

The background of the cover is a photograph of a sunset over the ocean. The sky is filled with horizontal bands of orange, yellow, and dark grey clouds. In the lower-left foreground, the dark silhouette of a fishing boat is visible, with its mast and rigging extending upwards. The water in the foreground is dark and reflects the light from the sky.

# Recent Trends in the South China Sea and U.S. Policy

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*A Report of the CSIS Sumitro Chair in Southeast Asia Studies*

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Gregory B. Poling

Tensions in the South China Sea have continued to build over the last year, with the Philippines submitting its evidence against Chinese claims to an arbitration tribunal, Beijing parking an oil rig in waters claimed by Vietnam, and Malaysia growing increasingly anxious about Chinese displays of sovereignty at the disputed James Shoal. These and other developments underscore just how critical managing tensions in the South China Sea are, for the region and for the United States.

With this in mind, the Center for Strategic and International Studies (CSIS) hosted its fourth annual South China Sea conference on July 10–11, during which officials and experts from both sides of the Pacific offered analyses of the situation in the sea, likely motivations behind China’s increasingly assertive approach to the disputes, and possible ways forward in managing and even resolving the crises. Informed by this conference, this report offers an overview of the latest developments in the South China Sea and provides recommendations for the United States and its partners.

## Recommendations

The following is a brief list of recommendations for U.S. policymakers regarding the South China Sea. The final section of this report explores these recommendations in greater detail.

- Assist the Association of Southeast Asian Nations (ASEAN) in the identification of legally disputed waters and publicly issue a map depicting them.
- Release a detailed legal analysis of claims in the South China Sea, particularly regarding the nine-dash line, through the State Department.
- Push ASEAN and its dialogue partners to embrace a freeze on activities in disputed areas while pursuing a binding code of conduct (COC) in the hopes of pressing China to do the same.
- Ratify the UN Convention on the Law of the Sea (UNCLOS).
- Issue a public acknowledgment that the United States erred in not accepting the 1986 ruling in the *Nicaragua v. United States* International Court of Justice case.
- Reexamine the ban on lethal weapons sales to Vietnam, preferably by developing a roadmap to allow a step-by-step relaxation of the restrictions.

- Relax the prohibition on contact between U.S. and Chinese forces in certain areas in order to promote more robust Chinese engagement in future joint exercises.
- Declare that the United States would consider itself obligated to respond under the terms of its mutual defense treaty with the Philippines if Chinese actions in disputed areas led directly to the death or injury of Philippine troops.
- Make the renovation, upgrading, and use of the Oyster Bay naval base a key focus of U.S. activities under the new Enhanced Defense Cooperation Agreement with the Philippines.
- Build up maritime domain awareness capabilities, for both the United States and its partners, and release a public database of real-time surface traffic in the South China Sea.

## Background

Despite a growing recognition of the need to effectively manage tensions in the South China Sea, the year between the third and fourth CSIS South China Sea conferences saw a further deterioration of stability on the ground—and in the water. Chinese actions toward other claimants grew increasingly assertive, furthering a pattern that has developed steadily since at least 2009.

## Recent Developments

The defense ministers of China and Vietnam, Chang Wanquan and Nguyen Chi Vinh, on June 6, 2013, agreed to set up a hotline between their navies in the hopes of managing maritime incidents, especially in the South China Sea, before they could spiral into larger conflicts. Unfortunately this hotline did little to stave off a steady stream of conflicts. Beijing harshly enforced its annual unilateral fishing ban in the northern portion of the South China Sea from May to August 2013, regularly harassing and arresting Vietnamese fishermen in and around the Paracel Islands as in years past.

Vietnam's president Truong Tan Sang paid a three-day visit to Beijing on June 19–21, 2013, during which he and Chinese president Xi Jinping made all the right pronouncements about lowering tensions in the South China Sea. They vowed to implement the 2002 ASEAN-China Declaration on the Conduct (DOC) of Parties in the South China Sea and agreed to extend until 2016 their bilateral agreement to explore for oil and gas in the Gulf of Tonkin. But the hoped-for détente following the meeting never materialized.

The summer of 2013 saw the start of an ongoing standoff between China and the Philippines over Second Thomas Shoal in the Spratly Islands. That feature, which sits about 120 nautical miles from the Philippines, is the site of a small garrison of approximately 8 to 12 Philippine marines. They are based on the derelict BRP *Sierra Madre*, a World War II-era vessel intentionally grounded on the shoal in 1999. Manila in May 2013 demanded that China withdraw three ships, including a naval frigate, which had begun patrolling near the reef. Those three proved to be a bellwether of things to come, as China over the course of the past year has reinforced the number of vessels regularly patrolling the shoal and on multiple occasions has harassed and even blocked

Philippine vessels attempting to resupply and relieve the soldiers on board the *Sierra Madre*.

U.S. concern over the deteriorating situation at Second Thomas was made clear on July 31, 2013, when Philippine foreign secretary Albert del Rosario confirmed that U.S. P-3C Orion aircraft had been flying reconnaissance over the shoal as part of the U.S. Navy's regular surveillance to assist Manila's maritime domain awareness under the provisions of the Philippine-U.S. Mutual Defense Treaty.<sup>1</sup>

Beijing sent an aggressive signal to the entire region on November 23, 2013, when it announced an air defense identification zone (ADIZ) over the East China Sea, where it overlapped with similar zones established by Japan and South Korea. China demanded that any flights, both commercial and military, through the zone alert authorities in Beijing ahead of time. Japanese, Korean, and U.S. forces immediately objected and sent flights through the zone, proving that Beijing lacked the ability to actually enforce the ADIZ.<sup>2</sup> Nonetheless, ASEAN was put on high alert, especially when China's then-ambassador to the Philippines, Ma Keping, said a week later that Beijing reserves the right to establish a similar zone in the South China Sea. On December 6, China sent another strong signal to the region when its only aircraft carrier, the *Liaoning*, docked at the Sanya base on Woody Island in the Paracels for the first time.

