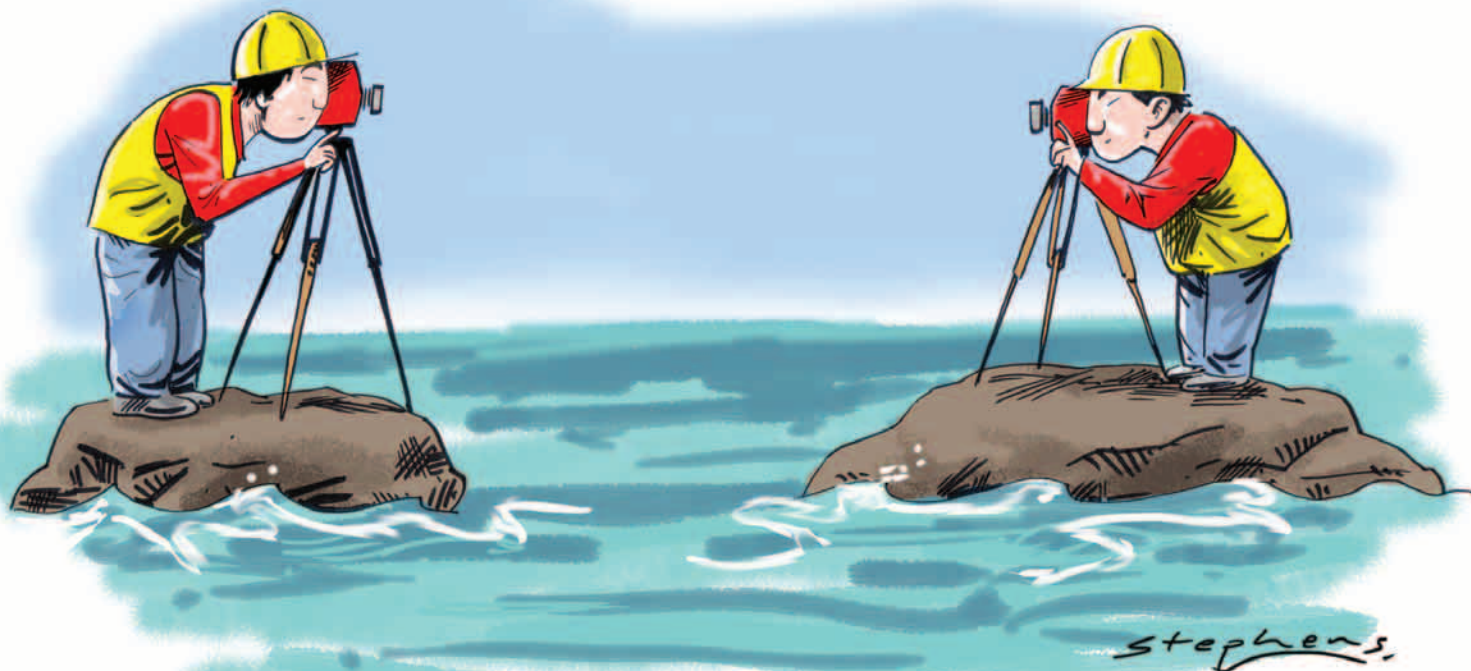


Clear line of sight



Mark Valencia says China can clarify its position on its territorial claims in the South China Sea in a way that not only maintains the status quo and preserves its interests, but is also arguably fairer to its neighbours

China has painted itself into a diplomatic and legal corner regarding its claims in the South China Sea. Its infamous and ambiguous "historic" nine-dash line has been variously interpreted by rival claimants as a national boundary; a sovereignty claim to all water and land within it; and, more optimistically, as an indicator of a sovereignty claim only to the islands and reefs and some submerged features it encloses.

The first two interpretations and China's frequent and expanding naval exercises in the South China Sea frighten smaller and weaker Southeast Asian countries and serve as convenient targets for US and Japanese anti-China propaganda.

Indeed, China has been under withering political and legal attack for allegedly violating the 1982 UN Convention on the Law of the Sea, which it ratified in 1996.

