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POLICY BRIEF CIRGoM 06

The Agreement on Marine Biodiversity: Accelerator or Inhibitor of Tensions in the South China Sea

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SUMMARY

The conflict in the South China Sea has persisted for decades, fuelled by the competing claims of ten coastal states, notably China and the Philippines. The entry into force of the Marine Biological Diversity Treaty (MBDT) in January 2026 introduced new elements likely to redefine the strategic framework of this tense region. This policy brief highlights the strategic dimension and the actors involved in the South China Sea conflict following the entry into force of the MBDT. It makes three recommendations: (1) States should capitalize on the novelty of the treaty to renew regional cooperation and dialogue. (2) Neighbouring states should be encouraged, through the binding mechanisms of the agreement, to rebuild trust and tolerance towards their peers. (3) States are now bound by the treaty to preserve the environment of the semi-enclosed sea they share, giving them the opportunity to pool national interests through environmental channels.

The strategic area of the South China Sea, traversed for decades by geopolitical and territorial tensions between coastal states, contains one of the richest marine ecosystems in the world: it is home to nearly 76% of the world's coral species and 37% of its reef fish species (Hong, 2025).

In a Policy report, the Center for Strategic & International Studies reveals that the overexploitation of resources and maritime disputes have led to significant degradation of this environment, baring ecological impacts extending far beyond the region.

The *Agreement on Marine Biological Diversity of Areas beyond National Jurisdiction*, which entered into force on January 17, 2026, commits ratifying coastal states of the South China Sea to strengthening governance and protection of the high seas. Further details are expected at the first Conference of the Parties (COP1) scheduled this year, particularly regarding the selection of the Secretariat and the area management tools and environmental impact assessments—two elements that require final decisions, despite the progress of discussions. This treaty is the result of two decades of elaboration involving a multitude of stakeholders eager to establish a comprehensive framework for the protection and sustainable use of areas beyond national jurisdiction.

It should be noted that the South China Sea is partly included within the high seas regime as defined by the *United Nations Convention on the Law of the Sea*.

HISTORY OF TENSIONS AND THE ARBITRATION OF 2026

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As a party to the Treaty on Marine Biodiversity and the Convention on the Law of the Sea, China attaches particular importance to navigation in the South China Sea, especially when it comes to foreign military vessels operating in its territorial waters and exclusive economic zone. By adopting a conservative interpretation of the freedom of navigation provisions of the Convention on the Law of the Sea, Beijing prioritizes an approach based on sovereignty and national security. This interpretation, which tends to reaffirm state control over adjacent maritime areas, contrasts with that of other regional and extra-regional powers, which adhere to a more liberal conception of freedom of navigation and maritime governance.

"Beijing prioritizes an approach based on sovereignty and national security."

In 2016, the arbitration award issued in the case *Philippines vs. China* clarified the interpretation of several key concepts in the Convention on the Law of the Sea. This case before the Permanent Court of Arbitration illustrates the efforts made by certain states to slow the increasing militarization of the South China Sea and limit Beijing's influence there. China, who refused to participate in the proceedings and to recognize the court's findings, has nevertheless continued its territorialization efforts, notably through the physical and infrastructural consolidation of various island formations and reefs.

China's persistence in its claims in the South China Sea has a major impact on regional stability and increases shipping risks. This stance continues to fuel accidental maritime incidents involving neighbouring states, which could escalate into direct confrontations. Furthermore, the proliferation of competing claims tests the interpretation and effectiveness of international law; it undermines the legitimacy of the Convention on the Law of the Sea, whose framework has failed to provide a lasting resolution to growing tensions. This situation could also jeopardize the implementation of the treaty on marine biodiversity.

SECOND MAJOR OUTBREAK IN SCARBOROUGH AND THE NEW CHINESE NATURE RESERVE

Following the *Philippines c. Chine* case, the Global Conflict Tracker highlights the expansion and fragmentation of the conflict, from the Spratly Islands to Scarborough Shoal, where Scarborough has become a second major flashpoint of the conflict, primarily bilateral (China-Philippines). Since 2023, this development has been significant: the shoal has been the subject of recurring legislative claims, diplomatic clashes, and kinetic incidents between the two powers. Without, however, commenting on the exact nature and limits of the water regimes composing the South China Sea, the conclusions of the 2016 case invalidated Chinese claims to historical waters. Since then, the existence of areas falling under the high seas regime can certainly be recognized. Nevertheless, the zones of the effective application of the Marine Biodiversity Treaty remain uncertain, given the geographical ambiguity of the South China Sea, exacerbated by overlapping sovereign claims and persistent cartographic competition.

