

THE SOUTH CHINA SEA: TROUBLED AND TURBULENT WATERS

PRADEEP CHAUHAN

The South China Sea (SCS) is a semi-enclosed sea in the western Pacific Ocean, spanning an area of almost 3.5 million sq km. As shown in Fig 1, it lies to the south of China; to the west of the Philippines; to the east of Vietnam; and to the north of Malaysia, Brunei, Singapore, and Indonesia.

The SCS has been much in the news recently, especially in the immediate aftermath of the judgement delivered by the Permanent Court of Arbitration (PCA) in The Hague on July 12, 2016, on a 15-point case initiated by the Republic of the Philippines, challenging China's claim to what it says are its historic waters, as enclosed by the 'Nine-Dash Line' (depicted in Fig 2). The arbitration award by the PCA, announced on July 12, 2016, was overwhelmingly in favour of the Philippines. In ruling that China's Nine-Dash Line is devoid of legal merit, the PCA scathingly removed the fig-leaf of 'historical' control that had been so brazenly worn by China. Beijing, for its part, has consistently maintained that the PCA has no *locus standi* in this matter and, as such, China would neither take part in the deliberations nor take cognisance of any award arrived at by the PCA.

Vice Adm **Pradeep Chauhan** retired in December 2013 after a distinguished four-decade- long career in the Executive Branch of the Indian Navy, during which he held numerous command and staff appointments, including that of the aircraft carrier, INS *Viraat*. He has since been an active member of the strategic community.

Fig 1: South China Sea



Source: "Limits of Oceans and Seas"; International Hydrographic Organisation Special Publication 23, 1953; available at url: <https://epic.awi.de/29772/1/IHO1953a.pdf>

Fig 2: Nine-Dash Line

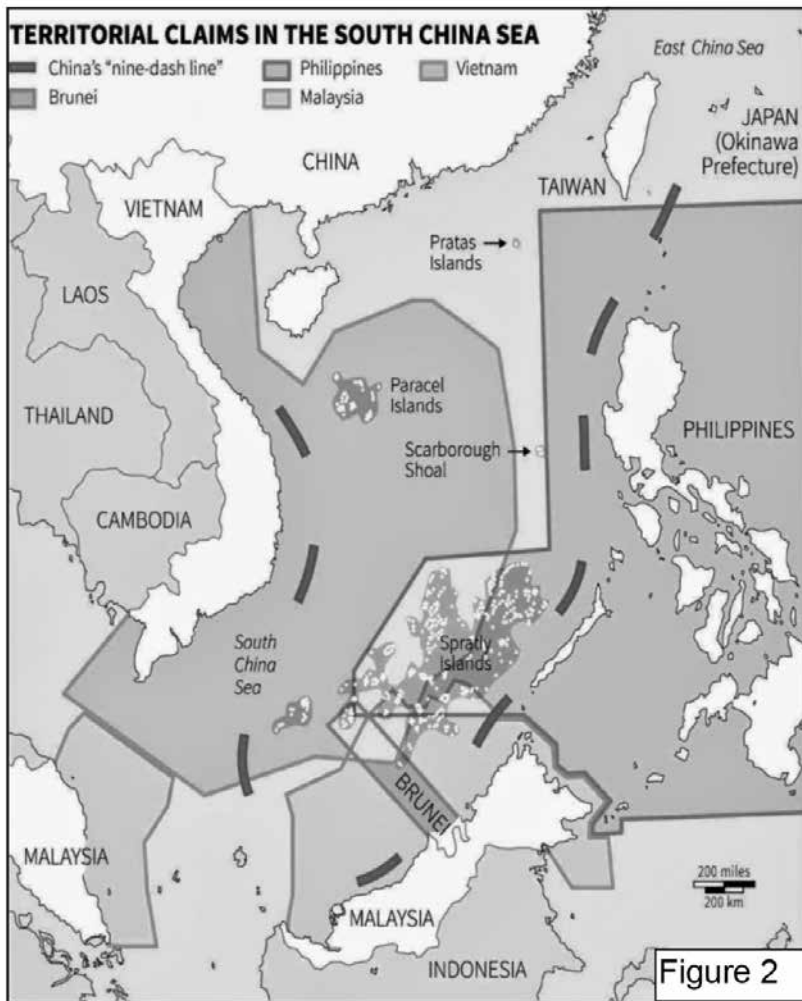


Image Credits: Stephen Green; "The New Containment", November 4, 2013; available at url: <http://pjmedia.com/vodkapundit/2013/11/04/the-new-containment/>

Although the various claimants to sovereign territory in the South China Sea have almost uniformly buttressed their claims by their respective versions of the sub-region's ancient and medieval history — if not its historiography — the history of 'sovereignty' disputes in the South China Sea actually begins only in the 19th century, with the peculiarly European practice of dividing all

The history of 'sovereignty' disputes in the South China Sea actually begins only in the 19th century, with the peculiarly European practice of dividing all land masses found above sea level between nation-states that thereafter (at least after the 1648 'Peace of Westphalia') claimed to enjoy full sovereignty over them.

land masses found above sea level between nation-states that thereafter (at least after the 1648 'Peace of Westphalia') claimed to enjoy full sovereignty over them. This may be contrasted with the much longer pre-European period, in which the SCS principally served not as an area enclosing segments of sovereign territory, but rather as a means of communication — i.e., seaborne transportation and trade. The islands of this sea were of consequence only as hazards to navigation that were to be avoided. In common with the global practice of those times, much of the SCS' seaborne trade involved close-coast sailing. Information on these sea routes and their relevant

coastlines was compiled into 'rutters'¹ — written mariner's handbooks or 'Sailing Directions' — comprising route maps, star charts, and 'magnetic-compass manuals' that were the primary sources of geographic information for maritime navigation, and remain invaluable even in contemporary times. There were several important maritime trading routes:² the 'Northern Routes' (Fig 3) from Fujian, Zhejiang, Jiangsu and Shandong, to the eastern and southern coasts of Korea and further to Japan (Hakata, Nagasaki), as also from Shandong along the Bohai and Dalian Bay to the mouth of the Yalu river and from Jiangsu or Zhejiang via Huksan to the west coast of Korea. Likewise, there was the 'Eastern Route' (Fig 3) from Fujian or Zhejiang via the Ryūkyūs to southern Japan and from Fujian via the northern tip of Taiwan to Naha on the Ryūkyūs, and from Fujian to Luzon and the Sulu region.

