

“An American Perspective on Maritime Asia”

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About eight years ago, I decided to write a book about China-Japan relations. I did not intend at the outset to focus on the maritime dimension of those relations, but that was where I ended up. The result was *Perils of Proximity*, which Brookings published in 2010. Initially, some of my colleagues were not convinced that this was the most important issue about Japan and China to address. Some colleagues thought that I was moving to rather alarmist conclusions. Fortunately for me, a Chinese fishing boat captain decided to ram a Japan Coast Guard vessel operating near the Diaoyutai one month before *Perils of Proximity* was released, and people quickly acknowledged that my timing had been near-perfect. As you know, Yuan-Liou Publishing published the Chinese-language version of my book this time last year under the title of *Yishan Erhhu*.

With that background, I have some modest qualification to make a keynote address at this conference marking the first anniversary of President Ma Ying-jeou's East China Sea Peace Initiative. And it is a great honor to do so. The Initiative and its associated policies represent an important effort on President Ma's part to apply a constructive approach to complex interstate disputes, and to put Taiwan on the side of promoting solutions rather than creating problems. To understand why that is true, I will need to explore the complexities of these disputes and the dangers they create. In so doing, I will touch on both the East China Sea and the South China Sea, where the Initiative's principles are also highly relevant.

Let me summarize my three main points at the outset. First of all, the clash among countries in the maritime domain of East Asia is a manifestation of underlying geopolitical rivalry in the region, a rivalry that usually pits China against other parties in a zero-sum competition. This contest is not the only way in which nations in the region interact with each other. They also seek to deepen economic cooperation for the benefit of all. But rivalry occurs simultaneously, and maritime disputes contribute to it. If maritime disputes are not addressed and mitigated, they will reinforce rivalry, to the detriment of all. Second, these maritime disputes actually encompass disagreements on several interrelated policy questions at the same time, and these disagreements are cumulative in their effect. That means, and this is my third point, that if the parties concerned wish to mitigate disputes and so enhance regional peace and stability, they must reduce or resolve the differences *in the right sequence*.

For this audience, I don't need to take much time on the basic geopolitical dispute. You all understand it, and you live it every day. China's power is growing, not only economically but also politically and militarily. Although China's revival has yielded benefits for its neighbors, it also, and naturally, creates anxieties on the part of at least some countries, who worry that China may seek to challenge the existing beneficial regional order with the United States at its center.

So between China and its neighbors, and between China and the United States, a complex interaction is underway. In response to China's power surge, some countries try to strengthen themselves both internally and externally (through closer relations with the United States), which only leads some in China to see a strategy of containment. Of course, Taiwan has a unique and significant place in this interaction. In seeking to understand these dynamics, scholars and others draw on the ideas of power transition and security dilemma, but in truth no-one can predict its ultimate outcome.

But there is a more concrete dimension of China's revival as a great power that is particularly relevant for our discussions today. That is, China is seeking gradually to push out its strategic perimeter from its eastern and southern coasts. This desire is understandable: generally, no country easily accepts having to defend itself at the coast. Moreover, China decided that it *had* to deter Taiwan Independence and be prepared to punish Taiwan if deterrence failed. That in turn required the ability to block or at least complicate U.S. intervention. So it has been acquiring counter-intervention capabilities, what we would call anti-access, area denial. The problem, of course is that China's extension of its strategic perimeter and its preparations for a war over Taiwan both require it to operate in maritime areas that traditionally were dominated by the navies and air forces of the United States and Japan. The larger point here is that a power transition is not simply China's accumulation of power – military, economic, and diplomatic – relative to its neighbors and to the United States, but also how it seeks to *use* that power in specific disputes.

That, briefly, is the underlying geopolitical dynamic. Let me turn now to Maritime Asia, where a set of varied yet interlocking disagreements have created complex disputes.

The first disagreement seems simple. That is, countries disagree over the ownership of various maritime landforms (regardless of which country exercises jurisdiction or control). Both the Republic of China and the People's Republic of China claim the Diaoyutai for China while Japan claims them also. Both the Republic of China and the People's Republic of China claim the Spratly Islands for China, disagreeing wholly or in part with Vietnam, the Philippines, Malaysia, and Brunei. And as Beijing suggests, protecting sovereignty and territorial integrity are a "core interest" of any country. Each country builds its own historical and legal case to support its territorial claims.

The second disagreement concerns maritime boundaries of the landforms, which define who has the rights to exploit the natural resources around and under the landforms. These resources include fish, oil and natural gas, and minerals. This issue stems from the first disagreement, because the definition of maritime boundaries and the attendant economic rights are linked to which country owns which maritime landforms. By one estimate, over half of the world's approximately 400 maritime boundaries remain unclear, un-delineated, or disputed. In the South China Sea, we have the issue of the nine-dash line.

