

# SOUTH CHINA SEA: AN AREA OF CLAIMS AND COUNTER-CLAIMS

**DHIRAJ KUKREJA**

## INTRODUCTION

On July 12, 2016, the Permanent Court of Arbitration (PCA), in its sitting in The Hague in the Netherlands announced the verdict on the landmark case of arbitration between China and the Philippines over the ‘ownership’ of the South China Sea(SCS). The PCA, in its ruling, decided in favour of the Philippines, by rejecting China’s claim to the SCS, based on its “nine-dash line” map. It stated that the Chinese claim had “no legal basis” and additionally stated that Beijing’s “historic rights” do not comply with the UN Convention on the Law of the Sea (UNCLOS) and that there is “no evidence that China had historically exercised exclusive control over the waters or their resources,” and that China’s maritime entitlements “exceed the geographic and substantive limits” under the UN Convention.<sup>1</sup>

The PCA comprehensively rejected China’s claim that only issues consistent with the UNCLOS were valid. Under UNCLOS, which came into force in 1982, and which China ratified in 1996, maritime rights derive from land, not history. Countries may claim an Exclusive Economic Zone (EEZ) up to 200 nautical miles (nm) of their coasts, or around islands. Based on

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1. Permanent Court of Arbitration (2016), “PCA Case No 2013-19 in the Matter of the South China Sea Arbitration”, July 12, 2016, <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Award.pdf>.

this, the court ruled that the nine-dash line of China had no valid standing to claim historic rights within it.

Fig 1



Source: *The Economist*

It was on January 22, 2013, that the Philippines had filed its suit against China in the International Court, after all avenues for it were closed. The Philippines, for 17 years, had exhausted all possibilities through political and diplomatic channels in an attempt to defend its legitimate maritime rights, to be only repeatedly thwarted in its attempts. It was only after using up all options did it choose to seek justice through international law. Other nations in the Southeast Asian region too have issues of sovereignty with China, but none has so far dared to approach any international body for resolution. The Philippines, with the other affected nations in the region, views China as an imperial bully. Hence, its action can be seen as an indication of anxiety on the part of a small nation.

China, on the other hand, had made attempts to forestall the ruling of the PCA going against it, with an aggressive and protracted media campaign, while also offering bilateral talks with the Philippines. It referred to an agreement with the Philippines, signed in 1995, wherein both countries had agreed to settle the issue and disputes arising from it, through negotiations. Even before the case came to culmination, China had openly declared that it would not “accept, recognise or execute” the verdict. It also refused to participate in the proceedings of the arbitration stating that it had been unilaterally initiated by the Philippines, knowing well that under the UNCLOS it was not mandatory for all parties involved to participate in the process. The court, therefore, had only to satisfy itself that the claim being arbitrated was well established, in fact and law, before reaching a conclusion. China was also aware that there existed a gap between the verdict of the court, and its implementation; the gap being that the court did not carry any authority or capacity to enforce the writ! Hence, the course of action adopted by China!

### GENESIS OF THE DISPUTE

The Philippines brought its case to the PCA in 2013, as mentioned, after China grabbed control of a reef, called Scarborough Shoal, located about 350 km due northwest of Manila. The case had wider significance though, because of the location of the SCS itself. About a third of world trade passes through its sea-lanes, including most of China’s oil imports. The SCS has sizeable, untapped reserves of oil and gas; it also has a considerable area that is a rich fishing ground, thus, leading to multiple, overlapping maritime claims from Vietnam, the Philippines, Malaysia, Brunei, and Taiwan.

The genesis of the current dispute in the SCS dates back to 1946 when China laid claim to the entire sea area by drawing the now famous nine-dash line. The International Court of Justice, in a ruling in a case between Burkina

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Faso and Mali, had ruled in 1986, "Maps merely constitute information which varies in accuracy from case to case; of themselves and by virtue solely of their existence, they cannot constitute a territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights."<sup>2</sup> Based on this ruling, the Philippines had claimed that a state could not enlarge its rights under international law by its own unilateral acts or a domestic legislation. Yet, this is what China did when it drew the nine-dash line in the map of the SCS, claiming it as based on historical rights.