1. The term is derived from the French *roulier*, meaning a roadmap.

2. Angela Schottenhammer, *The "China Seas" in World History: A General Outline of the Role of Chinese and East Asian Maritime Space from its Origins to c. 1800* (Ghent, Belgium: Ghent University, Blandijnberg 2, 9000), January 16, 2013, available at url: <http://www.sciencedirect.com/science/article/pii/S2212682112000261>

Fig 3: Ancient China: Northern & Eastern Sea Trade Routes



Source: Google Maps. Routes drawn by me. Citation for description of routes already indicated at note 2 of the article

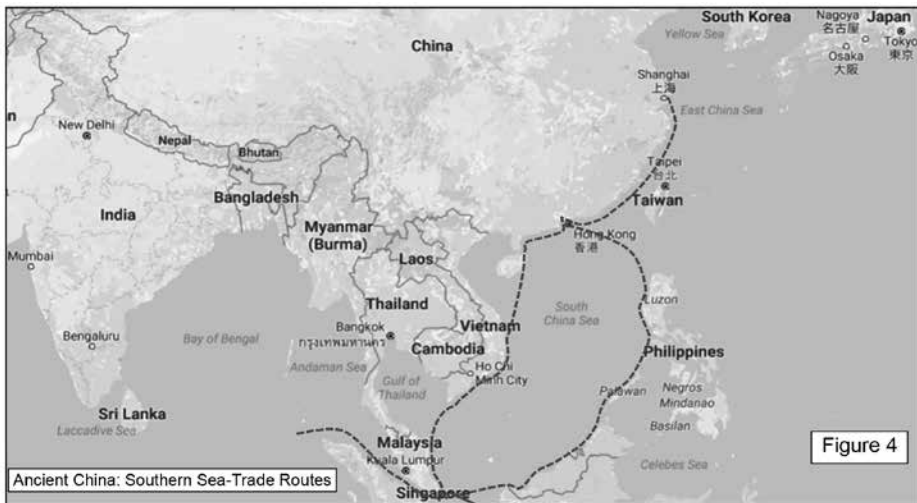
However, the main artery of maritime trade was the ‘Southern Route’ (Fig 4) from ports such as Shanghai in Jiangsu province, via Zhejiang, Fujian, Guangdong to the South China Sea via Hainan, Vietnam and the area of modern Singapore, and thence into the Indian Ocean (this route had many branches within Southeast Asia).

Insofar as the littoral powers (and sometimes hinterland ones as well) were concerned, the economic importance of this route lay in the levying of port dues, taxes to be paid by the vessels engaged in maritime trade, and also included sundry amounts of money that might assure safe-passage of the crew and cargo. These ships and their cargoes came from a variety of kingdoms, principalities and port-cities, and the levies to be paid were enforced by a messy mix of state-owned craft and hired privateers — one man’s privateer was often another’s pirate. This complex — albeit untidy — maritime trade network had one common and binding interest: economic profit. If the economic profit of a given portion of territory was deemed great enough and the power holding the territory

The major island and reef formations in the South China Sea that are at the centre of so much of the present-day turbulence afflicting the South China Sea — the Spratly Islands, Paracel Islands, Pratas Islands, Natuna Islands and Scarborough Reef — were utterly insignificant economic factors in the period preceding the advent of the European naval powers in the area.

was deemed weak enough, a kingdom might risk war with another in order to acquire the concerned territory, but if not, the economics of the market prevailed — a situation not terribly different from the one that governs contemporary international relations. Hence, the avoidance of risk — whether generated by predation or navigational hazards — was an important feature of maritime trade. The major island and reef formations in the South China Sea that are at the centre of so much of the present-day turbulence afflicting the South China Sea — the Spratly Islands, Paracel Islands, Pratas Islands, Natuna

Islands and Scarborough Reef — were utterly insignificant economic factors in the period preceding the advent of the European naval powers in the area, except as broad areas to be avoided for the navigational hazard that they represented. This was the case even during the Ming dynasty's impressive maritime outreach exemplified by the seven trans-oceanic voyages of Adm Zheng He (1405-33). Perhaps this could be termed 'active maritime-disinterest'. As such, there was no real question of any territorial dispute over these islands, islets, rocks and reefs. This 'active maritime-disinterest' remained largely unchanged even well after the advent of the European powers into the SCS.

Fig 4: Ancient China: Southern Sea Trade Routes

Source: Google Maps. Routes drawn by author. Citation for description of routes indicated at note 2 of the article.

EUROPEAN CONTRIBUTION TO THE SCS IMBROGLIO

With the launch of Europe's 'Age of Discovery' in the 15th century by Prince Henry of Portugal, the Portuguese were the first to venture into the SCS, arriving in the early 16th century, in pursuit of the wealth that would accrue were they to acquire a controlling interest in (and preferably a monopoly over) the spice routes into Europe. Aware that the land-based trade routes of Asia-Minor were under the firm control of the Egyptian Mamluk dynasty (whose principal trade partner was Venice), the Portuguese sought to exploit, instead, the medium of the sea. They were followed by the Spaniards and the Dutch, but neither of them showed any interest in establishing or maintaining sovereign claims over the SCS islands. This changed only in the 19th century — China's 'Century of Humiliation' — by which time Portugal had lost its empire to the Dutch. However, it was Britain and France that were the overwhelmingly dominant powers within the SCS. Between them, they created a number of new colonial states that were based upon the principle of national

sovereignty — Britain constructed Singapore, wrested Malacca (Melaka) from the Dutch, acquired Hong Kong, and established protectorates in Malaya and northern Borneo. Not to be left behind, France colonised Indo-China [Vietnam, Cambodia, Laos, and leased part of the Liaozhou peninsula (north of Hainan)].³ The by-now-lesser European powers (such as the Netherlands and Spain) were still in the sovereignty/colonisation game, with the Netherlands consolidating its many possessions (much of Java, parts of Sumatra, Makassar, Manado, and Kupang) into the 'Dutch East Indies' and Spain seeking to tighten its hold over the Philippines. Chinese power had been severely eroded by the Opium Wars (1839-42). Although systematic surveys of the Spratly and the Paracel groups were progressed from the 1830s onwards, resulting in more accurate charts and maps, nobody was particularly interested in the islands and islets of the SCS, much less so in its reefs and rocky outcrops, except as places where they and their ships would rather **not** go.

It was only in 1877 that the European concept of national sovereignty began to be force-fitted onto the SCS islands and islets. Consequent upon the commencement of private commercial exploitation of the *guano*⁴ on Spratly and Amboyna Cay, these two islands of the Spratly group were formally claimed by the British crown as sovereign British territory.⁵ From 1891 to 1933, these two islands "were mentioned specifically in the annual editions of the British Colonial Office list, but little was done to exploit them or exercise British sovereignty."⁶ Significantly, China did not protest the British claim.⁷ In fact, both Britain and France considered the

3. Timo Kivimäki, *War or Peace in the South China Sea?* (NIAS Press, 2002), p. 8, available as an e-book at url: https://books.google.co.in/books?id=CNVf9R_L5FAC&pg

4. *Guano* is bird-dung, used for fertiliser and in the making of soap.

