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Indonesia, South China Sea and the 11/10/9-dashed lines

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There seems to be an obsession among political commentators in Asia and beyond that Indonesia has to admit that it is a claimant state in the South China Sea (SCS) dispute and, therefore, must surrender its role as a "mediator". This is indeed laughable in the eyes of international law.

This is my take on the matter.

First, the very essence of the SCS dispute is, in simple terms, about who owns over hundreds of islands, rocks, reefs, low-tide elevations and sandbanks in the Spratleys and the Paracels. The claimants are Brunei, China, Malaysia, the Philippines and Vietnam. Taiwan is also considered a claimant by many.

Since its independence, Indonesia has never imagined laying claim to any of those hundreds of features in the SCS. Even when then Prime Minister Djuanda Kartawidjaja proclaimed Indonesia's archipelagic waters in 1957, Indonesia did not include the Spratleys. Indonesia has no territorial ambition in this area whatsoever.

If the claimants truly want to settle who owns what and where, they have to adopt the general principle of public international law and jurisprudence that dates back to the decision of Las Palmas/Miangas in 1928. They cannot operationalize the United Nations Convention on the Law of the Sea (UNCLOS) 1982 as it was not designed to settle sovereignty disputes.

Second, if, not when, the ownership of the hundreds of features in the SCS is ever determined, the following exercise would be the delimitation of maritime zones from those features. International legal principle stipulates that "land dominates the seas," therefore, any width of maritime zones in the South China Sea must be based on projection from land. The applicable laws are embodied in the UNCLOS 1982, especially articles 15 (delimitation of territorial waters), 74 (delimitation of exclusive economic zones [EEZ]), 83 (delimitation of the continental shelf) and 121 (regime of islands).

Regime of islands is a very critical facet of the law of the sea in determining the entitlement of the maritime zone of a particular island. The Chinese delegation to the 19th session of the state parties to UNCLOS stated that according to Article 121 of UNCLOS, rocks that cannot sustain human habitation or economic life shall have no EEZ or continental shelf. As most of the features in the dispute fall within this article, what could happen would be "bubbles" in the 12-mile territorial waters. Those bubbles are likely to be located far away to overlap with the Indonesian EEZ in the SCS.

Third, all claimants in the dispute have made their statements of claims crystal clear, yet none of them has elaborated the basis of their bids. Perhaps their arguments lack legal grounds so that revealing them would be disastrous.

Fourth, one of the claimants has proposed a cartographic piece with an inconsistent drawing known as nine-dashed line. It is inconsistent because the line does not always have nine dashes. Sometimes there are 11 or 10.

The dashed line is not connected. The dashes appear not to be a maritime zone projection of any features in the SCS. The cartographic piece on which these 11/10/nine dashed lines are drawn has neither coordinates nor specific datum nor geodetic system. No one has ever explained decisively whether the map is intended to show the claims over features only or features and waters or features, waters and maritime boundaries.

In the Burkina Faso-Mali dispute it was stipulated that "Maps […] by virtue of solely their existence […] cannot constitute territorial title". In the arbitration of Eritrea against Yemen, the International Court of Justice ruled that it "is unwilling to attribute meaning to dotted lines. The conclusions on this basis urged by Eritrea in relation to […] its map are not accepted".

In explaining its claim, China employed terms unknown in the UNCLOS 1982, namely "relevant waters" and "adjacent waters." Chinese commentators also mentioned that the map represented historic rights or historic waters. Yet the UNCLOS 1982 only knows historic bays and historic title in relation to territorial waters.

Fifth, Indonesian waters in that region are divided into two segments by the outer line of the 12-nautical-mile territorial water belt. This outer line is generated from archipelagic baselines that have been lodged with the UN and is considered in accordance with the archipelagic principle of the UNCLOS 1982. The waters behind this outer line are Indonesian territorial waters and archipelagic waters called the Natuna Sea. The waters beyond this outer line all the way to the Indonesian limit of the EEZ are part of the SCS. Indonesia and Malaysia lodged their treaty of delimitation of continental shelves in the SCS in October 1969 with the UN secretary-general.

Not a single country has challenged the validity of this 45 year-old treaty that divides rather significantly certain segments of the SCS.

Sixth, for Indonesia to declare itself a claimant state in the SCS dispute by virtue of the existence of the 11/10/nine-dashed-line map would be absurd. As a matter of law, fact and logic make it simply unfathomable that Indonesia would start overlaying its highly precise and legally correct work with an incomplete, inaccurate, inconsistent, and legally problematic map.

Indonesia outlined its position on the dashed-line map in its diplomatic note to the UN secretary-general on July 8, 2010, saying the map lacked international legal basis and was tantamount to upsetting the UNCLOS 1982. Foreign Minister Marty Natalegawa reiterated Indonesia's rejection of the legality of the map on March 19.

As an international Law of the Sea abiding country, Indonesia has always dismissed any lines over waters that have no basis regarding UNCLOS 1982, such as the 1898 Treaty of Paris and the dashed-line map. In the realm of international law of the sea, they have no legal value, whatsoever. There is no ambiguity, strategic or otherwise.

Seventh, arguments by some commentators such as Dr. Ann Marie Murphy of the US (see *PacNet* #26: "The end of strategic ambiguity: Indonesia formally announces its dispute with China in the South China Sea") and Dr. Batongbacal of the Philippines that Indonesia has lost its role as mediator in the SCS dispute are a mistake beyond repair. Indonesia is not a "mediator" because the dispute has not entered into the "mediation" stage.

It is beyond any reasonable doubt that the dispute is currently being discussed, not mediated, under the ASEAN-China Joint Working Group on the Implementation of the Declaration on the Conduct of Parties in the SCS that just met last March in Singapore.

Indonesia's relentless facilitation in the second track approach, known as the Workshop on Managing Potential Conflict in the South China Sea, is not intended to position Indonesia as a mediator. It is a confidence-building measure to enhance understanding and mutual trust.

The mere existence of an incomplete, inaccurate, inconsistent and legally problematic map will neither force Indonesia to abandon its efforts to facilitate confidence building nor suddenly make Indonesia lose confidence in its highly precise, legally correct and UN-lodged maritime projection in the SCS.

PacNet commentaries and responses represent the views of the respective authors. Alternative viewpoints are always welcomed.