

# Flashpoints: The Way Forward in the East and South China Seas

By Patrick M. Cronin

In January 2012, when the Center for a New American Security (CNAS) launched a report and corresponding website detailing flashpoints in the East and South China Seas, it seemed likely that tensions would increase in the two bodies of water that connect the rapidly developing Chinese coast with the majority of maritime countries in the Asia-Pacific region.<sup>1</sup> That forecast has borne out, because of a confluence of geopolitical tensions and resource competition, mixed with increasing domestic political debate about sovereignty and a corresponding increase in national assertiveness.

The outlook today appears equally dim for future harmony in the East and South China Seas. However, the disputes have now received unprecedented attention and many analysts have offered a wide variety of prognostications. Collectively, these judgments appear neither optimistic nor devoid of hope. The frictions that have surfaced since about 2009 (or re-surfaced, to be more precise) are complex, dangerous and unlikely to be resolved soon. While these tensions appear manageable and are unlikely to trigger war (except through miscalculation or accident), they are trending in an unfavorable direction. However, there are several policy options available to leaders both in the United States and in the region that can mitigate the tensions and help reduce the chances of conflict in these critical seas.

## **A Deteriorating Security Environment**

The security situation in the East and South China Seas has deteriorated over the past 16 months, as disputes have multiplied and distrust has deepened. China's assertiveness is growing, tensions in each of the seas have spilled over and produced suspicions in the

### **About this publication**

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other, regional institutions are not facilitating cooperation, international law is being ignored and Sino-American relations appear to be unmoored, with competitive elements outweighing shared great-power interests.

**China's Growing Assertiveness.** If Xi Jinping were inclined to revert to the longstanding policy articulated by Deng Xiaoping of “setting aside dispute and pursuing joint development,” there was little hint of it as he began a 10-year stint as head of state, Communist Party leader and commander-in-chief.<sup>2</sup> Addressing the People's National Assembly in mid-March, Xi rallied delegates around the goal of achieving “the great renaissance of the Chinese nation and the

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Chinese dream.”<sup>3</sup> He also called for the People's Liberation Army to strengthen its ability to “win battles,” very likely an allusion to possible conflict in China's near seas.<sup>4</sup>

Beneath Xi's calm demeanor is a tough man who should not be underestimated. His father fought with Mao against the Imperial Japanese Army. To be sure, China under Xi is elevating veteran diplomats and still focusing on economic development and trade, especially in East Asia.<sup>5</sup> But some of China's neigh-

bors are concerned about Xi's sharp-edged neighborhood policy. “The Chinese,” a Singaporean official told CNAS senior fellow Robert Kaplan, “charm you when they want to charm you, and squeeze you when they want to squeeze you, and they do it systematically.”<sup>6</sup>

**Maritime Disputes Are Spilling Over and Deepening.** Despite the different disputes in the East China Sea and the South China Sea, rising tensions in one have affected the other. What appeared to begin with growing Chinese-Vietnamese tensions over the Paracel Islands in the South China Sea in 2009 reverberated throughout all of East Asia by July 2010, when Hanoi hosted the 27-member Association of Southeast Asian Nations (ASEAN) Regional Forum.<sup>7</sup> It was there that then-Secretary of State Hillary Clinton said that the United States now considered conflict resolution in the South China Sea “a leading diplomatic priority.”<sup>8</sup> Similarly, when a Chinese fishing trawler rammed a Japanese coast guard ship in September 2010, East Asian countries took note, creating tensions leading up to the 2011 ASEAN Regional Forum.<sup>9</sup> Over the past year, the standoff between Chinese and Filipino ships near Scarborough Reef in the South China Sea led to Chinese de facto control of those land features and their surrounding waters, which was quickly followed by a

heightened state of confrontation between China and Japan over the Senkaku/Diaoyu Islands in the East China Sea.<sup>10</sup>