China has made the present day claims not under the UNCLOS, and despite the irrelevance of historical facts and its own ancient maps made by the Chinese authorities or foreigners; the maps of the ancient Philippines, made by its authorities or foreigners, in contrast, present a differing perspective. Since the start of the Song Dynasty in 960 AD until the end of the Zing Dynasty in 1912, or for almost a millennium, the southernmost territory of China has always been Hainan Island, based on all official and unofficial maps of China.<sup>3</sup> Scarborough Shoal, the area of contention between the Philippines and China, lies more than 500 nm from Hainan Island, at the southern end of the SCS! Likewise, all maps of the Philippines, from 1636 to 1940, a period of 304 years, have consistently shown Scarborough Shoal, whether named or unnamed, as a part of the Philippines<sup>4</sup>.

The real imbroglio erupted during the past couple of decades, with frequent disputes and minor confrontations erupting between the littoral

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2. Case concerning the frontier dispute -Burkina Faso/Republic Of Mali, Judgment of December 22, 1986, <http://www.icj-cij.org/docket/index.php?sum=359&p1=3&p2=3&case=69&p3=5>

3. "Historical Truths and Lies: Scarborough Shoal in Ancient Maps", 18<sup>th</sup> Sapru House Lecture delivered by Senior Associate Justice Antonio T. Carpio, on August 6, 2015.

4. Ibid.

states. The main areas of contention are the Spratly Islands, Paracel Islands, and Scarborough Shoal, all of which are claimed by several nations. Among these, the most contested are the Spratly Islands with China, Taiwan, Vietnam, the Philippines, Malaysia, and Brunei claiming sovereignty over them.

In 1974, China wrested control of the Paracels from Vietnam, which sprouted the conflict between the two nations that simmers even till date. In 2012, China displayed an aggressive stance by restricting access to the Scarborough Shoal to the Philippines, although today, after the unfavourable verdict from the court, China has permitted access to the waters of the shoal to Philippines fishing boats.

While the land boundaries of the countries in Southeast Asia were demarcated by the European nations as a part of their colonies, as far back as the 16th century, the end of World War II in 1945 brought some significant changes in the region. The process of decolonisation created numerous new sovereign states with frontiers based on the earlier divisions made by the colonial powers. Although the land borders were whimsical and erratic, they were generally accepted, with differences being settled relatively amicably, through negotiations. This was not a surprising development, as the ethos of the region tends to avoid physical confrontation as such, unless it becomes unavoidable or a conflict is forced upon the disputing nations.

After gaining independence from the colonial powers, the new nations did not pay much heed to the issue of sovereignty of the sea, or the exploitation of the seabed resources, as most of them were busy in resolving their internal affairs and did not possess the necessary wherewithal. It was only in the late 20th century, after four to five decades since gaining independence, that realisation dawned on these nations of the unequal use of the resources from the sea by other nations. This also coincided with the arousing of national interests in terms of their requirement for reserves to fulfil their own developmental needs.

Once the appreciation set in, the nations wanted parity in the system of distribution of the seabed resources; the situation, however, was made more complex with the definition of the Exclusive Economic Zone (EEZ)

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and the increasing awareness of the fishing and exploration rights. The demands for protection of sovereign rights, equality in distribution of the resources, and enforcing their will, were further frustrated, as most of the nations did not possess the capabilities to do so.

The fundamental issue revolves around sovereignty and control, both evoking emotional responses. There is clear understanding today of the need to exploit undersea natural resources to further the development of a nation. China's belligerent claims of sovereignty over waters that are not its own, raised the stakes in the Southeast Asian region, an area that has so far been spared aggressive confrontations between the regional nations. The stage was, thus, set for hardline politics.

## **CLAIMS AND COUNTER-CLAIMS**

In the past few years, Chinese foreign policy has been driven by populist nationalism and has been constantly assertive with the official narration of the 'century of humiliation'. There is a prevalent sense of victimisation in the nation's stance in all its dealings with other nations, both bilateral and multilateral. While working to expand its role in the Pacific region, China has taken steps to protect its strategic trade routes, resources, and markets from foreign interdiction. In part, this has meant trying to cement its long-standing claims to the SCS, claims that other nations are now disputing. This approach could lead to the adoption of a stubborn position in asserting its claims over disputed areas.

