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MARITIME STRATEGY SERIES

Nonmilitary Approaches to Countering Chinese Coercion

A Code of Practice for the Asia-Pacific

By John Lee

Center for a New American Security

About this Series

Maritime tensions in the East and South China Seas have raised significant questions about the long-term peace and stability that has enabled Asia's economic rise over the last several decades. While these disputes are longstanding, recent years have seen attempts to unilaterally change the status quo through tailored coercion that falls short of war. These activities do not appear to be abating despite growing international concern. While policy efforts to alleviate tensions must include engagement and binding, a comprehensive approach must include countering coercive moves by imposing costs on bad behavior. This series aims to explore various types and facets of strategies to deter, deny and impose costs on provocative behavior in maritime Asia. Hopefully these papers will, jointly and severally, generate new thinking on how to both maintain security and build order across the Indo-Pacific region.

Cover Image

U.S. Secretary of State John Kerry responds to a reporter's question during the joint press conference with U.S. Secretary of Defense Chuck Hagel, then Japanese Defense Minister Itsunori Onodera, and Japanese Foreign Minister Fumio Kishida in Tokyo on October 3, 2013.

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INTRODUCTION

By John Lee

The maintenance of peace and stability, including free and open access to sea lines of communication (SLOCs), is critical to the prosperity and security of all trading nations in the Indo-Pacific region. But this key objective is by no means guaranteed. States in the region, especially great powers, possess the ability to use force or other forms of coercion to pursue their claims in the East and South China Seas. America and its allies and partners therefore need to lend their weight and creativity (and be prepared to bear some diplomatic costs) in seeking to dissuade great powers from pursuing destabilizing paths. As the United States revises its military posture to deter such activities, Washington will also need to conceive of ways to raise the nonmilitary costs of coercive behavior designed to unilaterally revise the maritime commons in East Asia.

Existing mechanisms are insufficient to address this problem. The moral and legitimizing force of international law, such as the United Nations Convention on the Law of the Sea (UNCLOS), is unlikely to serve as an effective constraint on assertive behavior by great power claimants, China in particular. This is true even though international legal principles would be an important part of the solution if and when a great power claimant such as China were eventually more inclined to compromise and seek lasting resolutions, which seems unlikely for the foreseeable future. Consequently, more effort should be placed on novel diplomatic strategies that raise the nonmilitary costs of disruptive behavior and encourage claimants to abandon coercive solutions and seek a legal resolution.

The principal recommendation presented in this paper is that the United States and other regional powers –Australia, Japan, the Philippines and Vietnam – ought to explore the possibility of formalizing a Code of Practice (CoP) as declaratory policy regulating behavior guiding all disputes in both the East and South China Seas. Such a

concept could then be promoted to other regional states such as Singapore, Indonesia and Malaysia, while leaving the door open for China. This CoP would be declaratory policy and sit outside the Association of Southeast Asian Nations (ASEAN) process. It would also help to counter the delaying tactics employed by China vis-à-vis the ASEAN-backed Code of Conduct (CoC) for the South China Sea.

Moreover, since the intended signatories of the proposed CoP would include the United States and Japan, and the process need not require ASEAN-style consensus of all intended signatories for it to become the declaratory policy of individual signatories, could be used as a diplomatic the CoP instrument by like-minded great powers to better coordinate collective criticism of any disruptive behavior in the region, by signatories and nonsignatories, under an agreed set of principles.

The CoP idea is also designed to capitalize on the newfound Japanese interest in playing a more influential role in regional strategy, politics and economics and Tokyo's increased interest in maritime stability and the South China Sea specifically.[1]

Should Beijing seek to revive the credibility of its own "peaceful rise" or "peaceful development" thesis and reverse the trend of formal and ad hoc coalitions being organized against it in the region, signing on to a collective declaratory policy involving the other great powers would be a good demonstrative first step.

Overall, a Code of Practice instrument would help generate collective pressure, including by key great powers, to challenge coercive behavior and define sorely needed rules of the road.

I. THE LIMITATIONS OF INTERNATIONAL LAW

The long-standing position of nonclaimant states such as the United States and Australia is that although they do not hold any position on the sovereignty of disputed land features and maritime waters in Asia, disputes ought to be resolved peacefully and according to widely accepted principles of international law.[2]

The appeal of international law as the ultimate arbiter of disputes is broadly attractive and consistent with the priority of America and its allies to preserve a regional order founded on rule of law as China rises rather than to contain China's rise itself. Yet, when it comes to disputes in East Asia involving China, primary appeal and recourse to international law may prove disappointingly ineffective for a number of reasons.

For starters, although all claimants are signatories to UNCLOS, resolution is only possible under UNCLOS and other international legal provisions when all claimants explicitly and voluntarily consent to arbitration and resolutions under these principles. One might be able to persuade (or pressure) Japan and the Southeast Asian claimants to resort to and abide by legal determination, but the chances of getting China to do so are extremely low.

Therefore, the inherent defect is not so much in the provisions of international law to solve disputes but the refusal of claimants – especially China – to proceed with a legally binding and acceptable resolution to the disputes. Although a signatory to UNCLOS, China shows no indication that it is prepared to submit its claims for international arbitration and accept the decisions of such a process.

A related problem is what seems to be Beijing's perpetuation of deliberate ambiguity for the basis of its claims, which it uses both to avoid current legal scrutiny of its more expansive claims and to delay any arbitration process. This is done in the belief that extending China's de facto control over contested territories is likely to lead to a more satisfactory resolution of sovereignty and sovereign rights over maritime regions at a future time.

For example, Beijing remains deliberately vague as to the status of the nine-dashed line map of its claims in the South China Sea that was submitted to the United Nations in 2009. On the one hand, subsequent *notes verbales* regarding the submission suggest that China only claims islands and their adjacent waters, which it refers to as its "territorial sea," with islands entitled to exclusive economic zones (EEZs) and continental shelves in accordance with UNCLOS provisions – regions far less extensive than that indicated by the nine-dashed line. Yet, in the same submission, Beijing argued that "China's sovereignty and related rights and jurisdiction in the South China Sea are supported by abundant historical and legal evidence,"[3] seemingly introducing the "historic waters" argument into the claim.[4] Indeed, Beijing has asserted several times that UNCLOS "does not restrain or deny a country's right which is formed in history,"[5] suggesting that its "historic waters" rationale exists outside the boundaries of current international law and UNCLOS provisions.[6]

This position is problematic for the prospects of a legal solution. In referring to China's "historic waters" rationale in general, one prominent legal scholar argues that China's position, "applied to a large maritime area bordered by many states, threatens the entire legal regime established under UNCLOS."[7] As another two legal scholars put it, "China's assertiveness and its reiteration of indeterminate claims do not constitute, from a legal perspective, a position that is even minimally persuasive."[8]

In fact, China has not offered any reasoning or justification for linking its asserted "historic

rights" or "historic waters" with the nine-dashed line in the South China Sea that was formally submitted to the United Nations in 2009. In any event, and as far as international law is concerned, the legal consensus is that "the notion of historical consolidation has never been used as a basis of title in territorial disputes" and that "the theory of historical consolidation is highly controversial and cannot replace established modes of acquisition of title under international law"[9] – particularly when such claims under historical title are contested by other states.[10]

It is true that Chinese officials at different times alternate between offering justifications that may sit within UNCLOS and related principles and providing other justifications – such as "historic" rights, titles or waters – that would not. But in addition to refusing to clarify what its claims actually are, and on what basis they are made, China regularly conducts patrols over the entire area within the nine-dashed line. In 2008, the Chinese State Council authorized China Marine Surveillance (CMS) to commence regular patrols over all the maritime areas claimed by China, including all areas within the nine-dashed line. In 2009, CMS admitted for the first time that it undertook regular patrols over the entire claimed area in the South China Sea, reaching as far as James Shoal, and in 2010 CMS established a sovereignty marker in the form of a steel monument placed in the water during one of these patrols on James Shoal.[11] In 2011, CMS undertook a series of "special rights protection operations" in "historic waters" of the South China Sea, targeting what Beijing called the illegal activities of foreign countries undertaking oil and gas exploration, maritime surveys and military surveillance.[12] A more recent example is China's placing of its advanced Haiyang Shiyou 981 oil rig within Vietnam's EEZ from May through August 2014. As one report puts it, "recent actions of Chinese law enforcement vessels suggest Beijing is trying to enforce its jurisdiction in all waters inside the nine-dashed line."[13] This means that it has become prudent and reasonable for other regional states to conclude that Chinese policies and behaviors are designed to enhance its claims to the whole area designated by its nine-dashed line.

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As a summary, and with respect to Chinese claims, the impotence of international law and UNCLOS arises for three main reasons. First, China is not willing to clarify its claims and clarify under which legal principles these claims are being made, making the application of international law impractical. Second, China is not willing to submit its claims to formal and rigorous legal scrutiny and abide by the adjudications of formal legal bodies under the UNCLOS regime, meaning that recourse to the relevant international law, which requires the consent of all claimants, is powerless. And third, China seeks to offer a "historic waters" justification for claims beyond EEZs and continental shelves of contested islands that supposedly predates and even undermines the UNCLOS regime. In other words, and put simply, a legal solution in this context is only viable when claimants such as China genuinely seek and want one. For the foreseeable future, with Beijing instead seeking to enhance its leverage over other claimants as its power grows, this will not be the case.

This does not mean that international law and the UNCLOS regime in particular are valueless institutions and ought to be ignored or written off. But international law needs to be understood within the framework of the preferences and interests of great powers. Reliance on the international legal regime, especially in the context of the maritime disputes in East Asia, depends on great power claimants agreeing to submit to the provisions of international law and voluntarily abiding by the subsequent legal decisions. But in summarizing interviews of numerous Chinese scholars, the International Crisis Group concludes that the longer "de facto administration and control [by other claimants] continues, the slimmer is the chance of China gaining recognition for its legal title."[14] As another commentator puts it, China's increasingly assertive behavior is evidence of "anxiety … reinforced by growing recognition that China's claims over the South China Sea based on historical grounds will be unlikely to carry much weight in the contemporary legal environment."[15]

Although China's claims in the East China Sea are less extensive and may well be consistent with UNCLOS provisions (provided that it can justify its claim to what it calls the Diaoyu Islands[16]), Beijing's policy of unilaterally and often coercively trying to change "facts on the ground"[17] mirrors its behavior over contested regions of the South China Sea. With respect to its claims in the East China Sea, one suspects China would only resort to international law if it would unquestionably achieve the outcome that it sought. All evidence so far suggests that China is likely to avoid submitting its claims for international legal adjudication if it is not assured of the process and outcome that it seeks, and that it is likely to reject the outcome if legal decisions do not accord with its political or strategic interest.[18]

II. SHAPING THE BEHAVIOR OF AN AMBITIOUS RISING POWER

Despite its vast ambition in the maritime domains of East Asia, China cannot tolerate significant and sustained disruption to SLOCs or economic ostracism, given its dependence on trade and economic relations with advanced economies in particular. [19] Consequently, Beijing remains opportunistic rather than reckless in pushing its claims in the East and South China Seas, even if risks of catastrophic miscalculation and unintended escalation persist.

Despite its vast ambition in the maritime domains of East Asia, China cannot tolerate significant and sustained disruption to SLOCs or economic ostracism, given its dependence on trade and economic relations with advanced economies in particular.

