

SECTION 3: CHINA'S MARITIME DISPUTES

Introduction

This section provides an overview of China's East China Sea and South China Sea disputes, covering the drivers of Beijing's approach to the disputed waters, the means by which China is asserting sovereignty in those areas, the risks of escalation or miscalculation at sea, and the consequential dangers of political or military escalation. It is based on witness testimonies from Commission hearings; information from the Commission's fact-finding trips to China, Japan, and Taiwan; and additional research. This section primarily focuses on the East China Sea; the South China Sea was covered in detail in chapter 3, section 1, of the Commission's 2012 Annual Report.

Maritime Dispute Overview

Peter Dutton, professor and director of the China Maritime Studies Institute at the U.S. Naval War College, testified to the Commission that China's overall interests and objectives in the East and South China Seas include:

... enhancing China's sense of national security, acquiring control over the region's living and non-living maritime resources, and restoring China's place of pre-eminence in the East Asian regional order ... Additionally, consolidating Chinese state power over the offshore islands and regional seas serves the Communist Party's interest in maintaining internal political credibility by delivering to the Chinese people what they believe is rightfully their own.¹

Although sovereignty disputes in the East and South China Seas are not new, China's growing diplomatic, economic, and military clout is improving China's ability to assert its interests. It is increasingly clear that China does not intend to resolve the disputes through multilateral negotiations or the application of international laws and adjudicative processes but instead will use its growing power in support of coercive tactics that pressure its neighbors to concede China's claims.

East China Sea Dispute Background

The East China Sea dispute involves China, Japan, and Taiwan (see figure 1).^{*} The dispute can be divided into two distinct issues: territorial sovereignty over the Senkaku Islands (known as Diaoyu Dao in China, and Diaoyutai in Taiwan), and demarcation of maritime zones, which has implications for natural resource rights.

^{*}For a discussion of Taiwan's role in China's maritime disputes, see chapter 3, section 2, of this Report, "Taiwan."

China's most intense dispute in this area relates to territorial sovereignty over the Senkaku Islands, eight uninhabited islets that lie approximately 120 nautical miles (nm) northeast of Taiwan, and 240 nm southwest of Japan's Okinawa Island. China and Taiwan rely on a historical foundation as far back as the Ming Dynasty (1368–1644) to justify their claims to the islands. According to China's official narrative, Japan "secretly 'included' Diaoyu Dao in its territory at the end of the Sino-Japanese War of 1894–1895. Japan then forced China to sign the unequal Treaty of Shimonoseki," ceding the Senkaku Islands and Taiwan to Japan.²

Japan administers the Senkaku Islands and asserts there is no territorial dispute over the islands. When Japan made an official declaration incorporating the Senkaku Islands into Japanese territory in 1895, it considered them uninhabited land without an owner. The United States administered the islands following the 1951 Treaty of San Francisco officially concluding World War II until the 1971 Okinawa Reversion Treaty came into force. This treaty transferred administrative rights over the Senkaku Islands to Japan while maintaining U.S. neutrality on the ultimate sovereignty of the islands.³ Japan argues China did not express an interest in the islands until a 1968 United Nations (UN) study suggested the possibility of petroleum resources in the East China Sea.⁴

The Japanese government's September 2012 purchase of three of the Senkaku Islands from a private Japanese owner angered China, sparking an escalation in tensions between China and Japan.⁵ Beijing immediately responded by issuing a Government Statement, its highest-level diplomatic document, which for the first time includes map coordinates to its claims in the East China Sea.[†] Later that month, China's State Council released a white paper on the Senkakus, its first ever on a territorial dispute, which stated the "Diaoyu Dao is China's inherent territory in all historical, geographical, and legal terms, and China enjoys indisputable sovereignty over Diaoyu Dao."⁶

A separate but equally important dispute among China, Japan, and Taiwan is over rights and interests (including natural resource extraction) involving maritime demarcation of overlapping exclusive economic zones (EEZ) within the East China Sea. The dispute—which primarily concerns the Chunxiao (Shirakaba in Japanese) Gas Field—is mainly a result of differing interpretations of the United Nations Convention on the Law of the Sea (UNCLOS). Among many other provisions, UNCLOS allots nations an EEZ out to 200 nm from their coastal baselines.[‡] Although a coastal nation

*For more information on the background and domestic aftermath of the Senkaku Islands purchase in China, reference the East China Sea subsection in chapter 2, section 1, of the Commission's 2012 Annual Report, "China's Impact on U.S. Security Interests," pp. 133–135.

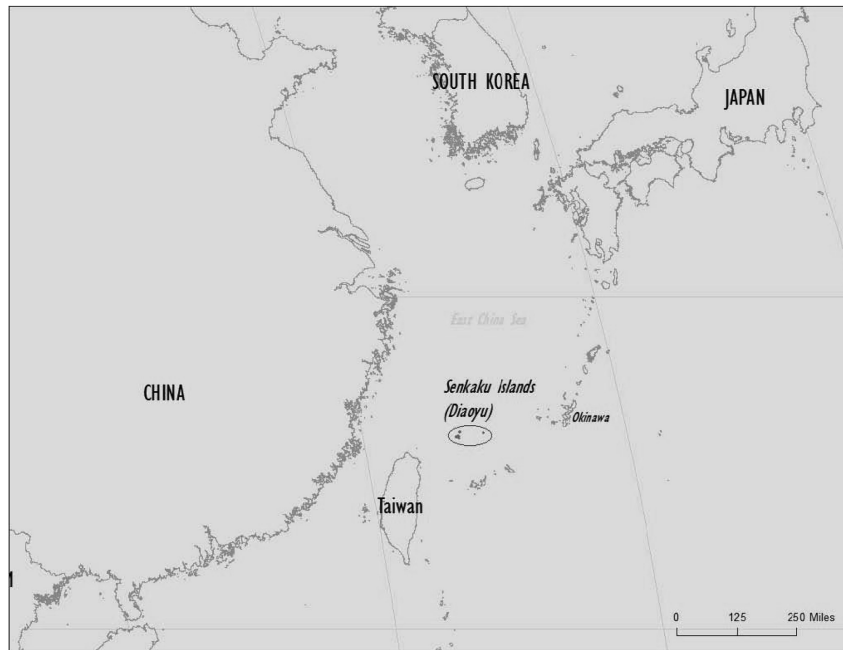
†Government Statements represent China's highest-level, most authoritative message. Prior to this incident, China had only twice issued a Government Statement—once regarding the Sino-Vietnamese War and once regarding the 1999 destruction of China's embassy in Belgrade during U.S. bombing operations. Open Source Center, "China Shows No Sign of Easing Tough Public Posture on Senkakus," September 14, 2012. OSC ID: CPF20120914534001. <http://www.opensource.gov>; J. Ashley Roach, "China's Straight Baseline Claim: Senkaku (Diaoyu) Islands," *American Society of International Law Insights*, February 13, 2013. <http://www.asil.org/pdfs/insights/insight130213.pdf>.