Tensions between Vietnam and China ratcheted higher on January 1, 2014, when new regulations from southern China's Hainan province to implement a 2004 national fisheries law took effect, including a rule that vessels seek permission from Chinese authorities before fishing or surveying in waters nominally under Hainan's jurisdiction—which includes all the waters enclosed by the nine-dash line. Both Vietnam and the Philippines announced they would ignore the regulation, while the United States and others strongly criticized it. Hainan's party secretary Luo Baoming said on March 6 that Chinese coast guard patrols were enforcing the fishing regulations by arresting or driving off fishing ships at the rate of at least one a week.<sup>3</sup>

While the Philippines and Vietnam have borne the brunt of China's assertive actions in the South China Sea over the last year, fellow claimant Malaysia has not been immune. China on January 26 announced that three of its ships—an amphibious landing craft and two destroyers—patrolled near the disputed James Shoal, which is located south of the Spratlys just 50 miles from the Malaysian coast. Chinese personnel on the ships also held a ceremony at the shoal swearing to defend China's sovereignty over the feature. If it were not so worrying, that development would have been laughable—James Shoal sits about 70 feet below the sea. Naval chief Abdul Aziz Jaafar three days later strenuously

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<sup>1</sup> "DFA: Spy Planes to Gather Evidence vs China," Rappler, August 1, 2013, <http://www.rappler.com/nation/35327-dfa-spy-planes-evidence-china>.

<sup>2</sup> Nicholas Szechenyi et al., "China's Air Defense Identification Zone: Impact on Regional Security," CSIS *Critical Questions*, November 26, 2013, <http://csis.org/publication/chinas-air-defense-identification-zone-impact-regional-security>.

<sup>3</sup> "China Apprehending Boats Weekly in Disputed South China Sea," Reuters, March 6, 2014, <http://www.reuters.com/article/2014/03/06/us-china-parliament-seas-idUSBREA2512I20140306>.

denied that there was ever a Chinese patrol, only to have armed forces chief Gen. Zulkifeli Mohd Zin reverse course on February 20 and admit that the incident had in fact happened.<sup>4</sup>

Philippine president Benigno Aquino has grown increasingly blunt in deriding Chinese actions over the last year. In a February 4 interview with the *New York Times*, he likened Beijing's actions in the South China Sea to those of Berlin on the eve of World War II and called on the international community to do more in support of Manila.<sup>5</sup> His statement followed closely on the heels of a statement by Japanese prime minister Shinzo Abe likening China to Germany in the lead-up to World War I.<sup>6</sup>

Scarborough Shoal, which Chinese forces occupied in April 2012, has remained a flashpoint. On February 25, 2014, Manila summoned Ambassador Ma to protest the use of water cannons by Chinese surveillance vessels to drive off Philippine fishing vessels near the shoal. Over the last year, there have been scattered reports of harassment of fishermen in the vicinity of Scarborough, while the entrance to the shoal itself has remained off-limits to Philippine ships.

On March 9, 2014, China dangerously escalated the situation near Second Thomas when it chased away Philippine civilian vessels carrying supplies to the garrison, which Beijing claimed were actually carrying construction materials. Manila managed to airdrop supplies to the troops three days later, but was unable to rotate out the marines for the rest of the month. Another civilian ship, this time packed with foreign reporters to document the Chinese Coast Guard's aggressive tactics, managed to reach Second Thomas and relieve the garrison on March 29. In attempting to do so, it was dangerously harassed by a Chinese vessel and managed to escape only by reaching shallower water around the shoal that the larger ship could not enter.

May saw the opening of a new stage of tensions in the South China Sea, at a level not seen since the 2012 Scarborough standoff. The China National Offshore Oil Corporation (CNOOC) on May 2 placed its \$1 billion deep-water drilling rig—China's only such platform—in waters south of the Paracel Islands that are claimed by Vietnam. The rig was initially accompanied by more than 80 Chinese ships, including at least 7 Navy vessels. Vietnam immediately dispatched over 20 coast guard and fisheries surveillance ships to try and prevent the rig's operations. Those numbers quickly escalated, with China having more than 100 ships surrounding the rig by June.

China announced that, despite Vietnam's objections, the rig was sitting on China's undisputed continental shelf, though Beijing never made a compelling case for that opinion.<sup>7</sup> CNOOC said that the rig would perform exploratory drilling in the area until

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<sup>4</sup> Carl Thayer, "'Speak Softly and Carry a Big Stick': What Is Malaysia Playing At?," *Diplomat*, February 28, 2014, <http://thediplomat.com/2014/03/speak-softly-and-carry-a-big-stick-what-is-malaysia-playing-at/>.

<sup>5</sup> Keith Bradsher, "Philippine Leader Sounds Alarm on China," *New York Times*, February 4, 2014, [http://www.nytimes.com/2014/02/05/world/asia/philippine-leader-urges-international-help-in-resisting-chinas-sea-claims.html?\\_r=0](http://www.nytimes.com/2014/02/05/world/asia/philippine-leader-urges-international-help-in-resisting-chinas-sea-claims.html?_r=0).

<sup>6</sup> Isabel Reynolds and Takashi Hirokawa, "Abe Comparing China Ties to Pre-War Europe Fuels Tensions," *Bloomberg*, January 23, 2014, <http://www.bloomberg.com/news/2014-01-23/abe-comparing-china-to-pre-world-war-one-germany-fuels-tensions.html>.

