Conflict Resolution and Peacebuilding

What China Can Learn From the South China Sea Case

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The ruling by the tribunal in the Philippines vs. China arbitration case is no doubt a major setback to Chinese diplomacy. No matter how people evaluate the quality and impartiality of the ruling, especially concerning it is overwhelmingly in favor of the Philippine claims, it will not only damage China’s image and soft power, but will greatly inhibit China’s claims to territory and maritime rights in the South China Sea, and the consequences will be far reaching. Looking back the process since January 2013, when the Philippine government decided to appeal to the arbitral tribunal, there are multiple lessons that China can learn from this arbitration case, especially when it comes to decision making, policy research, attitudes and perception, and communication.

Foreign Policy Decision Making

The arbitration case demonstrated there is a major problem with China’s foreign policy decision making process. If China had participated in the arbitration, it could have selected an arbitrator on behalf of China and influenced the selections of other arbitrators, which would have made it feasible to also have a direct impact to the possible result. It’s even possible that China could have successfully made the case that the tribunal lacked of jurisdiction over the matter, or limited the jurisdiction to fewer issues. Because of its non-participation, China also willingly lost the opportunity to directly participate in the debates and give its own opinion, evidence, and arguments regarding the case. So it was clearly a huge mistake for China to forgo participation.

China’s decision not to participate gave Shunji Yanai, the president of the International Tribunal for the Law of the Sea (ITLOS) and a Japanese citizen himself, the power to appoint arbitrators. As a result, four of the five arbitrators for this case were appointed by Yanai. Before serving as the ITLOS president, Yanai was Japan’s vice minister for foreign affairs (1997–1999) and ambassador to the United States (1999–2001). Due to the maritime conflicts and historical issues between China and Japan, some Chinese believe Yanai generally chose arbitrators that have a bias against China. However, it is only because China declined to participate that Yanai had the power to appoint arbitrators at his discretion.

China needs to reflect as to why they made this decision. First, there was a lack of careful consideration of the possible consequence of non-participation. Another crucial issue is whether there are effective channels for different opinions that can be discussed and evaluated in the policy making process. The government obviously did not receive good legal advice from top international law experts.

Policy Research

This arbitration case also demonstrated one of China’s major foreign policy weaknesses—policy research. China itself is surprisingly lacking in thorough research on the South China Sea issues, including its own claims, and the issues of historic rights. This is one of the important reasons why China decided to not participate in the arbitration, because it is still not ready. There isn’t a clear or well-supported roadmap that is agreed upon for people inside the government to follow. China’s ambiguity on the South China Sea is to some extent due to this lack of research. For example, China’s claims are mainly based on history, but so far I have not found a single book published in China that provides a comprehensive and objective analysis of the facts and history of the South China Sea as well as the processes involved in making the dashed-line maps and their actual meanings. China indeed has many pieces of historical evidence to support its claims, but many of these have been used for
domestic discourse for many years. Submitting them as legal evidence is a completely different thing. China also lacks sufficient international law experts, which are needed for this sort of major lawsuit.

Attitudes and Perception

Even though China ruled out acceptance of the arbitration decision in 2006, as a major power in the international community, to at least participate in the proceedings would be showing the necessary respect to international law and international legal institutions. Fundamentally, this is an issue of attitudes and perception. The Chinese government still sees international law as something that they can pick and choose to their liking. Also, the government is not familiar with the systems and institutions of international law, especially the use of arbitration as a dispute resolution method. Some people took a condescending attitude and even considered it as a loss of face for a big, mighty power to participate in an arbitration lawsuit initiated by a smaller country and organized by a temporary tribunal.

As mentioned in my another article, when China took part in negotiating the United Nations Convention on the Law of the Sea (UNCLOS) from 1973 to 1982, the Chinese decided to stand with the Third World countries and supported the demand for a 200 nm Exclusive Economic Zone (EEZ). The Chinese diplomats at that time totally forgot about the South China Sea and the nine-dash line. They put ideology above national interests and failed to realize that the 200 nm EEZ would bring unthinkable contradictions to China’s claims in the South China Sea, as the neighboring countries’ EEZs would overlap with the nine-dash line. From China’s participation in the negotiation of UNCLOS in the 1970s to its decision to not participate in the arbitration case in 2013, over 40 years has gone by, and in this time China’s economy has risen from being one of the poorest in the world to be the second largest economy in the world, but China’s attitude and perception toward international law has not seen that same kind of growth and development.

Communication

In terms of the South China Sea issues, China has been largely isolated. Its argument and opinions are essentially unheard by people outside China. But this isolation is partially created by China itself because Beijing has never found an effective way to communicate to the rest of the world regarding its claims and the argument behind them. Before the arbitration ruling, China launched a media campaign and organized diplomats to write articles for international media, but most of these efforts were not effective simply because they just repeated China’s official positions without providing convincing evidence and logical arguments to support China’s claims.

It is worrisome if a superpower-in-the-making cannot communicate effectively with the rest of world. There exists a huge perception gap regarding the South China Sea disputes. To a large extent the current South China Sea disputes are built upon perceptions and misperceptions from the media, education, and social discourse both inside and outside China. Clearly, there is an urgent need for communication and dialogue, especially between United States and China.

Unfortunately, the ruling from the arbitration tribunal will not bring any solution to the tension in the South China Sea; most likely it will only add new uncertainties and danger to the situation. The ruling is also likely to further stimulate China’s domestic nationalism and collective memory of historical traumas at the hands of the foreign powers. As a possible consequence the space for rational diplomacy may be further reduced. For Beijing, however, it should avoid overreacting, as it will only make the arbitration more costly to China’s national interests.

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