5. Bill Hayton, *The South China Sea: The Struggle for Power in Asia* (Yale University Press, 2014), available as an e-book at url: <https://books.google.co.in/books?id=01FmBAAAQBAJ&dq>

6. Stein Tønnesson, "An International History of the Dispute in the South China Sea", EAI Working Paper 71, March 2001; available at url: www.cliostein.com/documents/2001/01%20rep%20eai.pdf

7. James D Fry and Melissa H Loja, "The Roots of Historic Title: Non-Western Pre-Colonial Normative Systems and Legal Resolution of Territorial Disputes", *Leiden Journal of International Law*, 27, 2014, pp. 727-754; available at url: https://seasresearch.files.wordpress.com/2014/09/historictitle_territorial-disputes.pdf

Spratly Islands to be *terra nullius*.⁸ In any case, in the 1870s, Great Britain — in a staggering manifestation of imperial arrogance — “did not regard China at that period as fully a member of the family of nations”.⁹ France, too, was suffused with a palpable sense of imperium and simply ignored both Chinese and Vietnamese territorial claims (the latter were fairly strongly articulated by Vietnam’s *Nguyen* kings between 1802 and 1847). Towards the end of the turbulent 19th century, two non-European powers established themselves — both through conquest in war — as major factors in the subsequent South China Sea equation. The main newcomer was Japan, which had won the Sino-Japanese War in 1895 and acquired Taiwan as part of the ensuing peace settlement. The other was the USA which, having won the Spanish-American War of 1898, took over the Philippines from Spain. Thus, as the 19th century rolled over into the 20th, there was a condominium of five naval powers in the SCS — Britain, France, the Netherlands, Japan and the USA.

Much of the present geopolitical entanglements in the SCS can be traced to the complex geopolitical interaction among these five powers and the two main resident ones — China and Vietnam. Of particular note is that through the opening decade of the 20th century, the USA, like the Europeans, showed little or no interest in the Spratly or Paracel group or in any of the other islets, rocks and reefs that would be so central in a hundred years from then.

THE JAPANESE IMPACT

Japan, however, was another matter. Having defeated Qing China (1894-95), Japan annexed Korea and Taiwan and, amongst other (and less palatable) activities, also began to exploit the *guano* on the Paracel and Spratly Islands — the second country to do so, after Britain.¹⁰

8. *Terra nullius*: a Latin expression meaning “nobody’s land” and used in international law to describe territory which has never been subject to the sovereignty of any state, or over which any prior sovereign has expressly or implicitly relinquished sovereignty.

9. R. Haller-Trost, “The Spratly Islands: A Study on the Limitations of International Law”, Occasional Paper No. 14, (Canterbury: Centre of Southeast Asian Studies, University of Kent), p. 41.

10. Hurng Yu Chen; “Territorial Disputes in the South China Sea under the San Francisco Peace Treaty”, *Issues & Studies* 50, no. 3, September 2014, pp. 169-196, available at url: <http://tkuir.lib.tku.edu.tw:8080/dspace/bitstream/987654321/100230/2/>

As a direct consequence of its self-assessed humiliations and acutely sensitive to internal accusations that it was incapable of defending China's territory, Beijing decided — for the first time — to turn the question of sovereignty of the SCS islands into a question of national pride and the regaining of face.

The dawn of the 20th century saw multinational forces (comprising six European powers, Japan and the USA) intervene militarily in Beijing to suppress the 1901 Boxer Rebellion, causing significant loss of face to China's Qing court. By 1907, reports were freely circulating in Beijing recounting Japanese commercial activities on the *guano*-covered reef known as Pratas Island (400 km southwest of Taiwan — now under Japanese control). As a direct consequence of its self-assessed humiliations and acutely sensitive to internal accusations that it was incapable

of defending China's territory, Beijing decided — for the first time — to turn the question of sovereignty of the SCS islands into a question of national pride and the regaining of face. Thus, in 1909, it sent a mission to map and formally claim the Paracel Islands. However, within two years (in 1911) the Qing dynasty succumbed to the Chinese Revolution and China was wracked by protracted warlordism and civil war. As such, China was in no position to uphold its claim either through effective occupation or utilisation,¹¹ leaving Japan in *de facto* control.

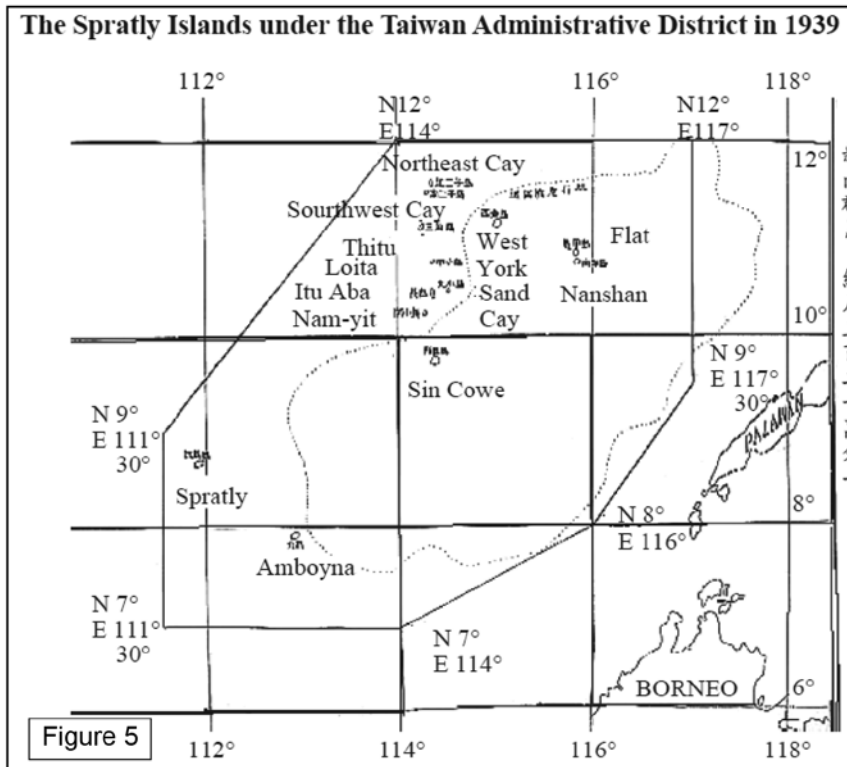
The unhappily simmering SCS brew next bubbled over in 1930. France, apprehending a further and imminent Japanese southerly naval expansion by using the Spratlys, occupied and claimed sovereignty over Spratly Island. Britain, by not opposing the French claim, relinquished its own 1877 one. Two years later, in 1932, France formally claimed both the Spratly and Paracel Island groups and in July 1933, annexed and occupied nine islands of the Spratly group, placing them under the administrative control of Cochinchina (which later became a part of Vietnam, thereby enabling independent Vietnam's subsequent claim).¹²

