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Publisher: Routledge

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Journal of Strategic Studies

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/fjss20>

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Published online: 02 May 2014.



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To cite this article: James Manicom (2014) China and American Seapower in East Asia: Is Accommodation Possible?, *Journal of Strategic Studies*, 37:3, 345-371, DOI: [10.1080/01402390.2014.900753](https://doi.org/10.1080/01402390.2014.900753)

To link to this article: <http://dx.doi.org/10.1080/01402390.2014.900753>

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China and American Seapower in East Asia: Is Accommodation Possible?

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ABSTRACT Debates about the future of American seapower in East Asia turn on the argument that American seapower presents a risky and costly luxury that undercuts the cooperative potential of US–China relations. This article asks whether accommodation between China and the United States on the possession and exercise of American seapower in East Asia is possible. Accommodation on this front could significantly lower the risks of unintended escalation and in turn undermine arguments that favour an American retreat from East Asia. The article outlines how accommodation can be achieved on the exercise of American seapower in the region.

KEY WORDS: China, United States, Freedom of Navigation, Accommodation, Maritime Security

American hegemony in East Asia is intimately linked to Washington's possession and expression of seapower. Although many US analysts argue this allows Washington to exercise benevolent rule of the global maritime commons, not all states are comfortable with America's overwhelming military strength. China has been chief among these in articulating a rejection of American maritime hegemony in East Asia. As expressed by Wu Xinbo to Secretary of Defense Robert Gates at the 2011 Shangri-la Dialogue:

One major problem with these [US–China military] relations ... is United States intelligence and military activities in the Chinese vicinity. While the United States may take access to every part of the world for granted, from a Chinese perspective, especially given the isometric [*sic*] relationship of the power, sometimes China may find United States activities intimidating and intrusive. As a major military power, the United States could sometimes exercise self-constraint in seeking its global military presence and access and

also to show some sensitivity to the concerns of the countries which are much weaker than the United States. I think this is very core to the equation in building military trust between the United States and China.¹

In Washington, the rise of China, economic challenges and the drawdown of the military after wars in the Middle East have sparked a debate about the suitability and durability of American hegemony in East Asia. Although the US rebalancing toward Asia announced in late 2011 was intended to quiet critics at home and reassure allies abroad, the fact remains that fiscal constraints and growing Chinese confidence at sea suggest that the nature of future American seapower will be different than heretofore. With a view to advancing the debate on the future of American seapower in East Asia, this article asks whether accommodation between China and the United States is possible on the possession and exercise of seapower in East Asia.² In light of Wu Xinbo's comments above, this seems to be the litmus geostrategic issue between the two powers in East Asia and vital to preventing the negative fallout that has historically accompanied power transitions.

The credibility of contemporary American seapower is impossible to separate from America's fiscal problems and its willingness to incur the costs of hegemony.³ Several voices in recent years have called for a scaling back of American military commitments globally as part of a strategic retrenchment.⁴ Yet, there is clearly a demand for American seapower in East Asia, despite its sometimes heavy handed nature. In an effort to

¹'First Plenary Session – Question & Answer Session,' The 10th IISS Asia Security Summit: The Shangri-la Dialogue, Singapore, Saturday 4 June 2011, <<https://www.iiss.org/en/events/shangri-la-dialogue%201a%20dialogue/archive/shangri-la-dialogue-2011-4eac/first-plenary-session-1fea/qa-1453>>.

²A.F.K. Organski and Jacek Kugler, *The War Ledger* (Univ. of Chicago Press 1980); Jacek Kugler and Ronald L. Tammen, 'Regional Challenge: China's Rise to Power', in Jim Rolfe (ed.), *The Asia-Pacific: A Region in Transition* (Honolulu: Asia-Pacific Center for Security Studies 2004), 33–53; Robert Gilpin, *War and Change in World Politics* (Cambridge: CUP 1981).

³Paul K. MacDonald and Joseph M. Parent, 'Grateful Decline? The Surprising Success of Great Power Retrenchment', *International Security* 35/4 (2011), 7–44.

⁴See Walter Russell Mead, 'The Tea Party and American Foreign Policy', *Foreign Affairs* 90/2 (2011), 28–44; Barry R. Posen, 'The Case for Restraint', *American Interest*, 3/2 (2007), 7–17; Stephen M. Walt, 'Keeping the World "Off-Balance": Self-Restraint and US Foreign Policy', in G. John Ikenberry (ed.), *America Unbridled: The Future of the Balance of Power* (Ithaca NY: Cornell UP 2002), 121–54; Michael Mandelbaum, 'Overpowered? Questioning the Wisdom of American Restraint', *Foreign Affairs* 89/3 (2010), 114–119.

undermine these calls for retrenchment by the United States, while contributing to debates about the sustainability of American seapower in East Asia, this article explores avenues for a Sino-US accord on the exercise of American seapower in East Asia. Such an understanding would undermine the retrenchment argument by reducing the likelihood of conflict between the United States and China and by removing an important barrier to improved Sino-American relations on the world's stage. Washington's choice is not limited to hegemony or retrenchment; there is an expansive middle ground of policy options that merit discussion. The article explores the strategic restraint perspective, outlines American seapower in East Asia and explores China's shifting attitude towards it. The penultimate section looks for common ground and looks to other instances of similar disagreements to assess the extent to which an accommodation is feasible. The final section considers the negotiation and practice of accommodation in light of the nascent power transition in East Asia. In doing so, the article highlights the importance of seapower to debates over strategic alignment and explores what accommodation between the US and China might look like. The article treats accommodation as an operational level compromise that accommodates the preferences of the other party; it does not treat accommodation as the result of a sea change in strategic level thinking.

American Seapower and Strategic Restraint

A growing chorus of pundits and policymakers has argued that in tough economic times, there is no overarching strategic policy objective that is served by continuing to be an active presence in East Asia.⁵ This perspective is concerned with both the possession of seapower – the costs of maintaining a forward deployed presence – and the exercise of seapower – the risks US forces incur to maintain hegemony. Preponderance, particularly when manifested as the deployment of a large number of ships that rarely engage in naval battle, is expensive and, in the post-Soviet era, unnecessary.⁶ Others argue that this presence has costs for US partnership with China on global issues such as climate change, global economic recovery and nuclear non-proliferation, or that it prevents the emergence of a stable regional order.⁷

⁵Joseph M. Parent and Paul K. MacDonald, 'The Wisdom of Retrenchment: America Must Cut Back to Move Forward,' *Foreign Affairs* 90/6 (2011), 32–47.

⁶Barrett Tillman, 'Fear and Loathing in the Post-Naval Era,' *USNI Proceedings*, 16 June 2009, 16–21.

⁷Ted Galen Carpenter, 'Washington's Clumsy China Containment Policy', *The National Interest*, 30 Nov. 2011; Ted Galen Carpenter, 'Washington Placates a Rising China', *China-US Focus*, 30 Sept. 2011. On the final point see Charles Kupchan, 'After Pax Americana: Benign Power, Regional Integration, and the Sources of a Stable Multipolarity', *International Security* 23/2 (1998), 44.