‡One nautical mile is approximately equal to 1.15 statute miles. Therefore, 200 nautical miles is roughly 230.16 statute miles.

cannot claim full sovereignty in an EEZ, it does have sovereign rights to explore, exploit, and protect natural resources, including fisheries, in this zone.⁷ UNCLOS also provides similar rights over natural resources, with the exception of fishing, in an extended continental shelf zone up to 150 nm beyond a country's EEZ, subject to certain restrictions based on seafloor geography.⁸

Because the maritime distance between China and Japan in the East China Sea is less than 400 nm, neither China nor Japan can claim a full EEZ in this region. Japan proposes a median line between the two countries as an attempt to divide EEZ rights evenly. China claims an extension of its continental shelf eastward past the median line to the Okinawa Trough and in December 2012 formalized its position in a claim submission to the United Nations.⁹

Figure 1: The East China Sea



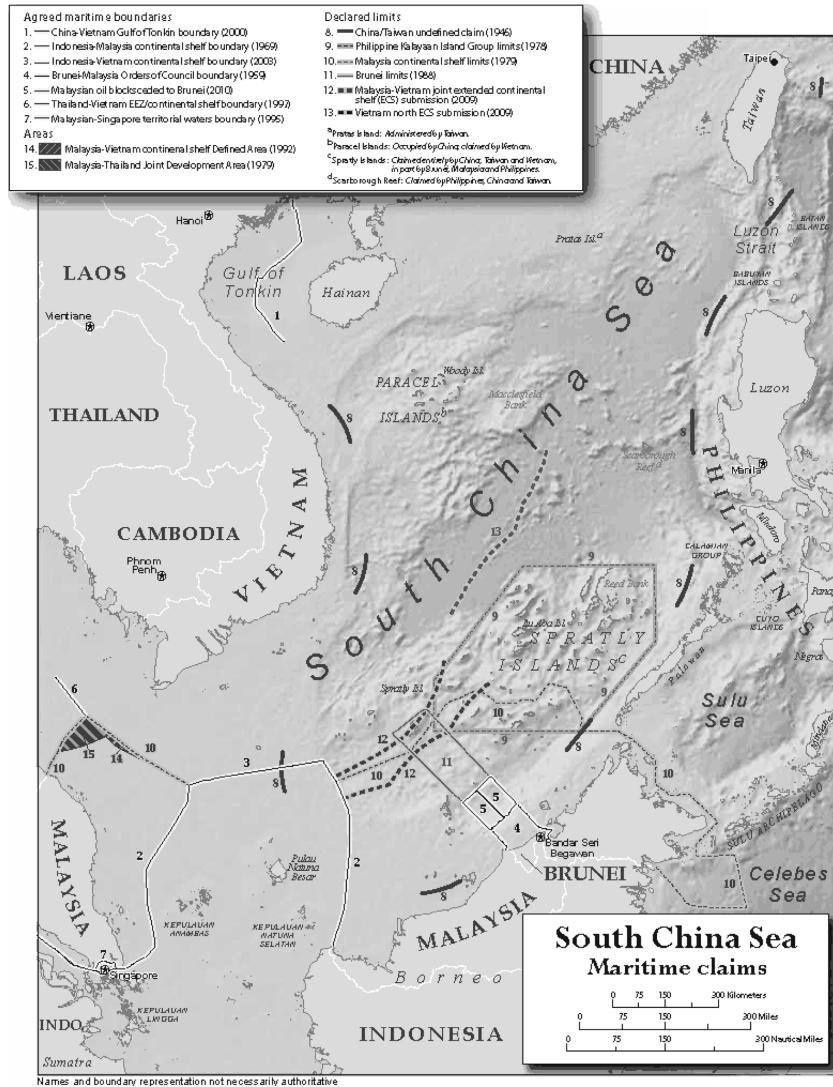
Source: Mark Manyin, Senkaku (Diaoyu/Diaoyutai) Islands Dispute: U.S. Treaty Obligations (Washington, DC: Congressional Research Service, January 2013).

South China Sea Dispute Background

Six parties claim the South China Sea in part or in full: China, Taiwan, Vietnam, the Philippines, Malaysia, and Brunei. Beijing denotes its claim on its South China Sea maps using a nine-dash line, with an additional dash off the coast of Taiwan to demonstrate its claim over Taiwan (see figure 2). Also in dispute are two sets of island groups: the Paracel Islands, located in the northern part of the sea, and the Spratly Islands, a widespread collection of approximately 200 islands, islets, rocks, and reefs located in the southern part of the South China Sea. China occupies the Paracel

Islands, though Taiwan and Vietnam also lay claim to them. While all claimants except Brunei have established military outposts in the Spratly Islands, China and Vietnam occupy the greatest number of outposts.* For a comprehensive discussion of the South China Sea dispute, see chapter 3, section 1, of the Commission's 2012 Annual Report, "China and the South China Sea."

Figure 2: The South China Sea



Source: U.S. State Department. From U.S. Energy Information Administration, *South China Sea* (Washington, DC: February 2013). <http://www.eia.gov/countries/regions-topics.cfm?fips=SCS>.

* For more information on Taiwan's claims and outposts and for another map depiction of the South China Sea, see chapter 3, section 2, of this Report, "Taiwan."

China's Overall Approach to Maritime Disputes

At the Commission's hearing on China's maritime disputes, two longtime China watchers concluded that China is seeking to change the status quo in its favor in both the East and South China Seas. Rear Admiral Michael McDevitt, USN (Retd.), senior fellow at CNA Center for Naval Analysis, said in testimony to the Commission that China has taken a "proactive approach toward creating a new, [more] favorable status quo" with regard to its maritime disputes. He assessed Beijing has been more assertive since 2012, offering rival claimants the choice of either facing the brunt of Chinese power as a result of challenging Chinese claims or benefitting from economic and political rewards for moderating their positions or even acquiescing to China's claims.¹⁰

Michael Swaine, senior associate at the Carnegie Endowment for International Peace, emphasized in his testimony that Beijing has in some instances "responded in a deliberately escalatory manner" to perceived attempts by China's rival claimants to secure territorial gains in the disputed waters, "seeking to create a new status quo in its favor or to undertake a more muscular or aggressive action in order to convey resolve and deter further escalation by others."¹¹ For example, Beijing appears to have calculated that Japan's purchase of the Senkaku Islands provided a justification to deploy a regular maritime presence supporting a new status quo in China's favor.¹²

Chinese official statements and use of maritime law enforcement rather than military forces suggest Beijing prefers to avoid direct military conflict over its maritime disputes and rely on the shift in the balance of regional power in its favor to resolve its maritime disputes in the long term.¹³ China probably judges that as a result of its growing power and influence vis-à-vis other claimants to the East and South China Seas, time is on its side with regard to consolidating control over its maritime claims.

