

South China Sea Geopolitics and the Shadow of Covid-19

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The current strategic discourse is one of speculation as to whether the COVID-19 pandemic is accelerating existing geopolitical trends or generating trends for a new world order in its wake. It may still be early days for a definitive answer given that this global crisis is still unfolding. Its effect, so far, has been for the national leaders to become more inward looking and to hunker down into a survival mode. Individual countries, feeling confident of having overcome this challenge, see a strategic advantage for themselves over the others, still grappling with it, for exploitation in specific situations but they also remain apprehensive that the tables might be turned against them if they are unsuccessful during the pandemic's next spike.

The domestic political churn being caused by it implies that the shape of emerging decision-making structures would determine the nature of the response the world community will make to the wide spectrum of global challenges facing it. The international environment is characterised by deepening suspicion amongst major powers with little prospect, as compared to the previous pandemics, for global cooperation.

Historical Background To the Geopolitical Drivers

Territorial Disputes and Clashes Over Them

This trend is no different in respect of the South China Sea waters which are getting hotter with each passing day. An area covering approximately 3.5 million km², its strategic importance has increased enormously as the global geopolitical and geo-economic centre of gravity has shifted towards Asia in the last decades; enframed by the ASEAN member states, China and Taiwan, it hosts global shipping routes, fish stock, hydrocarbon reserves, and rich biodiversity. The South China Sea contains over 250 small islands, atolls, cays, shoals, reefs, and sandbars many of which are naturally under water at high tide, and some of which are permanently submerged. The features comprise three archipelagos, namely, the Spratly Islands, the Paracel Islands, and the Pratas islands and Macclesfield bank and Scarborough Shoal.

Its geopolitical dynamics has some additional drivers. The land features are claimed variously by China, Taiwan (as the erstwhile Republic of China), the Philippines, Vietnam (which has the maximum number of Spratlys land features

under its control), Malaysia, and Brunei. There are maritime jurisdiction disputes, arising from claims under UNCLOS, between the countries as well as from the intersection between China's – and Taiwan's – claims of 'historic rights' expressed through its 'nine dash lines' ('eleven dash lines' for Taiwan) of indeterminate coordinates and the respective maritime zone claims under UNCLOS by various countries.

There is a history of clashes for forcible capture of land features amongst the claimant countries. The use of military force began in the early 1950s for assertion of territorial claims on the land features which involved most of the claimants. A major military operation was the Chinese forces capturing the Paracels, in 1974, from the then South Vietnamese government; the other major Chinese operation was, in 1988, when six Spratlys features were captured from the Vietnamese. In 1995, the Chinese occupied, by stealth, the Mischief Reef causing alarm in the Philippines because of its close proximity (130 nm) and its claim over it. A more recent episode is the blocking off of the Scarborough Shoal by the Chinese forces and denying access to the Philippines. Incidents of show of force have involved other countries as well on account of these ongoing disputes but most of them involve China as it enjoys an overwhelming favourable asymmetry vis-a-vis the other littoral claimants.

China's 'Historical' Claims (and Taiwan's)

Both China – and Taiwan (as its predecessor state) – also claim, with deliberate ambiguity, "historic rights" in the South China Sea which include both "historic waters" and "historic titles" in regard to islands and other features. Expressed through "nine dash lines" (by China) and "eleven dash lines" (by Taiwan), and covering nearly 90 per cent of the surface of the South China Sea, these dashes were first shown on an internal Chinese map in 1947 and, later, in 1949 after the establishment of the People's Republic. Truly unique among the claimant countries, these were made internationally only in 2009 vide an official note to the UN Secretary General where China asserted, "indisputable sovereignty over the

islands in the South China Sea and the adjacent waters, and enjoy(s) sovereign rights and jurisdiction over the relevant waters as well as the seabed and the subsoil thereof (see attached map)" (*Note Number CML/18/2009 From Permanent Mission of the People's Republic of China to the UN Secretary General 2009*). The jurisdictional claims represented therein have not been reconciled with the maritime zones as provided under UNCLOS to which China has acceded. Due to this assertion, there are frequent violent clashes and stand-offs of China with other countries exercising their entitled rights in their UNCLOS-compliant maritime zones.

