

Crisis, Conflict and Confrontation in the South China Sea: Impact of Recent Events on Regional Cooperation and Future Strategy

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BACKGROUND

Following the end of the Cold War, the Chinese began to say that the evil Soviet bear had been seriously maimed if not tamed, that China was a peace loving nation and that, therefore, there was no longer any need for U.S. military forces in the Pacific.

When I mentioned in a paper presented at a conference in Japan in 2003 that one reason the United States could not withdraw is that an armed Chinese attack against Taiwan would be against American and Japanese national security interests in the Western Pacific, a Chinese ambassador also attending the conference began to pound his fist loudly on the table and twice lectured me that China's patience was not unlimited and that, if provoked, China would not hesitate to use military force to achieve its policy goals. I remarked that I believed it was exactly such type of statements and behavior by China which was responsible for Japan and

South Korea desiring to maintain U.S. bases in their countries even after the end of the Cold War.

When numbers of Chinese students and intellectuals carried out protests in a number of Chinese cities in 1989 at the time of the funeral of moderate Chinese General Secretary Hu Yaobang, the Chinese government led by hard-line Premier Li Peng reacted by sending tanks in to quell the protests. The protestors had numbers but *little power; the Chinese government did not respect them*. A still undisclosed number of demonstrators were killed and the protests led to more rather than less repression.

In the run-up to the first democratic presidential election among Chinese people in 1996 in Taiwan, the Chinese government responded by firing missiles into waters close to Taiwan. The United States responded by sending two aircraft carriers, the *USS INDEPENDENCE* from its home base in Yokosuka, Japan and the *USS NIMITZ* from the Mediterranean Sea through the Suez Canal. China reacted angrily; however, the missile firing ended and the Taiwanese election of Lee Teng-hui as president proceeded smoothly. *The Chinese respect power*.

As effective as the American response was, it is regrettable that the *USS INDEPENDENCE* was not accompanied by one or more Japanese Navy destroyers from Yokosuka to the waters off Taiwan. Had that happened, the Chinese would

have no doubt complained even more; however, their respect would have also been higher. *The Chinese respect power.*

CRISIS IN THE SOUTH CHINA SEA

Today there is a crisis caused by China owing to three kinds of claims in the South China Sea – those of sovereignty over islands, those of jurisdictional boundaries between sea zones including EEZs and those asserting coastal state control over military activities [including freedom of navigation in the maritime commons] especially in EEZs.¹

The United States of America does not take sides on conflicting claims over sovereignty of the islands of the South China Sea, including in the case of the Senkaku Islands, owned by Japan which are also claimed by China. In the case of the Senkaku Islands, however, the U.S. administered them along with Okinawa from the end of World War II until the reversion of Okinawa in 1972 and still maintains rights to two bombing ranges in the Senkakus which were last used during the Korean War. The Senkakus were returned to Japanese administration as a part of Okinawa reversion and the U.S. has made clear that, since the Senkakus are “territories under the administration of Japan,” Article V of the U.S.-Japan Security Treaty applies to them and would be triggered if an armed attack on the

¹ Peter Dutton, “Three Disputes and Three Objectives,” *Naval War College Review*, Autumn 2011, Vol.65, No.4, pp. 42-67.

Senkakus from China took place. Although China claims the Senkakus Islands as Chinese territory Beijing has not attempted to take them by force. *China respects power.*

In 1992 the Chinese enacted domestic legislation which asserted rights given only to archipelagic states and which thereby extended its territorial seas to about 80 percent of the South China Sea, bringing China into conflict with many ASEAN nations. The United States is not a principal to these claims but has called for peaceful resolutions of conflicting claims.

The third area of crisis is caused by Chinese attempts to assert coastal state control over military activities, including freedom of navigation in the maritime commons, especially in what China claims are its EEZs in the South China Sea.

On the one hand Article 11 of the Chinese EEZ Law states that “any country shall enjoy freedom of navigation and over flight over the [EEZ] ... of the Peoples Republic of China...under the conditions that the laws and regulations of the People’s Republic of China are complied with.” But this is followed by Article 14 of the same law which states that “[t]he provisions of this law shall not affect the historic rights enjoyed by the People’s Republic of China.”

If in fact China tried to control freedom of navigation through what the United States considers to be part of the global maritime commons of the South China Sea through which pass one-third of the world's shipping [and are believed to hold huge oil and gas reserves in its seabed] this would, at a minimum, seriously impact the national security interests of the oil producing states of the Middle East, India, the United States, Japan, South Korea as well as virtually all of the ASEAN nations. It is this third area of crisis with which this paper addresses.

FREEDOM OF NAVIGATION

The United States and Japan won the Cold War in the Pacific by deterrence. Although the Soviets possessed more than 100 submarines in its Pacific Fleet alone, 40 percent of which were nuclear powered and some of which were equipped with nuclear ballistic missiles, every Soviet submarine which left Vladivostok was tracked by a Japanese Navy or U.S. Navy P3-C aircraft and or by U.S. and Japanese surface vessels. With Japan's 100 P3-Cs monitoring the Sea of Japan and the Northwest Pacific the U.S. could effectively monitor the sea-lanes of the Southwest Pacific and Indian Ocean against any threat to the oil routes from the Middle East through the Indian Ocean, the Straits of Malacca and the South China Sea.

