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Code of Conduct in the South China Sea: A Suboptimal Mechanism or Better Off with None?

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This year has been full of anticipation when it comes to the Code of Conduct in the South China Sea (CoC), now under negotiation between China and the Association of Southeast Asian Nations (ASEAN).

The CoC has a chequered history. It was first conceived of in the wake of the Mischief Reef incident in the 1990s between China and the Philippines. Following years-long talks the Declaration on the Conduct of Parties in the South China Sea (DoC) was promulgated in November 2002 as a first step to an eventual code.[1] Since then, negotiations have been a long-drawn process. Timelines for completion were regularly proposed and then delayed. The COVID-19 interregnum was especially disruptive, since the various parties demurred on continuing the negotiations using virtual platforms instead of the preferred in-person attendance due to travel restrictions.[2] Moreover, back then the concerned governments were more preoccupied with managing the pandemic crisis, hence relegating the talks to secondary importance in the order of policy priorities.

The concerned parties are bent on finalizing the CoC this year, to stick with the guidelines adopted in 2023 to accelerate negotiations.[3] And some of them struck an upbeat tone about it. Early this year for instance, Malaysia claimed, without going into specific details, that 70% of the draft code has been agreed upon between the negotiating parties.[4]

Spotlight on the Philippines

Of particular interest here is the context. The Philippines is now the rotating chair of ASEAN, and the country has seen arguably the most persistent tension vis-à-vis China amongst all concerned Southeast Asian parties to the South China Sea disputes. Having the code promulgated this year would certainly add plaudits for Manila, which has run an assertive transparency campaign exposing Beijing's coercive actions in the West Philippine Sea – a move which was unprecedented and in fact, novel, amongst the various ASEAN parties,[5] which have largely opted for low-key, low-profile approaches to handle their disputes with China.

Many of the Philippines' fellow ASEAN members, not least those involved in the SCS disputes, elected not to publicly comment on Manila's assertive transparency approach, even though officials privately express concerns that the Philippines' "name and shame" tactics could have contributed more to tensions than compelling a Chinese rollback in the disputed waters. There was no overt support from ASEAN as an organization, or amongst member states, for Manila's assertive transparency against Beijing. The Philippines is literally the "outlier" when it comes to how ASEAN parties traditionally handled their sensitive SCS issues with China.

When the Philippines took over the ASEAN chairmanship from Malaysia late last year, it pushed for more meetings in 2026 with the express intent to finalize the CoC.[6] Manila's intention is clear – it wanted to be seen, especially amongst its ASEAN peers, as a constructive player in pushing for SCS peace and stability, instead of using its bloc chairmanship to pursue its own agenda against Beijing.

China's Real Motives

If the CoC is indeed finalized and promulgated this year as repeatedly pledged by ASEAN statesmen, the crux of the matter lies not in the timeline but details. This is of great concern because of the apparent scramble, especially amongst ASEAN governments, to get the code finalized soonest. China has publicly evinced its intentions in alignment with the desires of its Southeast Asian counterparts. But it is important to understand Beijing's real motivations.

Since the DoC was signed in November 2002, China has for years dragged its feet on follow-up talks on the proposed CoC. In the later years of then Chinese President Hu Jintao's rule, Beijing started to ramp up its coercive activities in the SCS. But the true turning point came with Xi Jinping's ascendance to power. In April 2012, the same year he took the mantle of leadership, a major incident broke out with the Philippines over Scarborough Shoal and effectively imposed control over this feature that is located well within the Philippine exclusive economic zone. This was the most serious episode since that over Mischief Reef, also under Chinese control. The Scarborough Shoal row led Manila to file a legal suit against Beijing the following year. Instead of participating in the arbitration process, China opted to beef up its physical presence in the SCS with a massive land reclamation and island-building drive.

