



DELHI POLICY GROUP

Advancing India's Rise as a Leading Power

DGP Roundtable Reports, Vol. I, No. 1 Roundtable on "SOUTH CHINA SEA DISPUTES"

India International Centre | New Delhi | July 21, 2016



DPG Roundtable on "South China Sea Disputes"

July 21, 2016

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Abstract

DPG organized a roundtable on “South China Sea Disputes” on July 21, 2016. The event was well attended by around 50 participants from think tanks, the strategic community and diplomats.

The roundtable focused on the background to the disputes, the implications of the PCA Tribunal’s ruling of July 12, 2016 on maritime rights in the South China Sea, the reaction of China and other powers and the geo-strategic implications for India. Speakers and participants pointed to the need for moving beyond the present impasse towards diplomatic solutions, which required restraint and measured responses from all concerned. In this context, India’s response has been suitably nuanced and conciliatory in tone, but at the same time preserves India’s considerable security and economic interests in the South China Sea. There was agreement that in addition to upholding a rules-based regional order and supporting cooperative regional security architecture, India must also continue to build capacity for net security provision and thereby provide greater reassurance for its South East Asian neighbours.

DPG does not take specific policy positions; accordingly, all views, positions, and conclusions expressed in this publication should be understood to be solely those of the author(s).

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Programme



DELHI POLICY GROUP



FORUM
FOR
STRATEGIC INITIATIVES

FSI

DPG-FSI-IIC Roundtable

on

South China Sea Disputes

Venue: Conference Room No.2
India International Centre, Lodhi Road, New Delhi

July 21, 2016

Programme

- | | | |
|-----------------|---|--|
| 1430 – 1500 hrs | : | Registration |
| 1500 – 1515 hrs | : | Opening Remarks |
| | : | Welcoming Remarks by Ambassador Hemant Krishan Singh, DG, DPG |
| | : | Remarks by Session Chair: Ambassador Nalin Surie, DG, ICWA |
| 1515 – 1700 hrs | : | Roundtable and Discussion |
| 1515 – 1545 hrs | : | Speaker 1: Vice Adm. Anup Singh (Retd.), Senior Fellow, DPG |
| 1545 – 1600 hrs | : | Speaker 2: Ambassador Biren Nanda, Senior Fellow, DPG |
| 1600 – 1615 hrs | : | Speaker 3: Brig. Arun Sahgal (Retd.), Executive Director, FSI |
| 1615 - 1700 hrs | : | Discussion |
| 1700 hrs | : | Tea/coffee at Terrace Pergola (adjacent to Conference Room II) |

Opening Remarks
by
Ambassador Hemant Krishan Singh,
Director General, DPG

General

1. SCS issues are both complex and critical for a rules-based international order in the seas and oceans.
2. As China's relentless "island creeping" activities have progressed in the SCS, tensions have risen and distinctions between territorial claims and maritime rights have blurred.
3. Before the PCA ruling, China's unilateral assertions of "indisputable sovereignty" within the so-called "Nine-Dash Line" have been met largely with a combination of helplessness and inaction, creating a sense of inevitability in China's favour.
 - o Is the SCS China's own "blue water territory"?
 - o Does China claim all islands in the SCS?
 - o Is China assuming for itself all maritime rights?
 - o Will the South China Sea turn into an enclosed internal water?
4. Some non-Chinese experts and strategists point out that China in fact does not have any strong historical presence or claim over the SCS. The Spratlys were never mentioned as Chinese territory in WW2 settlements. British and French claims preceded. Japan held the Spratlys during the war but it also held Philippines, Malaysia and Myanmar. In this discourse, China never lost the SCS islands because it never owned them.
5. China perhaps made the mistake of opting out of a case which concerned maritime rights generated by SCS features - not territorial rights or ownership.
6. China itself has precipitated matters through three decades of incursions and pressures on neighbours which led the Philippines to take the matter to arbitration. Breakdown of progress on a code of conduct with ASEAN was another factor which spurred action by Manila.

PCA Verdict

7. Clearly, this has been the most anticipated and consequential decision of the PCA since UNCLOS was established in 1982. Under the treaty, any state party can unilaterally initiate proceedings, hence the PCA action was perfectly in order.
8. China's attempt to interpret UNCLOS in the light of its own historical and cultural sense of superior entitlement has now been upended: the PCA has ruled that China has no right to assert "historical rights" to resources in the EEZ of other states in the SCS, based on the Nine-Dash Line Map.
9. The PCA has not ruled on the Nine Dash Line itself, which remains relevant for showing the location of islands in the SCS over which China claims both sovereignty and maritime rights. But here again, maritime rights under UNCLOS are related to the definition of "island" under Article 121 of UNCLOS. The PCA ruled that none of the disputed Spratlys are islands entitled to an EEZ and continental shelf, only to 12 NM territorial sea.
10. Hence, the ruling clarifies that:
 - There are no overlapping EEZ claims in the EEZ of the Philippines.
 - There is no legal basis for China to claim fishing or hydrocarbon resources in the EEZ of ASEAN claimants bordering the SCS, nor any "historical rights" to resources.
 - Low tide elevations like Mischief Reef are located in the EEZ of the Philippines. Chinese constructions there are illegal.
 - **Waters in the SCS outside a 12 NM territorial sea from the Spratly Islands are open to all states to exercise freedoms of the high seas: navigation, overflight, military passage.**

China's Reaction

13. For some experts, in its statement and White Paper, China now implies that it does not in fact claim historical rights over the entire area within the Nine-Dash Line. But this is in contradiction of the fact that China has pushed naval patrols and coercive denials along the outer edge of the line.
14. At the same time, Beijing's rejection of the PCA verdict is total. It has reiterated its historical claim to territorial sovereignty and "relevant rights and interests" over islands in the SCS.

15. The question is, what happens next. The ruling clarifies legal issues but does not mitigate geo-political interests and competition. If China persists with its posture and continues coercive pressures, it will likely invite more opposition and place its global engagement at risk.
16. Thus far, we have seen enormous pressures on the Philippines not to put forward claims based on the PCA verdict, and the announcement of regular air patrols and military exercises by China in the SCS.
17. There will also be pressure on the US to step up support for allies and partners.
18. The struggle for mastery of the SCS is thus likely to continue. In the short term, tensions may in fact rise. What remains to be seen is what kind of great power China wishes to be, with the inherent danger of over-reach.

