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# Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress

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## Summary

China's actions for asserting and defending its maritime territorial and exclusive economic zone (EEZ) claims in the East China (ECS) and South China Sea (SCS), particularly since late 2013, have heightened concerns among observers that ongoing disputes over these waters and some of the islands within them could lead to a crisis or conflict between China and a neighboring country such as Japan, the Philippines, or Vietnam, and that the United States could be drawn into such a crisis or conflict as a result of obligations the United States has under bilateral security treaties with Japan and the Philippines.

More broadly, China's actions for asserting and defending its maritime territorial and EEZ claims have led to increasing concerns among some observers that China may be seeking to dominate or gain control of its near-seas region, meaning the ECS, the SCS, and the Yellow Sea. Chinese domination over or control of this region, or Chinese actions that are perceived as being aimed at achieving such domination or control, could have major implications for the United States, including implications for U.S.-China relations, for interpreting China's rise as a major world power, for the security structure of the Asia-Pacific region, for the long-standing U.S. strategic goal of preventing the emergence of a regional hegemon in one part of Eurasia or another, and for two key elements of the U.S.-led international order that has operated since World War II—the non-use of force or coercion as a means of settling disputes between countries, and freedom of the seas.

China is a party to multiple territorial disputes in the SCS and ECS, including, in particular, disputes over the Paracel Islands, Spratly Islands, and Scarborough Shoal in the SCS, and the Senkaku Islands in the ECS. China depicts its territorial claims in the SCS using the so-called map of the nine-dash line that appears to enclose an area covering roughly 90% of the SCS. Some observers characterize China's approach for asserting and defending its territorial claims in the ECS and SCS as a "salami-slicing" strategy that employs a series of incremental actions, none of which by itself is a *casus belli*, to gradually change the status quo in China's favor.

In addition to territorial disputes in the SCS and ECS, China is involved in a dispute, particularly with the United States, over whether China has a right under international law to regulate the activities of foreign military forces operating within China's EEZ. The dispute appears to be at the heart of incidents between Chinese and U.S. ships and aircraft in international waters and airspace in 2001, 2002, 2009, 2013, and 2014.

The U.S. position on territorial and EEZ disputes in the Western Pacific (including those involving China) includes the following elements, among others: The United States takes no position on competing claims to sovereignty over disputed land features in the ECS and SCS, but *does* have a position on how competing claims should be resolved: Territorial disputes should be resolved peacefully, without coercion, intimidation, threats, or the use of force, and in a manner consistent with international law. Claims of territorial waters and EEZs should be consistent with customary international law of the sea and must therefore, among other things, derive from land features. Claims in the SCS that are not derived from land features are fundamentally flawed. Parties should avoid taking provocative or unilateral actions that disrupt the status quo or jeopardize peace and security. The United States does not believe that large-scale land reclamation with the intent to militarize outposts on disputed land features is consistent with the region's desire for peace and stability. The Senkaku Islands are under the administration of Japan and unilateral attempts to change the status quo raise tensions and do nothing under international

law to strengthen territorial claims. The United States has a national interest in the preservation of freedom of seas as recognized in customary international law of the sea. The United States opposes claims that impinge on the rights, freedoms, and lawful uses of the sea that belong to all nations. The United States, like most other countries, believes that coastal states under UNCLOS have the right to regulate economic activities in their EEZs, but do not have the right to regulate foreign military activities in their EEZs. U.S. military surveillance flights in international airspace above another country's EEZ are lawful under international law, and the United States plans to continue conducting these flights as it has in the past.

China's actions for asserting and defending its maritime territorial and EEZ claims in the ECS and SCS raise several potential policy and oversight issues for Congress, including whether the United States has an adequate strategy for countering China's "salami-slicing" strategy, whether the United States has taken adequate actions to reduce the risk that the United States might be drawn into a crisis or conflict over a territorial dispute involving China, and whether the United States should become a party to the United Nations Convention on the Law of the Sea (UNCLOS).

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## Introduction

China's actions for asserting and defending its maritime territorial and exclusive economic zone (EEZ)<sup>1</sup> claims in the East China (ECS) and South China Sea (SCS), particularly since late 2013, have heightened concerns among observers that ongoing disputes over these waters and some of the islands within them could lead to a crisis or conflict between China and a neighboring country such as Japan, the Philippines, or Vietnam, and that the United States could be drawn into such a crisis or conflict as a result of obligations the United States has under bilateral security treaties with Japan and the Philippines.

More broadly, China's actions for asserting and defending its maritime territorial and EEZ claims have led to increasing concerns among some observers that China may be seeking to dominate or gain control of its near-seas region, meaning the ECS, the SCS, and the Yellow Sea. Chinese domination over or control of this region, or Chinese actions that are perceived as being aimed at achieving such domination or control, could have major implications for the United States, including implications for U.S.-China relations, for interpreting China's rise as a major world power, for the security structure of the Asia-Pacific region, for the long-standing U.S. strategic goal of preventing the emergence of a regional hegemon in one part of Eurasia or another, and for two key elements of the U.S.-led international order that has operated since World War II—the non-use of force or coercion as a means of settling disputes between countries, and freedom of the seas.

China's actions for asserting and defending its maritime territorial and EEZ claims in the ECS and SCS raise several potential policy and oversight issues for Congress. Decisions that Congress makes on these issues could substantially affect U.S. political and economic interests in the Asia-Pacific region and U.S. military operations in both the Asia-Pacific region and elsewhere.

The specifics of China's maritime territorial disputes with other countries are discussed in greater detail in other CRS reports.<sup>2</sup> Additional CRS reports cover other aspects of U.S. relations with China and other countries in the region.

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<sup>1</sup> A country's EEZ includes waters extending up to 200 nautical miles from its land territory. Coastal states have the right under the United Nations Convention on the Law of the Sea (UNCLOS) to regulate foreign economic activities in their own EEZs. EEZs were established as a feature of international law by UNCLOS.

<sup>2</sup> CRS Report R42930, *Maritime Territorial Disputes in East Asia: Issues for Congress*, by Ben Dolven, Mark E. Manyin, and Shirley A. Kan; CRS Report R42761, *Senkaku (Diaoyu/Diaoyutai) Islands Dispute: U.S. Treaty Obligations*, by Mark E. Manyin; and CRS Report RL33436, *Japan-U.S. Relations: Issues for Congress*, coordinated by Emma Chanlett-Avery.

# Background

## Overview of the Disputes

### Maritime Territorial Disputes

China is a party to multiple maritime territorial disputes in the SCS and ECS, including in particular the following (see **Figure 1** for locations of the island groups listed below):

- a dispute over the **Paracel Islands** in the SCS, which are claimed by China and Vietnam, and occupied by China;
- a dispute over the **Spratly Islands** in the SCS, which are claimed entirely by China, Taiwan, and Vietnam, and in part by the Philippines, Malaysia, and Brunei, and which are occupied in part by all these countries except Brunei;
- a dispute over **Scarborough Shoal** in the SCS, which is claimed by China, Taiwan, and the Philippines; and
- a dispute over the **Senkaku Islands** in the ECS, which are claimed by China, Taiwan, and Japan, and administered by Japan.

The island and shoal names used above are the ones commonly used in the United States; in other countries, these islands are known by various other names. China, for example, refers to the Paracel Islands as the Xisha islands, to the Spratly Islands as the Nansha islands, to Scarborough Shoal as Huangyan island, and to the Senkaku Islands as the Diaoyu islands.

These island groups are not the only land features in the SCS and ECS—the two seas feature other islands, rocks, shoals, and reefs, as well as some near-surface submerged features. The territorial status of some of these other features is also in dispute.<sup>3</sup> It should also be noted that there are additional maritime territorial disputes in the Western Pacific that do not involve China.<sup>4</sup>

Maritime territorial disputes in the SCS and ECS date back many years, and have periodically led to incidents and periods of increased tension.<sup>5</sup> The disputes have again intensified in the past few

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<sup>3</sup> For example, the Reed Bank, a submerged atoll northeast of the Spratly Islands, is the subject of a dispute between China and the Philippines, and the Macclesfield Bank, a group of submerged shoals and reefs between the Paracel Islands and Scarborough Shoal, is claimed by China, Taiwan, and the Philippines. China refers to the Macclesfield Bank as the Zhongsha islands, even though they are submerged features rather than islands.

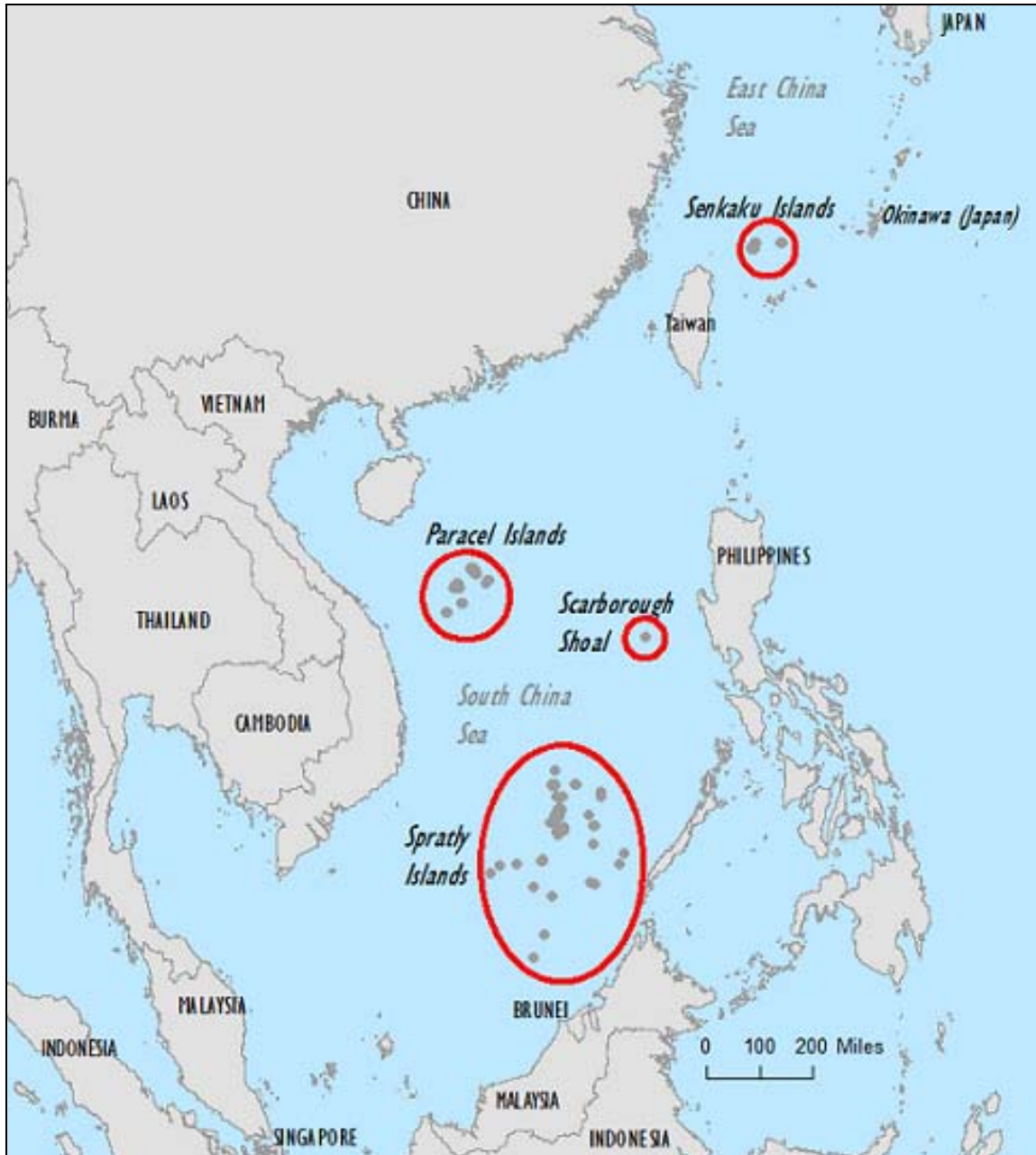
<sup>4</sup> North Korea and South Korea, for example, have not reached final agreement on their exact maritime border; South Korea and Japan are involved in a dispute over the Liancourt Rocks—a group of islets in the Sea of Japan that Japan refers to as the Takeshima islands and South Korea as the Dokdo islands; and Japan and Russia are involved in a dispute over islands dividing the Sea of Okhotsk from the Pacific Ocean that Japan refers to as the Northern Territories and Russia refers to as the South Kuril Islands.

<sup>5</sup> One observer states that “notable incidents over sovereignty include the Chinese attack on the forces of the Republic of Vietnam [South Vietnam] in the Paracel Islands in 1974, China’s attack on Vietnamese forces near Fiery Cross Reef [in the Spratly Islands] in 1988, and China’s military ouster of Philippines forces from Mischief Reef [also in the Spratly Islands] in 1995.” Peter Dutton, “Three Dispute and Three Objectives,” *Naval War College Review*, Autumn 2011: 43. A similar recounting can be found in Department of Defense, *Annual Report to Congress, Military and Security Developments Involving the People’s Republic of China*, 2011, p. 15.

years, leading to numerous confrontations and incidents involving fishing vessels, oil exploration vessels and oil rigs, coast guard ships, naval ships, and military aircraft. The intensification of the disputes in recent years has substantially heightened tensions between China and other countries in the region, particularly Japan, the Philippines, and Vietnam.

**Figure 1. Maritime Territorial Disputes Involving China**

Island groups involved in principal disputes



**Source:** Map prepared by CRS using base maps provided by Esri.

**Note:** Disputed islands have been enlarged to make them more visible.



## Dispute Regarding China's Rights Within Its EEZ

In addition to maritime territorial disputes in the SCS and ECS, China is involved in a dispute, particularly with the United States, over whether China has a right under international law to regulate the activities of foreign military forces operating within China's EEZ. The position of the United States and most countries is that while the United Nations Convention on the Law of the Sea (UNCLOS), which established EEZs as a feature of international law, gives coastal states the right to regulate economic activities (such as fishing and oil exploration) within their EEZs, it does not give coastal states the right to regulate foreign military activities in the parts of their EEZs beyond their 12-nautical-mile territorial waters.<sup>6</sup> The position of China and some other countries (i.e., a minority group among the world's nations) is that UNCLOS gives coastal states the right to regulate not only economic activities, but also foreign military activities, in their EEZs. In response to a request from CRS to identify the countries taking this latter position, the U.S. Navy states that

countries with restrictions inconsistent with the Law of the Sea Convention [i.e., UNCLOS] that would limit the exercise of high seas freedoms by foreign navies beyond 12 nautical miles from the coast are [the following 27]:

Bangladesh, Brazil, Burma, Cambodia, Cape Verde, China, Egypt, Haiti, India, Iran, Kenya, Malaysia, Maldives, Mauritius, North Korea, Pakistan, Portugal, Saudi Arabia, Somalia, Sri Lanka, Sudan, Syria, Thailand, United Arab Emirates, Uruguay, Venezuela, and Vietnam.<sup>7</sup>

Other observers provide different counts of the number of countries that take the position that UNCLOS gives coastal states the right to regulate not only economic activities but also foreign military activities in their EEZs. For example, one set of observers, in an August 2013 briefing, stated that 18 countries seek to regulate foreign military activities in their EEZs, and that three of these countries—China, North Korea, and Peru—have directly interfered with foreign military activities in their EEZs.<sup>8</sup>

The dispute over whether China has a right under UNCLOS to regulate the activities of foreign military forces operating within its EEZ appears to be at the heart of incidents between Chinese and U.S. ships and aircraft in international waters and airspace, including

- incidents in March 2001, September 2002, March 2009, and May 2009, in which Chinese ships and aircraft confronted and harassed the U.S. naval ships *Bowditch*, *Impeccable*, and *Victorious* as they were conducting survey and ocean surveillance operations in China's EEZ;

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<sup>6</sup> The legal term under UNCLOS for territorial waters is territorial seas. This report uses the more colloquial term territorial waters to avoid confusion with terms like South China Sea and East China Sea.

<sup>7</sup> Source: Navy Office of Legislative Affairs email to CRS, June 15, 2012. The email notes that two additional countries—Ecuador and Peru—also have restrictions inconsistent with UNCLOS that would limit the exercise of high seas freedoms by foreign navies beyond 12 nautical miles from the coast, but do so solely because they claim an extension of their territorial sea beyond 12 nautical miles.

<sup>8</sup> Source: Joe Baggett and Pete Pedrozo, briefing for Center for Naval Analysis Excessive Chinese Maritime Claims Workshop, August 7, 2013, slide entitled "What are other nations' views?" (slide 30 of 47). The slide also notes that there have been "isolated diplomatic protests from Pakistan, India, and Brazil over military surveys" conducted in their EEZs.

- an incident on April 1, 2001, in which a Chinese fighter collided with a U.S. Navy EP-3 electronic surveillance aircraft flying in international airspace about 65 miles southeast of China's Hainan Island in the South China Sea, forcing the EP-3 to make an emergency landing on Hainan Island;<sup>9</sup>
- an incident on December 5, 2013, in which a Chinese navy ship put itself in the path of the U.S. Navy cruiser *Cowpens* as it was operating 30 or more miles from China's aircraft carrier *Liaoning*, forcing the *Cowpens* to change course to avoid a collision; and
- an incident on August 19, 2014, in which a Chinese fighter conducted an aggressive and risky intercept of a U.S. Navy P-8 maritime patrol aircraft that was flying in international airspace about 135 miles east of Hainan Island.<sup>10</sup> DOD characterized the intercept as "very, very close, very dangerous."<sup>11</sup>

**Figure 2** shows the locations of the 2001, 2002, and 2009 incidents listed in the first two bullets above. The incidents shown in **Figure 2** are the ones most commonly cited prior to the December 2013 involving the *Cowpens*, but some observers list additional incidents as well. For example, one set of observers, in an August 2013 briefing, provided the following list of incidents in which China has challenged or interfered with operations by U.S. ships and aircraft and ships from India's navy:

- USNS *Bowditch* (March 2001);
- EP-3 Incident (April 2001);
- USNS *Impeccable* (March 2009);
- USNS *Victorious* (May 2009);
- USS *George Washington* (July-November 2010);
- U-2 Intercept (June 2011);
- INS [Indian Naval Ship] *Airavat* (July 2011);

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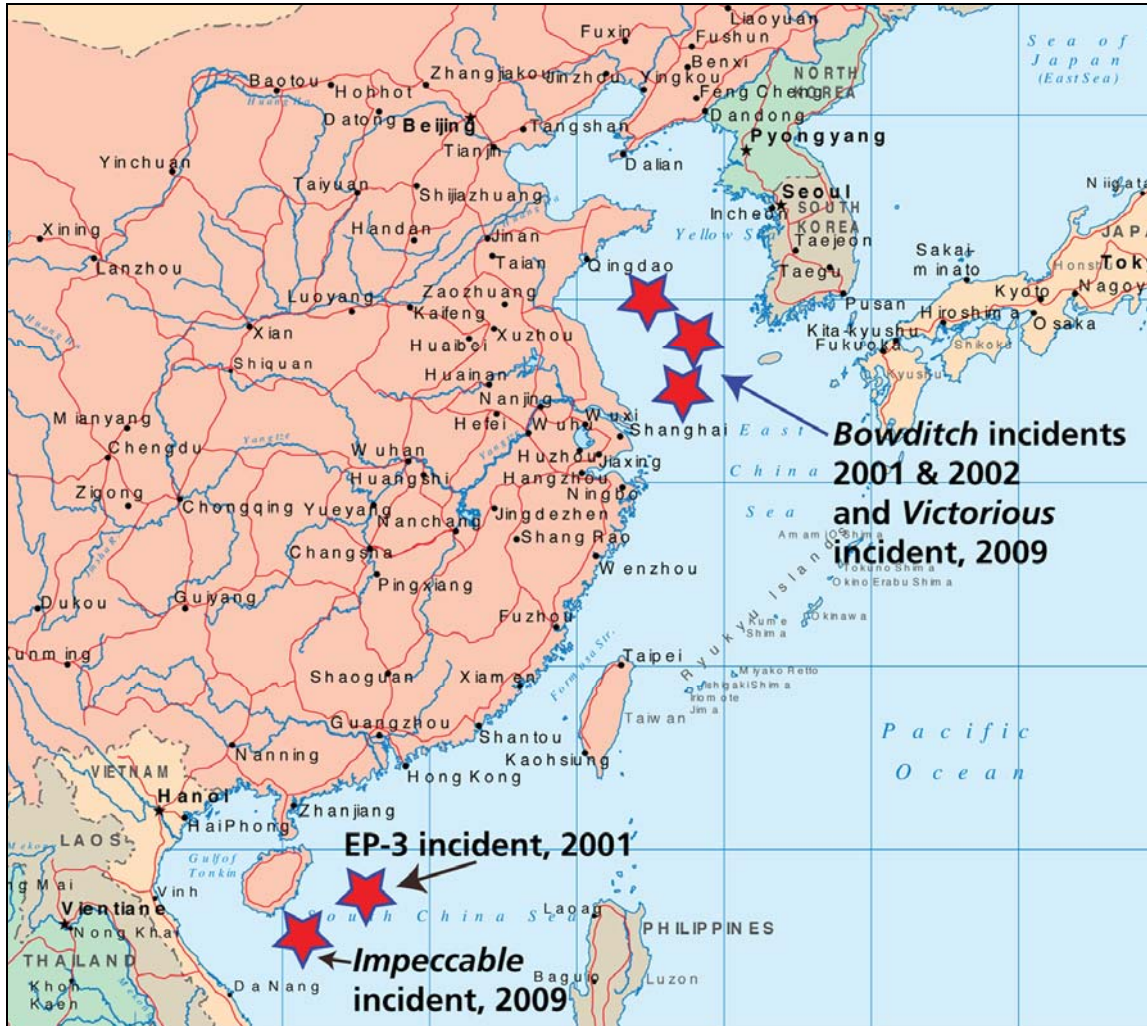
<sup>9</sup> For discussions of some of these incidents and their connection to the issue of military operating rights in EEZs, see Raul Pedrozo, "Close Encounters at Sea, The USNS Impeccable Incident," *Naval War College Review*, Summer 2009: 101-111; Jonathan G. Odom, "The True 'Lies' of the *Impeccable* Incident: What Really Happened, Who Disregarded International Law, and Why Every Nation (Outside of China) Should Be Concerned," *Michigan State Journal of International Law*, vol. 18, no. 3, 2010: 16-22, accessed September 25, 2012, at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1622943](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1622943); Oriana Skylar Mastro, "Signaling and Military Provocation in Chinese National Security Strategy: A Closer Look at the Impeccable Incident," *Journal of Strategic Studies*, April 2011: 219-244; and Peter Dutton, ed., *Military Activities in the EEZ, A U.S.-China Dialogue on Security and International Law in the Maritime Commons*, Newport (RI), Naval War College, China Maritime Studies Institute, China Maritime Study Number 7, December 2010, 124 pp. See also CRS Report RL30946, *China-U.S. Aircraft Collision Incident of April 2001: Assessments and Policy Implications*, by Shirley A. Kan et al.

<sup>10</sup> Source for location: Transcript of remarks by DOD Press Secretary Rear Admiral John Kirby at August 22, 2014, press briefing, accessed September 26, 2014, at <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5493>. Chinese officials stated that the incident occurred 220 kilometers (about 137 statute miles or about 119 nautical miles) from Hainan Island.

<sup>11</sup> Source: Transcript of remarks by DOD Press Secretary Rear Admiral John Kirby at August 22, 2014, press briefing, accessed September 26, 2014, at <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5493>.

- INS [Indian Naval Ship] *Shivalik* (June 2012); and
- USNS *Impeccable* (July 2013).<sup>12</sup>

**Figure 2. Locations of 2001, 2002, and 2009 U.S.-Chinese Incidents at Sea and In Air**



**Source:** Mark E. Redden and Phillip C. Saunders, *Managing Sino-U.S. Air and Naval Interactions: Cold War Lessons and New Avenues of Approach*, Washington, Center for the Study of Chinese Military Affairs, Institute for National Strategic Studies, National Defense University, September 2012. Detail of map shown on page 6.

<sup>12</sup> Source: Joe Baggett and Pete Pedrozo, briefing for Center for Naval Analysis Excessive Chinese Maritime Claims Workshop, August 7, 2013, slide entitled “Notable EEZ Incidents with China,” (slides 37 and 46 of 47). Regarding an event involving the *Impeccable* reported to have taken place in June rather than July, see William Cole, “Chinese Help Plan For Huge War Game Near Isles,” Honolulu Star-Advertiser, July 25, 2013: 1. See also Bill Gertz, “Inside the Ring: New Naval Harassment in Asia,” July 17, 2013. See also Department of Defense Press Briefing by Adm. Locklear in the Pentagon Briefing Room, July 11, 2013, accessed August 9, 2013, at <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=5270>. As of September 26, 2014, a video of part of the incident was posted on YouTube at <http://www.youtube.com/watch?v=TiyeUWQObkg>.

## **Relationship of Maritime Territorial Disputes to EEZ Dispute**

The issue of whether China has the right under UNCLOS to regulate foreign military activities in its EEZ is related to, but ultimately separate from, the issue of territorial disputes in the SCS and ECS. The two issues are related because China can claim EEZs from inhabitable islands over which it has sovereignty, so accepting China's claims to sovereignty over inhabitable islands in the SCS or ECS could permit China to expand the EEZ zone within which China claims a right to regulate foreign military activities.

The EEZ issue is ultimately separate from the territorial disputes issue because even if all the territorial disputes in the SCS and ECS were resolved, and none of China's claims in the SCS and ECS were accepted, China could continue to apply its concept of its EEZ rights to the EEZ that it unequivocally derives from its mainland coast—and it is in this unequivocal Chinese EEZ that most of the past U.S.-Chinese incidents at sea have occurred.

Press reports of maritime disputes in the SCS and ECS often focus on territorial disputes while devoting little or no attention to the related but ultimately separate EEZ dispute. From the U.S. perspective, however, the EEZ dispute is arguably as significant as the maritime territorial disputes because of its potential for leading to a U.S.-Chinese incident at sea<sup>13</sup> and because of its potential for affecting U.S. military operations not only in the SCS and ECS, but around the world.

## **Treaties and Agreements Related to the Disputes**

### **United Nations Convention on the Law of the Sea (UNCLOS)**

The United Nations Convention on the Law of the Sea (UNCLOS) establishes a treaty regime to govern activities on, over, and under the world's oceans. UNCLOS was adopted by Third United Nations Conference on the Law of the Sea in December 1982, and entered into force in November 1994. The treaty established EEZs as a feature of international law, and contains multiple provisions relating to territorial waters and EEZs. As of January 7, 2015, 167 nations were party to the treaty, including China and most other countries bordering on the SCS and ECS (the exceptions being North Korea and Taiwan).<sup>14</sup>

The treaty and an associated 1994 agreement relating to implementation of Part XI of the treaty (on deep seabed mining) were transmitted to the Senate on October 6, 1994.<sup>15</sup> In the absence of Senate advice and consent to adherence, the United States is not a party to the convention and the associated 1994 agreement. A March 10, 1983, statement on U.S. ocean policy by President Ronald Reagan states that UNCLOS

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<sup>13</sup> For a discussion, see Jeff M. Smith and Joshua Eisenman, "China and America Clash on the High Seas: The EEZ Challenge," *The National Interest*, May 22, 2014.

<sup>14</sup> Source: Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at 3 October 2014 (updated January 7, 2015), accessed April 15, 2015, at [http://www.un.org/Depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm#](http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#). The United Nations Convention on the Law of the Sea. A similar list, in alphabetical order by country name, is posted at [http://www.un.org/Depts/los/reference\\_files/status2010.pdf](http://www.un.org/Depts/los/reference_files/status2010.pdf).

<sup>15</sup> Treaty Document 103-39.

contains provisions with respect to traditional uses of the oceans which generally confirm existing maritime law and practice and fairly balance the interests of all states.

Today I am announcing three decisions to promote and protect the oceans interests of the United States in a manner consistent with those fair and balanced results in the Convention and international law.

First, the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans—such as navigation and overflight. In this respect, the United States will recognize the rights of other states in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states.

Second, the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the convention. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.

Third, I am proclaiming today an Exclusive Economic Zone in which the United States will exercise sovereign rights in living and nonliving resources within 200 nautical miles of its coast. This will provide United States jurisdiction for mineral resources out to 200 nautical miles that are not on the continental shelf.<sup>16</sup>

UNCLOS builds on four 1958 law of the sea conventions to which the United States is a party: the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on the Continental Shelf, and the Convention on Fishing and Conservation of the Living Resources of the High Seas.

### **1972 Multilateral Convention on Preventing Collisions at Sea (COLREGs Convention)**

China and the United States, as well as more than 150 other countries (including all those bordering on the South East and South China Seas other than Taiwan),<sup>17</sup> are parties to an October 1972 multilateral convention on international regulations for preventing collisions at sea, commonly known as the collision regulations (COLREGs) or the “rules of the road.”<sup>18</sup> Although commonly referred to as a set of rules or regulations, this multilateral convention is a binding

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<sup>16</sup> United States Ocean Policy, Statement by the President, March 10, 1983, accessed April 15, 23015, at <http://www.state.gov/documents/organization/143224.pdf>. The text is also available at <http://www.reagan.utexas.edu/archives/speeches/1983/31083c.htm>.

<sup>17</sup> Source: International Maritime Organization, *Status of Multilateral Conventions and Instruments in Respect of Which the International Maritime Organization or its Secretary-General Performs Depositary or Other Functions, As at 28 February 2014*, pp. 86-89. The Philippines acceded to the convention on June 10, 2013.

<sup>18</sup> 28 UST 3459; TIAS 8587. The treaty was done at London October 20, 1972, and entered into force July 15, 1977. The United States is an original signatory to the convention and acceded the convention entered into force for the United States on July 15, 1977. China acceded to the treaty on January 7, 1980. A summary of the agreement is available at <http://www.imo.org/About/Conventions/ListOfConventions/Pages/COLREG.aspx>. The text of the convention is available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201050/volume-1050-I-15824-English.pdf>.

treaty. The convention applies “to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.”<sup>19</sup>

In a February 18, 2014, letter to Senator Marco Rubio concerning the December 5, 2013, incident involving the *Cowpens*, the State Department stated:

In order to minimize the potential for an accident or incident at sea, it is important that the United States and China share a common understanding of the rules for operational air or maritime interactions. From the U.S. perspective, an existing body of international rules and guidelines—including the 1972 International Regulations for Preventing Collisions at Sea (COLREGs)—are sufficient to ensure the safety of navigation between U.S. forces and the force of other countries, including China. We will continue to make clear to the Chinese that these existing rules, including the COLREGs, should form the basis for our common understanding of air and maritime behavior, and we will encourage China to incorporate these rules into its incident-management tools.

Likewise, we will continue to urge China to agree to adopt bilateral crisis management tools with Japan and to rapidly conclude negotiations with ASEAN<sup>20</sup> on a robust and meaningful Code of Conduct in the South China in order to avoid incidents and to manage them when they arise. We will continue to stress the importance of these issues in our regular interactions with Chinese officials.<sup>21</sup>

In the 2014 edition of its annual report on military and security developments involving China, the Department of Defense (DOD) states:

On December 5, 2013, a PLA Navy vessel and a U.S. Navy vessel operating in the South China Sea came into close proximity. At the time of the incident, USS COWPENS (CG 63) was operating approximately 32 nautical miles southeast of Hainan Island. In that location, the U.S. Navy vessel was conducting lawful military activities beyond the territorial sea of any coastal State, consistent with customary international law as reflected in the Law of the Sea Convention. Two PLA Navy vessels approached USS COWPENS. During this interaction, one of the PLA Navy vessels altered course and crossed directly in front of the bow of USS COWPENS. This maneuver by the PLA Navy vessel forced USS COWPENS to come to full stop to avoid collision, while the PLA Navy vessel passed less than 100 yards ahead. The PLA Navy vessel’s action was inconsistent with internationally recognized rules concerning professional maritime behavior (i.e., the Convention of International Regulations for Preventing Collisions at Sea), to which China is a party.<sup>22</sup>

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<sup>19</sup> Rule 1(a) of the convention.

<sup>20</sup> ASEAN is the Association of Southeast Asian Nations. ASEAN’s member states are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

<sup>21</sup> Letter dated February 18, 2014, from Julia Frifield, Assistant Secretary, Legislative Affairs, Department of State, to The Honorable Marco Rubio, United States Senate. Used here with the permission of the office of Senator Rubio. The letter begins: “Thank you for your letter of January 31 regarding the December 5, 2013, incident involving a Chinese naval vessel and the USS Cowpens.” The text of Senator Rubio’s January 31, 2014, letter was accessed March 13, 2014, at <http://www.rubio.senate.gov/public/index.cfm/2014/1/rubio-calls-on-administration-to-address-provocative-chinese-behavior>.

<sup>22</sup> Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People’s Republic of China 2014*, p. 4.

## April 2014 Code For Unplanned Encounters At Sea (CUES)

On April 22, 2014, representatives of 21 Pacific-region navies (including China, Japan, and the United States), meeting in Qingdao, China, at the 14<sup>th</sup> Western Pacific Naval Symposium (WPNS),<sup>23</sup> unanimously agreed to a Code for Unplanned Encounters at Sea (CUES). CUES, a non-binding agreement, establishes a standardized protocol of safety procedures, basic communications, and basic maneuvering instructions for naval ships and aircraft during unplanned encounters at sea, with the aim of reducing the risk of incidents arising from such encounters.<sup>24</sup> The CUES agreement in effect supplements the 1972 COLREGs Convention (see previous section); it does not cancel or lessen commitments that countries have as parties to the COLREGs Convention.

Two observers stated that “The [CUES] resolution is non-binding; only regulates communication in ‘unplanned encounters,’ not behavior; fails to address incidents in territorial waters; and does not apply to fishing and maritime constabulary vessels [i.e., coast guard ships and other maritime law enforcement ships], which are responsible for the majority of Chinese harassment operations.”<sup>25</sup> An April 23, 2014, press report stated:

Beijing won't necessarily observe a new code of conduct for naval encounters when its ships meet foreign ones in disputed areas of the East and South China seas, according to a senior Chinese naval officer involved in negotiations on the subject....

U.S. naval officers have said they hoped all members of the group would observe the code in all places, including waters where China's territorial claims are contested by its neighbors.

<sup>23</sup> As described in one press release, the WPNS

The Western Pacific Naval Symposium (WPNS) comprises navies whose countries border the Pacific Ocean region. It was inaugurated in 1988 after navy chiefs attending the International Seapower Symposium in 1987 agreed to establish a forum where leaders of regional navies could meet to discuss cooperative initiatives. Under the WPNS, member countries convene biennially to discuss regional and global maritime issues.

