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Commentary

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Canada Must Be Prepared To Support Its Military Allies In The Pacific

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Ottawa's diplomatic and strategic engagements with East Asia have been erratic over the past two decades. Successive governments have been incapable or unwilling to clearly articulate a regional engagement strategy with virtual silence on major geopolitical tensions defining the region (Beitelman 2016), some with direct relevance to Canadian national interests (McDonough 2017a). In rectifying Canada's lack of regional staying power, some observers have advocated regular deployments of the Royal Canadian Navy (RCN) to create a visible, routine presence in the region (Lerhe 2015).

Notwithstanding competing operational demands (Macdonald 2017) and decreased fleet size and capabilities (Gilmore 2015), more regular naval deployments in upcoming years would signal the beginning of a more sustained and persistent presence in East Asia. By reflecting and reinforcing Canada's commitment to maintaining regional peace and security, such an increased presence should be welcomed. Possibilities include greater participation in joint exercises with regional militaries, additional port of call visits, and provision of an in-theatre capability to respond to emergencies, such as HMCS *Vancouver's* dispatch following the deadly earthquake in New Zealand in 2016 (McMillan 2016). Curiously, one unexplored area of possible involvement is whether Canada should participate in US freedom of navigation operations (FONOPs) in the South China Sea.

China's ill-defined legal justifications for their claims in the South China Sea, which are contrary to international law, combined with ever more capable military and constabulary forces are seen by some observers as indications of a real and emerging threat to international maritime order (Holmes 2016). With Canada's national interest as a maritime state and desire to contribute to continued peace and stability of East Asia, participation in FONOPs should be further explored. At this stage, however, participation would seem to be premature, at least in the

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absence of a robust strategic assessment on Chinese intentions and behaviours as well as the risk and benefits of undertaking FONOPs. Other less controversial forms of military engagement in East Asia should be embraced. Still, it would behoove Canadian policy-makers to prepare the groundwork for possible participation, whether it arises from a request coming from Washington or comes about more voluntarily.

The South China Sea Disputes – Beijing Takes Centre Stage

The South China Sea disputes are a collection of competing claims over the topographical features, specifically the Paracel and Spratly Islands, and their adjacent maritime areas between six claimant states – Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam. Of these China has by far the most expansive claims, asserting ownership of all the land features (e.g., islands, reefs, etc.) and upwards of 90 percent of the waters constituting the South China Sea.¹ China, as well, has the most intensive land reclamation activities on rocks and islets under their control, installing a limited but growing number of military assets and infrastructure on these manmade artificial islands. In addition, they also have the most capable and active military and constabulary forces patrolling and enforcing their claims at sea (Associated Press 2016).

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Alongside military developments, Beijing has also undertaken an extensive “civilianization” process (Qiu 2017) to solidify ownership of these occupied land features in the South China Sea. These include: the establishment of Sansha, located on Woody Island in the Paracels, as a prefecture-level city and capital of their South China Sea holdings; building-up small civilian population centres on these uninhabited islets; promoting tourism, including cruise ships tours to the region; and relying increasingly on a large, well-armed Coast Guard, backed up by a formidable naval presence, to enforce its maritime claims.

To force clarity of Chinese objectives and legal justifications, the Philippines brought a series of issues to the Permanent Court of Arbitration at The Hague. Their 2016 ruling, while not adjudicating over the sovereignty of the topographical land features, was decisively against Beijing (Joshi 2016). In particular, the Court declared that Chinese claims based on historic rights were illegitimate; all features in the South China Sea were not islands and therefore not entitled to the full suite of maritime sovereignty zones, which significantly reduced the size of China’s claims (and that of others as well); and that Chinese reclamation activities, while not in and of themselves illegal, had severely degraded the local environment and needed to stop. However, the ruling has done little to dissuade China from continuing its activities in the region. To their credit, Beijing has made some efforts to clarify their claims to fall more in line with UN Convention on the Law of the Sea (UNCLOS). But they are still widely seen as excessive and illegitimate (Chubb 2016).

