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China's EEZ: A US-China Danger Zone

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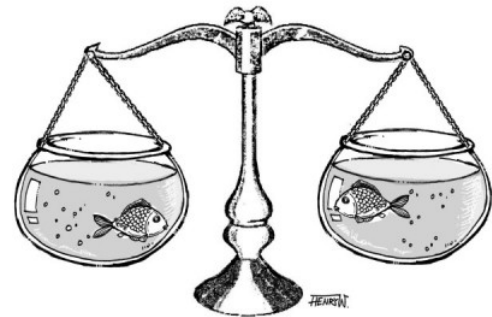
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By Jerome A. Cohen and Jon M. Van Dyke

Last week's US-South Korean "war games" in the Yellow Sea offshore China and Korea dramatically brought to a boil the long-simmering US-China dispute over what kinds of military activities can be conducted in another nation's exclusive economic zone (EEZ).

China has not yet formally staked out the boundaries of its EEZ. Under the UN Convention on the Law of the Sea (UNCLOS), ratified by China and most other countries, but not the U.S., a nation is generally permitted an EEZ extending 200 nautical miles from its coastal baselines. If the distance to its nearest neighbor is less than 400 nautical miles, a maritime boundary needs to be negotiated between the opposite countries.

Although international attention has focused on the urgent need to negotiate such boundaries in the East China Sea and the South China Sea, last week's euphemistically-entitled US-South Korean "joint military exercise" demonstrated the dangers of neighboring states failing to agree on Yellow Sea boundaries as well. And these maneuvers raise once again the question of what military activities are permissible in the EEZ of another country.



In its EEZ, a coastal country has complete control over all living and nonliving resources and can limit marine scientific research by other countries. But the US argues – and the text and negotiating history of UNCLOS appear to support it – that the ships and planes of other countries – military and commercial – have navigational rights to operate in and over these waters.

In the 16 years since UNCLOS went into effect, China has frequently said that it will not interfere with freedom of navigation in its EEZ as well as on the high seas beyond.

China's words and actions indicate that it permits commercial shipping to pass through its EEZ. Yet, although China was not among the small group of signers that declared that UNCLOS allows coastal states to limit military activities in this zone, it has periodically endorsed their position in recent years. In 2001 and again in 2009, China's continuing challenges to U.S. military activities in China's EEZ led to dangerous confrontations, and China has also objected to hydrographic surveying undertaken by U.S. vessels in these waters.

The 2001 incident involved an unarmed propeller-driven U.S. Navy EP-3 reconnaissance

plane, which was flying along China's coastline, beyond China's 12-nautical-mile territorial sea, but over its EEZ. When a Chinese fighter plane harassed the EP-3, the two planes collided. The Chinese plane crashed, and the pilot was killed. The U.S. plane was disabled and had to make an emergency landing on China's Hainan Island.

The United States argued vigorously that its plane was entitled to fly over China's EEZ without interference, and that the Chinese action violated international law. China responded with equal vigor, arguing that U.S. reconnaissance flights were a violation of China's EEZ rights, because these flights were not engaged in simple navigation, but were explicitly designed to intercept communications from China's coastal communities and military facilities and constituted "a serious threat to China's security interests". China released the EP-3's crew, and, after the United States stated that it was "very sorry" for the death of the Chinese pilot and the penetration of Chinese air space required by the EP-3's emergency landing, China returned the remains of the plane. But the U.S. did not apologize for its EEZ surveillance.

The 2009 incident involved another type of U.S. surveillance, this by the U.S.S. Impeccable. It was equipped with sophisticated sonar to locate Chinese submarines, and was operating about 75 miles south of China's submarine base on Hainan Island. Three Chinese government ships and two fishing vessels sought to disable the Impeccable's sonar equipment. The Impeccable managed to avoid serious damage, but this incident further highlighted China's views on navigational freedoms in the EEZ.

The United States has consistently contended that surveillance activities are legitimate in the EEZ, as well as on the high seas, but China refuses to accept this position, despite persistent reports that China itself quietly engages in similar activity offshore Japan and Vietnam.

The United States also seeks to survey the sea floor of the world's oceans, including EEZs, in order to permit its submarines to operate without running into seamounts and other obstacles. In the U.S. view, this activity is necessary for navigation and thus is permitted by UNCLOS. Some other countries, including China, characterize this activity as "marine scientific research" which, in an EEZ, requires the consent of the coastal state. In September 2002, China strongly protested the activities of the U.S. Bowditch, which was engaging in hydrographic surveying in China's EEZ, and in December 2002 China passed a law requiring Chinese approval for all mapping and surveying activities in its EEZ.

To bolster their view that military vessels have full navigational freedoms in the EEZ, American government experts emphasize that the U.S. does not prevent – but merely monitors – the military activities of Russia and other countries in America's EEZ. Yet a number of countries claim that coastal states can prohibit at least some types of military activities in their EEZ. So this matter remains controversial, as China's strong protests against the US-South Korean war games remind us, and U.S. failure to ratify UNCLOS makes it difficult for the United States to present arguments based on the Convention's carefully-nuanced language.

The conflicts over U.S. military activities in the oceans near China's coasts are likely to increase, as China's navy and air force continue to expand and as China pursues its claims to adjacent continental shelf resources that stretch beyond its EEZ. The United States has sought to convince China that – as China becomes more of a maritime naval power – it will be in China's interest to protect the navigational freedoms of military ships. China has not yet accepted this view, however, despite its own reported military activities near the coasts of its neighbors. Thus far its position seems to be: "Do as I say, not as I do."

In 1978, Deng Xiaoping suggested leaving China’s difficult island/sea boundary dispute with Japan “to the next generation, which will be wiser.” China has followed his advice regarding all its major law of the sea problems for more than three decades. Now it is time for Deng’s Chinese and foreign successors to prove that they are indeed wiser by reaching an understanding on these dangerous issues before they flare out of control.

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