

WATCHING BRIEF WB 16-4: SOUTH CHINA SEA

Background Paper by Quaker David Rosenberg (Professor Emeritus of Political Science, Middlebury College, Vermont USA, and Visiting Fellow at ANU, Canberra).

The war of words between the United States and China over who is militarizing the South China Sea is heating up in advance of a United Nations court ruling on the validity of China's nine-dash line claim to the sea. The Permanent Court of Arbitration at The Hague in The Netherlands is expected to issue its ruling in the case of *The Philippines v. China* before June 2016. This will be the first time that any international tribunal will rule on the validity of China's territorial claims to nearly the entire South China Sea.

The root cause of the conflict is that Washington and Beijing have different views about who controls what in the South China Sea, based on their differing interpretations of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The United States refers to the South China Sea as international waters, and has pledged to increase its freedom of navigation patrols. The PRC argues that the South China Sea has historically been Chinese, and is only defending its territorial waters. Neither claim is consistent with UNCLOS guidelines.

The South China Sea is an enclosed sea bordered by several states, all possessing 200 nautical mile exclusive economic zones (EEZ). Hence, the South China Sea is not primarily international waters, but rather overlapping EEZs. According to UNCLOS, the EEZ boundaries must be determined through negotiations by the claimants. Many Southeast Asian states have negotiated their maritime boundaries with each other bilaterally. None has done so with China, except for the China-Vietnam agreement in the Tonkin Gulf.

China seems to claim that it owns virtually all of the South China Sea, so therefore there is no need to negotiate anything. However, Vietnam, the Philippines, Malaysia, and Brunei also have claims to all or part of the South China Sea. They all want China to delineate its claims

so that they can negotiate their maritime boundaries bilaterally, as provided by UNCLOS guidelines. Unfortunately, Beijing has not precisely defined its claims to the South China Sea. Its nine-dash line map is manifestly ambiguous and unacceptable in international law. Therefore, no negotiation can occur. Some analysts point out that this is intentional ambiguity. If the PRC were to define its South China Sea boundaries in line with UNCLOS provisions, there would be many conflicting territorial claims that would need to be negotiated.

Both China and the United States accuse the other of militarizing the South China Sea. Both are correct. China is increasing its naval and air activities in the vicinity and has created a series of artificial islands that could accommodate combat ships and aircraft. The United States is assisting several Southeast Asian claimants enhance their naval and air capabilities. Washington is increasing its own land-based presence in the Philippines and Australia. Many observers in Washington believe that China is developing a capability to interrupt freedom of navigation in the South China Sea. Beijing claims it has no such intention and emphasizes that it is highly dependent on trade through these waters. It insists that any military capability it has in the region is entirely defensive. However, other countries around the South China Sea have cause to wonder exactly what interests China is defending.

China's newly-built military capabilities in the South China Sea are for the PLA-Navy, the Fisheries Law Enforcement Command, the Coast Guard, and the China Marine Surveillance Agency. In the past two months, vessels from these Chinese maritime forces have aggressively intruded with fishing boats in the EEZs of Vietnam, the Philippines, Malaysia, and Indonesia without the permission of these states. The PRC has also stationed an oil rig in waters claimed by Vietnam.

There appears to be no easy solution to maritime militarization in the South China Sea. As more combat ships and aircraft are added in a relatively small maritime space, the possibility of military encounters and/or accidents will increase over time. A case in point is the March 2016 capture of a PRC fishing vessel off Indonesia's Natuna Island. That led to a Chinese coast guard encounter with the Indonesian coast guard boat. There have been similar confrontations involving China and Vietnam around the Paracel Islands, between China and the Philippines around Scarborough Shoal, and between China and Malaysia near the Luconia Shoals.

What can be done in this situation? Southeast Asian states should continue to define, negotiate, and resolve their overlapping claims in the South China Sea. Then they should ask China to do the same thing. The problem with this seemingly reasonable proposal is that China has repeatedly stated that negotiating boundaries in the South China Sea is out of the question. Unfortunately, without negotiating overlapping EEZs, there is no prospect for resolving competing claims.

