

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

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Introduction

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.¹ 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

¹ Permanent Court of Arbitration, “PCA Press Release: The South China Sea Arbitration (The Republic of the Philippines v. The People’s Republic of China), July 12, 2016,

<https://pca-cpa.org/en/news/pca-press-release-the-south-china-sea-arbitration-the-republic-of-the-philippines-v-the-peoples-republic-of-china/>.

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.² 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

² Ministry of Foreign Affairs of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines,” December 7, 2014, http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1217147.shtml.

regarding the joint submission stating that it “seriously infringed China’s sovereignty, sovereign rights and jurisdiction in the South China Sea.”³ 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.⁴

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.”⁵ 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.

³ United Nations, “Commission on the Limits of the Continental Shelf (CLCS) – Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submission to the Commission: Joint submission by Malaysia and the Social Republic of Vietnam, May 3, 2011,

http://www.un.org/depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm

http://www.un.org/depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf

⁴ For example, see International Crisis Group, “Dangerous Waters: China-Japan Relations on the Rocks,” *Asia Report*, no. 245, April 8, 2013, URL:

<https://d2071andvip0wj.cloudfront.net/dangerous-waters-china-japan-relations-on-the-rocks.pdf>.

⁵ U.S. Department of State, “Comments by Secretary Clinton in Hanoi, Vietnam,” July 23, 2010,

<http://iipdigital.usembassy.gov/st/english/texttrans/2010/07/20100723164658su0.4912989.html#axzz4KWhIIXG>

The second turning point occurred in 2013, when the Philippines decided to bring its arbitration case under the UNCLOS at PCA. The Philippines maintained that since it had exhausted other means to settle the disputes, namely its attempt to conduct bilateral negotiations with China and the use of multilateral forums, such as ASEAN, it resorted to the international legal process to help resolve the disputes, at least in legal terms. The Arbitral Tribunal has the jurisdictional authority to determine whether China's claims are legally valid under the UNCLOS. After submission the Philippines did not cease in its attempts to conduct negotiations with China, and to undertake the multilateral effort to create a code of conduct, as illustrated by the "three-step plan" in 2014; however, this did not encourage Beijing to join in dialogue in an attempt to resolve the disputes. China strongly opposed this Philippines' application to the Tribunal because, it claimed, such an action violated the principle of the 2012 Declaration of the Conduct of Parties in the South China Sea, namely Article 4, which recommends that resolution to a dispute be sought "through friendly consultations and negotiation by sovereign states directly concerned."⁶ Also, China argued that the legal process is void because China claimed the use of Article 298, which excludes matters such as sea boundary delimitations, sovereignty, and historic title.⁷ Nevertheless, the Arbitral Tribunal stated that it had jurisdictional authority to determine seven out of the Philippines' 15 claims.

In the meantime, China asserted its presence by continuing oil extraction and occupation efforts in the South China Sea. Given the vast size of the occupation in comparison with past efforts conducted by other states, such actions intensified diplomatic rows between China and affected neighbours. The United States and other regional states, such as Japan and Australia, also expressed serious concerns, and this led the United States to conduct the Freedom of Navigation Operation (FONOP) on 26 October 2015, dispatching USS Lassen within 12 nautical miles of Subi Reef. The rapid reclamation and its militarisation were closely watched by concerned parties, but China continued to conduct occupation and probing actions in order to consolidate its control over the region.

The most recent turning point eventuated during 2016, when the Tribunal issued its Award on 12 July. The Award clearly stated that almost all of China's claims were rejected, including the legal validity of the Nine-Dash Line. China responded by stating

⁶ ASEAN, "Declaration of the Conduct of Parties in the South China Sea," 4 November 2002.

