

Drama and Maneuvering in the South China Sea: The US-China Standoff

Peter Lee

On October 27, 2015 China hawks got what they had long demanded: a US Navy Freedom of Navigation operation (aka FONOP) within 12 nautical miles of Subi Reef, one of China's manmade islands in the South China Sea.

But it turns out that wasn't enough!

China hawk joy was transformed into widely-advertised disappointment that the vaunted FONOP had allegedly been an anodyne "innocent passage" (i.e. a use of a foreign country's territorial waters for prompt passage as permitted by international law) by the guided missile destroyer USS Lassen, a timorous transit that failed to repudiate the PRC's unreasonable claims in the South China Sea based on the fallacy of the Nine Dash Line and the chicanery of its island-building program.



USS Lassen launches a missile

Exasperation with the FONOP was probably heightened by the fact that the PLA Navy had cleverly conducted its own "innocent passage" exercise through the territorial waters of the Aleutian Islands in September 2015, thereby diminishing the consequences of a close sailby of Subi Reef as a cathartic piece of defiance against PRC aggrandizement in the South China Sea.

A [spate of articles](#) appeared on the theme, per the article in the Lowy Interpreter, Innocent Passage: Did the US Just Fumble Its South China Sea Strategy?:

USNI News, Defense News and Graham Webster all recently noted that the USS Lassen was undertaking innocent passage when it sailed past Subi Reef on 27 October. This surprising revelation has not been officially confirmed but is understood to have been widely corroborated by sources in the US Navy, Department of Defence and Capitol Hill.

Responding to the furor, on November 9, 2015, almost two weeks after the seemingly triumphant sailby, Senator John McCain, a leading hawk on South China Sea matters, [issued a letter](#) to Secretary of Defense Ashton Carter querying:

Under the freedom of navigation programs, what excessive claim(s) was the Lassen operation intended to challenge?

Did the ship operate under the rules of innocent passage? If so, why?

If not, what specific action or actions were taken within twelve nautical miles of an artificial island to demonstrate that the ship was not conducting innocent passage?

If only the Lassen had turned on its attack radar; or launched a drone while it was within 12 miles of Subi Reef...

Really?

Consider the FONOP.

FONOPS are tasked, planned, and executed by the US Navy based on its determination of maritime claims it deems excessive.

Full Stop.

The activities conducted during a FONOP are not revealed. The FONOP "happens" and a report is issued to Congress stating that it did "happen".

As Amitai Etzioni of George Washington University put it in [an analysis](#) of FONOPs:

FONAs are low-profile operations. The Defense Department itself does not currently publish a detailed description or justification of the program. Instead, it publishes only a brief yearly summary of FONAs on the website of the Under Secretary of Defense for Policy, listing the countries against which an assertion was conducted, the "excessive claims" that were protested, and whether or not multiple assertions were carried out against a given country (without going into specific details about the date or number of operations).

In other words, the "FONOP" can pretty much be anything the US government said it was. Just the fact of announcing it basically gets the job done by putting the country and the world on notice that the US does not recognize a claimed jurisdiction.

As can be seen from the [Fiscal Year 2014 Freedom of Navigation Report](#), a concise two-page document issued by the Department of Defense, FONOPs are part of the Navy's global routine, conducted in waters claimed by friends

and allies as well as adversaries and enemies. During that period, FONOPs were conducted in waters claimed by 19 countries, including China, the Philippines, Vietnam and, indeed most claimants involved in the South China Sea.

Prior to the operation, the Department of Defense had [let it be known](#) that the Lassen would ostentatiously loiter with intent for "several hours" while executing a lingering passage through the nearshore waters of Subi Reef.

