THE RECENT INCIDENTS in the South China Sea followed by the July summit in Bali of foreign ministers from the Association of Southeast Asian Nations (ASEAN) provided fascinating diplomatic theater. On display and even magnified were the parties’ fundamental interests and their strategies and tactics to further them.

Ultimately ASEAN and China — which along with the United States and Japan were included in the Bali talks — agreed on “guidelines” for implementing the previously agreed 2002 Declaration on Conduct of Parties in the South China Sea (DOC). Negotiations were difficult and the guidelines reveal more by what they do not say than by what they do. Indeed, they lack specifics, timelines and enforceability and their practical focus is on “soft” security issues such as environmental protection, marine science and transnational crime. Many saw the guidelines as only a first step towards a binding code of conduct.

Nevertheless, the agreement was significant because with the world watching there was a lot at stake. The ASEAN nations — and China — needed to show that they could manage regional disputes more or less by themselves. And they also needed to demonstrate that the South China Sea is safe for commerce. Weighing heavily on ASEAN — and its current chair, Indonesia — was its failure to resolve the violent border dispute between members Cambodia and Thailand. In short, the capability, credibility and relevance of ASEAN security forums were at risk. Also at risk was the long-term hope for a Pax Asia-Pacific to replace the present Pax Americana.

SETTING THE SCENE

Over the past year, a series of aggressive incidents involving Chinese patrol boats interspersed with soothing official statements had left many analysts puzzled. Indeed, in nearly one fell swoop, actions by Chinese enforcement agencies embarrassed China’s leaders, undermined the country’s carefully nurtured and successful “charm offensive” towards ASEAN and played right into the US strategy of convincing ASEAN nations that they need its protection from a bullying China.

When ASEAN member states’ foreign ministers gathered with counterparts from the US, China and Japan for a summit in July in Bali, many observers had expected the issue of maritime disputes in the South China Sea to dominate discussions. But few expected the diplomatic maneuvering involving the players to be so obvious and intense.

Maritime expert Mark J. Valencia parses the entertaining diplomatic theater and argues that this is only Act One in an ongoing drama.

Diplomatic Drama: The South China Sea Imbroglio

By Mark J. Valencia
I am talking here not just about blatant violations of the solemnly agreed DOC — all of the parties are guilty of that. Instead, Chinese leaders found themselves contradicted by the poorly timed — or, depending on your point of view, well-timed — actions of official Chinese agencies. When Chinese Defense Minister General Liang Guanglie was telling the Shangri-La Dialogue in Singapore on June 3 that “China is committed to maintaining peace and stability in the South China Sea” and that “China stood by” the DOC, news media were reporting that on May 26 a Vietnamese survey ship operating on its claimed continental shelf had its seismometer cables cut by a Chinese patrol boat. Shortly after that event, China sent two vice chairmen of its Central Military Commission to Southeast Asia to try to reassure ASEAN claimants. But a second such incident occurred on June 9, just two weeks later.

Earlier, on March 4, the Philippines had protested an incident on the Reed Bank in which two Chinese patrol boats allegedly threatened to ram a Philippine survey ship. Then, on the eve of General Liang’s visit to Manila, Chinese fighter jets allegedly harassed Philippine fisherfolk near disputed islands in the South China Sea. Worse, China responded to frenzied protests from Vietnam and the Philippines by warning that any exploration in the vicinity of the disputed Spratly Islands without its consent was a violation of its jurisdiction and sovereignty, as well as of the DOC. The real-time link between China’s stark and sweeping position and its enforcement sent a chill down the spines of ASEAN claimants and drew US attention.

Behind the scenes negotiations led by Indonesia made considerable progress — a credit to the skills of the diplomats involved. Indeed, Indonesia demonstrated that it could lead, not only to resolve regional disputes but also ASEAN as a whole. ASEAN and Vietnam in particular made a major compromise by agreeing to drop a clause that would mandate that it form an ASEAN position before dealing with China on South China Sea issues. Of course, there is nothing to prevent the claimants from informally consulting among themselves before approaching China, but the gesture was important to convince China that Vietnam cannot use ASEAN to “gang up” on it. China’s position was that it should only have to deal with rival claimants — Brunei, Malaysia, the Philippines and Vietnam. Of course, as chair of ASEAN, Indonesia had a responsibility to improve the standing of ASEAN and its members. But Indonesia had more at stake than its reputation as a regional leader. Indeed, Indonesia has formally protested China’s so-called “nine-dashed line” claim — which overlaps some of its claimed maritime area in the South China Sea.