11. Hayton, n. 5.

12. Yu Chen, n. 10.

Both China and Japan protested. While Japan's protest was a formal one, China's was largely through expressions of confused outrage — the government being unsure where exactly these islands were and whether they were merely names of islands in the Paracel group that had been changed by the French to confuse Beijing!¹³ China's reaction was limited to an affirmation that the Spratly and Paracel Islands belonged to China, and the publication of a formal map. The Japanese reaction, however, was far more robust and involved the establishment of Japanese military presence in both the Paracels and the Spratlys. In January of 1939, Tokyo, flush with Japan's victories in Manchuria (1931) and China (1937), dispatched military troops to occupy the Spratly Islands and rejected the French demand for the dispute to be submitted to the Permanent Court of Arbitration (PCA). Two aspects merit note: to Britain's dismay, France did not militarily resist the Japanese occupation and the USA limited itself to a formal protest in Manila. This resulted in Japan formally claiming sovereignty, in 1941, over the islands of both groups (Fig 5). Tokyo placed the Paracel Islands under the administrative control of Hainan and the Spratly Islands under Taiwan (both of which were held by Japan). In World War II, Japan, which had entered into a treaty of cooperation with the Vichy France regime, used Itu Aba (in the Spratly Islands) as a submarine base and a vantage point for its 1942 invasion of the Philippines. However, Japan lost World War II, and in 1945, in accordance with the Cairo and Potsdam Declarations and with American help, the armed forces of the Republic of China (ROC) government at Nanjing accepted the surrender of the Japanese garrisons in Taiwan, including the Paracel and Spratly Islands.

13. Ibid.

Fig 5: The Spratly Islands Under Taiwan Administrative District, 1939

Source: Hurng Yu Chen; "Territorial Disputes in the South China Sea under the San Francisco Peace Treaty", *Issues & Studies* 50, no. 3, September 2014, Map 1, p. 178; available at url: <http://tkuir.lib.tku.edu.tw:8080/dspace/bitstream/987654321/100230/2/>

THE SCS IMBROGLIO POST-WORLD WAR II

With the defeat of Japan and its renunciation of its erstwhile territories in China and the SCS, Nanjing (the ROC's capital) claimed both archipelagos and declared them part of Guangdong province. In 1946, it established garrisons on both Woody Island in the Paracels and Taiping Island in the Spratlys. France protested and tried, but failed to dislodge the Chinese nationalist troops from Woody Island (then the only habitable island in the Paracels), but was able to establish a small camp on Pattle Island in the southwestern part of the Paracel archipelago.

What of the USA? By the end of World War II, the USA was the dominant naval power in the region and Japan had abandoned Itu Aba, Woody Island, and its other holdings within the SCS islands. However, in marked contrast to its present stand, it showed little interest in them except as targets to test the use of napalm.¹⁴

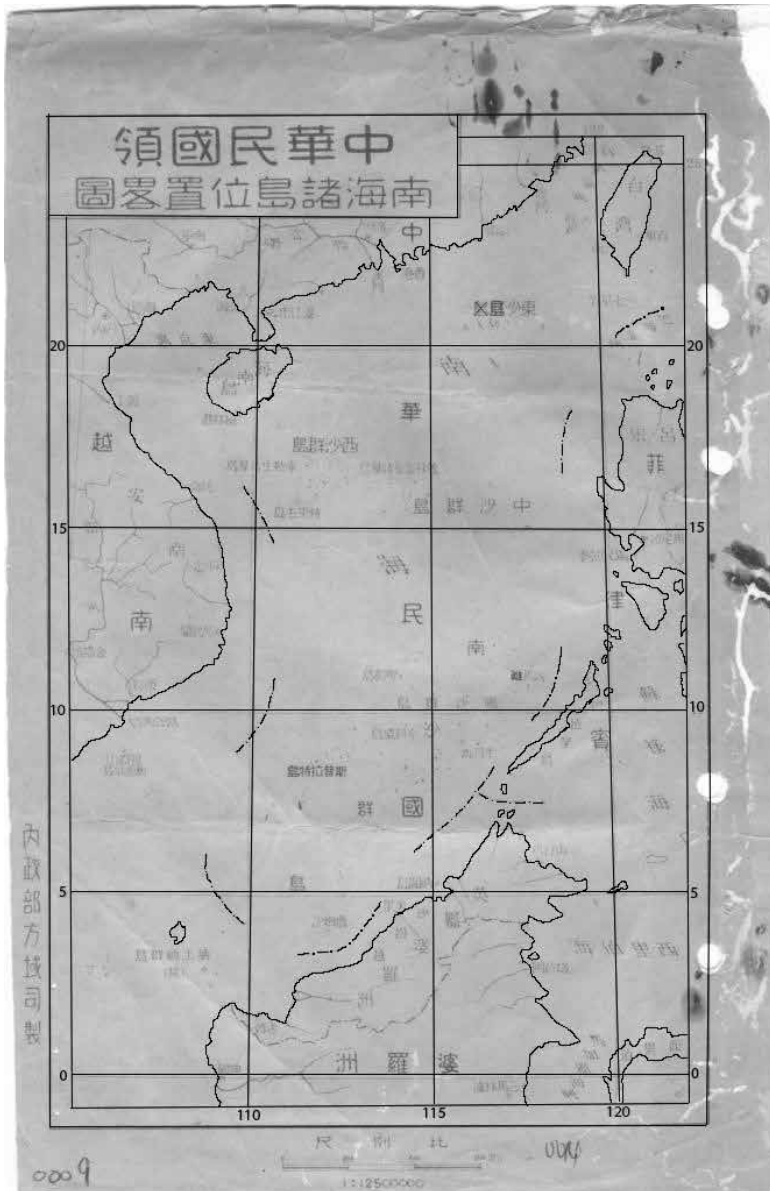
THE PHILIPPINES ENTERS THE FRAY

Around this point in time, a new regional claimant emerged — the Philippines. On July 4, 1946, the Philippines became formally independent from the USA. Just a few days later (July 23, 1946), Manila issued a declaration claiming the Spratly Islands — once again on the principle that they were *terra nullius*! In an immediate response, the ROC government in Nanjing began to take practical steps to reassert its own claim. Later that very year, the ROC Ministry of the Interior commissioned a ‘Location Sketch Map of the South China Sea Islands’. This depicted, for the first time, the now-infamous Nine-Dash Line (then comprising only eight dashes) stretching as far south as the James Shoal, just off the coast of Borneo. It has been speculated that this southerly stretch of the line (which is what gives it the sobriquet “Cow’s Tongue”) is due to the ROC’s mistaken belief that the James Shoal was an island, and that the line is a legacy of a series of ‘maps of national humiliation’ drawn by Chinese nationalists in the first half of the 20th century. As such, it owes more to misunderstandings amongst those nationalists about Southeast Asian history and the actual geography of the SCS than it does to any real assertion of historic Chinese sovereignty. Nevertheless, it is a mistake that has been forced upon the region with ideological rigour.¹⁵

14. Bill Hayton, “Calm and Storm: The South China Sea after the Second World War”, Asia Maritime Transparency Initiative (AMTI), August 2015, available at url: <https://amti.csis.org/calm-and-storm-the-south-china-sea-after-the-second-world-war/>

15. Ibid.

Fig 6: Location Sketch Map of the South China Sea Islands



Source: Bill Hayton; "Calm and Storm: The South China Sea after the Second World War", *Asia Maritime Transparency Initiative* (AMTI), August 2015; available at url: <https://amti.csis.org/calm-and-storm-the-south-china-sea-after-the-second-world-war/>

VIETNAM'S POST-UNIFICATION IMPRINT

In 1950, Vietnam became independent as two geopolitical entities. North Vietnam was supported and recognised by the People's Republic of China (PRC), the erstwhile USSR and several East European states, while South Vietnam was supported and recognised by Britain, the USA, France and most of Western Europe.

