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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For The Straits Times

The recent diplomatic exchanges between Indonesia and China make it clear that there are fundamental disagreements 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, not far from the Spratly Islands. Indonesia claims that this EEZ is consistent with UNCLOS.

The Indonesian EEZ claim in this area overlaps with the EEZ claims of Vietnam and Malaysia. The boundaries of the EEZs will be negotiated by Indonesia with its two Asian neighbours.

Nevertheless, as provided by 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 vessel that fish in the EEZ without a permit.

Permit. Therefore, Indonesia was acting in conformity with international law when it subjected the Chinese fishing vessels to arrest.

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.

1. UNCLOS or Chinese claims? First, it has historical rights in these waters because Chinese fishermen have been fishing in these waters for generations.

2. 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 recognize 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 of the 2016 South China Sea case between the Philippines and China.

Indonesia also points out that a coastal state has sovereign rights over the natural resources in its EEZ. UNCLOS does not recognize that states whose national have historically 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 also points 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 Indonesia is entitled to claim an EEZ occupation of one or more of the islands in the Spratly groupover which Beijing claims sovereignty.

This point was made in the 2016 award by the arbitral tribunal at the Permanent Court of Arbitration in The Hague. In essence, the tribunal ruled that the islands in the Spratly group are not an EEZ or continental shelf of any state and therefore none of the so-called “historic rights” (of China) can be exercised.

As Beijing continues to challenge the integrity of the current rules-based order in the South China Sea, it is of particular importance for Indonesia to protect its interests. Indonesia is not a claimant state in the South China Sea disputes, but it is a state that has a strong interest in the region.

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

Indonesia has played a very active and important role in the United Nations, and it is significant that Indonesia has expressed its support for the UNCLOS framework. Indonesia has also been consistent in its support for the UN’s role in the management of the South China Sea disputes.

At most, Indonesia’s position is that the South China Sea disputes should be resolved through peaceful means, including conciliation or arbitration, and that Indonesia is not a party to any of the disputes.

Until recently, the Indonesian government has been reluctant to engage in any direct dialogue with China on the South China Sea disputes. However, Indonesia has shown a willingness to engage in dialogue with China on other issues, such as trade and investment.

Indonesia has also been active in other regional organizations, such as the ASEAN+3 (i.e., the member states of ASEAN plus China, Japan, and South Korea), which are aimed at promoting cooperation and stability in the region.

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