

Avoiding Conflict in the South China Sea

By: Doug Bandow - January 4, 2013

The reelection of President Barack Obama gives a degree of stability to U.S.-China relations. There is no more important bilateral relationship.

The agenda is full. Particularly important are territorial disputes in East Asia which could turn violent. Relations between the People's Republic of China and its neighbors have deteriorated, naval confrontations have increased, and Washington has been dragged into the mess.

The issues are many. China makes contested claims to the Diaoyu/Senkaku, Nansha/Spratly, and Xisha/Paracel Islands, as well as Huangyan Island/Scarborough Reef. (I will use the more familiar names in the West.) On the other side are Brunei, Japan, Malaysia, Philippines, and Vietnam.

Despite its physical distance, the U.S. remains entangled in these disputes. Perceived Chinese aggressiveness has spurred the so-called "pivot" to Asia, including the augmentation of military forces and strengthening of military alliances.

Conflict between China and other states easily could drag in America, which has formal defense treaties with Japan and the Philippines. Washington and China have had their own contentious disagreement over the U.S. Navy's legal right to conduct intelligence gathering within China's 200 mile Exclusive Economic Zone.

The PRC obviously has important interests at stake. It wants international acceptance of control over its territory. Beneath the disputed waters are potentially significant energy deposits. As a great trading nation China is concerned about secure ocean transit. Good relations with its neighbors would ease its rise to regional primacy and global leadership.

Most fundamental may be the issue of peace. The PRC has suffered much over the last two centuries. Although policy reform was necessary for China's economic transformation, so was the absence of war. The latter allowed Beijing to concentrate on economic growth, which has allowed an ever larger share of the population to escape immiserating poverty. The PRC is wealthier today, but remains a relatively poor nation with great income disparities. China still needs peace.

America's interests may be fewer but are no less profound. The U.S. would benefit from greater resource development. Washington also is concerned about global norms, especially the peaceful resolution of territorial disputes. The U.S. is committed to its traditional alliances, seeks secure sea lanes for its trade, and desires stability and peace in a region with which it has abundant political, economic, and cultural ties.

The status quo is extremely dangerous. No one wants war. However, China and Vietnam fought over the Paracels a number of years ago. Passions are aflame throughout the region recognizing popular anger in China, Japan, and the Philippines makes it harder for any nation to climb down from confrontation.

China's President Xi Jinping has just taken over in the midst of internal political challenges and may feel pressure from nationalist elements. Abe's Liberal Democrats won the recent Japanese election while promising to be tough on China. The Philippines is eternally in crisis and its weakness may encourage it to overplay its hand. Anti-China sentiments were evident (though for other reasons) even in America's recent presidential election.

Fear of Beijing also has prompted countries in the region, including one-time enemy Vietnam, to move closer to the U.S. Both India and Japan are being encouraged to play a greater role. Tokyo and Manila have pressed the U.S. for express guarantees of disputed islands.

It won't be easy to resolve the many disputes. All parties should admit uncertainty and act with humility. Ownership of these islands is contested because it is uncertain. Territorial claims are based on a complicated mix of international law and treaty, control and occupation, and historical connection. No doubt the PRC's case looks better in Beijing than elsewhere, but it is not a slamdunk even under the best of circumstances.

China should recognize that its claims are not indisputable and therefore require a negotiated or adjudicated resolution. Any attempt at coercion will result in hostility, retaliation, and resistance. Indeed, Beijing's plan to stop and search ships considered to be illegally operating in its territorial waters in the South China Sea, if enforced, almost guarantees naval incidents. Yet negotiations work: of 23 border disputes since 1949 the PRC settled 17 peacefully. In return for restraint, Beijing could rightly insist that its interests not be compromised until the dispute is resolved.

Washington should acknowledge that its concern is indirect and it does not know the correct outcome. American officials should press allied states, which occupy or seek to control disputed lands, to demonstrate restraint and negotiate. After winning the Japanese election Prime Minister Shinzo Abe declared that the Senkakus are Japan's inherent territory so there is no room for negotiation at this point. That is a prescription for conflict.

The U.S. should not bias the outcome by promising to defend contested territorial claims. Former Undersecretary of Defense Michele Flournoy acknowledged the risk of the Philippines mistaking U.S. support for an opportunity to be much more assertive in staking their claims. America's objective should not be to 'defeat' Beijing, but to promote an outcome which leaves the entire region more peaceful and stable.

In some cases bilateral negotiation, perhaps with outside mediation, could resolve the issue. But in the case of the Spratlys, with multiple claimants, a multilateral dialogue or forum, which China so far has resisted, might be more effective. Disputes also could be brought before an international tribunal, whether formal (such as the International Tribunal for the Law of the Sea) or ad hoc.

Moreover, interim measures could evolve into long-term solutions. The parties should consider a code of conduct to prevent escalation of minor incidents; bilateral or regional resource development and maritime policing until ownership issues are decided; separation of resources and navigation from sovereignty, ensuring widespread access to the benefits irrespective of formal legal control; and shared sovereignty, where two or more nations have legal rights to the territory. As Wu Shicun of the National Institute for South China Sea Studies observed, countries should "seek common ground while reserving differences."

What matters most is that the resulting process be seen as fair and legitimate. China, the U.S., and nations throughout the region overwhelmingly benefit from today's stable and peaceful order. All interested parties should work to ensure its continuation.