EXECUTIVE SUMMARY

The South China Sea disputes involve the interests of the United States, particularly with regard to freedom of navigation, international norms and law, relations with important partners and allies, and the expectation of the peaceful resolution of disputes. China’s rising power and capabilities make PRC actions more consequential and unsettling than those of others, so they deserve particular attention but need to be evaluated in the broader context of the motives and actions of others as well.

American policymakers should consider the South China Sea in terms of how most effectively to address the problems so as to achieve the goals of diminishing tensions, preventing the use of military force by all parties, protecting the lawful rights of the international community, encouraging steps to reconcile the various claimants, and maintaining good relations and credibility with all the parties. This mix of objectives will require a nuanced array of policies that, taken together, move a difficult and increasingly dangerous situation toward greater stability. The United States should not regard the South China Sea disputes as signaling an incipient cold war with China or as the central strategic issue in U.S.-China relations. Such an approach is likely to lead to an outcome in which the United States does not achieve its objectives but instead greatly intensifies U.S.-China tensions and distrust of each other's strategic intentions and at the same time increases the chances of other claimants acting imprudently.

Our recommendations seek to strike a balance among competing interests. They are designed to diminish the momentum toward heightened tensions between the United States and China and among claimants in the South China Sea; to protect American interests on maritime issues where they are engaged; to provide confidence to regional actors that the U.S. security presence is enduring; and to avoid putting U.S. credibility at stake in cases where the United States is unlikely to act militarily to demonstrate it. They also aim to protect the broad interests of the United States in its relationship with China from becoming hostage to matters that it cannot control.
American policies have contributed mightily to enabling Asia to become an engine of both global and American growth for the last 35 years. The American security presence and associated actions have reduced the chances of large-scale conflict over this period, facilitating Asia’s economic emergence. Unfortunately, maritime territorial disputes in the East China Sea and the South China Sea increasingly threaten these critical U.S. interests.

This regional situation is unfolding in the larger context of the rise of China and its growing activism regarding regional and global issues and institutions, including more vigorously asserting its interests in the western Pacific. While expansion of China’s interests and influence is normal and natural, it is inevitably unsettling to many Americans and Asians, particularly when it involves employment of military and quasi-military assets.

China’s greater global activism also makes more salient the reality that almost all of the core challenges of this era—such as terrorism, nuclear proliferation, cyber security, opposition to trade and investment liberalization, climate change, and epidemics—are more manageable when the United States and China can cooperate or act along parallel lines and far less tractable when the two countries see their interests as at cross purposes. The growing U.S.-China distrust over both countries’ respective positions in the maritime territorial conflicts in the East China Sea and the South China Sea risks creating an impact on overall U.S.-China relations that can have consequences far beyond the specific merits of the disputes themselves.

Wrongly, Beijing is convinced that the flare-up of disputes in the East China Sea and the South China Sea reflects an underlying U.S. strategy to encourage others, especially Japan, Vietnam, and the Philippines, to push the envelope in the hopes the Chinese responses will lead those countries—and ASEAN—
to become more united and dependent on the United States. At the same time, China's increasingly bullying approach to its maritime territorial claims has increased the growing ranks and influence of analysts who argue that China's “peaceful rise” is a mirage and that intense competition, if not outright conflict, between the United States and China will define the future.

While the East and South China Sea disputes share certain similarities, they are quite different in important respects. The East China Sea territorial dispute involves only two claimants, China and Japan, revolves primarily around one small set of uninhabited islands claimed by both, and is closely intertwined with interpretation of the U.S.-Japan Mutual Security Treaty. The South China Sea disputes concern a vast area of ocean, inhabited and uninhabited islands, more complex rivalries and claims to land and resources, a more pronounced challenge to international law, and a greater imbalance in power among the claimants. This article addresses only the South China Sea disputes.

