



Chinese island building campaign is seen by decision-makers in Beijing as having constructed a Great 'Wall of Sand' enclosing 'blue soil'. It significantly increases the stakes to regard the area enclosed by the line as one not of maritime rights but of territorial sovereignty. However, as a matter of public legal argument China has not yet gone so far. Nonetheless, it has found itself compelled to make legal arguments to justify the position it has publicly adopted. While Chinese legal argument on point (discussed further below) has shifted over time, China's legal strategy must nonetheless be taken seriously.

The South China Sea is now a theatre of a great power competition. However, beyond freedom of navigation operations it appears that American attention now lies elsewhere with the trade war, Hong Kong, and North Korea. Any path forward lies in the region.

Affected coastal states for their part have taken different approaches. The Philippines has taken steps towards joint development agreements with China. However, these will face significant difficulties being operationalised in national law due to both internal politics and potential constitutional law constraints.

Malaysia is taking a quiet approach, downplaying the existence of the dispute and any clashes between Chinese and Malaysian vessels. Malaysia's first priority is closer economic ties with China.

There is at present no active dispute between Indonesia and China, despite one of the dashes of the Chinese line seemingly cutting into Indonesia's North Natuna Sea. While there have been dramatic images of Indonesian authorities burning illegal fishing vessels, China is not the principal source of any such threat to Indonesian fisheries at present.

Vietnam remains the state under the greatest pressure, particularly given Chinese resource exploration vessel activity within its EEZ and r

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There is a risk of normalisation of present Chinese activities and development of a new status quo.

maritime domain was principally seen as a source of threats and the principal purpose of naval power was coastal defence. Thus the Great Wall of Sand may be seen as a form of (extremely) long-range coastal defence, attempting to make the South China Sea a no-go zone for other powers.

The chain of artificial islands established forms not only a defensive perimeter but also provides nodes for surveillance, forward operational bases for reconnaissance and fighter aircraft, deep water bastions for nuclear submarines, and bases for offensive and defensive missile capabilities. Further, through a combination of underwater arrays and satellites Chinese technical capabilities are reaching a level that allows them to track any actor entering the South China Sea, however covertly.

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Fundamentally, China frames the South China Sea dispute as an issue of territorial integrity. While not necessarily defined as a core national interest, Beijing's actions there are intended to send clear messages to US and others. Otherwise, policy elites see more potential for conflict in the East China Sea, where the critical issues are Taiwan and with Japan. In particular, relations with Japan are always coloured by the complex historical relationship and the Japanese alliance with the US.

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The only international actor that issued a clear response was the US, making two statements naming China and asking it to respect longstanding international law rules regarding Vietnam's rights.

The *Haiyang Dizhi 8* incident highlights four points. First,

understood here to include trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms. Indonesia has proposed adding illegal fishing to this list.

China has presented a detailed proposal on six areas of cooperation:

the only claimant state willing to be assertive is China. There is also a general sense that US interests in the region are not such that the US is likely to come to the aid of an individual regional state in a dispute with China. It is also not clear how far the US would go to defend its own interests in freedom of navigation (both commercial and military). Finally, while there is pressure from China not to 'internationalise' the dispute and to keep 'outsiders' (i.e. western states) out of the region, being seen to invite international intervention is generally received poorly by other South East Asian countries also.

Further, it is hard to see a breakthrough in the immediate future on the ASEAN track. Compromise is difficult because of the significance of the issues involved for littoral states. Nationalist sentiment also makes compromise difficult. For all states involved, this is first and foremost about domestic politics. Each has multiple national constituencies which are dissatisfied with status quo. This is a two-edged sword. For example, the government in Vietnam is able to capitalise on nationalist sentiment at times, but must also work to keep it from boiling over.

A key question for the Code of Conduct, if concluded, will be its likely practical effectiveness. Practitioners in the discussion were less concerned about the risk of an unplanned incident escalating into armed conflict. History is replete with examples of unplanned encounters or incidents which have not lead to escalation. Recently, in defiance of maritime conventions and custom, a Chinese vessel left Philippines fishermen to fend for themselves when their vessel sunk following a collision.

Nonetheless, governments remain nervous about the risk of escalation from such incidents. The principal benefit of any Code of Conduct is likely to be that if channels of communication are established, and if step-by-step procedures are spelled out, and if these then become day-to-day practice, then the Code is likely to have de-escalatory and confidence building effects in practice irrespective of whether it is legally binding.

archipelagoes. This was the argument put by some 70 members of the scholarly Chinese Society of International Law (CSIL) in an extraordinary 500-page 'critical study' published in the

This raises the question as to how effective is invoking international law as part of public diplomacy. The consensus was that case studies show weaker countries can sometimes hold their own against stronger countries through reference to international law. This approach hasn't worked, however, in the South China Sea.

International law can also be used to de-escalate disputes and tensions. By framing disputes in legal terms, public opinion on an issue can be defused and politically difficult decisions sold as mandated by international law. One could think of the Qatar/Bahrain dispute over various islands which was settled by the International Court of Justice (ICJ) in 2001, in which the ICJ ruling was important in 'selling' the outcome to disaffected nationalists in Bahrain. There is, however, only a minimal prospect of other countries taking their claims over the South China Sea to an arbitral tribunal, other than Vietnam which might be keeping the opê be e

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Dealing with subsidies might not of itself help curb Chinese overfishing and other fishing activities. China is clearly looking to expand the scope of its distant water fishing. China has been actively discussing the utilisation of marine resources in Antarctica and has taken to labelling itself as a 'near-Arctic state'—why should China have a seat at the table in these discussions? Because when fish stocks in the South China Sea are fully depleted, China will start fishing elsewhere.



Grey zone actors and UNCLOS

A central topic for discussion was whether non-compliance by one state can erode a critical pillar of UNCLOS. The conclusion was that this is possible: China's size makes its actions disproportionately influential. In particular, China, unlike Russia, seeks to put forward alternative orthodoxies when it undermines international law. Russia merely undermines legality without proposing any alternative. In a sense, the Russian approach is *less dangerous* to international order: by playing the spoiler, its actions have no rule-

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Middle powers need to up their game in SCS and focus on how China is seeking global pre-eminence.
The focus should be o

those on which Australia relies for key strategic resources. Added to this, some great powers like Russia and China are increasingly relying on hybrid warfare or grey zone operations, that fall somewhere on the scale between war and peace.

Australia's strategic thinkers are focussing on the latter. Discussions on the emerging strategic environment, on Chinese operations in the South China Sea, potential accommodation or operational responses, and the logistics required to support operations to our north have dominated the debate. However strategic assessment of critical trade and resources upon which Australia relies that flows through the area, or sea supply, has received less attention.

Australia's economic functioning relies on maritime trade and increasingly this represents a strategic vulnerability. Further, 99% of communications reaching Australia pass through undersea fibre optic cables. Less and less civilian shipping used by Australia is Australian-owned or managed. The UN Convention on the Law of the Sea doesn't address some of the maritime trade issues we're facing at present.

Australia responses to threats to maritime trade in the past

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The UNSW Canberra Maritime Security Research Group is grateful for the participation of the following academics in the workshop. This report, however, is the sole responsibility of the chair and nothing in it should be attributed to any individual.

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