

# Two years have passed since the Permanent Court of Arbitration released its ruling on the South China Sea: The current conditions in China

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**O**n July 12 two years ago, the Permanent Court of Arbitration (PCA) released its ruling on a claim brought by the Philippines against China on the South China Sea disputes between those two countries. The court rejected China's claims on all thirteen issues taken up by the Philippines. But China refused to recognize the ruling, claiming "non-reception," "non-participation," "non-approval" and "non-execution" and maintains that position today, claiming that the ruling is not legally binding.

The active maritime policy and oppressive maritime advances of China, which ignore international norms, became particularly noticeable in the 2001 Hainan Island incident, in which a US Navy EP-3 reconnaissance aircraft operating above the waters of the South China Sea collided with a Chinese People's Liberation Army F-8 fighter. After several skirmishes, in 2009, an unidentified Chinese ship interfered with the USNS *Impeccable* (T-AGOS-23), an *Impeccable*-class ocean surveillance ship, which defined China's hardline stance. Behind China's aggressive attitude was the build-up of Chinese maritime and air forces beginning to back up China's hardline maritime policy.

The construction of artificial islands through the reclamation of the waters near maritime features<sup>1</sup>, such as atolls and sunken rocks in the South China Sea as a result of previous US administrations' silence allowing China to act freely, attracted attention from the international community because the Obama administration began to disclose information in early 2015, recognizing the seriousness of China's moves. The United States made it clear that it would not accept China's construction of artificial islands and demanded that China cease the work, which sparked tensions between the international community led by the United States and China. These increasing tensions are progressing quietly with the militarization of the artificial islands whose essence remains unchanged on the sidelines of the North Korean issue that has continued since 2016, and the situation is getting worse.

In this paper, I focus on the current situation of the South China Sea and examine the current conditions of China's maritime policy.



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<sup>1</sup> Because the PCA did not even recognize Thitu Island (0.4 km<sup>2</sup>, 700 m in diameter), a large piece of land under the Philippines' effective control as an island used for daily human activities according to the United Nations Convention on the Law of the Sea (UNCLOS) in its ruling in 2016. In this paper, I refer to atolls, shallows, sandbanks and sunken rocks, including land that is conventionally called islands, as maritime features.



Subi Reef in the Spratly Islands, South China Sea, May 2015 US NAVY PHOTO, PUBLIC DOMAIN

## 1. The essence of maritime issues involving China

China has maritime issues with numerous countries in the South and East China Seas, but the essence of these issues can be roughly classified into the following three points.

### (1) Conflicts on the dominions over maritime features

It is uncertain what country has the dominion over maritime features in the South China Sea with the exception of some maritime features because of their historical backgrounds. China has come in conflict with many coastal countries about the dominions over these maritime features. The basics of solving dominion issues are agreements between the related countries. With regard to the dispute between China and the Philippines as well, Japan and the United States do not support a particular country and maintain a neutral stance. At the same time, if a particular country attempts to secure a dominion with military force, it is anticipated that Japan and the United States will not remain neutral. In addition, China has claimed the areas surrounded by the “nine-dash line” as historic rights and indisputable sovereignty since before the Common Era, and the divide between China and the related countries is still deep.

The South China Sea Code of Conduct (COC), which reached a framework agreement in August 2017 to avoid unforeseen circumstances between China and the related countries, appears to involve basic conflicts regarding specific matters. The prospect of the COC as a sure-fire remedy for resolving the dispute between China and other countries, including the Philippines, is dubious.

## **(2) The construction of artificial islands and the non-militarization of the South China Sea**

### **· The construction of artificial islands**

Many maritime features are reclaimed in the South China Sea. Major examples of these are the Spratly Islands (Vietnam), Itu Aba Island (Taiwan) and Swallow Reef (Malaysia). These are expansions or reinforcements of existing large maritime features. China is also constructing artificial islands in several locations, including Weedy Island, the largest island in the Paracel Islands. China, which did not own maritime features under its effective control in the Paracel Islands, expelled the Vietnamese forces in the battle of the Spratly Islands in 1988 and established its effective control of small maritime features, including rocks in the neighboring waters, for the first time in its history. But China did not succeed in taking effective control of maritime features with sufficient areas for national activities. China, which needed a large base in the Paracel Islands, embarked on the construction of a large artificial island on the first atoll in 2013 following its seizure of the large Mischief Reef (the Philippines) (materials compiled by the Philippine government). China subsequently embarked on the construction of artificial islands one by one in seven locations, including three large atolls on which it is possible to construct airports.