Drivers of China's Approach to Maritime Disputes

Nationalism

The new Chinese Communist Party (CCP) leadership has affirmed that it intends to continue governing China without resort to elections or other democratic processes, and the CCP has long been aware that the absence of democratic legitimacy tends to undermine the stability of its rule. As a result, the CCP places a high priority on legitimizing itself by convincing the Chinese people that it is delivering economic growth, a better quality of life, and an assertion of China's ascendancy regionally and globally.

In fact, Beijing has long used the education system and media to cultivate an awareness of China's victimization during what China calls its century of humiliation from the mid-19th to the mid-20th centuries.¹⁴ By promoting a sense of grievance among the Chinese people, and then aggressively asserting China's claims against its neighbors, the CCP shifts attention away from the authoritarian nature of its rule and toward its role as the champion of China's interests in the region.

China not only takes an aggressive stance in the region to satisfy the nationalistic impulse it has promoted; it also uses nationalism

domestically to support its regional claims. Jessica Chen Weiss, assistant professor of political science at Yale University, testified to the Commission: “The Chinese government has allowed nationalist street demonstrations when it wants to demonstrate resolve to signal that China will not budge on [an] issue. Just as the [U.S.] president can point to Congress and say his hands are tied, so can the Chinese leadership point to nationalist fervor and say that they can’t compromise or else protestors will turn against them.”¹⁵

For example, Beijing permitted large-scale, anti-Japanese demonstrations in the fall of 2012 following the Japanese government’s purchase of several of the Senkaku Islands. Demonstrations in China’s second- and third-tier cities even became destructive, damaging storefronts of Japanese companies, such as Toyota and Panasonic.¹⁶

On the other hand, the Chinese government suppresses popular nationalism if it believes doing so will help it achieve its diplomatic objectives.¹⁷ For example, in a move attributed to Beijing, the Hong Kong government in August 2013 prevented a group of anti-Japan activists from sailing to the Senkaku Islands as they did in 2012 to mark the anniversary of Japan’s World War II surrender.¹⁸ Beijing likely judged popular Chinese animosity toward Japan threatened a potentially volatile public backlash that it might not be able to manage or exploit to its advantage. However, as Dr. Weiss testified, suppressing nationalist sentiment is “costly for the Chinese government, which has often been accused [by its people] of being both unpatriotic and undemocratic in suppressing nationalist sentiment.”¹⁹

Sovereignty and “Core Interests”

China’s view of “indisputable sovereignty” over its maritime claims underlies its overall policy approach to the East and South China Seas.²⁰ As tensions involving China’s maritime disputes in the East China Sea and South China Sea have grown since 2009, official and unofficial Chinese sources indicate China views the East and South China Seas as central to its “core interests,” which authoritative Chinese speeches and documents define as (1) national security; (2) sovereignty and territorial integrity; and (3) economic and social sustained development.²¹ Beijing makes core interest declarations to signal to other countries that China is unwilling to compromise on particular policy issues and to imply that China would use force to defend its core interests. These declarations usually relate to matters regarding China’s territorial sovereignty, such as Taiwan, Tibet, and Xinjiang.²²

China appears to have overtly linked the South China Sea and East China Sea to China’s core interests in recent years.*²³ Japanese commentators expressed concern that the designation of the Senkaku Islands as a core interest in April signaled a shift in Bei-

* According to Japanese press reports, a Chinese Ministry of Foreign Affairs spokesperson stated in a regular press briefing that “[t]he Diaoyu [Senkaku] Islands are about sovereignty and territorial integrity. Of course, it’s China’s core interest.” An official Ministry of Foreign Affairs transcript quotes the spokesperson as saying the issue of the contested islands “touches on” China’s core interests. Kyodo, “China Says Senkaku Islands are its ‘Core Interest,’” April 26, 2013. OSC ID: JPP20130426969071. <http://www.opensource.gov>; Open Source Center, “China-Japan—Video of PRC Remarks on Senkakus as ‘Core Interest’ Differs from Official Transcript,” May 7, 2013. OSC ID: CPP20130507358001. <http://www.opensource.gov>.

jing's approach to the maritime dispute and indicated China "will make no concessions on the islets."²⁴ Subsequent official Chinese statements have not clarified the status of the islands, allowing Beijing to maintain flexibility in its approach to the dispute, prevent any domestic accusations that China is adopting a weaker stance, and deny that it is taking unilateral actions or escalating tensions.²⁵

Economic Development

China also views the East and South China Seas as central to its economic development, due to their resource potential and significant roles as maritime transit routes. Though nationalism has a stronger pull on China's foreign policy-making levers with regard to its maritime disputes, natural resources are significant because they galvanize popular nationalist sentiment.²⁶

Oil and Gas Resources: China's surging economy has made the country increasingly dependent on oil and gas to supply its growing industrial and manufacturing base. However, hydrocarbon reserves in the East and South China Seas would provide only modest relief to the heavy energy demands of many of the surrounding Asian economies, according to Lloyd Thrall, project associate at the RAND Corporation.²⁷ Additionally, the financial feasibility of exploiting oil and gas reserves in these areas is limited at best. In the South China Sea, the risk and cost of recovering deepwater oil and gas in contested waters prone to unusually strong currents and tropical storms heavily outweighs the minimal benefit of yet-to-be-proven hydrocarbons.²⁸ Nevertheless, the speculation and perceived economic value of natural resources in both seas fuels the narrative of competition and sovereignty by the respective claimants.²⁹

