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ARBITRATION AS THE FINAL APPROACH IN TRIPLE ACTION PLAN

Willingness to resolve the matter peacefully and preparedness to accept the Tribunal's decision has boosted India's moral authority as the major power in South Asia. This is an example that China could well emulate. Rather than denying that sovereignty disputes exist, China might take these to arbitration even at the risk of an unfavourable outcome.

Sam Bateman

Professorial Research Fellow

Australian National Centre for Ocean

Resources and Security

University of Wollongong

"Resolution of Bangladesh-India Maritime

Boundary: Model for South China Sea

Disputes?"

RSIS, 7 August 2014

China should reconsider its decision to boycott the Tribunal's proceedings. China's rejection of the Arbitral Tribunal out of hand undermines international law. If China has an indisputable claim to sovereignty, as it repeatedly states, it should argue its case.

Carlyle A. Thayer

Emeritus Professor

University of New South Wales

Australian Defence Force Academy, Canberra

"China Should Uphold

International Law to Win Support

from Regional States"

People's Daily, 3 August 2014

The pending arbitration action by the Philippines versus China pursuant to Annex VII to the UNCLOS should have a salutary effect from a legal governance perspective since the arbitral panel is being presented with an opportunity to "codify" many legal principles. Even though China continues to boycott the activities of the arbitral panel, it does so at its peril . . .

Mark E. Rosen, JD, LLM

CNA Executive Legal Advisor

"Philippine Claims in the

South China Sea: A

Legal Analysis"

CNA Analysis & Solutions, August 2014

The Philippines proposed a Triple Action Plan in the South China Sea that identified arbitration as a final and enduring resolution to address the provocative and destabilizing activities in the region.

Recent developments in the South China Sea demonstrate the increased pattern of aggressive behavior and provocative actions that threaten the peace, security, prosperity, and stability in the region.

Amid the rising tensions between both claimant and non-claimant parties in the South China Sea, the Philippines officially proposed a Triple Action Plan that consists of an immediate, intermediate, and final approaches to address the escalating tensions in the South China Sea. The immediate approach is a moratorium on destabilizing activities in the South China Sea. The intermediate approach is a more effective implementation of the Declaration on the Code of Conduct in the South China Sea and the expeditious conclusion of the Code of Conduct. The final approach is the peaceful resolution of disputes in accordance with international law, including the United Nations Convention on the Law of the Sea.

The Triple Action Plan re-emphasized the importance of arbitration as a peaceful, open, and friendly mechanism to resolve the maritime disputes in the South China Sea. The arbitration is the ultimate goal line where the maritime entitlements of all claimants would be clearly defined, and will serve as basis for the eventual settlement of maritime disputes. It was also clarified in the Triple Action Plan that the Philippine arbitration case offers a durable solution that pertains only to the maritime entitlements in the South China Sea without reference to territorial claims.



(Photo: asianjournal.com)

"India, Bangladesh and Myanmar have all demonstrated that countries can successfully settle their disputes through impartial third-party arbitration. We are confident that the tribunal will find in favor of our position against China's Nine-Dash Line. I am sure the international community will receive such a development positively and that China will appreciate its value in the long run."

Foreign Affairs Secretary Albert del Rosario

Bloomberg, 31 July 2014

In international law there is essentially two ways to resolve disputes by peaceful means, that is by negotiation or by international tribunal arbitration. Clearly, China believes that such international tribunals are legitimate forms because I looked on the current International Court of Justice and the International Tribunal for the Law of the Sea and I see a Chinese judge on each of those courts. Clearly, they are legitimate means for resolving international disputes.

Cmdr. Jonathan Odom
Policy Adviser
Office of the Secretary of Defense
“Recent Trends in the
South China Sea and US Policy”
CSIS, 10 July 2014

India’s acceptance of the Arbitration Tribunal verdict presents a fine contrast with China, which refuses to accept any international jurisdiction over its claims to almost the whole South China Sea. Beijing knows only too well that maritime claims stretching 1,000 miles from its shores to the coasts of Malaysia, the Philippines and other countries would be rejected both on UNCLOS rules and by reference to the actual history of the region.

Philip Bowring
Hong Kong-based journalist
“India, Bangladesh and a Sensible Border
Dispute Settlement: Too bad China can’t
learn from this”
1 August 2014

If parties negotiate and couldn’t work, I think the two countries can consider using international courts and tribunal to solve their dispute. I know that China has opted out some issues from the UNCLOS Tribunal, and they haven’t accepted the compulsory jurisdiction of the International Court of Justice but I think some issues could enter into jurisdiction of the International Arbitration under Annex VII.