Diplomatic efforts, ongoing for over two decades, have shifted somewhat towards addressing conduct issues within contested maritime areas among the claimants, as opposed to determining sovereign ownership over territorial features (Dossani and Harold 2016). Despite the recent agreement to a draft version of a binding Code of Conduct between all parties (Associated Press 2017), many doubt the level of sincerity and commitment on the part of China towards the agreement. Still, Beijing has been successful in inhibiting the formation of a united front by other claimants, in part due to their inability to shelve their own disputes with each other and the international community writ large. In all likelihood, China will continue to make surgical coercive moves

within disputed areas, in an effort to avoid provoking armed conflict. Consolidating their control over claimed features and waters alongside their growing economic and political clout in the region, Beijing will be able to mould and shape diplomatic processes towards their advantage.

The risk of armed conflict between China and one or more of the other claimants is a real possibility. But to many, the greater threat is that China may one day effectively control the entirety of the South China Sea: an important regional and global trade artery with nearly an estimated \$4 trillion worth of annual trade transiting the area (Panda 2017b). Concerns about Beijing, however, controlling shipping in the region are grossly exaggerated. While Chinese constabulary forces have taken action against Filipino and Vietnamese fisherman operating in disputed areas, there is little evidence to suggest China is motivated by or moving towards establishing a system to limit or manage civilian movement in these waters (Laurenceson 2017). Instead, what is the greatest area of possible conflict within the South China Sea stems from the antagonisms between China and the United States over the freedom of navigation for foreign military vessels and aircraft.

US Freedom of Navigation Operations

Officially, the United States remains neutral on the issue of sovereignty over the disputed land features of the South China Sea, while promoting diplomatic solutions to resolving these matters. Washington's primary official interest in the South China Sea - alongside reducing the risk of conflict between the involved parties - is to ensure all claimants respect and promote the freedom of navigation for all maritime vessels and aircraft (Kuok 2016). Freedom of navigation represents a collection of rights and freedoms for civilian and military vessels and aircraft within the maritime domain as outlined by UNCLOS, a legal regime the US has not acceded to but accepts as customary international law.

In support of this national interest, the United States has a comprehensive FONOP program using diplomatic, legal, and military means to preserve the rights and freedoms of user states within the sovereign maritime zones of others, while showing due respect to the various degrees of authority coastal states have over these areas. The United States conducts FONOPs against a number of coastal states globally (Panda 2017a), but China is seen as particularly threatening due to their possession of a "full house" of excessive claims across all maritime zones (Odom 2016); holding exaggerated views over their perceived authority to regulate these areas, specifically as it pertains to foreign military aircraft and vessels; and becoming a major naval power able to enforce these views regionally.

The US has three major concerns about Chinese maritime claims and positions: Beijing's refusal to recognize military vessels' right of Innocent Passage through Chinese Territorial Waters without their express consent; drawing of straight baselines around the entirety of the Paracel and Spratly Islands as Chinese Internal Waters conferring complete sovereignty over a large body of water; and China's objections to foreign military activities in their Exclusive Economic Zones (EEZ) without prior authorization (Kuok 2016). As a result, the United States has over the past half-decade conducted a small number of surgical FONOP patrols against Chinese occupied islets and rocks, sailing within 12 nautical miles to promote and preserve their maritime rights to access these areas regardless of ownership disputes.

Given uncertainty on the exact extent and nature of Chinese maritime claims, US FONOPs are increasingly employed not only against actual claims but also to dissuade Beijing from expanding and acting on their sovereign claims over the entirety of the South China Sea. To do nothing, in Washington's views, will lead to acquiescence of Beijing's positions on these matters. The Trump administration has continued to undertake such operations, with recent FONOPs by the USS *Dewey* near Mischief Reef and USS *Stethem* near Triton Island. Whether the objectives will be expanded from promoting maritime rights towards an enforcement role, specifically in halting artificial island construction, is unknown, although the current administration has mused about such a possibility (Wadham 2017).

Beijing fervidly opposes FONOPs diplomatically and has dispatched air and naval assets to monitor them. They accuse the United States of deliberately misinterpreting international law to secure unopposed military access to others' maritime territories. Beijing, furthermore, argues US military operations are more of a threat to regional stability than their "defensive" military installations in the South China Sea. Yet the Chinese position that freedom of navigation only applies to civilian and commercial vessels, but not military, is on tenuous legal grounds at best (Odom 2016a). However, Washington's position on the legality of foreign military activities in the EEZ of other nations is not so clear cut either (Geng 2012). In Articles 58 and 87 of UNCLOS, which is on acceptable activities in coastal states' EEZs, military activities are not specifically listed – although the US argues that these are covered under the blanket freedom of peaceful purposes of the high seas under Article 88. To Beijing, however, US military activities in their EEZs are not peaceful, due to their role in the Intelligence, Surveillance, and Reconnaissance (ISR) of Chinese military installations, communications, and force postures.