⁷ For UNCLOS Chapter 298, see http://www.un.org/depts/los/convention_agreements/texts/unclos/part15.htm.

that the Award was “null and void,” and the level of strategic uncertainty increased.⁸ However, Philippine President Rodrigo Duterte shifted the Philippines’ South China Sea discourse to prevent tension from rising. He played down the importance of the arbitration award, suggested the possibility of bilateral talks with China, and gave an impression of distancing the Philippines from the United States.⁹ Whether or not his statement reflects Philippine policy remains to be seen; however, for the time being this behaviour permitted some political leeway for China to conduct dialogue with the Philippines without losing face.

In this vein, a positive trend is emerging within ASEAN-led institutions. Unlike his predecessor, Benigno Aquino II, Duterte remained low-key regarding the award during the 2016 ASEAN Summit and East Asia Summit.¹⁰ In the 2016 ASEAN–China summit, commemorating the 25th Anniversary of ASEAN–China Dialogue Relations, the member issued the joint statement that facilitates the early adoption of a Code of Conduct in the South China Sea (COC); the establishment of the Guidelines for Hotline Communications among Senior Officials of Ministries of Foreign Affairs of ASEAN and China; and the Application of the Code for Unplanned Encounters at Sea (CUES) in the South China Sea.¹¹ In its chairman’s statement, both ASEAN and China aims to “[complete] the implementation of Early Harvest Measures by the end of 2016, finishing the consultation on the COC outline in the first half 2017” – this is the first time in which China has consented to the specific schedule for the COC, albeit informally.¹²

⁸ Kor Kian Beng, “China rejects ruling, deems it null and void,” July 13, 2016,

<http://www.straitstimes.com/asia/china-rejects-ruling-deems-it-null-and-void>.

⁹ “Duterte declares independent foreign policy,” GMA News Online, September 10, 2016,

<http://www.gmanetwork.com/news/story/580839/news/nation/duterte-declares-independent-foreign-policy>.

¹⁰ Amy Sawita Lefevre and Manuel Mogato, “Tensions over South China Sea belie summit cordiality,” Reuters, September 7, 2016, <http://www.reuters.com/article/us-asean-summit-southchinasea-idUSKCN11D08P>.

¹¹ ASEAN, “Joint Statement of the 19th ASEAN-China Summit to Commemorate the 25th Anniversary of ASEAN-China Dialogue Relations: Towards a Closer ASEAN-China Strategic Partnership,” September 7, 2016, <http://asean.org/storage/2016/09/Joint-Statement-of-ASEAN-China-Commemorative-Summit-Final.pdf>.

¹² ASEAN, “Chairman’s Statement of the 19th ASEAN-China Summit to Commemorate the 25th Anniversary of ASEAN-China Dialogue Relations,” September 7, 2016,

<https://asean2016.gov.la/kcfinder/upload/files/Chairman's%20Statement%20of%20the%20ASEAN-China%2025th%20Anniversary%20Commemorative%20Summit.pdf>.

Strategic Trends, Risks, and Uncertainties over the South China Sea

Given the historical development of the South China Sea issue from 2009, there are three strategic implications. First, claimant states' political sensitivity over each other's behaviour in the South China Sea – particularly that of China and the Philippines – has increased due to the 2016 arbitration award. This creates a strategic dilemma. On the one hand, if China conducts provocative actions, such as reclamation and militarisation, the Philippines would strongly respond to such provocation under the name of international law, possibly with other states including the United States. Because those who advocate the rule-based order and international law could not easily back down, tension would likely rise, resulting in potential conflict. On the other hand, if the Philippines and other states demand that China immediately implement the award, China would stiffen its position that it would never accept the award and conduct further *fait accompli* behaviour. Given such heightened risks, the concerned parties would become more cautious about their behaviour over South China Sea issues.

