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Trouble at Sea 海上でのトラブル

Mel Gurtov

Between 2012 and 2014 we posted a number of articles on contemporary affairs without giving them volume and issue numbers or dates. Often the date can be determined from internal evidence in the article, but sometimes not. We have decided retrospectively to list all of them as Volume 10, Issue 54 with a date of 2012 with the understanding that all were published between 2012 and 2014.

Mel Gurtov

Trouble is again brewing in the South China Sea (SCS), where six nations compete for control over tiny atolls—the Paracel and Spratly Islands—that probably sit atop important gas and oil reserves. On the surface the dispute over sovereignty would appear to be about two kinds of claims, one based on history, the other on international law—200nm exclusive economic zones (EEZ) and territorial waters that a country may legally claim under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). In reality, however, the dispute has more to do with politics and economics—motives based on nationalism, power, and energy needs. Without such motives, the territorial dispute would stand a good chance of being quietly resolved through diplomacy or adjudication; with them, the dispute stands a good chance of leading to serious conflict.

The recent history of the South China Sea shows that escalation of the dispute may be just around the corner. In recent years, periodic claim-maintaining activities—landings of personnel on particular islands, contracts with international oil companies, detention of fishermen, deployments of ships, and interference with other parties' vessels—have repeatedly undermined opportunities for dialogue. The latest and most provocative acts have occurred in different sectors of the SCS. In one, the Philippines arrested eleven Chinese fishermen in disputed waters and seized their boat. At this writing they have not been released. In the other, which has received far more international attention, China stationed a giant oil rig inside Vietnam's claimed EEZ, supported by a large number of military vessels. The two governments traded accusations about the ramming of their boats. Large anti-Chinese demonstrations by workers in Vietnam cascading into the destruction of Chinese factories envenomed the situation. The Vietnamese government put a stop to them after a week in which well over 100 Chinese workers were hurt (about 3,000 were evacuated home) and some Taiwanese businesses as well as PRC businesses suffered heavy damage.

Each of the parties takes the public position that it has a superior claim to all (China) or some of the islands (Vietnam and the Philippines among other claimants); hopes that other parties will refrain from unilateral action to change the existing status; and urges peaceful resolution of the issue. But the actual situation is quite dangerous as the parties trade warnings and engage in shows of force at sea

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rather than resort to private conflict-prevention efforts. China has clearly been pushing its weight around of late, establishing a new administrative authority (Sansha) over the SCS in 2012, upholding a territorial claim (the "nine-dash line") that embraces the entire disputed area, declaring an air-defense zone in the East China Sea, and forcibly seeking to remove Vietnamese and Filipino vessels from the contested areas. Making matters worse is the possible spillover of the China-Japan dispute over Senkaku/Diaoyudao, with Beijing seeing Japan as aligning with all the other SCS claimants against China and Tokyo seeing China's assertiveness as further evidence that it's a military threat.

What might lie behind these latest Chinese and others' maneuverings, charges, countercharges, and clashes? Clearly, energy needs are central to the sovereignty claims of the parties. One study finds that Vietnam is particularly reliant on oil imports at this time; its oil production peaked around 2004, and oil consumption exceeded domestic supply in 2009. The Philippines' oil production is extremely low, and production has been flat for a long time. It, too, looks to the South China Sea, among other sources, to meet its energy needs. Meanwhile, China's needs are constantly rising, as evidenced by its global energy diplomacy that has taken it to every continent, including North America, to conclude oil and gas contracts.

But China's willingness to use force and threat to secure oil, and avoid international adjudication of the SCS claims, suggests other than purely economic motives. As the dispute with Japan has firmly established, China's national identity has become deeply intertwined with territorial issues. Its assertiveness in support of sovereignty claims has strong support across the Chinese social spectrum, as much among young people as among defense intellectuals and the professional military. Similar nationalistic feelings may be at play in Vietnam, as the anti-Chinese riots suggest, and in the Philippines, just as they also have in Japan. The San Francisco Treaty System, which neither the People's Republic of China nor Japan had a part in creating, has left a legacy of ambiguous maritime boundaries and multiple territorial claims that now have come home to roost. This is not to say that sovereignty claims are nonnegotiable, but it is to say that reaching agreement will involve hard bargaining. None of the parties, least of all China, wants to be perceived back home as having made excessive concessions for the sake of an agreement.