The contested waters of the SCS are a geopolitical flashpoint, but for now, they exist in a period of comparative calm. Following the July 2016 ruling by the tribunal, countries with territorial claims in the waters have

struck a conciliatory tone, most prominently over the Scarborough Shoal, which is a barely submerged coral atoll that has become a touchstone for affairs between China and the Philippines, the traditional adversaries in the South China Sea. The shoal is emblematic of deeper issues at stake, namely, the nature of maritime boundaries and bilateral concerns over fishing rights and exploitation of strategic territory. There is another area where tensions had flared up in 2014.

The shoal known as the Ayungin Shoal in the Philippines, Ren'ai Reef in China, and the Second Thomas Shoal in the West, is home to the BRP *Sierra Madre*, a former US tank landing vessel, which ran aground on the shoal as a Philippines Navy ship, about 15 years ago. Manila has stationed a handful of its marines aboard the rusting ship, which is believed to be part of its strategy in the larger geopolitics of the South China Sea. The reef, which is within the disputed Spratly Islands, lies inside Manila's 200 nm EEZ, but is contested by China in its entirety. On March 9, 2014, China's coast guard vessels stopped two Philippines boats carrying supplies to their troops stationed in the shoal since 1999, claiming that the Philippines was trying to build structures on the reef in an attempt to fortify its claim.

According to the Philippines, China itself illegally occupies seven landmasses in the Spratly chain as well as the Scarborough Shoal. The islands' various claimants have moved to fortify their positions in any way they can, including by taking recourse to international law. The Philippines adopted a legal strategy, which is based on negating China's claims in the SCS, and includes that the landmasses in question count as islands. While it is not attempting to expand its own territorial claims, it has conspicuously avoided engaging in new construction or repairs to its own extensive facilities in the area. It has also asked the UN to simply uphold the 200-nm EEZ, as defined

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by the terms of the UNCLOS, upon which it claims the impingement of China's nine-dash line. Rather than constantly trading frequent accusations, alleging wilful misinterpretations of the legal doctrines outlining what constitutes an island, reef, shoal, or rock, the Philippines, in 2013, initiated legal proceedings against China, for violating the UNCLOS.

For the Philippines, the SCS is a lifeline to international markets. Itself a fragmented archipelagic nation, it relies on sea-lanes to maintain a steady flow of imports and to support its nascent manufacturing sector. Additionally, a majority of its coastal population depends heavily on fishing to make ends meet. As depleted waters push Chinese fishing vessels farther from China's shores, they have begun to compete directly with Philippines vessels. If the Philippines loses any more ground in its dispute over the heavily trafficked waterway, its already weak geopolitical position will be shaken even further.

Other countries with stakes in the SCS have been watching the Philippines' case against China, and the aftermath, with interest. Vietnam, for instance, reacted cautiously, and sent an unpublished statement to the tribunal for it to endorse its jurisdiction and consider Vietnam's rights in the matter as well. Malaysia and Indonesia, both South China Sea claimants, have assumed the role of observers alongside Thailand and Japan, the latter being in conflict with China over the Senkaku Islands in the East China Sea.

Taiwan, neither a signatory to the UNCLOS, nor even a member of the UN, is another claimant in the SCS, more specifically, in the Spratly Island chain that is under the Philippines' scrutiny. Ironically, Taiwan's stance in the SCS is in alignment with that of China, and its territorial claims are also nearly identical.

## **THE VERDICT AND CHINA'S REACTIONS**

The award of the PCA in July 2016, in the case between the Republic of Philippines vs the People's Republic of China, broadly announced the following rulings in response to the 15 submissions submitted by the Philippines.

- There was no legal basis for China to claim 'historic' rights to resources within the sea areas falling within the 'nine-dash line'.



