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Malaysia and the South China Sea Dispute: Policy Continuity amid Domestic Political Change

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EXECUTIVE SUMMARY

- Over the past three decades, Malaysia's policy towards the South China Sea dispute has been largely consistent with only minor recalibrations.
- The policy is designed to protect the country's sovereignty and sovereign rights, uphold international law and foster peace and stability in the South China Sea.
- To achieve these policy outcomes, successive governments have pursued three main strategies: defend the country's claims; de-emphasize the dispute to maintain friendly relations with China; and promote the ASEAN-led conflict management process.
- The Pakatan Harapan (PH) government, led by Prime Minister Mahathir Mohamad, pursued the same policy and strategies, but with a slightly more critical attitude towards China's behaviour than its immediate predecessor.
- Post-PH governments are likely to adhere to Malaysia's existing policy on the South China Sea.

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INTRODUCTION

After a week of political turmoil which saw the collapse of the Pakatan Harapan (PH) government and the resignation of Prime Minister Mahathir Mohamad, on 1 March 2020 Muhyiddin Yassin was appointed as Malaysia's eighth prime minister. In the near term at least, Prime Minister Muhyiddin is unlikely to announce any major changes in the conduct of the country's foreign policy for two reasons. First, he will be preoccupied with consolidating political power and ensuring his fragile coalition survives. Second, since the end of the Cold War, the hallmark of Malaysian foreign policy has been continuity.

Policy continuity can be observed in Malaysia's approach to the South China Sea dispute. Over the past three decades, successive prime ministers—the arbiters of Malaysian foreign policy—have sought to protect the country's sovereignty and sovereign rights in its exclusive economic zone (EEZ), prevent the dispute from damaging ties with China (its largest economic partner), uphold international law and peacefully manage the dispute. This article examines Malaysia's territorial and jurisdictional claims, and its policy and strategies in the South China Sea, with a focus on the PH government from May 2018 until February 2020.

MALAYSIA'S CLAIMS IN THE SOUTH CHINA SEA

Malaysia claims sovereignty over ten atolls in the Spratlys archipelago, all of which fall within its 200 nautical miles (nm) EEZ. The Malaysian government appears to have ceded its claim to an eleventh feature, Louisa Reef, in a bilateral agreement with Brunei in 2009 which delimited their maritime boundaries.¹ Based on the continental shelf principle, Kuala Lumpur also claims jurisdiction over a submerged feature, James Shoal (45 nm off Sarawak), and a group of submerged and semi-submerged features collectively known as Luconia Shoals (54 nm off Sarawak).

Malaysia occupies five atolls in the Spratlys: Swallow Reef was occupied 1983; Mariveles Reef and Ardasier Reef in 1986; and Investigator Shoal and Erica Reef in 1999. It has also planted sovereignty markers on two unoccupied features, Dallas Reef (close to Ardasier Reef) and Royal Charlotte Reef (close to Swallow Reef).

Malaysia's claims overlap with those of China (and Taiwan), Vietnam and the Philippines. China claims sovereignty over all the features claimed by Malaysia as they fall inside its expansive nine-dash line which covers more than 80 per cent of the South China Sea. Even though it is underwater, China claims James Shoal as its southernmost "territory". Malaysia claims sovereignty over Vietnamese-occupied Amboyna Cay and Alison Reef, and Philippine-occupied Commodore Reef. Malaysia's principal dispute is with China, though a recent report suggests some friction with Vietnam.²

MALAYSIA'S POLICY IN THE SOUTH CHINA SEA

Since the late 1980s, when the South China Sea emerged as a serious security issue, Malaysia has consistently followed the same policy, with only minor recalibrations. That policy is composed of three elements.



