

# How Aggressive Is China?

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Several policymakers and other experts have called China's behavior, especially its activities in the South and East China Seas, 'aggressive.' This article compares China's behavior with a suggested definition of 'aggression' based on the one enshrined in international law, and it finds that these experts' use of the term 'aggressive' is inconsistent with this definition. It furthermore compares the reactions of China and the United States to each other's provocative actions that do not amount to aggression. The article finds that the use of the term 'aggressive' to describe China's behavior is unnecessarily escalatory and concludes by recommending that policymakers and China experts use the label more sparingly, in strict accordance with the suggested definition.

Key Words: China, aggression, international law, rhetoric, South China Sea

A considerable number of elected officials, public intellectuals, and academics have stated that China is acting 'aggressively.' According to Andrew J. Nathan 'perceptions of China as an aggressive, expansionist power' are 'widespread' (Nathan & Scobell 2012). In turn, these observations justify US policies that seek to contain China by increasing US military forces in the region, forming new military alliances (or extending old ones), conducting military exercises in the region, and dedicating a considerable portion of the military budget to weapons that are better suited for countering an aggressive China than for confronting ISIS. Although both the United States and China often follow their actions with soothing statements about a desire to cooperate, both countries' populations seem to view the other as aggressive. The tension between China and the United States concerns those who fear that the two nations will fall into the

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‘Thucydides trap’ (Allison 2015) – that is, that the existing power (the United States) will fail to cede some influence to the rising power (China), tensions will mount, and war will ensue. Even if no war ensues between the United States and China, both states are already investing hundreds of billions of dollars in purchasing arms that can only be used in a major war between major powers, such as F-35 fighter jets and additional nuclear submarines, though both states clearly need those resources to address pressing domestic needs. For all these reasons it is important to determine how aggressive China actually is.

## AGGRESSION: A SUGGESTED DEFINITION

Observers point to different evidence, including speeches by public officials, statements by generals, expansive sovereignty claims, military buildups, and forceful occupations of other states’ territory, as examples of ‘aggression.’ The validity of their observations is affected not so much by what China does, but rather by what they construe aggression to be. Because there is no registry for terms used to study international relations that would ensure that all who use key terms employ them the same way, none of these observers can be faulted. Much would be gained though if the use of the term ‘aggression’ were limited to acts that involve the use of force, and if other acts that are often labeled aggressive were instead called ‘assertive’ or some other such term. This distinction recommends itself because it makes a great deal of difference whether a state makes assertive statements composed of words that others are free to ignore or counter with other speech; legally builds up assets, including those that *could* be used for aggressive acts (e.g., increase their military budget); seeks allies and builds alliances; or actually uses force, whether to enforce an exclusive zone, invade another country, occupy contested territories, or sink another state’s ships.

This definition of aggression is preferable for three major reasons. First, a very extensive study has shown that there are substantial differences between the consequences of assertive and aggressive acts (Skinner & Winkler 1969; Lampton 2008). When people (or the state with which they identify) are forced to act counter to their own preferences, they tend to become highly resentful and alienated, and they often counter with more aggression or engage in other harmful behavior toward others or themselves. When someone persuades people to change, however, the opposite occurs. Millions will even sacrifice their lives for their nation if they hold its causes to be legitimate ones. A third realm, which gives people material incentives to change course, falls somewhere between the coercive and the persuasive; it is called ‘soft power’ (Nye 2004). Thus, social scientific

ic findings undergird the merit of the distinctions between aggressive and assertive power. One may say that by labeling acts others consider aggressive, ‘assertive’ we are merely defining the problem away. However, there are very clear and significant differences between acts that use force and acts that do not.

The second reason to prefer this suggested definition of aggression to the more expansive one is that it keeps tensions between states in check by curbing tendencies toward escalating rhetoric. This definition seeks to dissuade those who lump verbal actions such as speeches and declarations, which have few or no ‘real’ consequences, in with actual uses of force such as invasions by hostile forces. Without this distinction, it would be impossible to differentiate between planting a flag in the Arctic Circle (as Russia recently did) and annexing Crimea, or between flybys and acts of war. Painting neutral developments such as building ports in the South China Sea as aggressive acts because the fruits of those developments *might* be used for military purposes is a favorite rhetorical trick of those who seek to turn every assertive or expressive act into an aggressive one. Labeling as aggressive both bombastic statements and bombings, land reclamation and terrorist attacks, demands that other states give prior notification of passage through a state’s territorial waters and blocking that passage – contributes to international tensions.

The third reason is that the definition of aggression here followed has strong foundations in international law.