India's Reaction

17. Commendable consistency and balance in support of a rules- based international order.
18. Clear articulation of India's geo-political and geo-economic concerns over the SCS: security and stability of seas connecting the Indian and Pacific Oceans, which is indispensable for regional peace; and the criticality of sea lines of communication passing through the SCS (nearly 40% of India's trade).
19. By reiterating freedoms of the maritime commons, support for UNCLOS and appealing to all parties to respect UNCLOS, India's reaction implicitly calls attention to China's unilateral defiance of the international order of the seas.
20. There is also implicit encouragement to ASEAN and other countries towards building a regional consensus for self-restraint and peaceful resolution of disputes.

**Opening Remarks by the Chair,
Ambassador Nalin Surie,
Director General, ICWA**

- Opening Remarks by the Chair, Ambassador Nalin Surie

We find ourselves in a strange paradox. In the South China Sea, we have a judgment that was anticipated even though it was not expected to go as far as it has in favour of the Philippines. And now, the silence after the initial Chinese posturing, is eerie and even threatening. The Philippines reaction has been measured.

Let us face it. This was a proxy battle between China & the USA.

This is thus the time to test whether there is indeed a new form of Great Power relationship evolving or in place between the United States and China. The aspiring Great Power has lost face; it may even be wounded. The established Great Power (and its principal allies in the region) has made the necessary political noises but kept its powder dry and urged caution.

Nationalistic and patriotic sounds have emerged from China. The government has as expected rejected the Tribunal's award. But, both the Chinese Foreign Office and the Chinese Government stated on 12 July 2016 that China stands ready to continue to resolve the relevant disputes peacefully through negotiation and consultation with the states directly concerned on the basis of respecting historical facts and in accordance with international law. Pending final settlement, China is ready to make every effort with the states directly concerned to enter into provisional arrangements of a practical nature, including joint development in relevant maritime areas etc.

The Chinese government's statement further clarifies that China respects and upholds the freedom of navigation and overflight enjoyed by all states under international law in the SCS and stays ready to work with other coastal states and the international community to ensure the safety of and unimpeded access to international shipping lanes in the SCS.

Importantly, a Chinese White Paper issued on 13 July 2016 adds some conditionalities when it says that when exercising the above mentioned rights in the SCS, relevant parties shall fully respect the sovereignty and security interests of coastal states and abide by the laws and regulations enacted by coastal states in accordance with UNCLOS and other rules of international laws. Further, that peace, stability, prosperity and development in the SCS region is the shared

responsibility of China & ASEAN member states and serves the common interests of all countries. In effect, outsiders stay out.

It is interesting to note here India's position on the issue, articulated on 12 July 2016. The spokesperson stated that India supports freedom of navigation and overflight and unimpeded commerce based on the principles of international law, reflected notably (but not exclusively) in the UNCLOS. It was further clarified that in India's view SLOCs passing through the SCS are critical for peace, stability, prosperity and development. Finally, India has urged all parties to show utmost respect for UNCLOS and urged that states should resolve disputes through peaceful means without threat or use of force etc.

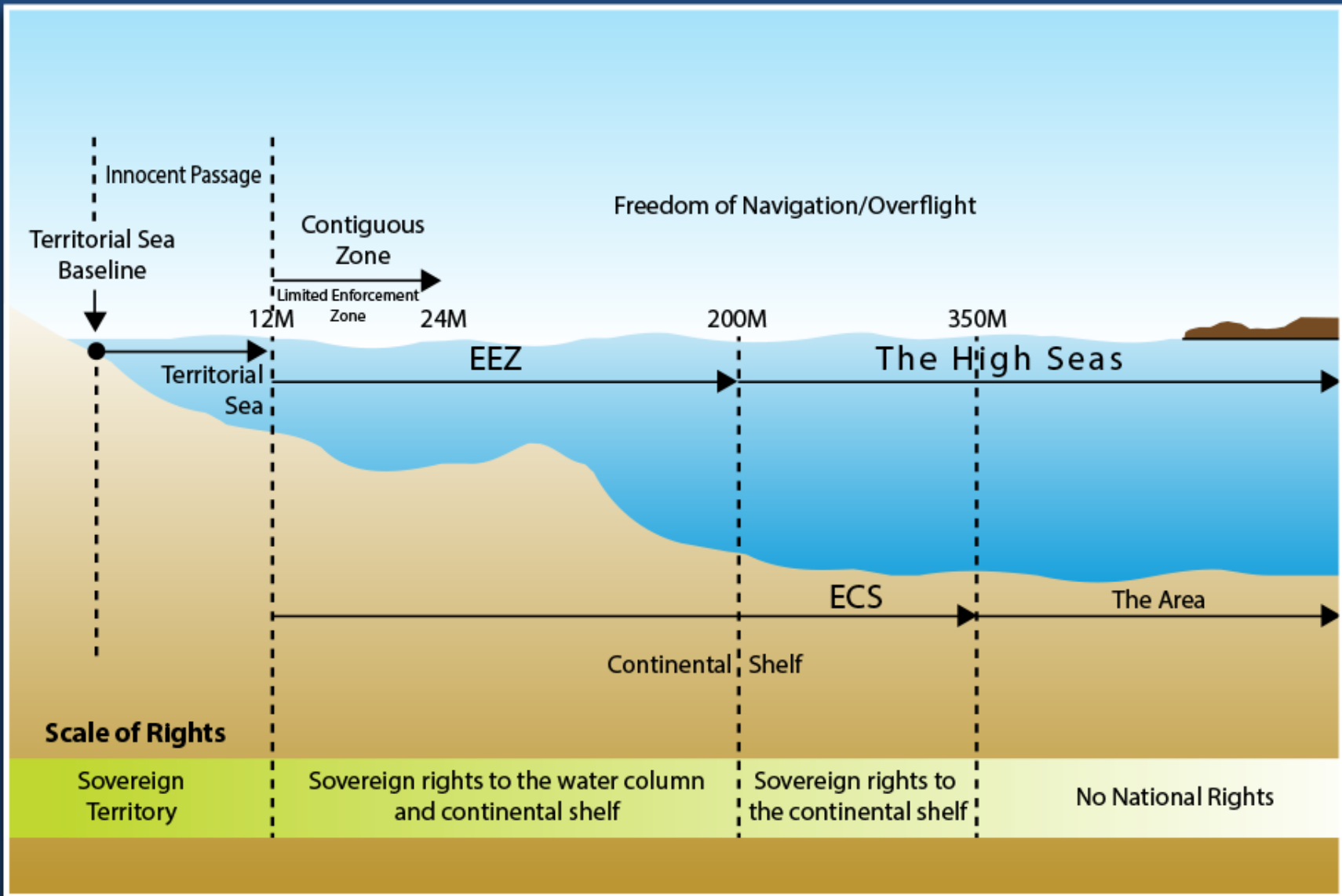
It is necessary especially for China and the United States to handle the outcome of the Tribunal's decisions with great care. The alternative cannot be simply threatening but also seriously disrupt the framework of cooperation that has been built up in the Asia Pacific. This is an area that is vital for India and it is important that sane minds, including from India, help find a face saving solution. Military moves and counter moves can easily go out of hand and are best avoided. Triumphalism has not brought success in Europe following the end of the Cold War. The outcome of such an approach in Southeast and East Asia may not be dissimilar and could give rise to long term complications and difficulties that threaten peace, stability and prosperity in our region.