Amon other things, on September 10, 2025, China established, under its domestic legislation, a natural reserve, covering 8,700 acres along the northeast coast of Scarborough Shoal. This area encompasses a maritime space already heavily impacted by Chinese fishing practices and appears to fall, in part, within the Philippines's exclusive economic zone, according to McLain Gill of ThinkChina. This action challenges the 2016 sentencing verdict which determined that the Bank includes traditional fishing waters for fishermen in the region, including the Philippines, China (and Taiwan) and Vietnam.

"China has established a nature reserve, covering an area of 8,700 acres."

The transformation of part of the Bank into a nature reserve by China is disputed by the Philippines. For some observers, China is demonstrating its interest in taking significant measures and integrating environmental considerations into its maritime governance. For others, it is a pretext for occupying ever more territory, in its capacity as a sovereign power. These observers also suggest that it could be a form of green manipulation of the law, a form of environmental *lawfare*. "Greening its image," becoming an environmental pioneer in the region, could be highly advantageous: failing to gain legitimacy in 2016, it could, through this means, legitimize its claims (both legally and practically).

Indeed, this 2025 nature reserve, unilaterally established by Beijing, is directly based on the 2024 Statement on Straight Baseline Reference Lines Around Scarborough. This action illustrates an administrative escalation, feared by observers. Portrayed negatively by some media outlets, this initiative around Scarborough could represent a first attempt; China would be testing the region's reaction, in addition to assessing the legal acceptability of such undertakings. A lack of opposition could thus encourage Beijing to repeat this maneuver. A victorious China would formalize its state control, while simultaneously restricting the fishing activities of neighbouring states.

In this context, the zonal management tools of the Marine Biodiversity Treaty, namely marine protected areas, could play a decisive role in the South China Sea conflict.

On the one hand, these instruments would allow China to legitimize and consolidate its territorial presence in the area, symbolizing sovereignty for the benefit of the submitting state, while masking its ambitions under the guise of marine conservation. It could then advance sustainably in the region, experiencing less friction, within a low-intensity military context.

"Beijing is definitively attempting to establish itself in the (normative) governance of the oceans."

(Liu et Scott 2024)

On the other hand, these tools have already played a pacifying role in the Spratly Islands. As highlighted by the Asia Maritime Transparency Initiative, "Peace Park," that is, joint nature reserves, promote both the easing of tensions and collaboration for marine environments. These "Parks" have a solid legal framework; they are supported by the Convention on the Law of the Sea, which provides for the adoption of transitional provisions concerning disputed waters (Article 74:3) and obligations of cooperation (in particular, regarding the management, conservation, exploration and exploitation of biological resources and the protection and preservation of marine environments) addressed to coastal states of semi-enclosed seas (Article 123).

OCEAN GOVERNANCE: XIAMEN, HOST OF THE NEW SECRETARIAT?

In a commentary by the Institute for China-America Studies,

China is portrayed in a "constructive" role, as an active participant in the treaty negotiations. In the context of the United States' withdrawal and the resulting power vacuum, observers note that China has proudly centred its discourse on multilateralism, a position it reportedly navigated successfully at COP30 in Brazil in 2026. Furthermore, previous efforts demonstrate its past leadership in environmental matters. At the time of COP15, for example, China was co-chair of the meeting for the *Convention on Biological Diversity*, notably when the Kunming-Montreal Global Biodiversity Framework was adopted in Canada in 2022. Nevertheless, China, along with Russia, was one of only two powers to oppose, for several consecutive years, the creation of marine protected areas within the Commission for the Conservation of Antarctic Marine Living Resources. To date, despite a shift in Chinese rhetoric, no consensus has yet been reached on the main proposals for marine protected areas.

Beijing is definitively attempting to establish itself in the (normative) governance of the oceans (Liu and Scott, 2024). In line with this, the Treaty on Marine Biological Diversity will need a host for its Secretariat. China has officially offered to host the institution in Xiamen. This idea does not appeal to everyone. However, it must be acknowledged that China has a legitimate claim. As the world's second-largest maritime power, bordered by the Pacific Ocean, it is directly confronted with the environmental challenges facing coastal ecosystems and semi-enclosed seas. Its candidacy competes with those Belgium and Chili.

This is not merely a matter of administration or convenience. Works and studies such as Jinnah's (2014) and Jörgens, Kolleck, & Saerbeck's (2016) demonstrate that the locations hosting secretariats have a major influence on their practical functioning. What if China were to exert influence over the Treaty Secretariat? Dr Youdon's analysis of the clauses in the section on the institutional framework (Part VI) suggests that China could benefit from considerable "interpretative space" (Youdon, 2026). Experts such as Pr Le Billon and Ladefoged emphasize that granting China such responsibility would amount to giving it decisive power over the concrete direction of the treaty's institutional functioning (Le Billon & Ladefoged, 2026).

