China's Chance to Revisit the Role of UNCLOS in Ocean Governance and Dispute Settlement in the South China Sea

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Abstract

After decades of hard negotiation, the United Nations Convention on the Law of the Sea (UNCLOS) ultimately resulted as a package of deals aimed at maintaining a delicate balance of different interest groups. Concurrently, it was not intended to be comprehensive to the extent that there would be no need to create further law. Rather than the UNCLOS regime itself, it is the coastal States who assume a large share of the responsibility for responding to the most pressing problems of ocean governance confronting the world. It is the States' responsibility to follow up with the implementation and improvement of UNCLOS in various forms such as national marine legislation, ocean governance systems, and state practice in ocean dispute settlement. The South China Sea coastal states have a good reputation of endorsing international and multilateral legal instruments in areas such as fishery management, environmental protection, safety and security.

With that said, existing practices of litigation or arbitration are proof that the manner and approach concerning the interpretation and application of some provisions of UNCLOS lack prudence and need to be carefully reviewed. One example is the interpretation and applicability of Article 298 of UNCLOS within the South China Sea Arbitration Case in which State consent is ignored. Another legal and policy implication which deserves attention is regarding China's future trajectory for maritime dispute settlement. Will its conventional approach of bilateral negotiations and consultations remain its preferred method for settling interstate disputes? Or will China be open to the possibility that third-party dispute resolution has a role to play in settling problems with its neighboring countries? The 2016 Arbitral Tribunal's ruling on the South China Sea provides a valuable opportunity for China to rethink its traditional approach to dispute resolution.