If steps are taken in the SCS that affect our interests, we will necessarily have to take counter measures in sea/ocean areas where we have effective control.

**Presentation on
“South China Sea PCA Ruling”
by
Vice Adm Anup Singh,
Senior Fellow, DPG**

SOUTH CHINA SEA

PCA RULING



Scale of Rights

Sovereign Territory

Sovereign rights to the water column and continental shelf

Sovereign rights to the continental shelf

No National Rights









THE TRIGGER

- **SCARBOROUGH SHOAL ???!!!**
- **EVEN THOUGH IT WAS THE FINAL TRIGGER, ACTUALLY A SERIES OF INCIDENTS MADE THE PUSH TO LEGAL RECOURSE**

THE TRIGGER

- *1995 – CHINA SEIZED MISCHIEF REEF, HARASSMENT BEGINS*
- *1999 – CHINA IMPOSED 3 MONTH FISHING BAN AROUND PARACELS, MACCLESFIELD, SCARBOROUGH*
- *2009 ONWARDS, AGGRESSIVE BEHAVIOUR*
- *2011 – REED BANK HARASSMENT, CHINA CG HARASSED PHILIPPINE SURVEY VESSEL (REED BANK), FOLLOWED BY NOTE VERBALE, PROTESTING AREAS 3, 4*
- *2012 – SCARBOROUGH SHOAL*
- *ALL WATERS, SEABED, SUBSOIL (9-D LINE?!!)*

- TERRITORIAL DISPUTE
- MARITIME DISPUTE – 6 COUNTRIES
- THE ARBITRATION WAS SOLELY A MARITIME DISPUTE INVOLVING INTERPRETATION (AS ALSO) THE APPLICATION OF UNCLOS

THE CASE

- WHETHER THE 9-DASH LINE CAN ENCROACH ON THE PHILIPPINES' 200 NM EEZ? – *NO LEGAL BASIS*
- WHETHER CHINA HAS HISTORIC RIGHTS – *NO*
 - UNCLOS CLEAR ABOUT EEZ/RIGHTS TO FISH
 - ANY HISTORY PRIOR UNCLOS IS *"HISTORY"* NOW
 - CHINA FISH(ed) AS PART OF *"HIGH SEAS" FREEDOM*
 - *NO EVIDENCE* OF HISTORICAL EXCLUSIVE CONTROL

- STATUS OF FEATURES – **UNCLOS CLASSIFIES FEATURES/ ZONES DEPENDING UPON THEIR NATURAL CONDITION**, (NOT ON ARTIFICIALLY BUILT ESTATES)
 - **AGREED WITH PHIL'** ON ALL ITS REFERENCES TO FEATURES EXCEPT ON TWO REEFS
 - ALSO DECLARED ***ALL FEATURES IN THE SPRATLYS ARE ROCKS (incl ITU ABA!)***
 - SIGNIFICANTLY, THAT **UNCLOS DOES NOT PROVIDE FOR A GROUP OF IS LIKE SPRATLYS TO GENERATE MAR ZONES COLLECTIVELY.**


- CHINESE ACTIVITIES (LAWFULNESS) – MISCHIEF R, 2ND THOMAS, REED BANK BEING LTES, WITHIN PHIL'S EEZ & CS, COMPLETELY FALL WITHIN ITS SOVEREIGN RIGHTS; CHINA HAS VIOLATED PHIL' SOVEREIGN RIGHTS IN EEZ AND CS
 - *CHINA HAD INTERFERED* WITH EXPLORATION
 - **PURPORTED TO PROHIBIT FILIPINOS FISHING**
 - *PROTECTED AND FAILED TO PREVENT CHINESE FISHERMEN WITHIN PHIL' EEZ*
 - **CONSTRUCTED INSTALLATIONS AND ART ISLANDS AT MISCHIEF REEF WITHOUT PHIL'S PERMISSION**

- “TRADITIONAL FISHING” AT SCARBOROUGH – *CHINA HAD VIOLATED PHIL’S RIGHTS* TO FISH
- EFFECT ON MARINE ENVIRONMENT – **RECLAMATION ON 7 FEATURES HAS CAUSED SEVERE HARM TO CORAL REEF ENVIRONMENT AND CHINA VIOLATED OBLIGATIONS** UNDER UNCLOS
 - *ALSO ENGAGED IN HARVESTING ENDANGERED SPECIES WITH METHODS INFLECTING SEVERE DAMAGE TO CORALS*
 - *CHINESE FULLY AWARE/FAILED DUE DILIGENCE*

- LAWFULNESS IN CHINA OBSTRUCTING PHILIPINO VESSELS FROM GAINING ENTRANCE TO SCARBOROUGH SHOAL APR/MAY 2012 – “FOUL” DELIBERATELY CREATING RISK OF COLLISION
 - *BREACHED ITS OBLIGATIONS UNDER UNCLOS ON MARITIME SAFETY*

- AGGRAVATING DISPUTE (RECLAMATION ON 7 FEATURES) – **OF COURSE, STARTING WITH MISCHIEF REEF [WITHIN PHIL' EEZ], AND PERMANENTLY DESTROYED EVIDENCE OF NATURAL CONDITION**
 - **SHOULD HAVE ABIDED BY THE DUTY TO REFRAIN FROM AGGRAVATING DISPUTE DURING PENDENCY OF SETTLEMENT**

- RESPECT RIGHTS AND FREEDOMS OF PHILIPPINES, COMPLY WITH ITS DUTIES UNDER UNCLOS
 - **UNCLOS DICTATES THAT AWARD SHALL BE COMPLIED WITH BY THE PARTIES**



What you do not want done to yourself,
do not do to others.

