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Thank you Co-Chairs Commissioners Carolyn Bartholomew and Daniel Slane, members of the Commission, and staff. I am grateful for the opportunity to testify today and for all the work you do to increase understanding of China.

### **China's Strategy toward the South China**

- What is China's strategy regarding the South China Sea maritime and territorial disputes? What are China's near-term and long-term objectives? What tactics does China employ to advance its interests in the South China Sea? How does China assess the progress it is making?

From Beijing's perspective, China has "indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof."<sup>1</sup> Beyond that statement, China has deliberately remained ambiguous about the extent of its claim in the South China Sea. Although China submitted its nine-dashed line map in a Note Verbale to the UN Secretary General in May 2009, it has never clarified the nature of its claim associated with that map.

China views the status quo in the South China Sea as unacceptable and is seeking to create circumstances more favorable to Chinese interests. The development of more advanced capabilities in recent years has enabled the Chinese to exert greater control over the disputed water and airspace in the South China Sea.

China sees itself as a relative latecomer in the scramble to assert sovereignty over land features in the South China Sea. In 1974, China seized the Crescent Group in the western Paracel Islands from Vietnam in a bloody naval firefight. Beijing had no foothold in the Spratly Archipelago until it snatched Johnson South Reef in another naval skirmish with Vietnam in 1988. Later China occupied another seven submerged or partially submerged features in the Spratlys. By comparison, Vietnam occupies approximately 26 land features; the Philippines has eight features

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<sup>1</sup> Permanent Mission of the People's Republic of China, Notes Verbales CML/17/2009 and CML/18/2009, May 7, 2009, available from the UN Division for Ocean Affairs and the Law of the Sea (DOALOS) at: [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf) and [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/vnm37\\_09/chn\\_2009re\\_vnm.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf). See also Chinese Ministry of Foreign Affairs: Position Paper on the Matter of Jurisdiction in the South China Sea Arbitration, December 7, 2014, <http://www.cfr.org/territorial-disputes/chinese-ministry-foreign-affairs-position-paper-matter-jurisdiction-south-china-sea-arbitration/p33978>.

under its control; Malaysia occupies another three; and Taiwan occupies one. Every claimant other than China, with the exception of Brunei and Malaysia, has at least one naturally formed island under its control. Most of the other claimants also have extracted hydrocarbons in the Spratlys.

Chinese officials say that the government has been under pressure to defend the nation's sovereignty and territorial integrity, including in the South China Sea. The People's Liberation Army, the security and intelligence apparatus, maritime agencies, state-owned energy companies and the general public support a vigorous defense of Chinese interests, especially territorial integrity and sovereignty. Deng Xiaoping's policy of "shelving sovereignty and pursuing joint development" has apparently been judged a failure in recent years.<sup>2</sup> Chinese analysts maintain that other claimants took advantage of Deng's moderate approach and China's restraint to pursue unilateral development of energy resources.

Possibly in response to this pressure, but more likely reflecting his personal proclivities, Chinese President Xi Jinping has adopted an unbending stance on sovereignty issues. In January 2013, just two months after becoming secretary general of the Chinese Communist party, Xi told members of the Politburo Standing Committee that China would never sacrifice its legitimate rights or basic interests . . . . No foreign country should expect us to make a deal on our core interests and hope we will swallow the bitter pill that will damage our sovereignty, security and development interests."<sup>3</sup> At key meetings since then, Xi has reiterated this position, including at the Foreign Affairs Work Conference held in November 2014.<sup>4</sup>

Beijing's strategy to change the status quo in its favor does not rely on the use of force. Instead, China is engaged in "salami-slicing"—using small, incremental actions, none of which by itself is a *casus belli*.<sup>5</sup> These include coercive actions against foreign ships, interference with energy exploration, disrupting foreign supply operations, unilateral energy exploration in disputed waters, warnings to foreign aircraft, and subsidizing Chinese fishing boats to fish in disputed waters. For example, in the energy realm, Chinese law enforcement vessels have obstructed seismic surveys in the 200 nm Exclusive Economic Zones (EEZ) of Vietnam and the Philippines. Beijing also imposes pressure on international oil firms that have signed oil exploration deals with other claimant countries in the South China Sea. Both ExxonMobil and IndianOil, India's state owned oil company, have been threatened to abandon deals with Vietnam or face consequences against its businesses in China.<sup>6</sup>

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<sup>2</sup> Comment by senior Chinese official at a closed-door meeting in Boao, China, April 2015.

<sup>3</sup> "No Compromises over China's sovereignty: Xi," Xinhua, January 30, 2013, <http://english.sina.com/china/2013/0129/555233.html>.

<sup>4</sup> "Xi eyes more enabling international environment for China's peaceful development," Xinhua, November 30, 2012, [http://news.xinhuanet.com/english/china/2014-11/30/c\\_133822694.htm](http://news.xinhuanet.com/english/china/2014-11/30/c_133822694.htm).

<sup>5</sup> Bonnie Glaser, "Statement before the U.S. House Armed Services Subcommittee on Seapower and Projection Forces and the House Foreign Affairs Subcommittee on the Asia Pacific," Hearing on People's Republic of China Maritime Disputes, January 14, 2014, [http://csis.org/files/attachments/ts140114\\_glaser.pdf](http://csis.org/files/attachments/ts140114_glaser.pdf).