Maritime Trade Routes: The East and South China Seas play central roles in the transport of oil and gas to China's coastal regions, which serve as the engines of China's economic growth.³⁰ According to the U.S. Energy Information Administration, almost a third of the world's crude oil passes through the South China Sea, with about 15 percent of this volume moving on to Northeast Asia and the East China Sea.³¹ Additionally, over half of the world's traded liquefied natural gas (LNG) passes through the South China Sea. China's reliance on this trade route is projected to grow significantly in the coming two decades due to increasing LNG consumption. As Steven Lewis, fellow and professor at Rice University, testified to the Commission: "The future economic growth of China's most prosperous cities and provinces is one heavily tied to massive fleets of LNG carriers (with four or five times the number of vessels used today)" transiting the East and South China Seas.³²

Fisheries: According to Mr. Thrall, "Fishermen in East and Southeast Asia are potent national symbols ... to have fishermen denied their livelihood in areas perceived as historical fishing grounds, or, worse yet, detained or facing violence can strike deeply discordant notes" within China.³³ This dynamic helps explain the nationalist sentiment in China that followed the detention of the captain of a Chinese fishing trawler upon his collision with a Japanese Coast Guard (JCG) vessel in September 2010. Similar senti-

ments are prevalent across the region; the death of a Taiwan fisherman in May 2013, a result of the Philippine Coast Guard firing shots at a Taiwan fishing boat in disputed fishing grounds, set off nationalist outpourings across Taiwan. The incident led to three months of strained relations between Taiwan and the Philippines that ended only after Manila offered an official apology, agreed to pay compensation to the victim's family, and recommended homicide charges for the Philippine Coast Guard personnel who opened fire on the Taiwan fishing boat.³⁴ See chapter 3, section 2, of this Report, "Taiwan," for full coverage of the Taiwan-Philippine row.

Advancing Maritime Claims in Regional and Multilateral Organizations

The multilateral nature of the South China Sea dispute, as opposed to the generally bilateral nature of the East China Sea dispute, diffuses negotiating power among multiple claimants, giving China relatively less influence in the multilateral dispute resolution process. China as a result seeks to "divide and conquer" by negotiating the issue on a bilateral basis rather than under the auspices of the Association of Southeast Asian Nations (ASEAN). At the ASEAN Regional Forum Foreign Ministers' Meeting in July 2013, Chinese Foreign Minister Wang Yi underscored this approach: "The South China Sea issue is not an issue between China and ASEAN. It is only an issue between China and a small number of Southeast Asian countries."³⁵ In 2013, there have been two significant efforts in multilateral venues seeking to resolve South China Sea disputes; China has stalled progress in one and refused to participate in the other.

South China Sea Code of Conduct negotiations: Chinese obstructionism and efforts to exploit disunity among Southeast Asian nations was a factor in stalled progress toward a binding Code of Conduct in the South China Sea. China and ASEAN in 2002 signed a Declaration on the Conduct of Parties in the South China Sea that laid the groundwork for an eventual Code of Conduct. However, despite agreeing to "work, on the basis of consensus, towards the eventual attainment" of a "code of conduct in the South China Sea [that] would further promote peace and stability in the region," Beijing remains circumspect on ASEAN calls for formal, substantive Code of Conduct talks.*³⁶ During an August 2013 multi-country visit to Southeast Asia, Foreign Minister Wang emphasized patience in what he described would be a long-term process toward concluding a Code of Conduct.³⁷

Philippines-initiated arbitration over South China Sea claims: Manila surprised many observers in January 2013 when it initiated UNCLOS-based arbitration challenging China's nine-dash line and maritime claims in the South China Sea. Beijing has rejected the arbitral process as "manifestly unfounded" under UNCLOS and declined to participate.³⁸ In an official Foreign Ministry statement responding to the arbitration, Beijing denounced the Philippines'

*For an additional discussion of the Declaration on Conduct and the Code of Conduct, reference chapter 3, section 1, of the Commission's 2012 Annual Report, "China and the South China Sea," p. 237.

“illegal occupation” of China’s claimed islands and reefs and argued the arbitral process counteracts ongoing bilateral negotiations that would peacefully resolve the South China Sea issue.³⁹ However, China’s refusal to participate in the arbitration has not prevented the formation of an arbitral tribunal or delayed the proceedings. A five-judge tribunal in the Hague is expected to consider Manila’s arguments following their submission in March 2014 and is likely to conclude proceedings by mid-2015.*⁴⁰

Political tension is particularly pronounced between China and the Philippines due to China’s view that the Philippines has internationalized the South China Sea disputes.⁴¹ In August 2013, official Chinese press signaled displeasure with the Philippines, seemingly for instituting arbitration to draw international attention to the lack of progress on a Code of Conduct: “. . . certain countries are deliberately creating an issue of the ‘Code of Conduct’ and are not genuinely concerned about the ‘Code’ but instead want to use this kind of hyping to multilateralize and internationalize South China Sea issues.”⁴²

Legal and Administrative Assertions of Maritime Sovereignty

Since late 2012, China has stepped up its use of a number of legal and administrative methods to assert sovereignty over its claims in the East and South China Seas, including the following:

- After the Japanese Senkaku purchase in September 2012, Beijing published its claim to the disputed islands in an official Government Statement “on the Baselines of the Territorial Sea of Diaoyu Dao and Its Affiliated Islands” and submitted these claims to the UN.⁴³ Japan, which does not officially recognize a dispute over the islands, countered with its position that China’s submission was “totally unacceptable and legally invalid.”⁴⁴ The United States also has protested China’s claims, calling them “improperly drawn.”⁴⁵
- In 2012, China introduced a new passport design that has a watermark of a national map that includes popular tourist sites in Taiwan, its nine-dash line around the South China Sea, and border areas disputed with India as part of its territory. Countries disputing the depiction of China’s territory denounced China’s new passports, and some are not stamping the new passports and instead are issuing separate visa sheets.⁴⁶
- Hainan Province, China’s southernmost province, issued new maritime regulations in late 2012. The regulations, which are

*The selected arbitrators include Judge Thomas Mensah (Ghana), Judge Jean-Pierre Cot (France), Judge Stanislaw Pawlak (Poland), Professor Alfred Soons (the Netherlands) and Judge Rüdiger Wolfrum (Germany). Judge Thomas Mensah is serving as the arbitral panel’s president. According to Annex VII of UNCLOS, each of the parties in arbitration may select one judge. The remaining three judges are in normal circumstances to be selected by agreement between the parties. Because of China’s refusal to participate, the Philippines selected Judge Wolfrum, and the president of the International Tribunal on the Law of the Sea appointed the four remaining arbitrators. Luke Eric Peterson, “Philippines-China UNCLOS arbitration moving forward without Chinese participation,” Kluwer Arbitration Blog, August 28, 2013. <http://kluwerarbitrationblog.com/blog/2013/08/28/an-update-on-the-philippines-china-unclos-arbitration/>.

