

## Briefing Memo

### **ASEAN Cooperation in Maritime Security — Focusing on the ASEAN Ministers' Meeting in August 2017**

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The Association of Southeast Asian Nations (ASEAN) founded the ASEAN Community at the end of 2015, based on the second Bali Concord of 2003. The ASEAN Community is composed of three pillars: the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASCC). Of these three pillars, the APSC Blueprint 2025, which sets forth the cooperative vision until 2025, has been drawn up for APSC, the pillar that governs over security cooperation.

Among the contents pertaining to ASEAN security cooperation in this blueprint, the first relates to addressing non-traditional security issues, including trans-national crime, terrorism, drugs, human trafficking, smuggling of small arms and light weapons, cybercrime, border control, and disaster relief. Of course, while addressing these non-traditional threats is positioned as one of the most important challenges for ASEAN, the security challenges that ASEAN currently faces are not limited to non-traditional ones. Maritime issues, particularly maritime disputes concerning territorial rights in the South China Sea, are increasingly becoming a matter of concern for the entire region as well as the international community, going beyond the frameworks of the claimant states of ASEAN and China.

How will ASEAN, which has developed as a political-security community, tackle this problem? The APSC Blueprint has established the goal of “maintain(ing) the South China Sea as a sea of peace, prosperity and cooperation.” It also sets out the following as more concrete policy goals to that end: continuation and revitalization of consultation among ASEAN states and between China and ASEAN, including the Declaration on the Conduct of Parties in the South China Sea (DOC) and the Code of Conduct in the South China Sea (COC); resolving disputes by peaceful means based on international laws such as the UN Convention on the Law of the Sea, without resorting to the use of force; cooperation on marine environmental protection; ensuring freedom of navigation in seas and air spaces; addressing problems such as smuggling and piracy; and addressing unplanned encounters. Overall, ASEAN’s approach toward the South China Sea includes a medium-term and comprehensive measure of concluding the COC with China as well as the short-term measure of preventing the escalation of the current circumstances, including maritime crime and crisis management.

Here, I will examine both the medium-term and the short-term measures in ASEAN's approach toward maritime issues, centered on the South China Sea. From this perspective, this study will focus on the ASEAN meetings held in August 2017, covering the COC consultation and the Code for Unplanned Encounters at Sea (CUES). At the same time, I will analyze the recent ASEAN Foreign Ministers' Meeting as an event that offers hints in examining ASEAN's approach toward the South China Sea issue and considering the difficulty of formulating a unified position.

### 1. Code of Conduct (COC) in the South China Sea

Article 10 of the DOC, an agreement that ASEAN and China signed in 2002, clearly sets forth the objective of COC adoption by stating, "The Parties concerned reaffirm that the adoption 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." In 2017, 15 years after the signing of the DOC, ASEAN's initiatives (with China) toward the formulation of the COC have finally shown a certain degree of progress. With respect to the COC, the APSC Blueprint has set forth the goal of "intensify(ing) negotiation between ASEAN and China for the early adoption of the COC." In recent years, it has definitely achieved the target of accelerating negotiations.

On July 12, 2016, a ruling was pronounced on the arbitration procedures between the Philippines and China. The ruling could be described as a complete loss of the suit for China. At a press conference for the ASEAN-China Foreign Ministers' Meeting held at the end of July, China's foreign minister Wang Yi stated that China wishes to complete negotiations on the COC by the first half of 2017, demonstrating China's proactive stance in the matter. This could be interpreted as the result of the arbitration award, which prompted China to come to some form of resolution with ASEAN and in turn led to the aforementioned declaration by China's foreign minister.

Thereafter, at the ASEAN-China Senior Officials Meeting held in May 2017 following the meeting in August 2016, ASEAN and China reached an agreement on the framework of COC; at the ASEAN-China Foreign Ministers' Meeting held in August, the same framework agreement was approved. While the specific contents of the framework have not been released, some reports and studies indicate that this framework is inadequate in that it lacks provisions related to geographical scope, fulfilment and arbitration mechanisms as presented by legally binding force and agreements. Nevertheless, new references are apparently made to areas such as preventing the occurrence of incidents and management in the event of the occurrence of an incident.