That may change with the UN tribunal ruling. The judges will almost certainly rule that China's nine-dash line is not a valid maritime claim and that China is not entitled to any historic rights beyond its territorial seas, exclusive economic zones, and continental shelves according to UNCLOS. That ruling will amount to an order that China clarify its maritime claims based on entitlements from land features, not ambiguous dashes on a map. Beijing is unlikely to clarify its claims in the South China Sea because the tribunal orders it to do so. The Chinese government has repeatedly said that it will not recognize any ruling. But being branded an international outlaw will involve significant reputational costs for Beijing. It will undermine China's narrative that it is a responsible rising power that deserves a greater hand in global governance. It will make other countries wary of Chinese commitments and will drive regional states even closer to Tokyo and Washington.

These costs to Beijing could make an eventual political compromise more appealing. China might agree to redefine the nine-dash line based on UNCLOS rather than historic rights and enter real negotiations with its neighbors. To promote that kind of political compromise, the other claimant states and Washington will need to embark on a sustained campaign to garner international support for the tribunal's ruling. Support will also need to come from like-minded countries like Australia, Japan, and European states.

In the meantime, regional policy-makers need to take the initiative for negotiating agreements for joint resource management whenever opportunities become available. For example, at the 2015 Boao Forum for Asia, Beijing officially launched the Year of ASEAN-China Maritime Cooperation, and announced that China and ASEAN nations would carry out cooperation in the areas of marine economy, maritime connectivity, marine science research and environmental protection, safety and security, and cultural and people-to-people exchanges on the sea. Regional diplomats and political leaders should work actively to test China's intentions and turn these pledges into targets and timetables.

Even amidst all the current maritime disputes, a naval code of conduct was approved by more than 20 nations – including South Korea, China, Japan, the United States, and

Australia - at the biennial Western Pacific Naval Symposium in Qingdao in April 2014. The Code for Unplanned Encounters at Sea (CUES) was endorsed by naval officials. The principles are not binding, but represent a small but positive sign of improved communications to reduce the risk of naval encounters escalating into conflict.

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QPLC Comments

The Joint Communiqué of the 9th Singapore-Australia Ministerial Committee (18 March 2016) included the following declaration, which largely represents the official Australian approach:

Ministers called on all parties concerned to resolve disputes in the South China Sea peacefully, with full respect for legal and diplomatic processes, and in accordance with international law, including the 1982 United Nations Convention on the Law of the Sea. They urged all parties to exercise maximum restraint, take steps to ease tensions and refrain from provocative actions that could escalate tensions. Ministers also emphasised the importance of non-militarisation of features. Ministers underscored their shared interest in freedom of navigation and overflight and unimpeded trade in the South China Sea. They emphasised the need for ASEAN and China to make substantive progress on a Code of Conduct for the South China Sea, as well as full and effective implementation of the Declaration on the Conduct of Parties in the South China Sea.

Australian Quakers have repeatedly made submissions to government and parliament seeking to promote nonviolent solutions to the foreign policy and security problems of the region and globally. For example, in May 2013 the Presiding Clerk wrote to the Government in these terms:

Australian Quakers wish to see Australia adopt defence policies that are part of a wider approach to international relations that helps take away the causes of war and advances peaceful conduct by all nations. We urge the allocation of greater resources to nonviolent initiatives, disarmament, stronger international law, and achievement of the Millennium Development Goals.

Friends are encouraged to consider the following questions:

- What are the main sources of potential conflict in the South China Sea?
- The USA has been giving greater attention to this region through its 'pivot' to Asia. What are the implications for its relations with China?
- Does Australia's close involvement with the US strategy (e.g. upgrading Pine Gap and stationing US forces in northern Australia) place it at a disadvantage in encouraging a balanced approach to conflicts in the region?
- In what ways can the UN Convention on the Law of the Sea assist a resolution of these issues? www.un.org
- What steps can Australia take to help reduce the militarisation of the region, given its commitment to the ANZUS treaty? <http://australianpolitics.com/1951/09/01/anzus-treaty-text.html> *
- How can Quakers work more effectively with other NGOs to advance the cause of peace?
- What can you do locally to engage with people from China?
- Quakers have used dialogue over many years to promote understanding and conflict resolution internationally. Is there any initiative that can be taken by Quakers at the United Nations, and/or within this region, to offer an alternative way to approach the potential crises in military strategies?

QPLC welcomes feedback on these and related concerns, to help in developing further Quaker responses to the challenges posed by what is happening in the South China Sea. See also WB15-5 (ANZUS, China and Australia) on YM website www.quakers.org.au

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*Article 1 of ANZUS treaty

"The Parties undertake, as set forth in the Charter of the United Nations, to settle any international disputes in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations."