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No. 085/2022 dated 29 December 2022

## **Managing Expectations: South China Sea Code of Conduct Under Indonesia's ASEAN Chairmanship**

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### **SYNOPSIS**

*The South China Sea Code of Conduct has languished since a single draft text was put forward as the basis for negotiation in 2018. Several fundamental issues have impeded resolution of the disagreements surrounding the code. These call for Indonesia, as incoming chair of ASEAN, to take an active approach to push the code through, argues **ARISTYO DARMAWAN**.*

### **COMMENTARY**

The idea of a South China Sea Code of Conduct (CoC), first mooted to create an ASEAN-China regional agreement to manage the maritime disputes between claimant states, has languished since both sides agreed in 2018 on a single draft text as the basis for further negotiations. Since then, no ASEAN chair has been able to break the deadlock and move the needle on the CoC. Expectations are high that as the *primus inter pares* of the regional grouping, Indonesia will be able to inject new momentum into the CoC negotiations during its chairmanship of ASEAN in 2023. Unfortunately, even though Indonesia has historically played a successful mediating role in critical junctures of ASEAN's history, the intractable issues surrounding the CoC make it unlikely that Indonesia will be able to successfully negotiate an agreement in the coming year.

### **A Long History**

Negotiations for the South China Sea CoC have had a [long history](#). A proposal to formulate a code was first mooted in 1996, some four years after ASEAN's 1992

Declaration on the South China Sea. However, favourable political conditions leading to regional negotiations for a CoC emerged only in 2016 in response to growing concerns among ASEAN countries regarding China's land reclamation activities in the South China Sea. These culminated in a series of consultations on the CoC and the emergence of a single draft negotiating text in 2018. Unfortunately, the CoC remains in cold storage after negotiations were halted in 2020 due to the COVID-19 pandemic.

The CoC is not a regional agreement to resolve territorial claims and disputes with regard to the South China Sea. Instead, it seeks to serve as a guideline for conduct to prevent military incidents and manage conflict in the disputed area. In addition, it is envisaged that the CoC will set out regional cooperation initiatives on resource management, marine scientific research, and environmental protection in the disputed area. Some ASEAN countries would also want to see provisions in the CoC for protecting their fishermen when fishing in disputed areas.

### **Indonesia's Position**

Under the leadership of Foreign Minister Retno Marsudi, Indonesia had viewed the CoC as an important instrument to maintain peace and security in the disputed area. In bilateral meetings between [Retno Marsudi and her Chinese counterpart, Wang Yi](#), the two leaders often emphasised the need to speed up the negotiations for the CoC.



US and PRC naval vessels on manoeuvres off the coast of Sulawesi, Indonesia, in 2009. Given increasing tensions between both superpowers, a Code of Conduct managing interactions between navies in the South China Sea have become increasingly urgent. [Image](#) from Wikimedia.

However, Indonesia has made its position clear. Indonesia is not keen on negotiating a symbolic or normative CoC that is ineffective in managing disputes between the claimant states. Instead, it wants to have a meaningful and substantive CoC that can be implemented in the disputed areas and is consistent with existing international law, especially the UN Convention on the Law of the Sea or UNCLOS. The CoC, in Indonesia's view, should also lay out clear measures to forestall and prevent any escalation among the law enforcement agencies of claimant states. As a mechanism for conflict management, the CoC should be able to reduce and minimise clashes between claimant states in the disputed waters.

### **Geographical Scope of the CoC: A Key Stumbling Block**

Even though Indonesia has a strong commitment to realising the CoC, it is highly unlikely that the code will be concluded under Indonesia's chairmanship. One of the key issues plaguing CoC negotiations concerns the geographical scope of the code, i.e., the inability to come to an agreement on a clearly delineated geographical zone where provisions of the code will be applicable for all signatories.

Unfortunately, Indonesia and China have mutually negating positions regarding the geographical scope of the CoC. Even though Indonesia is not a claimant to any of the contested islands, its exclusive economic zone (EEZ) in the North Natuna Sea overlaps with China's so-called Nine-Dash Line. Indonesia's position on the geographical scope of the CoC is based on non-recognition of the Nine-Dash Line, a position reinforced by its recognition of the 2016 Arbitral Tribunal Award, which declared the Nine-Dash Line to be incompatible with UNCLOS and illegal under international law. As UNCLOS is the basis of Indonesia's archipelagic status and of its EEZ, Indonesia cannot agree to a CoC referencing the Nine-Dash Line.

On the other hand, [China's position is also clear](#). China's notion of the geographical scope of the CoC includes the Nine-Dash Line, which constitutes the basis of China's historical claim to the South China Sea. Therefore, it is unlikely that China will agree to a CoC that does not include the Nine-Dash Line as part of its geographical scope.

One way to overcome these differences and achieve the CoC is for the code to stay silent on its geographical scope. Each of the signatories can then make unilateral statements declaring their intention to abide by the CoC provisions in their self-defined geographical zone. Unfortunately, disagreements over interpretation of the CoC mean that the agreement will not be an effective conflict prevention mechanism but could instead generate new tensions between the claimant states. Moreover, it is unlikely that ASEAN claimants will agree to leave out the CoC's geographical scope because doing so is unlikely to help in managing their disputes.

### **What Can We Expect Under the Indonesian Chairmanship?**

Progress on the CoC during Indonesia's chairmanship is likely to be influenced by the amount of political capital that President Jokowi is willing to invest in the CoC and by domestic dynamics in Indonesia leading up to the 2024 elections. Although the CoC is unlikely to be concluded during Indonesia's ASEAN chairmanship, Indonesia will still be able to push and steer the CoC forward. As ASEAN chair, Indonesia can put together a priority list for negotiation at regional CoC meetings. On the issue of the

CoC's geographical scope, a workable formula that satisfies China and the ASEAN countries would need to be devised.

Currently, the CoC negotiation process is split into two parallel tracks. The first track constitutes ministers and senior officials, who tend to be [sanguine about the CoC process](#). They are keen to conclude a CoC as a framework for dispute management and as a visible indicator of strong ASEAN-China ties. The second track involves legal advisers in the respective foreign ministries, who have thus far been unable to come to an agreement that will be substantive and palatable to all 11 countries. They are generally not optimistic about concluding the CoC because of conflicting interests.

Given these points of contention, Indonesia's past success as a consensus builder and bridge builder in ASEAN will be key to pushing forward the CoC negotiations in 2023. However, the road to a final diplomatic breakthrough for the successful conclusion of the CoC will be a long and difficult one.

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