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Chinese Policy in the South China Sea: After the Philippines v. China Ruling

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Since the Permanent Court of Arbitration (PCA) handed down a landmark ruling against China over Chinese actions in the South China Sea (SCS), the political and legal attention around the sovereign status of the SCS has soared. The SCS has long been subject to heated territorial disputes between several claimants, but it was this summer's PCA ruling that brought the situation under deeper

international scrutiny. The ruling was a result of a case the Philippines brought in to The Hague in 2013.¹ The Philippines wanted clarification on territorial disputes it had with China in the SCS, in addition to questions regarding the legality of China's "nine-dash line" claim. The result was that the PCA ruled China's territorial claims in the SCS as incompatible with the United



Nations Convention on the Law of the Seas (UNCLOS).² This meant that China's historical claim to the territory and resources within the nine-dash line was ruled as illegal because it defied the boundaries already provided by the UNCLOS. In addition to this, the PCA ruled that the Chinese land reclamations in the SCS did not create any maritime areas that gave China legal entitlements. As China had started land reclamation on several reefs inside the Philippine's exclusive economic zone (EEZ), this was a great win for the Philippines because it meant that China was violating Philippine sovereignty and acting against international law.³ However, this did not mean that China would change its ways. Not only did China refuse to participate in the PCA arbitration as it argued that the court was acting outside its jurisdiction, but it was also quick to reject the decision made by the PCA and failed to recognise its ruling.⁴ Chinese Ministry of Foreign Affairs made the following statement:

“The so-called award is illegal, null and void, and cannot change the fact that Nanhai Zhudao [SCS Islands] are China's inherent territory and cannot deny China's territorial sovereignty and maritime rights and interests in the South China Sea. This farce will not cause waves in the South China Sea, a sea that has been passed down to us by our

¹ Permanent Court of Arbitration (2016) *The South China Sea Arbitration: The Republic of the Philippines v. the People's Republic of China* (press release) pp. 1, retrieved on 12.07.2016 from <https://pca-cpa.org/en/news/pca-press-release-the-south-china-sea-arbitration-the-republic-of-the-philippines-v-the-peoples-republic-of-china/>

² *Id.* 1-2.

³ *Id.* 2

⁴ Ministry of Foreign Affairs of the Peoples Republic of China (2016) 'Vice Foreign Minister Liu Zhenmin at the Press Conference on the White Paper Titled China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea' (press conference)

ancestors. China's resolve and will to uphold our sovereignty and maritime rights and interests is as firm as ever."⁵

This assertive answer did not make the situation in the SCS any better as it heightened the tension even more, making it clear that China did not care about, or agree with international law in this particular case. However, China did reiterate its support for UNCLOS, but argued that it should not be used as an instrument for denying states their sovereign territory.⁶

The South China Sea Disputes

The territorial and jurisdictional disputes over the SCS have been going on since the early 1970s. Several countries assert their claims in the region creating overlap. Examples of this can be seen in



the two main island chains: the Spratly and Paracel Islands. The Paracel Islands are claimed by China, Taiwan and Vietnam, and the Spratlys, being even more contested, are claimed by the mentioned states plus Philippines, Brunei and Malaysia. However, the disputes started getting more attention as China started land reclamations on several of the atolls and reefs in the region. Many of these reclamations were done on territory that, under UNCLOS, were legally

regulated by other states, such as Philippines and Vietnam, and hence created even more heated sovereignty disputes. It did not help that they also started building facilities with dual-use capabilities, such as flight strips, high frequency radars and possible gun and missile emplacements. Not only regional actors but also the United States of America (US) became concerned by China's assertive conduct. In addition to the SCS being a major sea line of communication (SLoC) for them, the US is a key ally to the Association of Southeast Asian Nations (ASEAN) and assists them in

⁵ *Ibid.*

⁶ Lanteigne, M (2016) 'The South China Sea after 'Philippines v. China': Summer of Our Discontent?' (Policy brief) from *Norwegian Institute of International Affairs*

counterbalancing the growing Chinese power in the Asia-pacific. Due to both the trade-related and military importance of the SCS, the US has a great interest in keeping the SCS free from Chinese dominance. American involvement in the SCS has arguably made China even more assertive as the Chinese want to show the world



that they alone should be the reigning hegemon in the region. This does not necessarily mean that they want to change the status quo, but as Chinese international power grows, they feel it is only right that they take back the role of regional hegemon in Southeast Asia.

