

CHINA'S 'THREE WARFARES' DOCTRINE

By NESTOR MATA | June 24, 2014

WHEN China took its maritime dispute with Vietnam to the United Nations last June 9, did it represent a change in its long-standing policy that disputes in the South China Sea and adjacent seas can only be settled through direct consultations and negotiation of the parties directly concerned?

The answer came a day after China submitted to Secretary General Ban Ki-moon a position paper on the dispute with Vietnam with a request that it be circulated to all 193 UN members. A spokesman of the Ministry of Foreign Affairs in Beijing stated that China still rejected UN arbitration of its dispute with Hanoi.

China's action in effect opened a new front by internationalizing its dispute with Vietnam, according to Carl Thayer of The Diplomat Magazine on Asian-Pacific Affairs. "China's position paper was sent to the UN to outflank Vietnam's own propaganda effort and to isolate Vietnam...," he wrote. It's based on its doctrine of "three warfares" that was adopted by the Chinese Communist Party's Central Committee and Central Military Commission.

China's "Three Warfares" doctrine, according to a study written by Timothy A. Walton for the Delex Consulting, Studies and Analysis, comprises three components: psychological warfare, media warfare, and legal warfare. Media warfare is a strategy designed to influence international public opinion to build support for China and to dissuade an adversary from pursuing actions contrary to China's interests. Legal warfare is a strategy to use China's domestic and international law to claim the legal high ground to assert Chinese interests.

The latter two components shaped China's position paper submitted to the UN, Thayer noted, was replete with selected references to international law to support China's stance. In defending its placement of an oil rig within Vietnam's territorial waters, China claimed it was located 17 nautical miles from Triton islet, the western most feature of the Paracel Islands. However, under the UN Convention of the Law of the Sea, territorial waters only extend 12 nautical miles from a state's coastal baselines. So China later amended this error by claiming that the oil rig was within China's contiguous zone.

This new claim of China, Thayer pointed out, lacked legal foundation. According to UNCLOS the sole purpose of the contiguous zone is to enable a coastal state to "exercise the control necessary to prevent infringement of its customs, immigration or sanitary laws and regulations within its territory or territorial sea."

China has also attempted to obfuscate its dispute with Vietnam by advancing the argument that the location of its oil rig is closer to the Paracel Islands than to the Vietnamese. In its position paper, it argued that the oil rig was operating 17 nautical miles from both Triton islet and the baselines drawn around the Paracels and 133 to 156 nautical miles from Vietnam's coastline. At the same time, China claims sovereignty over Scarborough Shoal, which is closer to the Philippines than to the Chinese land feature. Under international law, mere proximity is not sufficient to demonstrate sovereignty.

China's position paper to the UN actually undermines its use of legal warfare to advance its case. It stated that "the waters between China's Xisha (Paracel) Islands and the coast of Vietnamese mainland are yet to be delineated. The two sides have not yet conducted delimitation of the Exclusive Economic Zone (EEZ) and continental shelf in these waters. Both sides are entitled to claim EEZ and continental shelf in accordance with the UNCLOS."

If this is the case, then China should have followed the provisions of UNCLOS to deal with overlapping claims. Both China and Vietnam should have entered into provisional arrangements over the disputed area until the agreement was reached on delimitation. During this period each side was enjoined from altering the status quo and the threat of force. Clearly, China's placement of the oil rig in the disputed waters violated international legal principles.

So, China's formal tabling of a position paper with the UN Secretary General should be taken up by members of the international community that are concerned about escalating tensions between China and Vietnam and other claimants and their possible impact on regional security. These states should argue that the matter be taken up by the UN Security Council.

China should not be permitted to pursue information warfare in order to have it both ways --- circulating its position paper to the UN in order to demonstrate the serious nature of its disputes and rejecting UN arbitration. And China should be forced into the uncomfortable position of opposing any Security Council debate and thus scuttling its attempt to use the UN for its propaganda purposes, or to veto any resolution arising from a debate in the Security Council critical of China's actions in the South China Sea.

Ultimately, the primary question is whether China is willing to adhere to the rule of law in international relations, disavow its claim of "indisputable sovereignty" over the entire South China Sea, reverse its longstanding policy to favour freedom of the seas and skies, and consequently salvage some positive reputational capital out of its handling of its disputes not only in the South China Sea, but also the East China Sea, and adjacent seas like the East Vietnam Sea and the West Philippine Sea.

This prospect bears watching. It could lead to peace in Asia!