The first element is to protect the country's territorial sovereignty and sovereign rights in its EEZ. The features Malaysia claims lie close to Sarawak and Sabah, and the waters off these two states host significant fisheries and hydrocarbon deposits. The latter is particularly important to Kuala Lumpur as a lucrative source of income. In 2019, Malaysia was the world's third largest producer of natural gas (29 million tonnes) and 26th largest producer of crude oil (661,240 barrels per day).³

The second element is to uphold international law, including freedom of navigation and overflight. As a small state, Malaysia is a strong advocate of international law, especially the United Nations Convention on the Law of the Sea (UNCLOS). Kuala Lumpur supports international arbitration to resolve conflicting territorial and jurisdictional claims, and has participated in three major cases with Indonesia and Singapore, and abided by the rulings.⁴ Malaysia delimited its maritime boundaries with Brunei in 2009 and with Indonesia in the Sulawesi Sea in 2018. In 2009, Malaysia and Vietnam made a joint submission to the United Nations' Commission on the Limits of the Continental Shelf (CLCS) on the two states' continental shelf claims in the southern part of the South China Sea. When the arbitral tribunal issued its ruling on the Philippines versus China case on 12 July 2016, Malaysia issued a statement noting that the South China Sea dispute should be resolved peacefully through "full respect for legal and diplomatic processes" including UNCLOS.⁵ The Malaysian government has been fully in accord with the tribunal's ruling that China's ninedash line is incompatible with UNCLOS. In March 2017, then Foreign Minister Anifah Aman told Parliament that Malaysia did not recognize the nine-dash line and therefore there were no overlapping claims between the two countries.⁶

The third element is to promote peace and stability in the South China Sea. As a major trading nation, Malaysia's economic prosperity is dependent on the free flow of maritime trade through the Straits of Malacca and the South China Sea. Critically, the sea lanes of communication which pass through the South China Sea link Peninsular Malaysia with East Malaysia.

MALAYSIAN STRATEGIES

To achieve its policy goals in the South China Sea, successive Malaysian governments have pursued three main strategies.

The first is to assert and defend the country's sovereignty and sovereign rights. From the late 1980s, Malaysia's defence policy became more externally oriented due to the defeat of communist insurgents and rising tensions in the South China Sea. A number of major defence procurement decisions were influenced by the maritime dispute, most notably the acquisition of two submarines in the 2000s.⁷ Malaysia has stationed military personnel on the five atolls it occupies, and the Royal Malaysian Air Force (RMAF), Royal Malaysian Navy (RMN) and Malaysian Maritime Enforcement Agency (MMEA, the coast guard) conduct regular patrols in the country's EEZ to monitor China's activities. Since 2013, the China Coast Guard (CCG) has maintained a near continuous presence at Luconia Shoals and in late 2019 and early 2020 upped the ante by trying to disrupt Malaysian survey and drilling activities in the area by harassing Malaysian-chartered drilling rigs, survey ships and supply vessels.⁸ This has led to a series of tense standoffs between Malaysian and Chinese government vessels in the area.



The second strategy is to insulate the country's valuable economic relationship with China from the dispute. Since the early 1990s, Malaysia's policy towards China has been to forge closer economic ties while publicly dismissing notions of China as a strategic threat, including in the South China Sea. China has become Malaysia's largest trade and investment partner, and to advance the country's economic interests and prevent the maritime dispute from overshadowing the relationship (as it has periodically done in both Sino-Vietnamese and Sino-Philippine relations), Kuala Lumpur has consistently de-emphasized the problem and endeavoured to suppress nationalist sentiment over its claims in the South China Sea. Thus, incidents at sea between Malaysian and Chinese government vessels have generally been kept out of the domestic media, downplayed or denied. This was particularly apparent during Prime Minister Najib Razak's tenure (2009-18) when Malaysia actively courted investment from China, including several high-profile Belt and Road Initiative (BRI) infrastructure projects. For example, in March 2013, four Chinese warships conducted an exercise near James Shoal: Malaysia's foreign ministry initially denied the exercise had taken place though later the RMN confirmed it.⁹ A few months later, then Defence Minister Hishammuddin Hussein told the media that Malaysia was not as concerned as the other claimants about the presence of Chinese warships in its EEZ stating that "Just because you have enemies, doesn't mean your enemies are my enemies."¹⁰ In January 2014, three Chinese warships conducted an exercise near James Shoal, but the RMN claimed it had taken place outside Malaysia's EEZ.¹¹ In March 2016 the government's response to the presence of nearly 100 Chinese fishing vessels at Luconia Shoals, with CCG escorts, was noticeably low-key.¹²

Malaysia has eschewed a military response to Chinese incursions, not only to preserve friendly relations with Beijing but also because the Malaysian Armed Forces (MFA) are underfunded and underequipped and stretched thin dealing with other security threats such as piracy, illegal migration, terrorism and border incursions. Malaysia has also rejected submitting the dispute to international legal arbitration as China would view this as a hostile act (as it did when the Philippines challenged China's claims at the International Tribunal for the Law of the Sea in 2013). Malaysia's preference—and China's—is to deal with the dispute through quiet, behind-the-scenes diplomacy.

