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In the Absence of a Code of Conduct: An Update on the South China Sea Disputes

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2020 has so far been a very difficult year to navigate. From social unrests in the United States, Hong Kong, and much of Europe, to the COVID-19 global pandemic, which, as of 30 June 2020, has claimed more than 500,000 lives with millions more still infected worldwide.¹ The South China Sea has not been spared the nail-biting tension of 2020. As claimant states are preoccupied with domestic efforts to fight the pandemic, increasing number of worrying incidents continue to occur within the South China Sea, which have only managed to exacerbate animosity between claimant states. Moreover, the presence of external actors has put additional strain to the geopolitical turmoil that have yet to be fully stabilised.

This is a brief analysis on the string of events that transpired within the first half of 2020 in the South China Sea, which gives a worrying picture of the pressing issues and increased tension in the area.

¹ BBC News. "Coronavirus: Covid-19 death toll hits 500,000 worldwide." BBC News. 28 June 2020.

Sovereign Rights/EEZ Violation

Violation of sovereign rights form one of the most pressing incidents in the South China Sea. The biggest incident so far was the West Capella standoff whereby Malaysia unilaterally conducted an oil and gas survey, by contracting the *West Capella* drillship, within the Malaysia-Vietnam Joint Defined Area.² This alerted Beijing, which decided to dispatched several China Coast Guard (CCG) vessels to trail, and harass the drillship and its supply vessels. Vietnam also scrambled a number of its maritime militia into the area to observe the drillship. Meanwhile, Malaysia doubled-down on its initial move by deploying the Royal Malaysian Navy's KD *Jebat*, a 2,270-ton guided missile frigate to protect the West Capella's operation. At one point of time Malaysian Navy's KD *Jebat* forced a CCG vessel to stand down.

The West Capella standoff continued unabated for months, which spread across the southern part of the South China Sea. Beijing, signalling Kuala Lumpur that it won't relent its presence in the area, have simultaneously initiated a showdown with Malaysia at the Luconia Shoals, where CCG vessels maintain a near-constant presence off the coast of Sarawak. At the culmination of it all, China dispatched the survey vessel *Haiyang Dizhi 8*, along with a flotilla of coast guard and paramilitary vessels. In response to this, the US maintained a persistent presence near *West Capella* for a month, by launching an array of multi-day patrol by the US Navy, and a flyby of the US Air Force bombers. The West Capella standoff caused a spill over effect towards neighbouring Indonesia, where CCG vessels were constantly observed trespassing into Indonesia's EEZ from December 2019 to January 2020.

An incident between China and the Philippines happened at Commodore Reef in February.³ The Commodore Reef incident started when Philippine Navy corvette BRP *Conrado Yap* encountered a PLA Navy corvette during a patrol mission in the area. As the Philippine Navy corvette radioed the PLA Navy corvette to 'continue to their next destination,' the PLA Navy corvette warned the Philippine Navy corvette that the Commodore Reef area is a sovereign territory of China. BRP *Conrado Yap* later visually identified that the PLA Navy corvette had their weapon systems "aimed" towards the Philippine Navy corvette. This incident not only amounts to a violation of Philippine's EEZ, but also to the illegal use of the threat of using force in high seas, which is in direct violation to UNCLOS.

Freedom of Navigation Operations (FONOPs) and Military Exercises

Within the first six months of 2020, five Freedom of Navigation Operations (FONOPs) were conducted by the US Navy in the South China Sea.⁴ The objective of these FONOPs stayed the same - that is "to challenge the unilateral claims of China on the entirety of the South China Sea, and to maintain the act of innocent passage by any ships on the high seas." However, the amount of FONOPs in 2020 is supplemented with additional deployment of US Navy vessels, and US Air Force bombers in the area. This is due to the tension generated by the West Capella standoff, which saw a standoff between Vietnam, Malaysia, China, USA, and Australia. The presence of American forces in the area were also intensified through the various military drills and exercises that it conducted in the area.

The biggest concentration of US Armed Forces occurred in April and May 2020, where a combination of US Navy vessels, and US Air Force bombers patrolled the South China Sea. The US Navy sent one of its newly deployed littoral combat ships, USS *Gabrielle Giffords*, to patrol the area from 26 to 28 April

² Herzinger, Blake. "Learning in the South China Sea: The U.S. Response to the West Capella Standoff." *The War On The Rocks*. 18 May 2020.

³ Vicedo, Christian. "Assessing China's Assertiveness at Commodore Reef." *The Diplomat*. 18 May 2020.

