



South China Sea aftermath by Joseph Bosco

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Defense Secretary Ashton Carter, speaking recently at the ASEAN defense ministers' meeting in Kuala Lumpur, Malaysia, called upon Chinese president Xi Jinping to honor his recent commitments in the South China Sea.

During his Washington visit, Xi told President Obama that China is "committed to respecting and upholding the freedom of navigation and overflight that countries enjoy according to international law," and pledged that China "does not intend to pursue militarization" of its artificial islands. Carter said China's conduct must match Xi's words.

"This is a positive step, but we all must mean what we say. The United States and the rest of the region will be watching closely to see how China's actions reflect the commitments of its leadership. The US calls on all claimants to put a halt to reclamation and further militarization."

In fact, Xi did not promise to stop reclamation, just militarization. Nor did he commit, and was not asked, to reverse the reclamation and militarization that has already been done. Still, Carter's admonition to China seemed clear enough to send a deterrent message.

But when he said "*we all* must mean what we say," presumably that applied as well to Washington's own commitment to the region which he restated as follows: "Make no mistake: these new facts – the intensive and aggressive reclamation of features in the South China Sea – will not change *what we've always done*. The United States will continue to fly, sail, and operate wherever international law allows."

That is *not*, however, what the U.S. Navy did when it sent a guided-missile destroyer seven nautical miles from China's manmade island in what it initially announced as a Freedom of Navigation (FON) exercise. It turns out we *did* "change what we've always done [in] operating wherever international law allows."

When the *USS Lassen* passed through those international waters, a Navy spokesman initially indicated it was an *innocent passage* which meant its fire control radar was deactivated and it refrained from conducting operational exercises, hardly a normal practice when Navy ships ply the open seas in a FON exercise. Though the "innocent passage" characterization was subsequently retracted, the Navy offered no further elaboration on what precisely occurred – *i.e.*, whether it followed normal underway operations (a FON exercise) or refrained from doing so

(innocent passage). However confusing the situation may be to the US Congress, Asia experts, and the American public, it is a virtual certainty that the Chinese know the facts and have drawn the appropriate conclusion.

Under the United Nations Law of the Sea Convention (UNCLOS), innocent passage means passing through *a country's recognized territorial waters*. But these were not China's waters – that was precisely the unlawful Chinese overreach the FON exercise was intended to challenge. Instead, the Navy operation can be seen by Beijing as implicitly confirming it.

Whether the muddled US message was inadvertent or was part of a prearranged compromise negotiated with Beijing during the many months of US inaction is not yet clear. If it was the latter, it would not be the first time the US has diluted an intended maritime deterrence action by giving China a face-saving but ultimately counter-productive concession.

In July 1995, when China fired missiles toward Taiwan to show its displeasure over a US visit by Taiwan's president, President Clinton sent a carrier battle group through the Taiwan Strait. Beijing vehemently objected and Washington quickly "explained" that the transit was a mere "weather diversion," thereby nullifying the intended strategic message.

More damaging over the long run, the Clinton administration's posture seemed to concede Beijing's demand that the US needed its permission to use that international waterway. For the next decade, the US Navy avoided the Strait, even when weather conditions made it the safest route.

Admiral Thomas Keating, Pacific commander, finally set the record straight in November 2007 when he responded to Chinese ire over a transit passage by saying "We don't need China's permission. It's international water. We will exercise our right of free passage wherever and whenever we choose."

That, however, is not the body language Washington is now displaying in the face of Chinese displeasure. After the *Lassen* exercise, Carter initially refused to confirm it to the Senate Armed Services Committee until Chairman John McCain's insistent questioning was finally able to extract what should have been a matter-of-fact acknowledgement.

Similar confusion ensued after U.S. officials made conflicting statements over a possible overflight of China's artificial islands by Air Force B-52 bombers from Guam.

Meanwhile, China has not been reluctant to advance its own forceful strategic messaging. The commander of the People's Liberation Army Navy told the visiting Pacific commander this week that Beijing has demonstrated "enormous restraint" in the face of the US Navy's "repeated provocations" in the South China Sea. Admiral Wu Shengli

warned Admiral Scott Swift: “We have the ability to defend our national sovereignty and security.”

As long as Beijing senses US uncertainty and hesitation, it will press forward with its unlawful actions. Carter’s subsequent symbolic visit to the *USS Theodore Roosevelt* would have sent a more powerful message had it transited close to China’s islands, and in its normal operating posture. That would have been “the Big Stick” for which the carrier is nick-named.

Senator McCain, still mystified at Carter’s equivocation at the hearing, followed up with a letter saying “it is vital that there be no misunderstanding about our objectives in the Asia-Pacific region or the international community.”

McCain asked the SecDef to clarify whether the *Lassen* passage was truly a FON exercise (*i.e.*, routine use of the high seas) or the more restricted innocent passage (*i.e.*, a concession that China’s manmade islands possess the territorial status it claims).

Further, the letter pointedly asked: “Did the United States alert China of the mission?” and if so, under which rationale. It is one thing to deconflict potentially dangerous encounters on the seas or in the air; it is quite another to do so by conceding established substantive rights or seeming apologetic for exercising them.

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