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The United States in the South China Sea Disputes *

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This short discussion paper examines the role of the United States in the disputes in the South China Sea over territorial sovereignty and maritime rights. The paper first reviews U.S. interests in the South China Sea and the policies that the United States has adopted to pursue these interests, especially its more public profile since the summer of 2010. The paper then examines whether the United States has emboldened claimant states to further challenge China or whether U.S. policy has helped to moderate China's own approach in these disputes.¹

U.S. Interests in the South China Sea

The United States has two principal interests in the South China Sea disputes: access and stability.

First, the United States has a powerful interest in maintaining unhindered access to the waters of the South China Sea. From Washington's perspective, all countries enjoy high seas freedoms, including freedom of navigation, beyond any coastal state's 12nm territorial seas over which the coastal state enjoys sovereign rights. Both commercial and military vessels enjoy such high-seas freedoms as contained in articles 56 and 87 of the United Nations Convention on the Law of the Sea (UNCLOS). Towards this end, the United States has conducted multiple "operational assertions" of such freedoms in Chinese waters annually since 2007.²

Unhindered access to the waters of the South China Sea is important for two reasons. First, it underpins the economic dynamism of the region, which is based on extensive intra-regional and international trade. More than 5 trillion dollars worth of trade passes through these waters each year, including more than 1 trillion with the

* This paper was completed on June 10, 2012.

¹ This paper draws on several previous publications, including: M. Taylor Fravel, "China's Strategy in the South China Sea," *Contemporary Southeast Asia*, Vol. 33, No. 3 (December 2011), pp. 292-319; M. Taylor Fravel, "Maritime Security in the South China Sea and the Competition over Maritime Rights," in Patrick Cronin and William Rogers, eds., *Cooperation from Strength: The United States, China and the South China Sea* (Center for New American Security: Washington, DC, 2012); M. Taylor Fravel and Michael D. Swaine, "China's Assertive Behavior – Part Two: The Maritime Periphery," *China Leadership Monitor*, No. 35 (Summer 2011), pp. 1-29; M. Taylor Fravel, *Strong Borders, Secure Nation: Cooperation and Conflict in China's Territorial Disputes* (Princeton: Princeton University Press, 2008).

² <http://policy.defense.gov/gsa/cwmd/fon.aspx>

United States. Second, unhindered access sustains America's ability to project military power, not just in East Asia but also around the world, as many naval vessels from the West Coast and Japan pass through the South China Sea en route to the Indian Ocean and Persian Gulf.

For the United States, unhindered access to the South China Sea faces several threats. The first is China's interpretation of the rights of coastal states in the Exclusive Economic Zone. Since the EP-3 incident in 2001, China has mobilized a variety of legal arguments designed to limit military activities in this zone, especially U.S. surveillance and reconnaissance activities. Although China has focused its opposition to U.S. operations in areas close to China's coast, China may seek to impose similar restrictions throughout the entire South China Sea. Even if China embraced UNCLOS-compliant claims that did not seek to restrict military activities, ambiguity surrounding the historic rights that China might claim in these waters based on the nine-dashed line sustains such concerns. A second threat is the modernization of the PLA Navy, which, over time, could be used to exclude U.S. naval vessels from these waters. Nevertheless, given the expanse of the South China Sea, the PLAN's South Sea Fleet will not have such capabilities for some time. At present, the South Sea Fleet has roughly eleven destroyers (four of which are modern) and eighteen frigates (four or eight of which are modern).

Second, the United States has a powerful interest in the maintenance of regional peace and stability in Southeast Asia. Like open and unhindered access, regional stability also sustains both East Asian and American prosperity, as conflict or intense security competition would divert scarce resources away from development, reduce trade by threatening the security of sea-lanes, and reduce cross-border investment.

