



## Grounding of USS Guardian in Philippines: Longer-term Implications by Sam Bateman

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The minesweeper USS *Guardian* ran aground on Tubbataha Reef in the Sulu Sea on Jan. 17, 2013. This reef is a marine sanctuary protected as a Philippine National Marine Park, and declared as a World Heritage Site by UNESCO. Over 1,000 marine species inhabit the reef, many of which are considered to be endangered.

While no oil pollution has occurred so far, the reef in the vicinity of the ship has been seriously damaged. The ship cannot be refloated and will now be broken up where it lies. The USS *Guardian* was a 23-year-old Avenger-class minesweeper valued at about \$277 million.

### Navigational freedoms

While the USN faces a major financial penalty due to the loss of the vessel and the costs of the salvage operation, longer-term political and strategic costs are likely. The incident has already sparked anti-US protests across the Philippines with protesters questioning the reinvigorated US military presence in their country. However, more serious consequences might lie in regional countries taking a harder line on the operations of warships in archipelagic waters and exclusive economic zone (EEZs).

The US adopts a firm position on navigational freedoms in regional waters and routinely protests rules and regulations of coastal states, including ones imposed on environmental protection grounds, which might restrict those freedoms. Some regional coastal states see this stance as disrespectful of their rights and duties in their adjacent waters, particularly in EEZs.

Accidents such as the grounding of the *Guardian* do not help the US position. This position is also not helped by the number of navigational accidents that the USN has experienced in recent times. In 2012 alone there were three serious accidents – the collision between the large amphibious ship USS *Essex* and a refueling tanker, USNS *Yukon*, off the coast of California in May; the collision between the guided missile destroyer USS *Porter* and an oil tanker outside the Strait of Hormuz in August; and the collision between the submarine USS *Montpelier* and the Aegis cruiser USS *San Jacinto* off the US East Coast in October. While there may have been different causes of these accidents, human error,

such as not properly appreciating a dangerous situation, is likely to have been a common factor.

### Navigational regimes

The Philippines is an archipelagic state under the 1982 UN Convention on the Law of the Sea (UNCLOS). The seas within the Philippine archipelago are archipelagic waters through which all ships have the right of innocent passage. However, this right is a restrictive one which can be suspended in certain circumstances.

It also includes some specific limitations on the activities of warships whilst exercising the right. Some regional countries, including China, the Philippines, and Indonesia, have legislation requiring countries to give prior notification of the innocent passage of warships through their archipelagic waters or territorial sea.

Largely at the behest of the US and other maritime powers, UNCLOS also introduced the right of archipelagic sea lanes (ASL) passage. This is more liberal than innocent passage. It cannot be suspended and allows warships to conduct most of their normal passage activities. However, the passage must be conducted along ASLs designated by the archipelagic state, or if no such lanes have been designated, along routes normally used for international navigation.

While the Philippines is yet to designate ASLs, the route apparently followed by USS *Guardian* across the Sulu Sea between Mindoro Strait north of Palawan and Sibutu Passage between Sabah and the Sulu archipelago is a likely ASL. It is used extensively by commercial shipping traffic, including by large iron ore and LNG carriers travelling between northwestern Australia and China. The USN would no doubt argue that the *Guardian* was exercising the right of ASL passage and not affected by any requirement for prior notification. However, the incident is likely to reinforce the position of the Philippines on prior notification of warship transit. This will be disputed by the US and likely damage the bilateral relationship.

### Sovereign immunity

Warships have sovereign immunity which means they are not bound by the laws of a coastal or archipelagic state. However, most navies will usually follow any environmental restrictions placed by a coastal state. A restriction on navigation through a designated marine park would be the type of restriction that would normally be observed by a warship.

The commanding officer of the *Guardian* appears to have taken a hard line on sovereign immunity. Press reports suggest that park rangers warned the *Guardian* by radio that it was nearing the reef, but the ship captain insisted they raise their

complaint with the US embassy. The park rangers were later forbidden by the Navy crew to assess the situation.

The US faces several disagreements with regional countries over the law of the sea. Its position is not helped by it still not being a party to UNCLOS. Its position on navigational freedoms in regional waters is also not helped by accidents, such as the grounding of the USS *Guardian*, that show that even warships can be involved in “at fault” navigational accidents.

The most serious political fallout of the *Guardian* incident for the US may well be some regional countries taking a harder line on USN operations in their waters, although any such policy will be hotly disputed by the US on legal and strategic grounds.

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