Was China's move into arguably Vietnamese waters also prompted by Obama's pivot to Asia? That would seem beyond doubt. His four-nation trip last month, clearly meant to give substance to the pivot, seemed clearly to reflect a reevaluation, or rebalancing, of engagement with China. We hear much less about US-China partnership or interest in Xi Jinping's notion of "a new type of great-power relationship," and more about strengthening US alliances in East Asia, with deterrence of China the focal point. Even though Obama avoided offense to China during his trip, he and his national security advisers did not refrain from commenting on the SCS dispute—calling on the disputing parties to avoid military steps, respect freedom of navigation, and abide by international law, and urging China to avoid "provocative" steps. Such pronouncements would be innocent enough except for the fact that during his Asia trip Obama sided with Japan in the territorial dispute with China over the Senkakus (Diaoyudao) in the East China Sea, and pushed for an agreement with the Philippines (similar to one with Australia) to permit periodic US deployments to its former base at Subic Bay. It also doesn't help the US position on China's

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claim, that it should abide by the UNCLOS, when the US itself has not ratified UNCLOS.

The Chinese put all these things together and see them as US intervention in a dispute that should only concern the parties directly involved —another example to them of how America has become "anti-China" and insensitive to China's side of the story when it comes to maritime boundaries. As articulated in a *China Daily* commentary, Beijing wants Washington to stay out of the dispute; but it also wants Washington to rein in its ally, the Philippines:

> While reiterating calls for peaceful settlement of the dispute and joint development of resources, China has also made it clear that it is confident and capable of countering challenges to its territorial and sovereign integrity. All parties should also be reminded that ignorance of China's resolve to defend its sovereign land will induce consequences too severe for certain countries to bear. Meanwhile, the wish to maintain regional peace and stability is shared by China and the majority of ASEAN members. The United States, which is strengthening military alliance with Manila and has a huge stake in the region's stability, should comply with its promise to leave the countries concerned to settle their differences through bilateral talks. Instead of spoiling its increasingly-paranoid junior ally and muddying the waters, Washington should keep Manila within bounds and try not to stir up tensions by backing it in territorial dispute.

Thus, the US pivot to Asia surely has much to do with China's thrust into disputed waters. At the same time, as Carl Thayer observes, the Chinese probably realize that aggressive behavior can only "stoke the anxieties" of most ASEAN members and push them closer to the US. Vietnam in particular is a weak link for China: It is one of the few ASEAN members without any sort of military arrangement with the US, a situation that could change if Beijing isn't careful. Hopefully, the Chinese will fulfill their commitment to withdraw the oil rig in mid-August, allowing ongoing Vietnam-China talks, which have been extensive during these months, to defuse tensions. Vietnam did its part by cracking down on the demonstrators; the next step is up to China, which so far has not gone beyond saying (as Xi Jinping did recently) that Asians can peacefully resolve their own problems.

In a statement issued after a meeting of ASEAN foreign ministers on May 10, the claimants were urged "to avoid actions which could undermine peace and stability in the area" and to "refrain from taking actions that would further escalate tension. ASEAN, however, lacks the unity or the political weight to push the disputing parties to the bargaining table. The Philippines and Vietnam often find themselves at odds with their ASEAN partners when it comes to developing a unified position on the South China Sea. Offending China is unacceptable to some members, such as Cambodia. China's insistence on dealing with the dispute bilaterally, refusing to "internationalize" or "ASEAN-ize" it, compounds and takes advantage of ASEAN's disunity, pitting the members against one another. Completion of a PRC-ASEAN code of conduct is crucial, but over the last fifteen years the SCS dispute has proved too big an obstacle to overcome. The closest the parties have come was in July 2011 when China and ASEAN agreed on Guidelines to Implement the Declaration of Conduct of Parties to the South China Sea, a declaration that had been agreed upon in November 2002. The declaration not only is nonbinding; it only discusses

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confidence-building measures rather than conflict prevention or resolution. Thus, concrete measures to implement basic principles of peaceful behavior are lacking.