Dr. Vu Hai Dang
Institute for East Sea Studies, Diplomatic
Academy of Vietnam
“Recent Trends in the
South China Sea and US Policy”
CSIS, 10 July 2014

“In all forums we attended to, we emphasized the need to follow the rule of law that is within the bounds of the UNCLOS... I hope the other party will also help ease tensions instead of worsening it.”

President Benigno S. Aquino III



“Let me stress that the European Union encourages all parties to seek peaceful solutions through dialogue and cooperation in accordance with international law, in particular with the UN Convention on the Law of the Sea.”



Catherine Ashton
High Representative of the European Union
for Foreign Affairs and Security Policy
and Vice President of the European Commission
Manila, 29 July 2014
(Photo: eda.europa.eu)

“The invitation, I think, to China not just from the Philippines but from Vietnam and other members of the ASEAN would at last realize that ignoring the problem would not make it go away . . .”

Asif Ahmad
British Ambassador to the Philippines
Asian Institute of Management, 4 August 2014
(Photo: gov.uk)



US Senate Passes Bipartisan Maritime Security Resolution



The US Senate passed a bipartisan maritime security resolution on 11 July 2014 that called on all claimants to clarify or adjust claims in accordance with international law, and fully supported the rights of claimants to exercise rights they may have to avail themselves of peaceful dispute settlement mechanisms. Senate Resolution 412 further urged all parties to refrain from engaging in destabilizing activities, including illegal occupation or efforts to unlawfully assert administration over disputed claims in the South China Sea.

Filipino, Japanese Lawmakers Sign Joint Document for Cooperation

Filipino and Japanese lawmakers signed the “Joint Document for Cooperation on Promotion of the Rule of Law at Sea” in their meeting in Manila held on 3 September 2014. The agreement states that countries should clarify their claims based on international law, should avoid the use of force in pursuing their claims, should settle disputes by peaceful means, and should avoid any unilateral attempts to change the status quo through force or coercion.



Philippine Congressman Rodolfo Biazon and Japanese Member of Parliament Hiroshi Nakada lead the signing of the agreement to promote the rule of law at sea. (Photo: inquirer.net)

Australia and US Reaffirm Support to Peaceful Resolution of Disputes During AUSMIN

The United States and Australia reaffirmed their support for the rights of claimants in the South China Sea to seek peaceful resolution of disputes, including through legal mechanisms such as arbitration under the Law of the Sea Convention in their annual Australia-United States Ministerial Consultations held on 12 August 2014 in Sydney, Australia.



Left to right: Minister for Defence Sen. David Johnston, Minister for Foreign Affairs Julie Bishop, Secretary of State John Kerry, and Secretary of Defense Chuck Hagel during the AUSMIN. (Photo: defence.gov.au)

The United States and Australia opposed unilateral attempts to change facts on the ground or water through the threat or use of force or coercion. They also affirmed their support for a voluntary “freeze” by claimants on activities in disputed maritime areas.

“All claimants must work together to solve the claims through peaceful means, big or small... We support the Philippines’ taking steps to resolve its maritime dispute with China peacefully, including through the right to pursue arbitration under the UN Convention on the Law of the Sea.”



John Kerry
US Secretary of State
“US Vision for Asia-Pacific Engagement”
East-West Center, Hawaii
August 13, 2014
(Photo: brazil.usembassy.gov)

ASEAN Foreign Ministers Issue Joint Communiqué after 47th Ministerial Meeting



The ASEAN Foreign Ministers released a Joint Communiqué following their 47th Ministerial Meeting held on 8 August 2014 in Nay Pyi Taw, Myanmar. In their joint statement, the leaders expressed serious concerns over recent developments which had increased tensions in the South China Sea. The ASEAN Ministers also urged all parties concerned to exercise self-restraint and to settle disputes through peaceful means in accordance with universally recognised principles of international law, including the 1982 United Nations Convention on the Law of the Sea.

Vietnam and India include South China Sea in Joint Communiqué

During the state visit to Vietnam by Indian President Pranab Mukherjee, Vietnam and India issued a Joint Communiqué on 15 September 2014 calling the parties concerned in the South China Sea to exercise restraint, avoid threat or use of force and resolve disputes through peaceful means in accordance with universally recognized principles of international law, including the 1982 UNCLOS.