<sup>7</sup> Ernest Z. Bower and Gregory B. Poling, "China-Vietnam Tensions High over Drilling Rig in Disputed Waters," *CSIS Critical Questions*, May 7, 2014, <http://csis.org/publication/critical-questions-china-vietnam-tensions-high-over-drilling-rig-disputed-waters>.



mid-August. The result was a months-long standoff that involved constant harassment of each other's ships, including the use of water cannons and direct ship-to-ship ramming. In the most egregious incident, a Vietnamese fishing boat capsized on May 26 after being rammed by a considerably larger Chinese fishing vessel—an incident that was caught on camera by the Vietnamese crew.<sup>8</sup> All 10 fishermen on board were rescued and the ship was towed to Danang, but the sinking only further enflamed Vietnamese anger. Luckily, both sides refrained from employing naval ships in these confrontations, instead employing coast guard, fisheries surveillance, and civilian fishing ships.

The rig placement drove anti-China sentiment in Vietnam to the highest levels in recent memory. Hanoi decided to allow peaceful demonstrations against the rig, only to see those protests spiral into violence on May 13-14 as thousands of workers near Ho Chi Minh City and in central Vietnam attacked foreign business believed to be owned by Chinese companies (most were actually Taiwanese and Korean). The violence left four Chinese workers dead and forced Beijing to dispatch ships to central Vietnam to evacuate more than 3,000 of its citizen. On May 22, Vietnam's National Assembly issued a rare public statement condemning China's placement of the rig while also calling on the Vietnamese public to maintain stability.

While Vietnam dealt with the Chinese drilling rig as best it could, tensions continued to build between China and the Philippines in the Spratlys. On May 7, Philippine authorities arrested 11 Chinese fishermen for poaching endangered sea turtles near Half Moon Shoal in the Spratlys, about 70 miles from the Philippine island of Palawan. Despite demands from Beijing for their release, Manila charged 9 of the 11. The other two were released as juveniles.

Then on May 13, Philippine officials released surveillance photos showing Chinese construction and reclamation projects at Johnson South Reef. That reef, which China seized from Vietnam in 1988, is almost entirely submerged at high tide with the exception of a few rocks. On June 13, Manila released photos showing Chinese reclamation work at four other low-tide features and small rocks in the Spratlys. It appears that Beijing is focusing reclamation work on features that Manila is asking an international court to declare as either low-tide elevations not eligible for an independent claim of sovereignty, or rocks not entitled to an exclusive economic zone or continental shelf. Secretary del Rosario on June 16 proposed a ban on new construction in the South China Sea, but received no support from Beijing.

Chinese state councilor Yang Jiechi made what turned out to be a blunt and at times confrontational trip to Hanoi on June 17–18. He blamed Hanoi for increasing tensions in the South China Sea and insisted to Vietnam's deputy prime minister and foreign minister Pham Binh Minh that China's oil rig had been placed legally in undisputed waters. Yang also met with Prime Minister Dung for what was described as a frank discussion.

On July 15, CNOOC suddenly announced the withdrawal of the rig, which would be placed instead in undisputed waters off the coast of Hainan. CNOOC and the China National Petroleum Corporation, which owns rights to the oil block in which the rig was

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<sup>8</sup> "Vietnam Says China Still Ramming Boats, Airs Sinking Video," Bloomberg, June 5, 2014, <http://www.bloomberg.com/news/2014-06-05/vietnam-says-china-still-harassing-boats-shows-video-of-sinking.html>.

operating, said that the platform had completed the necessary test drilling and would not return to the disputed area until after samples from the drilling were tested. However, no explanation was given for why the testing wrapped up a month early—a fact that is especially surprising considering the delays caused by Vietnamese attempts to prevent the rig’s operation. Various explanations have been offered, including that authorities feared an approaching typhoon would leave the platform unprotected as its cordon of ships would be forced to withdraw, and that Beijing saw a chance to reduce the criticism it would receive at the August 10 ASEAN Regional Forum (ARF) in Naypyidaw while at the same time not appearing to have capitulated to Vietnamese demands.<sup>9</sup>

## The China-Philippines Arbitration Case

The July 2013 ARF featured a war of words between Chinese and Philippine officials over Manila’s continued insistence on seeking an arbitral award against Chinese claims. That acrimony set the precedent for most Chinese rhetoric vis-à-vis the Philippines’ arbitration case since. Beijing has continued to refuse to take part in the case brought by the Philippines, which officially opened at the Permanent Court of Arbitration (PCA) in The Hague on July 1, 2014.

Chinese officials have repeatedly questioned the jurisdiction of the court, preferring to make their legal arguments in public, presumably with the understanding that the five judges on the tribunal will take those arguments into account with or without Chinese advocates in the courtroom. China refused to submit comments on the rules of the proceedings by an August 5 deadline, though it did send a note to the PCA on August 1, 2013, reiterating its refusal to participate.<sup>10</sup>

Despite significant pressure to drop the case, Manila submitted its memorial, which includes testimony, evidence, and arguments, to the tribunal on March 30, 2014. The 10-volume, nearly 4,000-page submission enraged authorities in Beijing, and its pending submission was widely blamed for Beijing’s decision to blockade Second Thomas Shoal. China said it would not issue a counter-memorial, but the Chinese Embassy in Manila instead released a position paper on April 3 reiterating its stance that the arbitration tribunal lacks jurisdiction and the case is without merit.<sup>11</sup> The PCA on June 4 announced that China will have until December 15 to change its mind and file a memorial, after which date the case will move forward without or without Beijing’s participation. If the tribunal finds jurisdiction, an award in the case will likely be decided in early 2016.