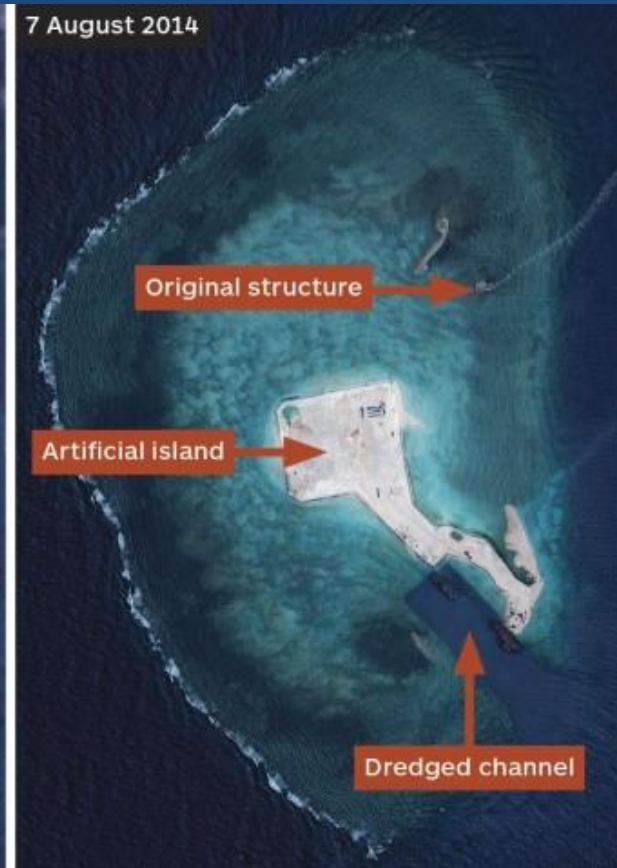
-Confucius

HUGHES REEF

30 March 2014

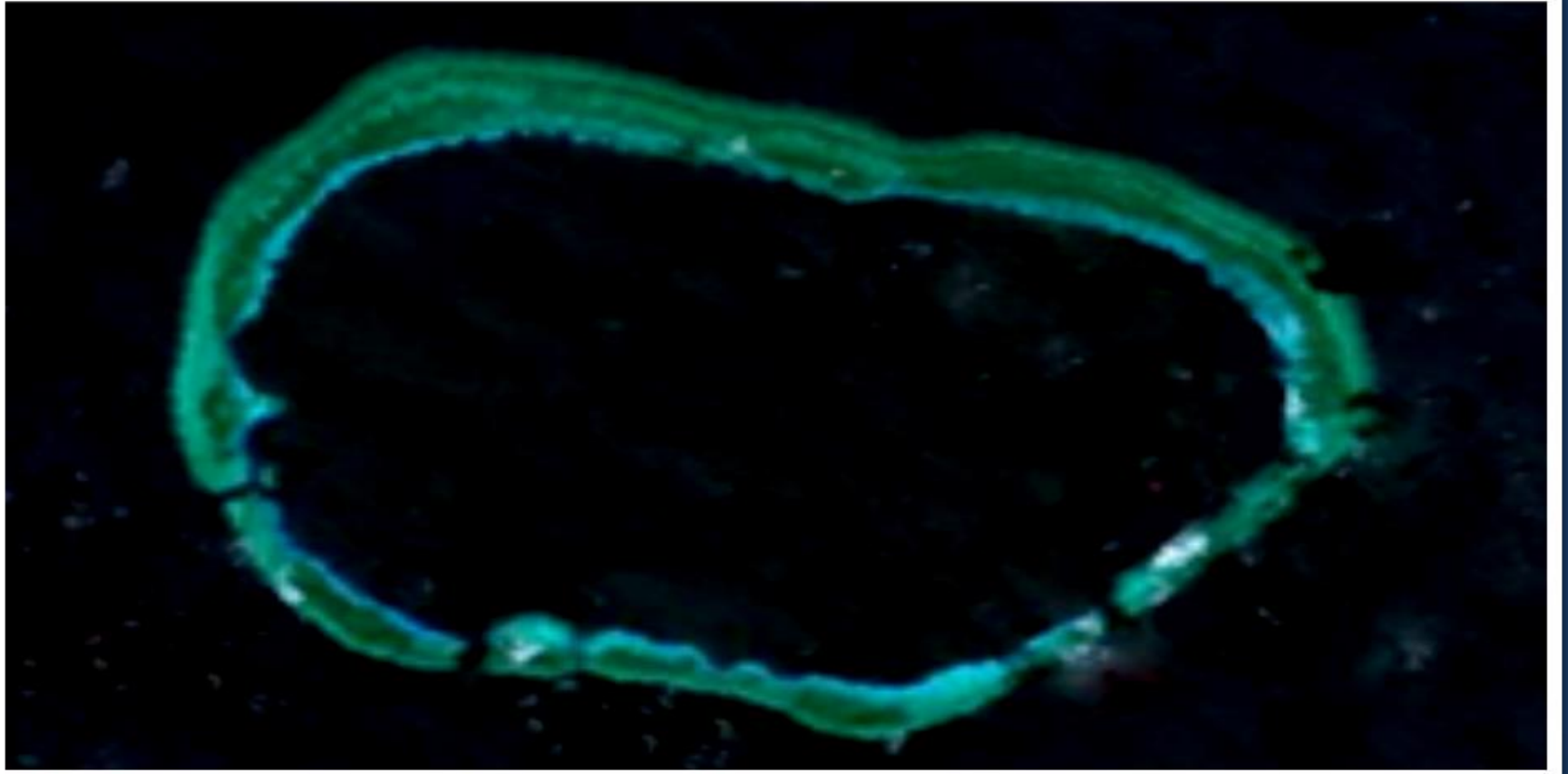


7 August 2014



30 January 2015







永暑岛想像图

南海ason007







Military-Today.cc





Newly reclaimed portion approx 300 meters long possibly location for another lighthouse







UNPRECEDENTED MIL BUILD UP

- **RECORD NO: OF NAVAL PLATFORMS**
- **NAVAL AVIATION TOO IN EXPONENTIAL GROWTH**
- **CDR PLA (N) HIMSELF VISITED RECLAIMED ISLANDS**
- **MILITARISATION (SCS) WITH PURPOSE**



“CHINA WILL NEVER GIVE UP HALFWAY”

**“SUFFICIENT PREPARATIONS TO DEAL WITH
INFRINGEMENTS/PROVOCATIONS”**

**“ANY ATTEMPT TO INTIMIDATE/FLEX MIL MUSCLE
WILL ONLY BACKFIRE”!!**

**“LEVEL OF DEFENCE DEPENDS ON THE THREATS WE
FACE”**

Presentation on
“Chinese Reaction to the PCA Award”
by
Ambassador Biren Nanda,
Senior Fellow, DPG

The Chinese Narrative

The Chinese narrative is best described in an Article published in a recent issue of the *National Interest* by Ms Fu Ying Chairperson of the Foreign Affairs Committee of China’s National People Congress and Wu Shicun President of China’s National Institute of South China Sea Studies. It goes something like this:

Prior to the 1930s there was no dispute on Chinese sovereignty over the four archipelagoes- Xisha, Nansha, Zongsha and Dongsha - comprising the Spratlys and the Paracels - indicated by dash lines on the map of 1947.

The Cairo Declaration of 1943 stated that Japan would be stripped of all islands in the Pacific and territories taken from China by the Japanese would be returned.

The San Francisco Peace Treaty to which PRC was not invited was silent on the return of former Chinese territories to China. Under the treaty the United States deemed the Taiwan authorities as China’s legitimate Government to take over the Islands.

The PRC then issued a Declaration on the Draft Peace Treaty stating that the Chinese Government of the day had taken over the Islands and the PRC’s rightful sovereignty would remain intact.

The discovery of gas and oil reserves led to a steady encroachment of the Nansha (Spratlys) Islands by the Philippines and South Vietnam – and later Vietnam - in 50s, 60s and 70s. These countries were joined by Malaysia in the 80s. It was only in the late 80s that China began to take control of six minor islands and reefs.

The US demonstrated its acknowledgement of Chinese sovereignty over these islands by making diplomatic enquiries, nautical chart measurement requests and flight plan notifications to the Taiwanese authorities in the 50s and 60s.

Throughout the 1990s the rapid development of China ASEAN relations largely masked seething contention in the South China sea. There was a new wave of unilateral occupation of Nansha (Spratly) islands and the development of oil and gas deposits by some countries.

The most extreme behavior was by the Philippines, which in 1994 blew up survey markers installed by China on a number of atolls and reefs and detained 62 Chinese

fisherman near Banyue shoal (100 Km from Palawan). In 1997 Philippines blew up the territory monument China had erected on Huang Yuan Island (Scarborough reef).

In March 2000 China and the ASEAN discussed the 'Code of Conduct' but due to differences it was decided to issue a compromise non binding Declaration on the Conduct of Parties in the South China Sea. The DOC issued in 2002 enjoins the Parties to resolve territorial and jurisdictional disputes by peaceful means without resorting to threat or use of force through friendly consultations and negotiations.

Since the adoption of the DOC China is the only country, which has abided by the document. Vietnam has been the biggest violator and was joined by Philippines and Malaysia who expanded facilities on Islands occupied by them and the development of oil and gas around them.

The situation became complicated after 2009 due to the official deadline set by the UN Commission on the Limits of the Continental Shelf (May 15, 2009) and the introduction of the US Asia Pacific rebalancing strategy. Meanwhile the US and China had a number of confrontational incidents in the South China Sea.

In July 2011, China and the ASEAN countries adopted the "Guidelines to implement the DoC" in Bali. Bilateral negotiations with Vietnam and the Philippines were offset by the US rebalancing and unabated reclamation effort by Vietnam and Philippines who also organized joint military exercises.

The Chinese activity on the reefs and islands is only maintenance work and has been misunderstood. There is no threat to the freedom of navigation in South China Sea.

The US has accelerated proactive and coercive action against China to impose costs on China. China is only seeking the protection of her territorial integrity, sovereignty and maritime rights.

China and the US share common strategic interests in maintaining the freedom and safety of navigation and promoting stability and prosperity in the South China Sea.

This was the official Chinese Narrative on the unfolding of the territorial dispute in the South China Sea.

Next we turn to the implications of the Tribunal Award

The Arbitration Award decisively held against China's maritime claims in the South China Sea. Last October the arbitral tribunal looked into the issue of jurisdiction and

it concluded it had jurisdiction under Article 288 of UNCLOS.

The Philippines carefully crafted its complaint to avoid raising issues concerning sovereignty and maritime delineations. To preserve its jurisdiction in the case, the PCA also acted cautiously and did not issue any direct conclusions regarding sovereignty disputes between China and Philippines in the South China Sea. Despite this restraint, the effect of the Tribunal's ruling is far-reaching.

The PCA concluded that China has not clarified the nine dash line officially and one potential explanation as a claim of historical rights was inconsistent with the UNCLOS and indeed was extinguished when China acceded to the Convention.

The PCA averred that protections for preexisting rights to resources were considered, but not adopted in the Convention. Accordingly, the Tribunal concluded that, to the extent China had historic rights to resources in the waters of the South China Sea, such rights were extinguished wherever they were incompatible with the exclusive economic zones provided for in the Convention.

The PCA also noted that, although Chinese navigators and fishermen, as well as those of other States, had historically made use of the islands in the South China Sea, there was no evidence that China had historically exercised exclusive control over the waters or their resources. The PCA concluded that there was no legal basis for China to claim historic rights to resources within the sea areas falling within the 'nine-dash line'.

The Tribunal next considered entitlements to maritime areas and the status of features. It first undertook an evaluation of whether certain reefs claimed by China are above water at high tide. Features that are above water at high tide generate an entitlement to at least a 12 nautical mile territorial sea, whereas features that are submerged at high tide do not.

The Tribunal noted that the reefs have been heavily modified by land reclamation and construction, and recalled that the Convention classifies features on their natural condition. It therefore relied on historical materials in evaluating the features.

Under the Convention, islands generate an exclusive economic zone of 200 nautical miles and a continental shelf, but "[r]ocks which cannot sustain human habitation or economic life of their own do not have any exclusive economic zone or continental shelf."

This provision depended upon the objective capacity of a feature, in its natural condition, to sustain either a stable community of people or economic activity that is not dependent on outside resources or purely extractive in nature.

The Tribunal noted that the current presence of official personnel on many of the features is dependent on outside support and not reflective of the capacity of the features.

The Tribunal found historical evidence to be more relevant and noted that the Spratly Islands were historically used by small groups of fishermen and that several Japanese fishing and guano mining enterprises were attempted.

The Tribunal concluded that such transient use does not constitute inhabitation by a stable community and that all of the historical economic activity had been extractive. Accordingly, the Tribunal concluded that none of the Spratly Islands is capable of generating extended maritime zones. The Tribunal also held that the Spratly Islands cannot generate maritime zones collectively as a unit.

Having found that none of the features claimed by China was capable of generating an exclusive economic zone, the Tribunal determined that it could - without delimiting a boundary - declare that certain sea areas are within the exclusive economic zone of the Philippines, because those areas are not overlapped by any possible entitlement of China.

The PCA award was therefore a sweeping rejection of China's claims.

Chinese Reaction

China greeted the PCA award with naval drills in the South China Sea. The Chinese air force has also stepped up patrols over the disputed area.

The verdict will be read as another "national humiliation" in China. Mortified at the prospect of the Philippines gloating at the PCA verdict the Chinese Ambassador in the Philippines conveyed a set of Do's and Don'ts for the Philippines Government and insisted that they should engage directly with China and set aside the verdict.

