



South China Sea Disputes: Regional Issue, Global Concerns

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The recent upsurge in tensions in the South China Sea represents a security flashpoint with global consequences. The South China Sea is a strategic maritime link and a vital gateway for shipping in East Asia. While it is economically and strategically an integrated entity and a key region for the emerging economies of the Asia-Pacific, many countries have staked a sovereign claim over its waters and islands. The dispute has the potential to turn into a military conflict that could end up affecting the peace and security of the entire region.

Introduction

The islands and maritime zones in the South China Sea (SCS) have been a bone of contention between China, Taiwan and five Southeast Asian countries for a long time. But tension escalated in early 2008, when the United Nations Commission on the Limits of the Continental Shelf (UNCLCS) set a deadline May 13, 2009 for submitting claims for extended continental shelves beyond 200 nautical miles.¹ After Vietnam and Malaysia submitted their respective claims, China made a submission to the UN in May 2009 and claimed that it had “indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the

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relevant waters as well as the seabed and subsoil thereof'.² Beijing dubbed the SCS as a "core national interest" and in the non-negotiable territorial claims category – the same phrase it uses for Taiwan, Tibet and Xinjiang province.

In response, the US Secretary of State Hillary Clinton rejected China's claims to sovereignty over the 1.3 million square-mile sea at the 17th Association of Southeast Asian Nations (ASEAN) Regional Forum (ARF) meeting in July 2010 at Hanoi. She stated that "the United States has a national interest in freedom of navigation, open access to Asia's maritime commons and respect for international law in the South China Sea", and reiterated the importance of "opposing the use of force or any coercion by any claimant". Further, she called for a binding "regional code of conduct" in the South China Sea – a move that would undercut China's attempts to assert its claims in a region that Beijing regards as "strategically sensitive".³

Since then, China has been getting increasingly assertive in pressing its claims over SCS matters. But the other nations in the region do not acquiesce to China's claims. In fact, during the 2010 ARF meeting, it was reported that 12 of the 27 participating countries, including India, had backed the United States' multilateral approach instead of China's bilateral approach for resolution of the SCS disputes.⁴ India cannot isolate itself from the dispute, especially after Beijing denounced plans by an Indian company to develop oil fields in the SCS. There are also unconfirmed reports of confrontation between a Chinese warship and INS *Airavat* in the South China Sea.

This paper aims to analyse the various dimensions of the overlapping and conflicting claims in the SCS. It seeks to examine approaches towards the resolution of the problem including multilateral negotiations in the framework of legal and maritime regimes. In addition, it tries to critically evaluate the China–ASEAN relations at the backdrop of the South China Sea dispute, and assess ASEAN's approaches towards solving the dispute and analyse the role of United States especially after 2010 ARF meeting. The paper also explores the possibilities for New Delhi to improve their bilateral and multilateral relations with the ASEAN Nations to safeguard their stand on freedom of navigation in the SCS.

Claimants of the South China Sea

China, Taiwan, Vietnam, Philippines, Malaysia and Brunei are the claimants of the SCS. The South China Sea stretches roughly from Singapore and the Strait of

Malacca in the southwest to the Taiwan Strait in the northeast. There are more than 200 tiny islands and several uninhabited rocky outcrops, atolls, sandbanks and reefs; the majority of them located in the Paracel and Spratly Island chains. The Spratly and Paracel islands are the major flashpoints of overlapping territorial disputes within the South China Sea.

Table 1. Territorial claims relating to Paracel and Spratly island group.

