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Sorting American Priorities in the South China Sea

Walter Lohman

The security situation in the South China Sea is deteriorating in a way unseen since the mid-1990s. And given the growth in China's military power and global influence since then, it is a much bigger problem for the United States. China's challenge in the South China Sea—its expansive extralegal claims to maritime territory—demands a strong, clear, interest-based response.

U.S. Interests. American interests in the conflict are, *in order of priority*, as follows:

1. Freedom of the Seas. This is a bedrock, non-negotiable interest of the United States. The U.S. is the world's preeminent seafaring nation. When it comes to the South China Sea—through which half of global shipping and most of Northeast Asia's energy supplies transit—its position is consistent: All nations enjoy navigational rights and freedoms there that are qualitatively and quantitatively the same as those applicable on the high seas.¹

2. Treaty Ally in the Philippines. The U.S. has wisely refrained from taking a position on the details of the six-sided South China Sea sovereignty dispute. But that does not mean it is neutral. It has legal security obligations toward one of the claimants. The 1951 U.S.–Philippines Mutual Defense Treaty obliges the U.S. to “act to meet the common dangers” embodied in an attack on the territory of the Philippines or “its armed forces, public vessels or aircraft in the Pacific.”

What constitutes Philippine territory in the context of the treaty is not entirely clear. Seven of the islands in dispute constitute the Kalayaan munic-

ipality of Palawan Province that is home to hundreds of civilians. It also bears noting that at least two of the recent incidents—at Reed Bank and Amy Douglas Bank—have occurred closer to the Philippine islands proper and within its main Exclusive Economic Zone (EEZ).

Regarding the Armed Forces of the Philippines (AFP) specifically, the treaty is unambiguous. In fact, during consideration of the 1999 Visiting Forces Agreement (VFA), then-Ambassador Thomas Hubbard formally represented to the Philippines that the treaty was applicable to any attack on the AFP, referencing assurances made by Secretary of State Cyrus Vance in 1977.²

3. Peace and Security in the Sea Lanes. The U.S. and Vietnam have no security treaty, but they do have shared interests in safeguarding peace and security in the western Pacific and in balancing growing China's regional clout. It is in their mutual interest to internationalize the South China Sea dispute because none of the parties to the conflict, including Vietnam, is strong enough to deal with China bilaterally.

ASEAN's Change of Heart. The Association of Southeast Asian Nations (ASEAN) made a grave

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error in its rush to conclude the 2002 Declaration on Conduct of Parties in the South China Sea. The Chinese are in clear violation of the declaration's call to "exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability." President Benigno Aquino III himself has identified "six to seven" incidents this year in violation of this principle.

Unfortunately, however, the Chinese are correct that the declaration stipulates that disputes be resolved through bilateral means between the "sovereign states directly concerned."³ The declaration does not support ASEAN's current position that China must deal with ASEAN as a whole on the disputes.

It is ASEAN that has had a change of heart—as well it should, because given China's growing naval capacity and increasingly aggressive claims, time is not on its side. This change of heart has provided an opening for deeper U.S. involvement in mediating the conflict. ASEAN now realizes, as it should have in 2002, that only the presence of the United States is going to balance the scales in the Pacific in a way that facilitates peace, security, and mutual development. The Chinese charm offensive of the late 1990s and 2000s was not something to build upon.

That said, and recent headlines notwithstanding, Southeast Asia as a whole is not in a mood to "contain" China. The diplomatic credentials of any party helping to address the conflict, therefore, depend in part on its effort to deal constructively with China. In fact, some version of China's official operating principle of "shelving disputes and seeking common development" is probably the only peaceful way out of the conflict. The problem has been that, beyond the rhetoric, the PRC is not operating in accordance with this principle.

What the United States Should Do. To protect its interests in this critical region, the United States should:

- **Continue naval operations in the South China Sea.** At any given time, the U.S. Navy is involved in multiple exercises and operations in the western Pacific, including areas that China regards as its EEZ. This demonstration effect is the most powerful thing the U.S. can do to assert its position. It cannot accede to Chinese demands to dial back operations without setting a precedent.
- **Do not rush to judgment on ratification of UNCLOS.** The United Nations Convention on the Law of the Sea (UNCLOS) has done nothing to avert the current impasse in the South China Sea. And on the issue most critical to U.S. interests—preserving the rights to conduct military activities in EEZs—it may very likely be a hazard. With the U.S. a party to UNCLOS, a finding against its position by the International Tribunal on the Law of the Sea⁴ on this issue would be disastrous for U.S. interests.
- **Stand by America's allies in the Philippines.** Ambassador Harry Thomas's recent assurances regarding the continued relevance of the U.S.–Philippines treaty alliance is a welcome demonstration of resolve. When Philippines Secretary of Foreign Affairs Albert del Rosario visits Washington this week, U.S. Secretary of State Hillary Clinton should make a similar strong statement. And she should, on behalf of President Obama, extend an invitation to President Aquino to make a full state visit to Washington before the end of the year.
- **Consider the face value of Clinton's proposal.** It is worth taking another look at an offer that Clinton made to the parties to the dispute in July of last year to "facilitate initiatives and confidence building measures" in the South China Sea. Her move hints at something more important than simple geopolitical jockeying. The U.S. is perfectly placed to mediate solutions: It has no stake

1. Deputy Assistant Secretary of Defense Robert Scher, testimony before the U.S.–China Economic and Security Review Commission, February 4, 2010.
2. Kyodo News Service, "U.S. Defense of Philippines Could Apply to Spratlys," June 7, 1999.
3. Association of Southeast Asian Nations Secretariat, "Declaration of Parties in the South China Sea," November 4, 2002, at <http://www.aseansec.org/13163.htm> (February 4, 2010).
4. Mark Valencia, "Foreign Military Activities in Asian EEZs: Conflict Ahead?" National Bureau of Asian Research, May 2011, at http://www.nbr.org/publications/specialreport/pdf/free/SR27_EEZs.pdf (June 20, 2011).

in the territorial dispute itself, and its core interests are in keeping with the broader interests of the region.

Getting U.S. Priorities Straight. A response to the challenge the Chinese are presenting in the South China Sea requires clear priorities. Positive U.S.–China relations are important context, not an “interest” in and of themselves. The intersec-

tion of U.S. and Chinese interests in the region and beyond is very narrow. Maintaining a positive relationship is not worth jeopardizing America’s real interests at stake: freedom of the seas, commitment to treaty allies, and peace and security in the Pacific.

—*Walter Lohman is Director of the Asian Studies Center at The Heritage Foundation.*