

# Beijing and Washington need to show restraint over the South China Sea row, to avoid poisoning relations, writes Minxin Pei

## Calm, before the storm

The recent row between the US and China over the South China Sea claims caught many by surprise. American Secretary of State Hillary Rodham Clinton fired the first shot at the end of last month: in her speech at the Asean Regional Forum, in Hanoi, she implicitly rejected China's territorial claims in the South China Sea and favoured the positions of the other claimants, Vietnam, the Philippines and Malaysia. Shocked by what it perceived as a surprise and unwelcome intrusion into an area critical to China's national interests, Beijing reacted with outrage. Chinese officials criticised Clinton's remarks and warned that the American attempts to "internationalise" the South China Sea dispute could only make things worse.

In Washington, the mainstream media quickly pronounced Clinton's statement in Hanoi as a dramatic departure from American policy and constituted a "marker" that serves as a warning to Beijing regarding its territorial ambitions.

### Beijing needs to ask itself whether its definition of core national interests is becoming too loose

American press reports suggested that Washington's hand was, in a way, forced by Beijing's renewed assertiveness in the South China Sea dispute. They cited recent remarks made by senior Chinese diplomats to their American counterparts stressing, for the first time, that the South China Sea is part of China's "core national interests".

By elevating its South China Sea claims to the same status as Taiwan and Tibet, China appeared to be warning the US to stay out of the area. The Americans were especially peeved by Beijing's demands that US naval intelligence-gathering vessels keep out of China's 200-nautical-mile exclusive economic zone (even though international law allows freedom of navigation in such zones). Thus, from Washington's perspective, it must push back.

Such a reading suggests that Clinton's statement represents a fundamental departure from Washington's long-

standing position on the South China Sea dispute. If examined closely, it does not.

The stated American policy on this issue consists of two core principles – the dispute must be resolved peacefully according to international law and the freedom of navigation must be protected. Even though American officials have studiously declared their neutrality on the South China Sea dispute, these two core principles favour the positions of the Southeast Asian nations more than those of Beijing. The only difference this time is that, the US secretary of state emphatically stated them, for the first time and in Hanoi.

In fact, Clinton was not the only senior US official to have reiterated America's policy on Southeast Asia lately. Secretary of Defence Robert Gates actually delivered even sharper criticism of China's positions in early June in Singapore. Gates' words fell on deaf ears, but Clinton's ignited a firestorm.

Now that the South China Sea dispute has taken on a new dimension of great power rivalry, both China and the US need to tread carefully and avoid allowing this dispute – never a high priority in US-China relations – to poison their overall relationship.

To the extent that Clinton's statement unpleasantly surprised China, some fence-mending by the Americans is in order. For the face-conscious Chinese, any American efforts aimed at calming Chinese tempers will be helpful even though, in substantive terms, American diplomatic gestures will not amount to a retraction or modification of the principles enunciated by Clinton in Hanoi. More importantly, the US must also maintain its neutrality on the South China Sea dispute. While pushing back on Chinese assertive claims, the US needs to urge the other claimants to exercise restraint and avoid actions that could escalate tensions. A nightmarish scenario is that, encouraged by the American position, the other claimants may decide to test China by, for example, awarding oil and gas exploration contracts to Western (particularly American) firms.

The stakes are equally high for China. Beijing needs to re-examine its recent pronouncements on its core national interests and ask itself whether its definition is becoming a bit too loose. It should pursue a parallel strategy to defuse tensions with Washington over the South China Sea dispute.



First, it must not retaliate against the Clinton statement by withholding co-operation with Washington in other critical areas. (Cynics would say that China has not been very co-operative on North Korea or Iran lately.) Such a vendetta could only cause further deterioration in Sino-American ties.

