

# WebMemo



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## Not the Time to Go Wobbly: Press U.S. Advantage on South China Sea

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A few days ago, the Associated Press quoted Assistant Secretary of State for East Asian and Pacific Affairs Kurt Campbell and White House Asia Adviser Jeffrey Bader telling ambassadors from the Association of Southeast Asian Nations (ASEAN) that the Administration's toughness regarding China's claims in the South China Sea is having the desired effect, "clearly [moving them] back to a more collaborative approach."<sup>1</sup>

On its face, this development should be welcomed. It dovetails, however, with a convenient view that China's characterization of South China Sea as "a core interest" on par with its interest in Tibet and Taiwan—a position conveyed directly to Bader himself this past March—is just a big misunderstanding or in the process of being walked back by the Chinese.<sup>2</sup>

**A Critical Choice of Words.** The Obama Administration has been pretty good on the South China Sea. In July, following the ASEAN Regional Forum in Hanoi—an annual meeting that brings together the foreign ministers of 27 countries, including China and the other claimants in the South China Sea dispute (except Taiwan), the other six ASEAN countries, Japan, South Korea, Australia, and the U.S.—Secretary of State Hillary Clinton delivered carefully prepared remarks to the press.

Most of what Clinton said on the South China Sea was very familiar ground. She stressed the U.S. interest in the freedom of navigation and respect for international law, expressed opposition to the use of force by any of the claimants and reiterated that the

U.S. takes no side on the "competing territorial disputes over land features in the South China Sea." But then, when addressing maritime claims, she said that "legitimate claims to maritime space in the South China Sea should be derived solely from legitimate claims to land features."

Clinton's choice of words is critical. The Chinese maintain that their maritime claims in the South China Sea are, indeed, derived from "land features." By saying that the land claims themselves must be legitimate in order to be used as a basis for their maritime claims, Clinton's language removes a major loophole in America's position

It sounds a bit technical, but this distinction matters a great deal to the U.S. Not because the U.S. has its own claim in the South China Sea; it does not. And not because it supports any other party's claim; it should not. It matters to the U.S. because of America's interest in the freedom of navigation. The Chinese contend—based on a misreading of the United Nations Convention on the Law of the Sea (UNCLOS)—that their land claims justify sovereignty over "adjacent waters" encompassing virtually the whole of the South China Sea. By questioning their land claims, the U.S. questions their maritime claims.

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In recounting Clinton's July statement, *The Washington Post* quoted an anonymous "senior Administration official" saying her intention was to declare Chinese claims to the entire sea "invalid."<sup>3</sup>

**Steady as She Goes.** Now is not the time to go wobbling on the issue of China's absurd maritime claims. Southeast Asia—particularly the Vietnamese, who along with the Philippines have the hottest dispute with the Chinese—are palpably relieved to have the U.S. playing a leadership role in the dispute. President Obama's upcoming September 24 meeting with ASEAN leaders in New York is a perfect opportunity to press the point home.

The Chinese have trained their diplomatic fire on Clinton's apparent offer to mediate the conflict. Just days ago, the foreign minister's spokesperson said, "We resolutely oppose any country which has no connection to the South China Sea getting involved in the dispute, and we oppose the internationalization, multilateralization or expansion of the issue."<sup>4</sup> In other words, the Chinese oppose any approach to this problem that does not match them one-on-one with their much smaller neighbors. They know that there is strength in numbers.

There is certainly no harm in President Obama reiterating the offer of mediation. Indeed, it comes as a welcomed second chance for ASEAN, which in 2002 negotiated away its prerogative to address sovereignty claims in a multilateral setting in the interest of pursuing economic opportunity and sweeping its friction with China under the rug.

But more importantly, in New York, President Obama should reiterate the skepticism Clinton raised in July over the Chinese claims. The Administration should not put any stock in what is most likely, if anything, a tactical Chinese pause in its approach. Currently embroiled in a higher profile dispute with Japan in the East China Sea, China has

an interest in minimizing its exposure to one front at a time. The problem posed by China's claim in either area is not going to go away in a matter of months. Now is just the time to press them.

**Treacherous Waters.** Despite Clinton's strong effort, the Administration has erred in tying the U.S.'s position to ratification of UNCLOS.