The South China Sea disputes pit China against five other claimants—the Philippines, Vietnam, Brunei, Malaysia, and Taiwan (many of which have maritime territorial claims that also overlap with each other)—and involve:

- Highly emotional territorial claims in a region of rising nationalism.
- Risks of accidental conflict that could escalate.
- Conflicting claims to potentially rich resources.
- Risks to freedom of navigation in Exclusive Economic Zones (EEZs).
- Disputes over the interpretation and applicability of international law, notably the UN Convention on the Law of the Sea (UNCLOS).1

And they involve the interests of the United States, particularly with regard to freedom of navigation, international norms and law, relations with important partners and allies, and the expectation of the peaceful resolution of disputes.

The United States has a critical interest in providing reassurance to its allies and partners in the region that it will maintain a strong security presence to prevent a power vacuum from developing as China rises. That requires a continuing active engagement in the South China Sea, taking steps that encourage responsible behavior and discourage coercion by all parties. One of the claimants, the Philippines, is a treaty ally. The United States needs to honor its security treaty, which covers the main Philippine islands and its “public vessels and aircraft.”

The United States should not exaggerate, however, what is going on in the South China Sea and regard it as an Asian counterpart to Russian aggression against Ukraine. China's territorial claims in the South China Sea are of long standing. Troops are not moving, people are not being killed. Management of claims disputes is important, but occasional assertions of sovereignty by one actor or another are not a fundamental challenge to recognized borders or the integrity of existing states.

China's actions in the South China Sea are not, as some have suggested in harkening back to the 1930s, a Sudetenland moment. The growing tensions over maritime claims require a multifaceted strategy, but the United States should not exaggerate the significance of rivalry over claims to a few hundred mostly uninhabited small islands, rocks, and atolls. Freedom of navigation and overflight aspects of these disputes involve vital U.S. interests, but the territorial claims themselves do not.

The United States thus needs to keep this issue in perspective, and shape a strategy designed to minimize the chances of a downward slide into confrontation.

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or conflict that could make numerous other critical issues, such as the Iranian and North Korean nuclear programs, promoting trade, investment, and economic growth, combatting climate change, and maintaining peace in the East China Sea and the Taiwan Strait, measurably more difficult to manage.

**Background**

Disputes among the claimants in the South China Sea go back many decades but have become more visible and intense in the last few years. There are differing interpretations in various capitals on why this is so. It is therefore important to lay out some facts about the behavior of claimants before making recommendations on specific U.S. policies.

The South China Sea encompasses an area of 1.4 million square miles of ocean and several hundred small islands, atolls, rocks, and shoals with a cumulative land area of about six square miles. The islands have no indigenous population and only a small number of inhabitants settled by regional countries designed to advance their claims. The area is rich in marine resources, historically exploited by a number of countries in the region, and an unknown amount of oil and gas, most of it difficult to develop and thus far relatively unexploited. More than half of the world's commerce that travels by sea and about half of the world's oil tanker shipments pass through its waters.

There are four island groups in the South China Sea: the Pratas Islands in the northeast, the Paracels to the north, the Spratlys to the south, and Scarborough Shoal in the central east. (Macclesfield Bank is a totally submerged reef complex in the center of the South China Sea.) All of these islands are claimed by both China and Taiwan, while Vietnam claims the Paracels and Spratlys, and the Philippines claims many of the Spratlys and Scarborough Shoal. Malaysia and Brunei claim a few of the Spratlys. China has controlled the Paracel Islands since it forcefully expelled the South Vietnamese military occupants in January 1974. But in the Spratlys, Vietnam occupies the most islands, about 25 in total. China and the Philippines each occupy about seven or eight, Malaysia four, and Taiwan one.

The land features of the islands do not lend themselves easily to construction of large military installations. Taiwan occupies the largest island, Itu Aba, that includes an airfield that can accommodate C-130’s and a small garrison. Landing strips, helicopter pads, and radars have been established elsewhere, and more are expected. Full-service bases would be very expensive and vulnerable to the typhoons that routinely cross the South China Sea, and as a result are unlikely to be built. Historically, the South China Sea has had particular military sensitivity for China, which continues today because it has an important submarine base on Hainan Island whose vessels exit and return through these South China Sea waters.

