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## **THE EVOLUTION OF THE SOUTH CHINA SEA SINCE 1992: ASSESSING ASEAN'S RESPONSE**

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**Abstract:** The article aims to assess the effectiveness of ASEAN's (the Association of Southeast Asian Nations) policy towards the South China Sea issue against major trends of its evolution and through the prism of global and regional developments. Concerning the former, an increase of the global dimension of the issue is evident, while the latter suggest that the international milieu is increasingly competitive and unpredictable. The author argues that ASEAN has been unable to overcome its instrumental deficiencies in addressing the issue, because of which the process to the Code on Conduct of Parties in the South China Sea (COC) is slow, while the COC prospects are unclear. Arguably, the association is encountering the exactly same problems it had to deal with in the early 1990s, but the present international milieu makes it increasingly difficult for the association to effectively resolve them. Mostly, ASEAN focuses on the process of negotiations rather than on their substance and outcomes. As a result, limited progress in the COC elaboration with no clear prospects in sight is a new normal. Although the topic itself is sufficiently explored by Russian and foreign scholars, the novelty and the academic significance of this paper accounts for its findings that summarize factors behind the limited efficiency of ASEAN policy towards the South China Sea issue within a long time period.

**Keywords:** *the South China Sea issue, global trends, ASEAN, multilateral dialogue, progress, limitations, Code on Conduct*

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## **ЭВОЛЮЦИЯ ПРОБЛЕМЫ ЮЖНО-КИТАЙСКОГО МОРЯ С 1992 ГОДА: ОЦЕНКА ОТВЕТА АСЕАН**

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**Аннотация:** В статье дана оценка эффективности политики Ассоциации стран Юго-Восточной Азии (АСЕАН) в отношении проблемы Южно-Китайского моря с учетом основных тенденций ее эволюции и сквозь призму глобальных и региональных процессов. Применительно к первым, очевидно нарастание глобального измерения проблемы, в то время, как вторые свидетельствуют о том, что международная среда становится все более конкурентной и непредсказуемой. Согласно позиции автора, АСЕАН не смогла преодолеть инструментальные недостатки своего подхода к проблеме, вследствие чего прогресс в выработке Кодекса поведения сторон в Южно-Китайском море остаются неопределенными. По всей вероятности, Ассоциация сталкивается с теми же проблемами, что и в 1990-е годы, однако современная международная среда в возрастающей степени затрудняет для ассоциации задачу их эффективного решения. Ассоциация делает акцент преимущественно на процессе переговоров, а не на их содержании и результатах. Это закономерно привело к ограниченному прогрессу в выработке Кодекса поведения сторон в Южно-Китайском море и неопределенных перспективах такой возможности. Хотя эта проблематика нашла достаточное освещение в российском и иностранном академическом сообществе, научная значимость данной статьи проистекает из достигнутых автором результатов, суммирующих основные причины недостаточную эффективность политики АСЕАН в отношении проблемы Южно-Китайского моря с охватом большого промежутка времени.

**Ключевые слова:** проблема Южно-Китайского моря, тенденции мирового развития, АСЕАН, многосторонний диалог, прогресс, сдерживающие факторы, Кодекс поведения

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Amidst an emerging multipolar international system, tensions between countries in various regions are intensifying. In the Asia-Pacific region, the South China Sea issue has been and remains one of the main destabilizing factors. In that maritime area, contradictions between not only the claimants of the territorial dispute, but also non-state and non-regional actors intensify.

What makes the South China Sea issue truly remarkable is its transformation from sovereignty-related contradictions (they embrace territorial claims and the demarcation of the boundaries of economic zones of the Paracel Islands, Spratly Archipelago, Scarlet Reef, Scarborough Reef and Natuna Islands) to a factor that increasingly affects global economy, politics and security. Since recently, a nuclear dimension (AUKUS-related submarines) has been part of the issue. In these circumstances, to trace the evolution of the issue from the perspective of ASEAN's attempts to keep the contradictions manageable is an important academic task.

Outlining an evolution of regional cooperation on security issues in the South China Sea since 1992, the paper turns to ASEAN's policy to address them to finally assess major results obtained. The conclusion summarizes the research and its findings.

### **The Conflict Stages and ASEAN's Imperatives**

Nine ASEAN countries except Laos are coastal states located in the vicinity of busy sea lanes of communication (SLOCs), with significant and constantly increasing commodity flows<sup>1</sup>. A hypothetical disruption of Malacca Strait, the Singapore Strait and the South China Sea maritime routes may cause a regional energy crisis with far-reaching global implications. Logically, ASEAN-led multilateral cooperation focuses mostly on maritime-related issues, namely, maritime security, marine ecology, climate changes and blue economy.

The evolution of regional cooperation on maritime security issue can be divided into three stages. Each of them has its salient features.

