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BEYOND THE DOC: GUIDELINES FOR MILITARY ACTIVITIES IN FOREIGN EEZS¹

by

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Recent Developments

The EP-3, the Bowditch, the Victorious, and the Impeccable incidents involved U.S. military activities in or over China's EEZ. The legal positions of the protagonists have been dealt with elsewhere but suffice it to say they continue to fundamentally and vehemently fundamentally disagree.² Moreover the convergence of their strategic trajectories is likely to increase the frequency and perhaps the intensity of such incidents. US Admiral Mike Mullen, the Chairman of the US Joint Chiefs of Staff says the US military perceives China as undergoing a "strategic shift, where they are moving from a focus on their ground forces to focus on their navy, and their maritime forces and their air force."³ Being more specific, US Secretary of Defense Robert Gates, says China's investment in anti-ship weapons and ballistic missiles could threaten America's primary way to project power and help allies in the Pacific.⁴ As for the U.S., according to US Secretary of State Hillary Clinton "Everywhere we go we will advance one overarching set of goals: to sustain and strengthen America's leadership in the Asia Pacific region."⁵ Making it perfectly clear, Secretary of Defense Robert Gates has said simply that "the U.S. will increase its military presence in Asia"⁶ while Michelle Flournoy, Undersecretary of Defense for Policy has elaborated that "the United States is strengthening alliances with the

Philippines, Singapore and Thailand and must do more with Indonesia and Vietnam.”⁷ The U.S. is also deepening its military relationship with Australia and Malaysia.

All this is being undertaken under the guise of stepping up pressure on Pyongyang⁸ – but there is little doubt in Beijing that the U.S. has it in mind as well. Indeed, the U.S.’s recently released US National Military Strategy states that it is ‘concerned about the extent and strategic intent of China’s military modernization and its assertiveness in space, cyberspace, in the Yellow Sea, East China Sea, and South China Sea.’ “To safeguard US and partner nation interests,” the U.S. will be prepared to demonstrate the will and commit the resources needed to oppose any nation’s actions that jeopardize access to and use of the global commons and cyberspace, or that threaten the security of our allies.”⁹ This is nothing less than a strategic ‘rebalancing’ of American foreign policy. Moreover, the U.S. is developing a US Air Sea Battle Concept in response to what it sees as China’s ‘anti-access area denied strategies.’¹⁰ The EP3, Bowditch and Impeccable military intelligence gathering, including target mapping, can be seen in this context. So can the US transition to increased use of UAVs (drones), USVs, USSVs and stealth littoral combat vessels. Their constant intrusions into Chinese air and sea space are considered like “flies at a picnic,” and China may develop counter measures.

A key question is what is China’s intent regarding Asian seas? Of course China maintains that it is committed to maintaining peace and stability in the South China Sea¹¹ and is simply defending its security and sovereignty and preventing what it perceives as isolation and ‘containment.’ It also denies that it is or will inhibit freedom of navigation. But some say that it is China’s intent to regain its historic hegemony over at least the South China Sea and thereby Southeast Asia.¹²

China apparently believes the Obama Administration is trying in general to boost the confidence of Southeast Asian nations to stand up to China¹³. Moreover, it sees the US intervention in the South China Sea disputes as part of a broad plan to reassert itself in Southeast Asia. This includes signing the Bali Treaty, opening a mission and naming an ambassador to ASEAN, holding a US-ASEAN summit and strengthening bilateral military co-operation with specific countries like Indonesia, the Philippines and Vietnam. This is all on top of continued US support for and arms sales to Taiwan, which violates one of China’s ‘core interests.’

Thus China may be convinced that the die is cast and that the U.S. is stealthily trying to draw ASEAN or some of its members (e.g., its allies, the Philippines and Thailand), together with Australia, Japan and South Korea into an alliance to constrain if not contain China. If so, China will struggle to break out politically and militarily, setting the stage for rivalry and tension in the years ahead.