There have been relatively small-scale clashes and incidents in the South China Sea, some causing loss of life over the last 50 years, including the aforementioned Chinese assault on the Paracels, a Chinese attack on Johnson Reef in 1988 routing the Vietnamese occupants, and Chinese occupation of and construction on Mischief Reef in 1994-1995 over Philippine protests. In the wake of the Mischief Reef fracas, suspicions and resentment mounted among Southeast Asians over Chinese conduct and intentions in the South China Sea. PRC diplomacy, under the guiding hand of Foreign Minister Qian Qichen, sought to cool down frictions and led to China and the ASEAN member states signing a regional nonbinding Declaration of Conduct in November 2002. This called for voluntary restraint on activities that would cause tensions and for consultation and negotiation rather than coercion to resolve disputes.

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The subsequent years witnessed numerous detentions of fishing vessel crews by one or another of the South China Sea littoral states, protests of attempts to drill for oil and gas in disputed waters, and stepped-up patrols by the Chinese Navy and its expanding coast guard in the region. The promise of the Declaration of Conduct for diplomatic negotiations to resolve disputes did not materialize, though direct military confrontations were avoided. These years have also witnessed two serious confrontations between the United States and China over U.S. Navy reconnaissance activities well outside of China’s territorial waters but within its EEZ.

In response to increasing tensions and in the absence of progress toward negotiating a binding Code of Conduct, at a meeting of the ASEAN Regional Forum in Hanoi in 2010, Secretary of State Hillary Clinton laid out the principles guiding U.S. policy toward the South China Sea: freedom of navigation, unimpeded lawful commerce, only recognizing maritime rights based on sovereignty over land features and delineated in conformity with UNCLOS, a “collaborative” diplomatic process among claimants to resolve territorial disputes concerning sovereignty over land features in the South China Sea, and strong encouragement of negotiation of a Code of Conduct.4

China reacted sharply and negatively to Secretary Clinton’s initiative, beginning with a heated intervention in Hanoi by Foreign Minister Yang Jiechi, in essence saying the South China Sea was none of America’s business and warning other claimants not to be drawn in by U.S. blandishments. The subsequent years have seen a number of disturbing incidents, including Chinese expulsion of Philippine vessels from the fishing waters of Scarborough Shoal in 2011,5 Chinese and Philippine maneuvering around resupply of a small contingent of Philippine military personnel living on a rusted ship deliberately grounded on Second Thomas Shoal,6 and physical confrontation between Chinese and Vietnamese vessels in response to Chinese deployment of a deep-water oil exploration rig in disputed waters and related anti-Chinese riots in Vietnam in May-June 2014.7

The claim by China to unspecified “historical rights” within the so-called “nine-dash line” (NDL) is significantly complicating the territorial disputes in the South China Sea. The NDL was first put forward by the Republic of China in 1947 and then inherited and endorsed by the PRC. The line on Chinese maps, including one submitted to the UN, encompasses almost the entire South China Sea.

Chinese officials have refused to clarify the rights China claims within this line. Sometimes China’s rhetoric and actions imply that it enjoys the rights to resources anywhere within the line. For example, the Hainan Provincial Government’s “Implementation Methods” for the PRC Fisheries Law that became effective on January 1, 2014, followed the NDL.8 Some Chinese scholars say that China enjoys “historic rights” to resources within the line, while others say privately that the NDL only delineates the area within which China claims all of the maritime land features, with associated maritime rights to be determined by applying UNCLOS rules to those land features. UNCLOS does not allow claims to maritime rights of the kind that expansive Chinese assertions about the meaning of the NDL suggest.

