

Assertive China Fails in the South China Sea

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On July 12, 2016, the Permanent Court of Arbitration (PCA) issued a ruling on the South China Sea (SCS). This case was brought by the Philippines against China in 2013. The ruling has three main components: 1) the Chinese claim of the nine-dash line has no legal basis; 2) no features in the Spratly Islands are entitled to an exclusive economic zone; and 3) the Chinese activities of reclamation in the SCS have damaged the marine environment. In short, it was a humiliating defeat for China. Some argue that the ruling is not enforceable. If we go beyond the verdict itself, however, one thing is clear – since 2009, in the major developments leading up to the tribunal ruling, there has been a failure of Chinese diplomacy. In that year, China began a campaign of assertiveness in the SCS, departing from the traditional Chinese position, which was clearly manifested by Deng Xiaoping in 1986.¹ Since then, there has been no Chinese diplomacy in the SCS. Instead, intimidation and provocations based on poorly planned strategies and misjudgement have defined China's actions in the region. Three episodes showcase this.

Episode # 1 – CLCS of 2009

At the onset of Chinese assertiveness in the SCS, there was a submission to the Commission on the Limits of the Continental Shelves (CLCS). Countries under UNCLOS were supposed to submit their position on the natural extension of the continental shelves beyond their respective exclusive economic zones (EEZ) by May 2009. China misjudged some of the ASEAN countries' potential actions in the SCS. Their judgement was based on an assumption that the SCS, unlike

¹ In a meeting with the Filipino Foreign Minister in 1986, Deng said, "We should leave aside the issue of the Nansha Islands for a while. We should not let this issue stand in the way of China's friendship with the Philippines and with other countries." In 1988, in a meeting with then Filipino President Corazon Aquino, he again said, "In view of the friendly relations between our two countries, we can set aside this issue for the time being and take the approach of pursuing joint development."
(http://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602_665543/3604_665547/t18023.shtml)

the East China Sea (ECS), would be safe since China had worked to improve relations with ASEAN countries over the past 20 years. However, Beijing was taken by surprise when Malaysia and Vietnam made a decisive move in the CLCS. China had submitted their interim finding on the ECS regarding its continental shelf extension, but did not do so for the SCS. China might have been of the opinion that there was no need to submit their position since China claimed nearly the whole SCS based on the nine-dash line claims. Contrary to Chinese expectations, however, Vietnam and Malaysia claimed some continental extension beyond their EEZ and jointly submitted their position to CLCS.

The initial Chinese action after the CLCS submission was to send warnings to Southeast Asian countries to not impinge upon Chinese territorial interests. China should have stopped these assertive displays, but they failed to do so. In the course of 2009-10, there were several incidents between China and Southeast Asian countries, such as Vietnam, the Philippines, and Indonesia. These include capturing Vietnamese fishing boats and fishermen, implementing a fishing ban, intimidation and physical damage to survey vessels, live ammunition military exercises in the SCS, etc. Facing these Chinese provocations, ASEAN countries realised that the security threat from China was real. This Chinese assertiveness alienated Southeast Asian countries on which they had invested many diplomatic and economic resources in the hope of boosting confidence in China.

Episode # 2 – The US Pivot to Asia became militarised

This assertiveness had further consequences that China sought to avoid most-internationalisation of the SCS dispute and US engagement in the region. From the beginning, China was against any attempt to internationalise the SCS issue. The Chinese argument is that the territorial dispute in the SCS is a bilateral issue and there is no precedence for a territorial dispute to be resolved multilaterally. It further argues that there is no place at the negotiation table for any countries that do not claim a territory in the SCS. The continuation of assertive Chinese behaviour in the SCS, however, has effectively made the SCS an international, or at least regional, issue by inadvertently involving the US in the dispute.