According to Western analysts China appears increasingly intent on challenging US naval supremacy in the Western Pacific.¹⁴ More ominous are indications that China's military is influencing its foreign policy and that China has launched a strategy of politics and actions "to remake global norms and institutions, transforming the world as it transforms itself."¹⁵ Indeed, "the reins of civilian control over the PLA [are] quite loose. The PLA's warnings are not necessarily intended as aggressive threats but rather as stern declarations of deterrence in order to underscore what China believes to be an asymmetry of resolve." Clearly factions of the two countries are on a strategic collision course with perhaps the bell weather being the military activities of US assets in Chinese waters particularly its EEZ. China has warned against "any military acts in our exclusive economic zone without permission."¹⁶ This of course was rejected by the U.S.. "The risk of miscalculation between the U.S. and China may be higher than many assume and once a crisis or confrontation develops, the potential for unintended escalation is significant."¹⁷ In such situations, it may be wiser to forego exercising a perceived right to preserve the peace.

If the problem were confined to China and the U.S., there might be some *modus operandi* developed to accommodate their differences. But as China's economic and military interests expand, they are clashing with their Asian neighbors as well. Although occurring in the East China Sea, the nasty incident between China and Japan in September 2010 highlighted the possibilities for similar confrontations in Southeast Asia.¹⁸ In that incident, Japan accused a Chinese trawler captain of ramming two Japanese coast guard vessels and arrested him and his vessel. China dramatically reduced ties with Japan, ratcheted up political pressure and ultimately forced Japan to release the captain. Not only did Japan lose face in the incident, but bitter feelings remain and both continue to patrol the area.¹⁹

Already remote sensing from satellites and high-flying surveillance aircraft undertake scientific research and military surveys without permission in others EEZs. Indeed, in a world of

increasing use of spy submarines, RC-135s, U2s, UAVs like the ever improving Global Hawk, USVs and even UUVs, it seems that little can be done to prevent their operations.²⁰ On the horizon are unmanned floating “bases” harboring missiles that may be ‘stationed’ in foreign EEZs²¹ and a new US naval emphasis on the littoral.²² A new US littoral combat ship will be deployed to Singapore.²³ The latter almost seems mandated to violate the Law of the Sea. For example, a legal advisor in the US Department of State has argued that “What is not true is that the Convention prohibits submerged transit through the territorial sea. Submarines are free to transit submerged; they simply aren’t entitled to the benefits of the right of innocent passage if they do.”²⁴ Such legal subterfuge and bad faith only enhances frustration in some quarters as well as the desire to forcibly halt such intrusions when and if detected

China had for several years been on a “charm offensive towards ASEAN countries. But now after several ugly incidents, both the Philippines and Vietnam have particular recurring problems with China in the South China Sea. The problems are similar in that they involve conflicting claims to areas with potential petroleum and China has aggressively prevented each from exploring for it. Unfortunately another commonality is that China’s claim to the areas in question is apparently based on its nine-dashed line claim.

The Philippines government says it has evidence of at least six Chinese intrusions in Manila claimed areas in the Spratlys since February 2011.²⁵ On 3 March 2011, the Philippines deployed two warplanes after a ship under contract with the Philippines and surveying the Reed Bank for oil complained that it was harassed by Chinese patrol boats in that ordered it to leave under threat of use of force.²⁶ Another incident involved firing by a Chinese navy vessel to scare away Filipino fishers. The most recent incident reported was on the eve of Chinese Defense Minister General Liang Guanglie’s arrival in Manila when Chinese jets allegedly intruded into Philippine air space.²⁷ Philippines Foreign Minister Albert Fidel Rosario also said that a Chinese transport ship and two missile boats put up buoys and posts at the Amy Douglas Bank 100 nm off Palawan.²⁸

These incidents appear to violate the 2002 ASEAN-China Declaration on Conduct. However, China rejected the Philippines’ protests arguing that the vessels were “carrying out scientific studies in waters under China’s jurisdiction.”²⁹ Making matters more complicated, the seismic work in question was to delimit the Philippine extended continental shelf for a

submission to the UN Commission on the Continental Shelf.³⁰ More problematic is that parts of the area were included in the now moribund Joint Marine Seismic Undertaking with China and Vietnam which tacitly recognized the legitimacy of their claims to the area. The Philippines has formally protested China's nine-dashed line claim.³¹ And President Benigno Aquino III has ordered the Philippine Coast Guard to provide security for oil exploration vessels in Philippine claimed areas.³² But China has responded with increasing vitriol that the Philippines has "invaded" Chinese territory and sea space.³³

