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The South China Sea Declaration: A Chinese Perspective

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The Declaration on the Conduct of Parties in the South China Sea has not been effective in mitigating tensions among claimant states. To make it more effective, various disputant countries should enhance mutual trust, be open to moral censure for violations and allow external powers to play a more constructive role.

TENSIONS OVER the South China Sea seemed to be on the rise in the first part of this year. Analysts lament that once again the Declaration on the Conduct of Parties in the South China Sea (DOC) signed by China and ASEAN in 2003 has not been effective in restraining the actions of various parties in the dispute.

Over the years, China has repeatedly criticised Vietnam, the Philippines, and Malaysia for exploring energy resources under the disputed waters and taking actions to strengthen their hold of the disputed areas. Some ASEAN countries regard the rapid development of China's naval power as an increasing concern. They also worry that China might attempt to change its current self-constraint policy on the South China Sea dispute.

Hailed by some people as a significant breakthrough, the DOC was indeed a positive step in enhancing confidence-building measures between China and ASEAN on the South China Sea issue. But few people, not even the designers of the scheme, realised at the time that there would be many indirect effects that would render the document not as effective as people had expected.

Limitations of the DOC

Firstly, the DOC has failed to notably overcome the mutual distrust among signatory states. For many years, Beijing indicated that its strategic priority was to pursue an economic modernisation and improve people's welfare. To facilitate the realisation of that domestic goal, China made a political and security commitment to ASEAN countries by signing the DOC. However, many ASEAN states have not been successfully persuaded that China would intend to solve the South China Sea dispute

through peaceful means.

It is perhaps understandable that surrounded by such a large rising economic and military power as China, those relatively smaller ASEAN states would have concerns about China. It is unfortunate that the DOC has not been more effective in mitigating regional states' misgivings towards Beijing.

Another shortcoming of the DOC is that there is no penalty in the case of non-compliance. On paper the DOC encourages various kinds of cooperation among the disputant countries in the South China Sea. The fact that there are so many uncertainties in the dispute makes cooperation difficult and non-compliance more likely. The implementation of a "joint development" is very difficult to push through. It took many Chinese efforts to get the Philippines and then Vietnam to participate in the joint scientific seismic study in the disputed waters in South China Sea in 2005. It was a tiny but significant step towards multilateral cooperation.

Unfortunately, the Philippines has refused to continue to carry out this project this year due to domestic opposition and pressure from the United States. This unsuccessful attempt at "joint development" has led to more ambivalent attitudes among disputant countries towards any other "joint development" schemes in the future. A good opportunity has been lost in turning the South China Sea into a "sea of peace," "Sea of cooperation," and "sea of friendship". Worse, if any of the claimant countries does not observe the DOC and there is no punishment, other disputant countries will have all the incentives to follow suit to breach the agreement.

Role of External Powers

Moreover, the DOC has unfortunately generated misunderstandings among other external powers such as America, Japan, India and Australia. These countries, to varying degrees, regarded the conclusion of the DOC as an indication of China's increasing clout in Southeast Asia. Some strategic observers in those countries believed that keeping a relatively stable backyard in this region via the DOC, China could then allocate more resources to expand its influence in other regions such as Northeast Asia, South Asia, South Pacific and so forth.

For instance, India decried China's growing influence in the Indian Ocean and warm ties with Myanmar. Japan worried that China would prioritise its maritime interests in the East China Sea. And the United States has been suspicious of China projecting maritime power beyond the island chains into the Pacific. Some strategic planners in these countries believe that certain amount of tension in the South China Sea would keep China busy in this body of water, which serves their respective national interests.

In addition, the DOC is flawed in that the US has nothing to do with it. Nowadays, the South China Sea issue has become a trilateral one involving Southeast Asia, China and the US. It would be hard for ASEAN and China to reach a comprehensive cooperation scheme in the South China Sea under the DOC without American involvement. This is so because Washington regards any regional multilateral arrangement in East Asia, for instance any security arrangement in the South China Sea, a big challenge to and concern for America's core security interest in West Pacific.

This is evident in the case of the Malacca Strait where the US has always attempted to be involved and play a larger role. Admittedly, it is extremely hard to establish a coordinative mechanism in the South China Sea involving China, ASEAN and the US. The difficulty for China and the US to establish some sort of bilateral consultative mechanism or crisis management regime after the Hainan EP-3 incident in April 2001 and the Impeccable incident this year is a good example. A trilateral mechanism would be far more difficult.

Solution: A legally-binding Code of Conduct?

One possible solution, as some observers have suggested, is to upgrade the DOC and establish a formal Code of Conduct (COC) as a higher level of legally-binding institution. However, given the above analyses, it is hard to imagine that a COC is really possible in the foreseeable future. In this sense, it is better to have the DOC than nothing. A more realistic option is to make the DOC more effective in restraining actions that disrupt the status quo in the South China Sea.

To achieve this objective, China and relevant ASEAN countries will need to further strengthen their political and security trust. Since there is no legal penalty for actions that breach the DOC, various parties should exert heavier moral pressures on such actions. External powers should not regard efforts at stabilising the South China Sea as China's gain and a challenge to their security interests in the region.

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