⁴ Herzinger, Blake. "Learning in the South China Sea: The U.S. Response to the West Capella Standoff." *The War On The Rocks*. 18 May 2020.

2020, and deployed submarines from the US Seventh Fleet to patrol the area. Meanwhile, the US Air Force sent B-1B bombers from South Dakota and conducted a 32-hour mission over the South China Sea on 29 April. In addition, several B-52 and B-2 bombers conducted a strategic deterrence mission on 7 May. This was joined by additional bombers from Guam on 8 May.

The United States also utilises the heightened tension by conducting several live-fire drills and military exercises. First and foremost were the testing of missiles by US Navy destroyer USS *Barry*, and cruiser USS *Shiloh*. This live-fire exercise was conducted in March 2020 on the waters east of the Philippines. Second, was a military exercise between the United States and Australia in April 2020. The exercise saw the Australian frigate HMAS *Parramatta* conducting several drills with US Navy warships within the contested region. HMAS *Parramatta* has been undertaking an extended deployment throughout South and Southeast Asia from March to April 2020.

Code of Conduct Negotiations

The progress of the Code of Conduct (CoC) seems to hit a snag in 2020, as COVID-19 pandemic forced the negotiations of the CoC to be postponed⁵ The negotiation already has caused several criticisms to be aired. One American scholar commented that the current draft, passed in September 2019, has “very little agreed upon.” Some points are still very contentious, such as dispute settlement procedures, and fishing, and seabed management. Meanwhile, a Singaporean scholar said that as the negotiation was being halted, Beijing is consolidating its position amid the COVID-19 outbreak. As ASEAN member states have their hands full in dealing with the pandemic, Beijing wants to raise its leverage in the negotiation when it restarts by consolidating its physical presence in the South China Sea.

Illegal, Unregulated, and Unreported (IUU) Fishing

IUU Fishing continued to occur between all claimant states. A fleet of around 300+ Vietnamese fishing vessels ventured into Chinese waters around February 2020.⁶ It has been identified that some vessels were operating with their transponders off. Several Chinese analysts suggest that some vessels were there to spy on Chinese military facilities. However, there’s not enough evidence that these vessels were there to do more than illegal fishing. Several cases of illegal fishing were also identified venturing into Indonesian waters. An incident in March 2020 saw Indonesian Maritime Law Enforcement Agencies capturing five Vietnamese fishing vessels and apprehending around 68 crews.⁷ Whilst in April 2020, two Vietnamese fishing vessels were seized in the North Natuna Sea area.⁸

Two incidents related to IUU Fishing were recorded between China and Vietnam. Both these involved CCG vessels intercepting and ramming Vietnamese fishing vessels, which led to the sinking of a fishing vessel in once incident. Vietnam has launched diplomatic protests over these incidents. Yet, Beijing’s response to these incidents have so far been muted.⁹

⁵ Santos, Eimor. “Negotiations for South China Sea Code of Conduct a ‘failed process,’ expert says.” CNN Philippines. 15 April 2020.

⁶ Huang, Kristin. “Hundreds of Vietnamese fishing boats intrude into Chinese waters, think tank claims.” South China Morning Post. 7 March 2020.

⁷ Agence France-Presse. “Indonesia detains ‘illegal’ Vietnamese fishing boats in islands off South China Sea.” South China Morning Post. 5 March 2020.

⁸ Ghaliya, Ghina. “Five vessels from Philippines, Vietnam caught fishing illegally in Indonesian waters.” The Jakarta Post. 13 April 2020.

⁹ Khanh, Vu. “Vietnam protests Beijing’s expansion in disputed South China Sea.” Reuters. 19 April 2020.

Concluding Notes

There seems to be no indication that the situation in the South China Sea will simmer down anytime soon. With the United States set to conduct the 2020 Presidential Election, President Trump could not afford to back down against Chinese assertive behaviour within the area. This would only serve to embolden Southeast Asian claimant states to push back against further aggression. A good example would be on Philippine's decision to backtrack on their decision to suspend the Visiting Forces Agreement with the US. This exemplified the need for support by the claimant states to stake their claims within the area. With the CoC negotiation halted in these pressing times, there will be a lot of clutter to clean up before any agreements could be pushed forward between the relevant littoral states.