<sup>6</sup> Greg Torode, "Beijing pressure intense in South China Sea row," *South China Morning Post*, September 23, 2011, <http://www.scmp.com/article/979876/beijing-pressure-intense-south-china-sea-row>.

Chinese vessels patrol the waters adjacent to the Paracel Islands, driving away Vietnamese fishing boats. Law-enforcement ships use coercive tactics to enforce a unilaterally imposed annual ban on commercial fishing in certain areas of the South China Sea, including aggressive maneuvering, use of water cannons and floodlights, and ramming. Foreign fishermen who violate the ban can be charged with punishments such as fines, license revocations, confiscations, and possible criminal charges.<sup>7</sup> In the waters around Scarborough Shoal, Chinese white-hulled ships ram Philippines fishing vessels when they refuse to leave the area.<sup>8</sup>

The Chinese government also encourages Chinese fishermen to fish in disputed areas far from China's shores.<sup>9</sup> The government pays for fuel and provides subsidized Beidou satellite navigation systems that link a fishing vessel's location to the Chinese coast guard in case of run-ins with Philippine or Vietnamese ships. Chinese media reported that at the end of 2013, more than 50,000 Chinese fishing vessels had installed the navigation equipment.<sup>10</sup> Fishing boats are also tasked to help defend Chinese sovereignty. When the Chinese Haiyang Shiyou-981 oil rig was placed in disputed waters off the coast of the Paracels and inside Vietnam's EEZ in May 2014, Chinese fishing boats played a role in protecting the oil rig and ramming Vietnamese fishing boats.

In recent months, China has started applying coercion in portions of the airspace in the South China Sea. In an especially dangerous move, a Chinese warship stationed near Subi Reef, a formerly submerged feature that is now a reclaimed island, aimed a powerful light at a Philippines military plane on maritime patrol at the end of April.<sup>11</sup>

Since March 2014, China has conducted land reclamation on seven reefs in the Spratly Archipelago, adding a total of 2,000 acres.<sup>12</sup> These ongoing dredging and construction activities prospectively serve purposes beyond consolidating Chinese presence on land features. China has emphasized that the artificial islands will improve the working and living conditions of people stationed on them as well as enable China to provide more effective maritime search and rescue, disaster prevention and mitigation, marine scientific research, weather observation, environmental protection, navigational safety, fishery production services, and other such public goods, while also acknowledging that they will satisfy "the need of necessary military

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<sup>7</sup> "Fishing Ban starts in the South China Sea," Xinhua, May 17, 2012, [http://news.xinhuanet.com/english/china/2012-05/17/c\\_131592412.htm](http://news.xinhuanet.com/english/china/2012-05/17/c_131592412.htm).

<sup>8</sup> Cecelia Yap, "Philippines Says China Rammed boats in South China Sea, Bloomberg, February 4, 2015, <http://www.bloomberg.com/news/articles/2015-02-04/philippines-issues-protest-over-china-ramming-illegal-fishing>.

<sup>9</sup> Harry Kazianis, "China's 50,000 Secret Weapons in the South China Sea," *The National Interest*, July 30, 2014, <http://nationalinterest.org/feature/china%E2%80%99s-50000-secret-weapons-the-south-china-sea-10973>.

<sup>10</sup> John Ruwitch, "Satellites and seafood: China keeps fishing fleet connected in disputed waters," Reuters, July 27, 2014, <http://www.reuters.com/article/2014/07/28/us-southchinasea-china-fishing-insight-idUSKBN0FW0QP20140728>.

<sup>11</sup> Franz Kendrick, "Chinese Aims a 'Powerful Light' at PHL Military Plane in Disputed Sea," *Philippine News*, April 24, 2015, <http://philnews.ph/2015/04/24/chinese-aims-a-powerful-light-at-phl-military-plane-in-disputed-sea/>.

<sup>12</sup> Lolita C. Baldor, "US Official: China Island Building Now Totals 2,000 Acres, AP, May 8, 2015, [http://hosted.ap.org/dynamic/stories/U/US\\_UNITED\\_STATES\\_CHINA\\_MILITARY?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2015-05-08-16-58-36](http://hosted.ap.org/dynamic/stories/U/US_UNITED_STATES_CHINA_MILITARY?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2015-05-08-16-58-36).

defense..”<sup>13</sup> Observers believe that the artificial islands will serve as forward operating bases for Chinese commercial interests, such as fisheries and hydrocarbons, as well as for various Chinese maritime law enforcement agencies. They will also likely be used for military purposes, including as bases for intelligence, surveillance, and reconnaissance activities, as well as ports for Chinese submarines and navy surface vessels. As a bastion for Chinese submarines, the South China Sea could be used to counter enemy antisubmarine operations and enhance China’s anti-access/area-denial capabilities.<sup>14</sup>