applicable to the 12 nm territorial waters within Hainan Province's announced baselines, include a provision allowing China to board, inspect, and expel foreign vessels "illegally" entering Chinese waters.⁴⁷ According to Wu Shicun, director of the Hainan Foreign Affairs Office and president of China's National Institute for South China Sea Studies, the provision is designed to curb Vietnamese fishing activity near the Paracel Islands.⁴⁸

- China's official Sinomaps Press issued a new national map in January 2013 that includes China's South China Sea claims. The new map depicts the entire South China Sea on the same scale as mainland China, rather than using insets to illustrate China's claimed island groups. The map also includes a dash southeast of Taiwan delineating China's claim over Taiwan, bringing China's well-known nine-dash line claim in the South China Sea to ten dashes. Although official Chinese maps have included the tenth dash for at least the past two years, its larger-scale incorporation into the newest version of an official Chinese map raised concerns among China's neighbors in both the East and South China Seas.⁴⁹ One Sinomaps editor said the changes in presentation served to "elevate the [Chinese] peoples' consciousness of national territory and safeguard China's maritime rights and interests."⁵⁰

Maritime Law Enforcement Assertions of Maritime Sovereignty

China's maritime law enforcement agencies since 2009 have played an increasing role as the frontline actors in staking and enforcing China's maritime claims.⁵¹ Beijing likely sees this approach as less provocative than the use of the PLA Navy and a means to demonstrate de facto governance over its territorial claims. Nevertheless, robust and near-constant deployments of increasingly capable maritime law enforcement vessels, with the PLA Navy often deployed nearby, effectively serve as coercive policy instruments in the East and South China Seas.⁵²

Since 2012, China has begun to "[respond] to challenges to its claims with an enhanced physical presence to bolster China's position and deter any further challenges," according to M. Taylor Fravel, associate professor of political science at the Massachusetts Institute of Technology. "These responses suggest an even greater willingness to pursue unilateral actions to advance its claims." Dr. Fravel further notes that this activity is a recent departure from what had for several decades been a pattern of Chinese restraint with regard to the presence of ships and aircraft in disputed waters.⁵³ Several other analysts have observed this change in China's approach to island disputes since the 2012 Scarborough Reef standoff, which began with a confrontation between China and the Philippines over the fishing activities of several Chinese fishing vessels at the reef, located in the South China Sea.*⁵⁴ Both countries had previously fished in Scarborough Reef despite disputing its

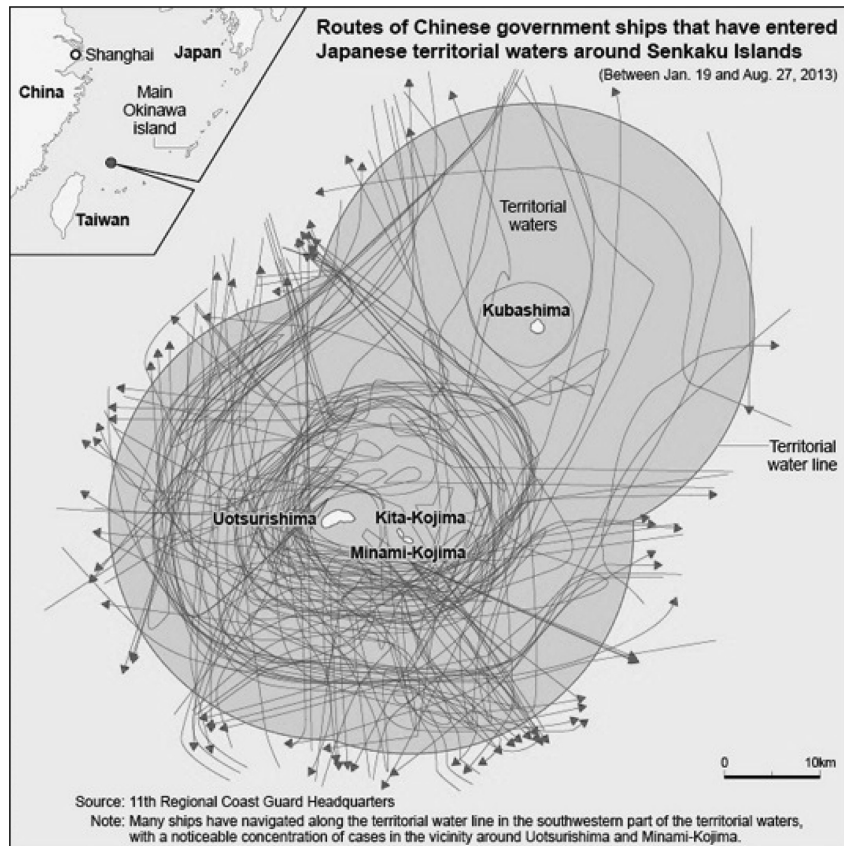
* For more information about the Scarborough Reef standoff, see chapter 3, section 1, of the Commission's 2012 Annual Report, "China and the South China Sea," p. 231–233.

territoriality. Over the course of the months-long standoff, China established physical control over the reef by patrolling the vicinity with maritime law enforcement vessels and roping off the reef's entrance to prevent Philippine vessels from operating there.⁵⁵ At the time of this Report's publication, China continues to maintain de facto control over the reef.⁵⁶

China has applied similar tactics in Second Thomas Shoal, a coral reef in the South China Sea approximately 105 nm west of Palawan Island, Philippines. The Philippines in early May 2013 reported a PLA Navy vessel escorting two Chinese maritime law enforcement ships and approximately 30 fishing boats in the shoal. The Philippines maintains a regular presence on Second Thomas Shoal of approximately 12 marines aboard the *BRP Sierra Madre*, a World War II-era U.S. tank landing ship that the Philippine Navy deliberately ran aground on the shoal in 1999 to stake its territorial claim.⁵⁷ China frames this "illegal occupation" of Chinese territory as justification for its enhanced patrols in the waters surrounding Second Thomas Shoal.⁵⁸

The Commission learned in meetings with the JCG that PLA Navy and Chinese maritime law enforcement activity near the Senkaku Islands, previously irregular and sporadic, increased sharply following Japan's Senkaku Islands purchase. Official Chinese press appears to confirm the purchase marked a turning point for China's maritime operations, after which Chinese government ships maintained a near-persistent presence near the disputed isles. (See figure 3 for a depiction of this operational state based on JCG data.)⁵⁹

Figure 3: Routes of Chinese Government Ships Near Senkaku Islands from January 19, 2013 to August 27, 2013



Source: *Asahi Shimbun* (Tokyo), "INSIGHT: Japan, China still far apart in mending ties 1 year after purchase of Senkakus," September 11, 2013. http://ajw.asahi.com/article/behind_news/AJ201309110069.