What now?

China's reaction to the PCA ruling shows that China is not willing to acknowledge any international intervention in their territorial disputes with its neighboring countries. In addition, China keeps on arguing that bilateral talks and negotiations are the best way of settling the disputes.⁷ The reason for this could be that bilateral talks open up for the use of power and leverage on a whole other level than international arbitration and negotiation does. Bilateral negotiations are a way for China to use its growing soft power to change the situation to their own favor, either with economic or military leverage/sanctions. On a bilateral level they get relatively more power than their counterpart, which is seemingly what China is all about these days if you look at it through the eyes of realism.⁸

⁷ *Id.*1

⁸ See article from March 2016: "Strategic developments in the South China Sea" p. 13.

How China acts next in the SCS will be crucial for how the situation develops. China may go into a calming period where it scales down its assertive behavior, or it may do something that creates even



greater pressure on the territorial claimants in the region. Even though the former is the optimal scenario and the one that is most widely supported, it is the latter that seems to be the most likely. This is supported by China's joint naval exercise with Russia in the SCS in September 2016.⁹ The Sino-Russian cooperation seems to be a clear message

from China that the US is not wanted in the SCS as it tries to balance out the US naval advantage in the SCS. This kind of balancing act is similar to what the ASEAN is doing when allying itself with the US, although this could perhaps rather be called buck passing than balancing due to the large difference in power between the allies. There are also concerns that China will accelerate its land reclamations and declare an Air Defense Identification Zone (ADIZ) over the SCS. This is similar to what happened in the East China Sea where the Chinese ADIZ is said to have escalated the dispute over the Senkaku Islands. As ADIZ's are not regulated in any international treaty it is seen as questionable if it aligns with controversial goals, such as Chinese territorial claims. As ADIZ are measures taken to obtain control beyond national airspace and territory, the purpose of an ADIZ in the SCS is presumably to reinforce China's territorial claims in the region.¹⁰

Factors beyond China

There are also factors outside China that can have an influence on how the situation in the SCS evolves. First of all there are American actions in the SCS. The Obama administration lead a rebalancing act in the SCS called the 'Pivot to Asia' since 2011, but the result of the election in

⁹ Reuters (2016) 'China, Russia naval drill in South China Sea to begin Monday'

<http://www.reuters.com/article/us-southchinasea-china-russiaidUSKCN11H051?il=0>

¹⁰ Almond, R. G (2016) 'South China Sea: The Case Against an ADIZ' from *The Diplomat*

<http://thediplomat.com/2016/09/south-china-sea-the-case-against-an-adiz/>

November may change the Asia-Pacific policy. With the Trump administration's foreign policies in Asia still unclear, it is not easy to foresee the future for the US in the SCS.¹¹

There is also the growing animosity between of the Philippine president Rodrigo Duterte and the US government. Not only has he carelessly cursed and name-called US president Barack Obama, but in September 2016 he called for the withdrawal of American vessels in southern Philippine. In addition to this, on his visit to China in the end of October 2016, Duterte announced a "separation" from the US and signed 13 bilateral cooperation documents with Xi Jinping, making it clear that the Philippines are making a complete turnaround in its foreign policy.¹²



Lastly there are China's growing economic interests. As Chinese power develops, so do their opportunities in regards to realizing their pursuits. One of these is the modernisation of the Chinese maritime "Silk Road", often referred to as Belt and Road Initiative (BRI).¹³ In this pursuit the SCS plays an inherent role as it is home to many important SLOCs that give China easier access to, amongst others, Africa and the Persian Gulf. The BRI stretches from China to the Persian Gulf and through the Bab el-Mandeb strait between Djibouti and Yemen to Europe. If Xi Jinping were to fully realise this pursuit, it would encompass not only economic development in these areas but also a growing Chinese strategic presence, as Jinping would want to make sure the investments are safe.

