The South China Sea has emerged as a dangerous and complex problem that has the potential to affect US relations not only with China but with key friends and allies in Southeast Asia. For this reason, it may be useful to look at the issue in a larger context since it brings together so many factors in international relations that are difficult to manage.

- First, it directly affects the growing competition between the United States and China caused by the interplay between China’s growing military capabilities and the traditional US presence as a security factor in the western Pacific.

- Second, it also touches on the interests of the Southeast Asia countries who are part of the Association of Southeast Asian Nations (ASEAN). This group of Southeast Asian countries, has been remarkably effective in forging an ability to put aside a host of bilateral differences in favor of working together for common purposes. However, only four of the ten members of ASEAN are involved in disputed claims with China in the South China Sea. That means that the ten ASEAN countries do not have a common interest in the South China Sea. They have some common interests, of course, in wanting peace and stability in the region, but they do not have a common interest in terms of what level of risk should be assumed in pursuing national claims.

- Third, other countries, such as Japan and South Korea, have fundamental interests in the South China Sea as well. A third of the world's shipping moves through the South China Sea and fifty percent of global oil tanker traffic. Each year over $5 trillion of trade passes through the South China Sea, with US trade accounting for around a fifth of the total. Moreover, for centuries the South China Sea has been an international waterway not under the administrative jurisdiction of any particular country. In other words, both regional and extra-regional countries have a long tradition of using the waters of the South China Sea for unrestricted trade and economic purposes.

- Fourth, the South China Sea brings into play relations between great powers and significant but lesser powers. History has taught us that major conflicts can result from great powers being drawn into disputes precipitated by lesser powers. That possibility certainly exists in the South China Sea. The maneuvering between China and the four Southeast Asian claimants over their respective territorial claims could give rise to disputes that affect the interests, treaty commitments, and credibility of larger countries such as the United States that take no position on the validity of the competing claims to sovereignty over the disputed islands.
The islands in the South China Sea have been a source of contention for many decades. Growing speculation regarding the oil, gas, and mineral resources that might lie in the seabed also spurred neighboring countries into making more vigorous claims. Rising tensions in the South China Sea during the 1990s provided the backdrop for some very skillful diplomacy at the beginning of the last decade, which produced the Declaration on the Conduct of Parties in the South China Sea in 2002 and the China-ASEAN strategic partnership in 2003. For a while, the various claimants seemed prepared to moderate their behavior in order to lower tensions. These hopes proved short lived.

More recently, tensions have again risen. At the ASEAN Regional Forum meeting in Hanoi in 2010, the United States declared that it has a fundamental interest in the South China Sea relating to freedom of navigation. Not surprisingly, China reacted negatively to this US declaration, regarding it as unhelpful outside intervention.

The net result is that the issue of the South China Sea has become more tense and more complicated. It does not involve just oil and gas. Some ten percent of the global fisheries catch occurs in the waters of the South China Sea, and fishing activities are important for the economies of the adjacent countries. As we have seen, this was a factor in the dispute over Scarborough Shoals.

In considering this question, we also need to bear in mind the background. For much of modern history most of Southeast Asia was under colonial regimes, including all of the ASEAN claimants to disputed territories in the South China Sea. This only ended after World War II, when all of the former colonies in Southeast Asia gained their independence over a period stretching from 1946 to 1984. So the ability of sovereign states in the region to put forward claims is a fairly recent development.

However, the history of the region extends back for many centuries. Specialists have referred to historical records showing that India was involved in the South China Sea as long ago as around 400 AD. The Chinese have similar records.

This historical background provides an additional complication. Some countries have detailed historical records extending back for millennia, while others have histories that are less well documented. How do you handle claims partly based on proximity and partly based on historical records of uneven quality extending back for many centuries? This makes the question of conflicting claims very difficult to handle.

For all these reasons, the United States finds itself in an anomalous position. On the one hand, Washington takes no position on the various claims to sovereignty over the islands and waters of the South China Sea, with two provisos. The United States insists that:

1. First, claimants should pursue their territorial claims and accompanying rights to maritime space in accordance with the UN Convention on the Law of the Sea; and
2. Second, consistent with customary international law, legitimate claims to maritime space in the South China Sea should be derived solely from legitimate claims to land features.
On the other hand, the United States is neither in a position to remain a disinterested party nor to impose its views on its friends and allies in the region. Equally relevant, the United States has a Mutual Defense Treaty with the Philippines which applies in the event of an armed attack in the Pacific Area on either of the parties, including attacks on “their armed forces, public vessels or aircraft in the Pacific.” So the question of whether or not the United States recognizes the Philippine claim to, say, Scarborough Shoal is largely irrelevant since the Mutual Defense Treaty applies if there is an attack on a Philippine ship or aircraft anywhere in the Pacific.

This makes it difficult for the United States to avoid being dragged into the problem in some fashion. However, what responsibility does that give the United States for monitoring Philippine behavior if the United States does not wish to be dragged into disputes over claims on which it takes no position? However you answer that question, the United States is not in an easy position.

