India as Peacemaker
The Case for New Delhi Helping to Calm the South China Sea Disputes

By P. K. Ghosh

Rather than put an end to a dispute in the South China Sea, July’s final ruling by the Permanent Court of Arbitration (PCA) at the Hague in the dispute between China and the Philippines, is destabilizing and unsustainable, because the associated brinkmanship by contesting nations could easily lead to miscalculation and eventual conflict, with grave repercussions for all stakeholders. It is in this context that an external power like India could well play a stabilizing role as a facilitator or mediator with the aim of creating a face-saving way out for all. As a rising power in the Indian Ocean, India should be well suited for such a role given its growing strategic aspirations and rising capabilities. Undoubtedly, this raises two crucial questions: Would such a role be acceptable to the contesting parties and would New Delhi accept the challenge?

One of the most sensitive international flashpoints in the world, the South China Sea region became a little more unstable on July 12, following the PCA’s verdict. While there was a subdued reaction from a victorious yet pragmatic Philippines, with Foreign Affairs Secretary Perfecto Yasay Jr. calling for “restraint and sobriety,” there was anger and some disbelief on the Chinese side, which predictably declared the verdict “null and void.” The case against China was brought by the Philippines in 2013, with Manila saying that after 17 years of negotiations it had exhausted all political and diplomatic avenues to solve the issue. The Chinese refused to participate, though they did give a position paper to the media at the end of 2014, arguing that the issues raised were outside the jurisdiction of the court, because they essentially were about sovereignty, which is outside the ambit of the United Nations Convention on the Law of the Sea (UNCLOS).

After some twists and turns, the PCA in its historical verdict struck down the very essence of the Chinese claims. The international court concluded that “there was no legal basis for China to claim historic rights” within the sea areas falling within China’s so-called nine-dash line, which includes nearly 80 percent of the South China Sea. (In all fairness, though, the ruling did not declare the nine-dash line itself as illegal)

The verdict managed in some eyes to erode Beijing’s image as a responsible member of the international community and a follower of a rules-based system, aspiring to become a primary power in the emerging new world order. While experts on all sides debate the nuances of the binding verdict and some rue its lack of enforceability, it is important to evaluate the way ahead for solving the South China Sea problem, or at least stabilizing it to ensure that freedom of navigation for the trillions of dollars in trade passing through the area continues. In such a situation, a facilitator or mediator may come to the fore because there is a dire necessity to seek an amicable and peaceful way forward without further loss of face for any of the contesting countries. In this article, I explore the potential role of an influential external power like India.

STRATEGIC CONUNDRUM
For China, the PCA verdict has not only affected its international image but also severely restricted its strategic maneuverability. The mainstream domestic discourse on the dispute has acquired jingoistic dimensions and has constrained the Chinese leadership’s options to pursue major conciliatory moves with other claimant nations. It’s a Hobson’s choice for China, where conciliation may be seen as “concessions” by the domestic audience, while externally the littoral claimants interpret China’s moves as defiance of the international system.

Any outright negation of the rules-based international legal system will have consequences for China’s development agenda and its carefully crafted international image. Beijing’s projection of a peaceful and harmonious rise will be undermined, and even its closest allies and friends may find it difficult to support it on legally untenable grounds. Hence, Chinese leaders will have to walk a fine line to ensure that not only is the South China Sea region calmed, but definitive conciliatory moves will display the genuineness of its intentions.

Admittedly, it would be difficult and far-fetched for Beijing to do a complete U-turn and abandon its sovereignty claims, but concessions on fishing rights and joint exploitation of mineral resources in disputed areas could well assuage the feelings of many claimant nations. In addition, the verdict has the capability of uniting a fractured Association of Southeast Asian Nations (ASEAN), thus potentially turning an entire neighborhood against the Chinese development agenda. Its long-held position of only dealing on bilateral terms with claimant countries needs re-examination.

ASEAN and China are fundamentally at odds on how to approach the issues relating to the South China Sea. For the Chinese, the issue is bilateral between contending parties and Beijing has rejected any idea of external media tion. The claimant littorals, on the other hand, insist on multilateral discussions, preferably between ASEAN and China, using the consensus “ASEAN way” to find a lasting solution — this being a means of overcoming the geographical and economic disparity between themselves and China. However, the Chinese find it superfluous to involve all of ASEAN because a majority of ASEAN members are not parties to the maritime disputes.

Unfortunately, even the four claimant states of ASEAN are not united in their stand, with Vietnam and the Philippines being vocally active against what they see as China’s “aggressive actions,” while Malaysia and Brunei are keeping a much lower profile. Other ASEAN members such as Cambodia, Laos, Myanmar and Thailand have little interest in becoming embroiled in the
disputes, while Indonesia often positions itself as a mediator, sometimes joined by Singapore.

The deep divisions within ASEAN were again on display when the Joint Communiqué of the 49th ASEAN Foreign Ministers’ Meeting in Vientiane, Laos was released on July 24. The statement, remarkably, omitted any reference to the South China Sea ruling, an omission that came about at the insistence of Cambodia, acting on behalf of China. Hence, the famed “ASEAN way” of conducting diplomacy has produced mixed results, at best.

