



## THE NEED FOR OPEN SEA LINES OF COMMUNICATION IN THE SOUTH CHINA SEA

BY LINDA M.B. PAUL

*Linda M. B. Paul is a Pacific Forum senior associate and the director of its Ocean Law and Policy Institute*

The South China Sea (SCS) is the location of some of the world's busiest commercial shipping routes. Thirty percent of global maritime trade passes through the SCS. CSIS estimates that in 2016 over 64 percent of China's maritime trade transited the SCS, while nearly 42 percent of Japan's maritime trade and over 14 percent of US maritime trade also passed through in the same year. The value of that trade was approximately \$3.4 trillion, which constitutes 21 percent of global trade. In 2016, the value of China's trade transiting the SCS was \$1.47 trillion, South Korea - \$423 billion, Japan - \$240 billion, Indonesia - \$239 billion, and the US \$208 billion.

The SCS is part of the "coral triangle," one of the most biodiverse and species-rich regions in the world. It also functions as the breeding grounds and nursery area for highly valued food fish such as Spanish mackerel, Pacific cod, giant grouper, and tuna. Genetic and biophysical studies have shown the critical importance of the coral reefs in Spratly Islands for maintaining natural bio-connectivity that sustain the fisheries' productivity in the littoral states around the SCS. The contributions of the fishery sector, including income or employment, foreign exchange earnings, nutrition, and food security in the region, are well established.

In 2009, China officially communicated to the United Nations a sovereignty claim to 90 percent of the South China Sea (SCS), demarcated by a "nine-dash line" even though most of the territory is within the exclusive economic zones (EEZs) of five other littoral

states: Vietnam, Malaysia, Indonesia, Brunei, and the Philippines. In 2012, China began chasing Philippine fishermen away from the Scarborough Shoal, a mostly underwater reef 130 miles from Philippines' largest island Luzon and 530 miles from China, and remained despite a US-brokered agreement for both states to back off. In 2013, the Philippines commenced a case against China in an Annex VII Arbitral Tribunal under the United Nations Convention on the Law of the Sea (UNCLOS) on the legal validity of China's claim of rights within the "nine-dash line." China viewed the matter as a political dispute and refused to participate. The Tribunal concluded that "China's claim to historic rights to the living and non-living resources within the 'nine-dash line' is incompatible with the Convention." As a party to UNCLOS, China is bound by the decision.

The shipping industry is highly competitive industry with very small profit margins. Merchant ships entering the SCS from the south pass through either the Malacca and Singapore Straits or the Sunda Strait. There are only two other alternative routes for ships heading for East Asia: the Lombok Strait or a long detour around the south of Australia. Both the Sunda Strait, which passes between the islands of Java and Sumatra, and the Lombok Strait, which passes between the islands of Bali and Lombok, are overshadowed by currently active and very dangerous explosive volcanoes. In August 2018, Indonesia's Nak Krakatau volcano produced a series of 49 blasts that were accompanied by ash plumes and fountains of lava on an island between Java and Sumatra. This volcano has grown an average of 5 inches a week since the 1950s and now towers above the Sunda Strait. Mt Agung, a 10,300-foot explosive stratovolcano on Bali, is less than 20 miles from the center of the Lombok Strait. Its 1963 eruption was among the most catastrophic volcanic events in Indonesian history. It last erupted in July 2018.

Longer trips mean fewer trips annually and higher fuel costs, which may sink a shipping company. Dangerous trips mean increased insurance premiums. Conflict in the SCS would disrupt supply chains, including the flow of oil to East Asian nations. International trade and shipping depend on open, safe and secure sea lines of communication (SLOCs). The

legal foundation for the international protection of SLOCs is rooted in customary international law that goes back to the time of the Romans and forms the basis of the public trust doctrine and the doctrine of freedom of the seas, which was codified in UNCLOS Article 87.

### **Establishing a vessel Traffic Separation System in the South China Sea**

Traffic Separation Systems (TSS) contribute to safety of life at sea, safety and efficiency of navigation and/or protection of the marine environment. TSS are vessel traffic route systems analogous to establishing one-way lanes in congested shipping corridors. They are governed by the Conventions and Rules of the International Maritime Organization (IMO). The Rules apply to all vessels on the high seas and all waters connected to the high seas and navigable by seagoing vessels. The IMO's responsibility for ship routing is set forth in SOLAS Chapter V, which recognizes the IMO as the only international body for establishing such systems. Rule 10 of the IMO Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs) specifies the rules for vessels navigating within a TSS and gives guidance in determining safe speed, the risk of collision, and the conduct of vessels operating in or near a TSS. TSS traffic lanes are demarcated in IMO publications by virtual boundaries. Ships join or leave a traffic lane at the termination of a lane, but may also join or leave from either side if they "do so at as small an angle to the general direction of traffic flow as practicable." There are several TSS systems currently in place in international straits and marginal seas, including the Phillips Channel in the Singapore Strait.

The establishment of a TSS is an intensive, multi-year process that involves extensive consultation with mariners, industry, national and state agencies, and IMO approval. To establish a TSS pursuant to SOLAS V/10 Ships' routing regulation, an IMO member state must develop and submit a formal proposal that justifies the need for a TSS. A proposal must describe the problem, justify the action proposed to solve the problem, and identify potential adverse effects the action might have on maritime interests and on the safety of navigation at sea. Documentation must be provided for the region, including the routes

and density of vessel traffic, the status and interests of neighboring states and their positions on the proposed action, and existing navigational rules, regulations and/or policies associated with the region. Proposals related to environmental issues may be reviewed by IMO committees that include the Marine Environment Protection Committee, the Sub-Committee on Safety of Navigation, and the Marine Safety Committee. In all cases, the solicitation of an IMO endorsement for a proposed action must be premised on the soliciting member state having already endorsed the proposal. Most proposed TSS lie partially or wholly within territorial waters or EEZs of one or more coastal states and an IMO endorsement is generally preceded or followed by actions involving intra and/or interstate authorities and rule-making and other regulatory instruments or policies such as declarations or legislation by the coastal states.

It is in everyone's interest to keep maritime trade flowing through the SCS. Given the high risk of conflict in the SCS, which would be devastating for the trade-based economies of East Asian states and the marine ecosystems of the SCS, a safe and secure TSS is needed for the SCS and the process for establishing one should begin immediately.

*PacNet commentaries and responses represent the views of the respective authors. Alternative viewpoints are always welcomed and encouraged. Click [here](#) to request a PacNet subscription.*