The Chinese claims in the South China Sea are not really founded on UNCLOS. UNCLOS is simply cover for claims that long predate and stand separate from UNCLOS—outlined in its now famous "nine-dash map" delineating Chinese claims encompassing most of the South China Sea virtually right up to the shores of some of its neighbors. The Chinese could take a major step to clearing up the whole dispute by simply disavowing the map and saying that their claims are based solely on UNCLOS and, as a result, would subject themselves to the dispute mechanisms it establishes. Not only have the Chinese not disavowed the nine-dash map, but as recently as a year ago, they circulated the map at the U.N. as documentation in support of their claims—damning evidence of their true position.

The South China Sea—as conceived by Chinese officials—belongs to China because it belongs to China. Plain and simple, UNCLOS or no UNCLOS. This position will not change, whether or not the U.S. ratifies UNCLOS. In fact, one could make the case that UNCLOS, with its exclusive economic zones and filing deadlines, has only exacerbated and complicated the current situation. Furthermore, although China's reading of its rights in the exclusive economic zones put it in a distinct minority, it is not alone, and it is certainly capable of cultivating friends on issues important to it. It is not a foregone conclusion that the U.S. position would prevail if it did ratify UNCLOS.

1. Teresa Cerojano, "Obama, ASEAN to Call for Peaceful End to Sea Spats," Associated Press, September 19, 2010, at <http://www.google.com/hostednews/ap/article/ALeqM5gTXar0gGseii90JC-Bk-3eckwXJgD9IARULO0> (September 22, 2010).
2. Hongmei Li, "Unwise to Elevate 'South China Sea' to Be Core Interest?," *People's Daily*, August 27, 2010, at <http://english.peopledaily.com.cn/90002/96417/7119874.html> (September 22, 2010).
3. John Pomfret, "U.S. Takes a Tougher Tone with China," *The Washington Post*, July 30, 2010, at <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/29/AR2010072906416.html> (September 22, 2010).
4. Ben Blanchard and Huang Yan, "China Tells U.S. to Keep Out of South China Sea Dispute," Reuters, September 21, 2010, at <http://www.reuters.com/article/idUSTRE68K1DB20100921> (September 22, 2010).

The U.S. Administration should continue to question Chinese claims under “customary international law.” But direct reference to UNCLOS is a distraction. And ultimately, because ratification remains distant, not only does such a position fail to counter the Chinese talking points on the matter, but it shifts the debate to an area where the U.S. is in a weak position.

**Additional U.S. Actions Needed.** What else can the U.S. do to really support its interests in the South China Sea?

- Press the Chinese to disavow the nine-dash map as the best way to clarify its intention in the South China Sea. That map is analogous to the more than 1,000 missiles the PRC has arrayed against Taiwan—a standing contradiction to any Chinese claim of “peaceful rise.”
- Continue to make common cause over the issue with regional friends and allies. As the meetings in Hanoi made crystal clear, the U.S. is not alone in its concerns about Chinese assertions of sovereignty. Other claimants are directly impacted, their concerns are paralleled by similar maritime territorial issues in both the West (Yellow) Sea and the East China Sea, and other countries like Australia and India

have concerns similar to the U.S. concern over freedom of navigation.

- Work with allies and partners in the region, particularly the Philippines and Vietnam, to build their maritime defense capacity.
- Demonstrate an international right to open seas by the U.S. Navy’s frequent exercise of this right.
- Make the sort of investments in America’s military that are indicative of a long-term U.S. presence. The navy is already nearly 30 ships below where it says it wants to be, and the trends are not good.<sup>5</sup>

**An Excellent Opportunity.** Clinton did the right thing in Hanoi staking America’s interest in the freedom of navigation in the South China Sea and making common cause with America’s friends and allies in the region. The Administration has to build international political pressure on the Chinese while effectively blocking their capacity to impose sovereignty by a demonstration—or actual use—of force. The meeting in New York on Friday between President Obama and the leaders of ASEAN is an excellent opportunity to demonstrate U.S. resolve at the highest level.

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5. Seth Cropsey, “Ebb Tide,” *American Interest*, September-October 2010, at <http://www.the-american-interest.com/article.cfm?piece=858> (September 22, 2010).