Indian President Pranab Mukherjee with his Vietnamese counterpart Truong Tan Sang at the Presidential Palace in Hanoi. (Photo: thehindu.com)

China has arguably advanced claims completely at odds with black-letter maritime law under UNCLOS, as best exemplified in its infamous “nine-dash line.” Recognizing its comparative strength in this area, the Philippines continues to sharpen the contrast by increasingly bringing its maritime claims into line with international law.

Sean Mirski
Editor, Harvard Law Review
“Litigation Tactics from the China-Philippine South China Sea Arbitration”
Lawfare, 11 June 2014

Can a country, a rising great power like China decide on its own, we are so right we do not have to go to the tribunal of the world community that we previously agreed to? It’s might against right . . . China has been trying to impose an interpretation on the 2002 Declaration on Conduct that would make it illegitimate to go to arbitration or go to adjudication . . . We must not condemn countries who are trying to defend themselves not through force but by presenting their legal arguments to a fair, impartial tribunal.

Jerome Cohen
Professor of Law, New York University
“Recent Trends in the South China Sea and US Policy”
CSIS, 10 July 2014

China has to submit its nine-dashed line and historical claims in line with UNCLOS. It has to legalize its claims in the South China Sea and other maritime claims . . . I can see no other way.

Leszek Buszynski
Visiting Fellow
National Security College, Australian National University, Canberra
Regional Conference on “The Future of Security in the Asia-Pacific”
Thailand, 25 August 2014

“Recent developments in the South China Sea underscore the need to resolve sovereignty issues peacefully by the countries concerned in accordance with international law. India opposes the use or threat of use of force and supports freedom of navigation and access to resources in accordance with principles of international law, including the 1982 UN Convention on the Law of the Sea.”



Sushma Swaraj
Indian External Affairs Minister
ASEAN Regional Forum (ARF) Meeting
Nay Pyi Taw, Myanmar, 10 August 2014
(Photo: mea.gov.in)

“All parties should be able to bring disputes for adjudication under international law if they conclude that regular diplomatic efforts will not succeed. But instead of engaging constructively and arguing its case as the Tribunal has proposed, China has pressured the Philippines to drop its case, and attempted to isolate the Philippines diplomatically. International law, not national power, should be the basis for pursuing maritime claims in the South China Sea.”

Daniel Russel
US Assistant Secretary
Bureau of East Asian
and Pacific Affairs
Commonwealth Club Speech
28 July 2014
(Photo: state.gov)



“The EU Ministers shared the serious concerns expressed by the ASEAN Ministers over the on-going developments in the South China Sea which have increased tensions in the area. The Ministers underscored the importance of maintaining peace, stability and prosperity in the region and promoting maritime security and safety, freedom of navigation and over-flight, unimpeded commerce, the exercise of self-restraint, including the use or threat to use of force, and the resolution of disputes by peaceful means, in accordance with universally recognised principles of international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).”

Co-Chairs
Statement of
the 20th EU-
ASEAN
Ministerial
Meeting
23 July 2014
(Photo: eu-
asiacentre.eu)



“And our point is simply that we don’t want to see a process where a big nation—a bigger nation—can bully a smaller one to get its way on a territorial dispute. We want to see an understanding of what the international legal basis is for resolving claims and what the process is in the region for avoiding tensions.”



Ben Rhodes
US Deputy National Security Advisor
for Strategic Communications
1 July 2014
(Photo: geneva.usmission.gov)

The 2013 Annex VII arbitration case by the Philippines against China over the West Philippine Sea—currently pending with the PCA—appears to be a positive development in the use of LOSC dispute settlement procedures.

Lowell Bautista
Lecturer at the School of Law
and Staff Member,
Australian National Centre for Ocean
Resources and Security (ANCORS),
University of Wollongong
“Dispute Settlement in the Law of the Sea
Convention and Territorial and Maritime
Disputes in Southeast Asia: Issues,
Opportunities, and Challenges,” *Asian
Politics & Policy*, Vol. 6, No. 3, pp. 375–396

Maritime East Asia should follow South Asia’s example in using international legal avenues to settle the issues of sovereignty in the East and South China Seas. Similar to India in South Asia, the key to this type of resolution has to be convincing China—the most powerful state involved—into joining this process. It would also be in China’s interest to submit the disputes to international tribunals.

Zachary Keck
Managing Editor, *The Diplomat*
“How South Asia Resolves
Maritime Disputes”
The Diplomat, 10 July 2014



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