As of October 2010, WPNS membership stands at 20 members and four observers. They are:

Members: Australia, Brunei, Cambodia, Canada, Chile, France, Indonesia, Japan, Malaysia, New Zealand, Papua New Guinea, People's Republic of China, Philippines, Republic of Korea, Russia, Singapore, Thailand, Tonga, United States of America and Vietnam

Observers: Bangladesh, India, Mexico and Peru

(Singapore Ministry of Defense, “Fact Sheet: Background of the Western Pacific Naval Symposium, MCMEX, DIVEX and NMS,” updated March 25, 2011, accessed October 1, 2012, at [http://www.mindef.gov.sg/imindef/news\\_and\\_events/nr/2011/mar/25mar11\\_nr/25mar11\\_fs.html](http://www.mindef.gov.sg/imindef/news_and_events/nr/2011/mar/25mar11_nr/25mar11_fs.html). See also the website for the 2012 WPNS at <http://www.navy.mil.my/wpns2012/>.)

<sup>24</sup> See, for example, “Navy Leaders Agree to CUES at 14<sup>th</sup> WPNS,” Navy News Services, April 23, 2014; Austin Ramzy and Chris Buckley, “Pacific Rim Deal Could Reduce Chance of Unintended Conflict in Contested Seas,” *New York Times*, April 23, 2014; Megha Rajagopalan, “Pacific Accord on Maritime Code Could Help Prevent Conflicts,” *Reuters.com*, April 22, 2014.

For additional background information on CUES, see Mark E. Redden and Phillip C. Saunders, *Managing Sino-U.S. Air and Naval Interactions: Cold War Lessons and New Avenues of Approach*, Washington, Center for the Study of Chinese Military Affairs, Institute for National Strategic Studies, National Defense University, September 2012, pp. 8-9. The text of the previous 2003 CUES Review Supplement was accessed October 1, 2012, at <http://navy.mil.my/wpns2012/images/stories/dokumen/WPNS%202012%20PRESENTATION%20FOLDER/ACTION%20ITEMS%20WPNS%20WORKSHOP%202012/CUES.PDF>.

<sup>25</sup> Jeff M. Smith and Joshua Eisenman, “China and America Clash on the High Seas: The EEZ Challenge,” *The National Interest*, May 22, 2014.

But the code isn't legally binding, and it remains to be seen whether China will observe it in what the U.S. sees as international waters and Beijing sees as part of its territory.

Senior Capt. Ren Xiaofeng, the head of the Chinese navy's Maritime Security/Safety Policy Research Division, said that when and where the code was implemented had to be discussed bilaterally between China and other nations, including the U.S.

"It's recommended, not legally binding," Capt. Ren told *The Wall Street Journal*....<sup>26</sup>

Another observer states that China

touts the fact that it recently signed a Code for Unplanned Encounters at Sea at the recent Western Pacific Naval Symposium held in Qingdao. CUES is meant to help avoid accidents at sea. However, the code is voluntary and applies only when naval ships and aircraft meet "casually or unexpectedly." It also does not apply to a country's territorial waters, and of course countering China's expansive claims to territorial waters is one of the most pressing problems in the South and East China Seas.<sup>27</sup>

A July 23, 2014, press report states:

A strange thing happened in the South China Sea the other month when the USS Spruance—an American guided-missile destroyer—encountered a civilian Chinese supply ship, according to U.S. naval officers.

The Chinese ship sped towards the U.S. vessel and began broadcasting abusive messages over the radio in Chinese and English, demanding that it leave the area, the U.S. officers said.

That was no particular surprise: Such confrontations have become routine in recent years as China has stepped up efforts to enforce maritime claims in the South China Sea and East China Sea.

What was unusual was that a Chinese naval frigate soon arrived to defuse the standoff, making radio contact with the U.S. ship in English, and acting as an intermediary with the Chinese supply vessel, the U.S. naval officers said.

The episode in February is one of three cited by Adm. Jonathan W. Greenert, the U.S. chief of naval operations, as evidence that China is trying to improve ties with the U.S. Navy, even as it presses territorial claims in Asia....

The Spruance encounter is indicative of a new two-pronged approach China is taking in disputed waters. Chinese ships and aircraft still confront counterparts from neighbors with competing maritime claims, including Japan and the Philippines, two U.S. allies. With the U.S. navy, though, China appears to be on something of a charm offensive—one that analysts say is designed both to build a new "major power" relationship with the U.S., and to gradually undermine U.S. alliances in Asia.

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<sup>26</sup> Jeremy Page, "China Won't Necessarily Observe New Conduct Code for Navies," *Wall Street Journal*, April 23, 2014.

<sup>27</sup> Patrick Cronin, "China's Problem With Rules: Managing A Reluctant Stakeholder," *War on the Rocks*, June 26, 2014. See also James Goldrick, "Cue co-operation? Pacific Naval Code Aims to Improve Collaboration at Sea," *Jane's Defence Weekly*, May 21, 2014: 24-25.



Another unusual encounter occurred in the East China Sea in October, when a Chinese navy frigate, the Putian, came within 25,000 yards of a Japan-based U.S. Navy destroyer, the USS Curtis Wilbur, according to U.S. officials.

The captains greeted each other over bridge-to-bridge communications and the two men began to talk—first about the weather and each other’s ships, then families, food, music and basketball, the officials said....

He cited the exchanges as evidence that the Chinese navy was living up to a commitment to communicate with U.S. ships in English when they meet at sea. China has since gone further, signing up to a Code for Unplanned Encounters At Sea, or CUES, in April.

Adm. Greenert said Chinese navy ships appeared to be behaving more professionally in their engagements with U.S. counterparts since the code was signed.

“When there’s an incident where there was unprofessional behavior or potential harassment involved, then it’s reported. I have none of those at sea since April,” he said. “There hasn’t been the instance where the mediation has needed to occur to my knowledge since the Spruance.”

The third example Adm. Greenert cited was an encounter in which U.S. officials say a Chinese navy vessel blocked the path of the USS Cowpens, a U.S. missile cruiser that was operating near China’s new aircraft carrier in the South China Sea in December.

Some U.S. military officers, politicians and defense experts have held that up as evidence that China is seeking not to just to enforce territorial claims, but to hinder U.S. freedom of navigation in the South China Sea.

But Adm. Greenert argued that the confrontation was only resolved after the captain of the Liaoning, China’s carrier, contacted the commander of the Cowpens and spoke to him in English. The Liaoning’s captain had visited the U.S. in September with Adm. Wu, U.S. officials said.

“I would tell you that knowing and having that clarity of what will happen when two ships pass—they’re speaking English, we’ll use CUES—I think is a fairly dramatic improvement,” Adm. Greenert said.<sup>28</sup>

## **November 2014 U.S.-China Memorandum of Understanding (MOU) On Air and Maritime Encounters**

In November 2014, the U.S. DOD and China’s Ministry of National Defense signed a Memorandum of Understanding (MOU) regarding rules of behavior for safety of air and maritime encounters.<sup>29</sup> The MOU makes reference to UNCLOS, the 1972 COLREGs convention, the Convention on International Civil Aviation (commonly known as the Chicago Convention), the Agreement on Establishing a Consultation Mechanism to Strengthen Military Maritime Safety

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<sup>28</sup> Jeremy Page, “Divide and Conquer? Chinese Navy Starts Playing Nice With U.S.,” *Wall Street Journal, China Real Time*, July 23, 2014.

<sup>29</sup> Memorandum of Understanding Between The Department of Defense of the United States of America and the Ministry of National Defense of the People’s Republic of China Regarding the Rules of Behavior for Safety of Air and Maritime Encounters, November 12, 2014.

(MMCA), and CUES. Section IV of the MOU states that the U.S. DOD and China's Ministry of National Defense

should conduct an annual assessment meeting, led by senior colonel/senior captain/colonel/captain-level officers or civilian equivalents, to review the previous year's events relating to the application of the rules of behavior and consult on potential revision and improvements for future implementation.

The annual assessment meeting should take place under the MMCA mechanism and be hosted in the United States and China on a rotating basis by the U.S. and Chinese Sides, consistent with the rotation cycle of MMCA meetings.

Section III states that "Both Sides decided to complex another annex ([for] air-to-air encounters) in 2015."<sup>30</sup>

### **Negotiations Between China and ASEAN on SCS Code of Conduct**

In 2002, China and the 10 member states of ASEAN signed a non-binding Declaration on the Conduct (DOC) of Parties in the South China Sea in which the parties, among other things,

... reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea....

... undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea....

... undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner....

...reaffirm that the adoption of a [follow-on] code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective....<sup>31</sup>

In July 2011, China and ASEAN adopted a preliminary set of principles for implementing the DOC. U.S. officials since 2010 have encouraged ASEAN and China to develop the follow-on binding Code of Conduct (COC) mentioned in the final quoted paragraph above. China and ASEAN have conducted negotiations on the follow-on COC, but China has not yet agreed with the ASEAN member states on a final text. An August 5, 2013, press report states that "China is in no rush to sign a proposed agreement on maritime rules with Southeast Asia governing behavior

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<sup>30</sup> For additional discussion of the MOU, see Peter A. Dutton, "MOUs: The Secret Sauce to Avoiding a U.S.-China Disaster?" *The National Interest*, January 30, 2015; Mira Rapp-Hooper and Bonnie Glaser, "In Confidence: Will We Know If US-China CBMs Are Working?" *Asia Maritime Transparency Initiative (Center for Strategic and International Studies)*, February 4, 2015; Mira Rapp-Hooper, "What's in a Confidence Building Measure?" *Lawfare*, February 8, 2015; Peter Dutton and Andrew Erickson, "When Eagle Meets Dragon: Managing Risk in Maritime East Asia," *Real Clear Defense*, March 25, 2015.

<sup>31</sup> For the full text of the declaration, see **Appendix A**.

in the disputed South China Sea, and countries should not have unrealistic expectations, the Chinese foreign minister said on Monday [August 5].”<sup>32</sup>

## **China’s Approach to the Disputes**

### **Map of the Nine-Dash Line**

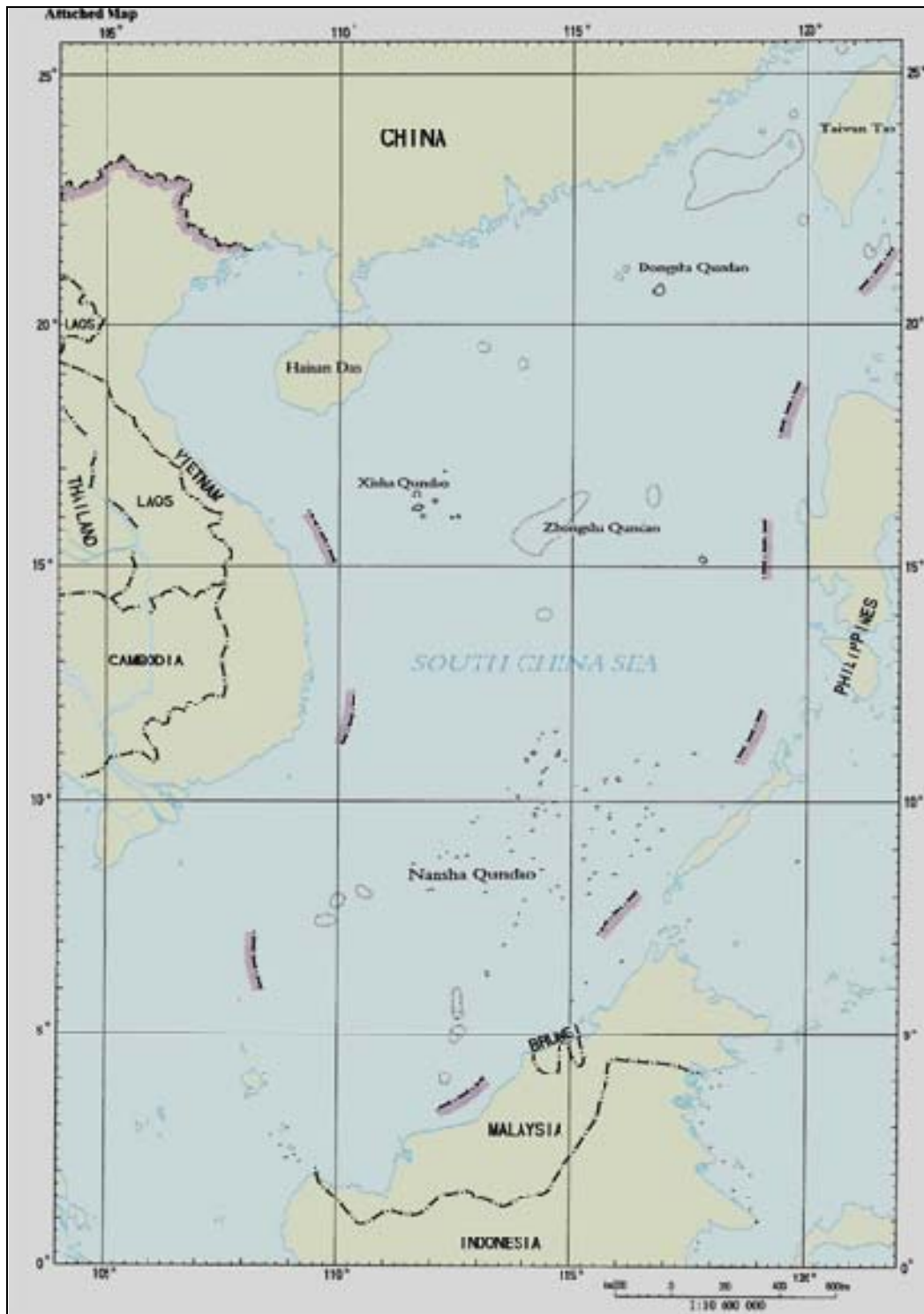
China depicts its territorial claims in the SCS using the so-called map of the nine-dash line—a Chinese map of the SCS showing nine line segments that, if connected, would enclose an area covering roughly 90% (earlier estimates said about 80%) of the SCS (**Figure 3**).

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<sup>32</sup> Ben Blanchard, “China Says In No Hurry to Sign South China Sea Accord,” *Reuters.com*, August 5, 2013. See also Shannon Tiezzi, “Why China Isn’t Interested in a South China Sea Code of Conduct,” *The Diplomat*, February 26, 2014.

### Figure 3. Map of the Nine-Dash Line

Example submitted by China to the United Nations in 2009



**Source:** Communication from China to the United Nations dated May 7, 2009, English version, accessed on August 30, 2012, at [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_vnm\\_37\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm).

The area inside the nine line segments far exceeds what is claimable as territorial waters under customary international law of the sea as reflected in UNCLOS, and, as shown in **Figure 4**, includes waters that are within the claimable EEZs (and in some places are quite near the coasts) of the Philippines, Malaysia, Brunei, and Vietnam.

**Figure 4. EEZs Overlapping Zone Enclosed by Map of Nine-Dash Line**



**Source:** Source: Eurasia Review, September 10, 2012.

**Notes:** (1) The red line shows the area that would be enclosed by connecting the line segments in the map of the nine-dash line. Although the label on this map states that the waters inside the red line are “China’s claimed territorial waters,” China has maintained ambiguity over whether it is claiming full sovereignty over the entire area enclosed by the nine line segments. (2) The EEZs shown on the map do not represent the totality of maritime territorial claims by countries in the region. Vietnam, to cite one example, claims all of the Spratly Islands, even though most or all of the islands are outside the EEZ that Vietnam derives from its mainland coast.

The map of the nine-dash line, also called the U-shaped line or the cow tongue,<sup>33</sup> predates the establishment of the People’s Republic of China (PRC) in 1949. The map has been maintained by the PRC government, and maps published in Taiwan also show the nine line segments.<sup>34</sup> In a

<sup>33</sup> The map is also sometimes called the map of the nine dashed lines (as opposed to nine-dash line), perhaps because some maps (such as **Figure 3**) show each line segment as being dashed.

<sup>34</sup> See Department of Defense, *Annual Report to Congress, Military and Security Developments Involving the People’s Republic of China*, 2011, pp. 15 and 39; Peter Dutton, “Three Disputes and Three Objectives, China and the South China Sea,” *Naval War College Review*, Autumn 2011: 44-45; Hong Nong, “Interpreting the U-shape Line in the South China Sea,” accessed on September 28, 2012, at <http://chinausfocus.com/peace-security/interpreting-the-u-shape-line-in-the-south-china-sea/>.

document submitted to the United Nations on May 7, 2009, that included the map as an attachment, China stated:

China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map [of the nine-dash line]). The above position is consistently held by the Chinese Government, and is widely known by the international community.<sup>35</sup>

The map does not always have exactly nine dashes. Early versions of the map had as many as 11 dashes, and a map of China published by the Chinese government in June 2014 includes 10 dashes.<sup>36</sup>

China has maintained some ambiguity over whether it is using the map of the nine-dash line to claim full sovereignty over the entire sea area enclosed by the nine-dash line, or something less than that.<sup>37</sup> Maintaining this ambiguity can be viewed as an approach that preserves flexibility for China in pursuing its maritime claims in the SCS while making it more difficult for other parties to define specific objections or pursue legal challenges to those claims. It does appear clear, however, that China at a minimum claims sovereignty over the island groups inside the nine line segments—China’s domestic Law on the Territorial Sea and Contiguous Zone, enacted in 1992,<sup>38</sup> specifies that China claims sovereignty over all the island groups inside the nine line segments. China’s implementation on January 1, 2014, of a series of fishing regulations covering much of the SCS suggests that China claims at least some degree of administrative control over much of the SCS.

### **“Salami-Slicing” Strategy and “Cabbage” Strategy**

Observers frequently characterize China’s approach for asserting and defending its territorial claims in the ECS and SCS as a “salami-slicing” strategy that employs a series of incremental actions, none of which by itself is a *casus belli*, to gradually change the status quo in China’s favor.<sup>39</sup> At least one Chinese official has used the term “cabbage strategy” to refer to a strategy of

<sup>35</sup> Communication from China to the United Nations dated May 7, 2009, English version, accessed on August 30, 2012, at [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_vnm\\_37\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm).

<sup>36</sup> For an article discussing this new map in general (but not that it includes 10 dashes), see Ben Blanchard and Sui-Lee Wee, “New Chinese Map Gives Greater Play to South China Sea Claims,” *Reuters*, June 25, 2014. See also “China Adds Another Dash to the Map,” *Maritime Executive*, July 4, 2014.

<sup>37</sup> See Andrew Browne, “China’s line in the Sea,” *Wall Street Journal*, April 1, 2014; Peter Dutton, “Three Disputes and Three Objectives, China and the South China Sea,” *Naval War College Review*, Autumn 2011: 45-48; Hong Nong, “Interpreting the U-shape Line in the South China, Sea,” accessed September 28, 2012, at <http://chinausfocus.com/peace-security/interpreting-the-u-shape-line-in-the-south-china-sea/>. See also Ankit Panda, “Will China’s Nine Dashes Ever Turn Into One Line?” *The Diplomat*, July 1, 2014.

<sup>38</sup> Peter Dutton, “Three Disputes and Three Objectives, China and the South China Sea,” *Naval War College Review*, Autumn 2011: 45, which states: “In 1992, further clarifying its claims of sovereignty over all the islands in the South China Sea, the People’s Republic of China enacted its Law on the Territorial Sea and Contiguous Zone, which specifies that China claims sovereignty over the features of all of the island groups that fall within the U-shaped line in the South China Sea: the Pratas Islands (Dongsha), the Paracel Islands (Xisha), Macclesfield Bank (Zhongsha), and the Spratly Islands (Nansha).” See also International Crisis Group, *Stirring Up the South China Sea ([Part] I)*, Asia Report Number 223, April 23, 2012, pp. 3-4.

<sup>39</sup> See, for example, Statement before the U.S. House Armed Services [Committee,] Subcommittee on Seapower and Projection Forces and the House Foreign Affairs [Committee,] Subcommittee on the Asia Pacific [sic: Asia and the Pacific] [on] “People’s Republic of China Maritime Disputes,” A Statement by Bonnie S. Glaser, Senior Adviser, (continued...)

consolidating control over disputed islands by wrapping those islands, like the leaves of a cabbage, in successive layers of occupation and protection formed by fishing boats, Chinese Coast Guard ships, and then finally Chinese naval ships.<sup>40</sup> Other observers have referred to China's approach as a strategy of creeping annexation<sup>41</sup> or creeping invasion,<sup>42</sup> or as a "talk and take" strategy, meaning a strategy in which China engages in (or draws out) negotiations while taking actions to gain control of contested areas.<sup>43</sup>

## Use of China Coast Guard Ships and Other Ships

China makes regular use of China Coast Guard ships to assert and defend its maritime territorial claims, with Chinese Navy ships sometimes available over the horizon as backup forces.<sup>44</sup> China has, by far, the largest coast guard of any country in the region, and is currently building many new ships for its Coast Guard.<sup>45</sup> Chinese Coast Guard ships are generally unarmed or lightly armed, but can be effective in asserting and defending maritime territorial claims, particularly in terms of confronting or harassing foreign vessels that are similarly lightly armed or unarmed.<sup>46</sup> In addition to being available as backups for China Coast Guard ships, Chinese navy ships conduct exercises that in some cases appear intended, at least in part, at reinforcing China's maritime

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(...continued)

Freeman Chair in China Studies, Center for Strategic and International Studies (CSIS), January 14, 2014, pp. 3-5; Robert Haddick, "Getting Tough in the South China Sea," *National Interest*, February 25, 2014; Robert Haddick, "America Has No Answer to China's Salami-Slicing," *War on the Rocks*, February 6, 2014; Bonnie S. Glaser, "Is China's Charm Offensive Dead?" *China Brief*, July 31, 2014; Patrick M. Cronin, *The Challenge of Responding to Maritime Coercion*, Center for a New American Security, September 2014, pp. 5-6.

<sup>40</sup> See Harry Kazianis, "China's Expanding Cabbage Strategy," *The Diplomat*, October 29, 2013; Bonnie S. Glaser and Alison Szalwinski, "Second Thomas Shoal Likely the Next Flashpoint in the South China Sea," *China Brief*, June 21, 2013, accessed August 9, 2013, at [http://www.jamestown.org/programs/chinabrief/single/?tx\\_ttnews%5Btt\\_news%5D=41054&tx\\_ttnews%5BbackPid%5D=25&cHash=6580ce14cee5ac00501d5439f3ee3632#.UdBFf8u9KSM](http://www.jamestown.org/programs/chinabrief/single/?tx_ttnews%5Btt_news%5D=41054&tx_ttnews%5BbackPid%5D=25&cHash=6580ce14cee5ac00501d5439f3ee3632#.UdBFf8u9KSM); Rafael M. Alunan III, "China's Cabbage Strategy," *Business World (Manila)*, July 8, 2013. See also Loida Nicolas Lewis, Rodel Rodis, and Walden Bello, "China's 'Cabbage Strategy' in West PH Sea," *Philippine Daily Inquirer*, July 27, 2013; Huseyin Erdogan, "China Invokes 'Cabbage Tactics' in South China Sea," *Anadolu Ajansi*, March 25, 2015.

<sup>41</sup> See, for example, Alan Dupont, "China's Maritime Power Trip," *The Australian*, May 24, 2014.

<sup>42</sup> Jackson Diehl, "China's 'Creeping Invasion,'" *Washington Post*, September 14, 2014.

<sup>43</sup> See, for example, Patrick M. Cronin, et al, *Cooperation from Strength, The United States, China and the South China Sea*, Center for a New American Security, January 2012, pp. 16, 56, and 65 (note 19); David Brown, "China, Vietnam Drift in South China Sea," *Asia Times Online*, January 21, 2012; Derek Bolton, "Pivoting Toward the South China Sea?" *Foreign Policy In Focus*, June 11, 2012; John Lee, "China's Salami-slicing Is Dicing Diplomacy," *Hudson Institute*, November 27, 2013; Fernando Fajardo, "Asia and the US Interest," *Cebu Daily News*, April 16, 2014; Jacqueline Newmyer Deal, "Chinese Dominance Isn't Certain," *The National Interest*, April 22, 2014; David Brown, "Viets Gamble Vainly on Appeasement in South China Sea," *Asia Sentinel*, May 7, 2014.

<sup>44</sup> See, for example, Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People's Republic of China 2014*, p. 38.

<sup>45</sup> See, for example, Office of Naval Intelligence, *The PLA Navy, New Capabilities and Missions for the 21<sup>st</sup> Century*, 2015, pp. 44-46. See also "China Builds the World's Largest Coast Guard Cutters," *Want China Times*, January 10, 2015.

<sup>46</sup> See, for example, Megha Rajagopalan and Greg Torode, "China's Civilian Fleet A Potent Force in Asia's Disputed Waters," *Reuters.com*, March 5, 2014.

claims.<sup>47</sup> Observers believe China also uses civilian fishing ships to assert and defend its maritime claims.<sup>48</sup>

## Preference for Treating Disputes on Bilateral Basis

China prefers to discuss maritime territorial disputes with other parties to the disputes on a bilateral rather than multilateral basis. Some observers believe China prefers bilateral talks because China is much larger than any other country in the region, giving China a potential upper hand in any bilateral meeting. China generally has resisted multilateral approaches to resolving maritime territorial disputes, stating that such approaches would internationalize the disputes, although the disputes are by definition international even when addressed on a bilateral basis. (China's participation with the ASEAN states in the 2002 DOC and in negotiations with the ASEAN states on the follow-on binding code of conduct represents a departure from this general preference.) As noted above, some observers believe China is pursuing a policy of putting off a negotiated resolution of maritime territorial disputes so as to give itself time to implement the salami-slicing strategy.<sup>49</sup> China resists and objects to U.S. involvement in the disputes.<sup>50</sup>

## Comparison with U.S. Actions Toward Caribbean and Gulf of Mexico

Some observers have compared China's approach toward its near-seas region with the U.S. approach toward the Caribbean and the Gulf of Mexico in the age of the Monroe Doctrine. One observer, for example, states:

Beijing is attempting to do in the East and South China Seas in the early twenty-first century what the United States successfully accomplished in the Greater Caribbean in the nineteenth and early-twentieth centuries. It has attempted to take effective strategic control of the blue water extension of its own continental land mass.<sup>51</sup>

It can be noted, however, that there are significant differences between China's approach to its near-seas region and the U.S. approach—both in the 19<sup>th</sup> and 20<sup>th</sup> centuries and today—to the Caribbean and the Gulf of Mexico. Unlike China in its approach to its near-seas region, the

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<sup>47</sup> See, for example, Trefor Moss and Rob Taylor, "Chinese Naval Patrol Prompts Conflicting Regional Response," *Wall Street Journal*, February 20, 2014.

<sup>48</sup> See Andrew S. Erickson and Conor M. Kennedy, "Meet the Chinese Maritime Militia Waging a 'People's War at Sea,'" *Wall Street Journal (China Real Time)*, March 31, 2015; James R. Holmes, *A Competitive Turn: How Increased Chinese Maritime Actions Complicate U.S. Partnerships*, Washington, Center for a New American Security, December 2012, East and South China Sea Bulletin 7, p. 1, accessed March 25, 2012, at [http://www.cnas.org/files/documents/flashpoints/CNAS\\_bulletin\\_Holmes\\_ACompetitiveTurn.pdf](http://www.cnas.org/files/documents/flashpoints/CNAS_bulletin_Holmes_ACompetitiveTurn.pdf); James R. Holmes, "China's Small Stick Diplomacy," *The Diplomat*, May 21, 2012, accessed October 3, 2012, at <http://thediplomat.com/2012/05/21/chinas-small-stick-diplomacy/>; Jens Kastner, "China's Fishermen Charge Enemy Lines," *Asia Times Online*, May 16, 2012; Carlyle A. Thayer, "Paracel Island: Chinese Boats Attack Vietnamese Fishing Craft," Thayer Consultancy Background Brief, May 28, 2013, p. 1; Kurt Campbell, "Trouble at Sea Reveals The New Shape of China's Foreign Policy," *Financial Times*, July 22, 2014; John Ruwitch, "Satellites and Seafood: China Keeps Fishing Fleet Connected in Disputed Waters," *Reuters*, July 27, 2014; Wendell Minnick, "Fishing Vessels in China Serve as Proxy Enforcers," *Defense News*, August 17, 2014.

<sup>49</sup> See, for example, Donald K. Emmerson, "China Challenges Philippines in the South China Sea," *East Asia Forum*, March 18, 2014.

<sup>50</sup> For additional discussion of China's approach to maritime territorial disputes, see Patrick Cronin, "China's Problem With Rules: Managing A Reluctant Stakeholder," *War on the Rocks*, June 26, 2014.

<sup>51</sup> Robert D. Kaplan, "China's Budding Ocean Empire," *The National Interest*, June 5, 2014.



United States has not asserted any form of sovereignty or historical rights over the broad waters of the Caribbean or Gulf of Mexico (or other sea areas beyond the 12-mile limit of U.S. territorial waters), has not published anything akin to the nine-dash line for these waters (or other sea areas beyond the 12-mile limit), and does not contest the right of foreign naval forces to operate and engage in various activities in waters beyond the 12-mile limit. One observer states:

Chinese interlocutors are forever trying to use facile comparisons with U.S. history to get Americans to commit to unilateral intellectual disarmament. If we did it in the Caribbean then, how can we object when China does it in Southeast Asia now?...

While China's methods in nearby waters bear some resemblance to *fin de siècle* America's, its goals could hardly be more different. The difference is between closed seas and skies ruled by a strong coastal state and freedom of the maritime commons....

[The United States] never claimed ownership of the greater Caribbean, however much it coveted primacy there. There was no American counterpart to the nine-dashed line.

Nor, despite occasional glances toward Cuba and other islands, did Washington regard these jewels of the Caribbean as rightful U.S. property. Nor did any significant school of foreign-policy thought regard southern waters as a seaward extension of the North American landmass. Still less did official policy consider the sea sovereign territory or "blue national soil," to borrow the ubiquitous Chinese phrase for the near seas.

Instead, the Monroe Doctrine was a unilateral directive forbidding European empires to reconquer American republics that had won their independence. The doctrine was popular in Latin America for decades....

Only in the 1910s did the Monroe Doctrine truly fall into disrepute in Latin America. That's when U.S. leaders took to using it abusively, as a pretext for diplomatic and military interventionism rather than a common defense of the Americas.

Yet U.S. statesmen didn't cling hardheadedly to even this most cherished of foreign-policy doctrines. In the 1920s, Washington retracted the Theodore Roosevelt "Corollary" to the doctrine, which Presidents William Howard Taft and Woodrow Wilson invoked as a license for intervention in Caribbean nations' affairs. Presidents Herbert Hoover and Franklin Roosevelt subsequently ushered in the pan-American defense system that remains in place to this day.

In effect Hoover and FDR internationalized the Monroe Doctrine, enlisting fellow American states as co-guarantors of hemispheric security. Can you imagine Beijing walking back its nine-dashed line in similar fashion? One can hope—but don't hold your breath.

So let's not drink the Kool-Aid Beijing is peddling. When it disavows its claim to "indisputable sovereignty" over the South China Sea, reverses longstanding policy to favor freedom of the seas and skies, and, most importantly, wins buy-in from Asian neighbors, then I'll be glad to welcome comparisons [with what the United States wanted to accomplish in the Caribbean Sea and the Gulf of Mexico in the age of the Monroe Doctrine].<sup>52</sup>

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<sup>52</sup> James R. Holmes, "The Nine-Dashed Line Isn't China's Monroe Doctrine," *The Diplomat*, June 21, 2014. See also James Holmes, "China's Monroe Doctrine," *The Diplomat*, June 22, 2012.

## Chinese Actions Since Late 2013 That Have Heightened Concerns

Following a confrontation in 2012 between Chinese and Philippine ships at Scarborough Shoal, China gained *de facto* control over access to the shoal. Subsequent Chinese actions for asserting and defending China's claims in the ECS and SCS and China's position on the issue of whether it has the right to regulate foreign military activities in its EEZ that have heightened concerns among observers, particularly since late 2013, include the following:

- ongoing Chinese pressure against the Philippine presence at Second Thomas Shoal, a submerged shoal in the Spratly Islands;<sup>53</sup>
- frequent patrols by Chinese Coast Guard ships—some observers refer to them as harassment operations—at the Senkaku Islands;
- China's announcement on November 23, 2013, of an air defense identification zone (ADIZ) for the ECS that includes airspace over the Senkaku Islands;
- the previously mentioned December 5, 2013, incident in which a Chinese navy ship put itself in the path of the U.S. Navy cruiser *Cowpens*, forcing the *Cowpens* to change course to avoid a collision;
- the implementation on January 1, 2014, of fishing regulations administered by China's Hainan province applicable to waters constituting more than half of the SCS, and the reported enforcement of those regulations with actions that have included the apprehension of non-Chinese fishing boats;<sup>54</sup>
- land-reclamation activities, begun in September 2013 and publicly reported starting in May 2014, at several locations in the SCS occupied by China (primarily the Spratly islands) that observers view as a prelude to the construction of expanded Chinese facilities and fortifications at those locations;<sup>55</sup>
- moving a large oil rig in May 2014 into waters that are near the Paracels and inside Vietnam's claimed EEZ, and using dozens of Chinese Coast Guard and Chinese navy ships to enforce a large keep-away zone around

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<sup>53</sup> For a discussion of the situation at Second Thomas Shoal, see "A Game of Shark And Minnow," *New York Times Magazine* online news graphic accessed March 10, 2014, at <http://www.nytimes.com/newsgraphics/2013/10/27/south-china-sea/>. See also Ben Blanchard, "China Says [It] Expels Philippine [Vessels] from Disputed Shoal," *Reuters.com*, March 10, 2014; Oliver Teves (Associated Press), "Philippines Protests China Stopping Troop Resupply," *Kansas City Star*, March 11, 2014; Kyodo News International, "Philippines Protests Chinese Actions in Disputed Sea," *Global Post*, March 3, 2014.

<sup>54</sup> See, for example, Natalie Thomas, Ben Blanchard, and Megha Rajagopalan, "China Apprehending Boats Weekly in Disputed South China Sea," *Reuters.com*, March 6, 2014.

<sup>55</sup> See, for example, Edward Wong and Jonathan Ansfield, "To Bolster Its Claims, China Plants Islands in Disputed Waters," *New York Times*, June 16, 2014; Trefor Moss, "China Rejects Philippines' Call for Construction Freeze," *Wall Street Journal*, June 16, 2014; Wendell Minnick, "Beijing Continues S. China Sea Expansion," *Defense News*, June 14, 2014; Joel Guinto, "China Building Dubai-Style Fake Islands in South China Sea," Bloomberg News, June 11, 2014; David Dizon, "Why China Military Base in West PH Sea Is A 'Game-Changer,'" ABS-CBN News, June 10, 2014; Andrew Erickson and Austin Strange, "Pandora's Sandbox, China's Island-Building Strategy in the South China Sea," *Foreign Affairs*, July 13, 2014.

the rig, leading to numerous confrontations and incidents between Chinese and Vietnamese civilian and military ships; and

- the previously mentioned August 19, 2014, incident in which a Chinese fighter conducted an aggressive and risky intercept of a U.S. Navy P-8 maritime patrol aircraft that was flying in international airspace about 135 miles east of Hainan Island.