- None of the Spratly Islands, where China has been concentrating its efforts on reclaiming land, can be termed as islands in international law. Being rocky outcrops, hence, they, neither individually nor collectively, can generate extended maritime zones.
- China's building on rocks that are visible only at low tide, had infringed upon the Philippines' sovereign rights as the Philippines has an EEZ in that sea area. Further, the court ruled that China's blocking of the Philippines' fishing and oil exploration activities was a violation of its obligations under the UNCLOS.
- China's large-scale land reclamation, the construction of artificial islands and airfields upon them and the indiscriminate fishing activities by Chinese fishermen, had caused severe damage to the fragile eco-system.

China had repeatedly stated that "it would neither accept nor participate in the arbitration unilaterally initiated by the Philippines." It lived up to its word; China landed two non-military aircraft at two new airstrips in the Spratly Islands on July 13, 2016, the day after the announcement of the verdict. It had also stated that it would not "accept, recognise, or execute the verdict." As a member of the UNCLOS, and the international comity of nations, it is expected to obey the rulings of the court, but there is no mechanism of enforcement.

Notwithstanding the lack of any mechanism to enforce the verdict, China continues to smart under the adverse reaction and its humiliation. The verbal duels with the Philippines and USA, led many nations to nervously watch the developments—whether the angry rhetoric would be matched with threatening behaviour by China's armed forces. Chinese officials had two opportunities to allay the fears and soothe the tensions, but passed them both up. The first came just prior to the verdict, when President Duterte of the Philippines offered a dialogue; China, however, demanded that the talks be without any reference to the tribunal's ruling. When the Philippines did not agree, the Chinese officials even threatened a confrontation.<sup>5</sup> The second opportunity that China failed to grab came during a visit to Beijing by America's naval chief, Adm John Richardson. During discussions, his

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5. "My Nationalism, and Don't you Forget it", *The Economist*, July 23, 2016.

**The air force began sorties of combat air patrol by bombers and fighters; there is also talk of establishing an Air Defence Identification Zone (ADIZ) in the SCS, similar to the one it has declared over the East China Sea.**

Chinese counterpart, Adm Wu Shengli said, "We will never stop our construction on the Nansha (Spratly) islands half way, no matter what country or person applies pressure."<sup>6</sup>

Aggressiveness through words continued to be the order of the day, combined with some hostile actions. The maritime authority of Hainan, the island province off Guangdong, announced the closure of an area in the SCS for three days while some naval exercises took place. The air force began sorties of combat air patrol by bombers and fighters; there is also talk

of establishing an Air Defence Identification Zone (ADIZ) in the SCS, similar to the one China has declared over the East China Sea. While all these are worrying possibilities, there also appeared indications that China might be cautious in its approach and not act provocatively.

China does not wish to be termed as a rogue nation, but rather as a responsible global power. While it has not signalled any retreat from its stance, China has extended an olive branch to President Duterte. It has engaged in talks with an ex-president and the current president of the Philippines, offering bilateral cooperation. It has said that China wishes to convert the SCS into a sea of peace and friendship, and as a display of its intentions, China has recently permitted passage of Philippines fishing boats in the Spratly area.

## **OTHER REACTIONS AND ACTIONS**

On being defeated, the Nationalists fled the Chinese mainland to Taiwan in 1949. The Kuomintang brought with them territorial claims of all of China, including a then unimportant group of islands in the South China Sea. Today, Taiwan claims sovereignty over a wide swath of this sea defined by its own "eleven-dash line" nearly identical to China's "nine-dash line", thus, making an outline of its own claims in the area. Taiwan's military

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6. Ibid.

also maintains a presence on Taiping (also known as Itu aba), the largest of the contested Spratly Islands, and on Pratas Island in the northern South China Sea. Ironically, the identical claims put forward by China and Taiwan has brought them into a sort of alignment! Taiwan quickly reacted to the verdict, which undermined its claims, and dispatched a warship to the area. Surprisingly, China has not reacted to the naval exercises recently conducted by the Taiwan Navy and Coast Guard, off Taiping, in November 2016. Strategists surmise that China is largely content for Taiwan to push its claims on the island, because it views

Taiwan as a breakaway province, to be taken back, by force one day, if necessary!