Within the next few years, China is likely to establish an Air Defense Identification Zone (ADIZ) in the South China Sea. An ADIZ would obligate aircraft flying through the zone to accommodate Chinese-imposed rules, including the identification of flight plans, the presence of any transponders, and two-way radio communication with Chinese authorities.<sup>15</sup> After China announced an ADIZ in the East China Sea in November 2013, senior PLA officers privately indicated that plans have long been in place to set up such zones in all of China’s near seas, which include the East China Sea, the South China Sea, and Yellow Sea. Chinese officials have subsequently said that the security situation in the South China Sea does not warrant the establishment of an ADIZ, although China retains the right to impose an ADIZ in its sovereign territory if and when it chooses.<sup>16</sup> To have the ability to enforce an ADIZ, China needs several airstrips. It currently has one two-kilometer-long airstrip on Woody Island in the Paracels, which has recently been upgraded. A 3,000 meter long airstrip is under construction on Fiery Cross Reef, a reclaimed island in the Spratlys. Satellite images suggest that another airstrip may be built on Subi Reef.<sup>17</sup>

China has recently taken the step of advancing what amounts to a legal defense for its South China Sea claim. In December 2014, China published a position paper defending its claim even though it did not agree to take the case to an international arbitration panel as requested by the Philippines.<sup>18</sup> Though the position paper rejects the formal arbitration procedure, it serves to temper the perception of China as a bully in the region. China has also created a body of domestic legislation protecting its vast maritime claims. In June 2011, Beijing declared a new South China Sea prefecture with its own government structure based on Woody Island in the Paracels.

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<sup>13</sup> Foreign Ministry Spokesperson Hua Chunying’s Regular Press Conference on April 9, 2015, Ministry of Foreign Affairs of the People’s Republic of China, [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/t1253488.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1253488.shtml).

<sup>14</sup> Tetsuo Kotani, “Why China Wants South China Sea,” *The Diplomat*, July 18, 2011, <http://thediplomat.com/2011/07/why-china-wants-the-south-china-sea/>.

<sup>15</sup> J. Berkshire Mileer, “China takes steps to control South China sea,” AlJazeera, April 23, 2015, <http://america.aljazeera.com/opinions/2015/4/china-takes-steps-to-control-south-china-sea.html>.

<sup>16</sup> “China dismisses ADIZ reports, optimistic about South China Sea Situation,” Xinhua, February 2, 2014, [http://news.xinhuanet.com/english/china/2014-02/02/c\\_126085456.htm](http://news.xinhuanet.com/english/china/2014-02/02/c_126085456.htm).

<sup>17</sup> Victor Robert Lee, “South China Sea: China’s Unprecedented Spratlys Building Program,” *The Diplomat*, April 25, 2015, <http://thediplomat.com/2015/04/south-china-sea-chinas-unprecedented-spratlys-building-program/>.

<sup>18</sup> “Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines,” Ministry of Foreign Affairs of the People’s Republic of China, December 7, 2014, [http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1217147.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1217147.shtml).

Diplomatically, China has tried to impose its “dual-track approach” to the South China Sea on both claimants and non-claimants. This policy, formulated in August 2014, advocates that territorial and maritime disputes be addressed by countries directly concerned through friendly consultations and negotiations in a peaceful way, while peace and stability in the South China Sea be jointly maintained by China and ASEAN countries.<sup>19</sup> Beijing continues to favor managing the South China Sea disputes bilaterally, where it has substantial leverage over smaller claimants, most of which are highly dependent on China economically. Chinese officials work tirelessly to keep the territorial disputes off the agendas of multilateral organizations such as ASEAN, the ASEAN Regional Forum, and the East Asia Summit, although they are having less success as China’s activities in the South China Sea become more worrisome to its neighbors.

China’s ultimate strategic objective in the South China Sea is a matter of speculation. However, it increasingly seems likely that Beijing seeks to eventually assert sovereignty and control over as much of the South China Sea as possible. By exercising control over the waters and air space of the South China Sea, China will be better positioned to defend its sea lines of communication and raise the costs to foreign navies, especially the United States, of operating in a semi-enclosed sea.<sup>20</sup>

Although China has a long way to go to consolidate its sovereignty claim and exert control over the South China Sea, it is nevertheless pleased with the progress it has made so far. Relying on white-hulled vessels to advance Chinese interests has created an advantageous space for China to advance its maritime interests. The seizure of Scarborough Shoal after a prolonged stand-off with the Philippines in 2012 was deemed a major victory that has since been applied to the disputed Senkaku/Diaoyu Islands in the East China Sea and Second Thomas Shoal in the Spratlys where a contingent of Philippines Marines stand watch on a rusted-out ship that was beached there in 1999. Thus far, China has incurred only a limited cost for its extensive land reclamation and construction activities.

A crucial tool in China’s strategy to force fellow claimants to accept the reality of Chinese control is the use of economic inducements. With the introduction of the Asian Infrastructure Investment Bank, One Belt, One Road project, and its Maritime Silk Road Fund, Beijing is building a framework for deep economic cooperation with countries on its periphery. China expects these neighbors over time to accommodate Chinese interests, including on territorial disputes, in return for providing those economic benefits.

### **Southeast Asia’s Response to China’s Actions in the South China Sea**

- How are Southeast Asian countries responding to China’s actions in the South China Sea? What are the opportunities and limits in addressing the disputes in the South China Sea through ASEAN? What is the potential for reaching a Code of Conduct?

