

**America “Returns” to Asia: The South China Sea
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Introduction

China has presented the United States with a golden opportunity to reaffirm a principled stand on South China Sea issues and thus strengthen its alliances and partnerships with other states in Asia. Beijing’s excessive claim and assertive behavior by elements of China’s maritime agencies in the South China Sea have alienated many governments in the rest of Asia. In the South China Sea, Beijing is playing directly to American strengths, support for freedom of navigation and overwhelming naval capabilities in Asia. The United States has taken advantage of China’s mistakes.

For a decade, the South China Sea has been a potentially significant security issue waiting to rise to the surface of American policy makers’ consciousness. Between the collision of a Chinese jet fighter with an American surveillance airplane in April 2001 and Chinese harassment of the USNS *Impeccable* in March 2009, the South China Sea had largely disappeared from the policy agenda of the U.S. government and policy community. China’s actions reawakened U.S. interest and provoked a reaffirmation of U.S. policy.

South China Sea issues rose to the surface at the same time as the current U.S. administration declared America’s return to Asia. They have become a major component of U.S. policy in Asia. Over the past two years, U.S. Secretary of State Clinton and former Secretary of Defense Gates have repeatedly stated that the U.S. has a “national interest” in freedom of navigation and the peaceful settlement of disputes in the South China Sea.

In a recent article on U.S. foreign policy, Clinton outlined a plan to pivot to Asia as America begins to withdraw its armed forces from Afghanistan. She argued that the Asia- Pacific has become the key driver of global politics and sketched out a new American regional strategy. However, as a global power, the United States is also concerned about several competing priorities outside Asia, including how to react to the “Arab Spring” uprisings in the Middle East.

Nonetheless, for the United States, developments in the South China Sea now apparently rank with such traditional issues as North Korea, Afghanistan, Pakistan and Iran in Clinton’s discussions with her Chinese counterparts. An initial internal debate about the depth of U.S. interests in the South China Sea and the potential impact of U.S. South China Sea policies on Sino-U.S. relations as a whole appears to have been, at least temporarily, resolved.

Diplomacy has the leading role in the implementation of U.S. policy, though the U.S. is also seeking to enhance the capabilities of several Southeast Asian states' armed forces and altering U.S. force posture in the region. The goal is not to contain China but to shape its behavior in the South China Sea and more broadly in Asia. At the same time, the United States benefits from improved relations with Asian countries that are also concerned about China's growing influence and military power.

The South China Sea is likely to remain a significant foreign policy issue for the United States for the foreseeable future.

U.S. Return to Asia

A recurring theme of President Obama's administration has been its commitment to return to Asia. Breaking with precedent, U.S. Secretary of State Clinton's first official visit was to Asia. The U.S. has continued to strengthen ties to key allies and deepen strategic and comprehensive partnerships with such emerging Asian powers as India and Indonesia. Washington has bet on New Delhi. The two capitals have intensified a previously anemic bilateral dialogue to include discussion of a wide variety of issues in Asia, and now plan to include Japan in this process. The Korea-U.S. free trade agreement is about to be approved by the U.S. Congress. A Trans-Pacific Partnership (TPP) trade agreement is moving forward, and several additional Southeast Asian countries are interested in joining this partnership. The U.S. has reversed the Bush administration's indifferent and occasionally antagonistic attitude to regional multilateral organizations.

This return requires a much more extensive interaction with China. As Clinton recently wrote "China represents one of the most challenging and consequential bilateral relationships the United States has ever had to manage."¹ After an initial deterioration in the relationship following U.S. President Obama's assumption of office, Sino-U.S. relations rebounded. Chinese President Hu Jintao's early 2011 visit to the United States was a success. A new Strategic and Economic Dialogue has been launched with China.

With regard to Southeast Asia, Washington signed ASEAN's Treaty of Amity and Cooperation. The Obama administration has stated that it views ASEAN as the "fulcrum" for regional issues and appointed an Ambassador to ASEAN. This November, President Obama will participate in the East Asia Summit for the first time.

