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China's Position on the South China Sea: Problems and Progress

By Yang Fang

Synopsis

China's South China Sea policy is not clear enough and has always been criticised by regional countries. While it may not change its South China Sea policy fundamentally, China seems to be lately adopting a more open-minded approach.

Commentary

CHINA has recently announced that it is working with all of the 10 ASEAN countries to formalise the 2002 Declaration of Conduct of Parties (DOC) dealing with the South China Sea territorial dispute. Despite China's reluctance to internationalise the issue and stick to a bilateral solution to the problem, its overture to ASEAN has been seen as Beijing's willingness to defuse the tension.

Criticism over Ambiguities

China has reiterated its position on the South China Sea on many occasions. However, the remarks expressed by its Ministry of Foreign Affairs are usually vague and lack elaboration and explanation which can easily cause mistrust. The mistrust has deepened recently after news that China considered the South China Sea as one of its "core interests" together with the issues of Taiwan, Xinjiang and Tibet. However, Chinese officials have neither acknowledged nor explained this position which was reportedly attributed to the Chinese government. Among Chinese scholars, there have been doubts about the credibility of the news as well as criticism of the validity of the policy.

China's claim is based on a U-shaped broken line which encompasses almost the entire waters of the South China Sea while at the same time not specifying what features and waters China has claimed. Its legal status has been questioned repeatedly by other countries. However, the Chinese government has yet to formally explain what exactly has been claimed by China.

In countering the joint submission by Malaysia and Vietnam to the United Nations' Commission on the Limits of the Continental Shelf (CLCS), China used in its Note Verbale on 7 May 2009 the U-shaped line officially to defend its maritime territorial claim in the South China Sea. This is the first time that China had used the U-shaped line to assert its claim in the context of the international community. In the text of its Note Verbale to the United Nations, China used the terms "adjacent waters" and "relevant waters", but did not explain the legal definition for either term. As suggested by some scholars, such as Professor Robert Beckman from the Centre of International Law, National University of Singapore, China could strengthen its position if it could justify its claims in accordance with the 1982 Law of Sea Convention (UNCLOS).

A Positive Trend

Even though China has verbally rejected the internationalisation of the South China Sea issue, it has essentially been involved in some multilateral cooperation, such as the signing of the 2002 DOC and conducting joint seismic surveys with Vietnam and the Philippines in 2005 (though the latter was suspended in 2008 due to domestic pressure in the Philippines). And recently, Beijing's ambassador in Manila Liu Jianchao confirmed that China and ASEAN countries have begun discussing a formal code of conduct based on the 2002 DOC.

In the diplomatic storm with the United States at the ASEAN Regional Forum (ARF) in July this year, China's strong opposition was mainly aimed at ruling out America's involvement. China's conflict with the US regarding the South China Sea issue has to be carefully examined within a broader context. The two countries have already tussled over a long list of contentious issues such as the conflict over the Korean Cheonan incident, the Taiwan arms sales issue and the value of the yuan.

Nevertheless, it has been observed that both China and the US have downplayed their differences over the South China Sea issue during the ASEAN defence ministers summit in Hanoi recently. It is believed that China is now taking a more open-minded approach in dealing with the disputes. Though the Chinese Defence Minister Liang Guanglie avoided mentioning the South China Sea disputes in the meeting, he had made a statement that was seen as conciliatory. China was willing to help establish a regional "security mechanism", he said, while highlighting a few areas for cooperation, including in dealing with maritime security issues.

Additionally, China has officially conveyed its willingness to pursue a peaceful approach with all the claimants and will not hinder the freedom of navigation in the South China Sea, which is a major concern for the US.

Code of Conduct

The DOC was signed by all ASEAN nations and China in 2002 to encourage the claimants to exercise self-restraint so as to reduce the tension. It also encouraged claimants to build mutual trust and confidence amongst themselves and to conduct maritime cooperative activities. However, the DOC is not legally-binding and is not effective in pressurising claimants if they are non-compliant. Countries did exert a certain self-restraint after they signed the DOC in 2002, but there have been some skirmishes over fishing activities, resource exploration rights, and some other non-military conflicts.

The South China Sea disputes in the near future could be better managed based on a more comprehensive and effective code of conduct. It is possible that the new code will incorporate sanctions into the draft to restrain countries from carrying out activities that would hamper the interest of the other claimants. Countries will have the obligation to comply with the rules and are encouraged to conduct joint cooperation pending the settlement of the disputes.

Once a code of conduct is achieved and consensus is forged among the claimants, a peaceful environment in the South China Sea can be created and sustained. However, as divergences exist among all claimants, it may take a long time for them to conclude a code of conduct. And pending the final outcome, it is possible that some minor conflicts will continue to occur in the South China Sea. Nonetheless, the code of conduct will be a crucial tool for ASEAN countries and China to mediate their South China Sea disputes. In this regard, China's willingness to formulate a stronger code of conduct to manage the South China Sea dispute is a significant step forward.

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