Country	Claims
China	Refers to the Spratly Islands as the Nansha islands, and claims all the islands and most of the South China Sea for historical reasons. These claims are not marked by coordinates or otherwise clearly defined. China also claims the Paracel Islands (referred to as the Xisha Islands), and includes them as part of its Hainan Island province. Chinese claims are based on a number of historical events, including the naval expeditions to the Spratly Islands by the Han Dynasty in 110 AD and the Ming Dynasty from 1403 to 1433 AD. Chinese fishermen and merchants have worked in the region over time, and China is using archaeological evidence to bolster its claims of sovereignty. In the 19 th and early 20 th centuries, China asserted claims to the Spratly and Paracel islands. During World War II, the islands were claimed by the Japanese. In 1947, China produced a map with nine undefined dotted lines, and claimed all of the islands within those lines. A 1992 Chinese law restated its claims in the region. In 1974, China seized the Paracel Islands from Vietnam.
Taiwan	Taiwan's claims are similar to those of China, and are based upon the same principles. As with China, Taiwan's claims are also not clearly defined. Occupies Pratas Island in the Spratlys.
Vietnam	Vietnamese claims are based on history and the continental shelf principle. Vietnam claims the entire Spratly Islands (Truong Sa in Vietnamese) as an offshore district of the province of Khanh Hoa. Vietnamese claims also cover an extensive area of the South China Sea, although they are not clearly defined. In addition, Vietnam claims the Paracel Islands (the Hoang Sa in Vietnamese), although they were seized by the Chinese in 1974. The Vietnamese have followed the Chinese example of using archaeological evidence to bolster sovereignty claims.

Table 1 (*Continued*)

Country	Claims
Philippines	Its Spratly claims have clearly defined coordinates, based both upon the proximity principle as well as on the explorations of a Philippine explorer in 1956. In 1971, the Philippines officially claimed eight islands that it refers to as the Kalayaan, partly on the basis of this exploration, arguing that the islands: 1) were not part of the Spratly Islands; and 2) had not belonged to anyone and were open to being claimed. In 1972, they were designated as part of Palawan Province, and have been occupied.
Malaysia	Its Spratly claims are based on the continental shelf principle, and have clearly defined coordinates. Malaysia has occupied three islands that it considers to be within its continental shelf. Malaysia has tried to build up one atoll by bringing soil from the mainland and has built a hotel.
Brunei	Does not occupy any of the islands, but claims part of the South China Sea nearest to it as a part of its continental shelf and exclusive economic zone (EEZ) as defined by the United Nations Convention on the Law of the Sea (UNCLOS) 1982. Therefore, in 1984, Brunei declared its EEZ, which included Louisa Reef.
Indonesia	Not a claimant to any of the Spratly Islands. However, Chinese and Taiwanese claims in the South China Sea extend into Indonesia's EEZ and continental shelf, including Indonesia's Natuna gas field.

Source: "Territorial claims in the Spratly and Paracel Islands," <http://www.globalsecurity.org/military/world/war/spratly-claims.htm> (accessed April 30, 2012).

Beijing claims almost the entire SCS, citing "historical" records which purportedly show Chinese control in the region over the past two millennia. Taiwan's claims are similar to those of China as the island considers itself to be the Republic of China. Indonesia is also a party to the dispute but they are seeking only maritime rights without claiming any islands of the region. In fact Indonesia's exclusive economic zones (EEZ) and continental shelf overlap China's claims, which include Indonesia's largest natural gas reserves. Vietnam rejects China's historical explanation and asserts that Beijing had never claimed sovereignty over the islands till the 1940s. Hanoi is convinced that both Spratly and Paracels are entirely within its own territory and has the documents to prove that the islands have been ruled by Vietnam since the 17th century.



Fig 1. South China Sea.

Historical Background

China and Vietnam claim the entire SCS citing historical records. But the history of the SCS dispute is itself in dispute. The discovery of the archipelago in the SCS dates back to ancient times. The SCS was used as a means of communication with small and large ships sailing through its coasts, and its ports were controlled by various states and dynasties. Trade then was dominated by Junks from port cities in the Middle Kingdom. This was the case during the Han dynasty (206 BC–220 AD),⁵ and also under subsequent dynasties, such as Funan, Angkor, Sri Vijaya, Ayutthaya, Champa and the Melaka Sultanate.⁶ During the colonial period the Europeans, namely the French, Dutch, Spanish, Portuguese, and British, ruled the region⁷ and during the Second World War the Japanese took over most of the Southeast Asian countries and the after end of war, the colonial status quo was challenged.⁸

In 1974, China forcefully seized the Crescent group of the Paracel islands, hitherto occupied by Vietnam. There were violent clashes between Chinese and Vietnamese forces, causing the death of 70 Vietnamese sailors. However, China had yet to establish a foothold in the Spratlys itself. This did not happen until 1988 when China, for the first time, sent troops to the Spratlys, to secure control over six islands after a brief naval clash with Vietnam over the Johnson Reef.⁹

In the 1970s several clashes took place between the claimant nations over the islands in the SCS. China and Vietnam clashed four times (1974, 1988, 1992 and 1994), China and the Philippines six times (1995, 1996, 1997, 1999, 2000 and 2001), Vietnam and the Philippines three times (1998, 1999 and 2002), Vietnam and Taiwan in 1995, and between Philippines and Malaysia in 1999.¹⁰ This pattern of claims and counter claims and military skirmishes continued in the SCS in the following years and if the issue is not resolved to the satisfaction of all maritime stake holders including the littoral nations, heightened global tension might result.