I don't have time to go through a detailed exposition of the differences between islands, rocks, and lesser landforms as defined by the UN Covenant on the Law of the Sea, and the question of continental shelves. And after a delicious lunch, you don't perhaps have the power of concentration to absorb all those mind-numbing distinctions. You might think that UNCLOS

would be definitive here, but even some of its provisions are ambiguous, and so the parties to these disputes disagree on what it means or they exploit ambiguities to strengthen their case. This only complicates the quest for greater consensus.

Suffice it to say, that when it comes to economic opportunity, owning an island is better than owning a rock or lesser landform. And when a claimant country asserts that a particular landform is an island with expansive maritime boundaries and an exclusive economic zone, you should examine the assertion carefully, because many legal experts believe that some of these so-called islands are really rocks (which come with narrower maritime boundaries) or that they are neither rocks nor islands. A prominent American legal scholar has concluded, based on objective analysis, that most of the landforms in Maritime Asia actually do not meet the standard of islands and so do not merit an EEZ. By the way, Taiping Island is one of the landforms in the South China Sea that is clearly an island under international law. This skepticism should also apply to countries that try to convert rocks and lesser landforms into islands by building tall structures on them and create the impression that they can support human habitation or economic activity when they really cannot.

Disputes over which country owns which maritime landform can easily become obstacles to the exploitation of natural resources, particularly for third parties. International oil companies that would like to pursue drilling in areas like the South China Sea, either under a license with a government in the region or in a joint venture with a local company, are reluctant to do so if different coastal states claim the same territory. And, the more claimants to the same landforms, the more diluted the gains of joint exploration agreements become. Most often, where control is disputed, the default position tends to be to freeze any natural resource exploitation. Concerning fishing, the default is often for fishing fleets to assert their rights in disputed fishing grounds through physical presence, and Taiwan has witnessed, painfully, the consequences of this competition. Generally, when it comes to resource competition, a zero-sum game is conducive to conflict.

These first two areas of disagreement concern countries' competing claims. Addressing these disagreements is and should be the work of statesmen and diplomats. A third area of disagreement concerns *how* countries and their subordinate entities assert their claims, rather than the substance of the claims. This factor is what makes Maritime Asia a rather dangerous place and, in turn, what makes President Ma's peace initiative so significant.

Even if countries disagree over their claims, they also have discretion in how they choose to assert their claims. Governments have a variety of tools with which to assert their claims: domestic legislation, diplomacy, and operations by maritime agencies (both law enforcement and military). The maritime states of East Asia have employed some or all of these in order to make the case that they own the landforms under dispute and the related resources. In addition, private citizens can take their own initiatives to assert claims, whether governments like it or not.

Most relevant to the prospects for interstate conflict, and what makes Maritime Asia more dangerous, is how the maritime agencies of contending states conduct their operations. Do they operate cautiously with due regard to the vessels of other nations? Or do they act more assertively, putting their rivals on the defensive? This is what creates worries about the situation

around the Diaoyutai/Senkaku and in the South China Sea. And aggressive and excessive action on the part of the Philippines was the cause of the tragedy of the Kuang Ta Hsing No. 28.

There are a couple of related questions here. One is which agencies are on the front lines in asserting a country's claims – navies or coast guards? A second is how tightly the headquarters of those entities control their conduct. If it is loose, this gives the action agencies discretion to interpret the general policy guidelines under which they operate and supplement those guidelines with their own understanding of the national interest.

Another disagreement that has made Maritime Asia more dangerous has to do with the passage rights of naval ships and air force planes within EEZs. The United States holds that all waterways outside the territorial sea are international waters, implying that it considers surveillance and naval exercises within its rights in the EEZs of other states. China and Malaysia, among other nations, have claimed that EEZs are categorically distinct from the high seas in that all military activities within EEZs constitute “preparing for war,” and are thus disruptive to economic control and therefore not permitted.¹ It is on that basis that Chinese vessels and planes have challenged U.S. surveillance activities over the years: the EP-3 incident in 2001, the 2009 *Impeccable* incident, and many others. More recently, it appears that China has changed its position, presumably because it contemplates doing surveillance in American EEZs sometime in the future. However, the issue of military surveillance in the EEZs of other countries is not directly germane to our discussion today.

Where does the United States stand on these issues? Here, it is useful to review a bit of history. As a trading nation, the United States has always stressed freedom of navigation. Our Marine Corps was created to end interference with navigation by North African pirates in the years after our country's founding. And Washington stresses freedom of navigation when it talks about Maritime Asia. Moreover, we learned during the Cold War that the aggressive ways that the U.S. and Soviet navies and air forces operated vis-à-vis each other could exacerbate bilateral tensions in ways that contradicted the desire of senior leaders for détente.

