

# China has outgrown its mistrust of international laws, not least in its maritime affairs, write Jerome A. Cohen and Jon M. Van Dyke

## Finding its sea legs

Increasingly intense ocean disputes between China and its neighbours have heightened interest in Beijing's theory and practice of international law. What legal principles does China invoke to support claims to islands in nearby seas? On what basis does Beijing believe sea boundaries should be drawn? What rights and obligations does it recognise regarding resources, and foreign ships and aircraft, within its maritime jurisdiction? What methods does it favour to resolve ocean disputes?

From its establishment in 1949 until 1971, the People's Republic of China was excluded from the United Nations and even fought a war against the UN in Korea from 1950-53. During that period, Beijing often rejected what it called the "bourgeois" rules and institutions that dominated the world community. Domestic upheavals, especially the 1957-58 "anti-rightist" campaign against intellectuals and the early years of the Cultural Revolution that began in 1966, enhanced China's hostility towards not only the capitalist world but also the Soviet bloc and silenced most of the country's

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academic and government experts in international law.

When China assumed its seat in the UN, it was so lacking in international law expertise that the wife of Huang Hua, its first UN ambassador, although trained in economics rather than law, represented the country in the UN's legal committee. As late as June 1972, when one of the authors urged premier Zhou Enlai (周恩来) to nominate a Chinese specialist to serve on the International Court of Justice, Zhou and China's other highly intelligent foreign policy leaders laughed derisively at the idea of participating in what they perceived to be an "imperialist" institution.

Today, China's attitude towards international law is very different. It plays an active role in the UN and most other international organisations. The Treaty and Law Department of the Ministry of Foreign Affairs is a knowledgeable group of specialists. China is now ably represented in the International Court of Justice, the

UN legal committee, the World Trade Organisation and other forums. Chinese experts do not reject international law but seek to shape it on behalf of their nation's interests.

China actively participated in the negotiations that produced the 1982 UN Convention on the Law of the Sea and ratified it in 1996. A Chinese maritime specialist serves as one of the 21 judges on the International Tribunal for the Law of the Sea, and another is a member of the Commission on the Limits of the Continental Shelf. China has joined three regional organisations created to protect the marine environment of the shared seas of East Asia. It is also a member of the Western and Central Pacific Fisheries Commission, which has jurisdiction over the straddling and migratory stocks of most of the Pacific Ocean.

China has generally played a responsible role in multilateral ocean organisations and seems committed to conducting maritime relations in accordance with at least its own understanding of international law. It has successfully negotiated a maritime boundary with Vietnam in the Gulf of Tonkin, which essentially divides the body of water between them equally. China's claim that the large Gulf of Bohai on its northeast coast has the status of "internal waters" appears to be accepted by most countries.

In 2008, China tentatively agreed with Japan on a joint hydrocarbon development area in the East China Sea that may be implemented before conflicting sea boundary claims are resolved. And it has been pursuing the possibility of mining the polymetallic nodules on the floor of the deep seabed through internationally prescribed channels.

Yet China has had difficulties reaching agreement with its neighbours regarding the proper division of most of its adjacent waters. Negotiations with Japan and South Korea remain deadlocked over Beijing's claim to virtually all the continental shelves of the Yellow Sea and the East China Sea



and their resources, which is based on the view that their sea floors are formed by the mineral-rich sediments that flow into these coastal areas from China's rivers.

Disputes over seemingly insignificant islets assume importance because they not only arouse nationalist territorial passions but also may be relevant to the much larger issues of how to draw maritime boundaries in the area. China and South Korea have sparred over jurisdiction over a submerged reef in the Yellow Sea called Socotra Rock by the West and Suyan Rock by China.

Far more prominent has been the long-simmering dispute between China and Japan over islets and rocks near Taiwan called the Diaoyu Islands in Chinese and the Senkakus in Japanese. It flared up dangerously last month when Japan, the administering power, detained a Chinese fishing trawler captain for allegedly ramming Japanese coast guard boats patrolling the adjacent territorial sea.

Equally troublesome politically is Beijing's claim to most islands and waters of the South China Sea. Although echoed by Taiwan, which also claims to represent China, it is vigorously opposed by others bordering the area – Vietnam, Malaysia, Brunei and the Philippines. Beijing hopes to settle this dispute through separate

bilateral talks with each of these countries, but they understandably prefer a single collective negotiation that would improve their bargaining power. The United States, alert to the security as well as economic importance of the South China Sea, has increasingly supported collective discussions.

A series of potentially serious recent incidents involving US air and naval reconnaissance in waters claimed by China as its exclusive economic zone has added yet another urgent problem to Beijing's ocean agenda. Thus far, official Sino-American consultations have proved disappointing.

With its sovereignty, national security, transport routes and economic resources at stake, China's law of the sea experts and diplomats confront challenges equal to their considerable talents. In future articles, we will discuss these challenges in detail.

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