Since the placement of China’s drilling rig off the Paracels, officials in Hanoi have repeatedly said that Vietnam is considering taking legal action against China. Following a May 21 meeting between President Aquino and Prime Minister Dung, Secretary del Rosario suggested that Vietnam consider participating in the Philippines’ case as an

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<sup>9</sup> Clint Richards, “China’s Rig Departure Proves Nothing,” *Diplomat*, July 16, 2014, <http://thediplomat.com/2014/07/chinas-rig-departure-proves-nothing/>.

<sup>10</sup> Permanent Court of Arbitration, “Arbitration between the Republic of the Philippines and the People’s Republic of China: Arbitral Tribunal Establishes Rules of Procedure and Initial Timetable,” press release, August 27, 2013, [http://www.pca-cpa.org/showfile.asp?fil\\_id=2311](http://www.pca-cpa.org/showfile.asp?fil_id=2311).

<sup>11</sup> “China’s Position Paper on Sea Disputes with Philippines,” *Philstar*, April 3, 2014, <http://www.philstar.com/disputed-seas/2014/04/03/1308385/chinas-position-paper-sea-disputes-philippines>.

interested party.<sup>12</sup> Dung on May 30 confirmed that Hanoi was prepared to take legal action against China.<sup>13</sup>

## The United States' Position

U.S. officials have remained consistent in their calls for all parties to peacefully manage the disputes in accordance with international law and to make concrete progress on a binding code of conduct (COC) for managing the disputes. At the same time, Washington has explicitly remained neutral on questions of territorial sovereignty over the land features in the South China Sea. Secretary of State John Kerry pressed China and ASEAN on these points on the sidelines of the July 1, 2013, ASEAN Ministerial Meeting in Brunei and during the ARF the following day.<sup>14</sup> Vice President Joseph Biden echoed this position on July 27 during a meeting with Singapore's prime minister Lee Hsien Loong and in statements afterward to the press.<sup>15</sup> He insisted that it is in the United States' interests to see the prompt negotiation of an ASEAN-China COC.

The U.S. position on the South China Sea was prominently on display during Defense Secretary Chuck Hagel's August 22–30, 2013, trip to the region, during which he visited Malaysia, Indonesia, and the Philippines, in addition to attending the ASEAN Defense Ministers' Meeting-Plus (ADMM+) in Brunei. The U.S. Congress has also voiced concern. On August 31, 2013, the Senate unanimously passed a resolution calling for a peaceful resolution to disputes in the East and South China seas and calling for claimants to reach a binding COC.<sup>16</sup> And Kerry again expressed support for a resolution of disputes based on international law and a speedy conclusion of a COC at the October 9 and 10 U.S.-ASEAN Summit and East Asia Summit (EAS) in Brunei, where he filled in for President Barack Obama who was unable to attend due to the partial government shutdown in Washington.<sup>17</sup>

The U.S. position has only grown more firm in 2014. National Security Council senior director for Asian affairs Evan Medeiros said January 30 that any attempt by China to institute an ADIZ over the South China Sea could trigger a shift in U.S. military posture in the Asia Pacific.<sup>18</sup> Six days later, Assistant Secretary of State for East Asia and the Pacific Danny Russel became the first U.S. official to publicly label the nine-dash line as illegal

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<sup>12</sup> Jim Gomez, "Vietnam Threatens Legal Action against China," Associated Press, May 22, 2014, <http://bigstory.ap.org/article/vietnam-threatens-legal-action-against-china>.

<sup>13</sup> "Vietnam Prepares Suit against China in Spat over Oil Rig," Bloomberg, May 31, 2014, <http://www.bloomberg.com/news/2014-05-30/vietnam-has-prepared-evidence-against-china-in-sea-spat.html>.

<sup>14</sup> Esther Teo, "Kerry Shows Support for South China Sea Code of Conduct," *Straits Times* (Singapore), July 1, 2013, <http://www.straitstimes.com/breaking-news/se-asia/story/kerry-shows-support-south-china-sea-code-conduct-20130701>.

<sup>15</sup> Haslinda Amin and Sharon Chen, "Biden Says U.S. to Push China for South China Sea Code," Bloomberg, July 28, 2013, <http://www.bloomberg.com/news/2013-07-28/u-s-to-push-china-for-south-china-sea-conduct-code-biden-says.html>.

<sup>16</sup> S. Res. 167, 113th Cong. (2013), <https://www.govtrack.us/congress/bills/113/sres167/text>.

<sup>17</sup> Lesley Wroughton and Manuel Mogato, "U.S., Japan Press China on South China Sea Dispute," Reuters, October 9, 2013, <http://www.reuters.com/article/2013/10/10/us-asia-summit-idUSBRE9980A320131010>.