At a February 5, 2014, hearing before the Subcommittee on Asia and the Pacific of the House Foreign Affairs Committee, Assistant Secretary of State Daniel Russel testified that

Deputy Secretary [of State William J.] Burns and I were in Beijing earlier this month to hold regular consultations with the Chinese government on Asia-Pacific issues, and we held extensive discussions regarding our concerns. These include continued restrictions on access to Scarborough Reef; pressure on the long-standing Philippine presence at the Second Thomas Shoal; putting hydrocarbon blocks up for bid in an area close to another country's mainland and far away even from the islands that China is claiming; announcing administrative and even military districts in contested areas in the South China Sea; an unprecedented spike in risky activity by China's maritime agencies near the Senkaku Islands; the sudden, uncoordinated and unilateral imposition of regulations over contested airspace in the case of the East China Sea Air Defense Identification Zone; and the recent updating of fishing regulations covering disputed areas in the South China Sea. These actions have raised tensions in the region and concerns about China's objectives in both the South China and the East China Seas.

There is a growing concern that this pattern of behavior in the South China Sea reflects an incremental effort by China to assert control over the area contained in the so-called "nine-dash line," despite the objections of its neighbors and despite the lack of any explanation or apparent basis under international law regarding the scope of the claim itself.<sup>56</sup>

## **China's Land Reclamation Activities**

China's land reclamation activities in the SCS have attracted particular attention and concern among observers, particularly since mid-February 2015,<sup>57</sup> due to the apparent speed and scale of the activities and their potential for quickly and significantly changing the status quo in the SCS.<sup>58</sup> A February 26, 2015, press report states that

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<sup>56</sup> Testimony of Daniel Russel, Assistant Secretary of State, Bureau of East Asian and Pacific Affairs, U.S. Department of State, Before the House Committee on Foreign Affairs, Subcommittee on Asia and the Pacific, Wednesday, February 5, 2014, [on] Maritime Disputes in East Asia, pp. 5-6.

<sup>57</sup> Awareness of, and concern about, China's land reclamation activities in the SCS among observers appears to have increased substantially following the posting of an article showing a series of "before and after" satellite photographs of islands and reefs being changed by the work. (Mira Rapp-Hooper, "Before and After: The South China Sea Transformed," Asia Maritime Transparency Initiative [Center for Strategic and International Studies], February 18, 2015.)

<sup>58</sup> See, for example, James Hardy, "Sands of Time," *Jane's Intelligence Review*, September 2014: 54-55; Sean O'Connor and James Hardy, "Imagery Shows Progress of Chinese Land Building Across Spratlys," *IHS Jane's 360*, February 15, 2015; Jeremy Page and Julian E. Barnes, "China Expands Island Construction in Disputed South China Sea," *Wall Street Journal*, February 18, 2015; David S. Cloud, "China Expands Islands on Disputed Reefs in South China Sea," *Los Angeles Times*, February 19, 2015; Greg Torode, "China To Project Power From Artificial Islands in South China Sea," *Reuters*, February 19, 2015; Mira Rapp-Hooper, "Is China Reclaiming the Law of the Sea?" *Lawfare*, February 23, 2015; Megha Rajagopalan, "China Doing 'Large Scale' Reclamation in Disputed Islands: Media," *Reuters*, February 26, 2015; Michael Mazza, "China's Dangerous South China Sea Challenge," *Real Clear* (continued...)

China rejected an appeal from the Obama administration earlier this month to halt “destabilizing” construction on disputed islets in the South China Sea, according to U.S. officials.

Assistant Secretary of State Daniel Russel urged Chinese officials to halt rapidly expanding island construction over the past several years in the disputed Spratly Islands during a visit to Beijing.

According to officials familiar with the talks, Russel’s appeal was rejected during a meeting Feb. 10 with Zheng Zeguang, China’s assistant foreign minister, who said the construction was occurring within China’s area of sovereignty.<sup>59</sup>

A March 19, 2015, letter to Secretary of Defense Ashton Carter and Secretary of State John Kerry from the chairmen and ranking members of the Senate Armed Services Committee and Senate Foreign Relations Committee states:

We are writing in regard to Chinese strategy in the Indo-Pacific maritime domains, and the alarming scope and pace of the land reclamation now being conducted by the People’s Republic of China (PRC) in the Spratly island chain of the South China Sea. At a recent Senate Armed Services Committee hearing, Director of National Intelligence James Clapper called the extent of the activities “aggressive,” and described it as an effort by China to expand its presence and further consolidate its sovereignty claims. Without a comprehensive strategy for addressing the PRC’s broader policy and conduct to assert its sovereignty claims in the South China Sea and East China Sea, including land-reclamation and construction activities, long-standing interests of the United States, as well as our allies and partners, stand at considerable risk.

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*Defense*, February 26, 2015; Matthew Pennington, “US: China Is Expanding Its South China Sea Outposts,” *Stars and Stripes*, February 26, 2015; Andrew Erickson and Austin Strange, “Putting Neighbors Between a Rock and a hard Place,” *War on the Rocks*, March 2, 2015; Kakumi Kobayashi (Kyodo News), “Pentagon Official Wary of China’s Spratly Reclamation,” *ABS-CBN News*, March 5, 2015; Luke Hunt, “China Challenges ASEAN with Land Fills in South China Sea,” *The Diplomat*, March 10, 2015; Rob Taylor, “China’s Great Wall of Sand’ Raises U.S. Concerns,” *Wall Street Journal*, March 31, 2015; “China Building ‘Great Wall of Sand’ in Contested Waters,” *Fox News*, April 1, 2015; Simon Denyer, “U.S. Navy Alarmed at Beijing’s ‘Great Wall of Sand’ in South China Sea,” *Washington Post*, April 1, 2015; “China Building ‘Great Wall of Sand’ in South China Sea,” *BBC News*, April 1, 2015; Prashanth Parameswaran, “US Blasts China’s ‘Great Wall of Sand’ in the South China Sea,” *The Diplomat*, April 1, 2015; Josh Rogin, “U.S. Misses Real Threat of China’s Fake Islands,” *Bloomberg*, April 2, 2015; David E. Sanger and Rick Gladstone, “Piling Sand in a Disputed Sea, China Literally Gains Ground,” *New York Times*, April 8, 2015; Felicia Schwartz, “U.S. Wary of Possible China Island Fortresses,” *Wall Street Journal*, April 8, 2015; David Brunnstrom and Kiyoshi Takenaka, “U.S. Defense Chief Warns Against Militarization of Territorial Rows in Asia,” *Reuters*, April 8, 2015; Sam LaGrone, “SECDEF Carter: U.S. Takes ‘Strong Stand’ Against Militarization in South China Sea Disputes,” *USNI News*, April 8, 2015; Andrew S. Erickson and Conor M. Kennedy, “China’s Island Builders,” *Foreign Affairs*, April 9, 2015; Trefor Moss, “China Expands Islands in Disputed Waters, Photos Show,” *Wall Street Journal*, April 14, 2015; David Brunnstrom, “China Reef Work Could Lead to New Air Exclusion Zone: U.S. Commander,” *Reuters*, April 15, 2015; Matthew Pennington, “U.S.: Growing China, Russia Military Activity in Asia-Pacific,” *Military Times (Associated Press)*, April 15, 2015; Jane Perlez, “Images Show China Building Aircraft Runway in Disputed Spratly Islands,” *New York Times*, April 16, 2015; Jeremy Page, “China Building Airstrip in Spratly Islands, Satellite Images Show,” *Wall Street Journal*, April 16, 2015; David Brunnstrom, “Images Show Rapid Chinese Progress on New South China Sea Airstrip,” *Reuters*, April 17, 2015; Kyle Mizokami, “Why China’s Island Building Is So Foreboding,” *The Week*, April 20, 2015.

<sup>59</sup> Bill Gertz, “China Rebuffs U.S. Request to Halt S. China Sea Island Work,” *Washington Free Beacon*, February 26, 2015.

The United States maintains vested interests in the Indo-Pacific region, including the security of our allies and partners, in the freedom of navigation, in free and unimpeded commerce, in respect for international law, and the peaceful resolution of disputes. The South China Sea is a critical maritime highway through which some \$5 trillion in global ship-borne trade passes each year. Unilateral efforts to change the status quo through force, intimidation, or coercion threaten the peace and stability that have benefited all the nations of the Indo-Pacific region. China's land-reclamation and construction activities on multiple islands across the Spratly chain, and the potential command and control, surveillance, and military capabilities it could bring to bear from these new land features, are a direct challenge not only to the interests of the United States and the region, but to the entire international community.

It is our understanding that the majority of this work has been completed in the past twelve months alone, and if current build-rates proceed, China could complete the extent of its planned reclamation in the coming year. Gaven Reef has 114,000 square meters of new land since March 2014. Johnson Reef, which was previously a submerged feature, now stands as a 100,000 square meter "island." Construction and reclamation has increased Fiery Cross in size more than 11-fold since August of last year. Reclamation by any state to enhance their sovereignty rights in the South China Sea complicates these disputes and runs contrary to calls from the United States and Association of Southeast Asian Nations (ASEAN) for parties to exercise self-restraint. However, while other states have built on existing land masses, China is changing the size, structure and physical attributes of land features themselves. This is a qualitative change that appears designed to alter the status quo in the South China Sea.

China's Foreign Minister, Wang Yi, recently noted that this extensive reclamation "does not target or affect anyone." We disagree. At a minimum, the construction activities violate the commitments that China made as part of the 2002 Declaration on the Conduct of Parties in the South China Sea with ASEAN, in which all parties agreed to "exercise self-restraint in the conduct of activities that would complicate or escalate disputes." If China attempts to militarize the artificial islands it has constructed or otherwise use the creation of these islands to attempt to strengthen its legal standing, such a provocation would likely hold serious consequences for the peace and stability of the region. Moreover, because these land reclamation activities could improve China's sustainment of its fishing boats, State Oceanic Administration ships, People's Liberation Army Navy (PLAN) ships, PLA Air Force (PLAAF) fighters, and other logistics and defense material from these completed islands, it could embolden China to declare an Air Defense Identification Zone (ADIZ) in all or part of the South China Sea.

Like President Obama, we believe China can and should play a constructive role in the region. We also acknowledge that the costs of seeking to shape China's behavior in the maritime commons may affect other elements of our bilateral relationship. But if China continues to pursue a coercive and escalatory approach to the resolution of maritime disputes, the cost to regional security and prosperity, as well as to American interests, will only grow. For the international community to continue benefiting from the rules-based international order that has brought stability and prosperity to the Indo-Pacific region for the last seven decades, the United States must work together with like-minded partners and allies to develop and employ a strategy that aims to shape China's coercive peacetime behavior.

There is no doubt that the United States must continue to sustain a military balance in the region that secures our long-standing political and economic interests, upholds our treaty commitments, and safeguards freedom of navigation and commerce. At the same time, China's deliberate effort to employ non-military methods of coercion to alter the status quo, both in the South China Sea and East China Sea, demands a comprehensive response from the United States and our partners. While administration officials have highlighted various speeches and initiatives as evidence of a broader strategy, we believe that a formal policy

and clearly articulated strategy to address these forms of Chinese coercion are essential. That is why the National Defense Authorization Act of 2015 includes a requirement for a report on maritime security strategy with an emphasis on the South China Sea and East China Sea.

Specifically, we believe such a strategy should address or consider a number of key items: specific actions the United States can take to slow down or stop China's reclamation activities in the South China Sea; the possible benefits of releasing intelligence more regularly about China's destabilizing behavior; what forms of security cooperation with China would be inappropriate to continue if land reclamation activities proceed and what forms of engagement might provide incentives for China to alter its behavior; the region's Maritime Domain Awareness needs; how to help regional partners enhance their own capacity; and additional diplomatic engagement with ASEAN countries or others in the international community to support unimpeded access to the Indo-Pacific maritime commons.

The United States faces a myriad of international challenges that inevitably compete for our attention and resources. The slow, calculated competition for sovereignty and influence in the Indo-Pacific region is not currently a crisis that garners international headlines. Yet the impact of this competition will likely reverberate for years to come. The Congress stands ready to support a renewed effort to address this challenge. More specifically, we look forward to working with you on the development and implementation of a comprehensive strategy for the maritime commons of the Indo-Pacific region, and to your thoughts on how the Administration and Congress can best work together on these issues.<sup>60</sup>

## **U.S. Position on the Disputes**

### **Some Key Elements**

The U.S. position on territorial and EEZ disputes in the Western Pacific (including those involving China) includes the following elements, among others:

- The United States takes no position on competing claims to sovereignty over disputed land features in the ECS and SCS.
- Although the United States takes no position on competing claims to sovereignty over disputed land features in the ECS and SCS, the United States *does* have a position on how competing claims should be resolved: Territorial disputes should be resolved peacefully, without coercion, intimidation, threats, or the use of force, and in a manner consistent with international law.
- Claims of territorial waters and EEZs should be consistent with customary international law of the sea and must therefore, among other things, derive from land features. Claims in the SCS that are not derived from land features are fundamentally flawed.
- Parties should avoid taking provocative or unilateral actions that disrupt the status quo or jeopardize peace and security. The United States does not believe

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<sup>60</sup> Letter dated March 19, 2015, to The Honorable Ashton Carter, Secretary of Defense, and The Honorable John Kerry, Secretary of State, from Senators Jack Reed, John McCain, Bob Menendez, and Bob Corker. See also Colin Clark, "McCain Points To 'Dramatic Change' in Chinese-Built Islands," *Breaking Defense*, February 26, 2015; Martin Matishak, "Senators Mull Response to China's Moves in Disputed Islands," *The Hill*, April 21, 2015.

- that large-scale land reclamation with the intent to militarize outposts on disputed land features is consistent with the region's desire for peace and stability.
- The Senkaku Islands are under the administration of Japan and unilateral attempts to change the status quo raise tensions and do nothing under international law to strengthen territorial claims.
  - The United States has a national interest in the preservation of freedom of seas as recognized in customary international law of the sea. The United States opposes claims that impinge on the rights, freedoms, and lawful uses of the sea that belong to all nations.
  - The United States, like most other countries, believes that coastal states under UNCLOS have the right to regulate economic activities in their EEZs, but do not have the right to regulate foreign military activities in their EEZs.
  - U.S. military surveillance flights in international airspace above another country's EEZ are lawful under international law, and the United States plans to continue conducting these flights as it has in the past.<sup>61</sup>

### **Statements from U.S. Officials**

For examples of statements from U.S. officials regarding the U.S. position, see **Appendix B**. For the full text of the written statement of Assistant Secretary of State Daniel Russel for a February 5, 2014, hearing before the Subcommittee on Asia and the Pacific of the House Foreign Affairs Committee on maritime disputes in East Asia, see **Appendix C**.

### **Operational Rights in EEZs**

Regarding a coastal state's rights within its EEZ, Scot Marciel, then-Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs, stated the following as part of his prepared statement for a July 15, 2009, hearing before the East Asian and Pacific Affairs Subcommittee of the Senate Foreign Relations Committee:

I would now like to discuss recent incidents involving China and the activities of U.S. vessels in international waters within that country's Exclusive Economic Zone (EEZ). In March 2009, the survey ship USNS Impeccable was conducting routine operations, consistent with international law, in international waters in the South China Sea. Actions taken by Chinese fishing vessels to harass the Impeccable put ships of both sides at risk, interfered with freedom of navigation, and were inconsistent with the obligation for ships at sea to show due regard for the safety of other ships. We immediately protested those actions to the Chinese government, and urged that our differences be resolved through established mechanisms for dialogue—not through ship-to-ship confrontations that put sailors and vessels at risk.

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<sup>61</sup> At an August 26, 2014, press briefing, DOD Press Secretary Rear Admiral John Kirby, when asked about U.S. military surveillance flights close to China, replied in part: "We're going to continue to fly in international airspace the way we've been, just like we're going to continue to sail our ships in international waters the way we've been." (Source: transcript of press briefing, accessed September 26, 2014, at <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5495>.) See also Bill Gertz, "Pentagon: No Plan to Reduce Spy Flights," *Washington Free Beacon*, August 26, 2014; Bill Gertz, "White House Rejects Chinese Demand to End U.S. Spy Flights," *Washington Free Beacon*, September 15, 2014.

Our concern over that incident centered on China's conception of its legal authority over other countries' vessels operating in its Exclusive Economic Zone (EEZ) and the unsafe way China sought to assert what it considers its maritime rights.

China's view of its rights on this specific point is not supported by international law. We have made that point clearly in discussions with the Chinese and underscored that U.S. vessels will continue to operate lawfully in international waters as they have done in the past.<sup>62</sup>

As part of his prepared statement for the same hearing, Robert Scher, then-Deputy Assistant Secretary of Defense, Asian and Pacific Security Affairs, Office of the Secretary of Defense, stated that

we reject any nation's attempt to place limits on the exercise of high seas freedoms within an exclusive economic zones [sic] (EEZ). Customary international law, as reflected in articles 58 and 87 of the 1982 United Nations Convention on the Law of the Sea, guarantees to all nations the right to exercise within the EEZ, high seas freedoms of navigation and overflight, as well as the traditional uses of the ocean related to those freedoms. It has been the position of the United States since 1982 when the Convention was established, that the navigational rights and freedoms applicable within the EEZ are qualitatively and quantitatively the same as those rights and freedoms applicable on the high seas. We note that almost 40% of the world's oceans lie within the 200 nautical miles EEZs, and it is essential to the global economy and international peace and security that navigational rights and freedoms within the EEZ be vigorously asserted and preserved.

As previously noted, our military activity in this region is routine and in accordance with customary international law as reflected in the 1982 Law of the Sea Convention.<sup>63</sup>

## **U.S. Freedom of Navigation (FON) Program**

U.S. Navy ships carry out assertions of operational rights as part of the U.S. Freedom of Navigation (FON) program for challenging maritime claims that the United States believes to be inconsistent with international law.<sup>64</sup> The Department of Defense's (DOD's) record of "excessive

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<sup>62</sup> [Statement of] Deputy Assistant Secretary Scot Marciel, Bureau of East Asian & Pacific Affairs, U.S. Department of State, before the Subcommittee on East Asian and Pacific Affairs, Committee on Foreign Relations, United States Senate, July 15, 2009, [hearing on] Maritime Issues and Sovereignty Disputes in East Asia, p. 5.

<sup>63</sup> Testimony [prepared statement] of Deputy Assistant Secretary of Defense Robert Scher, Asian and Pacific Security Affairs, Office of the Secretary of Defense, before the Subcommittee on East Asian and Pacific Affairs, Senate Committee on Foreign Relations, United States Senate, July 15, 2009, [hearing on] Maritime Issues and Sovereignty Disputes in East Asia, pp. 3-4. See also Raul (Pete) Pedrozo, "Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China's Exclusive Economic Zone," *Chinese Journal of International Law*, 2010: 9-29.

<sup>64</sup> The State Department states that

U.S. Naval forces engage in Freedom of Navigation operations to assert the principles of International Law and free passage in regions with unlawful maritime sovereignty claims. FON operations involve naval units transiting disputed areas to avoid setting the precedent that the international community has accepted these unlawful claims. ISO coordinates DOS clearance for FON operations.

(Source: State Department website on military operational issues, accessed March 22, 2013, at <http://www.state.gov/t/pm/iso/c21539.htm>. See also the web page posted at <http://www.state.gov/e/oes/ocns/opa/maritimsecurity/index.htm>.)

A DOD list of DOD Instructions (available at <http://www.dtic.mil/whs/directives/corres/ins1.html>) includes a listing for (continued...)



maritime claims that were challenged by DoD operational assertions and activities during the period of October 1, 2013, to September 30, 2014, in order to preserve the rights, freedoms, and uses of the sea and airspace guaranteed to all nations in international law” includes a listing for multiple challenges that were conducted to challenge Chinese claims relating to “excessive straight baselines; jurisdiction over airspace above the EEZ; restriction on foreign aircraft flying through an Air Defense Identification Zone (ADIZ) without the intent to enter national airspace; [and] domestic law criminalizing survey activity by foreign entities in the EEZ.”<sup>65</sup>

## Potential Implications of the Disputes for United States

### Overview

China’s actions for asserting and defending its maritime territorial and EEZ claims in the ECS and SCS, particularly since late 2013, have heightened concerns among observers that ongoing disputes over these waters and some of the islands within them could lead to a crisis or conflict between China and a neighboring country such as Japan, the Philippines, or Vietnam, and that the United States could be drawn into such a crisis or conflict as a result of obligations the United States has under bilateral security treaties with Japan and the Philippines.

More broadly, China’s actions for asserting and defending its maritime territorial and EEZ claims have led to increasing concerns among some observers that China may be seeking to dominate or gain control of its near-seas region, meaning the ECS, the SCS, and the Yellow Sea.<sup>66</sup> Chinese domination over or control of this region could have major implications for the United States, including implications for U.S.-China relations, for interpreting China’s rise as a major world power, for the security structure of the Asia-Pacific region, for the long-standing U.S. strategic goal of preventing the emergence of a regional hegemon in one part of Eurasia or another, and for two key elements of the U.S.-led international order that has operated since World War II—the

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(...continued)

DOD Instruction C-2005.01 of October 12, 2005, on the FON program, and states that this instruction replaced an earlier version of the document dated June 21, 1983. The document itself is controlled and not posted at the website. A website maintained by the Federation of American Scientists (FAS) listing Presidential Decision Directives (PDDs) of the Clinton Administration for the years 1993-2000 (<http://www.fas.org/irp/offdocs/pdd/index.html>) states that PDD-32 concerned the FON program. The listing suggests that PDD-32 was issued between September 21, 1994 and February 17, 1995.

<sup>65</sup> U.S. Department of Defense Freedom of Navigation Report for Fiscal Year 2014, accessed April 15, 2015, at <http://policy.defense.gov/Portals/11/Documents/gsa/cwmd/20150323%202015%20DoD%20Annual%20FON%20Report.pdf>.

<sup>66</sup> See, for example, Donald K. Emmerson, “China Challenges Philippines in the South China Sea,” *East Asia Forum*, March 18, 2014; Daniel Goure, “New Chinese Air Defense Zone Is latest Move In Beijing’s Strategy To Dominate East Asia,” Lexington Institute Early Warnig Blog, November 25, 2013; Henry Sanderson and Shai Oster, “China Air Zone Seen Step to Expanding Access to West Pacific,” *Bloomberg News*, December 4, 2013; Andrew S. Erickson, “Deterrence by Denial: How to Prevent China From Using Force,” *National Interest*, December 16, 2013; Statement of Peter A. Dutton, Professor and Director, China Maritime Studies Institute, U.S. Naval War College, Testimony before the House Foreign Affairs Committee Hearing on China’s Maritime Disputes in the East and South China Seas, January 14, 2014, pp. 2, 3. Italics as in original. [The hearing was actually a joint hearing before Seapower and Projection Forces subcommittee of the House Armed Services Committee and the Asia and the Pacific subcommittee of the House Foreign Affairs Committee]; Geoff Dyer, “US v China: Is This The New Cold War?” *Financial Times*, February 20, 2014; Benjamin Schreer, “China’s Rise: The Strategic Climate Is Getting Colder,” *The Strategist (The Australian Strategic Policy Institute Blog)*, March 3, 2014.

non-use of force or coercion as a means of settling disputes between countries, and freedom of the seas.

## Risk of United States Being Drawn into a Crisis or Conflict

Many observers are concerned that ongoing maritime territorial disputes in the ECS and SCS could lead to a crisis or conflict between China and a neighboring country such as Japan or the Philippines, and that the United States could be drawn into such a crisis or conflict as a result of obligations the United States has under bilateral security treaties with Japan and the Philippines. U.S. officials, concerned about the risk that a misunderstanding or miscalculation might cause a dispute over island territories to escalate into a conflict, have urged parties involved in the disputes to exercise restraint and avoid taking provocative actions.

## U.S.-Japan Treaty on Mutual Cooperation and Security

The 1960 U.S.-Japan treaty on mutual cooperation and security<sup>67</sup> states in Article V that

Each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes.

The United States has reaffirmed on a number of occasions over the years that since the Senkaku Islands are under the administration of Japan, they are included in the territories referred to in Article V of the treaty, and that the United States “will honor all of our treaty commitments to our treaty partners.”<sup>68</sup> (At the same time, the United States, noting the difference between administration and sovereignty, has noted that such affirmations do not prejudice the U.S. approach of taking no position regarding the outcome of the dispute between China, Taiwan, and Japan regarding who has sovereignty over the islands.) Some observers, while acknowledging the U.S. affirmations, have raised questions regarding the potential scope of actions that the United States might take under Article V.<sup>69</sup>

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<sup>67</sup> Treaty of mutual cooperation and security, signed January 19, 1960, entered into force June 23, 1960, 11 UST 1632; TIAS 4509; 373 UNTS.

<sup>68</sup> The quoted words are from Secretary of Defense Chuck Hagel, in “Media Availability with Secretary Hagel En Route to Japan,” April 5, 2014, accessed April 9, 2014, at <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=5405>. See also Associated Press, “US: Will Stand by Allies in Disputes with China,” *Military.com*, April 3, 2014.

<sup>69</sup> See, for example, Yoichiro Sato, “The Senkaku Dispute and the US-Japan Security Treaty,” PacNet #57 (Pacific Forum CSIS, Honolulu, Hawaii), September 10, 2012, accessed October 2, 2012, at <http://csis.org/files/publication/Pac1257.pdf>; James R. Holmes, “Thucydides, Japan and America,” *The Diplomat*, November 27, 2012; Shigemi Sato, “Japan, U.S. To Discuss Revising Defense Guidelines,” *DefenseNews.com (Agence France-Presse)*, November 11, 2012; Martin Fackler, “Japan Seeks Tighter Pact With U.S. To Confront China,” *NYTimes.com*, November 9, 2012; “Japan, U.S. To Review Defense Guidelines,” *Japan Times*, November 11, 2012; “Defense Official To Visit U.S. To Discuss Alliance,” *Kyodo News*, November 8, 2012; Yuka Hayashi, “U.S. Commander Chides China Over ‘Provocative Act,’” *Wall Street Journal*, February 16, 2013: 7; Julian E. Barnes, “U.S., Japan Update Plans To Defend Islands,” *New York Times*, March 20, 2013. See also Kiyoshi Takenaka, “China ‘Extremely Concerned’ About U.S.-Japan Island Talk,” *Reuters*, March 21, 2013; Wendell Minnick, “Senkakus Could Be Undoing of Asia Pivot,” *Defense News*, April 15, 2013: 16; Item entitled “U.S. Warns China” in Bill Gertz, “Inside the Ring: NSA Contractor Threat,” *Washington Times*, June 19, 2013; Anthony Fensom, “Yamaguchi: China Military Build-Up Risks Accident,” *The Diplomat*, June 21, 2013.

In April 2015, it was reported that

Japan and the United States will likely include an explicit reference to defence of far-flung Japanese islands in an update of security cooperation guidelines amid concerns about China's increasing military assertiveness, a Japanese newspaper reported.

The daily Yomiuri Shimbun said on Tuesday [April 14] that Japan had requested the revision include a clear commitment by U.S. forces in the event of an attack on Japanese islands. Tokyo is locked in a long-running dispute with Beijing over islets in the East China Sea known as the Senkaku in Japan and the Diaoyu in China.

The allies are expected to announce agreement over the revised guidelines later this month. U.S. President Barack Obama is due to meet Japan's Prime Minister Shinzo Abe in Washington on April 28 for a summit.<sup>70</sup>

### ***U.S.-Philippines Mutual Defense Treaty***<sup>71</sup>

The 1951 U.S.-Philippines mutual defense treaty<sup>72</sup> states in Article IV that

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.

Article V states that

For the purpose of Article IV, an armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories under its jurisdiction in the Pacific or on its armed forces, public vessels or aircraft in the Pacific.

The United States has reaffirmed on a number of occasions over the years its obligations under the U.S.-Philippines mutual defense treaty.<sup>73</sup> On May 9, 2012, Filipino Foreign Affairs Secretary Albert F. del Rosario issued a statement providing the Philippine perspective regarding the treaty's application to territorial disputes in the SCS.<sup>74</sup> U.S. officials have made their own statements regarding the treaty's application to territorial disputes in the SCS.<sup>75</sup>

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<sup>70</sup> Kiyoshi Takenaka, "U.S.-Japan Defense Guidelines To Specify Islands' Defense: Newspaper," *Reuters*, April 14, 2015.

<sup>71</sup> For additional discussion of U.S. obligations under the U.S.-Philippines mutual defense treaty, see CRS Report R43498, *The Republic of the Philippines and U.S. Interests—2014*, by Thomas Lum and Ben Dolven.

<sup>72</sup> Mutual defense treaty, signed August 30, 1951, entered into force August 27, 1952, 3 UST 3947, TIAS 2529, 177 UNTS 133.

<sup>73</sup> See, for example, the Joint Statement of the United States-Philippines Ministerial Dialogue of April 30, 2012, available at <http://www.state.gov/r/pa/prs/ps/2012/04/188977.htm>, which states in part that "the United States and the Republic of the Philippines reaffirm our shared obligations under the Mutual Defense Treaty, which remains the foundation of the U.S.-Philippines security relationship." See also Associated Press, "US: Will Stand by Allies in Disputes with China," *Military.com*, April 3, 2014.

<sup>74</sup> Statement of Secretary del Rosario regarding the Philippines-U.S. Mutual Defense Treaty, May 9, 2012, accessed September 20, 2012, at <http://www.gov.ph/2012/05/09/statement-of-secretary-del-rosario-regarding-the-philippines-u-s-mutual-defense-treaty-may-9-2012/>.

<sup>75</sup> See, for example, Agence France-Presse, "Navy Chief: US Would 'Help' Philippines In South China Sea," *DefenseNews.com*, February 13, 2014; Manuel Mogato, "U.S. Admiral Assures Philippines of Help in Disputed Sea," (continued...)

## **U.S.-China Relations**

Developments regarding China's maritime territorial and EEZ disputes in the ECS and SCS could affect U.S.-China relations in general, which could have implications for other issues in U.S.-China relations.<sup>76</sup>

## **Interpreting China's Rise as a Major World Power**

As China continues to emerge as a major world power, observers are assessing what kind of international actor China will ultimately be. China's actions in asserting and defending its maritime territorial and EEZ disputes in the ECS and SCS could influence assessments that observers might make on issues such as China's approach to settling disputes between states (including whether China views force and coercion as acceptable means for settling such disputes, and consequently whether China believes that "might makes right"), China's views toward the meaning and application of international law, and whether China views itself more as a stakeholder and defender of the current international order, or alternatively, more as a revisionist power that will seek to change elements of that order that it does not like.

## **Security Structure of Asia-Pacific Region**

Chinese domination over or control of its near-seas region could have significant implications for the security structure of the Asia-Pacific region. In particular, Chinese domination over or control of its near-seas area could greatly complicate the ability of the United States to fulfill its obligations to Taiwan under the Taiwan Relations Act (H.R. 2479/P.L. 96-8 of April 10, 1979).<sup>77</sup> It could also complicate the ability of the United States to fulfill its obligations under security and defense treaties with other countries in the region, particularly Japan, South Korea, the Philippines, and Thailand.<sup>78</sup> More generally, it could complicate the ability of the United States to operate U.S. forces in the Western Pacific for various purposes, including maintaining regional stability, conducting engagement and partnership-building operations, responding to crises, and executing war plans. Developments such as these could in turn encourage countries in the region to reexamine their own defense programs and foreign policies, potentially leading to a further change in the region's security structure.

## **U.S. Strategic Goal of Preventing Emergence of Regional Hegemon in Eurasia**

Observers who are concerned that China may be seeking to dominate or gain control of its near-seas region in some cases go further, expressing concern that this may be part of a larger Chinese

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(...continued)

*Reuters.com*, February 13, 2014.

<sup>76</sup> For a survey of issues in U.S.-China relations, see CRS Report R41108, *U.S.-China Relations: An Overview of Policy Issues*, by Susan V. Lawrence.

<sup>77</sup> For more on the Taiwan Relations Act, see CRS Report R41952, *U.S.-Taiwan Relationship: Overview of Policy Issues*, by Shirley A. Kan and Wayne M. Morrison.

<sup>78</sup> The United States has bilateral treaties with Japan, South Korea, and the Philippines. The United States and Thailand are parties to a Southeast Asia collective defense treaty that also includes the United Kingdom, France, Australia, and New Zealand. The United States also has a separate treaty with Australia and New Zealand. For a summary of U.S. collective defense treaties, see the list posted at <http://www.state.gov/s/l/treaty/collectivedefense/>.

effort to become the hegemonic power in its region.<sup>79</sup> From a standpoint of U.S. strategic policy, such an effort would be highly significant, because it has been a long-standing U.S. strategic goal to prevent the emergence of a regional hegemon in one part of Eurasia or another.<sup>80</sup>

## Non-use of Force or Coercion as a Means of Settling Disputes Between Countries

A key element of the U.S.-led international order that has operated since World War II is that force or coercion should not be used as a means of settling disputes between countries, and certainly not as a routine or first-resort method. Some observers are concerned that some of China's actions in asserting and defending its territorial claims in the ECS and SCS challenge this principle and help reestablish the very different principle of "might makes right" as a routine or defining characteristic of international relations.<sup>81</sup>

## Freedom of the Seas

Another key element of the U.S.-led international order that has operated since World War II is the treatment of the world's seas under international law as international waters (i.e., as a global commons), and freedom of operations in international waters. The principle is often referred to in

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<sup>79</sup> See, for example, Gary Roughead, "China, Time and Rebalancing," Hoover Institution, undated (but with copyright of 2014), accessed March 25, 2014, at <http://www.hoover.org/taskforces/military-history/strategika/11/roughead>; Jim Talent, "The Equilibrium of East Asia," *National Review Online*, December 5, 2013; Robert E. Kelly, "What Would Chinese Hegemony Look Like?" *The Diplomat*, February 10, 2014.

<sup>80</sup> Most of the world's people, resources, and economic activity are located not in the Western Hemisphere, but in the other hemisphere, particularly Eurasia. In response to this basic feature of world geography, U.S. policymakers for the past several decades have chosen to pursue, as a key element of U.S. national strategy, a goal of preventing the emergence of a regional hegemon in one part of Eurasia or another, on the grounds that such a hegemon could challenge core U.S. interests by, for example, denying the United States access to important resources and economic activity in part of Eurasia or establishing alliances with countries in the Western Hemisphere. Although U.S. policymakers do not often state this key national strategic goal explicitly in public, U.S. military operations in recent decades—both wartime operations and day-to-day operations—have been carried out in no small part in support of this key goal. For additional discussion, see CRS Report R43838, *A Shift in the International Security Environment: Potential Implications for Defense—Issues for Congress*, by Ronald O'Rourke.

<sup>81</sup> A "senior State Department official," in a background briefing, stated that "there is violent or strong agreement between the U.S. and ASEAN on the principles at stake, principles of freedom of navigation, principles of peaceful resolution. And those principles are, in fact, enshrined in the six points that ASEAN countries themselves have promulgated as guideposts for handling of the challenges of the South China Sea." (Department of State, Background Briefing En Route Brunei, October 9, 2013, accessed March 14, 2013, at <http://www.state.gov/r/pa/prs/ps/2013/10/215222.htm>.)

