

Dark cloud caused by China's oil rig may have a silver lining

Written by vuquangtiep

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A legally binding end to China's nebulous and maritime claims in these areas would bring enormous clarity, stability and security to at least two thirds of the area that is currently covered by China's ominous U-shaped line, and could also have positive effects on the Paracels area.



China's deployment of the \$1-billion Haiyang 981 oil rig in waters near the disputed Paracels on May 2, 2014 has sparked the most serious confrontation in the South China Sea since that country's seizure of Johnson South Reef in the Spratlys in 1988, in which over 70 Vietnamese sailors were killed.

The current confrontation has been going on for three weeks without any sign of ending soon, with China's Coast Guard vessels ramming Vietnam's Marine Police and Fishery Control vessels, wounding several Vietnamese personnel. China's flotilla vastly outnumbers the Vietnamese one, and its ships are faster and bigger, but the Vietnamese are persisting tenaciously. On land, anti-China demonstrations in Vietnam have spilled over into arson against factories, causing injuries and the death of at least three Chinese — although the situation has been brought under control.

However, these dark clouds of confrontation and violence might have a silver lining.

The key to this is on the other side of the South China Sea, where the Philippines is suing China over the Spratlys and Scarborough areas for violation of the United Nations Convention on the Law of the Sea (UNCLOS). The main obstacle for the Philippines' case is that China has taken advantage of Article 298 of the Convention to declare that it would not accept the compulsory dispute settlement procedure for several categories of disputes, including crucially the interpretation and application of Article 74 for matters relating to maritime delimitation. Under Article 74, a tribunal would most likely award the Philippines a large proportion of its claims. Without this article, these claims depend on the application of Article 121(3) to

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determine if any of the Spratly features, not just those cited in the proceedings, is entitled to an exclusive economic zone (EEZ), and it is not clear cut which way the tribunal will rule. If it does not rule in the Philippines' favor, the case will have to go to a conciliation commission, entailing a lengthy process, the result of which is not legally binding.

So far, Vietnam's view on the Philippines' legal submission is unclear. Although Vietnam has been supporting the Philippines' legal action against China as a matter of principle, and it has reserved its right to participate in the court case, it has not confirmed officially whether it takes the view that none of the Spratly features is entitled to EEZ, which, as indicated above, the Philippines' case depends on. Perhaps, at least until recently, the Vietnamese policy makers have not made up their minds on the question of EEZ entitlement for the Spratly features. If Vietnam considered that the Spratlys have EEZ, it might submit an opposition to the Philippines' claims. That would make it difficult for the tribunal to award them to the Philippines because Vietnam is not properly presented in the legal proceedings.

China's deployment of its giant oil rig within Vietnam's claimed EEZ has certainly had the effect of pushing Vietnam and the Philippines closer to each other. The Philippine President's statement of condemnation of China is an unprecedented act of support from one ASEAN country to another, and most likely suggests a policy of future co-operation between the Philippines and Vietnam in the South China Sea disputes.

But there might be another, less visible but far-reaching effect.

The current confrontation might be a wake-up call for Vietnamese policy makers to come down from their fence and support the view that none of the disputed features in the South China Sea is entitled to an EEZ. The confrontation over Haiyang 981 might convince them that in reality EEZ entitlement for disputed islands does more harm than good to Vietnam.

The combination of these two effects would mean that Vietnam will not submit an opposition to the Philippines claims based on the view that the Spratlys might be entitled to EEZ. That would eliminate a significant risk for the Philippines' case. Vietnam might even submit a support for the Philippines' view that none of the Spratlys features is entitled to an EEZ, which might possibly help to nudge the ruling to go in the Philippines' favor.

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The confrontation and violence coming from China's deployment of the Haiyang 981 oil rig at its current position should also serve as a stark reminder to the tribunal arbitrating the Philippines-China arbitration case. If this tribunal were to rule that some features in the Spratlys might be entitled to an EEZ, then, with China's rejection of arbitration for matters relating the equitable delimitation of EEZ and bona fide co-operation required by Article 74, that country would continue to violate this article with impunity. That would condemn the South China Sea to increasing turmoil, confrontations, and the threat and use of force, possibly ending with China managing to use its sheer strength to impose its will on the other littoral states.

If these factors help the tribunal's ruling to go in the Philippines favor, it would be absolutely disastrous for China's maritime claims. In one fell swoop, the pretense of legality for most of China's maritime claims in the southern and eastern parts of the South China Sea would be swept away by an international tribunal's ruling. What's more, that ruling would be legally binding for China. A legally binding end to China's nebulous and maritime claims in these areas would bring enormous clarity, stability and security to at least two thirds of the area that is currently covered by China's ominous U-shaped line, and could also have positive effects on the Paracels area.

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