

# The Efficacy of the US Freedom of Navigation Operations in the South China Sea

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In May 2015, the Obama administration dispatched a P8-A Poseidon surveillance plane carrying CNN news reporters to fly at low height close over the China-controlled Fiery Cross Reef located in the Spratly waters in the South China Sea. Soon after, the US released a classified video showing the intensive radio communications between the US and China, with the Chinese repeatedly warned the US to steer away from the Chinese “military alert zone”, while the US replied that it was conducting lawful operation in the airspace over international waters. This was the first time the US government took the initiative to publicize a record of its “Freedom of Navigation Operation” (FONOP) and military encounter with China in the South China Sea. The incident also marked a shift in past US policy to keep a low-profile of its FON activities.

The US FON program is not new. It began in 1979 as a form of legal exercise to reinforce the US interpretations of the international law of the sea, and to challenge what it believes as “excessive maritime claims” that could undermine the legitimate navigational and overflight rights. It was designed as a complementary strategy to diplomatic protests to ensure both the global mobility of US forces and the unimpeded traffic of lawful commerce. Until recently, the US Navy had been quietly conducting numerous FONOPs around the globe each year, and China is not the only Asian countries to have been targeted. For example, Cambodia was challenged in 1992 for requiring prior permission of foreign warship to enter its territorial sea. The Philippines have been regularly challenged for excessively claiming straight baselines of archipelagic waters as internal waters. Other targeted countries include Indonesia, India, Taiwan, Vietnam, Japan and South Korea.

Still, the FONOPs against China since May 2015 are somewhat different from other operations under the program. First, the first of such operations was ordered after a report showing that China had been rapidly undertaking large scale land-reclamation and construction works on 7 reefs and Low-tide Elevations in the Spratly area since 2014, around the period the Philippines had initiated an arbitration proceeding against China concerning their disputes in the South China Sea. Up until the rendering of the South China Sea Arbitral Award on 12 July 2016, the US navy had been conducting FONOPs to, among others, signal that the US would not recognize any of China’s 12-mile territorial sea claims based on an artificial island built on a Low-tide Elevation, which, according to international law of the sea, has no such an entitlement. Since China has not officially clarified its territorial and maritime claims in the South China Sea, it appears the US operations were aimed not only at existing claims which the US deemed illegal or excessive, but also at preventing China from making more of them.

Secondly, US has conducted more FONOPs and in higher frequency toward China from mid-2015 up until 2019 in the South China Sea than it has toward other countries. Between May 2015 and December 2016, the Obama Administration reported five operations contesting against certain China-controlled land features in the Spratly and the Paracel waters. Under President Donald Trump, the number has increased significantly. According to statistics provided by a recent US Congressional Research Service research based on open press reports, the Trump Administration have conducted four such operations in 2017; five in 2018; and not less than eight as of November 2019. Moreover, while there was normally a two-month interval between each operation during 2017 and 2018, back-to-back operations have been executed between 20 and 21 November 2019.

Thirdly, while FONOPs essentially constitute a form of assertion of legal position or countermeasure, recent undertakings under the Trump Administration have also important strategic underpinning. For the US under Trump’s presidency, China is seen as a “strategic competitor”, and the South China Sea has emerged as an arena for competition between the two major powers. The program has become an integral part of Trump’s competitive approach toward China, including the efforts in constructing a “Free and Open Indo-Pacific Region”. The expansion

and growing control of China in the South China Sea, as well as the East China Sea and the Yellow Sea, could substantially affect US's own strategic, economic and political interests in the Indo-Pacific region. It could also complicate the ability of the US to provide security guarantee for its treaty allies (Philippines, Japan, South Korea) or existing or potential partners (For example Singapore, Vietnam, Indonesia, and Taiwan).

The US FONOPs are seen by several regional countries as necessary for maintaining rules-based international order and freedom of navigation in the South China Sea, and to contain China's expansive territorial and maritime claims, particularly those like Vietnam and the Philippines that have been entangled in disputes with China, and continue to feel threatened by its assertive behaviors. A few other US allies and partners have also followed suit by carrying out their own versions of freedom of navigation, such as U.K., Japan, Australia, New Zealand, France, Canada and India or doing so jointly. Politically, through FONOPs in the disputed areas in the South China Sea, the US is trying to reassure allies and partners of its commitment to maintain security and order in the region.

By contrast, recent FONOPs in the South China Sea have also drawn caution and criticism both domestically and internationally. For example, countries like Indonesia have expressed disapproval of "any power projection" and called for US and China to exercise restraint. In addition, some American analysts observe that the operations have failed to prevent China from furthering its control in the South China Sea, or exploiting grey zone operations (namely, actions that lie between war and peace) to pressure its neighbors and undermining their rights. Moreover, some Asian experts suggest that while the US has reaffirmed its security commitment through FONOPs, FONOPs alone would have little effect on China's other strategic and economic maneuvers like the Belt and Road Initiative. US will need to adopt a more "holistic set of instruments in a more concerted manner", including economic tools.

More noteworthy, the intensified FONOPs against China have already given China more justifications to defend its territorial claims and coerce neighboring countries that support or join the operations – Vietnam, Japan, Taiwan included. A recent case in point was the diplomatic crisis between Vietnam and China over the Haiyang Dizhi 8 Incident in July 2019, in which a Chinese government-run survey vessel, escorted by Chinese Coastguards and militia, entered the Vanguard Bank area to conduct energy survey, which Vietnam claims to belong to its EEZ and continental shelf. Concerns have also grown about the increased risk of military confrontation between China and US, as a result of more frequent encounters between the two great powers in the disputed areas in the South China Sea. Some Chinese analysts point out that compare to the Obama Administration, the Trump Administration seems to have handed down more autonomy to the Department of Defense and the Indo-Pacific Command in relation to FON operations. This could lead to more risk of danger at the operational level.

On 23 November 2019, at the Halifax International Security Forum in Halifax, Nova Scotia, Canada, the US Navy Admiral Philip S. Davidson, commander of the U.S. Indo-Pacific Command, re-iterated the importance of securing freedom of navigation at both sea and air. He also urged the ASEAN member states not to enter into a code of conduct with China, which could restrict their navigational rights and inhibit their ability to conduct commercial or military operations. However, recent FONOPs have so far been insufficient in deterring China's hegemonic advances in the South China Sea. On the other hand, the growing strategic competition between US and China, as partly manifested through Trump Administration's FONOPs, has increased concern for regional stability, and posed more policy challenges to those countries that are used to align themselves with US in terms of security, ideology or values; while economically have become increasingly inter-dependent with China.

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