

# From Confidence Building, Preventive Diplomacy and Dispute Resolution to the ASEAN-China South China Sea Code of Conduct

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Presentation to

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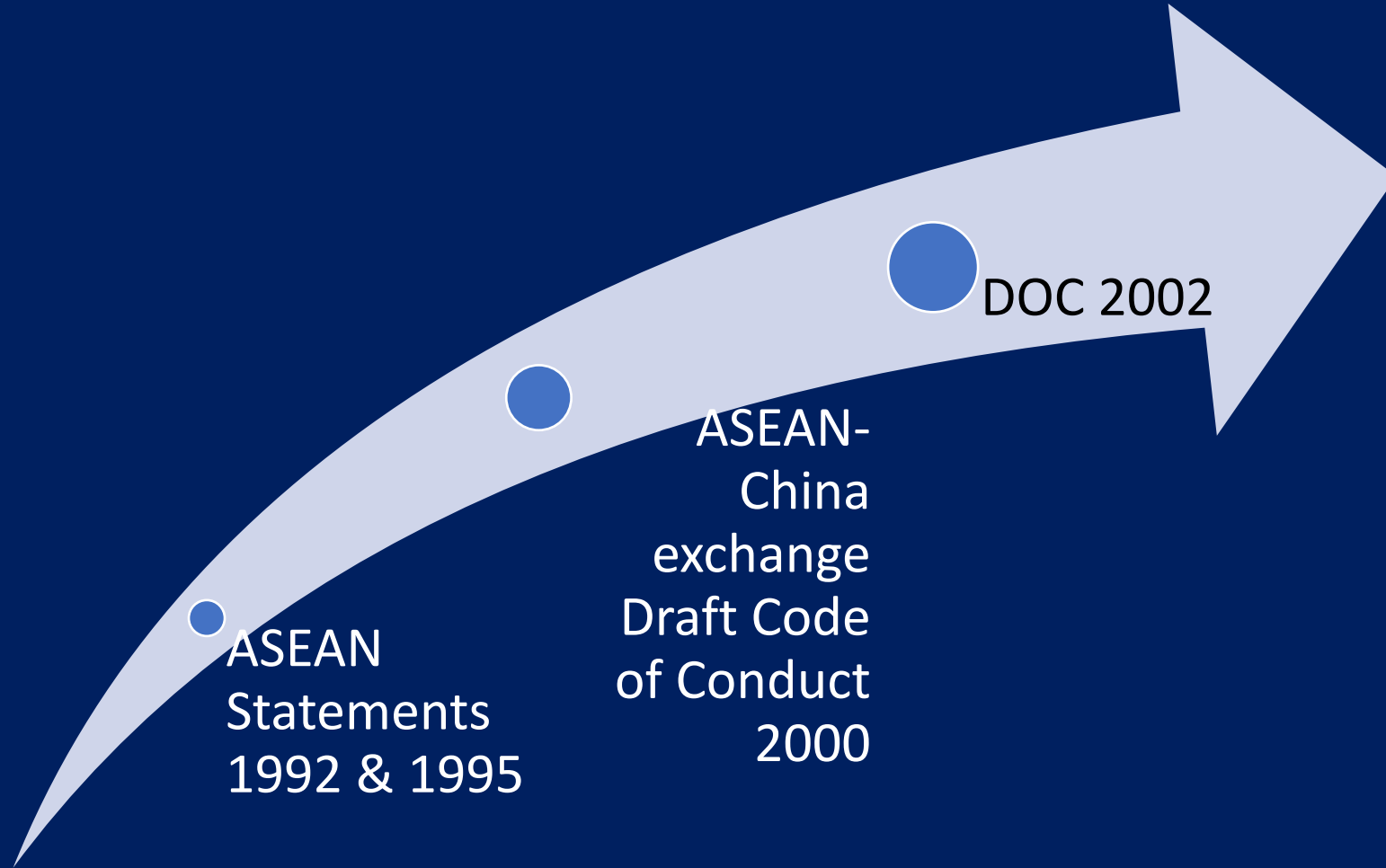
Da Nang, Viet Nam, November 7-9, 2018

