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Armed Clash in the South China Sea

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Armed Clash in the South China Sea

INTRODUCTION

The risk of conflict in the South China Sea is significant. China, Taiwan, Vietnam, Malaysia, Brunei, and the Philippines have competing territorial and jurisdictional claims, particularly over rights to exploit the region's possibly extensive reserves of oil and gas. Freedom of navigation in the region is also a contentious issue, especially between the United States and China over the right of U.S. military vessels to operate in China's two-hundred-mile exclusive economic zone (EEZ). These tensions are shaping—and being shaped by—rising apprehensions about the growth of China's military power and its regional intentions. China has embarked on a substantial modernization of its maritime paramilitary forces as well as naval capabilities to enforce its sovereignty and jurisdiction claims by force if necessary. At the same time, it is developing capabilities that would put U.S. forces in the region at risk in a conflict, thus potentially denying access to the U.S. Navy in the western Pacific.

Given the growing importance of the U.S.-China relationship, and the Asia-Pacific region more generally, to the global economy, the United States has a major interest in preventing any one of the various disputes in the South China Sea from escalating militarily.

THE CONTINGENCIES

Of the many conceivable contingencies involving an armed clash in the South China Sea, three especially threaten U.S. interests and could potentially prompt the United States to use force.

The most likely and dangerous contingency is a clash stemming from U.S. military operations within China's EEZ that provokes an armed Chinese response. The United States holds that nothing in the United Nations Convention on the Law of the Sea (UNCLOS) or state practice negates the right of military forces of all nations to conduct military activities in EEZs without coastal state notice or consent. China insists that reconnaissance activities undertaken without prior notification and without permission of the coastal state violate Chinese domestic law and international law. China routinely intercepts U.S. reconnaissance flights conducted in its EEZ and periodically does so in aggressive ways that increase the risk of an accident similar to the April 2001 collision of a U.S. EP-3 reconnaissance plane and a Chinese F-8 fighter jet near Hainan Island. A comparable maritime incident could be triggered by Chinese vessels harassing a U.S. Navy surveillance ship operating in its EEZ, such as occurred in the 2009 incidents involving the USNS *Impeccable* and the USNS *Victorious*. The large growth of Chinese submarines has also increased the danger of an incident, such as when a Chinese submarine collided with a U.S. destroyer's towed sonar array in June 2009. Since neither U.S. reconnaissance aircraft nor ocean surveillance vessels are armed, the United States might respond to dangerous behavior by Chinese planes or ships by dispatching armed escorts. A miscalculation or misunderstanding could then result in a deadly exchange of fire, leading to further

military escalation and precipitating a major political crisis. Rising U.S.-China mistrust and intensifying bilateral strategic competition would likely make managing such a crisis more difficult.

A second contingency involves conflict between China and the Philippines over natural gas deposits, especially in the disputed area of Reed Bank, located eighty nautical miles from Palawan. Oil survey ships operating in Reed Bank under contract have increasingly been harassed by Chinese vessels. Reportedly, the United Kingdom-based Forum Energy plans to start drilling for gas in Reed Bank this year, which could provoke an aggressive Chinese response. Forum Energy is only one of fifteen exploration contracts that Manila intends to offer over the next few years for offshore exploration near Palawan Island. Reed Bank is a red line for the Philippines, so this contingency could quickly escalate to violence if China intervened to halt the drilling.

The United States could be drawn into a China-Philippines conflict because of its 1951 Mutual Defense Treaty with the Philippines. The treaty states, "Each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes." American officials insist that Washington does not take sides in the territorial dispute in the South China Sea and refuse to comment on how the United States might respond to Chinese aggression in contested waters. Nevertheless, an apparent gap exists between American views of U.S. obligations and Manila's expectations. In mid-June 2011, a Filipino presidential spokesperson stated that in the event of armed conflict with China, Manila expected the United States would come to its aid. Statements by senior U.S. officials may have inadvertently led Manila to conclude that the United States would provide military assistance if China attacked Filipino forces in the disputed Spratly Islands.

With improving political and military ties between Manila and Washington, including a pending agreement to expand U.S. access to Filipino ports and airfields to refuel and service its warships and planes, the United States would have a great deal at stake in a China-Philippines contingency. Failure to respond would not only set back U.S. relations with the Philippines but would also potentially undermine U.S. credibility in the region with its allies and partners more broadly. A U.S. decision to dispatch naval ships to the area, however, would risk a U.S.-China naval confrontation.