Throughout those years of its SCS buildup, Beijing paid lip service to the continued necessity of diplomacy to address the dispute especially with Manila, while still dragging its feet on the CoC process. It embarked on a concerted campaign to peddle the narrative that extra-regional parties, especially the United States, were interfering with the SCS disputes and that justified its island-building work as "self-defense" measures against foreign military presence in the area. The period from 2013 till the lead-up to the announcement of the arbitral award on 12 July 2016, was fraught with tensions in the SCS, not least a disturbing series of aerial and maritime close encounters between American and Chinese forces in the area.

The arbitral award eventually dealt a huge blow to China. It basically demolishes Beijing's basis of historical claims to the SCS, and amongst the most damaging in its final assessment was China's role in the massive marine ecological damage as a result of its island-building drive.[7] The award was a major diplomatic and legal humiliation to China, so much so that it continues to insist adamantly that it would never recognize it despite its legally binding nature.

And this is where it becomes interesting. Following the release of the arbitral award, Beijing took a sudden renewed interest in the CoC. It is not far-fetched to argue that this was down to two key motivations. One, China calculated to dilute the arbitral award by

pushing the CoC to the forefront with ASEAN. Second, it sought to exclude extra-regional parties from "meddling" in the SCS. In any case, notwithstanding how they perceived Beijing's real intentions, ASEAN member states welcomed this newfound Chinese enthusiasm for the CoC. Faced with longstanding criticisms over its inability to foster intramural unity and effectively address this "hot button" SCS issue, ASEAN member states wanted to reassert the bloc's centrality and prove that it is in the driver's seat. Though of course, this is nothing more than an illusion: Beijing practically drives the process, ASEAN is in the co-driver seat precariously having the driver stay on lane. The failure of the CoC would deal more reputational damage to ASEAN than China. The former literally needs the code more than the latter does. Beijing is likely to emerge more or less unscathed than ASEAN would if the car crashes.

Devil Lies in the Details

Not only ASEAN wanted to keep Beijing's fire of enthusiasm burning, but geopolitical and geoeconomic developments to date have also served as motivations. The uncertainty of U.S. commitment to the SCS especially during the first and current second Trump administrations along with the global reciprocal tariffs, worsening flashpoint over Taiwan, the wars in Ukraine, then Gaza, and followed by Iran, have pushed ASEAN member states to accelerate efforts on the CoC. The central assumption is that this code will more effectively manage the SCS disputes and promote peace and stability in the area. In order for the CoC to live up to such an expectation, the teething hurdles that have long persisted in the negotiations have to be overcome.

For example, the geographical scope where the code would apply. There were differences between the parties to the negotiations; notably, Vietnam had earlier wanted to include the Paracel Islands though some other ASEAN parties took the side of Chinese argument that this is purely a bilateral dispute between Beijing and Hanoi thus should not be covered in the code. There was a Chinese proposal in the 2018 Single Draft Negotiating Text, which literally implies a veto over the ASEAN parties' freedoms to pursue military engagements and joint marine resource development with extra-regional parties. This was pushed back by at least some of the ASEAN governments as an affront to their sovereign prerogatives. In this connection, the role of extra-regional parties also emerged prominently in the discussions. Point to note that Beijing would assiduously seek to avoid any clause in the code that legitimizes a greater role of extra-regional parties and "internationalization" of the SCS disputes.

Prominently, whether the CoC would be binding on all parties, legally or otherwise, has also become a subject of interest. In this regard, ASEAN parties and China appear to be on the same page: all seek a binding and durable CoC. The question about the binding nature of the CoC, however, is a moot one if the parties are unable to effectively address the challenge of compliance, verification and enforcement (CVE). This three-letter term would have been no stranger to anyone familiar with the field of arms control.