## AGGRESSION IN INTERNATIONAL LAW

Until modern times, what we would now term ‘aggression’ was considered to be a right of states; the ‘norm of non-aggression’ can be traced to the aftermath of World War I, when a set of states renounced aggression in the Covenant of the League of Nations and the Kellogg-Briand Pact alike (Brown 2014, 649). The Nuremberg Charter of 1945 deals aggression in Article 6 (a), which defined crimes against the peace as including the ‘planning, preparation, or waging of a war of aggression’ (Paulas 2009, 1119-1120).

The United Nations General Assembly adopted A/RES/29/3314 in December 1974, Article 1 of which defines an act of aggression as ‘the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.’ The Charter assigns the jurisdiction to determine whether or not an act of aggression has occurred to the United Nations Security Council (McDougall 2007). A/RES/29/3314, Article 3 lists state actions that *prima facie* constitute

acts of aggression, including military invasion, military occupation, bombardment, blockade, attack on another state's armed forces, and the use of private actors or mercenaries to carry out acts of armed force against another state (Weisbord 2011, 90).

Until 2010, the question how to define the 'crime of aggression' remained unresolved (Petty 2008; Maogoto 2002). However, according to the Congressional Research Service, a consensus now exists among the International Criminal Court member states present for the Kampala Outcome that the ICC defines an act of aggression (based on the applicable United Nations resolution) as 'the use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State, or in any manner inconsistent with the Charter of the United Nations' (Weed 2011). That is, 'at least eighty-four delegations of legal advisors and experts from States Parties to the Rome Statute' agree that this definition of aggression is clear (Trahan 2012, 909). The uniformity with which law journal articles on the subject define 'aggression' and outline the concept's pedigree, as well as the substantial similarities between codified definitions of 'aggression' (See Solera 2010, 803-804), suggests that the definition supplied in the United Nations A/RES/29/3314 is the generally accepted, baseline definition of aggression (O'Connell & Niyazmatov 2010; Stahn 2010; Mancini 2012; Trahan 2012). Stahn (2010) makes reference to A/RES/29/3314, as do Mancini (2012), Koh and Buchwald (2015), and many more. The International Criminal Court adheres to the same concept of aggression, although it differentiates between 'crimes of aggression' attributed to individuals, over which the Court exercises jurisdiction, and 'acts of aggression' that are attributed to whole states (Scheffer 2010; Halpern & Betteridge 2008; Weisbord 2011, 89).

Of course, disagreements exist. For example, there is disagreement among international legal scholars about whether the provision of arms to rebel forces constitutes an act of aggression (Lubell, Koh, Kress & Murphy 2014). Moreover, any force that falls within the scope of self-defense or is carried out with the consent of the state in whose territory military force is used does not constitute an act of aggression (Griffiths 2002). And there is some disagreement about how specific the United Nations definition of aggression really is (Glennon 2010; Trahan 2012).

## THE SUGGESTED EVIDENCE

There is little question that until 1990 China was an aggressive state. Its troops played a significant role in the Korean War, which took place from 1950 to 1953;

it played a key role in the Vietnam War by supplying Vietnam with supplies and support troops; in the 1969s it engaged in a brief war with India over territory (Tharoor 2012); and from the 1950s to the 1970s it supported several revolutionary movements and coups d'état. To quote David Shambaugh and Thomas Robinson: 'China supported the Thai and Malayan Communist parties because they opposed governments closely aligned with the West; it supported the PLO because it opposed Israel; it endorsed national liberation movements in Southern Africa directed against colonies of Western countries that did not recognize Beijing; and it aided insurgencies in Afghanistan and Cambodia because they were aimed against governments supported by the Soviets and the Vietnamese' (Robinson & Shambaugh 1994, 387). In 1979, China even invaded Vietnam (the Sino-Vietnamese War) to punish Vietnam for invading Cambodia and occupying parts of the Spratly Islands, and to antagonize the USSR, with which it had recently had a diplomatic falling-out. However, since 1990 China settled 20 out of 23 territorial disputes *without* the use of force (Fravel 2008, 173)<sup>1</sup> and 17 of them through substantial compromise, according to M. Taylor Fravel of MIT (Fravel 2005, 46).

The article next examines more recent events. It first lists the incidents that various observers have categorized as Chinese 'aggression' and then turns to evaluating these claims.