Regional stability faces several threats in the South China Sea. The first is the potential for armed conflict among the various claimants in the disputes over territorial sovereignty and maritime rights. China and Vietnam have clashed twice, first in 1974 over the Crescent Group in the Paracel Islands (contested only by China and Vietnam) and in 1988 over the control of Johnson Reef. As zero-sum conflicts, territorial disputes are prone to the pernicious effects of the security dilemma and can quickly spiral out of control. A second threat to stability would be increasingly frequent use to coercive measures short of armed conflict to advance a state's claims. China's threats to American oil companies in 2007 and 2008 provide one example of such coercive behavior that can increase instability. A third threat would be ongoing naval modernization in the region. In addition the recapitalization and modernization of the China's South Sea Fleet, Vietnam is also investing heavily in naval and air capabilities to be used in the South China Sea, such as *Kilo*-class submarines purchased from Russia that will enhance Hanoi's own area denial capability. Spirals

of instability in disputes over sovereignty and maritime rights could evolve into a capabilities race and increased security competition. A third source of instability, indirectly related to the South China Sea, would be the potential for a spiral around efforts by China and the United States over threatening and maintaining access, respectively. In response to new Chinese “anti-access/area denial” capabilities, including an anti-ship ballistic missile, the United States military has developed a new operational concept known as AirSea Battle intended to ensure U.S. access to these waters in wartime. Peacetime efforts to develop such capabilities could result in an “access” arms race and increased instability.

The United States has other interest related to these disputes, including maintaining its commitments to allies in the region and ensuring a stable and cooperative relationship with China (that bears on many U.S. interests apart from those in the South China Sea).

U.S. Policy in the South China Sea

U.S. policy toward the disputes in the South China Sea has evolved since the mid-1990s. The United States first articulated its policy during the tensions that occurred after China’s occupation of Mischief Reef in late 1994. In a May 1995 statement by a State Department spokesperson, the United States outlined its policy.³ Five elements of U.S policy contained in this statement should be noted:

1. *Peaceful resolution of disputes*: “The United States strongly opposes the use or threat of force to resolve competing claims and urges all claimants to exercise restraint and to avoid destabilizing actions.”
2. *Peace and stability*: “The United States has an abiding interest in the maintenance of peace and stability in the South China Sea.”
3. *Freedom of navigation*: “Maintaining freedom of navigation is a fundamental interest of the United States. Unhindered navigation by all ships and aircraft in the South China Sea is essential for the peace and prosperity of the entire Asia-Pacific region, including the United States.”
4. *Neutrality in disputes*: “The United States takes no position on the legal merits of the competing claims to sovereignty over the various island, reefs, atolls, and cays in the South China Sea.”
5. *Respect of international principles*: “The United States would, however, view with serious concern any maritime claim or restriction on maritime activity in the South China Sea that was not consistent with international law, including the 1982 United Nations Convention on the Law of the Sea.”

³ http://dosfan.lib.uic.edu/ERC/briefing/daily_briefings/1995/9505/950510db.html

In 2010, the United States decided to expand and clarify its policy toward the South China Sea in response to the escalation of tensions among the claimants. Elements of increased tensions include a raft claims and counter-claims at the United Nations Commission on the Limits of the Continental Shelf, Chinese threats against foreign oil companies investing in Vietnam's offshore hydrocarbon exploration blocks, conflict over Vietnamese fishing in waters near the Paracels (including China's detention of several hundred Vietnamese fishermen in 2009), greater attention in the region to the possible implications of the nine-dashed line on Chinese maps, and (in 2011) Chinese intimidation of seismic survey vessels operating in Vietnamese and Philippine offshore hydrocarbon exploration blocks. In response to these events, top U.S. officials "decided that a new, more comprehensive articulation of U.S. policy was called for."⁴

The platform for the articulation of this new policy was the July 2010 annual meeting of the ASEAN Regional Forum. During the closed-door session, the United States and twelve other countries expressed concern about the tensions in the South China Sea. Secretary of State Hillary Clinton also delivered a public statement of the U.S. position, the highest-level U.S. official ever to do so.⁵ In her statement, Clinton affirmed core elements of the 1995 policy, including "a national interest in freedom of navigation," opposition to "the use or threat of force by any claimant," and "not taking sides" in the competing territorial claims.

Clinton also introduced new elements to U.S. policy that were not part of the 1995 statement, including:

- Resolving disputes without coercion
- Support for a "collaborative diplomatic process by all claimants," including a willingness to "facilitate initiatives and confidence building measures consistent with the [2002 Declaration on a Code of Conduct]"
- Support for drafting of a full code of conduct
- A belief that "legitimate claims to maritime space in the South China Sea should be derived solely from legitimate claims to land features."

