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### *South China Sea Series*

## **Freedom of Navigation Operations: Better Quiet Resolve**

*By Chong Ja Ian*

### **Synopsis**

*Highly publicised American FONOPs makes it more challenging for many Southeast Asian governments to openly welcome such action. A more preferable approach may be consistent, regular, but quiet FONOPs by the US to avoid a premature raising of stakes.*

### **Commentary**

ONGOING DEVELOPMENTS over maritime territorial disputes in the South China Sea create a conundrum for Southeast Asian governments, especially littoral states with claims or interests in those waters. Events are increasingly heightening tensions between different sets of interests that these regional states have.

China's extensive reclamation works in disputed waters and American statements surrounding its recent Freedom of Navigation Operations (FONOPs) in the same seas further complicate such matters for actors in Southeast Asia.

### **Self-interests in tension**

Southeast Asian countries are eager to continue benefitting from closer commercial ties with China, which is ASEAN's largest trading partner. China and Southeast Asian countries invest heavily in each other's economies, while Southeast Asian and Chinese firms are deeply embedded in global production networks. That Southeast Asian governments and businesses wish to take fuller advantage of such commercial ties and avoid friction with Beijing is unsurprising.

Yet, for Southeast Asian states that rely on trade, frameworks that ensure regional stability, manageable risk, and low levels of uncertainty over the seas are no less important. Disruptions arising from piracy to heightened international tensions are highly costly to regional economies dependent on easy, low-risk access to the sea. Clear, dependable, and widely-recognized regimes that manage navigational safety, security risks, and disputes help ensure such access. The United Nations Convention on the Law of the Sea (UNCLOS) is one such framework.

Unfortunately, Chinese actions in the South China Sea may weaken UNCLOS. Artificial islands created over features permanently underwater or underwater at high tide cannot claim a 12 nautical mile territorial sea under UNCLOS, but Beijing seems to act as if this is the case by warning non-Chinese vessels against crossing these demarcations. Then there is ambiguity over the nine-dash lines on Chinese maps that undergirds China's sovereignty claims. Beijing has not defined their meaning and UNCLOS does not provide clear bases for the "historical claims" China says they represent. Repeated public actions that appear inconsistent with UNCLOS can undermine its standing.

### **Freedom of navigation—A question of how**

With the exception of the Philippines, Southeast Asian littoral states are noticeably quiet regarding American FONOPs, at least publicly. This is despite the fact that they should be supportive of the principle behind the freedom of navigation—particularly if consistent with UNCLOS. Even Singapore, which has much invested in maritime access, only issued a lukewarm public statement in August 2015. Singapore Defence Minister Ng Eng Hen stated that while the US has a right to protect its interests, "incidents" would not be good for the region. Reticence over possible US FONOPS in Southeast Asia may come down to the relatively high-profile manner in which the idea appeared in the press.

Media attention may have inadvertently raised the political stakes for interested parties. With what seems tantamount to a declaration of intent by the US, many in Southeast Asian capitals believe that Washington now has to follow through consistently or risk doubts over the credibility of its commitment to the region. Publicity surrounding the FONOPs may create pressure for more robust Chinese responses when they may not have been necessary. Most South East Asian governments wish to avoid appearing to take sides with either Washington or Beijing in such circumstances, even if some privately feel otherwise.

Another complication arising from greater publicity is heightened sensitivity toward where and when FONOPs occur. Operations around some artificial islands but not others may give the impression that the US tacitly accepts claims over certain features and not others. Washington may also find that it has to repeatedly conduct high visibility FONOPs to demonstrate commitment to the freedom of navigation in the South China Sea. Such action risks greater friction with Beijing. Conversely, symbolically conducting a few limited FONOPs near selected islands could encourage questioning of American seriousness about freedom of navigation in the region.

Should China create a public perception that the US is unnecessarily militarising and escalating tensions in the South China Sea, Southeast Asian governments may find seeking future American assistance more difficult. Widespread belief that American involvement is more trouble than it is worth may discourage governments in the region from openly supporting US engagement. This would be unfortunate since the US remains a key stakeholder in Southeast Asia whose active involvement and attention benefits the region.

### **Better quiet resolve**

A more effective American approach to FONOPs in the South China Sea may be to conduct such activities regularly and without fanfare. Official US channels could then post updates after such operations, noting that there is nothing out of the ordinary. This more restrained option underscores the fact that exercising the freedom of navigation in accordance with UNCLOS and other accepted international practices are par for the course and should be no cause for alarm.

It still leaves room for more robust courses of action if necessary. These steps can provide a basis for progress on mutually acceptable, UNCLOS compliant rules-of-the-road that permit day-to-day management of differences until peaceable solutions are possible.

Given the attention already garnered by US FONOPs, the next best alternative may be for such operations to regularly take place without fuss in future. Subsequent official reporting on FONOPs can emphasise the normality of such operations. Other countries may even wish to do the same. This approach may temper the effect of potentially inflammatory public reactions that may follow FONOPs, even if imperfectly. That Central Military Commission Vice-Chair Fan Changlong announced that China would not recklessly resort to force even on sovereignty-related issues may provide some leeway for this second best option.

Sensitivities in the South China Sea are such that seemingly small steps are enough to make complex circumstances even more fraught. Moreover, the various South China Sea claimants and other interested parties in Southeast Asia weigh the relative importance of cooperation with China and maintaining international and regional best practices differently. This situation further complicates the coordination and collective action challenges within the region. If the promotion of regional cooperation remains a goal for Beijing and Washington, they may wish to include a fuller consideration of these dynamics when formulating policy toward the South China Sea and Southeast Asia.

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