In a December 5, 2013, letter to China's Ambassador to the United States, Senators Robert Menendez, Bob Corker, Marco Rubio, and Benjamin L. Cardin stated:

We view this unilateral action [by China to establish an ECS ADIZ] as an ill-conceived attempt to alter the status quo, increasing the possibility of misunderstanding or miscalculation. Moreover, this declaration reinforces the perception that China prefers coercion over rule of law mechanisms to address territorial, sovereignty or jurisdictional issues in the Asia-Pacific. It also follows a disturbing trend of increasingly hostile Chinese maritime activities, including repeated incursions by Chinese vessels into the waters and airspace of Japan, the Philippines, Vietnam and other in the East and South China Seas. These actions threaten freedom of air and maritime navigation, which are vital national interests of the United States."

See also Andrew S. Erickson, "China's Near-Seas Challenges," *National Review Online*, January 13, 2014; Jack David, "The Law of the Jungle Returns," *National Review Online*, March 6, 2014.

shorthand as freedom of the seas. It is also sometimes referred to as freedom of navigation, although this term can be defined—particularly by parties who might not support freedom of the seas—in a narrow fashion, to include merely the freedom to navigate (i.e., pass through) sea areas, as opposed to the freedom for conducting various activities at sea. A more complete way to refer to the principle, as stated in DOD’s annual FON report, is “the rights, freedoms, and uses of the sea and airspace guaranteed to all nations in international law.”<sup>82</sup> The principle that most of the world’s seas are to be treated under international law as international waters dates back hundreds of years.<sup>83</sup>

Some observers are concerned that China’s maritime territorial claims, particularly as shown in the map of the nine-dash line, appear to challenge the principle that the world’s seas are to be treated under international law as international waters. If such a challenge were to gain acceptance in the SCS region, it would have broad implications for the United States and other countries not only in the SCS, but around the world, because international law is universal in application, and a challenge to a principle of international law in one part of the world, if accepted, can serve as a precedent for challenging it in other parts of the world. Overturning the principle of freedom of the seas, so that significant portions of the seas could be appropriated as national territory, would overthrow hundreds of years of international legal tradition relating to the legal status of the world’s oceans<sup>84</sup> and significantly change the international legal regime governing the surface of the world.

More specifically, if China’s position on whether coastal states have a right under UNCLOS to regulate the activities of foreign military forces in their EEZs were to gain greater international acceptance under international law, it could substantially affect U.S. naval operations not only in the SCS and ECS (see **Figure 5** for EEZs in the SCS and ECS), but around the world, which in turn could substantially affect the ability of the United States to use its military forces to defend various U.S. interests overseas. As shown in **Figure 6**, significant portions of the world’s oceans are claimable as EEZs, including high-priority U.S. Navy operating areas in the Western Pacific, the Persian Gulf, and the Mediterranean Sea.<sup>85</sup> The legal right of U.S. naval forces to operate

<sup>82</sup> U.S. Department of Defense (DOD) Freedom of Navigation (FON) Report for Fiscal Year (FY) 2013, accessed March 10, 2014, at <http://policy.defense.gov/Portals/11/Documents/gsa/cwmd/FY2013%20DOD%20Annual%20FON%20Report.pdf>. Similar reports for prior fiscal years are posted at <http://policy.defense.gov/OSDPOffices/FON.aspx>.

<sup>83</sup> The idea that most of the world’s seas should be treated as international waters rather than as a space that could be appropriated as national territory dates back to Hugo Grotius (1583-1645), a founder of international law, whose 1609 book *Mare Liberum* (“The Free Sea”) helped to establish the primacy of the idea over the competing idea, put forth by the legal jurist and scholar John Selden (1584-1654) in his book 1635 book *Mare Clausum* (“Closed Sea”), that the sea could be appropriated as national territory, like the land.

<sup>84</sup> One observer states:

A very old debate has been renewed in recent years: is the sea a commons open to the free use of all seafaring states, or is it territory subject to the sovereignty of coastal states? Is it to be freedom of the seas, as Dutch jurist Hugo Grotius insisted? Or is it to be closed seas where strong coastal states make the rules, as Grotius’ English archnemeses John Selden proposed?

Customary and treaty law of the sea sides with Grotius, whereas China has in effect become a partisan of Selden. Just as England claimed dominion over the approaches to the British Isles, China wants to make the rules governing the China seas. Whose view prevails will determine not just who controls waters, islands, and atolls, but also the nature of the system of maritime trade and commerce. What happens in Asia could set a precedent that ripples out across the globe. The outcome of this debate is a big deal.

(James R. Holmes, “Has China Awoken a Sleeping Giant in Japan?” *The Diplomat*, March 1, 2014.)

<sup>85</sup> The National Oceanic and Atmospheric Administration (NOAA) calculates that EEZs account for about 30.4% of the (continued...)

freely in EEZ waters is important to their ability to perform many of their missions around the world, because many of those missions are aimed at influencing events ashore, and having to conduct operations from more than 200 miles offshore would reduce the inland reach and responsiveness of ship-based sensors, aircraft, and missiles, and make it more difficult to transport Marines and their equipment from ship to shore. Restrictions on the ability of U.S. naval forces to operate in EEZ waters could potentially require a change in U.S. military strategy or U.S. foreign policy goals.<sup>86</sup>

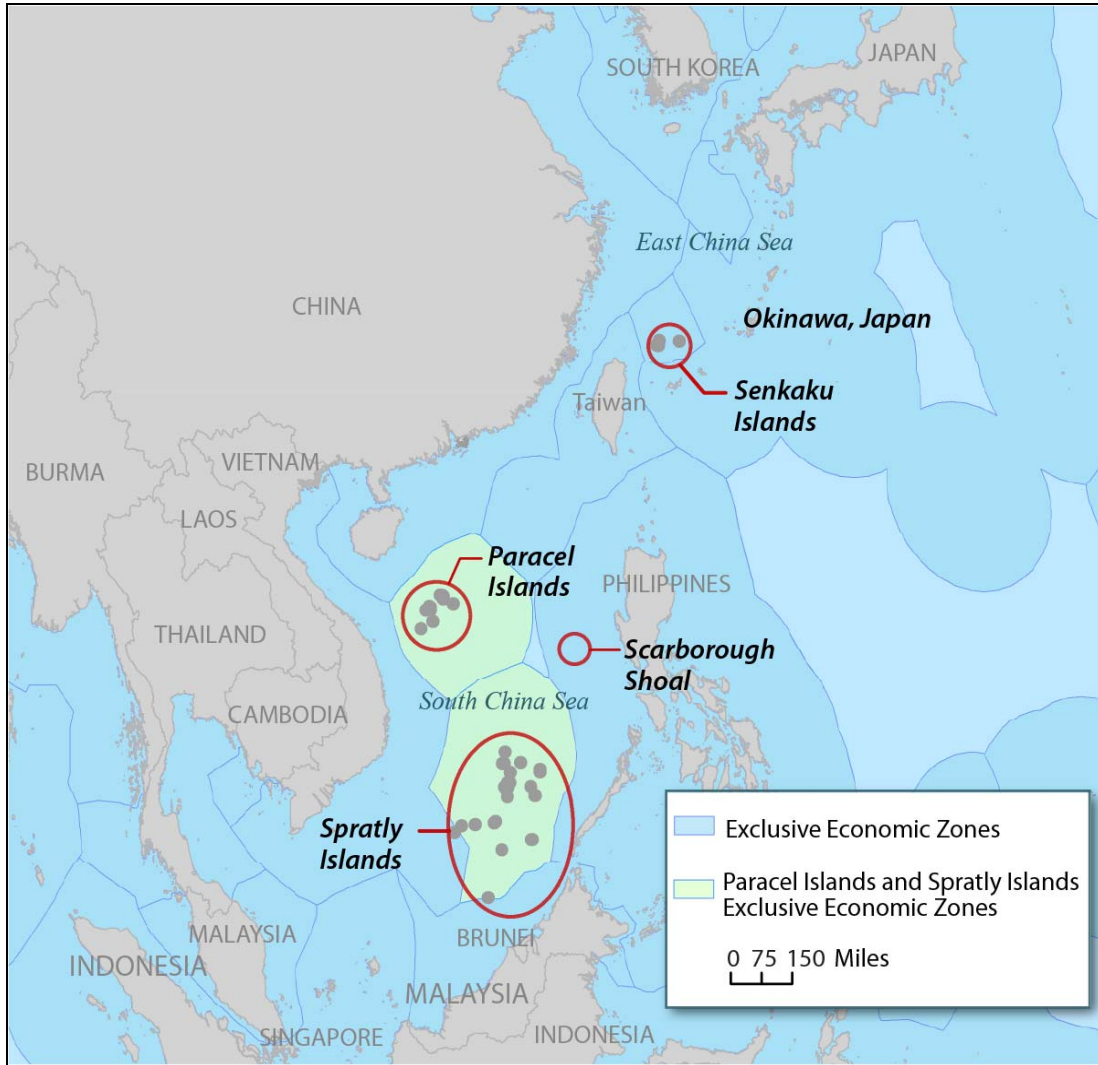
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world's oceans. (See the table called "Comparative Sizes of the Various Maritime Zones" at the end of "Maritime Zones and Boundaries, accessed June 6, 2014, at [http://www.gc.noaa.gov/gcil\\_maritime.html](http://www.gc.noaa.gov/gcil_maritime.html), which states that EEZs account for 101.9 million square kilometers of the world's approximately 335.0 million square kilometers of oceans.)

<sup>86</sup> See, for example, United States Senate, Committee on Foreign Relations, Committee on Foreign Relations, Hearing on Maritime Disputes and Sovereignty Issues in East Asia, July 15, 2009, Testimony of Peter Dutton, Associate Professor, China Maritime Studies Institute, U.S. Naval War College, pp. 2 and 6-7.

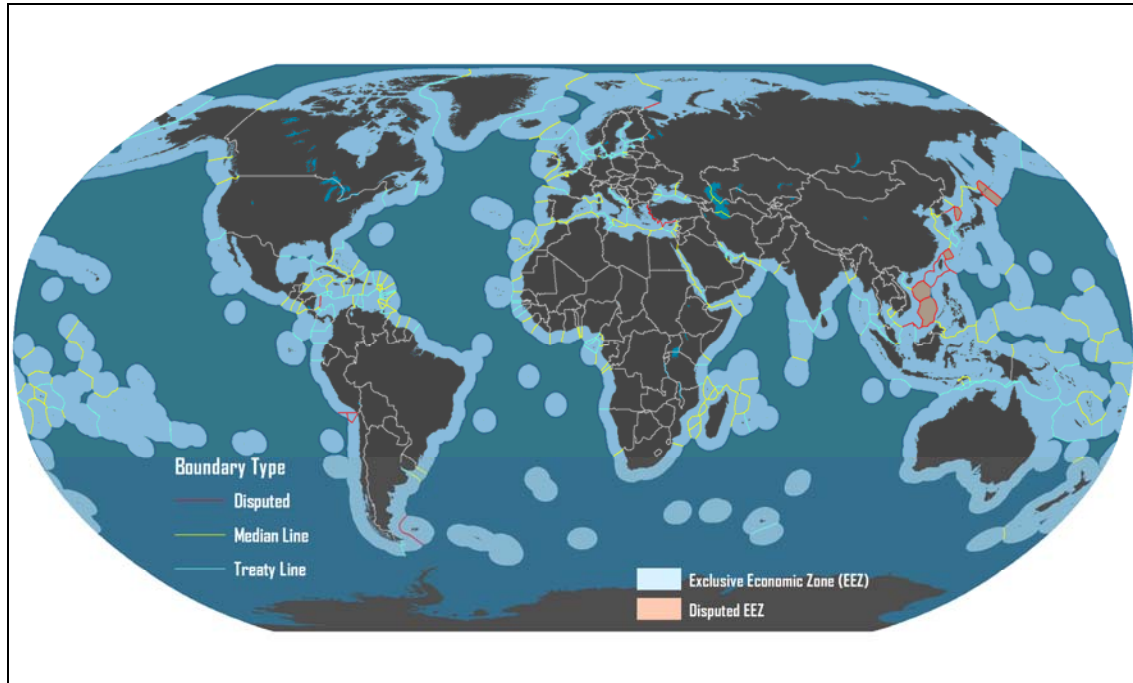
Figure 5. EEZs in South China Sea and East China Sea



**Source:** Map prepared by CRS using basemaps provided by Esri. EEZs are from the Flanders Marine Institute (VLIZ) (2011). Maritime Boundaries Geodatabase, version 6. Available at <http://www.vliz.be/vmcddata/marbound>.

**Note:** Disputed islands have been enlarged to make them more visible.



**Figure 6. Claimable World EEZs**

**Source:** Map designed by Dr. Jean-Paul Rodrigue, Department of Global Studies & Geography, Hofstra University, using boundaries plotted from Maritime Boundaries Geodatabase available at <http://www.vliz.be/vmcddata/marbound>. The map is copyrighted and used here with permission. A version of the map is available at <http://people.hofstra.edu/geotrans/eng/ch5en/conc5en/EEZ.html>.

Some observers, in commenting on China's resistance to U.S. military survey and surveillance operations in China's EEZ, have argued that the United States would similarly dislike it if China or some other country were to conduct military survey or surveillance operations within the U.S. EEZ. Skeptics of this view argue that U.S. policy accepts the right of other countries to operate their military forces freely in waters outside the 12-mile U.S. territorial waters limit, and that the United States during the Cold War acted in accordance with this position by not interfering with either Soviet ships (including intelligence-gathering vessels known as AGIs)<sup>87</sup> that operated close to the United States or with Soviet bombers and surveillance aircraft that periodically flew close to U.S. airspace. The U.S. Navy states that

<sup>87</sup> AGI was a U.S. Navy classification for the Soviet vessels in question in which the A meant auxiliary ship, the G meant miscellaneous purpose, and the I meant that the miscellaneous purpose was intelligence gathering. One observer states:

During the Cold War it was hard for an American task force of any consequence to leave port without a Soviet "AGI" in trail. These souped-up fishing trawlers would shadow U.S. task forces, joining up just outside U.S. territorial waters. So ubiquitous were they that naval officers joked about assigning the AGI a station in the formation, letting it follow along—as it would anyway—without obstructing fleet operations.

AGIs were configured not just to cast nets, but to track ship movements, gather electronic intelligence, and observe the tactics, techniques, and procedures by which American fleets transact business in great waters.

(James R. Holmes, "China's Small Stick Diplomacy," *The Diplomat*, May 21, 2012, accessed October 3, 2012, at <http://thediplomat.com/2012/05/21/chinas-small-stick-diplomacy/>)

When the commonly recognized outer limit of the territorial sea under international law was three nautical miles, the United States recognized the right of other states, including the Soviet Union, to exercise high seas freedoms, including surveillance and other military operations, beyond that limit. The 1982 Law of the Sea Convention moved the outer limit of the territorial sea to twelve nautical miles. In 1983, President Reagan declared that the United States would accept the balance of the interests relating to the traditional uses of the oceans reflected in the 1982 Convention and would act in accordance with those provisions in exercising its navigational and overflight rights as long as other states did likewise. He further proclaimed that all nations will continue to enjoy the high seas rights and freedoms that are not resource related, including the freedoms of navigation and overflight, in the Exclusive Economic Zone he established for the United States consistent with the 1982 Convention.<sup>88</sup>

DOD states that

the PLA Navy has begun to conduct military activities within the Exclusive Economic Zones (EEZs) of other nations, without the permission of those coastal states. Of note, the United States has observed over the past year several instances of Chinese naval activities in the EEZ around Guam and Hawaii. One of those instances was during the execution of the annual Rim of the Pacific (RIMPAC) exercise in July/August 2012. While the United States considers the PLA Navy activities in its EEZ to be lawful, the activity undercuts China's decades-old position that similar foreign military activities in China's EEZ are unlawful.<sup>89</sup>

In July 2014, China participated, for the first time, in the biennial U.S.-led Rim of the Pacific (RIMPAC) naval exercise, the world's largest multilateral naval exercise. In addition to the four ships that China sent to participate in RIMPAC, China sent an uninvited intelligence-gathering ship to observe the exercise without participating in it.<sup>90</sup> The ship conducted operations inside U.S. EEZ off Hawaii, where the exercise was located. A July 29, 2014, press report stated that

The high profile story of a Chinese surveillance ship off the coast of Hawaii could have a positive aspect for U.S. operations in the Pacific, the head of U.S. Pacific Command (PACOM) said in a Tuesday [July 29] afternoon briefing with reporters at the Pentagon.

"The good news about this is that it's a recognition, I think, or acceptance by the Chinese for what we've been saying to them for sometime," PACOM commander Adm. Samuel Locklear told reporters.

"Military operations and survey operations in another country's [Exclusive Economic Zone]—where you have your own national security interest—are within international law and are acceptable. This is a fundamental right nations have."<sup>91</sup>

<sup>88</sup> Navy Office of Legislative Affairs email to CRS dated September 4, 2012.

<sup>89</sup> Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People's Republic of China 2013*, p. 39.

<sup>90</sup> See, for example, Sam LaGrone, "China Sends Uninvited Spy Ship to RIMPAC," *USNI News*, July 18, 2014; William Cole, "Chinese Spy Ship Off Hawaii Keeps Track of RIMPAC," *Star Advertiser*, July 18, 2014; Jeremy Page, "Chinese Ship Spies on U.S.-Led Drills," *Wall Street Journal*, July 19, 2014; Andrew S. Erickson and Emily de La Bruyere, "Crashing Its Own Party: China's Unusual Decision to Spy On Joint Naval Exercises," *Wall Street Journal, China Real Time*, July 19, 2014; Phil Stewart, "Update 1—China Sends Spy Ship Off Hawaii During U.S.-Led Drills," *Reuters*, July 21, 2014.

<sup>91</sup> Sam LaGrone, "U.S. Pacific Commander: Chinese Spy SHIP Off Hawaii Has An Upside," *USNI News*, July 29, 2014. Material in brackets as in original. See also Paul McLeary, "PACOM Chief: US Not Worried About Chinese Intel Ship off Hawaiian Coast," *Defense News*, July 29, 2014.

One observer stated:

The unprecedented decision [by China] to send a surveillance vessel while also participating in the RIMPAC exercises calls China's proclaimed stance on international navigation rights [in EEZ waters] into question...

During the Cold War, the U.S. and Soviets were known for spying on each other's exercises. More recently, Beijing sent what U.S. Pacific Fleet spokesman Captain Darryn James called "a similar AGI ship" to Hawaii to monitor RIMPAC 2012—though that year, China was not an official participant in the exercises....

... the spy ship's presence appears inconsistent with China's stance on military activities in Exclusive Economic Zones (EEZs).... That Beijing's AGI [intelligence-gathering ship] is currently stationed off the coast of Hawaii suggests either a double standard that could complicate military relations between the United States and China, or that some such surveillance activities are indeed legitimate—and that China should clarify its position on them to avoid perceptions that it is trying to have things both ways....

In its response to the Chinese vessel's presence, the USN has shown characteristic restraint. Official American policy permits surveillance operations within a nation's EEZ, provided they remain outside of that nation's 12-nautical mile territorial sea (an EEZ extends from 12 to 200 nautical miles unless this would overlap with another nation's EEZ). U.S. military statements reflect that position unambiguously....

That consistent policy stance and accompanying restraint have characterized the U.S. attitude toward foreign surveillance activity since the Cold War. Then, the Soviets were known for sending converted fishing ships equipped with surveillance equipment to the U.S. coast, as well as foreign bases, maritime choke points, and testing sites. The U.S. was similarly restrained in 2012, when China first sent an AGI to observe RIMPAC....

China has, then, sent a surveillance ship to observe RIMPAC in what appears to be a decidedly intentional, coordinated move—and in a gesture that appears to contradict previous Chinese policy regarding surveillance and research operations (SROs). The U.S. supports universal freedom of navigation and the right to conduct SROs in international waters, including EEZs, hence its restraint when responding to the current presence of the Chinese AGI. But the PRC opposes such activities, particularly on the part of the U.S., in its own EEZ....

How then to reconcile the RIMPAC AGI with China's stand on surveillance activities? China maintains that its current actions are fully legal, and that there is a distinct difference between its operations off Hawaii and those of foreign powers in its EEZ. The PLAN's designated point of contact declined to provide information and directed inquiries to China's Defense Ministry. In a faxed statement to Reuters, the Defense Ministry stated that Chinese vessels had the right to operate "in waters outside of other country's territorial waters," and that "China respects the rights granted under international law to relevant littoral states, and hopes that relevant countries can respect the legal rights Chinese ships have." It did not elaborate.

As a recent *Global Times* article hinted—China's position on military activities in EEZs is based on a legal reading that stresses the importance of domestic laws. According to China maritime legal specialist Isaac Kardon, China interprets the EEZ articles in the United Nations Convention on the Law of the Sea (UNCLOS) as granting a coastal state jurisdiction to enforce its domestic laws prohibiting certain military activities—e.g., those that it interprets to threaten national security, economic rights, or environmental protection—in its EEZ. China's domestic laws include such provisions, while those of the United States do not.

Those rules would allow China to justify its seemingly contradictory approach to AGI operations—or, as Kardon put it, “to have their cake and eat it too.” Therefore, under the Chinese interpretation of UNCLOS, its actions are neither hypocritical nor illegal—yet do not justify similar surveillance against China.

Here, noted legal scholar Jerome Cohen emphasizes, the U.S. position remains the globally dominant view—“since most nations believe the coastal state has no right to forbid surveillance in its EEZ, they do not have domestic laws that do so.” This renders China’s attempted constraints legally problematic, since “international law is based on reciprocity.” To explain his interpretation of Beijing’s likely approach, Cohen invokes the observation that a French commentator made several decades ago in the context of discussing China’s international law policy regarding domestic legal issues: “I demand freedom from you in the name of your principles. I deny it to you in the name of mine.”

Based on his personal experience interacting with Chinese officials and legal experts, Kardon adds, “China is increasingly confident that its interpretation of some key rules and—most critically—its practices reinforcing that interpretation can over time shape the Law of the Sea regime to suit its preferences.”

But China is not putting all its eggs in that basket. There are increasing indications that it is attempting to promote its EEZ approach vis-à-vis the U.S. not legally but politically. “Beijing is shifting from rules- to relations-based objections,” Naval War College China Maritime Studies Institute Director Peter Dutton observes. “In this context, its surveillance operations in undisputed U.S. EEZs portend an important shift, but that does not mean that China will be more flexible in the East or South China Seas.” The quasi-authoritative Chinese commentary that has emerged thus far supports this interpretation....

[A recent statement from a Chinese official] suggests that Beijing will increasingly oppose U.S. SROs on the grounds that they are incompatible with the stable, cooperative Sino-American relationship that Beijing and Washington have committed to cultivating. The Obama Administration must ensure that the “new-type Navy-to-Navy relations” that Chinese Chief of Naval Operations Admiral Wu Shengli has advocated to his U.S. counterpart does not contain expectations that U.S. SROs will be reduced in nature, scope, or frequency....

China’s conducting military activities in a foreign EEZ implies that, under its interpretation, some such operations are indeed legal. It therefore falls to China now to clarify its stance—to explain why its operations are consistent with international law, and what sets them apart from apparently similar American activities.

If China does not explain away the apparent contradiction in a convincing fashion, it risks stirring up increased international resentment—and undermining its relationship with the U.S. Beijing is currently engaging in activities very much like those it has vociferously opposed. That suggests the promotion of a double standard untenable in the international system, and very much at odds with the relationships based on reciprocity, respect, and cooperation that China purports to promote....

If, however, China chooses to remain silent, it will likely have to accept—at least tacitly, without harassing—U.S. surveillance missions in its claimed EEZ. So, as we watch for clarification on Beijing’s legal interpretation, it will also be important to watch for indications regarding the next SROs in China’s EEZ.<sup>92</sup>

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<sup>92</sup> Andrew S. Erickson and Emily de La Bruyere, “China’s RIMPAC Maritime-Surveillance Gambit,” *The National Interest*, July 29, 2014. See also Andrew S. Erickson, “PRC National Defense Ministry Spokesman Sr. Col. Geng (continued...)”

In September 2014, a Chinese surveillance ship operated in U.S. EEZ waters near Guam as it observed a joint-service U.S. military exercise called Valiant Shield. A U.S. spokesperson for the exercise stated: “We’d like to reinforce that military operations in international commons and outside of territorial waters and airspace is a fundamental right that all nations have.... The Chinese were following international norms, which is completely acceptable.”<sup>93</sup>

## Issues for Congress

Maritime territorial and EEZ disputes in the SCS and ECS involving China raise several potential policy and oversight issues for Congress, including those discussed below.

### U.S. Strategy for Countering China’s “Salami-Slicing” Strategy

Particularly in light of the potential implications for the United States if China were to achieve domination over or control of its near-seas areas (see previous section), one potential oversight issue for Congress is whether the United States has an adequate strategy for countering China’s “salami-slicing” strategy.

#### Some Reported U.S. Actions

In apparent response to China’s “salami-slicing” strategy, the United States has taken a number of actions, including the following:

- reiterating the U.S. position on maritime territorial claims in the area (see “U.S. Position on the Disputes” in “Background”);
- expressing strong concerns about China’s land reclamation activities;
- taking steps to improve the ability of the Philippines and Vietnam to maintain maritime domain awareness (MDA) and patrol their EEZs, including transferring two ex-U.S. Coast Guard Hamilton-class high-endurance cutters to the Philippine Coast Guard and announcing a commitment of \$32.5 million in new regional and bilateral assistance to advance maritime capacity building in Southeast Asia;<sup>94</sup>
- taking steps to strengthen U.S. security cooperation with Japan, the Philippines, and Vietnam, including signing an agreement with the Philippines that provides U.S. forces with increased access to Philippine

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(...continued)

Yansheng Offers China’s Most-Detailed Position to Date on Dongdiao-class Ship’s Intelligence Collection in U.S. EEZ during RIMPAC Exercise,” *Andrew S. Erickson*), August 1, 2014. See also Michael Auslin, “Wishful Thinking on China’s Navy,” *AEIdeas*, July 30, 2014.

<sup>93</sup> Erik Slavin, “Chinese Ship Spies on Valiant Shield, And That’s OK With US,” *Stars and Stripes*, September 22, 2014.

<sup>94</sup> Department of State Fact Sheet, “Expanded U.S. Assistance for Maritime Capacity Building,” December 16, 2013, accessed March 14, 2013, at <http://www.state.gov/r/pa/prs/ps/2013/218735.htm>, and Department of State Fact Sheet, “Southeast Asia maritime Law Enforcement Initiative,” April 10, 2015, accessed April 17, 2015, at <http://www.state.gov/r/pa/pl/240798.htm>.

bases, increasing the scale of joint military exercises involving U.S. and Philippine forces, and relaxing limits on sales of certain U.S. arms to Vietnam,<sup>95</sup>

- expressing support for Japanese patrols in the SCS,<sup>96</sup> and
- stating that the United States would support a multinational maritime patrol of the SCS by members of ASEAN.<sup>97</sup>

In April and July 2014, it was reported that the Administration was considering additional options for responding to China's "salami-slicing" strategy. An April 27, 2014, press report states:

The U.S. military has prepared options for a muscular response to any future Chinese provocations in the South and East China seas, ranging from displays of B-2 bomber flights near China to aircraft-carrier exercises near its coastal waters, officials said.

The menu of options, described by officials briefed on the action plan, reflects concerns that U.S. allies in Asia have about the Obama administration's commitments to its security obligations, particularly after Russia's seizure of the Crimean peninsula....

The new U.S. options were developed by the Hawaii-based U.S. Pacific Command in recent months, and come after the international crisis last year in which China unilaterally declared an air-defense zone around islands that are the subject of a territorial dispute with Japan.

Defense officials said the options have been drafted to apply to any provocative act in the region, whether carried out by China or North Korea. Defense officials are currently revising the options in the context of a possible act of aggression by North Korea, with some officials arguing Pyongyang is poised to begin a "cycle of provocation."

The Pacific Command, like other U.S. regional military commands world-wide, regularly drafts military options and contingency plans. The options were recently updated to make them brawnier, defense officials said.

"Combatant Commands plan...for everything from exercises and humanitarian assistance, disaster relief operations all the way up to full-scale combat operations," said Capt. Chris Sims, the spokesman for Pacific Command. "In the plans that they create, options are provided to senior military and civilian leadership."

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<sup>95</sup> See, for example, Michael R. Gordon, "U.S. Eases Embargo on Arms to Vietnam," *New York Times*, October 2, 2014; Associated Press, "U.S. Eases Ban on Arms Sales to Vietnam," *Wall Street Journal*, October 3, 2014; Lesley Wroughton and Andrea Shalal, "US Eases Arms Embargo Against Vietnam for Maritime Security," *Reuters*, October 2, 2014; Aaron Mehta, "US State Department Opens Door to maritime Defense Weapon Sales To Vietnam," *Defense News*, October 2, 2014; Aaron Mehta, "New Vietnam Ruling Could Open Door To Further Exports," *Defense News*, October 4, 2014.

<sup>96</sup> Tim Kelly and Nobuhiro Kubo, "U.S. Would Welcome Japan Air Patrols in South China Sea," *Reuters*, January 29, 2015; Sam LaGrone, "U.S. 7<sup>th</sup> Fleet CO: Japanese Patrols of South China Sea 'Makes Sense,'" *USNI News*, January 29, 2015.

<sup>97</sup> Sam LaGrone, "U.S. 7<sup>th</sup> Fleet Would Support ASEAN South China Sea patrols," *USNI News*, March 20, 2015. See also "US Navy Head Calls For Regional Force to Patrol S China Sea," *Today*, March 18 (updated March 19), 2015; Andrea Chen and Agencies, "Asean Nations React Coolly to US Navy Commander's Call for Joint Patrols in South China Sea," *South China Morning Post*, March 19, 2015; Sharon Chen, "U.S. Navy Urges Southeast Asian Patrols of South China Sea," *Bloomberg News*, March 17, 2015.

In addition to bomber flights and aircraft carrier maneuvers, the options include demonstrations of U.S. power such as increasing surveillance operations near China, and stepping up U.S. naval port visits to allies.

A senior Obama administration official declined to comment on details of any military options, but said unilateral moves by Beijing—such as the declaration of another air-defense zone in the region—“could result in changes in our military posture and presence” in the region.

The military options don't specify particular responses to individual actions. Rather, officials briefed on the options said, the actions would need to be tailored to the specific incident, such as maritime confrontation.

Under the U.S. options, any new moves in the region by China to assert its claims unilaterally would be met by an American military challenge intended to get Beijing to back down. U.S. officials said the White House would be prepared to step up military deployments in disputed waters in the South and East China Seas, in a more direct challenge to Chinese claims there than the U.S. has taken in the past.

The steps can be taken without risking a shooting war, officials say, citing intelligence that suggests there are divisions within the Chinese military establishment about how to respond. U.S. defense officials said some of the options are designed to send a subtle message, like stepped-up port calls by Navy ships or increasing the size and scope of already-planned exercises. All of the contingency plans, said a defense official, are designed to allow a potential adversary a chance to de-escalate.

“Never push your enemy into a corner because you might get a reaction you don't want,” said a U.S. official, specifying the need for an “off ramp.”...

Current and former officials said among the more provocative options on the table to counter China would include expanded U.S. surveillance flights and sending U.S. aircraft carriers through disputed waters close to the Chinese coast, including the strait of Taiwan.

The U.S. Navy regularly sends destroyers and cruisers through the strait of Taiwan in lower-profile freedom-of-navigation operations, but sending a carrier through would mark a significant escalation, officials said.<sup>98</sup>

A July 9, 2014, press report states:

In Washington, the bitterness over what US officials saw as an exercise in bad faith on the Chinese side is informing the fierce debate within the Obama administration about how to respond to what are often described as China's “salami-slicing” tactics.

In recent months, the US has come to two broad conclusions about its approach to the South China Sea. The first is that its efforts at deterrence are having only limited impact. Despite considerable US attention and rhetoric since 2010, China has slowly continued to shift the status quo in ways that are rattling both many of its neighbours and the US.

The second is that US military strategy in the region has to some extent been asking the wrong question. For several years, some of the Pentagon's best minds have been focused on

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<sup>98</sup> Adam Entous and Julian E. Barnes, “U.S. Beefs Up Military Options for China as Obama Reassures Allies in Asia,” *Wall Street Journal*, April 27, 2014.

how the US would win a protracted war with China and have come up with a new concept – known as AirSea Battle—to ensure continued access of US aircraft and ships to contested areas during a conflict.

However, the reality is that Washington is facing a very different military challenge, a creeping assertion of control by the Chinese that often involves civilian rather than naval vessels—the sort of grey area that would not normally warrant any response from the US.

“We need to think less about a hypothetical major war and more about the actual situation we are confronting on a daily basis,” says a former senior US commander in the region. “It should not be beyond our wits to devise a strategy to outmanoeuvre China.”

The military options being considered by the US revolve around collecting more information on Chinese actions—from surveillance aircraft or radar—and increased air and naval operations that will challenge efforts by China to claim control of new areas.

The dilemma for the US is to find ways to raise the costs for China without sparking a confrontation over territories that most Americans would consider a worthless bunch of rocks.<sup>99</sup>

A July 10, 2014, press report states:

The US is developing new military tactics to deter China’s slow but steady territorial advances in the South China Sea, including more aggressive use of surveillance aircraft and naval operations near contested areas.

The rethink comes in the wake of the series of low-level incursions China has used to shift the status quo in one of the vital waterways of the global economy....

“Our efforts to deter China [in the South China Sea] have clearly not worked,” said a senior US official....

One element of the emerging US strategy was evident in March when the US flew P-8A surveillance planes over the Second Thomas Shoal, an uninhabited atoll in the South China Sea. Chinese ships there were trying to prevent the Philippines from supplying marines who were trying to get essential supplies to a ship that in 1999 was deliberately run aground on a land-feature claimed by both countries. The US planes flew at low altitude to make sure they were visible to the Chinese.

“This is a new dynamic,” said a former Pentagon official familiar with the operation. “The message is, ‘we know what you are doing, your actions will have consequences and that we have the capacity and the will and we are here’.”

A spokesman for the US military’s Pacific Command said that “we do routine operations in these waters and airspace on a regular basis”.

More extensive use of surveillance aircraft in the region could be coupled with a greater willingness to publicise images or videos of Chinese maritime activity. Some US officials believe the Chinese might be given pause for thought if images of their vessels harassing Vietnamese or Filipino fishermen were to be broadcast.

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<sup>99</sup> Geoff Dyer and Demetri Sevastopulo, “US Strategists Face Dilemma Over Beijing Claim in South China Sea,” *Financial Times*, July 9, 2014.



The US military's Hawaii-based Pacific command has also been asked to co-ordinate the development of a regional system of maritime information, which would allow governments in the western Pacific detailed information about the location of vessels in the region. Several governments say they have been caught unawares by the surprise appearance of Chinese ships.