Although China does not yet have the level of submarine capability which the Soviets had in the 1980s, if it could deny access to the South China Sea to foreign military vessels and could regulate the transit of merchant shipping in the same area, the largest part of the global economy could be made subject to Beijing's control.

China's claim to the entire South China Sea, sometime dubbed "the nine-dotted line" was first promulgated by the Republic of China in 1936² but only came to public notice gradually and periodically. Following reports of potential oil reserves near the Senkaku Islands of Japan in the early 1970s the Peoples Republic of China began referring to historic Chinese claims to the islands which were formally incorporated by Japan in 1895, as noted above were administered by the United States from 1945 – 1972 and were returned to Japan's administration as part of Okinawa Reversion. The domestic Chinese legislation of 1992 put the dotted line into law, designating the South China Sea, as "historic Chinese waters," which has no standing in international law and mandated its armed forces to defend China's maritime territory. In the early 1990s two Chinese senior colonels answered "no" when asked if the U.S. Seventh Fleet has a right to transit the South China Sea without Chinese permission; more recently a Chinese submersible

² Marvin C. Ott, "China Ambitions in the South China Sea," *Asia Pacific Bulletin*, Number 71, September 28, 2010.

planted a Chinese flag at the deepest part of the South China Sea and on various occasions have referred to the South China Sea as a “core interest,” a term previously reserved for Taiwan and Tibet.³

As pointed out by James Kraska, China misstates the plain letter of international law by stating that foreign states only enjoy the right of innocent passage through what China refers to as the “special economic zone,” mixing the terms and rules applicable to the regime of the territorial sea with those applicable in the EEZ.⁴

CONFRONTATIONS

2001, EP-3

When it joined UNCLOS, China declared that it required prior permission for warships to conduct innocent passage in territorial seas and has interfered with U.S. reconnaissance flights over Chinese claimed EEZs even though those flights are unrelated to China’s resource jurisdiction in the water column and seabed of the EEZ. A U.S. Navy reconnaissance EP-3 aircraft was operating about 70 miles (110 km) away from the PRC island province of Hainan, and about 100 miles (160 km) away from the Chinese military installation in the Paracel Islands, when it was intercepted by two Chinese J-8 fighters on April 1, 2001, early in the administration of President George W. Bush. A collision between the EP-3 and one

³ Ibid

⁴ James Kraska, *Maritime Power and the Law of the Sea*, Oxford University Press, Inc., 2011, p. 317.

of the J-8s caused the death of a PRC pilot, while the EP-3 was forced to make an emergency landing on Hainan. Kraska compares China's effort to "territorialize" airspace over its EEZ to similar Soviet and North Korean actions in the 1950s and 1960s. Poor coordination and communication between the Chinese military and Chinese Foreign Ministry complicated Chinese handling of the incident.⁵

2009, *USNS IMPECCABLE*

On March 5, 2009, shortly after the inauguration of U.S. President Barack Obama, the *Impeccable* was operating in international waters in the South China Sea when it was approached by a Chinese frigate which crossed its bow at a range of approximately 100 yards without first making contact. This was followed less than two hours later by a Chinese Y-12 aircraft, conducting flyovers of the *Impeccable* at an altitude of 600 feet (180 m) and a range from 100–300 feet (30–90 m). The frigate then crossed *Impeccable's* bow again, this time at a range of approximately 400–500 yards. On March 7, a Chinese intelligence ship contacted the *Impeccable* over bridge-to-bridge radio, calling her operations illegal and directing the *Impeccable* to leave the area or "suffer the consequences." On March 8, 2009, the *Impeccable* was 75 miles south of Hainan, when it was shadowed by five Chinese ships, at least two of which were naval vessels which maneuvered close to the

⁵ Ibid, pp. 318-320.

Impeccable, with two closing in to 50 feet (15 m), waving Chinese flags, and ordering the *Impeccable* from the area. When it was trying to leave the area, however, the two Chinese trawlers dropped pieces of wood in the *Impeccable's* path and stopped directly in front of it, forcing it to maneuver to avoid a collision. Once the *Impeccable* got underway, the crew aboard one of the trawlers used a grappling hook to try to snag *Impeccable's* towed sonar array. The day before the *Impeccable* was first challenged, a Chinese official of the People's Political Consultative Conference (CPPCC), Li Guao'an, urged China to take great steps to protect its "blue territory," complaining that "some countries...have attempted to invade and occupy our legal sea area."⁶

2010, SENKAKU ISLANDS INCIDENT

On September 7, 2010, less than a week after Naoto Kan became Prime Minister of Japan succeeding a discredited Yukio Hatoyama who had advocated an equidistant relationship between China and Japan and the United States and Japan, a Chinese fishing boat rammed a patrol boat of the Japan Coast Guard in the territorial waters of the Senkaku Islands. The trawler was taken by the Japan Coast Guard, and the captain and crew were held in custody in Japan pending possible charges. China strongly protested, cancelled visits of Japanese students to China, embargoed the

⁶ Ibid, pp. 322-323

export of rare earth metals to Japan and demanded an immediate release of the Chinese fishermen. The crew was released on September 13, 2010, while the captain was held until September 24 when he was released without charges. The Japanese Government in Tokyo elected not to officially release the video evidence of the deliberate collision and took the position that the crew were released based on a decision of local authorities.