The pivot to Asia by the US was not heavily militarised at first. When Obama and Clinton argued for a “pivot” to Asia, it was more about economic and diplomatic engagement. Economically it was about reinstating a liberal economic order or writing a new economic order in Asia. The

Trans-Pacific Partnership (TPP) was instrumental in this scheme. Engaging regional multilateral frameworks such as the East Asia Summit (EAS) was central in this diplomatic approach. Although there was a military element from the beginning in the US pivot to Asia, the US was cautious to promote the military aspect – probably mindful of the consequences of the US approach to Southeast Asia in the Bush administration as a part of the war on terror. The continued assertive military actions of China in the SCS provided justification for the US to put military rebalancing at the forefront of their policy.

When the US military began freedom of navigation operation in the SCS, the dispute was no longer a dispute between China and some ASEAN countries. This was the beginning of the end of the SCS dispute as a local dispute, which China regarded as more manageable. It became a regional issue when powers like Japan, Australia, and India indirectly put pressure on China along with the US. When the European Union and the international law community made their voices heard in the SCS, it became a security concern for the global community. As the dispute became internationalized, Chinese control over the dispute diminished, which China had hoped to avoid through their attempts to keep the issue local.

Episode # 3 – Clumsy Reaction to the Tribunal

The Chinese strategy in dealing with the PCA case is again full of misjudgement, miscalculation, and lack of a strategic mind to achieve a bigger goal. From the beginning, China did not recognise the case, its ruling, or the authority of the arbitration. China's rejection and ignoring of the tribunal only hurts themselves. Such actions narrowed the Chinese case rather than strengthening its argument. Throughout the whole process, from the compilation of the case to the final decision and the follow-ups thereafter, the Chinese response has been full of clumsiness, misjudgement, and miscalculation.

Since the Philippines government took the case to the arbitration court, China has had three years until the final verdict by the court. During that time, China's actions were all about denial and rejection. China announced that it would not accept the authority of the court and opt out from defending itself. Instead, China has been going around the world, mostly to developing countries, to find support for the Chinese position. At the end of the day, it did not make any difference to the final ruling by the PCA. It only succeeded in further damaging China's reputation and strengthening the existing image of a China that buys support with money rather

than abiding by established international rules and norms. Before the final decision by the PCA, China was able to get support from only 10 countries, while 44 countries expressed that they would respect the decision by the PCA.

When the final decision was made public, China once again used harsh words to criticize the verdict while a substantial majority of the international community responded positively to the ruling. According to the data compiled by the Asia Maritime Transparency Initiative, so far 40 countries supported or positively acknowledged the ruling while only four countries, including China, opposed the ruling.² While the PCA ruling is not enforceable, it still has an impact on the international community and not as many countries openly defied the ruling as China had hoped for. This shows that a substantial majority of countries are operating within the existing system of the international order that underpins global institutions and laws. It shows that it is not an easy task for any country, including China, to go openly against the existing international order, contrary to Chinese beliefs.

In the case of CLCS, China was too naïve to believe that Southeast Asian countries would not openly challenge the Chinese position on the nine-dash line and territorial claims in the SCS. Taken by surprise by the Malaysian and Vietnamese action in the CLCS, China attempted to warn some Southeast Asian countries through their assertiveness in the SCS. These actions unintentionally provided a justification for the US pivot to Asia to become militarised, which pressured China and made them, in turn, increase their level of military response in the SCS. China could have approached the Philippines to persuade the latter to withdraw from the tribunal. Instead, China misjudged the situation and ignored the court and the tribunal decision. While the court cannot enforce its ruling, there are not many countries which support the Chinese position, effectively leaving China isolated.

The whole development in the SCS since 2009 shows that China wrongly calculated the CLCS case and PCA case and did not have a sophisticated strategy to limit US involvement in the SCS dispute. This observation is limited to what happened in the SCS since 2009, but the same question – does China not have sound judgement of the strategic situation and a sophisticated strategy to achieve its goals? – is relevant in other grand Chinese strategies including the

² Data from Asia Maritime Transparency Website, (<https://amti.csis.org/arbitration-support-tracker/>)

Chinese One Belt, One Road (OBOR), new types of major power relation, etc. Are Chinese policies different in their efforts to realise other aspects of the Chinese Dream?

* The views expressed herein do not necessarily reflect the views of the Asan Institute for Policy Studies.