



Center for a
New American
Security

MAY 2014

AGENDA

A Summer Calendar for Advancing U.S. Policy toward the South China Sea

By Ely Ratner

2014

MAY

WHO: Secretary Hagel
WHAT: Propose a multilateral
“common operating picture” for
the South China Sea
WHEN: Shangri-La Dialogue
WHERE: Singapore

JUNE

WHO: President Obama
WHAT: Declare an official consensus
among like-minded states on the
legitimacy of managing maritime
disputes in the South China Sea
through international arbitration
WHEN: G-7 Summit
WHERE: Brussels, Belgium

JULY

WHO: Deputy Secretary Burns
WHAT: Contest Chinese
administration of Scarborough Reef
WHEN: Strategic Security Dialogue
WHERE: Beijing, China

AUGUST

WHO: Secretary Kerry
WHAT: Propose the “early harvest”
of specific components of the
ASEAN-China Code of Conduct for
the South China Sea
WHEN: ASEAN Regional Forum
WHERE: Naypyidaw, Burma

It's time to breathe new life into U.S. policy in the South China Sea. Despite important initiatives by the Obama administration to strengthen bilateral security ties, build partner capacity and enhance multilateral cooperation, the region's territorial and maritime disputes continue to engender dangerous crises. The potential for armed conflict will only grow larger in the absence of creative and decisive U.S. leadership.

The South China Sea sits at the fulcrum of 21st-century politics and economics, providing a critical thruway for natural resources and trade that move between Asia, the Middle East and Africa. The sea itself also harbors rich fishing grounds and potentially large oil and gas reserves.¹ Meanwhile, Southeast Asia is rising as an economic and political force in its own right with emerging powers and a burgeoning regional institutional architecture.

In part because of its growing economic and geopolitical significance, the South China Sea has become one of the most complex and fiercely contested maritime security environments in the world, where six governments – Brunei, China, Malaysia, the Philippines, Taiwan and Vietnam – lay claim to various islands, rocks and their surrounding waters. It goes without saying that conflict there would run counter to substantial U.S. economic and security interests. The South China Sea is one of the most important trade routes in the world, including for the United States. U.S. trade accounts for \$1.2 trillion of the \$5.3 trillion of trade that passes through each year.² Not only would conflict be terribly disruptive from an economic perspective, the region is also home to U.S. allies and security partners who would look to the United States to intervene militarily in the event of war.

And yet crisis after crisis in the South China Sea continues to destabilize the region. The costs for the United States of failing to play an innovative leadership role could be enormous. Against this backdrop, the coming months provide a series of critical opportunities for top-level U.S. officials to evolve and advance U.S. policy. Below is a proposed calendar for launching four new initiatives that are practical, feasible and would support U.S. interests in the region.

MAY**WHO: SECRETARY OF DEFENSE CHUCK HAGEL****WHAT: PROPOSE A MULTILATERAL “COMMON OPERATING PICTURE” FOR THE SOUTH CHINA SEA****WHEN: SHANGRI-LA DIALOGUE****WHERE: SINGAPORE**

The lack of maritime domain awareness (MDA) in the South China Sea is an endemic problem that has strategic and operational consequences. Countries in the region remain insufficiently equipped to monitor their near seas, creating an environment prone to accidents, miscalculation and adventurism.

Although the United States has prioritized building maritime capacity on a bilateral basis in Asia (with the Philippines and Vietnam, for instance), the Obama administration should supplement these efforts by supporting the construction of a multilateral MDA architecture for the South China Sea. This would have multiple strategic effects, all of which comport with stated U.S. interests in the region.

First, greater and more public information about maritime activity in the South China Sea would deter bad behavior and provide countries throughout the region and the international community with a

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more accurate account of who is actually doing what. In diplomacy, pictures really are worth a thousand words, and the utility of being able to share common images with allies and partners would be far more powerful than simply providing statistics, descriptions of behavior or ad hoc intelligence.

Regional stability would benefit from holding China to account if its paramilitary forces continue to block freedom of navigation, harass fisherman and energy companies and operate in the territorial waters of neighboring states. At the same time, a common operating picture – able to highlight the misdeeds of all parties – would underscore the degree to which U.S. policy is aimed at curbing destabilizing behavior, not the activities of any specific country.