Chinese sensitivities are particularly heightened in the South China Sea due to the location of the Yulin naval base on Hainan Island, which is home to their burgeoning nuclear-ballistic missile submarine force. Disputes over military vessels and aircraft freedom of navigation in Chinese waters and their littoral regions have led to high profile incidents, including the collision of a Chinese fighter jet and a US P-3 Orion surveillance aircraft in 2001 and the harassment of the USNS *Impeccable* ocean surveillance ship in 2009 by Chinese fishing vessels. While both militaries work to establish conduct procedures for unplanned encounters at sea, China's growing naval presence and frequent patrols in the South China Sea heighten the possibility of misunderstandings and accidents with their US counterparts.

Furthermore, China continues to acquire the platforms, capabilities, and experiences associated with a blue-water navy (McDonough 2017b), with greater power projection further from their littoral areas. As a result, there are apprehensions they will employ this force in a confrontational manner against other major powers. The goal here would be a grand bargain of maritime rules to create spheres of military influence at the expense of UNCLOS (Koda 2017). The 2015 sailing of a Chinese task group near the Aleutian Islands, including off the coast of Alaska, may have even been motivated to determine US views on foreign military vessels conducting such activities in their own waters. The same could be said of more recent activities this year, such as when Chinese spy ships operated in the EEZ near Alaska, just before a test of a US THAAD (Terminal High Altitude Area Defense) system, and off the coast of Queensland during the 2017 Talisman Sabre exercise. Both Washington and Canberra had a muted response to these instances. Yet it is uncertain if their views would change if China were interested in regular naval patrols in their respective EEZs, close to major bases and installations.

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China's military build-up on occupied islets, combined with increasingly capable naval and constabulary forces patrolling the South China Sea, is part of and a reflection of the changing military balance of power. Many Western scholars see a deliberate strategy to deny the US access to and the ability to manoeuvre within East Asia by threatening US assets at increasing distances at sea. For the United States, therefore, freedom of navigation supports legal access to the region for military assets, viewed as critical in maintaining the balance of power against a rising China. FONOPs, therefore, are increasingly becoming more strategic in nature, specifically in opposing any Chinese predilections of establishing an exclusive sphere of influence at Washington's expense.

As a result, while the United States justifies FONOPs as upholding UNCLOS and thus in the interest of the international community at large, the placement of the South China Sea as the epicentre of the unfolding Sino-US great power competition has deterred many other states, including key regional allies such as Australia and Japan, from joining. Many of these states continue to conduct military exercises in the South China Sea. But they have decided against targeted FONOPs and other operations in and around contested islets/rocks under Chinese ownership.

Preparing the Groundwork for Canadian Participation

Canada must continue to engage East Asia on a permanent basis, including regular deployment of RCN ships. That would help to alleviate Ottawa's fair-weather status, which has resulted in Canada being denied entry into the region's premiere defence and security institutions (Manicom 2013; 2014), including the ASEAN Defence Ministers Meeting Plus (ADMM-Plus) and the East Asia Summit. Although predominately relying on diplomatic processes, Canada should prepare to operate in a region under increasing strain over maritime sovereignty and access. As part of that effort, Canadian political and military leaders should begin to lay the groundwork for a possible future US request for allies to take part in FONOPs.

So far, Canada has not been asked by Washington to participate or indeed shown any inclination to do so. But we cannot assume that such a request will not soon be in the offing. Debate is already ongoing on possible FONOPs in Australia, while Great Britain has recently agreed to undertake such activities - although most see that as only happening in a few years' time. With the Trump administration pressing for greater allied contributions on numerous areas, it may only be a matter of time before Canada is "politely" asked to help safeguard freedom of navigation here.

Canada needs to adopt a more strategic mindset and put its own house in order with respect to its dealings in that region, before assessing the benefits (and possible risks) of participating in FONOPs - irrespective of whether it needs to respond to a US request or simply to ascertain the value of volunteering to participate. Three major factors need to be addressed: the absence of a regional strategy; an ill-defined and ambiguous relationship with China; and the lack of clarity with respect to their legal views towards certain aspects of UNCLOS.

