

# REVIEW OF THE DOC IMPLEMENTATION

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# ASEAN DISUNITY?

- Political accident at the 45<sup>th</sup> AMM
  - AMM is just one of more than 30 ministerial bodies in ASEAN
- ASEAN Foreign Ministers' statement on the Six-Point Principles on the South China Sea, 20 July 2012 = ASEAN (minimum) common position
- Six-Point Principles include (3) **the early conclusion** of a Regional Code of Conduct in the South China Sea

# Implementation of the DOC

- The glass is half-full or half-empty?
  - **Half-full :**
    - 6<sup>th</sup> meeting (in Suzhou) of the ASEAN-China SOM on the Implementation of the DOC, Sept 2013 (co-chaired by **Thai Foreign Affairs Permanent Secretary Sihasak Phuangketkaew** and **Chinese Vice Foreign Minister Liu Zhenmin**);
    - 9<sup>th</sup> meeting (in Suzhou) of the ASEAN-China Joint Working Group on the Implementation of the DOC (in Suzhou)
    - four meetings of the Joint Working Group in 2014 in Singapore, Indonesia, Thailand, and China
    - 5 DOC projects implemented; several new projects proposed (in Suzhou)
- 2011 Guidelines for the Implementation of the DOC** adopted after several years of talks
- China-ASEAN Maritime Cooperation Fund** (3 billion yuan= US\$480 million) can support DOC projects

# Implementation of the DOC

- **Half-empty:**

- The DOC has failed to prevent “**unpleasant incidents**” in disputed areas in the South China Sea
- Unilateral actions of some claimant states that have complicated the disputes :

***Viet Nam's Maritime Law** June 2012; China's upgrading the administration authority of **Sansha City** to have jurisdiction over both the Paracels and the Spratlys; and the **Philippines' legal case to challenge China's 9-dash line***

- Trust and confidence among the Parties, especially between the two “Parties concerned” (China and the Philippines) are not yet good
- China has singled out the Philippines for spoiling the ASEAN-China strategic partnership; FM Wang Yi has (deliberately?) not visited the Philippines
- last year China blamed the Philippines and Viet Nam for “taking unilateral provocative actions that chocked China”, forcing China to delay the start of official consultations with ASEAN on a COC

# Prospects of a COC

- ASEAN and China can agree that there are shortcomings in the implementation of the DOC; but they differ on what needs to be done to improve the situation in the South China Sea:
  - ASEAN:** need to move on to put in place a legally-binding COC as soon as possible (the “early conclusion”)
  - China** : need to improve implementation of the DOC first and move only gradually, step-by-step on the basis of consensus the adoption of a COC as provided for (in Para 10 ) of the DOC
  - China** also considers the official consultations on a COC as part of the comprehensive implementation of the DOC, within the framework of the implementation of the DOC

# Prospects of a COC

- 6<sup>th</sup> ASEAN and China in Suzhou discussed issues concerning a COC and agreed to task the Joint Working Group to continue the official consultations
- China wants to set up an Eminent Persons and Experts Group (**EPEG**) [presumably a Track 1.5 ad hoc body] to support the official consultations; but ASEAN wants to wait and see how the official consultations will develop before deciding on establishing an EPEG “*and/or other mechanisms*”

# How can a COC help?

- A COC can add new value by including:
  - + additional confidence-building measures
  - + rules of procedure on handling “unpleasant incidents” and incidents at sea
  - + hot-line communications to respond to incidents at sea, and for search and rescue operations
  - + legally-binding commitments (register the COC at the Secretariat of the UN)
  - + dispute settlement modalities, including those in the TAC, and UNCLOS

# A few tough questions remain

- Does China want a legally-binding COC?
- What is the scope of a COC? (Only in areas with multilateral disputes? Or it shall include areas of bilateral disputes, including the Paracels? Will undisputed territorial waters, EEZ and CS come under the scope of a COC?)
- How to make a COC legally-binding internationally?
- What to do if there is a serious breach?
- **China has proposed a new treaty on good neighbourliness and friendly cooperation with ASEAN Member States**
  - ASEAN Leaders have “*noted with appreciation*” the Chinese proposed treaty (though no details yet)!
- If the proposed treaty turns out to be a good one, then no need to waste any more time on a COC!!