The Philippines – with tacit US support – has filed a complaint against China with the International Tribunal for the Law of the Sea, established by the convention. However, China has refused to participate in the case and is taking a propaganda pounding for not doing so. The US Senate Foreign Relations Committee in July approved a resolution condemning China's behaviour in Asian seas, behaviour that

China sees as defending its claims. Meanwhile, rival claimants as well as the US and other Western powers have criticised some of China's actions in its 200-nautical-mile exclusive economic zone as violating the freedom of navigation. And they and Vietnam say China's drawing of enclosing baselines around the disputed Paracel Islands is illegal.

Several policy analysts and I have suggested that China could turn the tables on its antagonists by making a statement that clarifies the nine-dash line as commensurate with the most optimistic interpretation – a claim to sovereignty only over all legal islands and rocks enclosed by the line.

According to the convention, legal islands are those features that are naturally formed areas of land and above water at high tide. They must be able to sustain human habitation or economic life. Otherwise, they are rocks which have no exclusive economic zone or continental shelf.

There are at least 13 features in the Spratlys that appear to qualify as islands. China could then state that it is claiming 200-nautical-mile exclusive economic zones and continental shelves from these features and that the boundary between its jurisdiction and that of other South China Sea littoral countries is the median line

between the legal islands and their mainlands. China might want to consider drawing this line in a manner that is not seen as an abuse of rights. Regardless, the other claimants – the Philippines, Vietnam, Malaysia and Brunei – would strongly object and dispute both China's sovereignty claim over the islands and the drawing of a median line in this manner.

But such a claim would conform to the 1982 convention and could not be arbitrated by the International Tribunal for the Law of the Sea because boundary delimitation is excluded from its jurisdiction. Likewise, the conflicting claims to sover-



By this simple but velvet manoeuvre, China could mollify its critics ... and build confidence

eighty over the islands could not be brought to the International Court of Justice without the consent of the parties. The result would be the status quo, minus any historic waters or title claim, and sovereignty and boundary disputes would have to be resolved by negotiations or non-binding conciliation.

Joint development might even be possible in some areas of overlapping exclusive economic zones and continental

shelf claims. Issuing an official statement along these lines would clarify China's position without fundamentally sacrificing its claims or interests.

This would be important in explaining the move to its citizens. More importantly, it would bring the debate within the realm of international comity and parlance. And it should help mollify the public angst of naval powers regarding "freedom of navigation".

Meanwhile, because maritime boundaries within the nine-dash line have not been agreed and the area is in dispute, there should be no unilateral drilling for hydrocarbons according to precedents in international arbitrations.

Instead, in general in such situations, the courts have recommended that disputants enter into interim arrangements of a practical nature, such as joint development of resources.

By this simple but velvet manoeuvre, China could mollify its critics, render the Philippines case politically moot, demonstrate its willingness to abide by the convention and modern international law, and build confidence with its Southeast Asian maritime neighbours.

It won't be clear sailing from there in the South China Sea, but China will have resolved its dilemma, and taken the initiative as well as the "high ground".

Hopefully, China will see the wisdom of this option, which could reduce tensions and uncertainties in the South China Sea.

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Scant evidence

Grenville Cross says any suggestion that the SFC is mixing up its roles as investigator and prosecutor is not borne out by the facts or statistics

When the retiring director of public prosecutions called in August for the Securities and Futures Commission to be stripped of its power to prosecute cases, he cited internal deficiencies and "tension between us". The SFC disagreed, and the damage caused by the ensuing contretemps has taken its toll. Public rows between law enforcers are best avoided, not least because they provide succour to law breakers.

Although other statutory bodies and government departments also investigate and prosecute their own cases, no criticism was levelled at them. If the suggested principle is that investigators should not also be prosecutors, this, presumably, applies across the board.

The SFC has, since 1989, handled its own prosecutions. But it is subject to justice department oversight. In practice, therefore, the department can take over, stop or continue any SFC prosecution, and the suggestion that the SFC is some sort of unaccountable maverick is inaccurate.