In addition, bilateral ties have been significantly strengthened with Indonesia, Malaysia, the Philippines, Singapore and Vietnam. The Obama administration's commitment to a "geographically distributed, operationally resilient and politically

¹ Clinton, Hilary. Foreign Policy, November 2011, www.foreignpolicy.com/articles/2011/10/.../americas_pacific_centur.

sustainable force posture” in Asia requires Washington to examine “how we can increase our operational access in Southeast Asia and the Indian Ocean region and deepen our contacts with allies and partners.”²

Clinton, in an article entitled “America’s Pacific Century,” harks back to the U.S. post - World War II legacy of transatlantic ties and compares the successful American initiatives of that era, such as NATO, with current opportunities in Asia. She believes “the time has come for the United States to make similar investments as a Pacific power.” Clinton refers repeatedly to the South China Sea as an issue of equal importance with such long-standing flashpoints such as the Korean peninsula, which directly, legally and strategically implicate core American interests. She writes that “Strategically, maintaining peace and security across the Asia-Pacific is increasingly crucial to global progress, whether through defending freedom of navigation in the South China Sea, countering the proliferation efforts of North Korea, or ensuring transparency in the military activities of the region’s key players.”

A striking feature of the article is a statement that “we have made strides in protecting our vital interests in stability and freedom of navigation and have paved the way for sustained multilateral diplomacy among the many parties with claims in the South China Sea, seeking to ensure disputes are settled peacefully and in accordance with established principles of international law.”

In late October in Bali at a meeting of ASEAN defense ministers, new U.S. Secretary of Defense Panetta said “even with the budget constraints that we are facing in the United States” there is “no question that the Pacific will be a priority” to ... “protect international rights to be able to move across the oceans freely.”³

However, America’s pivot to the Asia-Pacific depends on its ability to extricate U.S. forces from Afghanistan, to manage a difficult relationship with Pakistan, and to maintain sufficient capabilities in the Middle East to curb Iranian adventurism. In addition, the United States spent at least \$700 billion on the U.S. intervention in Iraq and a decade building up its forces and capabilities to suppress insurgencies. Now, it will need to overcome bureaucratic challenges to realign its armed forces and budgets to meet conventional, primarily naval, challenges in Asia.

US Interests in the South China Sea

A few American commentators have questioned the priority currently assigned in U.S. foreign policy to freedom of navigation through a sea filled with disputed islets, rocks, and reefs claimed by a number of states. One argument is that Sino-Japanese

² Ibid.

³ Bumiller, Elizabeth, “U.S. to Sustain Military Power in the Pacific, Panetta Says,” The New York Times, October 23, 2011

maritime disputes over Diaoyu/Senkaku are of greater importance because of U.S. treaty obligations to Japan. Others find the new emphasis on the South China Sea overdrawn, particularly in comparison with U.S. treaty obligations in Asia and America's decades old commitments involving cross-straits issues and North Korea. On the other hand, an influential author argues that "East Asia can be divided into two general areas: Northeast Asia, dominated by the Korean peninsula, and Southeast Asia, dominated by the South China Sea."⁴ He goes on to make a case that the struggle for primacy in the Western Pacific will dominate U.S. national security policy in the coming decade. The relative importance of specific flashpoints may be debatable, but that the U.S. has several important interests in the South China Sea is not.

The U.S. has been dealt a winning diplomatic hand. In the current competition with China for influence in Asia, Washington can only benefit from upholding the principles of freedom of navigation and the peaceful settlement of disputes. China is in an embarrassing position, with a claim that is untenable under international law. As long as incidents in the South China Sea do not threaten to escalate out of control, U.S. foreign policy, national security, and economic interests are fulfilled by current policy.

In terms of foreign policy, the South China Sea issue provides the U.S. with leverage in discussions and negotiations with China. Since escalating rivalries in the South China Sea pose the most intractable security problem in Sino-Southeast Asian relations, U.S. support for basic principles and the American security shield provide ample reason for many Southeast Asian countries to seek to improve bilateral relations with the United States. The U.S. role is also seen as supportive of ASEAN's cohesion.

In terms of security, the United States depends on free passage through the waters and airspace of the South China Sea to deploy its armed forces between the Pacific and Indian Ocean. The U.S. also needs to keep track of Chinese naval deployments. Though People's Liberation Army Navy (PLAN)'s ability to project naval power remains limited, China has constructed a major new naval base on Hainan Island. This base improves the Chinese navy's ability to stage naval forces into the South China Sea. Adjustments in U.S. force posture are not exclusively tied to the South China Sea, but the U.S. had made or plans several responses to protect American interests in the region.