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<sup>19</sup> “China supports ‘dual-track’ approach to resolve South China Sea issue: Chinese FM,” Xinhua, August 10, 2014, [http://news.xinhuanet.com/english/china/2014-08/10/c\\_133544827.htm](http://news.xinhuanet.com/english/china/2014-08/10/c_133544827.htm).

<sup>20</sup> Carl A. Thayer, “South China Sea: Assessing China’s Land Reclamation Activities,” Chennai Centre for China Studies, March 16, 2015, <http://www.c3sindia.org/china/4880>.

## ASEAN

ASEAN is an organization composed of ten countries with divergent cultures, political systems and strategic priorities. Decision making is based on consensus, which means the lowest common denominator prevails. How to manage disputes over maritime sovereignty in the South China Sea has been one of the most divisive issues facing ASEAN in recent years. Only four members of ASEAN—Vietnam, the Philippines, Malaysia, and Brunei—are claimants in the South China Sea, and of those, only the Philippines has adopted a directly confrontational approach to China. ASEAN as a grouping remains reluctant to antagonize China. Nevertheless, anxiety about rising tensions in the South China Sea and the role played by China in precipitating tensions has increased significantly among virtually all its members, prompting ASEAN to speak out more forcefully on the issue.

One week after China's May 2, 2014 deployment of the massive state-owned oil rig HD-981 off the coast of the Paracel Islands and inside Vietnam's EEZ, ASEAN Foreign Ministers issued a stand-alone statement expressing "their serious concerns over the on-going developments in the South China Sea, which increased tensions in the area." The statement urged the parties concerned to act in accord with international law, including the United Nations Convention on the Law of the sea, to exercise self-restraint, avoid actions that could undermine peace and stability, and to resolve disputes by peaceful means without resorting to the threat or use of force.<sup>21</sup> The joint statement released following the ASEAN summit in Malaysia in April 2015 voiced concerns about land reclamation activities that members agreed have "eroded trust and confidence and may undermine peace, security and stability in the South China Sea."<sup>22</sup> To address the matter, ASEAN leaders called for more dialogue.

ASEAN's role in managing the ongoing disputes in the South China Sea will remain important, but limited. Destabilizing behavior by China will likely be met with tougher ASEAN rhetoric, but little more. Collective action beyond the adoption of harsher language is improbable. ASEAN will unquestionably continue to press Beijing to negotiate a Code of Conduct (CoC), which its members and China agreed to in the 2002 Declaration of Conduct of Parties on the South China Sea (DoC). Although China began to discuss a CoC with ASEAN in July 2013, virtually no progress toward an agreement has been made. A draft Code circulated by Indonesia that reportedly called for an end to military exercises in disputed waters, reaffirmed freedom of navigation, and set out rules to prevent accidents at sea has not gained traction.<sup>23</sup>

Chinese dissatisfaction with the status quo in the South China Sea makes it unlikely that Beijing will support finalizing a CoC in the near term. It is possible that upon completion of its land reclamation activities and after its military outposts are operational, China may opt to conclude a CoC from a more advantageous position. However, China might still resist agreeing to make the CoC legally binding or to include a dispute settlement mechanism. If a CoC is not legally binding

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<sup>21</sup> ASEAN Foreign Ministers' Statement on the Current Developments in the South China Sea, May 10, 2014, <http://www.asean.org/news/asean-statement-communicues/item/asean-foreign-ministers-statement-on-the-current-developments-in-the-south-china-sea>.

<sup>22</sup> Chairman's Statement of the 26<sup>th</sup> ASEAN Summit, April 27, 2015, [http://www.asean.org/news/asean-statement-communicues/item/chairman-s-statement-of-the-26th-asean-summit?category\\_id=26](http://www.asean.org/news/asean-statement-communicues/item/chairman-s-statement-of-the-26th-asean-summit?category_id=26).

<sup>23</sup> Shannon Tiezzi, "Why China Isn't Interested in a South China Sea Code of Conduct," *The Diplomat*, February 26, 2014, <http://thediplomat.com/2014/02/why-china-isnt-interested-in-a-south-china-sea-code-of-conduct/>.

and has no agreed-upon mechanism to resolve disputes as they arise, it is likely to be no more effective in preserving peace and stability in the South China Sea than the voluntary DoC has been.

### *Malaysia*

Malaysia's concerns about China's behavior in the South China Sea have surged in the past few years, but its leader, Prime Minister Najib Razak, remains determined to not allow the territorial dispute to dominate Sino-Malaysian ties. In March 2013 and January 2014, Chinese ships conducted naval exercises around James Shoal, a submerged reef that lies inside Malaysia's 200 nautical mile EEZ and 1,800 km. from Mainland China. After the second provocation, Malaysia quietly launched a dialogue with the Philippines and Vietnam to coordinate policy toward China.<sup>24</sup>

Malaysia openly rejects China's expansive nine-dashed line claim. In May 2009, Malaysia made a joint submission to the UN with Vietnam which claimed a continental shelf in the southern part of the South China Sea. A joint statement signed during President Obama's visit to Malaysia in April 2014 contained a lengthy paragraph on the South China Sea that affirmed the importance of safeguarding maritime security, ensuring freedom of navigation and overflight throughout the region, avoiding the use of force, intimidation or coercion, and exercising self-restraint in the conduct of activities. It also emphasized the importance of resolving territorial and maritime dispute in accordance with UNCLOS.<sup>25</sup>