The US has supplied the Philippines, Japan and other countries in the region with improved radar equipment and other monitoring systems and is now looking for ways to build this information into a broader regional network that shares the data.

The Pentagon has also been working on plans for calculated shows of force, such as the flight of B-52s over the East China Sea last year after China declared an exclusive air defence zone over the area. The potential options involve sending naval vessels close to disputed areas.

US officials say that there is little appetite within the administration for some of the more confrontational ideas that have been proposed as a means of deterring China. These include deploying the US coast guard to the South China Sea to counter the activities of Chinese civilian vessels and using US-led convoys to escort fisherman from the Philippines and other nations into areas where they have been expelled by the Chinese.<sup>100</sup>

### **Potential Further U.S. Actions Suggested by Observers**

Some observers believe that the United States currently does not have an adequate strategy for countering China's land reclamation activities in the SCS and the other elements of its salami-slicing strategy.<sup>101</sup> Some of these observers have proposed taking actions that would be in addition to those described above. The actions proposed by these observers are reprinted at length in **Appendix D**. In general, these proposed actions include (but are not limited to) the following:

- making stronger U.S. statements to China about the consequences for China of continuing assertive or coercive actions in the ECS and SCS, and more generally, changing the U.S. tone of conversation with China;
- increasing and/or accelerating actions to strengthen the capacity of allied and partner countries in the region to maintain maritime domain awareness (MDA), coast guard patrols, and a fishing fleet operations in the area;
- increasing U.S. Navy operations in the region;
- further strengthening U.S. security cooperation with allied and partner countries in the region, and with India, to the point of creating a coalition for balancing China's assertiveness; and

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<sup>100</sup> Geoff Dyer, Richard McGregor, and Demetri Sevastopulo, "Pentagon Plans New Tactics To Deter China in South China Sea," *Financial Times*, July 10, 2014.

<sup>101</sup> See, for example, David Brunnstrom, "Senators Seek U.S. Strategy To Stop China's South China Sea Reclamation," *Reuters*, March 19, 2015; Colin Clark, "US Should 'Slow' Or 'Stop' China's Island Building: SASC, Foreign Relations Leaders," *Breaking Defense*, March 19, 2015; "Conquering the South China Sea," *Wall Street Journal*, March 25, 2015.

- increasing U.S. arms sales to Taiwan; and inviting Taiwan to participate in the next RIMPAC (Rim of the Pacific) exercise, a U.S.-led multilateral naval exercise that takes place every two years.

In connection with the second bullet point above, it was reported in April 2015 that the Philippines “would soon ask the United States for more military equipment and training to build its defenses, as it faces Chinese ‘aggressiveness’ in disputed waters.”<sup>102</sup>

## **Risk of United States Being Drawn into a Crisis or Conflict**

Another potential issue for Congress is whether the United States has taken adequate actions to reduce the risk that the United States might be drawn into a crisis or conflict over a territorial dispute involving China. Potential oversight questions for Congress include the following:

- Have U.S. officials taken appropriate and sufficient steps to help reduce the risk of maritime territorial disputes in the SCS and ECS escalating into conflicts?
- Do the United States and Japan have a common understanding of potential U.S. actions under Article IV of the U.S.-Japan Treaty on Mutual Cooperation and Security in the event of a crisis or conflict over the Senkaku Islands? What steps has the United States taken to ensure that the two countries share a common understanding?
- Do the United States and the Philippines have a common understanding of how the 1951 U.S.-Philippines mutual defense treaty applies to maritime territories in the SCS that are claimed by both China and the Philippines, and of potential U.S. actions under Article IV of the treaty in the event of a crisis or conflict over the territories? What steps has the United States taken to ensure that the two countries share a common understanding?
- Aside from public statements, what has the United States communicated to China regarding potential U.S. actions under the two treaties in connection with maritime territorial disputes in the SCS and ECS?
- Has the United States correctly balanced ambiguity and explicitness in its communications to various parties regarding potential U.S. actions under the two defense treaties?
- How do the two treaties affect the behavior of Japan, the Philippines, and China in managing their territorial disputes? To what extent, for example, would they help Japan or the Philippines resist potential Chinese attempts to resolve the disputes through intimidation, or, alternatively, encourage risk-taking or brinkmanship behavior by Japan or the Philippines in their dealings with China on the disputes? To what extent do they deter or limit Chinese assertiveness or aggressiveness in their dealings with Japan the Philippines on the disputes?

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<sup>102</sup> Agence France-Presse, “Philippines Seeks More Aid To Counter China,” *Defense News*, April 21, 2015.

- Has the DOD adequately incorporated into its planning crisis and conflict scenarios arising from maritime territorial disputes in the SCS and ECS that fall under the terms of the two treaties?

## **Whether United States Should Ratify United Nations Convention on the Law of the Sea (UNCLOS)**

Another issue for Congress—particularly the Senate—is the impact of maritime territorial and EEZ disputes involving China on the question of whether the United States should become a party to UNCLOS. As mentioned earlier, the treaty and an associated 1994 agreement relating to implementation of Part XI of the treaty (on deep seabed mining) were transmitted to the Senate on October 6, 1994.<sup>103</sup> In the absence of Senate advice and consent to adherence, the United States is not a party to the convention and the associated 1994 agreement. During the 112<sup>th</sup> Congress, the Senate Foreign Relations Committee held four hearings on the question of whether the United States should become a party to the treaty on May 23, June 14 (two hearings), and June 28, 2012.

Supporters of the United States becoming a party to UNCLOS argue or might argue one or more of the following:

- The treaty’s provisions relating to navigational rights, including those in EEZs, reflect the U.S. position on the issue; becoming a party to the treaty would help lock the U.S. perspective into permanent international law.
- Becoming a party to the treaty would give the United States greater standing for participating in discussions relating to the treaty—a “seat at the table”—and thereby improve the U.S. ability to call on China to act in accordance with the treaty’s provisions, including those relating to navigational rights, and to defend U.S. interpretations of the treaty’s provisions, including those relating to whether coastal states have a right under UNCLOS to regulate foreign military activities in their EEZs.<sup>104</sup>
- At least some of the ASEAN member states want the United States to become a member of UNCLOS, because they view it as the principal framework for resolving maritime territorial disputes.
- Relying on customary international law to defend U.S. interests in these issues is not sufficient, because it is not universally accepted and is subject to change over time based on state practice.

Opponents of the United States becoming a party to UNCLOS argue or might argue one or more of the following:

- China’s ability to cite international law (including UNCLOS) in defending its position on whether coastal states have a right to regulate

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<sup>103</sup> Treaty Document 103-39.

<sup>104</sup> See, for example, Andrew Browne, “A Hole in the U.S. Approach to Beijing,” *Wall Street Journal*, May 20, 2014.

foreign military activities in their EEZs<sup>105</sup> shows that UNCLOS does not adequately protect U.S. interests relating to navigational rights in EEZs; the United States should not help lock this inadequate description of navigational rights into permanent international law by becoming a party to the treaty.

- The United States becoming a party to the treaty would do little to help resolve maritime territorial disputes in the SCS and ECS, in part because China's maritime territorial claims, such as those depicted in the map of the nine-dash line, predate and go well beyond what is allowed under the treaty and appear rooted in arguments that are outside the treaty.
- The United States can adequately support the ASEAN countries and Japan in matters relating to maritime territorial disputes in the SCS and ECS in other ways, without becoming a party to the treaty.
- The United States can continue to defend its positions on navigational rights on the high seas by citing customary international law, by demonstrating those rights with U.S. naval deployments (including those conducted under the FON program), and by having allies and partners defend the U.S. position on the EEZ issue at meetings of UNCLOS parties.

## Legislative Activity in 2015

### Concurrent Resolution on the Budget for FY2016 (S.Con.Res. 11)

#### Senate

On March 27, 2015, as part of its consideration of S.Con.Res. 11, the Senate agreed by unanimous consent to S.Amdt. 705, which added a new section. The new section (**Section 399uu**) states:

SEC. 399uu. Deficit-neutral reserve fund relating to Indo-Pacific partner capacity building and strategy.

The Chairman of the Committee on the Budget of the Senate may revise the allocations of a committee or committees, aggregates, and other appropriate levels in this resolution for one or more bills, joint resolutions, amendments, amendments between the Houses, motions, or conference reports relating to supporting a comprehensive multi-year partner capacity building and security cooperation plan in the Indo-Pacific region, including for a regional maritime domain awareness architecture and for bilateral and multilateral exercises, port calls, and training activities of the United States Armed Forces and Coast Guard to further a comprehensive strategy to strengthen United States alliances and partnerships, freedom of navigation, and the unimpeded access to the maritime commons of the Asia-Pacific by the amounts provided in such legislation for those purposes, provided that such legislation would

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<sup>105</sup> For a discussion of China's legal justifications for its position on the EEZ issue, see, for example, Peter Dutton, "Three Dispute and Three Objectives," *Naval War College Review*, Autumn 2011: 54-55.

not increase the deficit over either the period of the total of fiscal years 2016 through 2020 or the period of the total of fiscal years 2016 through 2025.

## **FY2016 National Defense Authorization Act (H.R. 1735/S. 1376)**

### **House**

**Section 1254** of H.R. 1735 as reported by the House Armed Services Committee (H.Rept. 114-102 of May 5, 2015) states:

SEC. 1254. Sense of Congress on the United States alliance with Japan.

It is the sense of Congress that—

(1) the United States highly values its alliance with the Government of Japan as a cornerstone of peace and security in the region, based on shared values of democracy, the rule of law, free and open markets, and respect for human rights in order to promote peace, security, stability, and economic prosperity in the Asia-Pacific region;

(2) the United States welcomes Japan's decision to contribute more proactively to regional and global peace and security;

(3) the United States supports recent changes in Japanese defense policy, including the adoption of collective self-defense and the new bilateral Guidelines for U.S.-Japan Defense Cooperation which were approved on April 27, 2015, and will promote a more balanced and effective alliance to meet the emerging security challenges of this century;

(4) the United States and Japan should continue to improve joint interoperability and collaborate on developing future capabilities with which to maintain regional stability in an increasingly uncertain security environment;

(5) the United States and Japan should continue efforts to strengthen regional multilateral institutions that promote economic and security cooperation based on internationally accepted rules and norms;

(6) the United States acknowledges that the Senkaku Islands are under the administration of Japan and opposes any unilateral actions that would seek to undermine such administration and remains committed under the Treaty of Mutual Cooperation and Security to respond to any armed attack in the territories under the administration of Japan; and

(7) the United States reaffirms its commitment to the Government of Japan under Article V of the Treaty of Mutual Cooperation and Security that “[e]ach Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes”.

H.Rept. 114-102 also states:

#### **U.S.-Philippines Defense Cooperation**

The committee notes that in April 2014, the Governments of the United States and the Republic of the Philippines announced a bilateral Enhanced Defense Cooperation Agreement. This 10-year agreement, building upon the 1951 Mutual Defense Treaty, would

facilitate the enhanced rotational presence of U.S. forces, expand opportunities for joint military training and exercises, and support the long-term modernization of the Philippine military. It would also provide for greater U.S. presence in the region to reassure allies and partners and to monitor U.S. interests, particularly freedom of navigation in the South China Sea.

The committee welcomes the enhancement of defense cooperation with the Philippines and the expansion of bilateral military training opportunities. The committee also recognizes the willingness of the Philippines to host U.S. forces on a rotational basis as a strong signal of its commitment to the bilateral strategic partnership. It further supports efforts to modernize the Armed Forces of the Philippines and to strengthen their maritime security, maritime domain awareness, and humanitarian assistance and disaster relief capabilities, so that they can enhance their defensive capabilities and provide a greater contribution to regional security and stability. (Page 260)

## **Senate**

**Section 1261** of S. 1376 as reported by the Senate Armed Services Committee (S.Rept. 114-49 of May 19, 2015) states:

SEC. 1261. South China Sea Initiative.

(a) Assistance authorized.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, is authorized, for the purpose of increasing maritime security and maritime domain awareness of foreign countries along the South China Sea—

(A) to provide assistance to national military or other security forces of such countries that have among their functional responsibilities maritime security missions; and

(B) to provide training to ministry, agency, and headquarters level organizations for such forces.

(2) DESIGNATION OF ASSISTANCE AND TRAINING.—The provision of assistance and training under this section may be referred to as the “South China Sea Initiative”.

(b) Recipient countries.—The foreign countries that may be provided assistance and training under subsection (a) are the following:

(1) Indonesia.

(2) Malaysia,

(3) The Philippines.

(4) Thailand.

(5) Vietnam.

(c) Types of assistance and training.—

(1) **AUTHORIZED ELEMENTS OF ASSISTANCE.**—Assistance provided under subsection (a)(1)(A) may include the provision of equipment, supplies, training, and small-scale military construction.

(2) **REQUIRED ELEMENTS OF ASSISTANCE AND TRAINING.**—Assistance and training provided under subsection (a) shall include elements that promote the following:

(A) Observance of and respect for human rights and fundamental freedoms.

(B) Respect for legitimate civilian authority within the country to which the assistance is provided.

(d) **Priorities for assistance and training.**—In developing programs for assistance or training to be provided under subsection (a), the Secretary of Defense shall accord a priority to assistance, training, or both that will enhance the maritime capabilities of the recipient foreign country, or a regional organization of which the recipient country is a member, to respond to emerging threats to maritime security.

(e) **Incremental expenses of personnel of certain other countries for training.**—

(1) **AUTHORITY FOR PAYMENT.**—If the Secretary of Defense determines that the payment of incremental expenses in connection with training described in subsection (a)(1)(B) will facilitate the participation in such training of organization personnel of foreign countries specified in paragraph (2), the Secretary may use amounts available under subsection (f) for assistance and training under subsection (a) for the payment of such incremental expenses.

(2) **COVERED COUNTRIES.**—The foreign countries specified in this paragraph are the following:

(A) Brunei.

(B) Singapore.

(C) Taiwan.

(f) **Funding.**—Funds may be used to provide assistance and training under subsection (a) as follows:

(1) In fiscal year 2016, \$50,000,000 from amounts authorized to be appropriated for the Department of Defense for that fiscal year for operation and maintenance, Defense-wide.

(2) In fiscal year 2017, \$75,000,000 from amounts authorized to be appropriated for the Department of Defense for that fiscal year for operation and maintenance, Defense-wide.

(3) In each of fiscal years 2018 through 2020, \$100,000,000 from amounts authorized to be appropriated for the Department of Defense for such fiscal year for operation and maintenance, Defense-wide.

(g) **Notice to Congress on assistance and training.**—Not later than 15 days before exercising the authority under subsection (a) or (e) with respect to a recipient foreign country, the Secretary of Defense shall submit to the congressional defense committees a notification containing the following:

- (1) The recipient foreign country.
  - (2) A detailed justification of the program for the provision of the assistance or training concerned, and its relationship to United States security interests.
  - (3) The budget for the program, including a timetable of planned expenditures of funds to implement the program, an implementation timeline for the program with milestones (including anticipated delivery schedules for any assistance under the program), the military department or component responsible for management of the program, and the anticipated completion date for the program.
  - (4) A description of the arrangements, if any, to support host nation sustainment of any capability developed pursuant to the program, and the source of funds to support sustainment efforts and performance outcomes to be achieved under the program beyond its completion date, if applicable.
  - (5) A description of the program objectives and an assessment framework to be used to develop capability and performance metrics associated with operational outcomes for the recipient force.
  - (6) Such other matters as the Secretary considers appropriate.
- (h) Expiration.—The authority provided under this section may not be exercised after September 30, 2020.

Regarding Section 1261, S.Rept. 114-49 states:

**South China Sea Initiative (Sec. 1261)**

The committee recommends a provision that would authorize the Secretary of Defense, with the concurrence of the Secretary of State, to provide equipment, supplies, and training to national military or other security forces of foreign countries to respond to threats to maritime security. The provision would authorize \$50.0 million with increase in future years, in Operation and Maintenance, Defense-wide (OMDW) for the Global Train and Equip Program to provide assistance to the recipient countries, which include Indonesia, Malaysia, the Philippines, Thailand, and Vietnam. The provision would require that the Secretary of Defense provide prior notification to the congressional defense committees not later than 15 days before exercising this authority. (Page 234)



## **Appendix A. 2002 Declaration on Conduct of Parties in South China Sea**

The text of the 2002 Declaration on the Conduct of Parties in the South China Sea is as follows:<sup>106</sup>

### DECLARATION ON THE CONDUCT OF PARTIES IN THE SOUTH CHINA SEA

The Governments of the Member States of ASEAN and the Government of the People's Republic of China,

REAFFIRMING their determination to consolidate and develop the friendship and cooperation existing between their people and governments with the view to promoting a 21<sup>st</sup> century-oriented partnership of good neighbourliness and mutual trust;

COGNIZANT of the need to promote a peaceful, friendly and harmonious environment in the South China Sea between ASEAN and China for the enhancement of peace, stability, economic growth and prosperity in the region;

COMMITTED to enhancing the principles and objectives of the 1997 Joint Statement of the Meeting of the Heads of State/Government of the Member States of ASEAN and President of the People's Republic of China;

DESIRING to enhance favourable conditions for a peaceful and durable solution of differences and disputes among countries concerned;

HEREBY DECLARE the following:

1. The Parties reaffirm their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations;
2. The Parties are committed to exploring ways for building trust and confidence in accordance with the above-mentioned principles and on the basis of equality and mutual respect;
3. The Parties reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
4. The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;

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<sup>106</sup> Text as taken from <http://www.aseansec.org/13163.htm>.

5. The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.

Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts to seek ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, including:

- a. holding dialogues and exchange of views as appropriate between their defense and military officials;
- b. ensuring just and humane treatment of all persons who are either in danger or in distress;
- c. notifying, on a voluntary basis, other Parties concerned of any impending joint/combined military exercise; and
- d. exchanging, on a voluntary basis, relevant information.

6. Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following:

- a. marine environmental protection;
- b. marine scientific research;
- c. safety of navigation and communication at sea;
- d. search and rescue operation; and
- e. combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.

The modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.

7. The Parties concerned stand ready to continue their consultations and dialogues concerning relevant issues, through modalities to be agreed by them, including regular consultations on the observance of this Declaration, for the purpose of promoting good neighbourliness and transparency, establishing harmony, mutual understanding and cooperation, and facilitating peaceful resolution of disputes among them;

8. The Parties undertake to respect the provisions of this Declaration and take actions consistent therewith;

9. The Parties encourage other countries to respect the principles contained in this Declaration;

10. The Parties concerned reaffirm that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.

Done on the Fourth Day of November in the Year Two Thousand and Two in Phnom Penh, the Kingdom of Cambodia.

## **Appendix B. Statements from U.S. Officials Regarding the U.S. Position on These Issues**

### **February 5, 2014, State Department Testimony**

At a February 5, 2014, hearing before the Subcommittee on Asia and the Pacific of the House Foreign Affairs Committee, Assistant Secretary of State Daniel Russel testified that

Since the end of the Second World War, a maritime regime based on international law that promotes freedom of navigation and lawful uses of the sea has facilitated Asia's impressive economic growth. The United States, through our our [sic] alliances, our security partnerships and our overall military presence and posture, has been instrumental in sustaining that maritime regime and providing the security that has enabled the countries in the region to prosper. As a maritime nation with global trading networks, the United States has a national interest in freedom of the seas and in unimpeded lawful commerce. From President Thomas Jefferson's actions against the Barbary pirates to President Reagan's decision that the United States will abide by the Law of the Sea Convention's provisions on navigation and other traditional uses of the ocean, American foreign policy has long defended the freedom of the seas. And as we consistently state, we have a national interest in the maintenance of peace and stability; respect for international law; unimpeded lawful commerce; and freedom of navigation and overflight in the East China and South China Seas....

Mr. Chairman, we have a deep and long-standing stake in the maintenance of prosperity and stability in the Asia-Pacific and an equally deep and abiding long-term interest in the continuance of freedom of the seas based on the rule of law—one that guarantees, among other things, freedom of navigation and overflight and other internationally lawful uses of the sea related to those freedoms. International law makes clear the legal basis on which states can legitimately assert their rights in the maritime domain or exploit marine resources. By promoting order in the seas, international law is instrumental in safeguarding the rights and freedoms of all countries regardless of size or military strength.

I think it is imperative that we be clear about what we mean when the United States says that we take no position on competing claims to sovereignty over disputed land features in the East China and South China Seas. First of all, we do take a strong position with regard to behavior in connection with any claims: we firmly oppose the use of intimidation, coercion or force to assert a territorial claim. Second, we do take a strong position that maritime claims must accord with customary international law. This means that all maritime claims must be derived from land features and otherwise comport with the international law of the sea. So while we are not siding with one claimant against another, we certainly believe that claims in the South China Sea that are not derived from land features are fundamentally flawed. In support of these principles and in keeping with the longstanding U.S. Freedom of Navigation Program, the United States continues to oppose claims that impinge on the rights, freedoms, and lawful uses of the sea that belong to all nations.

As I just noted, we care deeply about the way countries behave in asserting their claims or managing their disputes. We seek to ensure that territorial and maritime disputes are dealt with peacefully, diplomatically and in accordance with international law. Of course this means making sure that shots aren't fired; but more broadly it means ensuring that these disputes are managed without intimidation, coercion, or force. We have repeatedly made

clear that freedom of navigation is reflected in international law, not something to be granted by big states to others....

China's lack of clarity with regard to its South China Sea claims has created uncertainty, insecurity and instability in the region. It limits the prospect for achieving a mutually agreeable resolution or equitable joint development arrangements among the claimants. I want to reinforce the point that under international law, maritime claims in the South China Sea must be derived from land features. Any use of the "nine dash line" by China to claim maritime rights not based on claimed land features would be inconsistent with international law. The international community would welcome China to clarify or adjust its nine-dash line claim to bring it in accordance with the international law of the sea.

We support serious and sustained diplomacy between the claimants to address overlapping claims in a peaceful, non-coercive way. This can and should include bilateral as well as multilateral diplomatic dialogue among the claimants. But at the same time we fully support the right of claimants to exercise rights they may have to avail themselves of peaceful dispute settlement mechanisms. The Philippines chose to exercise such a right last year with the filing of an arbitration case under the Law of the Sea Convention.<sup>107</sup>

## **May 31, 2014, Secretary of Defense Speech**

On May 31, 2014, in a speech at an international conference in Singapore called the Shangri-La Dialogue, Secretary of Defense Chuck Hagel stated in part:

One of the most critical tests facing the region is whether nations will choose to resolve disputes through diplomacy and well-established international rules and norms...or through intimidation and coercion. Nowhere is this more evident than in the South China Sea, the beating heart of the Asia-Pacific and a crossroads for the global economy.

China has called the South China Sea "a sea of peace, friendship, and cooperation." And that's what it should be.

But in recent months, China has undertaken destabilizing, unilateral actions asserting its claims in the South China Sea. It has restricted access to Scarborough Reef, put pressure on the long-standing Philippine presence at the Second Thomas Shoal, begun land reclamation activities at multiple locations, and moved an oil rig into disputed waters near the Paracel Islands.

The United States has been clear and consistent. We take no position on competing territorial claims. But we firmly oppose any nation's use of intimidation, coercion, or the threat of force to assert those claims.

We also oppose any effort—by any nation—to restrict overflight or freedom of navigation—whether from military or civilian vessels, from countries big or small. The United States will not look the other way when fundamental principles of the international order are being challenged.

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<sup>107</sup> Testimony of Daniel Russel, Assistant Secretary of State, Bureau of East Asian and Pacific Affairs, U.S. Department of State, Before the House Committee on Foreign Affairs, Subcommittee on Asia and the Pacific, Wednesday, February 5, 2014, [on] Maritime Disputes in East Asia, pp. 2, 4-5, 6.

We will uphold those principles. We made clear last November that the U.S. military would not abide by China's unilateral declaration of an Air Defense Identification Zone in the East China Sea, including over the Japanese-administered Senkaku Islands. And as President Obama clearly stated in Japan last month, the Senkaku Islands are under the mutual defense treaty with Japan.

All nations of the region, including China, have a choice: to unite, and recommit to a stable regional order, or to walk away from that commitment and risk the peace and security that have benefitted millions of people throughout the Asia-Pacific, and billions around the world.

The United States will support efforts by any nation to lower tensions and peacefully resolve disputes in accordance with international law.

We all know that cooperation is possible. Last month, 21 nations signed the Code for Unplanned Encounters at Sea—an important naval safety protocol. ASEAN and China are negotiating a Code of Conduct for the South China Sea—and the United States encourages its early conclusion. Nations of the region have also agreed to joint energy exploration; this month, the Philippines and Indonesia resolved a longstanding maritime boundary dispute; and this week, Taiwan and the Philippines agreed to sign a new fisheries agreement.

China, too, has agreed to third-party dispute resolution in the World Trade Organization; peacefully resolved a maritime boundary dispute with Vietnam in 2000; and signed ASEAN's Treaty of Amity and Cooperation.

For all our nations, the choices are clear, and the stakes are high. These stakes are not just about the sovereignty of rocky shoals and island reefs, or even the natural resources that surround them and lie beneath them. They are about sustaining the Asia-Pacific's rules-based order, which has enabled the people of this region to strengthen their security, allowing for progress and prosperity. That is the order the United States—working with our partners and allies—that is the order that has helped underwrite since the end of World War II. And it is the order we will continue to support—around the world, and here in the Asia-Pacific.<sup>108</sup>

## **June 25, 2014, State Department Testimony**

At a June 25, 2014, hearing before the Senate Foreign Relations Committee, Assistant Secretary of State Daniel Russel testified that

We believe all countries, and particularly emerging powers like China, should recognize the self-benefit of upholding basic rules and norms on which the international system is built; these are rules and norms which China has participated in formulating and shaping, and they are rules and norms that it continues to benefit from. In this context, we are encouraging China to exercise restraint in dealing with its neighbors and show respect for universal values and international law both at home and abroad....

In the Asia-Pacific region, Beijing's neighbors are understandably alarmed by China's increasingly coercive efforts to assert and enforce its claims in the South China and East China Seas. A pattern of unilateral Chinese actions in sensitive and disputed areas is raising

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<sup>108</sup> Secretary of Defense Speech, IISS Shangri-La Dialogue, As Delivered by Secretary of Defense Chuck Hagel, May 31, 2014, accessed June 6, 2014, at <http://www.defense.gov/Speeches/Speech.aspx?SpeechID=1857>. Ellipse in the first paragraph as in the original.

tensions and damaging China's international standing. Moreover, some of China's actions are directed at U.S. treaty allies. The United States has important interests at stake in these seas: freedom of navigation and overflight, unimpeded lawful commerce, respect for international law, and the peaceful management of disputes. We apply the same principles to the behavior of all claimants involved, not only to China. China—as a strong and rising power—should hold itself to a high standard of behavior; to willfully disregard diplomatic and other peaceful ways of dealing with disagreements and disputes in favor of economic or physical coercion is destabilizing and dangerous.

The United States does not take sides on the sovereignty questions underlying the territorial disputes in the South and East China Seas, but we have an interest in the behavior of states in their management or resolution of these disputes. We want countries, including China, to manage or settle claims through peaceful, diplomatic means. For example, the Philippines and Indonesia have just done so in connection with their EEZ boundary. Disputes can also be addressed through third-party dispute resolution processes. Where parties' rights under treaties may be affected, some treaties provide for third-party dispute settlement, as is the case of the Law of the Sea Convention, an avenue pursued by the Philippines in an arbitration with China currently being considered by an Arbitral Tribunal constituted under that treaty. The United States and the international community oppose the use or the threat of force to try to advance a claim, and view such actions as having no effect in strengthening the legitimacy of China's claims. These issues should be decided on the basis of the merits of China's and other claimants' legal claims and adherence to international law and norms, not the strength of their militaries and law enforcement ships or the size of their economies.<sup>109</sup>

## **July 11, 2014, State Department Remarks**

On July 11, 2014, Deputy Assistant Secretary of State Michael Fuchs stated in a speech that

The situation in the South China Sea, no doubt, is complex. Six claimants, plentiful fisheries and potential hydrocarbon reserves, the growing presence of maritime law enforcement vessels, and hundreds of geographic features make for a dynamic situation. Moreover, many of these features are submerged and therefore not subject to sovereignty claims but are nonetheless a source of friction in the region.

Now some may ask why, given the many areas of tension across this part of the world, small features in the middle of the sea are generating so much concern and so much attention. It's because the way in which countries pursue their claims speaks to whether future disputes will be handled by the threat and use of force on the one hand or the rule of law on the other. It speaks to whether the same rules will apply to all claimants – big and small alike. And it's because everyone inside and outside the region stands to lose if rules are devalued, dialogue breaks down, misreadings and misinterpretations multiply, and tensions spiral.

Recent events in particular are of great concern. Incidents involving the coercion and the threat of force contribute to an increasingly tenuous situation that could affect not only the claimants, but the entire region and beyond.

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<sup>109</sup> Testimony of Daniel Russel, Assistant Secretary of State, Bureau of East Asian and Pacific Affairs, U.S. Department of State, Before the Senate Foreign Relations Committee, [on] *The Future of U.S.-China Relations*, June 25, 2014, pp. 2, 7-8.

No claimant is solely responsible for the state of tensions. However, a pattern of provocative and unilateral behavior by China has raised serious concerns about China's intentions and willingness to adhere to international law and standards.

Provocative actions include efforts to assert claims in the South China Sea – such as its restrictions on access to Scarborough Reef, pressure on the long-standing Philippine presence at Second Thomas Shoal, and, most recently, the commencement of drilling operations in disputed waters near the Paracel Islands.

While the United States does not take a position on the sovereignty over land features in the South China Sea, we have a strong interest in the manner in which countries address their disputes and whether countries' maritime claims comport with the international law of the sea.

International law, not power or an ambiguous sense of historical entitlement, should be the basis for making and enforcing maritime claims in the South China Sea.

The ambiguity of some claims, such as China's nine-dash line, and recent actions in disputed areas heighten regional tensions and inhibit the emergence of cooperative arrangements to jointly manage resources. They undermine possible resolutions to the overlapping disputes.<sup>110</sup>

## **July 28, 2014, State Department Remarks**

On July 28, 2014, Assistant Secretary of State Daniel Russel stated in a speech that

In 2002, the ASEAN nations and China signed a Declaration on Conduct in the South China Sea. The Declaration, among other things, said that the parties would resolve disputes peacefully and in accordance with international law, and would refrain from actions that would escalate disputes, such as setting up new outposts on unoccupied features. And they agreed to work toward a more detailed Code of Conduct.

But tensions have flared over the years as well, and this year, they are running high. No claimant is solely responsible for the state of tensions. However, big and powerful countries have a special responsibility to show restraint. China's recent pattern of assertive, unilateral behavior has raised serious concerns about China's expansive claims, and its willingness to adhere to international law and standards.

Tensions spiked recently when China sent a deepwater drilling rig and armed ships into an area near the Paracel Islands that Vietnam also claims. The resulting weeks-long confrontation resulted in damaged ships, including the sinking of a Vietnamese fishing vessel, and damaged relations, including anti-Chinese riots in Vietnam.

At the same time, public evidence indicates the claimants are upgrading outposts on small land features in the South China Sea. What worries me is that China's projects are far outpacing similar upgrades that other claimants are making. This important, resource-rich area should not be heavily militarized.

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<sup>110</sup> "Fourth Annual South China Sea Conference," Remarks [by] Michael Fuchs, Deputy Assistant Secretary [of State], Bureau of East Asian and Pacific Affairs, [at the] Center for Strategic and International Studies, Washington, DC, July 11, 2014, accessed July 16, 2014, at <http://www.state.gov/p/eap/rls/rm/2014/07/229129.htm>.

And actions off the water can raise tensions as well.

All parties should be able to bring disputes for adjudication under international law if they conclude that regular diplomatic efforts will not succeed. The Philippines has done this in a dispute with China over the validity of its claim that a 1948 Nationalist Chinese map “proves” that China owns the land and water within a “9 dash line” in the South China Sea.

But instead of engaging constructively and arguing its case as the Tribunal has proposed, China has pressured the Philippines to drop its case, and attempted to isolate the Philippines diplomatically.

International law, not national power, should be the basis for pursuing maritime claims in the South China Sea.

The United States works to lower tensions and help the parties peacefully manage their disputes in several ways. We have told the claimants – including the Chinese – directly and at the highest levels, of our growing concern. And we’ve encouraged all sides to avoid provocations and make clear claims based on international law.<sup>111</sup>

## **November 4, 2014, Secretary of State Remarks**

On November 4, 2014, Secretary of State John Kerry stated in a speech that

when we talk about managing our differences, that is not code for agree to disagree. For example, we do not simply agree to disagree when it comes to maritime security, especially in the South and East China Seas. The United States is not a claimant, and we do not take a position on the various territorial claims of others. But we take a strong position on how those claims are pursued and how those disputes are going to be resolved. So we are deeply concerned about mounting tension in the South China Sea and we consistently urge all the parties to pursue claims in accordance with international law, to exercise self-restraint, to peacefully resolve disputes, and to make rapid, meaningful progress to complete a code of conduct that will help reduce the potential for conflict in the years to come. And the United States will work, without getting involved in the merits of the claim, on helping that process to be effectuated, because doing so brings greater stability, brings more opportunity for cooperation in other areas.<sup>112</sup>

## **December 5, 2014, State Department Analysis of China’s Nine-Dash Line**

On December 5, 2014, the State Department released a document presenting the U.S. analysis of China’s nine-dash line claim. The analysis concludes that

unless China clarifies that the dashed-line claim reflects only a claim to islands within that line and any maritime zones that are generated from those land features in accordance with

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<sup>111</sup> “ASEAN and America: Partners for the Future,” Remarks [by] Daniel R. Russel, Assistant Secretary [of State], Bureau of East Asian and Pacific Affairs, [at the] Commonwealth Club, San Francisco, CA, July 28, 2014, accessed July 30, 2014, at <http://www.state.gov/p/eap/rls/rm/2014/07/229872.htm>.

<sup>112</sup> Remarks on U.S.-China Relations, John Kerry, Secretary of State, [at] Johns Hopkins School of Advanced International Studies, Washington, DC, November 4, 2014, accessed December 24, 2014, at <http://www.state.gov/secretary/remarks/2014/11/233705.htm>.



the international law of the sea, as reflected in the LOS [Law of the Sea] Convention, its dashed-line claim does not accord with the international law of the sea.<sup>113</sup>

The full text of the conclusion section of the document states:

China has not clarified its maritime claims associated with the dashed-line maps in a manner consistent with international law. China's laws, declarations, official acts, and official statements present conflicting evidence regarding the nature and scope of China's claims. The available evidence suggests at least three different interpretations that China might intend, including that the dashes are (1) lines within which China claims sovereignty over the islands, along with the maritime zones those islands would generate under the LOS Convention; (2) national boundary lines; or (3) the limits of so-called historic maritime claims of varying types.