2011, *INS AIRAVAT* VISIT TO VIETNAM

On July 22, the *INS AIRAVAT* sailed from the Vietnamese port of Nha Trang towards Haiphong, where it was to make a port call. Reportedly, at a distance of 45 nautical miles from the Vietnamese coast in the South China Sea, it was contacted on an open channel by a caller identifying himself as the “Chinese Navy” stating that “you are entering Chinese waters.” The *AIRAVAT* reportedly saw no ship or aircraft and proceeded as scheduled. The Indian Ministry of External Affairs stated that “there was no confrontation involving the *INS AIRAVAT*.” The Ministry added that “India supports freedom of navigation in international waters, including in the South China Sea and the right of passage in accordance with

accepted principles of international law. These principles should be respected by all.”⁷

2015? *USS GEORGE WASHINGTON*

In the Winter 2010 issue of *Orbis*, maritime legal scholar James Kraska wrote a fictional account of the sinking in 2015 of the nuclear aircraft carrier *USS GEORGE WASHINGTON* homeported in Yokosuka, Japan resulting in the loss of 4,000 sailors and airmen and 80 aircraft. The fictional missile attack is described as exemplifying the use of multiple elements of Chinese national power promoting Beijing’s goal of dominating the East China Sea. Kraska’s account describes China as responding quickly with a well-orchestrated, pre-planned “rescue” effort by a flotilla of first responders from China while denying responsibility for the attack, reporting instead to the U.N. Security Council that an accident on board the aircraft carrier had created a “radioactive incident” in its fishing zone, spreading nuclear fallout throughout the air and water in the region. The U.S. is described as marshalling forces and seeking the support of its allies and friends, but the highly capable fleet of the Japan Maritime Self Defense Force rests at anchor in various Japanese ports while the Japanese Government claims to be constitutionally prohibited from taking action on behalf of the United States. In Delhi, the growing

⁷ “South China Sea confrontation: Indian Navy downplays *INS Airavat* reports,” *The Asian Age*, September 1, 2011.

sense of a U.S.-Indian naval condominium and a common Chinese foe is described as not able to overcome the strength of the communists in the government who restrain Indian support for the United States. A dilemma confronts the White House—will it start a war, claiming China sunk the carrier while “responsible” opinion-makers warn of a holocaust; surely, they argue, this is a time for cool heads to prevail.⁸

SUGGESTIONS FOR INDIA, JAPAN AND THE USA

The reaction of regional and global powers to China’s statements and confrontations regarding its excessive and extra legal claim over the South China Sea have resulted in a rising anti Chinese sentiment and have called into question what kind of power a rising China will be. China seems unwilling to or unable to accommodate the interests of either its regional neighbors or the United States, despite China’s pledge in the declaration on the Conduct of Parties in the South China Sea to “respect...freedom of navigation and overflight above the South China Sea provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea.”⁹

⁸ James Kraska, “How the United States Lost the Naval War of 2015,” *Orbis, The Foreign Policy Research Institute, Winter, 2010*, pp. 35-45.

⁹ Dutton, p. 63.

While India, Japan and the United States should encourage China to live up to its pledge and make its peaceful intentions transparent in word and indeed, they should not wait for such statements and actions to take place. In Tokyo on October 25, U.S. Secretary of Defense Leon Panetta stated: "The Pacific remains a priority of the United States ... we will continue to not only maintain but to strengthen our presence in this part of the world." He added that the United States will maintain a strong presence in the Pacific "for a long time" and is "not anticipating any cutbacks in this region."¹⁰

Specifically, New Delhi, Tokyo and Washington, D.C., seats of the world's three largest democracies, should consider seriously the following measures:

- Echoing the sentiments expressed by Secretary of State Hillary Clinton at the July 2010 ASEAN Regional Forum, they should support freedom of navigation, open access to the maritime commons, respect for international law in the South China Sea and a "collaborative diplomatic process by all claimants for resolving the various territorial disputes without coercion."¹¹
- The United States and Japan should institute frequent, regular transits of the South China Sea for purposes of ensuring the rights of free navigation and encourage the participation therein of all nations of the Southeast Asia

¹⁰ Secretary of Defense Leon Panetta, "Speech at Yokota AirBase, Japan," October 25, 2011.

¹¹ Secretary of State Hillary Clinton, "Speech at the ASEAN Regional Forum," July 23, 2010

region as exemplified by consultations between Indonesia and Vietnam and by Brunei's consideration of the procurement of a long range US-2 Search and Rescue aircraft.

- The United States should ratify UNCLOS.
- Japan should make a new statement of Cabinet policy making clear its right to exercise collective self-defense.