As holder of the rotational chair of ASEAN this year, Malaysia has tried to strike a difficult balance: allowing constructive and positive discussion of the South China Sea among ASEAN members and pushing for progress on a CoC, while avoiding a confrontation with China. At a press conference following the April ASEAN leaders' meeting, Najib struck a moderate tone, saying that ASEAN will "continue to engage China in a constructive way," . . . . We hope to be able to influence China."<sup>26</sup>

China's encroachments on Malaysia's waters was likely a factor in Kuala Lumpur's decision to upgrade bilateral relations with the U.S. to the level of "comprehensive partnership," including strengthening military ties. Malaysia reportedly offered to host U.S. Navy P-8A Poseidon aircraft, although only on a case-by-case basis, which means that this understanding has greater political than military significance.<sup>27</sup>

One of Malaysia's primary interests is to protect its oil and gas reserves in the region. So far, China has refrained from disrupting Malaysia's drilling activities. Rajib announced that the defense

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<sup>24</sup> Richard Javad Hevdarian, "Philippines and Vietnam in the South China Sea: A Burgeoning Alliance," *The World Post*, May 26, 2014, [http://www.huffingtonpost.com/richard-javad-hevdarian/philippines-and-vietnam-i\\_b\\_5392321.html](http://www.huffingtonpost.com/richard-javad-hevdarian/philippines-and-vietnam-i_b_5392321.html).

<sup>25</sup> Joint Statement by President Obama and Prime Minister Najib of Malaysia, April 27, 2014, <https://www.whitehouse.gov/the-press-office/2014/04/27/joint-statement-president-obama-and-prime-minister-najib-malaysia-0>.

<sup>26</sup> Manirajan Ramasamy and Pooi Koon Chong, ASEAN to Keep Non-Confrontational Approach on South China Sea, Bloomberg, April 27, 2015, <http://www.bloomberg.com/news/articles/2015-04-27/look-to-global-law-for-south-china-sea-engagement-najib-says>.

<sup>27</sup> Dzirhan Mahadzir, "Base for the P-8? The View from Malaysia," Center for International Maritime Security, <http://cimsec.org/base-u-s-p-8s-view-malaysia/13047>.

budget in 2015 will increase by 10 percent to \$5.4 billion. In 2013 Malaysia revealed plans to build a navy base in Bintulu on Sarawak, the closest major town to James Shoal, where it will station a new Marine Corps.<sup>28</sup>

### *The Philippines*

Of all the claimants, the Philippines has adopted the most confrontational strategy toward China on South China Sea matters in recent years and consequently has borne the brunt of China's ire. Manila decided to take China to court after years of unsuccessful bilateral diplomacy and unrelenting pressure. In 2012, a confrontation ensued between China and the Philippines at Scarborough Shoal after a Philippine naval frigate attempted to arrest Chinese fishermen poaching protected shellfish. A U.S. attempt to mediate failed. After both sides withdrew their vessels, Chinese naval, civil, and civilian maritime forces returned, forming concentric circles of control that Chinese experts have called a cabbage strategy and roped off the mouth of lagoon.<sup>29</sup> To date, the Chinese control the waters around the Shoal and will not permit Philippines fishing boats in the area. Chinese pressure on the Philippines during the incident included quarantining imports of tropical fruits and restrictions imposed on Chinese tourists to the Philippines.

Another episode that persuaded Manila to initiate arbitration proceedings at the International Tribunal for the Law of the Sea was China's interference with a Filipino vessel conducting seismic studies at Reed Bank, which is inside the Philippines EEZ.<sup>30</sup> Plans to drill in the waters around Reed Bank have been suspended.<sup>31</sup> The case that is now pending at The Hague asks that China's maritime claims based on the nine-dashed line be declared "contrary to UNCLOS and invalid."

The Philippines is alarmed about China's dredging activities, some of which are taking place on land features claimed by Manila, including on Mischief Reef, located inside the Philippines EEZ. Once China's outposts are complete, Manila fears that a permanent Chinese presence in the Spratlys will enable China to easily disrupt the delivery of supplies to its outposts, and therefore make it impossible for the Philippines to sustain its presence on some of the smaller reefs that it occupies. China has already demonstrated this intention at Second Thomas Shoal. Manila is also worried that China will establish an ADIZ over the South China Sea. In early May, China apparently challenged Filipino aircraft landing and departing from Pagasa Island and warned Filipino patrol planes to stay out of Chinese airspace around Subi Reef where extensive land reclamation is taking place.<sup>32</sup>

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<sup>28</sup> Stuart Grudgings, "China's assertiveness hardens Malaysian stance in sea dispute," Reuters, February 26, 2014, <http://uk.reuters.com/article/2014/02/26/uk-malaysia-china-maritime-insight-idUKBREA1P1Z020140226>.

<sup>29</sup> Ely Ratner, "Learning the Lessons of Scarborough Reef," *The National Interest*, November 21, 2013, <http://nationalinterest.org/commentary/learning-the-lessons-scarborough-reef-9442>.