Strategic and Economic Importance of the South China Sea

The South China Sea region is the world's second busiest international sea lane. More than half of the world's supertanker traffic passes through the region's waters. The main reason behind the scramble for the two island chains is its richness in natural resources, especially oil and gas. On April 19, 2011 China's *Global Times* published a special report that termed the region as the "Second Persian Gulf" – a repository of 50 billion tons of crude oil and more than 20 trillion cubic meters of natural gas (about 25 times China's proven oil reserves and eight times its gas reserves).¹¹

The SCS is not only a strategic maritime link between the Pacific and the Indian Oceans, but also a vital gateway for shipping in East Asia. 85% of China's energy imports and Japan and Korea's oil supplies pass through these waters. Almost, 55% of India's trade with the Asia Pacific transits through the SCS to China, Japan, Korea and the United States.¹² The economic potential and geopolitical importance of the SCS are the primary motivating factors for the surrounding countries to claim the islands and their resources. The bountiful fishing opportunities within the region are yet another motivating factor for the overlapping territorial claims in the SCS.

Legal Framework and Maritime Regimes in the SCS

The United Nations Convention on the Law of the Sea (UNCLOS) of 1982 created a number of guidelines concerning the status of islands, continental shelves, EEZs, enclosed seas, and territorial limits. According to UNCLOS, a mid-ocean island is entitled to a 12 nautical mile territorial sea as well as a 200 nautical mile EEZ. Therefore, UNCLOS is often blamed as providing the motivation for the states concerned to strongly assert sovereignty claims over the Spratly Islands in the SCS.

UNCLOS did not offer much support for the Vietnamese and Chinese claims which go beyond their respective EEZs or continental shelves as historical rights of first discovery do not carry enough weight. This has stimulated both claimants to occupy islands for the EEZs and the continental shelves they would generate. Indeed, international law has stressed the importance of the “effective occupation” of islands to prove title rather than historical rights or first discovery.¹³

UNCLOS created a number of guidelines concerning the status of islands, the continental shelf, enclosed seas, and territorial limits.¹⁴ Among the most relevant to the SCS are:

1. Article 3, which establishes that “every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles”;
2. Articles 55–75 define the concept of an EEZ, which is an area up to 200 nautical miles beyond and adjacent to the territorial sea. The EEZ gives coastal states “sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to” (above) “the seabed and of the seabed and its subsoil”;
3. Article 76 defines the continental shelf of a nation, which “comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles”. This is important because Article 77 allows every nation to exercise “over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources”; and
4. Article 121(3) provides that “rocks which cannot sustain human habitation or economic life of their own” are only entitled to a 12 nautical mile territorial sea. Further, geographic features which are not naturally formed or which are not above water at high tide are not entitled any maritime zones of their own.

The establishment of the EEZ created the potential for overlapping claims in semi-enclosed seas such as the SCS. These claims could be extended by any nation which could establish a settlement on the islands in the region. SCS claimants have established outposts on the islands (mostly military) in order to conform to Article

121 when pressing their claims. UNCLOS states that countries with overlapping claims must resolve them by good faith negotiation. The absence of any movement towards a resolution of the issue raises the prospect of future conflict.¹⁵

ASEAN's Approach towards the SCS Dispute

All 10 members of ASEAN maintain a deep interest in the peace and stability of the SCS. Since all ASEAN countries are not equally involved in the dispute and consequently have no equal stake, there is not one ASEAN approach to the SCS dispute, even though they may all subscribe to the idea of the building of confidence and engagement of China to resolve disputes and manage conflicts in the region. In fact, despite the talk of consensus and ASEAN solidarity, each member country pursues its own policy, particularly vis-à-vis China that claims practically the entire SCS. The ASEAN countries appear to be divided over their approach towards China, as well as on the exact mechanism to diffuse tension in the region. Each member country looks at China from the point of view of their national interests – whether it perceives China as a threat or as a source of economic benefit. As a result, ASEAN's position on political and strategic issues towards China is rather weak. To compensate for this weakness, ASEAN had often used diplomacy and tried involving external powers by internationalising the regional issue. Such a strategy may have often accorded ASEAN a higher diplomatic profile, as in the Cambodian conflict in 1980s and early 1990s, and may have helped it to avert regional tension in the short term; nevertheless it failed to hide its inherent weakness in dealing with the regional hegemon, i.e. China.¹⁶