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US Presence

The other driver is the Chinese attempts to break through the US-driven strategy of creation of the "first Island chain", through its various chokepoints and alliance networks, to prevent the other from challenging its pre-eminence in the Pacific Ocean. This needs to be flagged to understand the nature of naval and other kind of maritime activity which has a bearing on the existing strategic equilibrium in the South China Sea where this strategic contest manifests itself in different ways affecting the relationship between the US and China but also with the other countries in the South China Sea littoral. Since 2010, the US is pursuing a policy of 'rebalance' to Asia through the creation of 'lily pads' in south-east Asian countries for purposes of stationing/rotating its forces.

ASEAN's Role

Yet another factor is ASEAN which aims to be in the 'driving seat' for the operation of a regional security architecture through the development of various ASEAN-related bodies.

It stepped into this role to fill the vacuum created by the withdrawal of the US from the region at the end of the Cold War. Although formulaic expressions of the big powers and its dialogue partners for support to the ASEAN-centrality for this aspirational role continue, the organisation's deepening internal fissures in recent times make it difficult to play such a role, adding yet another element of geopolitical uncertainty.

Complexity of South China Sea Geopolitics

These parallel (and disaggregatable) geopolitical drivers are generating concomitant, parallel trends but they also conflate to put the existing power equilibrium under stress. Making cooperation in South China Sea extremely difficult, there are concerning negative implications for freedom of navigation/overflight for global trade, sustainable exploitation of its resources, conservation of its rich biodiversity, and other maritime system defence functions at the national and multinational levels.

Recent Developments Under the Shadow of COVID-19

Ramifications Of the UNCLOS Arbitral Findings (2016)

Despite China's rejection of its proceedings, the ramifications of the 2016 Arbitration Panel findings, constituted under the provisions of UNCLOS, continue to have geopolitical significance. Instituted by the Philippines against China and not having immediate material impact except ASEAN's polarisation, the Panel's findings are a seminal contribution to the literature on international maritime law.

These make China's case – and conduct – in the South China Sea legally untenable and publicly unjustifiable even as it professes friendship with its littorals. It rejected China's "historic rights", including the "nine dash lines", as having any basis in international law; any claims for maritime zones have to conform to the UNCLOS yardsticks. Further, artificial alteration of the land features does not lead to any rights regarding maritime zones; none of

the land features in the Spratlys generates EEZ and in many cases not even territorial waters for being low-tide features; the Spratlys do not constitute a unit (thus, making, by implication the Chinese baselines covering the Paracels illegal as also the Chinese 1996 declaration of intent to proclaim them for the Spratlys as well); China is in breach of UNCLOS for aggravating the dispute between the parties by activities such as artificial islands, causing irreparable harm to the coral reef ecosystem, and permanently destroying evidence of natural condition of the relevant features. It also upheld the Philippines claims about the illegality of the Chinese preventing the former in the exercise of traditional fishing rights in the Scarborough Shoal and for interference in the exercise of Philippines rights to various features, such as Mischief Reef, the Second Thomas Shoal, the Reed Bank, which fall under its EEZ.

Despite its excessive claims and rhetoric, the 2016 arbitral findings have made China defensive – and, lately offensive. In its wake, it declared that its Spratlys reclamation activities were over even though it has continued beefing up its military infrastructure. At the 2016 Shangri-La dialogue, Major General Yao Yunzhu, Senior Fellow at the Academy of Military Science, People's Liberation Army, admitted¹ to a domestic debate over the issue, saying, " And on the ongoing (domestic) debate on the nine-dash line, I think, yes, it is an ongoing debate. If it is an ongoing debate, it is ongoing and it means that we are still debating; but ambiguity, is it still China's interest? I can give you my personal opinion. I think it still serves China's interest and also the interest of other claimants in the South China Sea because the ready excuse is domestic politics, as my Singaporean colleague has mentioned (by ascribing non-ratification of UNCLOS by US to domestic politics), a ready explanation, but I also think it is not only domestic politics, it is just for China and other claimants to the have more room to manoeuvre and to have more room for compromise. So I still think that ambiguity might be a good thing for China as well as for other claimants."