Improved situational awareness would further allow countries to better calibrate their responses to particular incidents. The high-stakes standoff at Scarborough Reef between the Philippines and China in 2012 began, at least in part, because Manila

was unaware of China's robust maritime presence near the shoal. Had Philippine reconnaissance assets seen Chinese government ships – not just illegal Chinese fisherman – it may have responded in ways that Beijing found less provocative.

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region, including humanitarian and natural disasters, piracy and trafficking in weapons of mass destruction, narcotics and persons. A multilateral MDA initiative would also advance the kind of critical civilian-military cooperation that was highlighted during the unprecedented meeting Secretary Hagel and USAID Administrator Rajiv Shah held with the Association of Southeast Asian Nations' (ASEAN) defense ministers in Hawaii in April 2014.³

The process of building a multilateral MDA architecture would provide a critical vehicle for countries in Southeast Asia to cooperate more with one another and begin working through difficult issues associated with information sharing and interoperability. The ASEAN Defense Ministers Meeting Plus (ADMM+) mechanism could provide one such vehicle.

Finally, U.S. contributions to a regional common operating picture would create new opportunities to enhance bilateral cooperation with key partners and augment the goal of establishing more geographically-distributed military access and presence arrangements in the region.

RECOMMENDATION

At the Shangri-La Dialogue in Singapore at the end of May, Secretary Hagel should propose in concept the development of a multilateral MDA initiative. In concert, the National Security Council staff should lead an interagency working group to offer recommendations related to cost, operational requirements and intelligence sharing. The administration should also consider potential groupings of allies and partners, including (but not limited to) an ASEAN-centered architecture.

JUNE

WHO: PRESIDENT OBAMA

WHAT: DECLARE AN OFFICIAL CONSENSUS AMONG LIKE-MINDED STATES ON THE LEGITIMACY OF MANAGING MARITIME DISPUTES IN THE SOUTH CHINA SEA THROUGH INTERNATIONAL ARBITRATION

WHEN: G-7 SUMMIT

WHERE: BRUSSELS, BELGIUM

As a foundational principle of the U.S. rebalancing to Asia, the United States is aiming to shape a regional order in which disputes and crises are managed by rules, norms and institutions, rather than coercion and the use of force. U.S. officials have said repeatedly that the United States seeks a “prosperous region

guided by widely accepted rules and standards and a respect for international law.”⁴

In practice, this has meant stronger U.S. engagement with regional institutions and robust support for multilateral mechanisms that can build confidence and trust among governments and militaries, while providing agreed-upon processes to deal with destabilizing events. As a result, the United States has become an active par-

ticipant in the ADMM+ mechanism and continues to support the development of an ASEAN-China Code of Conduct for the South China Sea.

The United States should work with like-minded countries to build support for the arbitration process and highlight its significance as an unambiguous test of the region’s willingness to manage differences through peaceful means.

While these institutions are developing slowly, the region is confronted with a critical and immediate test of its willingness and ability to construct a rules-based order. In January 2013, the Philippines initiated international arbitration proceedings against China under the United Nations Convention on the Law of the Sea.⁵ The Arbitral Tribunal is tasked not with settling complex land disputes, but rather with determining the nature and legality of various maritime claims in the South China Sea.

As part of this effort, the Philippines is contesting China’s expansive nine-dashed line, which extends far from mainland China

and snakes along the borders of Vietnam, Malaysia, Brunei and the Philippines. To date, China has neither clarified the meaning of its nine-dashed line nor justified its claims in accordance with international law.

Without making judgments on the merits of the case itself, the United States should work with like-minded countries to build support for the arbitration process and highlight its significance as an unambiguous test of the region’s willingness to manage differences through peaceful means. To date, only Japan, Malaysia and the United States have expressed public support for the arbitration process.⁶

More should be asked of other key regional and outside countries, including Australia, Indonesia, Singapore, the remaining members of the G-7 (Canada, France, Germany, Italy and the United Kingdom) and the Scandinavian members of the Arctic Council (Denmark, Norway and Sweden). This is a prime opportunity for European nations to make a key contribution to the region in ways that comport

with their comparative strengths in international law and regional institutions. Particularly in the context of ongoing diplomacy over Ukraine, U.S. officials should call upon European leaders to support multilateral mechanisms for the peaceful resolution of disputes.