Responding to the growing assertiveness of China's territorial claims in the SCS, the ASEAN foreign ministers adopted the ASEAN Declaration on the SCS in July 1992. Pushed by the Philippines, the declaration called for the peaceful resolution of "all sovereignty and jurisdictional issues pertaining to the SCS", the exercise of "restraint", and the application of the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the SCS.¹⁷

In July 1996, the ASEAN foreign ministers, according to the joint communiqué of their annual meeting, "endorsed the idea of concluding a regional code of conduct in the SCS" as something that would "lay the foundation for long term stability in the

area and foster understanding among claimant countries”.¹⁸ In November 2002, ASEAN and China agreed upon a Declaration on the Conduct of Parties in the SCS. The parties unanimously considered that this event has made an important contribution to the maintenance of peace and security in the region and to the promotion of development and cooperation. But efforts to turn it into a formal and binding code failed, partly because of China’s anger at ASEAN’s attempts to develop a common approach.¹⁹

China argues that ASEAN has no role in territorial issues, and insists on negotiating with the other claimants bilaterally. It has been observed that ASEAN has no wish to “turn itself into a party to the dispute”. Indeed, the jurisdictional issues can be resolved only by the claimants themselves through negotiations or through adjudication by a third party. However, because the legal, historical and other issues are so complex and because of the deep and often conflicting interests of the claimants in their positions in the SCS, the rival claims have little chance of being resolved anytime soon, particularly in the light of the fact that most points of conflict involve more than two parties.²⁰

It has been also noticed that the ASEAN countries are not able to firmly oppose Beijing’s overarching behaviour in the SCS as almost the entirety Southeast Asian countries are dependent on China for their developmental activities. The contact between China and Southeast Asia goes back many centuries. The Chinese diaspora has also led to significant ethnic Chinese minority populations in Burma, Thailand, Malaysia, the Philippines, and Indonesia. Currently, 30–40 million ethnic Chinese reside in Southeast Asia²¹ and they have also receive considerable amounts from them.²²

The year 2011 marks the 20th anniversary of the establishment of the dialogue mechanism between China and ASEAN. In 2010, the two sides set up a free trade area and signed the protocol on developing Southeast Asia into a nuclear-free region. In 1991, the bilateral trade volume was only \$7.96 billion, but it soared to \$292.78 billion in 2010. Currently, China is the largest trading partner of ASEAN. China has invested a huge amount in building infrastructure in ASEAN countries.²³ Since most of the ASEAN countries depend on Beijing for their developmental activities therefore, ASEAN–China relations can be summarised as China is a necessary evil for Southeast Asian countries.

The US Factor

It has been noted that after the end of the Cold War, US policy on the South China Sea dispute has been consistent. At the height of the Mischief Reef Crisis in 1995, a statement issued by the US State Department articulated that Washington had a “fundamental interest in freedom of navigation” and the claimants should intensify diplomatic efforts to resolve the problem in accordance with international law and not by force.²⁴ As tensions have been rising, the fundamentals of this policy have remained unchanged but there has been a change in tone and emphasis.²⁵

US national interests in the South China Sea are readily apparent. The free flow of maritime trade through the sea lines of communication (SLOCs) is crucial to the American economy.²⁶ At the strategic level, the SLOCs allow the US Navy to transit between the Indian and Pacific Oceans, greatly facilitating America’s global military posture. Therefore, US policy cannot be seen to be conceding the SCS as a matter falling under the Chinese sphere of influence. Consequently, Washington has taken a series of measures to bolster its military presence in Asia, including forward deployment of a modern nuclear powered aircraft carrier i.e. USS *George Washington*.²⁷ The United States has also tightened military-to-military relations with a number of Southeast Asian countries, including capacity-building support for Malaysia, Vietnam, the Philippines and Indonesia.