However, it can also open a window of opportunity for new dialogue among the claimant states. Precisely because the current trend has increased the claimant states' sensitivity and a drastic change in the maritime situation would be less likely, the claimant states would likely have a chance to engage in further negotiations. China needs negotiation because it aims to mitigate the negative impact of the award on its international standing, and might invite external states to reconvene actions in the South China Sea. Other claimant states, particularly the Philippines, require negotiation because they are eager to avoid diplomatic and maritime confrontation, and would seek to draw concessions from China to prevent China from conducting *fait accompli* behaviour. This is why some political progress in the 2016 ASEAN–China summit was observed. Nevertheless, this window of opportunity would likely be short, because if the negotiation is prolonged and *fait accompli* behaviour continues without consequence, political momentum to respect the award would decline and the situation may return to that of the 2009–2016 period.

Second, the explicit great power involvement, such as that of the United States, Japan, and India, would likely provoke China and might give it an opportunity to take “reactive assertive” actions in the South China Sea. To be sure, it is strategically important to clarify what national interests non-claimant states have in the South China Sea. Whether such interests may include protecting the sea lines of communication (SLOCs), ensuring alliance commitments, respecting international law, or maintaining strategic influence, such clarification signals to the international community an approximate idea of what

behaviour would be tolerable for those states. However, this can be a double-edged sword. If non-claimant states clarify their own national interests, China would conduct other means to advance its own interests. For example, since the United States argued that it has a national interest in the freedom of navigation and overflight in the South China Sea, China has responded that freedom of navigation and overflight have remained stable non-issues while continuing to conduct reclamation programs. Furthermore, if non-claimant states maintain strategic ambiguity, China would test the degree to which their strategic ambiguity permits its assertive behaviour. For instance, the 2012 Scarborough Shoal incidents demonstrated that China's fait accompli strategy of using its coast guard to create a "grey zone" situation, whereby naval assets were not involved, was successful in preventing the United States from further involvement. In this sense, it is important to strike a balance between political declarations and their expected actions in order to enable the deterrence effect of non-claimant states.

Indeed, the historical record shows very little success for non-claimant states to deter China's behaviour in the South China Sea. For example, explicit diplomatic statements – such as Clinton's 2010 speech at the ARF and Abe's 2014 "three principles" of the rule of law at sea – did not deter China in the short term from resorting to reclamation, harassment, and militarisation. The United States conducted the FONOP in the South China Sea in response to China's continuous provocation; however, the operations were relatively ineffective in probing China's maritime claim, and they failed to create strong deterrence effects, even if the operation was not originally designed to do so. On the other hand, an alternative is that of a cost-imposition strategy, aiming to punish China proportionate to its violation of international law. However, considering China's denial of the recent UNCLOS Award, it is unlikely that a cost-imposition strategy towards China would be effective. This is partly because without clearly identifying what types of behaviour in the South China Sea is permissible, the cost-imposing action could be conducted arbitrarily, and partly because with clear criteria it becomes relatively easy for China to avoid such actions. Due to this strategic dilemma, it is difficult for non-claimant states to gain strong leverage to deter China's behavior.

Third, a domestic political change matters in terms of foreign policy direction. The outcome of the 2016 presidential election in the Philippines is a case in point. Unlike Aquino, who took a hardline approach towards China by conducting legal contestation and a balance of power politics through enhancement of its alliance with the United States, Duterte demonstrated his willingness to negotiate with China over the South China Sea: he established military ties with Russia and China by procuring weapons, and

implied that the Philippines would distance itself from the United States by stating that the Philippines would end joint patrols with US forces in the South China Sea.¹³ While this diplomatic posture can be little more than a signal to his domestic audience to bolster Duterte's strong leadership image, the United States is still regarded as the foremost strategic ally with the Philippines.¹⁴

Nevertheless, the Philippines' foreign policy behaviour can partly derive from the uncertainty of the upcoming US presidential election, which will be held on 8 November 2016. Given the close competition between Democratic nominee Hillary Clinton and Republican nominee Donald Trump, it is unclear what types of foreign policy the United States will conduct towards the South China Sea in the next four years. These uncertainties have particularly important implications for claimant states because disengagement by the US from the issue would weaken the credibility of the alliance and the strategic partnerships between the United States and claimant states. In other words, the outcome of the US presidential election would determine the range of potential behaviour that the claimant states can take. As such, Southeast Asian claimant states, including the Philippines, would be likely to hedge against such risks and uncertainties by pursuing cooperative strategies towards China and cautiously maintaining distanced ties with the United States.