China has embarked on a massive political campaign to challenge the legitimacy of the arbitration and defend its expansive claims over the South China Sea. China has also attacked the credibility of the Judges on the PCA panel accusing them of anti-China bias and having been paid for by Manila.

China released a Statement by the Foreign Ministry immediately after the Award

The statement contained five numbered points, each explaining a different aspect of China's position. The Statement says that the PCA award denies China's territorial sovereignty, maritime rights and interest in the South China Sea. Elsewhere the statement stresses China's commitment to resolve disputes through negotiations on the basis of respecting historical facts and in accordance with international law. The statement made no mention of the Nine dash line.

China also issued a White Paper, which stressed China's commitment to settle outstanding issues in the South China Sea through negotiation. In its White Paper China reiterated the historical basis of its claims.

China says it won't accept the arbitration award¹ because the Court had no jurisdiction in the case, and China does not accept any dispute resolution from a third party nor any dispute resolution forced on China.

The Chinese Government pointed out that pursuant to article 288 of UNCLOS it had made a Declaration in 2006 excluding maritime delimitation issues from arbitration and compulsory dispute settlement procedures. China points out that 30 countries including Australia and four members of the P-5 have done the same. The US of course is yet to accede to UNCLOS. In disregard of these facts the Tribunal has chosen to admit the case and deliver the award. China however, remains committed to a resolution through direct negotiations with the countries concerned.

China rejects Philippines contention that bilateral negotiations had reached an impasse. China says by initiating arbitration the Philippines goes back on the consensus reached between China and ASEAN in 2002 when the Declaration on the Conduct of Parties was signed and all Parties agreed that the dispute should be settled through friendly consultations and negotiations by sovereign states directly concerned. The Philippines unilateral initiation of arbitration was therefore in bad faith and breached the agreement between the two States, violated UNCLOS and went against the practice of international arbitration.

China also said it retained its right to proclaim an air defense identification zone in the South China Sea.

Striking a conciliatory tone the Chinese Ambassador to the UK Mr Liu Xiaoming urged all parties to the dispute to come to the negotiating table and accept a

¹ China regards the award null and void and having no binding force.

Chinese proposal to shelve disputes and work towards joint management of resources.

Finally, China reiterated its commitment to abide by international law and the UN Charter, - including the principles of respecting state sovereignty, territorial integrity and peaceful settlement of disputes.

However, what is important is that China has not declared the Air Defense Identification Zone over the South China Sea, moved to begin the reclamation of the Scarborough Shoal², sanctioned the Philippines or announced the intent to withdraw from the UNCLOS. China has also not exhibited any hyper-nationalist reaction or demonstrations as occurred after the NATO bombing of the Chinese Embassy in Belgrade in 1999 or the Japanese nationalization of the Diaoyu Islands in 2012. By reiterating its commitment to the DOC, China has left the door open for negotiations with other parties to the dispute.

China sees the South China Sea issue as a major catalyst for troubled US China relations and believes that as a result the two sides appear to be reassessing each other's intentions on a strategic level.

China's objective remains to pressure the US into accepting China's role in Asia as well as its strategic status as a world power.

US Reaction

In a Statement issued after the award the US stated three things:

First, it strongly supported the rule of law and efforts to resolve territorial and maritime disputes in the South China Sea peacefully, including through arbitration.

Second, as provided in the Convention, the Tribunal's decision was final and legally binding on both China and the Philippines.

Third, The US has urged all Parties to the dispute to avoid provocative statements or actions.

The US narrative sees China in defiance of international law, coercing smaller neighbors, attempting denial of access to the US navy and attempting to take over control of the South China Sea.

² Though Xinhua said that the construction would not stop half way

The US has also maintained that

It will not take sides in the sovereignty disputes in the South China Sea.

and it will sail, fly and operate wherever International Law allows.

So What's next

The Philippines reaction has been upbeat but restrained. They regard the ruling as a basis on which negotiation can be held to peacefully resolve the disputes. After getting a taste of China's heavy hand the Philippines Foreign Secretary rejected any offer from China to engage in talks outside off and in disregard of the ruling. It would appear that while the Philippines may have won the award, it has simultaneously limited its space for bilateral negotiations with China that would follow the award.

Other Southeast Asian parties directly involved – Vietnam, Malaysia and Indonesia – have reacted with restraint and circumspection – and called for a continuation of efforts towards the peaceful resolution and management of disputes in the South China Sea.

It is possible to identify **three strategic trends**. First, power asymmetry and interdependence between China and Southeast Asia will continue to grow. While China's neighbors should not give up their claims, out of considerations of national interest they do have to sustain relationships with China that are wider than the South China Sea dispute.

Second, the United States is no longer the only great power operating in maritime Southeast Asia. The US and China must find mutually acceptable rules for maritime usage.

Third, China is most likely to continue on its path of development within the existing international order because it has benefitted enormously from it and because its economic partners sit within it.

China's propaganda blitz against the ruling notwithstanding, it will soon begin to fear a blow to its global reputation if it is seen flouting international law. The power of international law is after all primarily reputational and measured in terms of legitimacy.

US allies and friends look to the US to maintain safety of maritime lines of communication and to maintain peace and stability in the region. If nations in

Southeast Asia lose faith in the US as the principal security guarantor, a potentially costly and destabilizing arms buildup amongst regional countries could ensue.

What about the possibility of Armed clashes in the South China Sea? The US has been conducting its freedom of navigation patrols in the South China Sea based on the right to innocent passage of warships. Post the award the divergence of points of view on the issue of territorial sea, EEZ and sovereignty in the Spratlys is greater than ever before. Thereby aggravating the chances of an incident at sea.

Three possible scenarios arise: A clash stemming from US military operations in China's EEZ which provokes an armed response. The US holds that under UNCLOS all nations have the right to conduct military operations in a coastal States' EEZ. China insists that reconnaissance activities carried out without prior notification and permission of the coastal state violate Chinese domestic and international law. There have been Chinese interceptions of US aircraft in the past including the 2001 incident involving a collision between US and Chinese aircraft.

Second there could be a conflict between China and the Philippines over oil exploitation in the disputed area of the Red Bank located 80 nautical miles from Palawan. The US could be drawn into such a conflict because of the 1951 Mutual Defense Treaty with the Philippines.

Third, there could be a clash between China and Vietnam over seismic surveys or drilling for oil and gas. The United States is less likely to be drawn into a conflict between China and Vietnam.