The third strategy has been to support the conflict management process between ASEAN and China, specifically the 2002 Declaration on the Conduct of Parties (DoC) in the South China Sea and the ongoing negotiations for a Code of Conduct (CoC). As a means to resolve the issue, successive Malaysian governments have, in principle, supported joint development of resources in disputed areas. When discussing the South China Sea dispute, Malaysian prime ministers have invariably invoked the 1979 Malaysia-Thailand joint development agreement in the Gulf of Thailand as a model.¹³ In practice, however, Kuala Lumpur has not seriously pursued this option since under UNCLOS, it has sovereign rights to the natural resources in its EEZ and does not recognize China's nine-dash line claim.

PH AND THE SOUTH CHINA SEA DISPUTE

The PH government's approach to the South China Sea was consistent with previous governments, with only minor recalibrations.



This consistency was unsurprising given that it was Mahathir who had set the country's policy towards China (including on the South China Sea) during his first stint as prime minister between 1981 and 2003. When he returned to office in May 2018, his principle foreign policy concern was to renegotiate BRI projects—which he had previously criticized as being overpriced, uneconomical and potential debt traps—without upsetting relations with China, an outcome that was successfully achieved.

The recalibrations were the result of the changed geopolitical context of the dispute, specifically China's growing military power and more assertive policy in the South China Sea, together with increased US-China rivalry. This changed context was reflected in the country's 2019 defence white paper (DWP).¹⁴ The DWP noted that the "volatile external environment" and "intensifying [great] power competition" had created unprecedented security challenges for Malaysia.¹⁵ On the South China Sea dispute in particular, the DWP states that activities undertaken by both China and the US have "turned the overlapping sovereign [sic] claims issue into a big power game".¹⁶

Malaysian Strategies

The PH government adhered to the three main strategies of previous administrations.

The first strategy was to defend and assert the country's maritime claims. A few months after taking office, Mahathir said Malaysia would continue to occupy its five atolls in the Spratlys.¹⁷ The DWP emphasized the economic importance of the country's maritime environment when it stated "one of the sources of Malaysia's prosperity. The seas, seabed, subsoil, waterways, airspace and continental shelf are crucial to trade and commerce, marine fisheries and fishery resources, means of transportation, people-to-people connectivity and other modes of the nation's wealth creation."¹⁸ Living and non-living resources, especially oil and gas, were "one of the main sources of Malaysia's revenue".¹⁹

The RMN and MMEA continued monitoring the presence of the Chinese Navy, CCG and maritime militia in the country's EEZ. RMN warships quietly escorted Malaysian-chartered drilling rigs and supply ships near Luconia Shoals.²⁰ In October 2019, Foreign Minister Saifuddin Abdullah called for the RMN to be upgraded so that it could increase its monitoring activities in the EEZ.²¹ The DWP indicated that the RMN needed new multirole support ships, fast patrol boats and coastal radar stations to fulfill that mission but did not provide a detailed acquisition plan.²²

In December 2019, Malaysia made another submission to the CLCS, this time pertaining to its continental shelf claims in the northern part of the South China Sea.²³ The submission implicitly recognized the 2016 arbitral tribunal's ruling that none of the features in the Spratlys were islands capable of generating EEZs or continental shelves.²⁴ China protested Malaysia's submission as a violation of its sovereignty and urged the CLCS not to consider it.²⁵ In response, Saifuddin called China's nine-dash line claims "ridiculous".²⁶ Earlier, in October, the US-China animated movie "Abominable" had been pulled from Malaysian cinemas when the producers refused to comply with a request from the country's film censorship board to remove a scene that showed the nine-dash line map.²⁷

