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Troubled Waters? Seeking a New Maritime Order in East Asia

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The 2011 ASEAN Regional Forum and Maritime Disputes in East Asia

Without a doubt, the most heated and persistent maritime disputes in the world are in the East Asia region. The vast bodies of water included in this region are the Northwest Pacific, the East Sea, the West Sea, the East China Sea, and the South China Sea. The diplomatic spat in the fall of 2010 between China and Japan over the Senkaku/Diaoyu Islands in the East China Sea was a strong indication that any mishandling of maritime issues can disrupt the subtle balance of power and interests in the region. Equally problematic are the disputes in the South China Sea, where China's growing assertiveness has provoked concern among not only its Southeast Asian neighbors but also with the United States. Since the end of the Cold War, the United States has been the main provider of maritime security in the East Asia region but now faces the challenge of a rising China. In May 2011, a Chinese patrol boat cut the cable of a Vietnamese petroleum and gas probe vessel in the South China Sea. From this incident, tensions escalated to the brink of armed conflict. As countries in the region participate in tit-for-tat military exercises, the atmosphere has become worse.

Under such conditions, many considered that the South China Sea issue, tangled with conflicts between China and ASEAN and the United States could flare up significantly. However at the 18th ASEAN Regional Forum (ARF) held from July 22-23 2011 a new perspective developed as China stated that "the

importance of the freedom of navigation in the South China Sea is clear and all countries should be beneficiaries of such freedom." Furthermore, during the China-ASEAN ministerial of the 2011 ARF Beijing stepped back by adopting the guidelines for the implementation of the Declaration on the Conduct of Parties in the South China Sea, which was agreed upon in 2002. Washington welcomed this move as it suggested an effort to decrease tensions with respect to the South China Sea. This is in stark contrast to the 2010 ARF meeting where confrontations arose between the United States and China with U.S. Secretary of State Hillary Clinton stating "a peaceful resolution of the South China Sea conflict directly relates to U.S. national interest."

From such developments, one can assess that the ARF has made important progress with respect to the South China Sea issue. However, the 2002 Declaration of Conduct that establishes the principle for peaceful resolution of maritime disputes in line with the United Nations Convention on the Law of the Sea (UNCLOS) lacks binding capacities and the newly adopted guidelines are mostly declaratory and lack specific details. Thus it would be too soon to consider the 2011 ARF meeting as a success with respect to the South China Sea dispute. Considering that China tends to use such multilateral channels as a ground for making peace but then is more forceful in its bilateral relations, the outcome of the recent ARF meeting could come to have less significance than expected.

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A New Power Dynamics and the Maritime Order in East Asia

The complex balance of power and interests in the region does not allow for a single pacesetter. Although it is limited in hard power, South Korea has managed to establish itself as a balancer among the great powers of the region. Japan, on the other hand, has tried to establish its own role by using the U.S.-Japan alliance to balance China, which is its regional competitor. China's increasingly assertive maritime policy and growing naval power is a challenge for the region, as highlighted by the fact that Beijing stated its willingness to seek a new regional maritime order, but it will always be reluctant to follow institutions or rules that are not of its own making. To make matters even more complicated, the United States has recently shown signs of renewed interest in maritime issues in Asia, deviating from its previous "hands-off" approach.

As mentioned before, the maritime order in East Asia has become more unstable due to changing political and economic factors. China is emerging and assertive, while the United States is returning to the region yet ambiguous about its intentions. As the global economy is more dependent on China it has mitigated major political and diplomatic tensions arising between Beijing and its neighboring countries. With the shackles of the Cold War gone, however, China has more freedom to pursue its own maritime interests. The launch of China's first aircraft carrier is an example of a more active maritime policy. Although not all experts accept this as a negative development, there are signs that neighboring countries, including the United States, have been accelerating their military buildup as a means to balance against both direct and indirect force

projection from China.

During the Cold War, the United States and the Soviet Union only had geopolitical interests in East Asia. Since a rising China today possesses both territorial and geopolitical ambitions, the impact it will have on East Asia's maritime order is significantly different. Although debatable, China's policy with regards to maritime disputes in East Asia reflects a form of so-called "irredentist ambition." For example, China's territorial claim of a U-shaped sea area including most of the South China Sea has been based on an argument of "inherent territory." A similar historical and cultural claim has denied Japan and South Korea's sovereign rights in the East China Sea as well. Economic considerations have also been part of China's confrontational maritime policy as securing sea lanes for energy and raw material transportation became an essential component for its economic growth. As China has become an oil importing country since 1993, the energy issue is a key reason for conflicts in both the South China Sea and the East China Sea.