Vietnam’s feistiness, political courage and long experience with China were on full display. It challenged China at every turn — tit for tat. Diplomatically, Vietnam maneuvered for ASEAN support, continually referring to the DOC’s prohibition on the threat or use of force. It made consistent reference to the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and the fact that China’s claim doesn’t conform to it. Earlier it demonstrated its compliance with the Convention by filing a joint extended continental shelf submission with Malaysia to the UN Continental Shelf Commission — a provocative act in China’s eyes.

**DIPLOMATIC DRAMA**

The Philippines, no match for China militarily, chose to appeal to ASEAN, the international community and international law. It also demonstrated political courage by breaking many of China’s unwritten “rules” for maintaining good relations. It “internationalized” the issue by appealing to both the United Nations and the United States for help. It made reference to the US-Philippine 1951 Mutual Defense Treaty, potentially committing the United States to come to the aid of the Philippines or its forces if attacked. It also tried to link the disputes to freedom of navigation issues and claimed that China’s new “assertiveness” was a threat to peace in Asia. It publicized the issue, revealing details of its negotiations with China — in particular that China was indeed basing its claim on the “nine-dashed line,” confirming this unorthodox position to the world. And it publicly challenged China’s claim by suggesting the jurisdictional issue be decided by the arbitration process provided by the 1982 UNCLOS, which they have both ratified.

China, having been put on the defensive, angrily declined. It was also revealed by the Philippines that China had influenced the Philippine Congress and the government to refrain from claiming the Spratlys as part of its archipelago, thus leaving some room for negotiation.

While the diplomatic tactics employed by the Philippines may be unusual, they have been rather effective in forcing both China and the US to make important decisions. Perhaps more importantly they demonstrated that international law could help make relations more equal and give pause to even powerful nations. Foreign Minister Albert del Rosario led the charge. He said, “We don’t have to convince China, we just have to convince ASEAN that [turning the South China Sea into a Zone of Peace, Freedom, Friendship and Co-operation] is a valid way to settle the disputes.” And he was strongly supported by Philippine President Benigno Aquino III, who stated in his second State of the Nation address on June 25: “Our message to the world is clear: what is ours is ours. Setting foot on Recto [Reed] Bank is no different than setting foot on Recto Avenue,” referring to a major thoroughfare in Manila. In next step is the September hosting of an ASEAN legal experts meeting to discuss its proposal. The Philippines hopes ultimately to have ASEAN delineate the legally disputed areas as targets for joint development.

Australia was even drawn into the fray. In the middle of the brouhaha it held joint naval exercises with Japan and the US in the South China Sea. This sent a message to China and ASEAN that it supports America’s “push back” policy vis-a-vis China and that it will support America if China “pushes back” in turn. This more strident tone turned out to be a prelude to possible changes in defense policy that would include closer collaboration between the US and Australia. This
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is projected to involve, among other things, repositioning of US military equipment in Australia as well as greater US use of Australian facilities and ports. Some Australian defense analysts are now worried that Australia might be drawn into a confrontation or conflict between the United States and China.

Japan’s predictions were also manifest. Its new defense policy now identifies China as a potential enemy. And a recent defense white paper ups the ante by accusing China of taking “high-pressure steps” regarding both the East China Sea and South China Sea disputes. Some influential Chinese analysts have concluded that Japan is trying to show support for the ASEAN claimants in a grand conspiracy to contain and constrain it.

China of course not only protested Japan’s public position but also essentially appealed to Japan’s better judgment to choose carefully between it and the United States.

Taiwan even got in on the act, blasting ASEAN and the DOC guidelines because it was not involved or consulted. The possibility was also raised that the Taiwanese government of President Ma Yin-jeou might side with Beijing regarding the South China Sea. China’s PLA Academy has repeatedly called for co-operation with Taiwan in protecting “common ancestral rights” in the East and South China Sea.