The second strategy was to maintain cordial relations with China. In general, the PH government continued to de-emphasize the country's maritime dispute with China. In a



number of media interviews, Mahathir explicitly stated that in order to preserve valuable trade and investment ties with its largest economic partner, his government would avoid criticizing Beijing's actions in the South China Sea (and Xinjiang). For example, in June 2018 he argued "We need markets so we can't quarrel with such a big market" and in September 2019 "You don't just try and do something which would fail anyway, so it is better to find some other less violent ways not to antagonize China too much, because China is beneficial for us. Of course it's a big trading partner of ours and you do not want to do something that will fail, and in the process, also, we will suffer."²⁸ Mahathir also regularly highlighted the asymmetries in military power between the two countries and the inability of the MAF to confront China: "if the Chinese take action, we are not in a position to resist or to act against them.... Yeah, we have to accept the fact that China is a big power."²⁹ The PH government also ruled out submitting its overlapping claims with China to international legal arbitration.³⁰

However, the PH government was slightly more critical of China's actions in the South China Sea than its immediate predecessor. Unlike Najib and his ministers, PH leaders were more vocal in expressing concern at the presence of Chinese government vessels in the country's EEZ.³¹ Indeed, the DWP remarked that such incursions posed "clear challenges" to Malaysia's sovereign rights.³² The DWP also referred to China's "militarisation" and "perceived aggressive polices" in the South China Sea.³³ And as noted above, Saifuddin called China's nine-dash line claims "ridiculous". While still mild, for Malaysia such comments represented a noticeable hardening of tone.

At the same time, the PH government balanced its criticism of China by questioning US activities as well. On taking office, Mahathir repeatedly said that foreign warshipspresumably both American and Chinese-in the South China Sea were "destabilising" and raised the risk of a military confrontation.³⁴ His views were echoed by his ministers. Defence Minister Mohamad Sabu called the presence of US and Chinese warships "very worrying", while Saifuddin criticized both countries for being "too active" in the region.³⁵ The DWP suggested that US "freedom of navigation operations" (FONOPs) in the South China Sea had contributed to Great Power competition in Southeast Asia.³⁶ To reduce tensions, Mahathir called for the non-militarization of the South China Sea and for the area to be turned into a "region of peace, friendship and trade" in line with Malaysia's longcherished foreign policy goal of transforming Southeast Asia into a Zone of Peace, Friendship and Neutrality (ZOPFAN).³⁷ Initially, Mahathir had suggested the establishment of "ASEAN patrols" in the South China Sea, though this idea was subsequently dropped.³⁸ The third strategy of the PH government was to manage the dispute through the use of diplomacy. ASEAN was placed at the forefront of this effort because in the government's view it could act as an "honest broker" in managing "power dynamics and regional uncertainties", due to its collective negotiating power, and its ability to socialize China into becoming a "responsible and benign giant that will not cause anxiety among small neighbours".³⁹ One of the PH's top priorities was an "early conclusion" to the CoC.⁴⁰ Although Malaysia and China agreed in September 2019 to establish a Bilateral Consultative Mechanism (BCM) to discuss "maritime issues" it is unclear the extent to which the BCM will address the South China Sea dispute, given Kuala Lumpur's preference for ASEAN-led talks.⁴¹



CONCLUSION

Malaysia's approach to the South China Sea dispute has differed markedly from the Philippines and Vietnam. While Manila has alternated between accommodating China (under Presidents Gloria Arroyo and Rodrigo Duterte) and confronting it (under President Benigno Aquino), Kuala Lumpur's policy—and the strategies to achieve it—has remained largely consistent, with minor tweaks to take account of changes in the geopolitical environment. Although Vietnam has been more consistent than the Philippines, unlike Hanoi, Malaysia has refrained from stirring up nationalist sentiment, publicizing incidents at sea, rhetorically pushing back against Chinese assertiveness and voicing support for America's military presence. Instead, Malaysia prefers quiet, behind-the-scenes diplomacy, letting ASEAN take the lead while simultaneously asserting the legal basis for its claims and maintaining vigilance in the South China Sea. In the 2020s, short of overt aggression by Beijing in the South China Sea or the appointment of an excessively pro-China prime minister, Malaysia is unlikely to deviate significantly from this tried and trusted formula.

NOTES

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