CVE is essential for the implementation of any effective arms control mechanism. However, it is similarly applicable to confidence- and security-building measures (CSBMs) such as the CoC. What are the institutional provisions available that ensure

compliance with the code by all 12 parties? In the hypothetical – but somewhat likely – event of a purported violation of the code by any of the signatories, what are the institutions that can verify the breach and enforce against the violator? These institutions have to be deemed independent or non-partisan, and avoid being politicized or seen to be polarizing amongst the concerned parties. It is all in all a tall order unable to be satisfactorily addressed by preexisting mechanisms within ASEAN. In any case, it is difficult to assume that Beijing would defer to an ASEAN-led mechanism to implement CVE for the code.

The "Wicked Problem" of Militarization

Before one engages CVE, it is requisite to first define what it means by "militarization". In the 2018 Single Draft Negotiating Text, Vietnam was the only party that sought to advance this definition, albeit a debatable one. It is a bold attempt, but so far, the jury remains out there on the most commonly accepted definition of militarization. Without defining it clearly, any perceived moves could be labelled as such, as weaponized by one party against the other to suit parochial national interests. And there is already a real-life example. In 2015 during their Rose Garden meeting, Xi pledged to his American counterpart then, Barack Obama, that China "does not intend to pursue militarization" in the SCS.[8] As events unfolded since, Beijing and Washington levelled accusations against each other for militarizing the SCS.

Assume a hypothetical scenario following the promulgation of the CoC that fails to clearly define the scope of militarization: a joint military exercise conducted between an ASEAN party and extra-regional powers could be alleged by Beijing as "militarization". In response, China would ramp up military and coastguard activities which would then be accused by ASEAN and extra-regional parties as "militarization". All of them would justify their own actions as "defensive" instead of "militarization" for sure. The biggest bugbear of all would not be about ASEAN member states or China but extra-regional parties – none of them would become signatories to the CoC. Beijing would vigorously resist having extra-regional actors sign onto the code lest it facilitates the "internationalization" of the SCS disputes and legitimizes their presence in the area by acknowledging explicitly their stakeholdership.

Would the CoC mean that ASEAN parties would from then on stop engaging in joint military exercises with extra-regional parties? The answer should be an unequivocal no. External balancing has been part and parcel of the toolkit of ASEAN parties in the SCS, considering the relative asymmetries vis-à-vis China in military and coastguard capacities. Would the CoC mean that Beijing would roll back on its military and coastguard presence in the SCS, including such contentious areas as Scarborough Shoal and Second Thomas Shoal within the Philippine EEZ? Likewise, an unequivocal no. Rolling back on these activities has domestic political repercussions that no political elites sitting in the respective ASEAN capitals or in Beijing would contemplate. Externally, rolling back also sends a bad signal – that the political will to uphold one's sovereignty and rights in the SCS has reduced.

If there is no explicit attempt to define what is and the scope of militarization and instead deferring to vague wording similar to those found in the DoC, then one could expect the "wicked problem" of SCS actions and counteractions amongst the ASEAN parties and China to persist. Not being involved in the negotiations right from the start and not being invited to sign on to the CoC, extra-regional parties would see no obligation to subscribe to it and consequently curtail their own rights and freedoms in the SCS.

Final Push on a Path of No Return?

It is a foregone conclusion that, for all the misgivings about the code and its inherent challenges, ASEAN and China have embarked on a path of no return. The CoC process is irreversible. It would incur more reputational damage to ASEAN than Beijing, which casts more questions about its credibility. Yet not all is lost in this final push for a truly durable and effective code.

Firstly, it is essential for all parties to recognize that the SCS is an international maritime medium, like it or not. The sea lines of communications plying through the area serve as arteries of world trade and hence directly bear upon global economic well-being. It is oft-cited that nobody is sane enough to seek armed conflict in the SCS but not everyone agrees that both littoral states and international users have legitimate economic stakes at least in this semi-enclosed water body. It is time to recognize a need for inclusivity in this common maritime medium. In this regard, the role of extra-regional actors, and their stakes, has to be seriously considered in the CoC.

