Peace Imperatives In South China Sea And Attitude Of U.S. And China: An Impending Threat To Global Peace

Kumar Ashutosh *
Anjum Parvez**

Introduction:

After the emergence of new economic order, a race has begun among the various leading nations to establish supremacy in the field of international trade and business. In our present era, international relations have assumed all the more great significance. In the Twenty-First century, we live in a world that is both fascinating and terrifying- one that exhibits deep contradictions and yet manifest high hopes1. Disputes in Asia, be they in maritime sphere or territorial, military or non-military in nature, are usually become complex because of presence four Nuclear Powered Countries including China, India, Pakistan and North Korea.

In his recent book2, while contemplating the boiling state of Asia, Michael R. Auslin observes “While dynamic and peaceful on the surface, the continent is riddled with unseen threats, from economic stagnation to political unrest and growing military tensions. These risks are also threatening the rest of the world, thanks to the extraordinary economic, political and military growth of Asia over the past decades3.”

Genesis of Dispute

And one of the most vital reasons behind this boiling state of Asia is Chinese attempt to establish its hegemony in the Indo-Pacific Sea region. China’s insistence that all waters in the south China Sea falls within its jurisdiction, without providing any legal rationale, has led to several disputed over oil and gas concessions. For instance, on 25 June, 2012 the State owned China National Offshore Oil Corporation responded to ongoing tension with Vietnam by declaring the nine new offshore oil and gas blocks open for bids from foreign companies. The blocks were off the coast of Vietnam and the closest was located 230 nautical miles from China. All nine also were overlapped with blocks previously created by Vietnam4 South China Sea, which is the geographic commons of Southeast Asia’s navigable rimland basically touching the shores of six countries viz. China, Vietnam, Philippines, Taiwan, Malaysia and Brunei. Its 3.5 million square kilometers of underlying bedrock contain oil and natural gas deposits that, by official U.S. estimates, are at least equal to Mexico’s and, by some contested Chinese estimates, might be second only to Saudi Arabia’s oil deposits. According to Robert D. Kaplan “the South China Sea has proven oil reserves of seven billion barrels, and estimated 900 trillion cubic feet of natural gas. If Chinese calculations are correct that the South China Sea will ultimately yield 130 billion barrels of oil, then the South China sea contains more oil than any area of the globe except Saudi Arabia”5. Also home to lucrative fisheries and supply routes that carry 80 percent of China’s crude imports, the territorially disputed region may be the most strategically important waterway of the 21st century6.

*Assistant Professor (Political Science), Law College Dehradun, Uttaranchal University, Dehradun-India.
**Assistant Professor (Law), Law College Dehradun, Uttaranchal University, Dehradun-India.
3. Ibid.
For centuries, these waters also have been vital to the economic survival of neighboring Vietnam, Malaysia, Brunei and the Philippines. However, according to the United Nations Convention on the Law of Sea, 1982 (hereinafter referred as UN CLOS) every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention. It further provides that the outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea. However, it seems that China is inclined to disregard the UNCLOS.

**Rules of International Law Relating to Sea:**

Basically all vital rules relating to distribution of territories of sea and division of sea water are given in the UNCLOS. As the dispute of South China is concerning the sea territories, it is not unworthy to have a glimpse upon some relevant provisions of UNCLOS. It affix the sea territories under Article 15 which provides that delimitation of the territorial sea between States with opposite or adjacent coasts Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.

It further provides that the above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

The waters are also prized by regional non-claimants. For U.S.-allied Japan and South Korea, situated far to the north, South China Sea shipping lanes provide access to trade-intensive waters of the Indian Ocean, via which more than half of their respective energy needs are met. For non-claimant Indonesia, Natuna Sea fishing grounds along the southern fringe of the contested region hold vital natural gas reserves.

Vietnam dominates the western shore of South China Sea. Once the pre-eminent foreign symbol of domestic turmoil inside America, Vietnam has been until recent years -least-a capitalist dynamo seeking closer military ties to the United States, in order to maintain balance against China. China consolidated as a dynastic State by Mao Zedong after decades of chaos and made into world most dynamic economy by the liberalization of Deng Xiaoping, is now pressing outward with its navy, to the First Island Chain in the western Pacific. Then there is demographic Muslim behemoth of Indonesia, which having sustained endless decades of left and right wing authoritarian rule during the cold war, could possibly emerge as a second “India”, that is a vigorous and stable democracy that has the potential to project power through its growing economy. Singapore and Malaysia, meanwhile, move forward economically in devotion to the City-State-cum-Trading-State model, through varying blends of democracy and authoritarianism. Therefore, the composite picture is of cluster of States that, with problems of domestic legitimacy and State building mostly behind them, are ready to advance their perceived territorial rights beyond there own shores. The outward collective push is located in the demographic cockpit of the globe: it is here in Southeast Asia, with its nearly 600 million people, where China’s 1.3 billion people coverage with the Indian Subcontinent’s 1.5 billion people. And the geographical meeting place of all these States is maritime i.e. the South China Sea.