There is also an important history concerning the American approach to the Diaoyutai. The key points appear to be the following:

- First of all, a review of U.S. government documents indicates that Washington consistently viewed the Diaoyutai as part of the Ryukyu chain, and not associated with Taiwan. There were exceptions in the statements of American officials, but they were exceptions.
- Second, the United States saw Okinawa as a key point for its regional positioning in the Cold War, *but* Washington recognized that, even during the period that it had administrative rights over the islands of the Ryukyu chain pursuant to the San Francisco Peace Treaty, Japan had residual sovereignty over them. That meant that the sovereign powers that the U.S. exercised would revert at some point to Japan and not be transferred to any other country. The implication of the U.S. position was that when sovereignty over Okinawa reverted to Japan, sovereignty over the Diaoyutai would revert as well.

¹ Klein 2011.

- Third, during negotiations with Japan on Okinawa reversion, the United States changed its position on sovereignty over the Diaoyutai – from its past position of being the object of residual Japanese sovereignty to a new stance of taking no position on which state possessed the island. At the same time, it did return administrative control over the islands to Japan.
- Fourth, although there is no real evidence that the PRC government had anything to do with this change in U.S. policy, it is very clear that lobbying by the ROC government did have a significant impact. Without that pressure from Taipei, Japan would likely possess sovereignty today.
- Fifth, I have seen nothing to suggest that the Nixon Administration explicitly understood that returning administrative control of the Diaoyutai to Japan brought them under the scope of the mutual security treaty (in general, the Diaoyutai were not a high-profile issue for the United States at that time).
- Sixth, although the circumstances of the change in the U.S. position on the Diaoyutai are unique, where Washington ended up is essentially its standard position on territorial disputes between other countries – that is, to take no position. The main exception is Washington’s favoring Japan’s position on the Northern Territories, which stems from a U.S. initiative during the early part of the Cold War.

That is the historical background. If we fast-forward to today, we find that United States policy has been consistent with the position it took on territory at the time of Okinawa reversion. It takes no position on which state possesses sovereignty over the Diaoyutai: Japan or China (and China is represented here by both the ROC and the PRC). At the same time, it has followed the logic of the U.S.-Japan mutual security treaty when it comes to whether the islands are under the U.S. defense umbrella. (I should note that this is not the first time that Washington has adopted such a bifurcated approach.) The territorial scope of the American defense commitment under the U.S.-ROC defense treaty was Taiwan and Penghu, but we did not regard Taiwan and Penghu as part of the territory of China. Their legal status was yet to be determined.

Yet, the United States has not focused solely on freedom of navigation per se. With memories of U.S.-Soviet naval clashes during the Cold War in mind, Washington has grown increasingly concerned about how countries that claim land features in both the East and South China Seas are asserting their claims. The danger here, in the view of the U.S. government and American scholars, is that when maritime agencies of claimant countries act in rather aggressive ways to assert claims over territory and access to natural resources, the chances of a clash – even an accidental clash – increases. And, to make matters worse, the governments of these countries are usually beset by nationalistic publics, whose calls for tough action are amplified by the media. Too often, these governments lack the capability to conduct effective crisis management. Which means that small clashes can quickly escalate into serious foreign policy and even military conflicts, disturbing the peace, stability, and prosperity that all countries in the region desire. These political-military conflicts in turn exacerbate the geopolitical rivalry that is occurring in East Asia and undermine the quest for win-win outcomes. These, by the way, were some of the themes of my *Perils of Proximity*.

So Maritime East Asia is a new arena for regional rivalry. Of course, there have been incidents for decades, but their number is increasing, as is the danger that they could spiral out of control.

The capability and will that Beijing is applying to this arena is new as well. And this is where President Ma's East China Sea Peace Initiative comes in.

The Initiative is important because of the emphasis that it places on *how* claimant countries assert their claims. You know the five principles:

- Refrain from taking any antagonistic actions.
- Shelve controversies and not abandon dialogue.
- Observe international law and resolve disputes through peaceful means.
- Seek consensus on a code of conduct in the East China Sea.
- Establish a mechanism for cooperation on exploring and developing resources in the East China Sea.

Clearly, President Ma's emphasis is on the way in which the operation of maritime agencies can exacerbate tensions and, in turn, "jeopardize peace and stability in East Asia." His emphasis is on the need for the parties concerned to create specific conflict avoidance and risk reduction measures – something I stressed in *Perils of Proximity*. And, it is worth stressing that President Ma, with his focus on reducing the dangers inherent in how regional actors assert their claims concerning territory, maritime boundaries, and resource exploitation, very much echoes the concerns of the Obama Administration. But please don't take my word for that assertion. Listen to these remarks by Vice President Joe Biden only eighteen days ago in a speech at George Washington University.

