

The danger of convoluting everything into sovereignty disputes

Written by vuquangtiep
Tuesday, 10 June 2014 02:20

Much of the tensions in the South China Sea could be resolved by applying UNCLOS's dispute settlement procedure to matters relating to maritime delimitation and cooperation in disputed areas.



Dr. Bateman wrote in his response to our commentary that “The strident assertions of sovereignty, even evident in the response of the authors, are becoming more counter-productive and leading nowhere”. Such hasty characterisations have no place in a scholarly discussion, while solid facts and figures are much more conducive to finding a peaceful solution to conflicts. There is nothing in our previous response that could be characterised as strident assertion of sovereignty. On the contrary, it was Bateman who originally asserted that “the question as to who has sovereignty over the Paracels is at the heart of the current situation”, took China's side on the sovereignty question based on questionable evidence and argument, and proposed that Vietnam “agree to China's sovereignty over the Paracels”, while our response minimised the importance of the conflicting sovereignty claims.

Root cause of the problem

Our previous response provided facts, figures, jurisprudence by the International Court of Justice and the Gulf of Tonkin Agreement between Vietnam and China to show that an EEZ allocated to the disputed Paracels would not extend as far as the position of the Haiyang 981 oil rig, thus refuting Bateman's view that the conflicting sovereignty claims over the Paracels is at the heart of the current situation or that “a negotiated maritime boundary in this area would likely place the rig within China's EEZ”. In effect, we put the current situation where it really is: away from the conflicting sovereignty claims to the Paracels.

Obviously we are not denying that there are sovereignty disputes in the region. However, territorial disputes over tiny islands, reefs and rocks need not cause the serious tensions that

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we have been seeing in the South China Sea. Witness the complete absence of serious tensions between Vietnam, the Philippines, Malaysia and Brunei, which have sovereignty disputes with each other.

The problem for the South China Sea, and the source for the tensions we have been seeing, is that there is one country which is strident in its territorial claims to the point of refusing to acknowledge that there is a sovereignty dispute over the Paracels, which claims most of the South China Sea's waters and continental shelf in a way that disregards both UNCLOS and previous negotiated or legal settlements in maritime delimitation, which does not hesitate to unilaterally enforce such claims, and which has declared that it does not accept UNCLOS's dispute settlement procedure for several categories of disputes, including, crucially, those relating to the interpretation and application of UNCLOS's Articles relating to maritime delimitation. That country is China.

We appreciate and support Bateman's wish for more co-operation in the South China Sea, but his attempt to justify the unilateral deployment of a huge deepsea drilling rig in an area of overlapping EEZ claims, in complete disregard of UNCLOS Article 74, does precisely the opposite. Further, we dispute his statement that "Bordering countries have eschewed cooperation for fear that by cooperation they will somehow be compromising their sovereignty claims". In our view, the greatest obstacles to such co-operation are China's refusal to recognise that there is a sovereignty dispute over the Paracels and its vague claim over the waters and continental shelf in the U-shaped line, which is based partly on an unequitable stance on EEZ allocation to the tiny, disputed islands and partly on an abuse of the concept of historic rights. It must be stressed that Vietnam, Cambodia, Thailand and Malaysia have fully functioning schemes for co-operation in areas of unsettled overlapping maritime claims, and that this is possible because they do not make maritime claims that are as outrageous as China's.

Way forward

Although the maritime disputes in the South China Sea are complex, it is not beyond the ability of the international courts or bona-fide negotiators to resolve them. Past arbitrations and negotiations of maritime boundaries worldwide give the court and negotiators who have goodwill plenty of precedents to go by. If China had not declared its rejection of UNCLOS's dispute settlement procedure disputes, international tribunals would have been able to disentangle most of the maritime delimitation disputes in the South China Sea from the sovereignty disputes over islands and resolve the former, leaving only residual disputed areas. That would be a good starting point for co-operation in both undisputed and disputed areas. Another deleterious effect

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of China's rejection of this procedure is that it denies the court or tribunal the jurisdiction to apply Article 74's stipulation of goodwill and co-operation in areas of overlapping EEZ claims pending settlement, something which the South China Sea desperately needs.

Bateman wrote "The authors concluded their criticism by claiming that I could make a more positive contribution to peace and cooperation by encouraging China to submit itself to the dispute settlement procedure in UNCLOS. Might I say the same of Vietnam?" He might be surprised to know that in fact Vietnam has already agreed to UNCLOS's dispute settlement procedure when it ratified the Convention in 1994 without reservation, unlike China, which explicitly rejected the said procedure to the maximum possible extent in 2006.

UNCLOS is the bedrock for co-operation and order for the world's seas and oceans, but there are bound to be aspects that need clarification. Its dispute settlement procedure, by making sure that interpretation and application are fair by objective standards, is vital for making the Convention work in practice. Without this procedure, a State party to UNCLOS can easily make a mockery of this bedrock. For this reason, we propose that Dr Bateman and international scholars who care about equitability, co-operation, and good order in the world's seas and oceans join us in encouraging China to scale down its maritime claim to be more consistent with legal and negotiated settlements worldwide (this proposal does not necessarily go as far final boundary demarcation), and to accept UNCLOS's dispute settlement procedure for the South China Sea.

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