For its part, ASEAN as a whole has not taken any stand on the sovereignty of any particular island or rock. On the contrary, it has reiter- ated that the issues should be sorted out peace- fully and that stability needs to be maintained in the region. Hence, it has in effect only dis- cussed maritime and security confidence-build- ing measures (MSCBMs) and other confidence- building measures as a way of reducing any esca- lation of tensions in the area. One of the eventual results of this was the signing in 2002 of the legally non-binding “Declaration on the Con- duct of Parties in the South China Sea,” (DoC of 2002), which has been violated by nearly all the countries involved at one time or another. This has been followed by initial discussions on estab- lishing a legally binding Code of Conduct (CoC) for the South China Sea, but that effort has been proceeding at a slow rate.

Admittedly, some minimal progress has been made at the China and ASEAN 13th Senior Offi- cials’ Meeting (SOM) and the 18th Joint Work- ing Group Meeting on the Implementation of the DOC held in Manzhoubi, Inner Mongolia on 15th and 16th Aug 2016. The meeting agreed to enhance the CoC discussions and adopted two guideline documents for setting up of hot- lines and the application “Code for Unplanned Encounters at Sea” (CUES) in the South China Sea. However these are just initial steps that require considerable effort and discussions to achieve the final goal of the CoC document.

With so-called ASEAN centrality in doubt, it is only prudent that a country like India, which would be affected by any instability in the South China Sea, help to facilitate an amicable solution as an honest broker of peace and stability. This notion has found ready acceptance within ASEAN, although unofficially.

THE POTENTIAL ROLE OF EXTERNAL POWERS
The contesting parties realize that the instabili- ty, especially after the PCA’s verdict, could prove disastrous both economically and militarily for the region, especially if a miscalculation led to a serious conflict.

The US, the primary external power, has rejected China’s bilateral approach and is in favor of the multilateral ASEAN way, calling on China to accept the court verdict. On the other hand, the US has also made it clear on numerous occasions that what it views as aggressive recent Chinese actions are unacceptable and aggravate rather than resolve the issue.

Given that mediation of any sort would require agreement from the concerned parties, it is most unlikely that the Chinese would ever agree to the US — their main competitor for regional influence — being a mediator. Washington is regarded by Beijing as tacitly “leading” other countries against China and stymying China’s rise. This has infuriated the Chinese and fueled tension in the area.

The other Asian power with sea influence is Japan. A close US ally, Japan carries the historical baggage of deep animosity with the Chinese, who are inherently against any Japanese efforts of any type. Additionally, the Japanese are also the main contenders against the Chinese in the East China Sea over the Senkaku/Diaoyu Island dispute, which links them to the entire problem.

While Beijing’s allegations that the US and Japan pushed the Philippines to bring the matter to the Permanent Court of Arbitration as a way to embarrass China can never be proven, the sus- picions ensure that neither Japan nor the US can mediate the dispute.

Indonesia, the largest country in ASEAN, has been keen to play the role of mediator in the South China Sea disputes. However, the seas off Indonesia’s Natuna Islands, which are one of the country’s primary offshore energy fields, lie within China’s nine-dash line and hence are claimed by China. Indonesia has been unable to resolve this issue with the Chinese, despite its best diplomatic efforts. It is only a matter of time before Indonesia becomes a claimant, because China is unlikely to give up its claim to the oil- rich sea beds around Indonesia’s Natunas.1

Russia is another power with varied interests in the South China Sea. However, despite its cur- rent bonhomie with China and deep relations simultaneously with Vietnam, it is unlikely to get entangled in a deeply contentious issue that lies outside its area of influence. The Russian posture was evident on April 29, when Chinese Foreign Minister Wang Yi and Russian Foreign Minister Sergei Lavrov held a joint press conference in Beijing during which they spoke against outside interference by non-claimants in the South China Sea. Earlier, in Ulan Bator on April 14, Lavrov expressed Russia’s opposition to “interference from third parties” and “attempts to interna- tionalize” the South China Sea disputes. He said that since Russia was “not a party to the conflict,” it “won’t interfere” in negotiations, indicating a cau- tious and hands-off approach should the disputes continue to escalate.

India, on the other hand, is often regarded as a benign power and is well suited to play a larger and positive role in the entire region. While it is “close” to US and Western nations, it refuses to toe their line blindly and support the idea of a “China threat.” Instead, it follows its own strate- gic agenda of maintaining a necessary balance and it has steadfastly refused to undertake joint

Who Could Mediate?
India may be best placed, as other potential countries face major obstacles: or are reluctant

The US?
Beijing sees Washington as tacitly “leading” other countries against China and stymying China’s rise. This has infuriated the Chinese and fueled tension in the area.
China is most unlikely ever to agree to the US being a mediator.

Japan?
A close US ally, Japan carries the historical baggage of deep animosity with the Chinese, who are inherently against any Japanese efforts of any type.