(*International Institute of Strategic Studies* 2016).

Even some of the recent Chinese dissidents' criticism (*China File* 2020) suggests that there is a certain thought stream, of whatever political weight, which is uncomfortable with this overtly aggressive posture of the government. Although Taiwan's position is identical to China's, it is signalling a shift in position on the U-line (nine or eleven dashes) to create a conducive atmosphere for enhancing its collaboration with the littorals: unlike China, it responded to the arbitral findings by dropping reference to its "historic rights" (*Asia Maritime Transparency Initiative* 2020).

Although predating by a few months the pandemic-driven geopolitics, a certain push back from the other claimant countries on the maritime rights has led to a further escalation in this debate with China displaying its intent - expressed in highly nationalistic terms - to press its nine dash lines claim even if it adds to further international tension. On 12 December 2019, Malaysia submitted a claim for extended continental shelf to the UN Secretary General which elicited the Chinese response, on the same day, claiming vide note number CML/14/2019 both "historic rights" as also territorial and contiguous zones, EEZ, and Continental Shelf for its South China Sea islands; not only is the Chinese claim in conflict with UNCLOS but it raises the prospect - even though improbable due to its lack of control over a large number of Spratlys land features - of drawing Paracels like baselines to enclose large sea areas as its sovereign "internal waters".

This push back includes Indonesia as well as it explicitly rejected, in a note to UN SG on 26 May 2020, China's position by making reference to the Arbitration Panel's findings; Vietnam did the same, earlier on 30 March 2020 as did the US in a similar note of 1 June 2020. This building up of momentum, with the involvement of the other 'middle' and littoral powers, against the Chinese "historic claims" is coincidental with heightened naval activity.

China's Expansive Development of Infrastructure

China is not alone in developing infrastructure on land features in the Spratlys but it has been the most expansive, at least since 2013, in developing infrastructure such as airfields, communication installations, docking facilities for vessels et cetera. This enhanced capability is leading some strategic analysts, including senior US officials, to express concerns that this incremental creation of 'facts on the ground' is tilting the balance of power in China's favour. It has been most pronounced at features called Fiery Cross Reef, Mischief Reef, Subi Reef (Spratlys) and Woody Island (Paracels) which are capable of hosting military aircraft, ships, submarines, ammunition depots, radar and signal intelligence/jamming systems.

This massive infrastructure enhances capabilities of its Coast Guard and the maritime militia, comprising fishing vessels with sophisticated communication technology, which is treated by the US Navy as part of the Chinese naval chain of command (*Defence News* 2020).

These significant capabilities enable China to take recourse to below-threshold kinetic action short of war against other South-East Asian countries, greater loiter time for its naval vessels and aircraft for expanded force projection, and help acquire effective maritime domain awareness (MDA) capabilities across the entire region. With undemarcated territorial/contiguous waters on account of huge reclamation work on these ecologically fragile features, the issues concerning freedom of navigation/overflight, exploitation of marine resources, and marine conservation activities have become a matter of international concern. Cambodian and Chinese denials notwithstanding, a US Indo-Pacific Command officer has told journalists that China will build this year a naval base at Ream and an air base 70 km north. (*Voan News* 2020).

US 'Pivot to Asia'

An articulation of its policy of 'pivot' to Asia can be found in the Pentagon's June 2019

'Indo-Pacific Strategy Report' (*US Department of Defence* 2019) which underlines a "vision for a free and open Indo-Pacific... (with) linkages between economics, governance, and security". This latest document lists several strategic steps: a distributed presence and location access for expeditionary capabilities for conventional and unconventional warfare; strengthened alliances with Japan, South Korea, Australia, the Philippines, and Thailand; expanded partnerships with Singapore, Taiwan, New Zealand, and Mongolia; security partnerships with Vietnam, Indonesia, and Malaysia; stronger engagement with Brunei, Laos, and Cambodia; and, closer alliance relationship with UK, France, and Canada, "each with their own Pacific identities".