Thus, all this has led to deployment of U.S. Navy in the region by President Trump, challenging the Chinese hegemonic designs on the ground that they violate the international maritime norms as well as regional peace. This again is emerging as potential and impending tension between the global giants. It might prove to be thaw not only between the two great naval powers but may spell a doom for maritime peace in the Indian Ocean. To avoid this tension, international community through consensus should persuade Beijing to conform to the provisions of Article 25 of UNCLOS.

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7. UN Convention on the Law of Sea, 1982; Article 3
8. Ibid, Article 4.
9. Ibid, Article 15.
10. Ibid
11. Supra note 5, p.9.
Geo-Political Rivalry between U.S. and China

The ongoing sea dispute over the South China Sea has brought U.S. in the fray further complicating geo-strategic rivalry between the two great powers along with India entering as a stakeholder from the side of Vietnam where India has interest in oil exploration drives in the South China Sea become complicated when U.S. jumped into the fray. For many years, China and United States, have been locking horns in a mounting rhetorical war over Chinese sea territorial claims, which seems to be in violation of international law — and island building strategy in the said sea and also, in the contested waters of the pacific ocean. Heights of tension between the two reached when the Chinese Foreign Ministry had cautioned the U.S. military not to exacerbate tension in the South China Sea by sailing naval vessels or flying aircraft near Chinese-held islands, many of which are located in waters, which are also claimed by Vietnam, the Philippines and Malaysia that they belong to these countries. The mighty Pentagon has countered the Chinese allegation that U.S. ships and aircraft will travel along any routes allowed by international law at any time and has told regional allies like Malaysia and Indonesia that it will soon conduct patrols near Chinese positions.

Though this standoff between the two might seem like an ordinary nationalist posturing between two Pacific powers, maritime disputes carry a special significance in Asia. Unlike in Europe, water is the organizing element of the continent, which wraps around the East and South China Seas, the Bay of Bengal and Indian Ocean, as well as countless peripheral lagoons and bays. Ownership of a particular island, reef or rock, and the right to name a body of water is more than a question of sentimentality — it is the foundation of many national policy strategies. Securing the right to patrol, build bases and regulate trade through these waterways can mean access to resources critical to sustaining economic growth and political stability.

Beijing’s and Washington’s divergent perspectives are rooted in radically different national and regional strategies. On the Global platform, China portrays the South China Sea dispute as fundamentally a question of its sovereignty in which it has complete authority to anything. On the other hand, however, foregrounds concerns of the United States is about freedom of navigation. Since the end of the Cold War, the United States has been the unquestioned pre-eminent power in the Pacific Rim, assisted by its allies, most notably Japan and South Korea. Simultaneously, however, China has been emerging as a potential regional hegemony, and the South China Sea has become the most visible area of tension.

A core but often unstated component of U.S. naval strategy is to maintain global maritime supremacy in oceanic waters. By controlling the seas, the United States is able to ensure the secure movement of U.S. goods and to deploy military reinforcements worldwide. This preserves American interests in the form of global economic activities — feeding the domestic economy while ensuring that any threat to national security is addressed abroad before it can reach the homeland. This state of

\[12^{12} \text{Supra note 7, Article 15(1)}\]
\[13^{13} \text{Ibid, Article 15(2)}\]
\[15^{15} \text{Ibid.}\]
affairs is enforced by the powerful U.S. Navy, but it is undergirded by Washington’s particular interpretation of international law.

In pursuit of their respective interests, the United States and China have chosen to interpret international maritime law in tandem with their own interests. The precise legal nature of various landforms has become key, in the strategic policy framing for establishing domination upon a particular region. There are four basic geographic terms at play: island, rock, low tide elevation and artificial island. Understanding the ambiguity of each of these terms is vital for understanding conflict in the South China Sea between different States.

According to international law, an "island" is a naturally formed elevation that is always above the high-tide level and is habitable and capable of sustaining rising economic activities. A "rock" in the sea territory is also formed due to the natural forces and emerge above the surface but not necessarily suitable for habitation or economic exploitation. By contrast, a "low tide elevation" can be covered by water at high tide but is exposed at low tide. An "artificial island" differs from an island in that it is not naturally formed and always poses a threat to imbalance the oceanic equilibrium. Disputes of such kind become further complicated when considering submerged rocks, seamounts and other subsea landforms, which have also become the subject matter of diverse claims by the coastal States.