Defense Secretary Robert Gates stated in May 2014 that China had become 'significantly more aggressive' in the preceding two years; as evidence he pointed to China's new air defense identification zone (ADIZ) in the East China Sea, its use of planes and ships to support its claims to the Senkaku/Diaoyu Islands, and its installation of an oil rig in Vietnamese maritime territory (Miles 2014). Keith Johnson of *Foreign Policy* wrote in April 2015, references 'China's maritime aggression,' or more specifically 'an aggressive interpretation of its rights in the South China Sea' through land reclamation and the building of military installations on the resulting islands (Johnson 2015). On March 18, 2015, Admiral Samuel J. Locklear, the Commander of United States Pacific Command referred to '...aggressive Chinese air intercepts of Japanese reconnaissance flights, inflammatory strategic messaging, and the no-notice declaration of a Chinese Air Defense Identification Zone in the East China Sea' as well as to China's land reclamation program and its ship-building program (Locklear 2015). Similarly, Bonnie S. Glaser described some of China's interceptions of United States reconnaissance flights as 'aggressive' (Glaser 2012; Glaser 2015). On June 1, 2015, President Obama condemned 'aggressive actions' in the South China Sea in ref-

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<sup>1</sup> 'China [...] has nevertheless used force in three of these conflicts' (Fravel 2008, 173).

erence to land reclamation projects (Blair 2015). In February 2015, Director of National Intelligence James Clapper called China's expansion in the South China Sea, which would give China new capabilities to use anti-air and other weapons, 'aggressive' (Associated Press 2015). Moreover, China has of late been labeled aggressive on a new front: 'cyber-aggression' (Auslin 2013). James Lewis of the Center for Strategic and International Studies considers 'state-sponsored cyber-aggression' to be a 'well-established part of China's strategy for global influence.'<sup>2</sup>

The legal issues involved are complex, and the details of what actually occurred are often murky or classified. One could readily dedicate a whole article to each of the incidents. However, it is possible to determine fairly conclusively whether aggressions occurred in most of the often cited cases.

## RECONNAISSANCE INTERCEPTONS

The United States routinely conducts aerial surveillance and naval patrols along China's coastline (Brown 2014b). On a few occasions, China is reported to have sent its fighter jets within 30 feet of the US reconnaissance planes; Secretary John Kirby called one such maneuver 'aggressive' (Cooper 2014). These maneuvers echo the Hainan Island Incident of 2001, in which a Chinese military plane flew too close to and collided with an US EP-3 reconnaissance plane (Tiezzi 2014a). China also seems to regularly fly dangerously close to Japanese reconnaissance planes in the East China Sea (Fackler 2014). Likewise, in December 2013, a Chinese aircraft navigated dangerously close to a United States plane (Mulrine 2013). These and several other similar incidents do not quite qualify as aggression by the definition here employed, but come close. They may be called 'mini-aggression.'

## SCARBOROUGH SHOAL

Details about what happened at the Scarborough Shoal are complex. On April 8, 2012, Philippine Navy aerial surveillance identified a group of eight Chinese fishing vessels poaching corals and other wildlife at Scarborough Shoal, and the Philippines sent a warship, the 378-foot BRP Gregorio del Pilar, to investigate on April 10 (Mogato 2012; BBC 2012; CNN 2012). In response, China sent two

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<sup>2</sup> This is not an exact quote from James Lewis, but rather is a quote of the article that summarizes Mr. Lewis' statements (Geller 2015).

unarmed China Maritime Surveillance (CMS) ships (Thayer 2012) to sail physically between the Philippines warship and the Chinese fishing vessels to prevent the arrest of the Chinese fishermen (Mogato 2012). Over the course of the ensuing standoff, the Philippines replaced its ship with two coast guard vessels, while China increased its number of ships at the shoal. By May 2012, there were five Chinese government ships, 16 Chinese fishing vessels, and 76 Chinese ‘utility boats’ at the shoal (BBC 2015). China then violated a June agreement that both sides would vacate the shoal, and instead became the sole presence at the disputed area (Fravel 2012), where they have since maintained a permanent presence (Tiezzi 2015); by August 2012 China had fully restricted access to Scarborough Shoal by stringing a rope across its entrance to prevent boats from entering (Neumann 2012). In January 2015, the Philippines stated that Chinese coast guard ships rammed three Philippine fishing boats that were operating in the vicinity of the shoal (Reuters 2015). As of today, China *de facto* controls the shoal (Tiezzi 2015). These are clearly acts of aggression. At the same time, their scale must be measured by the fact that not even one person was killed on either side, and no shots were fired. Call these acts of mini-aggression.