Second, China must accelerate its diplomatic efforts to resolve the South China Sea dispute with the other claimants. Talks over the signing of a code of conduct on the South China Sea have been going on for several years. Beijing should invest more leadership and energy to see this process come to fruition soon. At the same time, China can also take

advantage of its geographical proximity and growing economic influence to intensify its own engagement with Southeast Asian nations. In particular, China needs to reassure its jittery neighbours that it will abide by international laws and norms in settling territorial and national resource disputes.

Only such a forward-looking response will allow China to take back the initiative and repair the damage done by this incident to Sino-American relations.

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## Court of opinion

Everyone's angry – yet again. This time people are enraged that a judge didn't jail a rich girl for slapping a policeman. They believe our justice system favours the wealthy. But we need to straighten something out. Are people angry that a rich girl got off? Or are they angry that she got off because she's a rich girl?

There's a huge difference. Maybe the people are mostly angry because Amina Bokhary got off even though it's her third offence, rich or poor aside? It's important we pin it down.

If the people feel the judge was too lenient despite Bokhary's record of attacking police officers then we're saying he's incompetent. We're also interfering with his independence to rule as he sees fit. If people are angry that her wealth got her off then we're saying our justice system bows blatantly to the rich. If people are angry that her family connections saved her then we're saying our justice system is corrupt.

All of those things jab at the very heart of our much-touted rule of law. Such is the fallout from the Bokhary ruling that most people you talk to are now convinced our justice system is biased towards the elite class.

I am still waiting for Justice Secretary Wong Yan-lung to publicly assure us otherwise. Maybe he wants to preserve his image as the phantom of the government.

Public outrage has forced his department to appeal against magistrate Anthony Yuen Wai-ming's soft treatment of Bokhary. But how does that reverse the belief that our courts are buddies with the big guys? If anything, it makes things even worse.

Sure, let's hold our anger so that the judicial process can run its course, as calmer voices have urged. Justice will prevail in the end. Really? Let's face facts. Would the government have even appealed against the magistrate's ruling if the public hadn't so shrilly shouted foul?

Does the prevailing of justice mean the jailing of Bokhary? If a higher court does jail her, would the people put it down to the fairness of the judicial process? Or would it come across as judicial independence surrendering to public outrage? And what if even the highest court upholds the magistrate's ruling?

### Does the prevailing of justice mean the jailing of Bokhary? ... There is no happy ending

Would the people accept the outcome, admit they were wrong, put away their anger and say sorry to the magistrate for doubting his fairness? Or would it cast even more doubt on the fairness of the courts, further enraging the people?

There is really no happy ending to it all. The jailing of Bokhary would send the message that the judicial system bowed to public pressure. By not jailing her, the system would stand accused of favouritism. The funny thing is, no one seriously believes Bokhary's influential uncles, Court of Final Appeal judge Kemal Bokhary and executive councillor Ronald Arculli, applied pressure on the judge to go easy on their niece. What's even funnier is that the police, after choosing to charge Bokhary with a lighter rather than heavier offence, are now all indignant she got off. The police management says it will even support the assaulted officers should they decide to sue Bokhary.

Amina Bokhary is not really the central issue here. Nor do I think the people are angry simply because a rich girl from an influential family got lenient court treatment. They are angry because they believe Hong Kong has become too unfair a society. The Bokhary verdict simply solidified this belief, giving them another reason to vent their fury.

As I said here two weeks ago, people will now rebel against whatever they believe is evidence of an unequal society. They're turning against the elite, the business class, the tycoons and the government, which they believe sides with the powerful. It's become a class thing – us against them.

If a class war seems preposterous to you then you should mull over the words of magistrate Yuen when he refused to reverse his ruling on Bokhary: would there have been such public outrage over the compassion he showed in sentencing a mentally ill person if she was not from an elite family?

**Michael Chugani is a columnist and broadcaster**

## Voices: Hong Kong

# Free speech, but not at the expense of other rights

**Frank Ching**

Former chief executive Tung Chee-hwa used to point to the fact that more demonstrations were being held after 1997 than under British colonial rule as proof that freedom of expression continues to flourish under Chinese sovereignty.

