

It allows diplomacy to continue functioning

By Collin Koh

The ASEAN-China Code of Conduct process may fall short of expectations, but it remains necessary to maintain confidence-building mechanisms.

Singapore would and should continue supporting the ASEAN-China Code of Conduct in the South China Sea (CoC) process.

Singapore is not a claimant state in the disputes, but it is interested in the rule of law—especially the United Nations Convention on the Law of the Sea (UNCLOS)—as well as freedom of navigation and overflight in the area.

Singapore was one of the first few ASEAN members to **respond** to the release of the 2016 UNCLOS tribunal award on the South China Sea (SCS). This move resulted in a period of tense relations with Beijing, including a **war of words** between senior officials and the **non-invitation** of Prime Minister Lee Hsien Loong to the Belt and Road Summit. Singapore nonetheless persisted and sought to punch above its weight in managing the SCS disputes.

Under Singapore's chairmanship in 2018, ASEAN accomplished one of the most significant developments in the CoC process: the adoption of the Single Draft Negotiating Text (SDNT) as the capstone document for



ongoing negotiations. But progress has been lacklustre; partly due to the pandemic that prevented face-to-face discussions as well as the spate of Beijing's coercive acts against other claimants.

In general, the current CoC process falls short of the expected format, especially a single ASEAN position. But as reflected aptly by the SDNT, it is a collection of 10 ASEAN member states' proposals against China's. The CoC process looks to further drag on while the parties seek to assert their positions, overcome differences, and derive a consensus—not unusual for complex multilateral negotiations over topics that concern matters of sovereignty and rights.

Nevertheless, Singapore would support the CoC process because it would serve as a form of confidence-building measure (CBM) to help ameliorate tensions that erupt from time to time. ASEAN and Beijing have

engaged in CBMs for a few decades now. While these instruments have failed to roll back efforts by some to consolidate their physical possessions in the SCS, the CoC process continues to be useful in bringing all parties to the same table.

Given that ASEAN is a cornerstone of Singapore's foreign policy, it is important to ensure the grouping remains viable, geopolitically relevant, and retains its centrality in the regional security architecture. The CoC therefore serves as an ASEAN litmus test.

For now, Beijing is **enthused about the code** after having dragged its feet for years. The 2016 tribunal award handed a heavy blow to China's claims, thus forcing it to reinvigorate the process. Beijing then wanted to bolster its narrative that the SCS begs no foreign interference, and that the CoC was proof that ASEAN and China could manage their own disputes. However, some Southeast Asian claimants have been concerned about negotiating with Beijing from a position of relative weakness. Not only has there been a yawning asymmetry in military power, but China has not demonstrated good faith in the CoC talks as seen by its continued coercive moves.

The talks may therefore go on for an indefinite length of time. The parties have stopped harping on timelines—a clear sign that the negotiators themselves are less than certain. This has added to concerns that allowing “committed timelines” to lapse without an agreement speaks ill of the

process and creates more scepticism.

However, the fact that all 11 parties remain, at least rhetorically, willing to continue the CoC process is itself comforting. It shows that diplomacy continues to function. The political cost of calling off the CoC process could have been unimaginable for ASEAN considering the amount of effort and time invested thus far. In other words, the CoC process is not likely to be reversible at a minimum cost to the bloc's credibility.

For Singapore, it is also important not to compromise on the CoC's substance. Ideally, to distinguish it from the 2002 Declaration on the Conduct of Parties in the South China Sea (DoC), the CoC must be more than just “DoC-plus”. The CoC needs to have clear and unambiguous provisions on the dos-and-don'ts for signatories. The worry is that out of the political expediency of hastily finalising the CoC, ASEAN and China may agree to a suboptimal CoC—one that does not effectively prevent or mitigate flareups in the SCS.

Without effective compliance, verification, and enforcement provisions to address possible violations, the CoC risks becoming an abject failure. The CoC needs prescriptive provisions that oblige signatories to refrain from actions unambiguously considered to be in violation of the code, including giving the authority to verify such acts to have taken place and impose penalties. Without such provisions, the CoC would have fared no better than the DoC.

While one can argue we should have an effective CoC or no code at all, others believe an imperfect CoC is better than none at all. The concern is that an ineffective CoC will do more lasting damage to ASEAN's credibility. One should also not harbour illusions that the CoC would serve as a panacea to the simmering SCS tensions. The SDNT currently amounts to nothing more than a set of general principles and proposals without a clear action plan.

Until a final CoC is agreed upon, pre-existing CBMs such as the Code on Unplanned Encounters at Sea could serve as a useful firebreak against untoward incidents between naval forces in the SCS. While focusing on the CoC is important, ASEAN member states, China, and other concerned stakeholders should not lose sight of the utility of such operational mechanisms.

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