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In the last four years, the Southeast Asian claimant states have unsuccessfully tried to rally ASEAN behind a position that would restrain China. The U.S. government has issued a series of public statements critical of various Chinese actions, calling them “provocative,” “aggressive,” and “destabilizing” and pointing to a disturbing pattern of bullying and intimidation in Chinese behavior. The United States has reached an agreement with the Philippines to increase defense cooperation and rotation of U.S. forces through the Philippines, and U.S.-Vietnam defense relations have improved. The United States and Japan each have committed to provision of coast guard vessels and other means of improving the Philippines’ maritime security.

U.S. Principles and Interests

As noted earlier, at the ASEAN Regional Forum meeting in Hanoi in July 2010, Secretary of State Clinton laid out the principles guiding the U.S. government’s policy toward the South China Sea. These principles provide the foundation, though not the sum total, of U.S. interests in the region.

How do these principles translate into specific U.S. interests, and which interests need enhanced protection?

- **Freedom of navigation/military**: The high seas freedoms enshrined in UNCLOS are essential to America’s global role as a provider of security in the distant seas of the world. Under Beijing’s interpretation of the Law of the Sea, transiting military vessels and intelligence activities in its Exclusive Economic Zones are expected to seek China’s consent before operating. China has never successfully imposed this interpretation on the United States. But this Chinese position can potentially become consequential for the U.S. military if the PRC’s most expansive South China Sea claims were to be realized. China’s position remains a minority one within the international community, and the United States should work to ensure that does not change.

- **Freedom of overflight**: There is concern that China might seek to impose an Air Defense Identification Zone (ADIZ) in the South China Sea, as such as it has announced in the East China Sea and of the kind that many other countries, including the United States, have established. Establishment of a Chinese ADIZ in the South China Sea, covering an area claimed by a number of other countries, would be destabilizing, would heighten tensions and should be strongly discouraged. Were it established, however, there is little reason to expect that it would be enforced in a manner that negatively affected aviation traffic, much as the East China Sea ADIZ thus far has produced no significant alterations in aviation patterns.

- **Unimpeded commerce**: Because all the states in the Asia Pacific, including China, have a strong interest in preventing interference with commerce in the South China Sea, it is hard to see dangers to this common interest on the horizon.

- **Peaceful resolution of disputes and abstaining from coercion**: This should be a vital objective of the United States in the South China Sea, as elsewhere, since it is a foundational principle of the international system and critical to maintenance of regional stability. China is the claimant with the greatest capability of resorting to coercive diplomacy. The “peaceful rise” (or “peaceful development,” as Beijing officially calls it) that it touts and that the rest of the world hopes for is thus being tested in the South China Sea. Recently, China has operated in a grey zone: it has not assaulted islands held by other claimants, and is relying on its Coast Guard rather than the PLA Navy to reinforce its claims. But it has pushed the Philippines out of Scarborough Shoal, a traditional Philippine fishing ground, and assembled an armada of Coast Guard and fishing vessels to chase off Vietnamese protests.
of its oil/gas exploration rig in the Paracels. These and related activities have generated high anxiety over future Chinese coercive activities among the claimants and other states in East Asia.

- **Conforming claims to the UN Convention on the Law of the Sea**: The most expansive claim to rights in the South China Sea is the NDL, which encompasses nearly the entire South China Sea. China and Taiwan have failed to clarify the meaning of the nine-dash line—does it delineate claims to rights (and, if so, to exactly what rights?) over all the maritime area within the line, or does it instead merely delineate their claims to all the land features within it? The United States cares, because respect for international law and norms is a fundamental underpinning of the international system, because imposition of such massive and extra-legal claims would profoundly affect the rights of numerous other states and be destabilizing, and because U.S. companies and actors may wish to exercise exploration or fishing rights in what otherwise are clearly international waters.

- **A collaborative diplomatic process to resolve territorial disputes**: The United States has an interest in the parties negotiating settlements of their claims, whether they do it bilaterally (as China prefers) or multilaterally (as the ASEAN claimants prefer). There is very little likelihood, however, of serious negotiations in the near term over territorial claims, so the U.S. interest lies more in having the claimants avoid coercion to change facts on the ground than in putting diplomatic capital into negotiations to resolve claims.

