

Pompeo Draws a Line Against Beijing in the South China Sea

The United States has aligned itself on the side of international law, but backing up a tough statement will be hard.

By Bill Hayton

In a surprise move, the Trump administration has issued a statement on the South China Sea that is consistent with international law, grounded in historical evidence, and completely in line with the expectations of the United States' allies and partners. It places the United States squarely behind the interests of Vietnam, Malaysia, Indonesia, Brunei, and the Philippines, all of which have serious disputes with Beijing. It's a strong move—but the big question is how Washington will follow up on it.

In his statement on Monday, U.S. Secretary of State Mike Pompeo said he was aligning the U.S. position on China's maritime claims in the South China Sea with the 2016 ruling of an international arbitral tribunal in The Hague. That ruling, in a case brought by the Philippines, comprehensively demolished China's decades-old claims to maritime resources that go beyond those allowed by the United Nations Convention on the Law of the Sea (UNCLOS). China refused to even attend the tribunal, despite being a UNCLOS signatory, and fiercely denies the result.

In an alternate universe, one in which Rodrigo Duterte lost the Philippine presidential election in 2016 and Hillary Clinton won the White House, this statement would have been issued long ago. Duterte's taking power, just 12 days before the arbitration ruling was announced, killed the chances of such an approach at the time even under then-U.S. President Barack Obama. It is easy to imagine it lying buried in a file for four years until some patient State Department officials felt able to revive the practice of diplomacy and working partnerships in the twilight months of Trump. But with the statement now nailed to the mast of U.S. policymaking in Asia, what should happen next?

China's claims in the South China Sea fall into two types: "territorial claims" to the disputed rocks and reefs and "maritime claims" to the resources in the sea around those rocks and reefs. The United States, quite sensibly, has never taken a position on which country is the rightful owner of these territories. However, Pompeo's statement breaks new ground by asserting that China has "no lawful territorial or maritime claim to (or derived from) James Shoal."

This will be music to the ears of Malaysia because James Shoal (Beting Serupai in Malay, Zengmu Ansha in Chinese) is an entirely submerged piece of seabed about 50 miles from the coast of Borneo and more than 600 miles from China. China claims James Shoal as its "southernmost territory" because of a translation error by a Republic of China government committee in 1934. The committee used the Chinese word "tan" as a translation of "shoal." Tan means "sandbank," and this bureaucratic mistake led to a piece of seabed becoming defined as land. In 1947, the translation was changed to ansha, which means "hidden sand," but the territorial claim remained.

The other key parts of Pompeo's statement followed the 2016 arbitration ruling in asserting that neither Scarborough Shoal (off the Philippine coast) nor any of the so-called Spratly Islands are actually islands in the full sense. That is, they are not large enough to justify an exclusive economic zone (EEZ) around them. An EEZ can stretch for up to 200 nautical miles around an island, incorporating a far larger area than the 12-nautical-mile territorial sea that a mere "rock" can generate. This is exactly what the Philippines would want Washington to say and backs up the findings of the arbitral tribunal.

But Pompeo went even further by rejecting any Chinese "maritime claim in the waters surrounding Vanguard Bank (off Vietnam), Luconia Shoals (off Malaysia), waters in Brunei's EEZ, and Natuna Besar (off Indonesia)." Vanguard Bank is another underwater feature, like James Shoal. Luconia Shoals are a series of reefs where sandbanks occasionally form, and Natuna Besar, where the statement deliberately used the Indonesian name, is a reference to problems that Indonesia has been suffering from incursions of Chinese fishing vessels into its EEZ around the Natuna Islands.

This statement thus positions the United States not as an outside interloper in the South China Sea only interested in questions of freedom of navigation or great-power competition with China but as a supporter of the legitimate rights of Southeast Asian countries, backed up by well-established international law under UNCLOS.

It is exactly what the governments of those countries want to hear. It is their fishers whose boats get sunk by Chinese vessels and their offshore energy industries that are blocked from developing new resources. It is their people's livelihoods and national economies that suffer as a result of China's efforts to undermine the UNCLOS treaty that it negotiated, signed, and ratified. Southeast Asian governments knew this statement was coming. American diplomats circulated a nonpaper version to them last week. They broadly welcome its fine words, but that rhetoric means little by itself. What Southeast Asian governments seek is protection in their EEZs, far out at sea. They want to know that they can go fishing and prospect for hydrocarbons in line with UNCLOS without triggering intimidation from China's growing navy, coast guard fleet, and maritime militia.

At the same time, they are apprehensive. As Shahrman Lockman, a veteran South China Sea watcher at the Institute of Strategic and International Studies in Malaysia, said: "The U.S. presence is seen as a double-edged sword. It has the effect of both deterring but also potentially escalating matters with China. ... The worst-case scenario is for things to escalate, and then the U.S. gets distracted by something in the Middle East, and we get saddled with more Chinese ships in our waters."