Finally, the U.S. has significant economic interests in Southeast Asia and the South China Sea. Through the South China Sea passes more than half of the world's annual merchant fleet tonnage and about one third of global maritime commerce. About 80% of China's, 66% of South Korea's and 60% of Japan's crude oil imports pass through the South China Sea, as well as a large percentage of these states' Liquefied Natural Gas (LNG) imports. The seabed may also become a major source for the energy supplies that

⁴ Kaplan, Robert D., "The South China Sea is the Future of Conflict," *Foreign Policy*, September/October 2011, p. 76-85.

are essential to the further economic development of East Asia, though U.S. estimates of potential energy reserves are considerably smaller than those of China.⁵ The U.S. is also deeply committed in Southeast Asia, the home to \$160 billion in investments by U.S. companies and America's fifth largest trading partner.

US Policy

U.S. policy with regard to the South China Sea has remained consistent since it was articulated in 1995, but U.S. interest in this body of water had waned as China and several ASEAN states shelved conflicting claims in the South China Sea while Beijing courted its southern neighbors. As the strategic situation has evolved, the U.S. has reacted pragmatically and in accordance with long-standing policy.

The two elements of U.S. policy for the South China Sea are distinct. They should not be conflated. They are:

- a) The United States "takes no position on the legal merits of the competing claims to sovereignty" in the South China Sea
- b) Maintaining freedom of navigation is a fundamental U.S. national interest. The U.S. maintains that states may not restrict military survey operations within their Exclusive Economic Zone (EEZ).⁶

While consistent with policy articulated in 1995, as tensions have increased over the past two years the U.S. has added positions that reflect deepening U.S. involvement in the issues. The U.S. has been particularly critical of China's claim because it is primarily based on an alleged historical presence in the South China Sea rather than customary international law. It has also expressed a new willingness to encourage and facilitate negotiations among the claimants in the South China Sea.

Beginning in 2008, China's confrontational approach in the South China Sea provoked a response from the United States, which gradually escalated as China persisted with actions that were widely interpreted as a campaign to coerce other interested parties. Initially, the United States appeared reluctant to add the South China Sea to its agenda with either China or Southeast Asian states, but it has become alarmed over the past few years by rising tensions in an area where it has important security and foreign policy interests.

⁵ Chinese energy companies, which may earn more than 90% of the "profits" of Chinese state owned enterprises, are widely believed to influence China's policies in the South China Sea. These companies want to participate in the discovery and exploitation of energy resources in the South China Sea.

⁶ Approximately 25 of the 164 states that have signed UNCLOS do not fully acknowledge the right to unrestricted military survey operations with their EEZs, including India, Malaysia, Myanmar, and Thailand.

In 2009 U.S. National Intelligence Director Admiral Dennis Blair called China's harassment of the USNS *Impeccable*, while conducting a military survey off Hainan Island, the most serious military dispute between China and the U.S. since 2001.⁷ On the other hand, the appropriate pattern and frequency of U.S. military surveys within these waters appear to be subject to some debate within U.S. councils. A one senior American thinker commented recently, "having the legal right to do something does not make it wise to rub others' noses in it."⁸

At the July 2010 Asian Regional Forum (ARF) meeting, the United States and eleven other countries criticized Chinese actions in the South China Sea, which led to a diplomatic standoff with China. Afterward, Clinton told the press that the United States has a national interest in freedom of navigation, open access to Asia's maritime commons and respect for international law in the South China Sea. Clinton also offered to facilitate negotiations on a code of conduct among all the claimants in the South China Sea.

Subsequently, China appeared to respond by seeking to again reassure Southeast Asian states, through visits to the region by Prime Minister Wen Jiabao and other Chinese leaders, and by restraining itself in the South China Sea. For eight months, there were no significant incidents in the South China Sea. China agreed to meetings of the ASEAN-China Joint Working Group to implement the Declaration on the Conduct of Parties in the South China Sea (DOC), although these were no more productive than previous meetings.