There was an extent of uncertainty in the immediate reaction of the Philippines in the wake of the ruling; yet, the Philippines, as the winning party in the dispute, displayed maturity and restraint. It appeared that the Philippines did not want to rock the boat any further and antagonise China to lead to a military confrontation. While President Duterte did not voice any immediate reaction to the ruling, Philippines Foreign Secretary Perfecto Yasay urged “all concerned to exercise restraint and sobriety.” China reciprocated to this subdued reaction from the Philippines by posting police officers to protect the Philippines Embassy in Beijing from protestors. Former Philippines President Fidel Ramos met Chinese officials in Hong Kong as the special envoy for President Duterte, to discuss ways of resolving the imbroglio through cooperation; one of the proposals was the possibility of jointly developing fishing farms in the disputed waters, including around Scarborough Shoal.

President Duterte, however, cannot choose to remain silent for too long. The Chinese are holding out hope that the Philippines, under his leadership,

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can eventually be drawn out of, what they see as a US coalition, designed to encircle China. To a certain extent, they have not been disappointed. President Duterte's undiplomatic outbursts against President Obama could be an indication! An effective arrangement to manage the dispute demonstrates China's willingness to negotiate, encouraging other SCS claimants too, to rethink their approach.

It was opined that following the adverse ruling on China, Vietnam and Malaysia may also seek legal recourse for similar relief from China's claims. These nations, instead, have put out measured statements, supporting peaceful settlement of the disputes. The ten-country grouping, Association of Southeast Asian Nations (ASEAN), had in June 2016, put out a strong statement on China's stand on its claims, only to retract it within a few hours! The organisation has four nations that are in dispute with China, yet chose to remain silent on the ruling by the PCA. During the subsequent meeting of ASEAN in Laos in September 2016, President Obama sought to keep up the pressure on China over the contentious issue. However, ASEAN itself appears divided over how hard to pursue the matter with China, with nations like Cambodia firmly in the China camp. It needs to be borne in mind that most of the Southeast Asian nations are beneficiaries of Chinese investments, and, hence, would not like to take any stance against China that may appear harsh.

China and the other claimant nations, all appear willing to seize the opportunity to move some stagnant agendas forward, at least for now. Their gestures include an agreement between China and ASEAN to finalise a framework for the Code of Conduct in the South China Sea before mid-2017, and a host of accommodating trilateral arrangements among China and the Philippines and Vietnam. Some regional joint development proposals, too, have reemerged. The possibility of jointly developing fishing farms in the disputed waters, including around Scarborough Shoal, was put forth to the Philippines ex-president during his meeting with Chinese officials in Hong Kong. President Xi Jinping of China, told Vietnamese Prime Minister, Nguyen Xuan Phuc that both countries should actively push forward with joint exploration of waters beyond the Gulf of Tonkin. In addition, China

and Japan appear ready to resume a long-stalled dialogue on natural gas exploration in the East China Sea.

Taken individually, these proposals may appear commonplace, but seen collectively in the context of the dispute in the SCS, they assume significance. Joint development is a well-trodden path in Southeast Asia. Mutually agreed joint development mechanisms have a proven record of easing maritime tensions in the face of overlapping claims elsewhere. Therefore, many, including the claimant governments of Southeast Asia, perceive it as a potential option to calm the ruffled waters in the SCS. There are, however, hurdles even in initiation of the process. Domestic sentiment in the Philippines is a prime factor, which is augmented by suspicions about China's strategic intent, coupled with its unceasing territorial expansion and escalation of maritime tensions. Many wonder if this is a pragmatic policy or a stalling strategy being adopted by China!

It is unlikely that China will ever ease its assertive behaviour in the SCS. Rather, the new maritime status quo, after the court ruling, may allow it to rethink what strategies best fit its interests, even if those strategies take years to develop and result in even greater maritime disruption. China's imperatives, as of now, would be to avoid outright military confrontation with any of the participating nations, to avoid further riling its ASEAN neighbours, and to evade interference from any extra-regional player.