Essentially, it aims to strengthen the capabilities of countries to resist Chinese pressures through military supplies, friendly visits, and joint exercises which, now, focus more on amphibious operations. Seeking to counter the Chinese attempts to change the balance of power in the South China Sea, it conducts sailing of ships, US air force flights, surveillance ships and aircraft in waters off China's claimed maritime zones which it does not recognise as being UNCLOS-compliant; in these 'freedom of navigation' (FONOPs) sailings, UK and France have also occasionally joined, including challenging the Chinese declared baselines around the Paracels.

These have led to frequent close and "unsafe" encounters and are contributing towards the growing tension. As many of these activities solely aimed to shape their bilateral relationships with China, the littorals remain somewhat unsure about the long-term commitment to the region; as noted by some commentators, the Trump White House was scheduling the FONOPs for influencing the Chinese policy on the Korean question (*The Interpreter* 2017). One particular US concern, arising from the challenge of mobilisation of military power over a much longer distance in comparison to the Chinese, is the apprehension about a possible military infrastructure in Chinese-controlled Scarborough Shoal about which President Obama is reported to have warned the Chinese President directly (*NY*

Times 2020). At the same time, the US is not directly engaging in bilateral claims issues of even its close friends; despite supporting the Philippines' case before the arbitration panel, it has not intervened on the Philippines' side in terms of their mutual defence treaty, despite the Chinese coercive prevention of the legitimate use of the country's maritime resources.

Growing Tensions In the South China Sea

The Chinese exertions have led to clashes over fishing and stand-offs where no one, including China, is able to exploit the hydrocarbon resources in the contested waters; this strategic ambiguity is aimed to corrode the existing equilibrium in these waters. China is able to enforce its nine dash line claims more aggressively over an expanding geography due to the ability of its vessels to refuel at the reclaimed features. The Chinese naval, Coast Guard and maritime militia vessels are able to remain at sea for a far longer period in recent months. The Chinese Coast Guard has been patrolling Luconia Shoals off the Malaysian coast for 258 out of 365 days; at the Second Thomas Shoal, where a Philippines ship has been scuttled, the Chinese Coast Guard vessels were on station for 215 out of 365 days (*Asia Maritime Transparency Initiative* 2020a); Chinese ships have been near the Philippines-controlled Thitu Island for over 450 days with a daily average of 18 ships preventing the construction of an airstrip there (*Asia Maritime Transparency Initiative* 2020b). As a consequence, the Chinese stand-offs with the littoral claimant countries are growing in frequency: in December 2019-January 2020, there was a stand-off in the Natuna Islands off Indonesia; in May 2019, there was interference in the oil exploration activities by a Malaysian hired drilling ship of Royal Dutch Shell; there was a four-month stand-off (June-October 2019) with a Vietnam-contracted Rosneft drilling ship; on 3 April 2020, a Chinese ship sank a Vietnamese fishing vessel with eight crewmembers on-board.

As a result, there is military build-up on the part of the other claimant states. In the Malaysian case, there was another stand-off, in April 2020, during its exploration in its