Similarly, US commitment to the defence of Taiwan is an unnecessary luxury that impedes the improvement of Sino-US relations.⁸ These voices are not isolationist in a traditional sense. They simply support a grand strategy that relies less on preponderance, and is closer to offshore balancing.⁹ Overwhelming military power increases the risk of recklessness by the hegemon; America is thus better suited to a more classically defined defensive realist foreign policy.¹⁰ According to this view, the United States should ‘recognize that stability in Asia can no longer be imposed by a non-Asian power’.¹¹

One of the chief policy implications of this perspective relates to the exercise of American seapower in East Asia, which is a function of an age-old consensus in government that America is more secure if it can project naval power around the world. Proponents argue the freedom of navigation and the associated actions justified on this basis are vital to US national security. According to critics, American intelligence gathering activities in Chinese waters are an unnecessary strain on Sino-US relations and may undermine cooperation on common global challenges. As one prominent critic has argued:

[H]aving a legal right to do something does not make it wise to rub others’ noses in it. Lurking offshore to satisfy a prurient interest in the military preparedness of other nations to defend themselves can clearly be useful. Possibly, in some circumstances, it could be essential. But the best way to preserve the right to do it may be to refrain from doing it too obviously, too frequently, or too intrusively.¹²

Beyond this, two other policy recommendations follow from this perspective. First, the US should conduct a more constrained foreign

⁸Bruce Gilley, ‘Not So Dire Straits: How the Finlandization of Taiwan Benefits US Security’, *Foreign Affairs* 89/1 (2010), 44–60; Charles Glaser, ‘Will China’s Rise Lead to War? Why Realism Does not Mean Pessimism’, *Foreign Affairs* 90/2 (2011), 80–91. For a rejoinder see Nancy Berkopf Tucker and Bonnie Glaser, ‘Should the United States Abandon Taiwan?’, *Washington Quarterly* 34/4 (2011), 23–37.

⁹Christopher Layne ‘From Preponderance to Offshore Balancing: America’s Future Grand Strategy’, *International Security* 22/1 (1997), 118.

¹⁰Robert J. Art, *A Grand Strategy for America* (Ithaca, NY: Cornell UP 2003), 140–8; John J. Mearsheimer and Stephen Walt, ‘An Unnecessary War’, *Foreign Policy*, Jan./Feb. 2003; Christopher Layne, ‘Offshore Balancing Revisited’, *Washington Quarterly* 25/2 (2002), 233–48.

¹¹Zbigniew Brzezinski, ‘Balancing the East, Upgrading the West: US Grand Strategy in an Age of Upheaval’, *Foreign Affairs* 91/1 (2012), 97–104.

¹²Ambassador Chas Freeman, ‘Beijing, Washington and the Shifting Balance of Prestige,’ Remarks to the China Maritime Studies Institute, 10 May 2011, Newport RI.

policy in East Asia, focused on diplomacy and mediation.¹³ Second, forward deployed forces should be brought home.¹⁴ The Cold War era hub and spokes alliance system should be dismantled as part of a complete withdrawal of American troops from the region.¹⁵ This would entail maintaining command of the commons to 'preserve the ability to help out if necessary', but the United States would withdraw from Europe, reduce direct financial assistance to Israel and 'reconsider' its security relationship with Japan.¹⁶ Although difficult to reverse in the event of a crisis, the proponents of retrenchment argue that the likelihood of a crisis in East Asia is reduced by American withdrawal. This perspective is not limited to the United States but is shared by analysts in some allied countries as well, such as Australia.¹⁷ Taken together, these views argue that the possession of American seapower is too costly and the exercise of American seapower too risky to endure.

However, strategic restraint may not be feasible for US foreign policy or stability in Asia in the twenty-first century. The primary problem with restraint so-envisioned is that it assumes Chinese military weakness relative to its potential target states, not least due to the geographic buffer provided by the Taiwan Strait and the East China Sea.¹⁸ Although the expeditionary capabilities of the Chinese military remain poor relative to rest of the force, Chinese military modernization has been guided by the strategic rationale to develop the capabilities to deter Taiwanese independence while weakening US resolve to intervene on Taiwan's behalf.¹⁹ This modernization has occurred concomitant with an enlargement of Chinese naval ambitions.²⁰ Chinese operations beyond the Japanese islands in the Pacific have certainly increased

¹³Brzezinski, 'Balancing the East, Upgrading the West'.

¹⁴Eugene Gholz, Daryl G. Press, and Harvey M. Sapolsky, 'Come Home, America: The Strategy of Restraint in the Face of Temptation', *International Security* 21/4 (1997), 17–30.

¹⁵Ibid.

¹⁶Posen, 'The Case for Restraint', 13–17.

¹⁷Hugh White, 'Power Shift: Australia's Future between Washington and Beijing', *Quarterly Essay* 39 (Sept. 2010).

¹⁸Gholz *et al.*, 'Come Home, America', 20; Michael G. Gallagher, 'China's Illusory Threat to the South China Sea', *International Security* 19/1 (1994), 169–94.

¹⁹Thomas G. Mahnken, 'China's Anti-Access Strategy in Historical and Theoretical Perspective', *Journal of Strategic Studies* 34/3 (June 2011), 313.

²⁰David Lei, 'China's New Multi-Faceted Maritime Strategy', *Orbis* 52/1 (2008), 139–57. M. Taylor Fravel and Alex Liebman, 'Beyond the Moat: The PLAN's Evolving Interests and Potential Influence', in Phil Saunders *et al.* (eds), *The Chinese Navy: Expanding Capabilities, Evolving Roles* (Washington DC: National Defense UP 2011).

anxiety among Japanese strategists.²¹ The enduring strategic rationale for US forces in the region, to foster stability and deter aggression, by both China and Japan, endures.²² The possession of seapower is worth the money.

This perspective seems to resonate in Washington DC. In his address to the Australian Parliament in November 2011, President Obama stated unequivocally that ‘reductions in US defense spending will not – I repeat, will not – come at the expense of the Asia-Pacific’.²³ Secretary of Defense Leon Panetta noted at the 2012 Shangri-la Dialogue that 60 per cent of the US Navy would be stationed in the Pacific by 2020.²⁴ In addition to the US commitment to supply seapower to East Asia, there seems to be growing demand for it in the region. Perceptions of Chinese assertiveness in regional maritime affairs since 2010, by enforcing its claimed maritime jurisdiction against vessels of rival claimants in contested waters, caused regional states to reach out to the United States for security. States once accused of accommodating or bandwagoning with China’s rise, such as Vietnam and the Philippines, engaged in external balancing behaviour through closer defence ties, and in the case of the latter, seeking security assurances from the United States. There is clearly still an appetite for US seapower among East Asian states, which reinforces the legitimacy of American power.²⁵ Rebalancing is an effort to strengthen the credibility of America’s regional security posture amid domestic resistance to costly international engagement.

Yet, if Washington intends to stay the course in East Asia, it will increasingly rub against the preferences of a rising China and increase the risks of miscalculation in an increasingly crowded East Asian littoral. However, it may be possible to reduce US risk exposure without wholesale withdrawal from East Asian security commitments; there may be a middle ground. Chief among the concerns of the restraint school is the propensity for adventurism recently featured in Bush era foreign policy. Such adventurism may now be impossible due to

²¹See Masafumi Iida, Makoto Saito, Yasuyuki Sugiura, and Masayuki Masuda, *NIDS China Security Report* (Tokyo: National Institute for Defense Studies 2011).

