Policy Forum 10-044: The South China Sea Brouhaha: Separating Substance from Atmospherics

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Policy Forum 10-044: August 10th, 2010
Mark J. Valencia

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A version of this report is available in Chinese via the Oriental Morning Post.

I. Introduction



Cooperation Afloat Readiness and Training (CARAT) operation in the South China Sea by Larry Zou

Mark J. Valencia, Nautilus Institute Senior Associate and National Asia Research Program (NARP) Research Associate, writes, “China is unlikely to forgive or forget the fact and especially the manner of US interference. If anything, it may have convinced China that the die is cast. It could confirm its worst fears that the United States is stealthily trying to draw ASEAN or some of its components together with Australia, Japan and South Korea into a soft alliance to constrain if not contain China. And China will struggle to break out politically and militarily, setting the stage for rivalry and tension in the years ahead.”

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II. Article by Mark J. Valencia
-“The South China Sea Brouhaha: Separating Substance from Atmospherics”
By Mark J. Valencia

Now that the most recent wave of China-threat mongering in the Western media has passed, it is time to separate substance from atmospherics. Most of these pieces were triggered by US Secretary of State Hillary Clinton’s statements at the July ASEAN Regional Forum in Hanoi-- including a US offer to mediate the South China Sea disputes-- and China’s angry response at what it views as US interference in its affairs.

The United States has cleverly conflated some ASEAN countries’ fear of China’s aggressiveness regarding their conflicting claims to various features and ocean space in the South China Sea with its own angst regarding freedom of navigation. But as the United States knows or should know, China’s objections to certain US military intelligence gathering activities in its exclusive economic zone have little or nothing to do with its purported claim to much of the South China Sea. Indeed, China is not challenging freedom of navigation itself but US abuse of this right. The activities of the US’s EP 3, the Bowditch, and the Impeccable probably collectively included active “tickling” of China’s coastal defenses to provoke and observe a response, interference with shore to ship and submarine communications, ‘preparation of the battlefield’ using legal subterfuge to evade the consent regime, and tracking China’s new nuclear submarines for potential targeting as they enter and exit their base. Few countries would tolerate such provocative activities by a potential enemy

without responding in some fashion. These are not passive intelligence collection activities commonly undertaken and usually tolerated by most states but intrusive and controversial practices that China regards as a threat of use of force. A threat of use of force is a violation of the UN Charter let alone the 1982 Convention on the Law of the Sea. These activities should be carefully examined and adjudicated by a neutral body to determine if they are "legal" or not. But such an inquiry would risk making Secretary Hillary Clinton's statement that the United States 'opposes the use or threat of force' by any claimant seem a bit hypocritical.

Moreover if the ASEAN claimants – Brunei, Malaysia, the Philippines and Vietnam – think that the recent US statements favor their claims, they may need to think again. Secretary Clinton said that the "United States has a national interest in freedom of navigation, open access to Asia's maritime commons, and respect for international law in the South China Sea." But just what international law is that? This statement is a bit odd coming from the only major country that has not ratified the 1982 Convention on the Law of the Sea which governs such claims and activities at sea. Nevertheless, the claims by the Philippines to a large swath of features and the Sea as Kalayaan, and that of Malaysia to various features because they lie on its claimed continental shelf are as spurious and weak as China's historic 'nine-dashed line' claim. And Vietnam and Indonesia (which has also objected to China's South China Sea claim) ---contrary to the Convention that they have ratified-- do not allow innocent passage of foreign warships in their territorial seas without their consent, while Malaysia does not allow foreign military exercises in its claimed EEZ.

Knowing ASEAN claimants' concerns and desiring to give China a 'come-uppance' regarding its lack of co-operation in punishing North Korea after the Cheonan sinking – and still smarting from the Impeccable incident-- it verbally ambushed and embarrassed China in front of an Asian audience in its sometime nemesis, Vietnam.

However, despite US arrogance in offering to 'facilitate' multilateral talks on the South China Sea disputes – which is what really infuriated China – it is clear that China has been its own worst enemy in this matter. It refused to file a joint claim with Malaysia and Vietnam to extended continental shelf in the South China Sea. It then filed an objection to their claim attaching a map with its nine-dashed line ambiguously claiming most of the Sea. It publicly categorized the South China sea as a "core interest" akin to Tibet and Taiwan , i.e. something it would fight over, and allowed its Ministry of Defense spokesperson Geng Yanshen, to say "China has indisputable sovereignty of the South Sea and China has sufficient historical and legal backing" to underpin its claims. These actions and accompanying large military exercises in the area provided a diplomatic opportunity for the United States and pushed the ASEAN countries into the US corner.

But it is still not clear whether China's claim is to the features (and their territorial seas) or to the sea as well. To ameliorate ASEAN fears, China should immediately clarify exactly what it claims and why in the context of the Convention on the Law of the Sea. It should also elaborate in contemporary understandable 'legalese' its objections to US military intelligence gathering activities in its EEZ. And to counter the US diplomatic advantage, China should agree with ASEAN on a formal Code of Conduct for the South China Sea. If this transpires then the US ploy will have helped tamp down the disputes over claims.

But the cost will have been high. China is unlikely to forgive or forget the fact and especially the manner of US interference. If anything, it may have convinced China that the die is cast. It could confirm its worst fears that the United States is stealthily trying to draw ASEAN or some of its components together with Australia, Japan and South Korea into a soft alliance to constrain if not contain China. And China will struggle to break out politically and militarily, setting the stage for rivalry and tension in the years ahead.

III. Nautilus invites your responses

The Northeast Asia Peace and Security Network invites your responses to this essay. Please send responses to: bscott@nautilus.org. Responses will be considered for redistribution to the network only if they include the author's name, affiliation, and explicit consent.

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Nautilus Institute
608 San Miguel Ave., Berkeley, CA 94707-1535 | Phone: (510) 423-0372 | Email: nautilus@nautilus.org