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Indonesia-Philippines Agreement: Lessons for South China Sea Claimants

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Synopsis

The successful conclusion of long-dormant negotiations between Indonesia and the Philippines over maritime boundaries holds key lessons for claimant states of disputed waters in the South China Sea.

Commentary

THE RECENT conclusion of negotiation over maritime boundaries between Indonesia and the Philippines was a significant development for the two ASEAN member states. Their negotiation commenced in June 1994 and was dormant until 2003.

The positive turn came amidst rising tensions in the South China Sea sparked by worsening disputes over competing maritime claims. The successful conclusion of the talks between Jakarta and Manila holds important lessons for all claimant states over disputed waters in the South China Sea.

How it began

In December 2003, I was assigned to jumpstart the maritime boundaries negotiation with the Philippines that was left dormant by both countries for almost a decade. I worked with my counterpart until 2010 when I left for Brussels, with my successor continuing the negotiation until it was completed and signed just last month on 23 May 2014 in Manila.

Negotiations on maritime boundaries require patience and resolve. It is a long haul. Negotiation with the Philippines is particularly significant because both Indonesia and the Philippines are two of the largest archipelagic countries in the world, initiators of the archipelagic legal principle, and member states of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

Yet the Philippines was left with the historical issue of the rectangular line of the Treaty of Paris of 1898 which ended the Spanish-American War but left behind unclear territorial boundaries with Manila's neighbours. Indonesia disputed the rectangular line of this Treaty on the ground that it did not conform with UNCLOS 1982 which Indonesia and the Philippines are parties to.

It was a complicated issue for both countries because Indonesia rejected the claim. While my Philippine counterpart understood the reasons for our objection, they were under intense domestic pressure to somehow

keep the Treaty of Paris on the table. The Philippines eventually aligned its position with UNCLOS 1982 and thus cleared the way for the conclusion of the maritime boundaries negotiation. The alignment of the Philippines position with UNCLOS 1982 can be seen as commendable state practice in international law.

Negotiation over Coral Triangle Initiative (CTI)

When maritime boundaries negotiations were going on between Indonesia and the Philippines as well as Indonesia and Malaysia, I was also involved in 2007 in the negotiation over the Coral Triangle Initiative (CTI) - a multilateral partnership of six countries - Indonesia, Malaysia, the Philippines, Papua New Guinea, Timor-Leste and Solomon Islands.

Of these countries, Indonesia, Malaysia, the Philippines and Timor-Leste had no maritime boundaries in 2007. Yet they managed to work together, even establishing a Secretariat, to address the urgent threats facing the coastal and marine resources of one of the most biologically diverse and ecologically rich regions on earth.

On another front, in the busiest waters on earth - the Strait of Malacca and Singapore - three littoral states namely Indonesia, Malaysia and Singapore have been able to work together in the areas with little maritime boundaries, all for the larger good.

Two lessons for South China Sea claimants

There are two important lessons arising from the negotiation between Indonesia and the Philippines over their bilateral maritime boundaries.

Firstly, whether you like it or not, the current prevailing law to settle maritime boundaries is UNCLOS 1982. This is regardless of your historical record, even if it is 115 years old. If a rectangular line map of a century-old Treaty had to be aligned with UNCLOS 1982, aligning a dash-line map that was created only in the mid 1940s with UNCLOS 1982 should be relatively problem-free.

While there is a difference in shape between the rectangular line of the Treaty of Paris that the Philippines previously used with Indonesia and the nine dash-line map that China currently uses to base its maritime claim in the South China Sea, they share one similarity: both are unilateral expressions of claim which are not based on international law. The first Indonesia-Philippines maritime boundary signifies the emergence of a state practice whereby in maritime boundary claims a unilateral proclamation of maps will eventually be aligned with prevailing international law.

Secondly, the claimants need not look far to see how countries in the region can work together for the larger interest over a large swath of waters devoid of maritime boundaries.

The larger interest in CTI is the protection of the environment; in the Straits of Malacca, it is maritime security. They are public goods promoted and protected by countries regardless of the lack of maritime boundaries. These are concrete and excellent state practices in South East Asia. These are also clear examples demonstrating that we in South East Asia do have a culture of international law.

Therefore, the recent escalations in the overlapping claims in the South China Sea are not the regional norm. They are an anomaly to the existing state practice in South East Asia and must be corrected.

It is my conviction that all claimant states in the South China Sea, especially China which is also a Permanent Member of the UN Security Council, carry the moral, political, and legal responsibility of creating peace and stability in the world and are able to work together peacefully.

Asia could very well be a world leader in conflict prevention and management of disputes regardless of the existence of boundaries. This can be done by putting the larger common interest and public goods, namely regional stability and security, over and above narrow national views. Are we up to the test?

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