During this period of time, China did not fear the abovementioned conflict with the United States, continued with its construction work, completed all its construction projects this year and succeeded in establishing facts about its dominion over the artificial islands within its territory. At the same time, the PCA ruling, which I mentioned at the beginning of this paper, totally rejected China's construction of artificial islands. The conflict between the international community, including Japan and the United States, which support the ruling, and China is still intensifying.

### **· The non-militarization of the South China Sea**

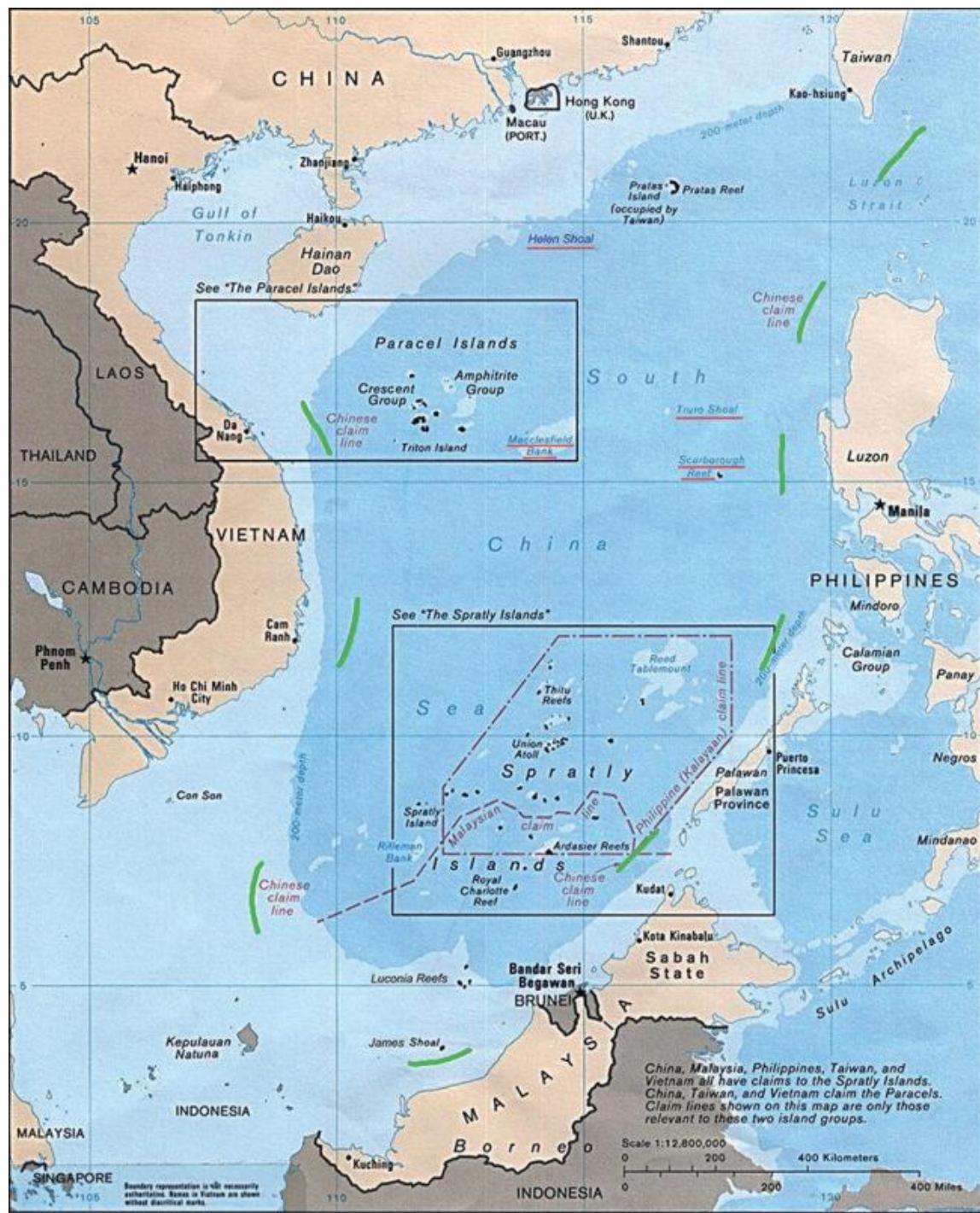
As an important event related to the construction of artificial islands, Chinese President Xi Jinping and US President Barack Obama reached an agreement on the non-militarization of the South China Sea in September 2015. This was the sole US-China agreement, although Xi directly refused a US request to China to stop constructing artificial islands at the summit on Xi's visit to the United States. At that time, the agreement was interpreted as meaning "China, which is forging ahead with the construction of artificial islands, will not militarize artificial islands (construct military installations and deploy military troops)." Regarding the interpretation of this agreement, China claimed, "The construction of any military installations and the deployment of military troops in our historic rights and indisputable sovereignty are a matter of state sovereignty and also just measures for defending ourselves as an independent state," and completely undermined the agreement reached between the leaders of the United States and China. Immediately after this, China reasoned that US military activities, including the presence of the US forces in the South China Sea, US joint military exercises with neighboring countries and US Freedom of Navigation Operations (FONOPS), are the militarization of the South China Sea, and claimed that the United States was responsible for this. China strongly justified its construction of military installations on artificial islands and the deployment of Chinese troops.