- **Negotiation of a Code of Conduct**: The ASEAN claimants and China agreed in the nonbinding “Declaration on the Conduct of Parties in the South China Sea” completed in November 2002 that the adoption of a Code of Conduct in the South China Sea would further promote peace and stability in the region and agreed to work, on the basis of consensus, towards the eventual attainment of this objective. Since the disputes over ownership of land features are not resolvable in the foreseeable future, a Code of Conduct that stipulates how rights will be asserted is a critical tool in managing frictions.

**RECOMMENDATIONS**

Many, probably most, of the issues in contention in the South China Sea will remain unresolved for years to come. It is an area where all the littoral states seek to maximize the strength and validity of their claims and where some seek to draw the United States in deeply in order to counterbalance the Chinese. China’s rising power and capabilities make PRC actions more consequential and unsettling than those of others, so they deserve particular attention but need to be evaluated in the broader context of the motives and actions of others as well.

The South China Sea presents the United States with difficult dilemmas in balancing and choosing among competing interests. The claimant states are concerned about the risk to their own claims absent visible U.S. involvement, and non-claimant states in Asia are concerned about the larger significance of China’s rise if Beijing’s successfully uses coercive diplomacy to cement its South China Sea claims. The United States must be cognizant of and sensitive to these legitimate concerns. At the same the United States should take care not to gratuitously aggravate U.S.-China relations by reflexively siding with the other claimants when all are pursuing their own strategies to maximize their positions. The United States does not wish to be drawn unintentionally into a conflict in response to an incident that does not engage its vital national interests. Therefore, the United States should not announce policies that engage credibility in a way it is unprepared to back up. The United States should articulate its concerns about the important principles described in this paper, but be
American policymakers should consider the South China Sea in terms of how most effectively to address the problems so as to achieve the goals of diminishing tensions, preventing the use of military force by all parties, protecting the lawful rights of the international community, encouraging steps to reconcile the various claimants, and maintaining its own good relations and credibility with all the parties. This mix of objectives will require a nuanced array of policies that, taken together, move a difficult and increasingly dangerous situation toward greater stability. The United States should not regard the South China Sea disputes as signaling an incipient cold war with China or as the central strategic issue in U.S.-China relations. Such an approach is likely to lead to an outcome in which the United States does not achieve its objectives but instead greatly intensifies U.S.-China tensions and distrust of each other’s strategic intentions and at the same time increases the chances of other claimants acting imprudently.

The challenges presented by the South China Sea thus above all require a sound and active diplomatic strategy. The attention the U.S. government has brought to the issue carries both benefits and risks. If the involvement of the United States, evident since 2010, brings about momentum for engagement by the claimants themselves to address their differences, as they did when they reached agreement in 2002 on the Declaration of Conduct, it will have been worthwhile. If, on the other hand, it encourages Chinese nationalism and assertiveness, and if it encourages claimants to think they have U.S. backing for risky behavior, then it will have had the opposite effect from what is in the interests of the United States and the region.

We believe that a positive U.S. role in the South China Sea is possible building on the principles that Secretary Clinton enunciated in 2010, but only if the implementing diplomatic strategy is forward-looking, comprehensive, disciplined, and sound.

What should be the principal elements of such a strategy?

- U.S. policy should be based on principles, not on choosing sides. The United States should make clear it will not favor one country’s territorial claims over another’s. That is the U.S. position now, and it should remain unaltered.

- The principles articulated by Secretary Clinton, and subsequently by Secretary of State John Kerry, are the right ones when they are applied as explicated below. The United States should call out all countries, not only China, when they take actions or make threats that violate them. But U.S. government officials and spokesmen should also overall lower the temperature of their public commentary. Statements, for example, that regularly condemn Chinese actions as “provocative” or “aggressive” while remaining silent on actions by others that alter the status quo serve to lend credibility to Beijing’s assumption that the United States is biased and using the issue to contain them.

