



South China Sea Code of Conduct and Taiwan

by Yann-huei Song

The ASEAN-China regional Code of Conduct in the South China Sea, once adopted, could help build up trust, enhance cooperation, and reduce tensions in the Spratlys/South China Sea area. However, it is naive to expect that the adoption of the Code would serve as a safety valve to prevent the claimants from taking unilateral actions or counter-actions to bolster their respective sovereignty and jurisdictional claims in the disputed area, or speed up the process of moving toward eventual resolution.

In August 1995, China and the Philippines issued the Joint Statement on the South China Sea and Other Areas of Cooperation, in which the two agreed to abide by specific principles for a Code of Conduct in the disputed area. Similarly, the Philippines and Vietnam signed a joint agreement in November 1995, which also contains "basic principles for a Code of Conduct in the contested areas." The two existing bilateral Codes failed to prevent China from expanding the structures built on the disputed Mischief Reef in the Spratly archipelago, the Philippines from firing at or arresting Chinese fishing boats operating close to the disputed Scarborough Shoal, and Vietnam from firing at a Philippine Air Force reconnaissance aircraft that flew over the disputed Tinent Reef (Pigeon Reef).

If potential conflicts in the disputed area are to be reduced or managed well enough to avoid tensions escalating into serious armed conflicts, all parties must faithfully observe the agreed principles contained in the Code of Conduct. However, the nature of a Code of Conduct differs from that of a treaty, bilateral or multilateral. A contracting party to an international treaty is obligated to abide by its terms. In comparison, a country which agrees to a voluntary Code is not necessarily bound by its principles, unless the principles are taken from existing bilateral or multilateral treaties that have legal binding force.

Taiwan's Exclusion. Another problem in formulating a South China Sea Code of Conduct centers around the exclusion of Taiwan from the dialogue process. It is a fact that Taiwan is one of the six parties directly involved this sovereignty and maritime jurisdictional dispute. Taiwan Coast Guard personnel and marines are stationed on the largest island in the Spratly chain, Tai-pin-dao (Itu Aba). It is also a fact that the People's Republic of China has not exercised sovereignty or jurisdictional rights over those islands controlled and administrated by Taiwan, including Pratas Islands and Itu Aba, since the PRC was established in 1949.

Taiwan has been excluded from the process of formulating a regional Code of Conduct mainly because member states of ASEAN adhere to the so-called "one-China"

policy. It is unlikely in the near future that the ASEAN states will negotiate with Taiwan for the purpose of adopting a similar Code. In these circumstances, not much can be done by Taiwan to press ASEAN to change course. In the past, and even today, Taiwan's good neighbor policy has not been met with a favorable response from ASEAN. Therefore, Taiwan, one way or the other, must find a way to help release itself from the frustration it experiences and the unfair treatment it receives. It should also be noted that the possibility of Taiwan taking unilateral actions in the disputed area in support of its sovereignty and maritime jurisdictional claims should never be ruled out, given the fact that Taipei is not a contracting party to the 1982 United Nations Convention on the Law of the Sea. Taipei was not invited to participate in the process of formulating the ASEAN-PRC Code of Conduct and thus cannot be expected to be bound by it.

Taiwan's Position on the Code. Nonetheless, Taiwan intends to give its support to the formulation of the ASEAN-China regional Code of Conduct in the South China Sea. Taipei considers the Code to be a useful confidence building measure, which, if faithfully observed, would help build up trust, enhance cooperation, and reduce tension. However, Taipei considers the exclusion of Taiwan from the dialogue process to be inconsistent with the letter and spirit of both the 1992 ASEAN Declaration on the South China Sea and the 1995 Statement by the ASEAN Foreign Ministers on the Recent Developments in the South China Sea, which encouraged "all claimants" to address the issue in various fora.

The exclusion of Taipei from the process of formulating a regional Code of Conduct is contradictory to ASEAN efforts to develop preventive diplomacy and confidence building measures. Taiwan's position is that a regional Code must include all six parties concerned, and that any cooperative programs in the disputed area proposed or carried out either in accordance with the ASEAN-China regional Code of Conduct or other agreed bilateral or multilateral agreements must be discussed and agreed upon by all the concerned claimants.

Taiwan urges the other five claimants and the concerned countries to consult with its government and invite it to participate in future deliberations on any cooperative programs in the disputed areas in the South China Sea. Necessary actions will surely be taken by Taiwan to defend its sovereignty and jurisdictional rights and the possibility of taking unilateral actions to explore and exploit resources in the South China Sea can never be ruled out if any cooperative programs are undertaken by other claimants without Taiwan's participation and the consent of its government.

Yann-huei Song is a Research Fellow at the Institute of European and American Studies, Academia Sinica, Taipei, Taiwan.