The Philippines may try to drag the U.S. into the fray invoking Article V of the Manila Defense Treaty.³⁴ But the U.S. has argued in the past that the Philippines claim to Kalayaan postdates the Treaty and is thus not covered by it. However Admiral Willard has vowed to cooperate with Manila in "safeguarding its territorial integrity and security."³⁵ And on 4 May the US aircraft carrier Carl Vinson made a port call to the Philippines sending a clear signal to relevant militaries. The U.S. already has a Coast Watch training and assistance arrangement with the Philippines which could be "expanded to cover Kalayaan."³⁶

The case of Vietnam is more complex and reflects the special centuries old topsy-turvy relationship between China and Vietnam. The two are sometimes allies, sometime enemies. When in the latter mode, China treats Vietnam and Vietnamese with a particularly heavy hand.

Even in the best of recent times they have had their strident differences – particularly involving the South China Sea. Vietnam has repeatedly accused China of detaining Vietnamese fishing boats around the Spratlys and Paracels.³⁷ Vietnam also regularly protests Chinese military exercises in the disputed area arguing that they violate Vietnamese sovereignty and the DOC.³⁸ In July 2010, China's three sea fleets conducted their largest joint training exercise ever and in November a live fire exercise involving 800 Chinese Navy amphibious assault vessels was conducted between Zhanjiang and Hainan Island³⁹.

The central issue is of course conflicting island and jurisdictional claims. But the latest round of incidents have focused on domestic Vietnamese elections, exploration for oil in concessions let by Vietnam, and China's enforcement of fishing regulations. However the incidents have been particularly rancorous and show no sign of ameliorating. In May 2011, China protested Vietnam's holding of elections for "National Assembly Deputies" on the Nansha

islands, arguing that they violated China's sovereignty and the DOC.⁴⁰ Of course Hanoi said "The holding of elections in the Spratlys is the internal affair of Vietnam."⁴¹ Then in May and June Vietnam accused China of harassing, threatening and disrupting the activities of a Petro Vietnam survey boat. In the May 26 incident the Binh Minh 02 was operating in block 148 about 120 nm off the coast of PhuYen province⁴² and a Chinese patrol boat severed its towed seismometer cable. The June 9 incident involved a Chinese fishing boat traveling with two patrol vessels. A seismometer cable towed behind a Vietnamese exploration vessel got caught in the net of the fishing boat.⁴³ Vietnam alleged that the Chinese actions deliberately violated the DOC as well as the UN Law of the Sea.⁴⁴ However China accused Vietnam of "conducting unlawful oil and gas surveys in seas around the Wan-an Bank of the Spratly archipelago and by driving out a Chinese fishing vessel, Vietnam has gravely violated China's sovereignty and maritime rights."⁴⁵

Finally, China announced on 11 May 2011 its annual ban (16 May-1 August) on fishing in the South China Sea. This poses a dilemma for those claimant countries whose fishers fish in the covered waters.⁴⁶ Vietnamese fishers in particular are unlikely to cease fishing there. Vietnamese fishers defied previous bans in 2009 and 2010 and China arrested hundreds and impounded dozens of boats.⁴⁷ Although a fishing ban during the spawning season is a public good, the area covered by the ban includes the Paracels, also claimed by Vietnam as well as other areas claimed by Vietnam. If Vietnam ordered its fishers to refrain from fishing in the area, it could be considered as implicitly recognizing China's claim. But it could of course issue its own ban for the same or similar area. This issue is quite separate but politically linked with frequent incursions of Chinese fishers (and their arrest) in Vietnamese coastal waters.