## ISLAND-BUILDING ACTIVITIES

Students of international relations have accorded considerable attention to China’s island-building activities in the South China Sea. Some have noted that other states in the region, such as Vietnam, are also pursuing island building activities, albeit less extensively (Asia Maritime Transparency Initiative n/d). According to a widely-held interpretation of international law, landforms that are not submerged at high tide confer certain territorial rights to the seas around them; thus, China’s land-building activities seem to serve in part to change the legal status of the reefs under consideration so that China can gain territorial rights over the surrounding seas. The United States and its allies have objected to this unilateral change in the status of the islands (Mirasola 2015). However, to call such land reclamation efforts ‘aggressive’ seems to stretch the term.

True, it may be argued that these islands and the runways and harbors they feature could be used for military purposes. The same is true of every truck, train, and plane (Rosenberg 2015). The main issue is whether changing (or attempting to change) a landform’s legal status is an act of aggression. It might well be considered one, but again, it is a borderline case. No shots have been fired, no one has been killed, and no other state in the area that has undertaken the same land-building activities has been labeled aggressive.

The Philippines brought a case before the Permanent Court of Arbitration in The Hague over the status of the Spratly Islands and Scarborough Shoal. At issue was not sovereignty over the islands but 15 other claims, only seven of which the Court agreed to arbitrate (*Philippines v. China* 2015). The claims included: whether various features were low-tide elevations, rocks or islands according to UNCLOS, and thus what entitlements to maritime zones they conferred; China's failure to protect and preserve the environment around Scarborough Shoal and Second Thomas Shoal; China's purported violation of the Convention on the International Regulations for the Prevention of Collisions at Sea; and China's prevention of Philippine fishermen from carrying out traditional fishing activities within the territorial sea of Scarborough Shoal.

China refused to recognize the right of the court to deal with these claims and did not participate in the proceeding, despite the fact that, as a signatory of UNCLOS, it is required to agree to settle out disputes like those at hand through arbitration or one of the other dispute resolutions mechanisms provided in the treaty. In the days before the court's ruling was released, China made some rather unyielding statements. For instance, Chinese Foreign Minister Wang Yi told US Secretary of State John Kerry in a phone call before the ruling was announced that "regardless of any outcome of the so-called arbitration, China will firmly safeguard its own territorial sovereignty and legitimate maritime rights and firmly safeguard the peace and stability in the South China Sea" (Xinhua 2015). The state-run *People's Daily* newspaper ran a front-page editorial declaring "We do not claim an inch of land that does not belong to us, but we won't give up any patch that is ours" (Perlez 2016).

The court ruled against China on every significant point; China announced that it would not recognize the rulings. After the court's ruling, both the US and China decided, wisely, to deescalate the conflict (For a detailed discussion of Mutually Assured Restraint, a proposal for reducing tensions, see Etzioni 2013). Chinese censors removed online posts from ultra-nationalists calling for war with the Philippines or the US (Allen-Ebrahimian 2016). The US has also sought to reduce the potential for tensions in its response to the rulings, with State Department spokesperson John Kirby saying "In the aftermath of this important decision, we urge all claimants to avoid provocative statements or actions. This decision can and should serve as a new opportunity to renew efforts to address maritime disputes peacefully" (Tharoor 2016). Again China's verbal stance and dealing with the court were rather assertive, but when push came to shove, it has not acted aggressively. China declared an ADIZ in the Senkaku/Diaoyu islands, but never in the South China Sea. It has not yet tried to block US Freedom of Navigation patrols near the island. Again, assertive but not aggressive,

## SENDING GOVERNMENT PLANES AND SHIPS TO THE SENKAKU/DIAOYU ISLANDS

On September 7, 2010, a Chinese fishing vessel collided with two Japanese coast guard ships that were operating off the coast of the islands after Japan instructed the vessel to leave the area (Tiezzi 2014b). In July 2012, China conducted a series of military drills in the East China Sea, including one that involved PLAN troops simulating ‘an amphibious assault on the Diaoyutais;’ (Cole 2012) and a few years later, China repeated these maneuvers (Keck 2014).

In October 2012, China sent four surveillance ships within a 12-nautical-mile radius of the Senkaku/Diaoyu Islands (*The Telegraph* 2012) and in the year following Japan’s nationalization of the Senkaku/Diaoyu Islands China sent its official government vessels into the disputed territory 216 times (Richards 2014). In April 2013, China identified the Senkaku/Diaoyu Islands as one of its ‘core interests’ and sent more than 40 aircraft and eight maritime surveillance vessels to the area of the disputed islands in a single day (Kazianis 2013; Roy 2014; Rapp-Hooper 2013). Of these actions, only the fishing vessel’s ramming of two Japanese ships constitutes an act of ‘mini aggression.’