The U.S. also "took its foot off the accelerator" on South China Sea issues. At the ASEAN Defense Minister Meeting Plus (ADMM+) initial meeting in October 2010 in Hanoi, U.S. Secretary of Defense Gates "echoed recent statements by Secretary of State Clinton that the U.S. would not take sides in competing claims, but would insist on open access to international waters and shipping lanes ... but also said that he did not directly speak with (Chinese Defense Minister) Liang about the South China Sea or other maritime squabbles."⁹ Gates accepted an invitation to visit Beijing in

⁷ "China and the United States have fundamentally different interpretations of the United Nations Convention on the Law of the Sea (UNCLOS). One major difference is over whether and which type of military activities are permitted within the 200-nautical mile exclusive economic zone (EEZ) of a nation. China's national interests and growing confidence lead to an expansive view of its EEZ and a narrow view of which military activities are permissible for a foreign nation to undertake within an EEZ. Such activities must be peaceful and Chinese nationalists don't consider intelligence gathering even by non-warships to be peaceful. The United States, on the other hand, not only contends that such information gathering is entirely within international law, but also that the United States has an obligation to periodically test the premise in order to maintain what it considers the global public good of freedom of the seas." How China, US See Each Other at Sea, *The Diplomat*, Patrick Cronin, May 29, 2011

⁸ Ambassador Chas Freeman, Remarks at U.S. Naval War College Maritime Studies Institute Annual Conference, Newport, Rhode Island, May 10, 2011.

⁹ Whitlock, Craig, "The U.S. has 'national interest' in Asian Sea Disputes," *The Washington Post*, October 12, 2010

January 2011. American press reporting suggested that the tone of the U.S. - Chinese dispute over the South China Sea issues had softened.

Later that month, at the East Asia Summit in Hanoi, Clinton and Prime Minister Wen Jiabao also appeared to “soften their stances,” though the Secretary reaffirmed the basic U.S. positions on the South China Sea.¹⁰

By the time Chinese President Hu Jintao visited Washington in January 2011, tensions between Washington and Beijing had eased and bilateral relations improved. The joint statement contained no direct mention of the South China Sea. Subsequently, U.S. officials publicly stressed cooperative ties. The U.S. was careful not to “bang the drum” on South China Sea issues.

By May 2011, however, Chinese actions aroused new concerns. Nonetheless, Gates focused on America’s enduring commitments to Asia in his speech at the June 2011 Shangri-la meeting in Singapore. He restated the U.S. position on the South China Sea: “we have a national interest in freedom of navigation, in unimpeded economic development and commerce, and respect for international law. We also believe that customary international law, as reflected in the UN Convention on the Law of Sea, provides clear guidance on the appropriate use of the maritime domain and rights of access to it.” However, the South China Sea did not dominate the Secretary’s remarks as it had at the 2010 Shangri-la dialogue.

Gates announced that U.S. “Littoral Combat Ships” would be deployed to Singapore and pledged increased maritime capacity building support for regional states. In response to a specific question referencing those recent Chinese actions that have led to protests by Hanoi and Manila, Gates stressed the need to find a mechanism to adjudicate disputes, which “need to be resolved peacefully and within the framework of international law.”¹¹

Since the Shangri-la dialogue, Clinton has commended agreement between China and ASEAN on implementing guidelines to the DOC that facilitate confidence building measures in the South China Sea. At the July ASEAN Regional Forum, she “called on all parties to clarify their claims in the South China Sea,” while reaffirming the U.S. view that “claims to maritime space in the South China Sea should be derived solely from legitimate claims to land features.”¹² The next step is for ASEAN and China to negotiate a binding code governing their conduct in the South China Sea. Thus far, China has employed delaying tactics, informing ASEAN that China will work towards a code “at an appropriate time.”¹³

¹⁰ Abdul Khalik, “US, China Soften Stances While RI Takes Regional Leadership,” *The Jakarta Post*, October 31, 2010

¹¹ Transcript of “First Plenary Session - Dr. Robert Gates” and “First Plenary Session – Question and Answer Session,” <http://www.iiss.org/conferences/the-shangri-la-dialogue/shangri-la-dialogue-2011/speeche...>

¹² “U.S. calls for more clarity on S. China Sea Claims,” Reuters, July 23, 2011

¹³ Wain, Barry, “China Faces New Wave of Dispute,” *The Straits Times*, October 17, 2011

Different Interests But Common Views

For the United States, the South China Sea is a complex diplomatic and security challenge. Various parts of the U.S. government and commercial communities have different interests, but there is no evidence of coherent opposition to current U.S. policy in the United States.