<sup>18</sup> Jun Kaminshikawara, "U.S. Could Change Military Posture If China Expands Air Defense Zone," Kyodo News, February 1, 2014, <http://english.kyodonews.jp/news/2014/02/269068.html>.

when he told a congressional hearing that Beijing's refusal to base its claims on land features is inconsistent with international law.<sup>19</sup>

The South China Sea was also a topic of discussion at the first-of-its-kind meeting of U.S. and ASEAN defense ministers that Hagel hosted in Hawaii on April 1–3. And it featured heavily in discussions that President Obama had with Malaysian prime minister Najib Razak during his April 26–27 stop in Kuala Lumpur and with President Aquino in Manila on April 28–29. Hagel again addressed the issue on May 31 during remarks at the Shangri-La Dialogue in Singapore. Hagel echoed accusations made by Prime Minister Abe, who gave the opening keynote, accusing China of violating international law and employing aggression that could destabilize the region.<sup>20</sup>

On June 4, President Obama joined Abe and the heads of state of the other five members of the Group of Seven—Canada, France, Germany, Italy, and the United Kingdom—in issuing a joint statement opposing the use of force in the South and East China seas and emphasizing the importance of using international law to clarify and resolve the disputes.<sup>21</sup>

This consistent U.S. position—neutrality in territorial disputes, insistence on international law and nonaggression in managing maritime disputes, and the desirability of a timely negotiation of a COC—were echoed by Deputy Assistant Secretary of State Michael Fuchs during his keynote remarks on the second day of the CSIS South China Sea conference. But Fuchs also made an explicit proposal for a freeze on occupation and construction in disputed areas of the South China Sea—a call that has received no explicit support from China but quickly caught on in Washington and ASEAN circles, and can be expected to come up at the ARF.<sup>22</sup>

## Hunting for a Code of Conduct

Talks toward the implementation of the 2002 DOC and the conclusion of a COC have proceeded throughout the year, but without demonstrable progress. Officials in the region hoped for a breakthrough when ASEAN foreign ministers on August 14, 2013, emerged from a meeting in Hua Hin, Thailand, having reached a consensus on the likely contents of a COC and agreement on the need to quickly conclude one. Chinese authorities agreed to meet informally on the topic in Beijing on August 29. They met with ASEAN counterparts twice more in China in September, once among senior officials and again as part of the ninth joint working group on implementing the DOC. But hopes for progress were quickly dashed as those meetings and subsequent ones were characterized by foot-dragging by Beijing and discord between its cautious approach and the desire of most ASEAN members for a speedy conclusion of a COC.

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<sup>19</sup> Daniel R. Russel, “Maritime Disputes in East Asia” (testimony before the House Committee on Foreign Affairs Subcommittee on Asia and the Pacific, February 5, 2014), <http://www.state.gov/p/eap/rls/rm/2014/02/221293.htm>.

<sup>20</sup> Clint Richards, “Shangri-La Dialogue: The Aftermath,” *Diplomat*, June 2, 2014, <http://thediplomat.com/2014/06/shangri-la-dialogue-the-aftermath/>.

<sup>21</sup> Tuo Yannan, “G7 ‘Deeply Concerned’ about the East, South China Sea Tensions,” *China Daily*, June 6, 2014, [http://www.chinadaily.com.cn/world/2014-06/06/content\\_17567916.htm](http://www.chinadaily.com.cn/world/2014-06/06/content_17567916.htm).

<sup>22</sup> Michael Fuchs (remarks at the Fourth Annual South China Sea Conference, CSIS, Washington, DC, July 11, 2014), <http://www.state.gov/p/eap/rls/rm/2014/07/229129.htm>.

Chinese officials simply have not shared the sense of urgency regarding the COC that their ASEAN and other regional counterparts do. For instance, in addition to Secretary Kerry, both President Aquino and Prime Minister Abe during the October 9–10 ASEAN Summit and EAS called for an early conclusion of the COC, while Chinese premier Li Keqiang maintained the importance of a measured and consensus-based approach.

## Pushing Claimants Together

One clear result of China's growing aggressiveness has been to drive the other claimants, particularly the Philippines and Vietnam, in addition to other concerned ASEAN parties, closer than at any previous time, at least with regard to the South China Sea disputes. During the August 1, 2014, meeting of the Philippines-Vietnam Joint Commission for Bilateral Cooperation, Foreign Secretary del Rosario and Foreign Minister Minh pledged to work closely together to convince the rest of ASEAN to push China harder on a timely conclusion of a COC. Vietnamese defense minister Phuong Quang Thanh and his Philippine counterpart Voltaire Gazmin met in Manila on August 25–27, where their discussions also focused on joint security concerns in the South China Sea.

Malaysia and Vietnam on November 1, 2013, agreed to set up an intelligence-sharing link between their main bases on the South China Sea—Malaysia's Maritime Region 1 Base in Kuantan and Vietnam's Southern Command. Prime Ministers Dung and Lee on September 11 announced the upgrading of their two countries' relationship to a strategic partnership, with a specific emphasis on increasing cooperation on the South China Sea.

On February 18, 2014, senior officials from Malaysia, the Philippines, and Vietnam met for their first official three-way claimant meeting in Manila. Brunei originally agreed to send lower-level representatives from its embassy in Manila, but changed its mind at the last minute. The assembled officials echoed the now-familiar calls for China to abandon the nine-dash line and for the other claimants to take a coordinated approach in pushing to quickly conclude a COC.

When the heads of state of every ASEAN member nation except Thailand, which remained embroiled in a political crisis, attended the organization's annual summit in Naypyidaw on May 10–11, the South China Sea featured prominently. The day before the leaders' meeting, the ASEAN foreign ministers for the first time released a joint statement calling for a peaceful resolution to the crisis in light of the dangerous situation developing around the placement of China's drilling rig.<sup>23</sup>

ASEAN defense ministers met for their annual summit in Naypyidaw on May 20 and agreed to boost defense cooperation and establish a hotline for regional crises. They avoided mention of the South China Sea in their public statements, but the topic reportedly took center stage at a meeting afterward with their Chinese counterpart Chang Wanquan. Prime Minister Dung and President Aquino met again on the sidelines of the May 21 World Economic Forum on East Asia in Manila and jointly condemned Chinese actions.

