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The South China Sea Ruling

Rising China Confronts Maritime Southeast Asia

By Barry Desker

Synopsis

China's rejection of the Permanent Court of Arbitration ruling on its expansive claim to the South China Sea has set itself up for confrontation with maritime states in Southeast Asia. It will also heighten tensions within ASEAN.

Commentary

THE RISK of confrontation between China and the maritime states of Southeast Asia has increased significantly. On 12 July 2016, the Permanent Court of Arbitration at The Hague ruled that China's expansive claim to the waters of the South China Sea enclosed by its "nine dash line" map had no legal basis under the UN Convention on the Law of the Sea (UNCLOS) and China could not claim historical rights to resources within the enclosed area. It criticised China for denying Philippine fishermen access to shared fishing grounds and aggravating the dispute by engaging in extensive land reclamation and the building of artificial islands.

In a striking indictment of Chinese actions, the tribunal observed that China had violated the Philippines' sovereign rights within the Philippine EEZ by interfering with Philippine fishing and petroleum exploration, constructing artificial islands and failing to prevent Chinese fishermen from fishing within the zone. The arbitral tribunal noted that the entitlement of islands to a territorial sea and exclusive economic zone (EEZ) had to be based on natural conditions, not the result of augmentation through land reclamation. It concluded that none of the features in the Spratlys are islands capable of sustaining human or economic life on their own, including the Taiwanese-occupied Itu Aba, the largest natural land mass in the Spratlys.

Strong Chinese Reactions

The Chinese government rejected the ruling, calling it “null and void”. It had earlier rejected the jurisdiction of the UN arbitral tribunal and declined to participate in the case. Ahead of the announcement, Chinese policymakers engaged in a diplomatic offensive warning that any decision undermining Chinese sovereignty “will increase tension and undermine peace in the region” and conducted live-firing military exercises in the disputed waters. In remarks published after the ruling, President Xi Jinping told European Union leaders attending the China-EU Summit that China “will not be affected in any way by the ruling and case brought by the Philippines”.

Although China has supported calls for an early conclusion to the ASEAN/China negotiations on a Code of Conduct (COC) in the South China Sea, in practice China has stalled negotiations by insisting on concurrent progress on implementation of the 2012 Declaration on the Conduct of Parties in the South China Sea (DOC) as well as proposing many DOC projects as a distraction. Just as the DOC took ten years to negotiate, China’s tactics will stretch the COC negotiations.

Increasingly Assertive China

In the meantime, through its assertive actions, China is changing the facts on the ground. There is a growing Chinese naval and coast guard presence in the South China Sea. China has also engaged in large-scale land reclamation including the building of runways, wharves, a weather observation station and four-storey building on Subi Reef as well as similar developments on Fiery Cross Reef in the Spratlys and Woody Island in the Paracels. Recent years have witnessed sharp exchanges between China and the two most vocal Southeast Asian claimant states, the Philippines and Vietnam.

China has now gone further, challenging Southeast Asian states like Indonesia and Malaysia that have generally adopted a low-key approach to South China Sea issues. On 19 March, a Chinese coast guard vessel prevented a Chinese fishing vessel from being detained for fishing within Indonesia’s exclusive economic zone near the Natuna islands. In response to protests by the Indonesian Foreign Minister Retno Marsudi, China said that it recognised Indonesia’s sovereignty over the Natuna islands but the detained Chinese fishermen should be released as they were fishing in China’s traditional fishing grounds - an argument contrary to UNCLOS which does not recognise historical rights.

China has since stated that there are overlaps between its maritime territorial claims and those of Indonesia. On 24 March, 100 Chinese fishing vessels were reported fishing in Malaysian waters off Miri, Sarawak. Frequent intrusions by Chinese coast guard vessels and fisheries protection vessels into Malaysia’s exclusive economic zone have also been observed in recent months.

China splits ASEAN

China’s actions in the hallways of diplomacy are also troubling. A meeting in Kunming on 14 June between ASEAN and China to commemorate 25 years of dialogue relations between the two parties ended in disarray. China used its

leverage with Cambodia and Laos to block a joint statement on the South China Sea by ASEAN, after the ASEAN ministers had reached an agreement to issue the statement.

That statement expressed “serious concerns” over the South China Sea disputes which “have eroded trust and confidence, increased tensions and which may have the potential to undermine peace, security and stability” in the region. Malaysia had issued the statement, only to withdraw it later, reportedly because of frustration that the ASEAN decision was blocked by Chinese lobbying of some ASEAN governments.

These developments have occurred even as China is emerging as the leading trading partner and key investor of Southeast Asian economies. Southeast Asia’s historical experience is that the region would be seen by China as part of its zone of influence, just as Southeast Asian kingdoms had welcomed tributary relationships with China in the pre-colonial era. While their economic interests suggest that these states would align with a rising China, the divergent perspectives on the South China Sea have led maritime Southeast Asian states paradoxically to strengthen their ties with the United States.

China’s Growing Perception of Maritime Threats

The political reality is that Southeast Asian states do not pose a threat to China. A rising China which asserts its interests in the South China Sea will increase their wariness of China, even as economic linkages bind the region to China.

Today, the primary risks on China’s western borders are from separatist elements in the Uighur community as well as from Tibetan demands for independence. These pressures are domestic and limited in impact, although the self-styled Islamic State, also known as ISIS, may take advantage of Uighur Islamic sentiments as part of its global jihad.

China’s leaders recognise that the only power with the capacity to threaten China is the United States, the sole superpower, which has a network of alliance relationships in the Asia-Pacific. American naval and air power dominates the western Pacific. These concerns have led China to focus eastwards towards the Pacific. China’s assertion of its claims in the East and South China Sea reflects these maritime interests.

While the ruling of the Permanent Court of Arbitration was clearly against China, it is not enforceable. But the tribunal’s decision will heighten the tensions within ASEAN. It increases the likelihood that China will exert more pressure on the claimant states to negotiate on a bilateral basis and to give due recognition to China’s interests. Next week’s annual meeting of ASEAN foreign ministers in Vientiane will demonstrate China’s leverage on ASEAN states.

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