The US President Barack Obama visited Australia in November 2011, just before the 6th East Asia Summit (EAS) in Bali, Indonesia, and during his visit the US administration announced that the American military will boost its operations in the north and west of the Australian continent. The country’s Northern Territory and its capital city Darwin, which is closer to Indonesia than Australia’s major southern cities, will be developed into a major US staging base. From next year, 200 to 250 US marines will train for six months of the year in the Northern Territory. By 2016–2017, the training will involve an entire marine air–ground task force of 2500 troops. The increased US military presence in Australia and Asia underscore that Washington’s aggressive intervention into the Asia-Pacific region is aimed at undercutting China’s growing influence. The announcements in Australia are clearly intended to influence the agenda, tone and outcome of the EAS, in which the US president participated for the first time. The deployment of American troops to

northern and western Australia, along with a heightened naval and air force presence may put the United States in a better position to dominate the critical sea lanes between the Indian and Pacific Oceans, through which a large proportion of world trade passes.²⁸

On January 2012, the US Department of Defense released a policy document titled “Sustaining US Global Leadership: Priority for the 21st Century Defense”, which raised concerns over the rise of China as a regional power and will have the potential to affect the US economy and security significantly. Therefore, the document underlined that for the maintenance of peace, stability, the free flow of commerce in the region and the military presence of United States is necessary.²⁹

South China Sea Dispute and India

India cannot isolate itself from the dispute, especially after Beijing denounced plans by an Indian company to develop oil fields in the SCS. However, China insists on building strategic projects in Pakistan occupied Kashmir and deploying troops there but protests Indian oil exploration in the SCS.

The Indian Navy document *Freedom to Use the Seas: India's Maritime Military Strategy*, highlighted India's area of interest “extends from the north of the Arabian Sea to the South China Sea”.³⁰ In the 2010 ARF meeting, it was noted that 12 of the 27 participating countries, including India, backed the United States' multilateral approach instead of China's bilateral approach for resolution of the SCS disputes. During the 17th ARF meeting, India joined other countries to openly declare that the SCS should remain open for international navigation but, unfortunately, it went unnoticed.³¹ At the July 2011 ARF meeting in Bali, India noted that the parties concerned should engage in discussions to address the SCS issue and welcomed the recently agreed guidelines on the implementation of the 2002 Declaration of the Conduct of Parties between China and ASEAN. In an address at National Maritime Foundation, New Delhi, on July 28, 2011, Indian Foreign Secretary Nirupama Rao reiterated India's stand on the SCS dispute and emphasised that the SCS is an important shipping route and that India supports freedom of navigation in the SCS.³²

India retains a strong interest in keeping sea lanes open in the SCS. Apart from helping secure energy supplies for countries like Japan and Korea, India has the unique distinction of shipping oil from Sakhalin to Mangalore through this sea route. If China controls these waters it will be difficult for India to continue their activities through this channel. On August 31, 2011, the UK media reported that an “unidentified Chinese warship confronted an Indian Navy vessel”. But India downplayed the reported confrontation between an Indian Naval ship and the People’s Liberation Army (PLA) Navy in the international waters of the disputed SCS. Actually, *INS Airavat* was on a “friendly visit” to Vietnam between July 19 and 28, 2011. The Ministry of External Affairs, India said in a statement, “There was no confrontation involving the *INS Airavat*”. The Indian Navy, too, issued a terse statement stating: “There was no confrontation with any vessel”. Beijing, too, maintained its silence over the incident. However the fact of the matter is that China is closely looking at Indian activities in the SCS and its growing relations with ASEAN countries.³³

On September 14, 2011, Beijing object to ONGC Videsh’s (OVL) venture in Vietnam and asked India to refrain from entering into deals with Vietnamese firms exploring oil and gas in the disputed SCS over which China enjoys indisputable sovereignty.³⁴ India has responded to Chinese objections to its companies scouting for hydrocarbons in the SCS, saying its cooperation with Vietnam is in accordance with international laws and is a completely commercial venture.³⁵ During the S.M. Krishna visit to Hanoi on September 15–17, 2011, the External Affairs Minister of India underlined that OVL will go ahead with oil and gas exploration in the disputed region of the two offshore blocks (127 and 128) claimed by Vietnam.³⁶ China, however, appeared unconvinced and announced plans to expand maritime exploration of 10,000 sq km of seabed in the southwest Indian Ocean.³⁷

India knows it cannot take the rapidly evolving situation in the SCS lightly. Almost, 55% of India’s trade in the Asia-Pacific transits through this region, and the country derives considerable economic benefits from the SCS. As a nation that supports freedom of navigation in the SCS, New Delhi recognises the SCS as a strategic maritime link between the Pacific and Indian Oceans, and has advocated the right to free movement through its waters.