In 2003, market misconduct, including insider dealing, was criminalised, and cases may either be prosecuted or dealt with by a tribunal, depending on the evidence. In 2007, the SFC entered into a pact with the Department of Justice and, as a consequence, potential market misconduct prosecutions are referred to the director of public prosecutions to decide if a prosecution is justified.

The pact, moreover, recognises that regulatory offences not involving market misconduct, such as unlicensed dealing, will be prosecuted by the SFC. Since 2007, it has prosecuted almost 300 such cases in the magistrates' courts, with a conviction rate of over 90 per cent. This suggests not only that SFC prosecutions are meritorious, but that prosecution policy guidelines are being properly applied.

Throughout the prosecution process, the SFC benefits from legal input, and there is no reason to suppose its investigatory and prosecutorial functions are being mixed up. A decision to prosecute is based on legal advice, and if there is a trial or appeal, the case is conducted by a private lawyer.

Ideally, the justice department should approve every charge brought by a law enforcement agency, but many more prosecutors would be required and the cost could be prohibitive. In 2006, in England and Wales, the Crown Prosecution Service adopted a statutory charging scheme whereby its prosecutors advise on cases from the outset, and they, not the police, take the decisions on charging in the more serious and complex cases. The scheme, however, has been hugely expensive, and even now the police still take charging decisions in 72 per cent of cases.

Last month, when asked if the SFC would be stripped of its power to prosecute cases, Secretary for Justice Rimsky Yuen Kwok-keung said the administration "currently has no plan to suggest any changes", adding that the new director of public prosecutions, Keith Yeung Kar-hung, would take a full role in discussions with the SFC over criminal cases. This is encouraging. Both sides must work together to uphold Hong Kong's role as a major financial centre.

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Rent-seeking by journalists will dent Chinese media's credibility as watchdog

The full facts of the dramatic arrest and subsequent confession of *New Express* reporter Chen Yongzhou (陈永洲) are not yet known but there's no escaping the problem it revealed. The painful truth is that the case exposes the unforgivable practice of "rent-seeking" in Chinese journalism. Given the important role news media play in society, such corruption cannot be tolerated – even people who continue to speak up for Chen and the newspaper would agree with that.

Chen was arrested by Changsha (长沙) police on October 18, and news of it emerged four days later. That night, *New Express* posted a message of support on its *weibo* feed, and ran front-page stories calling for his release two days in a row.

Given the paper's government connections and some comments by officials in Beijing, the arrest seemed at first to be a mistake. But the twist came three days later: Chen appeared on CCTV and admitted to taking bribes of more than 500,000 yuan (HK\$632,000) to fabricate a series of stories targeting construction machinery company Zoomlion.

CCTV's reporting of the story was rightly criticised for being less than fair, and the manner of Chen's arrest and the investigation and prosecution also raised questions of collusion. Some valid concerns include: the questionable conduct of the Hunan (湖南) police officers, who arrived in a Zoomlion car to arrest Chen; the apparent neglect of Chen's right to legal counsel; the vagueness

Hu Shuli says given the key role they play in society, reporters must keep their conduct honest no matter how difficult the working environment



of the charges of "damaging [a company's] commercial reputation" that have been slapped on him; the fact that he is so far the only person to be prosecuted even though the case clearly involved his employer.

The murky chain of relations that led to the arrest must be thoroughly probed.



Public trust is the media's best defence. And it cannot be credible without fair reporting

At its heart, however, the allegation exposes the dark side of Chinese journalism. That someone should abuse his journalist's right to report should pain all of us who work in the industry. However, worse harm is being done to the credibility of the media, which plays a major role in every society's development. The onus is on us media professionals to exercise discipline and keep our conduct honest.

There's no freedom of speech without freedom of the press, and no social justice without the rule of law – both play a key role in a society in transition. As

elsewhere, the media environment in China is rapidly changing due to the rise of the internet and new media.

But journalists in China, unlike in other countries, also have to deal with the pressure that comes from operating in a particular political environment. Perhaps because of this, it is doubly important for Chinese journalists to try to improve and protect the credibility of the media, for public trust is its most valuable asset and best defence. And the media cannot be credible without fair reporting.

