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CHECKING CHINA'S MARITIME PUSH

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Thank you very much Mr. Chairman.

Since roughly 2007–2008, the People’s Republic of China has clearly taken a more active, assertive stance toward its longstanding territorial claims in the South China Sea (SCS) and East China Sea (ECS), both bordering its long maritime coast. Such activities have included, among others:

- Strong statements criticizing the actions and claims of other disputants, especially Japan (in the East China Sea) and Vietnam and the Philippines (in the South China Sea)
- The establishment of new administrative authorities charged with managing various aspects of the claimed land and sea features
- The increased use of military and especially para-military air and naval assets to challenge the activities of other claimants in disputed areas, and sometimes even in what are generally regarded as “open ocean” areas or within the exclusive economic zones of other nations
- The establishment of an air defense identification zone over the East China Sea that includes disputed territories with Japan
- The creation of artificial islands in the Spratly Islands and the deployment of air defense weapons systems and the construction of dual-use civilian-military facilities on those islands

While not taking any formal position in support of any claimant’s sovereignty position, Washington has clearly focused the vast majority of its concern, and its actions since roughly 2010, on Beijing. This has led many in China to conclude that the United States is actively supporting the other disputants while attempting to undermine China’s position and influence in the disputed areas.

The obvious danger presented by this situation is that increasing numbers of U.S. and Chinese air and naval assets operating in close proximity to one another, or perceived provocations of various sorts including further military deployments onto islands or rocks or possible clashes between China and other disputants, could produce escalating crises. These might draw the United States into direct confrontation with Beijing, as the latter acts excessively to strengthen its position and thereby deter or counter perceived provocations (perhaps out of an exaggerated sense of its growing power) and the former overreacts to such a perceived challenge in an effort to reaffirm its predominant position and maintain its credibility as a security guarantor.

This danger is reinforced by the absence of any serious dialogue among the claimants and between the United States and China regarding limits on the level and type of militarization occurring in disputed maritime areas, and the failure of China—and to a lesser extent other disputants—to clarify their specific claims regarding various waters, particularly in the South China Sea. Contrary to widespread claims in the media, Beijing has yet to define exactly what the so-called Nine-Dashed-Line denotes regarding the waters within it.

The resulting uncertainties stimulate worst casing about motives and behavior, thus leading to further escalation. And of course the fact that sovereignty issues are generally zero-sum in nature and elicit strong nationalist emotions further adds to the dangers.

Managing this complex and potentially volatile issue requires a clear understanding of the stakes involved for all sides (both now and in the future), the likely foundations of long-term stability, and the probable resources available to the United States to manage this issue.

Maritime Motives and Stakes

China's ultimate motives in expanding its influence and presence in nearby disputed maritime areas are not entirely clear, despite what some observers argue is a clear effort to "control" these areas and push the United States out of East Asia.

In truth, the historical dynamic at work in the disputed maritime areas has long involved an interactive tit-for-tat rivalry among the claimants, made possible by the absence of any clear and commonly accepted code of conduct (beyond the voluntary, nonbinding, and vague 2002 Declaration on the Conduct of Parties in the South China Sea signed between China and ASEAN) and driven by deep-seated suspicions and strongly felt nationalist impulses on all sides.

In the South China Sea competition (which focuses mainly on the southern Spratly Islands since China has firmly held the northern Paracel Islands for many years), Beijing is by far the biggest player. There, it is seeking to use its growing capabilities to more effectively defend and advance what it regards as its indisputable claims to the land features and undefined adjoining waters of the area, as well as certain also undefined historical rights. Other claimants are doing virtually the same thing, except their capabilities and claims are not as extensive, their actions not as effective, and hence their activities do not generate as much attention. In general, they are hopelessly outmatched by Beijing in this competition.

In recent years, however, Beijing has certainly gone beyond a proportional tit-for-tat interaction to apparent attempts to establish itself as the dominant claimant in the Spratly Islands, arguably to deter future perceived provocations by others and to establish a strong position in future negotiations. This impulse is driven even further by the fact that Beijing has historically held a very weak position in that area compared with Vietnam, the other claimant to virtually all the land features within the South China Sea.

In the case of the East China Sea dispute with Japan, Beijing has also departed from its past basic tit-for-tat stance in an attempt to establish itself in recent years as an equal claimant to Tokyo over the Senkaku/Diaoyu Islands, thereby supposedly correcting years of Japanese dominance.

Regardless of its motives, China's more recent, escalatory behavior has contributed significantly to the buildup in tensions in the disputed maritime areas. At the same time, when measured against the metric of a supposed direct challenge to the U.S. position in Asia, Beijing's actions appear at least somewhat cautious. It generally avoids the use of warships to assert its claims, has given assurances that it does not intend to militarize the Spratly Islands beyond the placement of what it calls "defensive capabilities," and has certainly not attempted to seize land features long held by other claimants to assure its control of the area.

