



How to Avoid War in the South China Sea

War between China and the United States is not inevitable.

By **Walter C. Clemens, Jr.** for *The Diplomat*



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President Xi Jinping seems to agree with the Athenian general who, more than 2,000 years ago, warned the people of Melos that the strong do what they wish and the weak do as they are compelled. His government insists that nearly all the South China Sea belongs to China – even islets and reefs close to the Philippines and five other littoral states but hundreds of miles from the Chinese mainland. Instead of raising China in harmony, Beijing's policies point the world toward the brink of war. Intransigent, Beijing rejects the jurisdiction of the Permanent Court of Arbitration and its ruling that China has no historic rights to large swathes of the South China Sea and has wrongly abused not only fishing vessels from the Philippines but the [coral riches beneath the water](#).

Skeptics about international law say that China behaves no differently from other great powers. Few, if any, have bowed to international tribunals. When Nicaragua complained that the United States was mining its waters, the Reagan administrations simply discarded the U.S. commitment to accept compulsory jurisdiction of the International Court of Justice and rejected the court's ruling in 1986 against the United States. In a similar vein, the George W. Bush administration "un-signed" the statute creating the International Criminal Court and abrogated, with no legal justification, the Nixon administration's treaty with Moscow limiting ballistic missile defense.

While the UN Charter bans acts of aggression, China's seizure and militarization of islands and reefs in the South China Sea do not directly violate this standard. Still, China's actions (along with Russia's in the Caucasus and Ukraine) do breach the principle enunciated by the U.S. Secretary of State Henry Stimson in 1932. Responding to Japan's invasion of Manchuria, Stimson declared that *the United States would not recognize any political or territorial changes accomplished by force*. Though not a member of the League of Nations, a U.S. representative joined the League's investigation of Japan's puppet state "Manchukuo." The League said it would not recognize the new state of Manchukuo on the grounds that its establishment violated the territorial integrity of China, and therefore the Nine-Power Treaty to which many prominent league members subscribed. Neither the Stimson Doctrine nor the League's declaration stopped Japan's invasion of China. Still, Stimson's key principle had greater effect when the Soviet Union invaded and absorbed Estonia, Latvia, and Lithuania in 1940. Even though Washington and its allies came to value Stalin as an ally against Hitler, none recognized

Moscow's annexation of the Baltic states. Indeed, the three Baltic countries retained their embassies in Washington for five decades. Upholding the Stimson principle helped to delegitimize Soviet occupation and enable Estonians, Latvians, and Lithuanians to reestablish their independence in 1990-1991.

Taking a leaf from Thucydides on the root cause of the Peloponnesian War, some analysts warn that China and the United States are destined to fight. Indeed, Michael Pillsbury argues that China's elites are engaged in a hundred-year marathon to displace the United States as global leader. China's actions in the South China Sea and elsewhere seem to confirm the expectation that rising powers will challenge the existing order and its dominant power.

This "inevitability" forecast is both misleading and dangerous. As recent history shows, war between challengers and hegemony need not lead to war. Great Britain did not fight the United States at the end of the nineteenth century. The Kremlin challenged the West during the Cold War but the USSR evaporated not with a bang but a whimper. Very little in world affairs is inevitable. Acquiescing in China's effort to annex the South China Sea, however, can only whet Beijing's appetites and encourage those Chinese who think the United States is becoming a paper tiger.

The way to meet China's needs and those of its neighbors is to develop joint ventures to share the fish, energy, and mineral resources of the South and East China Seas as well as those in what Koreans call their West Sea. Some Beijing representatives say that China is willing to negotiate win-win solutions with its neighbors. This posture appears constructive, but is not acceptable if it means that China holds onto what it has seized (or built, from dredged sand) and then, as the grand master, offers – *noblesse oblige* – to share some of its newly acquired riches with the other littoral states, squeezing them one by one.

What is needed is a general reaffirmation that the South China Sea is *mare liberum* – freely open for navigation and trade – and that its riches can and should be shared by all the littoral powers. How to do to divide these assets would require complicated negotiations. Issues would include who does the work, who pays for it, and whose territory is closest. Still, any formula for sharing would be better for all parties than armed or other forms of conflict. Affirming freedom of navigation in international waters would preserve a vital interest of all parties.

The peaceful resolution of these conflicts would be abetted if the U.S. Senate permitted the United States to join the UN Convention on the Law of the Sea. Meanwhile, the Obama administration should tell Moscow as well as Beijing that it stands by the Stimson Doctrine and ask all UN members to endorse this position. Asking China to take down its military facilities in the South China Sea, the United States should offer to halt its intelligence gathering missions in and above these waters.

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