Disputes between China and Vietnam over seismic surveys or drilling for oil and gas could also trigger an armed clash for a third contingency. China has harassed PetroVietnam oil survey ships in the past that were searching for oil and gas deposits in Vietnam's EEZ. In 2011, Hanoi accused China of deliberately severing the cables of an oil and gas survey vessel in two separate instances. Although the Vietnamese did not respond with force, they did not back down and Hanoi pledged to continue its efforts to exploit new fields despite warnings from Beijing. Budding U.S.-Vietnam relations could embolden Hanoi to be more confrontational with China on the South China Sea issue.

The United States could be drawn into a conflict between China and Vietnam, though that is less likely than a clash between China and the Philippines. In a scenario of Chinese provocation, the United States might opt to dispatch naval vessels to the area to signal its interest in regional peace and stability. Vietnam, and possibly other nations, could also request U.S. assistance in such circumstances. Should the United States become involved, subsequent actions by China or a miscalculation among the forces present could result in exchange of fire. In another possible scenario, an attack by China on vessels or rigs operated by an American company exploring or drilling for hydrocarbons could quickly involve the United States, especially if American lives were endangered or lost. ExxonMobil has plans to conduct exploratory drilling off Vietnam, making this an existential danger. In the short term, however, the likelihood of this third contingency occurring is relatively low given the recent

thaw in Sino-Vietnamese relations. In October 2011, China and Vietnam signed an agreement outlining principles for resolving maritime issues. The effectiveness of this agreement remains to be seen, but for now tensions appear to be defused.

WARNING INDICATORS

Strategic warning signals that indicate heightened risk of conflict include political decisions and statements by senior officials, official and unofficial media reports, and logistical changes and equipment modifications. In the contingencies described above, strategic warning indicators could include heightened rhetoric from all or some disputants regarding their territorial and strategic interests. For example, China may explicitly refer to the South China Sea as a core interest; in 2010 Beijing hinted this was the case but subsequently backed away from the assertion. Beijing might also warn that it cannot “stand idly by” as countries nibble away at Chinese territory, a formulation that in the past has often signaled willingness to use force. Commentaries and editorials in authoritative media outlets expressing China’s bottom line and issuing ultimatums could also be a warning indicator. Tough language could also be used by senior People’s Liberation Army (PLA) officers in meetings with their American counterparts. An increase in nationalistic rhetoric in nonauthoritative media and in Chinese blogs, even if not representing official Chinese policy, would nevertheless signal pressure on the Chinese leadership to defend Chinese interests. Similar warning indicators should be tracked in Vietnam and the Philippines that might signal a hardening of those countries’ positions.

Tactical warning signals that indicate heightened risk of a potential clash in a specific time and place include commercial notices and preparations, diplomatic and/or military statements warning another claimant to cease provocative activities or suffer the consequences, military exercises designed to intimidate another claimant, and ship movements to disputed areas. As for an impending incident regarding U.S. surveillance activities, statements and unusual preparations by the PLA might suggest a greater willingness to employ more aggressive means to intercept U.S. ships and aircraft.

IMPLICATIONS FOR U.S. INTERESTS

The United States has significant political, security, and economic interests at stake if one of the contingencies should occur.

- *Global rules and norms.* The United States has important interests in the peaceful resolution of South China Sea disputes according to international law. With the exception of China, all the claimants of the South China Sea have attempted to justify their claims based on their coastlines and the provisions of UNCLOS. China, however, relies on a mix of historic rights and legal claims, while remaining deliberately ambiguous about the meaning of the “nine-dashed line” around the sea that is drawn on Chinese maps. Failure to uphold international law and norms could harm U.S. interests elsewhere in the region and beyond. Ensuring freedom of navigation is another critical interest of the United States and other regional states. Although China claims that it supports freedom of navigation, its insistence that foreign militaries seek advance permission to sail in its two-hundred-mile EEZ casts doubt on its stance. China’s development of capabilities to deny American naval access to those waters in a conflict provides evidence of possible Chinese intentions to block freedom of navigation in specific contingencies.

