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Changing Power, Changing Interests: Freedom of Navigation in South China Sea

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Synopsis

By placing the oil rig HD-981 in Vietnam's proclaimed EEZ off the disputed Paracel Islands, China has profoundly affirmed its assertive policy of "monopolising" the South China Sea. The security order in the Sea is in flux, and the time is right for a fundamental reassessment of key trends there.

Commentary

IN ALL the official (and also semi-official) documents, American interests and standpoints in the South China Sea disputes can be covered by four main principles: promote regional peace, prosperity, and security; be neutral in the overlapping sovereignty claims; maintain freedom of navigation; and encourage peaceful settlement through adhering to international law.

Nonetheless, China's assertiveness has forced the United States into a situation whereby it has no other choice but to redefine its interests. This process, in fact, is directed by three contradictory priorities.

US' three contradictory priorities

First of all, the US needs to focus on protecting freedom of navigation and remain neutral over sovereignty issues. However, China's increasingly assertive behaviour since 2012 has pointed out that these two items are inter-connected. The oil rig HD-981, for instance, is likely to be used as a "mobile territory" coded as declaring Chinese actual sovereignty over the Paracel archipelago and surrounding area. By withholding Triton Island and labeling it a qualified island according to Article 121 of UNCLOS, China has employed a new way to expand its maritime claims.

Secondly, the US should safeguard its regional allies (which will strengthen America's post-1945 alliance system), but not provoke harmful damage to Sino-American strategic partnership (especially restraining armed conflicts from occurring). The Scarborough Shoal clash in 2012 shows that these two targets could only be achieved in case China maintains its "*taoguangyanghui*" (meaning "not to show off one's capability but to keep a low profile") policy, the concept that has been partially or even totally decried by recent signals.

And thirdly, the US seeks to assure American hegemony in the Asia-Pacific and at the same time has to deal with domestic economic challenges by cutting the defence budget and concentrating on saving the economy (creating jobs and the federal government's debt as an example). Consequently, the US is in need of a policy

which does not heavily lean on hard power and require massive defence expenditures, but can be employed through other channels such as diplomacy and international law.

A more active policy is needed

Since 2011, US strategies in the South China Sea can be generalised through five different channels: (i) to oppose, or even threaten China's aggressive behaviours in multilateral forum; (ii) to urge involved parties to find a pacific conflict settlement based on international law (in this case, to support the formation of a full Code of Conduct, COC, and to call for utilisation of the 1982 UNCLOS); (iii) to assist regional allies by providing warships and military facilities for naval defence; (iv) to support cooperation amongst US allies and potential partners; (v) to communicate with China (regarding not only the South China Sea but also the East China Sea's associated issues) about the costs of their expansion policy.

These approaches do not seem to fully serve US interests. A more active policy, therefore, is needed.

If the US desires to establish a rules-based order in the South China Sea, it should prioritise its own ratification of UNCLOS, the UN Convention of the Law of the Sea. This spirit was shared by President Obama's commencement speech at the US Military Academy Graduation Ceremony at West Point on May 28 2014: "We can't try to resolve problems in the South China Sea when we have refused to make sure that the Law of the Sea Convention is ratified by our United States Senate, despite the fact that our top military leaders say the treaty advances our national security". The treaty provides not only a legal basis but also the moral credibility and "strategic weapon" of the US in the South China Sea.

Furthermore, the US needs to support the establishment of a juridical alliance including Japan, Vietnam and the Philippines – those who are currently undertaking their territorial disputes with China. In 2012, for the very first time, Japan's minister of foreign affairs, writing in *The New York Times*, confirmed the possibility of bringing the Senkaku/Diaoyu dispute to the International Court of Justice.

This incident left a significant mark on the emerging orientation of "prioritising rules and laws" in conflict resolution.

In term of military cooperation, the US can assist regional states by other means, that is, to provide aid in maritime surveillance and intelligence exchange. Accordingly, the strategies which involve military operations could be applicable if the US avoids direct confrontation with China through helping its regional allies, especially Japan and the Philippines.

The US would then play its role from the rear, in other words, to "lead from behind" – a notion introduced during the Libyan war by the Obama Administration. Taken from there, the US can foster military cooperation with other countries to prevent maritime security threats; as predicted, this process would be speeded up in future.

In sum, China has tied the US into a tough game with contradictory interests. However, right amidst that paradoxical situation, the credibility of a measure stressing rules and law rather than guns and violence might be vigorously reinforced. By forming the "rule of the game" that relied on international law, the US has created unanimity to carry out military engagement in case American (and its allies') national security and interest are threatened.

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