The worsening relations between China and its neighbors have provided an opportunity for the United States to reengage the region. Secretary of State Clinton's remarks in October 2010 that the Senkaku/Diaoyu Islands fall under Article 5 of the U.S.-Japan Treaty of Mutual Cooperation and Security caused deep discontent in China, but reminded Japan that the United States is the main guarantor for its security. Accordingly, the controversial Futenma base relocation issue on Okinawa between the United States and Japan settled in a dramatic overture to U.S. support over such territorial disputes. On a similar note, Vietnam is also trying to improve its ties with the United States in order to

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counter China, its main rival in the South China Sea. Hanoi is seeking to internationalize the dispute and is working toward a multilateral solution. As a partial response, the Obama administration has stated that it will remain neutral to Vietnam's territorial disputes over the Paracel and Spratly Islands, but would intervene if the right to freedom of navigation is infringed upon.

The conflict between the United States and China over the seas in East Asia is linked to the debate on international law, particularly on what military operations can be conducted in a country's Exclusive Economic Zone (EEZ). The collision between a U.S. Navy EP-3 reconnaissance aircraft and a Chinese fighter jet in 2001 and Chinese provocations against the surveillance ship USNS *Impeccable* in 2009 shows how such incidents can escalate into a serious conflict as China takes up an offensive posture toward U.S. military operations in its EEZ. According to the UNCLOS, the country that has jurisdiction over its EEZ has full control over all biological and non-biological resources within the area and can also limit scientific research conducted by another country. However, the United States argues that the activities by its vessels in another country's EEZ are lawful under the principle of the freedom of navigation, also guaranteed by the UNCLOS. Of course, China does not accept such claims and has designated U.S. activities as “maritime scientific research,” which requires consent from littoral countries. Yet, this same argument would go against China's own activities in the EEZs under Vietnamese and Japanese jurisdiction. Therefore, the issue remains highly controversial.

Such confrontation between the United States and China was notable during the U.S.-ROK combined joint naval exercises following

North Korea's sinking of the *Cheonan* in 2010. In the aftermath of the *Cheonan* incident, the United States and South Korea announced that in response they would conduct a large scale joint military exercise in sea areas around the Korean Peninsula and Japan which would include the participation of the aircraft carrier USS *George Washington*. Initially the exercises were planned to be conducted in the Yellow Sea but were moved due to strong protests by China. To match these words, China also conducted a preemptive naval exercise in an area where its EEZ is included. However, the EEZ boundaries in the West Sea between South Korea and China have never been formally agreed upon and therefore Beijing's claims cannot be justified. A change of behavior was noted following North Korea's artillery attack on Yeonpyeong Island where China did not object to South Korea and the United States conducting similar naval exercises in the West Sea, again with the USS *George Washington*. Yet, the dominant view is that such a muted response by Beijing does not reflect any fundamental change in its position. Such diplomatic frictions between the United States and China shows the difficulties in producing an agreement that is satisfactory for both sides on what military operations are acceptable in such a semi-enclosed sea.

Searching for a Multilateral Solution

What can be done in order to improve the current situation? As the maritime issue in East Asia is tangled with issues such as boundary delimitation, resources, territorial rights, and sea lanes, it is almost impossible to resolve the disputes either unilaterally or bilaterally. At the same time, a multilateral solution

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cannot be achieved without concessions from China as it is involved in almost all of the maritime disputes in the region. Still China has insisted on resolving maritime disputes bilaterally and has actively promoted the notion of “dialogue by directly related parties and non-intervention by the United States” as a way of avoiding multilateral efforts. Such a strategy may seem to be favorable from China’s perspective, but this should not disrupt the legitimacy of multilateralism in settling maritime disputes. A multilateral solution does not necessarily mean mediation by a third party such as the International Court of Justice or the International Tribunal for the Law of the Sea. Rather, such a solution points to regionalism in a multilateral sense as depicted by Secretary Clinton’s comments on “a cooperative diplomatic process by all related parties in order to resolve various territorial disputes without coercion.” The Obama administration’s repeated inferences to hold multilateral meetings with regards to maritime issues in East Asia derive from the same background. It is also rumored that the United States may bring up the South China Sea issue during the East Asia Summit (EAS) in the fall of 2011, which it will participate in for the first time.

In the past, maritime disputes in East Asia tended to occur individually. Recently, however, such conflicts are occurring on a simultaneous basis. This implies that there needs to be the full participation of all related parties in order to create an effective maritime order. A common regional understanding must be developed in a multilateral setting with appropriate sequencing to resolve the issues such as maritime border disputes, territorial disputes, and resource disputes. As in the South China Sea case, adopting a code of conduct that may lack in a binding capacity

but still has some symbolic value could be a good start to induce mutual understanding while maintaining the status quo. But shared understanding and mutual confidence building alone are not enough. In the end, there needs to be a binding element. Since its first meeting in 1994, we can assess positively the efforts of the ARF in managing regional security issues including territorial and EEZ disputes. However, because the member composition of the ARF is too broad and the adopted presidential statements are not binding, such a forum is not appropriate for handling maritime disputes in East Asia.