Chinese opportunism is based on a dual approach of delaying the political and legal resolution of disputes while extending Beijing's de facto control and administration over disputed areas. This approach includes "salami slicing": exercising creeping sovereignty over land features and sovereign rights over disputed maritime areas so China can present its claims as a *fait accompli* and seek formal judicial and political ratification of them at a future time when its bargaining position is stronger.[20] This approach is also designed in such a way that each singular action to extend its *de facto* control over an area is not significant enough to justify another claimant's or the United States' using military force to repel the Chinese action, let alone escalating the situation into a crisis or possible war.

III. CHINESE STRATEGIC ISOLATION AND BEIJING'S RESPONSE

In response to this approach, the United States should seek to find collective ways of increasing (rather than lowering) the nonmilitary costs of disruptive and coercive behavior. The key to doing so is to understand how China seeks to forestall collective and united regional pressure vis-à-vis its behavior in contested maritime zones.

China is well aware that its East Asian ambitions profoundly affect the interests of every maritime country in the region. For those countries with outstanding maritime disputes with China, the latter's actions constitute a considerable potential threat to their direct national interests. For other littoral countries such as Australia and Singapore, the prospect that China is emerging outside the American-led alliance system is significant since it remains unclear whether Beijing will choose to remain a free-rider within the current security order or become an increasingly robust challenger of the current order as its naval capabilities grow. Beijing must therefore be frustrated but not surprised that every major maritime country in East Asia desires a renewed and even strengthened American strategic and military presence and that many countries are even cautiously welcoming a Japanese strategic revival in the region.[21] Note that the widespread regional enthusiasm for American pre-eminence also feeds into the long-standing regional distaste for the emergence of a dominant Asian power, whether it was Japan in the 1930s or China in the future.[22]

China has responded to its strategic isolation in two main ways. The first is to seek any opportunity to bind, circumvent, exclude or else bypass America, which is militarily more powerful and strategically far better positioned (via its alliances and security partnerships). The second is to reorganize strategic relations and diplomatic negotiation such that the United States is excluded, and countries are instead channeled into dealing with China bilaterally. This aims to negate China's weakness as an inferior strategic and military player to America and plays to its strengths as the largest, fastest-growing and arguably most powerful stand-alone Asian nation in the region. These approaches are manifested in a number of ways.

For example, Chinese criticisms of existing U.S. alliances as exhibiting a "Cold War mentality" and being a factor for instability are largely attempts at gradually diluting the regional appetite for hosting American military assets in the region, since Beijing realizes that America's forward military presence cannot be sustained without these relationships. (Of course, this argument ignores the reality that security alliances and partnerships with the United States and each other were invigorated only after a period of more assertive Chinese behavior from around 2010 onward.) The same can be said for Chinese advocacy for "new security concepts" that are based on principles of "common and cooperative" security rather than on exclusive alliances.[23]

Multilaterally, China has long pursued an approach of promoting institutions that exclude the United States as the pre-eminent security regimes, such as ASEAN+3,[24] while also attempting to deny American membership in emerging regimes such as the East Asia Summit[25] (although this is now obviously a lost cause). Recently, especially as it occupies the chair for the next two years, Beijing is placing more emphasis on the little-known Conference on Interaction and Confidence Building Measures in Asia (CICA), which does not include the United States. In his keynote speech at the 2014 CICA summit, Chinese President Xi Jinping promoted a "new Asian security concept" that he pointedly summarized as meaning that "it is for the people of Asia to run the affairs of Asia, solve the problems of Asia and uphold the security of Asia."[26]

In ASEAN forums, China consistently attempts a "divide and negate" strategy to exploit the ASEAN preference for consensus by dividing Southeast Asian members on issues pertaining to the management of disputes, such as concluding a binding Code of Conduct, thereby rendering these forums impotent and less relevant.[27] This is complemented by Beijing's insistence that maritime and other disputes be negotiated bilaterally with the individual disputant, rather than be discussed and negotiated multilaterally (even if an actual legal agreement will be one only between claimants.)[28] This allows China to either intimidate a much smaller claimant during any bilateral negotiation or to use other tools of statecraft available to a much larger power. At the very least, the noninvolvement of a more powerful third party such as the United States allows China to delay any comprehensive settlement with minimal pressure exerted on it by larger powers, while it physically consolidates its claims: the "talk and take" strategy.[29]