Moreover, Beijing continues to insist that it is dedicated to a peaceful, negotiated solution of the disputes and supports the peaceful objectives of the 2002 declaration. Most recently, it has supported reaching a basic framework for a more detailed Code of Conduct by mid-2017. In general, one can say that it is attempting to increase its influence in both seas without greatly increasing the chance of armed conflict with the United States or other claimants.

This could change, of course, as China's power and presence in the area increase. Those in and out of the U.S. Government who call for a zero-sum confrontation with Beijing over the maritime disputes assert that it certainly will, allegedly because China's caution thus far conceals its "real" expansionist and aggressive motives.

This is pure speculation, but of a dangerous sort, since if accepted as a basis for U.S. policy it would basically lock in a zero-sum interpretation of every assertive Chinese action, thereby justifying an equally zero-sum U.S. move in response. And of course, such actions would indeed cause Beijing to eventually adopt precisely the threatening motives that some observers insist (in my view incorrectly) are already present.

Relative Capabilities

Beyond basing itself on a purely speculative and dangerous set of assumptions about Chinese motives, a zero-sum, confrontational argument calling for a doubling down of U.S. capabilities in the Western Pacific also employs another highly dubious (at best) set of assumptions regarding American and Chinese defense spending relevant to Asia.

Barring an unlikely near-total collapse of the Chinese economy and/or a major surge in the overall U.S. GDP, Washington will not possess the capacity to greatly exceed the kind of military and economic capabilities that China will be able to bring to bear in its nearby maritime areas over the coming years.

In fact, projections by myself and other scholars at the Carnegie Endowment for International Peace, along with other reputable sources, predict a much more likely movement toward parity between U.S. and Chinese capabilities in that region, in other words, a de facto strategic equilibrium or balance of power.¹

Of course, the United States could devote a much larger share of its available economic resources to defense spending, and to spending in Asia in particular, in an attempt to remain clearly dominant militarily in the Western Pacific near China. However, that would likely require either considerable belt-tightening elsewhere, especially in vital social welfare or entitlement areas, or a huge expansion in the government deficit. Neither of these is politically feasible at present or for the foreseeable future, absent a truly major increase in public perceptions of the threat posed by China.

Disputes over rocks and islands in the far reaches of Asia are unlikely to motivate such a level of alarm, unless a crisis in that region escalates to a genuine Sino-U.S. military clash of serious proportions. While certainly possible, such a hypothetical crisis should not be assumed and likely could not a priori alter threat perceptions.

The Most Feasible and Viable Way Forward

The complexity of the maritime disputes in the East and South China Seas, involving a) economic resources; b) differing interpretations of applicable international law and historical rights; c)

¹ For details, see Michael D. Swaine with Wenyan Deng and Aube Rey Lescure, *Creating a Stable Asia: An Agenda for a U.S.-China Balance of Power*, Carnegie Endowment for International Peace, Washington D.C., 2016.

overlapping jurisdictional claims based on continental shelves, exclusive economic zones, and other relevant legal zones; and d) domestic political factors rooted in strong nationalist sentiments, together suggest that any resolution, if at all possible, will take many years, and perhaps decades, to achieve.

In the meantime, a stable, enduring *modus vivendi* among all relevant parties is needed, centered on mutual restraint in asserting local sovereign or special rights as well as an effective, peaceful process for handling incidents.

Such an understanding ideally should consist of several elements. The first is an initial shift away from military and para-military competition and maneuvering toward an emphasis on diplomacy, primarily via an initial set of interim (short- to medium-term) understandings among the claimants and between Beijing and Washington regarding levels and types of militarization and the non-use of force. This must be based on clear, agreed-upon definitions of acceptable and unacceptable military behavior and clear, specific proscriptions on the unprovoked display and use of force.

As a part of this negotiation process, some level of mutually acceptable long-term equilibrium in the military capabilities of the claimants within the Spratly archipelago in particular must be achieved, as a stable ceiling against future militarization. This might involve permission for claimants other than China (such as Vietnam) to upgrade or expand their facilities on land features in the Spratly Islands to bring them up to a par with those that Beijing has constructed.

Without such an understanding, any transition toward diplomatic efforts on claims, jurisdictions, resource development, and an eventual long-term code of conduct for both the East China and South China Seas will remain virtually impossible, as all sides continue to maneuver militarily to deter one another.