- *Alliance security and regional stability.* U.S. allies and friends around the South China Sea look to the United States to maintain free trade, safe and secure sea lines of communication (SLOCs), and overall peace and stability in the region. Claimants and nonclaimants to land features and maritime waters in the South China Sea view the U.S. military presence as necessary to allow decision-making free of intimidation. If nations in the South China Sea lose confidence in the United States to serve as the principal regional security guarantor, they could embark on costly and potentially destabilizing arms buildups to compensate or, alternatively, become more accommodating to the demands of a powerful China. Neither would be in the U.S. interest. Failure to reassure allies of U.S. commitments in the region could also undermine U.S. security guarantees in the broader Asia-Pacific region, especially with Japan and South Korea. At the same time, however, the United States must avoid getting drawn into the territorial dispute—and possibly into a conflict—by regional nations who seek U.S. backing to legitimize their claims.
- *Economic interests.* Each year, \$5.3 trillion of trade passes through the South China Sea; U.S. trade accounts for \$1.2 trillion of this total. Should a crisis occur, the diversion of cargo ships to other routes would harm regional economies as a result of an increase in insurance rates and longer transits. Conflict of any scale in the South China Sea would hamper the claimants from benefiting from the South China’s Sea’s proven and potential riches.
- *Cooperative relationship with China.* The stakes and implications of any U.S.-China incident are far greater than in other scenarios. The United States has an abiding interest in preserving stability in the U.S.-China relationship so that it can continue to secure Beijing’s cooperation on an expanding list of regional and global issues and more tightly integrate China into the prevailing international system.

PREVENTIVE OPTIONS

Efforts should continue to resolve the disputes over territorial sovereignty of the South China Sea’s land features, rightful jurisdiction over the waters and seabed, and the legality of conducting military operations within a country’s EEZ, but the likelihood of a breakthrough in any of these areas is slim in the near term. In the meantime, the United States should focus on lowering the risk of potential armed clashes arising from either miscalculation or unintended escalation of a dispute. There are several preventive options available to policymakers—in the United States and other nations—to avert a crisis and conflict in the South China Sea. These options are not mutually exclusive.

Support U.S.-China Risk-reduction Measures

Operational safety measures and expanded naval cooperation between the United States and China can help to reduce the risk of an accident between ships and aircraft. The creation of the Military Maritime Consultative Agreement (MMCA) in 1988 was intended to establish “rules of the road” at sea similar to the U.S.-Soviet Incidents at Sea Agreement (INCSEA), but it has not been successful. Communication mechanisms can provide a means to defuse tensions in a crisis and prevent escalation. Political and military hotlines have been set up, though U.S. officials have low confidence that they would be utilized by their Chinese counterparts during a crisis. An additional hotline to manage maritime emergencies should be established at an operational level, along with a signed political agreement committing both sides to answer the phone in a crisis. Joint naval exercises to enhance the

ability of the two sides to cooperate in counter-piracy, humanitarian assistance, and disaster relief operations could increase cooperation and help prevent a U.S.-China conflict.

Bolster Capabilities of Regional Actors

Steps could be taken to further enhance the capability of the Philippines military to defend its territorial and maritime claims and improve its indigenous domain awareness, which might deter China from taking aggressive action. Similarly, the United States could boost the maritime surveillance capabilities of Vietnam, enabling its military to more effectively pursue an anti-access and area-denial strategy. Such measures run the risk of emboldening the Philippines and Vietnam to more assertively challenge China and could raise those countries' expectations of U.S. assistance in a crisis.

Encourage Settlement of the Sovereignty Dispute

The United States could push for submission of territorial disputes to the International Court of Justice or the International Tribunal for the Law of the Sea for settlement, or encourage an outside organization or mediator to be called upon to resolve the dispute. However, the prospect for success in these cases is slim given China's likely opposition to such options. Other options exist to resolve the sovereignty dispute that would be difficult, but not impossible, to negotiate. One such proposal, originally made by Mark Valencia, Jon Van Dyke, and Noel Ludwig in *Sharing the Resources of the South China Sea*, would establish "regional sovereignty" over the islands in the South China Sea among the six claimants, allowing them to collectively manage the islands, territorial seas, and airspace. Another option put forward by Peter Dutton of the Naval War College would emulate the resolution of the dispute over Svalbard, an island located between Norway and Greenland. The Treaty of Spitsbergen, signed in 1920, awarded primary sovereignty over Svalbard to Norway but assigned resource-related rights to all signatories. This solution avoided conflict over resources and enabled advancement of scientific research. Applying this model to the South China Sea would likely entail giving sovereignty to China while permitting other countries to benefit from the resources. In the near term, at least, such a solution is unlikely to be accepted by the other claimants.