### **INDIA'S ROLE IN THE SCS**

The SCS is of important maritime interest to India; 55 per cent of its seaborne trade by volume passes through the sea-lanes of the SCS; India is engaged in oil exploration in the EEZ of Vietnam and has signed an energy agreement with Brunei too. India has good relations with all the ASEAN nations, especially those involved in the dispute with China, while always maintaining a principled stand over issues of sovereignty, advocating that all disputes be resolved peacefully, without any threat of use of force or coercion. As an example, it has cited its own maritime dispute with Bangladesh being resolved peacefully in 2014, using the UNCLOS, hence, giving it the moral right to demand a similar arbitration in the SCS discord.

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While the best course of action for India would be not to get overly involved in the issue of the SCS with China, it has been getting itself entangled in the issue for geostrategic and economic compulsions. In a joint statement after the sitting of the India-Philippines Joint Commission on Bilateral Affairs, India referred to the SCS as the 'West Philippines Sea'; China was not amused. Similarly, in the months preceding the judgement of the PCA, when there were hints of China wanting to restrict freedom of navigation and flight in the region, reports emanated of India being not averse to joint naval patrols with the USA; the reports, however, were immediately denied by both nations. Notwithstanding, India has recommenced its oil exploration off the Vietnam coast, which had been suspended for some time; it has also sent its navy to the area, purportedly on goodwill missions, but in reality as a signal to all concerned of its reach to distant places.

The evolving Indian position is the result of a number of factors, primary of which is the US involvement in the region. The USA has been forced to adopt a robust posture in the Asia-Pacific expanse due to the exponential rise of China as an economic and military power. While China boasts of having resolved most of its land frontier issues with its neighbours, its maritime disputes continue to fester and are concentrated in the East China and South China Seas. For a nation that, for most of its history, had a continental mindset, China's maritime strategy and increasing capabilities that could overwhelm the smaller nations of the region, have forced the USA's hand to provide confidence in the Asia-Pacific.

President Obama, however, as per a news report in early 2016, rejected a confrontational approach as proposed by Adm Harris, the head of the US Pacific Command (PACOM). Echoing the president's thinking, the Chief of US Navy, Adm John Richardson, in a security conference held in June 2016 in

Washington DC, said, "Cooperation with China would be great...competition is fine but conflict is the thing we want to avoid."<sup>7</sup>

If the USA and China, not wanting to rile each other, head towards a mutually acceptable compromise that may not be favourable or acceptable to the disputants, India too would be left in the lurch. It is for this reason that India should be proactive, and coordinate its 'Look East-Act East' policies to bolster the dissuasive military capabilities of the ASEAN nations, especially the main contestants of the SCS row.

Some maritime strategists and Indian naval officials also seem to favour a forward strategy, which should extend eastward for extensive cooperation with Japan, Vietnam, and the Philippines. In consonance with this policy, and as a security provider for the vital interests of the nations within the region, the Indian Navy's forays have increased. Besides these independent outings, the Indian Navy has also participated in exercises with the navies of the USA, Japan, and Australia; ironically, the Rim of the Pacific (RIMPAC) exercises conducted in April 2016, had the Chinese Navy too participating, despite the prevalent tensions in the SCS.

On the pretext of international cooperation in tackling piracy off the Horn of Africa and thereabouts, China has steadily built its naval presence in the Indian Ocean, much to India's consternation. Earlier in the year, China admitted to its first overseas military base in the Indian Ocean rim nation of Djibouti, located on the Horn of Africa, representing a transformative moment in its quest for supremacy at sea. With the regular movement of Chinese submarines into India's maritime backyard, right under the nose of its Andaman and Nicobar Command (A&NC), India has now to confront a new threat. China's growing interest in the Indian Ocean draws strength from its insistent drive for dominance in the adjacent SCS, where it has

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7. Bharat Karnad, "Narrowing the Seas: Security Ramification of the SCS Verdict", *SP's MAI*, vol 6, issue 16, August 16-31, 2016.