Many media companies have been hit with lawsuits in recent years. Even those that upheld the professional standards of their business have not been immune from trouble. Yet we must insist on the bottom line of "no favouritism, no corruption, no self-interest, no groupthink". Without this, the media cannot be credible, and it cannot survive. All self-respecting journalists must adhere to this code of conduct.

If the allegations are true, Chen could not have acted alone. It's hard to imagine that an ordinary reporter could have filed more than 10 hard-hitting pieces targeting a single company without the support and help of the editors.

After the CCTV report, *New Express* issued a statement of apology and admitted it failed to fact-check his reports, but only gave the impression that there

was more to the story than it was saying. Its U-turn embarrassed the profession, and its management are rightly taking responsibility for the fallout.

Chen's case should serve as a warning. Rent-seeking is not attributable to a misbehaving individual; it is an illness infecting the whole industry. Greed has no place in journalism. The problem is, in China's peculiar political and media environment, where media companies are government-linked, excessive interference and an absence of supervision co-exist, which makes it easier for people to succumb to temptation.

Thus, some media firms would smear companies that refuse to place ads with them, while others are happy to sell themselves as a public relations tool. Such practices are no secret within the industry; some even brag about them.

If allowed to fester, rent-seeking will stunt the healthy growth not just of China's media but its entire society.

Ultimately, the only way to root out rent-seeking is to ensure there is no room for such "price differentials". Chinese media is not given enough room for independent thinking, and there is no true competition to ensure the bad seeds are weeded out. Apart from the exercise of self-discipline, journalists need the rule of law, room for independence and adequate protection to thrive.

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Can China's economic planners rise to the challenge?

G. Bin Zhao surveys the obstacles to growth ahead of key Beijing meeting

Five of the Communist Party Central Committee's past seven third plenums have discussed macroeconomic policies relating to reform and opening up, and economic development.

Thus, it can be expected that Xi Jinping (习近平) and Li Keqiang (李克强) will continue along the same path. This time, the main theme will probably be the "adjustment and regulation" of policies. To predict the areas of focus, we need to look at the major obstacles to growth over the next five to 10 years.

First, the current economic system has seriously hampered sustainable development. Even after 35 years of refinement and improvement, the pace of change is still not well coordinated; in particular, a system that favours public ownership over private enterprise is totally inconsistent with the trend towards a market economy.

In addition, numerous complex and inefficient regulations interfere with the basic laws of the market. For example, the slow development of China's stock market has made it impossible for a large number of companies to list. Data released last month shows 754 companies were awaiting approval for an IPO; that could mean some 7.5 trillion yuan (HK\$9.5 trillion) of capital requirements are not being met.

Restricting companies' financing activities will retard growth. Improper supervision is the main problem; too much government power and too many regulations only create the conditions for corruption.

Second, there is an urgent need to tackle the high levels of pollution; industrial and economic development based on high energy consumption and a deteriorating environment is unsustainable.

According to official statistics, since the beginning of the year, pollution has affected one quarter of China's total land area and about 600 million people. Air quality is now a serious threat to the health of millions of people and so the need to



The need to address pollution is now greater than the need for more development

address environmental pollution is now actually greater than the need for more economic development.

Third, the income divide is growing, leading to increasingly acute social conflicts. Asset and resource allocation remains opaque, irregular and uneven; at the same time, there is a huge amount of hidden income which affects real income distribution.

Through their access to power, the privileged minority gains enormous wealth while the middle class and low-income people continue to suffer from the high costs of

housing, health, education, pensions, and so on.

Fourth, the overall economic structure is irrational. Some core areas are inefficient, which impedes industrial upgrading and restructuring. As a result of monopolies and policy interventions, some key industries have excessive control over production materials and large amounts of capital, thereby limiting the ability of competing industries to develop.

Other obstacles, such as the ageing population, also restrict development. The demographic dividend that has been helping to drive economic development will gradually disappear; in fact, future labour shortages will become a bottleneck for growth.

Then there is China's overdependence on exports, the lack of domestic demand, regional development imbalances, and the central and local government fiscal and taxation disparities, to name but a few more hurdles.

Clearly, the only way to tackle these issues, and ensure China's sustainable development, is to deepen reforms.

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