



TALKING POINTS

Asan Plenum 2013: “New World Disorder”
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Panel: Maritime Security (Grand Ballroom I)

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Talking Points for: Alan D. Romberg, Distinguished Fellow and Director, East Asia Program, Stimson Center

Maritime security in the Asia-Pacific can be viewed from different perspectives. On the one hand, the nations of the region (including the United States) face many problems in common, and cooperation among them, while not always easily achieved, is a benefit for all. This includes activities such as maintaining freedom of navigation for the vast commerce that passes to and through the region, combating piracy, drug smuggling and human trafficking, and providing for disaster relief and humanitarian assistance. On the other hand, issues relating to national security or resource exploitation tend to be viewed as “zero-sum” in nature, where one nation’s gain is seen as another’s loss. The sea is either a buffer against external aggression or an avenue for access, depending on one’s perspective. And while cooperative resource exploitation is often described as “win-win,” given the high stakes involved in potentially vast hydrocarbon reserves, that has been shown to be easier to talk about than to execute.

Moreover, it is obvious that in the Asia-Pacific region, the related issues of historical legacies and nationalism play a role, sometimes a very large role, making cooperation more difficult and exacerbating the sense of conflicting interests.

The UN Convention on the Law of the Sea (UNCLOS) provides some guidance regarding the rules to be applied to operating in the maritime space and to resolving potential conflicts. And it is a very important instrument for addressing such issues in an “objective” way. At the same time, UNCLOS does not resolve all issues, both because different nations rely on different provisions of the Convention, and because different nations hold different interpretations of what it calls for. Dealing with vast claims based on “history” is particularly problematic.

Beyond that, and of fundamental importance, UNCLOS tells us nothing about how to address, much less resolve, disputes over ownership of territory on which all maritime claims must be

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based. It tells us what sorts of rules apply in determining the territorial waters or Exclusive Economic Zones (EEZs) for any given kind of territory (island, rock, shoal, etc.), but it is silent on how to determine who holds sovereignty of that territory.

In addition, interpretation of some of UNCLOS’s terms is open to question. If one builds a structure on a submerged feature and introduces a desalinization plant, does that rock now become an “island” that is above the water at high-tide and that can sustain human life? And does that mean it generates a 200-nm EEZ rather than only 12-nm territorial waters? Who defines whether a trough defines the outer limit of a continental shelf or is merely a feature of the shelf, which extends beyond that trough?

From an American perspective, these issues are of enormous importance, even though the United States is neither a claimant nor has it yet ratified UNCLOS. (As a signatory to UNCLOS, however, the U.S. is obligated to abide by the terms of the Convention, and it does, but it clearly lacks the “legitimacy” it would have were it a full member. Whether the Obama Administration will be able to push through Senate ratification in its second term remains to be seen.)

Among the well-known issues for Washington in the Asia-Pacific maritime sphere are the rules governing naval vessels in EEZs, specifically in China’s EEZ. In promoting a rules-based maritime regime, the United States adheres to the understandings reached during long and difficult negotiations leading up to the adoption of UNCLOS. As explained by an expert on the subject, Peter Dutton of the Naval War College:

“The creation of the exclusive economic zone in 1982 by UNCLOS...was a carefully balanced compromise between the interests of the coastal states in managing and protecting ocean resources and those of maritime user states in ensuring high seas freedoms of navigation and over flight, including for military purposes. Thus, in the EEZ the coastal state was granted sovereign rights to resources and jurisdiction to make laws related to those resources, while high seas freedoms of navigation were specifically preserved for all states, to ensure the participation of maritime powers in the convention.”

In other words, agreeing to preserve full high-seas freedoms, including for naval vessels, was the price the coastal states agreed to pay in order to gain control over resources in their EEZs.

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It was not a matter of interpretation, it was the deal that was struck.

Another issue of concern to the United States is the potential for clashes between nations of the region over disputed territory based on “history” (e.g., Senkakus/Diaoyu, Spratlys, Paracels) or the maritime domain also associated with disputed territory based on competing interpretations of UNCLOS (e.g., Japan/China in the East China Sea, North-South Korea in the area of the Northern Limit Line, China vs. Vietnam and the Philippines [and others] with respect to the continental shelf in the South China Sea). A huge issue, of course, one that is fortunately quiescent at this time but may not always be so, relates to cross-Taiwan Strait relations.

The American interest centers on issues of access and stability, the maintenance of peace and security and the protection of commercial interests. The nature of relations over the maritime space in the region has, of course, been affected in a major way by the changing capabilities of the regional players, most importantly the rise of China. And in that context, China’s behavior—or perceived behavior—has been a matter of particular concern to other nations in the region and has conditioned the way many of them view their security interests and the appropriate U.S. role.

As is well-known, the United States takes no stand on the various competing territorial claims in the East and South China Sea, although it does recognize Japan’s administrative control over the Senkaku islands, which therefore brings those islands within the purview of the U.S.-Japan Mutual Security Treaty. This latter point is a matter of the plain text reading of the treaty and has been publicly reaffirmed by a succession of American administrations.

But while taking no stand on sovereignty, the United States takes a strong stand on the question of the behavior of competing claimants. It firmly opposes the use or threat of force or coercion to address the disputes and supports resolution of competing territorial claims through a legal, diplomatic process and resolution of accompanying rights in the maritime space in a manner consistent with UNCLOS. Moreover, to repeat, consistent with international law, legitimate claims to maritime space should be derived solely from legitimate claims to land features.

It goes without saying that, where the U.S. has alliance commitments, it will stand by them.

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That does not mean that those commitments extend to all of the disputed claims, but especially in the case of the Senkaku/Diaoyu issue, the position is clear. That said, American policy is focused intensively on diplomatic approaches, not military ones. Short of any military confrontation, which all contestants currently seek to avoid, the importance of the alliances is greatest in terms of their role as a deterrent to those who might consider using force.

The relevance of all of this to China is clear, and, as I say, the U.S. is firm on its commitments. But we need to think about these questions not only, and not primarily, in the context of possible worst-case contingences. Rather it is important to place them in the context of a dedicated policy in both Beijing and Washington to act constructively together and to build what has been called a “new type of major power relationship.” How that will actually be realized remains to be seen. But there can be little doubt that how the two countries perceive each other’s intentions—and how they interact—with respect to maritime security issues will play a large role in their success or failure in creating such a new type of relationship.

Although there are obviously other maritime security issues that need serious consideration, but at this moment of some heightened tension, let me conclude by focusing on North Korea. The tragic and destabilizing events of 2010 regarding both the Cheonan and Yeonpyongdo were directly related to issues of maritime security. In the first case, it was an act of plain aggression on the high seas. In the second case, which was also an act of aggression, while North Korea’s motives were doubtless mixed, an important element Pyongyang cited to justify the attack was directly related the different views about the dividing lines in waters around Yeonpyongdo and the other four islands in South Korea’s northwest.

My point is not only to highlight security dimension of the Northern Limit Line vs. North Korea’s claimed demarcation line, but to note that those incidents in the maritime space had a significant impact on security throughout the Peninsula and indeed throughout the region. Indeed, the consequences of those incidents resonated in ROK-PRC relations, U.S.-PRC relations and, positively, in ROK-U.S. relations, not to mention relations with Pyongyang. And while the sea is a domain in which the U.S. and others will now maintain an even more

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robust deterrent, this also has broader implications, including for China.

So while managing maritime security is very complex by itself, involving as it does issues of national power, pride and prosperity, it also involves, and must be addressed within the context of, overall national and regional security and international relations writ large.

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