Overall, the Clinton statement emphasized broadly accepted international principles that should be applied to these disputes. China was not mentioned by name. Nevertheless, several elements of the Clinton statement were directed against China. First, the language regarding "legitimate claims" suggested that the United States opposed any claim by China to maritime rights based on the nine-dashed line on Chinese maps. UNCLOS is based on the principal that the land dominates the sea.

⁴ Jeffrey A. Bader, *Obama and China's Rise: An Insider's Account of America's Asia Strategy* (Washington, DC: Brookings).

⁵ <http://www.state.gov/secretary/rm/2010/07/145095.htm>

Second, the emphasis on a “collaborative process” emphasized multilateral talks in contrast to China’s preference for dealing with each claimant bilaterally.

The change in U.S. policy in the South China Sea was part of a greater focus on East Asia that began in the second term of the Bush administration and quickened pace after the election of Barack Obama as president. This actions include signing ASEAN’s Treaty of Amity and Cooperation, participating in the annual East Asian Summit, enhancing Guam as a forward deployed facility for the U.S. military in East Asia, announcing in 2011 a policy of rebalancing American priorities from the Middle East to East Asia, strengthening alliance relations with the Philippines and Australia, and deepening military engagement with Vietnam.

By taking more a detailed and active position on the dispute, the United States walks a fine line between maintaining its principle of neutrality in sovereignty disputes and being viewed by the claimants as partial. If China views the United States as taking sides with other claimants, it might see the U.S. in East Asia as posing a growing threat and reduce cooperation with the United States over other issues. If other claimant states view the United States as supporting their positions, they could become more assertive in challenging China and draw the United States more directly into conflict with China.

The response of the United States to the standoff between China and the Philippines over Scarborough Shoal reflects an awareness of this tension. Although U.S. statements have underscored its commitments under the 1951 Mutual Defense Treaty, the U.S. has stressed repeatedly that it does not take sides in the dispute and has refused to clarify whether the features in the South China Sea claimed by the Philippines are covered under the treaty. At the same time, the United States has strengthened its military relationship with the Philippines to enhance its ability to defend its claims and to resist Chinese coercion. In addition, the U.S. has pushed for all claimants to reach a more specific and binding code of conduct that would limit the potential for any specific confrontation to escalate and harm access or stability

Did U.S. Policy Embolden Others?

Although the United States does not take a position on the sovereignty claims at stake, its efforts to reduce tensions in the dispute since 2010 has run the risk that some claimants might be emboldened and that the United States might become unwittingly entrapped. In addition, China’s media after Clinton’s statement has blamed the United States for increased tensions in the South China Sea by encouraging states to challenge China. Below, I briefly assess this claim, demonstrating that, with the exception of the Philippines, U.S. policy has not emboldened other claimants. I

examine the behavior of each claimant before and after July 2010, when the United States signaled its public involvement.

- *Malaysia*: Before and after July 2010, Malaysia has maintained a low profile throughout the recent period of tensions, largely because most confrontations and diplomatic exchanges have occurred between China and Vietnam and the Philippines. At the UN Commission on the Limits of the Continental Shelf, for example, Malaysia did not respond to the note submitted by China challenging its joint submission with Vietnam and only responded to the Philippine objection.
- *Indonesia*: After July 2010, Indonesia has been slightly more active in the dispute, largely because it held the role of ASEAN Chair in 2011. Nevertheless, overall, Indonesia has maintained a low profile and has not been emboldened by U.S. policy in the South China Sea. Indeed, for a variety of historical reasons, Indonesia is wary of a greater U.S. presence in the region.
- *Vietnam*: After 2010, Vietnam also does not appear to have been emboldened by greater U.S. activism in the dispute. Vietnam's own efforts to assert its claims occurred in 2008 and 2009, well before the change in U.S. policy occurred. Moreover, Vietnam actively sought to increase the United States role in the dispute when it held the ASEAN chair in 2010. Vietnam has also adopted a much lower profile in these disputes after signing an agreement with China in October 2011 on guiding principles for resolving bilateral maritime disputes.
- *Philippines*: The case for emboldenment is strongest with the Philippines. In mid-2011, the Philippines became much more active in the dispute. It officially changed the name of the area it claims in the South China Sea to the West Philippine Sea, it drafted a proposal for ASEAN to resolve the dispute, it called for explicit inclusion of the South China Sea in the 1951 Mutual Defense Treaty with the United States, and it pushed for ASEAN to negotiate a Code of Conduct without consulting China. As most of these actions have occurred after greater U.S. activism in the dispute, one could claim that the Philippines were emboldened. At the same time, given its almost nonexistent naval and air forces, the Philippines has strong incentives to increase American support for its position in these disputes.

