

China's Conduct in the South China Sea: Power Politics Versus Legal Battles

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In 2014, the situation in the South China Sea entered a new stage after it transpired that China is building islands through land reclamation. On Dec. 5, 2014, the U.S. State Department released a report titled *China: Maritime Claims in the South China Sea*, which analyzes China's maritime claims in the South China Sea, in particular the legal status of its "dashed-line" claim. The Philippines has filed a case against China to resolve conflicting territorial claims in the South China Sea through international arbitration. In response to the arbitral tribunal's demand that China submit a counter-memorial before Dec. 15, the Chinese Foreign Ministry issued a position paper on Dec. 7, titled *Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines*, which reiterated that the Arbitral Tribunal under the Permanent Court of Arbitration in The Hague "does not have jurisdiction over this case." On Dec. 17, the Arbitral Tribunal issued Procedural Order No. 3, requesting the Philippines to submit further written argument before March 15, 2015. China will have until June 16, 2015, to provide any comments in response to the supplemental written submission of the Philippines, the Arbitral Tribunal said. In other words, for the time being the legal battle over territorial claims in the South China Sea is going to rage on.

At the same time, it deserves our attention that China is currently reclaiming land from the sea to build islands on six reefs (Eldad Reef, the Gaven

Reefs, Fiery Cross Reef, Hughes Reef, Cuarteron Reef and Johnson South Reef). No matter what China's true intentions are, its hard-line conduct has already raised tension in the region. The commander of the U.S. Seventh Fleet, Vice Admiral Robert L. Thomas, has said publicly that the U.S. would welcome if Japan expanded the scope of its aerial patrols to the South China Sea. Vietnam is also considering whether to follow the Philippines by filing for international arbitration. Vietnamese Foreign Minister Pham Binh Minh and his Philippine counterpart Albert Del Rosario have announced that they will forge a strategic partnership to jointly counter China's actions in the South China Sea. Faced with strategic partnerships in the region or challenges from beyond the region, China shows its muscle in the South China Sea for the following reasons:

1. Might versus legal battles: Should the Arbitral Tribunal proceed with the case and rule in favor of the Philippines, China will be slapped with the negative image of a nation that does not comply with international law. In its memorial, the Philippine government argues that China does not have the right to claim the reefs that it occupies as part of its exclusive economic zone and continental shelf. To counter this argument, China has been using land reclamation to build up the reefs into islands in order to meet the conditions stipulated in Article 121, paragraph 3 of the 1982 United Nations Convention on the Law of the Seas (UNCLOS), and consequently claim relevant maritime rights. However, China is being scrutinized whether it will destroy the original,

naturally formed land features in the process of the reclamation. Should the structures turn out to be entirely manmade, China will have ruined its otherwise ingenious plan because under UNCLOS such structures are only entitled to a safety zone within a 500-meter radius but cannot claim rights to a territorial sea within 12 nautical miles and a contiguous zone up to 24 nautical miles from the baseline.

2. Matching the “one belt, one road” strategy:

In 2014 China formally presented its “one belt, one road” initiative. “One road” refers to the 21st Century Maritime Silk Road, for which the South China Sea is an indispensable sea lane. Following the establishment of the Beijing-proposed Asian Infrastructure Investment Bank (AIIB), China believes that the other South China Sea littoral nations will not dare to confront China’s hard-line conduct in the region because they need AIIB capital for infrastructure development.

3. Early preparations for securing maritime interests:

The ultimate goal of China’s land reclamation projects and the aggressive patrolling by the China Coast Guard is to turn the nation into a maritime power and secure the right to exploit marine resources. Chinese President Hu Jintao stated this in a report to the 18th National Congress of the Communist Party of China in 2012. This means that China can use these reefs as advance and supply bases for further exploration activities at Vanguard Bank (Wan-an Bank) and Reed Bank (Lile Bank). They also complete China’s preparatory work for safeguarding its maritime interests.

4. Sounding out other nations’ bottom lines:

Previously, the international community focused on whether China would proclaim an Air Defense

Identification Zone (ADIZ) in South China Sea. No one expected China to launch land reclamation projects within such a short time. These moves not only show that China aggressively guards its maritime interests but also serve to sound out the bottom lines of the other South China Sea claimants, as well as to push the bottoms of Japan and the United States. If China does not meet effective countermeasures, it will only make further assertions regarding its maritime interests or even its interests in outer space.

China is flexing its muscles in the South China Sea not only in response to the Philippines’ arbitration case but much more out of consideration for long term strategic and economic interests. Since China cannot change the outcome or intention of the Arbitral Tribunal, it attempts to force a *fait accompli* by changing the status quo in the South China Sea. In effect, China is unlikely to heed the international community’s appeals to return to the situation before the Declaration on the Conduct of Parties in the South China Sea, signed between China and the Association of Southeast Asian Nations (ASEAN) in 2002. **B**

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