Officials concerned with vital U.S. strategic interests in East Asia and the growing capabilities of the Chinese armed forces tend to see developments in the South China Sea in the context of Sino-U.S. relations. Differences over the relative priority to be assigned to the South China Sea among the vast number of issues in the U.S. – Chinese relationship appeared to surface in debate about whether China had identified the South China Sea as a “core interest.”

According to U.S. and Japanese press reporting, in March 2010 Chinese officials told two visiting senior U.S. officials that China had elevated the South China Sea to a “core interest” of sovereignty and would not tolerate outside interference. “China conveyed the new policy to visiting U.S. Deputy Secretary of State James Steinberg and Jeffrey Bader, senior director for Asian Affairs on the National Security Council, in early March, according to sources. The two U.S. officials met with Chinese State Counselor Dai Bingguo, Chinese Foreign Minister Yang Jiechi and Vice Foreign Minister Cui Tiankai in Beijing, and Bingguo is believed to have relayed the policy to the U.S. side.”¹⁴

In the absence of a public, official Chinese statement confirming that China had raised the South China Sea to a “core interest” on par with Taiwan or Tibet, many American experts began to question the meaning of China’s alleged definition of the South China Sea as a “core interest.” Some Chinese officials and academics subsequently suggested that China’s position had been misunderstood and sought to “walk back” China’s position on whether the South China Sea constitutes a “core interest.”

As this debate within American policy circles died down, it became apparent that the priority accorded the South China Sea in the basket of Sino-U.S. issues would vary depending on tactical considerations. There is no reliable evidence, however, of a lobby within the U.S. government that seeks to consistently downplay the South China Sea as an issue. Moreover, support for U.S. policy appears to be solid across party lines in the Senate and House of Representatives.

Other U.S. officials focus on the South China Sea as an element in U.S. relations with ASEAN states, and stress the value of being perceived by U.S. allies and friends in

¹⁴ “China Tells U.S. that S. China Sea is ‘core interest’ in new policy,” Kyodo News Service, July 3, 2010.

Southeast Asia as reliable and supportive. The Obama administration's determination to rebuild ties with Southeast Asia that had atrophied during the Bush era increases the relative weight accorded to South China Sea issues and American interest in supporting allies and partners in Southeast Asia.

In addition, the new American "mental map" of an Asia-Pacific stretching from India to the Pacific shores of America (often also called the Indo-Pacific region) accords the South China Sea a role as a crucial hinge in the overall U.S. security structure in Asia as distinctions between East and South Asia are seen to be of diminishing relevance. One commentator has labeled it the "center of maritime Eurasia."¹⁵

The South China Sea episodically attracts the attention of the community concerned about consistency in U.S. positions on international legal questions. The relevant legal community is supportive of U.S. policy and, in fact, a force in arguing for periodic reaffirmations of the U.S. position on military surveys within China's EEZs.

U.S. commercial interests include supporting U.S. energy companies that seek to compete on an equal basis to explore for and extract energy and other mineral resources in the South China Sea. The renewal of U.S. interest in the South China Sea began with an attempt by elements of the Chinese government to place pressure on energy companies doing business both in China and the South China Sea. As one senior official recently noted, the "really big ones will do what they want" and the smaller ones don't have the clout to influence U.S. policy. There is no energy lobby in the U.S. calling for a policy that would seek to accommodate Chinese views on South China Sea issues.

In summary, policy makers' opinions have coalesced. U.S. policy on South China Sea issues is not controversial in the United States.

Policy Instruments

The primary instrument of U.S. policy on the South China Sea has been diplomacy. Secretary of State Clinton has led the effort to define and coordinate U.S. policy. The emphasis has been on tapping widespread international concern about China's actions in the South China Sea to forge coalitions of like-minded states. One goal is to help convince Beijing, in China's own interest, to reassess Chinese tactics and goals. Nonetheless, the U.S. also has additional instruments to support U.S. policy.

The U.S. has worked particularly closely with the Philippines and Vietnam.