Annex: Incidents in the South China Sea – Timeline January–June 2020

January 2020

7 January – 11 January *Chinese Coast Guard (CCG) Vessels intrusion*

- Four CCG Vessels violated Indonesia's and Malaysia's EEZ
- Part of the intrusion that was seen in December 2019
- Jokowi visited Natuna on 8 January 2020

25 January *USS Montgomery FONOP*

- US warship passed by Spratly Islands
- China sent air and sea patrols to “track, monitor, and identify” the warship

February 2020

17 February *Commodore Reef Incident*

- Philippine Navy (PHN) corvette BRP *Conrado Yap* conducted a patrol mission near Commodore Reef.
- PHN corvette encountered PLA Navy (PLAN) corvette in the area. PLAN corvette warned PHN corvette that Commodore Reef is Chinese sovereign territory.
- PHN visually identified that PLAN corvette “aimed their guns” towards the PHN corvette.
- This amounts to a violation of UNCLOS as PLAN corvette employed the threat of use of force within Philippine's EEZ.

February

Intrusion of Vietnamese fishing vessels

- 300+ Vietnamese fishing vessels ventured into Chinese waters in February; some with transponders off.
- Beijing-based analysts suggest that some vessels were there to spy on Chinese military facilities.
- Not enough evidence to suggest spying activities; most likely just IUU Fishing.

March 2020

4 March

Vietnamese vessels conduct IUU Fishing in Natuna

- Five fishing boats, and around 68 fishermen/crew were intercepted near Natuna Islands.

10 March

USS McCampbell FONOP

- US warship sailed near Paracel Islands.

19 March

US Navy conducts 'live-fire' drill

- Drill conducted in waters east of the Philippines.
- Two warships were involved: Destroyer USS *Barry*, and Cruiser USS *Shiloh*. Each launched a missile during the drill.

24 March

USS Bunker Hill FONOP

- US warship sailed near Spratly Islands.

April 2020

3 April

China sinks Vietnamese fishing vessel

- China Coast Guard (CCG) vessels rammed and sunk a Vietnamese fishing vessel.
- Incident happened near the Paracel Islands
- All fishermen were picked up by the Chinese vessel alive and transferred to two other Vietnamese fishing vessels.

11 April

IUU Fishing in North Natuna Sea and Sulawesi Sea.

- Three Philippine vessels were seized in Sulawesi Sea, and Two Vietnamese vessels seized in North Natuna sea.

18 April

Establishment of administrative control over Paracel and Spratly

- China has established two new districts, under Sansha City, in the South China Sea.

- Xisha district will administer the Paracel Islands, Macclesfield Bank, and Scarborough Shoal.
 - Nansha district will administer the Spratly Islands
- 28 April *USS Barry FONOP*
- US warship sailed near Paracel Islands
- 29 April *USS Bunker Hill 2nd FONOP*
- US warship sailed near Spratly Islands
- May 2020**
- December – May *West Capella Standoff*
- *West Capella* drillship contracted by Petronas to explore oil and gas blocks in Malaysia-Vietnam Joint Defined Area.
 - Unilateral action by Malaysia caused Vietnam to dispatch Maritime Militia into the area.
 - China dispatched survey vessel *Haiyang Dizhi 8* along with a flotilla of coast guard and paramilitary vessels.
 - US maintained a persistent joint presence near West Capella from April to May 2020.
 - *West Capella* leaves the area in 12 May.
- June 2020**
- 3 June - 10 June *Chinese survey vessels around South China Sea*
- *Hai Yang Di Zhi 4* sailed into Vietnam's EEZ, likely in response to Vietnam's threat of renewing oil exploration in disputed territory.
 - *Hai Yang Di Zhi 9* surveying area near Taiwanese-controlled Pratas Islands.
- 8 June *China installs undersea cables*
- Satellite imagery shows Chinese vessel laying undersea cable between Chinese outposts in the Paracels.
 - It is still unclear whether the vessel is laying new cables, repairing, or upgrading existing ones.
 - Connections between these Chinese outposts likely meant for military purposes.

21 June

China rammed Vietnamese fishing vessel

- China Coast Guard (CCG) vessels rammed a Vietnamese fishing vessel.
- Incident happened near Lincoln Island within the Paracels
- Chinese sailors allegedly boarded the vessel, seizing fish and navigation equipment, whilst beating and kicking Vietnamese fishermen.

24 June

US-Japan bilateral military exercise

- USS *Gabrielle Giffords* conducted a military exercise with two Japan Maritime Self-Defense Force vessels in the South China Sea area (JS *Kashima* & JS *Shimayuki*).
- Exercise part of *Training Cruise 2020* aimed at offering trainee officers experience and professional skills.

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