

The Code of Conduct in the South China Sea and Beyond: Foolish Consistency or Holy Grail?

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Outline

1. Introduction
2. Full Implementation of the DOC
3. Crucial, Difficult and Complicated Issues
4. An ASEAN Proactive Dual Track Approach
5. Shoring up the ASEAN Political-Security Community
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1. Introduction

- Code of Conduct mentioned in 2002 DOC
- Terms of Reference drawn up
- Key elements of ASEAN COC adopted (2012)
- 26th ASEAN Summit
 - consultations be intensified, to ensure the expeditious establishment of an effective COC
- 9th ASEAN Senior Officials Meeting (2015)
 - address crucial, difficult and complicated issues

2. Full Implementation of the DOC

Need to operationalize Paragraphs 4, 5 and 6

- Threat or Use of Force
- Self-Restraint
- Voluntary Exchange of Information
- Notification of Military Exercises
- Protecting Marine Environment
- Safety of Navigation & Communication at Sea
- Duty to Cooperate

3. Crucial, Difficult and Complicated Issues

- Operative Provisions and Principles
- Obligations
- Dispute Settlement
- Area of Application
- Clarification of Maritime and Territorial Claims
- Without Prejudice
- Monitoring and Reporting

Geographic Scope of South East Asia

- (a) "Southeast Asia Nuclear Weapon-Free Zone", hereinafter referred to as the "Zone", means the area comprising the territories of all States in Southeast Asia, namely, Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam, *and their respective continental shelves and Exclusive Economic Zones (EEZ)*;
- (b) "territory" means the land territory, internal waters, territorial sea, archipelagic waters, *the seabed and the sub-soil thereof and the airspace above them.*
 - - South East Asia Nuclear Weapons Free Zone Treaty 1995 , emphasis added

4. An ASEAN Proactive Dual Track Approach

- Track 1 – ASEAN and China
 - Continue with ASEAN-China Joint Working Group process
 - Why COC is fundamentally flawed
- Track 2 – ASEAN and Its Dialogue Partners
 - Treaty of Amity and Cooperation in Southeast Asia's Maritime Domain
 - SEANWFZ Treaty & ASEAN Charter

5. Shoring up the ASEAN Political-Security Community

- Create corporate identity
- Highest standards of transparency
- Whole-of-ASEAN approach
 - ASEAN Defense Ministers, ASEAN Navy Chiefs, ASEAN Coast Guards, etc.

Expanded ASEAN approach

- ASEAN Regional Forum, Expanded ASEAN Maritime Forum, ASEAN Defense Minister's Meeting Plus and the East Asia Summit

6. Conclusion: Foolish Consistency or Holy Grail?



Foolish Consistency is the hobgoblin [*tin h nghich*] of little minds

- Foolish consistency
 - Consultations for consultations sake
- Holy Grail
 - COC will result in perpetual peace, cooperation and development
- Proactive ASEAN
 - Oppose militarization
 - Ward off great power rivalry and intervention

Conclusion

- When SEANWFZ is coupled with the ASEAN Charter and ASEAN Political-Security Council it appears inescapable that **ASEAN as a regional multilateral institution has the legal personality and political authority to act on behalf of its member states** in managing territorial disputes in the South China Sea. ASEAN does not have to take sides over sovereignty disputes but it has an obligation to support its members in the peaceful resolution of maritime disputes on the basis of international law including UNCLOS.

Conclusion

- **ASEAN has a corporate responsibility** to politically and diplomatically protect its individual members from intimidation, coercion, and threats and the use of force by external powers to alter the maritime geography of Southeast Asia. By drawing up and ratifying a Treaty Amity and Cooperation in Southeast Asia's Maritime Domain ASEAN can then reach out and solicit support from its Dialogue Partners and other members of the international community **to gain leverage in its consultations with China.**

Part 4 ASEAN's Dual Track Approach to the South China Sea

- Proactive Corporate Approach
- Track 1 – ASEAN and Its Members
 - SEANWFZ + ASEAN Charter + DOC
- Track 2 – ASEAN and Its Dialogue Partners

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