Each year 5.3 trillion dollars worth of trade passes through the South China Sea of which the US accounts for US \$1.2 trillions. Should a crisis occur there would be costly diversion of ships along alternate routes to and from the Pacific. Exploitation of resources by clamant countries would also be adversely affected.

What is needed is a diplomatic solution, which could reverse course in some areas and shelve certain disputes and give a face saving exit to the parties in each dispute. The US could also restrict its forward deployment, which China resents as part of the solution.

One way the Southeast Asian countries can occupy the high moral ground is for ASEAN to agree on a COC, which is consistent with international law. Having done so the ASEAN can try to persuade China to join.

**Presentation on
“Strategic Perspectives of SCS
Arbitration Decision”
by
Brig. Arun Sahgal,
Senior Visiting Fellow, DPG**

Introduction

1. Chinese reaction outlines stridency and unwillingness under all circumstances to concede jurisdiction over SCS or retract from its claims. Not that the verdict was unknown, perhaps the nature of verdict demolishing all their historical claims and in a sense highlighting its maritime grab, was too damning and consequences too far reaching perhaps beyond expectations. Verdict has squarely put shadow boxing between China and US aside and laid bare Sino – US tussle for influence in Asia Pacific. What the verdict has managed to achieve?
2. As things stand today, China as an emerging global power cannot be seen as to succumbing to Western machinations. Similarly US despite its measured and somewhat nuanced stand cannot and will not ignore the verdict and is expected along with its regional allies will insist upon China accepting the basic features of PCA verdict for upholding the basic tenants of UNCLOS in a rule based international order.
3. A situation of standoff over period of time could emerge particularly as a consequence of the ruling; US and other regional players will seek freedom of unhindered passage in international waters. China on the other invoking historical claims and maritime territorial sovereignty prevent the same. Greater problem will arise with regard to maritime resources and exploration for energy and other resources. As things are beginning to pan out the scenario is pregnant with potential for unintended escalation.

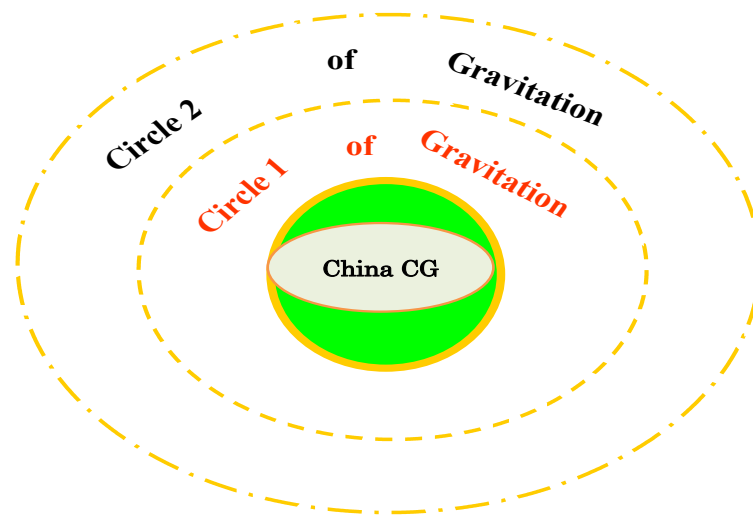
Regional Security Architecture

4. This brings into focus a more fundamental question; does the ruling exposes the weakness of the very construct of “Regional Security Architecture”, assiduously created over decades to deal specifically with the situation of managing China’s rise and dealing with its assertive behaviour particularly as it begins to carve out its sphere of influence. It is reasonably apparent from the behaviour of ASEAN (which has made no statement on the award so far) that they are acting like swing states, waiting for both major regional actors i.e. China and US make their moves. In the backdrop of assertive China and the constraining influence of US pivot together with its Rim – Land partners, a scenario based on jockeying for power and influence based on “Balance of Power” relations based on dynamics of power

equations, economic and political leverages backed by overriding strategic interests is clearly emerging in Asia - Pacific.

5. Within the above backdrop it needs to be noted that China looks upon both SE and South Asia as part of its geo – gravitational sphere of influence. Thus it is imperative for China to exercise influence over both its continental and maritime strategic periphery. The fig below highlights this perspective. Whereas the inner circle is its immediate geographical periphery the outer represents maritime domain straddling the SCS and IOR. Chinese strategic dilemma of projecting power and influence is constrained by US Alliance controlled “First Island Chain”, forcing upon China a construct of maritime insularity. The creeping maritime strategy of China that includes control over major portion of SCS is part of this perceived strategic vulnerability.

Conception of Geo-gravitational Forces



6. Seen from above perspective China’s Island creeping strategy and military fortifications thereupon are part of challenging this insularity, thru military coercion as also trade and economic engagement. Pull back under the circumstances is not an option? This has very serious geo strategic and even more importantly internal political ramifications, with direct consequences for President Xi Jipeng’s own position?

7. Within the above backdrop of “Balance of Power” oriented security architecture and Chinese compulsions as outlined, some of the areas that our analysis of security ramifications should focus on the following;

- a. Limits of Chinese activism and its conversion into hard power? In simple terms how far China go in its current posturing; more importantly will it declare ADIZ over SCS and implement it? What will be the implications of such a move including the likely associated scenarios and more importantly their escalation management?
- b. What happens if China continues with its military activism, while simultaneously enters into bilateral negotiations; prolong them sufficiently to create time windows to complete its military deployment and present the region fait-acompli? No regional player has the power or political determination to contest china. How will US and other major regional actors like Japan, Australia and India react?
- c. Should China gets away with its strident and pro-active posture, forces negotiations on its terms or manages to appease ASEAN. This will make China politically and militarily more strident. Heighten nationalist fervor and strengthen President Xi Jinping's position. Lead to revitalization of Chinese power and influence. Creating a scenario of possible ASEAN based tributary system in terms of political, economic bandwagon with China. Calling in question efficacy of US led regional strategic architecture. It is not my argument that China will only use coercion but more likely to be a nuanced carrot and stick strategy.
- d. Such a scenario will call into serious question options for US and its regional alliance and other strategic partners. Will backing down be an option? Elements within the Pentagon believe that long-term impact of such a strategy would be suicidal. Here the important thing is not physical conflict but graded Chinese escalation forcing US to react or be seen as weak-kneed?
- e. No doubt there are limits to how much China will be willing to push, fully realizing that any misstep could lead to unintended escalation, worry is nationalism and misconceived thinking of PLA leadership could force such a course. Deployment of H6 Bombers, declaration of ADIZ, Stride 2016, drills including live firing around Parcel Islands are all provocative actions.
- f. Chinese stridency could also permeate along the disputed LAC and regionally in heightened Sino – Pak collusion and strengthening of CPEC as a nuanced message to India. Recent exercises of 15 AB Corps in TAR including Para drops and firing are signs that should not be ignored.