But the influence that China exerts over the nations of Southeast Asia and the Indian Ocean Region (IOR) is only growing. China has strengthened its naval

presence in the SCS and is endeavouring to do the same in the Indian Ocean. It has reportedly installed a listening post in the Burmese territory of the Coco Islands and thus is aiming to establish its strategic presence in the Indian Ocean Region purportedly through the “String of Pearls” strategy.

After the Chinese claims over the entire SCS, Southeast Asian countries are preparing themselves against further Chinese aggressive intent. From the ASEAN perspective, India is seen as a possible counterweight against China in the region. Therefore, India and selected ASEAN countries began holding joint maritime exercises. In February 2010, the Indian Navy concluded its Milan series of maritime exercises in the Andaman and Nicobar islands. The 7th edition of exercise Milan was held in the backdrop of India’s “Look East” policy. Naval ships of Singapore (two ships), Sri Lanka, Thailand, Australia, Bangladesh, Indonesia, Malaysia and Myanmar, with representatives from navies of Brunei, Philippines, Vietnam and New Zealand participated in exercise Milan.³⁸ And most of the participants of the 2010 Milan maritime exercises also participated in the recent Milan-2012 exercises hosted by the Indian Navy.³⁹

China does not welcome the ASEAN move to interact with major powers. However, the Indian Navy has conducted joint exercises with the Singaporean, Vietnamese, Japanese and South Korean navies in the south and east China Seas. The Indian Navy, however, has also conducted exercises with the PLA Navy whenever Indian ships have visited the region.⁴⁰

Witnessing overarching Chinese claims over the SCS, there is significant scope for the Indian and Southeast Asian navies to engage constructively. India has helped Malaysia in building up its coast guard in the past and it can also help other ASEAN countries. However, maritime cooperation between India and ASEAN is still limited. Cooperation with regard to capacity-building and patrolling piracy-infested areas or jointly facing non-traditional threats at sea like drug-trafficking, human-trafficking and possible maritime terrorism remain inadequate. India has a strong navy with technological credibility that can be leveraged by ASEAN. Frequent joint naval exercises similar to the India-Singapore exercises and deeper cooperation in training and exchange of defence personnel could form additional and viable confidence-building measures. Collaboration on missile technology, radar systems, defence component systems and supporting hardware are again areas where ASEAN countries can work in partnership with India.⁴¹

India has provided training to Malaysia's Air Force pilots on MIG-29s in the past and has offered training also on the Sukhoi. It has also shown keenness to sell Brahmos missiles to friendly countries including the neighbouring Southeast Asian countries.⁴² Most of the ASEAN countries have been engaged in a defence modernisation programme and would like to obtain assistance in weapons up-gradation and systems integration. Like India, most of the Southeast Asian countries also rely on Russia for their defence procurements. India, with its long experience in using Russian products and developed the technological capabilities for low-cost servicing, could be a potential ally for ASEAN in this field. Assisting ASEAN will also improve India's relations with the Southeast Asian countries bilaterally and multilaterally and it will also boost India's morale in balancing China in the IOR.

Recent Upsurge in Tension

In the past few years, aggressive manoeuvres of the PLA maritime agencies in the SCS have resulted in ASEAN countries adopting a more robust defence policy. Vietnam is in the process of acquiring six Russian Kilo-class submarines and a dozen Su-30MKK jet fighters equipped for maritime warfare. Malaysia has also paid more than \$1 billion for two diesel submarines from France. Indonesia too announced that it will acquire new submarines. Australia has expressed willingness to buy or build nine more submarines and bolster its air force with 100 US-built F-35s.⁴³

As China seeks to intimidate her rivals into stopping oil exploration and mining in the area, other nations in turn have begun to protest vehemently against Beijing's military build-up in the region. Recently, Vietnam blamed China for deliberately sabotaging two Vietnamese exploration operations which led to huge anti-China protests in Hanoi. Consequently, Hanoi held live-fire exercises off its coast, an act described by China as a grave provocation.⁴⁴

These skirmishes run counter to the spirit of the Declaration on the Conduct of Parties (2002) in the SCS, drawn up between ASEAN countries and the People's Republic of China. Under the agreement, the countries had agreed to "resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations". But recent

developments have negated the “friendly tenor” that underpinned the agreed mechanism for conflict resolution.