Exploration off Vietnam is likely to continue.⁴⁸ Talisman, Canada's third largest oil company by market value, plans to begin exploratory drilling in blocks 133 and 134 known as WAB-21 in China (the former Crestone Energy Corp. site and now owned by Houston-based Harvest Natural Resources Inc.). The Calgary-based company is a partner of Petro Vietnam. China has said it will intervene in some way. Pouring salt in the diplomatic wound, Vietnam undertook naval live fire exercises, and appealed to the international community and specifically the United States to help resolve the dispute.⁴⁹

One legal way to manifest sovereignty is to effectively control an area by enforcing state regulations there, i.e., demonstrating *effectivities* (continuous presence, control, regulation and management). China has announced it is adding 36 new ships over the next five years to enhance enforcement of its claims and maritime interests in the South China Sea including specifically areas where territorial disputes exist.⁵⁰ In addition to oil and gas, potential resources include some ‘guesstimated’ 19.4 billion cubic meters of natural gas hydrates.⁵¹ Also China’s first deep water drilling platform is nearing completion signaling its intent to explore in deeper water and even in disputed areas,⁵² probably backed up by its navy.

So the regional stage is set for confrontation and calamity with only good judgment and the DOC standing in the way.

The Struggle to Implement the DOC

Ever since China’s agreement with the 2002 DOC, ASEAN has been trying to negotiate its implementation. The focus has been on “guidelines” or guiding principles.⁵³ A China – ASEAN joint working group on the implementation of the DOC has met six times over nine years and failed to produce significant results. ASEAN could not even agree to formally put it on the agenda of the East Asia Summit. The fundamental sticking point is that China maintains the South China Sea issues should be settled bilaterally with ASEAN members concerned and not with ASEAN as a block.⁵⁴ But a paragraph in a draft guideline for the DOC says “ASEAN will continue the present practice of consultations among themselves before meeting with China.” Because of this difference, China has not sent senior officials to the meetings. Moreover, ASEAN’s united front is permeable. Another problem is that Cambodia, Indonesia, Laos, Myanmar, Singapore and Thailand are not claimants to the South China Sea proper and some have close ties to China. Also there is a fundamental difference between Vietnam who wishes to include the Paracels in any agreement, and China, who does not.

The ASEAN countries or prime movers Vietnam, the Philippines⁵⁵ and Indonesia want to focus on specific guidelines with legal import for implementing the DOC while China maintains

a more general principles approach. Indonesia, as the 2011 chair of ASEAN, is determined to push for a concrete agreement.⁵⁶ Indeed Indonesian Foreign Minister Marty Natalagawa wants to finalize the code by December 2011 and feels that any further delays would indicate failure.⁵⁷ Meanwhile, China may be trying to split off individual ASEAN countries and reach separate understandings.⁵⁸

Positive Indicators

Clearly China and the U.S. have quietly reached some sort of interim understanding regarding US military activities in its EEZ. Otherwise, we would be reading about more incidents. US Admiral Robert Willard told the US Senate that the Chinese navy has not exhibited the same level of assertiveness in 2011 that it did in 2010.⁵⁹ Willard attributed this change in China's behavior to the strong American response regarding such actions and the resumption of US-China military talks. Perhaps. Maybe China can tolerate passive ELINT data collection but active 'tickling' and interference with communications is the real problem. If so, perhaps the two sides could agree that each should refrain from (1) provocative acts, such as stimulating, exciting, or probing the defensive systems of the coastal state, and (2) collecting information to support the use of force against the coastal state. Perhaps they could work toward a formal agreement on the following points:

1. The activities of another state in the EEZ of coastal state should not interfere with the communications, computer, and electronic systems of the coastal state or make broadcasts that adversely affect the defense or security of the coastal state.
2. The coastal state should not interfere with the communications, computer, and electronic systems of vessels or aircraft of another state exercising its freedom of navigation or flight in or over the coastal state's EEZ.
3. In order to make the first two points effective, states should conclude agreements guaranteeing mutual noninterference with communications, computer, and electronic systems.