Critics argue that although China has not used force, its use of what the West has called ‘salami tactics’ cannot be ignored because it has a cumulative effect similar to an outright occupation. However, a close examination of the details shows that so far China has achieved surprisingly little through these means. The Senkaku/Diaoyu Islands remain fully under Japanese control. (China also withdrew the oil rig it positioned in the Paracel Islands during the Haiyang Shiyou 981 ‘standoff,’ and the islands are still firmly under Vietnamese control.)

## EEZ AND ADIZ

On November 23, 2013, China declared an air defense identification zone (ADIZ) in the East China Sea, an area that encompasses the Senkaku/Diaoyu Islands (Panda 2014) and overlaps with Japan’s ADIZ.<sup>3</sup> China claimed that it had a right to be informed when other states’ aircraft (and commercial aircraft) entered an extension of its territorial airspace; China implied that it would use force (‘defensive emergency measures’) against states that did not comply with the notification requirements (Reinhart & Elias 2015). However, when the United States sent two B-52 bomber fighter craft through the ADIZ without first announcing their

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<sup>3</sup> The Chinese ADIZ also overlaps with an ADIZ claimed by South Korea (Kazianis 2015).

flight pattern to China first, China did not react with force. And when the United States sent the USS Lassen within the 12 nautical mile area surrounding Subi Reef in 2015, China protested but did not use force. One may say that this lack of follow-through on China's part reflects that China is not ready to confront the United States; this is very likely the case but does not change the fact that China did not act aggressively despite some harsh words.

One should note that similar declarations have been made by many states in the area, including Japan, Vietnam, and Canada. The matter would change greatly if China were to use force to enforce these zones by shooting down planes without prior notification or sinking ships that enter the claimed territory. Otherwise, these declarations are akin to lawyers' opening statements and are not acts of aggression.

## CYBER-AGGRESSION

There are no established norms and few international laws that directly apply to this new realm. It seems useful, though, to note that the United States and China have both agreed that using cyber tools for *espionage* cannot be curbed, as espionage has existed since the beginning of history, both sides engage in it, and neither side considers it to be an act of aggression. The United States protests China's use of cyber tools to violate property rights and to steal trade secrets, but considers it an economic crime that should be countered with economic means. By contrast, using cyber tools to cause damage to power grids, the financial system, or any other physical infrastructure – as Russia did to Ukraine in 2015 – would qualify as aggression, as the outcome would be equivalent to the outcome of a major use of force. However, so far there is no evidence that China has engaged in this sort of 'kinetic' cyber attack against the United States or its allies. In short, it seems erroneous to label China's cyber acts 'aggression,' at least according to the definition here followed, which is aligned with that of the United Nations and international law.

## IN CONCLUSION

Many of the acts that various commentators label 'aggressive' and which this article treats as 'assertive' might well be considered to be 'provocative.' To properly examine them, one must consider the context. Were China's actions made in response to provocative acts taken by other states, for instance the United States'

almost-daily reconnaissance flights off of China's coastline – which are legal but which China views as highly provocative? Moreover, one ought to note that to a significant extent an act's degree of provocation is in the eye of the beholder. When China sent its ships within 12 nautical miles of the Aleutian Islands in Alaska in 2015, the United States responded calmly by acknowledging that China had conducted 'a legal transit of U.S. territorial seas in accordance with the Law of the Sea Convention' (Page and Lubold 2015). By contrast, when the United States sent USS Lassen within a 12 nautical mile radius of Subi Reef, China viewed the act as provocative and protested vocally. The question whether or not force has been used provides a clearer set of guidelines about what acts should be considered aggressive.

The observation that, unlike aggression, which others can readily observe and recognize as such, provocation is largely a subjective matter is not to deny that provocative acts contribute to tensions. How a state responds to provocations and other assertive but non-aggressive acts depends to a significant degree on the more encompassing strategies used by the United States. If the United States seeks to avoid the Thucydides trap and to accommodate a rising China without sacrificing core US interests, US policymakers need to understate their interpretations of Chinese actions and under react so as to defuse tensions while still drawing clear red lines. For instance, using force to integrate Taiwan into the Chinese mainland, actually preventing the United States or other states from freely traveling in China's EEZ or ADIZ, or occupying contested islands should not be tolerated. By contrast, habitually interpreting Chinese acts of assertion as aggressive ones is symptomatic of a strategy that holds that China cannot be accommodated and that it must be contained by any means necessary.

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