<sup>30</sup> *Stirring up the South China Sea (III): A Fleeting Opportunity for Calm*, International Crisis Group, Asia Report no. 267, May 7, 2015, <http://www.crisisgroup.org/en/regions/asia/north-east-asia/china/267-stirring-up-the-south-china-sea-III-a-fleeting-opportunity-for-calm.aspx>.

<sup>31</sup> "PHL stops oil and gas drilling in Reed Bank, cites dispute with China," GMA News, March 3, 2015, <http://www.gmanetwork.com/news/story/445665/economy/companies/phl-stops-oil-and-gas-drilling-in-reed-bank-cites-dispute-with-china>.

<sup>32</sup> "Philippines alarmed over China aircraft challenges in disputed sea," Channel News Asia, May 7, 2015, <http://www.channelnewsasia.com/news/world/philippines-alarmed-over/1831716.html>.



In the face of growing Chinese pressure, Manila has begun to shift its attention away from internal security threats to the maritime domain. The Philippine Coast Guard is undergoing a modernization program, including acquisition of new aircraft, patrol vessels, installation of coastal surveillance and communication systems, and other assets. Among those in the pipeline are one 80-meter Offshore Patrol Vessel, four 24-meter Inshore Patrol Boats from France, and ten new 40-meter Multi-Role Response Vessels from Japan.<sup>33</sup> The Philippine Navy is being modernized as well, albeit from a very low base, with the planned purchase of three guided missile fast attack craft, two guided missile stealth frigates, and two anti-submarine helicopters.

### *Vietnam*

Growing tensions with China in the South China Sea have challenged Hanoi's efforts to maintain a stable and constructive relationship with its much larger neighbor. Vietnam has steadfastly opposed Chinese intimidation tactics ranging from severing cables of Petro Vietnam ships engaged in seismic surveys in 2011 and 2012 to the positioning of the giant oil rig in Vietnam's EEZ in May 2014. Vietnam and Malaysia jointly submitted a notification of the two nations' extended continental shelf claims to the UN Commission on the Limits of the Continental Shelf in May 2009. Although Hanoi has not joined Manila in its arbitration case, it lodged a submission in December 2014 which rejected China's nine-dashed line as "without legal basis," and requested that the court give "due regard" to Vietnam's own legal rights and interests in the Spratlys, Paracels, and in its EEZ and continental shelf while deliberating the case.<sup>34</sup>

Hanoi has forcefully opposed China's construction and expansion of reefs in the South China Sea that it claims rightfully belong to Vietnam. It has repeatedly called on China to end its activities and strictly comply with international law, including UNCLOS, and the DOC, which contains the following provision: "The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner. Vietnam and China are engaged in a diplomatic tussle at the UN, with both sides sending diplomatic notes to other countries' permanent missions to the UN asserting sovereignty and condemning the other's land reclamation activities."<sup>35</sup>

To counter Chinese pressure in the South China Sea, Vietnam is enhancing cooperation with many of its neighbors, both small and large, near and far. Hanoi and Manila are strengthening military cooperation, including training, visits, defense industry collaboration, and handling of maritime violations.<sup>36</sup> The strategic partnership with India, established in 2007, is expanding in a number of

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<sup>33</sup> Philippine Coast Guard – Focusing on the Modernization of its Naval and Air Assets, MaxDefense, November 7, 2014, [http://maxdefense.blogspot.com/2014\\_11\\_01\\_archive.html](http://maxdefense.blogspot.com/2014_11_01_archive.html).

<sup>34</sup> Prashanth Parameswaran, "Vietnam Launches Legal Challenge Against China's South China Sea Claims," *The Diplomat*, December 12, 2014, <http://thediplomat.com/2014/12/vietnam-launches-legal-challenge-against-chinas-south-china-sea-claims/>.

<sup>35</sup> "China must stop violating Vietnam's sovereignty in East Sea: foreign ministry," Tuoi Tre News, May 9, 2015, [http://tuoitrenews.vn/politics/27957/china-must-stop-violating-vietnams-sovereignty-in-east-sea-foreign-ministry?utm\\_content=buffer76f0c&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](http://tuoitrenews.vn/politics/27957/china-must-stop-violating-vietnams-sovereignty-in-east-sea-foreign-ministry?utm_content=buffer76f0c&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer).

<sup>36</sup> Vu Trong Khanh, "Philippines, Vietnam to Deepen Military Cooperation," *The Wall Street Journal*, June 25, 2014, <http://www.wsj.com/articles/philippines-vietnam-to-deepen-military-cooperation-1403699495>.

fields, including energy, trade, defense, and space.<sup>37</sup> Political and military ties with the US are developing steadily. The partial lifting in 2014 of the ban on the sale of lethal weapons by the U.S. to Vietnam has begun to lay the foundation for a bilateral defense procurement relationship. Nevertheless, Vietnam can be expected to maintain a balance in its foreign policy, especially between the U.S. and China.

In the face of the growing threat from China in the South China Sea, Vietnam is modernizing its navy. All six Kilo class diesel submarines will be delivered by Russia before 2016. Other platforms being procured include four Gepard class frigates from Russia, four Sigma-class corvettes from the Netherlands, and new missile boats.<sup>38</sup> Vietnam's Coast Guard is also being upgraded.