A high-level meeting of Chinese and U.S. defense officials was held in Washington, D.C., on December 10, 2010, and dealt with maritime security. Defense Secretary Gates visited

China January 10 to 14, 2011. And Gates met China's Defense Minister Liang Guanglie at the Shangri-la Dialogue in Singapore in June. The two countries have agreed to have their militaries conduct a joint humanitarian assistance and disaster relief exercise and to make use of a special telephone link.⁶⁰ And collision protocols have been established so "unintended maritime incidents do not escalate."⁶¹ All in all soothing words were exchanged but whether they will be followed by positive actions remains to be seen.⁶² Despite these rays of hope, a deep chill remains in the air. A significant obstacle to a breakthrough regarding intelligence gathering efforts is that the U.S. might may essentially have to forgo its current advantages in ELINT, particularly active ELINT.

A Regional Approach

Several respected analysts suggest that it is time for Asia to take the lead in regional security matters.⁶³ Indeed, perhaps it is time for a regional initiative to forge an understanding among all Asian countries regarding what are considered hostile and non-hostile acts in EEZs. The approach would be for ASEAN to negotiate a declaration on conduct similar to the *Declaration on the Conduct of Parties in the South China Sea* but focused on military activities, especially maritime intelligence gathering in EEZs. The language would hopefully be more specific than the declaration's rather vague admonition "to exercise self restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability."⁶⁴

The next step would be to invite China to join the agreement. However, this may be difficult for China because such an agreement would require that China deny itself the technological advantage it enjoys vis a vis all ASEAN countries except Singapore. But such a sacrifice would be proof of China's benign intent toward the region, leaving it up to the U.S. and Japan to either join or decline to do so at their own political peril. These agreements could also be bilateral between any relevant Southeast Asian countries or those involved in the region in series like the DOCs between China and the Philippines and Vietnam and the Philippines. The end result would be the same – a norm against provocative military activities in foreign EEZs. In the end, short of a major conflict - and a scramble to resolve it - this may be the only realistic

option. Otherwise, these incidents are likely to increase in frequency and severity and foster conflict that could spiral out of control.

Indeed, analysts foresee an incipient unconstrained regional arms race that will be more complex than the bipolar Cold War situation.⁶⁵ At the Shangri-la Dialogue, Secretary Gates warned that more clashes between the South China Sea claimants were likely if they failed to agree on and implement a Code of Conduct.⁶⁶ In May, the ASEAN Defense Ministers' meeting declared their commitment to effectively implementing the DOC and working towards the adoption of a regional COC.⁶⁷ The ARF, the ASEAN, the SOM and various subcommittees met in Surabaya in June and emitted similar platitudes. All parties expressed interest in keeping peace in the area. China again promised to resolve the disputes peacefully.⁶⁸ And ASEAN pushed for a rapid solution. So the immediate task is to move forward – both to a COC – and beyond.

A Voluntary Set of Guidelines for Military Activities in Foreign EEZs

Needed is a fundamental agreement as to what is and is not considered “unfriendly” military behavior in EEZs. Also required is a mechanism to manage crises such that minor incidents will be contained and not escalate.

The DOC provides an entry point for such guidelines in several of its provisions, *viz.*:

The Parties reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;

The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;

The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.

Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts to seek ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, including:

- a. holding dialogues and exchange of views as appropriate between their defense and military officials;
- b. notifying, on a voluntary basis, other Parties concerned of any impending joint/combined military exercise; and
- c. exchanging, on a voluntary basis, relevant information.

The Parties encourage other countries to respect the principles contained in this Declaration.

Elaboration of specific and implementation of these provisions would be a logical next step. Agreement on the following would do so.^{69 70}

I. Rights and duties of the coastal State

1. A State using another State's EEZ should ensure that its vessels and aircraft with sovereign immunity, act, as far as is reasonable and practicable, in a manner consistent with the 1982 UNCLOS.
2. Any restriction on navigation and overflight imposed by a coastal State in its EEZ due to its weapons tests and exercises, or any other operational activity, should be temporary, in specified areas only, and only if such suspension is essential for the carrying out of such tests and exercises.

II. Rights and duties of other states

1. While exercising the freedoms of navigation and overflight in a coastal State's EEZ, States should avoid activities that unreasonably prejudice the peace, good order or security of the coastal State.