### 2. Code for Unplanned Encounters at Sea (CUES)

CUES is a set of rules that members of the Western Pacific Naval Symposium (WPNS) have agreed

upon, and ASEAN was not directly involved in its formulation (Laos and Myanmar are not parties to WPNS). However, in addition to the establishment of a hotline between the authorities of the respective countries involved, ASEAN regards CUES as an effective means of crisis management in the South China Sea, and it is exploring the active utilization of the CUES framework. The effectiveness of CUES was reaffirmed in the joint declaration of the ASEAN Defense Ministers' Meeting (ADMM) held in Laos in May 2016: "Practice and observe international protocols such as the Code for Unplanned Encounters at Sea (CUES) and commence work on crafting protocols of interaction to maintain open communications, avoid misunderstanding, and prevent undesirable incidents."

At the ASEAN-China Summit held in September the same year, member countries agreed on the application of CUES to matters related to the South China Sea, and this was announced during the Joint Statement on the Application of the Code for Unplanned Encounters at Sea (CUES) in the South China Sea. The contents of the agreement can be summarized in the three points given below.

- (1) CUES will be applied to ensure the safety of navigation for naval ships and aircraft in seas and air spaces, as well as to foster mutual trust between the relevant countries.
- (2) As established in CUES, for the safety of all naval ships and aircraft, in the event of mutual encounters in the South China Sea, safety and communication procedures will be used.
- (3) We affirm that our initiatives toward the application of CUES will contribute to peace and stability in the region, maximizing maritime safety, promoting relations of neighborly friendship, mitigating risk in unplanned encounters in air and sea, and strengthening cooperation between navies.

Based on this abstract text, we can see that the application of CUES in the South China Sea is still in its initial stages. However, under circumstances where various difficulties exist toward the resolution of the South China Sea problem and the easing of tension, ASEAN places great importance on CUES as a means of preventing further escalation of the immediate situation. In fact, the Joint Communiqué of the 50th ASEAN Foreign Ministers' Meeting issued in August 2017 states that, "We looked forward to the operationalization of the joint statement on the observance of the Code for Unplanned Encounters at Sea (CUES) in the South China Sea. In our view, these are practical measures that could reduce tensions as well as the risk of accidents, misunderstandings and miscalculation." Moving forward, it is necessary to address issues such as whether the relevant countries using CUES will put the framework into practice repeatedly, including during joint exercises, such that the rules become a widespread practice; it is also important to determine which rules should be applied with regard to authorities such as maritime police and the coast guard.

### 3. 50th ASEAN Foreign Ministers' Meeting—Conflicting Views over the Joint Communiqué

At the Foreign Ministers' Meeting held in July 2012, ASEAN was unable to adjust the conflicting

views between the chair country Cambodia and the Philippines and Vietnam concerning the wording used in reference to the South China Sea problem. For the first time in history, ASEAN failed to issue a joint declaration. After that meeting, there were other occasions where the joint declaration was issued only days after the meeting as time was required to adjust the conflicting views between ASEAN nations concerning the wording for the South China Sea situation, particularly in reference to China. A similar situation arose at the 50th ASEAN Foreign Ministers' Meeting held in Manila on August 5, 2017.

The respective ASEAN countries faced difficulties in coordinating the wording concerning the South China Sea in the joint communique issued during the meeting. The reason for this was that Vietnam asserted that the communique should reflect ASEAN's concerns regarding China's "construction" of various infrastructural facilities that may be used for military purposes as well as the large-scale land reclamation that it is carrying out in the South China Sea. It also sought for the inclusion of wording related to the legally binding force of the COC, which was not mentioned in the COC framework. In response to these demands, Cambodia showed its disapproval. Prior to the meeting, Vietnam had been subjected to strong pressure from China to suspend its resource development activities in the South China Sea; hence, its assertions are believed to be aimed at restraining China through the ASEAN joint communique. The Philippines, which had strengthened its dialogue with China under President Duterte, did not throw its weight behind Vietnam as the previous Aquino administration had, but rather devoted itself to its coordinating role as the chair country.

Consequently, the joint communique issued on August 6 stated: (1) concerns expressed by some Ministers on the land reclamations and activities in the area; (2) the importance of maintaining freedom of navigation in and over-flight above the South China Sea; (3) the need to exercise self-restraint and avoid actions that may further complicate the situation; and (4) the importance of non-militarization and self-restraint in the conduct of all activities by claimants and all other states. While these statements did not represent a step back from ASEAN's previously declared stance, they also showed no signs of progress in view of the new developments in the South China Sea regarding the arbitration award. We could say that this event once again demonstrated the difficulty that ASEAN faces in taking a further step toward the resolution of the South China Sea problem as well as the limitations of ASEAN's consensus-based policymaking methods.

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