In 1954, France accepted the independence of both South and North Vietnam and withdrew from Indochina, thereby ceasing to be an involved factor. However, which Vietnam (North or South?) inherited its erstwhile holdings remained a matter of doubt. North Vietnam's dilemma was that it was in no position to oppose its major benefactor — the PRC — and yet, the PRC claimed the Paracel and the Spratly Island groups as its own. South Vietnam, on the other hand, claimed both, the Spratlys and the Paracels. There was also the question of which 'China' was the counter claimant? The PRC re-established a Chinese garrison on Woody Island in the Paracels, while the Republic of China (Taipei) put troops back on Taiping Island in the Spratlys.

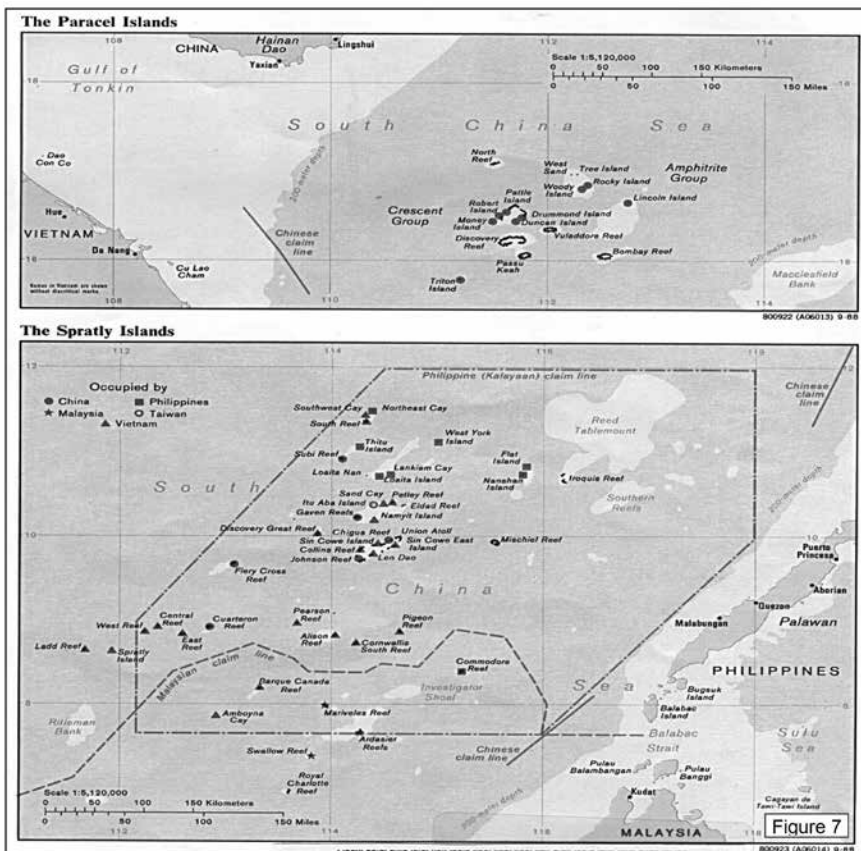
In 1974, South Vietnam attempted to enforce its claims to sovereignty by placing settlers in the Spratlys and expelling Chinese fishermen from the southwestern Paracels. In the ensuing naval battle at Pattle (a.k.a. *Shanhu*) Island, China defeated the Vietnamese forces. This enabled Beijing to extend its control to the entire Paracel archipelago, where it has not been effectively challenged since. In 1975, however, North Vietnam defeated the South and the country was reunited, with Hanoi as its capital. Five years later, Hanoi repudiated its earlier deference to China's claims, adopted the erstwhile South Vietnam's position, and claimed sovereignty over all the islands in the South China Sea. In the early 1980s, even as Beijing, Kuala Lumpur, Manila, and Taipei protested, Vietnam resumed vigorous settlement and garrisoning of the Spratlys.

THE IMPACT OF UNCLOS

The effect of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) upon the SCS imbroglio has been profound and mostly negative.

Even before the 1982 UNCLOS could be brought into force, but most especially after, the SCS dispute split into two separate but related disputes: the older one, with its complex history, is about the islets themselves and involves China, Taiwan, the Philippines, Malaysia, Brunei, Vietnam and, to a limited extent, Indonesia. The other is about the spaces in between the islets — which is really about the rules of the international system, particularly the Law of the Sea. It is the overlap between the two disputes that makes them so potentially dangerous.

Fig 7: Spratly & Paracel Islands



Source: US CIA Maps, University of Texas Libraries; available at url: http://www.lib.utexas.edu/maps/middle_east_and_asia/paracel_spratly_88.jpg

In the long run-up to the 1982 UNCLOS, several countries unilaterally promulgated enhanced maritime zones such as a 200 nm(nautical miles) Exclusive Economic Zone (EEZ). Within the SCS, these included the Philippines and Malaysia (Fig 7). In 1978 and 1979, respectively, Manila and Kuala Lumpur had unilaterally proclaimed such EEZs off their coasts. Once the UNCLOS was signed, the resolution of claims and counter-claims in the SCS became even more problematic, particularly because contemporary international law is premised upon the land dominating the sea. Thus, ownership of 'islands' (as defined by UNCLOS) generated varying degrees of jurisdiction and exclusive rights over substantial sea areas ranging from territorial seas, contiguous zones and exclusive economic zones — the latter additionally incorporating continental shelves in certain cases. The Philippines' claim has already been alluded to. Malaysia, too, entered the list of claimants and, in 1983, occupied Swallow Reef and established a military presence there. Malaysia, the Philippines, Vietnam, and China have all correctly understood that the key to sovereignty is not legal arguments but physical possession and control — a continuous human presence. Whether an island generates an EEZ or simply a twelve-mile territorial sea is determined by whether or not it is able naturally to support human life. Hence, the rush to seize and settle any and all land features in the South China Sea and to demonstrate that people can live on them. Thus, in March 1988, after a bloody skirmish with Vietnamese forces at Johnson South Reef, the PRC seized seven land features and began frenetically building fortresses atop these reefs and rocks. Where the Spratly Islands are concerned, some 44 features in the group are currently settled, occupied, or garrisoned: 25 by Hanoi, eight by Manila, seven by Beijing, three by Kuala Lumpur, and one by Taiwan. The political difficulty for the claimants of accepting this outcome can hardly be overstated. All sides feel cheated by it. None is without passion on the subject.¹⁶

16. Chas W. Freeman, Jr., erstwhile US ambassador, "Diplomacy on the Rocks: China and Other Claimants in the South China Sea", remarks at a seminar of the Watson Institute for International Studies, Brown University, available at url: <http://www.mepc.org/articles-commentary/speeches/china-and-other-claimants-south-china-sea?print>

In 2002, during the 8th Association of Southeast Asian Nations (ASEAN) Summit, a declaration was signed between China and the ASEAN member-states (which included all the other claimants except Taiwan), whereby all the parties committed themselves to exercising self-restraint.