*The first period (early-late 1990s)* marked Beijing's involvement in emerging ASEAN-led security discussions. The ASEAN Regional Forum, a major multilateral dialogue platform for dealing with Asia-Pacific security issues, played the most important role. China's concerns that the conflict in the South China Sea could be addressed on the sidelines of the ARF incentivized Beijing to join the dialogue<sup>2</sup>. China's apprehensions were substantiated at the second ARF meeting in Brunei in 1995 – as the Philippines tried to obtain support from the ARF participants issue after the PLAN had occupied Mischief Reef<sup>3</sup>. Predictably, the PRC's diplomats blocked those attempts.

The Asian financial and economic crisis of 1997-1998 profoundly reshaped cooperation between ASEAN and China. Suffice it to say that the PRC's anti-crisis measures helped ASEAN member states to keep their economies afloat. Logically, the implications included ASEAN's reluc-

tance to stir up the South China Sea issue due to fears that it might provoke Beijing's dissatisfaction.

*The second period (late 1990s – late 2000s)* witnessed elaborating on and eventually signing the Declaration on Conduct of Parties in the South China Sea (DOC) by China and ASEAN. Since then, DOC has been a key internationally recognized legal instrument to address the issue.

In performing this task, the Association counted upon its new multilateral institutions. Specifically, the East Asia Summit (EAS) (2005) and the ASEAN Defense Minister's Meeting-Plus (ADMM-Plus) (2010) were established as new venues of the ASEAN-driven multilateral architecture to address political and security challenges in the Asia-Pacific region. With overlapping membership of the EAS and the ADMM-plus brought together the leaders and the defense ministers of eighteen states in order to broaden the dialogue on maritime security, humanitarian assistance and disaster relief (HADR), counter-terrorism, peacekeeping operations and transnational crimes. Notably, the ADMM-plus launched expert working groups co-chaired by an ASEAN member state and a Plus state on a rotating basis. The ADMM-plus supplemented the Shangri La Dialogue that had been the only venue for regional senior military officials to share perspectives on regional security<sup>4</sup>. Collectively, the new multilateral arrangements offered responses to ASEAN institutional deficiencies and contributed to security cooperation in practically-oriented fields like logistics HADR and others<sup>5</sup>.

*The third period embraces late 2000s – mid 2020s.* Its beginning marked a new phase in the development of the South China Sea issue. Arguably, the global dimension of the issue has considerably increased. After the U.S. Secretary of State H. Clinton's intervention at the Hanoi ARF meeting in 2010<sup>6</sup>, Washington started to internationalize the dispute.

As a result, the situation in the South China Sea deteriorated. The PRC's assertive policy in the South China Sea, including land reclamations and their justification in the Chinese media, was interpreted in other countries a series of provocative gestures. In its turn, the U.S. rebalancing toward Asia became a trigger for another round of escalation of the South China Sea issue. It marked a shift in Washington's focus, with a stronger emphasis on military and diplomatic containment of China's rise.

A new milestone in the intensification of anti-China rhetoric was triggered by Washington's "Indo-Pacific Strategy of the United States"<sup>7</sup> and "National Security Strategy 2022" published in February and October 2022<sup>8</sup>. These documents underscore the region's special importance for the U.S. security interests, as well as Washington's aim to build up a regional "strategic ecosystem" in the Pacific Ocean and the Indian Ocean in the fol-

lowing decade. Undoubtedly, the U.S. intends to achieve these objectives as part of “a free, open, interconnected, secure and sustainable” Indo-Pacific region under the American leadership.

Remarkably, the U.S. reiterates the importance of ASEAN’s central role and ASEAN-led multilateral mechanisms for regional security. At the same time, ASEAN’ split continues to gain momentum. Washington’s strategy of “integrated deterrence” in the form of Major Defense Partnerships in South Asia, South-East Asia and Oceania, apart from relations with its traditional military partners (Australia, Japan, South Korea, Philippines, Thailand), increasingly embraces new countries, including India, Indonesia, Vietnam, Malaysia, Mongolia, Vietnam, Taiwan and the states of the South Pacific.

In sum, the U.S. increased military presence in the South China Sea and its assertive Indo-Pacific narrative lead to further escalation of the South China Sea issue. At the same time, as it will be demonstrated further, ASEAN’s instruments to keep the contradictions manageable are of limited efficiency.

### **The Progress in the Conflict Management: Running Around in Circles**

To date, ASEAN has made numerous attempts to tackle the South China Sea issue. Collectively, those measures can be described as multi-directional dialogue process involving both claimant parties and non-state actors.