Japan Reconsiders Self-Defense in the East China Sea

The ongoing domestic debate over whether Tokyo should revise its constitution to expand the circumstances for self-defense was a prominent theme of the Commission's fact-finding trip to Japan this year. Japan remains divided on the issue of revising a constitutional provision renouncing war and preventing the maintenance of a military force.⁶⁰ In meetings with a group of retired Japan Self-Defense Force and JCG senior officers, the Commission learned that such a revision could, for example, allow the Japan Self-Defense Force to employ arms in the event of intrusion into Japan's territorial waters by foreign government vessels. The retired senior officers further explained that under the current constitution, a lengthy legal process would precede

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*Continued***

any decision by Tokyo to exercise self-defense. This would complicate Tokyo's ability to authorize a military response to a perceived Chinese escalation in the East China Sea, especially if such activity involves only Chinese maritime law enforcement—not naval—vessels.

Beijing has undertaken a number of steps since mid-2012 to address several shortcomings in its coordination of maritime policy to better align China's maritime activity with national policy. China's lack of a unified maritime strategy and multiple—sometimes overlapping—bureaucracies has previously been characterized as a model of inefficiency and an impediment to effective policy-making.⁶¹

In mid-2012, China created a new, high-level advisory group for maritime security issues. In China's foreign policy-making apparatus, key Chinese security policy issues, such as Taiwan, foreign affairs, and national security traditionally have merited their own high-level advisory groups within the Politburo Standing Committee.⁶² However, this is the first time maritime security has been elevated to this level, signaling the rising importance of this issue to Chinese leadership. The designation of Xi Jinping, who at the time was the top contender to be China's next senior leader, as the group's head, also indicates high-level attention to the matter. Furthermore, upon Japan's 2012 purchase of the Senkaku Islands, Beijing reportedly formed an "Office to Respond to the Diaoyu Crisis" and again placed Mr. Xi at the helm.⁶³

China previously had six chief maritime law enforcement agencies, all with separate and sometimes overlapping missions. In June 2013, China officially consolidated four of these six agencies—China Marine Surveillance, China Coast Guard, Fisheries Law Enforcement Command, and Maritime Customs Service—into the new China Coast Guard. The Maritime Safety Administration and China Rescue and Salvage remain independent.⁶⁴ The inaugural China Coast Guard patrol occurred near the Senkaku Islands, and was intended to "sternly declare the Chinese government's stance on its sovereignty over the Diaoyu Islands to Japanese vessels," according to an official Chinese statement.⁶⁵

While most of these ships previously had been unarmed, those subordinated to the China Coast Guard under the new structure could now be armed with mounted guns.⁶⁶ Furthermore, the China Coast Guard's capabilities will continue to modernize and improve in the next three to five years as it receives at least 30 new ocean-going ships and more than 100 smaller patrol boats. Most of these vessels will be larger and more capable than previous ones, and some will have the ability to embark helicopters. China's maritime law enforcement agencies also will continue to incorporate decommissioned ships from the PLA Navy into their own fleets—a practice that has increased in recent years.⁶⁷

Military Assertions of Maritime Sovereignty

The PLA Navy plays a powerful but indirect role in the East and South China Seas, backing up maritime law enforcement patrols from a distance; training, transiting, and conducting highly visible displays of presence in disputed waters; and resupplying Chinese-controlled islands in the South China Sea.*⁶⁸

- In March 2013, the PLA Navy sent a task force comprised of one large amphibious ship and three modern surface combatants to James Shoal, which is the southernmost point of China's maritime claim in the South China Sea and lies approximately 43 nm off the coast of Malaysia. According to official Chinese media, the crews of these vessels held a ceremony pledging to safeguard China's maritime interests upon reaching James Shoal. The task force then conducted training in the West Pacific before returning home.⁶⁹
- In May 2013, the PLA Navy conducted a rare, multifleet exercise involving elements of all three PLA Navy fleets in the South China Sea. While China's Ministry of National Defense described the exercise as "routine" and "not aimed at any specific country or target,"⁷⁰ some commentators suggested the exercise was used for political signaling during the China-Philippines standoff at Second Thomas Shoal and the transit of the U.S. Navy's *USS Nimitz* aircraft carrier through the region.⁷¹
- In mid-July 2013, following a joint exercise with the Russian Navy, a PLA Navy task force for the first time passed through the La Perouse Strait (also known as the Soya Strait), dividing northern Japan and Russia. The group of five vessels then transited east of Japan through the Pacific Ocean and back around southern Japan through the Miyako Strait dividing Japan's Miyako and Okinawa Islands, before reaching its homeport in Qingdao.⁷² Japanese press portrayed the route as "intended to demonstrate Chinese naval might to Japan and the United States and show Russia it means business in the region."⁷³ Official Chinese press heralded the event as a demonstration of the PLA Navy's ability to gain access to the Pacific Ocean through narrow chokepoints and to "cut the first island chain into several pieces," according to a PLA Navy official.⁷⁴ Chinese strategists and academics assert that the United States and Japan use the first island chain to strategically encircle or contain China and to prevent China from operating freely in the Pacific.[†]⁷⁵

The PLA Navy's regional power projection capability has advanced rapidly since the 1990s, boosting Beijing's ability to assert its maritime claims in the East and South China Seas and to respond forcefully to perceived challenges by rival claimants. See chapter 2, section 1, of this Report, "Military and Security Year in Review," for full coverage of China's naval modernization.⁷⁶

*U.S. Navy Seventh Fleet senior officers told the Commission PLA Navy vessels generally supported maritime law enforcement patrols at a distance of about 50 to 75 nm.

†The first island chain refers to the first chain of major archipelagoes east of the East Asian continent—from the Kuril Islands in the north, through the Japanese archipelago, Ryukyu Islands, Taiwan, the Philippines, and Borneo.

Risk of Unintended Escalation in the East and South China Seas

While Beijing's efforts to streamline its decision making on maritime disputes may reduce the risk of unintended escalation or accidents stemming from poor policy coordination, this risk is unlikely to be completely eliminated for the following reasons.