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<sup>23</sup> ASEAN Foreign Ministers' Statement on the Current Developments in the South China Sea, May 10, 2014, <http://www.asean.org/news/asean-statement-communications/item/asean-foreign-ministers-statement-on-the-current-developments-in-the-south-china-sea>.



## Modernization and Realignment

Another result of China's assertiveness, and the increasing threat perceptions it has created in the region, has been to push the other claimants in the last year to speed up attempts to modernize their coast guard and naval capabilities and shift their focus increasingly to the South China Sea. Manila on August 3, 2014, announced the purchase of a decommissioned French naval vessel, *La Tapageuse*, for \$8 million. The ship is expected to be delivered to the Philippine coast guard in 2014. On December 4, the Philippine Department of National Defense announced that it would spend \$11 million to upgrade an airstrip and naval facilities on Thitu Island, the second largest of the Spratlys after the Taiwan-occupied Itu Aba.

In late January, the Philippines agreed to purchase three air-search radar from Israel for over \$58 million. The radar installations are expected to be delivered by 2016, and in the interim Israel has agreed to lend the Philippines one for use in monitoring the South China Sea. Then on March 28, Manila agreed to purchase 12 FA-50 fighter jets from South Korea and 4 Bell 12 combat utility helicopters from Canada for a combined \$528 million.

Vietnam's General Department of Defense Industry on August 26, 2013, transferred three patrol boats to the country's marine police department, which was renamed the Vietnam Coast Guard. Hanoi has subsequently increased training and funding for the coast guard. On January 3, 2014, Vietnam's navy took delivery of the first of six Russian-built *Kilo*-class submarines that will constitute the heart of its new deterrence capability in the South China Sea. A second was delivered in late January. Vietnamese sailors are currently training on the subs—it will likely take several years before Vietnam is able to operate the small fleet without onboard assistance from Russian officers.<sup>24</sup> On June 2, Deputy Defense Minister Nguyen Chi Vinh announced that Japan had agreed to provide the Vietnamese coast guard with training and additional patrol ships by 2015.

Manila and to a lesser extent Hanoi have both embraced increased cooperation with the United States as part of their efforts to modernize and counter China's naval and maritime superiority. To this end, Secretary Kerry pledged \$18 million in maritime assistance to Vietnam and \$40 million in military aid to the Philippines during a December 16–18 trip to the two countries. On April 8, 2014, two U.S. Navy ships and 400 U.S. sailors joined their Vietnamese counterparts for six days of noncombat exercises in the South China Sea. The exercises were accompanied by classroom training on maritime security at the University of Danang.

On April 27, 2014, just a day before President Obama landed in Manila, U.S. and Philippine officials concluded negotiations on an Enhanced Defense Cooperation Agreement to allow greater rotational access to Philippine bases for U.S. service personnel and materiel. Presidents Aquino and Obama hailed the agreement as a landmark achievement.<sup>25</sup>

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<sup>24</sup> Carlyle A. Thayer, "Russian Subs in Vietnam," USNI News, updated February 5, 2013, <http://news.usni.org/2012/08/20/russian-subs-vietnam>.

<sup>25</sup> White House Office of the Press Secretary, "Remarks by President Obama and President Benigno Aquino III of the Philippines in Joint Press Conference," press release, April 28, 2014, <http://www.whitehouse.gov/the-press-office/2014/04/28/remarks-president-obama-and-president-benigno-aquino-iii-philippines-joi>.

U.S. and Philippine troops came together from May 5 to 15 for the annual Balikatan bilateral exercises, with a special focus on maritime security. They were joined by Australian special forces. Foreign Secretary del Rosario pointed to the rising tempers in the South China Sea as proof of the importance of the exercises. Philippine armed forces chief Gen. Emmanuel Bautista on May 15 suggested that the United States would be offered access to Oyster Bay, a small naval base on Palawan facing the South China Sea, as part of the new cooperation agreement. Bautista was clear that he hoped the United States would rehabilitate the base, just 100 miles from the Spratlys, to give the Philippine military a better presence in the disputed archipelago.<sup>26</sup>

Malaysian defense minister Hishammuddin Hussein on October 10, 2013, announced that his country would create its first-ever marine corps to operate from a new base on the South China Sea in eastern Malaysia's Sabah state. The new corps, which has yet to be placed under either the army or navy, is considered vital to security in eastern Malaysia, which has seen frequent incursions by extremist and criminal elements. But the new base, which is just 60 miles from the disputed James Shoal, was clearly planned with an eye to the South China Sea. On February 11, 2014, Malaysian navy chief Aziz told visiting U.S. navy secretary Adm. Jonathan Greenert that Malaysia would welcome closer maritime relations, including more ship visits by the U.S. Navy.<sup>27</sup>

Unlike other claimants, however, Malaysia has been especially careful to balance its maritime modernization with messages of cooperation toward Beijing. For instance, Malaysian and Chinese officials on October 30, 2013, announced that they would hold joint military drills in 2014—their first since establishing official defense ties in 2005. During a May 27–June 1 visit to China to commemorate the 40th anniversary of the normalization of relations, Prime Minister Najib avoided any public mention of the South China Sea disputes and focused instead on positive bilateral cooperation.

Oft-overlooked Taiwan has gotten into the action too. In July 2013, it announced plans for \$111 million of infrastructure improvements at Itu Aba island in the Spratlys—the only island it occupies in the chain. The project, which will include a new pier and reinforcing an existing runway, began in 2014 and will be completed by the end of 2015.