### *Indonesia*

Indonesia is not a claimant in the South China Sea disputes, but its Natuna Islands are located where China's nine-dashed line claim and Indonesia's EEZ off the coast of Natuna overlap. When China submitted its nine-dashed line map to the United Nations Commission on the Limits of the Continental Shelf in May 2009, Indonesia officially protested. Indonesian President Joko Widodo reiterated this position in an interview with the Yomiuri newspaper during his visit to Japan in March 2015. Jokowi reportedly stated: China's "nine-dashed line that China says marks its maritime border has no basis in any international law."<sup>39</sup>

In recent years, Indonesia has been more vocal in expressing its concerns about Chinese activities in and possible Chinese claims to the waters around the Natuna Islands. For example, after China issued a new passport with a map of the Chinese nation in 2014 that included a part of the Natuna waters, a senior Indonesian official dubbed China's claim "arbitrary."<sup>40</sup> In an article published in the *Wall Street Journal* later that year, General Moeldoko, chief of the Indonesian armed forces, said that his nation "is dismayed . . . that China has included parts of the Natuna Islands within the province as its territory."<sup>41</sup> When announcing multilateral military drills that took place around the Natuna Islands in 2014, a senior Indonesia National Defense Forces (TNI) official warned that attention would be paid to "the aggressive stance of the Chinese government by entering the Natuna area."<sup>42</sup> Indonesia has recently embarked on a plan to modestly bolster its naval, air, and

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<sup>37</sup> Carl Thayer, "India and Vietnam Advance Their Strategic Partnership," *The Diplomat*, December 11, 2014, <http://thediplomat.com/2014/12/india-and-vietnam-advance-their-strategic-partnership/>.

<sup>38</sup> Vietnamese People's Navy – Modernization, Global Security.org, <http://www.globalsecurity.org/military/world/vietnam/navy-modernization.htm>.

<sup>39</sup> "Indonesia's leader rejects China's South China Sea claims," Aljazeera, March 23, 2015, <http://www.aljazeera.com/news/2015/03/indonesia-leader-rejects-china-south-china-sea-claims-150323045523097.html>.

<sup>40</sup> Berni Moestafa and Sharon Chen, "Indonesia flags military build-up to protect presence in South China Sea," *Sydney Morning Herald*, May 30, 2014, <http://www.smh.com.au/world/indonesia-flags-military-buildup-to-protect-presence-in-south-china-sea-20140529-zrsg.html>.

<sup>41</sup> Moeldoko, "China's Dismaying New Claims in the South China Sea," *Wall Street Journal*, Apr. 24, 2014, <http://www.wsj.com/articles/SB10001424052702304279904579515692835172248>.

<sup>42</sup> Zachary Keck, "China's Newest Maritime Dispute," *The Diplomat*, March 20, 2014, <http://thediplomat.com/2014/03/chinas-newest-maritime-dispute/>.

army forces on and around the Natuna Islands as a preemptive measure against instability in the South China Sea.<sup>43</sup>

Jakarta has employed a mix of diplomatic, legal, and military measures aimed at opposing China's vast claims in the South China Sea, while maintaining its status as a non-claimant. At the same time, the Indonesian government has worked assiduously to promote progress toward a CoC and the implementation of confidence-building measures in the region. Earlier this year, Jokowi reaffirmed his country's willingness to play the role of an "honest broker" in the territorial disputes. Indonesia's goals are to defend its rights in its EEZ, ensure peace and stability in the South China Sea, while continuing to strengthen relations with China.

### **Developing a Cost Imposition Strategy**

- Is US strategy achieving any success in persuading China to not use coercion against its neighbors, to settle disputes peacefully and to abide by international law? What additional steps could the US take, including congressional action?

It is unlikely that any single cost imposition step will successfully persuade China to alter its present course of action. However, it is possible that a multifaceted strategy that is coordinated with like-minded countries can deter China's use of coercion and convince Beijing to adopt a less confrontational policy toward its neighbors in the South China Sea. The Obama administration's strategy so far has included the following elements: 1) explicitly criticizing China for taking destabilizing actions; 2) actively mobilizing support for use of legal dispute mechanisms; 3) bolstering U.S. military presence and capabilities; 4) enhancing capabilities of allies and partners through military drills and provision of equipment; 5) encouraging Southeast Asian claimants to work together and push China to conclude a legally binding CoC; 6) backing multilateral frameworks for cooperation, risk reduction, and dispute resolution; 7) ) putting forward specific suggestions aimed at reducing tensions, such as a voluntary freeze on destabilizing activities; 8) strengthening regional security and economic architecture; and 9) reinforcing ASEAN and U.S.-ASEAN Ties, and promoting ASEAN unity and centrality.<sup>44</sup> These policies have created some costs for China, but have not yet been sufficient to change Beijing's overall cost/benefit calculus. Therefore, more steps need to be taken.

The following additional steps should be considered as part of the U.S. cost imposition strategy.

1. **Encourage ASEAN to develop its own Code of Conduct** containing risk-reduction measures and a dispute-resolution mechanism. Only by reaching a consensus on a draft CoC can ASEAN hope to make progress in negotiating a China-ASEAN CoC. An alternative is for ASEAN to adopt a Treaty of Amity and Cooperation in Southeast Asia's Maritime Domain that would bind all ASEAN members to bring their maritime boundaries and claims into line with international law, including UNCLOS and commit all signatories to renounce the threat of and use of force to settle disputes and to uphold

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<sup>43</sup> Ibid.