He said, "With regard to maritime disputes, it's critical that all nations have a clear understanding of what constitutes acceptable international behavior. That means no intimidation, no coercion, no aggression, and a commitment from all parties to reduce the risk of mistake and miscalculation." Quoting his father, he said, "The only war that's worse than one that's intended is one that is unintended." And he specifically warned that "the prospects for mistakes are real" when maritime vessels are operating in close proximity. So, Vice President Biden concluded, "It's in everyone's interest that there be freedom of navigation, unimpeded lawful commerce, respect for international laws and norms, and peaceful resolution of territorial disputes." Thus, he called for China and ASEAN to work even more quickly to reach an agreement on a code of conduct in the South China Sea. "Setting clear rules," he said, "is the first step to managing these disputes."

This emphasis on reducing danger is important in another way. Recall a point that I made at the beginning of my talk about the difficulty of mitigating complex disputes like those we see in Maritime Asia. That is, if the parties concerned really wish to mitigate these complex disputes and so enhance regional peace and stability, they must reduce or resolve the differences *in the right sequence*. Grand bargains don't work in this kind of situation. Nor is it productive to try to solve the hardest part of the dispute first. Rather it makes good sense to start with the easy things and move toward harder things. Moreover, if the dispute contains within it the danger of serious exacerbation and conflict, as the Maritime Asia disputes do, then a good place to start is by reducing the danger. And with maritime disputes, the way to do that is, as President Ma's Initiative advocates, by establishing codes of conduct that make a difference in how maritime

agencies operate in a disputed area. There is much that can be done to develop and implement conflict-avoidance and risk-reduction measures.

President Ma's Initiative also makes the point that although "national territorial sovereignty cannot be divided, natural resources can be shared." Cooperative arrangements for resource sharing not only creates outcomes where all parties benefit, they also reduce the dangers of clashes by defining more precisely who can do what where. For me, the fisheries agreement between Taiwan and Japan that was signed in April is a perfect example of this kind of cooperative arrangement and is the first specific fruit of President Ma's Initiative. Japan's willingness, finally, to engage with Taiwan on resolving the dispute over fishing, reduced danger and enhanced bilateral cooperation. It also serves as a good example for the Philippines.

There has been a lot of discussion of whether or how much Taiwan should align itself with Mainland China when it comes to the Diaoyutai and other maritime matters. To be sure, the ROC and the PRC are aligned when it comes to territorial claims, but the more salient question is whether Taipei should associate itself with Beijing on how to assert claims. Here, Taipei and Beijing disagree

When it comes to the People's Republic of China's role in Maritime Asia, an interesting debate has opened up in the United States. The narrative in the mass media, of course, is that China is moving full steam ahead, and seeking to expand its dominance over its neighbors step by step. A contrary view among some scholars is that China has consistently reacted to actions of others that change the status quo (in this view, Prime Minister Noda started the most recent conflict between China and Japan by purchasing several of the Diaoyutai). I, and some others, tend to think that although China may indeed be reacting in many instances (or at least it makes a strong case that other actors are at fault), but Beijing habitually exploits those actions in an opportunistic way in order to alter the status quo to its advantage. For example, Michael Swaine concludes that although Beijing may intend a "tit-for-tat" response to the actions of others, "in some instances Beijing has responded in a deliberately escalatory manner, seeking to create a new status quo in its favor or to undertake a more muscular or aggressive action in order to convey resolve and deter further escalations by others."

China's approach is quite contrary to the fundamental principles at the heart of President Ma's East China Sea Peace Initiative. Taipei may align with Beijing on territorial claims, but it is very much aligned with the United States and other responsible countries when it comes to how claims are asserted. That is very clear when you compare the principles in the Initiative and the approach of Vice President Biden that I just quoted.

We talk a lot these days about soft power. Soft power has become a very broad concept, encompassing everything from political systems to popular music and soap operas. But at its core is the idea of setting a positive and constructive example. I would suggest to you that President Ma's Initiative – both its constructive principles and their concrete application in achievements like the Japan fisheries agreement – has enhanced Taiwan's soft power. And it's not easy for a small country to have true soft power. As the United States found after World War II, it's much easier to create soft power if you have a little hard power to back it up. But when it comes to how to handle disputes in Asia's maritime domain, Taiwan has clearly set a positive example. It is an example that relies not on very general, soothing assurances but focuses in very

specific ways on how to avoid conflict, secure the peace, and promote mutually beneficial cooperation. It is an example that other countries, particularly the People's Republic of China, should emulate.