Even Indonesia has cautiously entered a period of increased focus on its maritime capabilities in the South China Sea as some officials in Jakarta grow concerned that Beijing will seek to exert control over those parts of Indonesia's exclusive economic zone (EEZ) and continental shelf north of the Natuna Islands that fall within the nine-dash line claim. From March 28 to April 3, 2014, Jakarta hosted a biannual multilateral naval exercise—Operation Komodo—with all 10 ASEAN countries and 7 of the other 8 nations that make up the EAS (Australia was uninvited amid growing bilateral tensions) off the Natunas for the first time. The exercises focused on humanitarian assistance and disaster relief, but the choice of location was seen by many commentators as an indicator of growing Indonesian concern regarding the South China Sea.

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<sup>26</sup> Manuel Mogato, "Philippines May Offer U.S. Naval Base on Western Palawan Island," Reuters, May 15, 2014, <http://mobile.reuters.com/article/topNews/idUSBREA4E08O20140515?irpc=932>.

<sup>27</sup> "Malaysia, US to Strengthen Maritime Ties," Malay Mail Online, February 11, 2014, <http://www.themalaymailonline.com/malaysia/article/malaysia-us-maritime-ties-to-strengthen>.

## Recommendations for U.S. Policymakers

The Obama administration's efforts on the South China Sea disputes have stepped up in recent months. The most critical steps Washington can take are already being pursued: to consistently maintain that the only acceptable approach to the disputes is for all claimants to pursue their claims peacefully in accordance with international law, and assist in the modernization of Southeast Asian claimants' naval, maritime patrol, and domain awareness capabilities.

In addition, the administration has strongly supported the implementation of the DOC and the timely conclusion of a binding COC, and has played a crucial role in keeping the South China Sea at the top of regional and global agendas in order to rally support from other interested parties. It is imperative that U.S. policymakers continue in these efforts. In addition, Washington should consider the following:

- *Assist ASEAN in the identification of legally disputed waters and publicly issue a map depicting them.* One of the most persistent complications in attempts to manage the disputes—whether through joint development, confidence-building measures, joint conservation, or other forms of cooperation—is the failure of claimants to agree on which areas of the sea are disputed. This disagreement, primarily between China on one hand and the ASEAN claimants on the other, makes a binding COC likely unworkable.

The United States should push the claimants to agree among themselves on what areas they consider disputed, based strictly upon the overlap between coastal EEZs/continental shelves and the potential maritime entitlements of disputed islands, and offer technical and legal assistance in that effort. The ASEAN claimants, with public support from the United States and like-minded interested parties, should publicize the map of this legally disputed area. If the ASEAN claimants remain reticent or unable to agree on an area of dispute, the United States should create its own map based on UNCLOS and customary international law to help move the discussion forward.

- *Release a detailed legal analysis of claims in the South China Sea, particularly regarding the nine-dash line, through the State Department.* In the same vein as publishing a public map, the U.S. State Department should issue an analysis of the United States' position regarding the legality of claims in the South China Sea. In some cases, such as regarding claimants' straight territorial baselines, the State Department did this through the Limits in the Seas series of position papers published since 1970.<sup>28</sup> The department took an important step this year when it renewed the series after an eight-year hiatus, but it has so far not taken up the issue of claims in the South China Sea.
- *Push ASEAN and its dialogue partners to embrace a freeze on activities in disputed areas while pursuing a binding COC in the hopes of pressing China to do the same.* Deputy Assistant Secretary Fuchs's proposal for such a freeze, particularly on the occupation and construction in disputed areas, was one of the highlights of CSIS's

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<sup>28</sup> U.S. Department of State, "Limits in the Seas," accessed July 17, 2014, <http://www.state.gov/e/oes/ocns/opa/c16065.htm>.

conference and quickly received both support and dismissal, the latter mainly from the Chinese press. But pushing the other claimants to accept such a freeze could go a long way toward building momentum for the COC.

Secretary Kerry will undoubtedly raise this proposal at the ARF, and it has already peaked interest in the region. Secretary del Rosario, for instance, said on July 17 that he and Indonesian foreign minister Marty Natalegawa were considering inclusion of such a freeze in an undisclosed plan they will present to ASEAN foreign ministers for a coordinated approach to manage tensions in the sea.<sup>29</sup>

- *Ratify the UN Convention on the Law of the Sea.* This is a perennial complaint, especially from Chinese interlocutors who point to the perceived hypocrisy of U.S. officials insisting that Beijing follow its commitments under UNCLOS without Washington being a party to the treaty. There is likely no possibility of ratification during President Obama's remaining time in office, but that does not mean the administration should not be pushing to build a consensus in Congress now—one that could be employed by his successor to secure ratification after 2016.
- *Issue a public acknowledgment that the United States erred in not accepting the 1986 ruling in the Nicaragua v. United States International Court of Justice case.* This is another example that Beijing uses to claim U.S. hypocrisy regarding international law. More importantly, it is a black mark on the international legal system and Washington's commitment to it. Nicaragua withdrew the case in the 1990s, so subsequent administrations never had the chance to reverse President Ronald Reagan's decision to ignore the court's ruling and refuse to compensate Nicaragua for the United States' support for antigovernment forces and the mining of Nicaragua's harbors. Nevertheless, the Obama administration could help bolster the credibility of international law by issuing a public acknowledgment that the United States was wrong to thumb its nose at the court.
- *Reexamine the ban on lethal weapons sales to Vietnam, preferably by developing a roadmap to allow a step-by-step relaxation of the restrictions.* The congressional ban on sales of lethal weapons to Vietnam until the country's human rights record improves significantly retains bipartisan support and is unlikely to be rescinded in the near future. But the issue is no longer the taboo subject it was in years past. During his confirmation hearing in June, Ted Osius, the nominee for ambassador to Vietnam, supported a reexamination of the ban.<sup>30</sup>

Garnering congressional support for lifting the arms sales restrictions would require Vietnam to work with the administration on implementing some concrete measures to improve the human rights climate, particularly with regards to restrictions on religious freedom and the ongoing crackdown on bloggers. While Congress is unlikely to lift the ban entirely any time soon, the administration should examine the possibility of allowing the export of certain types of weapons, especially coast guard and certain naval materiel that are almost exclusively

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<sup>29</sup> Pots de Leon, "PH, Indonesia to present solution to West Philippine Sea row," InterAksyon.com, July 17, 2014, <http://www.interaksyon.com/article/91410/ph-indonesia-to-present-solution-to-west-philippine-sea-row>.

