

Separating fact from fiction in South China Sea conundrum

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The South China Sea conundrum has risen to the pinnacle of regional security priorities. It has generated a veritable fountain of government pronouncements, propaganda, and biased analyses. Some of these conflate information with misinformation. It is time to separate fact from fiction when it comes to several oft-made statements.

US pivot

"THE US pivot or rebalance to Asia is enhancing security and stability in the region."

That is certainly the stated intent. But the United States' strengthening of its military and political relations with its allies and others in the region has altered the strategic environment.

China is convinced that the US is trying to draw Asean or some of its members together with Australia, Japan and South Korea into a soft alliance to constrain if not contain it. China alleges that tacit US support has emboldened the Philippines and Vietnam to challenge China's claims and actions.

Whether correct or not, the contrasting perceptions have enhanced rivalry and tension in the region. There is an honest difference of opinion regarding who is reacting to whom and who has the "right" or "obligation" to be active there.

But there is little doubt that the US pivot has contributed to instability in the region.

Chinese assertiveness

"CHINA'S assertiveness regarding its maritime claims has created instability."

In other claimants' eyes, China has violated the 2002 Asean-China Declaration on the Conduct of Parties in the South China Sea (DOC).

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

There are also International Court of Justice precedents that should discourage disputants from undertaking unilateral activities that would alter the nature of disputed areas.

Another DOC provision pledges the parties to resolve their differences "through friendly consultations and negotiations by sovereign states directly concerned".

China has indeed been increasingly aggressive in implementing its claims. But other claimants have also undertaken unilateral activities on and at features and in maritime areas claimed by China. Indeed, China maintains that the Philippines has violated both DOC provisions and that Vietnam is on the verge of doing so.

All claimants have contributed to the instability.

Chinese claims

"CHINA'S claims in the South China Sea are illegitimate and even absurd."

China claims sovereignty over most of the Spratly features based on history, discovery, usage, administration and, for some of them, effective control.

Vietnam, the Philippines and Malaysia also claim some of the features. All of these sovereignty claims have serious weaknesses in modern international law which requires continuous, effective administration and control and acquiescence by other claimants.

China's sovereignty claims are just as valid or invalid as those of the other claimants.

As for the maritime sphere, China has never specified what it claims nor has it clarified what it claims by its so-called nine-dash line.

Nevertheless, some of the Spratly features are legal islands and under the United Nations Convention on the Law of the Sea (Unclos) could be the basis for claims to 200 nautical miles from Exclusive Economic Zones, continental shelves and extended continental shelves. Of course sovereignty over the islands and the boundaries of such claims on them would have to be negotiated with other claimants.

But quite apart from the nine-dash line, China has legitimate sovereignty claims and can make Unclos-compatible jurisdictional claims in the South China Sea.

US neutrality

"THE US is neutral regarding maritime claims in the South China Sea."

Although it has not ratified the 1982 Unclos and cannot be bound by it, the US insists that China must base its claims solely on it. The US also insists that any claims to maritime jurisdiction in the South China Sea must be from land. This implies that any Chinese claim to jurisdictional rights within the nine-dash line is invalid.

The US also insists that China negotiate these issues multilaterally with a bloc of claimants - Asean - that includes non-claimants, and that it cease its aggressive actions there. The US may be neutral as to the sovereignty claims but it is decidedly not neutral regarding the jurisdictional claims.

Threat to navigation

"CHINA'S claims are a threat to freedom of navigation."

China has never challenged commercial freedom of navigation.

China is objecting by word and deed to what it perceives as US abuse of this right and a threat to use force - a possible violation of the United Nations Charter - let alone Unclos.

The activities of the maritime surveillance aircraft Poseidon P8A just this past August, as well as US navy ships Bowditch, Impeccable and Cowpens, probably collectively included active "tickling" of China's coastal defences to provoke and observe a response, interference with shore to ship and submarine communications, abusing the consent regime for marine scientific research, and tracking China's new nuclear submarines for potential targeting.

These are not passive intelligence collection activities commonly undertaken and usually tolerated by many states, but intrusive, provocative and controversial practices.

In the spirit of transparency, the details of these activities should be revealed and carefully examined by a neutral body to determine if they are "legal" or "friendly", or not.

Asean unity

"ASEAN or the Asean claimants are united against China."

Asean takes no position on the disputes. Asean claimants Malaysia, the Philippines and Vietnam cannot even settle their own disputes, some of which involve both conflicting sovereignty and maritime jurisdictional claims like that between Malaysia and the Philippines over Sabah and maritime claims based on them.

These security issues are every bit as serious as the Vietnam-China sovereignty and jurisdictional disputes centred on the Paracels.

Indonesia and China may have overlapping maritime claims east of the Natunas and Indonesia has publicly opposed China's nine- dash line claim. Thus its "neutrality" is suspect.

Malaysia and Brunei as well as non-claimants Cambodia, Laos, Myanmar and Thailand are much less willing to confront China.

Asean and the Asean claimants are divided on these issues as well as on the details of a possible Code of Conduct between Asean and China.

New US-China relationship

"THE US and China are building a new relationship to avoid the usual conflict between an established and a rising power, and thus mitigate growing tension in the South China Sea."

The US basically wants to strengthen the existing status quo in which it is the dominant actor and patron. This is essentially a continuation of its Cold War policy and posture in the region with a forward deployed military presence and a hub-and-spoke alliance structure.

According to US Secretary of State John Kerry, the US wants "a mutual embrace of the rules, the norms, and institutions that have served both of our nations and the region so well". But China and the US do not agree on many rules, norms, and institutional directions, and have conflicting national interests as well.

China believes it is being constrained by the existing international world order that favours a system developed and sustained by the West. China also appears to be interpreting the "new model" as a de facto recognition of China's enhanced status and US "respect" for its core interests, such as Taiwan, Tibet and perhaps its claims in the East China and South China Seas.

Former US national security adviser Steven Hadley said recently that he hopes the US will accept an increasingly powerful China playing an enhanced role on the world stage - perhaps ultimately a role on a par with that played by the US. But this is unrealistic. Doing so would be disastrous for whichever US domestic political party aspiring to power at a time when its national politics are so fractious. Moreover, the US has shown no evidence that it is prepared to accept such a Chinese role. Thus the chances of a "new relationship" are poor and their national security interests will continue to conflict sharply in the South China Sea.

There has been a plethora of proposals emanating from US officials, international observers and analysts. But the US has not been able to unify Asean against China, stem China's assertiveness or even enhance stability in the South China Sea. Recently, the US proposed a "freeze" on all provocative activities.

But this and all US attempts to mediate or impose a temporary solution have been rebuffed - by China and some Asean countries - as unwelcome interference in the region's affairs. Unless the US can facilitate progress in resolving these disputes we may be witnessing a fundamental US foreign policy failure in East Asia.

My view is that the US needs to get out ahead of the US-China rivalry, decide what type of relationship is realistically possible, and figure out how to achieve it.

Once a decision is made, it needs to proceed with an "all of government approach" and stop sending mixed signals. Right now it is hard to reconcile US and Chinese rhetoric with their actions. The

media and analysts could help by making sure they report accurate information and distinguish between fact and fiction.

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