Did U.S. Policy Enhance Stability?

By contrast, the evidence supports a different claim: that United States involvement has helped moderate China's approach to managing its claims in the South China Sea.

Since tensions peaked in June 2011 after a China Marine Surveillance ship cut the towed cable of a Vietnamese seismic survey vessel, China has adopted a more moderate approach. China's new approach has several components:

- China's top leaders, including President Hu Jintao and Premier Wen Jiabao, have re-affirmed the late Deng Xiaoping's guiding principle for dealing with China's maritime conflicts of "setting aside disputes and pursuing common development."
- China reached agreements with other claimant states with the aim of managing tensions, promoting dialogue, and facilitating eventual dispute resolution. In addition to a July 2011 agreement with ASEAN, China reached a much more substantial agreement with Vietnam in October 2011 over basic principles for resolving maritime disputes that stress using international law.
- China's top leaders held high-level meetings with their counterparts to improve broader bilateral relationships. Philippine President Benigno Aquino and Vietnamese communist party general secretary Nguyen Phu Trong visited Beijing in August and October 2011, respectively. Likewise, Vice President Xi Jinping traveled to Vietnam in December 2011 as part of a Southeast Asian tour.
- Authoritative Chinese-language media such as the *People's Daily* underscored the importance of a cooperative approach in the South China Sea. Such articles are written largely to explain policy decisions to domestic readers, especially those working within party and state bureaucracies.
- China has engaged other claimants by establishing a 3B *yuan* (476 million US dollar) China-ASEAN Maritime Cooperation Fund (November 2011), hosting several workshops on oceanography and freedom of navigation in the South China Sea (December 2011), and hosting a meeting with senior ASEAN officials to discuss implementing the 2002 code of conduct declaration (January 2012).
- Finally, China has halted the more assertive behavior that attracted so much adverse attention between 2009 and 2011. Vessels from the Bureau of Fisheries Administration have detained and held only two Vietnamese fishing vessels since late 2010 (in early March 2012). Patrol ships from the State Oceanic Administration have not interfered in Vietnamese or Philippine hydrocarbon exploration activities since last May. More generally, China has not obstructed related exploration activities, such as Exxon's successful drilling of an exploratory well in Vietnamese waters claimed by China in October.

Why did China adopt a more moderate approach? China realized that it overreached and overreacted: China undermined its broader grand strategy by threatening states in Southeast Asia and increasing United States involvement in the region.

As noted above, in early 2010, other parties to the disputes in the South China Sea began to express growing concern about China's actions. Moreover, they began to turn to other powers with interests in the South China Sea for help, especially the United States. In January 2010, Vietnam assumed the chairmanship of ASEAN and used this position to draw greater international attention to the dispute, culminating in the July 2010 meeting of the ASEAN Regional Forum and Clinton's statement. As a result, China began to realize that its actions were harming its broader foreign policy objectives. One core principle of China's current grand strategy is to maintain good ties with great powers, its immediate neighbors, and the developing world. Through its actions in the South China Sea, China had undermined this principle several ways: It 1) tarnished the cordial image in Southeast Asia that it had worked to cultivate in the preceding decade, 2) created a shared interest among countries in the region in countering China, 3) created strong incentives for states in the region to seek support from the United States, and 4) it added the dispute as an issue in the U.S.-China relationship. In sum, China's behavior worsened its relations with both its immediate neighbors and the United States – and created a shared interest among them in China.

China's more moderate approach sought to ensure that the disputes in the South China Sea do not harm China's broader foreign policy objectives. Through this approach, Beijing sought to project a more benign image in the region to prevent the formation of a group of East Asian states allied against China, reduce Southeast Asian states' desire to further improve ties with the United States, and weaken the rationale for a greater U.S. role in these disputes and in the region. The elevated profile of the United States in the South China Sea disputes after 2010 helped to push China in this more moderate direction and, for a time, enhanced stability. Whether the U.S. can continue to help moderate China's behavior remains an open question.