The most significant regional diplomatic effort to date is ASEAN's halting attempts at erecting a regional binding Code of Conduct for the South China Sea – which would put obligations on all signatories to resolve disputes peacefully and according to international law. However, China has consistently frustrated the conclusion of a meaningful and binding CoC since much of its behavior in contested zones would violate the letter and spirit of such a code, and Beijing has continued to delay indefinitely meaningful progress on the CoC.

Of further relevance are Beijing's delaying tactics, which exploit both nonclaimant Southeast Asian countries' reluctance to incur Chinese displeasure and differences between claimant countries as to their willingness to diplomatically confront China. For example, the Philippines and Vietnam are far more willing to criticize Chinese behavior, while Malaysia[30] and until recently Indonesia[31] have taken a much more cautious approach. China's "divide and rule" tactic led to the farce of the 2012 ASEAN Ministerial Meeting being unable to even issue a joint statement after there was disagreement on whether Chinese activity in the South China Sea ought to be mentioned, with Cambodia capitulating to Chinese pressure in blocking any such communique.[32]

The continued success of China's "talk and take" strategy depends on Beijing's capacity to simplify the region to its advantage: Reduce disputes and complaints about its actions down to a one-on-one negotiation or competition with weaker powers, while removing the influence of great powers not directly involved in the disputes. As a counter-strategy, it is in the region's overriding interest to complicate matters for China – but to do so in ways that avoid overt military confrontation. This means seeking ways to enhance collective and coordinated regional criticism of any actions designed to coerce or intimidate other claimants. It also entails creating possibilities for great powers such as the United States and Japan to lend their diplomatic weight to collective efforts to condemn any behavior that seeks to challenge the territorial status quo through coercion or intimidation.

IV. COUNTERING THE CHINESE COUNTERSTRATEGY – A CODE OF PRACTICE FOR THE ASIA-PACIFIC

Although international law is largely impotent when it comes to resolving the disputes for the reasons mentioned earlier, it is important to create regional norms that raise the nonmilitary costs of coercive and intimidating behavior to settle disputes, and to make it easier for nonclaimant great powers to intervene diplomatically or even militarily on behalf of smaller allies and partners.

The challenge is to enhance the role of norms in dissuading and constraining disruptive and provocative behavior. To do so, one must overcome the restrictions of the ASEAN consensus-based decisionmaking process without getting ASEAN or its major member states offside. Indeed, major ASEAN members have to be eventually supportive of any alternative initiative. One must also use norms to enhance the voice, relevance and influence of nonclaimant powers in condemning the behavior of disruptive states, thereby raising the nonmilitary costs for those states regardless of whether the norms enshrined in a code are legally binding or not on claimants.

None of this is to suggest that diplomatic efforts and public opprobrium will be sufficient to shape China's behavior, but U.S. policymakers should see them as necessary components of a comprehensive strategy.

In this context, the United States should lead efforts to establish a Code of Practice with the following four characteristics:

A declaratory statement of policy, the CoP should mirror much of the language of the 2002 Declaration on the Conduct of Parties in the South China Sea (DoC) but expand its geographic scope and reference to existing international law. Suggested text, with new principles in italics, is as follows: "The CoP prohibits and condemns the use of intimidation and coercion in the settlement of territorial disputes *throughout the Asia-Pacific, and supports the "no first use of force" principle.* All CoP signatories agree that all claims, *including claims based on "historic" title or right, and revision to the territorial status quo for any reason* must be settled in accordance with international law and arbitration, including UNCLOS."