# Outline of Presentation

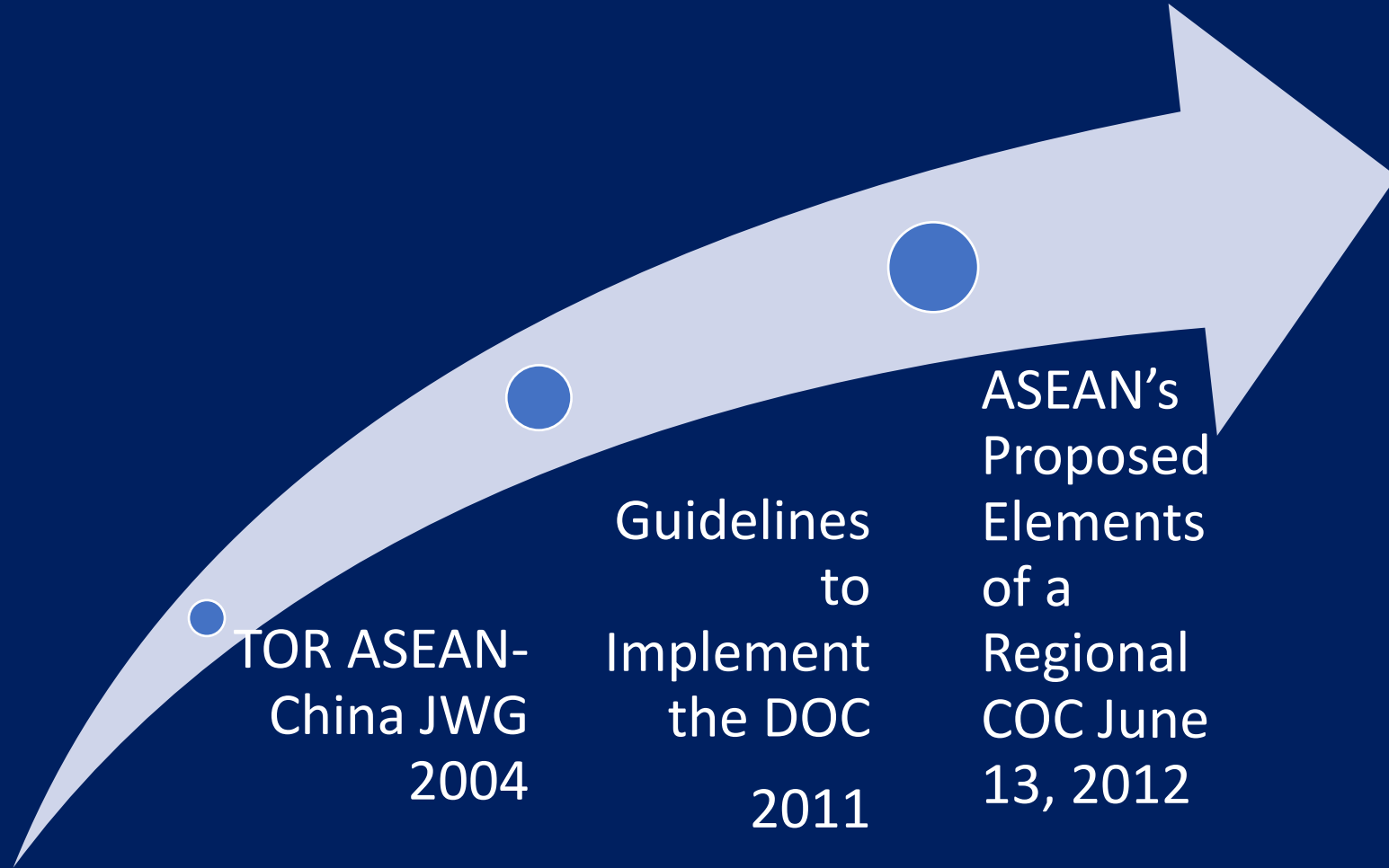
- Introduction
- Part 1 – Major Turning Points, 1992-2018
- Part 2 – Single Draft South China Sea Code of Conduct Negotiating Text
- Part 3 Conclusion – Key Issues for Resolution