As to the first interpretation, if the dashes on Chinese maps are intended to indicate only the islands over which China claims sovereignty then, to be consistent with the law of the sea, China's maritime claims within the dashed line would be those set forth in the LOS Convention, namely a territorial sea, contiguous zone, EEZ, and continental shelf, drawn in accordance with the LOS Convention from China's mainland coast and land features that meet the definition of an "island" under Article 121 of the Convention. Because sovereignty over South China Sea islands is disputed, the maritime zones associated with these islands would also be disputed. In addition, even if China possessed sovereignty of the islands, any maritime zones generated by those islands in accordance with Article 121 would be subject to maritime boundary delimitation with neighboring States.

As to the second interpretation, if the dashes on Chinese maps are intended to indicate national boundary lines, then those lines would not have a proper legal basis under the law of the sea. Under international law, maritime boundaries are created by agreement between neighboring States; one country may not unilaterally establish a maritime boundary with another country. Further, such a boundary would not be consistent with State practice and international jurisprudence, which have not accorded very small isolated islands like those in the South China Sea more weight in determining the position of a maritime boundary than opposing coastlines that are long and continuous. Moreover, dashes 2, 3, and 8 that appear on China's 2009 map are not only relatively close to the mainland shores of other States, but all or part of them are also beyond 200 nm from any Chinese-claimed land feature.

Finally, if the dashes on Chinese maps are intended to indicate the area in which China claims so-called "historic waters" or "historic rights" to waters that are exclusive to China, such claims are not within the narrow category of historic claims recognized in Articles 10 and 15 of the LOS Convention. The South China Sea is a large semi-enclosed sea in which numerous coastal States have entitlements to EEZ and continental shelf, consistent with the LOS Convention; the law of the sea does not permit those entitlements to be overridden by another State's maritime claims that are based on "history." To the contrary, a major purpose and accomplishment of the Convention is to bring clarity and uniformity to the maritime zones to which coastal States are entitled. In addition, even if the legal test for historic waters were applicable, the dashed-line claim would fail each element of that test.

For these reasons, unless China clarifies that the dashed-line claim reflects only a claim to islands within that line and any maritime zones that are generated from those land features in

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<sup>113</sup> United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, *Limits in the Seas, No. 143, China: Maritime Claims in the South China Sea*, December 5, 2014, p. 24. Accessed December 24, 2014, at <http://www.state.gov/documents/organization/234936.pdf>.

accordance with the international law of the sea, as reflected in the LOS Convention, its dashed-line claim does not accord with the international law of the sea.<sup>114</sup>

## **December 16, 2014, State Department Remarks**

On December 16, 2014, Assistant Secretary of State Daniel Russel stated in a speech that

the shifting regional dynamics generate tensions as well; tensions that pose serious risks to stability and prosperity for all of us.

Is the construction of large-scale man-made outposts and continual encroachment by ships, planes and oil-drilling rigs going to be the way that Asians resolve maritime boundaries?

Will ASEAN's longstanding effort to negotiate a basic Code of Conduct in the South China Sea require another decade?

The sharpening of tensions over maritime boundaries underscores the importance of maintaining a regional system based on adherence to rules, not adhesion to rocks... a system where claims are based on international law, not a sense of entitlement or muscle... a system based on interdependence and peaceful dispute resolution.<sup>115</sup>

## **March 31, 2015, Defense Department Remarks**

In a March 31, 2015, speech, Admiral Harry Harris, Jr., the Commander, U.S. Pacific Fleet, stated that in addition to other security issues in the region,

We also see the misuse of maritime claims by some coastal states. The excessive nature of some of these claims is creating uncertainty and instability. These disruptions should compel us to increase cooperative efforts in this region, like those announced earlier this month, right here in Canberra, between Australia and Vietnam. Prime Minister Abbott said both nations, and I quote, "support freedom of navigation by air and by sea in the South China Sea. We both deplore any unilateral change to the status quo. We both think that disputes should be resolved peacefully and in accordance with international law." Unquote.

Competing claims by several nations in the South China Sea increase the potential for miscalculation. But what's really drawing a lot of concern in the here and now is the unprecedented land reclamation currently being conducted by China.

China is building artificial land by pumping sand on to live coral reefs—some of them submerged—and paving over them with concrete. China has now created over four square kilometers of artificial landmass, roughly the size of Canberra's Black Mountain Nature Reserve.

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<sup>114</sup> United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, *Limits in the Seas*, No. 143, *China: Maritime Claims in the South China Sea*, December 5, 2014, pp. 23-24. Accessed December 24, 2014, at <http://www.state.gov/documents/organization/234936.pdf>.

<sup>115</sup> Remarks at the Brookings Institution, Daniel R. Russel, Assistant Secretary, Bureau of East Asian and Pacific Affairs Washington, DC, December 16, 2014, accessed December 24, 2014, at <http://www.state.gov/p/eap/rls/rm/2014/12/235145.htm>. Ellipses as in original.

The Indo-Asia-Pacific region is known for its mosaic of stunningly beautiful natural islands, from the Maldives to the Andamans, from Indonesia and Malaysia to the Great Barrier Reef and Tahiti. And I get to live in the beautiful Hawaiian Islands, in one of nature's great creations, a magnificent geography formed by millions of years of volcanic activity.

In sharp contrast, China is creating a great wall of sand, with dredges and bulldozers, over the course of months. When one looks at China's pattern of provocative actions towards smaller claimant states—the lack of clarity on its sweeping nine-dash line claim that is inconsistent with international law and the deep asymmetry between China's capabilities and those of its smaller neighbors—well it's no surprise that the scope and pace of building man-made islands raise serious questions about Chinese intentions.

The United States and other countries continue to urge all claimants to conform to the 2002 China-ASEAN “Declaration of Conduct,” where the parties committed to “exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability.” How China proceeds will be a key indicator of whether the region is heading towards confrontation or cooperation.<sup>116</sup>

## **April 9, 2015, Remarks by President Obama**

On April 9, 2015, in remarks at the University of the West Indies in Kingston, Jamaica, President Obama stated:

Well, first of all, let me say that it is U.S. official policy and it is my strong belief that we should welcome China's peaceful rise. What China has done in the last 20, 30 years is remarkable. More people have been lifted out of poverty in a shorter period of time than perhaps any time in human history. (Applause.) And that's good for the world. I mean, we should be more fearful of a poorer, collapsing China than a China that is participating in the world marketplace and trading and is getting along with its neighbors and part of the international order, because there are a really large number of Chinese people and we want them to be doing well.

So our policy is not to fear China's peaceful rise. Where we get concerned with China is where it is not necessarily abiding by international norms and rules, and is using its size and muscle to force countries into subordinate positions. And that's the concern we have around maritime issues. We think this can be solved diplomatically, but just because the Philippines or Vietnam are not as large as China doesn't mean that they can just be elbowed aside.

And, by the way, we don't have a particular view on the territorial disputes, the maritime disputes. Our attitude is simply, let's use the mechanisms that we have in place internationally to resolve them.<sup>117</sup>

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<sup>116</sup> Commander, U.S. Pacific Fleet, [remarks to] Australian Strategic Policy Institute, Canberra, Australia, [by] Admiral Harry B. Harris Jr., March 31, 2015, as delivered.

<sup>117</sup> Remarks by President Obama in Town Hall with Young Leaders of the Americas, University of the West Indies, Kingston, Jamaica, April 9, 2015, accessed April 21, 2015, at <https://www.whitehouse.gov/the-press-office/2015/04/09/remarks-president-obama-town-hall-young-leaders-americas>. See also David Tweed, “Obama Says Concerned China Using Muscle in South China Sea,” *Bloomberg News*, April 9, 2015; Matt Spetalnick and Ben Blanchard, “Obama Says Concerned China Bullying Others in South China Sea,” *Reuters*, April 10, 2015; “Obama: China ‘Using Muscle’ To Dominate in South China Sea,” *BBC News*, April 10, 2015.

## **April 15, 2015, Defense Department Testimony**

On April 15, 2015, Under Secretary of Defense Christine Wormuth testified that

As Asia-Pacific nations rise and become more prosperous, it creates enormous opportunities for the United States. At the same time, Asia's dynamism has also created a much more complex security environment, with challenges ranging from rapidly advancing military technologies to widespread humanitarian disasters.

In particular, China's rapid military modernization, its opaque defense budget, its actions in space and cyber space, and its behavior in places like the East China Sea and South China Sea raise a number of serious questions. Though China's expanding interests are a natural part of its growing power, China continues to pursue activities and investments that lead many in the region, including the United States, to question its long-term intentions. Of note, China is engaging in a comprehensive military modernization program that includes investments in capabilities such as ballistic missiles, anti-ship cruise missiles, and counter-space weapons that seem designed to counter U.S. power projection capabilities.

China's behavior in the maritime domain has also created significant friction with its neighbors. The Chinese government's efforts to incrementally advance its East and South China Sea claims and to block access to disputed fishing zones suggest a willingness to assert control over contested areas through coercion or the use of force. Moreover, its extensive land reclamation activities, especially the prospect to militarize these outposts, are deeply concerning to us. We would therefore urge China to show restraint and refrain from further activities that undermine regional trust. We also continue to urge China to clarify the meaning of its ambiguous Nine Dash line claim as a starting point to reducing tensions and creating greater transparency.

The U.S. and China are not allies, but we don't have to be adversaries. A strong, constructive U.S.-China relationship is essential for global security and prosperity. Our efforts to reduce the risk of miscalculation and unintentional conflict in the South China Sea and the region more broadly are a critical element of our regional engagement. We are therefore not only raising our concerns with China, we are also taking steps to build transparency and improve understanding through our military-to-military ties. Over the past year, through initiatives like the two Confidence-Building Measures we signed last fall, we have made significant strides in our bilateral defense relationship, while still adhering to the strict limitations guiding our defense contacts with China.<sup>118</sup>

At the same hearing, Admiral Samuel Locklear, the Commander, U.S. Pacific Command, testified that

Territorial and maritime issues in the East and South China Seas, if not handled properly, may negatively impact stability in the regional and the security environment. The claimants' use of maritime law enforcement vessels to enforce their claims has largely kept these issues out of the military sphere, despite a steady increase in military air and sea patrols. While no country appears to desire military conflict, an escalation due to a tactical miscalculation cannot be ruled out.

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<sup>118</sup> Testimony of Under Secretary of Defense Christine Wormuth, U.S. Department of Defense, [to the] House Armed Services Committee [on] "The Risk of Losing Military Technology Superiority and its Implications for U.S. Policy, Strategy, and Posture in the Asia-Pacific," April 15, 2015, pp. 1-2.

In the East China Sea, Japan and China both claim sovereignty over the Senkaku Islands. While the United States does not take a position on ultimate sovereignty over the islands, it has long recognized Japanese administration of them. China's behavior in the area has resulted in close encounters at sea, 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.

The South China Sea issues are complex. Six claimants (China, Vietnam, Malaysia, Brunei, Taiwan, and the Philippines) have overlapping claims in the South China Sea. As the South China Sea claimants' populations and economies continue to grow, access to the oil, gas, minerals, and fisheries within the South China Sea becomes more important. Claimants appear to be asserting their claims through increased maritime patrols, outpost and facility construction, and land reclamation.

China has the broadest claim with its self-proclaimed "Nine-Dash line" that covers almost the entire South China Sea. China's lack of clarity with regard to its South China Sea claims, and China's attempts to unilaterally enforce its ambiguous claims, has created uncertainty in the region. Any use of the nine-dash line by China to claim maritime rights not based on claimed land features would not align with international law. The international community would welcome China to clarify or adjust its nine-dash line claim and bring it into accordance with the international law of the sea, as reflected in the Law of the Sea Convention.

To achieve its long-term goals in the region, China is executing a strategy that includes expanding outposts in contested areas through land reclamation on South China Sea features, taking actions to prevent other nations from establishing / maintaining outposts, exploring for natural resources in disputed waters, and increasing its naval and air forces' presence through exercises and patrols. China's aggressive land reclamation and construction projects at eight South China Sea military outposts include new buildings, more capable berthing space for ships, and presumably an airfield on the Fiery Cross Reef (China's largest reclamation project). Although land reclamation cannot, for example, change a submerged feature into a natural island that generates any legal entitlements to maritime zones, the completion of these projects will give China the ability for greater presence, increase dwell time for military and coast guard assets, and expand the areas covered by surveillance and area-denial systems. Examples of activities supporting China's long-term strategy include attempts to block resupply missions to the small Philippine garrison at Second Thomas Shoal and exclude Philippine and other fishermen from the disputed Scarborough Reef. Last year, China also moved a China National Offshore Oil Corporation drilling platform into Vietnam's claimed Exclusive Economic Zone resulting in a tense standoff between Vietnamese and Chinese maritime assets substantially increasing the possibility of miscalculation between the two countries.

The U.S. does not take a position on issues of sovereignty with respect to territorial claims in the East and South China Sea, but we do insist that all maritime claims must be derived from land features in accordance with international law as reflected in the Law of the Sea Convention. The U.S. also continues to emphasize the importance that maritime and territorial disagreements be resolved peacefully in accordance with international law and opposes the use of intimidation, coercion, or force to assert claims. An example of such an attempt at peaceful resolution is the Philippines' arbitration against China under the Law of the Sea Convention that is being heard by a tribunal in The Hague. Of note, China has refused to participate in this arbitration to date.<sup>119</sup>

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<sup>119</sup> Statement of Admiral Samuel J. Locklear, U.S. Navy, Commander, U.S. Pacific Command, Before the House (continued...)

## **Appendix C. February 5, 2014, Testimony of Assistant Secretary of State Daniel Russel**

The appendix presents the text of the written statement of Assistant Secretary of State Daniel Russel for a February 5, 2014, hearing before the Subcommittee on Asia and the Pacific of the House Foreign Affairs Committee on maritime disputes in East Asia. The text of the statement is as follows:

Chairman Chabot, Members of the Subcommittee, thank you for the opportunity to testify today on these important issues.

Before I begin, I would also like to take this opportunity to thank you, Chairman Chabot, for your leadership on this issue and for your work to enhance our engagement with the Asia-Pacific region. This Subcommittee has contributed to the rich bipartisan tradition of engaging the Asia-Pacific and advancing U.S. interests there.

The Members of this Subcommittee know well the importance of the Asia-Pacific region to American interests. The broader region boasts over half the world's population, half of the world's GDP, and nearly half of the world's trade, and is home to some of the fastest growing economies in the world. More and more American citizens are now living, working, and studying in this part of the world and people-to-people and family ties between Americans and the peoples of the Asia-Pacific have witnessed tremendous growth. Growing numbers of American companies are investing in and exporting their products and services to rapidly expanding East Asian markets. Asia-Pacific businesses are increasing their profiles in the United States and creating jobs for American workers. And, as the region's economies continue to grow and their interests expand, it becomes increasingly important that the governments and institutions there contribute to upholding and strengthening international law and standards – ranging from human rights to environmental protection to responsible policies on climate change, maritime security, and trade and investment. The effects of what happens in the Asia-Pacific Region will be felt across the globe and have direct implications for America's interests.

It is precisely with this in mind that this administration has for the past five years made sustained engagement in the Asia-Pacific a strategic priority. This is precisely why Secretary Kerry is about to make his fifth visit to Asia in ten months and why he has devoted so much time and effort to meeting, calling and consulting with his Asian counterparts.

We have a strong stake in the continuing economic growth of this region, and we are working to ensure that Americans can fully participate in that growth and share in that prosperity. We are negotiating high-standard trade and investment agreements that will unlock the dynamism of Pacific Rim economies for mutual benefit. We are bolstering regional cooperation on transnational issues through ASEAN and its related institutions. And we are helping countries manage complex environmental issues resulting from rapid development. The common thread running through our strategic rebalancing is a determination to ensure that the Asia-Pacific remains an open, inclusive, and prosperous region guided by widely accepted rules and standards and a respect for international law.

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(...continued)

Armed Services Committee on U.S. Pacific Command Posture, April 15, 2015, pp. 3-5.

Since the end of the Second World War, a maritime regime based on international law that promotes freedom of navigation and lawful uses of the sea has facilitated Asia's impressive economic growth. The United States, through our alliances, our security partnerships and our overall military presence and posture, has been instrumental in sustaining that maritime regime and providing the security that has enabled the countries in the region to prosper. As a maritime nation with global trading networks, the United States has a national interest in freedom of the seas and in unimpeded lawful commerce. From President Thomas Jefferson's actions against the Barbary pirates to President Reagan's decision that the United States will abide by the Law of the Sea Convention's provisions on navigation and other traditional uses of the ocean, American foreign policy has long defended the freedom of the seas. And as we consistently state, we have a national interest in the maintenance of peace and stability; respect for international law; unimpeded lawful commerce; and freedom of navigation and overflight in the East China and South China Seas.

For all these reasons, the tensions arising from maritime and territorial disputes in the Asia-Pacific are of deep concern to us and to our allies. Both the South China and East China Seas are vital thoroughfares for global commerce and energy. Well over half the world's merchant tonnage flows through the South China Sea, and over 15 million barrels of oil per day transited the Strait of Malacca last year, with most of it continuing onward through the East China Sea to three of the world's largest economies—Japan, the Republic of Korea, and China. A simple miscalculation or incident could touch off an escalatory cycle. Confrontations between fishermen and even law enforcement patrols are not unusual in these waters. But the frequency and assertiveness of some countries' patrols are increasing. In addition, the imposition of competing regulations by different countries over disputed territory and associated maritime areas and airspace is raising tensions and increasing the risk of confrontation. We witnessed a tragic incident in May of last year, when a Philippine Coast Guard patrol shot and killed a fisherman from Taiwan. Both sides, to their credit, took steps to prevent an escalation of tensions. But the risk of confrontation could have very serious adverse consequences for all of our economic and security interests.

Accordingly, we have consistently emphasized in our diplomacy in the region as well as in our public messaging the importance of exercising restraint, maintaining open channels of dialogue, lowering rhetoric, behaving safely and responsibly in the sky and at sea, and peacefully resolving territorial and maritime disputes in accordance with international law. We are working to help put in place diplomatic and other structures to lower tensions and manage these disputes peacefully. We have sought to prevent provocative or unilateral actions that disrupt the status quo or jeopardize peace and security. When such actions have occurred, we have spoken out clearly and, where appropriate, taken action. In an effort to build consensus and capabilities in support of these principles, the administration has invested considerably in the development of regional institutions and bodies such as the ASEAN Regional Forum, the ASEAN Defense Ministers Meeting Plus, the East Asia Summit, and the Expanded ASEAN Maritime Forum. These forums, as they continue to develop, play an important role in reinforcing international law and practice and building practical cooperation among member states.

In the South China Sea, we continue to support efforts by ASEAN and China to develop an effective Code of Conduct. Agreement on a Code of Conduct is long overdue and the negotiating process should be accelerated. This is something that China and ASEAN committed to back in 2002 when they adopted their Declaration on the Conduct of Parties in the South China Sea. An effective Code of Conduct would promote a rules-based framework for managing and regulating the behavior of the relevant countries in the South China Sea. A key part of that framework, which we and many others believe should be adopted quickly, is inclusion of mechanisms such as hotlines and emergency procedures for preventing incidents in sensitive areas and managing them when they do occur in ways that prevent disputes from escalating.

And in the East China Sea, we remain concerned about the serious downturn in China-Japan relations. We support Japan's call for diplomacy and crisis management procedures in order to avoid a miscalculation or a dangerous incident. It is important to lower tensions, turn down the rhetoric, and exercise caution and restraint in this sensitive area. China and Japan are the world's second and third largest economies and have a shared interest in a stable environment to facilitate economic growth. Neither these two important countries nor the global economy can afford an unintended clash that neither side seeks or wants. It is imperative that Japan and China use diplomatic means to manage this issue peacefully and set aside matters that can't be resolved at this time.

China's announcement of an Air Defense Identification Zone (ADIZ) over the East China Sea in November was a provocative act and a serious step in the wrong direction. The Senkakus are under the administration of Japan and unilateral attempts to change the status quo raise tensions and do nothing under international law to strengthen territorial claims. The United States neither recognizes nor accepts China's declared East China Sea ADIZ and has no intention of changing how we conduct operations in the region. China should not attempt to implement the ADIZ and should refrain from taking similar actions elsewhere in the region.

Mr. Chairman, we have a deep and long-standing stake in the maintenance of prosperity and stability in the Asia-Pacific and an equally deep and abiding long-term interest in the continuance of freedom of the seas based on the rule of law—one that guarantees, among other things, freedom of navigation and overflight and other internationally lawful uses of the sea related to those freedoms. International law makes clear the legal basis on which states can legitimately assert their rights in the maritime domain or exploit marine resources. By promoting order in the seas, international law is instrumental in safeguarding the rights and freedoms of all countries regardless of size or military strength.

I think it is imperative that we be clear about what we mean when the United States says that we take no position on competing claims to sovereignty over disputed land features in the East China and South China Seas. First of all, we do take a strong position with regard to behavior in connection with any claims: we firmly oppose the use of intimidation, coercion or force to assert a territorial claim. Second, we do take a strong position that maritime claims must accord with customary international law. This means that all maritime claims must be derived from land features and otherwise comport with the international law of the sea. So while we are not siding with one claimant against another, we certainly believe that claims in the South China Sea that are not derived from land features are fundamentally flawed. In support of these principles and in keeping with the longstanding U.S. Freedom of Navigation Program, the United States continues to oppose claims that impinge on the rights, freedoms, and lawful uses of the sea that belong to all nations.

As I just noted, we care deeply about the way countries behave in asserting their claims or managing their disputes. We seek to ensure that territorial and maritime disputes are dealt with peacefully, diplomatically and in accordance with international law. Of course this means making sure that shots aren't fired; but more broadly it means ensuring that these disputes are managed without intimidation, coercion, or force. We have repeatedly made clear that freedom of navigation is reflected in international law, not something to be granted by big states to others. President Obama and Secretary Kerry have made these points forcefully and clearly in their interactions with regional leaders, and I—along with my colleagues in the State Department, Defense Department, the National Security Council and other agencies—have done likewise.

We are also candid with all the claimants when we have concerns regarding their claims or the ways that they pursue them. Deputy Secretary Burns and I were in Beijing earlier this month to hold regular consultations with the Chinese government on Asia-Pacific issues, and



we held extensive discussions regarding our concerns. These include continued restrictions on access to Scarborough Reef; pressure on the long-standing Philippine presence at the Second Thomas Shoal; putting hydrocarbon blocks up for bid in an area close to another country's mainland and far away even from the islands that China is claiming; announcing administrative and even military districts in contested areas in the South China Sea; an unprecedented spike in risky activity by China's maritime agencies near the Senkaku Islands; the sudden, uncoordinated and unilateral imposition of regulations over contested airspace in the case of the East China Sea Air Defense Identification Zone; and the recent updating of fishing regulations covering disputed areas in the South China Sea. These actions have raised tensions in the region and concerns about China's objectives in both the South China and the East China Seas.

There is a growing concern that this pattern of behavior in the South China Sea reflects an incremental effort by China to assert control over the area contained in the so-called "nine-dash line," despite the objections of its neighbors and despite the lack of any explanation or apparent basis under international law regarding the scope of the claim itself. China's lack of clarity with regard to its South China Sea claims has created uncertainty, insecurity and instability in the region. It limits the prospect for achieving a mutually agreeable resolution or equitable joint development arrangements among the claimants. I want to reinforce the point that under international law, maritime claims in the South China Sea must be derived from land features. Any use of the "nine dash line" by China to claim maritime rights not based on claimed land features would be inconsistent with international law. The international community would welcome China to clarify or adjust its nine-dash line claim to bring it in accordance with the international law of the sea.

We support serious and sustained diplomacy between the claimants to address overlapping claims in a peaceful, non-coercive way. This can and should include bilateral as well as multilateral diplomatic dialogue among the claimants. But at the same time we fully support the right of claimants to exercise rights they may have to avail themselves of peaceful dispute settlement mechanisms. The Philippines chose to exercise such a right last year with the filing of an arbitration case under the Law of the Sea Convention.

Both legal and diplomatic processes will take time to play out. The effort to reach agreement on a China-ASEAN Code of Conduct has been painfully slow. However, there are important steps that the relevant parties can take in the short term to lower tensions and avoid escalation. One line of effort, as I mentioned earlier, is to put in place practical mechanisms to prevent incidents or manage them when they occur. Another common-sense measure would be for the claimants to agree not to undertake new unilateral attempts to change the status quo, defined as of the date of the signing of the 2002 Declaration of Conduct, that would include agreement not to assert administrative measures or controls in disputed areas. And as I have indicated, all claimants—not only China—should clarify their claims in terms of international law, including the law of the sea.

In the meantime, a strong diplomatic and military presence by the United States, including by strengthening and modernizing our alliances and continuing to build robust strategic partnerships, remains essential to maintain regional stability. This includes our efforts to promote best practices and good cooperation on all aspects of maritime security and bolster maritime domain awareness and our capacity building programs in Southeast Asia. The Administration has also consistently made clear our desire to build a strong and cooperative relationship with China to advance peace and prosperity in the Asia-Pacific, just as we consistently have encouraged all countries in the region to pursue positive relations with China. And this includes working with all countries in the region to strengthen regional institutions like ASEAN and the East Asia Summit as venues where countries can engage in clear dialogue with all involved about principles, values and interests at stake, while

developing cooperative activities – like the Expanded ASEAN Seafarers Training initiative we recently launched – to build trust and mechanisms to reduce the chances of incidents.

To conclude, this is an issue of immense importance to the United States, the Asia-Pacific, and the world. And I want to reaffirm here today that the United States will continue to play a central role in underwriting security and stability in the Asia-Pacific.

Mr. Chairman, I thank you for this opportunity to appear before you today to discuss this important issue. I look forward to answering any questions you may have.<sup>120</sup>

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<sup>120</sup> Testimony [prepared statement] of Deputy Assistant Secretary of Defense Robert Scher, Asian and Pacific Security Affairs, Office of the Secretary of Defense, before the Subcommittee on East Asian and Pacific Affairs, Senate Committee on Foreign Relations, United States Senate, July 15, 2009, [hearing on] Maritime Issues and Sovereignty Disputes in East Asia, 7 pp.

## Appendix D. Options Suggested by Observers for U.S. Actions to Counter China’s “Salami-Slicing” Strategy

This appendix presents excerpts from writings by observers who have suggested options for actions beyond those already taken by the United States for countering China’s “salami-slicing” strategy.

Steven Groves and Dean Cheng, *A National Strategy for the South China Sea*, Heritage Foundation, April 24, 2014 (Backgrounder No. 2908):

The United States should develop and promulgate a National Strategy for the South China Sea (NSSCS) as part of its ongoing efforts to counter Chinese aggression in the region and to resolve the disputes there in a peaceful manner. It behooves the United States to shift its current posture in the South China Sea from one of vigilant maintenance of the status quo to a position that will foster the peaceful management and ultimately permanent resolution of issues affecting U.S. navigational rights and interests in the region. An NSSCS is one effective means of producing the necessary shift....

Specifically, the U.S. should:

1. Take an official position regarding disputed SCS land features....
2. Underscore U.S. policy on military activities in the SCS....
3. Continue freedom-of-navigation protests and naval operations....
4. Publish a “Limits in the Seas” report regarding the nine-dash line....
5. Assist SCS nations in complying with the law of the sea....
6. Support arbitration cases against China....
7. Preempt potentially harmful provisions of an SCS “code of conduct.”

Ely Ratner, *A Summer Calendar for Advancing U.S. Policy toward the South China Sea*, Center for a New American Security, May 2014:

It’s time to breathe new life into U.S. policy in the South China Sea. Despite important initiatives by the Obama administration to strengthen bilateral security ties, build partner capacity and enhance multilateral cooperation, the region’s territorial and maritime disputes continue to engender dangerous crises. The potential for armed conflict will only grow larger in the absence of creative and decisive U.S. leadership....

The costs for the United States of failing to play an innovative leadership role could be enormous. Against this backdrop, the coming months provide a series of critical opportunities for top-level U.S. officials to evolve and advance U.S. policy. Below is a proposed calendar for launching four new initiatives that are practical, feasible and would support U.S. interests in the region....

At the Shangri-La Dialogue in Singapore at the end of May, Secretary Hagel should propose in concept the development of a multilateral MDA initiative. In concert, the National Security Council staff should lead an interagency working group to offer recommendations related to cost, operational requirements and intelligence sharing. The administration should also consider potential groupings of allies and partners, including (but not limited to) an ASEAN-centered architecture....

At the G-7 summit in Brussels in June, President Obama should propose to include language in the summit's joint statement supporting the legitimacy of international arbitration to manage maritime disputes in the South China Sea....

Beginning at the U.S.-China Strategic Security Dialogue in August, the United States should make clear in private that it expects China to withdraw its occupation of the disputed feature by the end of 2014 and return to the pre-April 2012 status quo. If necessary, this message can be repeated publicly in ASEAN-centered regional forums later in the year, including the East Asia Summit in Burma in November. The United States military should also consider conducting freedom of navigation operations in areas surrounding the reef to underscore that the United States does not recognize Chinese administration....

Secretary Kerry should propose the idea of an “early harvest” of the COC at the ASEAN Regional Forum in August and, with guidance from the U.S. Mission to ASEAN in Jakarta, propose specific components of the COC discussions that are widely agreed-upon and ripe for immediate implementation.

Elizabeth Economy and Michael Levi, “Beijing’s Actions in the South China Sea Demand A U.S. Response,” *Washington Post*, May 15, 2014:

what is happening in the South China Sea is actually far more dangerous than what has come before—and the forces driving it go well beyond pursuit of energy riches. The United States needs to face up to the full magnitude of the Chinese challenge to have any hope of successfully confronting it. This means not only tough talk but also a willingness to take difficult action....

The United States has said it won’t take a stand on the sovereignty dispute and has called on the two parties to resolve their differences peacefully. This is not enough: The United States ought to call China’s bluff and make clear the real stakes. The United States and the Association of Southeast Asian Nations (ASEAN) should present a unified front in refusing to recognize unilateral assertions of claims in disputed territories.

Even more important, the United States must be prepared to give life to its rhetorical position. Although it does not have a treaty obligation to defend Vietnam, its rebalancing to Asia is premised on its role as the primary guarantor of stability in the Pacific. Chinese actions challenge that.

Vietnam has reiterated its commitment to peacefully resolve the dispute. If China does not reciprocate, the United States should be prepared to offer support to Vietnam through an increased naval presence. This would give Washington the ability to assess Chinese capabilities and to help de-escalate the situation. Other options, such as restrictions on CNOOC’s activities in the United States, could also be considered. If the United States can’t back up its words with actions, its credibility in promising to uphold peace and stability in the region will be gutted.

Rory Medcalf, “China’s Premature Power Play Goes Very Wrong,” *The National Interest*, June 3, 2014:

These are times of mounting drama and tension in the long power play of China's rise in Asia. Thus, it is more important than ever for American policy makers to peer behind the curtain to see when rising-power loneliness is dressed as leadership and when confidence is a mask for insecurity....

The Asian strategic order may now be in play; its U.S.-led character is under question, but this is a complex, multilayered game. If China is seeking to rattle America and others—especially Japan, the Philippines and Vietnam—it may be miscalculating. In the long run, the premature displays of confidence China has lately shown are likely to harm its interests more than advance them....

Under question is the region's capacity to craft an order that is at once stable and free from domination by a single power. If China's latest behavior and rhetoric can partly be explained by an excess of the wrong sort of confidence—premature, misjudged or a conduit for nationalism—then the United States, its allies and partners will need to be firm, yet also careful and nimble, in how they push back. Somehow, the message needs to reach China's security decision makers that their continued risk-taking could have consequences they cannot control.

What the region requires is a new kind of balance—not of power or of resolve, but of uncertainty. Of late, too much of the uncertainty has been in the minds of America's Asian allies and partners. Turning this situation around may be a first step towards China's acceptance that it will have to live up to its 'win-win' rhetoric when dealing with all its neighbors. In other words, what is needed now is greater uncertainty among China's strategic decision makers about how the United States, Japan and the region's middle powers will respond to—or anticipate—the next coercive move.

Beijing may pretend to shrug off one legal action, but will have trouble sustaining its indifference if Vietnam or additional South China Sea claimants also seek international arbitration with the overt blessing of the United States, the European Union and other champions of a rules-based international system. Stability in the South China Sea, a global shipping artery, is every trading nation's business. So Washington would be well advised to follow the kind of practical action plan recently advanced by security policy expert Ely Ratner, involving a coordinated assertion of rules-based management of maritime disputes, globally through the G7, as well as regionally through the East Asia Summit. Simultaneously, the United States and its allies, including Japan, are in their rights to signal that they will expand security capacity-building, training and intelligence-sharing when Southeast Asian states invite them to do so in response to new anxieties about China's actions.

Shifting the balance of uncertainty in Asia need not have a principally military dimension. Even with constrained resources, the U.S. Navy can sustain a visible presence in the South China Sea and, by invitation, in the territorial seas and exclusive economic zones of partners and allies. New anxieties about regional stability will encourage more countries to join U.S.-led maritime exercises and surveillance cooperation throughout the Indo-Pacific. This need not amount to provocation, if combined with persistent invitations for China to begin serious risk-reduction dialogue so that close encounters like the December 2013 USS Cowpens incident become less likely to occur or escalate. The truth is, China's maritime assertiveness in recent years has not risen relentlessly. Notably, the tempo of sea and air incidents against Japan—though still troubling—has eased this year; the disciplined pushback by Japan's experienced maritime forces may well be a factor. Beneath the bluster, at least some of China's security actors must know they cannot be the masters of infinite risk. This will be a long drama and the script is not theirs alone to write.

Patrick M. Cronin, “US Should Help Vietnam Counter China’s Coercion,” *Asia Pacific Bulletin*, Number 269, June 26, 2014:

Beijing is opportunistically seeking to flex its newfound muscle and make the 9-dash line a *de facto* and *de jure* reality. In effect, China wants the South (and East) China Sea as an inland lake. The placement of [the] HS-981 [oil rig] is part of a disturbing pattern of aggressive Chinese behavior. Another ongoing resort to “tailored coercion” is the reclamation of small land features in the Spratly Islands. Recently released photographs taken in March show China’s reclamation of Johnson South Reef, the site of a 1988 Vietnam-China naval skirmish. Although China is not alone in seeking to advance its territorial claims and maritime interests, its behavior is uniquely escalatory. US Secretary of Defense Chuck Hagel singled out China’s “destabilizing, unilateral actions” against its maritime neighbors at this year’s Shangri-La Dialogue in Singapore.