III. Maritime surveillance

1. Maritime surveillance may be conducted by States for peaceful purposes in areas claimed by other States as EEZ. This surveillance should not prejudice the jurisdictional rights and responsibilities of the coastal State within its EEZ.

IV. Military activities

1. with the exception of the qualifications noted elsewhere in these guidelines, military vessels and aircraft have the right to navigate in, or fly over the EEZs of other States, and to engage in other internationally lawful uses of the sea associated with the operations of ships and aircraft.
2. Ships and aircraft of a State undertaking military activities in the EEZ of another State have the obligation to use the ocean for peaceful purposes only, and to refrain from the threat or use of force, or provocative acts, such as stimulating or exciting the defensive systems of the coastal State; collecting information to support the use of force against the coastal State; or establishing a 'sea base' within another State's EEZ without its consent. The user State should have due regard for the rights of others to use the sea including the coastal State and comply with its obligation under international law; such activities should follow the "Rules of the Road".
3. Warships or aircraft of a State intending to carry out a major military exercise in the EEZ of another State should inform the coastal State and others through a timely navigational warning of the time, date and areas involved in the exercise, and if possible, invite observers from the coastal State to witness the exercise.

4. Military activities in the EEZ of other States should not hamper the search and rescue operations of the coastal State in its EEZ. States should co-operate in any such search and rescue operations.
5. Military activities by a State in the EEZ of another State should not involve the deployment of systems that prejudice the defense or security of the coastal State, or interfere with or endanger the right of the coastal State to protect and manage its resources and environment.
6. Military activities of a State in the EEZs of other States should not cause pollution or negatively affect the marine environment or marine living resources including mammals. In particular, if prohibited by the laws of the coastal State, such activities in a coastal State's EEZ should not involve live weapons fire, underwater explosions or creation of sound waves and dangerous or radioactive materials that may directly or indirectly harm marine life or cause marine pollution.
7. Military activities by another State should not be conducted:
 - i. In areas which have been announced by the coastal State as temporarily closed for the purposes of safety of navigation and overflight;
 - ii. In areas with intensive fishing activities declared by the coastal State;
 - iii. In areas with special circumstances adopted in accordance with Article 211 (6)(a) of the 1982 UNCLOS;
 - iv. In marine parks or marine protected areas declared by the coastal State as required by Article 194 (5) of the 1982 UNCLOS;
 - v. In areas with intensive navigation and near sea lanes and traffic separation schemes; and
 - vi. Near submarine cables and pipelines on the seabed of the EEZ clearly marked by the coastal State on large-scale charts recognized by the coastal State.

8. If there are high seas immediately adjacent to the coastal State's EEZ, a State undertaking military exercises should make every possible effort to limit them to the high seas.
9. Ships and aircraft of the user State shall not make simulated attacks on ships of the coastal State, nor launch nor drop any objects near ships of the coastal State.

V. Non-interference with electronic systems

1. The activities of another State in the EEZ of a coastal State should not interfere with the communications, computer, and electronic systems of the coastal State, or make broadcasts that adversely affect the defense or security of the coastal State.
2. The coastal State should not interfere with the communications, computer, and electronic systems of vessels or aircraft of another State exercising its freedoms of navigation or overflight in or over the coastal State's EEZ.
3. In order to make subparagraphs a and b effective, States should conclude agreements regarding mutual non-interference with communications, computer and electronic systems.

VI. Suppression of piracy and other unlawful activities

1. Ships in an EEZ are subject to the exclusive jurisdiction of their flag State, except in circumstances provided by the 1982 UNCLOS or other international treaties.
2. States may act in an EEZ of another State to seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property onboard.
3. To suppress terrorism and illicit traffic in drugs, persons, arms, and weapons of mass destruction (WMD), their delivery systems and related materials, States should:

- i. Board and search any vessel flying their flag in their EEZ that is reasonably suspected of transporting terrorists or being engaged in illicit traffic in drugs, persons, arms and WMD, their delivery systems, or related materials, and seize such cargoes that are identified as such; and
 - ii. Consent, under appropriate circumstances, to the boarding and search of their own flag vessels by other States, and to the seizure of terrorists or drugs, persons, arms, and WMD-related cargoes on such vessels that may be a mutually identified as such by both States;
4. The boarding and search of a foreign flag vessel in an EEZ without the consent of the flag State is not justified solely because it is suspected of illegal trafficking in WMD, their delivery systems, or related materials.
5. In cases of arrest or detention of foreign vessels in the EEZ of a coastal State, the arresting vessel should through appropriate channels inform the coastal State of the action taken.