First, given its narrow focus on trade and economic engagement, Canada has largely failed to develop a comprehensive and coherent strategy for East Asia. Indeed, Canada does not even possess a coherent position on the South China Sea disputes, complicating any decision to employ military assets here. That needs to be rectified. Without a more strategically-grounded approach in its engagement, including a clear position on the South China Sea itself, any decision on participating in a FONOP will be ill-informed.

As part of that process, Canada needs to better assess what the reaction in the region would be to Canada's participation, especially given that other regional allies like Japan and Australia have been equally hesitant in participating themselves. Would they be happy with a Canadian contribution? Or would they be upset that such a move renders their own ambiguous stance more difficult? Importantly, Canada may be seen by local actors and Washington as a proxy of the United States, possibly wedging Ottawa into a "little sheriff" role it has long been unwilling and unable to perform.

Canada also needs to assess the changing US positions and behaviour in the South China Sea towards China. The Trump administration has commented about possibly taking a firmer stance against China (BBC 2017), and reportedly signed a plan for more regular naval patrols. While today's FONOPs appear limited in scope and intent, they are heavily influenced by the larger strategic-military competition between China and the United States. So far, Canada has by and large avoided comment on and lacks any concrete views or policies towards this larger Sino-US competition. As such, it needs to be clear about its own stand on this critical strategic issue before possibly being dragged into the more contentious areas of their evolving great power relationship.

Keeping the aim and role of Canadian warships towards FONOPs distinct, furthermore, from other issues, including armed clashes between claimants, would be a challenge and require deep deliberation with Washington. Canada needs to better understand under what conditions it would support the United States militarily in East Asia. For example, would Canada be asked or expected to contribute to the defence of US regional allies, such as the Philippines, if they were attacked by China over a contested feature in the South China Sea? Or would they only be called on to assist US forces attacked while conducting FONOPs?

Second, Canada needs to have a clear position on the rise of China and what the nature of Sino-Canadian relations should be. Canada's participation in FONOPs would largely be directed against China, so such activities may unnecessarily antagonize relations with Beijing, with unknown implications for trade and diplomacy. Ottawa should not be deterred from acting here simply based on an expected negative reaction by China. But, at the very least, the absence of a Canadian position on the South China Sea opens the door for confusion and misunderstandings that could hamper the relationship unnecessarily.

Canada must begin to undertake a more comprehensive and informed process on understanding China as a rising great power, its implication on international order, and what Canada's relationship is and should be with them (Mulroneu 2015). Such strategic-level thinking about China requires an assessment of their intentions towards regional order and possible responses to deter revisionist behaviour. Canada must also prepare for China's growing interest and involvement in other regions closer to home, specifically the Arctic.²

Third, Canada lacks clarity on some of the more nuanced and complicated legal matters framing the South China Sea disputes. The major contested issue that is the greatest cause of tensions – US military activities in China's EEZs – has never been commented upon. It is unclear whether Canada shares the US position on which military activities fall under the "peaceful purposes" caveat listed in UNCLOS of user states in coastal states EEZs. Would Canada, for example, accept Chinese military activities in their Arctic EEZ as a legitimate and legal right or as an unacceptable provocation? Whether FONOPs should be used only to promote maritime rights versus being used to challenge excessive claims is an outstanding issue Ottawa has not addressed. Determining and promulgating such legal views should be done before Canada decides to exercise such rights in the South China Sea, especially with naval warships.

Only by rectifying these deficiencies in its approach to East Asia would Canada be placed to make an informed decision about participating in US FONOPs. And there is clearly a convincing argument to be made about the value of participation. At the very least, it would send a clear signal to and a significant increase in Canada's strategic engagement with the region. Canadian naval participation in FONOPs would be a small but nonetheless important contribution towards regional stability – by surgically balancing against any Chinese, or other claimants, predilections towards unilateral military action.

FONOPs would also support Canada's promotion of adherence to UNCLOS and international adjudication mechanisms to resolve territorial and maritime claims; an issue of direct relevance to Canada, given its own outstanding maritime claim issues in the Arctic. It would go a long way towards alleviating possible US criticisms about Canadian burden-sharing, and may even assist Washington in catalysing other states to participate. As such, there are strong and logical strategic and political rationales for Canadian participation, even ad hoc and periodic, in FONOPs in the South China Sea.