The United States and China must take the lead in this effort, based on a common recognition of the need to remove the maritime issue as a driver of their deepening strategic contention. That said, a Chinese acceptance of such limits would doubtless prove conditional, based on the eventual acceptance by the other claimants.

Such agreements will require overcoming domestic military and paramilitary resistance to any restraints on military activities in disputed areas, including limits on the frequency of Freedom of Navigation (FON) operations by the U.S. Navy. They will also require overcoming the argument that any agreement to eschew an unprovoked use of force would undermine the sovereignty claims of China and the other claimants.

Second, a staged diplomatic process is necessary for clarifying the precise content and legal or other rationale of the many claims involved, that is, the jurisdictional disputes involving both sovereignty issues and non-sovereignty (but privileged) rights over resource extraction, such as fishing. Washington should do more to facilitate this effort.

This could proceed on a bilateral or multilateral basis but should gradually expand to eventually include all extant claims across the East China and South China Seas. During this process, Beijing would need to clarify the meaning of the nine-dash line, and all claimants would specify their claims to land or underwater features and corresponding waters as they relate to relevant legal (that is, based on the United Nations Convention on the Law of the Sea) definitions, as well as so-called historical

rights. When the status of specific features (as islands, rocks, reefs, and so on) is clearly in dispute, the parties concerned must negotiate a compromise or petition for a ruling from the International Tribunal for the Law of the Sea (ITLOS) under UNCLOS.

Third, on the basis of such clarification of claims and jurisdiction, all parties must reach an agreement on those areas subject to joint resource development and a procedure for implementing such development. Although often called for, joint development cannot actually occur unless all disputants clarify those areas that are subject to such development, and this cannot occur until the specific areas of overlapping claims are identified and agreed upon.

In principle, joint development of disputed maritime areas is already accepted by most if not all disputants as a valid interim means of exploiting resources before any resolution of claims, although some compromise and agreement on the division of proceeds is required. Hence an agreement on such development, once the areas of overlapping claims have been identified, should not prove excessively difficult to achieve.

Fourth, on the basis of the previous actions, the claimants must eventually negotiate elements of a binding code of conduct for limiting levels of militarization and handling future incidents over the long term. This code must build on: a) previously agreed-upon, clear definitions of prohibited activities of all kinds, military and nonmilitary alike (the existing 2002 Declaration on the Conduct of Parties in the South China Sea is extremely vague on this point); b) a process for identifying and interpreting such activities; and c) a means of punishing violations.

Some observers might argue that the formulation of a binding code of conduct should precede these steps, as a necessary precondition. However, it is almost certainly the case that the willingness of highly assertive states locked in contentious sovereignty disputes to agree confidently to a binding code will require a prior increased level of trust, a reduced propensity for military competition, and a clear understanding of the nature and extent of competing claims that can only result from the above steps.

Obviously, many obstacles would confront any efforts to greatly reduce disputes over maritime territorial claims as a source of Sino-U.S. tension or conflict, including distrust among virtually all the parties concerned, nationalist domestic pressures, and deeply entrenched bureaucratic interests. And American leverage is extremely limited by its failure to ratify UNCLOS. How can Washington seriously press China and others to abide by UNCLOS rulings and establish a Code of Conduct when it refuses to subject itself to such scrutiny? In addition, more extensive confidence-building measures (CBMs) and crisis management mechanisms (CMMs) are also likely to constitute necessary preconditions, to reduce distrust and strengthen confidence in the enforceability of a legally binding code of conduct.

On the U.S. side, political leaders will also need to reassure Manila and especially Tokyo that any agreement Washington makes with Beijing to limit the content or scope of its military activities in disputed areas will not place those countries at a disadvantage either militarily or with regard to sovereignty claims.

U.S. leaders will also need to clarify what constitutes unacceptable coercion or intimidation. Not all forms of Chinese assertiveness would necessarily threaten the U.S. interest in a stable and peaceful

environment. Similarly, on the Chinese side, limits on the use or display of force and clarifications of existing claims will require, on both sides, a determined and strong leadership able to manage backlashes by nationalists and the military and a clear sense of what constitutes unacceptable coercion.

In sum, the only effective way to create a more stable environment in the maritime areas near China is for the United States to lead a serious diplomatic dialogue with Beijing and other claimants aimed at establishing mutually acceptable restraints, accompanied by strong U.S. and allied deterrence signals, ideally as part of a larger effort to create a regional balance of power. Such deterrence signals should involve clear indications of the adverse consequences for China (and for regional stability) that would result from a failure to reach an agreement. A unilateral, near-term doubling down on military deployments, a drastic increase in defense assistance to those powers opposing China, or a drawing of high stakes “lines in the sand” directed at Beijing on their own will not achieve this objective and could make the situation much worse.