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By the book

A clarification from Beijing about its claim in the South China Sea could help resolve the disputes with the Philippines and Vietnam, without compromising its sovereignty

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The recent disputes over the Spratly Islands between China and Vietnam, and China and the Philippines, reflect fundamental differences between China and the two Asean countries on the legitimacy of China's claim in the South China Sea under international law. There is also no agreement about which areas are in dispute.

The Asean members firmly believe that all claims to rights and jurisdiction on the islands must be consistent with the 1982 United Nations Convention on the Law of the Sea. The convention establishes a legal framework for all activities in the oceans. However, it does not have any provisions on how to decide competing sovereignty claims over islands. These rules are found in decisions of international courts and tribunals.

Under the UN convention, states can claim sovereignty over their territorial sea, a 12-nautical-mile belt of sea around them. They can also claim sovereign rights and jurisdiction to explore and exploit the natural resources on their continental shelf and in a 200-nautical-mile exclusive economic zone measured from their mainland or from islands.

In this case, the three claimants have a common position on some points. China and Vietnam both claim sovereignty over all of the Spratly Islands. The Philippines claims sovereignty over the islands in the Kalayaan Island Group, which includes most of the Spratly Islands.

The disputes, however, are not over the competing sovereignty claims to the islands and their adjacent territorial sea within 12 nautical miles. The disputes centre on the claims to "sovereign rights and jurisdiction" to explore and exploit the natural resources in the waters outside the 12 nautical miles.

Vietnam and the Philippines both claim a 200-nautical-mile exclusive economic zone - Vietnam measured it from baselines along its mainland coast, the Philippines from its main archipelago. They have not claimed an exclusive economic zone or continental shelf from any of the Spratlys.

Their position seems to be that they have the exclusive right to explore and exploit resources in their own exclusive economic zone, except in areas in dispute. They seem to assert that the recent incidents were not in areas in dispute because they were inside their economic zone, outside the adjacent 12-nautical-mile territorial sea of any disputed island, and too far from any disputed island that is entitled to an economic zone or continental shelf of its own.

The recent disputes were caused in part because of confusion on the scope of China's claim in the South China Sea as well as the legal basis for its claim. In an official diplomatic note in May 2009, China stated that it has sovereignty over the islands and their adjacent waters, and "sovereign rights and jurisdiction in the relevant waters as well as the seabed and subsoil thereof". It attached a map showing the infamous nine-dotted line

which dates to a map issued by the Republic of China authorities in 1947. This suggested to some observers that China was asserting sovereign rights and jurisdiction in all of the waters inside the line on the map, even though there is no legal basis for such an assertion under the UN convention.

However, in an official note this April, China again stated that it had sovereignty over the islands and their adjacent waters, and sovereign rights and jurisdiction in the relevant waters, but it made no reference to the nine-dotted line.

It also stated that the islands in the Spratly archipelago are entitled to a territorial sea, an exclusive economic zone and a continental shelf. This suggests that China is bringing its claim into conformity with the UN convention by claiming maritime zones from the islands, and not claiming sovereign rights in all the waters inside the nine-dotted line.

Unfortunately, despite its official statements, some of China's enforcement agencies appear to be asserting China's rights in all sea areas inside the line, as in the recent incidents with the Philippines and Vietnam. This has caused confusion and concern.

China could counter much of the suspicion about its claim and its willingness to conform to the UN convention if it clarified its claim in the South China Sea. It could do this by stating that it claims indisputable sovereignty over the islands inside the nine-dotted line and the 12-nautical-mile territorial sea adjacent to the islands. It could further assert that at least some of the islands in the Spratlys are entitled to an exclusive economic zone and continental shelf of their own, and that it has sovereign rights and jurisdiction to explore and exploit the natural resources in such maritime zones.

With such clarification, China could legitimise its claim without compromising its position on sovereignty over the islands.

While there would be an overlap between China's claim of exclusive economic zone from the islands and the claims of exclusive economic zones of the Philippines and Vietnam from their main territory, it would be much clearer which areas in the South China Sea are in dispute and which are not.

Such a clarification would send a signal that China is willing to comply with its rights and obligations under the UN convention. It would be a major confidence-building measure and would lay the groundwork necessary to enable China to work with the Association of Southeast Asian Nations to implement the 2002 Asean-China Declaration on the Conduct of Parties in the South China Sea. It would also be a significant step towards setting aside the sovereignty disputes and jointly developing the resources, which was suggested by the late Deng Xiaoping.

Finally, all these actions would be without prejudice to China's claims to sovereignty over the islands and to the final delimitation of the maritime boundaries.

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