THE CONTEMPORARY SCENARIO AND INDIA

Standing out starkly against the foregoing historical backdrop is the contemporary situation. The advent of the 21st century was one of great hopes that most, if not all, of the many Asian colonial traumas of the preceding centuries would be put firmly in the unhappy past. The start of the new millennium seemed to herald a happier future. The condition of the South China Sea appeared to be characterised by a relatively benign set of geopolitical swell-waves rather than the fierce and choppy sea waves of the

preceding epoch. Matters appeared to be well in hand and in 2002, during the 8th Association of Southeast Asian Nations (ASEAN) Summit, a declaration was signed between China and the ASEAN member-states (which included all the other claimants except Taiwan), whereby all the parties committed themselves to exercising self-restraint and resolving their territorial and jurisdictional disputes without resorting to the threat or use of force.

Then, having lulled ASEAN into complacency with a protracted and most seductive siren song of a peaceful rise, China — responding to the submissions to the UN by Malaysia and Vietnam in respect of their continental shelves — suddenly precipitated matters by a formal submission to the UN on May 7, 2009, claiming some 90 percent of the South China Sea as its own, through the now famous Nine-Dash Line.¹⁷ Although, as indicated earlier in this article, a map depicting this Nine-Dash Line (then comprising eight dashes) — the result of a set of historical, geographical and cartographic mistakes by the ROC authorities in Nanjing¹⁸ — had been in existence since 1946, the audacity with which it was dusted off and used to proffer a ‘historical claim’ by Beijing put the Chinese cat firmly amongst the ASEAN pigeons.

17. China’s Submission CML/17/2009; available at url: http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf.

18. Hayton, n. 14.

While several ASEAN states chose to either acquiesce or remain extremely circumspect, the Philippines and Vietnam have consistently adopted robust positions in opposing China's moves of creeping jurisdiction within the SCS.

In 2010, China declared that, like Tibet and Xinjiang, the South China Sea was a "core national interest". It is important to understand that the term 'core interest', as used by the Chinese leadership, does not have direct correspondence with the same term used by India — or, for that matter, by almost all the other nation-states. The People's Republic of China uses the term geopolitically "*to lay down a marker, or type of warning.*"¹⁹ — in other words, to specify "*issues it considers important enough to go to war over.*" Geopolitics is, after all, largely the sum of geoeconomics and geostrategy.²⁰ Consequently, as China's geoeconomic power impacted and dwarfed other regional and state economies, Beijing's asserted geostrategy has been incorporating an incremental increase of geographically-specific regions as its "core interests".

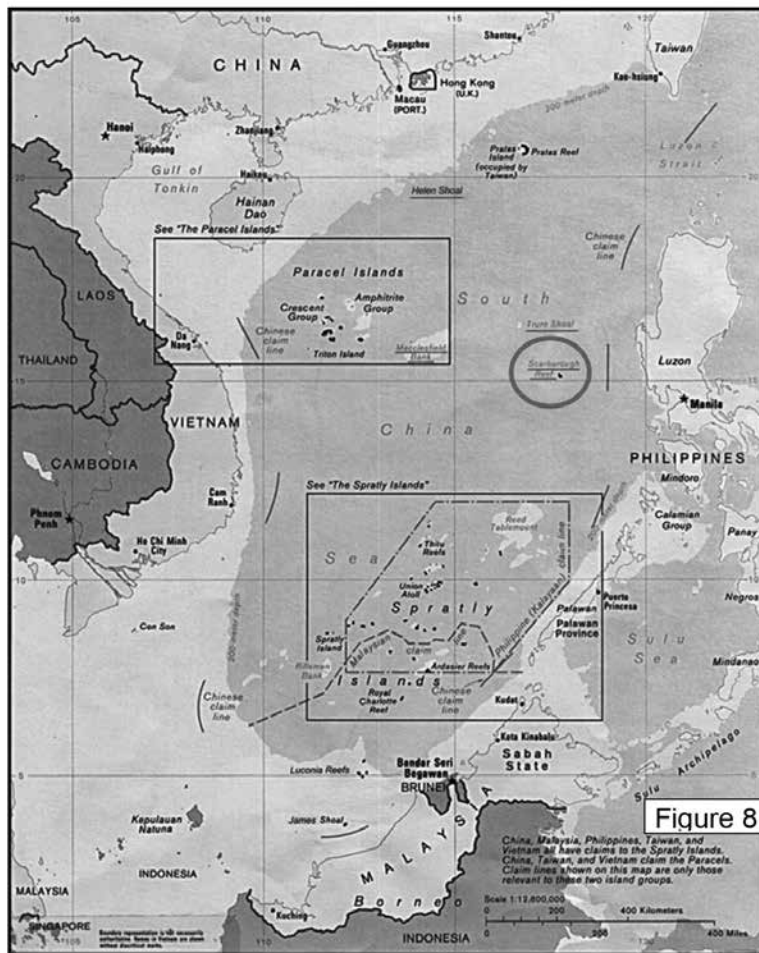
Since 2010, China has been undertaking frenetic offshore construction to convert uninhabited islets and shoals within the South China Sea into artificial islands so as to cloak itself in the garb of the UNCLOS-based International Maritime Law. Notable examples of such transformative construction include Gaven Reef, Johnson South Reef and Fiery Cross Reef. Of course, it is true that other claimants, too, have built upon existing natural structures (Itu Aba by Taiwan, Southwest Cay by Vietnam, Swallow Reef by Malaysia, and Thitu Island by Philippines) but what sets China's activities apart, is that while other claimants have built upon, or modified, *existing* land masses, Beijing has been dramatically changing the size and structure of the physical land features themselves. Moreover, in both, the Paracel and Spratly groups, the PRC has now weaponised islands [Chinese Surface-to-Air Missiles (SAMs) are already deployed on Woody Island] and created

19. Michael D. Swaine; "China's Assertive Behavior — Part One: On Core Interests", Carnegie Endowment Lectures (CLM-34); available at url: http://carnegieendowment.org/files/CLM34MS_FINAL.pdf

20. Editorial Board of *The New York Times*, "China's Evolving Core Interests", May 11, 2013, available at url: <http://www.nytimes.com/2013/05/12/opinion/sunday/chinas-evolving-core-interests.html>

airstrips capable of operating medium and large military aircraft, thereby altogether abandoning its earlier pretences of developing these rocks, shoals and islets for the advancement of tourism!

