



China Draws A Line In The Ocean

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Chinese Senior Col. Zhou Bo made headlines at the annual Shangri La Dialogue in Singapore, held from May 31 to June 2, when he announced that Chinese ships have been conducting reconnaissance operations in America's Exclusive Economic Zone. It wasn't exactly a surprise: Buried in its 2013 Report on Chinese Military Power was a statement by the Pentagon that Chinese ships had begun conducting "naval activities" around Guam and Hawaii. What may have been surprising though, was the response of Adm. Samuel Locklear, the head of U.S. Pacific Command: "They are [conducting exercises in our EEZ], and we encourage their ability to do that." Why would the United States want the Chinese navy patrolling the waters off Hawaii?

To answer that question, we first need to take a step back. Before the 1990s, the oceans of the world were effectively divided into two categories: "territorial seas," the sovereign waters of a state stretching three nautical miles from its coastline, and the "high seas," open to unrestricted navigation for all. During negotiations for the U.N. Convention on the Law of the Sea in the 1970s, conferees agreed to extend the territorial sea to 12 nautical miles and create several new categories, including an Exclusive Economic Zone 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 United States has not ratified the treaty, but in practice observes these distinctions).

However, the language defining what activities are permissible in another country's Exclusive Economic Zone was left ambiguous and open to a wide array of interpretations. For example, some 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 United States and China have a very sharp disagreement on whether U.S. warships must first seek Beijing's permission to operate in China's economic zone. Beijing thinks they do, and has passed domestic legislation making such activity illegal. The United States thinks they do not, and continues to operate its warships in China's zone, as it has always done. Most experts think the United States is on firmer legal footing and a majority of the world's capitals align with the U.S. position, but China is not alone: 26 other countries insist on "home state consent" for foreign military activities in their zone.

However, China is the only state that has "operationally challenged" U.S. 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 U.S. EP-3 spy plane operating near Hainan Island was harassed by a PLA J-8 fighter jet, causing a 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 Exclusive Economic Zone, 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."

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

Now that China is conducting its own operations in America's Exclusive Economic Zone, Adm. Locklear and others seem hopeful that it will signal a new Chinese acceptance of American operations in China's zone. That would be a good outcome, indeed, and many experts have noted that a more expansive interpretation of maritime rights is ultimately in the growing Chinese navy's interest.

Our optimism should be tempered with caution, however. 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 U.S. presence in its zone, it has been conducting its own surveillance activities in Japan's zone. Those hoping for a new, enlightened Chinese interpretation of the U.N. Convention on the Law of the Sea may be disappointed: Recent discussions with Chinese officials suggest that if anything, their enthusiasm for the treaty is receding.

This isn't really about the treaty, though — it's about a conflict of national interests. China doesn't want U.S. warships exercising off its coast or spying on its nuclear submarines. The United States doesn't want to compromise its freedom to navigate and conduct operations in the Western Pacific. So while welcoming Chinese warships to the waters off Hawaii gives consistency to our treaty position, I'm not convinced it addresses our conflict of interests at sea.

Jeff M. Smith is the Kraemer strategy fellow at the American Foreign Policy Council in Washington, D.C.