Secondly, the code needs to be more than just a "DoC-plus" – long on generalities and short on specifics as to lose its meaning and yet open avenues for potential abuse. It is encouraging that, as the 2018 Single Draft Negotiating Text indicated, various parties have proposed ways to promote practical cooperation in the areas of marine environmental protection, maritime and aeronautical search-and-rescue, as well as addressing illegal, unreported and unregulated fishing activities. However, these practical measures should not be the dominant feature in the CoC, as the 2018 draft implies. It is necessary to recognize that adding practical measures that cannot be readily implementable does not help promote the code's implementation. Rather, the CoC should be firstly a CSBM, secondly a document outlining practical cooperation in those functional areas. Without addressing CSBMs as a prerequisite, practical measures are bound to fail.

Thirdly, there is a need to strike a balance between prescription and flexibility. The envisaged CoC cannot be so prescriptive that it severely constrains the space for parties to exercise some flexibility where necessary, yet should not leave the wordings in the document so open-ended as to create room for individuals to exploit for parochial gains. In particular, if there is no omnibus definition of militarization, there should at least be terms of reference to scope such activities in order to mark out a basic paradigm of "dos and don'ts" for parties. There should be regular working-level meetings to review this scope in accordance with evolving conditions on the ground. In other words, the

CSBM-related clauses can be "living provisions" subject to continuous review and not set in stone.

Finally, the CVE challenge has to be addressed and not glossed over for the expediency of hammering out the code by the desired timeline. Without CVE, the code will be anything but effective. While signatories would be bound by CVE obligations, it is necessary to consider scope for participation by extra-regional parties who may not become signatories to the code, either by their own volition or due to resistance from Beijing and ASEAN parties. As a first step, having extra-regional parties agree in principle to the code and its CVE provisions would be helpful. ASEAN parties and China also need to seriously consider establishing the necessary institutions to implement CVE for the code. Without these, the question of whether the code is binding or not, legally or otherwise, is essentially meaningless.

It is poignant that ASEAN and China wanted the code to be finalized and promulgated this year, which marks the tenth anniversary of the SCS arbitral award. But this endeavour should not be geared merely for a grandeur press conference and handshake photo event. An effective and durable CoC requires not just more meetings or more upbeat platitudes from ASEAN policy elites in this final push toward promulgation, but an honest discussion that takes into proper account the real issues on hand regarding its implementation.

Notes

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[1] ASEAN Secretariat, Declaration on the Conduct of Parties in the South China Sea. Available at: https://asean.org/declaration-on-the-conduct-of-parties-in-the-south-china-sea-2/

[2] According to Indonesian authorities, COVID-19 delayed the scheduled CoC talks and that it was "very hard" to conduct negotiations virtually. Dian Septiari, "South China Sea rules cannot be negotiated virtually: Indonesian official," *The Jakarta Post*, 18 June 2020.

[3] Arlina Arshad and Lim Min Zhang, "China and Asean agree on guidelines to expedite South China Sea negotiations," *The Straits Times*, 13 July 2023.

[4] Luqman Hakim and Hakim Mahari, "South China Sea Code of Conduct 70pct agreed, says Tok Mat," *New Straits Times*, 12 January 2026.

[5] For a detailed outline of Manila's assertive transparency approach, read: Ray Powell and Benjamin Goirigolzarri, "Game Changer: The Philippines' Assertive Transparency Campaign," jointly published by SeaLight and the Stratbase ADR Institute, January 16, 2024. Available at: https://www.sealight.live/posts/game-changer-the-philippines-assertive-transparency-campaign-1

[6] Cristina Chi, "Philippines ready to propose more frequent Code of Conduct talks as ASEAN chair," *The Philippine Star*, 17 November 2025.

[7] Permanent Court of Arbitration, *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*. Available at: https://pca-cpa.org/en/cases/7/

[8] The White House, *Remarks by President Obama and President Xi of the People's Republic of China in Joint Press Conference*, September 25, 2015. Available at: https://obamawhitehouse.archives.gov/the-press-office/2015/09/25/remarks-president-obama-and-president-xi-peoples-republic-china-joint