These local disputes are not just coloring the perceptions of others in the region; they also show signs of growing intractability. Certainly this is the case in the East China Sea, where Japan's new conservative prime minister, Shinzo Abe, says that his country will not back off its claims to both sovereignty and administration of the Senkaku Islands.<sup>11</sup> Meanwhile, China claims "indisputable sovereignty" over the same islands and their surrounding waters (as it continues to do over most of the South China Sea).<sup>12</sup> The dispute has gradually escalated, especially since the previous Japanese administration purchased privately-held leases to three of the five islands in 2012.<sup>13</sup> Chinese maritime and air intrusions into the territorial waters and airspace now occur daily, with Beijing encouraging fishing in these troubled waters and then dispatching civilian marine surveillance and law enforcement vessels to exercise nominal administrative control (thereby challenging not only Japan's claim to ownership but also its claim to sole administration). Military forces have increasingly been thrown into the mix of intrusions, and Japan has been forced to scramble fighter jets.<sup>14</sup> In one instance in January 2013, a Chinese frigate locked onto a Japanese destroyer with its fire-control radar on the high seas surrounding the Senkakus.<sup>15</sup> Whereas some believe that China's logic may be to exhaust Japan's limited coast guard and maritime forces, the rising tensions are accompanied by a constant and seemingly growing risk of military escalation.<sup>16</sup>

**Regional Institutions Falling Short.** At a time when some foresee global fragmentation,<sup>17</sup> there is an increasing need for effective regional institutions. East Asia is famous for its so-called alphabet soup of overlapping institutions, most of which are affiliated with ASEAN. But even as that organization approaches a 2015 deadline for advancing a unified economic community, its core principles of neutrality, the non-use of force and consensus-based decisionmaking are all showing strain over maritime disputes in the South China Sea. Having taken a decade to produce a Declaration of Conduct of the Parties in the South China Sea, and another decade to produce broad implementation guidelines, ASEAN appears no closer to concluding a binding Code of Conduct. And it is divided over whether any such Code of Conduct should be first agreed to by all ASEAN members or crafted with China from the start.<sup>18</sup>

Indeed, the process appeared to go in reverse while Cambodia held the ASEAN chair in 2012, as the countries were unable to issue even a joint declaration for the first time in its history. The disputes in the South China Sea have divided ASEAN between the four claimant states of Vietnam, the Philippines, Malaysia and Brunei on one

side, and the six non-claimant states on the other. In addition, the non-claimant states have widely varying degrees of opposition to the claimant states, often depending on their ties with China and the United States. Among the claimant states, Vietnam and the Philippines have been at the forefront of disputes with China, which has published a map with a vague nine-dashed line covering most of the South China Sea to indicate its historical claims.<sup>19</sup> While many hope Brunei will do a better job at addressing the dispute while it holds the ASEAN chair this year, that is a lot to ask of a small country with few defenses and significant economic interests at stake with China.<sup>20</sup> And Myanmar, set to chair ASEAN in 2014, may simply be hoping to get through the process without incident.

**Casting Aside International Law.** International law rarely triumphs over power politics and national prerogatives. Yet, the law of the sea has evolved in important ways since Swiss jurist Hugo Grotius articulated his doctrine of freedom of the seas.<sup>21</sup> In particular, the United Nations Convention on the Law of the Sea (UNCLOS) provides the world with positive law, or treaty text, which has been ratified by the vast majority of countries (although not the United States, as discussed below). But that text is open to different interpretations (for instance, over what precisely constitutes an “island” or a “rock,” the crucial difference being the undefined natural ability to sustain human life, or exceptions to compulsory arbitration of disputes). So in January 2013, when the Philippines opted to clarify its maritime disputes with China through compulsory third-party arbitration, China summarily rejected the process and elected not to participate. The arbitration will continue, but without the Chinese even attempting to explain why they believe the UNCLOS provision for compulsory arbitration does not apply.<sup>22</sup> While it may be difficult for China to ignore the ultimate verdict (especially if it casts serious legal doubt on China’s nine-dashed line, for instance), it is worrisome that key countries seem to reject international law.

