



ODUMUNC 2025 Issue Brief





Toward an ASEAN code of conduct for states in the South China Sea



An agreed general international *Maritime Code of Conduct* for all countries or a spe-1. EereM9Ee(r440D(t7e6l

China's *Nine Dash Line* is a unilateral statement by China, recognized by no other country and rejected under international law, but insisted upon by China. For the member states of ASEAN, the South China Sea is an unwanted issue, but might be one they find increasingly hard to avoid. With their strong preference to avoid international conflict, especially with China, ASEAN member states want to avoid antagonizing the region's fast-growing superpower.

So far they have avoided collective statements and action. But they have turned to outside power for support. Japan, which has no direct stake in the South China Sea, provides ships and military equipment to claimants like Viet Nam and the Philippines, as does the United States.

For ASEAN the issue challenges not just its members' strength and self-interest, but the regional organization's relevance. With so many countries in close quarters to one another, an effort to resolve the disputes through a *code of conduct* has great appeal. But agreeing on a code of conduct may indeed prove challenging.



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Background

Maritime territory is designated by the 1982 UN Convention on the Law of the Sea (UNCLOS).² This established a legal framework and formal distances for territorial waters, contiguous zones, and Exclusive Economic Zones (EEZ). Each country's sovereign, territorial waters extend twelve nautical miles out from their coastline. This is the area where countries have exclusive sovereignty over the waters, seabed and air space above. Contiguous zones extend a further 12 nautical miles out from the territorial waters, over which nations have authority to enforce all laws and regulations. In their Economic Exclusion Zone, extending 200 nautical miles from the shore, countries have unique rights to exploitation of natural resources, including fisheries, exploration, and management of natural resources.³

China uses its civilian fishing fleet or 'Maritime Militia' to force other countries' fishing ships, coast guards and navies out of contested parts of the South China Sea. Photo: Ian Urbina, 'How China's vast and

aggressive fishing fleet is kept afloat by Beijing', *South China Morning Post*, 21 November 2020.

Foreign navies are not entitled to enter territorial waters, within the 12 miles limits, without permission of the host country. However, international law is usually interpreted such that foreign navies are allowed *safe passage* through Economic Exclusion Zone waters, whether for innocent passage or military surveillance. However, certain nations have stated that foreign naval forces in their Economic Exclusion Zone violate the maritime sovereignty allotted by the 1982 UNCLOS.⁴ While the definition of maritime territories is fairly well-defined, interpretations may be contested.

Territorial claims in the South China Sea (SCS) and neighboring East China Sea (ECS) came under dispute at the end of World War Two, due to the rise of China, the collapse of Japanese conquests and the end of Western imperial rule.

Three archipelagos and island chains are contested: the Paracel and Spratly islands in the South China Sea; and the Senkaku/ Diaoyu (their Japanese and Chinese names) islands in the East China Sea. It is important to note that just two decades ago these islands were all completely uninhabited. Many of these are shoals, tiny islands often the size of a car. Currently there are inhabitants on the Paracel and Spratley islands placed there by China, Viet Nam, Philippines, and Malaysia to legitimize their rival claims. Japan built a Coast Guard

²United Nations, "United Nations Convention on the Law of the Sea," UN Treaty Collection, United Nations, 10 December 1982, https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=en

³ NOAA, "U.S. Maritime Limits & Boundaries," National Oceanic and Atmospheric Administration,

Accessed on 8/25/24, <https://nauticalcharts.noaa.gov/data/us-maritime-limits-and-boundaries.html#faq>

⁴Michael D. Swaine, "America's Security Role in the South China Sea," Carnegie Endowment, 23 July 2015, <https://carnegieendowment.org/posts/2015/07/americas-security-role-in-the-south-china-sea?lang=en>





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therefore levy this to gain foreign aid, military
defense, direct investment, etc.¹⁵

Landmark ASEAN and UN Action



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three years (2026).¹⁹ There has been little if any progress since then.

Bloc Positions

Chinese allies: China seeks control over the majority of the SCS according to the Nine Dash Line. In the neighboring East China Sea, they have historically been less aggressive in their claim to the Senkaku/ Diaoyu islands. Chinese messaging revolves around the historic basis of the Nine Dash Line. However, true interests are likely more about their sphere of influence, military strategy, and access to natural resources. In the Pacific, China is interested in



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Chinese demand in the South China Sea. Neither country has a sea claim contested by China. But they have coastlines on the gulf of Thailand, and require cooperation with neighboring ASEAN members, making everything about this issue sensitive and difficult. Both countries will strive to avoid the issue, keep it off the ASEAN agenda, and minimize discussion. If it must be addressed, they will try to limit it to scientific and technical issues only.

China seeks control over the majority of the South China Sea according to the Nine Dash Line. In the East China Sea, they have historically been less aggressive in their claim to the Senkaku/ Diaoyu islands. Chinese messaging revolves around the historic basis of the Nine Dash Line. However, true interests are likely more about their sphere of influence, military strategy, and access to natural resources. In the Pacific, China is interested in expanding its sphere of influence as the U.S. still holds tremendous influence across the Pacific since World War Two.

Fiji: A Pacific island, Fiji will use their position to play China and the United States off one another.

French Polynesia: A Pacific island archipelago, French Polynesia is governed by Paris and strongly supports efforts to restrain Chinese influence in the South Pacific.

Indonesia: A country comprising tens of thousands of distinct islands, a strong maritime territory agreement and stable South China Sea is strongly in Indonesia's interest. Working with the other core ASEAN members, this nation will use collective bargaining to get what they want from the powers involved.

Japan: A strong U.S. ally, Japan contests the Chinese claim to the Senkaku/ Diaoyu islands. Japan has been strengthening their own military (the Japanese Self Defense Force or JSDF), strengthening U.S. mutual defense treaties, and showing a willingness to act. While increased

Chinese influence in the Pacific and China Sea



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coordinating their policies to serve China's goals:

ASEAN can state its support for the sovereignty of its member states and call for international respect for their land borders, maritime borders and Economic Exclusion Zones. Such a statement would gain the most support if it were addressed to the entire international community and did not target any particular country, issue or location.

Finally, a more divisive proposal, likely to lose the support of some ASEAN member states—would **name particular countries or organizations** involved in attacks on the sovereignty and territorial integrity of ASEAN member states. Because naming China is almost certain to result in heavy retaliation, such as trade sanctions from China or even military or quasi-military action, many member states will resist such proposals, or find ways to dilute them to reduce the danger of raising tensions.

ASEAN can recommend or even draft a new



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