

Will China and USA further escalate tension in South China Sea

Written by Nguyen tien thinh
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South China Sea (SCS) is emerging a hotbed of tension between China, the economic and military power of Asia and its sea neighbors of the Asia Pacific region. Following military activity by China which claims its authority over the zone, tensions between China and its northern maritime neighbours continue to dominate developments in the SCS but further unresolved disputes add to the dangerous atmosphere because no side is ready to back down and seek genuine reconciliation, while US super power opposes Beijing and supports its neighbors.



China has issues with ASEAN as Philippines, Japan and Vietnam are being wooed by USA to fight China as part of President Obama's Asia Pivot agenda. US military role in the region in support of China's neighbors further complicates the tension. July 12, 2016, marked a turning point in the long-standing disputes over the South China Sea. After more than three years of proceedings at the Permanent Court of Arbitration, an international body in The Hague, a tribunal constituted under the UN Convention on the Law of the Sea (UNCLOS) issued a widely anticipated decision in a case the Philippines brought in 2013 to challenge China's maritime claims to most of the contested waterway.

The members of the Association of Southeast Asian Nations (ASEAN)—have become increasingly wary of Beijing in recent years and have clearly supported resolving the region's disputes through the mechanisms of international law. Were China to make aggressive new moves, it would deepen their sense of alienation, encouraging them to strengthen their militaries to further balance against Beijing. The Philippines' new president, Rodrigo Duterte, has signaled that he is interested in pursuing a more conciliatory approach to Beijing and has held out the possibility of resuming negotiations with China over resource sharing in the South China Sea. If Chinese President Xi Jinping accepts Duterte's offer, he might be able to reach a deal with Manila that allows China to continue to claim some rights to resources in the far corners of the South China Sea.

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As expected by many, the tribunal ruled in Manila's favor and China rejected the tribunal's decision, since Beijing, a signatory to the convention, has long opposed the proceedings and had warned that it would not abide by the judgment. China believes Washington has played its role in getting the judgment against China's position over the SCS. USA and its local partners can avoid a dangerous escalation, and encourage China to abide by the ruling. China responds with increased belligerence.

China insists that it has sovereignty over the Spratly Islands, and the tribunal did not rule on their rightful ownership. But by declaring all of the Spratlys' features to be reefs or rocks, it significantly limited the claims China can make to the surrounding water and airspace. Under international law, China's outposts in the Spratly Islands should be considered isolated enclaves floating in a part of the ocean that is in the Philippines' exclusive economic zone, since they lie within 200 nautical miles of that country's territory. And Beijing cannot use the Spratlys to justify any claims to the surrounding waters.

The tribunal ruled in favor of the Philippines on almost every count, declaring nearly all of China's maritime claims in the region invalid under international law, bringing a substantial amount of new clarity to a number of contentious legal issues and has set precedents that will affect the law of the sea for years to come. The tribunal held that all the territories in the contested Spratly Islands are reefs or rocks, not islands. That distinction matters, because under UNCLOS, reefs cannot generate a claim to the surrounding waters or airspace, and rocks can serve as the basis for only a small maritime claim of 12 nautical miles. Islands, on the other hand, generate a 200-nautical-mile exclusive economic zone; states can also assert additional rights based on the extent of the continental shelves that underlie them.

The tribunal found that China had conducted illegal activities inside the Philippines' exclusive economic zone and thus completely invalidated China's claim that it holds historic rights to the South China Sea through its "nine-dash line," a sweeping cartographic projection that encompasses as much as 90 percent of the waterway. Chinese vessels, the tribunal ruled, had fished where they shouldn't have, and had prevented others from fishing and extracting petroleum within the zone. The tribunal also censured China's construction of artificial islands in the region, which it determined had caused severe environmental damage and heightened geopolitical tensions.

The tribunal's ruling that the Spratlys do not constitute islands under UNCLOS complicated Chinese position and closed off another opportunity for Beijing to save face and destroyed China's ability to justify its expansive claims to the South China Sea in legal terms. As speculated, China has rejected the legitimacy of the Philippines' case and the tribunal's

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jurisdiction to hear it since Manila first brought its complaint in January 2013. Beijing has decried the tribunal's decision as illegitimate, and it will certainly not abandon its outposts in the Spratlys or return the sand it used to manufacture them to the seabed. In fact, in the wake of the ruling, China landed civilian aircraft on some of those outposts, presumably to demonstrate that possession is nine-tenths of the law.

Since the tribunal rejected China's claims to historic rights in the waterway entirely, Beijing now must either continue to reject the tribunal's ruling wholesale or offer the Chinese public a fresh explanation of why its rights still stand—a tough approach, since Chinese leaders have long stuck to exactly the narrative that the tribunal rejected. The line was first unveiled by the Republic of China in 1947 and was adopted by China's Communist rulers after they took power in 1949. Chinese officials have never explained the nine-dash line's precise legal meaning, but they have repeatedly claimed that it demarcates an area from which China can extract resources.

