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U.S. Policy on the South China Sea

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The U.S. policy on the South China Sea (SCS) has remained consistent since its initial formulation in 1995 through today.

U.S. SCS Policy (1995).

Concerned that a pattern of unilateral actions and reactions in the South China Sea had increased regional tensions, the Department of State announced a new *U.S. Policy on Spratly Islands and South China Sea* on May 10, 1995. Four pillars served as the basis for the policy.

U.S. Position on Maritime Claims in the SCS (2020).

In response to continued Chinese malign behavior in the SCS, Secretary of State Michael Pompeo announced on July 13, 2020, that the United States was strengthening its policy in the SCS to make clear to China that its

“claims to offshore resources across most of the SCS are completely unlawful, as is its campaign of bullying to control them.”¹ The reinvigorated policy seeks “to preserve peace and stability, uphold freedom of the seas in a manner consistent with international law, maintain the unimpeded flow of commerce, and oppose any attempt to use coercion or force to settle disputes.”²

The new policy highlights that the rules-based international order has come under an “unprecedented threat” from China.³ In particular, China has used “intimidation to undermine the sovereign [resource] rights of Southeast Asian coastal states in the . . . [SCS], bully them out of offshore resources,

**U.S. Policy on the South China Sea:
The Four Pillars (1995)**

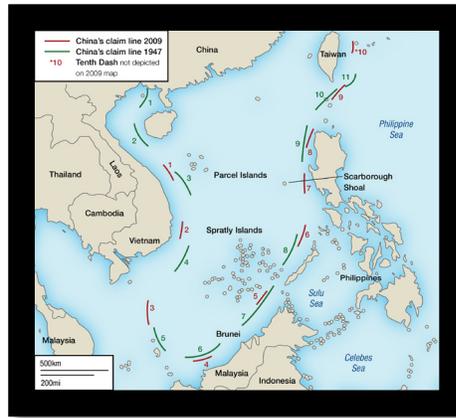
- (1) Oppose the use or threat of force to resolve competing claims.
- (2) Intensify diplomatic efforts to resolve the competing claims, taking into account the interests of all parties, and contribute to peace and prosperity in the region.
- (3) Maintain freedom of navigation by all ships and aircraft in the South China Sea.
- (4) Take no position on the legal merits of the competing claims to sovereignty over the various features in the South China Sea but view with serious concern any maritime claim or restriction on maritime activity in the South China Sea that is inconsistent with international law, including UNCLOS.

assert unilateral dominion, and replace international law with ‘might makes right.’”⁴

The U.S. position recalls that an Arbitral Tribunal, constituted under Annex VII of the 1982 Law of the Sea Convention, decided unanimously on July 12, 2016 that China’s maritime claims in the SCS, including the Nine-Dashed Line, have no basis in international law.⁵ The new policy reiterates that the Tribunal’s decision is final and legally binding on the Philippines and China, and indicates that the United States aligns its position on China’s maritime claims in the SCS with the Tribunal’s decision.⁶

U.S. Position on China’s Maritime Claims in the SCS (2020). The United States takes the following positions on China’s SCS maritime claims.

1. The PRC cannot lawfully assert maritime claims derived from Scarborough Reef and the Spratly Islands, including an Exclusive Economic Zone (EEZ), “vis-à-vis the Philippines in areas that the Tribunal found to be in the Philippines’ EEZ or on its continental shelf.”⁷
2. China’s “harassment of Philippine fisheries and offshore energy development within those areas is unlawful, as are any unilateral Chinese actions to exploit those resources.”⁸
3. China “has no lawful territorial or maritime claims to Mischief Reef or Second Thomas Shoal, both of which fall fully under the Philippines’ sovereign rights and jurisdiction,” nor may China generate any territorial or maritime claims from these features.⁹
4. The United States rejects any Chinese “claims to waters beyond a 12-nautical mile (nm) territorial sea derived from islands it claims in the Spratly Islands (without prejudice to other states’ sovereignty claims over such islands).”¹⁰
5. The United States rejects any Chinese “maritime claims in the waters surrounding Vanguard Bank (off Vietnam), Luconia Shoals (off Malaysia), waters in Brunei’s EEZ, and Natuna Besar (off Indonesia).”¹¹



6. Any Chinese “action to harass other states’ fishing or hydrocarbon development in these waters, or to carry out such activities unilaterally, is unlawful.”¹²
7. China has no lawful territorial or maritime claims to James Shoal, a submerged feature 50 nm from Malaysia. “An underwater feature like James Shoal cannot be claimed by any state and is incapable of generating maritime zones.”¹³
8. James Shoal “is not and never was Chinese territory, nor can China assert any lawful maritime rights from it.”¹⁴
9. The United States stands with its “Southeast Asian allies and partners in protecting their sovereign rights to offshore resources, consistent with their rights and obligations under international law.”¹⁵

Status Quo on Territorial Sovereignty Claims. The new policy aligns the U.S. position with the Tribunal’s rulings regarding China’s maritime claims. It does not affect the U.S. position on SCS territorial claims reflected in the Fourth Pillar of the 1995 policy statement other than to clarify that sovereignty claims may only be asserted over high-tide features. China may not claim sovereignty over low-tide elevations, such as Mischief Reef and Second Thomas Shoal, or totally submerged features, like James Shoal, which are located within the EEZ or continental shelf of another nation.¹⁶

The 2020 position reinforces the First Pillar of the 1995 policy by opposing China’s use of force to settle disputes and to impose “might makes right” in the SCS or in the wider region. Finally, the new policy reiterates the long-standing U.S. position, reflected in the Third Pillar of the 1995 policy, that the United States will stand with the international community to defend “freedom of the seas and respect for sovereignty . . . in the SCS.”

Two days after the U.S. statement was released, Secretary Pompeo reiterated the need to intensify diplomatic efforts to resolve the competing claims in the SCS. Consistent with the Second Pillar of the 1995 policy, Pompeo indicated that the United States would “support countries all across the world who recognize that China has violated their legal territorial [and maritime] claims.”¹⁷ Specifically, he stated that the United States would provide States assistance using all the tools at its disposal, “whether that’s in multi-lateral bodies . . . [or] through legal responses.”¹⁸

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1. Press Statement, Michael R. Pompeo, U.S. Secretary of State, U.S. Position on Maritime Claims in the South China Sea (July 13, 2020) [hereinafter U.S. Position on Maritime Claims in the South China Sea].
 2. *Id.*
 3. *Id.*
 4. *Id.*
 5. The South China Sea Arbitration (Phil. v. China), Case No. 2013-19, Award, (Perm. Ct. Arb. 2016) [hereinafter South China Sea Arbitration Award].
 6. U.S. Position on Maritime Claims in the South China Sea, *supra* note 2.
 7. *Id.*
 8. *Id.*
 9. *Id.*
 10. *Id.*
 11. *Id.*
 12. *Id.*
 13. *Id.*
 14. *Id.*
 15. *Id.*
 16. South China Sea Arbitration Award, *supra* note 6, ¶¶ 305, 309, 1040.
 17. Arshad Mohammed and Humeyra Pamuk, *U.S. to Back Nations that Say China Violated their South China Sea Claims*, REUTERS (July 15, 2020), <https://www.reuters.com/article/us-usa-china-southchinasea-pompeo/u-s-to-back-nations-that-say-china-violated-their-south-china-sea-claims-idUSKCN24G25U>.
 18. *Id.*