aggressively pushed to extend its frontiers by the construction of military facilities, runways, and even missile sites, on the disputed islands. China, thus, is diligently chipping away at India's natural geographic advantage. The strategic risk for India in the long term is that China, in partnership with its all-weather friend and close ally, Pakistan, could encircle it on land and at sea. With its economic corridor through Pakistan-occupied Kashmir (PoK) to the port of Gwadar, where it shall have naval facilities and, hence, easy access to the Indian Ocean, China is very close to achieving its aim. After covertly transferring nuclear weapons, missile and, most recently, drone technologies to Pakistan, China has publicised a deal to double the size of that country's submarine force, by selling eight submarines to it. It is, thus, adding to its naval force in the Indian Ocean.

India, as an aspiring regional power, needs to get its act together with the ASEAN nations and Japan, and evolve a common strategy to contain China in the SCS, within an Asian security framework. India and Vietnam are both concerned about China's assertive behaviour in the Asia-Pacific region, and are building on their relationship. It is with the other ASEAN nations that India needs to bolster its relations. Any further delay or failure to do so, could create a systemic risk to strategic stability in the region, besides opening the path for China to consolidate its strategic foothold in the Indian Ocean.

### **FUTURE OPTIONS FOR CHINA**

The differences between China and its neighbours around the South China Sea widened perceptibly after the PCA ruling. This was primarily because of the hasty reaction that China resorted to, and the strong unilateral position that it adopted, which has made it difficult for it to withdraw. In fact, China had committed a diplomatic faux pas in 2013, when the Philippines filed its case in the PCA. It embarked on an extraordinary global diplomatic effort to discredit the Philippines' claim as well as the arbitration court itself, resulting in the focus of the world on the judgement rather than on tensions. In addition to the initial gaffe, it faulted in another three of its actions. First, it made the mistake of refusing to participate in the arbitration process, even though it is a signatory to UNCLOS. Second, it stated that it would not abide by the



ruling even before the judgement was issued. Lastly, it displayed intimidating behaviour when it started building artificial islands in the disputed areas while the arbitration process was ongoing, thus, getting the world's attention to the region, which could well have been avoided.

What, therefore, are the options open to China? At this point, it appears that China probably understands the risks and repercussions of claiming the entire South China Sea, or pressing its claims based on the nine-dash line, and, hence, is playing soft. Yet, to avoid a loss of face, it is also unlikely that it will ever ease its assertive behaviour in the SCS. The new maritime status quo, coupled with the PCA ruling, may force China to rethink its strategies to serve its interests, even if those strategies take years to develop and result in even greater maritime disruption. At present, its imperatives appear to be to avoid outright military confrontation, circumvent further interference from international players, and refrain from antagonising all of its ASEAN neighbours at once.

With the current unpredictability of the situation in the SCS, bordering on a deadlock, the question that arises is whether an emerging US-Japan-India-Australia quadrangular combine will deter China. This is highly improbable, since the concept of compromise has always been alien to China; even dialogue, diplomacy, or appeasement may not work in resolving the imbroglio. In the past few years of reinventing itself, China has revealed its inherent belief that its smaller regional neighbours are only an extension of itself and, therefore, must adhere to the rules as China lays them down. There is no acknowledgement that such a situation is tantamount to the regional nations surrendering their sovereignty.

#### **THE ROLE OF THE USA IN DEFUSING THE SITUATION**

If China can somehow establish dominance over the SCS, then, it would constitute a formidable blow to US interests. Fortunately, the situation, as it exists today, at the time of writing this piece, does not appear to be heading that way, but it may not be so for long. This is chiefly due to two factors. First, there is a fear that risks hardening into a conclusion in the region that the SCS is going China's way, and that the US is reluctant or unwilling to take the actions needed to stem this trend. Second, China's militarisation

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of the islands it occupies or has reclaimed and built up already, poses a considerable military challenge.