The very least all parties to the SCS dispute must accomplish is to avoid actions that dangerously alter the status quo and reaffirm the peaceful resolution of disputes. If those principles were accepted, China would have to withdraw its oil rig to commonly accepted waters, all the parties would have to withdraw vessels and personnel from the islands except as commonly agreed upon, and all would have to suspend contract or other arrangements for oil and gas exploration. They would have to sit down and talk through additional ways to avoid conflict, including setting aside claims to territory, whether based on history or otherwise. Some formula for joint (as China proposed in 1992) or clearly demarcated exploitation of undersea resources would need to be devised and, when carried out, be monitored, such as by joint patrolling of ships and planes. Agreement should be obtained on prior notification of military exercises or other significant movements of personnel or equipment.

The United States needs to be careful about its involvement in the dispute. Putting it in the context of alliance politics antagonizes China and, more importantly, may create exaggerated expectations of direct intervention should the dispute take another violent turn. After all, the United States has multiple naval and air facilities at its disposal all over East Asia, whereas China has neither allies nor overseas bases. Obama has already possibly put US forces in harm's way in the Senkakus/Diaoyudao dispute by accepting that the US-Japan Security Treaty covers those islands even though the US takes no (formal) position on sovereignty. The Philippines in particular may see an opportunity for "extended deterrence" here. To be sure, in Southeast Asia the desire has been expressed for some time that the US strengthen regional relationships so that China's rise can be more effectively managed. But that view is not meant to suggest a US military confrontation with China. Having a larger nonmilitary presence in East Asia is one thing, backing friendly countries' territorial claims with force, real or promised, is quite another.

The United States cannot be an honest broker in the SCS dispute. Nor can it effectively preach freedom of navigation when its ships are monitoring Chinese naval activities in Hainan and elsewhere along China's coastline. Washington's influence might be most effective if it continued to encourage a diplomatic resolution, along the lines of Deng Xiaoping's position of long ago on Diaoyudao: shelve the sovereignty issue and undertake joint exploration of resources. Washington should also acknowledge the importance of reaching agreement on a code of conduct (including one that the US itself could later sign), and should finally ratify the UN Convention on the Law of the Sea.

Matt Mushalik, www.resilience.org/stories/2014-05-13/asian-century-sails-into-troubled-waters-in-the-south-china-sea.

See Mark J. Valencia, "China Bashing Doesn't Help," *Japan Times*, May 20, 2014.

Zhu Dongyang, "Manila to Bear Consequences for Deliberate Provocation," *China Times*, May 14, 2014.

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Carlyle Thayer, http://thediplomat.com/2014/05/chinas-oil-rig-gambit-south-china-sea-game-changer/.

"Xi: Asian Nations Voice Capacity of Taking Lead in Solving Asian Affairs," May 22, 2014, http://english.peopledaily.com.cn/n/2014/0522/c90883-8730697.html.

Carl Thayer has written a detailed history of the China-ASEAN negotiations. See *Carlyle A. Thayer, "ASEAN'S Code of Conduct in the South China Sea: A Litmus Test for Community-Building?" The Asia-Pacific Journal, vol. 10, Issue 34, No. 4 (August 20, 2012). See Thayer's recent Diplomat piece.*

The principles include self-restraint, respect for international law, peaceful settlement of disputes, nonuse of force, and non-alteration of the islands' status quo. CBMs mentioned in the DOC include dialogue among defense officials, exchanges of information, and joint projects such as marine research and search and rescue operations.

For these and other suggested inclusions, see Mark Valencia, "Policy Forum 11-41: A Code of Conduct for the South China Sea: What Should It Contain?" NAPSNet Policy Forum, December 08, 2011, http://nautilus.org/napsnet/napsnet-policy-forum/a-code-of-conduct-for-the-south-china-sea-what-should-it-contain/.

See, for example, Dewi Fortuna Anwar, "An Indonesian Perspective on the U.S. Rebalancing Effort toward Asia," National Bureau of Asian Research (NBR) *Commentary*, February 26, 2013.

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