In sum, the strategic development of the South China Sea issue indicates that: (1) the 2016 arbitral award temporarily created strategic stability and opened a window of opportunity for further cooperation among the claimant states; (2) the explicit great power involvement would likely provoke China and provide China with an opportunity to undertake further reactive assertiveness; and (3) the Southeast Asian claimant states would adopt hedging behavior vis-à-vis the South China Sea as the outcome of the US presidential election shapes the range of policy options for the claimant states.

¹³ "Philippines' Duterte eyes arms from China, ends joint patrols with United States," *South China Morning Post*, September 14, 2016, [URL]

<http://www.scmp.com/news/asia/southeast-asia/article/2019084/philippines-duterte-eyes-arms-china-ends-joint-patrols>.

¹⁴ Nick Wadhams, "Philippine Foreign Minister Reassures on Strong U.S. Relations," *Bloomberg*, September 16, 2016, URL:

<http://www.bloomberg.com/news/articles/2016-09-15/philippines-foreign-minister-reassures-on-strong-u-s-relations>.

Roles of the United States, Japan, and India: Potential Contributions

In this context, what roles would the regional great powers, namely the United States, Japan, and India play in mitigating the tension over the South China Sea? Trilateral cooperation will pose challenges in terms of the perception that it constitutes a new balancing coalition against China. As a state affected by the China Sea issue, being a strategic balancer will be useful in maintaining stability, particularly if all great powers, including China, engage in balance of power politics. However, this is not always the case, as alternative political mechanisms remain as possibilities, especially considering circumstances in which one strategy creates a favourable environment for alternative tactics; for instance, where strategic balancing often facilitates the establishment of a dialogue mechanism among balancing states.

Furthermore, each great power has different levels of strategic interests and commitments to the South China Sea issue – the United States and Japan are relatively close to each other over the South China Sea issues, while India evinces less commitment. For example, when the decision in the Philippines–China arbitration was announced in July, Japan, the United States, and India stated their general support; however, while the United States and Japan clearly endorsed the tribunal’s outcome, India avoided using the words, “award” or “decision”, and instead maintained relative ambiguity.¹⁵ This shows that there will be a limitation in engaging trilateral cooperation based on a balance of power politics in the South China Sea. Also, there remains the risk that such a coalition can be used by China’s as justification to further its assertiveness.

Nevertheless, there are roles that the United States, Japan, and India can play in three areas. First, these three states could trilaterally support and facilitate the political momentum of the ASEAN–China dialogues to implement DOC, establish hotlines at the Ministry of Foreign Affairs level, and conclude COC. The three states share the political

¹⁵ Ministry of Foreign Affairs of Japan, “Arbitration between the Republic of the Philippines and the People’s Republic of China regarding the South China Sea (Final Award by the Arbitral Tribunal) (Statement by Foreign Minister Fumio Kishida) July 12, 2016, http://www.mofa.go.jp/press/release/press4e_001204.html; US Department of State, “Decision in the Philippines-China Arbitration,” July 12, 2016, <http://www.state.gov/r/pa/prs/ps/2016/07/259587.htm>; Ministry of External Affairs, India, “Statement on Award of the Arbitral Tribunal on South China Sea under Annex VII to the UNCLOS,” July 12, 2016, <http://www.mea.gov.in/press-releases.htm?dtl/27019/statement+on+award+of+arbitral+tribunal+on+south+china+sea+under+annexure+vii+of+unclos>.

posture of respecting the peaceful resolution of conflict, and this shared attitude should be publicly addressed more clearly, even though it would be the lowest common denominator. Unhelpfully, the three states have yet to produce any trilateral joint statement, even though the US–Japan–India trilateral strategic dialogues at the General Director level and the Foreign Minister level have been conducted since 2011.¹⁶ As the ASEAN decisions are shared by the Southeast Asian claimant states and China, such a political declaration cannot plausibly be used as China’s justification for its assertiveness while simultaneously signalling political support for ASEAN states and its attention to the South China Sea situation.