First, China's crisis management approach emphasizes demonstrating resolve to assert its sovereignty claims to rival claimants and domestic audiences. This characteristic, combined with China's tendency to view sovereignty in moralistic and absolutist terms, results in China's greater capacity to engage in escalatory actions in a foreign policy crisis.⁷⁷

Second, despite Beijing's efforts to consolidate its maritime bureaucracy, the fragmented nature of China's foreign policy structure could undermine Beijing's cohesiveness on maritime issues, particularly in the East China Sea. A major contributing factor is the limited authority of the Chinese Foreign Ministry. The Chinese Foreign Minister ranks several steps below the Politburo, whereas his Japanese counterpart occupies a much more influential position within the Japanese government. In some cases, this difference in protocol ranking between the two foreign ministries has prevented meaningful dialogue from taking place at the working level and could limit the capacity for crisis mitigation. For example, despite its limited authority, the Chinese Foreign Ministry was reportedly the only official channel open to Tokyo during the 2012 Senkaku Island crisis. Frequent turnover in Japanese leadership from 2006 to 2012 has further hindered the establishment of consistent official and unofficial diplomatic channels between the two countries.⁷⁸

The Ministry of Foreign Affairs in PRC Foreign Policymaking

Although China's Ministry of Foreign Affairs technically is responsible for the formulation and implementation of China's foreign policy, its influence has waned over the past decade. Due to China's increased political, economic, and military interaction with the world in recent decades, a wide array of actors has entered the Chinese foreign policymaking process through their direct dealings with foreign entities, including several national ministries, most provincial governments, the PLA, and state-owned firms.⁷⁹ As a result, the Ministry of Foreign Affairs is but one of several Chinese foreign policy actors that often have competing interests and goals. The exclusion of the foreign minister from China's 25-member Politburo since 1998 has further weakened the Ministry of Foreign Affairs' position in the foreign policymaking process. Though the opacity of the Chinese political system makes it difficult to render a definitive assessment, most analysts judge the Politburo and its seven-member Standing Committee make most of China's important foreign policy decisions.⁸⁰

For more information on the proliferation of official and non-official Chinese foreign policy actors, see chapter 3, section 2, of the Commission's 2011 Annual Report, "Actors in China's Foreign Policy."

Finally, deficiencies in civil-military coordination could continue to hamper policy coordination in the East and South China Seas. Officials at Japan's National Institute for Defense Studies, a policy think tank under the Japanese Ministry of Defense, told the Commission that coordination between the PLA and the Foreign Ministry, an important nexus in the management of China's maritime disputes, remains weak.⁸¹ The position of the PLA in the party bureaucracy outweighs and outranks the Foreign Ministry, which is one of many ministries under the State Council. Therefore, "for the Foreign Ministry to liaise with the PLA, it must report up to the State Council, which may have to report up further up to the Politburo in order to secure PLA cooperation," according to the Congressional Research Service.⁸² Such a structure does not lend itself to rapid or coordinated decision-making between the PLA and Foreign Ministry, which would be critical in a crisis in either the East or South China Seas.

The apparent maturation since the mid-2000s of China's National Committee on Border and Coastal Defense, an entity under the "dual leadership" of the State Council and the Central Military Commission that "coordinates China's border and coastal defense," suggests an effort to strengthen civil-military coordination with regard to border defense. However, outsiders know little about the influence of this organization on Beijing's overall management of the East and South China Sea disputes.⁸³

China's civil-military relationship also poses risks for crisis in the East and South China Seas at the operational level. Because the PLA routinely enjoys autonomy for military affairs, operational military activities that could significantly impact foreign affairs may not be approved at the highest levels before their execution.⁸⁴

For instance, on two occasions in late January 2013, a Chinese PLA Navy frigate reportedly locked weapons-targeting radar onto a Japan Maritime Self-Defense Force platform—first a helicopter, and later a destroyer. Public information on both Japanese and Chinese rules of engagement for ships and aircraft in the area is limited; however, illuminating another military asset with radar suggests hostile intent under international norms and increases the risk of miscalculation in an operational environment.⁸⁵

When queried about the incidents at a press conference, China's foreign ministry spokesperson stated the foreign ministry was "not aware of the matter" and knew of the incidents only through press reports.⁸⁶ Later in March, Japan's Kyodo News, citing unnamed high-level PLA officers, reported that the PLA admitted its frigates had locked its weapons-targeting radar onto the Japanese platforms. According to Kyodo, these PLA officers claimed the event, at least in the case of the destroyer, was reportedly due to an isolated "emergency decision" of the frigate's commander based on the Chinese military's rules of engagement.⁸⁷ China's Ministry of Defense dismissed the Kyodo report.⁸⁸ Nevertheless, the disconnect among Chinese entities in these cases suggests, as Rear Admiral McDevitt testified to the Commission, "that perhaps [the] ability [of Chinese leadership] to control the situation was not absolute."⁸⁹

Such close encounters are not limited to naval surface vessels. Japan also has reported an increasing number of Chinese aircraft within Japan's Air Defense Identification Zone. Between March

2012 and March 2013, the Japan Air Self-Defense Force scrambled fighter jets against Chinese aircraft in 306 instances—the largest number on record, and the first time this number surpassed the number of similar Japanese responses against Russia.⁹⁰ Furthermore, the Japanese Ministry of Defense in May 2013 reported three separate instances of PLA Navy submarine operations within Japan’s contiguous zone in the East China Sea, an UNCLOS-defined band of water that stretches from 12 to 24 nm from Japan’s coastal baselines.⁹¹ “Innocent passage” of submarines is lawful in contiguous zones and even in territorial waters, but the frequency and persistence of such operations at a time of ongoing tension was enough for Tokyo to raise the issue publically as a means to urge restraint.⁹²

These incidents, particularly the radar lock incident, “raise questions about . . . whether there’s an appreciation [in China] for the degree to which [these were] escalatory act[s],” as Roy Kamphausen, senior advisor for political and security affairs at the National Bureau for Asian Research, testified to the Commission.⁹³ As interactions between Chinese forces and U.S. and Japanese forces become more regular, the adherence of international protocols at sea will become increasingly important for the safety of all air and maritime operations in the region as well as the stability of the security situation in the East and South China Seas.

Implications for the United States

Beijing discourages and seeks to prevent the diplomatic involvement of the United States in the disputes, which Beijing considers a series of bilateral issues between China and each claimant. In response to interview questions on the role of the United States in the East China Sea, China’s Ambassador to the United States Cui Tiankai stated, “The most helpful thing the U.S. could do is to remain truly neutral, to take no side . . . When the United States talks to us, they say they’ll take no side, but sometimes, when they talk to the Japanese or when they make public statements, we hear something different.”⁹⁴

Although the United States does not take a position on the sovereignty of the disputed features and waters in the East and South China Seas, its treaty commitments bind it to the region in ways that link its security interests to the peaceful resolution of China’s maritime disputes.