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In this capacity, FONOPs would be a justifiable and valuable endeavour for Canada to preserve lawful access to maritime spaces while deterring, via a united front, Chinese (or others') attempts to blatantly violate international law. Any decision to join such naval patrols would put Canadian naval assets at risk of a dangerous interaction with their Chinese counterparts. The RCN, however, has experience in designing procedures and protocols to avoid accidents during periods of tense military posturing and shadowing by others, most recently by Russia due to Canada's participation in NATO's deployments in the Black Sea to reassure Eastern European allies following Moscow's 2014 annexation of Crimea.

Conclusion: Defining Canada's Military Role

Despite the current lack of a strategic, diplomatic, and legal framework underpinning and legitimizing any Canadian contribution in US FONOPs, Canada should not avoid operating in the South China Sea due to the possibilities of military conflict with Beijing. Deliberate avoidance of the area will only accrue de facto acquiescence of Chinese ownership (Nuttall 2017). Sailing through the South China Sea is a lawful and rational endeavour to visit and interact with regional partners and represents an indirect exercise of freedom of navigation in these waters.

Strategic engagement by the RCN in the region alone does not, however, constitute a regional strategy but lends credence on the need for one. Canada should continue to build and further develop relations with Beijing through cooperative ventures, but it must place greater emphasis on constructing a future fleet of the RCN with the appropriate force structure and capabilities to operate in an environment and defend against anti-access and area denial strategies and tactics, which China and others are developing (Sloan 2016). Such efforts, as well, are in accordance with the government's recently released Defence Policy Review, which states the need for Canada, in conjunction with its allies, to maintain superior military capabilities against a "near peer" (Department of National Defence 2017, 50); a categorization most likely in relation to Russia but should also include China. Canadian government and defence officials must gauge and determine expectations from the United States and regional allies as well as the requirements and conditions under which Canadian military assets would be used in any confrontation or conflict in East Asia, including the South China Sea.

It may be premature and inadvisable to label China as an inevitably revisionist power. But its actions in the South China Sea suggest they are becoming an exceptionalist power, which can operate within the international order but exempts itself from global rules and processes when advantageous. However, China would only be the latest in a steady stream of great powers throughout history with a disdain for international law applying to them while being applicable to others. As China continues to become a major maritime and naval power (McDonough 2017b), there is the possibility they may become supportive of freedom of navigation as a strategic interest, accepting military vessels in jurisdictions and waters nearby but insisting others respect similar rights and freedoms to an ever more capable and far reaching Chinese navy (Zhang 2016). Notably, there is a litany of international treaties - climate agreements and the Non-Proliferation Treaty among them - Beijing had bitterly opposed but over time grudgingly accepted as critical to their strategic interests as a major power.

As a maritime nation supportive of the international order, Canada has an inherent interest in upholding and promoting the legal regime at sea, especially with respect towards emerging and influential powers like China. But, at this juncture, participation in FONOPs alongside the United States seems premature. Other forms of engagement, including a more regular and sustained naval presence in East Asia, should first be embraced. Yet Canada needs to start preparing the groundwork for Canada's possible participation in safeguarding freedom of navigation in East Asia - by pursuing a more comprehensive approach to the region and clarifying its own thinking on China, the South China Sea, and international maritime law more generally. Only then will Canada be positioned to make a strategically-informed decision on the benefits and possible risks associated with FONOPs in this dispute-laden sea.

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Endnotes

1 Taiwan has the exact same claims as China, and most recently asserted these publicly (Tiezzi 2016), but they are not seen as a threat by others due to their focus on constructing multi-lateral forums for regional management over contested regions as opposed to building and deploying forces to assert their exclusive control, which is Beijing's strategy.

2 China's revisionist intentions and future behaviour towards the Arctic are loosely based speculation at this point. But Ottawa should focus on developing a common understanding on the universal application of UNCLOS to blunt any troubling Chinese positions on outstanding Arctic disputes (e.g., the status of the North West Passage), especially if Canada undertakes military action in or adopts firmer positions on the South China Sea (Macdonald 2016).



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