According to the latest released information, China frequently deploys fighter aircraft on Woody Island, which is part of the Spratly Islands. In May this year, it was reported that the Chinese military's large bomber H-6 had landed on the island for the first time. In addition, it has been confirmed that China constantly flies military transport planes over artificial islands and sends naval vessels to the islands. In addition to constructing radar facilities for early warning and surveillance as well as air control, and setting numerous information-collecting devices in place, China deploys anti-air and anti-ship missiles and electronic jamming devices. In this way, China is steadily militarizing the South China Sea, completely ignoring the agreement between the leaders of the United States and China.

### **(3) The open sea and internal waters**

The most basic issue is the clarification of the control of the waters claimed by China, including the nine-dash line, by UNCLOS. Japan and the United States regard the waters excluding the waters surrounding maritime features that meet the conditions for the reference point of territorial waters as the open sea, where everyone is guaranteed free navigation. But China set the territorial waters in a manner based on its unique interpretation, which is completely different from the Japanese and US interpretation of international standards on territorial waters, as mentioned in (2). Next, China claims its historical control of and dominion over much of the South China Sea, whereas Japan and the United States claim that because the historical grounds are insufficient and weak, scientific grounds based on certain evidence are necessary.

Japan and the United States both suspect that China's claim is an attempt to bring the open seas of the South China Sea under the UNCLOS definition "internal waters," giving it almost the same authority as territorial waters. At international conferences, China argues that it will guarantee free and safe navigation even after it has established its effective control over the waters (making the waters internal waters). This point is doubtful, but it is not the heart of the matter. The heart of the matter is that the open sea is waters to which UNCLOS and customary international law (international standards) are basically applied. Precisely because it is based on these two internationally common rules, even sailors in distant countries can navigate freely and safely in the waters with which they are unfamiliar, regardless of their geographical positions. These waters are the open sea. Conversely, because domestic laws, not international standards, are applied to internal waters under the sovereignty of a state just like territorial waters, if China's claims are accepted, much of the South China Sea, which should be the open sea, will become waters to which many Chinese domestic laws that sailors all over the world hardly know or do not need to know are applied. This means the destruction of the international maritime order that has been constructed by UNCLOS and customary international law, the fruits of wisdom for thousands of years since human beings advanced into the sea. The pillar of the dispute between China and the Philippines is that although the South China Sea is only part of the huge oceans all over the world, it must not be made into internal waters for China as an exception to the international maritime order.



The Tribunal found that China's claim to the South China Sea on the basis of the "nine-dash line" [green dashes] was incompatible with the UNCLOS and that there was no evidence supporting the "historic rights" of China.

In addition, if this is acknowledged, it will be possible to selectively force Chinese domestic laws on a particular country; if a conflict occurs between China and a particular country, China will be able to effectively disrupt that country's maritime traffic in the South China Sea by applying an arbitrary domestic law. Such a serious situation, with the potential to destroy the international maritime order, cannot be overlooked.

## 2. Freedom of Navigation Operations (FONOPS)

The US military FONOPS, which China criticizes, are not intended to prevent a particular country from supporting the dominion issue, or to prevent China from constructing artificial islands using military might. FONOPS is an operation that is entirely different from exerting military pressure to prevent China from conducting activities as a state. FONOPS is the diplomatic action of operating naval vessels as a means of showing US interpretation to a particular country (China in this case) if the United States and a particular country interpret the UNCLOS stipulations differently. FONOPS is not aimed solely at China, and there is a case in which FONOPS was also applied to Japan, a US ally.

Currently, US military FONOPS in the South China Sea can be divided into the following two cases: (1) Harmless navigation of military vessels according to the stipulations of UNCLOS in territorial waters whose sovereign state is undetermined with maritime features whose sovereign state has yet to be determined being the reference point; and (2) Free navigation according to China's interpretation of UNCLOS, which is different from that of the United States, especially in the waters where China claims surrounding maritime features that cannot be the reference point of territorial waters; that is, the waters (the open sea) where there are no territorial waters stipulated by UNCLOS according to the US interpretation.