It is important to create regional norms that raise the nonmilitary costs of coercive and intimidating behavior to settle disputes, and to make it easier for nonclaimant great powers to intervene diplomatically or even militarily on behalf of smaller allies and partners.

It is critical that declaratory policy condemning coercive behavior apply to the whole maritime region of East Asia and not just the South China Sea. This will allow a larger number of countries to appeal to the CoP in condemning such behavior, whether it occurs in the East or South China Sea.

It is important that signatories to the CoP insist that claims based on "historic title" or "historic waters" be settled according to international law – and that all historic title claims not capable of being recognized by international law be rejected. All claims not submitted for arbitration under UNCLOS would also not be recognized by CoP signatories. To be sure, these terms will be unacceptable to China since it has consistently ruled out international arbitration to resolve its disputes.

But the point is to establish a multilateral declaratory policy regime that will eventually leave China isolated, putting pressure on Beijing to sign on.

Significant early efforts should be made to gain the support of Australia, Japan, Vietnam and the Philippines for the CoP. These countries should then persuade other, smaller regional countries to sign on.

It is important that great powers such as the United States and Japan be signatories of any declaratory policy, which is not the case with the 2002 Declaration on the Conduct of Parties in the South China Sea or the proposed CoC.

Countries such as the United States, Japan, the Philippines and Vietnam have consistently declared that they oppose the use of force in resolving disputes or changing the status quo in the region,[33] consistent with the ASEAN-backed 2002 DoC. Indeed, a joint statement from the Japanese-U.S.-Australia Defense Ministers Meeting at the sidelines of the Shangri-La Dialogue in May 2014 affirmed that the countries opposed the use of "coercion or force to unilaterally alter the status quo in the East China and South China Seas" while also calling on all claimants to clarify and pursue their claims in accordance with international law.[34] The CoP would advance the formalization of this and similar joint statements. The two countries at the coalface of disputes with China – Vietnam and the Philippines – should also be early targets as signatories. Indeed, Vietnam has recently called for a "no first use of force principle" to manage disputes.[35]

If a core group comprising the United States, Japan, Australia, Vietnam and the Philippines became the first signatories to a CoP, then diplomatic pressure could be gently placed on other claimants and nonclaimants, such as Indonesia, Malaysia and Singapore, to sign on.

The CoP becomes the declaratory policy of any particular country once it agrees to sign on. Unlike the ASEAN process, it need not require the agreement of all intended signatories for it to become the declaratory policy of any one country.

Objections are likely to be voiced by some ASEAN member states not wanting any instrument or regime to dilute the relevance or standing of ASEAN. Even so, the CoP would primarily be designed to offer great-power and claimant states that are signatories a diplomatic instrument to frame and coordinate criticism of coercive behavior while a binding CoC is developed. Moreover, ASEAN states realize that China can exploit the ASEAN consensus process to delay the CoC indefinitely, preventing its use in condemning coercive behavior.

The CoP should serve as formal declaratory policy for relevant signatories until a binding ASEAN CoC is achieved – cognizant of the likelihood that this may not be for some time. But it should be made clear that the CoP would borrow heavily from the principles behind the CoC, and ASEAN norms more generally, and would not be designed to negate or supplant the CoC. The CoC may well supplant the CoP if the former becomes a binding instrument.

This is designed to preserve the relevance and standing of ASEAN in order to gain the support eventually of major ASEAN member states: Indonesia, Malaysia, Singapore, Vietnam and the Philippines. Once these states become signatories, it becomes difficult for other member states not to follow suit.

In analyzing the utility of this concept, one can point to a lesson of the Trans-Pacific Partnership (TPP): Getting Chinese cooperation, or getting China to the table, is often best achieved by initially isolating China through emphasis on an alternative institution or regime that is backed by other great powers – the United States and Japan in particular – while keeping the door open for Beijing.[36]

V. CONCLUSION

The reality is that there is widespread regional concern with respect to Chinese ambitions and behavior in East Asia, and countries are already pushing back in military and diplomatic terms and will increasingly do so. The purpose of the CoP would be to introduce a declaratory policy regime that encompasses the great powers and can help give shape, consistency, clarity and justification for why countries are pushing back against Chinese actions, beyond narrow and parochial national interest. Such a code may help win the diplomatic and public relations contest and justify why countries are "ganging up" against China.