China can be stubborn. Beijing knows for sure, as being veto members USA would not think of a war with China. It could also apply new domestic laws to the areas it controls. However, China's actions would be deeply worrisome for neighbors and would demonstrate that Beijing is uninterested in playing by the rules of the international order. China's withdrawal from the UNCLOS convention would suggest not only that Beijing intends to ignore the tribunal's ruling but also that it does not want to be bound by the many other maritime rights and provisions that UNCLOS enshrines and that govern the free use of the global commons. USA is not a party to the convention to observe its provisions.

Although the tribunal dealt a blow to China's maritime claims—its rights to water and airspace and its authority to conduct certain activities there—it did not rule on China's claims to sovereignty over territory in the South China Sea, which are beyond the scope of UNCLOS. For that reason, Beijing can rightly argue that its sovereignty over the contested reefs and rocks it occupies has not been affected. It cannot legally continue to declare military zones in the water or airspace around the reefs it occupies, nor can it do so more than 12 nautical miles from the rocks it controls. But if Beijing emphasizes sovereignty claims instead of maritime ones, it could draw criticism from the West.

China might now choose to flout the decision more explicitly by deepening its de facto control

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of the area, declaring an air defense identification zone in the South China Sea, as it did in the East China Sea in 2013, unsettling many of its neighbors in Southeast Asia. Chinese forces could attempt to intercept a US ship or plane as it conducts a freedom-of-navigation operation, raising tensions between Beijing and Washington.

China has issues with Japan. There is a continual stream of events that all sides use to test the others' resolution, with a dangerous possibility of the tension turning violent at any moment. The Chinese organised a large fishing fleet to visit islands which the Japanese claim and call the Senkaku. Japan lambasted the Chinese for sending the fishing fleet, and pointed out that they were supported by Chinese government ships. The joint presence of commercial and official Chinese vessels on such a large scale is something new. China is aggravating the situation. China appears to be asserting its right to protect its interests by mobilising fishing vessels during the summer fishing season, escorted by official vessels. Also in a recent development in a gas field in the East China Sea near the midway line between China and Japan, China installed naval vessel surveillance radar on its exploration platform. This, too, is an arbitrary move that cannot be overlooked. Beijing is steadily aiming for de facto control as fait accompli. The same tactic has been employed in the South China Sea.

Chinese sources blamed Japanese intransigence for much of the tension that has arisen with China in recent years over islands in the East China Sea. For years, Japan has refused to acknowledge it has any territorial dispute with China, which has basically shut the door to finding a peaceful solution to their sovereignty dispute over the Diaoyu Islands (Senkaku Islands in Japan) through diplomacy and dialogue." "Japan has tried to blame China for the deteriorating situation in the region, accusing it of unilaterally seeking changes to the 'status quo'. But it was Japan that did that by 'nationalizing' some of the islands in 2012, betraying the acquiescence reached by leaders of the two countries in the 1970s and subsequently maintained that the dispute should be shelved."

A recent cyber attack in July by Chinese sources on computer system of Vietnam Airline has been condemned by Vietnamese leadership. The computer system was hacked. In addition, for a day, the screens displaying flight information at Hanoi's and Ho Chi Minh City's international airports were taken over and displayed derogatory messages about Vietnam and the Philippines regarding their dispute with China over South China Sea.

Although the South China Sea disputes have deep historical roots, they have flared up in recent years because China's growing military capabilities have meaningfully improved Beijing's ability to press its claims. If China goes further by deliberately flouting the ruling or withdrawing from UNCLOS, it could destroy the maritime order it has already damaged.

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Satisfying as the tribunal's decision may be for Manila, all parties now have a strong stake in ensuring that the situation doesn't escalate. The judgment sets a significant legal precedent: the principles that guided the tribunal's decision are now part of international law, and countries must embrace and reinforce them if they want others to uphold them in the future. The USA and like-minded countries around the world should continue to declare their support for the legal process, calling on China and the Philippines to abide by it without taking a position on the underlying sovereignty disputes. USA should make clear that it will investigate the implications of the decision for its own island claims.

If China does not begin construction at Scarborough Shoal, there will be ample room for cooperation between China and its neighbors and between Beijing and Washington. The wider world is looking on with some concern and it is putting a lot of the blame on China. The New York Times said that the waterway is too strategically important and the disputes too complex for the competing claims by China and five other countries. Yet, provocations continue, raising questions about "China's commitment to the rule of law and heightening fears of a wider conflict".

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