Rather than this mode of dialogue, a multilateral forum such as ASEAN+5 (China, Japan, Russia, South Korea, and the United States) would be more effective in bringing about binding agreements based on common interests. In a sense, we can imagine moving forward from a modified bilateral approach such as the ASEAN+1 arrangement which developed the Code of Conduct between ASEAN and China, and from a purely formal multilateral forum such as the ARF which is not binding, to a forum such as the Six-Party Talks. In such a forum all related parties could convene and agree on issues such as baseline principles, boundary demarcation principles, and resource sharing principles that are binding, while imposing a tentative freeze on ongoing territorial disputes. The difference between a multilateral forum like ASEAN+5 and the Six-Party Talks is the latter requires one party to make concessions that the other parties compensate for while the former has all parties making equal concessions and receiving equal benefits. For instance, with a multilateral agreement on the “equidistance-special circumstances principle,” involved parties would declare a moratorium on activities re-

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lated to challenging disputed islands and then adjust their EEZ claims based on a tentative median line for overlapping waters and not upon disputed territories. In this way, each country will find it easier to secure a balance of interests by gaining benefits on a particular area for concessions it made on another area. Also, because reputational costs under a multilateral setting increase, deterrence on provocative behavior by domestic right-wing extremists will be higher and thus decrease unnecessary diplomatic frictions as well.

The recent maritime disputes will prove to be an important test for China’s “peaceful rise.” If China fails to effectively ease the concerns of its neighbors over its “irredentist ambitions,” the diplomatic trust that was built over the past 30 years can rapidly deteriorate. As seen with the recent disputes with Japan, China did not hesitate to use economic relations as a diplomatic leverage in order to “teach a lesson” to its opponents. When Japan arrested a Chinese ship captain after he had rammed a Japanese Coast Guard vessel in September 2010, China in response restricted its rare-earth exports to Japan in an effort to induce his release. However, such blatant linkage behavior has caused international wariness with regards to China’s intentions. Beijing should understand that an offensive diplomatic strategy can backfire and harm its own interests.

As for Japan, it simply lacks the political will and credibility to serve as a leading power in forming a multilateral maritime regime. Tokyo’s broad but vague maritime claims, best symbolized by its bizarre claim to Okinotorishima, two tiny rocks in the Pacific Ocean about 1,700 kilometers south of Tokyo, only harm the country’s interests. Despite early signs of warmer bilateral relations after the

March 2011 earthquake and the Fukushima disaster, the Japanese government must clearly see that the ongoing textbook disputes and clashes over Dokdo Island most recently brought up again by a handful of right-wing members of parliament are damaging for Japan. While it may prove useful for gaining some domestic political support, it more often than not would harm the long term national interests of Japan in becoming a responsible member of the East Asian community.

Amid these new dynamics and challenges, South Korea and ASEAN states could assume the role as a stabilizer, perhaps by offering to bridge between the United States, China, and Japan. It would not be a good policy option for these countries to balance China by becoming overly dependent on the United States in response to what they see as China’s growing assertiveness. Both South Korea and ASEAN need to raise their voices more actively. Before the 2011 ARF meeting, the South Korean government was not willing to move from its position with respect to the South China Sea issue by stating that “the South China Sea issue is not a concern that Korea needs to be deeply involved in. However, the right to freedom of navigation, in accordance to the UNCLOS, must be respected.” Such a position was most likely adopted in consideration of China’s position. However, since the South China Sea is a critical sea lane for the South Korean economy and there is no guarantee that South Korea will not face similar territorial conflicts with China, it will be important that Seoul establishes a more active multilateral strategy. In this complex and interdependent region, South Korea cannot simply remain as a bystander. The previously mentioned “equidistance-special circumstances principle” is a position that the South

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Korean government has been long promoting and there will need to be a concentrated diplomatic effort to establish this as a regional norm. South Korea also has diplomatic experience from its role in the Six-Party Talks, ASEAN+3, EAS, and APEC. With this experience, South Korea can play a more active role as an agenda-setter.

On the surface it would seem that there has been a consistent approach made in ASEAN, but a closer look would show there are divided attitudes toward the South China Sea issue. While Vietnam and the Philippines are taking a hard-line approach, countries such as Malaysia, Singapore, and Thailand prefer not to directly confront China. Nevertheless, there needs to be a more active leadership role managed by ASEAN if there is to be a multilateral solution.

For its own part, the United States needs to recognize that it cannot shape the region unilaterally. Although the United States has sought to convince China that it will be in its interest to protect the freedom of navigation, China has yet to accept this view. During the 2011 ARF meeting, Chinese Foreign Minister Yang Jiechi stated that “by adopting the guidelines (to peacefully resolve the South China Sea issue), we are able to have a friendly environment to solve the disputes among countries who claim their rights within this region.” However, he also made it clear that “it is important to respect China’s sovereign rights and territorial integrity,” and therefore requested the United States to take a non-intervention stance as an unrelated party to the territorial disputes in the South China Sea. As such, the United States also needs to reassure China that it welcomes its rise if Beijing is a respon-

sible stakeholder, while making sure that there is a clear limit to the expansion of China’s power. To conclude, the perfect storm of opportunity for more effective maritime cooperation vital to the common prosperity of the region may arrive only after the opening-up of all sorts of complex problems in Pandora’s Box. ■

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