For example, although fishing is not addressed in the Marine Biodiversity Treaty, China has much to lose when it comes to fisheries governance. Pointed out by the OCEANA initiative as possessing the largest deep-sea fishing fleet, China is blamed for its illegal practices, accusations detailed in the report of the Environmental Justice Foundation in 2022. The treaty has the potential to exert pressure on this kind of internationally condemned behaviour, which casts doubt on the dynamic that could be established between the host and the future development of the treaty.

Of course, hosting the Secretariat would give a major boost to Chinese ocean governance. By adopting a strategy of institutionalism, Dr Youdon argues that China, in a deliberate effort, is attempting to gain influence by integrating itself into institutional structures (Youdon, 2026). Without challenging international regimes, it is shaping the evolution of norms, procedures, and their interpretation within existing institutions. By combining a "distributive solidarity" approach to a "procedural prudence," China is embracing a comprehensive adaptation strategy: it relies on equitable norms when these effectively strengthen its political alliances, while simultaneously prioritizing flexibility and discretion in technical governance. It can safeguard its national interests and shape future maritime regimes domestically in the same way.

RECOMMANDATIONS

The entry into force of the Marine Biodiversity Treaty presents several risks. As an additional tool, it could open new diplomatic and legal fronts. In this sense, disputes could become bogged down under an additional layer of regulations. The introduction of specific legal vocabulary also has the power to influence states to reformulate their sovereign claims in "green" terminology. In doing so, the conflict would migrate to additional international forums. Ultimately, the pursuit of "green" claims could be detrimental to the imperatives of preservation and sustainability of the treaty.

However, opportunities are also emerging. These can be outlined in three recommendations.

1. This is a historic moment for the high seas; States must raise the threshold of mutual tolerance by focusing on confidence-building measures.

It may not be urgent to revisit sovereignty issues despite the impetus created by the entry into force of the treaty. Indeed, States would benefit from raising their threshold of mutual tolerance by cooperating on confidence-building measures, which can, for example, be found in the treaty's binding mechanisms. The treaty's legal framework provides a new diplomatic lexicon, fostering a pragmatic dialogue grounded in the science and expertise of the treaty's scientific and technical body.

In the past, the adoption of the Paris Agreement had had a moderating impact on competition in the region, as it had encouraged the initiation of confidence-building measures in the face of the urgency of the climate situation – which was highlighted by the Asia Maritime Transparency Initiative. Obviously, the region is vulnerable to climate change, besides being prone to sea-level rise. Sea-level rise, in turn, impacts maritime boundaries and the status of formations in the South China Sea.

Through ASEAN, or even driven by individual ASEAN members, precedents have been co-created in response to these threats. Multilateral efforts on coastal and bioresource issues, such as the Coral Triangle Initiative on Coral Reefs, Fisheries, and Food Security demonstrates the positive impact of the many forms that confidence-building measures can take.

2. States must overcome their differences by renewing regional cooperation through the treaty.

South China Sea coastal states should prioritize collective submissions for the designation of marine protected areas under the treaty. The treaty text explicitly authorizes these regional initiatives, offering a co-management pathway that can defuse bilateral tensions without prejudging sovereign claims. This echoes the earlier mention of "Peace Parks." In other words, unilateralism (and its normalization) in the area should be avoided.

The Mediterranean has thus overcome its historical differences by building a network of transboundary marine protected areas, while the Antarctic Treaty established marine sanctuaries by consensus, despite the lack of recognized sovereignty. The silence of China's neighbours (Vietnam, Malaysia, Indonesia, Brunei) in the face of its declaration of September 10, 2025, could signal a pragmatic desire to exploit this type of precedent.

3. The coastal states of this area must collectively address the degradation already suffered by this ecosystem, and its future aggravation, by aligning their national objectives with coordinated regional initiatives.

The coastal states of the South China Sea must recognize and counter the advanced deterioration of this exceptional ecosystem by aligning their national ambitions with regional measures under the auspices of the treaty (sustainable fisheries, water quality, and coral restoration, for example). This scientific collaboration, free from any impact on sovereign claims, constitutes the internationalization of the high seas for the benefit of humanity. Without coordinated action, the ratified commitments will remain ineffective in the face of imminent transboundary threats.

In the past, the Code of Conduct, non-binding, ASEAN-China

treaty of 2002 was a partial failure regarding territorial delimitation, but it did foster minimal environmental cooperation (notably, joint monitoring of illegal fishing). The framework provided by the Marine Biodiversity Treaty (for example, transboundary marine protected areas) could strengthen the marine protection provisions contained in the revised Code of Conduct, which is slated for finalization by 2026 under the Philippine ASEAN chairmanship. Thus, ASEAN + 3 (China, Japan, and South Korea) should initiate joint submissions of marine protected areas as foreseen by the treaty, with the support of the revised Code of Conduct. This would also have the effect of pushing for additional environmental standards from coastal states that have not yet ratified the treaty.

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