



POLICY BRIEF

Australia and the South China
Sea: An Integrated Approach

March 2016
By Paul Grandoni

Australia and the South China Sea: An Integrated Approach
By Paul Grandoni

© 2016, Young Australians in International Affairs Inc.

Young Australians in International Affairs is a not-for profit organisation committed to connecting, engaging and empowering the next generation of Australian leaders in international affairs. The views expressed in this policy brief are those of the author, and do not reflect those of Young Australians in International Affairs, the author's employers, or any other organisation they are affiliated with.

Executive Summary

Australia has overriding interests in the continued existence of a global maritime commons, an international economy oriented towards free trade norms, and the continued evolution of a regional rules-based order. These interests rely on a peaceful and stable region. China's recent assumption of a more belligerent approach to settling territorial disputes in South China Sea (SCS) has led to tension and uncertainty in the region, consequently threatening these interests. This policy brief recommends a review of Australia's approach to the SCS to adapt to this evolving geopolitical landscape, and suggests four ways Australia should respond.

Context

The South China Sea is one of the world's most contested areas, home to overlapping sovereignty claims from nine different states. China is one such claimant. Despite actions to the contrary, the nature of its claims and their reference to the nine-dash-line area (as shown), covering most of the SCS and claims of several other states, remain unclear. This 'strategic ambiguity' has allowed China near de-facto control over the SCS. The nature of these actions is incompatible with the 1982 UN Convention on the Law of the Sea, and therefore a challenge to the rules based order.

Since 2012, China has assumed a more belligerent approach to seek greater control over these waters and airspace in ways which have further called into question its commitment to international law; inflaming regional tensions and serving to threaten states that have interests in preserving a peaceful and stable rules-based order to advance their security and prosperity.

Australia's interests ultimately rely on continuation of this order, and any damage to it through assertiveness of any kind threatens these interests. By virtue of its geographic position, the SCS is a vital trade and strategic gateway. Any loss of access or freedom to it would therefore also be of direct and immediate consequence to Australia.

Along with warning its Southeast Asian neighbours against otherwise routine patrols and drilling for resources in the contested territory, China is carrying out war games in the region, causing significant disruption to SCS waters and airspace. Claimant states are now considering legal options and boosting their military capacity to defend against Chinese action. The potential for escalation in the SCS presents a threat to Australia's interests in a stable security environment and for the continuation of the regional rules-based order.

Unless Australia shifts policy beyond measures of soft diplomacy, the fate of these interests will be determined by other actors with views not necessarily aligned to its own. This would have strategic consequences for Australia. As a respected middle-power with demonstrated capability to shape regional outcomes, Australia is well placed to assume a greater role in mediating a peaceful resolution of tensions in the SCS. The following recommendations would work towards cultivating an environment conducive to reaching this resolution.



Figure: South China Sea; Nine-Dash Line

Source: Yuan, *Emerging maritime rivalry in the South China Sea: Territorial disputes, sea-lane security, and the pursuit of power*, (2012), *The Economist*.

Recommendation One: Resolution through International Law

Australia has long advocated for international law to be the principal vehicle for clarifying and resolving the South China Sea dispute (including through arbitration), and that failure of claimant states to respect international law or abide by any rulings will severely damage the legitimacy of the current rules-based order.

At face value, all claimants invoke principles of international law for the maintenance of peace and stability in the region; all are party to the UN Convention on the Law of the Sea and cite international law as justification for their claims. Australia should therefore continue to exert pressure on China and other claimant states to uphold Convention principles and remain bound by any rulings from an arbitral tribunal or court constituted under Annex VII to the Convention. Australia should engage cooperatively in any case, as it has as an observer in *The Philippines vs. People's Republic of China*.

Doubts remain over the capability of international law and arbitration to resolve the disputes, given China's reluctance to engage in proceedings brought by the Philippines and refusal to acknowledge the Permanent Court of Arbitration as having legal jurisdiction over the case despite the Court ruling otherwise. Australia should continue however to exert pressure on China to engage cooperatively in resolving disputes through this long established and accepted channel, which by extension would exhibit its commitment to the continued existence of the rules-based order.

