East Asian Maritime Disputes and U.S. Interests

Presentation by Michael McDevitt
Worlds top ports by total cargo 2012

1. Shanghai, China (ECS)                      744 million tons
2. Singapore (SCS)                                 537.6
3. Tianjin, China (Yellow Sea)               476
4. Guangzhou, China (SCS)                   460
5. Ningbo, China  (ECS)                          453
6. Rotterdam                                           441.5
7. Suzhou, China                                     428
8. Qingdao, China (Yellow Sea)             400
9. Dalian, China (Yellow Sea)                 303
10. Busan, ROK                                    298
Disputes in China Seas
THE SOUTH CHINA SEA
Oil in million barrels per day
Major LNG trade flows in the South China Sea (2011)

trillion cubic feet

Persian Gulf: 0.3

Thailand: 0.3

Vietnam: 0.6

Philippines: 0.6

Indonesia: 0.9

From Arafura: 0.9

From Australia: 1.4

To South Korea: 3.4

To Japan: 4.4
First Problem—Overlapping Claims

- China and Taiwan claim all the land features in the SCS
  - Pratas Island (Taiwan occupies)
  - Paracel Group (China occupies)
  - Scarborough Shoal (China controls) and Maccelsfield Bank (totally submerged)
  - Spratly Group (Taiwan occupies biggest island; China occupies 7)

- Vietnam claims all of Spratly and Paracel Islands
  - Occupies around 22-25 of Spratly’s
  - South Vietnam forcibly expelled from Paracels by PLA Navy in 1974
  - China killed 68 VN sailors/army in 1988 around Johnson Island

- Philippines claims some 53 of Spratly’s (occupies 7-8) and Scarborough Shoal

- Malaysia claims 12 of Spratly’s and occupies 7-8
Mischief Reef circa 1995

Mischief Reef today
Itu Aba-- The largest island in Spratly chain (Taiwan)
Thitu Island (Philippines)
Spratly Island (Vietnam)
Fiery Cross Reef (China)
Turning an LTE into defacto island
Subi Reef – a low tide elevation (China)
Scarborough Shoal

• China took control in 2012...not giving it back
  – Philippine claim is probably legally better
Scarborough Shoal
Paracel Islands

- Total control of China since 1974
- Drove the South Vietnamese out from western Paracels
- In 2012 prefecture level government for South China Sea territory
- PLA garrison
- Fighter jet capable airfield
The capital – Sansha City, Yongxing (Woody) Island
The Second Issue: China’s nine dashed line—the single biggest impediment to resolution in the SCS

- Not defined—Beijing has been unwilling to officially state what it is intended to convey
- Inherited from ROC
- Cuts through legitimate EEZ of coastal states—where most of the oil is thought to be
- Trying to redefine International law—arguing it conveys “historic rights” to resources
Philippines take China to court

• January 2013—a pleading for arbitration in accordance with provisions of Law of the Sea (UNCLOS)

• Pleading challenges China’s claim to sovereign rights within the maritime space encompassed by the nine-dash line that appears on China’s official maps.

• The submission asserts that China has interfered unlawfully with the exercise of Philippine sovereign rights within its 200 nautical mile exclusive economic zone (EEZ)—illegal activities that have escalated since 2012.

• The Philippines requests

  – ITLOS to issue a finding that, inter alia, declares China’s maritime claims based on its nine-dash line to be contrary to UNCLOS and therefore invalid

  – Requires China to desist from unlawful activities in the Philippines’ EEZ, including exploiting living and non-living resources.
The Third major issue: Surveillance activities in China’s EEZ

• China’s view
  – Flights are a threat to Chinese security; are a hostile act
  – Go beyond overflight provisions of UNCLOS; in fact they abuse the principle of overflight
  – Violate “due regard” clause of UNCLOS Art 58 (3)
  – China has the right to regulate most foreign military activities in its EEZ.

• US View
  – Nonsense; these issues were thoroughly debated at Law of Sea drafting process
  – The result was provisions in UNCLOS specifically permitting “high seas freedoms,” which necessarily include military activities, in an EEZ
  – States do not have the right to regulate military activities
  – We understand if you want to monitor our surveillance flights just do it safely
US Interests in South China Sea

• Establishment of a rules based order in East Asia; SCS a litmus test
  – Primacy of international law
  – Peaceful, negotiated outcomes

• Strict interpretation of UNCLOS regarding “high seas freedoms”
  – Our constant nagging of China about “freedom of navigation” has to do with this, and is all about US surveillance conducted in China’s EEZ

• Credibility of US claim to be a force for peace and stability in East Asia
  – Is the “rebalance to Asia” a paper tiger?

• Mutual Defense Treaty with the Philippines
  – Does not apply to Philippine claims to features in SCS which were made after treaty was signed and were disputed by other countries from the outset
  – However, treaty does apply if a Philippine Navy or public vessel is attacked
U.S policy on South China Sea (I)

• No use of force or coercion by any of the claimants to resolve sovereignty disputes or change the status-quo of disputed South China Sea features.

• There must be freedom of navigation, which includes unimpeded lawful navigation for commercial, private, and military vessels and aircraft.

• The U.S. insists that coastal states respect the UNCLOS Convention’s language that all “high seas freedoms” are applicable to military operations in the EEZs of coastal states.

