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Scarborough Shoal and Safeguarding American Interests

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For a month, the Philippines and the People's Republic of China (PRC) have been deadlocked in a sovereignty dispute off the Philippine main island of Luzon, around Scarborough Shoal. The situation, which began with a Philippine warship challenging private Chinese poachers in the waters around the shoal, has evolved into something on which no less than the credibility of America's commitment to peace and security in the Pacific hinges.

The U.S. has two major interests at stake in the impasse: the security of treaty allies and freedom of navigation. If the Obama Administration mishandles this situation, all the "pivoting" (to the Pacific) in the world will not make up for it.

Standoff over Sovereignty. The Chinese fishing boats that precipitated the crisis left the shoal for

home early in the conflict, as has the Philippine naval vessel that sought to apprehend them. Sending a naval vessel to deal with a law enforcement issue was either a tactical mistake¹ or, as the Philippine government maintains, a matter of expediency for a nation strapped for maritime resources. Either way, a subsequent decision by Philippine authorities not to return it to the disputed area after replenishment was a gesture intended to de-escalate the conflict.

On the PRC side, the state media have been in hypernationalist mode. Rumors of war preparations (denied by the PRC Ministry of National Defense) and unconfirmed media reports of PLA Navy warships en route toward the Philippines² have only added to the sense of crisis. The Chinese Foreign Ministry continues to publicly declare its sovereign rights to Scarborough Shoal and the waters around it. It has summoned the Philippine chargé d'affaires three times to protest. And although it remains to be seen whether the PRC can successfully leverage its considerable economic strength in such diplomatic disputes, suspension of tours to the Philippines by Chinese tourist agencies and increased scrutiny of agricultural imports from the

Philippines at Chinese ports raise concerns that it intends to try.

As things stand, two Chinese marine surveillance ships and a fisheries patrol ship remain in the area today, as do two Filipino public vessels, one from the coast guard and the other from the Philippines' own fisheries bureau. Dozens of Chinese fishing vessels are also reported to be in the area.

There is a very basic calculation involved here: The first to leave the shoal will be perceived as ceding sovereignty.

America's Treaty Obligations to an Ally. The U.S. has long been neutral on the sovereignty issues involved in the South China Sea. This is as it should be. It would be folly for the U.S. to cast its support for the disputed territorial claims of any party, even that of an ally.

The South China Sea is a maze of conflicting territorial claims involving six active claimants. Only one of these claimants—the PRC—is a competitor for American predominance in the Western Pacific. In fact, the others are all, to one extent or another, part of the American strategy to maintain a balance of power in the region capable of restraining Chinese ambitions.

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This is not to say, however, that the U.S. is neutral in the current standoff between the PRC and the Philippines. America has very specific treaty obligations to the Philippines, and other treaty allies in the Pacific are assuredly watching very closely to see how it executes those obligations under the current circumstances.

The U.S.–Philippines Mutual Defense Treaty (MDT) “recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes.” It envisions three contingencies:

- An attack on the territory of the Philippines (or the U.S.);
- An attack on the “island territories under its (the Philippines or the U.S.) jurisdiction in the Pacific”; or
- An attack on either party’s “armed forces, public vessels or aircraft in the Pacific.”

The implications of the first are obvious; it is not in any way in play in the current conflict. The implications of the second have also been made clear—perhaps too much so³—by the U.S.; it does not consider Filipino claims beyond its

recognized borders subject to the treaty. In the current month-long standoff, the third part of this equation is very much in play.

In 1979, American Secretary of State Cyrus Vance confirmed in an official letter to Philippine Foreign Secretary Carlos P. Romulo that the MDT covers an “attack on Philippines armed forces, public vessels or aircraft” even if such attack does not occur in the “metropolitan territory of the Philippines or island territories under its jurisdiction,” thus separating the issue of territorial sovereignty from attack on Philippine military and public vessels. The Philippine ships currently deployed off Scarborough Shoal are “public vessels.”

U.S. Ambassador Thomas Hubbard reaffirmed these assurances in 1999 during deliberations over the U.S.–Philippines Visiting Forces Agreement. He also stated unequivocally that “the U.S. considers the South China Sea to be part of the Pacific Area.”⁴ This position has not changed.

What this series of statements means in the current context is that if any Philippine “public vessel” comes under Chinese fire, such an act will result in the U.S. invoking the treaty. Invoking the treaty does not mean automatic armed response, but by invoking it, the U.S. formally recognizes the attack as “dangerous to its own peace and safety and declares that it (will) act to meet the

common dangers.” The attack triggers formal bilateral consultations under the treaty to determine an appropriate course of action. (There is nothing uniquely tentative about the U.S.–Philippines MDT in this regard. All of America’s security treaties in the region contain similar diplomatic nuance and consultation mechanisms.)

Formally invoking the treaty would require a response that could range from diplomatic censure to armed defense of Philippine vessels. The decision over what specific response to choose would be a political one and dependent on the circumstances of the conflict. Declaring Chinese activity in the South China Sea “dangerous to peace and security,” however, would have powerful effects in and of itself. With such a declaration on the table, it is difficult to imagine life as usual in the U.S.–China relationship.

Ensuring Freedom of

Navigation. The U.S. has a separate but related interest in freedom of navigation at stake in the Scarborough impasse. These issues need not be as closely related as they are, but it is the Chinese claims that have made them so.