The 1951 U.S. - Philippines Mutual Defense Treaty obliges the U.S. to "act to meet common dangers" embodied in attack on the territory of the Philippines or "its armed forces, public vessels or aircraft in the Pacific." The applicability of this treaty

¹⁵ Kaplan, Robert D., "The South China Sea is the Future of Conflict," *Foreign Policy*, September/October 2011, p. 80

in the event of armed conflict involving the Philippines in the South China Sea is ambiguous. According to the treaty, the parties are required to consult in the event of an attack on the territory of the Philippines as of 1951, which does not include Manila's claims in the South China Sea that were advanced several years later. One expert believes that, "regarding the Armed Forces of the Philippines (AFP) specifically, the treaty is unambiguous. During consideration of the 1999 Visiting Forces Agreement (VFA), then Ambassador Thomas Hubbard formally represented to the Philippines that the treaty was applicable to any attack on the AFP, referencing assurances made by Secretary of State Cyrus Vance in 1977."¹⁶

The U.S. will not commit itself to specific actions based on hypothetical situations, though many Southeast Asian states would expect an American reaction to a clear attack on the AFP. It has responded to the Philippine government's apparent determination to "stand up" for itself under President Aquino and provided assistance and at least one reconditioned ship to increase the capacity of the Philippines to monitor and defend its claimed waters. Moreover, U.S. – Filipino cooperation to suppress terrorists in the southern Philippines has forged a closer bond between U.S. forces and part of the AFP. This relationship may serve as a model for improving the capacity of the Philippine navy. Joint exercises and port visits can also be adjusted to emphasize U.S. commitments. However, U.S. policy must remain nuanced and ambiguous, both because the U.S. does not support the claims of any particular state in the South China Sea and because of Philippine sensitivities about U.S. military presence in the Philippines.

Although not a treaty ally, the U.S. is also in the process of building a closer military-to-military relationship with the Vietnamese armed forces, particularly its navy. The U.S. is prepared to move forward at a pace that Vietnam finds comfortable, while taking into account all issues in U.S. – Vietnamese relations.

For the region as a whole, the U.S. has several options. It can build on an already robust program of capacity building and exercises with selected Southeast Asian states, many of which have seen their defense budgets grow exponentially in the past few years. It can also share additional information to increase maritime domain awareness among Southeast Asian states.

When it assumed office, the Obama administration realized the U.S. force posture in Asia was "unbalanced." It has subsequently moved towards its goal of more geographically distributed and politically sustainable forces. That said, U.S. force posture in Southeast Asia and nearby countries is not dictated exclusively by concerns about the South China Sea.

Nonetheless, the U.S. can also increase its presence in the South China Sea. It can also publicize routine and continuous transit by the U.S. navy of the South China Sea

¹⁶ Lohman, Walter, "Sorting American Priorities in the South China Sea," *Web Memo Published by The Heritage Foundation*, No. 3297, June 20, 2011

and other elements of U.S. presence. As noted earlier, two U.S. littoral combat ships will be hosted by Singapore. In addition, talks are now underway to base U.S. marines in northern Australia, with the potential to deploy some of these forces to help selected Southeast Asian countries increase their capacities through joint exercises and training.

Outlook

The American pivot to Asia is inevitable, though it may not proceed quite as smoothly as predicted by Secretary Clinton. Nonetheless, the era of costly U.S. military interventions in pursuit of real and alleged terrorists is finally coming to an end. There is light at the end of the tunnel.

As the U.S. shifts to focus on the geographic space between India and Japan, or the newly redefined Asia-Pacific, Southeast Asia and the South China Sea may not become the “cockpit of the globe” but this region will assume greater prominence for the United States.

The South China Sea may not be a “litmus test” of China’s intentions or of U.S. consistency in Asia. Nonetheless, it is a good issue for the United States. U.S. support for freedom of navigation and the peaceful settlement of disputes highlights China’s embarrassingly excessive claims and coercive tactics in the South China Sea while it simultaneously strengthens U.S. alliances and partnerships with other states in Asia.

Moreover, the current pattern of sporadic incidents in the South China Sea is likely to continue. As long as these “maritime skirmishes” don’t escalate into serious conflicts, the cost to the U.S. is low. No domestic opposition to current U.S. policy is discernible.

For these reasons, the South China Sea is likely to remain an important issue. Only agreement between ASEAN and China on an enforceable “code of conduct” or a radical revision in China’s nine-dash claim would return the South China Sea to the bottom of U.S. policy makers’ in-boxes.

If it turns out that China is set on a path of “incremental imperialism” on the water, the South China Sea is likely to remain high on the American agenda in Asia.