**U.S. Policy Questions Linger.** The U.S. policy of rebalancing to the Asia-Pacific region has occurred against the backdrop of rising tensions in the East and South China Seas. A major pillar of that policy has been to reassure allies and friends that the United States would not only remain in the region, but over time enhance its comprehensive engagement there. Although U.S. policy studiously avoids taking sides over sovereignty disputes, the United States has sought to reassure Japan that it recognizes Japanese administration of the Senkakus and as such is covered under Article V of the mutual security treaty.<sup>23</sup> Even so, Washington has also sought to preserve some strategic ambiguity, underscoring its emphasis on the peaceful resolution of disputes. Like Japan, the Philippines is a treaty ally of the

United States, and the mutual security treaty pledges U.S. support in responding to attacks on Philippine ships. Yet, officials in Manila have sought to remove strategic ambiguity and win an Article V-like pledge of support in the event of escalating tensions with China.

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conflict drawdowns have led to budget cuts across all services, slowing down and purchasing fewer large assets, and reduced operations and maintenance budgets.<sup>24</sup> But government officials stress that U.S. rebalancing will go forward despite budget cuts. For instance, Deputy Secretary of Defense Ashton Carter repeated the Obama administration's commitment to deploy "60 percent of our naval assets ... to the Asia-Pacific region by 2020—a substantial and historic shift."<sup>25</sup> U.S. rebalancing, which focuses more on engagement than new basing, is also meant to be as much about diplomacy and trade as about military presence. Even so, allies and partners will be watching the U.S. defense budget very closely.

For China, U.S. rebalancing offers too much allied reassurance, by showing that the United States intends to preserve its military preponderance at a time when an increasingly capable China also wants to assert greater influence over its immediate neighborhood.<sup>26</sup> The problem is that U.S.-China relations have not achieved a satisfactory level of equilibrium. The confrontational elements of that relationship may overshadow cooperative elements such as trade.

The answers to these problems are readily apparent to some experts, especially from the United States and Southeast Asia: China should adopt a friendlier neighborhood policy (as it has on some past occasions); countries should exercise restraint and advance cooperation; ASEAN needs to adopt a realistic strategy to advance a binding Code of Conduct; countries must institute military confidence-building measures to build habits of cooperation and minimize distrust; and the United States and China need to embrace their enlightened self-interest and pursue a basically cooperative framework for bilateral relations to prevent some tensions from creating a vicious cycle of action-reaction great-power relations.<sup>27</sup>

## Dialogue and Management Do Provide Hope

While none of these disputes can be resolved easily, there is a way forward that decreases some of the risk and heads toward more common ground. Leaders in East Asia and the United States can take positive steps in four important areas: international law, regional institutions, cooperative military measures and balanced U.S.-China relations.

### 1. Advance International Law

Although international law is rarely the main topic of discussion among political leaders, tensions in the East and South China Seas now require them to embrace it and expand rules-based conflict management mechanisms. In the next two years, they can advance international law in three ways.

*First, claimant countries should make the Philippines-Chinese UNCLOS arbitration an important precedent.* They can do this by offering diplomatic support for the basic approach, thereby putting moral pressure on China to accept the ultimate determination of the panel. After all, the panel is not deciding sovereignty but rather seeking to clarify legal questions surrounding claims, including China's claim to the nine-dashed line area covering most of the South China Sea. While Chinese leaders may believe that claim only applies to land features and their surrounding waters, they appear either unable or unwilling to state publicly that it does not apply to the entire body of water, largely because this would undoubtedly inflame Chinese nationalist sentiment. An independent international determination that such a claim lacks a basis in contemporary international law could encourage China to narrow its claims, which in turn could make it easier to advance joint development projects and alleviate some concerns over the freedom of navigation.

*Second, non-claimant countries should host an international legal and political conference to explore conflict prevention and conflict resolution mechanisms, including the third-party arbitration mechanism in UNCLOS.* Australia, India and others might be able to mobilize new ideas and debate best practices for managing conflicts and averting escalation. Selecting a nongovernmental conference organizer could encourage new ideas and the convener could brief the results to different bodies such as ASEAN and claimant country governments.