In an opinion piece titled [The USS Lassen's Transit of Subi Reef Was Not So "Innocent"](#), Captain Anthony Cowden of the US War College had this to say about the "innocent passage" aspersions cast on the sailby:

We have already seen that Subi Reef has no territorial waters associated with it, so by the logic of the "and" conjunction, innocent passage is not possible-not by Lassen, and not by any ship of any nation transiting within 12 nautical miles of Subi Reef. It does not matter if Lassen was operating in a non-confrontational manner or not; by definition, Lassen did not pass through any nation's territorial waters and therefore could not be conducting an innocent passage.

In other words, mission accomplished!

In addition to the campaign to highlight the purported inadequacies of the first sailthrough, there is a movement to formally schedule further sailthroughs, on a regular basis, perhaps [twice a quarter](#), and presumably exhibiting [more satisfactory anti-China bravado](#).

The key question is whether the US Navy will

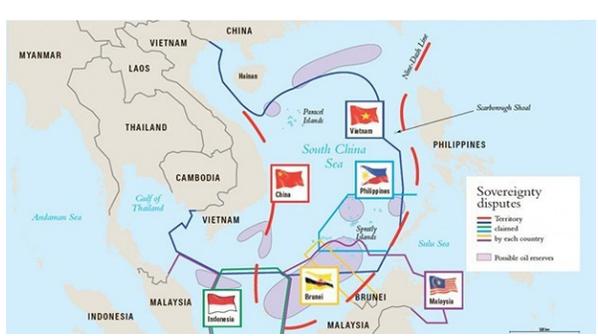
be able to back the PRC into a corner on the island FON issue. This could involve forcing a confrontation-not necessarily military but political, one that involves the PRC overtly and requiring that it back down instead of fighting back. This would reveal the PRC to the world and, especially, America's allies in East Asia, as the paper tiger that the hawks are convinced it is.

However, despite frequent public claims that the PRC has drawn red lines and is daring the US to cross them, it should be clear that the PRC, as a matter of common sense and courtesy to the world's unchallenged naval hyperpower, is resigned to the US Navy sailing wherever it wants to, at least for the time being.

This is illustrated by the past history of maritime contention between the People's Republic of China and the US Navy, which have involved two elements.

The first was the PRC's attempt to restrict US naval operations inside the Exclusive Economic Zone (EEZ) of the PRC, not sovereign waters of the PRC but a 200 nautical mile zone of international waters adjacent to the PRC's territorial waters (territorial waters are often defined as inside the 12 nautical mile limit off a country's shoreline) reserved for its use under the UN Convention of the Law of the Sea (UNCLOS), which the PRC acceded to in 1996.

The second area concerns the US Navy's "Freedom of Navigation" operations which, as described above, are meant to demonstrate US rejection of excessive territorial waters claims, such as the PRC assertion that the area of the South China Sea enclosed within the Nine-Dash-Line is its "sovereign territory".



Sovereignty disputes and China's nine dash line in the South China Sea

The first significant US-PRC military dustup of the Obama era occurred when in 2009 the PRC tried to evict US naval vessels conducting anti-submarine surveillance within the (undisputed) PRC EEZ off Hainan Island on the grounds that the PRC had the right to control foreign military activities inside its EEZ (a position shared or supported at one time by the Philippines and Vietnam). The US dispatched a destroyer to protect its ship, and insisted on its interpretation of UNCLOS: that only foreign economic and military activities, and not military operations are precluded within an EEZ. The PRC backed off and, in 2014, signaled its tacit acceptance of the US interpretation by sending its own spy ship to shadow the RIMPAC naval exercise inside the Hawaiian EEZ.

With the EEZ issue apparently retired, the focus shifted to US Navy "FONOPs" in the South China Sea.

In evaluating the provocative value of the island FONOPs, it must be pointed out that the PRC has also tolerated US military activity in the South China Sea within the Nine Dash Line—officially on the principle of exercising forbearance in what it asserts is its sovereign territory—for a number of years.