extended continental shelf which drew in US and Australian naval ships; at a video conference between the US Secretary of State and the ASEAN foreign ministers, the former accused the Chinese government of taking “advantage of the distraction (on account of COVID 19 problems)” (ABC News 2020). In June 2020, Vietnam accused Chinese ships of attacking its fishing boat near the Paracels and the Australian Prime Minister stated, on 19 June 2020, about a cyber attack by “a state actor” without identifying the state. The backdrop of the current pandemic has increased the military and naval activity, from the Chinese and the US side, throughout the Western Pacific; naval and air near confrontation instances are growing with the Chinese Navy conducting naval exercise in South China Sea (May 2020) and the US strategic bomber flights, as part of their training missions have been carrying out “simulated cruise-missile attacks on Chinese artificial islands” (*Japan Times* 2020). The US Global Hawk spy drones are regularly flying over the region. As these activities increase, it is worth noting that the Philippines have reviewed their earlier intimation to the US to terminate the visiting forces agreement without which their bilateral mutual defence treaty would be ineffective. Three US nuclear powered aircraft carriers are sailing in the western Pacific presently. For the international community, this ascending action-reaction cycle carries a growing risk of a clash of arms.

Limitations of the ASEAN Way

Unlike the earlier assertiveness on the part of ASEAN to speak up about their concerns about the Chinese coercive behaviour as evident in Mischief Reef episode (1995), its effectiveness in dealing with China is much diminished due to lack of internal cohesion which can be attributed to China’s effective combination of both threats and blandishments towards the organisation and its members; its BRI/MSR projects and robust trade relations are leveraged to achieve that effect especially with regard to the member countries with weak economies.

The limitations of the ‘ASEAN Way’ are becoming increasingly evident as the

geopolitical circumstances are changing profoundly, a trend which is likely to exacerbate in this period of pandemic-driven crisis. Despite the push back by some of its member countries, the aggressive stance of the Chinese government suggests that it feels confident – with the pandemic seemingly under control – to shape the geopolitical transformation by leveraging its hard power, its economic heft, and the organisation’s fissures; however, the broader negative international sentiment and China’s internal economic tepidity might blunt this strategy as is clear from the Chinese unwillingness to soften the project terms and overall slowdown in their implementation.

China’s breach of the provisions of the 2002 declaration on code of conduct for the South China Sea, in critical areas like non-escalation of disputes and alteration of the character of land features, ecological sustainability (*Centre for International Law*, ‘Declaration On the Conduct Of Parties In the South China Sea’ 2020; paragraphs 4, 5, and 6) is unlikely to be made good through a Code of Conduct whose timeline of 2021 for conclusion appears increasingly unrealistic. ASEAN’s Outlook on the Indo-Pacific, despite pro forma support by other countries, is also unlikely to become the roadmap for a stable governance structure for the Indo-Pacific to the same reasons.

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Its failure to take on board India’s concerns on the RCEP negotiations reflects a certain blind faith in the mystique of its ‘ability’ to somehow muddle through the geopolitical dynamics over which it aspired to retain control by striking a balance between India, China, and the other powers. It has also not

been able to seize the momentum, generated by the arbitration panel findings, to develop consensus among the member countries on issues such as UNCLOS-compliant maritime zones and CBMs amongst the other claimant countries in managing their own South China Sea claims which other non-littoral countries could also subscribe like the ASEAN Treaty of Amity and Cooperation; such diplomatic approach would increase pressure on China as well, especially as ASEAN has emerged as its largest trade partner during the current pandemic.

Already successful examples of collaboration, despite unsettled maritime claims, exist in south-east Asia itself, such as Malaysia-Thailand Joint Authority (1992) (for exploiting hydrocarbon resources in the overlapping continental shelf) claims and Commercial Agreement Area (2009) between Malaysia and Brunei. Importantly, China is the only littoral country insisting upon its so-called “historic rights”; all the other claimant countries are approaching the delimitation of maritime zones from their respective baselines and seem inclined to adhere to the ‘Regime of Islands’ envisaged under UNCLOS (Severino 2011, p. 98). According to some scholars, UNCLOS can provide the basis for an equitable median line between the Spratlys and the opposite coasts of Palawan, Borneo, and Vietnam, taking into consideration the principles of maritime boundary delimitation including the length of the relevant coasts (Yaan Huei Song and Tonnesson 2013).

