



# Delhi Policy Group

Advancing India's Rise as a Leading Power



## DPG POLICY BRIEF

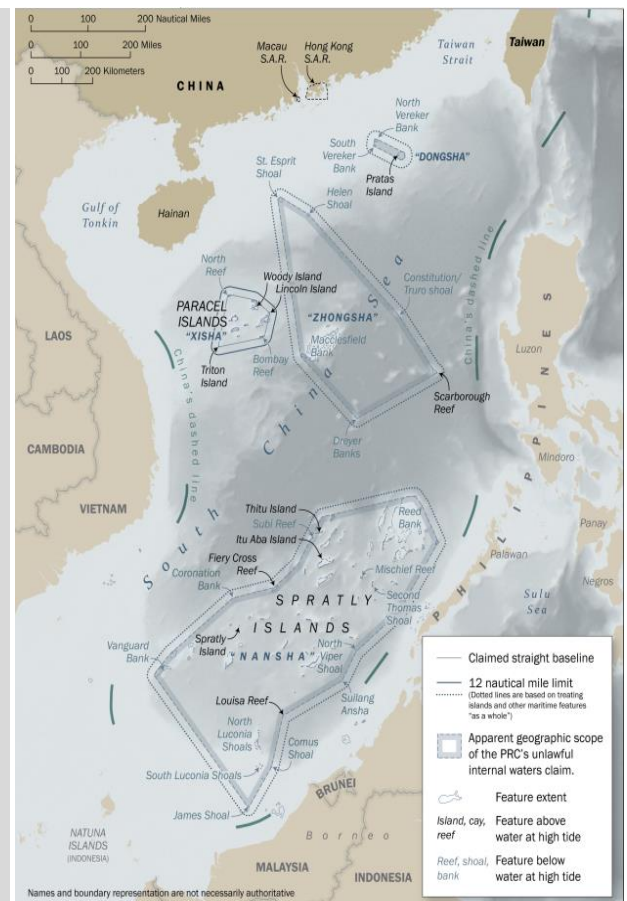
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### ABOUT US

Founded in 1994, the Delhi Policy Group (DPG) is among India's oldest think tanks with its primary focus on strategic and international issues of critical national interest. DPG is a non-partisan institution and is independently funded by a non-profit Trust. Over past decades, DPG has established itself in both domestic and international circles and is widely recognised today among the top security think tanks of India and of Asia's major powers.

Since 2016, in keeping with India's increasing global profile, DPG has expanded its focus areas to include India's regional and global role and its policies in the Indo-Pacific. In a realist environment, DPG remains mindful of the need to align India's ambitions with matching strategies and capabilities, from diplomatic initiatives to security policy and military modernisation.

At a time of disruptive change in the global order, DPG aims to deliver research based, relevant, reliable and realist policy perspectives to an actively engaged public, both at home and abroad. DPG is deeply committed to the growth of India's national power and purpose, the security and prosperity of the people of India and India's contributions to the global public good. We remain firmly anchored within these foundational principles which have defined DPG since its inception.

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*The views expressed in this publication are those of the author and should not be attributed to the Delhi Policy Group as an Institution.*

### Cover Photographs:

*Illustrative map of the apparent geographic extent of China's claims in the South China Sea, from which it claims its maritime zones. Source: US State Department*

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## The US State Department's "Limits of the Seas Study" on China's Claims in the South China Sea

by  
Lalit Kapur

On July 12, 2016, the arbitral tribunal in the South China Sea Arbitration Case found that China's claims to historic or other sovereign rights or jurisdiction within the so-called nine-dash line were contrary to the UN Convention on the Law of the Seas (UNCLOS) and "without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the Convention". It concluded that "the Convention superseded any historic rights or other sovereign rights or jurisdiction in excess of the limits imposed therein"<sup>1</sup>. The same day, China released a statement advancing a new rationale for its maritime claims in the South China Sea. This was followed by a white paper one day later.