Indonesia?
It has been keen. But it is only a matter of time before Indonesia becomes a claimant, because China is unlikely to give up its claim to the oil-rich sea beds around Indonesia’s Natuna Islands.

Russia?
Despite its current bonhomie with China and deep relations simultaneously with Vietnam, it is unlikely to get entangled in a deeply contentious issue that lies outside its area of influence.

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(OVL). In addition, Vietnam has offered an additional seven oil blocks in the South China Sea for exploration by India as part of a plan to internationalize Hanoi’s territorial dispute with China. Hanoi hopes to create more stakeholders who can withstand what it sees as Chinese aggression in the area.

But the primary factor that could tilt the scales in India’s favor as a possible mediator hinges around the public statement by the Indian government after the PCA verdict. “India supports freedom of navigation and overflight, and unimpeded commerce, based on the principles of international law, as reflected notably in the UNCLOS,” the carefully crafted statement said. “India believes that states should resolve disputes through peaceful means without threat or use of force and exercise self-restraint in the conduct of activities that could complicate or escalate disputes affecting peace and stability.” It also said that “sea lines of communication passing through the South China Sea are critical for peace, stability, prosperity and development. As a State Party to the UNCLOS, India urges all parties to show utmost respect for the UNCLOS, which establishes the international legal order of the seas and oceans.” The statement carried just enough displeasure with the verdict to find favor with the Chinese, who interpreted it as support for their cause and posture.

WHY INDIA?

It is obvious from the above that India is well suited to shoulder the task of mediation or facilitation in the troubled region, but few countries would like to get entangled in such a complex maze. India has traditionally been wary of taking any major decisions on contentious issues in international relations and has preferred to watch from the sidelines. However, with the rise of Indian power and its aspirations to play the role of a “net security provider,” there is a paradigm shift under way in the current government of Prime Minister Narendra Modi.

In a strategic transition of sorts, India is keen and willing to play the role of a primary power in the Indian Ocean region and hence accept additional responsibilities in adjoining areas. This has been recently alluded to in an Indian Navy publication, “Ensuring Secure Seas: Indian Maritime Security Strategy.” The underlying message is that New Delhi is shedding its previous image of a proverbial fence sitter. Its initiative in the Indian Ocean to get its neighboring littoral countries into a common maritime-security grid is noteworthy and indicative.2 Similarly, this effort was preceded by IONS, or Indian Ocean Naval Symposium, a major Indian maritime initiative that grew out of a desire for a common response to growing threats in the region.

With the added factor of vast economic interests at stake, New Delhi, though circumspect, may not need too much prodding to realize its potential role in the South China Sea. This would not only enhance the international stature it desires, but also provide it with additional strategic leverage to cement its rise as a global power.

PREREQUISITES AND PRAGMATIC SOLUTIONS

Given the past stance of China, it is unlikely that a mediation effort of any type by an external power would be readily accepted by Beijing. However, with the regional situation deteriorating steadily and instability affecting all the littorals, it is evident that the situation is in a dangerously slippery slope.

There is a realization both in Chinese political circles as well as in the claimant countries that brinkmanship could well escalate with disastrous effect. Thus, the need to find acceptable face-saving strategies for all parties is a dire necessity. Mediation or facilitation on resource exploitation in disputed areas, evolution of a legally binding CoC and additional maritime and security confidence-building measures to ensure stability should be easily attainable partial solutions. Success in these efforts could ensure a paradigm shift in the region and a win-win situation for all parties without loss of face. Such developments would also help to sustain the concept of China’s peaceful rise, something that Beijing has repeatedly said it is committed to.

Mediation efforts need not necessarily be either singular or intrusive, nor would they take on key issues such as sovereignty in disputed areas. Such subjects left out of the ruling by the PCA (because they are outside of the ambit of the UNCLOS) may also be left by the mediator for future generations to resolve. Instead, a mediator could “gently channelize” the ensuing talks with the eventual aim of attaining a stable and peaceful resolution.

Needless to add, certain basic necessities would also be required for this to work — namely, an immediate halt to provocative behavior such as reclamation of islands, the placement of weapons on disputed islands, freedom of navigation exercises and so on. A political willingness to solve the problems associated with the South China Sea would also be an obvious prerequisite.

CONCLUSION

It is clear that the rising turbulence in the South China Sea, especially following the PCA verdict, is unsustainable and could easily lead to a miscalculation and conflict that would have grave repercussions on a global scale. It is in this context that external powers could well play a stabilizing and mediating role to ensure a face-saving, win-win situation for all stakeholders.

India is well suited for the role, given its growing strategic aspirations, capabilities and influence, and many claimant countries have privately indicated they would welcome India’s assistance. The main question, however, remains: Do the contesting countries, especially China, really want to “solve” the problem and stabilize the region, or is it more profitable to let the disputes fester, while continuing to pay lip service to peaceful negotiations? More worrisome, has the jingoistic fervor reached such alarming proportions that it has handicapped the negotiating capability of the political elite?

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