

**China comes around?** by Jeff M. Smith

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Chinese Sr. Col. Zhou Bo made headlines at the annual Shangri La Dialogue in Singapore when he announced that Chinese ships have been conducting reconnaissance operations in America's "Exclusive Economic Zone (EEZ)." It wasn't exactly a surprise: buried in its 2013 Report on Chinese Military Power was an admission by the Pentagon that Chinese ships had begun conducting "naval activities" around Guam and Hawaii. What was surprising was the response of Adm. Samuel Locklear, the head of US Pacific Command: "They are [conducting exercises in our EEZ], and we encourage their ability to do that."

Why would the US *want* Chinese warships operating off the coast of Hawaii?

Before the 1990s, the oceans of the world were effectively divided into two categories: "territorial seas," the sovereign waters of a state which generally extended three nautical miles from its coastline, and the "high seas," open to unrestricted navigation for all. During negotiations for the UN Convention on the Law of the Sea (UNCLOS) in the 1970s, conferees agreed to extend the territorial sea to 12 nautical miles and create several new categories, including an EEZ extending 200 nautical miles from a country's coastline. There, the host state would enjoy limited sovereign rights over economic exploitation and marine scientific research, among other things. (The US has not ratified UNCLOS but in practice observes these distinctions).

However, the language defining what activities are permissible in another country's EEZ was left ambiguous and open to a wide array of interpretations. For example, states disagree on whether sonar mapping, which can be used both for scientific purposes and to track enemy submarines, is banned under the marine scientific research provision. Fortunately, these battles have largely been fought by legal scholars in courtrooms and academic journals – with one important exception.

The US and China have a very sharp disagreement on whether US warships must first seek Beijing's permission to operate in China's EEZ. Beijing believes they do, and has crafted domestic legislation to reflect as much. The US believes they do not, and continues to operate its warships in China's EEZ. Most legal experts believe the US is on firmer legal footing and a majority of the world's capitals agree with the US position, but China is not alone: 26 other countries insist on "home state consent" for foreign military activities in their EEZ.

However, China is the only state that has "operationally challenged" US warships on multiple occasions. Where other countries lodge diplomatic protests, Chinese ships have forced dangerous confrontations at sea, and at least one in the air. For example:

In April 2001, a US EP-3 spy plane operating near Hainan Island was harassed by a PLA J-8 fighter jet, causing a mid-air collision that resulted in the death of the Chinese pilot and an international crisis. Only days before the EP-3 incident, a Chinese frigate confronted the *USNS Bowditch*, an unarmed hydrographic survey vessel collecting data in the Yellow Sea. Over the ensuing three years the *Bowditch* was harassed at least a half-dozen times in China's EEZ, including being rammed by Chinese fishing ships.

In 2009 a series of similar confrontations with the *USNS Impeccable* and *Victorious* off the coast of Hainan Island forced the *Impeccable* to turn its water cannons on Chinese crews, which tried to snag the ship's sonar array with a grappling hook. Shortly after the incident, firebrand PLA Col. Dai Xu told the Chinese press "concrete military actions should be taken." "First warning, second expulsion. And if that does not work, the invading vessels can be directly surrounded and sunk."

When a North Korean midget submarine sank the South Korean cruiser *Cheonan* a year later, the Obama administration had a brief stare-down with Beijing. China refused to condemn the attack and when a South Korean spokesman announced plans to conduct joint exercises in the Yellow Sea with the US aircraft carrier *George Washington (GW)*, Beijing issued multiple warnings to Washington that the carrier was not welcome in the Yellow Sea. (The *GW* had drilled in the Yellow Sea the previous October with no protest from Beijing).

For several months it looked as if Beijing's warning was having the desired effect, as the naval drills were held first in the Sea of Japan, and then in the Yellow Sea without the *George Washington*. On November 23 North Korea followed the *Cheonan* incident with an artillery attack on South Korea's Yeongpyeong Island and exactly one week later, the *GW* steamed into the Yellow Sea for a previously scheduled exercise. "China is suffering the indignity of exercises close to its shores, and though they are not directed at China, the exercises are a direct result of China's support for North Korea and unwillingness to denounce their aggression," Deputy Secretary of State Jim Steinberg said prior to the drills.

It is not hard to see why this issue has moved to the forefront of the bilateral agenda: maritime security and cyber-security are now the top two priorities for US officials at the annual US-China Strategic Security Dialogue, a forum where both sides are expected to air their most pressing grievances.

Now that China is conducting its own operations in America's EEZ, Adm. Locklear and others seem hopeful that it will signal a new Chinese acceptance of US activities in China's EEZ. That would be a good outcome indeed, and many scholars have noted that a more expansive interpretation of maritime rights is ultimately in the growing Chinese navy's interest. The tempo of confrontations at sea has certainly slowed since 2009, and when the US sent the *USS George Washington* into the Yellow Sea in June 2012, Beijing shrugged it off with a mild diplomatic protest.

But our optimism should be tempered with caution. We shouldn't assume China will be compelled to change course out of fear of a double standard. After all, the whole time Beijing has protested the US presence in its EEZ, it has been conducting its own surveillance activities in Japan's EEZ. We shouldn't assume China will change course out of fear of a double standard. And those hoping for a new, enlightened Chinese interpretation of UNCLOS may be disappointed: recent discussions with Chinese officials suggest that if anything, their enthusiasm for UNCLOS is receding.

But this isn't really about UNCLOS – it's about a conflict of national interests. China doesn't want US warships exercising off its coast or spying on its nuclear submarines. The US doesn't want to compromise its freedom to navigate and conduct operations in the Western Pacific. So while welcoming Chinese warships to the coast of Hawaii gives consistency to our UNCLOS position, I'm not convinced it addresses our maritime security dilemma with China.

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