The placement of [the] HS-981 [oil rig], coming after diplomatic exertions to improve Beijing-Hanoi ties, is perplexing to many in the region. But China’s gambit in its near seas involves dialing up and dialing down coercive diplomacy. As part of a renewed focus on “periphery diplomacy,” China is rewarding neighbors willing to work with Beijing, and is seeking to isolate those who resist China’s unilateral demands. Such actions are tailored to be sufficiently peaceful so as not to escalate into full-fledged conflict or to trigger a unified, anti-China alliance; they are tailored to appear sufficiently non-military in nature and thus not intended to accentuate China’s rapidly modernizing military forces; and they are tailored to send varying messages to different audiences—internal, regional, and international. China’s tailored coercion is aimed not just at its neighbors but also at the United States. China wants to coerce the United States to tamp down the national exuberance of its allies and partners, from the Philippines and Japan (in the East China Sea), to Vietnam and Malaysia. Notwithstanding China’s coercive behavior, the United States needs to persevere in building an open, rules-based system in the Asia-Pacific region. But in the meantime, it also needs to find a way to address Chinese incremental aggression, often likened to salami slicing. In the present SCS crisis, the United States needs to bolster its ties with Vietnam to help impose costs on China. Taking together the twin US goals of regional security maintenance and order building, and focusing on countering China’s use of coercion to unilaterally alter the status quo, there are five priorities that deserve attention from both Hanoi and Washington, and the region in general.

*First, as part of the burgeoning US-Vietnam security dialogue, the two countries should focus on developing cost-imposition strategies that might dissuade China from resorting to unilateral changes to the status quo or impose stiff penalties for bad behavior.* Cost-imposition strategies can be direct and indirect, military and non-military, short-term and long-term. But they should be feasible, cost-effective, and meaningful. Vietnam needs to send top-level officials to Washington to underscore the importance of this dialogue.

*Second, there should be more frequent and larger bilateral exercises and US military deployments to Vietnam under the existing shared membership in the Proliferation Security Initiative (PSI).* Through PSI, the United States can provide a reassuring presence without taking on the burdens, costs and risks of trying to restore a permanent military base. At the same time, greater US-Vietnam cooperation can improve the professionalism of Vietnamese defenses and the capacity for combined action. Improving maritime domain awareness is an objective that supports both PSI and would have benefits for the early detection of misbehavior in the East Sea.

*Third, the United States should support triangular dialogue and practical cooperation among other SCS claimant states, especially Vietnam, Malaysia and the Philippines.* The United States can support this dialogue through regional multilateral forums such as the ASEAN Regional Forum, the ASEAN Defense Ministers’ Meeting Plus and the East Asia

Summit. Washington can also encourage other US allies and partners (Japan, South Korea, Australia, India and other members of ASEAN) to offer assistance with training and education, equipment and information sharing. The United States should encourage Japan, which is already providing coast guard patrol vessels beginning next year, and India, which operates Russian submarines, to assist the Vietnamese navy to operate and deploy Russian Kilo-class submarines. As Vietnam incorporates six submarines into its small navy, others need to help Vietnam establish operational independence.

*Fourth, the United States should end the ban on lethal arms sales to Vietnam.* The scope and kind of direct military support can still be linked to demonstrable improvements in human rights. But it is now time to begin limited arms sales that are useful for countering tailored coercion. Such systems could improve maritime domain awareness and bolster defensive if still potentially lethal means of punishing any attacker. Torpedoes and short-range cruise missiles would strengthen deterrence, and a potential aggressor would think twice before using overt coercion or limited force to make its claims.

*Fifth, the United States should press Vietnam and other ASEAN members to support specific rules for maintaining good order at sea and preserve the freedom of the global commons in the South China Sea.* Specific steps that might eventually be part of a binding code of conduct should be promoted and put into practice as soon as possible. International arbitration over UNCLOS provisions should be embraced. Land features should be systematically cataloged and defined to develop a shared regional understanding of what land features are islands and which are rocks.

These steps are illustrative of a broader tool kit at the disposal of officials in Vietnam, the United States and the region to impose costs on bad behavior and provide safeguards for complying with mutually agreed rules. They are necessary because of China's increasing reliance on coercion. At the same time, it is vital to further develop a roadmap with China on how to avert dangerous incidents and manage strategic competition. Through these steps, tailored coercion can be prevented from becoming the accepted norm in the South China Sea.<sup>121</sup>

Michèle Flournoy and Ely Ratner, "China's Territorial Advances Must Be Kept in Check by the United States," *Washington Post*, July 4, 2014:

This month, China will participate for the first time in the U.S.-led Rim of the Pacific naval exercise, better known as RIMPAC....

The Obama administration's decision to include China in the world's largest naval exercise is only the latest U.S. move designed to encourage Beijing to play a more productive role in the world. Such efforts have been a signature feature of Washington's China policy since the normalization of relations in 1979.

The problem, however, is that, after 35 years of such engagement, China is now calling into question its commitment to preserving the very system that facilitated its rise. This argues for a careful reassessment of the overall U.S. approach to China.

The current approach has been premised on the idea that China's integration into the prevailing economic and security order not only is in China's interest but also benefits the United States and the whole world....

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<sup>121</sup> Italics as in original. See also Richard Fontaine and Patrick M. Cronin, "The Case for U.S. Arms Sales to Vietnam," *Wall Street Journal*, July 15, 2014.

As a result of this embrace, the theory goes, China's stake in the international system would increase over time. By virtue of self-interest, it would come to see the benefits of contributing to stability and upholding existing rules and norms, such as freedom of navigation and peaceful resolution of disputes, even as it became more capable of violating them. This would eventually lead China to emerge as, to use former deputy secretary of state Robert Zoellick's indelible phrase, a "responsible stakeholder."

Unfortunately, that's not what's happening. Following decades of double-digit economic growth, China's behavior took a notable turn in the wake of the global financial crisis. Many in Beijing anticipated a rapid U.S. decline, and this triumphalism fused with growing nationalism and wealth to generate a more assertive Chinese foreign policy....

Particularly since President Xi Jinping assumed power in 2013, China has begun to advance its territorial claims more actively in the East and South China seas, contravening former premier Deng Xiaoping's long-held dictum of "shelving disputes."

Yet China's leaders are well aware that continued economic growth, the principal source of the Communist Party's legitimacy, depends on a stable regional environment. As a result, China appears to be taking carefully calibrated steps—such as seizing small islands with coast guard vessels, unilaterally asserting greater administrative rights over contested territories, building small outcrops into military installations and drilling for oil in disputed waters—designed to change the territorial status quo in Asia without provoking a serious response from its neighbors or the United States.

The danger is that incremental Chinese revisionism, if left unchecked, will fundamentally alter the international order in Asia over time in ways antithetical to stability and the vital interests of the United States and its allies and partners....

China's more assertive actions also increase the risk of a tactical miscalculation that could escalate into a crisis or even conflict.

How should the United States respond? Washington should remain committed to building a durable partnership with Beijing. Abandoning efforts to engage with China would likely accelerate Beijing's assertiveness and run counter to a wide range of U.S. economic and security interests.

Nevertheless, it is imperative that China's destabilizing actions stop. This will require the United States to take steps that more regularly and visibly enforce the rules-based international order in Asia.

The United States can start by supporting the construction of a regional architecture for maritime domain awareness to deter adventurous behavior and allow governments to better police their shores. While bolstering its alliances and partnerships, the United States should also help countries develop the defensive capacity to stand their ground in the face of China's rapidly emerging force-projection capabilities.

These military measures should be complemented by diplomatic efforts to build rules of the road for managing maritime disputes. In particular, the United States will have to pursue alternative crisis management mechanisms if Beijing continues to drag its feet on concluding a binding code of conduct for the South China Sea.

Washington will have to think creatively about how to improve the efficacy of international arbitration, which the Philippines is employing to contest China's expansive claims. Although such bodies lack enforcement mechanisms, the United States and its partners can still affect China's calculus by sticking together and making adherence to their rulings a



prerequisite for participation in military exercises such as RIMPAC or in multilateral organizations such as the Arctic Council.

The United States should also explore means for exerting economic pressure on Chinese state-owned enterprises, such as the China National Offshore Oil Corporation, that are complicit in Chinese revisionism.

Harry J. Kazianis, “America’s Dangerous \$5 Trillion Dollar Bet in the South China Sea,” *The National Interest*, July 11, 2014:

Tensions have been steadily rising over the last few years in [the South China Sea], and so far Washington has been unable to find the magic formula to get Beijing to back off. A new U.S. plan reported by the *Financial Times* will do little to change Beijing’s calculus. In fact, it could make matters far worse....

This supposed new strategy will focus heavily on surveillance flights and what might be dubbed a simple “shaming” strategy....

While such a plan clearly shows Washington is doing what it can to demonstrate support for allies and partners in the region in an attempt to deter Beijing, there are many pitfalls that should be considered—especially when it comes to the wider use of surveillance assets. For one, the U.S. would obviously have to place men and women in harm’s way in contested waters time and time again in order to enact this part of the plan. You don’t have to be a bookie in Vegas to understand the odds of some sort of tragic incident occurring are quite high. In this case, the goal of “doing something” might actually be worse than doing nothing. As history tells us quite clearly, wars can start from a small incident where tensions are running high. The consequences can be dire....

If you want to use the shame game to alter Beijing’s strategic calculus, there might be a better way. There only seems one solution to the various territorial disputes in the region—specifically, what some are calling “lawfare.” All of the various claimants that have disputes with China in the South China Sea should appeal collectively to any and all international bodies that could possibly hear their claims. Only together can they hope to get Beijing to halt its aggressive actions. This may just have the same or greater impact than if the U.S. attempted to use surveillance flights to embarrass Beijing—without the possibility of an incident spiraling into a possible conflict no one wants. While Manila has already filed its own claims against Beijing and Hanoi seems likely to follow suit, a joint claim or multi-party suit would be much more powerful. China should realize its neighbors have the ability to resist its claims without resorting to kinetic means.

While even this might not stop China’s moves to enforces its claims in the area around its nine or ten-dash line around the South China Sea, if shaming Beijing is the goal, and considering the stakes (not just who controls sea lanes worth trillions of dollars, but the very idea of the global commons, space that no one owns), this might be just the best way to do it.

Zachary Keck, “Shaming Won’t Stop China’s Salami Slicing,” *The Diplomat*, July 16, 2014:

Last week a couple of reports in the *Financial Times* said that the Department of Defense has been examining ways to deal with China’s salami-slicing tactics.

“The U.S. is developing new military tactics to deter China’s slow but steady territorial advances in the South China Sea,” one of the reports, by Geoff Dyer and Richard McGregor, said. “The challenge for the U.S. military is to find tactics to deter these small-scale Chinese moves without escalating particular disputes into a broader military conflict.”

The bad news is that the solution that the Pentagon has come upon appears to be a wholly insufficient solution to the problem. “More extensive use of surveillance aircraft in the region could be coupled with a greater willingness to publicize images or videos of Chinese maritime activity. Some U.S. officials believe the Chinese might be given pause for thought if images of their vessels harassing Vietnamese or Filipino fishermen were to be broadcast.”

They are almost certainly wrong. The U.S. has tried shaming in many of its other interactions with China, including human rights. It has almost never been successful. If China can't be embarrassed on low-level issues like human rights, it is hardly going to be “shamed” into abandoning its “core interests” in the East and South China Seas.

Moreover, it is unlikely that China will feel ashamed by videos and images of its vessels trying to protect its claims to the territorial waters it claims sovereignty over. In fact, these videos will prove extremely popular with the Chinese Communist Party's domestic audiences. In addition, there is almost always enough ambiguity in clashes in the South China Sea that Beijing will be able to claim that the videos the Americans and its allies have released are “biased” in only showing China's vessels doing the ramming. It will claim, however, that its vessels were only responding to the aggression of the other states. This is already what happened when Vietnam released videos and images of Chinese vessels ramming and using fire hoses against Vietnamese vessels over the oil rig incident.

In other words, while it is commendable that the Pentagon understands that it must do more to counter China's salami-slicing, it needs to continue looking for better solutions.

Robert Sutter, “Dealing with America's China Problem in Asia—Targeting China's Vulnerabilities,” *PacNet*, Number 58, July 21, 2014:

China's recent unrelenting drive to use coercive and intimidating state power, short of direct application of military force, to advance control of disputed territory in the East China Sea and the South China Sea poses a major problem for the United States. The Chinese “salami slicing”, a term used to describe the accumulation of small changes that gradually change the strategic picture, undermines the credibility of US alliances and US standing as the region's security guarantor. The Obama government has adopted a harder public line against China's actions and has deepened security cooperation with allies and others threatened by Chinese provocations. These steps presumably pose some costs to China's regional standing and its long-standing goal to reduce the US security presence around China's periphery. Whatever the costs, they have not gotten the Chinese to stop.

Former Pacific Commander and Director of National Intelligence Dennis Blair, members of Congress responsible for national security matters, and a variety of other experienced observers urge the US government to break out of the prevailing pattern of the US reacting to Chinese provocations. They push the United States to take initiatives that would show China the serious costs for Beijing in its salami slicing strategy of the disputed East and South China Sea. In response, the Pacific Command is reportedly pursuing enhanced surveillance and monitoring of Chinese activities in disputed seas and possible consideration of shows of force and US escorts of allied ships in disputed seas. How these and other measures will deter determined Chinese salami slicing is not at all clear, especially as it remains to be seen how strongly the Obama government will pursue such initiatives. Notably, such US actions risk possible confrontation with Chinese forces at a time of serious troubles in US foreign relations with Russia and protracted problems in Ukraine, and throughout the Middle East and Southwestern Asia.

Against this background, this writer judges that judges that Chinese advances, and subsequent negative consequences on US interests, have reached a point where careful consideration needs to be given to options that focus on the many weaknesses and

vulnerabilities China faces in dealing with the United States. The thinking in congressional deliberations is that China's use of coercive measures, short of military force, targets US weakness in dealing with such technically non-military threats. The United States should do likewise, targeting Chinese weaknesses and vulnerabilities, which are more than those of the United States.

Most of these options can be implemented easily by US policymakers and are within US budget constraints. In most cases, the options can and probably should be employed without heavy publicity, strong rhetoric, direct arguments, or public confrontation with China.

Rather, Washington should continue to pursue its close engagement with China and leave it to China to react to the US initiatives which will show China's leaders the kinds of costs and risks they run if Beijing insists on pursuing policies that undermine the US position in the Asia-Pacific. Such an approach is similar to China's recent record of pursuing expansionist policies in the disputed seas as well as economic and trade, nuclear non-proliferation, and human rights policies with profound negative implications for the United States while still seeking the positive goal of a so-called new great power relationship in US-China relations. The United States can do the same by mixing negatives and positives in US-China relations.

Meanwhile, options raised in congressional hearings often do not reflect the full policy awareness and knowledge of current, and sometimes hidden, circumstances that only the US executive branch experts can provide. Nonetheless, their importance will grow if China, as expected, is undeterred by prevailing US policies.

The options include the following:

1) US attack and missile submarines go undetected by weak Chinese anti-submarine warfare capabilities and possess the firepower to annihilate any advancing Chinese forces in the disputed East China Seas and South China Sea. The surfacing of US attack submarines near disputed areas of the East and South China Seas, perhaps in conjunction with Japanese and Australian submarines, would remind China of its serious anti-submarine limitations. In response, Beijing will doubtless seek to fix the problem. Yet to remedy China's anti-submarine warfare limitations will require prolonged and large-scale costs and diverted resources for Chinese military planners and Chinese leaders juggling budget priorities in the period of wide-ranging and difficult change in Chinese development and governance. In sum, the solution will also incur major costs for China.

2) Taiwan is an area of acute sensitivity for China; one where the United States has several options to raise significant costs for China. As the United States seeks to check China's recent coercion and intimidation of neighbors, it could devote more attention to Taiwan—which has faced unbridled Chinese military coercion and intimidation for almost two decades. One option is to complicate Chinese defense plans and overall strategy toward Taiwan by allowing the sale of the 66 F-16 fighter jet long sought by the Taiwan government. The cost to China of such action involves not just the planes themselves but the significance of the substantial US demonstration of support for Taiwan in the face of China's pressure and threats. Another option would involve a more active US posture in support of Taiwanese free expression and identity represented by the so-called Sunflower Movement on the island. Beijing has shown no positive response to the rising importance of such demonstrations of Taiwan identity at odds with Chinese interests. The demonstrations tend to support Taiwan's political opposition's wariness on dealing with China. US support for such expressions of Taiwanese identity could further shift Taiwan politics in favor of the opposition against the unpopular government of President Ma Ying-jeou. China would face costly and difficult reevaluation of its reasonably successful policy toward Taiwan, should the opposition win the 2016 presidential election.

3) Recent demonstrations in Hong Kong—another very sensitive area for China leadership—also foreshadow a possibly costly and delicate policy reevaluation for China. The United States could easily add to the salience of the demonstrations and the related costs for China by adopting a higher profile in support for free expression in Hong Kong.

4) The main external reason why the North Korean problem continues to threaten the Asia-Pacific region is continued Chinese support for the brutal regime. Official US rhetoric could focus more on this fact. This could add considerable weight to the reputational costs China faces as a result of its expansionism in disputed areas of the East and South China Seas, perhaps tipping the scales and compelling China to alter its practices.

5) The United States could demonstrate a concrete response to China's practice or to deploying conventionally armed Chinese ballistic missiles targeted at US bases and forces in the Asia-Pacific over the past 20 years. These missiles are a direct threat to US service personnel and US allies. The US response could involve conventionally armed multi-warhead US ballistic missiles deployed in the United States or in the region in attack and ballistic missile submarines. These missiles would be ready to rapidly respond with multiple warheads were China to launch its missiles against US forces. Because of China's weak ballistic missile defense capabilities, Beijing would face an enormous cost in dealing with the new risk to its leadership and strategic structure posed by these US warheads.

John Lee, *Nonmilitary Approaches to Countering Chinese Coercion*, Center for a New American Security, September 2014:

the United States should lead efforts to establish a Code of Practice [CoP] with the following four characteristics:

A declaratory statement of policy, the CoP should mirror much of the language of the 2002 Declaration on the Conduct of Parties in the South China Sea (DoC) but expand its geographic scope and reference to existing international law....

It is critical that declaratory policy condemning coercive behavior apply to the whole maritime region of East Asia and not just the South China Sea....

It is important that signatories to the CoP insist that claims based on "historic title" or historic waters" be settled according to international law—and that all historic title claims not capable of being recognized by international law be rejected.

All claims not submitted for arbitration under UNCLOS would also not be recognized by CoP signatories....

The CoP becomes the declaratory policy of any particular country once it agrees to sign on....

The CoP should serve as formal declaratory policy for relevant signatories until a binding ASEAN CoC is achieved—cognizant of the likelihood that this may not be for some time....

Patrick M. Cronin, *The Challenge of Responding to Maritime Coercion*, Center for a New American Security, September 2014:

The responses to China's tailored coercion—from diplomatic demarches to international legal means to bolstering maritime and military presence, activities and capabilities—have produced little obvious improvement in China's behavior since 2008. While some actions have appeared to exact reputational costs on China, it is far from clear that those have been sufficient to change Chinese behavior....

Militarily, the United States is taking a number of steps to improve its long-term force posture and presence in the Asia-Pacific region....

A second way to impose military costs on bad behavior and otherwise strengthen military options is by conducting more military operations with more partners. The United States is already well on its way to doing this....

A third military approach to imposing costs and otherwise preparing to deny maritime coercion is by exploiting the vulnerabilities and weaknesses of the provoking nation to exact a military cost. This approach could involve military modernization or other steps to highlight another's security weaknesses....

A fourth military tool for imposing costs, at least indirectly, is to bolster the capacity of allies and partners to help themselves. This can come through deepening strategic dialogue, exporting professionalism and training, and especially in the form of arming and equipping. This applies especially to those countries with a large force asymmetry relative to China's large, modernizing and growing coast guard, law enforcement and military forces....

Nonmilitary cost-imposition tools might be categorized as informational: to impose reputational costs in particular (such as through an ISR regime to spotlight provocations); to create a shared information regime for possible coalition operations, including escort missions; and to contribute to a positive narrative that the political aim of the United States and its allies is not conflict and not even confrontation if it can be avoided. Rather, the aim is to draw a line under certain bad behavior and dissuade others from resorting to unilateral changes to the status quo through coercion or force....

The U.S. government has tabled the idea of a freeze on provocative unilateral actions. This may be more useful in the South China Sea than in the East China Sea....

In the South China Sea, an information regime could help, and the narrative should focus on the need for a binding code of conduct and agreed-upon behavior by all—not just bilaterally between a great power such as China and smaller neighbors....

The two final types of cost-imposing tools are diplomatic and economic....

Finally, even if the United States and its allies are willing to pay the price of imposing costs on China's bad behavior, and even if they can devise and implement a workable strategy, there is no assurance that it will have the desired effect on Chinese behavior. Thus, it is important to remember that there is a difference between *imposing costs* and *changing behavior*.<sup>122</sup>

Robert Haddick, "How U.S. Allies Can Counter China's Strategy," *Real Clear Defense*, September 9, 2014:

China's strategy—salami slicing, military modernization, and creating commercial and financial dependence with others in the region—is multidimensional and requires a similarly broadbased response. This section describes ways America's partners, with U.S. support, can contribute to a competitive response to China's strategy. These responses will resist China's salami slicing and attempt to counter elements of China's military program. As we will see, many of these approaches come with risks and objections....

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<sup>122</sup> Italics as in original.

First, America's partners must promote their legal cases against China's territorial assertions. A central element of China's salami slicing is to gradually build up the legal legitimacy of its territorial claims by incrementally, but firmly, accumulating ever more "facts on the ground" to support its claims. America's partners must resist this by supporting their own legal claims. China's "nine-dash line" and its legal position regarding EEZ restrictions are weak legal claims and they find little acceptance in the international community. But China's persistent salami slicing, if not resisted, could still prevail. The United States could help its partners, and its own interests, by leveraging existing law and institutions....

Second, America's partners around the East and South China Seas need to match China's maritime presence. China's salami-slicing strategy is supported by its economic and industrial power, which Beijing believes will sustain a growing and persistent presence of civilian, paramilitary, and if necessary, military vessels on patrol around the disputed claims in the two seas. Chinese planners are counting on their material advantages to wear down the other claimants, with Chinese fishing boats and patrol craft establishing new "facts on the ground," which they hope will eventually be accepted by the international community. Japan, the Philippines, Vietnam, Malaysia, and other claimants need to match China's persistence with their own, otherwise they risk conceding the seas to China....

In order to assist the other claimants with their maritime patrolling presence, the United States should organize a multilateral group to support the claimants, especially the smaller countries around the South China Sea. The United States should quietly rally Japan, Australia, and India, the other three big powers in the network, to assist and subsidize a matching maritime presence in the two seas. The civilian component of maritime presence should have the lead in such an effort....

Third, America's partners in the region should improve their information operations and messaging to the global audience. Media outreach, information operations, and public diplomacy are critical elements of a successful strategy. In the contest with China over territorial claims in the two seas, America's partners should enjoy a comparative advantage in the realm of media and information operations: they have a stronger legal case to argue before the global audience. Even more compelling should be the impression that China, with its huge size and graceless moves, is a bully, intent on using its raw power to take possessions and rights from its much smaller neighbors....

Fourth, the United States should expand and deepen its partnership network across Asia. There are at least three aspects to this initiative:

- (1) the United States should reach out to countries where there has been little security cooperation in the past,
- (2) U.S. security interests would benefit from deepening the security relationship with a few especially important partners, and
- (3) the U.S. government should extend the concept of partnership beyond just relationships with states and state-based organizations like ASEAN....

Fifth, the United States should lead an effort to build up basic maritime domain awareness and information sharing among its partnership network. The goal would be to develop an accurate and timely picture of China's maritime activities, of both its naval forces and its civilian and paramilitary patrolling. This network would then share this up-to-date picture with all its members so they could improve their responses to China's maritime actions. This initiative would not be a substitute for U.S. Pacific Command's current intelligence collection; rather it would be a complementary effort, designed to assist America's partners in the region and to improve cooperation among them....

Sixth, the United States should encourage its partners in the region to build their own access denial capabilities. China's rapid development of extensive access denial capabilities over the past two decades demonstrates that dangerous antiship and antiaircraft capabilities are accessible to countries (and even nonstate actors) not previously ranked as leading military powers....

Seventh, the United States and its partners should prepare for irregular warfare.

The recent wars in the Middle East and Central Asia have focused the minds of U.S. policymakers on defending against an adversary's use of irregular warfare. The United States and its allies in the Asia-Pacific region may face this prospect, either through China's expanded use of its nonkinetic "Three Warfares" doctrine (media, psychological, and legal techniques) or through its employment of proxies, nonviolently or kinetically. Should these tactics transpire, the United States and its partners will once again have to fashion ways to parry them.

However, U.S. and allied planners should also plan for their own offensive use of irregular warfare. Irregular warfare is commonly associated with the weaker players in a security competition—the side that does not have the advantage in military hardware and organization and that would not gain from conventional military escalation. A decade from now, when China's reconnaissance, missile, aircraft, and submarine programs mature, the United States, with its defense effort lagging by comparison, might end up as the second-ranking military player in the region and thus the player on the losing side of potential conventional escalation. In that case, the United States and its allies may have to resort to irregular warfare in order to change the rules of the competition in their favor.<sup>123</sup>

Robert Sutter, "Asia's Importance, China's Expansion and U.S. Strategy: What Should Be Done?" *Asia Pacific Bulletin*, Number 283, October 28, 2014:

China continues coercive means backed by military force to expand control at neighbors' expense in disputed territory; this comes despite periodic Chinese moderation during high-level leadership meetings, notably the US-Chinese summit in 2013. So-called Chinese "salami slicing" intimidates neighbors, destabilizes Asia and undermines US alliances and US standing as the region's security guarantor.

The Obama government ignores calls in Washington for an American strategy in the face of China's expansionism. Its posture has been reactive, vacillating between periodic strident statements against Chinese coercive behavior and muting disputes in the lead up to the November 2014 meetings. The Obama "rebalance" policy includes improved surveillance capabilities for allies and partners and proposals dealing with territorial issues according to the rule of law that are criticized by China.

The US government waits to see if US opposition and resistance to Chinese expansionism from Japan, Vietnam and the Philippines will dissuade Beijing from further advance. Unfortunately, forecasts for change in Chinese behavior have been repeatedly undermined by Beijing's expansion and fortification of disputed islands, its impressive buildup of coast guard and supporting naval forces, and its avowed determination to control disputed territories.

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<sup>123</sup> The post states that it "is an adapted excerpt from Robert Haddick's *Fire on the Water: China, American, and the Future of the Pacific* (Annapolis, MD: Naval Institute Press, © 2014)."

The Obama approach clearly does not see Chinese salami slicing as a defining issue in US-China relations. For now, it endures erosion of American regional standing for the sake of other priorities. This approach is misguided given the importance of Asia and the prevailing balance of US-Chinese influence there.

The Obama rebalance policy explains well the importance of Asia for America's strategic, economic and political interests. Of course, the policy depends on Asian countries having faith in American dependability. Chinese expansionism tests US resolve. American friends and adversaries watch closely to see if the United States can come up with means to stop the Chinese expansion. If the United States does not come up with suitable means, pragmatic Asian governments will understand better what they can and can't count on America to do. They will adjust toward Washington and Beijing, foreseeing an Asian order more influenced by China....

Despite such trends, the situation in Asia shows significant Chinese vulnerabilities and US strengths that allow US leverage to influence Beijing's cost-benefit calculations to avoid offensive Chinese practices.... Shoring up American strengths and using them effectively against Chinese vulnerabilities should have a higher priority in US policy; it should supersede the existing reactive American stance witnessing erosion of American regional influence and Chinese expansionism....

Against this background, the United States should:

1. Conduct a careful assessment of US vs. Chinese strengths and weaknesses in Asia with an eye toward identifying areas of US leverage influencing Chinese practices prejudicial to US interests.
2. Consider the specific options below and other possible options in the context of an overall American approach that avoids confronting China overtly in the disputed seas or on other issues. The United States should build on its strengths, notably US capabilities to project power in the Asia-Pacific, which would quietly but unmistakably cause Chinese decision makers to realize the net costs of territorial advances. It should go much further than the rebalance in strengthening US relationships with Asian allies and associates; and should work closely but quietly with Taiwan in the process. Engagement should continue, but the United States should signal without attribution disappointment with the meager results while China challenges US interests. American leaders should side-step engagement used by China in self-serving ways, suggesting in actions and not words that American interests are better served with more attention to American power projection, economic well being and working with various regional friends and multilateral groups.

Specific options include:

- Build an effective defense strategy in the event of rising tensions with China involving closer US defense cooperation with Japan, the Philippines and Taiwan in particular. Possibly move to a more even-handed stance regarding the cross-strait policies of the unpopular ruling government and those of the opposition, with the latter expected to be more forthcoming to closer American military ties against China.
- Increase recent US demonstrations of conventional missile and attack submarines that avoid detection by China.
- Increase recent US demonstrations of conventional surface sea and air power as part of the Pentagon's evolving Air-Sea Battle concept.



- Counter Chinese ballistic missiles threatening US forces in Asia with Prompt Global Strike conventional weapons—involving multi-warhead ballistic missiles or other systems—to respond promptly and hold at risk targets in China if Chinese missiles were to strike American forces.

- Respond to the nuclear threat posed by the North Korean regime (still supported by China) with discussions with Japan and South Korea involving possible transfers of offensive weapons and perhaps even deploying nuclear weapons to shore up the American extended deterrence in ways that would seriously complicate Chinese interests and policies.

- Options for raising costs for China include greater support for popular sovereignty in Hong Kong and Taiwan—areas of acute sensitivity and uncertainty in recent Chinese calculations; and a pull back from close US economic engagement and reassurance of China that has been artfully used by China as it “games” the international economic system.

Michael McDevitt, “Options for US Policy Toward The South China Sea,” *PacNet*, Number 81, November 20, 2014:

US policy toward the South China Sea is sensible, relatively comprehensive, and proportionate to the US interests involved....

That said, how should the US proceed?...

The United States should reinforce its policy emphasis that international law is the basis for rules-based stability by issuing a comprehensive white paper, or a series of white papers, on the aspects of international law that pertain to the South China Sea. Because the focus on international law has been a centerpiece of US policy, these authoritative documents should be signed by the secretary of state and given appropriate publicity.

The Department of State should consider issuing a statement in strong support of the arbitral tribunal ruling that it does have jurisdiction to review Manila’s request for a finding regarding China’s nine-dash line, among other things. This will permit the Philippines to have “its day in court” by agreeing that it does have jurisdiction.

US policy-makers should explore with ASEAN and China the possibility of establishing a Joint Development Area (JDA) in the Spratlys aimed at exploitation of hydrocarbons. The goal would be to find a way to allow states to share these resources without prejudicing their position on final maritime boundaries.

US policy makers should explore whether ASEAN would welcome US involvement aimed at moving the Code of Conduct process to conclusion.

The United States should be responsive to requests from small South China Sea littoral states that want assistance in improving their maritime policing and security capabilities.

The United States needs to be completely committed to a very long-term, dedicated effort to improve the Armed Forces of the Philippine’s maritime capabilities. A mutually agreed upon AFP “minimum credible deterrent” plan deserves strong US support. Washington should not however, explicitly expand the scope of the Mutual Defense Treaty to cover the contested Philippine claims in the Spratlys.

Washington should ensure that planned US military posture and capability improvements are portrayed as symbols of reassurance and stability-inducing presence and are not characterized as attempts to directly confront China. Emphasize that the objective of the

military portion of the rebalance is to ensure that the US can fulfill its security responsibilities to its allies and is capable of assured access whenever required.

US naval and air presence in the South China Sea should be a visible daily occurrence.

The US Navy should increase the duration of its exercises with South China Sea littoral states, and expand participation in these exercises by inviting participation from other Asian maritime states, such as Japan, Australia, South Korea, and possibly India.<sup>124</sup>

Robert Haddick, “Six Ways to Resist China’s Salami-Slicing Tactics,” *The National Interest*, November 24, 2014:

his Chinese “salami-slicing”—small, incremental actions too minor to be a *casus belli*, but which can accumulate over time into substantial strategic change—now presents a vexing challenge to China’s smaller neighbors. They lack the capacity to match China’s increasing presence, which, if not opposed, could eventually create “facts on the ground” supporting China’s maritime claims. The United States, which still retains a strong interest in defending the principles of an open commons in the East and South China Seas, is presently hard-pressed to justify drawing red lines and risking a confrontation over what many consider to be uninhabited and insignificant rocks. The United States and its friends in the region thus seem flummoxed over how to respond.

Fortunately, there are practical actions China’s smaller neighbors around the East and South China Seas can take to resist China’s salami-slicing. These actions focus on building maritime capacity, especially on the nonmilitary end of the spectrum. They also focus on increasing cooperation and coordination among these neighbors in order to make the best use of limited assets and to enhance the political, legal and moral legitimacy of resisting China’s assertions. The United States will have to become a major supporting player if these initiatives in the region are to succeed; the United States is trusted by most of these countries and is thus well placed to provide the diplomatic and leadership “glue” needed to ensure effective cooperation.

Here are six ways countries in the region, supported by the United States, can resist China’s salami-slicing.

1. Expand the presence of non-Chinese fishing fleets in the East and South China Seas....
2. National government policies and budgets should support expanded maritime law enforcement and coast-guard capacity and presence....
3. The United States maritime services (civilian and military) and their counterparts in allied and partner countries in the region should expand information sharing, officer exchanges and multilateral training activities....
4. The United States, along with allied and partner countries, should establish a formal system for sharing basic, real-time maritime intelligence....
5. Policy makers and planners from the United States and other countries in the regional maritime network should prepare multilateral crisis-response staffing procedures....

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<sup>124</sup> See also Michael McDevitt, *The South China Sea: Assessing U.S. Policy and Options for the Future*, CNA (A CNA Occasional Paper), October 2014, 91 pp. Accessed December 24, 2014, at <http://www.cna.org/sites/default/files/research/IOP-2014-U-009109.pdf>.

6. Invite other interested countries in the region to join the initiatives listed above....

Patrick M. Cronin, “How to Deal with Chinese Assertiveness: It’s Time to Impose Costs,” *The National Interest*, December 4, 2014:

We have to accommodate a rising China, but we do not have to accommodate imprudent and even aggressive behavior. China’s increasing wealth is a fact, but so is its pattern of maritime coercion. China is seeking to use multiple levers of power to coerce its neighbors to give way to Chinese dominance. Indeed, China has recently resorted to a pattern of “tailored coercion” in maritime Asia. While engaging in protracted diplomatic discussions on a binding code of conduct or new confidence-building measures, China has systematically used public diplomacy, legal, and psychological instruments of power to redraw contemporary boundaries. Generally China has sought to do this incrementally, in salami slices less likely to trigger escalation or strong responses. Because so many neighbors lack the quality and quantity of Chinese coast guard, law-enforcement, and other paramilitary forces, it has been relatively easy to stake a claim in these often disputed areas....

Although China is not alone in seeking to advance its territorial claims and maritime interests, China’s behavior is uniquely escalatory. That is why U.S. Secretary of Defense Chuck Hagel singled out China’s “destabilizing, unilateral actions” against its maritime neighbors at this year’s Shangri-La Dialogue in Singapore....