# Part 1 – Major Turning Points, 1992-2018

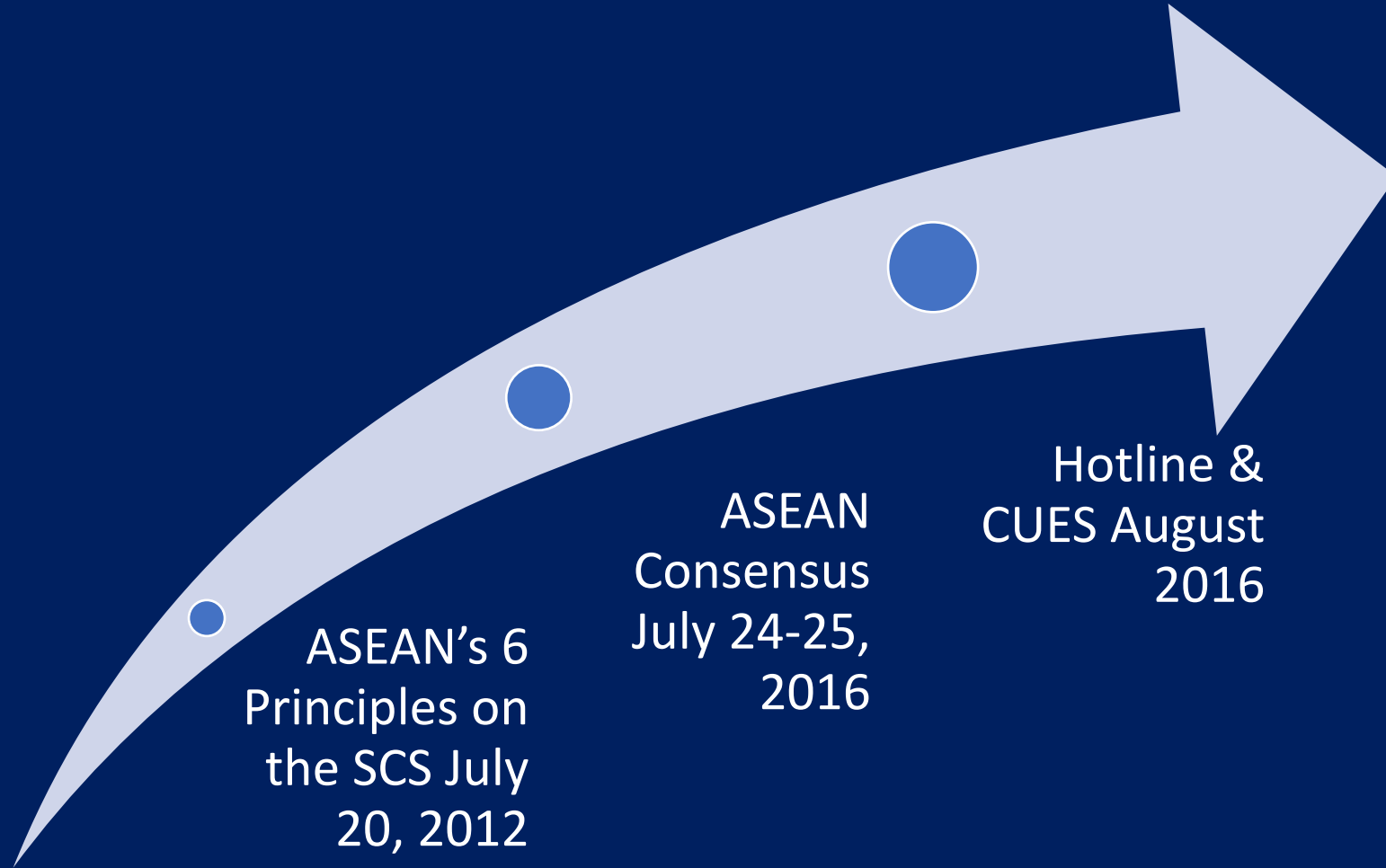
# Major Turning Points, 1992-2002



# Major Turning Points, 2004-2012



# Major Turning Points, 2012

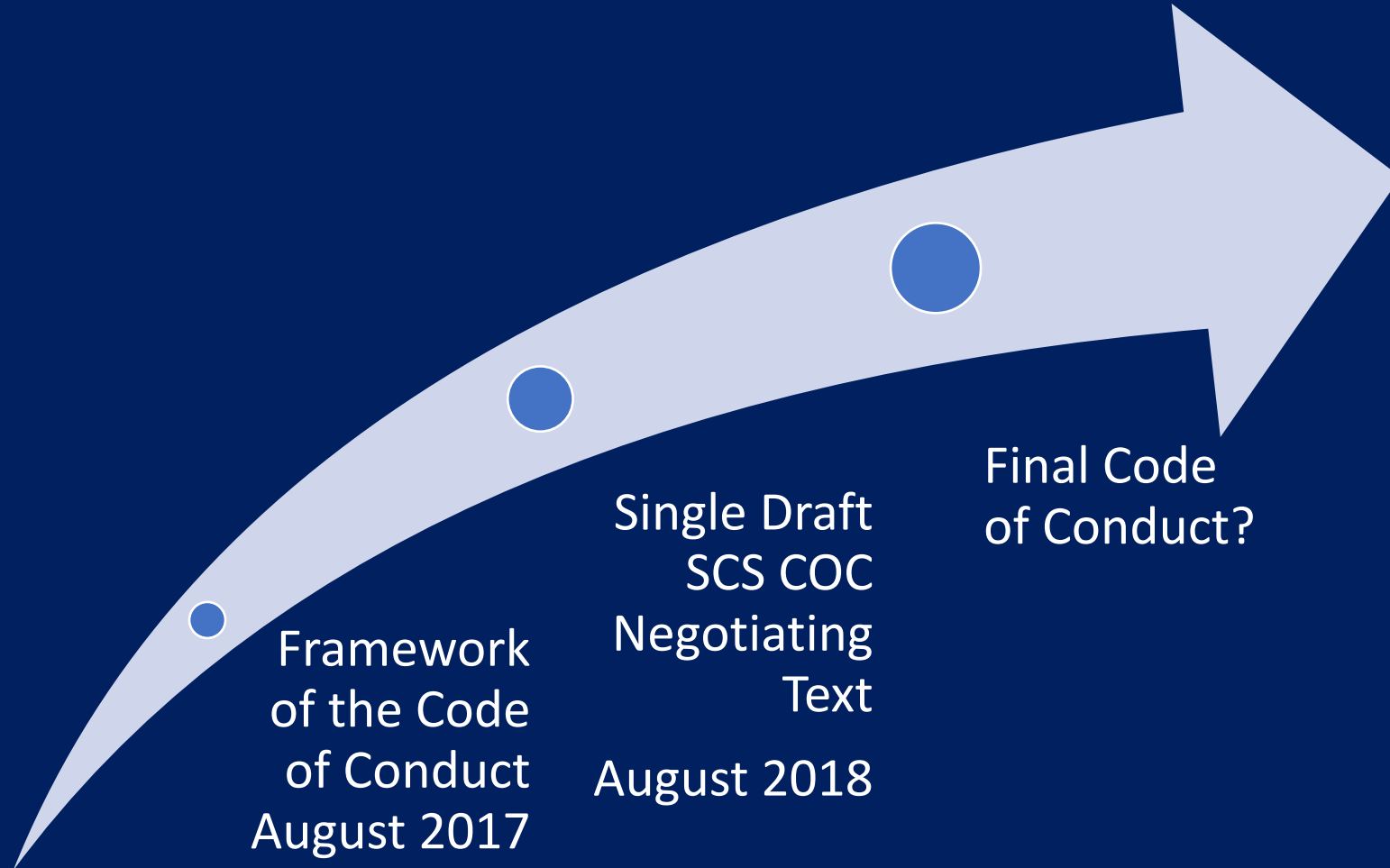


ASEAN's 6  
Principles on  
the SCS July  
20, 2012

ASEAN  
Consensus  
July 24-25,  
2016

Hotline &  
CUES August  
2016

# Major Turning Points, 2017-18



## Part 2

Single Draft South China Sea Code of  
Conduct Negotiating Text



Country	Unilateral*	Joint**	Total
Brunei (BN)	3	18	21
Cambodia (CA)	2	17	19
China (CH)	16	20	36
Indonesia (ID)	10	19	29
Laos	0	0	0
Malaysia (MY)	19	6	25
Myanmar (MM)	0	0	0
Philippines (PH)	6	17	23
Singapore (SG)	3	18	21
Thailand (TH)	10	6	16
Vietnam (VN)	12	14	26
Sub-total	81	135	216

2.c

- Duty to Cooperate
- Practical Maritime Cooperation

2.c

- Self-restraint/Trust & Confidence
- Prevention of Incidents

2.c

- Management of Incidents
- Other Undertakings

# Duty to Cooperate

- The SDNT incorporates provisions in UNCLOS that state signatories have a duty to cooperate to protect the marine environment in a semi-enclosed sea and pending settlement of disputes state signatories should enter into arrangements of a practical nature.