Promote Regional Risk-reduction Measures

The Association of Southeast Asian Nations (ASEAN) and China agreed upon multilateral risk-reduction and confidence-building measures in the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC), but have neither adhered to its provisions (for example, to resolve territorial and jurisdictional disputes without resorting to the threat or use of force) nor implemented its proposals to undertake cooperative trust-building activities. The resumption of negotiations between China and ASEAN after a hiatus of a decade holds out promise for reinvigorating cooperative activities under the DOC.

Multilaterally, existing mechanisms and procedures already exist to promote operational safety among regional navies; a new arrangement is unnecessary. The United States, China, and all ASEAN members with the exception of Laos and Burma are members of the Western Pacific Naval Symposium (WPNS). Founded in 1988, WPNS brings regional naval leaders together biennially to discuss maritime security. In 2000, it produced the Code for Unalerted Encounters at Sea (CUES), which

includes safety measures and procedures and means to facilitate communication when ships and aircraft make contact. There are also other mechanisms available such as the International Maritime Organization's Regulations for Preventing Collisions at Sea (COLREGS) and the International Civil Aviation Organization's rules of the air. In addition, regional navies could cooperate in sea environment protection, scientific research at sea, search and rescue activities, and mitigation of damage caused by natural calamities.

The creation of new dialogue mechanisms may also be worth consideration. A South China Sea Coast Guard Forum, modeled after the North Pacific Coast Guard Forum, which cooperates on a multitude of maritime security and legal issues, could enhance cooperation through information sharing and knowledge of best practices. The creation of a South China Sea information-sharing center would also provide a platform to improve awareness and communication between relevant parties. The information-sharing center could also serve as an accountability mechanism if states are required to document any incidents and present them to the center.

Advocate Joint Development/Multilateral Economic Cooperation

Resource cooperation is another preventive option that is underutilized by claimants in the South China Sea. Joint development of petroleum resources, for example, could reduce tensions between China and Vietnam, and between China and the Philippines, on issues related to energy security and access to hydrocarbon resources. Such development could be modeled on one of the many joint development arrangements that exist in the South and East China seas. Parties could also cooperate on increasing the use of alternative energy sources in order to reduce reliance on hydrocarbons.

Shared concerns about declining fish stocks in the South China Sea suggest the utility of cooperation to promote conservation and sustainable development. Establishing a joint fisheries committee among claimants could prove useful. Fishing agreements between China and its neighbors are already in place that could be expanded into disputed areas to encourage greater cooperation.

Clearly Convey U.S. Commitments

The United States should avoid inadvertently encouraging the claimants to engage in confrontational behavior. For example, Secretary of State Hillary Clinton's reference in November 2011 to the South China Sea as the West Philippine Sea could have unintended consequences such as emboldening Manila to antagonize China rather than it seeking to peacefully settle their differences.

MITIGATING OPTIONS

If preventive options fail to avert a crisis from developing, policymakers have several options available to mitigate the potential negative effects.

Defusing a U.S.-China Incident

The history of crisis management in U.S.-China relations suggests that leaders in both countries go to great lengths to prevent a crisis from escalating to military conflict. Nevertheless, pre-crisis steps could be taken to limit the harmful consequences of a confrontation. Political agreements could be

reached that would increase the possibility that communication mechanisms in place would be employed in a crisis. Steps should be taken to enhance operational safety at sea between U.S. and Chinese ships. Confidence-building measures should also be implemented to build trust and promote cooperation.

Mitigating a Regional Crisis with China

Dispatching air and naval forces to the immediate vicinity of an armed clash to defend U.S. interests and deter further escalation should always be considered an option. Such actions, however, must be balanced against the possibility that they will produce the opposite effect, encouraging an even stronger response from China and causing further escalation of a confrontation. A less risky option would be to threaten nonmilitary consequences—diplomatic and economic sanctions—to force China to back off and deter further military action. But here again such measures may only inflame hostilities and escalate the crisis. It is also doubtful in any case whether such measures would be supported by many in the region given China's economic importance.

