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South China Sea: Worsening Dispute or Growing Clarity in Claims?

Robert Beckman

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In May 2009 Malaysia and Vietnam made submissions to extend their continental shelves beyond 200 nautical miles into the South China Sea, and China objected to their submissions. While adding a layer of complexity to the South China Sea disputes, the submissions and objections also clarified the claims of the competing states.

ONE OF the sources of the increased tension in the South China Sea of late is the steps taken by Malaysia and Vietnam in May 2009 to extend their continental shelf claims into an area in the South China Sea beyond 200 nautical miles from their coastlines.

Under the 1982 UN Convention on the Law of the Sea (UNCLOS) a coastal state has the right to claim a continental shelf beyond 200 nm from either its mainland or its islands. It may do so by submitting technical information on the shelf to the Committee on the Limits of the Continental Shelf (CLCS), a body of scientists established by UNCLOS. The deadline for most states to make submissions was 13 May 2009. However, states could also meet this deadline by submitting preliminary information to the CLCS.

Joint Submission by Malaysia, Vietnam

Malaysia and Vietnam made a joint submission on 6 May 2009. Vietnam made an additional submission on 7 May 2009. China objected to these submissions. The Philippines objected to the submissions of Malaysia and Vietnam, made a partial submission in an area outside the South China Sea, and brought its baselines law into conformity with the UNCLOS provisions on archipelagic baselines. China and Brunei have submitted preliminary information.

While the submissions and accompanying objections are very complex, the practical effect of these submissions has the potential to have a significant impact on the South China Sea disputes.

The joint submission of Malaysia and Vietnam suggests that they have taken the position that sovereign rights to the resources in the South China Sea should be determined by principles governing the continental shelf as measured from the mainland coast. By not measuring their continental shelves or EEZs from any of the islands which they claim in the South China Sea, they have in effect taken the position that no islands in the South China Sea should be entitled to more than a 12 nm territorial sea - the maximum permitted by UNCLOS.

Understandably, China vigorously objected to the submissions of Vietnam and Malaysia. It pointed out in a *Note Verbale* to the UN Secretary-General that the submissions of Vietnam and Malaysia are in an area subject to a maritime dispute, and that consequently the CLCS is not permitted under its rules to consider them. Notwithstanding this, the submissions of Malaysia and Vietnam reflect their positions on how the hydrocarbon resources of the South China Sea should be allocated.

China's Note to UN

It can also be argued that China has clarified its claim in the South China Sea through its *Note Verbale* objecting to the joint submission of Malaysia and Vietnam. China stated that it “*has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof.*” This would suggest that China is claiming sovereignty over the islands and their “*adjacent waters*”, which can be interpreted to be a 12 nm territorial sea. Further, China’s claim to “*sovereign rights and jurisdiction*” in the “*relevant waters*”, can be understood to be a reference to the EEZ and continental shelf measured from the islands.

On the face of it, the wording of China’s Note appears to be consistent with international law and with UNCLOS. However, China also attached the infamous dotted-line map to its Note. The dotted-line map was first produced by the Chinese government in 1947 and has nine dashes drawn in a u-shape around the islands in the South China Sea. Although China has used this map on several occasions, it has never clarified its position on exactly what it is claiming inside the dotted-line. This has led some to conclude that China is claiming all the waters within the dotted-line as its territorial waters or historic waters. Such a position would be contrary to UNCLOS.

While much attention has been given to the dotted-line map attached to China’s *Note Verbale*, it should be remembered that the Note does not assert sovereignty over the waters in the dotted-line except for the waters “*adjacent*” to the islands which arguably only refers to a 12 nm territorial sea. The Note contains no language suggesting that China claims that all the waters inside the dotted-line are its territorial waters or historic waters, or that it has any historic rights in the waters inside the dotted-line. This suggests that China’s claim is only to the islands inside the dotted-line, and to the maritime zones that can be generated from such islands, a position consistent with UNCLOS.

An Emerging Common Framework?

While the present positions of Philippines and Brunei are not entirely clear, it is expected that their positions will be consistent with those of Malaysia and Vietnam. If so, the evolving position of the ASEAN claimants would be that continental shelf claims should determine access to the hydrocarbon resources, and that none of the islands should be entitled to more than a 12 nm territorial sea. The position of China will likely be that it has sovereignty over all the islands and that at least some of them are entitled to an EEZ and continental shelf of their own. Therefore, there will be a substantial overlap between the EEZ and continental shelf claims of China and the ASEAN claimant States.

The fact that the claimant states appear to be taking steps to make their claims in the South China Sea consistent with UNCLOS is a very positive development. However, fundamental differences remain.

The continental shelf submissions have not resolved the underlying disputes on sovereignty over the islands. In addition, disputes are likely to arise on the issue of whether any of the islands are entitled to an EEZ and continental shelf of their own. There are also potential disputes on how to reconcile the overlapping maritime zones measured from the islands with those measured from the mainland. Nevertheless, the fact that all of the claimants are making their claims consistent with UNCLOS establishes a common framework which should make it easier to explore possible solutions.

Robert Beckman is Director, Centre for International Law and Associate Professor at the Faculty of Law at the National University of Singapore, as well as an Adjunct Senior Fellow at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University.