The US Navy does not respect imputed claims to PRC sovereignty over the area within the

Nine Dash Line as territorial waters, as [this July 2015 press release](#) from US Pacific Fleet states:

Since August 2013, Destroyer Squadron 15 [Guided Missile Destroyers] have operated in the South China Sea. During these patrols, safe interactions with People's Liberation Army (PLA) Navy vessels at sea, courteous radio conversations, and prudent shiphandling establishes U.S. Navy's commitment to maritime security and informs our Chinese counterparts the U.S. Navy intends to operate freely in international waters...

Lassen [the destroyer currently on station] conducts daily flight operations with her two embarked MH-60R Seahawk helicopters, assigned to Helicopter Maritime Strike Squadron (HSM) 51, also known as the "Warlords." During these flights, Warlords are often queried by the Chinese. The pilots on the helicopter respond in a professional manner by reiterating they are operating in international airspace in accordance with international law.

In other words, the US Navy has actually been engaging in de facto "FONOPs" in the South China Sea for at least two years.

The Lassen October FONOP at Subi was shadowed by two PLA Navy vessels without interference, and the operation was condemned with vociferous but empty excoriation by PRC officialdom and in the Chinese press.

The PRC position that it allowed the Lassen to do whatever it did without challenge as an

acknowledgment of American power, and not recognition of its indefensible claims in the South China Sea, was illustrated by the different treatment it gave to a Vietnamese government vessel that subsequently sailed past Subi Reef.

Sauce for the US Navy goose is definitely not for the Vietnamese gander, as [an account](#) by the Vietnamese captain of a Vietnamese Ministry of Transport supply boat confirms. For whatever reason, innocent or otherwise, he decided he would skirt Subi Reef at "about" 12 nautical miles a week or so after the FONOP and received this reception:

A while later, two Chinese coast guard ships, coded 35115 and 2305, appeared and sped up toward the Vietnamese ship.

"The ship 35115 rushed to the prow of our boat while the ship 2305 darted toward the stern," Captain Nga narrated. "We had to try to steer our boat so that it could avoid colliding with either of the Chinese vessels."

At 11:00 am, a Chinese warship came from Subi Reef and headed for Hai Dang 05, at a speed of 16-18 nautical miles, to support the two coast guard boats to bully the Vietnamese ship, Captain Nga said.

Nga asserted that the warship then used equipment to disrupt radar waves, so the local ship failed to measure distances between itself and other vessels around it.

The warship then repeatedly let off flares toward Hai Dang 05 as a sign of threat and broadcast messages in Chinese through a

loudspeaker to drive the local ship away, the captain said.

At 11:30 am, the warship exposed a 37mm artillery gun by removing its wrappings, and more than 10 people in camouflage battledress armed with AR assault rifles were deployed in different positions on board, pointing their guns at the local ship, Captain Nga recounted.

... the soldiers on board the Chinese warship kept aiming their guns at the Vietnamese boat until 1:30 pm, when all of the Chinese vessels left...

The interesting question of what the PRC would do if its rival, Japan, decided to join high profile US FONOPs has been raised, but apparently Japan is not quite ready to find out, at least for now.

For the time being, therefore, the FONOP has simply reaffirmed that the US Navy enjoys "sail anywhere" privileges by virtue of its naval clout, and this is a privilege that the PRC is determined to deny to its neighbors in the South China Sea.

The situation is further complicated, I would suspect knowingly, by the PRC construction of military facilities on many of the South China Sea structures. Close approaches by foreign military and civilian ships and aircrafts in the South China Sea are apparently warned off not only on the basis that PRC sovereign territory is being infringed, but that intruders are coming too close to a sensitive military installation.

The PRC's ability to bob-and-weave away from the United States while acting aggressively against Vietnam and the Philippines may receive its most challenging test if the PRC's claims of sovereignty are repudiated by the

decision of the UN Permanent Court of Arbitration on the issue of the "Nine-Dash-Line" in the South China Sea in response to a petition from the Philippines under the UN Convention of the Law of the Sea (UNCLOS).

