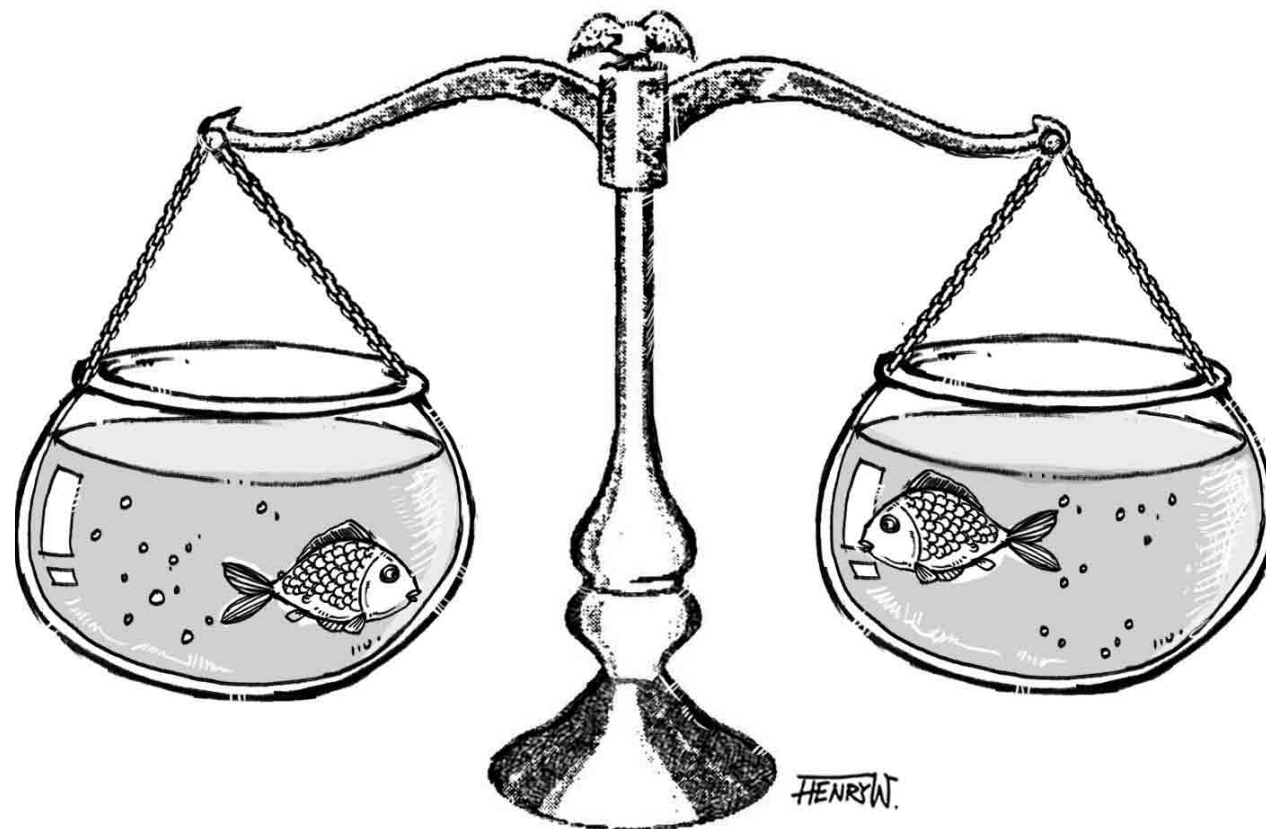


China must clarify the ambiguities over military activities in its seas, write **Jerome A. Cohen** and **Jon M. Van Dyke**

Limits of tolerance



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.

China has not yet formally staked out the boundaries of its economic zone. Under the UN Convention on the Law of the Sea, ratified by China and most other countries, but not the United States, a nation is generally permitted an exclusive economic zone extending 200 nautical miles from its coastal baselines. If the distance to its nearest neighbour 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 US-South Korean "joint military exercise" demonstrated the dangers of neighbouring states failing to agree on Yellow Sea boundaries as well. And these manoeuvres raise once again the question of what military activities are permissible in the exclusive economic zone of another country.

In such a zone, 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 the UN convention 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 the UN convention went into effect, China has frequently said it will not interfere with freedom of navigation in its exclusive economic zone as well as on the high seas beyond. China's words and actions indicate that it permits commercial shipping to pass through its economic zone. Yet, although China was not among the small group of signers that declared that the UN convention 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 US military activities in its economic zone led to dangerous confrontations, and China has also objected to hydrographic surveying undertaken by US vessels in these waters.

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propeller-driven US Navy EP-3 reconnaissance plane, which was flying along China's coastline, over its exclusive economic zone. When a Chinese fighter plane harassed the EP-3, the two planes collided. The Chinese plane crashed, and the pilot was killed. The US argued vigorously that its plane was entitled to fly over the zone without interference, and that the Chinese action violated international law. China responded with equal vigour, arguing that US reconnaissance flights were a violation of China's zone 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.

Last year's incident involved another type of US surveillance, this by the USS 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 (海南島). 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 exclusive economic zone.

The US has consistently contended that surveillance activities are legitimate in the zone, 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 US also seeks to survey the sea floor of the world's oceans, including in such zones, to permit its submarines to operate without running into obstacles. In the US view, this activity is necessary for navigation and thus is permitted by the UN convention. Some other countries, including China, characterise this activity as "marine scientific research" which, in an exclusive economic zone, requires the consent of the coastal state. In December 2002, China passed a law requiring Chinese approval for all mapping and surveying activities in its economic zone.

American government experts emphasise that the US does not prevent – but merely monitors – the military activities of Russia and other countries in America's economic zone. Yet a number of countries claim that coastal states can prohibit at least some types of military activities in their zone. So this matter remains controversial, and US failure to ratify the UN Convention on the Law of the

Sea makes it difficult for it to present arguments based on the convention's nuanced language.

The conflicts over US military activities 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 economic zone. The US 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 neighbours. Thus far, its position seems to be: "Do as I say, not as I do."

In 1978, Deng Xiaoping (鄧小平) suggested leaving China's difficult island 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 over three decades. Now it is time for Deng's 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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