

COC negotiators will carry on burden

Asean-China must stay the course on finding solution to 'intractable'
South China Sea problem

By Vu Hai Dang



*"Biar lambat asal selamat, takkan lari gunung dikejar" **

At the 56th Asean Foreign Ministers' Meeting (AMM) in Jakarta in July 2023, two important news related to the Code of Conduct of Parties in the South China Sea (COC) were announced.

First was the completion of the second reading of the single draft COC negotiating text. Second was the adoption of a set of guidelines for accelerating the early conclusion of an effective and substantive COC at the Post-Ministerial Conference (PMC 10+1) meeting with China.

While the Indonesians dubbed these as "important milestones" in China-Asean ties, Jakarta did not release any detail about these achievements. According to media reports, the guidelines call for the Asean-China Joint Working Group on the Implementation of the Declaration on the Conduct of Parties in the South China Sea to complete the COC negotiations within three years.

They also ask for more meetings and the start of negotiations for the most contentious issues, including whether the regional code should be enforceable legally and its geographical scope.

Meanwhile, the second reading consists of a preamble finalised in 2022 and some basic principles that had been agreed on, including the code's compliance with international law, such as the 1982 United Nations Convention on the Law of the Sea. The main difference from the first reading was the addition of a few paragraphs and the removal of some sensitive references.

It could be stated that the adoption of the guidelines and completion of the second reading are a procedural – and perhaps political – agreement between the relevant parties rather than substantive progress in negotiations.

This commentary will look at this from two angles: a critical one and a more optimistic one. First, it argues that it may be unwise to rush the negotiations. Second, it opines that the good thing is the parties are still willing to talk to each other.

What's the rush?

No one can deny that the COC negotiations have been a drawn-out affair, as they have been ongoing since 1996. The process is long, not because the negotiators are dragging it, but because of some thorny issues which elude an agreement.

Some of the contentious points cropped up in the 1990s and remain until today, such as the geographical scope of COC, its legal status and what are the prohibited activities. As long as these points remain contentious, negotiations will remain at an impasse.



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The only way to move on is to skip these questions but doing so would mean COC will not be much different from the Declaration on the Conduct of Parties in the South China Sea.

From that perspective, setting a deadline to complete the COC negotiations will just put more pressure on officials, who appear at the negotiation table without understanding the challenges of the situation.

It is not the first time that such a deadline was proposed. In 2019, China wanted to complete a final and binding COC in three years. Beijing has since pushed the deadline to the end of 2024, but COC is still far from being final. One can blame it on the Covid-19 pandemic but, as a matter of fact, three years is a short timeframe in international life.

Instead of pursuing a deadline, the three-year timeframe could serve as the marker of the negotiation process. At the end of this stage, Asean member states and China could review the process to see what has been achieved, what the outstanding issues are and what new approach could be pursued. This will relieve the pressure on negotiators while allowing them to re-evaluate their approach and strategy.



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Keep talking

Still, there is something positive here – that is, both parties are still talking to each other regularly and extensively to reach an agreement on the South China Sea.

The negotiations are protracted because the parties need to reach compromises on difficult issues. It is a good sign that both parties want to intensify the frequency of meetings and consultations to overcome their differences.

These talks are not easy, even tense and argumentative at times. However, everyone understands that fighting at the negotiation table is much better than fighting at sea. Diplomats are willing to carry on the burden to prevent conflicts at sea. This is a brave action that needs to be commended.

While the recent adoption of the guidelines and completion of the second reading of COC cannot be viewed as substantive progress, they still send positive signal to show the world the parties' determination to continue to talk with each other.

** It doesn't matter if it's slow, as long as it's safe*



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