Pakistan could also attempt to fish in troubled water by becoming more assertive, including raising the ante of proxy war?

- g. If China manages to leverage the present scenario in creating notion of Sino centric Asia with ASEAN countries bandwagon with China, enhancing its political economic clout. India could be adversely impacted calling in question our 'Look East Policy', which could come under the shadow of Chinese influence.

Trend Lines of Chinese Behaviour

8. China while rubbishing the PCA findings appears to be shifting discourse from Nine Dash Lines to sovereignty and historical claims, which cannot be bartered under any circumstances.
9. To deal with the political fallout of the verdict it is stoking nationalist fervor by strong statements of its political and military leadership. With traditional claims trashed, it has fallen back to using bluster, legalize, its military and diplomatic heft to do damage control. China understands negotiating position is considerably weakened. It cannot be seen running a foul of international conventions as these have serious ramifications in other equally important areas of Chinese interest, e.g. IOR, Africa, Arctic etc. Hence current posturing and diplomatic leveraging is part of soft coercion strategy.
10. On its own it would be an acceptable reaction by 'presumptively wronged China', what is however worrying and a serious concern is the series of military actions initiated by China backed by strident statements by their military leadership. Important military moves post arbitration award and actions are outlined below:
 - a. On 12 Jul itself, Office of Emergency Committee promulgated heightened security measures.
 - b. Chinese President and head of CMC on the same day tells the PLA to be prepared for all possibilities including 'war'.
 - c. PLA's, Southern Theatre placed on secondary alert, South China Sea Fleet, Theatre Air and Rocket Forces placed on 'Pre War Alert'. Alert status of strategic forces also upgraded.

- d. Live fire exercises by SCS, ECS and NCS fleets in massive show of strength and intimidations. Portion of SCS has been cordoned off for these exercises. Military exercises are also underway in Inner Mongolia, including heightened Air Defense.
- e. Stride 2016, launched in Inner Mongolia, which includes strategic mobilization of corps, sized mechanized forces also alert by strategic support forces.

PLA's View on Crisis and Conflict

11. Important thing to note is whether there is a pattern in these moves? Chinese writings on escalation management and control look at conflict as a multi stage activity, with different military actions at each stage. There is no clarity whether these actions are threshold driven and even what constitutes pre war or state of war. Closer interpretation of their writings would indicate present situation of one being that of 'quasi war' or war like but not 'war'. Situation of 'quasi war' is deemed as most dangerous as objectives of escalation remain at best nebulous. Chinese military actions outlined above clearly signify such a situation. Through deployments, drills and firing an effort is being made at escalation without any clarity of purpose or objectives. Aim appears to be intimidation and coercion aimed at SE Asian countries party to SCS conflict by intimidation aimed at coercion. What is also discernable is the Chinese preparation for wider conflict should circumstances lead to such a contingency. It is important to however highlight that Chinese will not get involved with open hostilities even with regional countries unless there is grave provocation, which does not appear on the horizon.

Implications for the Region

Chinese bellicosity and retching up of tensions is pushing the region towards incremental standoff. Although the US, Japan and India have had a measured and rational stand urging China to abide by international conventions, its insistence on extended territorial claims could and making it a sovereignty issue could lead to tensions, once 'freedom of navigation' operations begin together with regional countries begin their fishing and exploration operations on the basis of judgment. Under these circumstances should Chinese navy object its alliance partners and US would have little option but to contest China creating a scenario for possible confrontation?

Dilemma for the US will be how far should it push the envelope? On one side it will be hate to escalate tensions with China on the other it has to honour its bilateral commitments. Under the circumstances following options provide the best course;

- a. Alliance partners and US must show resolve in upholding the verdict as also leave China in no doubt that its unilateralism is unacceptable. Mere diplomatic statements may not work but need to be backed by concrete actions and minimal show of force. Joint exercises like the Philippine – Japan to include US is one such possibility.
- b. Closer coordination between Rim land Countries on strategies to deal with Chinese activism. India – Japan – US and India – Japan – Australia trilateral dialogues should be activated as means of both strengthened resolve as also to signal to ASEAN preventing bandwagon with China.
- c. India although not a direct party but has critical geopolitical, energy, economic and maritime interests which it will need to safeguard. It is in this context understanding with US and other regional stake holders like, Japan, Vietnam, Philippines, Indonesia etc. is imperative which also makes it as an important stakeholder. Turbulence in SCS therefore hurts both our economic and political interests, particularly if SCS becomes a Chinese lake, which although assuring safe passage hangs Damocles sword in terms of regulations and control.
- d. Other Issues:
 - Efficacy of judgment on India – China territorial claims in Aksai China and Arunachal Pradesh is another aspect. If historical claims that cannot be satisfactorily proved lose their relevance, which is the case with regard to Chinese maritime claims relating to Nine Dash Lines, this brings into focus the validity of Chinese historical claims in Tibet as also the status of erstwhile kingdom of Tibet. This is an aspect, which India needs to examine both historically and legally in the light of the judgment.
 - Ruling according to some analysts also has an implications for Sir Creek Award should Pakistan decides to take the case International Tribunal on the Law of the Sea (ITLOS). Whereas the India's position on the dispute makes the case of the Sir Creek issue and boundary settlement being two distinct matters. India believes whereas maritime boundary can be settled in line with the

principles of UNCLOS and international law, which would establish the EEZ rights of both littoral states, while the intractable land boundary, should be negotiated independently.

- Pakistan, on the other hand, insists that the territorial lines can only be drawn after settling Sir Creek that will stand as the reference for the maritime boundaries as well; therefore, the issues are conjoined. According to analysts the South China Sea verdict could give leverage to Pakistan's position, because an ITLOS tribunal could well agree and suggest that the EEZ rights of both states can only be identified only after the Sir Creek boundary dispute is resolved.

Conclusion

The attempt in the foregoing analysis is to highlight geo strategic and political considerations that will have a bearing on contending parties as they go ahead in dealing with the implications of the award. There is no doubt award is a set back for Chinese revitalization strategy and peaceful and harmonious rise. Whatever it does will have contentious impact, based on balance of power relations? Indeed it will also have deep impact internally if China in order to appear as rational actor settles disputes with involved parties on terms seen as a sell out. There is much at stake in the building high tide in Asia – Pacific.

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STRATEGIC INITIATIVES**

FSI



Delhi Policy Group

Core 5A, First Floor, India Habitat Centre

Lodhi Road, New Delhi-110003

Ph. +91-11-41504646

www.delhipolicygroup.org