Moreover, by putting forward a CoP that covers both the East and South China Seas, one would be allowing signatories to the CoP to make the point that the prohibition on coercion and intimidation to advance one's claims applies in all circumstances and claims, despite the differences between the various claims in the two seas. Bear in mind that the CoP could be used to condemn any country that used coercion or intimidation in contested waters, not just China.

In putting the onus on China to publicly explain its "historic water" or "historic title" justification, explain why it is putting forward precepts sitting outside the current UNCLOS regime or justify why it might refuse to explain its actions, the broader regional public would have a better idea of what is at stake in these disputes. When it comes to the East China Sea, the onus should be on Beijing to justify why sovereign title over the Senkaku/Diaoyu Islands should return to a moment in history of China's choosing. Such a conversation would demonstrate why selective history in justifying one's claims will almost invariably be destabilizing by undermining the existing territorial boundaries in Asia.

As the pre-eminent power and the only player with a proven capability for regionwide leadership, the United States must play a central role in driving initial support for the initiative from a number of key countries. The United States has no maritime disputes with countries in the East or South China Seas; it is not bound by the conventions and practices of ASEAN states to maintain the pretense of unity to the point of paralysis; it has intimate and long-standing alliances with Australia, Japan and the Philippines; and it has a comprehensive relationship with a Japan seeking a more proactive role in the region. Once there is agreement between these countries on the precise language and terms of the CoP, the initiative should be launched and promoted as a multilateral agreement that is open for all countries to sign on to.

Preserving a rules-based order, rather than resisting China's rise, is the region's ultimate objective. Resorting to international law will only be viable when all claimants genuinely seek a compromise solution. The CoP, in putting pressure on China (or any other country seeking to use force or coercion to assert territorial claims), would provide a useful waypoint while recognizing that there remains a long way to go before genuine compromise and negotiation are possible in East Asia.

ENDNOTES

1. Céline Pajon, "Japan and the South China Sea: Forging Strategic Partnerships in a Divided Region" (Center for Asian Studies, January 2013), http://www.ifri.org/downloads/asievisions60celinepajon.pdf.

2. For example, see Geoff Dyer, "US blames China for rising tensions in South China Sea," *Financial Times*, February 9, 2014, http://www.ft.com/cms/s/0/cdc09e14-91a7-11e3-8fb3-00144feab7de.html#axzz32Jde6T6s, accessed May 21, 2014; and Karen Barlow, "Australia expresses concern over China air defence zone," ABC, November 26, 2013, http://www.abc.net.au/news/2013-11-26/an-aust-calls-in-china-ambassador-over-air-defence-zone-announc/5117974.

3. Permanent Mission of the People's Republic of China, *Note Verbale to the Secretary-General of the United Nations*, CML/8/2011 (April 14, 2011), http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl_e.pdf.

4. Robert Beckman, "The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea," *The American Journal of International Law*, 107 no. 1 (January 2013), 156.

5. For example, see Foreign Ministry of the People's Republic of China, "Foreign Ministry Spokesperson Jiang Yu's Regular Press Conference," September 15, 2011, http://big5.fmprc.gov.cn/gate/big5/www.fmcoprc.gov.mo/eng/gsxwfb/fyrth/t860126.htm.