Actions should have consequences. That is why the United States and its allies and partners need to think together about cost-imposition strategies. This requires going beyond simple concepts of deterrence to concepts of dissuasion and compellence—ways to drive up the cost of coercive behavior and incentivize cooperation. Too often the regional way of imposing costs is to rely on reputational costs. We use diplomatic forums such as the ASEAN Regional Forum to register collective disapproval. Unfortunately, reputational costs will be insufficient to counter a clever campaign of creeping exertions of sovereignty. We need to think about a full-spectrum approach to levers of power to penalize bad behavior and reward good behavior. Failing this, we should expect more tailored coercion....

More recently, the administration has appeared to strengthen its rhetoric and willingness to use selective shows of force. But a principled approach has been far from obviously effective....

So the questions that those who would only promote lowest-common denominator accords refuse to address are these: What are the consequences of letting misbehavior go unpunished? And what should the international community do about those who commit provocations and stir disorder at sea?...

There are at least four types of countermeasures or actions that might constitute part of such a strategy. Responses can be categorized as military or nonmilitary. Military responses might be thought of as related to presence, operations, modernization and other steps designed to exploit another’s security weaknesses, and building partnership capacity. Non-military responses include informational, diplomatic, and economic measures. These categories of costs in turn need to be embedded in a comprehensive strategy....

Militarily, the United States is taking a number of steps to improve its long-term force posture and presence in the Asia-Pacific region....

A second way to impose military costs on bad behavior and otherwise strengthen military options is by conducting more military operations with more partners. The United States is already well on its way to doing this....

A third military approach to imposing costs and otherwise preparing to deny maritime coercion is by exploiting the vulnerabilities and weaknesses of the provoking nation to exact a military cost. This approach could involve military modernization or other steps to highlight another's security weaknesses....

Given China's relative weakness with respect to antisubmarine warfare, the United States and its allies and partners can invest more heavily in submarine operations and, over the longer term, procurement, to force China to have to divert even more resources to shore up this weakness. Another approach to exploiting the weaknesses of China's PLA would be to pose a missile threat and other asymmetric threats to China, much as China has been investing in systems that provide what is called in general anti-access and area-denial capabilities. The cruise missile, and not just the anti-ship ballistic missile program of China, is apparently seen within the People's Liberation Army as a cost-effective defensive tool to force U.S. forces further away from its waters. But if the United States were to replace current missile warheads and arm drones with multiple reentry vehicles, this would pose a huge risk to China's forces and force greater investment in air defense and missile defenses on land and at sea. Similarly the U.S. operational concept of Air-Sea Battle potentially forces China to invest in systems even without the concept being proven, adopted or implemented. Of course, these approaches would not be without risk and cost to the United States, whether to American credibility as the champion of peaceful resolution or the risk of escalation....

A fourth military tool for imposing costs, at least indirectly, is to bolster the capacity of allies and partners to help themselves....

Another way to build partnership capacity, as implied by Japan's patrol boat transfer, is to foster the growing Asia power web of intra-Asian security cooperation.... Thinking regionally, the United States can work with appropriate allies and partners in creating transparency through an intelligence, surveillance and reconnaissance (ISR) regime for putting all actions—from ramming tactics to the reclamation of disputed land features or the movement of oil rigs in contested waters—on the internet....

There are numerous policy instruments for imposing costs that are not directly related to military presence, operations and posture. Non-military cost-imposition tools might be categorized as informational: to impose reputational costs in particular (such as through an ISR regime to spotlight provocations); to create a shared information regime for possible coalition operations; and to contribute to a positive narrative that the political aim of the United States and its allies is not conflict and not even confrontation if it can be avoided....

In the South China Sea and throughout the Indo-Pacific, it would help to have a common operating picture. By that, I am referring to more broadly disseminated information to help enforce any code of conduct in the South China Sea or throughout the region. At stake is the maritime and air commons on which the global economy depends. A successful informational narrative needs to explain to the broader public what is at stake in the East and South China Sea and beyond, for even some seasoned defense analysts in the United States sometimes fail to appreciate how incremental changes could fundamentally alter the balance of power and regional order. The order can break down one reef at a time. Moreover, a narrative can spotlight China's resort to a comprehensive toolkit of policies to press for more influence and attempt to exert greater influence and administrative control over both seas.

In sum, we need to think through China's strengths and vulnerabilities, determine our best points of leverage, and then implement policies to apply that leverage. In thinking through these measures, we need to keep them proportionate to the coercion and mindful of our larger political goals of integrating a rising China in an inclusive, rules-based regime. While we should not delude ourselves that there can be zero risk, there is no reason why we cannot find non-confrontational ways to dissuade China from imprudent behavior. But one thing

that seems likely is this: gray-zone challenges in the Indo-Pacific are not likely to disappear anytime soon and certainly not without appropriate actions on the part of the region's most capable nations.

Robert Haddick, "The Struggle for a Strategy," *U.S. Naval Institute Proceedings*, January 2015:

China is implementing a well-designed cost-imposing strategy in the Western Pacific that is inexorably undermining the position of the United States and its partners in the region. We need a competitive response if we are to maintain peace and stability in an area the Obama administration has made a top priority for U.S. security planning....

Salami slicing appears to be working for China, and therefore we should expect it to continue. Resisting China's actions could require a willingness to risk a confrontation involving fishing boats, oil rigs, coast guard vessels, and perhaps military forces. Whether a confrontation results in armed conflict will depend on many factors, most particularly the calculation each side makes regarding its prospects for tactical success....

If the United States is to maintain the credibility of its alliances in East Asia and freedom in the region's commons, the United States and its partners will very likely have to take greater risks to resist China's salami-slicing strategy. For that resistance to succeed, the United States and its partners will need forces and operational concepts that enhance crisis stability, convince China's leaders that they will not benefit from escalation, and threaten to impose costs on Chinese decision-makers in response to actions that place burdens on U.S. and partner interests....

To enhance crisis stability, the United States needs to rebalance its portfolio of strike platforms away from vulnerable and short-range systems, forward-based within easy range of China's missile forces. For the U.S. Air Force, that will mean less investment in tactical fighters and more on bombers and long-range air-to-surface missiles based outside the range of Chinese systems. For the Navy, it will mean reconsidering the centrality of the carrier strike group and revisiting whether a long-term goal of 48 attack submarines will be sufficient if surface forces will struggle to persist inside missile-threat zones.

The U.S. Army and Marine Corps should play leading roles bolstering the capabilities of allies and partners—America's most important strategic asset in the region. A greatly expanded security-force assistance mission for U.S. ground forces can make progress establishing trust among America's partners, expanding their capacities to collect and share intelligence, building partners' conventional access-denial military capabilities, and preparing for all forms of irregular and unconventional warfare. The Army and Marine Corps should prepare to execute this critical line of effort.

More generally, these steps should be part of a comprehensive approach that assembles political, diplomatic, economic, and conventional and unconventional military techniques into a broad toolbox available to policymakers. China has vulnerabilities, its leaders have anxieties, and the United States and its partners can use such a toolbox to create persuasive and dissuasive leverage that can influence Chinese behavior in mutually beneficial ways.<sup>29</sup> The capacity to impose a distant blockade, along with the capability to threaten direct attacks on assets and conditions highly valued by China's leaders, should be included. These and other military and non-military tools could be developed to complicate Chinese planning, impose costs during a peacetime competition, and hold at risk Chinese interests in ways that enhance deterrence and sustain regional stability.

China is employing salami slicing and using the missile and sensor technical revolution to execute a cost-imposing strategy on the United States and its partners in the Asia-Pacific region. The United States currently lacks an effective response, but it better find one if it is to

maintain stability in this vital region. A competitive strategy would greatly expand the security force assistance effort in the region, rebalance U.S. striking power toward long-range air power and submarines, prepare for the full range of irregular and unconventional warfare missions, and assemble a broad portfolio of military and non-military tools that could provide persuasive and dissuasive leverage against China's vulnerabilities. Many of these ideas are controversial and disruptive to established routines, which explains why thus far they generally haven't been implemented. But, if the Asia-Pacific region is to maintain the peaceful stability that has benefited all, including China, the United States and its partners will need to steer a new course, and soon.

Michael Mazza, "US in the Asia-Pacific: Toward A More Effective Asia Strategy," American Enterprise Institute, January 30, 2015:

In short, the Obama administration should assert that it welcomes China's peaceful rise but that Washington is increasingly convinced Beijing is interested only in peace on its own terms and, to a growing extent, prepared to abandon the peaceful pursuit of its own interests. As such, the United States will continue to engage with China in an attempt to bring both countries' interests into greater alignment, but will also be better prepared to defend the peace in Asia.

To defend that peace, the United States must adopt a more robust regional posture and work to further enhance its alliance network. The United States and its allies should be able to contain the PLA within the first island chain and deter aggression within that area. Doing so will minimize the Chinese military's ability to pose a direct threat to the United States and to effectively threaten America's allies in Asia.

In essence, a more effective Asia strategy would see the United States finally moving beyond its hub-and-spoke alliance model. An "Asian NATO" is not in the offing; rather than work to bind allies together in a grand mutual defense treaty, the United States should pursue multilateral cooperation in a few discrete areas to enhance regional security. Two efforts in particular are worth pursuing.

First, with U.S. partners South Korean, Japan, Taiwan, Australia, and India all upgrading their submarine fleets, American strategists should consider the value of an allied submarine "picket line," stretching from the Soya Strait (also known as the La Pérouse Strait) between Hokkaido and Sakhalin in the north, to the Bashi Channel and other waterways connecting the South China Sea and Philippine Sea, through the Southeast Asian archipelagos, and into the eastern Indian Ocean and Andaman Sea. A picket line would allow for enhanced tracking of Chinese subs exiting and reentering the South China Sea and position the allies to more easily close strategic chokepoints in the event of a conflict.

Partner nations could divide geographic responsibilities, with Taiwan taking primary responsibility for patrolling waters in and around the Taiwan Strait and the United States doing so in the South China Sea itself. To encourage greater interoperability, the United States should voice support for Japan's efforts to sell its submarines abroad and should lobby for American industrial participation in indigenous submarine programs. Washington should make Taiwan's submarine program a priority for the bilateral security relationship, either by assisting Taipei with its indigenous production plans or, better yet, by pushing Tokyo to sell to Taiwan Soryu-class submarines equipped with American communications and weapons systems.

Second, the United States should work to initiate a regional maritime domain awareness (MDA) network, which would include not only traditional U.S. partners but also Indonesia, Malaysia, and Vietnam. Participating countries would contribute their own intelligence, surveillance, and reconnaissance (ISR) capabilities to the network, and all participants would

have access to a common operating picture. The United States could assist currently less capable partners in the development of their ISR assets, thus enhancing its own ISR reach.

Such a network would serve to deter Chinese aggression in the China seas, as Beijing would know it was always under observation. It might also discourage China from provocative activities—such as military construction—on disputed islands under its control. An allied MDA network would have the added benefit of tamping down tensions among participant nations as well, many of which are engaged in territorial disputes and tend to competition with one another.

There are, of course, political challenges in building both an allied submarine picket line and a shared MDA network. Seoul and Tokyo frequently do not get along, Southeast Asian states are fiercely protective of their sovereignty, and India has long insisted on pursuing an independent foreign policy. All are tentative in their dealings with Taiwan and all wish to maintain positive economic relations with China.

But Chinese behavior is already pushing these states towards each other. The United States should take advantage of this trend to play the role of convener. The central American role in each project, moreover, should be to reassure partner states that are traditionally suspicious of one another, such as South Korea and Japan. In cases where direct cooperation may be too sensitive—between the Southeast Asians and Taiwan, for example—the United States can abet implicit coordination.

Ely Ratner, “Can Washington Do More to Stop PRC Land Reclamation?” *War on the Rocks*, March 2, 2015:

Efforts by the Obama administration to enhance America’s strategic position in Southeast Asia have been considerable: expanding and diversifying U.S. force posture, strengthening our alliances, building partner capacity, engaging regional institutions and providing forward-deployed U.S. forces with the newest and most advanced capabilities. Accompanying this has been intensive diplomacy in the region, including with China. And yet none of this has been sufficient to stop or deter China from proceeding apace with its land reclamation activities.

Ongoing PRC land reclamation in the South China Sea, if left unchecked, could fundamentally alter the strategic dynamics in East Asia and beyond. More needs to be done....

... there’s the fact that this is a really hard policy problem. Even for those within the U.S. government who agree that Chinese land reclamation deserves more serious attention, most do not see any viable options that can thread the needle between being effective at changing China’s behavior in ways that are consistent with U.S. interests and not overly provocative.

So where to go from here? First, analysts need to be more concrete about the medium- and long-term implications of China’s land reclamation. For instance, what will these island facilities mean for PRC military and paramilitary presence and power projection? How would it affect key U.S. interests in the region if China, as a result of these facilities, has effective administrative control over much of the South China Sea? Senior policymakers will not be seized by this issue without a clearer picture of the potential consequences.

Second, it’s critical to conjoin efforts to highlight the importance of the issue with specific policy proposals for what to do next. Instead of just admiring the problem, there’s a dire need for policy entrepreneurship.

We should reject the proposition that Chinese hegemony is a fait accompli in the South China Sea and there's nothing the United States can do to stop it. But moving the policy needle will require both clearer assessments of the strategic consequences of land reclamation, as well as creative and specific proposals for how the United States can more effectively prevent, deter and neutralize these seriously destabilizing activities.

Shawn Brimley, "Contesting China's Facts on New Ground," *War on the Rocks*, March 2, 2015:

The point of establishing a rotational presence of U.S. Marines in Darwin, Australia, or stationing several U.S. Littoral Combat Ships in Singapore was not to create militarized redoubts far askance from contested areas where conflict might eventually break out, but rather to steadily build up a greater presence in Asia that, after a decade or so, would actually aggregate into something quite formidable. But more importantly, these so-called "baby steps" would—year after year and initiative after initiative—help further reinforce our key alliances, encourage new partners, and create habits of cooperation and patterns of presence that would shape competition with China in ways that would benefit U.S. interests.

That logic of this gradual rebalancing has been, if not lost than somewhat muted in recent years, as these initial "baby steps" weren't replicated with great consistency or fanfare. That needs to change—now. China saw what we started doing and are playing the same game with more skill and urgency.

We can do more with the Philippines, Vietnam, Malaysia and Thailand. Recent agreements on defense cooperation with India opens a door for possible maritime and surveillance ideas linked to the Nicobar and Andaman islands. With a more liberal approach to exporting unmanned aircraft, hopefully our allies and partners will purchase these systems and link them together into a U.S.-supported common operating picture. These ideas (and there are many more) are affordable, practical, and overlap with the real security interests of our friends in Asia.

China needs to understand that we are playing this game to win. It's time to up our game before it's too late.

Robert Haddick, "Publicize China's Creeping Aggression and Bolster Allies," *War on the Rocks*, March 2, 2015:

The United States needs to step up the modernization of its naval and aerospace military forces in order to ensure that military escalation will never be a winning option for China. But for now, the competition is playing out at the political, diplomatic, legal, and public diplomacy levels. There is much more the United States government and its partners in the region can do right now to publicize China's creeping aggression and ensure that the consequences to the global commons and international law are known throughout the region and the world.

The long-standing and bipartisan U.S. policy of forbearance toward China has run its course. Resisting China's assertions will now require a much higher tolerance for risk. That risk-taking should begin with legal, diplomatic, and public diplomacy actions where the United States, its partners, and the global community can do much more.

Mira Rapp-Hooper, "To Respond to Reclamation, Aim at China's Strategy," *War on the Rocks*, March 2, 2015:

U.S. policymakers should tell China that it will not succeed in using these new outposts to coerce partners or to undercut international law. Officials should privately inform their



Chinese counterparts that the United States will actively challenge a South China Sea ADIZ if Beijing declares one. Washington should continue to invest in partner capacity-building efforts, with a focus on fast-tracked improvements to allies' maritime domain awareness capabilities. The United States should also seek to make public or furnish the Permanent Court of Arbitration with as much information as possible on the reefs and rocks on which China is currently building. These prescriptions won't necessarily stop China from dredging, but they will buttress U.S. partnerships, freedom of the seas, and rule of law. Ultimately, Washington must grapple with the fact that this rapid-fire construction is another manifestation of Beijing's evolving salami-slicing strategy. By design, this approach is especially difficult to engage. It is also far too consequential to set aside.

Zack Cooper, "It's Time for Gray Hulls in Gray Zones," *War on the Rocks*, March 2, 2015:

If U.S. leaders are serious about countering Chinese coercion, they will have to accept more risk. For too long, Beijing has set the terms of the gray zone competition by leveraging its strengths against its neighbors' weaknesses. Yet, despite its recent successes, China itself has many gray zone vulnerabilities. Through careful management of vertical and horizontal escalation risks, the United States can exploit these asymmetries to deter further Chinese coercion.

Raising escalation risks can be an effective deterrent if carefully designed and calibrated. U.S. policymakers should focus their counter-coercion efforts on domains in which the United States and its allies and partners hold relative advantages, whether political, military, legal, economic, financial, or diplomatic. For example, despite China's rapid military modernization, the U.S. military retains an asymmetric advantage in maritime power projection capabilities. China has attempted to sideline U.S. naval forces by utilizing China's robust paramilitary forces to paint involvement of U.S. gray-hulled vessels as unnecessary escalation. But in the face of mounting Chinese coercion, the United States should consider the use of gray hulls in gray zones.

China's coercion campaign is unlikely to end without external intervention. Allowing Beijing to dictate the terms of the competition in the East and South China Seas enables continued coercion and undermines regional and international order. The time has come for the United States to stop playing along.

Richard Fontaine, "Chinese Land Reclamation Pushes Boundaries," *Wall Street Journal*, March 3, 2015:

The U.S. and its growing number of willing Asian partners should use Beijing's recent action in the South China Sea to further galvanize their security cooperation—not as a method of containing China but rather of balancing its assertiveness. The best bet for avoiding coercion and conflict in a region where China continues to rise is a U.S. that is present, strong and working with other powers.

This requires Washington to get its own defense house in order. At a moment when China's submarine fleet for the first time outnumbers America's, the specter of sequestration hangs over the Pentagon's budget. It means working more meaningfully with countries like Vietnam and the Philippines and encouraging them to work with Japan and others. And it should include encouraging India's continued rise as a major Indo-Pacific power that can eventually help balance Chinese weight.

Michael Mazza, "Obama's China Tool Kit: In Need of Serious Repair," American Enterprise Institute, March 5, 2015:

Given that China's land reclamation activities began at least as early as February [2014], two months prior to the revelation of the Pentagon's new military plans,<sup>125</sup> Pacific Command must have prepared options for responding to this development. This is what combatant commands do; they plan for all sorts of contingencies, especially the predictable ones.

So, having asked nicely for the Chinese to cease and desist, and having been rebuffed (repeatedly), isn't now the time for the Obama administration to revisit the Pentagon's menu of policy options for dealing with provocations in the China seas? Last summer's recently revealed three-week deployment to the Philippines of a P-8 squadron, which conducted flights over the Spratlys, could have been a response to Chinese moves in the South China Sea, but if so, it did not dissuade China from continuing its land reclamation projects, nor did its fleeting nature suggest seriousness of purpose.

Stepped-up and sustained surveillance by the surface fleet and air assets; presence missions by U.S. warships within the Spratly archipelago; live-fire exercises, perhaps designed to demonstrate how the Navy might deal with a fortified enemy islet—all would at least convey American alarm at Chinese activities and show that the United States is watching China at least as closely as is IHS Jane's. Such responses would also signal that the United States does not fear a confrontation at sea with China, whose naval and air forces have been acting dangerously in response to regular U.S. naval operations.

Harry Kazianis, "Superpower Showdown: America Can Stop Chinese Aggression in Asia," *The National Interest*, March 6, 2015:

Here's a fun filled fact Asia hands here in the beltway and throughout the U.S. need to make peace with: Washington at present has zero chance of stopping China's island building adventure in the South China Sea. None. Zero. Zip. Nada. The Obama Administration's lackluster approach when it comes to Beijing's challenge to the international status quo has only enabled Chinese behavior over the last few years.

But what America can do—like any smart strategist—is gain a clear understanding of Beijing's strategy when it comes to Asia and plan the next move. And that next move, a carefully-thought-out reaction to Beijing's various attempts to slowly change the international order in the Asia-Pacific is key. To put it quite simply: China needs to pay a price for its actions now and in the future. Beijing needs to be put on notice from here on out the costs of its actions will be steep—like the promotion of a "balancing" coalition that will only grow stronger with every aggressive action China takes....

So if China wants to change the international order in its favor, fine. But Beijing needs to realize it will pay a price for such a move—a massive one. That is the only way to successfully challenge China's aggressive behavior going forward.

The best way to do this would be for President Obama to start changing the tone of the conversation when it comes to China. No more feel-good talk about wanting Beijing to be a partner, or promises to pursue a "new type of great power relations." Obama needs to change course dramatically and make sure Beijing knows it has crossed the line.

This would involve punching up the rhetoric, beginning with a series of speeches and selected interviews discussing not just some half-hearted "pivot" to Asia, but a move towards "balancing" against those who want to disrupt the international order in the broader Indo-Pacific region....

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<sup>125</sup> This is a reference to the information reported in the article cited in footnote 98.

So how would “balancing” work in practice? Obama would need to explain that any nation that seeks to fundamentally chip away at the international order would no longer be considered a partner of the U.S., and Washington would work with nations around the region to “balance” against such actions.

We would play the time honored game of not naming China, but Beijing would know they were being called to task. They might even see such talk as code for China’s greatest fear coming true: containment—and so much the better. No U.S. official would use such a phrase, however, Beijing needs to know that something similar to it could be the next step if it didn’t halt its aggressive actions. There would be no threats of war or aggressive moves against Beijing, it would simply know its actions would have consequences from this moment on, and Washington would balance any actions that are counter to the status-quo in Asia. In fact, John J. Mearsheimer offers words China should fear if it continues its actions:

The historical record clearly demonstrates how American policymakers will react if China attempts to dominate Asia. Since becoming a great power, the United States has never tolerated peer competitors. As it demonstrated throughout the twentieth century, it is determined to remain the world’s only regional hegemon. Therefore, the United States will go to great lengths to contain China and do what it can to render it incapable of ruling the roost in Asia. In essence, the United States is likely to behave toward China largely the way it behaved toward the Soviet Union during the Cold War.

China’s neighbors are certain to fear its rise as well, and they, too, will do whatever they can to prevent it from achieving regional hegemony. Indeed, there is already substantial evidence that countries like India, Japan, and Russia, as well as smaller powers like Singapore, South Korea, and Vietnam, are worried about China’s ascendancy and are looking for ways to contain it. In the end, they will join an American-led balancing coalition to check China’s rise, much the way Britain, France, Germany, Italy, Japan, and eventually China, joined forces with the United States during the Cold War to contain the Soviet Union.<sup>126</sup>

Here is a simple scenario to show how “balancing” could work. Any non-kinetic move China makes to undue the status quo in Asia would be met with a countermove of equal significance that reinforces our allies and partners’ military capabilities. So, for example, China tries to take over another reef in the South China Sea. what would America do? Well, one real possibility: Washington could decide its time to sell Taiwan those F-16 C/D fighters it has been requesting for years as well as partner on helping advance its domestic submarine program—and float the idea that Taipei could even receive the F-35. The strategy is simple: China moves to solidify its position in one area, we could counter with our allies and partners in another.

As I have said in the past, Washington must begin to craft some sort of organized and coherent strategy when it comes to China—and not one that focuses on trade or profits but ensures there will be costs for its coercive actions. Long gone are the days of hoping Beijing would become a “responsible stakeholder.”

Such a strategy need not adopt the same bullying or confrontational tone that Beijing has employed, but a show of strength to halt Chinese attempts to alter the status-quo and to ensure stability throughout the Indo-Pacific. We too have the capability to craft strategies

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<sup>126</sup> The quoted passage is from John J. Mearsheimer, “Can China Rise Peacefully?” *The National Interest*, October 25, 2014.

short of war that can also maintain the status-quo and reinforce the existing international order. The best way to do so is for Beijing to know that we are more than happy to “balance” its moves in the wider Indo-Pacific.

Jeff W. Benson, “Essay: U.S. Should Consider Establishing a South China Sea International Operations Center in Indonesia,” USNI News, March 9, 2015:

The incoming U.S. Pacific Command (PACOM) commander, Adm. Harry B. Harris, testified before Congress late last year that “China’s rise as a regional military and global economic power, and in particular, its rapid military modernization and assertive behavior toward regional neighbors present opportunities and challenges that must be managed effectively. This is our most enduring challenge.”

To meet that challenge, the U.S. Navy should explore establishing an International Maritime Operations Center (IMOC) headquartered in Indonesia to showcase the Navy’s commitment to the Asia-Pacific, monitor maritime developments in the South China Sea and Indian Ocean and serve as a new mechanism to meet China’s rise...

The IMOC would serve as the primary link to enhance maritime relations with the Indian, Indonesian, and Southeast Asian maritime forces. An operations center supported by international navies is a familiar concept in key maritime areas. In Bahrain, the Combined Maritime Forces exists as a multi-national naval partnership consisting of 30 nations to promote security, stability and prosperity in the maritime domain. In Norwood, United Kingdom, as part of NATO, the Allied Maritime Command operates two key organizations: a 24/7 operations center for permanent command and control of NATO maritime operations, and a shipping center to provide dialogue and coordination with the shipping industry about potential threats.

An IMOC also provides a forward presence and an increased capability to manage the protection of maritime commerce—the single most important variable in the Asia Pacific.

Michael J. Green and Mira Rapp Hooper, “Push China Toward Diplomacy,” *Washington Post*, March 12, 2015:

The United States does not have a stake in the sovereignty claims at issue, but it has an important interest in ensuring that China does not use coercion to change the status quo. The Chinese trajectory suggests that it intends to do just that. Halting Chinese land reclamation and base-building would be difficult, but other steps can be taken to dissuade Beijing from moving down the path of coercion.

First, Washington should continue to invest in capacity-building efforts with countries such as the Philippines and Vietnam, which are most directly threatened by China’s rapid buildup. In particular, we should support Southeast Asian nations’ efforts to improve their maritime surveillance capabilities so they can establish a reliable operating picture of the South China Sea. Japan and other allies stand ready to assist with infrastructure investment and transfers of equipment.

Second, the U.S. Navy should demonstrate that China’s moves will not diminish freedom of navigation in the area. The rotational deployment of four combat ships to Singapore will help, but these ships and other 7<sup>th</sup> Fleet assets should increase their exercises with partners in the region. Beijing should also understand that any declaration of an exclusive ADIZ over the South China Sea will not be acceptable. When Beijing declared such a zone over the East China Sea, the United States sent unarmed B-52s directly through it to demonstrate that there

would be no impact on U.S. operations, but that came after the fact. Beijing needs to understand ahead of time that a South China Sea ADIZ invite a robust response.

Third, the United States should assist Southeast Asia with diplomatic and legal measures it is taking to slow China's effort. The United States has long encouraged the development of a South China Sea code of conduct between China and the Association of Southeast Asian Nations, but Beijing appears to be slow-walking these talks. There is room, however, for the United States to step up support for ongoing international legal efforts. China's building spree apparently aims, at least in part, to undermine the Philippines' maritime legal case against it, which is being heard at The Hague. Washington should provide the tribunal with detailed information on the status of the Spratly features that China is transforming, to ensure that Manila gets its day in court. The United States can also hold up the example of Taiwan's East China Sea peace initiative and agreements with the Philippines and Japan on resource sharing and joint development. The goal of U.S. policy should not be to defeat Chinese diplomacy in Asia but to use dissuasion and transparency to push China toward more responsible diplomacy.

The administration has taken small steps in these directions, but it continues to debate whether this is really a good time for increased tension with Beijing. China's rapid fortification of the South China Sea should make it clear to all that, without a more robust response now, there will almost certainly be a more dangerous confrontation later.

John Schaus, "Concrete Steps for the U.S. in the South China Sea," *War on the Rocks*, March 16, 2015:

Promoting the rule of law and equal access by all countries to the maritime commons will require a far more comprehensive set of activities from the United States.

The first need, as noted by several contributors at War on the Rocks, is that the United States will need to pursue policies that demonstrate to China that its actions in the South China Sea risk escalation. As long as China sees little risk of escalation in its actions, it will have little reason to refrain from provocation.

Second, my colleague Zack Cooper is right that the United States needs "gray hulls for gray zones." To be truly effective, the United States (and countries in Southeast Asia) will also need more hulls so that they are present more often for more time. Doing so will require the United States to carefully consider what the rules of engagement are, and the latitude given to ship commanders.

Third the United States must demonstrate progress on the economic front. The Trans-Pacific Partnership (TPP) needs to be signed this year. For the United States to be seen as a viable economic partner (and not just a guarantor of security), TPP is the minimal credible step. In addition, the United States should identify targeted ways to promote U.S. investment in the developing economies throughout Southeast and South Asia, and should work with countries in these regions to bolster rule of law and contract enforcement so that businesses have greater clarity about the market environment.

Fourth, the United States should commission legal scholars from across the region and a broader community of interest to develop a proposal for the legal status (elevation, rock, or island) of each feature in the South China Sea. Countries would be free to debate differing viewpoints, but this would be a useful mechanism for countries to reduce tensions without directly confronting one another's claims.

Lastly, the United States must present a vision for what a vibrant and open South China Sea could look like. Currently, zero-sum national interests combine with resource and political constraints to impede countries bordering the South China Sea from working together to achieve positive outcomes. The United States must partner with littoral states to build the case that countries in the region have more to gain working together than they have to lose.

Bonnie S. Glaser, “Conflict in the South China Sea,” Council on Foreign Relations, April 2015:

Although China may have moderated some of its intimidation tactics for now, it continues to seek greater control over the sea and airspace in the South China Sea. Moreover, various attempts to persuade China, along with the other claimants, to freeze destabilizing behavior such as land reclamation have not succeeded. Beijing continues to drag its feet on negotiating a binding code of conduct (CoC) with the Association of Southeast Asian Nations (ASEAN) and has rejected Manila’s attempt to resolve its territorial dispute through arbitration under the United Nations Convention on the Law of the Sea (UNCLOS). Halting Chinese land reclamation activities may not be possible, but the United States can press China to be transparent about its intentions and urge other nations to do the same. While remaining neutral on sovereignty disputes, the United States should encourage all parties to pursue their claims peacefully and in accordance with international law. The United States should also press China to accept constraints on its behavior in a CoC and dissuade China from taking actions that increase the risk of conflict. Several of the recommendations in CFR’s 2012 analysis of potential conflict in the South China Sea remain to be implemented; in particular, the United States should ratify UNCLOS. In addition, the United States should take the following steps:

—In the absence of progress between China and ASEAN on a binding CoC to avert crises in the South China Sea, the United States should encourage ASEAN to develop its own draft CoC containing risk-reduction measures and a dispute-resolution mechanism. The United States should then work with ASEAN to convince Beijing to sign and implement it.

—The United States should continue to help the Philippines and Vietnam enhance their maritime policing and security capabilities, for example through better surveillance systems, so they can deter and respond to China entering the water and airspace in their EEZs with impunity. Similar assistance should be extended to Malaysia if requested.

—The United States should be prepared to respond to future Chinese coercive acts including using U.S. naval forces to deter China’s continuing use of “white hulled” paramilitary vessels. Other responses, such as imposing economic sanctions on Chinese energy companies should they drill in contested waters, are also conceivable but should not be specified in advance.

—The United States should state clearly and publicly that a declaration of an ADIZ by Beijing over the South China Sea would be destabilizing and would not be recognized by Washington.

—To further reduce the risk of an accident between U.S. and Chinese forces, the two militaries should implement their joint commitment to conclude an agreement on air-to-air encounters by the end of the year.

Robert Williams, “A Secret Weapon to Stop China’s Island Building: The Environment?” *The National Interest*, April 20, 2015:

In 2013 the Philippines launched a legal case against China under the dispute settlement procedures of the UN Convention on the Law of the Sea (UNCLOS), seeking a ruling from

an arbitration tribunal on the status of certain features China occupies and challenging its controversial “nine-dash line.” Vietnam recently submitted a statement to the tribunal supporting the Philippines’ position.

Although the tribunal has yet to decide whether it has jurisdiction to hear the case, the Philippines’ strategy of using international law to press its arguments—rather than through negotiations with China—may offer a blueprint for pushing back against China’s recent land reclamation activities. Here is where the environmental consequences of China’s island buildup are poised to play a central role.

Like all countries that have ratified UNCLOS, China has general legal obligations to protect and preserve the marine environment. UNCLOS specifically requires signatory nations to refrain from causing transboundary environmental harms and to take measures “necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.”

The treaty also calls upon states to conduct and communicate the results of environmental impact assessments. Importantly, these obligations are largely independent of questions about sovereignty and jurisdiction. And an independent tribunal can be convened under compulsory jurisdiction to interpret and apply them.

If the Philippines or another littoral state brought a claim against China for violation of UNCLOS’s environmental protection provisions, the claimant state could rest its case on the damage being caused by land reclamation in a region that hosts the world’s greatest marine biodiversity—where fish supply around 22 percent of the average person’s diet yet 40 percent of fish stocks are already depleted; where 70 percent of the coral reefs are judged to be in fair or poor condition; and where the list of endangered species is rising steadily alongside increasing ocean acidification. With this context to support it, the litigant state’s ultimate goal would be a judgment from the tribunal ordering China to change its behavior in the name of environmental sustainability.

Under UNCLOS, even before an arbitral tribunal is convened to address the merits of the dispute, the International Tribunal on the Law of the Sea (ITLOS) can issue “provisional measures” requiring that states take certain actions to preserve the parties’ rights or prevent harm to the marine environment. Thus, it is conceivable that ITLOS or an arbitral tribunal could require China to halt or modify its land reclamation work if it found that these activities pose an urgent environmental threat.

There is precedent for a request under UNCLOS for provisional measures to address environmental harms caused by land reclamation. In 2003, Malaysia brought a case against Singapore challenging its land reclamation activities in and around disputed waters in the Straits of Johor. Malaysia requested provisional measures including a suspension of all reclamation until the arbitral tribunal reached a judgment.

Although ITLOS declined to support Malaysia’s request for a suspension of Singapore’s activities, it ordered the countries to establish a joint group of independent experts to study the environmental effects of Singapore’s land reclamation and propose appropriate mitigating measures. In addition, pending a final decision in the arbitration, ITLOS required Singapore and Malaysia to share information and engage in risk assessments, and ordered Singapore to refrain from any land reclamation that would cause irreparable prejudice to Malaysia’s rights. After one year, the joint expert working group proposed a number of mitigating measures that served as the basis for an eventual settlement between the parties.

China denies that its land reclamation is damaging marine ecosystems, and even contends it is providing neighboring nations in the South China Sea with public goods such as weather

monitoring and search and rescue facilities. Experts and officials from other countries offer a starkly different assessment. According to the Philippines' deputy representative to the United Nations, land reclamation "is causing widespread destruction of the region's biodiversity" and will "irreparably damage the entire ecological balance" in the region's waters. On April 13, the Philippines' foreign ministry spokesperson alleged that Chinese construction has destroyed more than 300 acres of coral reefs and is causing \$100 million in annual economic losses to states in the vicinity.

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