CENTRE STAGE

However, the main characters in this shadow play were China and the United States, and it is their rivalry that drove the issues forward and created pressure to make some progress. Indeed, ASEAN must be careful not to get caught in the middle and be used by either party to further its own interests.

Playing to perhaps some ASEAN members’ worst fears, China has hinted that the United States will use necessary sacrifice ASEAN interests for its own. A better outcome would see collaboration among ASEAN, China, and the United States.

It is no secret that the United States and China are at strategic odds in the South China Sea. One is striving to maintain, and if necessary demonstrate, its dominance while the other is bent on expanding its might and reach. Respective nuclear warfare strategies may even play a role. The recently released US National Military Strategy states that “to safeguard US and partner nation interests, we will be prepared to demonstrate the will and commit the resources needed to oppose any nation’s actions that jeopardize access to and use of the global commons and cyberspace, or that threaten the security of our allies.” This was clearly aimed at China, including its actions in the South China Sea and its “anti-access” strategy vis-a-vis the United States. But if China perceives that it is being strategically constrained and contained it will likely strive to break out both politically and militarily.

China’s maneuvering was readily apparent. It had long resisted the draft guidelines and made a major compromise by agreeing to them. Perhaps it saw the writing on the wall and feared that the disputes were pushing ASEAN toward the United States. But a probable more powerful influence was the pressure of world opinion, including that of the United States and Japan, and China’s desire to appear reasonable. Whatever the impetus, it succeeded by its rhetoric and behavior in reducing tension, at least for the time being.

THE NEXT ACT

But this may only be temporary. China’s charm offensive is unraveling. It has complained that Vietnam and the Philippines are violating the DOC by unilaterally exploring for hydrocarbons in areas claimed by China — but to no avail. It would appear that China’s leadership is losing patience with its Southeast Asian neighbors. It has warned darkly of “due consequences” if challenged in the South China Sea. And it has warned Vietnam that in their particular dispute it will “take whatever measures are necessary.” Yet more Vietnamese and Philippine-sanctioned surveys and even exploratory drilling are planned in areas claimed by China. Philex Mining Corporation has announced its plan to drill at least two wells on the Reed Bank. So far, China has only used maritime police to enforce its jurisdiction, but this could change.

The United States and China have had their own rather dangerous flare-ups in the South China Sea regarding what the former believes is its right to freedom of navigation. Indeed, the EP-3, Bowerich and Impeccable incidents — in which the Chinese forcefully contested the US presence in the South China Sea in recent years — have tested the nerves of commanders and defense leaders on both sides. Although the two continue to fundamentally and vehemently disagree regarding the principles involved, they may have worked out a modus operandi. At least all has been relatively quiet on that front, although a recent incident over the Taiwan Strait shows that the issue is alive and kicking.

Despite China’s positive rhetoric, some ASEAN nations were genuinely alarmed by its contradictory behavior and they began to explore closer co-operation between their navies and to set up hotlines. And they publicly sought succor and support from the United States, which had cleverly conflated the disputes with freedom of navigation issues. The United States — having confronted China and injected itself into the issues via Secretary of State Hillary Clinton’s speech at the ASEAN Regional Forum foreign ministers’ meeting in Hanoi in July 2010 — was only too happy to help the ASEAN claimants, at least verbally and with signals that militaries understand like co-operative exercises and port visits, both planned and unplanned.

At the end of the Bali summit, just in case China had not gotten the full message, Clinton laid the US cards on the table. First, she proclaimed that the United States has a national interest in freedom of navigation, peace and stability and respect for international law in the South China Sea. Second, it opposes the threat or use of force by any claimant to advance its claims. Third, it supports a multilateral diplomatic process for resolving the disputes. Fourth, it “calls on all parties to clarify their claims in the South China Sea in terms consistent with customary international law, including as reflected in the Law of the Sea Convention. Consistent with international law, claims to maritime space in the South China Sea should be derived solely from legitimate claims to land features.” These were all challenges to China. At the time of this writing, the US Senate had just passed a resolution urging support for the Philippines in its dispute with China and US Senator James Webb, the Chairman of the Senate Foreign Relations Committee, was visiting the region.

Thus concluded Act One. The stage is now set for Act Two. Let us hope that this shadow play has an uplifting outcome. Stay in your seats!