- The United States should make the centerpiece of its diplomatic strategy two fundamental objectives, and seek to persuade the international community to embrace them: 1) adherence to the UNCLOS criteria to delineate all maritime rights as determined by the relevant land features; and 2) support for negotiation of a Code of Conduct among the ASEAN member states and the PRC government that codifies agreed rules, procedures, and regulations, including the commitment to resolve disputes without the threat or use of force.

- The United States should ratify the UN Convention on the Law of the Sea. While the United States respects and abides by UNCLOS even without ratification, its standing on the issues will be greatly enhanced if its isolation is ended from the international community on this treaty that the Reagan Administration did so much to
shape. That has long been the view of former Secretaries of State, Secretaries of Defense, Chairmen of the Joint Chiefs of Staff, and major elements of the business community. The Senate should endorse their view.

- Key to observance of UNCLOS is for the United States and the international community to call on Beijing to clarify its position on the NDL consistent with the relevant provisions of UNCLOS, which the PRC has signed and ratified. The United States also should press Taiwan to provide a similar clarification. Clarification of the NDL is at the center of Manila’s request for arbitration by the International Tribunal for the Law of the Sea (ITLOS).

- Wherever disputes exist over the boundaries of Exclusive Economic Zones, the United States should encourage the claimant states to reach either comprehensive or piecemeal agreements on fishing zones that allow fishermen from all the claimants to fish in their traditional waters without interference but subject to overall limitations to prevent overfishing or threats to endangered species. The U.S. should also voice its support for the principle of joint projects among the claimants to develop seabed resources in disputed EEZs.

- The United States should encourage the entire range of possible negotiating forums and methods without expressing an insistence on any one unless there is a regional consensus. Bilateral negotiations, as recently undertaken by Indonesia and the Philippines, can be useful. Multilateral negotiations by the states directly concerned will almost certainly be necessary at some stage to reconcile the overlapping claims where these involve more than two parties. International arbitration can be a useful tool, ideally with the consent of both parties to a dispute but in any case to elicit the views of international tribunals.

- The United States should make clear by its actions that coercive behavior by claimants entails a cost. China’s conduct in the last few years has caused several ASEAN states, most notably the Philippines and Vietnam, to seek closer security ties with the United States. The U.S. should be responsive to requests by claimants, including Vietnam, to improve maritime security capabilities. Russia, the Netherlands, and France already provide arms to Vietnam; the United States should lift the embargo to permit provision of command and control and maritime surveillance equipment.

- The United States should reiterate its insistence on freedom of navigation and overflight, including in EEZs, for military as well as civilian ships and planes, and should act accordingly if challenged. The July 2014 dispatch of a Chinese intelligence ship into the U.S. EEZ off the coast of Hawaii during RIMPAC 2014 highlights the hypocrisy of China’s objections to this interpretation of permitted activities in EEZs.

- The United States should encourage all claimants to freeze if possible, or restrain if not, the construction of military facilities on disputed islands or low tide elevations. The United States should encourage agreement that all such facilities should be used for traditional coast guard purposes and not for power projection.

These recommendations are designed to strike a balance among competing interests: to diminish the momentum toward heightened tensions between the United States and China and among claimants in the South China Sea; to protect U.S. interests on maritime issues where they are engaged; to provide confidence to regional actors that the U.S. security presence is enduring; and to avoid putting U.S. credibility at stake in cases where the United States is unlikely to act militarily to demonstrate it. They also aim to protect the broad interests of the United
States in its relationship with China from becoming hostage to matters that it cannot control.

Should China move from its current posture in the South China Sea to a determinedly aggressive military strategy that threatens regional stability, the United States will need to look at additional options to dissuade such behavior. To help prevent the situation from evolving to that point, the United States should ensure that its diplomatic strategy concentrates on its core concerns of freedom of navigation, protection of international norms, and creating an environment in which use of force and coercive outcomes are less likely. In doing so, the United States should tone down its rhetoric, work with all the actors and not just some, and keep the South China Sea in proper perspective.
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