<sup>44</sup> Bonnie S. Glaser, "U.S. Strategy Seeks to Calm the Roiled Waters of the South China Sea," Paper for the Fourth CSIS annual conference on the South China Sea, July 2014, [http://csis.org/files/publication/140930\\_Hiebert\\_PerspectivesSouthChinaSea\\_Web.pdf](http://csis.org/files/publication/140930_Hiebert_PerspectivesSouthChinaSea_Web.pdf).

good order at sea, including safety of navigation and overflight. The Treaty would be open to accession by all of ASEAN's dialogue partners. Quick accession by other ASEAN dialogue partners would put pressure on China to accede to the Treaty.<sup>45</sup>

2. **Conduct freedom of navigation (FON) operations around China's artificial islands.** UNCLOS provides that artificial islands do not qualify as "islands" under the Convention because they are not naturally formed areas of land surrounded by and above water at high tide. Therefore, artificial islands are not entitled to any maritime zones.<sup>46</sup> Since 1979, the US has carried out the FON program to protect maritime rights throughout the world.
3. **Respond to future Chinese coercive acts, including by using U.S. naval forces to deter China's continuing use of "white hulled" paramilitary vessels.** By relying on paramilitary ships, China appears to believe that it can conduct coercive actions without incurring significant risk. This has provided China with an opportunity to change the status quo. A successful counter-coercion strategy should entail consideration of a greater acceptance of risk by demonstrating US willingness to employ navy ships in response to Chinese provocations.
4. **Withhold invitation to RIMPAC 2016 if China coerces its neighbors.** RIMPAC should be open to participation by nations that are contributing to peace and stability in the Asia-Pacific region. If China uses its newly-built outposts to coerce the other claimants, for example by establishing an Air Defense Identification Zone over the South China Sea, China should not be invited to participate in the next RIMPAC exercises in 2016.
5. **Encourage Taiwan to clarify the meaning of its original 1947 11-dashed line and its territorial claim in the South China Sea.** Since China's nine-dashed line claim is based on Taiwan's original claim, a decision by Taiwan to clarify its claim would put pressure on Beijing to do the same. UNCLOS requires that maritime claims be derived from land features. It does not recognize "historical rights" as a basis for claiming EEZs or Extended Continental Shelves. Taiwan has called on regional nations to respect UNCLOS, but it has not defined its claim in the South China Sea.<sup>47</sup>
6. **Continue to help the Philippines and Vietnam enhance their maritime policing and defense capabilities** so they can deter and respond to China entering the water and airspace in their EEZs with impunity. Similar assistance should be extended to Malaysia and Indonesia if requested. For example, the U.S. should encourage regional states to

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<sup>45</sup> This proposal was put forward by Carlyle A. Thayer, *Indirect Cost Imposition Strategies in the South China Sea: U.S. Leadership and ASEAN Centrality*, Maritime Strategy Series, Washington, D.C.: Center for New American Security, April 2015, <http://www.cnas.org/sites/default/files/publications-pdf/CNAS%20Maritime%208%20Thayer.pdf>.

<sup>46</sup> Robert Beckman, "International Law and China's Reclamation Works in the South China Sea," 2<sup>nd</sup> Conference on South China Sea, Lee Kuan Yew School of Public Policy, National University of Singapore, <http://cil.nus.edu.sg/wp/wp-content/uploads/2015/04/Beckman-Nanjing-Draft-17-April-2015.pdf>.

<sup>47</sup> Lynn Kuok, *Tides of change: Taiwan's evolving position in the South China Sea*, The Brookings Institution, May 2015, <http://www.brookings.edu/research/papers/2015/05/taiwan-south-china-sea-kuok>.

acquire land-based intelligence, surveillance, and reconnaissance (ISR) aircraft and anti-ship cruise missiles. The U.S. should coordinate with Japan, Australia and other like-minded nations in these efforts to enhance the effectiveness of such assistance.

### *Role of Congress*

Congress can play an important role in promoting a more effective U.S. policy toward the South China Sea. Timely letters from Congress to senior U.S. officials expressing concerns and advocating specific courses of action are one important tool. The March 19, 2015 letter from the Chairmen and ranking members of the U.S. Senate Foreign Relations and Armed Services committees to Secretary of Defense Ashton Carter and Secretary of State John Kerry calling for a comprehensive U.S. strategy to address Chinese actions in the East and South China Seas is a case in point.

Congress could also take steps to publicize China's destabilizing activities in the South China Sea. For example, Congress could require the Defense Department to include a section on Chinese activities in the South China Sea in its Annual Report to Congress on Military and Security Developments Involving the People's Republic of China. In addition, Congress could require that the Commander of the U.S. Pacific Command report on China's South China Sea activities in his or her annual posture statement to the respective Armed Services Committees of the House and Senate.

Congressional resolutions can send powerful signals of American concerns to the executive branch, the region, and the rest of the world. One such example, S.Res.412, which passed in July 2014, called on China to withdraw its massive drilling rig and associate maritime forces from the area near the Paracels and condemned coercive actions to alter the status quo or to destabilize the Asia-Pacific region.