

The issues involved in the South China Sea disputes and clashes of interests in it are extremely complex. They include legal, technical, domestic political, international political, strategic, and economic considerations. Unfortunately, in their effort to make things understandable to their readers, viewers or listeners, or out of their own ignorance, or both, the mass media contribute to the confusion, primarily by oversimplifying what is inherently complicated. The confusion is compounded by government officials, who should know better, and whose pronouncements, no matter how erroneous, are then picked up by the media, and so on. (I shall be using the phrase “South China Sea” throughout this paper, because it is neutral, having been created by now-distant powers, although Vietnam prefers to refer to it as the East Sea, the Philippines as the West Philippine Sea, and China/Taiwan as Nan Hai, or southern sea.)



The first issue is the need to make the distinction between land and water, between claims to land features in the South China Sea and those to the waters that those features may or may not generate. Here, it is important to remember that land begets maritime jurisdictions and not the other way around. There are genuine disputes over claims to land features in the South China Sea – between China/Taiwan and Vietnam over the Paracels and among China/Taiwan and Vietnam, and partially the Philippines and Malaysia, over the Spratlys. As far as I know, Brunei Darussalam does not lay claim to any land features in the South China Sea but to an expanse of sea as its exclusive economic zone, continental shelf or “fisheries zone” projected from its territory, an expanse that, nevertheless, overlaps with those claimed by others. However, no claimant has defined the extent of the waters that it claims. At the same time, to assert “undisputed sovereignty” over the South China Sea, as Beijing does, flies in the face of the fact that large swaths of that sea, as well as many land features, are disputed.

Being a law for the oceans, the 1982 United Nations Convention on the Law of the Sea has nothing to say about the disputes over jurisdictional claims to land features. There have been and are many such disputes around the world, most, if not all, of them involving only two parties

each and hence can be resolved, although with much difficulty in some cases, through bilateral negotiations or agreed referral to an international adjudicating body. However, the 1982 UNCLOS does have something to say about the waters generated by land features without, of course, passing judgments upon disputed claims.

This brings us to another issue pertaining to the South China Sea, the issue of islands versus rocks. Article 121 of the 1982 UNCLOS says, "An island is a naturally formed area of land, surrounded by water, which is above water at high tide." It goes on to provide that an island so defined can generate its own territorial sea, contiguous zone, exclusive economic zone and continental shelf like any other land territory. On the other hand, according to the same Article 121, "Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf." Up to this point, none of the claimants to the land features in the South China Sea has designated which of those that it claims are islands and which are rocks, as defined by Article 121 of the 1982 UNCLOS, presumably preferring to retain for itself a measure of "strategic ambiguity".

The confusion arising from the failure, inability, refusal or reluctance to distinguish between islands and rocks and between land and water is compounded by the tendency to conflate "territory" and the exclusive economic zone and continental shelf. The 1982 UNCLOS assigns different and specific rights and duties to coastal states and to others in each of these jurisdictions. However, the mass media and even government officials, for self-serving reasons or out of ignorance, continue to refrain from making these all-important distinctions.

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