The future of the SCS is not easy to predict, but indicators makes it clear that the SCS plays a big role in Chinas future maritime strategic thinking. The SCS does not only tell a story about growing

¹¹ Lanteigne, 4

¹² Parameswaran, P (2016) 'The Limits of Dutertes US-China Rebalance' from The Diplomat <http://thediplomat.com/2016/10/the-limits-of-dutertes-us-china-rebalance/>

¹³ Lanteigne, 4

Chinese power, but also the story of an emerging great power that needs to learn how to navigate through a modernized world. The landscape is not the same today as it was the last time China was a great power.

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Towards Effective Cyber Deterrence: Drawing the Lessons from NATO's Nuclear Experience

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Although cyber capabilities have been used as a tool of warfare alongside the conventional warfighting domains (air, land, sea) only against non-NATO states (e.g. Ukraine in 2015, Georgia in 2008), examples of cyberattacks against actual NATO members abound, too. In 2007, Estonia suffered a wave of distributed denial-of-service (DDoS) attacks that incapacitated

various government, bank and media websites following the relocation of a Soviet war memorial—an attack remarkably similar to the DDoS attacks that hit Georgia in conjunction with an actual military incursion a year later. Further offensive cyber actions against NATO members targeted, inter alia, the German parliament as well as the French media outlet TV5. These more prominent attacks only represent the tip of the iceberg, however. The NATO Computer Incident Response Capability (NCIRC) automatically blunts millions of cyber actions every day, with approximately 320 cyber events per month having necessitated a manual reaction in 2015.¹⁴

Milestones in the evolution of NATO's cyber policy

NATO has made considerable advances in cyber since the Allies first agreed 'to strengthen ... capabilities to defend against cyber attacks'¹⁵ in the 2002 Prague Summit Declaration, which created the NCIRC. New cyber-related bodies, such as the Cooperative Cyber Defence Centre of Excellence and the Cyber Defence Management Authority, have been set up to facilitate the Allies' coordination and development of cyber capabilities. Further milestones in the evolution of NATO's cyber policy

¹⁴ "The Secretary-General's Annual Report 2015", NATO, January 2016, p. 23.

¹⁵ "Prague Summit Declaration", NATO, 21 November 2002.

are the Summits of 2014 and 2016. The Wales Summit affirmed that NATO's defence mandate and international law apply to the cyber domain (a cyberattack against a NATO state can thus provoke a collective response); the Warsaw Summit recognised cyber as an operational military domain—a significant step because cyber forms



henceforth an integral part of operational planning, with even offensive capabilities now under consideration (although the acquisition of offensive cyber capabilities has thus far been rejected by most Allies). The Allies further pledged to 'Develop the fullest range of capabilities to defend our national infrastructures and networks'.¹⁶

Why NATO's efforts to strengthen its cyber defence remain insufficient

NATO's efforts to strengthen its cyber defence capabilities represent a step in the right direction, though they remain insufficient. First, the Cyber Defence Pledge not only fails to quantify how much



each Ally should invest into its cyber defence capabilities or indeed how much NATO as an alliance should invest; but it also fails to specify which systems should actually be procured or upgraded to strengthen cyber defence. Second, the cyber defence capabilities of individual member states vary greatly amongst the Allies. Whereas the United States, the United Kingdom, and Estonia have

invested heavily into their cyber capabilities, other Allies have spent far fewer resources. Because NATO's overall cyber defence is only as powerful as the weakest link in its cyber capabilities, NATO should ponder more thoroughly the question of what constitutes effective defence in the cyber domain: should each Ally develop a cyber defence capability with the limited resources available to

¹⁶ "Cyber Defence Pledge", NATO, 8 July 2016.

each Ally or should cyber capabilities be developed jointly, and shared across the Alliance in an arrangement akin to NATO's nuclear sharing?

