China vs. the US: Asia’s Maritime Disputes

By Zhu Feng

Tensions in the South China Sea have more potential than anything else to set the two great powers against each other in a military arena. It is not inevitable, but ‘real diplomacy’ must prevail over ‘gunboat diplomacy’ and each side must make better efforts to see things from the other’s perspective.

By Anthony Cowden

China’s disputes in the East and South China Seas are very different in nature, but the US position on both is that the rule of law must be respected. For the sake of the future, it is time for the world’s only current superpower to lay down a marker on the side of international law.
China has been pursuing extensive maritime claims in both the East and South China Seas. In the East China Sea, Beijing claims sovereignty over the Senkaku Islands, which are uninhabited but under the administrative control of Japan. In the South China Sea, China claims sovereignty over an extensive area within the so-called “nine-dash line” that covers almost the entire sea. The nine-dash line area encompasses the Spratly and Paracel island groups, most of which are small and uninhabitable and are claimed by a number of countries. China, Taiwan, the Philippines, Vietnam and Malaysia all occupy a number of the larger islands in the South China Sea, and China has recently been building artificial islands with port and airfield facilities in the Spratly Island group.

The US position with regard to these disputes has four principal components that can be summarized as follows: the US does not recognize the sovereignty of any of the disputed land features in the region; territorial disputes should be solved diplomatically and without the use or threat of force; freedom of navigation and access to the maritime commons should not be interfered with; and international law should be respected.1

The East and South China Sea situations are fundamentally different in a number of important ways. For one thing, in the East China Sea, the parties are more limited: China, Taiwan and Japan all claim one group of islands in a relatively small geographic area. In the South China Sea, many more nations are involved over a much larger area.

Another difference is that while the US does not recognize the territorial sovereignty of any of the islands in dispute, in either the East or South China Seas, it does recognize the administrative control of the Senkakus by Japan. In addition, the US has made it clear that Article V of the US-Japan Treaty of Mutual Co-operation and Security covers an armed attack on the Senkakus.2 This is not true in the South China Sea, where the US has not made any such declaration, even though one of the claimants to some of the islands, the Philippines, is a US treaty ally.

A final difference is that in the case of the Senkakus, Japan has the national power, resident in its coast guard and self-defense forces, to stand up to Chinese coercive efforts by its coast guard and military. Because Japan has sufficient national power to confront China’s efforts, the US role has been much more limited, and less visible. However, the US declaration that the Senkakus falls under the mutual security treaty with Japan was strategically important in signaling to both China and Japan the degree to which the US is committed to security within the region and its role in ensuring that security.

The US has pursued a number of actions related to its policy with regard to China’s maritime claims. None of these actions, however, have prevented China from occupying and building facilities on an increasing number of features within the South China Sea over the past few years. Furthermore, none of the “Potential Further US Actions Suggested by Observers” listed in a recent Congressional Research Report on the subject are likely to dissuade China from pursuing their territorial claims or modifying their behavior.3

While it is beyond the scope of this effort to
detail all of the actions the US has taken, a review of additional steps the US might take is warranted. In terms of the broad range of national powers available to the US (diplomatic, informational, military, economic, financial, intelligence, and law enforcement, or DIMeFIL), there is little more the US can do in the informational, military, or intelligence realms that it is not already doing and will continue to pursue. In addition, it is unlikely to take coercive economic or financial actions in support of its policies, as the damage to the US economy would be too great. Finally, there do not appear to be any law enforcement actions that would be applicable for the US to take.

That leaves diplomatic action. Certainly, the US has taken a wide range of diplomatic actions in support of its announced policy. One additional step that the US could take would be to announce that it would abide by and respect the findings in the matter of the claim submitted by the Philippines against China.1 This would send a powerful message to the international community that the US supports customary international law, the United Nations Convention on the Law of the Sea (UNCLOS), and established international mediation mechanisms. This would also highlight China’s position as lying outside of international law and their continued refusal to be bound by the mediation mechanisms of a treaty they are party to — but to which the US is not. Finally, this would show support for a treaty ally as it seeks justice through international mediation.

There are certainly those that would argue that the US acquiescing to the opinion of international legal arbitration would set a dangerous precedent for future decisions by which the US would perhaps not like to be bound. However, a rising China that is so blatantly rejecting the current system of international treaties and arbitration mechanisms raises the issue of the kind of world the US would like to live in if, in the not so distant future, China’s national power eclipses our own. Maybe it is time for the world’s only current superpower to lay down a marker on the side of international law. Certainly, it is in no one’s interest for there to be direct confrontation between the US and China over the territorial disputes in the South China Sea.

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