In the East China Sea, the 1960 Treaty of Mutual Cooperation and Security between Japan and the United States of America provides for a U.S. commitment “in accordance with its constitutional provisions and processes” to defend Japan in the event of an armed attack “against either Party in the territories under the administration of Japan.”⁹⁵ The official U.S. position includes the Senkaku Islands, which are under Japanese administration, in its treaty obligations.⁹⁶ In the South China Sea, the United States maintains a treaty alliance with the Philippines based on the 1951 Mutual Defense Treaty between the United States and the Republic of the Philippines. Though the United States has affirmed its commitment to the Mutual Defense Treaty,⁹⁷ it has not officially articulated the specific geographic areas that would trigger a mutual de-

fense response to the Philippines. Some observers suggest this ambiguity regarding the Philippines' disputed land features has led Manila to misinterpret U.S. defense obligations, perhaps even emboldening Manila to challenge China.⁹⁸

Forward-deployed U.S. forces in East Asia are another element of U.S. security policy in the East and South China Seas. As Lt. Gen. Wallace "Chip" Gregson, USMC (Retd.), currently senior director for China and the Pacific at the Center for the National Interest, testified to the Commission, "Broad, active, widely distributed presence throughout the theater dampens sources of instability, deters conflict, gives substance to U.S. security commitments, and ensures continuing American access to the region."⁹⁹ As defense budgets tighten, the United States will face difficult choices in implementing its policy "rebalance" to Asia. A major challenge ahead for Washington, therefore, will be to stand firm on its security commitments while resourcing its overall foreign policy and security goals in the Asia Pacific region.¹⁰⁰ An integral part of this effort is evident in the deepening U.S. diplomatic and military engagement in the region, with an apparent emphasis on treaty alliances with the Philippines and Japan.¹⁰¹

Finally, the U.S.-China relationship is central to Washington's interest in the East and South China Sea disputes. Despite a generally improving military-to-military relationship, mutual mistrust about one another's long-term intentions continues to pervade the overall security relationship.¹⁰² This strategic backdrop poses challenges for the operational environment at sea, especially as the maritime operating areas of the two countries increasingly overlap. China's growing naval and maritime law enforcement advantage over its neighbors will add to already high levels of confidence that China can and should take bolder actions to protect its maritime interests. As U.S.-China air and naval interactions become more frequent, China's adherence to and participation in multilateral regimes regulating mariner interactions, such as the Convention on the International Regulations for Preventing Collisions at Sea and the Western Pacific Naval Symposium's Code of Unalerted Encounters at Sea, will become increasingly critical.¹⁰³

Through its diplomatic actions and the rebalance to Asia, the United States has signaled its intent to strengthen its relationship with partners and allies in East Asia. However, China's military modernization, coupled with the potential decline in U.S. power caused by sequestration, is altering the balance of power in the region and reducing the deterrent effect of the rebalance policy. The risk is therefore increasing that China's coercive approach to its sovereignty claims will lead to greater conflict in the region.

Conclusions

- China relies on a coercive and persistent maritime law enforcement and naval presence to gain control of disputed territory in the East and South China Seas. A consolidated maritime policy-making bureaucracy and streamlined maritime law enforcement fleets could increase Beijing's confidence in its capability for coercion in the ongoing maritime disputes.

- Two key drivers shape China's approach to its maritime disputes: First, China encourages ardent popular nationalism, which it exploits to support its foreign policy aims in the East and South China Seas. Second, China views sovereignty over claims in the East and South China Seas as central to its national security, territorial integrity, and economic development.
- China uses legal and administrative measures to assert de jure governance over its disputed maritime regions; it deploys maritime law enforcement and naval vessels to its claimed waters to demonstrate and lay the groundwork for de facto governance.
- Beijing's tendency to demonstrate resolve in its maritime disputes; its large and complicated political, foreign affairs, and military bureaucracy; and its inconsistent adherence to internationally accepted norms of air and maritime operations may contribute to operational miscalculations in the East and South China Seas. Unyielding positions on sovereignty and nationalist sentiment surrounding these maritime disputes increase the risk of escalation from a miscalculation at sea to a political crisis.

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RECOMMENDATIONS

China's Cyber Activities

The Commission recommends:

- Congress adopt legislation clarifying the actions companies are permitted to take regarding tracking intellectual property stolen through cyber intrusions.
- Congress amend the Economic Espionage Act (18 U.S.C. § 1831–1839) to permit a private right of action when trade secrets are stolen.
- Congress support the Administration's efforts to achieve a high standard of protection of intellectual property rights in the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership.
- Congress encourage the Administration to partner with other countries to establish an international list of individuals, groups, and organizations engaged in commercial cyber espionage. The Administration and partner governments should develop a process for the list's validation, adjudication, and shared access.
- Congress urge the Administration to continue to enhance its sharing of information about cyber threats with the private sector, particularly small- and medium-sized companies.
- Congress direct the Administration to prepare an inventory of existing federal use of cloud computing platforms and services and determine where the data storage and computing services are geographically located. Such inventory should be prepared annually and reported to the appropriate committees of jurisdiction.
- Congress urge the Administration to expedite progress in its implementation of Section 806 of the National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383), which was intended to enhance the Department of Defense's ability to address supply chain risks.

China's Maritime Disputes

The Commission recommends:

- Congress fund the U.S. Navy's shipbuilding and operational efforts to increase its presence in the Asia Pacific to at least 60 ships and rebalance homeports to 60 percent in the region by 2020 so that the United States will have the capacity to maintain readiness and presence in the Western Pacific, offset China's

growing military capabilities, and surge naval assets in the event of a contingency.

- Congress fund Departments of Defense and State efforts to improve the air and maritime capabilities of U.S. partners and allies in Asia, particularly with regard to intelligence, surveillance, and reconnaissance, to improve maritime domain awareness in the East and South China Seas.
- Congress urge the Department of Defense to continue to develop the U.S.-China maritime security relationship in order to strengthen strategic trust. The relationship should be within the bounds of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) and based on the principles of reciprocity and transparency.
- Congress fund U.S. Coast Guard engagement efforts with coast guard and maritime law enforcement agencies in the Western Pacific to increase understanding among civilian maritime bodies in the Asia Pacific.