Indian Approach

Indian Strategic Objectives

Although taking no position on various territorial claims, India has concerns about the developments in the South China Sea as upending of the power equilibrium is to the detriment of its strategic equities. The corrosion of regional power balance is being accelerated by an action-reaction spiral, intensifying arms race, and heightened military tensions. India’s power asymmetries are to be factored in its larger strategic approach. It envisages a certain power balancing role as it

posits a more stabilising, holistic vision for the region. There is much work to be done in both these aspects and India’s diplomatic engagements in the region and with other countries with similar equities in its stability subserve these objectives; this approach does not aim to isolate China either. This strategy needs some recalibration taking on board the efforts of the littorals to stabilise an UNCLOS-based maritime order as we think of a post-COVID world.

Evolving Engagement With the Region

Prime Minister Modi’s landmark Shangri-La speech, on 1 June 2018, setting out India’s vision for a free, open, inclusive, and rules-based Indo-Pacific region was universally welcomed, including by China. He further fleshed it out as the Indo-Pacific Oceans’ Initiative, in Bangkok in November 2019, for cooperation in maritime security, maritime environment, disaster risk mitigation, sustainable use of marine resources and exclusion of illegal fishing, capacity building, and maritime trade and transport. This was taken further in a speech by External Affairs Minister, in December 2019, where he suggested closer cooperation, on as many platforms as possible, in areas such as connectivity including foreign project alignment with the ASEAN Master Plan, open-ended partnership-building maritime projects, maritime security strengthened by a seamless MDA and institutionalised cooperation amongst the coast guards, and stronger ASEAN and related mechanisms.

India actively participates in all the ASEAN-led institutional activities. Of particular importance is its participation in the East Asia Summit mechanism enveloping the entire South China Sea with a semblance of security architecture having ASEAN in the ‘driving seat’. This is supplemented by the Quadrilateral Dialogue, involving US, India, Japan, and Australia at the level of foreign ministers and at other senior foreign office level, which aims to stress their collective interest in an open, prosperous, and rules-based and inclusive Indo-Pacific region, in economic and security coordination in the interest of

regional stability and economic growth, sustainable and transparent infrastructure development, and regional partnerships. In a variation of this format, the Indian Foreign Secretary has been having weekly telephone conversations on the post-COVID outlook for the Indo-Pacific with his opposite numbers from US, Australia, Japan, South Korea, Vietnam and New Zealand.

At a multilateral level, India also carried out a six-day long 'Group Sail' in the South China Sea, in May 2019, along with US, Japan, and the Philippines to 'deepen the existing partnership and foster mutual understanding' as part of its annual overseas deployment in the region which included exercises with several other countries, including China.

As part of its deepening engagement with the region, India also has robust bilateral relationships with several littoral countries covering all aspects, including naval and maritime; the last mentioned include training, defence equipment, and port visits.

Indian approach has been one of sensitivity to the concerns of ASEAN and other littoral countries regarding the regional strategic stability. It also faces a perception issue as regards its strategic heft to shape the regional balance of power which requires a more effective external media polity. Yet, it feels that a calibrated partnership in multilateral and bilateral formats, leveraging the recent trends, can help shape the regional order which is ecologically sustainable and stable in its strategic interests.

Conclusion

With the pandemic still unfolding, the geopolitical environment in the South China Sea has markedly deteriorated with increasing tension between the big powers as also between China and the other littorals; the activities seem to be driven by a desire to exploit the other's vulnerability on account of the domestic preoccupations in coping with the pandemic.

Whatever tactical gains are sought to be achieved from such activity, it bears keeping in

mind that they pale into insignificance when compared to the threat – in nobody's interest – of disequilibrium in the region and the effect of the potential collapse of the global economy.

The other global challenges get exacerbated as institutional capacity, at national and international levels, diminishes as a consequence. International experience of the current pandemic demands a fresh approach towards regional and global problems. With the global fight against the pandemic being still inconclusive, the developments so far do not indicate that the current geopolitical moves reflect this imperative. A promising scope for a constructive, win-win regional diplomacy opens up through a wider recognition of the existential challenges facing the region and the world.

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