In China’s near seas, the U.S. global imperative comes into conflict with Chin’s policy based upon emerging regional needs of China. Since the early 1980s, China has been undergoing a transitional phase from an insular, self-sufficient pariah State to a major exporter in the matter of international trade and business and this new economic interest has forced Beijing to reassess its maritime risks and vulnerabilities. It equally a bitter truth that China will no longer be able to protect its national economy without securing the maritime routes it needs to maintain trade and to feed its industrial plant.

The South China Sea is one such essential waterway, made more important by the value of the sea's fisheries and subsea resources such as natural gas. But addressing the risks of its near seas means tackling the time-consuming and costly project of building, training and deploying a stronger blue-water navy while also establishing a greater maritime buffer along the Chinese coastline. China's assertion of ownership and control in the South China Sea, coupled with liberal interpretations of its rights within its claimed exclusive economic zone, gives Beijing at least a modicum of greater security. With neighbors unable or unwilling to directly challenge China’s concrete actions in the sea, and the United States hesitant to use force to halt Chinese expansion, Beijing is reshaping the status quo unimpeded.

If Asia’s astonishing economic growth of the past two decades continues, the regional stability will not only remain intact but might proved beneficial for the overall growth of the region. However, the problem remains further complicated as China’s increasingly assertive land grabs and island-building campaigns, some 1,300 hectares of tiny islets have been land filled to sustain mostly military infrastructure, including runways long enough to accommodate bombers—low-level skirmishes between Chinese naval patrols and civilian fishing fleets from neighboring countries could spark international conflict.

In July, a five-judge panel of Permanent Court of Arbitration in the Hague unanimously rejected the legal basis of nearly all of China’s maritime claims. Within weeks, China’s Supreme People’s Court issued a regulation stating a “clear legal basis for China to safeguard maritime order,” in which Beijing vowed to prosecute any foreigners found fishing or prospecting in disputed waters. The similar trend can be observed in the case of United States which continues to flout international regimes concerned with UNCLOS. In fact, the United States was the first member State of United Nations to reject the jurisdiction of international legal tribunals in recent decades. In 1986, the U.S.
refused to participate in legal proceedings over its support for the Contra rebellion against the ruling Sandinista government in Nicaragua. Although the International Court of Justice held in *Nicaragua v. United States* that the U.S. had violated the sovereignty of Nicaragua under customary international law, a U.S. veto in the UN Security Council prevented Nicaragua from enforcing the judgment of ICJ in any meaningful way. The case helped to shape American political skepticism toward international courts; the United States takes no part in the International Court of Justice or the International Criminal Court. It even rejected the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the comprehensive maritime law agreement which it spearheaded through the negotiation process along with the member States of the United Nations. The trend, however, seemed to be reflective of American hegemonic postures in international relations.

Other means of settling complex maritime disputes also appear ineffective. Even the ASEAN failed to devise modalities for settling outstanding maritime disputes in the South China Sea. Beijing’s promise to finalize the matter in 2017 also proved to be futile as conflicting claims of sovereignty over South China Sea remain an apple of discord between China and member countries of ASEAN. Much like the Hague-based tribunal’s ruling, any legally binding ASEAN declaration would lack meaningful mechanisms of enforcement.

**Conclusion:**

While the United States repeatedly asserts that it doesn’t take an official position on South China Sea disputes, it continues to criticize Chinese stand and plans to expand defense alliances with countries that have overlapping claims. By 2021, U.S. Naval plan is to expand the Pacific Fleet’s overseas assigned forces by approximately 30 percent.

Such incidents engineered or otherwise, are likely to continue defining the dispute as it unfolds in real time. Until broader questions of maritime sovereignty are resolved, the waterway promises to remain a fulcrum upon which the geopolitics of international trade, and thus the global economy, pivots. We’ll keep close tabs on developments here as they occur.

The development of a multilateral, binding code of conduct between China and ASEAN countries is often cited as a way of easing territorial disputes in the South China Sea. The parties have already agreed upon multilateral risk reduction and confidence-building measures in the 2002 Declaration on the Conduct of Parties in the South China Sea, but none have adhered to its provisions or implemented its trust-building proposals. While China has historically preferred to handle all disputes bilaterally, ongoing consultations between Beijing and ASEAN still hold some promise for reinvigorating a multilateral framework toward greater cooperation and conflict resolution. However, given differences among ASEAN members vis-à-vis China and China’s preference to settle matters bilaterally, it is uncertain whether progress can be made.

Many nations have urged Beijing to abide by the United Nations Convention on the Law of the Sea (UNCLOS), which sets maritime zones of control based on coastlines. The United States, which has signed onto UNCLOS without ratifying it, often relies on the international agreement to settle territorial disputes. China has refrained, invoking inter-temporal laws based on the deep historical record, such as archaeological findings on disputed reefs and islands. At best, China views U.N.-backed codes of maritime governance as incompatible with domestic laws; at worst, it sees them as instruments of Western hegemony designed to undercut its expanding influence as a world power.