On its face, the PRC’s asserting sovereignty so close to the Philippines—as it has done so often over the past year and a half—is suspect. Its famous nine-dash map encompassing virtually the entire expanse of the South China Sea and

1. Carlyle Thayer, “Standoff at Scarborough Shoal: Implications for US–China Relations,” *China US Focus*, May 9, 2012, <http://www.chinausfocus.com/peace-security/standoff-at-scarborough-shoal-implications-for-us-china-relations/> (accessed May 14, 2012).

2. Damien McElroy, “Chinese Media Warns of War with Philippines,” *The Telegraph*, May 10, 2012, <http://www.telegraph.co.uk/news/worldnews/asia/philippines/9258225/Chinese-media-warns-of-war-with-Philippines.html> (accessed May 14, 2012).

3. Walter Lohman, “South China Sea: Make the Chinese Guess,” The Heritage Foundation, The Foundry, April 21, 2011, <http://blog.heritage.org/2011/04/21/south-china-sea-make-the-chinese-guess/> (accessed May 14, 2012).

4. Republic of the Philippines, Department of Foreign Affairs, “Statement of Foreign Affairs Secretary Albert F. del Rosario Regarding the Philippines–US Mutual Defense Treaty,” May 9, 2012, <http://www.dfa.gov.ph/main/index.php/newsroom/dfa-releases/5359-statement-of-foreign-affairs-secretary-albert-f-del-rosario-regarding-the-philippines-us-mutual-defense-treaty> (accessed May 14, 2012).

repeated official references to “indisputable sovereignty over the islands of the South China Sea and their adjacent waters” are reflective of an expansive extra-legal claim.

The dispute over Scarborough Shoal, per se, is not the problem for the U.S. The problem is the nature of the Chinese claim that encompasses it. If the nine-dash map reflects a claim to all the water within it, then freedom of navigation is a right controlled by the PRC, and the U.S. Navy and international shipping sail there only at the PRC’s forbearance.

This is why China’s assurances that it will honor freedom of navigation in the South China Sea regardless of sovereignty disputes have fallen on deaf ears in Washington. Developments over the past three years have only confirmed American concerns about the way the PRC views the rights of others in these waters. Since the *Impeccable* incident of 2009, the Filipinos and others have been subject to multiple incidents of Chinese violations of their navigational rights.

American Leadership in the South China Sea. The current situation in the Scarborough Shoal requires concerted action by the U.S. Its interests in the region, its role as the Asia-Pacific’s indispensable power, and its credibility as an ally depend on its active leadership. The U.S. should therefore:

- **Highlight U.S. treaty commitments.** The U.S. should make clear to PRC officials privately that in the event of an armed PRC attack on Philippine “public vessels,” the U.S. must invoke its treaty commitment to declare

such action “dangerous to its own peace and safety” and would initiate formal consultations with the Philippines to determine an appropriate course of action. The nature of its response will be dictated by the nature of the attack.

- **Call for clarity on Chinese claims.** Earlier this year, a PRC Ministry of Foreign Affairs spokesman made the point publicly that American officials and analysts have heard privately from the Chinese: “No country, including China, has claimed sovereignty over the entire South China Sea.”⁵ The Obama Administration should press the PRC to reiterate this point publicly at the highest levels. It might be a very small step toward resolving the current impasse over Scarborough Shoal and related disputes, as even a claim over all the land features encompassed by the nine-dash map will not effectively change much about the scope of claims over the “adjacent waters.” At the very least, however, it will put all claims in common language—a necessary prerequisite to managing the dispute successfully.
- **Encourage the involvement of the Association of Southeast Asian Nations (ASEAN) and ASEAN-centric organizations.** ASEAN should attempt to mediate an immediate de-escalation of the standoff in the Scarborough Shoal. Both parties require a face-saving way to climb down from the current impasse, yet the most logical intermediary has been missing in action. The fact that conflicting

interests within ASEAN and its cumbersome consensus-building process have prevented it from playing a mediating role is troubling. ASEAN can go a long way toward proving its value to regional peace and security by playing a constructive role in de-escalating the conflict.

- **Refrain from making the situation at Scarborough and the South China Sea a talking point in the current push for ratification of the United Nations Convention on the Law of the Sea (UNCLOS).** Whether or not the U.S. ratifies UNCLOS has no bearing on the impasse or on the appeals to UNCLOS by the parties to the dispute. U.S. navigational rights are not dependent on UNCLOS ratification either. To imply otherwise, particularly given the uncertain outcome UNCLOS faces in the Senate, would weaken the defense of U.S. interests.

A Strong America Means a Stable and Secure Asia-Pacific. In 1951, the U.S. signed a security treaty with the Philippines. The Obama Administration has done much over the past three years to indicate America’s continued commitment to it. The current impasse over Scarborough Shoal is the first real test of these efforts. If the Administration mishandles this situation, not only will America’s commitment to the security of the Philippines and freedom of navigation be called into question, but so will the very credibility of its position in the Western Pacific. That will

5. M. Taylor Fravel, “Clarification of China’s Claim?” *The Diplomat*, March 5, 2012, <http://the-diplomat.com/china-power/2012/03/05/clarification-of-china%E2%80%99s-claim/> (accessed May 14, 2012).

not be good for anyone on either side
of the Pacific.

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