On January 12, 2022, the US State Department released a "Limits in the Seas Study" examining China's revised articulation from a legal and technical perspective, and concluding that the PRC asserts unlawful maritime claims in most of the South China Sea<sup>2</sup>.

As observed in the Limits in the Sea Study<sup>3</sup>, China's claims in the South China Sea can be divided into four categories. The first is claims to maritime features that are submerged at high tide or entirely submerged even at low tide. They are not, therefore, capable of sustaining human habitation in their natural state. Under UNCLOS, such features are not subject to lawful sovereignty claims and are not capable of generating maritime zones such as the territorial sea. China, however, claims several hundred such features, such as Reed Bank, Vanguard bank, James Shoal, Mischief Reef, Second Thomas Shoal etc., and has created artificial islands on some of them.

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<sup>1</sup> Para 278 of The South China Sea Arbitration Award of 12 July 2016, <https://www.pcacases.com/pcadocs/PH-CN%20-%2020160712%20-%20Award.pdf>

<sup>2</sup> Study on the People's Republic of China's South China Sea Maritime Claims, January 12, 2022, <https://www.state.gov/study-on-the-peoples-republic-of-chinas-south-china-sea-maritime-claims/>

<sup>3</sup> Ibid.





The second category is straight baselines around four island groups claimed by China (Dongsha Xundao or the Pratas Island group; Xisha Qundao or the Paracel group; Zhongsha Qundao or features including Scarborough Reef, Macclesfield Bank, St. Esprit Shoal, Helen Shoal, Constitution Shoal and Dreyer Banks; and Nansha Qundao, which encompasses the Spratly Islands as well as about 150 low tide elevations and submerged features surrounding them). China has drawn or asserts the right to draw straight baselines enclosing these groups. The groups do not, however, fulfil the geographical criteria specified by UNCLOS for using straight baselines. Nor is there any separate body of customary international law that supports the PRC position that it may enclose entire island groups within straight baselines.



The USS Carl Vinson Strike Group and the USS Essex Amphibious Ready Group Conduct Joint Operations in the South China Sea on January 18, 2022. Source: Indo-Pacific Command

The third category is maritime zones. China asserts claims to internal waters, a territorial sea, an EEZ and a Continental Shelf based on treating each of the four island groups above as a whole. Moreover, within these claimed zones, China imposes unlawful restrictions on the rights of innocent passage in the claimed territorial sea; asserts jurisdiction with respect to customs, fiscal, health, security and immigration laws and regulations in the unlawfully claimed EEZ; and requires prior authorisation for the laying of submarine cables in such EEZs. International law, however, does not permit such claims and assertions.

The fourth category is claimed 'historic rights', without specifying the nature or geographic extent of these claimed rights. The arbitral tribunal had categorically ruled that any historic rights China may have had were superseded by UNCLOS. The claims have, therefore, been formally rejected by a host of countries, including Australia, France, Germany, Indonesia, Japan, Malaysia, New Zealand, the Philippines, the UK, the US and Vietnam.

The overall impact of the claims is that the PRC unlawfully claims sovereignty or some form of exclusive jurisdiction over most of the South China Sea. The claims undermine the rule of law and have been rejected by affected South China Sea littoral nations and other maritime powers. China, however, continues expanding its ability to enforce these illegal claims, confident that its asymmetric power cannot be challenged by littoral nations. Maintaining the freedoms provided by UNCLOS will, therefore, necessitate continued USN presence and brinkmanship for the foreseeable future.

Three fundamental questions arise out of this clarification of the legal position under international law regarding China's sweeping claims to 'historic' rights in the South China Sea. The first, one that regional nations will increasingly ask, is how long the US will sustain this effort to enforce maritime freedoms? The second, for maritime nations of the world and the international community at large, is how far they are willing to go to stand up for the rule of law prescribed by UNCLOS in the global maritime commons, particularly in the South China Sea? And the third, for regional claimant states, is to what extent they are willing to stand up for their rights by calling out China's coercive behaviour and resisting its attempts to impose a Code of Conduct that undermines UNCLOS? The answers to these questions will determine the future of this vital international waterway.

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