6. This is apparent in the Chinese claim to the right to exploit "the seabed and subsoil" of maritime areas under "relevant waters" of historic title within the nine-dashed line map. Permanent Mission of the People's Republic of China, *Note Verbale to the Secretary-General of the United Nations*, CML/17/2009 (May 7, 2009), http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf. As "relevant waters" is not an established legal term (see Beckman, "The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea," 155), it is unclear whether China is merely claiming rights to exploit resources within the "territorial sea" of disputed islands (which may possibly be consistent with UNCLOS principles) or the much more expansive claim that China can exploit resources in all maritime areas inside the nine-dashed line map. If it is the latter, China may well be asserting a claim based on "historic right" that predates the UNCLOS regime and the modern law of the sea. If so, the right by other claimants to exploit the seabed and subsoil within the EEZ as currently recognized by UNCLOS would be supplanted by China's historic right rationale.

7. Beckman, "The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea," 163.

8. Florian Dupuy and Pierre-Marie Dupuy, "A Legal Analysis of China's Historic Rights Claim in the South China Sea," *The American Journal of International Law,* 107 no. 1 (January 2013), 141.

9. International Court of Justice, *Land and Maritime Boundary Between Cameroon and Nigeria,* October 28, 1998, http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=52&case=94.

10. International Court of Justice, *Minquiers and Ecrehos*, November 17, 1953, http://www.icj-cij.org/docket/index.php?sum=88&code=fuk&p1=3&p2=3&case=17&k=19&p3=5.

11. "China's navy holds landing exercises at disputed islands," *Taipei Times*, March 28, 2013, http://www.taipeitimes.com/News/front/archives/2013/03/28/2003558176.

12. *China's Ocean Development Report 2012* (Beijing: Ocean Press, 2012).

13. "Stirring Up the South China Sea (I)," Asia Report No. 223 (International Crisis Group, April 23, 2012), 3, http://www.crisisgroup.org/~/media/Files/asia/north-east-asia/223-stirring-up-the-south-china-sea-i.pdf.

14. "Stirring Up the South China Sea (I)," 29.

15. Jian Zhang, "China's growing assertiveness in the South China Sea: A strategic shift?," in *The South China Sea and Australia's Regional Security Environment*, *National Security College Occasional Paper* No. 5, ed. Leszek Buszynski and Christopher Roberts (National Security College, May 24, 2013), 18-25, http://nsc.anu.edu.au/documents/occasional-5-brief-4.pdf.

16. Although China does not use the "historic waters" argument to justify its claims over the Senkaku/Diaoyu Islands, it does reach back into history to make its claim. In particular, China claims the disputed islands on the grounds that the Ming Dynasty annexed them as early as 1403, while the Qing Dynasty placed them under the jurisdiction of Taiwan, which was then part of the Chinese empire. China also bases its claims on the "theft" of the islands by the Japanese in 1895 under the "unjust" Treaty of Shimonoseki and argues that the subsequent U.S. decision to revert administration and title of the islands to Japan after World War II was both a legal error and a decision that is not binding on a China that was not a party to the relevant agreements.

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36. The TPP was a little-known agreement by Brunei, Chile, New Zealand and Singapore before the Barack Obama administration plucked the TPP from obscurity and used it to give shape and content to American leadership and economic statecraft in the region. It is granted that the TPP is unlikely to reach the heights intended for it in terms of establishing a comprehensive set of economic rules-of-the-road in the region. But even though many in China continue to view the TPP as an initiative designed to isolate and contain its rise economically, Beijing is exploring the possibility of signing on to the agreement. China is doing so largely because of Japan's decision to begin serious negotiations to join the TPP. Incidentally, some ASEAN resistance to the TPP also melted away once major powers became participants in the TPP negotiations. Fu Jing, "China, US 'ready to engage' on TPP talks," *China Daily*, November 1, 2013, http://usa.chinadaily.com.cn/business/2013-11/01/content_17075452.htm; and Aurelia George Mulgan, "Japan, US and the TPP: the view from China," EastAsiaForum.org, May 5, 2013, http://www.eastasiaforum.org/2013/05/05/japan-us-and-the-tpp-the-view-from-china/.

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