*Third, the United States needs to fully join the Law of the Sea by ratifying UNCLOS.* The United States has long sought to establish rules by which all nations can get along and prosper. U.S. policy towards the region currently focuses on establishing a rules-based international system, but it is robbed of moral authority by the failure of the U.S. Senate to ratify the treaty that American political, military

and business leaders have embraced (including former Secretaries of State Henry Kissinger, George Shultz, James Baker, Colin Powell and Condoleezza Rice.)<sup>28</sup> The United States already abides by the law's provisions, and the commercial reasons for ratifying UNCLOS are becoming even more important. The main conservative argument that ratification would buttress the creation of a faceless, unaccountable international bureaucracy has some validity; but the best way to address that concern is by joining and then shaping the admin-

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istrative body. The United States needs to fully participate in shaping effective institutions for global problems: The problems of the East and South China Seas are not simply local problems to be left to the largest local power. More important, the United States cannot be persuasive if it criticizes others for not using the dispute mechanisms of UNCLOS when it has not even ratified the agreement. Thus, the failure to ratify UNCLOS limits the U.S. ability to press for positive resolution of disputes and to establish rules of the road because the United States simply lacks credibility.

## **2. Reinforce Regional Institutions**

With so many overlapping regional institutions in East Asia, there is little need for new ones. Yet, the existing bodies need to become more effective. The United States can help strengthen these institutions in three ways.

*First, the United States must continue to embrace ASEAN centrality.* This does not mean that ASEAN should abandon its lowest-common-denominator principles of consensus and neutrality. Instead, it means that ASEAN should remain the central organizer for security dialogues in Southeast Asia and the Asia-Pacific. The Obama administration has gone a long way in the past four years to recognize the importance of ASEAN, both as an organization of 10 Southeast Asian states and as a facilitator of larger regional discussions. The decision to join the Treaty of Amity and Cooperation means that the president of the United States will now join other regional leaders at the East Asia Summit, combined with a variety of other senior-level and mid-level dialogues leading up to that meeting. Secretary of State John Kerry and other officials need to maintain this high-tempo U.S. engagement with ASEAN.

*Second, the United States should work with ASEAN members and other regional states to support an independent survey of land features*

*in the East and South China Seas.* A systematic survey could help to clarify major issues regarding geographical features, including narrowing down the roughly 140 features in the South China Sea large enough to justify their own Exclusive Economic Zone (EEZ) to a mere dozen or so.<sup>29</sup> Though all parties might not agree on the outcome, such an objective, technical study could provide a good basis for future cooperation among those who do agree. Because islands deserving their own 200-nautical-mile EEZ would create the largest overlapping claims, reducing their number would focus diplomacy on a finite set of geographical features rather than all of them, thereby making it easier for claimant states to cooperate on freedom of navigation and joint development.

*Third, the United States should move decisively forward, by completing Trans-Pacific Partnership (TPP) negotiations this year and expanding the economic and trade dimensions of its rebalancing policy.* Commerce is ultimately the main shared interest in the region, and even when it is competitive, it is less dangerous than military issues. With Japanese Prime Minister Abe's decision to join negotiations for the TPP, the burgeoning trade agreement finally has some wind beneath its sails. If necessary, the United States and the other 11 nations currently negotiating initial rules for the TPP should set aside those few issues that remain too difficult to resolve to ensure that they fulfill their goal of concluding "a next-generation, comprehensive" trade and investment agreement "in the 2013 time frame."<sup>30</sup>

### **3. Strengthen Military Capacity and Confidence**

Military modernization is inevitable in a dynamic and growing region. This is a key reason why Asian militaries outspent the NATO European defense forces in 2012, for the first time in recent history – a trend that is likely to continue.<sup>31</sup> To ensure that regional militaries remain a stabilizing force, the United States should support them in two ways.

*First, the United States should continue to boost the capacity of allies and partners to maintain a minimal credible defense.* This is particularly critical for issues surrounding maritime forces and information sharing. The main aim should not be to threaten neighbors but to help deter the first shot from being fired. But the United States should recognize that some of the most active security developments are occurring within the region, as a number of countries including Japan, South Korea, Australia, India and others are working with individual ASEAN members and each other to enhance their security. The United States still needs to adhere to its commitments and strengthen its presence for the long term, but these dynamics can help regional states that might feel threatened by rising neighbors.