Fig 8: South China Sea Islands



Source: US CIA Maps, University of Texas

While contemporary geopolitical tensions between the Philippines and China have been high over ownership of the Johnson South Reef (also claimed by Brunei, Taiwan, and Vietnam) in the Spratly Islands, the most recent

point of confrontation with China has involved the ring-shaped coral reef called Scarborough Shoal, which Philippines calls *Bajo de Masinloc*. Located 124 nm west of Luzon Island but as much as 472 nm from China, it lies well within the 200 nm EEZ of the Philippines Island of Luzon (Fig 8). The Philippine position is that Scarborough Shoal is an integral part of Philippine territory. China, on the other hand, which wrested physical control over the reef in 2012, asserts that it has a historical claim over the shoal, claiming that it was discovered by the Yuan Dynasty and that it is, moreover, part of its traditional fishing waters. There is real concern that this might well be the eighth reef subjected to Chinese 'terraforming'. In January 2013, the Philippines, holding that China's Nine-Dash Line was completely illegal, took the issue to the Permanent Court of Arbitration (PCA) in The Hague. China strenuously opposed the move, opining that the court did not have jurisdiction to rule on the case since the issues raised in the Philippines could not be considered without determining sovereignty, which the tribunal was not empowered to do. It categorically stated that it would not participate and would not accept any ruling of the court. However, eight months later, having considered all the relevant arguments, the PCA ruled that it did, indeed, have jurisdiction over the matter. This ruling notwithstanding, China remained obdurate, stating, "By unilaterally initiating the arbitration, the Philippine side is imposing its own will on others..... It is only natural for China not to participate in such arbitration that has become tainted and gone astray. And China will not accept or recognize the award of the arbitration, whatever it might be." On July 12, 2016, in an anxiously awaited but widely expected verdict, the PCA not only ruled overwhelmingly in favour of the Philippines, but far more damagingly for China, it scathingly removed the fig-leaf of 'historical' control that had been so brazenly worn by China. The PCA has categorically ruled that China's Nine-Dash Line is devoid of legal merit.

Where does all this leave the People's Republic? On the one hand, China has remained consistent in its rejection of the jurisdictional competence of the PCA on this subject, insisting that the only solution to the imbroglio lies in bilateral negotiations between the Philippines and the People's Republic.

There has been much by way of angry (if not vituperative) polemics within official circles as well as within the media, but all that is largely along expected lines, as are the calls for restraint and sobriety. In the wake of this verdict, whether or not accepted by China, any move by Beijing to set up an Air Defence Identification Zone (ADIZ) in the SCS will be very hard to sustain outside of outright military belligerence, since an ADIZ is essentially a measure to prevent transgressions into one's *territorial* air space and China's view that the Nine Dash Line defines the limits of its national waters within the SCS has been roundly debunked. We may certainly expect a high level of browbeating by Beijing and there is a good possibility of China extending its 'terraforming' activity to the Scarborough Shoal. However, with the USA and the Philippines having concluded a new Enhanced Defence Cooperation Agreement (EDCA) on March 18, 2016, which envisages US personnel and assets being integrated into (and rotated through) five *existing* bases of the Philippines, any future Freedom-of-Navigation (FON) operation by the US Navy to challenge such moves by China will be backed by extremely proximate US forces. On the other hand, the very recent apparent *volte-face* by President Rodrigo Duterte of the Philippines and his strong overtures to the PRC have introduced even more complexity into the SCS tangle. Despite President Duterte's pro-China rhetoric, the significance of the USA's sharp recovery from its 1992 loss of Subic Bay can hardly be lost upon Beijing. This is not something that can be countered by coast guard forces or paramilitary militias, nor by the eminently newsworthy but militarily insignificant positioning of a few HQ-9 or equivalent SAMs, as had been done on Woody Island in the Paracel group.

Of particular concern is that China, with its continuing militarisation of the SCS islands, is rapidly increasing its ability to control who can go where in the South China Sea — including along the trade routes. This creeping Chinese ability to control international trade routes through the South China Sea greatly worries the USA, Japan, Australia, South Korea, Vietnam and others. It ought to be deeply troubling to New Delhi too.

It is common knowledge that 90 percent by volume and some 77 percent by value of India's external merchandise trade moves by sea. But how much

does this external merchandise trade impact India's Gross Domestic Product (GDP)? This is indicated by the country's 'Openness Index', i.e., its Trade-to-GDP Ratio. In the 1980s, this averaged a mere 11.25 percent. So whatever happened (or didn't happen) to our external trade, did not matter very much to our GDP. One unfortunate consequence of this was that many Indians — including many Indian naval officers — pretty much forgot the symbiotic relationship between 'flag' and 'trade' and paid little more than lip-service to the navy's need to promote, pursue and protect India's external merchandise trade. However, the India of today is very different from the somnolent one that lumbered along between 1947 (Independence) and the economic reforms of 1990.

Today, India is a dynamic and resurgent power and its merchandise trade²¹, as a percentage of its GDP, has skyrocketed to its present average decadal value of 40 percent!²² Today, therefore, any adverse impact upon India's maritime trade has a huge impact upon its GDP, and geopolitical disruptions and infirmities — particularly maritime ones — have very great significance. Since "*money is a coward*"²³ and abjures areas of high instability and geoeconomic risk, geopolitical maritime instability nearly always has an adverse impact upon trade. Space, time and cost disruptions of external trade, in turn, affect both domestic manufacture and local consumption, and, hence, money flows and market dynamism.

However, a caveat is in order at this point. Contrary to several reports and analyses²⁴ appearing in the Indian media, the Malacca Strait does **not** lie within the South China Sea. It is, of course, true that almost all of India's maritime trade to, and from, the East Asian and Southeast Asian countries — such as Thailand, Indonesia, Malaysia, Brunei, Philippines, Vietnam,

21. 'Merchandise Trade' only includes trade in goods, not in services nor capital transfers and foreign investments.

22. World Bank, "Data: Merchandise Trade (% of GDP)", available at url: <http://data.worldbank.org/indicator/TG.VAL.TOTL.GD.ZS/countries/IN-CN?page=2&display=default>.

23. Zoltan Merszei; speech at the Empire Club of Canada on February 16, 1978, available at url: <http://speeches.empireclub.org/61635/data?n=2>

24. As only one example of this erroneous view, see: Palakh Dutta; "What the South China Sea Dispute is all About", *Hindustan Times* epaper (New Delhi Edition), February 18, 2016, available at url: <http://www.hindustantimes.com/world/explained-what-the-south-china-sea-dispute-is-all-about/story-1MORDfwv5sRfgXsjYXEj9J.html>

Some 25 percent of all India's external (maritime) trade — i.e., approximately \$190 billion worth — does, indeed, pass through the SCS [bound to, and from, Vietnam, Cambodia, Laos, the two Koreas, China (including Hong Kong), Japan, Pacific Russia, and, the western seaboard of the USA] and is certainly susceptible to geopolitical infirmities/ disruptions in the SCS.

