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South China Sea: Promise and Problems of COC

By Truong-Minh Vu & Nguyen The Phuong

Synopsis

Since the escalation of tension in the South China Sea in early 2014, establishing a code of conduct (COC) has become more pressing. Foreign ministers from China and ASEAN who met in Naypyitaw last weekend agreed to speed up hammering out a legally-binding COC. Can there be an early conclusion of the COC?

Commentary

IN HIS RSIS Commentary on 2 June 2014 entitled a Tale of Three Fears: Why China Does Not Want to Be No 1, Dr Kai He nicely points out how signing a code of conduct (COC) in the South China Sea could be the first step for China to become a world leader. We do believe that a binding COC is necessary for China to manage the relationship with the smaller states as a new leader through rules and norms. We are, however, skeptical about the actual promise of a “self-restraining rising power”.

According to John Ikenberry, writing in *International Security*, a decision by a dominant power to accept institutions and comply with international law is motivated by the preservation of its power. Relying on their power advantages, they see institutions as “power investment” and create rules and laws that ensure their interests even when their power is declining relatively. Using hard power to protect their interests or to solve disputes can be very costly. Through institutions, weaker nations on their part are willing to accept principles set out by bigger nations as a result of the use of force or in return for some benefits.

China’s dilemma and COC as a power tool

The relationship between dominant powers and international norms always prove to be complicated and multi-dimensional, however. Dominant powers can instrumentalise, withdraw and reshape international law by their own domestic law. In other words, in the eyes of dominant powers, international law is regarded as a power tool for them to fulfil their short-term or long-term goals.

Since 2009, China has faced the dilemma of choosing between using its growing power or being the exemplar in complying with international law. As a rising power, China is facing a problem of how to

deal with its growing capabilities and expanding interests beyond its borders, rather than dealing with the declining situation.

Therefore, there are at least three reasons that negotiations on the Declaration on Conduct of Parties (DOC) in the past have and COC in the present will be used as a “power tool” rather than “power investment”.

Firstly, throughout the negotiations for a COC from 1998 to present, China has looked at the COC totally differently. For ASEAN, signing the COC will bring about significant benefits, especially political interests, which would make a precedence in dealing with maritime disputes via negotiation. China, on the other hand, showed that it had no intention to join any treaty which would limit its power in the region, and that COC is a symbol of “a measure of confidence building”.

Secondly, China’s power is steadily augmenting. Beijing is not under pressing need to constrain itself until China realises that its power is diminishing or its strategy is diverging from its control. In Nyapyitaw last weekend, China reportedly expressed the need for an early conclusion to the COC, matching ASEAN's position. It reminds us of a time in early 2013 when a positive wind blew following China's proactive pursuit of the COC negotiations with ASEAN countries.

The key question is when the negotiations will be concluded and whether they would actually meet ASEAN's proposed deadline for an early conclusion. Chinese Foreign Minister Wang Yi, during his official visit to ASEAN countries in 2013, had stated that ASEAN should have “realistic expectations” and should take a “gradual approach to arriving at a COC consensus.

Using the COC negotiation as a “time-buying solution”, China is cultivating an illusion of it getting onto the right track in settling disputes in accordance with international law. In this way, China can enhance its prestige in the South China Sea and continue the policy of “peaceful development”.

Thirdly, the COC will function more as an ornament than a reality. Should ASEAN accept a weak COC with the least binding commitment with China due to the splits/disunity among its members? These splits, exposed in the history of the COC negotiation process, were duly taken advantage of by China.

COC more an ornament?

However, there were remaining disagreements on addressing territorial issues in the COC, limitation on building new infrastructures in the disputed areas, and on conducting military actions in the waters near the Spratly Islands, as well as ambiguity in whether fishing boats in disputed waters should be arrested or not.

Eventually, a non-binding DOC was born. July 2012 marks the very first time during its 45-year history that ASEAN's foreign ministers failed to issue a joint communiqué after their annual meeting in Phnom Penh. Analysts have attributed internal conflict within ASEAN to the underlying causes leading to the failure, particularly that between Cambodia and the Philippines.

Can the more legally-binding COC contribute as the stepping stone to restoring China’s leadership in the South China Sea by rules and norms? We think that this prediction will spring into life if two conditions are provided. The first condition requires Chinese elites to realise that pursuing a policy inclined to hard power has limitations, with the possibility of drawing the US more deeply into a conflict or confrontation with China.

This movement will wreak havoc on the Chinese economy. Therefore, a “tao guang yang hui” (meaning “not to show off one’s capability but to keep a low profile”) policy version two will be established, through which China is obliged to devise a way to settle conflicts with its neighbours through accepted rules and recognised norms.

While China is still away from confrontation with a stronger nation, and power asymmetry remains in the South China Sea disputes, a COC limiting the relationship between China and ASEAN countries should be considered a temporary solution.

Only an extended COC which encompasses the involvement of all nations having interests in the South China Sea - such as the US, Japan, and even India - or a maritime agreement for the whole region, can become a real “power investment” in managing territorial disputes and taming the rise of China as a responsible great power.

Truong-Minh Vu is a Ph.D. Candidate at the Centre for Global Studies, University of Bonn (Germany) and a lecturer at the Faculty of International Relations, University of Social Sciences and Humanities, Ho Chi Minh City. Nguyen The Phuong is a research fellow at the Faculty of International Relations, University of Social Sciences and Humanities, Ho Chi Minh City. They contributed this specially to RSIS Commentary.

Nanyang Technological University

Block S4, Level B4, 50 Nanyang Avenue, Singapore 639798
Tel: +65 6790 6982 | Fax: +65 6794 0617 | www.rsis.edu.sg