<sup>30</sup> Matthew Pennington, "Envoy Nominee Open to Lifting Arms Ban to Vietnam," Associated Press, June 17, 2014, <http://bigstory.ap.org/article/envoy-nominee-open-lifting-arms-ban-vietnam>.

applicable to external defense. This could be linked to prescribed, achievable steps by Hanoi in the short term, and would go a long way to helping Vietnam build a credible deterrent against Chinese aggression.

- *Relax the prohibition on contact between U.S. and Chinese forces in certain areas in order to promote more robust Chinese engagement in future joint exercises.* There is a strong consensus that improved links between the U.S. and Chinese militaries are essential to maintaining peace in the Asia Pacific as China extends its naval reach in the region. The better military-to-military contacts become, the less likely it will be for misunderstandings to lead to conflict. This is the rationale behind China's participation in the 2014 Rim of the Pacific (RIMPAC) multilateral naval exercises in Hawaii from June 26 to August 1.

Beijing deployed the second-largest naval contingent to the exercises after the United States, including 48 ships, 6 submarines, and 25,000 sailors. It took part in a wide range of joint training and exercises with participants from the other 21 nations present, but was unable to take part in an "opposed boarding" of a ship. This was because the 2000 National Defense Authorization Act bans U.S. forces from engaging with Chinese counterparts in 12 areas, including joint combat operations.<sup>31</sup> This ban has both political and national security rationales, and will probably prove impossible to roll back in its entirety. But the administration should use RIMPAC as a launching pad for a discussion with Congress on ways to relax the prohibition on some areas of cooperation, particularly during multilateral exercises.

- *Clarify that the United States would consider itself obligated to respond under the terms of its mutual defense treaty with the Philippines if unprovoked Chinese actions in disputed areas led directly to the death or injury of Philippine troops.* The United States has been hesitant to clarify its obligations to the Philippines in the same way that it has explicitly said that the Senkaku/Diaoyu Islands fall under the umbrella of the U.S.-Japan alliance. In some ways, such ambiguity serves an important purpose by allowing the United States greater room for maneuver in case of a crisis. But it also creates uncertainty in both Manila and Beijing regarding just what the red line would be for U.S. military intervention.

During the CSIS South China Sea conference, a simulation was held regarding the potential U.S. response to a complete Chinese blockade of resupply to Filipino marines stationed at Second Thomas Shoal. That simulation, which consisted entirely of former U.S. administration officials, both Democrats and Republicans, showed that such an incident would provoke a U.S. military response under the aegis of the U.S.-Philippine treaty if it threatened the lives of Filipino troops.<sup>32</sup> This is a point that should be made explicit to China for the sake of avoiding a conflict over a misunderstanding of U.S. red lines.

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<sup>31</sup> Jeremy Page, "In Pacific Drills, Navies Adjust to New Arrival: China," *Wall Street Journal*, July 16, 2014, [http://online.wsj.com/news/article\\_email/in-rimpac-naval-drills-off-hawaii-militaries-adjust-to-new-arrival-china-1405527835-lMyQjAxMTA0MDEwNzExNDcyWj](http://online.wsj.com/news/article_email/in-rimpac-naval-drills-off-hawaii-militaries-adjust-to-new-arrival-china-1405527835-lMyQjAxMTA0MDEwNzExNDcyWj).

<sup>32</sup> "Video: Recent Trends in the South China Sea and U.S. Policy: Day 1, Panel 4 Simulation," CSIS, July 10, 2014, <http://csis.org/multimedia/video-recent-trends-south-china-sea-and-us-policy-simulation-us-response-crisis-south-chin>.



- *Make the renovation, upgrading, and use of the Oyster Bay naval base a key focus of U.S. activities under the new Enhanced Defense Cooperation Agreement with the Philippines.* The new agreement to allow greater rotational access to Philippine bases for U.S. troops and materiel will play an important role in assisting with Philippine force modernization, domain awareness, and maritime capacity building. As Manila has made clear, one hope is that the United States will choose to renovate and make use of the small base at Oyster Bay—the closest Philippine naval facility to the disputed Spratlys. Washington should seize this chance, both to assist the Philippines to build its minimum credible defense against Chinese actions, and to ensure that in the case of a crisis, the United States will likely have its own assets deployed to Oyster Bay and therefore capable of rapid response.
- *Build up maritime domain awareness capabilities, for both the United States and its partners, and release a public database of real-time surface traffic in the South China Sea.* Such a public database would contribute enormously to the protection of legal, transparent use of the South China Sea’s waterways, and help reduce confusion and avoid misunderstandings that can trigger unlooked-for clashes. The United States already has much of this capability, primarily through satellite monitoring and existing radar and signals intelligence facilities in the region. The latter should be built up, and more added. But the United States should also redouble efforts to boost the maritime domain awareness capabilities of its allies and partners, including Australia, Indonesia, Malaysia, the Philippines, Singapore, and Vietnam, in order to build a more effective monitoring network in the South China Sea.

## About the Author

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