Cambodia, Laos, China (including Hong Kong), North and South Korea, Japan, and the western seaboard of the USA — passes into, or emerges from, the Strait of Malacca. However, trade to, and from, the Malacca Strait littorals (Malaysia, Indonesia, Thailand and Singapore) — which is quite substantive, by the way — does not transit the South China Sea at all! This notwithstanding, some 25 percent of all India's external (maritime) trade — i.e., approximately \$190 billion worth²⁵ — does, indeed, pass through the South China Sea [bound to, and from, Vietnam, Cambodia, Laos, the two Koreas, China (including Hong Kong), Japan, Pacific Russia, and, the western seaboard of the USA] and is certainly susceptible to geopolitical infirmities/ disruptions in the South China Sea.

This notwithstanding, India's burgeoning interest and occasional naval presence in the South China Sea are derisively dismissed by some as a case of maritime overreach if not hubris. Their view is that by meddling in maritime expanses that do not directly concern India, the country and its navy will be distracted from activities that lie squarely within what ought to remain India's (and its navy's) principal area of focus, namely the Indian Ocean in general and the Arabian Sea and Bay of Bengal in particular. They believe that venturing into the South China Sea will serve only to mar a much-needed strengthening of relations with the People's Republic of China, debar India from enjoying the economic benefits of Chinese cooperative constructs such as the 'One Belt One Road' (OBOR) initiative, and, contribute to regional insecurity at precisely a time when nation-states of the Indo-Pacific need to

25. EXIM Bank figures for FY 2015 are Merchandise Exports: US \$309.6 billion and Merchandise Imports: US \$447.5. See: "Catalysing India's Trade and Investment", July 2015, available at url: <http://www.eximbankindia.in/sites/default/files/indias-international-trade-and-investment.pdf>

maximise mutual amity so as to face the menace of malevolent violent non-state entities such as the IS/ISIL/ISIS/Daesh.²⁶ These are frequently the opinions of those whose life's experience, either 'in' or 'about' the Indian Navy, is drawn from a time when this force had very limited 'capacity', while its 'capability' was still in the process of being established.

At the other end of the spectrum are those who feel that India has come into its own as a maritime power in the Indo-Pacific and that the time is now ripe for India to deal with China in its own coin. They hold that it is essential for India to establish and sustain geopolitical signalling that explicitly conveys its refusal to be cowed down by China's aggressiveness and to convey India's firm intent to proactively protect its trade. Towards this end, they believe that although India should continue to abjure alliances, it should visibly and overtly strengthen its alignment with like-minded powers such as the USA, Japan and Australia and should, indeed, be unafraid to undertake India-US-Japan-Australia combined 'Freedom-of-Navigation' (FON) patrols in the South China Sea. These are frequently the opinions of those whose life's experience, either in or about the Indian Navy, is from relatively contemporary times when the Service has adequate 'capacity' to look at geographical spaces other than those immediately proximate to it, while its 'capability' is globally recognised as being sufficient for India to assert at its apex political (prime ministerial) level that it would be *"... a net provider of maritime security in our immediate neighbourhood and beyond."*

26. IS: Self-styled Islamic State = ISIL: Islamic State of Syria in the Levant = ISIS: Islamic State of Iraq and Syria (also sometimes expanded to Islamic State of Syria and al-Sham) = Daesh (an Arabic acronym formed from the initial letters of the group's previous name in Arabic: *"al-Dawla al-Islamiya fil Iraq wa al-Sham"*, where 'al-Sham' was commonly used during the rule of the Muslim Caliphs from the 7th century to describe the area between the Mediterranean and the Euphrates, Anatolia (in present day Turkey and Egypt). See: Faisal Irshaid, "ISIS, ISIL, IS or Daesh? One Group, Many Names", BBC Monitoring, December 2, 2015, available at url: <http://www.bbc.com/news/world-middle-east-27994277>

security in our immediate neighbourhood and beyond."²⁷

In determining which end of this spectrum of opinion to tend towards (or whether, indeed, to embrace one or the other end), it might be best to be guided by Lord Palmerston's (seldom accurately quoted) comment²⁸ on the permanence of India's core national interest and the persistence of the maritime interests that flow from, and feed into, it. India's core national interest, as derived from the Constitution of India, is *to assure the economic, material and societal well-being of the people of India*.

Flowing from, and simultaneously feeding, into this core national interest, are India's *maritime* interests. These are:

- (1) Protection from sea-based threats to our territorial integrity.
- (2) Ensuring stability in our maritime neighbourhood.
- (3) Obtaining and retaining a regionally favourable geostrategic maritime position.
- (4) Provision of holistic maritime security ('human' security) — that is, freedom from threats arising 'in' or 'from' the sea.
- (5) Creation, development, and sustenance of a 'blue' ocean-economy, incorporating:
 - Preservation, promotion, pursuit and protection of offshore infrastructure and maritime resources within and beyond the Maritime Zones of India.

27. Press Information Bureau, Government of India (Prime Minister's Office); "PM's Speech at the Foundation Stone Laying Ceremony for the Indian National Defence University at Gurgaon", May 23, 2013, available at url: <http://pib.nic.in/newsite/mbErel.aspx?relid=96146> (accessed on August 7, 2015).

28. "I hold, with respect to alliances, that England is a Power sufficiently strong, sufficiently powerful, to steer her own course, and not to tie herself as an unnecessary appendage to the policy of any other Government. I hold that the real policy of England—apart from questions which involve her own particular interests, political or commercial—is to be the champion of justice and right; pursuing that course with moderation and prudence, not becoming the Quixote of the world, but giving the weight of her moral sanction and support wherever she thinks that justice is, and wherever she thinks that wrong has been done...I say that **it is a narrow policy to suppose that this country or that is to be marked out as the eternal ally or the perpetual enemy of England. We have no eternal allies, and we have no perpetual enemies. Our interests are eternal and perpetual, and those interests it is our duty to follow...** And if I might be allowed to express in one sentence the principle which I think ought to guide an English Minister, I would adopt the expression of Canning, and say that **with every British Minister, the interests of England ought to be the shibboleth of his policy.**" [Emphasis added] Speech to the House of Commons, March 1, 1848.

- Promotion, protection and safety of our overseas and coastal seaborne trade and our Sea Lines of Communication, including the ports that constitute the nodes of this trade.
- Support to marine scientific research, including that in Antarctica and the Arctic.
- (6) Provision of support — including succour and extrication-options — to our diaspora.

The question with regard to India's involvement in the South China Sea is simply this: *how many (if any) of these maritime interests does the South China Sea — and the developments therein — impact and to what degree?* The short answer is that of the foregoing enumeration, Serials 3 and 5(b) are impacted in the first degree by events and activities that induce security-related instability, while Serials (4) and (6) are impacted to a lesser degree.

Finally, India must ask itself whether or not it truly believes that 'freedom of navigation' is an intrinsic component of the aforementioned maritime interests. If so, India must carefully choose the time and spatial point of the translation of its geopolitical rhetoric in this regard into tangible action. In the meanwhile, New Delhi must keep a watchful eye on developments in the South China Sea.