Whether China manages to establish dominance or not, depends upon the countries in the Indo-Pacific, which have to resolve to prevent such an exigency. While China is very capable, it can be contained by a coalition of countries in the region and the US, largely because these countries, backed by the US will have the power to balance China.<sup>8</sup> Power in the contemporary world is largely a function of economic vitality, and China is already experiencing very serious and potentially grave challenges in that sphere, challenges

that could be very difficult for the Chinese government to address and resolve. China's growth rate has already slowed, and it is likely to drop further, leading to constraints on its rate of increase in expenditure on defence.

The role of the USA will be crucial in this effort. No country in the region wants to be left exposed as the balancer against China, and triggering its ire in the process. Thus, even as many countries in the region fear Chinese dominance, each has an incentive to be very cautious about provoking its wrath. US efforts in this regard have not been too convincing for the nations of the region; this fact has not been lost on China, which has observed the US' reluctance to get deeply involved on many occasions.

The USA needs to follow a three-pronged strategy if it wishes to contain China in its own backyard. First, it needs to increase and extend US military presence in the region; second, the US needs to deepen its alliances and partnerships to encourage the other nations; and, lastly, it needs to maintain economic leadership by going ahead with the Trans-Pacific Partnership

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8. Ashley J. Tellis, "Balancing Without Containment: An American Strategy for Managing China", Carnegie Endowment for International Peace, 2014.

(TPP), not allowing China to economically lean on the nations of the region. This does not seem to be happening, especially given the utterances of President Donald Trump.

## CONCLUSION

The SCS challenge is not purely an Indo-Pacific issue, nor is it a localised problem between China and its regional neighbours. Restrictions threatened to be imposed by China, whether in the SCS or in the local air space, would have an adverse impact for global trade; therefore, the area must remain part of the global commons, and not be permitted to be converted into China's backwaters. Doubts, however, arise about the capability of any international body of nations to impose the rule of law. China, by its nature, displayed over the past decade or so, does not seem amenable to accept the PCA ruling, hence, is pushing the region towards a confrontation.

India's strategic objective in playing the role of an extra-regional power in Southeast Asia is based on twin objectives. First, its ambition to be a predominant power in the Indian Ocean, which is centered mainly on the Bay of Bengal and the Andaman Sea. Second, it stands within the broader objective to assume a greater strategic role in Southeast Asia and the Pacific Ocean. For the most part, this interest is driven by a need to counter China's growing influence in the region, as well as its aspirations to expand its own strategic space. Safeguarding maritime security and ensuring the freedom of navigation in the SCS, hence, are of importance to India, for which, stability in the SCS is a prerequisite.

Although India acts as an extra-regional actor in the South China Sea, its strategic relationship with Vietnam implicates India, to quite an extent, directly in the area. Vietnam is one of the littoral and offshore countries, which have shown the most grit in opposing China. The strategic gains from arming Vietnam with offshore patrol boats, the offer to sell it the Brahmos cruise missile, and now lately, with Vietnamese pilots to come to India for training

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on the SU-30 MKI from next year, could be multiplied if the Philippines, Malaysia, and Indonesia also seek similar assistance. The dissuasion power of these small nations would be greatly enhanced to deter China from any misadventure.

US efforts should particularly focus on building up regional state capacity to resist the Chinese assertiveness. However, the success of any US strategy in the Asia-Pacific cannot come only from diplomacy and military means. Rather, economic steps are likely to be as important, if not more, given Asia's level of development and the region's broadly shared view of the centrality of economics.

It would be in China's interest to adopt a less aggressive stance and instead initiate bilateral dialogues with the Philippines and other ASEAN nations, to evolve a more purposeful Code of Conduct in the SCS. There are some indications of this in the recent statements of the Chinese Foreign Ministry and actions such as permitting Philippines fishing boats into the disputed waters of Scarborough Shoal. The concessions, however, could also be a ruse by China to buy time to expand its own strategic space. It hopes that adopting such a diplomatic track will help reduce external involvement, leading to international acknowledgement of its maritime interests. Notwithstanding the diplomatic initiative, China does possess the tactical advantage in the shoal with its upcoming strong military infrastructure in the islands, and consequent military presence to achieve full control, if it so desires.

Whether Chinese President Xi will manage to extricate himself from the corner that he has painted himself in, and how he does it, is to be seen. It is going to be a long wait!