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Settling South China Sea disputes

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OSLO -- China's policies in the security field are generally reactive and suspicious.

This also characterises its approach to the South China Sea, although it now, in fact, has a diplomatic window of opportunity there. Present talks with the Association of South-east Asian Nations for arriving at a code of conduct could be transformed into a process of genuine conflict resolution.

China's present policy can be summed up in seven points:

- A claim to irrefutable sovereignty over the Paracels, the Macclesfield Bank, Scarborough Reef and all the islets and reefs in the huge Spratly area.
- Wide-ranging but undefined claims to continental shelf and maritime zones.
- Occupation and construction of facilities on formerly unoccupied reefs in the Spratly area, but no attacks against islets or reefs that are already occupied by other states.
- A long-standing, undefined proposal to shelve sovereignty disputes while establishing joint development.
- Rejection of proposals for multi-lateral negotiations, and a preference for resolving disputes bilaterally with each of the other claimant states. Yet reluctant acceptance of multi-lateral talks within the region about specific issues, such as a code of conduct.
- Rejection of any involvement by extra-regional powers.
- Repeated promises to follow the rules established in the 1982 United Nations Convention on the Law of the Sea.

All this amounts to a passive, reactive policy that ensures against a general conflagration but does not let Beijing assert its interests diplomatically.

The main conditions for a more constructive approach are for Beijing to realise the urgency of addressing threats to the marine environment (coral reefs, depletion of fish stocks etc) and to start using China's eminent experts in international law to define Chinese claims to sovereignty over islands and maritime zones in a legally defensible way.

China's policy in the South China Sea has not been as chauvinistic or aggressive as is often claimed. China believes that it is defending its patrimony against foreign incursions. But it is exactly this suspicious, defensive attitude which prevents it from achieving its potential diplomatically.

In the last decade, China has achieved tremendous improvements in its relations with the South-east Asian countries.

This improved situation could now be used, and there is little risk that the United States would interfere if China were seen to focus on the use of diplomatic means, while seeking a solution that ensures freedom of navigation.

Within a time frame of 10 to 15 years, China should be able to resolve disputes with the other claimants (Taiwan, the Philippines, Malaysia, Brunei and Vietnam) by pursuing the following six-stage strategy:

- Negotiate, as promised, a bilateral treaty with Vietnam on the Gulf of Tonkin (Beibu Gulf) before the end of this year. Make sure that the median line is measured from baselines drawn in accordance with the rules established in the UN convention, and define territorial waters, contiguous zones and exclusive economic zones on both sides of the median line. Arrive at a mutually acceptable fishing regime that ensures preservation of essential fish stocks.
- Enlist Taipei's cooperation in working out a coordinated negotiation strategy vis-a-vis the Philippines, Malaysia, Brunei and Vietnam. This would also be a way to build cross-strait confidence.
- Together with Taiwan, make a "small bargain" with the Philippines over Scarborough Reef. Agree that the reef does not have a right to more than 12 nautical miles of territorial waters. Shelve the sovereignty dispute over the reef and its territorial waters, and prohibit any kind of economic activity in the disputed zone.
- Use the "small bargain" as a model for a "big bargain" for the Spratlys and the Paracels. Concede that none of the Spratlys satisfies the conditions for a right to more than 12 nautical miles of territorial waters; shelve the sovereignty dispute over the islands and reefs and their territorial waters. Obtain in return, recognition of Chinese sovereignty over the Paracels and agreement that some of the Paracels do satisfy the conditions for having a right to a continental shelf and a 200-nautical-mile exclusive economic zone.
- Ask all claimants to draw proper baselines along their coasts and islands, and to define precisely their continental-shelf and maritime-zone claims, using the baselines as point of departure. Delimit the continental shelf and exclusive economic zones in bilateral and multilateral negotiations. The Paracels can then be used as a basis for Chinese zone claims, but no claimant can use Scarborough Reef, the submerged Macclesfield Bank or the Spratlys.
- All claimants transfer their alleged sovereignty over the Spratlys to a regional or international authority, which is set up to administer a system of marine nature parks. Within the parks, all economic activity should be prohibited except environment-friendly tourism. The Spratlys are thus given back to their original inhabitants -- the birds, fish and turtles.

[The writer, a professor of human development at the Centre for Development and the Environment at the University of Oslo, contributed this comment to the International Herald Tribune.]