With all these complexities in mind, the United States has laid out a position on handling disputes in the South China Sea that is clear and consistent:

- We call for restraint and diplomatic resolution;
- We oppose provocation;
- We oppose coercion;
- We oppose the use of force;
- We do not take sides on competing territorial claims;
- And we want disputes to be resolved peacefully and in a manner consistent with international law.

I am quoting here from remarks by former U.S. Secretary of Defense Panetta at a Shangri-La conference in Singapore in 2012. This position is completely consistent with the Declaration on the Conduct of Parties in the South China Sea issued by China and the ten members of ASEAN in 2002. Nevertheless, there is a small fly in the ointment. The United States is calling for an approach based on the rule of law, but it itself has not ratified the UN Convention on the Law of the Sea, which is the most fundamental law governing maritime issues. This undermines our moral authority on the question. Secretary of State Kerry is intimately familiar with this issue because of his earlier position as Chairman of the Senate Foreign Relations Committee. One can only hope that he will continue pressing for ratification of this important treaty.

Doing so, however, will not remove all sources of contention. The United States and China, for example, disagree on the nature of permissible activities in Exclusive Economic Zones. This is a problem that will constantly plague our ability to work out satisfactory arrangements.

These complications are troublesome, but there is also a bright side, in the form of the above-mentioned ASEAN-PRC Declaration on the Conduct of Parties in the South China Sea. This Declaration was not simply a routine hortatory statement. It was formally signed by all the parties, namely China and the ten members of ASEAN. In it, the parties:

- Reaffirmed their respect for and commitment to the freedom of navigation in and overflight above the South China Sea.
Undertook to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations.

Undertook to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability.

Agreed to work, on the basis of consensus, for adoption of a Code of Conduct in the South China Sea.

So clearly something is wrong. The Parties to the dispute have adhered to principles that they are not applying to their behavior patterns. This is not a problem caused by any individual country. It is a problem for all of the parties who signed the Declaration. Obviously, it would be an enormous step in the right direction if the Parties could make progress on the adoption of a Code of Conduct in the South China Sea, as called for in the 2002 Declaration.

Troublesome as this issue is, we should bear in mind that the countries directly involved in the disputes in the South China Sea in general have friendly and expansive relations with each other. After all, China is the principal trading partner with many if not most of the countries in the region. Moreover, all of these countries want friendly relations with China, whose expanding economy is the engine of growth in East Asia.

The United States cannot stay uninvolved in this problem since we have an enormous interest in freedom of navigation in the South China Sea. This is not simply because of trade considerations but also because US military vessels regularly pass through the South China Sea en route to the Indian Ocean, Diego Garcia, and other destinations. In addition, Japan and other major trading countries have their own interests in this region. Nevertheless, there is an element in the US position that needs careful attention.

The United States is creating an expectation that our military presence will somehow stabilize the situation. But what if it does not? Then, if the United States does not act when a crisis occurs, it might create the mistaken impression that the United States is not reliable. But in many of the potential scenarios, the United States has no obligation to intervene, and it may not be in our interest to do so. In fact, the primary US interest is in not having such clashes occur. This underlines why making progress towards concluding a Code of Conduct for the South China Sea is so important, if only because these disputes hold the potential for great power confrontation.

The US posture on these disputes has already had a negative impact on US-China relations. A poll in China last spring by the highly respected Pew Global Attitudes survey found that:

- The percentage of Chinese who characterize their country’s relationship with the United States as one of cooperation has plummeted from 68% to 39%.
- 26% of those polled now say the relationship is one of hostility, up from 8% in a poll two years ago.

A comparable Chinese poll of mainland public and elite attitudes last summer had parallel findings.
• Asked whether the United States is China’s partner, competitor, or enemy, 27% of Chinese government officials chose enemy, while 68% chose competitor.
• A Pew poll in the same time frame of how Americans view China found that only 2% of US government officials called China an enemy, while 80% called it a competitor.

In other words, the nature of the island disputes in the South and East China Seas is having an asymmetrical impact in China and the United States. Most Americans do not care about these islands and could not find them on the map. The Asian claimants do care about them, with passions often running high on the question. This is not a healthy situation.

In conclusion, let me again emphasize that it is important for us to give this issue careful attention. There is an enormous possibility for things to go wrong in the South China Sea. At the same time, there are enormous possibilities for matters to be handled in ways that will damp down tensions and not let this issue interfere with the more fundamental interests of all of the countries involved.

It is difficult to come up with a scenario involving conflict in the South China Sea that will be beneficial to any of the claimants. The United States can play a constructive role, but it has to be careful not to create expectations that we will do things that we are not in a position to do, or that it is not in our interest to do. That would only make matters worse because of the great power factors that I mentioned at the beginning of my remarks. What is needed in wise and responsible behavior by all of the parties involved.