More specifically, ASEAN has been involved in the South China Sea issue since 1992, after it released the 1992 ASEAN Declaration on the South China Sea<sup>9</sup>, following the PRC’s adoption of the Law on the Territorial Sea and Contiguous Zone<sup>10</sup>. It was a step towards elaborating on a document based on globally recognized principles of international law. ASEAN’s position was reiterated in 1995 in the ASEAN Statement on the Recent Development in the South China Sea after China’s occupation of Mischief Reef<sup>11</sup>.

Those documents laid down the groundwork for the negotiation process on the South China Sea issue. It resulted in early discussions on the Code on Conduct of Parties in the South China Sea (COC) and the eventual signing of the Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002<sup>12</sup>. Notwithstanding that achievement, the DOC is not a legally-binding document.

Article 10 of the DOC formalized the notion of establishing a specific set of rules of maritime conduct to be developed in the future: “the Par-

ties concerned reaffirm that the adaptation of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.”<sup>13</sup> In 2011, ASEAN and China agreed upon the “Guidelines for the Implementation of the DOC”<sup>14</sup>.

Even though the objective to formulate the COC was announced in the DOC, formal consultations began only in 2013, after the Philippines filed a legal case to Permanent Court of Arbitration. Manila claimed that Beijing’s actions ran counter to the United Nations Convention on the Law of the Sea (UNCLOS)<sup>1516</sup>. Remarkably, the verdict issued by the Permanent Court of Arbitration (PCA) was clearly anti-China biased.

It took ASEAN and China four years to elaborate on a framework for the Code of Conduct in the South China Sea and to reach a consensus on regional rules to manage the issue<sup>17</sup>. However, while the framework of the COC was agreed upon in 2017, the overall process of negotiations was slow.

In June 2018, however, ASEAN and China announced an agreement on the Single Draft South China Sea Code of Conduct Negotiating Text (SDNT) that serves as a basis for the COC. It is structured in accordance with the previously adopted Framework Agreement on the Code of Conduct. Later on, at the ASEAN-China Post Ministerial Conference in August 2021, the parties announced that the JWG agreed upon the Preamble section.

Remarkably, ASEAN uses an integrated and comprehensive approach for developing maritime cooperation. According to the Work Plan on the Implementation of the DOC for 2016-2021, the emphasis is placed on the following areas: marine environmental protection; enhancing military-to-military confidence; cooperation among maritime law enforcement coast guards; as well as cooperation in ensuring humane treatment of fishermen in the South China Sea<sup>18</sup>.

The second reading of the Single Draft COC Negotiating Text and the adopted set of Guidelines for Accelerating the Early Conclusion of an Effective and Substantive COC in the South China Sea took place during a meeting between ASEAN’s and the PRC’s representatives in Jakarta in 2023<sup>192021</sup>. Even though in July the parties agreed on a three-year timeline to finalize the negotiations on the COC, it does not necessarily mean that a final agreement will be elaborated on soon.

It has been more than twenty five years since the idea of concluding a regional code of conduct was endorsed by Indonesia in 1996, but until now no agreement has been worked out<sup>2223</sup>.

Overall, the limited progress of ASEAN in negotiations on the COC formulation relates to the scope and the legal status of the SDNT and the prospective COC. Notably, the SDNT does not clearly specify the geographic area of the South China Sea. It does not clarify the area of the force application either<sup>24</sup>. More importantly, the SDNT does not aim to imply any dispute settlement mechanism. Arguably, if the COC is not a legally-binding document, there is no guarantee that the PRC will be bound by the agreement.

### Conclusion

ASEAN's attempts to develop a Code of Conduct of Parties in the South China Sea relates to the process of negotiations per se. ASEAN-led multilateral architecture aims to engage China, but these attempts have not resulted in elaborating on legally binding rules of conduct or practical solutions to keep contradictions in the South China Sea in a manageable state.

ASEAN's limited progress in negotiating the COC is proved by the following evidence: the compelled second reading of the Single Draft COC Negotiating Text and Guidelines for Accelerating the Early Conclusion of an Effective and Substantive Code of Conduct in the South China Sea. These developments are more procedural than substantial, as they do not tackle major challengers in finalization of the formal COC, mostly, its geographic scope. So, a lack of enforcement mechanism undermines ASEAN's objective to effectively mediate Asia-Pacific security challenges, including maritime contradictions.

The South China Sea has been and remains a litmus test of ASEAN's ability to support its international credentials. Regrettably, as discussed above, the progress is slow, if any at all. The problems that grasped observers' attention in the 1990s, namely, ASEAN's institutional and – more broadly, instrumental – deficiencies, are in overabundance in mid-2020s. But there is an important difference between ASEAN's early and present attempts to tackle the issue, as nowadays the global and regional international milieu is much more volatile. If so, ASEAN has to resolve old problems by means of outdated instruments in radically new circumstances. This factor imposes a heavy extra burden on the association and ASEAN-led multilateral dialogue venues.

## ИНФОРМАЦИЯ ОБ АВТОРЕ

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