During the Shangri La Dialogue in June 2011, the United States took a position that “the maritime security remains an issue of particular importance for the region” and followed it up by passing a resolution in the US Senate on June 27, 2011, calling for “a peaceful and multilateral resolution to maritime territorial disputes in South East Asia”, deploring the use of force by naval and maritime security vessels from China in the SCS, and supporting the continuation of operations by the US armed forces to enable the freedom of navigation in international waters and air space in that Sea. The ASEAN foreign ministers came up with new draft guidelines on the implementation of the DOC 2002 during the Bali meeting, preparatory to the ASEAN Regional Forum meet. In a joint communiqué issued on July 19, 2011, they stated that “they looked forward to the finalization of the same during the upcoming ASEAN-China senior officials’ meeting”.⁴⁵

As Beijing seeks to neutralise the US presence in the region, the United States is beginning to play a crucial role in the SCS dispute. In fact, America has increased its maritime cooperation with regional countries, mainly concentrating on capacity-building with Vietnam and Philippines. The US and the Philippine Navies held joint exercises in the SCS from June 28 to July 8, 2011. In another move, the United States, Australia and Japan reportedly conducted a trilateral military exercise off the coast of Brunei in the SCS on July 9, 2011. These naval exercises do indicate the continuing US strategic stake in the region. In a joint press conference with the US Joint Chiefs of Staff, Admiral Mike Mullen on July 11, 2011, in Beijing, the Chinese Chief of the General Staff, General Chen Bingde underscored that the joint military exercises held by United States in the SCS with Vietnam and Philippines were “extremely inappropriate” and Washington should respect Beijing’s core interests. On the contrary, Mike Mullen reiterated that the United States would continue to support its allies in the region.⁴⁶

In the August 2011 China completed the trial run of its first aircraft carrier and they have planned to deploy her in the SCS. Beijing seems to believe that deploying the aircraft carrier will act as a deterrent to keep away the other nations eyeing the region. However, Admiral Arun Prakash emphasises that the “PLA Navy has a few years to go before it can claim to have an operational carrier at sea”.⁴⁷ Beijing’s

showing-off tactics or deploying an aircraft carrier close to the SCS can only add to the tensions and arms race in the region.

Conclusion

China's recent actions in the SCS indicate that it is working on a "revisionist agenda" in the region and trying to unilaterally change the status quo in the SCS. China's rising economic and military might could compel ASEAN countries to rally together as well as to seek assistance from the United States' and other nations to balance China. The US posture has, in turn, raised tensions in the region as China warned its neighbours not to "play with fire". Further, Beijing believes that Washington has an eye to control the Spratlys through Vietnam and the Philippines. If the territorial disputes relating to the SCS are not resolved soon to the satisfaction of all maritime stake holders, including the littoral nations, heightened global tension might result.

China being a regional power and a permanent member of the UN Security Council, it is essential for ASEAN to constructively engage China in the region. The 1982 UNCLOS is completing its third decade in the year 2012, therefore, it is obligatory for the United Nations to redefine its convention on Law of the Seas. It has been also noted that UNCLOS became impotent in resolving complicated issues like the SCS. Moreover, maritime disputes, especially the SCS, became more complex after the 1982 UNCLOS was enacted.

On India's part, if New Delhi is concerned about their stand on freedom of navigation in the SCS it will have to channel its foreign policy substantially rather than symbolically. It has been also noted that the second phase of the India's Look East policy is over and now the time has come for India to lay the ground work for the third phase, in which it must concentrate on the strategic aspects of the bilateral relations with the entire Southeast Asian countries. Moreover, it is an opportune time for India to interact strategically with its allies in the region. In this context, the capacity-building and maritime cooperation between India and Southeast Asian countries will be of great importance.

Notes

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