• All maritime entitlements to any of the waters of the South China Sea must be based on international law and be derived from land features in the South China Sea. In short, the land (islands and rocks) generates maritime zones, not vice versa.

• China’s nine-dash line does not meet these criteria.

• The U.S. government takes no position on the relative merits of competing sovereignty claims. The United States does not choose sides; nor does it favor one country’s claim over another’s.
• An effective Code of Conduct that would promote a rules-based framework for managing and regulating the behaviour of relevant countries in the South China Sea is essential.

• Since, the sovereignty disputes over the features in South China Sea do not appear to be resolvable in the foreseeable future, a Code of Conduct that stipulates a rule based framework for managing and regulating the behaviour of relevant countries in the South China Sea is necessary.

• There must be support for internationally recognized dispute resolution mechanisms, including those provided for in the UNCLOS treaty.

  – This point refers to the Philippine arbitration case.
The “Hard Power” side of U.S. policy

• Administration criticized for not being tough enough with China.

• What it has done:
  – Improvements in security relationships with South China Sea littoral counties and in the capacity of those countries that are U.S. allies and officially designated as “strategic partners” or “comprehensive partners” to patrol and monitor their own territorial waters and EEZs.
  
  – The Obama Administration established “comprehensive partnerships” with Indonesia in November 2010, Vietnam in July 2013, and Malaysia in April 2014. The US is a formal treaty ally of the Philippines since 1951, and already a “Strategic Partner” with Singapore.
  
  – Improved access for the U.S. military in countries near to the South China Sea. EDCA with Manila, US ship to Singapore, USMC to Australia
  
  – Daily presence of U.S. Navy in the South China Sea
    • 140 separate USN ship visits to Philippines in 2013
THE EAST CHINA SEA... THE MOST DANGEROUS SEA
Taiwan is an East China Sea Issue

• Cross strait relations as good as they have ever been; but

• China still keeps use of force on table

• Result: US deterrent mission still exits

• Taiwan is still at the center of Sino-US military capability competition

• 2016 elections in Taiwan could reverse positive trend
**US policy on Taiwan**

- Taiwan
  - No unilateral change to the status-quo by either side
  - Do not support a declaration of independence.... unless Beijing agrees (not likely)
  - Ambiguity on what US military response would be to a PRC attempt to coerce reunification
    - Trying to determine the future of Taiwan by other than peaceful means is a “grave concern to the US...”
  - Legal basis for any intervention is the Taiwan Relations Act of 1979
    - Derecognized the Republic of China, recognized the PRC
    - Permits “unofficial” diplomatic recognition, rationalizes arms sales
The Senkaku/Diaoyu Island Dispute

- Claimed by China, Taiwan and Japan

- Japan annexed in 1895 (*terra nullius*)
  - Sold to Japanese business man to use as fish processing plant (1900-1940)
  - Occupied as part of Okinawa prefecture by US until Okinawa reversion Treaty in 1972, returned to Japan along with Okinawa and Ryukyu’s
  - UN survey report in 1970 that possibility of oil near the islets
  - Sparked ROC claim, followed by PRC claim
  - Japan says it has “indisputable” sovereignty

- China/Taiwan argue Japan annexation illegal, islands were always part of Taiwan (hence China)
  - 2012 Japanese government buys back three of islands from private owner
  - China claims Japan has “nationalized the islands” breaking implied deal with Deng Xiaoping to “set aside” dispute
  - Coordinated maritime and air actions and ADIZ declaration to demonstrate Japan’s claim is in dispute

- No compromise in sight
On Nov. 23, China declared the right to monitor and request identification from aircraft flying above much of the East China Sea. China’s newly claimed airspace overlaps with similar claims by Japan, South Korea and Taiwan.
US Policy regarding Senkaku/Diaoyu islands

- No position on sovereignty--- but, Japan has “administrative control” therefore the US –Japan Mutual Defense Treaty would apply, if China attempts to seize them, or attacks Japanese ships or aircraft
  - In short, the US could get in a shooting war with China over five uninhabited islets

- Obama visit April 2014—Senkaku’s “fall within scope” of US-Japan Alliance
  - First President to explicitly comment on dispute

- No use of force or military coercion to unilaterally undermine Japanese administrative control
  - Which, of course, is what China is doing (Grey Zone pressure)
US Policy regarding Senkaku/Diaoyu’s

• On ADIZ, "We do not accept, we do not acknowledge, we do not recognize China's declared ADIZ.” NSC Senior Director for East Asia

• Helping Japan create capacity to defend
  • Amphibious capabilities/ exercises
  • Expect them to be in lead if fighting starts

• Publicly reminding China that Mutual Defense treaty with Japan applies—deterrence

• Japan requires constant reassurance—worried (correctly in my view) that the US is not willing to go to war with China over uninhabited rocks
Concluding Thoughts

• China’s strategy in ECS and SCS is working; it is brilliant
  – A steady progression of very small steps, none of which is likely to trigger conflict, but in the end reshapes the status-quo in its favor.
  – Use of constabulary vice naval forces keeps escalation in check

• US options in SCS very limited
  – Exhortation, capacity building
  – Could pursue “Legal White Paper”
  – Frustrates some regional countries and lots of DC based think-tankers

• It US really willing to go to war with China over uninhabited rocks in ECS or if China shoots up a Philippine ship in the SCS?
  – U.S. credibility as an ally and stabilizer would be main issue
  – Deterrence has to be credible to be effective
Questions?