The PRC claim to most of the South China Sea is based on an unsurveyed assertion illustrated by nine dashes on Chinese maps-the "Nine-Dash-Line"-that is widely derided by non-PRC observers and is also anathema to the principles of UNCLOS. It would be an occasion of enormous surprise if the arbitration panel does not invalidate the Nine-Dash-Line when it hands down its decision in the first half of 2016, thereby endorsing the delineation of 200 nautical mile EEZs in the SCS by the Philippines and everybody else in the region.

Australia, Singapore, Indonesia, Japan, Malaysia, Thailand, and Vietnam have sent observers to the hearing, presumably to demonstrate to the judges their support for the Philippines' effort. Although the US Senate has not ratified UNCLOS (due to concerns by Senate Republicans concerning possible infringement of US sovereignty) and the United States has been unable to appear officially in the proceedings, it has on several occasions expressed its support for the UNCLOS arbitration process and the Philippines position on the Nine Dash Line.

The South China Sea without the Nine Dash Line is basically divided between the Philippines and Vietnam for EEZ purposes, creating difficulties for the immense PRC fishing fleet that presently exploits the contested waters, and also offering the possibility of a major blowup over development of Reed Bank, a significant hydrocarbon play within the expected Philippine EEZ that is coveted by the PRC.

The PRC, although a signatory to UNCLOS, has adamantly denied the jurisdiction of the arbitration court over the Nine-Dash-Line issue, has declined to participate in the proceedings

of the arbitration court, and has repeatedly declared it will not honor any judgment by the panel. UNCLOS has no enforcement mechanism, military, economic, or otherwise, so a negative ruling has no direct consequences for PRC territorial claims under UNCLOS. Assuming the PRC ignores the ruling and continues to try to exploit the bounties of the South China Sea, and particularly if it takes active measures to deny them to others, it is possible for the South China Sea to drift into the limbo of "frozen conflict": business as usual, albeit with persistent, chronic friction.

The PRC would probably be satisfied with this outcome. However, China hawks in United States and, especially in the Philippines, which has staked its vision of the Philippines' future on confronting China under the aegis of the United States (and trashed relations with the PRC in the service of this vision), would not.

If the PRC cannot be confronted in the South China Sea over its defiance of UNCLOS, the entire U.S. exercise of power in the SCS would look ineffectual, even pointless.

There is some hope and expectation among China hawks that US Navy activities might expand beyond traditional FONOPs to direct support of the Philippines in claiming its EEZ rights subsequent to the UNCLOS ruling. Flashpoints inside the expected Philippines EEZ include the Scarborough Shoal-a valued fishing ground currently controlled by PRC vessels much to Philippine resentment-and the Reed Bank energy play.

Another US Naval War College faculty member, James Holmes, [opined](#):

The fact is, domestic law provides remedies for wrongful claims. The law of the sea does not. Or, more precisely, a UN tribunal exists to resolve nautical disputes, but seagoing states can refuse to

accept its authority - as China has done in a case brought by the Philippines.

That leaves seafaring states mindful of maritime freedom with an unpleasant choice. They can either accept the unacceptable, namely China's effort to rewrite international law to the detriment of maritime freedom. Or they can resort to self-help. Governments can defy unlawful claims by deploying steel, à la Lassen; by backing up their actions through diplomatic correspondence with the offending government; and by explaining their purposes to important audiences. If resolute enough, stakeholders in the free sea keep excessive claims from calcifying into international custom and - perhaps - law.

...

Navies enforce the law of the sea, and always have. Who else will do it - the Maersk Line? A Carnival cruise?

Therefore, I interpret the China hawk dissatisfaction with the Lassen FONOP as a

signal that further escalation beyond the traditional limits of the FONOP is desired... and will be pursued until a provocation sufficient to bring the PRC into a direct and humiliating confrontation with US power is discovered.

Peter Lee writes on East and South Asian affairs and their intersection with US global policy. He is the moving force behind the Asian affairs website [China Matters](#) which provides continuing critical updates on China and Asia-Pacific policies. His work frequently appears at [Asia Times](#).

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Related articles

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