But what happens when the exercise of such a cherished right comes into conflict with a pillar of Hong Kong's free and open society – an independent judiciary?

That is the situation in the case of Amina Bokhary, a member of a prominent family who was convicted of slapping a police officer – the third time she had been convicted of assaulting an officer – but who has never been jailed. The magistrate placed her on probation for a year, fined her HK\$5,000 for refusing to give a breath sample and an additional HK\$3,000 for careless driving.

Some of the local media played up the fact that she is the niece of Mr Justice Kemal Bokhary, who sits on the Court of Final Appeal.

Last week, several hundred people dressed in black marched in protest against what they saw as an overly lenient sentence. Tens of thousands of other people signified on Facebook their dissatisfaction with the way the case was handled.

Demonstrations are part of Hong Kong's culture but protests against the judiciary are rare. Most are against the executive arm of government. That is as it should be.

Outside Hong Kong, there are occasional protests against the legislature, such as those against new legislation to deal with illegal

immigrants in the US state of Arizona. In Hong Kong, where the legislature cannot initiate legislation, protests against unpopular measures, such as the 2003 national security bill, are also directed against the executive.

So rare are protests against judgments by judges or magistrates that the current episode is causing fear that the judiciary may come under political pressure and that the rule of law will be put in jeopardy.

The Hong Kong Bar Association and the Law Society of Hong Kong

### It would be disastrous for Hong Kong if judges were to come under political pressure

have put out a joint statement in an attempt to allay any misgivings. "While the joint legal professions recognise the right to freedom of expression," it said, "... any attempt made to bring public pressure on a magistrate or judge to change his or her mind upon a review of sentence is to be deplored."

The Department of Justice also issued a statement urging the public to "respect and protect judicial independence and the rule of law in Hong Kong".

So, in this conflict, an independent judiciary is clearly considered more important than freedom of expression. Freedom of expression, after all, has to be

exercised in such a way so as not to jeopardise other fundamental rights.

An independent judiciary is vital for Hong Kong and it would be disastrous if judges were to come under political pressure.

Ironically, what the case exposes are not so much flaws in the judiciary as in prosecution procedures, which are often determined by the police. In this case, the police, without consulting the Department of Justice, decided to invoke the Police Ordinance, which carries a maximum penalty of six months in prison and a HK\$5,000 fine, rather than cite the Offences Against the Person Ordinance, which carries a maximum penalty of two years' jail for the same offence.

Conceivably, if the harsher law had been invoked, the magistrate involved could have meted out a different sentence and the public outcry could have been avoided.

The Department of Justice is now applying to the Court of Appeal for leave to review the sentence. That is as it should be. The case should be dealt with by the courts on its legal merits and not on the streets. The police and the Justice Department should sort out the law and agree on prosecution policy.

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## Voices: India

# Economy in fine shape to meet next challenge

**Shashi Tharoor**

As the world economy begins to recover, Indians are looking with particular satisfaction at how they coped with the recent crisis. Despite an unprecedented global recession, India remained the second fastest-growing economy in the world. Its gross domestic product grew by more than 6 per cent over the past two years – and by 7.9 per cent in the last quarter of 2009.

India's achievement is all the more striking given that the Pakistani terrorist attacks on Mumbai – India's financial nerve centre and commercial capital – in November 2008 came in the midst of the crisis. The terrorists dented the worldwide image of India as an emerging economic giant.

Indeed, in late 2008, foreign investors withdrew US\$12 billion from India's stock markets. But India's resilience in the face of adversity, and its mature restraint in the face of violent provocation, encouraged investors to return.

India's ability to stave off the economic gales was helped by the fact that it is much less dependent than most countries on global flows of trade and capital. India relies on external trade for about 20 per cent of its GDP (the figure for China is roughly double). The country's large and robust internal market accounts for the rest. Indians continued producing goods and services for other Indians, and that kept the economy humming.

