Renewed Strategic Dynamics over the South China Sea: Options for the US, Japan, and India

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Introduction

Maritime

Issues

Since the end of World War II the South China Sea has been disputed by six claimant parties – Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam – and given its potentially vast reserves of energy resources and strategically important location, the claimant states have been unable to find any resolution of the issue. While the intensity of disputes ebbs and flows – such as the 1974 and 1988 skirmishes over the Paracel Islands between China and Vietnam, and the 1995 Mischief Reef incident between China and the Philippines – the recent trend shows gradual but significant increases in diplomatic and military tensions. Indeed, the maritime disputes and tensions over the South China Sea between claimant states has rapidly increased since 2009, and comprises strategic – including political, military, and legal – implications for the future of East Asian power configuration.

In this context, on 12 July 2016, the Permanent Court of Arbitration issued the press release, "The South China Sea Arbitration (*The Republic of the Philippines v. The People's Republic of China*)" along with a copy of the Award. The Award, which is final and binding, categorically frames the legal dimension of disputes over the South China Sea between China and the Philippines – significantly determining that China's "Nine-Dash line" will not be recognised in accordance with the United Nations Convention on the Law of the Sea (UNCLOS); its currently occupied, reclaimed reefs and shoals in the Spratly Islands do not create an Exclusive Economic Zone (EEZ); and its violation of environmental protection and impediment to Philippine fishing rights.

Nevertheless, the dispute persists because of its existing political and strategic dimensions. China rejects the Award in accordance with its "position paper" towards the Arbitration. While this risks China's international reputation of violating international law, the degree of such a risk will depend on its diplomatic and political skills – how China will interact with other claimant states and construct its relations with them while neutralizing the ruling of the Arbitral Tribunal. In this regard, the South China Sea situation is at a critical juncture. It will worsen if China persists in its current position and continues to reclaim and militarise the South China Sea; the tension could be alleviated if China's diplomatic approach towards other claimant states, particularly the Philippines, shifts in a more accommodative way. In this context, question becomes how regional great powers, such as the United States, Japan, and India, could contribute to maintaining and facilitating peace and stability in the South China Sea. To answer this question, this paper first overviews developments regarding maritime claims and occupation of the South China Sea and what actions are likely to be effective to promote stability. The paper concludes with analysis of the potential actions that regional great powers could undertake.



Background: Three Turning Points

Despite the persistence of the South China Sea disputes, there are three important turning points that have altered the dynamics of strategic interactions among the claimant states in the past eight years: the 2009 Commission on the Limits of the Continental Shelf (CLCS); the 2013 Philippines' submission of South China Sea legal claim to the Arbitral Tribunal; and the 2016 Award of the Arbitral Tribunal.

The first turning point occurred in 2009. While China's behaviour is generally seen as becoming increasingly assertive in the South China Sea, early instances of such behaviour were typically reactive. After Vietnam and Malaysia jointly submitted information on the limits of the continental shelf, China responded by sending a note regarding the joint submission stating that it "seriously infringed China's sovereignty, sovereign rights and jurisdiction in the South China Sea." Given that each claimant state has the incentive to create domestic law to strengthen its claim over the South China Sea before the submission, China expanded its patrols in the South China Sea and attempted to thwart other claimant states' enforcement practice. In the meantime, China maintained strategic ambiguity in relation to its Nine-Dash line – deliberate abstruseness over whether it referred to land territory within the lined region or a specific military delimitation – thereby allowing it to be interpreted arbitrarily. It is unclear at this point to what extent China strategically calculated the South China Sea issues as capable of causing reactive assertiveness; however, the number of skirmishes and harassment between China and other claimant states began to increase rapidly.

The increased tension in the South China Sea drew non-claimant states' attention, particularly that of the United States. The most notable example was the 2010 ASEAN Regional Forum's (ARF) speech by US Secretary of State Hillary Clinton, stating that the freedom of navigation and flight over the South China Sea as US "national interest." Several claimant states with direct interests in the South China Sea – particularly Vietnam and the Philippines, which solicited this clear statement of US presence in the region to deter Chinese encroachment – welcomed this US declaration, while China strongly opposed any kind of US involvement in the territorial disputes. This created a series of declarative measures between the United States, China, the Philippines, and Vietnam, leading to the 2012 Scarborough shoal incident, in which China occupied the area after a naval stand-off with the Philippines.

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