# Promotion of Practical Maritime Cooperation

- Four options on the promotion of practical maritime cooperation submitted by the
  - Philippines,
  - Indonesia and Singapore,
  - China, and
  - Cambodia
- Alternative by Vietnam to replace all four options
  - Twenty-one proposals

# Vietnam's Seven Do Nots:

1. Resort to threat or use of **force, coercive actions or any other cruel, inhuman and degrading treatment and punishment** against persons from other Contracting States while conducting law enforcement activities;
2. Conduct **construction of any artificial island** in the South China Sea;
3. Initiate, participating in, or allow the use of its territories for any policy or activity that would **complicate or escalate disputes** and affect peace and stability;

## Vietnam's Seven Do Nots:

4. **Militarize** occupied features in the South China Sea;
5. **Blockade** vessels carrying provisions or personnel for rotation;
6. Declare an Air Defence Identification Zone (**ADIZ**) in the South China Sea;
7. Conduct **simulated attacks** that aim guns, missile launches, *inter alia*, at targets of other countries.

# Self-restraint

## Promotion of Trust and Confidence

- Option 1 Indonesia – four measures:
  - dialogues between defense and military officials,
  - humane treatment of persons in distress,
  - voluntary notification of impending joint/combined military exercises and
  - the exchange of relevant information on a regular basis.
- Option 2 – China, China/Philippine, China
  - exchanges between defense and military forces including
    - “mutual port calls of military vessels and joint patrols on a regular basis...
    - undertaking joint military exercises among China and ASEAN Member States on a regular basis. (CH)

# Self-restraint

## Promotion of Trust and Confidence

- Option 2 –China
  - The Parties shall not hold joint military exercises with countries from outside the region, unless the parties concerned are notified beforehand and express no objection.
- Option 2 China and the Philippines
  - “just and humane treatment of all persons who are either in danger or in distress in the South China Sea” (CH, PH)
- Option 2 Philippines
  - “respect of the exercise of traditional fishing rights by fishermen... [and] access to features and fishing grounds.”