China has thus far refused to participate in the arbitration process and instead appears intent on delegitimizing the multilateral institutions involved. Should this opportunity slip by without sufficient diplomatic and political attention, it would set a terrible precedent for future disputes and could close off a critical avenue for the peaceful management of competition in Asia. On the other hand, if key states speak out on this issue, sufficient diplomatic pressure could be cause for China to recalibrate its response and do more than simply reject the legitimacy of multilateral arbitration. Sufficient international support would also create diplomatic space for countries in Asia and elsewhere to pursue similar legal mechanisms.

RECOMMENDATION

At the G-7 summit in Brussels in June, President Obama should propose to include language in the summit's joint statement supporting the legitimacy of international arbitration to manage maritime disputes in the South China Sea.

JULY

WHO: DEPUTY SECRETARY OF STATE BILL BURNS

**WHAT: CONTEST CHINESE ADMINISTRATION OF
SCARBOROUGH REEF**

WHEN: U.S.-CHINA STRATEGIC SECURITY DIALOGUE

WHERE: BEIJING, CHINA

Consistent with U.S. policy of supporting a rules-based regional order in Asia, the United States should contest China's illegal administration and continued occupation of Scarborough Reef. In 2012, China employed economic, military and diplomatic coercion against the Philippines to seize the disputed feature in the South China Sea.⁷ U.S. officials have said repeatedly that the United States has national interests in the maintenance of peace and stability, respect for international law, freedom of navigation and unimpeded lawful commerce in the South China Sea. China's behavior at Scarborough Reef has violated all of these principles.

Although the reef itself does not harbor specific economic or strategic significance, it is profoundly important that the United States, the region and the international community not accept the use of force

and coercion as the arbiter of political disputes in Asia. Furthermore, it does not serve U.S. interests to constantly be playing a game of strategic defense, always reacting to Chinese actions of “tailored coercion” that seek to alter incrementally the territorial status quo in East Asia.⁸ A strategy of seizing the strategic initiative in the South China Sea can signal U.S. resolve and help to ensure that China cannot engage in acts of revisionism cost-free.⁹

RECOMMENDATION

Beginning at the U.S.-China Strategic Security Dialogue in August, the United States should make clear in private that it expects China to withdraw its occupation of the disputed feature by the end of 2014 and return to the pre-April 2012 status quo. If necessary, this message can be repeated publicly in ASEAN-centered regional forums later in the year, including the East Asia Summit in Burma in November. The United States military should also consider conducting freedom of navigation operations in areas surrounding the reef to underscore that the United States does not recognize Chinese administration.

AUGUST

WHO: SECRETARY OF STATE JOHN KERRY

WHAT: PROPOSE THE “EARLY HARVEST” OF SPECIFIC COMPONENTS OF THE ASEAN-CHINA CODE OF CONDUCT FOR THE SOUTH CHINA SEA

WHEN: ASEAN REGION FORUM

WHERE: NAYPYIDAW, BURMA

There is little optimism that sovereignty disputes in the South China Sea will be resolved any time soon. Nevertheless, there is a pressing need for preventing and managing crises as the waters and surrounding airspace become increasingly crowded with government and military vessels.

The primary vehicle for developing multilateral maritime security mechanisms has been the ASEAN-China Code of Conduct (COC) for the South China Sea. While urging the region to accelerate negotiations on the COC, Secretary of State Kerry emphasized in Jakarta in February 2014 that “the region’s future stability will depend, in part, on the success and the timeliness of the effort to produce a code of conduct.”¹⁰

Although the United States should sustain its full support for this process, it is also the case that negotiations have dragged on for too long, with China sending mixed signals about its willingness to

enter into serious negotiations toward a binding set of rules.¹¹ Given Beijing's ambiguity toward adhering to rules of conduct, Secretary Kerry was therefore right that, with regards to the COC: "The longer the process takes, the longer tensions will simmer, and the greater the chance of a miscalculation by somebody that could trigger a conflict. That is in nobody's interest."¹²

In this context, the United States should revise its policy on the COC by supporting the "early harvest" of agreed-upon initiatives that could be implemented in the short-term without agreement on the full COC, which may never occur. The United States, in cooperation with allies and partners, can consider leveraging ASEAN and ASEAN-centered institutions to implement these initiatives. Some could also be agreed upon and implemented by a majority of countries if universal consensus cannot be reached.

RECOMMENDATION

Secretary Kerry should propose the idea of an "early harvest" of the COC at the ASEAN Regional Forum in August and, with guidance from the U.S. Mission to ASEAN in Jakarta, propose specific components of the COC discussions that are widely agreed-upon and ripe for immediate implementation.

