



Weighing the Rebalance Policy Brief Series

China-U.S.-ASEAN Relations and Maritime Security in the South China Sea

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POLICY RECOMMENDATIONS

- Develop codes of military conduct and prompt efforts to reduce tensions.
- Guarantee the safety of fishermen and their continued access to their means of livelihood, as well as the freedom to conduct other peaceful economic, scientific, and navigational activities.
- Set in place processes for claimant states to actually strengthen and monitor compliance with their obligations under UNCLOS.
- Strengthen the unity and capacity of ASEAN to contribute to peaceful settlement of the South China Sea disputes.
- The United States, ASEAN, and China, as well as other user-states should cooperate and redouble efforts at developing rules-based approaches for management of the seas that would render their behavior more predictable and reduce the prospects of armed conflict.

Weighing the Rebalance is a Wilson Center initiative that brings a series of experts to Washington to analyze the Chinese and American roles in the Asia-Pacific from the viewpoints of countries whose futures will be shaped by Sino-U.S. competition and cooperation in the region. This paper was presented at the third event of the series: "The Philippines, Vietnam, and Territorial Disputes in the South China Sea" on June 3, 2014.

BREWING TROUBLE IN THE SEAS

The long-standing disputes over territory and maritime resources in the South China Sea (SCS) have rapidly escalated in recent years, due to a spiral of actions and reactions by claimant states. At the core of the problem is China's expansive claim, as expressed – however ambiguously – by its so-called 9-dash line map which is said to encompass 90 percent of this ocean. While the significance of the line to China's claim itself is not clear, China has in words and in deeds begun unilaterally exercising jurisdiction within this area, which overlaps with the claims of the Philippines, Vietnam, Malaysia, and Brunei, and impinges on the interests of other user states and private entities.

Some littoral states of the SCS have long allowed their nationals and companies to fish and to explore for oil, and their official agencies to conduct law enforcement operations in the disputed areas (e.g. against illegal fishing, and capture of and trading in endangered species), with such actions based either on sovereignty claims, or sovereign rights as well as obligations under the UN Convention on the Law of the Sea (UNCLOS). However, under a new geopolitical environment characterized by China's military rise, its growing assertiveness as well as rivalry for influence among the great powers, such actions, alongside re-provisioning of military troops on occupied features and the strengthening of security alliances, are now deemed by China to be acts of deliberate provocation to be met with serious response.



For the first time since the violent Sino-Vietnamese clashes in 1988 in the Spratlys, it is no longer merely the prospect of miscalculation and accidental clashes among claimant governments that cause concern. Incidents of deliberate (albeit modest) use of force or coercion have begun to occur, most recently with China's use of water cannon against fishermen and subsequent sinking of a Vietnamese fishing vessel. With the anti-Chinese rioting in Vietnam leading to civilian casualties and mass evacuations, and with new evidence of Chinese construction of military facilities in the Spratlys, one gets the sense that things could get much worse, should the governments concerned abandon all self-restraint.

UNCLOS provides some guideposts on the rights of coastal states and suggests formulas for the settlement of maritime overlaps, but it provides no answers on issues of territorial sovereignty per se. The sovereignty contests have instead placed huge obstacles both to the full implementation of UNCLOS and to the construction of rules-based regional arrangements for maritime security and good order in the SCS. The Philippines' filing of a case against China's 9 dash-line before an International Tribunal for the Law of the Sea (ITLOS) arbitration panel is a

significant step in terms of opening up a new arena for peaceful dispute settlement based on law rather than power politics, but it is yet unclear how its outcomes may affect the facts on the ground, especially given China's refusal to participate in the proceedings.

ASEAN, as the hub of multilateral diplomacy and security dialogue in Southeast Asia, persists in efforts to develop greater unity of perspective among members and to promote a regional code of conduct, but patience is beginning to wear thin as the slow progress in diplomacy can hardly keep up with problems that grow worse by the day.

Meanwhile, the United States has recognized that it, too, has a national interest in how the disputes are resolved, turning the disputes into one of the justifications for its "rebalance" to Asia. A more palpable worry for Washington is how China's rapid advances in defense technology, clearly intended to erode American primacy in the East Asian seas, make it the most likely peer competitor to emerge since the end of the Cold War. China knows that it is no match for the United States militarily, yet its assertive posture and coercive diplomacy in its surrounding seas, backed up by military and paramilitary presence as well as strong rhetoric, is directed as much at the United States as at its rival claimants Japan, Vietnam, and the Philippines.

POLICY CHALLENGES AND RECOMMENDATIONS

The utmost pressing challenge facing the region is how to avoid any resort to violence among armed forces of the various claimant states that could lead to further escalation, a dead-end to the current diplomatic efforts, and the possibility of military engagement by great powers. It is in this respect that codes of military conduct and prompt efforts to reduce tensions are most valuable.

Aside from that and anticipating that tensions will occasionally flare up in the disputed areas, the safety of fishermen and their continued access to their means of livelihood, as well as freedom to conduct other peaceful economic, scientific, and navigational activities, must also be guaranteed.

The call to return to basic principles and norms of international law calling for peaceful settlement of disputes is well-intentioned, but over the long term, even more necessary is to set in place processes for the states to actually strengthen and monitor compliance with their obligations under UNCLOS. Such obligations are not limited to guaranteeing freedom of navigation, but would entail bilateral and collective commitments to clarify overlaps in maritime boundaries and jurisdictions, identify zones



for functional cooperation, and develop cooperative regimes particularly to address common nontraditional security challenges in the shared oceans. Such regimes built to collectively address maritime security concerns should be part of any new regional security architecture for East Asia.

It is likewise important to strengthen the unity and capacity of ASEAN to contribute to peaceful settlement of the South China Sea disputes, given its strong dialogue relations with China, the United States, and other actors. A politically stable, economically secure, and diplomatically active ASEAN can develop into a coalition of moderate middle powers, helping to ensure that the neighborhood persists on the road of peace, inclusiveness, and cooperation as the key to regional resilience. The ASEAN Political-Security Community project, and mechanisms such as the ASEAN Defense Ministers Meeting (ADMM), ADMM Plus, and the ASEAN Regional Forum, could expand to involve civilian maritime law enforcement agencies – i.e. Coast Guards and Fisheries authorities, among others - in consultative processes leading to improved policy coordination on rules of conduct in the SCS.

Indeed, the United States, ASEAN, and China, as well as other user-states should cooperate and redouble efforts at developing rules-based approaches for management of the seas that would render their behavior more predictable and reduce the prospects of armed conflict. China itself carries the largest burden of responsibility to step back from the brink. While the existing alliances and new security partnerships continue to be strengthened as part of hedging strategies, regional states must ensure that the goals of building more effective inclusive, multilateral, cooperative security arrangements remain clearly in sight.

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