Recommendation Two: Diplomatic Leadership

Australia is a source of diplomatic initiative. This was displayed most recently in its ability to marshal an international recovery effort to MH370. In the past Australia has also acted to solve other problems in the region. Recently it settled a regional impasse over unauthorised immigration, culminating in the Bali Process. Such diplomacy in attempting to settle the SCS disputes has not yet been pursued.

Australia should lead a diplomatic effort in concert with regional partners to develop a common statement that China immediately withdraw military equipment, including its anti-aircraft missiles, from Woody Island and any other area in the SCS. Australia should then work with claimant states through regional fora to reach a middle-ground. The East Asia Summit is one such forum it could utilise to diffuse tensions by building closer relationships and start a conversation about how to maintain order, manifesting in a Code of Conduct for the SCS. While Chinese engagement is key, if it refuses to accommodate the interests of other claimant states in ways conducive to peaceful resolution it must be worked around; it cannot have right of veto.

Models of shared area access and development, from the Spitsbergen Archipelago in the Arctic to the Neutral Zone between Saudi Arabia and Kuwait, provide pathways for Australia to work towards in negotiating this Code of Conduct. As the rebuke from Foreign Minister Bishop on China's establishment of an 'Air Defense Identification Zone' in the East China Sea proved, this can be achieved with minimal repercussion.

Recommendation Three: Regional Force-Structure Development and Coordination

Australia is seen as a source country in the region for security training and assistance, maintaining a comprehensive bilateral relationship with each SCS claimant. As part of an integrated approach to balancing China's assertive behaviour, Australia should draw from these relationships to develop targeted and joint packages of maritime assistance measures in policing, interdiction and intelligence sharing. This would need to be done on a regional basis with a small grouping of capable states, such as Japan, South Korea, India or other Southeast Asian states concerned about China's actions and interested in maintaining the regional status quo.

With demonstrated capacity to act as a regional hub, Australia would be well placed to establish this grouping and coordinate maritime assistance measures in an agile and responsive way. These measures when deployed would signal to China that its actions are resulting in a balancing alignment of other states in the region. This could equip these states with the structure to proactively defend their interests in a coordinated way in future and serve to promote closer cooperation and understanding between them in ways that may be inimical to China's interests in the SCS and elsewhere in the region.

Recommendation Four: Hard-Power Complement

Australia's current posture is limited to condemning China's actions and a non-specific commitment to enhanced naval cooperation with the United States. China has ignored these measures of soft-diplomacy in the past, while continuing to assert its claims. Australia should complement its soft-diplomatic approach with direct measures; including continuing presence and freedom of navigation and overflight exercises (both military and commercial) and surveillance missions.

As part of this approach, Australia would need to make sure that other like-minded states in the region take similar steps as an expression of collective will and that it is not just Australia and its allies taking action; minimising unilateral risk, exhibiting the region's commitment to the established rules-based order and improving the strategic dividend for Australia. These measures should therefore be employed in concert with other states in the region that claim to value freedom of navigation and overflight. Failure to exercise this right will cede de facto sovereignty to China.

To minimise the risk this will be perceived by China as an escalation or act of aggression, Australia should stress these direct measures as part of Operation Gateway; and therefore a continuation of long-standing policy to defend the strategic status quo and improve regional security and stability by way of these navigation and overflight exercises and surveillance missions. Having been effective in maintaining the defence relationship between Australia and Malaysia, Operation Gateway also serves as a template for Australia to replicate in developing bilateral defence ties with other like-minded countries in corraling support and legitimacy for these and future exercises and missions.

Conclusion

Australia has vital interests at stake that are ill-served by its current approach to South China Sea territorial disputes. Recent and foreseeable events in the region make this untenable as a long term strategy. The four recommendations outlined in this brief would recast Australia's policy to be one that is integrated and of minimal risk in light of current SCS tensions; comprised of soft and hard measures, framed in the context of regional cooperation, and proportionate in effectively advancing and protecting its interests.

About the author

Paul Grandoni is a postgraduate student at the ANU National Security College, completing a Master of National Security Policy (Advanced). He holds a Bachelor of Commerce (Hons) from ANU, a Master of International Business and Law from the University of Sydney, a Master of International Trade and Development from the University of Adelaide, and a Graduate Diploma in International Relations from the University of Western Australia.