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ENDNOTES

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2. Bonnie Glaser, "Armed Clash in the South China Sea," *Council on Foreign Relations*, April 2012, <http://www.cfr.org/world/armed-clash-south-china-sea/p27883>.
3. Carl Thayer, "US-ASEAN Defense Ministers Meet in Hawaii," *The Diplomat*, April 11, 2014, <http://thediplomat.com/2014/04/us-asean-defense-ministers-meet-in-hawaii/>.
4. Assistant Secretary Daniel R. Russel, "Maritime Disputes in East Asia," Testimony Before the House Committee on Foreign Affairs Subcommittee on Asia and the Pacific, Washington, February 5, 2014; <http://www.state.gov/p/eap/rls/rm/2014/02/221293.htm>.
5. See Permanent Court of Arbitration, "The Republic of the Philippines v. The People's Republic of China," http://www.pca-cpa.org/showpage.asp?pag_id=1529. In March 2014, the Philippines presented its "Memorial" on the jurisdiction of the Arbitral Tribunal and the merits of the Philippines' claims. See "Statement of Foreign Affairs Secretary Albert del Rosario," March 30, 2014, <http://www.gov.ph/2014/03/30/statement-of-the-secretary-of-foreign-affairs-ph-files-memorial-under-unclos-against-china/>.
6. Upon the occasion of President Obama's visit to Malaysia in April 2014, the official joint statement noted that: "The two leaders underscored the importance of all parties concerned resolving their

territorial and maritime disputes through peaceful means, including international arbitration, as warranted, and in accordance with universally recognized principles of international law, including the United Nations Convention on the Law of the Sea." See "Joint Statement By President Obama And Prime Minister Najib Of Malaysia," April 27, 2014, <http://www.whitehouse.gov/the-press-office/2014/04/27/joint-statement-president-obama-and-prime-minister-najib-malaysia>. Similarly, a Ministry of Foreign Affairs press statement stated that, "The Government of Japan supports the Philippines' use of procedures under the United Nations Convention on the Law of the Sea aiming at peaceful settlement of disputes on the basis of international law, as such an action contributes to the maintenance and enhancement of the international order in the region based on the rule of law." "Statement by the Press Secretary, Ministry of Foreign Affairs of Japan, on an Issue concerning the South China Sea (Arbitral Proceedings by the Philippines under the United Nations Convention on the Law of the Sea)," March 31, 2014, http://www.mofa.go.jp/press/release/press4e_000257.html.

7. Ely Ratner, "Learning the Lessons of Scarborough Reef," *The National Interest*, November 21, 2013, <http://nationalinterest.org/commentary/learning-the-lessons-scarborough-reef-9442>.

8. Patrick Cronin, et. al., "Tailored Coercion: Competition and Risk in Maritime Asia," Center for a New American Security, March 2014, http://www.cnas.org/sites/default/files/publications-pdf/CNAS_TailoredCoercion_report.pdf.

9. Elbridge Colby and Ely Ratner, "Roiling the Waters," *Foreign Policy*, January/February 2014, http://www.foreignpolicy.com/articles/2014/01/21/roiling_the_waters.

10. Secretary of State John Kerry, "Remarks With Indonesian Foreign Minister Raden Mohammad Marty Muliana Natalegawa," Jakarta, Indonesia, February 17, 2014, <http://www.state.gov/secretary/remarks/2014/02/221711.htm>.

11. This ambiguity was recently on display when China first agreed in April 2014 to a code of conduct on sea encounters under the Western Pacific Naval Symposium, only to have a senior PLA Navy official say the next day that the measures in the agreement are "recommended, not legally binding." See Jeremy Page, "China Won't Necessarily Observe New Conduct Code for Navies Code Approved This Week by 21 Naval Powers," *The Wall Street Journal*, April 23, 2014, <http://online.wsj.com/news/articles/SB10001424052702304788404579519303809875852?mg=reno64-wsj>; and Austin Ramzy and Chris Buckley, "Pacific Rim Deal Could Reduce Chances of Conflict in Contested Seas," *The New York Times*, April 23, 2014, http://www.nytimes.com/2014/04/24/world/asia/deal-could-reduce-chance-of-conflict-in-contested-pacific-seas.html?smid=tw-share&_r=0.

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