²²Joseph S. Nye Jr, ‘The Case for Deep Engagement,’ *Foreign Affairs* 74/4 (1995); 90–102. See most recently, Richard L. Armitage and Joseph S. Nye, *The US-Japan Alliance: Anchoring Stability in Asia* (Washington DC: CSIS 2012), 8–10.

²³Office of the Press Secretary, ‘Remarks By President Obama to the Australian Parliament’, 17 Nov. 2011.

²⁴Leon Panetta, ‘Address to the 11th Shangri-la Security Dialogue’, 2 June 2012, <www.iiss.org/conferences/the-shangri-la-dialogue/shangri-la-dialogue-2012/speeches/first-plenary-session/leon-panetta/>.

²⁵Ian Clark, ‘Bringing Hegemony Back In: The United States and International Order’, *International Affairs* 85/1 (2009), 23–36.

financial constraints and war-weariness on the part of the American populace. As noted by the Pentagon's 2012 Defense Strategic Guidance, 'US forces will no longer be sized to conduct large-scale, prolonged stability operations.'²⁶ A new era of limited strategic leadership was arguably demonstrated in the campaign against Muammar Gaddafi. US forces led the charge, remained in theatre to provide domain awareness, but the bulk of the combat burden shifted to allies like France, the UK, Italy and Canada. Reaching an accommodation with China on the exercise of American seapower in East Asia could be a valuable feature of post Global Financial Crisis American foreign policy.

The Foundations of American Maritime Hegemony

The possession and exercise of American seapower is integral to American hegemony in East Asia. American regional hegemony has kept East Asia stable despite concerns of growing instability caused by rising military spending, growing energy needs, disputed territories and unresolved historical legacies.²⁷ The possession of seapower is embodied by the presence of the United States military in region, particularly at sea.²⁸ This is achieved by its qualitative edge in military forces and by forward deployed US forces on the territory of its regional allies; Japan, South Korea and access arrangements with Southeast Asian states. The 'hub and spokes' alliance system has kept the peace in East Asia since the end of World War II by deterring adventurism by would be rivals and is credited with maintaining the stability required for East Asia's dramatic economic growth.²⁹ US seapower in East Asia deters aggression on the Korean peninsula and across the Taiwan Strait and provides the public good of secure sea lanes.³⁰ During the post-Cold War era this system has acted as a hedge against the emergence of alternative multi-polar orders modelled on

²⁶*Sustaining US Global Leadership: Priorities for 21st Century Defense* (Washington DC: Dept. of Defense 2012), 6.

²⁷Aaron L. Friedberg, 'Ripe for Rivalry: Prospects for Peace in a Multipolar Asia', *International Security* 18/3 (1993/94), 5–33; Richard K. Betts, 'Wealth, Power, and Instability: East Asia and the United States after the Cold War,' *International Security* 18/3 (1993/94), 34–77.

²⁸Dennis Blair, 'Military Power Projection in Asia', in Ashley J. Tellis, Mercy Kuo and Andrew Marble (eds), *Strategic Asia 2008: Challenges and Choices* (Seattle: National Bureau of Asian Research 2008).

²⁹Robert D. Blackwill and Paul Dibb (eds), *America's Asian Alliances* (Cambridge, MA: The MIT Press 2000); G. John Ikenberry, 'American Hegemony and East Asian Order', *Australian Journal of International Affairs* 58/3 (2004), 353–67.

³⁰Office of International Security Affairs, *United States Security Strategy for the East Asia-Pacific Region* (Washington DC: Dept. of Defense 1995).

alternative structures and norms.³¹ Washington values a globally present navy as the foundation of international order, including East Asia.³² Despite moderate adjustments in force structure, overwhelming American military strength at sea has remained an enduring feature of East Asian international relations since the end of World War II. The possession and exercise of seapower underwrites US maritime hegemony by giving it the necessary freedom of action to collect intelligence, conduct operations, engage in naval diplomacy and maintain its deterrent posture, which reinforces America's role as the dominant military power.³³

The exercise of American seapower rests on the norm of freedom of navigation.³⁴ This centuries old rule has underwritten East Asia's growth as a region of trading states and allowed freedom of access for US naval vessels. Free access to the seas fostered not only economic growth within individual East Asian states, but also the creation of robust economic interdependence between East Asian states that creates a powerful disincentive for war. The United States is the leading defender of navigational freedoms worldwide despite not being a state party to the United Nations Convention on the Law of the Sea (UNCLOS). This interest emerged during the 1970s as the world negotiated UNCLOS and many states made claims to ocean space that sought to limit access to coastal waters as far offshore as 200 nautical miles. In response, the Office of Ocean Affairs in the US Department of State has published lists of excessive maritime claims by coastal states and has in some cases physically resisted these claims through the Freedom of Navigation Program (FON) in conjunction with the Navy.³⁵ Although

³¹Jae Jeok Park, 'The US-led Alliances in the Asia-Pacific: Hedge Against Potential Threats or an Undesirable Multilateral Security Order?', *Pacific Review* 24/2 (2011), 137–52.

³²James T. Conway, Gary Roughead and Thad W. Allen, *A Cooperative Strategy for 21st Century Seapower*, Oct. 2007, <www.navy.mil/maritime/Maritimestrategy.pdf>. This was echoed forcefully by Secretary of Defense Robert Gates at the 10th Shangri-la Dialogue.

³³James E. Auer and Robyn Lim, 'The Maritime Basis of American Security in East Asia', *Naval War College Review* 54/1 (2001), 39–58; John M. Van Dyke, 'North-East Asian Seas: Conflicts, Accomplishments and the Role of the United States', *International Journal of Marine and Coastal Law* 17/3 (2002), 417–20.

³⁴Ramses Amer, 'Towards a Declaration on "Navigational Rights" in the Sea-Lanes of the Asia-Pacific', *Contemporary Southeast Asia* 20/1 (1998), 88–102.

