

# Countermeasures against Chinese actions in the South China Sea

On July 12, 2016, the Permanent Court of Arbitration (PCA) issued a very significant award that the “nine dash line,” long claimed by China, has no legal foundation. The South China Sea was decided to be for all the countries concerned. The next day, however, the Chinese government intentionally landed airplanes on the Mischief, as well as the Subi, reefs, behaving as if they were China’s territories.

China’s increasingly assertive behaviors will jeopardize not only the freedom of navigation (FON), but also precious fishery resources and the marine environment.

Given that fact that the oceans cannot be dealt with in the same way as territories (simply because oceans are linked with each other, and there are no national boundaries), Japan is the most ardent supporter of the PCA award. Japan urges China to seek peaceful settlement of the disputes based on international law, but China says, in terms of extending the logic of land to the maritime areas, that Japan is not a party to the South China Sea issue and should exercise caution in its words and deeds.

Given the connectivity of maritime areas, this claim is fundamentally wrong from the perspectives of FON, since that area is the place where a tremendous number of vessels pass every day for transport and other logistical purposes. Historically speaking, China has obstructed the passage of various vessels, and these events have challenged the existing foundations of maritime order globally.

What must be our countermeasures? First, we need to look for other like-minded countries, and the united group should continue to support the award from two years ago. At least, China has come not to employ the terminology “nine dash line” frequently, but the reclamation and militarization of the Mischief, Subi and Fiery Cross reefs has never stopped. That is, China has made light of the international organization by saying that the award was paper trash. Is this the kind of action the world’s second-largest economic power is able to take? China’s lack of attention will jeopardize its own reputation in the international community.

Second, the use of environmental protection in the maritime area could be instrumental in delineating the harm China has been doing. Legal terms and technicalities are not easy for the general public to understand. In order to win much stronger international public support on this issue, we must call their attention to the damages China must have inflicted on the marine environment and ecosystem with its reclamation and militarization. While China insists that its land reclamation is environmentally friendly, the PCA found that China had caused severe detriment to the marine environment, and violated its obligation to preserve a healthy environment. The PCA found that China has caused severe damage to the marine environment, and it is contradictory that while seeking to monopolize the benefits stemming from the South China Sea, China has not been held responsible for the harm they caused. The PCA’s findings on the marine environment issues should be highlighted even more, and the countries concerned must pay more attention to this environmental issue of shared global interest.

Third, we will need both carrots and sticks in employing the utility of international law. Regarding sticks, the common



This Image provided by CSIS Asia Maritime Transparency Initiative/DigitalGlobe shows a satellite image of Fiery Cross Reef in Spratly island chain in the South China Sea, annotated by the source to show areas where China has conducted construction work above ground during 2017.

understanding of the international law relevant to maritime security will help build a fundamental environment for a stable rule-based international order by sending a message to China of, “You cannot do it!” Regarding carrots, conversely, we need to find what common interests all countries concerned will be able to gain from maritime stability and order. For instance, such issues as counterpiracy, the global value chains and their connectivity must become public goods for all countries, whether coastal or inland. We need to find out these overlapping interests.

Why have individual countries had differences in perceptions regarding the South China Sea? The reason would be that all countries have tended to regard the maritime area as an extension of land. However, the oceans are not land. We need a serious modification in our approaches. The oceans are interconnected. The concept of “territorial waters” in the United Nations Convention on Law of the Sea is not the same as “territories” on land. As long as vessels indicate their intention of “innocent passage,” coastal countries have to accept the arrival by ship. Maritime security, in this sense, cannot be a zero-sum game, but has to entail the conception of public goods for all countries willing to use the oceans for their benefits.

Therefore, regarding the South China Sea, the area should be for everybody. In this sense, the award two years ago by the PCA pointed out the fundamental characteristics of maritime areas. As long as there are the countries that see them as an extension of land, what we should implement is not to create a power vacuum that could cause confrontation among those countries concerned. In this sense, the U.S. conduct of the FON strategy has supported the “publicness” of the oceans. But, we cannot be too careful that the current U.S. FON strategy hasn’t mentioned anything about the ownership of islands and rocks in the South China Sea. The countries concerned also need to make their own efforts to maintain the passion for the stable ocean governance.

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