Recommendations

1. When conceptualising its cyber defence posture, NATO should draw more heavily on its nuclear experience, particularly with regards to capabilities- and burden-sharing as well as deterrence. The nuclear arsenals of only three states have achieved effective deterrence for all 28 members. Only a few Allies would need to develop highly sophisticated cyber capabilities, both offensive and defensive, to replicate this success. Whereas the offensive capabilities would provide for deterrence-by-punishment, the defensive resources would achieve deterrence-by-denial. NATO's nuclear risk- and responsibility-sharing experience further suggests that a similar burden-sharing arrangement for cyber, especially with regards to the development of capabilities and the procurement of equipment, could yield very effective results. As with nuclear, some member states could provide the Alliance with the actual capabilities, with NATO coordinating the doctrine, the declaratory policy as well as the command and control systems.
2. NATO's lead committee for the governance of cyber defence, the Cyber Defence Committee, should evolve into a Cyber Planning Group to replicate the success of the Nuclear Planning Group. This would not only ensure the influence of the non-cyber Allies over the Alliance's cyber policy, but would also ensure that NATO's cyber policy evolves from the policy level into fully-fledged strategic operational planning including defensive and offensive aspects. Like nuclear deterrence, cyber deterrence will only work if NATO's own capabilities render pre-emption and punishment a sufficiently credible possibility. Indeed, the advent of new weapons technology has decisively changed international politics, bestowing a formidable advantage upon the possessor of new weapons technology. For instance, when gunpowder reached medieval Europe, even the most fortified castles became vulnerable and when nuclear weapons were invented, even the most resilient conventional defences proved insufficient. Therefore, rather than investing purely into enhancing resilience (cyber

defence), the Allies should embrace the technological advances and develop offensive cyber capabilities to enhance its cyber deterrence.

3. NATO must avoid miscalculation in its efforts to enhance cyber deterrence by resolving the following issues:
 - a. The problem of attribution in cyberspace, which makes deterrence-by-punishment more difficult to achieve. If the Allies aspire to effective cyber deterrence—i.e., a drastic reduction in the number of cyber attacks against NATO members—then the Allies should invest significantly into the development of a reliable attribution capability because only effective attribution will render pre-emption and punishment—the core components of deterrence—a sufficiently credible possibility. Yes, cyber criminals can enhance their ability to disguise the origin of cyber attacks (an argument advanced again and again at international cyber security conferences); but NATO can improve its attribution capability, too, by prioritising the issue and making investments accordingly (procurement of equipment, training personnel).
 - b. As with nuclear armaments, there remains a risk that NATO’s efforts to achieve cyber deterrence offset a cyber capabilities arms race with countries that perceive NATO’s actions in this sphere as a threat to their security. NATO must work in earnest to avoid this dynamic, for example through cyber consultations with the Russian Federation, modelled closely on the success of bilateral nuclear arms control measures.
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Mosul to Berlin, Paris, and London: How the Battle in Iraq Affects the West

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In October, 2016 an international coalition of 30,000 troops, directed by 100 US advisors, began efforts to retake the ISIS-held city of Mosul, Iraq's second most populous city. Kurdish Peshmerga, Sunni Arab soldiers, and Shia volunteer ground troops helped to support coalition forces, including American special forces. While the offensive was an initiative of the Obama administration, the United States-equipped

anti-ISIS coalition continues to battle the militants and continues to reverse ISIL's previous territorial gains in northern Iraq. With approximately 3,000-5,000 in the north of the country, the battle's end, while still distant, seems to have turned in the anti-ISIL coalition's favour. A potential corollary, however, is that a reduction in territory could force ISIL to increase the tempo of terrorist attacks within the aforementioned European capitals.