³⁵See Robert W. Smith and J. Ashley Roach, 'United States Responses to Excessive National Maritime Claims', *Limits of the Seas*, No. 112, (Washington DC: Office of Ocean Affairs, US Dept. of State 1992); Robert W. Smith, 'National Claims to Maritime Jurisdiction', *Limits in the Seas*, No. 36 (Washington DC: Office of Ocean Affairs, US Dept. of State 2000).

there several ways in which coastal states can exceed their jurisdictional competence, the most prominent source of dispute relates to military activities in the exclusive economic zone (EEZ). Despite some differences of perspective, most states in the international system interpret regulating military activities as beyond the purview of coastal states' jurisdictional authority over the EEZ. Washington's support of this norm is unequivocal and has been coercively applied to several states, allied and non-allied alike. States the world over have tolerated US assertions of its navigational freedoms, such as through the FON programme, as a cost of American hegemony. China is chief among a minority of states that have either passed domestic laws banning military activities in their EEZ or have made statements to this effect. Other states that adopt the Chinese attitude include Bangladesh, Brazil, Cape Verde, India, Iran, Malaysia, Pakistan and Uruguay, Vietnam, and most recently Thailand.³⁶

China's Perspective on American Seapower

China has historically accommodated American seapower. China's historical focus on continental security underwrote a bipolar order in East Asia, with American maritime hegemony balancing Chinese continental dominance.³⁷ For most of the history of Communist China, maritime issues were not a concern to Beijing.³⁸ Since the onset of the reform period China has become maritime oriented, yet the stability created by US seapower helped support China's strategic interests including developing a peaceful external environment that permitted economic growth and the perpetuation of the Chinese Communist Party (CCP) regime.³⁹ China was able to free ride off American SLOC security to gain the benefits of secure trade while not bearing any of the costs. American seapower acted as a restraint on Japanese militarism because it directed pressures from within Tokyo and Washington for greater burden sharing towards less controversial responsibilities such as sea lane security up to

³⁶Compiled from Dept. of Defense, *Excessive Maritime Claims Manual* 2005, <www.dtic.mil/whs/directives/corres/html/20051m.htm> and Peter A. Dutton, 'Caelum Liberam: Air Defense Identification Zones Outside Sovereign Airspace', *American Journal of International Law* 103/4 (2009), 697–9.

³⁷Robert S. Ross, 'Geography of the Peace: East Asia in the Twenty-First Century', *International Security* 23/4 (1999), 106–8.

³⁸David G. Muller, *China as a Maritime Power* (Boulder, CO: Westview Press 1983).

³⁹Michael D. Swaine and Ashley J. Tellis, *Interpreting China's Grand Strategy: Past, Present, and Future* (Santa Monica, CA: RAND 2000).

1,000 nautical miles from the Japanese islands.⁴⁰ Despite China's longstanding objections about the way the US exercises its freedom of navigation, it has accommodated the exercise of American sea-power in East Asia since the formation of the People's Republic.⁴¹

However, recent events indicate a shift in China's perspective. Chinese scholars lament the growing complexity of China's strategic environment as a function of perceived US pressure on China's maritime approaches.⁴² Chinese analysts argue that encroachment into its claimed sea areas by non-claimant states like Australia and the United States is the basis of an encirclement strategy to contain China.⁴³ While this sentiment is an enduring feature of the Chinese discourse on its maritime ambitions, it has become more popular of late.⁴⁴ Some argue that Chinese seapower can be used to strengthen control over shipping and resource development in its claimed maritime areas in the Yellow, East and South China Seas.⁴⁵ This attitude became noticeably more pronounced following the sinking of the South Korean naval vessel *Cheonan* and the increased presence of presence of US naval forces in the Yellow Sea.⁴⁶ This more assertive perspective reinforced concerns within the region that China's military modernization contributes to an agenda of territorial revisionism

⁴⁰Wu Xinbo, 'The End of the Silver Lining: A Chinese View of the US-Japanese Alliance', *Washington Quarterly* 29/1 (2005-06), 119-30; Victor D. Cha, 'Powerplay Origins of the US Alliance System in Asia', *International Security* 34/3 (Winter 2009/10), 158-96.

⁴¹On the first point see Elizabeth Van Wie Davis, *China and the Law of the Sea Convention: Follow the Sea* (Lewiston: Edwin Mellen Press 1995). On the second see Alan Tonelson, *A Necessary Evil? Current Chinese Views of America's Military Role in East Asia* (Washington DC: Stimson Center 2003); Hugh White, 'Why War in Asia Remains Thinkable', *Survival*, 50/6 (2008), 89.

⁴²Shen Dingli, 'A Chinese Assessment of China's External Security Environment', *China Brief* 11/5 (March 2011).

⁴³Zhang Jingwei, 'China Adjusts Its Maritime Power Strategy at the Right Moment', *Ta Kung Pao*, 29 Dec. 2008.

⁴⁴For older work in this vein see David Winterford, 'Chinese Naval Planning and Maritime Interests in the South China Sea: Implications for US and Regional Security Policies', *Journal of American-East Asian Relations* 2/4 (1993), 369-98; Shee Poon Kim, 'The South China Sea in China's Strategic Thinking', *Contemporary Southeast Asia* 19/4 (1998), 369-87. The most outspoken advocate of this perspective is Luo Yuan. See Luo Yuan, 'PLA General: US engaging in gunboat diplomacy', *People's Daily*, 12 Aug. 2010.

⁴⁵Zhang Wenmu, 'Sea Power and China's Strategic Choices', *China Security* 2/2 (2006), 25.

⁴⁶Yang Yi, 'Navigating Stormy Waters: The Sino-American Security Dilemma at Sea', *China Security* 6/3 (2010), 3-11.

in maritime East Asia.⁴⁷ As a consequence many US analysts now assume that China harbours revisionist aspirations towards regional order including the expulsion of the United States.⁴⁸

These concerns are illustrated by the growing number of confrontations between Chinese and American ships in regional seas that arise from the legal dispute noted above. In March 2009, the USNS *Impeccable* was confronted by a flotilla of five Chinese vessels as it towed a sonar array in the South China Sea, 75 nautical miles from Hainan Island.⁴⁹ Chinese forces also confronted civilian-crewed research vessels the USNS *Bowditch* and USNS *Victorious* in 2002 and March 2009 in the Yellow Sea. In all cases American ships and aircraft were conducting reconnaissance and research operations that Washington defends as being consistent with freedom of navigation rights under the law of the sea.⁵⁰ China, by contrast, argues that these American operations, indeed all types of survey activity, are forbidden in Chinese waters without coastal state permission.⁵¹ Although there is a wider global and legal context relating to the exercise of seapower in the EEZ, these incidents cut right to the heart of a Sino-US dispute about the exercise of American seapower in East Asia.

Although it is not a party, the US accepts much of UNCLOS as customary international law. The *Impeccable* was confronted 75 nautical miles off the coast of Hainan Island, well within the Chinese EEZ. Scholars of international law argue that states are entitled to freedom of navigation through a coastal state's EEZ and the *Impeccable* thus did nothing wrong. Coastal states have exclusive jurisdiction over resource exploitation and other commercial activities, while user states retain

⁴⁷See for instance, Robert Kaplan, 'The Geography of Chinese Power', *Foreign Affairs* 89/3 (2010); Jae-hyung Lee, 'China's Expanding Maritime Ambitions in the Western Pacific and the Indian Ocean', *Contemporary Southeast Asia* 24/3 (2002), 549–68.

⁴⁸Dan Blumenthal, 'Networked Asia', *The American Interest* (May/June 2011); Robert J. Art, 'The United States and the Rise of China: Implications for the Long Haul', *Political Science Quarterly* 125/3 (2010), 379–81; Dean Cheng, 'Seapower and the Chinese State: China's Maritime Ambitions', *Heritage Foundation Background*, No. 2576, 11 July 2011; James R. Holmes and Toshi Yoshihara, 'China's "Caribbean" in the South China Sea', *SAIS Review* 26/1 (2006), 79–92.

⁴⁹The incident raised many of the same issues as the 2001 collision between a Chinese fighter and an American reconnaissance plane. See John M. Van Dyke, 'Military Ships and Planes Operating in the Exclusive Economic Zone of Another Country', *Marine Policy* 28 (2004), 29–39.