*Second, the United States should work with other countries in the region to prioritize cooperation on humanitarian assistance and disaster relief.* All countries share an interest in being able to address disasters and humanitarian crises. Civil-military cooperation in these areas can not only help alleviate human suffering; it is also an important building block for inclusive regional security and cooperation. The United States could encourage ASEAN members to help establish a regionally-based coordination authority similar to the United Nations Office for the Coordination of Humanitarian Affairs, to be established under the auspices of ASEAN.<sup>32</sup> The body could improve readiness, training and effectiveness for joint responses to future crises.

#### **4. Reverse the Perceptions of Zero-Sum Relations with China**

Many Chinese commentators believe Sino-U.S. relations are increasingly confrontational and zero-sum – that one country can only gain at the expense of the other.<sup>33</sup> This increases the chance that incidents in the East and South China Seas will undermine bilateral relations and thereby reduce the scope for partnership as well. U.S. National

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Security Advisor Tom Donilon suggested a similar concern during a major speech on Asia policy in March 2013. “Every Administration,” Donilon said, “faces the challenge of ensuring that cascading crises do not crowd out the development of long-term strategies to deal with transcendent challenges and opportunities.”<sup>34</sup> The United States can do two things to reverse this perception and establish a bilateral relationship that is mostly cooperative.

*First, the United States should improve military-to-military relations with China, because the most likely cause of any conflict in these seas would be the*

*result of accident or miscalculation.* As Donilon added in his recent speech, “a deeper U.S.-China military-to-military dialogue is central to addressing many of the sources of insecurity and potential competition between us ... and it is a critical deficiency in our current relationship.” He added that, “We need open and reliable channels to address perceptions and tensions about our respective activities in the short-term [*sic*] and about our long-term presence and posture in the Western Pacific.”<sup>35</sup> While there is frustration about past cooperation, including on a maritime military agreement that China has never fully implemented, the rising stakes require a new effort.

The invitation from the United States to China to participate in next year's biennial and multilateral Rim of the Pacific naval exercises is the kind of initiative that may begin to reduce some suspicions and mistrust.

*Second, the United States should once again seek cooperation on other pressing security issues.*<sup>36</sup> Besides searching for rules for cyber space (something both countries say they want), both countries would benefit from closer cooperation in addressing North Korea's growing nuclear and missile programs. North Korea is closing in on the ability to fashion a nuclear intercontinental ballistic missile, and given North Korea's record of proliferating nuclear technology off the peninsula to the Middle East and countries like Iran, the two great powers share a strong interest in tamping down the threats posed by the young, inexperienced and dangerous North Korean leader, Kim Jong-un.

If the United States, China and other countries in the Asia-Pacific region can move forward on any or all of these initiatives, then the slow deterioration of stability in the East and South China Seas may yet be the preamble to future regional cooperation.

### **Sources of Optimism**

There is no single answer to the problems of the East and South China Seas. Yet, there are reasons to be optimistic, especially because most parties believe that war is remote and dispute management necessary. Economically, the seas are at the crossroads of global commerce and an increasingly vital source of both food and energy resources. Politically, cooperation in these seas tests both the peace and prosperity of a rising Asia and the Chinese narrative of its peaceful rise. Strategically, the East and South China Seas are the place where Chinese military modernization is most likely to directly challenge America's long postwar dominance. In other words, the East and South China Seas are central to Asia-Pacific security. The stakes are high and increasing in these seas, and all governments must place a premium on avoiding war, managing disputes, slowly building institutions and advancing joint cooperation.

In the pursuit of peace, all nations – not just the United States – will need both wisdom and deft statecraft to manage these complicated and interwoven challenges. Building new norms and effective institutions take time. While China's future intentions cannot be known, China's embrace of globalization has evolved over time. Today, for instance, it regularly accepts third-party arbitration in World Trade Organization disputes, and there is some hope that in the future it will do so when it comes to maritime disputes as well. Intelligent, rules-based solutions can allow international fair play and give equal protection to the weak and strong alike.

## ENDNOTES

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36. This was a major element of President Barack Obama's first-term Asian policy agenda. See Jeffrey A. Bader, *Obama and China's Rise: An Insider's Account of America's Asia Strategy* (Washington: Brookings Institution Press, 2012).

## About the Center for a New American Security



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