Secondly, the United States, Japan, and to a lesser extent India, can continuously promote capacity building programs for the Southeast Asian states. The conventional balance of power politics suggests that non-claimant states can strengthen their alliance and alignment to counterbalance China’s assertiveness by issuing political statements regarding the stability and their potential involvement in the South China Sea, such as conducting joint patrols and military exercises with claimant states. However, China can again easily criticise these actions and use them as a justification for reactive assertiveness. Moreover, the coast guards in the Southeast Asian countries, whose capabilities have been remained low except in Singapore, have begun to play a vital role in maintaining stability in the regional strategic landscape due to the emergence of “grey zone” situations. In this sense, each state would help to strengthen coast guards’ capabilities as a significant component of internal balancing. The capacity building program would include education, joint trainings, technical cooperation, technological transfer, maritime domain awareness, and patrol vessel transfer. Japan has been active in providing such capacity building programs to Southeast Asian states such as the Philippines, Vietnam, and Malaysia.

Moreover, coast guard capacity building in terms of regional information sharing and confidence building measures (CBMs) should be taken into account. Admittedly, there are coast guard forums already existing in Asia, such as the Heads of Asian Coast Guard Agencies Meeting (HACGAM) and North Pacific Coast Guard Agencies Forum (NPCGF). However, their geographical scopes are limited to Northeast Asia and broader Asia, which do not include the United States. In this sense, the framework of the East Asia Summit (EAS), which includes ASEAN member states, China, Japan, India, and the

¹⁶ 外務省「最近のインド情勢と日インド関係」2016年4月, p. 2,

<http://www.mofa.go.jp/mofaj/files/000147456.pdf>.

United States and now considers “maritime security” as an EAS priority area of cooperation, would be suitable for creating the EAS version of the Coast Guard Forum. As the CBM proceeds, the United States, Japan, and India should advocate for establishment of the coast guard version of the Code for Unplanned Encounters at Sea (CUES), just as Singapore proposed to expand CUES to both naval vessels and coast guards in ASEAN–China relations in 2016, which reduces the possibility of accidents among the coast guard.

Thirdly, regional great powers, particularly Japan, should mitigate strategic uncertainty caused by domestic political change in the Philippines and the 2016 US presidential election. As described above, the Philippines’ potential foreign policy shift partly derives from the uncertainty of US foreign policy towards Asia under the next administration. While actual shifts remain to be seen, Asian states need to prepare for such a contingency. A grave risk in this process is that if the Philippines engage with China without respecting the tribunal award as part of its concession, this would not only negatively affect the viability and validity of international law, but also have an abrupt impact on East Asia’s strategic landscape. In this sense, Japan – which has recently nurtured a strategic relationship with the Philippines and has long aligned with the United States in matters of security – should help to bridge the current political gap between the United States and the Philippines by facilitating bilateral communication regarding the strategic value of US alliances for East Asian stability.

The South China Sea issue has entered a new stage due to the 2016 tribunal award. However, this does not necessarily mean that the situation will change for the better. In order to further economic and security stability in the South China Sea and East Asia, a number of actions need to be undertaken: it is crucial that China be prevented from using its current *fait accompli* and reactive assertiveness strategy through engagement with ASEAN in the short term; that states maintain the validity of international law by implementing it in the South China Sea and beyond; and that the tribunal award be used to full advantage as leverage to facilitate political concessions from China to claimant states.