The reasons for the uptick for potential terror is based on the coalition's launch of "Operation Inherent Resolve", consisting of airstrikes and military ground forces aimed at disrupting ISIL's plans to establish and strengthen a clearly geographically defined caliphate of its own. Since its inception, the ISIL Caliphate in Iraq has



committed atrocities while they try to make their leadership a "legitimate" governing power in the Middle East. If denied their caliphate, however, this violence could spread beyond their self-declared borders. While it is anticipated that it will take another three months to recapture previously-held

territory or to entirely defeat the group, one should not overlook the impact a Mosul defeat has on Europe's overall security.

Consequences of Winning in Mosul

While removing ISIL from the area deprives it of territory, it certainly doesn't prevent new extremist attacks taking place in Western Europe. Defeating the leadership and structure of ISIL might inspire non-local militants to return to their respective countries. Estimates from intelligence services and law enforcement agencies, such as Europol, place upwards of 5,000 extremists who have travelled to the Middle East. While it is not certain that all who return plan to commit attacks, forcing enemy combatants from Mosul will force them to look elsewhere for refuge.



From an EU perspective, there is much to coordinate and share amongst governments if they want to stem the flow of militant countrymen returning to their respective homelands. Solutions to the ever-increasing threat can only be made through shared intelligence between security and law enforcement agencies

throughout Europe. A possible consequence of not sharing this information is that the public's safety within the EU will be put at greater risk. A more integrated and robust approach to border security is needed to counter the threats posed by returning militants.

The challenge posed to the security apparatuses of Western nations by returning ISIS fighters may actually help to improve security measures. Increased security may help us prevent such attacks like those witnessed in Istanbul, Berlin, and Paris. While denying territory to ISIS is the goal of Operation Inherent Resolve, victories which take place several thousand miles away in the Middle East may not help European capitals to protect their own citizens. Gilles de Kerchove, the EU's Counter Terror

Coordinator has suggested that returning members of ISIS have risen considerably and will not subside even as ISIS leaders are killed and ISIS loses territory in Iraq and Syria essentially bringing the fight to Western Europe.

Some Methods Preventing Increased Violence

Counterterror measures will develop alongside any increase in terrorist activity. However, with respect to thwarting new attacks, it would be best for national intelligence agencies to collaborate closely with one another. Because intelligence can be intrinsically tied to notions of national sovereignty, information sharing between nations is sometimes problematic. Nevertheless, Europol has taken the lead and helped to establish a classified continental database specifically to monitor foreign fighters who have returned to Europe. This program, called Trend Reporting, allows authorities to cross-check information from multiple countries and sources, and tracks criminal activity that provides information as to who potentially could be planning an attack or attempting to access dangerous objects and materials. This sort of trend analysis is similar to what is seen in the United States in using data analytics to predict a possible attack.



Other activities the EU may be undertaking to prevent terrorist attacks are based on border security wherein EU Members can upgrade technology while upgrading relevant databases through increased staffing and processes. In addition, EU countries, through the agency Frontex, that oversees border security, have increased staffing levels to help cross-reference information and conduct security checks in a number of hotspots such as Belgium, France and others. Frontex has also taken the lead in helping to detect, and find the source of false passports.

Conclusion

What has been briefly presented is a quick analysis on why the EU must be prepared to confront Islamic State extremism. With an increase of “foot soldiers” from Iraq and other spots, Europe must be vigilant with its border security and must continue to develop and share new and innovative counterterror measures. Realizing it will be hard to adapt to new ways to stop an ISIS attack either well organized or through lone individuals, countries in the EU face a daunting challenge and a much more serious threat from extremist where the only way to prevent an attack is to be ahead of the game.