⁵⁰James Kraska, 'The Legal War Behind the Impeccable Incident', *World Politics Review*, 16 March 2009.

⁵¹Cheng Xizhong, 'A Chinese Perspective on Operational Modalities', *Marine Policy* 28 (2004), 25–7.

navigational and communication freedoms.⁵² While UNCLOS is ambiguous when it comes to distinguishing between those types of survey activities that can be regulated by a coastal state in its EEZ, it is highly unlikely that the *Impeccable's* survey could be considered as an infringement on China's coastal state economic rights.⁵³ It is unlikely that the US government would seek commercial gain from the data collected.⁵⁴

By contrast, from the Chinese perspective the United States is abusing freedom of navigation to conduct intelligence-gathering operations, prejudicial to the security of the Chinese state.⁵⁵ Some analysts claim that American operations are testing China's ability to detect foreign vessels and aircraft by 'tickling' their radar stations, interfering with ship to shore communications and attempting to detect how Chinese submarines enter and leave their bases.⁵⁶ Beijing views these activities as a form of battlefield preparation and has prohibited them under Chinese domestic law.⁵⁷ According to Ji Guoxing, American intelligence gathering activities run counter to UNCLOS Article 301, which stipulates that state parties shall refrain from threatening the sovereignty of any state when exercising their rights at sea.⁵⁸ Some Chinese argue that the operations are legal cover for the strategic prerogative of maintaining American hegemony and that American intransigence on the issue is an irritant to other countries.⁵⁹

⁵²R.R. Churchill and A.V. Lowe, *The Law of the Sea*, 3rd ed. (Manchester UP 1999), chapters 9 and 13.

⁵³Ian Townsend-Gault and Clive Schofield, 'Hardly Impeccable Behaviour: Confrontations between Foreign Ships and Coastal States in the EEZ', *International Zeitschrift* 5 (April 2009), <www.zeitschrift.co.uk/indexv5n1.html>.

⁵⁴Sam Bateman, 'Hydrographic Surveying in the EEZ: Differences and Overlaps with Marine Scientific Research', *Marine Policy* 29 (2005), 163–74.

⁵⁵Zhang Haiwen, 'The Conflict between Jurisdiction of Coastal States on MSR in EEZ and Military Survey', in Myron H. Nordquist, John Norton Moore and Kuen-chen Fu (eds), *Recent Developments in the Law of the Sea and China*, (Leiden: Martinus Nijhoff 2006), 317–31.

⁵⁶Mark J. Valencia, 'The South China Sea Brouhaha: Separating Substance from Atmospherics', *Policy Forum* 10-044, 10 Aug. 2010, <www.nautilus.org/publications/essays/napsnet/policy-forums-online/security2009-2010/the-south-china-sea-brouhaha-separating-substance-from-atmospherics>.

⁵⁷Ren Xiaofeng and Cheng Xizhong, 'A Chinese Perspective', *Marine Policy* 29 (2005), 139–46.

⁵⁸Ji Guoxing, 'The Legality of the 'Impeccable Incident'', *China Security* 5 (2009), 18.

⁵⁹Zhang Haiwen, 'Is It Safeguarding the Freedom of Navigation or Maritime Hegemony of the United States? – Comments on Raul (Pete) Pedrozo's Article on Military Activities in the EEZ', *Chinese Journal of International Law* 9 (2010), 45.

The policy challenge that emerges is a lack of predictability at sea. According to US Deputy Assistant Secretary of State Scot Marciel, 'In some cases we do not share or even understand China's interpretation of international maritime law.'⁶⁰ For instance, China unexpectedly protested the American naval exercises with South Korea in waters near North Korea in response to the sinking of the *Cheonan*. Deputy Chief of the Armed Forces General Staff General Ma Xiaotian warned Washington not to deploy the USS *George Washington* to the Yellow Sea as part of these exercises, which was interpreted as an effort to restrict American access to the Yellow Sea.⁶¹ Symptomatic of the nature of disputes over the interpretation of international law, Chinese objections to the deployment of the aircraft carrier made its deployment a necessity in order to defend freedom of navigation norms.⁶²

Furthermore, there are areas of maritime East Asia where the US and China dispute not only what activities they can conduct, but also the very status of the waters, which increases operational uncertainty.⁶³ Some American scholars have argued that China is engaged in an effort to shape international norms and laws to ensure that these do not limit Chinese freedom of action. US analysts' fear is China's perspective is gaining traction following Thailand's perspective on the issue in the wake of its UNCLOS ratification in 2011.⁶⁴ Problematically, American and Chinese interpretations are mutually exclusive. As a result, both sides have a disincentive for accommodation of the other's posture given the role of state practice in the evolution of international law and the global and legal context in which these disputes are unfolding. Accommodation on these issues in East Asia would surely be expected elsewhere in the world.

The above indicates that China is dissatisfied with the possession – manifested by forward deployed forces – and the exercise – manifested

⁶⁰Scot Marciel, Testimony at the Subcommittee on East Asian and Pacific Affairs, Senate Foreign Relations Committee, Maritime Issues and Sovereignty Disputes in East Asia, 15 July 2009.

⁶¹Michael Richardson, 'Steering a Fine Line in the Yellow Sea,' *Straits Times*, 23 Aug. 2010.

⁶²Ralph Cossa, 'Not China's Coastal Waters,' *Japan Times*, 1 Sept. 2010. The USS *George Washington* thus returned to the Yellow Sea in Nov. 2010 to conduct a second exercise with South Korean forces. 'S. Korea, US conduct joint drill amid NK's threats of rockets,' *Korea Herald*, 28 Nov. 2010.

⁶³James Manicom, 'Beyond Boundary Disputes: Understanding the Nature of China's Challenge to Maritime East Asia,' *Harvard Asia Quarterly* 12/3&4 (2010), 46–53.

⁶⁴Peter Dutton, 'Cracks in the Global Foundation: International Law and Instability in the South China Sea,' in Patrick Cronin (ed.), *Cooperation from Strength: The United States, China and the South China Sea* (Washington DC: Center for a New American Security 2012), 74.

by US commitment to the freedom of navigation of US seapower in East Asia. Rather than being seen as a stabilizing element, US forces are now seen as an unwelcome, highly-mobile foreign military presence in the Chinese sphere of influence. The primary challenge with disputes over interpretations of international law is that they are zero-sum.⁶⁵ Yet, given China's growing maritime ambitions and its quite legitimate right to field a potent and globally mobile navy of its own, it is vital that the two arrive at some kind of understanding on these issues. The alternative is a scenario in which an incident could escalate quickly and engulf the two powers in conflict. Despite calls for retrenchment at home there is no evidence that the United State is considering a withdrawal from East Asia. Simultaneously, both the possession and exercise of American seapower are rejected by the region's rising power, which is simultaneously becoming a less predictable foreign policy actor as a function of a growing plethora of inputs into the foreign policy-making process, including a growing diversity of actors and a pluralistic media.⁶⁶ All this makes East Asia less stable. Reaching an accommodation on the exercise of American seapower may reduce the probability of conflict.

