

Why Indonesia has stake in fight to defend Unclos

Its national interests are dependent on the integrity of the current rules-based order even if it's not a claimant state in the South China Sea disputes with China

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The recent diplomatic exchanges between the governments of Indonesia and China concerning Chinese fishing activities in the waters off the Natuna Islands in the South China Sea raise questions on the extent to which there are legal disputes between Indonesia and China with regard to sovereignty claims and maritime claims in the South China Sea.

The sovereignty disputes in the South China Sea arise from the fact that China, Malaysia, the Philippines, Vietnam and possibly Brunei claim sovereignty over some or all of the Spratly Islands.

In addition, China and Vietnam claim sovereignty over the Paracel Islands. Indonesia does not claim sovereignty over any of the islands in the Spratly Islands or the Paracel Islands. Furthermore, no other state claims sovereignty over Indonesia's Natuna Islands, which border the South China Sea. Consequently, Indonesia is correct when it points out that it is not a "claimant state" and is not a party to the sovereignty disputes with China in the South China Sea.

The situation with regard to maritime disputes is different. The recent diplomatic exchanges between Indonesia and China make it clear that there are fundamental legal disputes between Indonesia and China concerning the legality of China's maritime claims in the South China Sea under the 1982 United Nations Convention on the Law of the Sea (Unclos).

INDONESIA'S SOVEREIGN RIGHTS

Indonesia has claimed an exclusive economic zone (EEZ) in the southern part of the South China Sea measured from the straight archipelagic baselines it has drawn from the outermost points of the Natuna Islands. Its EEZ claim is consistent with Unclos.

Because Indonesia's EEZ claim in this area overlaps with the EEZ claims of Malaysia and Vietnam, EEZ boundaries will have to be negotiated by Indonesia with its two Asean neighbours.

Nevertheless, as provided in Unclos, Indonesia has sovereign rights for the purpose of exploring and exploiting the natural resources in its EEZ. This includes the right to prohibit fishing by vessels of any other state, and to arrest any foreign fishing vessels that fish in its EEZ without a



permit. Therefore, Indonesia was acting in conformity with international law when it objected to fishing activities by Chinese vessels in its EEZ.

The statements of China with respect to the incident suggest that it has taken the position that its vessels have the right to fish in Indonesia's EEZ for two reasons.

UNCLOS ON CHINESE CLAIMS

First, it has historical rights in these waters because Chinese fishermen have been fishing in those waters for generations.

Second, China has sovereign rights and interests in "the relevant waters" within the "nine-dash line" on the map China circulated to the international community in May

2009 when it objected to the joint submission of Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf for an extended continental shelf in the South China Sea.

Indonesia made it clear in its recent official statements that it will never recognise the legitimacy of any claims based on China's nine-dash line map because such claims have no basis in Unclos, as was decided in the arbitral award in the 2016 South China Sea case between the Philippines and China.

Unclos provides that a coastal state has sovereign rights to exploit the natural resources in its EEZ. Unclos does not recognise that states whose nationals have habitually fished in waters that are now the EEZ of another state can claim that they have historic rights to continue fishing in those waters.

Indonesia can also point out that it is not possible under Unclos for China to argue that its fishing vessels were fishing in an area of overlapping EEZ claims because China too is entitled to claim an EEZ from one or more of the islands in the Spratly group over which Beijing claims sovereignty.

This point was made clear in the 2016 award by the arbitral tribunal at the Permanent Court of Arbitration in The Hague. In essence, the tribunal ruled that no island in the Spratlys is entitled to an EEZ or continental shelf of its own. The tribunal found that none of the high-tide features in the Spratlys "are capable of sustaining human habitation or an economic life of their own" and "are therefore legally rocks" that do not generate entitlements to an exclusive economic zone or continental shelf.

At most, islands in the Spratlys are entitled to a 12-nautical-mile territorial sea, too short a distance to cross over into Indonesia's EEZ arising from the Natunas Islands.

UNLAWFUL USE OF COAST GUARD VESSEL

It has been reported that the Chinese fishing vessels were

accompanied by a Chinese Coast Guard vessel. If the coast guard vessel was escorting the fishing vessels to prevent them from being arrested by Indonesia, such activity would be unlawful because it would interfere with Indonesia's right to prevent foreign vessels from fishing in its EEZ.

A Chinese Coast Guard vessel has the right to exercise freedom of navigation in the EEZ of Indonesia, but it does not have the right to escort Chinese vessels to prevent them from being arrested by the authorities of the coastal state.

This incident confirms that even though Indonesia has no overlapping EEZ claims with China, and even though Indonesia is not a claimant state with respect to the disputes over who has the better sovereignty claim to the disputed islands, Indonesia nevertheless has serious disputes with China on China's claims to maritime rights and interests in the South China Sea.

In fact, Indonesia has the same interests as Brunei, Malaysia, the Philippines and Vietnam in challenging the legality of assertions by China that it has rights and interests that allow it to exploit the natural resources in the EEZs of the Asean states bordering the South China Sea.

Given that Indonesia played a very active and important role in the negotiations leading to Unclos, and given that Indonesia benefits greatly from the new regimes in Unclos on archipelagic states and the EEZ, it can be argued that Indonesia is the Asean state that has the greatest interest in challenging actions by China that are not consistent with the rules-based legal order for the oceans that was established in Unclos.

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