

On the Issues of Overlapping Maritime Claims in the Far East

The marine environment in the Far East has witnessed different types of overlapping claims among neighbouring coastal states' parties. The overlapping claims often occur in cases where states' parties have interests in maritime boundaries and / or associated features, such as islands, reefs, etc. Such claims are subject to many factors, including: available facts, historical documents, landmarks, occupation, physical presence and inhabitation of the claimed areas by their respective ancestors. Furthermore, overlapping claims usually involve litigation and the states' parties need to come to terms in the form of an agreement for a collective understanding towards the exploitation and exploration of the resources within the area of geographic overlap.

This has recently been supported by a call by the Association of Southeast Asian Nations (ASEAN) to settle maritime dispute issues among the states' parties for the Spratly Islands using the international instrument – the 1982 United Nations Convention on the Law of the Sea (UNCLOS). However, this call is yet to be fully supported by all the concerned states. The following states: China, Brunei, Philippines, Malaysia Vietnam and Taiwan, have overlapping claims on the Spratly Islands.

Other overlapping claims include: China and Japan on the island of Diaoyu (China) / Senkaku (Japan) in the East China Sea; South Korea and Japan on Dokdo / Takeshima in the East Sea (Sea of Japan); and the Kuril Islands / Northern Territories claim between Russia and Japan across the Pacific Ocean.

Furthermore, Malaysia and Indonesia have also disputed over the islands of Sipadan and Ligitan. This dispute started in 1969 during the negotiations efforts between Malaysia and Indonesia to extend their common maritime boundaries for the continental shelf. This was purposely left out of the 1969 agreement since both countries failed to agree on their sovereignty. The matter was eventually brought before the International Court of Justice (ICJ) in The Hague, the Netherlands. In 2002, the ICJ decided that the sovereignty of both islands belongs to Malaysia. Until now, the maritime boundary in the Sulu Sea is still under negotiation between Malaysia and Indonesia.

On the other hand, the ICJ announced sovereignty over Batu Puteh (Pedra Branca) to Singapore on 23 May 2008, whilst Malaysia had sovereignty over Middle Rocks. The maritime boundary around the South Ledge is under negotiation between Malaysia and Singapore to determine its sovereignty.

In addition, the governments of Malaysia and Vietnam jointly submitted a notification to the Commission on the Limits of the Continental Shelf (CLCS), for the extension of their continental shelf claims. Although this is being challenged by China and the Philippines, the United Nations will review the joint documents in 2019, and will take into consideration the objections by China and the Philippines on this joint submission. More so as each coastal state has the right to claim the continental shelf limit as stipulated in Article 76 UNCLOS 1982 with scientific support and technical data to CLCS, set up under Annex II of UNCLOS 1982.

Although the ICJ awards claims based on features, the boundaries between the states' parties are left to be determined through discussions, negotiations, and agreements between the states concerned, using UNCLOS 1982 as the basis for their technical negotiations and agreements.