The Future of American Seapower in East Asia

In light of the above it is worthwhile to explore what an accommodation on American seapower in East Asia might look like. Importantly, reaching an accommodation on the exercise of American seapower in East Asia rests on the assumption that the possession of American seapower in East Asia endures, while recognizing the emerging constraints on US defence policy. Several modifications to the possession and exercise of US seapower have been advanced, which are worth exploring.

It is clear that the post-financial crisis fiscal reality dictates that the possession of American seapower in East Asia will be different than before. The challenge therefore is not to drawdown from the region

⁶⁵It remains to be seen whether recent Chinese admissions to conducting military intelligence activities off the coast of Guam amount to a change in China's legal perspective. Surveys of the Chinese EEZ remain illegal under Chinese law for instance. See Office of the Secretary of Defense, *Annual Report to Congress on Military and Security Developments Involving the People's Republic of China 2013* (Washington DC: Dept. of Defense 2013), 39; Kimberly Hsu and Craig Murray, 'China's Expanding Military Operations in Foreign Exclusive Economic Zones'. *US-China Economic and Security Review Commission Staff Research Backgrounder*, 19 June 2013.

⁶⁶Thomas J. Christensen, 'The Advantages of an Assertive China', *Foreign Affairs* 90/2 (2011), 60–1.

entirely but to change the nature of US arrangements in the region. Some argue that the United States may have to encourage its allies to do more to complement American hegemony, rather than relying heavily on it. Trying to convince American allies to bear their share of the burden has a long, rich tradition in the history of US–Asia alliance politics. According to Michael Auslin, this includes developing a more liberal set of access arrangements with a broader array of countries, including non-treaty allies such as India, Malaysia and Vietnam, modelled on arrangements with Singapore.⁶⁷ Others have argued for a more forceful reinforcement of US alliance relations with existing and new allies such as Indonesia through the augmentation of defence ties. This includes the somewhat ambitious aims of facilitating allied acquisition of diesel-electric submarines and cooperative research and development among US allies in Asia.⁶⁸ The intention is to enable these states to assist the United States in the protection of the maritime commons. In this view calls to drawdown US global force deployments may weaken America's capacity at precisely the time at which other states are developing the capabilities to contest US control of the global commons.⁶⁹

As to the exercise of seapower several proposals have been advanced to build confidence between US and Chinese forces. Given the growing frequency of interactions between these forces at sea, it could certainly be argued that the climate is right to construct an incidents at sea agreement, modelled on the US-USSR INCSEA (Incidents at Sea). Indeed, this was what the Military Maritime Consultative Mechanism (MMCM) was supposed to achieve following its inception in 1998. However, this forum has become more of a venue for the dogmatic restatement of well-known positions.⁷⁰ To resuscitate this process Mark Valencia has argued that the US should take the lead in negotiating a set of voluntary guidelines regarding military activities in Asian EEZs. This would involve the exercise of restraint by the United States by refraining from active intelligence-gathering operations or interference with coastal state electronics systems, in exchange for Chinese acquiescence to American navigation or over-flight of the Chinese EEZ. However,

⁶⁷Michael Auslin, *Security in the Indo-Pacific Commons: Towards a Regional Strategy* (Washington DC: American Enterprise Institute 2010), 24–5.

⁶⁸Dan Blumenthal with Randall Schriver, Mark Stokes, L.C. Russell Hsiao and Michael Mazza, *Asian Alliances in the 21st Century* (Washington DC: Project 2049 Institute 2010), 31–2.

⁶⁹Abraham M. Denmark and James Mulvenon (eds), *Contested Commons: The Future of American Power in a Multipolar World* (Washington DC: Center for a New American Security 2010), 9.

⁷⁰See David Griffiths, *US-China Maritime Confidence Building: Paradigms, Precedents, and Prospects*, China Maritime Studies No. 6 (Newport, RI: US Naval War College 2010).

this raises questions about how compliance can be measured and ensured given the voluntary nature of the guidelines.⁷¹

Alternatively, the lead could come from the Association of Southeast Nations (ASEAN) in the spirit of the codes of conduct declarations in the South China Sea.⁷² An initiative driven by ASEAN would pressure China to sign up, which could in turn pressure Washington to participate as well. However, ASEAN capacity to lead on this issue is suspect given their divisions on maritime issues, on their respective relations with the US and China and on the relevant legal principles. Furthermore, there is no evidence that the United States is interested in any effort to provide guidelines on behaviours the US perceives as totally consistent with the letter and the spirit of UNCLOS.⁷³

Furthermore, such a recalibration of America's regional posture does not explicitly address the issue of Chinese dissatisfaction with American seapower in East Asia, which is an important ingredient to reducing the risk profile that confronts American forces in East Asia. As it relates to the possession of seapower there may be little recourse. Withdrawal of forward deployed forces out of range of Chinese missiles accomplishes little compared to maintenance of the status quo. By remaining in range, and vulnerable to Chinese missile strikes, American forces reassure their allies they are committed to their security by accepting the inherent vulnerability of forward deployment. This also signals China that US forces are prepared to accept a degree of vulnerability, but that they can also strike the Chinese homeland if necessary. Total withdrawal of the US Navy from East Asia is tantamount to military abdication from the region, and would be inconsistent with many regional preferences. Guam, Hawaii and California are simply too far from the theatre to credibly police the region's maritime commons or to deter an adversary.⁷⁴

Negotiating Accommodation: Agreeing to Disagree

A more flexible alternative is to forge an informal understanding on military activities in the Chinese EEZ. If achieved, this understanding could soften the primary source of China's dissatisfaction with American seapower, while making the region safer for US vessels. Further, the United States can send a clear signal to Beijing of its

⁷¹I am indebted to Andrew Erickson for this point.

⁷²Mark Valencia, 'Foreign Military Activities in Asian EEZs: Conflict Ahead?', *NBR Special Report*, No. 27 (2011), 17–18.

⁷³One such failed effort was made by the Ocean Policy Research Foundation in concert with regional states. See Ocean Policy Research Foundation, *Guidelines for Navigation and Overflight in the Exclusive Economic Zone*, EEZ Group 21, Oct. 2005.

⁷⁴Auslin, *Security in the Indo-Pacific Commons*, 20–2.

nonthreatening intentions, thereby putting the onus on China by removing an oft cited barrier to improved military relations.⁷⁵ Keeping the agreement informal and secret would eliminate any concern of it building a precedent for the exercise of American seapower in other parts of the globe. Most importantly, this arrangement can be conditional on improved Chinese behaviour during interceptions of American aircraft and vessels, an enduring concern for American forces, and otherwise improved military contacts between the two services.⁷⁶ Most importantly, this can be achieved under the current American posture in East Asia and thus does not come at a cost of lost credibility to regional friends and allies. Such an initiative has been absent from the current public debate on efforts to improve military contacts with China. Current efforts revolve around multilateral exercises, the building of cooperative capacity and discussion on navigational issues.⁷⁷ This proposal is predicated on the notion that Chinese interceptions of American vessels are an attempt to express Chinese preferences vis-à-vis its maritime domain and not a function of a coherent strategy to engage in risky behaviour to achieve a strategic end.⁷⁸

Several precedents for agreeing to disagree exist elsewhere in both US and Chinese foreign policy. For instance, the United States and Canada dispute the type of access rights user states have to the Northwest Passage (NWP). The United States argues that the NWP meets the geographical criteria of an international strait and thus asserts its right to transit the passage on this basis. Canada by contrast claims the NWP is internal waters and argues that all transits must have Canadian permission. An agree-to-disagree formula emerged in 1985 when a US Coast Guard vessel announced it would transit the NWP. Canada replied by giving it permission, and the US replied by noting that permission was not requested. This formula was formalized in the 1988 Canada–US Arctic Cooperation Agreement.⁷⁹ Of course, this

⁷⁵Admiral Robert F. Willard, Commander, US Pacific Command, Testimony to Senate Armed Services Committee, 28 Feb. 2012.