# Prevention of Incidents

- Eight countries submitted a total of seven proposals
  - Compliance with COLREG, SOLAS, SAR, SUA, International Convention on Oil Pollution Preparedness (CA, CH, IN, SG, TH)
  - ICAO and IMO operational procedures
  - Protocols and mechanisms on self-restraint (PH), COC annex (PH)
  - Incremental and gradual cooperation MLE agencies (CH)
  - ASEAN-China Maritime Cooperation Fund (BN)
  - Early harvest measures (TH)
  - Prevent incidents that would affect trust and confidence, and peace and stability (MY)

# Management of Incidents

- Eight countries contributed eleven proposals with China and Indonesia playing a prominent role:
  - Compliance with COLREG, SOLAS, International Ship and Port Facility Security Code (ISPC Code), and Code for Unplanned Encounters at Sea
  - Hotlines
    - MFA-to-MFA
    - Military-defence
    - Maritime Law Enforcement agencies
    - Hotline platforms in other fields
  - Procedure to manage and resolve incidents

# Other Undertakings

## Monitoring

- Option 1 (BN, CA, CH, MY and SG) :
  - ASEAN-China Senior Officials' Meeting
- Option 2 (VN)
  - Commission led by foreign ministers or their representatives.

# Part 3 Conclusion

## Key Issues for Resolution

# Geographic Scope and Disputed Areas

- “the present Code of Conduct shall apply to all disputed features and overlapping maritime areas claimed under the 1982 UNCLOS in the South China Sea” (VN)
- “the Parties are committed to respect the Exclusive Economic Zone and continental shelf of the coastal states as provided for in the 1982 UNCLOS” (ID)
- Suggestion to define geographic scope (MY, SG)

# Military Activities, Exercises and Militarization

“The Parties shall establish a notification mechanism on military activities, and to notify each other of major military activities if deemed necessary. The Parties shall not hold joint military exercises with countries from outside the region, unless the parties concerned are **notified beforehand and express no objection**” (CH)

- “**notifying, on a voluntary basis**, other Parties concerned of any impending joint/combined military exercise” (ID)
- “Notify other Contracting States of any impending joint/combined military exercise/drill to be taken place within the South China Sea. Such **notifications shall be made 60 days before** the commencement of such military exercise/drill” (VN)

# Cooperation Among Maritime Law Enforcement Agencies

- Humane treatment of persons in danger or distress at sea
- Safety of navigation, communication at sea, search and rescue
- Fisheries cooperation
- Capacity building
- Joint exercises
- Hotlines, exchange of information
- Extension of CUES to Coast Guard-type agencies.
- **These proposals need to be operationalized in guidelines and protocols attached to the final text of the COC.**

# Dispute Resolution – Two Proposals

1. High Council of the Treaty of Amity and Cooperation (TAC) at the consent of the Parties concerned (ID)
  - any unresolved incident may be referred to an appropriate international disputes settlement mechanism, at the consent of the concerned Parties.
2. Settle their disputes “through friendly negotiations, enquiry, mediation, conciliation and other means as may be agreed by the disputing Contracting Parties” (VN)
  - failing that the disputants “utilize the dispute settlement mechanism under relevant provisions of the Treaty of Amity and Cooperation in Southeast Asia.”



# Legal Status of the DOC

- The Contracting States “have consented to be bound by the present Code of Conduct...” (VN)
- the COC “be subject to ratification in accordance with the respective internal procedure of the signatory States” and the instrument of ratification be deposited with the ASEAN Secretary General who “shall register” the COC pursuant to Article 102 of the Charter of the United Nations.
- No Contracting Party may hold a reservation when signing the COC (BN, VN)

# Role of Third Parties

- Third parties are states that are not signatories to the COC.
- There is no reference in the SDNT about accession to the COC by third parties.
- Brunei proposed that, “following the Entry into Force of the COC, the Parties can jointly propose an UNGA (United Nations General Assembly) biennial resolution which would ensure all other countries respect the principles contained in the COC”
- **Third party accession should be included in COC**

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