Several less provocative responses might contain a budding crisis while avoiding further escalation. One option for the United States would be to encourage a mediated dialogue between involved parties. However, while Southeast Asian states may welcome a neutral mediator, China would probably oppose it. Thus, such an effort would likely fail.

Direct communication between military officials can be effective in de-escalating a crisis. States involved should establish communication mechanisms, include provisions for both scheduled and short-notice emergency meetings, and mandate consultation during a crisis. Emergency meetings would focus on addressing the specific provocative action that brought about the crisis. Operational hotlines, including phone lines and radio frequencies with clear protocols and points of contact, should also be set up. To be effective, hotlines should be set up and used prior to a crisis, though even then there is no guarantee that they will be used by both sides if a crisis erupts. China and Vietnam have already agreed to establish a hotline; this could be a model for other states in the region and China. The goal would not be to resolve underlying issues, but to contain tensions in the event of a minor skirmish and prevent escalation.

RECOMMENDATIONS

Against the background of rebalancing U.S. assets and attention toward the Asia-Pacific region, the United States should take steps to prevent a conflict in the South China Sea and to defuse a crisis should one take place. Although the possibility of a major military conflict is low, the potential for a violent clash in the South China Sea in the near future is high, given past behavior of states in the region and the growing stakes. Therefore, both U.S. and regional policymakers should seek to create mechanisms to build trust, prevent conflict, and avoid escalation.

First, the United States should ratify UNCLOS; though it voluntarily adheres to its principles and the Obama administration has made a commitment to ratify the convention, the fact that the United States has not yet ratified the treaty lends credence to the perception that it only abides by international conventions when doing so aligns with its national interests. Ratifying UNCLOS would put this speculation to rest. It would also bolster the U.S. position in favor of rules-based behavior, give

the United States a seat at the table when UNCLOS signatories discuss such issues as EEZ rights, and generally advance U.S. economic and strategic interests.

Second, nations with navies active in the South China Sea—including the United States, China, Vietnam, and the Philippines—should better utilize the CUES safety measures and procedures to mitigate uncertainty and improve communication in the event of a maritime incident. Under current arrangements, observing CUES procedures is voluntary. Participating countries should consider making compliance compulsory in order to guarantee standardized procedures. Countries should also engage in multilateral and bilateral maritime exercises to practice these procedures in a controlled environment before a contingency unfolds.

Third, the United States should make clear its support for risk-reduction measures and confidence-building measures among claimants in the South China Sea. The United States should continue to voice its support for full implementation of the China-ASEAN DOC and subsequent agreement on a binding code of conduct. Beijing needs a favorable regional security environment and therefore has important incentives to work out a modus vivendi with its neighbors, but will not likely do so absent pressure. Agreement on a binding code of conduct will require unity among all members of ASEAN and strong backing from the United States. In the meantime, cooperation should be further developed through expanded ship visits, bilateral and multilateral exercise, and enhanced counter-piracy cooperation. In addition, cooperation on energy and fisheries should be further promoted.

Fourth, the creation of new dialogue mechanisms—such as a South China Sea Coast Guard Forum, an information-sharing center, and a joint fisheries committee—would provide greater opportunity for affected parties to communicate directly and offer opportunities for greater coordination.

Fifth, the United States should review its surveillance and reconnaissance activities in the air and waters bordering China's twelve-mile territorial sea and assess the feasibility of reducing their frequency or conducting the operations at a greater distance. Any modification of U.S. close-in surveillance and reconnaissance activities requires assessment of whether those sources are uniquely valuable or other intelligence collection platforms can provide sufficient information about Chinese military developments. The United States should not take such a step unilaterally; it should seek to obtain a concession from Beijing in return lest China interpret the action as evidence of U.S. decline and weakness.

Sixth, the Military Maritime Consultative Agreement process should be made effective or abandoned. There is a pressing need for the United States and China to agree on operational safety rules to minimize the possibility of a conflict in the years ahead. A more formal "incidents at sea" agreement should be considered.

Seventh, Washington should clarify in its respective dialogues with Manila and Hanoi the extent of the United States' obligations and commitments as well as the limits of likely U.S. involvement in future disputes. Clarity is necessary both to avoid a scenario in which regional actors are emboldened to aggressively confront China and to avert a setback to U.S. relations with regional nations due to perceptions of unfulfilled expectations.

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