⁷⁶Shirley A. Kan, 'US-China Military Contacts: Issues for Congress', *CRS Reports for Congress*, RL32496 (Washington DC2012), 17-23.

⁷⁷Office of the Secretary of Defense, *Annual Report to Congress: Military and Security Developments Involving the People's Republic of China 2010*, (Washington DC: Dept. of Defense 2010); Willard, Testimony to Senate Armed Services Committee, 9.

⁷⁸However, some analysts maintain that China is deliberately engaging in risky behaviour to pressure the United States. See Bill Gertz, 'Chinese Naval Vessel Tries to Force US Warship to Stop in International Waters', *Washington Free Beacon*, 13 Dec. 2013, <<http://freebeacon.com/chinese-naval-vessel-tries-to-force-u-s-warship-to-stop-in-international-waters/>>.

⁷⁹Brian Flemming, *Canada-US Relations in the Arctic: A Neighbourly Proposal* (Calgary: Canadian Defence & Foreign Affairs Institute 2008).

example may hold few lessons for US–China relations as Canada and the United States are formal treaty allies, deeply economically interdependent and share continental defence responsibilities. Nevertheless, there are operational lessons for the US and China. When Chinese vessels intercept American vessels, they could assert their view that American activities are illegal; American vessels could reply that they disagree. Chinese vessels could then continue to monitor American activities, even arguing they are providing an ‘escort’; American vessels could reply that they do not need an escort. This has occurred between Chinese naval ships and the navies of other countries sailing in East Asian waters in the past.

China is also capable of agreeing to disagree. The 1992 consensus that advanced the relationship with Taiwan was centred on an agreement that there was only one China, but a disagreement as to what that entailed. Although this is considered a domestic issue in Beijing, it is nevertheless an example of China accepting the risk that comes with accommodating the interests of a rival political actor. Sino-Japanese efforts to manage maritime tensions are more relevant to the US–China example. Despite recent denials by the Japanese government, both sides abided by Deng Xiaoping’s *modus vivendi* to shelve territorial questions while pursuing joint development over the Senkaku/Diaoyu Islands until 2003.⁸⁰ Furthermore, both sides sought to prevent nationalist groups from visiting the islands in an effort to manage tensions.⁸¹ Likewise, there is evidence that, as their vessels enforce their EEZ jurisdiction against one another in the disputed area of the East China Sea, both Beijing and Tokyo exercise restraint. Japanese Coast Guard (JCG) vessels have been confronted by China Coast Guard (CCG) vessels while conducting marine research activities in contested areas of the EEZ without incident.⁸² Likewise, the CCG has entered the territorial sea of the Japanese controlled Senkaku/Diaoyu Islands on multiple occasions.⁸³ In both instances vessels have been shadowed, radioed by the other and diplomatic remonstrations have been sent. There have been no conflicts between maritime enforcement vessels, unlike incidents involving civilian vessels in the region.⁸⁴ China and

⁸⁰Takakazu Kuriyama, ‘Both Sides Need to Make Efforts to Maintain Status Quo’, *Asahi Shimbun*, 26 Dec. 2012.

⁸¹Chien-peng Chung, *Domestic Politics, International Bargaining and China’s Territorial Disputes* (London: RoutledgeCurzon 2004), 58.

⁸²For details see Manicom, ‘Beyond Boundary Disputes’, 46–53.

⁸³‘China Boats Enters Waters of Senkakus’, *Yomiuri Shimbun*, 25 Aug. 2011; ‘Chinese Ships Cross Into Japanese Waters’, *Japan Update*, 11 Dec. 2008.

⁸⁴International Crisis Group, ‘Dangerous Waters: China–Japan Relations on the Rocks’, *Asia Report*, No. 245 (April 2013), 45.

Japan have either reached an understanding or are deterred from detaining on another's enforcement vessels due to fears of escalation.⁸⁵ In any event, both the US and China have 'agreed to disagree' before, not least with each other on the status of Taiwan in the Three Communiqués.

The first step to developing an agree to disagree formula is American acceptance of a less frequent intelligence-gathering programme, both at sea and in the air, in an effort to signal its intentions. The United States could notify China of its operations, or most of its operations, that take place in the Chinese EEZ. The Chinese could choose, as Canada does, to interpret this as asking permission in a fashion that is consistent with its domestic laws and give its consent. For its part, China will guarantee that Chinese interceptors will follow accepted patterns of behaviour at sea, thereby reducing the risk of misunderstanding. In particular, civilian Chinese ships will be encouraged to report American vessels to the Chinese authorities and discouraged from vigilantism. If the efforts above to reinforce American seapower are successful, this arrangement should have limited impact on the navigational freedoms that the US has sworn to uphold. An informal arrangement to agree to disagree is useful because it does not affect either side's legal position. Importantly, because the agreement is informal, it will be difficult for the Chinese to argue that America has acceded to China's position. American policy-makers should make clear that any statement to this effect, or effort to frame the arrangement as an American concession, would be denied and result in the abrogation of the arrangement and the resumption of the full spectrum of activities in China's EEZ.

This threat of abrogation should be sufficient to keep the arrangement private. This is vital because, despite the issue's primacy in the Sino-American relationship, freedom of navigation is first and foremost an issue of global importance for the United States. American assertions of navigational freedoms are not aimed at any particular state; they are aimed at all states. For instance, the central challenge confronted by Canadian policymakers in American Arctic policy is the gentle reminder from their American counterparts that they do not care about the status of the Northwest Passage, but they care about the status of the Straits of Hormuz, or Malacca.

