



Executive Summary

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THE PARACEL ISLANDS AND U.S. INTERESTS AND APPROACHES IN THE SOUTH CHINA SEA

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The Paracel Islands and the South China Sea are fraught with physical, economic, political, and military hazards. This region is important to the economies of the surrounding states in terms of the fish and potential energy resources needed to fuel their growing economies, but it also spurs many of the region's diplomatic and physical clashes. The high flow of maritime commerce through the South China Sea is also crucial to the economic well-being of the region and the world. Although the waters around the Paracel Islands are economically important, the islands themselves have been less so. China's firm—if contested—occupation of the Paracels, however, gives it a distinct advantage in the region for security purposes, and because possession of them may allow control over more of the rich surrounding waters.

Although direct military confrontations among the claimant states have diminished since the 1990s, civilian enforcement agencies have been active in protecting claimed spaces, sometimes employing violence resulting in deaths. Because partner countries, like Vietnam, rely on the United States to ensure stability in the South China Sea and to address its own interests in maintaining freedom of navigation rights and economic development of the international seabed, the United States should remain engaged with the South China Sea states. The United States has also been embroiled in the circumstances through confrontation with the People's Republic of China (PRC) over the right of navigation through claimed waters. To better address these concerns, policymakers need to understand the underlying problems and conflicting claims that threaten the region's security and prosperity.

The use of customary law and the United Nations Convention on the Law of the Sea (UNCLOS) in establishing claims to the Paracels and surrounding waters helps explain both the perspectives of the disputants and how they have, in part, interacted with each other and the United States on the issues of rights and claims. Their legal positions are especially important for American policymakers as they inform possible solutions and suggest how to contribute to peace and prosperity in the region. Three key legal questions must be answered to help sort the disputes: sovereignty over the islets, the nature of a claimed land feature, and the delimitation of maritime jurisdiction. Sovereignty is claimed through customary law, with China and Vietnam using historic doctrine to claim most of the South China Sea; both have also used the doctrine of occupation to claim the Paracels. Both states support their claims with efforts at effective administration, although only China controls them currently.

Should the Paracel Islands be designated as inhabitable or economically viable under UNCLOS, they accrue more consideration for maritime jurisdictions than uninhabitable rocks. After sovereignty and feature type are determined, zones of authority may be established by the occupying state, depending on the distance from its established shore baseline. Internal, archipelagic, and historic waters are maritime variations of near-full sovereign control, which could be disruptive to economic and navigation activities. Vietnam or China, for instance, could control most of the South China Sea if either historic claim was affirmed. Islands above the high tide mark establish territorial waters and a contiguous zone, which would carve 24 nautical mile (nm) zones around the Paracels, but

should allow innocent passage, even if restricting most other maritime activities. However, Vietnam and China do not recognize innocent passage for naval ships, which makes such zones a major concern for the U.S. Government.

Since the length of the 200-nm exclusive economic zone (EEZ) allows much potential overlap among land masses and islands in the semi-enclosed South China Sea, their delimitation through equidistant or equitable principles affects jurisdiction, and like territorial waters, Vietnam and China restrict military activities within the EEZ beyond the economic regulation normally allowed. The awarding of an EEZ then affects freedom of navigation and the potential for economic development by the United States in otherwise international waters. Although such arguments by claimants for more restrictions in these zones are tenuous, they could be useful justification to cover military actions by states like China, which is the most active in enforcing a restrictive EEZ.

Freedom of navigation in the South China Sea is the most immediate U.S. concern to ensure naval vessels retain all the rights of access allowed in the region under international maritime law. Current policy in China and Vietnam restricts foreign naval activities in their zones beyond the rights normally attributed to UNCLOS. Concluding an Incidents at Sea Agreement with the PRC would clarify further the rights and responsibilities between the two, while remaining fully compliant with international law and significantly reducing the potential for future clashes. Other forms of government-to-government interaction would build confidence in present and future agreements, leverage common interests, as the U.S. Coast Guard (USCG) has done so well with its PRC counterparts, and would also reduce tensions in the region to enhance freedom of navigation. Through engagement activities of regionally aligned forces, the U.S. Army could become a significant influence in making the United States both a conciliator and balancer in the region.

U.S. ratification of UNCLOS is another important step to influence the evolution of future interpretations of freedom of navigation toward more open stipulations than some of the states around the South China Sea now espouse. Although a more difficult proposition, the United States should demand the clarification of the historic claims made in the South China Sea to facilitate negotiating a settlement, accelerate economic development, and remove the potential of shutting down all foreign navigation through the region. Support to Vietnam's current islet occupations in the Spratlys, its claims to coastal EEZ and continental

shelf areas in compliance with UNCLOS, and specific historic economic rights could wean Vietnam from its otherwise weak historic claims, and start sincere bargaining by linking the Paracel and Spratly disputes in a comprehensive agreement. The United States has less influence to change China's position on historic rights because the ambiguity of China's positions has served the country well. Here, appealing to China's future role in world politics may help to change its parochial freedom of navigation perspective into a more global one like the United States holds.

Open economic access to the South China Sea maritime commons is a second U.S. interest, but one for which the solution may diverge from freedom of navigation considerations. Access to the resources of the high seas is an important enough U.S. interest to stall the ratification of UNCLOS for nearly 20 years. While the United States remains outside the treaty, however, it is at a disadvantage to shape events like whether the South China Sea becomes a wholly divided and claimed sea. Such arrangements as a Joint Development Zone or a Joint Management Zone could stabilize the area and provide peace and economic development for its participants. This could detract from potential U.S. economic development activities, depending on the arrangements, but supports U.S. security and economic prosperity goals for the region as well as attains a diplomatic settlement through recognized international law.

To contribute to overall stability and prosperity in the region—and its own freedom of navigation and economic interests—the United States must delicately play the roles of conciliator and balancer as circumstances require. The United States is an honest broker through “active neutrality” because it shares goals in common with the states around the South China Sea. Although the United States may not be truly neutral, it has less direct demands in the disputes, has garnered more trust than most other states, and possesses resources to bear on these problems, making it a useful interlocutor in resolving problems.

The United States has also intervened in problems in the South China Sea in more parochial ways to balance the diplomatic field in aid of defense partners and to protect its freedom of navigation interests directly in a policy some have dubbed “active concern.” As a balancer, the United States has improved its military relationship with Vietnam in a remarkably short time, and challenged Chinese actions, which Chinese officials have complained “internationalizes” the issues. The balancing role should be minimal so as to not overshadow the conciliator role, since both are

necessary roles that only the United States can play well in order to achieve the peaceful settlements toward security and economic interests that all the states ultimately want. In short, all parties should welcome a nuanced U.S. role as both conciliator—to keep the United States relatively neutral in the disputes—and balancer—to deter aggressive actions and thus support diplomatic solutions.

For these reasons, the United States has again made the Asia-Pacific region a major focus of its stated global interests, and converging national interests between the United States and China may indicate that some progress on the issues outlined here are possible. In the end, the conflicts in the Paracel Islands and South China Sea are not for the United States to solve, but its ability to contribute, facilitate, balance, or support is necessary toward a solution from which all may benefit.

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