Let me take the Mischief Reef as an example. According to the US interpretation, the reef consists of sunken rocks that are submerged under water at low tide, which cannot be the reference point of the territory. Even if you construct a large artificial island that constantly exists above water by reclaiming the neighboring area, because neither the reef nor the artificial island can be the reference point of territorial waters, the waters surrounding the reef will be the open sea where there are no territorial waters owned by any country. To ensure that China follows this interpretation, the United States conducts free navigation operations involving US warships with a definition of the waters as the open sea, instead of the harmless navigation of maintaining a certain level of speed and course that warships are required to observe when they navigate within territorial waters defined by UNCLOS. As this example makes clear, the United States shows China its interpretation of the definition of territorial waters and warships' rights and obligations in territorial waters and the open sea, which are stipulated by UNCLOS by conducting FONOPS in the South China Sea. FONOPS are not designed to prevent a particular country from claiming a territorial issue or to call for the cessation of the construction of artificial islands – a point that is widely misunderstood in Japan as well.

After all, given the large gaps between the United States and China in their interpretations of UNCLOS and the current situation in which the gaps are unlikely to be closed rapidly, US FONOPS to China will continue to be conducted several times a year.

## **China can construct artificial islands, but China cannot move the geographical locations of other countries.**

If international standards support the achievement of its national goals, China will use them. If international standards do not support the achievement of its national goals, China forges ahead with its own interpretation. If international standards run counter to the achievement of its national goals, China insists on new rules, ignoring the existing standards, and promoting its national policy. My observations in this paper confirm this. In addition, in recent years, the Chinese military power has rapidly grown amid Chinese economic growth, and this in turn supports the fulfillment of Chinese foreign policy.

As these instances show, China, which is determined to follow its national policy no matter what, and which has the capability to fulfill that policy given its economic and military power, has a huge impact on the stability of the region and acts as a challenger to the US-led world and the regional order. At the same time, if we can compare China to a person, it is a big man with both good and bad points, but it is not a giant who is 10 meters (35 feet) tall. If Japan treats China with wisdom and skills, it can handle the country in a manner that is advantageous to Japanese interests.

From this perspective, it is necessary to treat China, which uses international standards in a cunning, tricky way and deals with its neighboring countries oppressively by exercising its military might, with a consistent strategy based on the Japan-US alliance. In addition, as Japan's original efforts, it is essential to improve the capability of the Self-Defense Forces commensurate with the modernization of Chinese military forces, and to improve the capabilities of joint operations with US forces and support operations.

In addition, China, which is surrounded on its southern and eastern sides by the South and East China Seas, which are semi-closed waters, has the critical disadvantage of being contained geographically by neighboring countries. From this perspective, the concept of first and second island chains as terms to explain Chinese strategy actually refers to an Achilles tendon that China cannot avoid. Because of these geopolitical characteristics, the Chinese maritime and air forces must go through several choke points<sup>2</sup> scattered around the islands and peninsulas from the Southwest Islands of Japan to Taiwan to the Philippine islands to the Indonesian and Malaysian islands to the Malay Archipelago to the area around the Thai Bay to Vietnam, in order to advance into open-sea operational waters and air spaces. In addition, these characteristics that are inherent in China are also true of imports of overseas resources for its national survival and for maintaining national activities and maritime traffic for its exports. In particular, there are just four channels that are more than 100 meters deep (two channels in each of the South and East China Seas) where submarines can navigate from the South China Sea to the open sea, submerged, where they could pose a serious threat to US forces. If these channels were blocked, it would be a critical blow to the Chinese maritime and air forces. The point is that although China can construct artificial islands self-righteously, ignoring UNCLOS, it cannot change the topography.

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<sup>2</sup> Choke points are narrow points of channels that warships and airplanes must go through without fail in order to fulfill their operations and missions.

China is highly likely to continue its oppressive foreign activities and continue to build up its military might. In an emergency, though, Japan and the United States can contain the advance of the Chinese maritime and air forces into the open sea and block the maritime traffic that is so essential for China's survival by drawing up a strategy of controlling the aforementioned choke points in the island areas that surround China and building up defensive capabilities. This works as a highly effective deterrent to today's China and also backs up peacetime diplomatic activities. Going forward, Japan and the United States are expected to adjust their strategies from this perspective, and Japan is also expected to build up its defense capability with the same thing in mind.

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