India's generally conservative financial system played a vital role, too. Its banks and financial institutions were not tempted to buy the mortgage-supported securities and credit-default swaps that ruined several Western financial

institutions. Among the drivers of growth, domestic capital formation retained much of its momentum from preceding years.

Moreover, India's government adopted a proactive fiscal policy, rolling out two rounds of stimulus packages. The authorities pursued pro-growth policies, including lower interest rates, expanded credit and a reduction in excise duties.

There are still challenges ahead. Reform is pursued hesitantly by a coalition government constantly wary of voters' reactions. Privatisation of India's bloated public sector has been slow to get off the ground. And, of course, the persistent complaints of corruption and bureaucratic red tape have not faded with liberalisation. The country's infrastructure remains woeful; power shortages are frequent. Some 40 per cent of the population still lives below a poverty line drawn just this side of the funeral pyre.

Yet all these problems are being dealt with by a confident Prime Minister Manmohan Singh, who has steered the ship of state through some particularly treacherous waters. Success will not occur overnight, but progress has been impressive and is continuing.

In the last 15 years, India has pulled more people out of poverty than in the previous 45 – roughly 10 million people per year on average in the last decade. The current financial crisis, far from prompting India to retreat, is an opportunity to safeguard and build on those gains.

**Shashi Tharoor, a former Indian minister of state for external affairs and UN undersecretary general, is a member of India's parliament. Copyright: Project Syndicate**

## Voices: Governance

# Even an open society needs a few secrets

**Peter Singer**

Transparency seems to be the word of the day in a wide array of policy domains. But is greater transparency always good?

Ever since the financial crisis erupted in 2008, there has been a call for "greater transparency" in financial services. The financial reform law passed by the US Congress last month requires improved transparency from banks and other financial services firms. Moreover, the law also requires oil and mining companies – both US and foreign – that want to raise capital in the US to disclose their payments to the governments of countries in which they operate.

For many poor countries, wealth in natural resources is a curse rather than a benefit. Corrupt rulers can use the billions they receive from oil and mining corporations for personal extravagance, or to buy arms for troops to crush democratic resistance movements. Of course, transparency alone cannot prevent this, but it will show everyone how much the rulers are getting, and who is funding them.

A different form of transparency received much more attention last month. WikiLeaks released 92,000 documents related to the war in Afghanistan, including military reports on incidents and intelligence reports. WikiLeaks has, over the past three years, published a variety of sensitive documents, including the US military's manual for operating its prison in Guantanamo Bay, evidence of corruption in Kenya and the dumping of toxic chemicals off the coast of Africa. But posting the Afghan war reports was its most controversial move yet.

*The New York Times*, together

with *The Guardian* and *Der Spiegel*, was given a chance to study the documents before they were released, and decided to publish some of the material. Its editors argued that while the decision to publicise secret material is always difficult, these documents were of significant public interest.

There is a clear parallel between the Afghanistan leaks and Daniel Ellsberg's release in 1971 of the Pentagon Papers, which helped the American public understand how the war in Vietnam was really being conducted. On its website, WikiLeaks quotes the US Supreme Court ruling in that case – "only a free and unrestrained press can effectively expose deception in government". WikiLeaks also asserts that its leaks have already been the catalyst for "hundreds of reforms".

But even some supporters of open government think WikiLeaks goes too far. Steven Aftergood, head of the project on government secrecy at the Federation of American Scientists, counts WikiLeaks among the enemies of an open society because of its failure to respect the rule of law and the rights of individuals.

But how much openness is too much? In a world in which terrorists have committed atrocities and threaten to commit more, to seek complete government transparency is utopian. Sometimes it is possible to do good only in secret. Yet on the whole, a more transparent community is likely to be a better one – and the same applies to a more transparent world.

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