Although legal disputes are zero-sum, this does not make confrontation inevitable. The registration of a diplomatic protest is all that is needed to prevent the establishment of a damaging international

⁸⁵Chinese Coast Guard vessels did cut the towed seismic monitoring cable of the *Bin Minh 02* operated by PetroVietnam in May 2011. There have been no confrontations between government enforcement vessels in the South China Sea either. See Carlyle A. Thayer, 'Chinese Assertiveness in the South China Sea and Southeast Asian Responses', *Journal of Current Southeast Asian Affairs* 30/2 (2011), 77–107.

precedent. As Alan Wachman has observed, the problem described above is not simply one of law, but is a product of 'the ways in which the strategic aims of Beijing and Washington collide and chafe against one another during a period of rapid transition of stature and perceived power'.⁸⁶ The issue is thus a product of and source of strategic mistrust between the two. As a consequence, building trust on the navigation issue will not obviate all tensions, but could offer ways forward for addressing those problems exacerbated by a perceived tenable legal high ground while making maritime East Asia a safer strategic environment. China will need to live with US seapower as long as it is not prepared to expel it by force. The United States may need to live with a less intrusive maritime operations regimen to build trust with a rising power. Both are examples of a rising power and a hegemon accommodating the other's preferences. Incurring these costs is integral to signaling American good faith in its efforts to manage the maritime relationship in East Asia and overcome Chinese mistrust of American regional intentions.⁸⁷

The agree-to-disagree formula confronts several challenges. It may not be feasible given the perception of an increasingly hawkish and nationalistic style of Chinese foreign policy. Furthermore, even if Chinese political elites accepted the premise of the proposal, the bureaucracies involved in its implementation, the military and civilian agencies in charge of policing China's waters, may interpret the move as weakness or a sign of reduced American willingness to maintain its hegemony, which could invite further hawkish behaviour. Moreover, the very suggestion of accommodation with China on American seapower in East Asia risks legitimizing China's legal perspective.⁸⁸ Although this could be dismissed in some quarters as appeasement, accommodation of another's preferences is also the basis of cooperation.⁸⁹ Recent work has illustrated that American seapower is the defining characteristic of the absence of balancing coalitions forming against the US. According to this logic, China and other great powers do not balance against

⁸⁶Alan Wachman, 'Playing By or Playing with the Rules of UNCLOS?', in Peter Dutton (ed.), *Military Activities in the EEZ: A US-China Dialogue on Security and International Law in the Maritime Commons*, China Maritime Study No. 7 (Newport, RI: US Naval War College 2010), 108.

⁸⁷Michael S. Chase, 'Chinese Suspicions and US Intentions', *Survival* 53/3 (June–July 2011), 135.

⁸⁸Oriana Skylar Mastro, 'Signaling and Military Provocation in Chinese National Security: A Closer Look at the *Impeccable* Incident', *Journal of Strategic Studies* 34/2 (April 2011), 241.

⁸⁹Robert Axelrod, and Robert O. Keohane, 'Achieving Cooperation under Anarchy: Strategies and Institutions', in Kenneth A. Oye (ed.), *Cooperation under Anarchy* (Princeton UP 1986), 226–54.

American power because they do not see it as a threat: the stopping power of water means they do not fear invasion.⁹⁰ Yet, as China's maritime interests have expanded, so have its threat perceptions as its interests move closer to the operational sphere of the US Navy. Finally it could be argued that the arrangement outlined above asks the China to give up little and the United States to give up a great deal.

However, this perception overlooks the ideational and sometimes emotional nature of threat perceptions. That the US provides public goods and lacks the capacity to invade China may be cold comfort to a nation that perceives its interests as extending beyond the 'near seas' into the 'far seas'.⁹¹ Chinese and American navies will therefore be interacting with greater frequency in the future and it is unlikely that these interactions on the 'far seas' will remain as constructive as they are now should tensions between them persist in the 'near seas'. Finally, incurring a disproportionate share of the costs is part and parcel of exercising leadership in the international system and the most effective way to communicate benign intentions. Conveying expectations that restraint will be reciprocated by the other is a first step to cooperation.⁹² Therefore, because United States is prepared to remain East Asia's hegemon, and because China seems prepared to resist this posture, developing an understanding on the exercise of American seapower reduces the risk profile to American assets in East Asia and sets the stage for a more constructive naval and political relationship globally.

In any event, accommodation should be balanced by efforts to reinforce the possession and exercise of American seapower. American diplomatic efforts should continue to build support for the American position on navigational freedoms by leveraging the threat perceptions of East Asian states. This includes reaching out to states that do not share Washington's interpretation of navigational freedoms including Vietnam, Malaysia and India, but which have recently been unsettled by Chinese activities at sea. Getting these states on side is integral to perpetuating the accepted version of the norm in question and in establishing the continued legitimacy of the

⁹⁰Jack S. Levy and William R. Thompson, 'Balancing on Land and at Sea: Do States Ally against the Leading Global Power?', *International Security* 35/1 (2010), 7–43; John J. Mearsheimer, *The Tragedy of Great Power Politics* (New York: W.W. Norton 2001), 114–28.

⁹¹Nan Li, 'The Evolution of China's Naval Strategy and Capabilities: From "Near Coast" to "Near Sea" to "Far Sea"', *Asian Security* 5/2 (2009), 144–69.

⁹²For an analysis of Sino-US restraint in other areas of 'commons' see David C. Gompert and Philip C. Saunders, *The Paradox of Power: Sino-American Strategic Restraint in an Age of Vulnerability* (Washington DC: National Defense UP 2011).

American force presence in the region. It does little good to reach out likeminded regional states if these states in fact directly dispute American interpretation of navigational norms (Malaysia and Vietnam) or have bad memories of American FON operations in violation of their Archipelagic Sea Lanes claims (Indonesia). This effort should be supported by United States ratification of UNCLOS. Ratification would not limit US freedom of action, but enhance it and increase the credibility of American pronouncements on navigational freedoms. Although the idea has been criticized as less useful than continued assertion of American interpretations of its navigational freedoms, the two are not mutually exclusive.⁹³ American FON operations are more credible and legitimate if they are conducted as a state party to UNCLOS. The United States should also continue to shift the burden onto East Asian allies, asking more on efforts to police the maritime commons. More navies policing the maritime commons in East Asia could provide a pathway to include China in multilateral activities over time.

Conclusion

This article has taken on the unenviable task of exploring how China and the United States could reach an accommodation on the possession and exercise of American seapower in East Asia. As a function of its emergence as a great power, China has become dissatisfied with American hegemony in East Asia, chiefly the possession and exercise of American seapower. Problematically, neither party seems prepared to accommodate the preferences of the other; the first step to cooperation. Given the expectation among power transition theorists that such conditions result in catastrophic hegemonic war, the article explored what accommodation on the exercise of US seapower might look like. The article argued that it is possible for China and the United States to sidestep disputes on navigational questions despite the zero-sum nature of their legal interpretations. The two could develop an 'agree-to-disagree' formula on military operations in the EEZ. The proposals outlined herein reflect a middle ground between those that advocate for US retrenchment from East Asia and those that advocate for a stronger US regional presence constrained by budget cuts. Arriving at an agree-to-disagree formula reduces the risk profile confronting American ships and personnel, thereby undercutting part of the case for retrenchment. Although China will have to accept the possession of American seapower, if China's emergence is welcomed – rather than resisted by the

⁹³Dan Blumenthal and Michael Mazza, 'Why Not Forget UNCLOS', *The Diplomat*, 17 Feb. 2012, <<http://the-diplomat.com/flashpoints-blog/2012/02/17/why-to-forget-unclos/>>.

United States – it may be possible for the two powers to share the burden of policing East Asia’s maritime commons along with partnered regional states in due course.

Acknowledgements

An earlier version of this paper was presented at the International Studies Association 53rd Annual Convention, 1–4 April 2012, San Diego, California, USA. The author thanks Andrew Erickson, M. Taylor Fravel and Alessio Patalano for comments on previous drafts.

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