VII. Marine scientific research

1. Coastal State consent should in normal circumstances be granted for marine scientific research in its EEZ exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all humanity.
2. Marine scientific research in a coastal State's EEZ that has direct use for living and non-living resource exploration and exploitation, conservation and management is entirely under the jurisdiction of the coastal State, which is not obliged to grant consent to such research by foreign vessels.
3. Overflight by manned or unmanned aircraft or spacecraft of one State over the EEZ of another State should not be conducted for the purpose of marine scientific research without the consent of the coastal State.

VIII. Hydrographic surveying

1. Hydrographic surveying should only be conducted in the EEZ of another State with the consent of the coastal State. This does not apply to the collection of navigational data by a ship required for safe navigation during the ship's passage through an EEZ.
2. The Guidelines in Articles VII and VIII also apply to aircraft, autonomous underwater vehicles (AUVs), remotely operated vehicles (ROVs) and other remotely operated devices of a State conducting research or collecting data in an EEZ.

IX. Transparency of legislation

1. Those States with policies and/or legislation regarding military activities in their EEZs should make them as transparent and as widely known as possible, including to the military authorities of other States that are frequently using or navigating their EEZs.

Initially, formal multilateral arrangements should address common maritime problems like search and rescue, environmental protection, drug trafficking, and smuggling of arms and humans. Further out to sea, in time and space, a Southeast Asian ocean peacekeeping force might ensure safety and security of navigation, undertake air – sea rescue, protect fisheries from illegal fishers, and the environment from pollution and potential polluters. The harder issues – comprehensive fisheries management, and ultimately, common security would be next. But first things first.

Endnotes

¹ This paper is written as a policy brief, i.e., without background and with a minimum of references. It covers developments and analysis thereof since my last paper in this series presented in Ho Chi Minh in November 2010. Thus it is written and presented for experts intimately familiar with the issues.

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⁷⁰ For the purposes of these Guidelines:

1. "abuse of rights" means the unnecessary or arbitrary exercise of rights, jurisdiction and freedoms, or interference with the exercise of rights by another State, or the abuse or misuse of powers by a State causing injury to another State;
2. "exclusive economic zone" means an area referred to as such in relevant Articles of the 1982 UNCLOS.
3. "hydrographic survey" means a survey having for its principal purpose the determination of data relating to bodies of water. A hydrographic survey may consist of the determination of one or several of the following classes of data: depth of water, configuration and nature of the seabed; directions and force of currents; heights and times of tides and water stages; and location of topographic features and fixed objects for survey and navigation purposes;
4. "marine environment" is the physical, chemical, geological and biological components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, the waters of the seas and the oceans and the air immediately above those waters, as well as the seabed and ocean floor and subsoil thereof;
5. "marine scientific research" means activities undertaken in the marine environment to enhance scientific knowledge regarding the nature and natural processes of the seas and oceans, the seabed and subsoil;
6. "military activities" means the operations of military vessels, aircraft and devices, including intelligence gathering, exercises, trials, training, and weapons practices;

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7. “military surveys” refers to activities undertaken in the marine environment involving data collection for military purposes;
 8. “peaceful uses/purposes” in the context of the EEZ means that uses of that zone, or the purposes of activities conducted therein or there above, must not threaten or use force;
 9. “surveillance” means the observation by visual or any technical means of activities on, over or under the seas and oceans; and
 10. “threat of force” means a coercive attempt to compel another State to take or not to take certain specific action, or an action that is directed against or undermines the territorial integrity or political independence of that State, or against any of its assets or people, or taken in any other manner inconsistent with the UN Charter.