

Mapping way out of South China Sea rows

Two academics have come up with a novel proposal on how China can start a paradigm shift in the disputes in the South China Sea: Base its claims on the largest disputed islands. This brings it in line with international law - and allows for joint exploration of overlapping areas with other claimants.

Straits Times, Page A22, Published on Feb 18, 2014

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THE testimony on Feb 5 of United States Assistant Secretary of State for the Asia-Pacific Daniel Russel, before the House Committee on Foreign Affairs' Subcommittee on Asia and the Pacific, has reopened calls for China to clarify its maritime claims in the South China Sea.

Mr Russel argued that, consistent with the international law of the sea, all maritime claims must be derived from land features. He further stated that claims in the South China Sea that are not derived from land features, such as those apparently based on China's so-called "nine-dashed line", are fundamentally flawed.

Can China bring its maritime claims into conformity with international law and still protect its legitimate interests in the South China Sea?

We believe that it can, and that it would be in China's interests to do so - not least because this could open the door to serious discussions on joint development in areas of overlapping maritime claims.

How might this be done?

First, China could limit its exclusive economic zone (EEZ) claims to just larger islands, such as the 12 largest islands in the Spratlys. The same logic can be applied to the largest features among the Paracel Islands group, together with the Pratas Islands.

Claiming only the larger islands will not limit China's maritime reach significantly. But it would bring these claims more in line with international law.

Good faith

THE amended claim would be fundamentally different from the implicit claim shown in maps of the nine-dashed line. That claim delineated a large part of the South China Sea as being under Chinese control, despite the fact that much of it is closer to the surrounding coasts than to any of the disputed islands of the South China Sea.

Beijing used the U-shaped line - which extends up to 1,800km from the Chinese mainland - to justify its claims over the South China Sea in a map submitted to the United Nations in 2009. The map is based on one drawn up in 1947.

The U-shaped or nine-dashed line has been considered by many experts as incompatible with the 1982 United Nations Convention on the Law of the Sea (Unclos). This convention rejects historically-based claims.

Under our proposal, the total land area of the larger islands that China might claim is only about 2 sq km. But they all have vegetation and in some cases roads and structures have been built on them.

Therefore, it can be argued in good faith that they are "islands" entitled in principle to EEZ and continental shelf rights of their own, as allowed under the 1982 Unclos.

They are not "rocks which cannot sustain human habitation or economic life of their own" that are only entitled to a territorial sea of 12 nautical miles. As "islands" they would be entitled to the full 200 nautical miles of exclusive economic zone activity.

And while it may appear that using only the larger disputed islands to generate its EEZ claim would entail a "loss" of potential maritime areas to China, actually the impact would be minimal because of the way in which the islands are grouped in close proximity to one another, allowing a broad sweep of EEZ claims.

Next, China can trigger a paradigm shift in the disputes in the South China Sea if it were to issue charts indicating the outer limit of its EEZ claims from the islands over which it claims sovereignty. The EEZ extends to a full 200 nautical miles over the open sea from the coastal fringes of the islands being claimed.

As for EEZs that extend in the direction of the mainland coast or main archipelago of the Asean claimants, China could limit its EEZ claim from the selected islands to the theoretical "equidistance line" between the islands and mainland coast or main archipelago: that is, mid-point in the water from the islands it claims, to land belonging to other countries.

Past international practice suggests that the equidistance line is almost always the starting point in delimiting the boundary between offshore islands and mainland territory. An EEZ claim extending from the islands to the equidistance line would arguably be a good faith claim consistent with Unclos.

But it is still likely to be contested by other claimants. There are two reasons for this. First, they will challenge China's claim to sovereignty over the islands. Second, they will argue that the practice of international courts and tribunals when delimiting boundaries between mainland coastlines and small offshore islands is to adjust the equidistance line so that the mainland coast is given a much larger share of the maritime zone.

Overlapping claims

DESPITE this, there are still clear advantages for China in taking this route. First, since such a claim is likely to be consistent with Unclos, China could no longer be criticised as acting outside international law.

Second, as illustrated in the attached map (above), a full effect equidistance line from the largest islands towards the surrounding coasts would create a large area of overlapping claims in the middle of the South China Sea.

Having an area of overlapping EEZ claims means China and the other claimant states concerned would be under a legal obligation to make every effort to enter into "provisional arrangements of a practical nature" - as allowed under Unclos - such as joint development arrangements. This potentially opens the door for the countries to negotiate and engage in joint exploration of resources.

Further, the states concerned would be under an obligation under Unclos not to take any unilateral actions in the areas of overlapping claims that would jeopardise or hamper a final agreement on maritime boundaries.

If China were to exercise this option, it would also benefit the Asean claimants because it would clarify which areas in the South China Sea are not subject to overlapping claims.

The areas between the equidistance line and the mainland coasts or main archipelago of the Asean states would be within the EEZ of the Asean states. They would have the sovereign right to explore and exploit the fisheries and hydrocarbon resources.

If they acquiesced to joint development of areas with overlapping claims, the claimant states could justify their actions to their domestic constituents by pointing out that any such measures are "without prejudice" to their claims to the islands and without prejudice to any final agreement on maritime boundaries. Nor are they recognising the legitimacy of the claims of any other state. Also, the provisional arrangements cannot be taken into account in any negotiations for a final agreement on maritime boundaries.

In short, if China were to clarify the extent of its EEZ claims as described above, it would send a clear signal to the international community that it is willing to pursue its interests in accordance with the rules of international law.

This would help restore trust and confidence. It would also encourage joint development arrangements, in the areas of overlapping claims.

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