



Conduct Unbecoming in the South China Sea?

by Ronald A. Rodriguez

Recent events confirm that maritime territorial disputes in the South China Sea remain an issue for East Asian governments. Ownership of the Spratly Islands is disputed, in whole or in parts, among Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam. In the first quarter of 2004 alone, the claimants took turns building up anxiety, raising concerns about the sustainability of the status quo and the ability of the *Declaration on the Conduct of Parties in the South China Sea* to ensure the claimants' self-restraint.

First came the Philippines' announcement of the *Balikatan* exercises with the U.S. in the South China Sea in February. The Philippine action appeared to be driven by Manila's growing uneasiness over an increasing number of visits by Chinese research vessels and warships in the Spratly Islands, as well as the sudden appearance of new Chinese markers on the unoccupied reefs late last year. The mounting tension did not dissipate until Philippine President Gloria Macapagal-Arroyo assured the region that the military exercises did not have anything to do with the maritime territorial disputes.

Then came Taiwan's turn. On March 23, a Taiwanese speedboat carrying eight individuals landed and carried out the swift construction of a makeshift "bird-watching stand" on the Ban Than Reef. Vietnam strongly condemned Taiwan's move and demanded an end to the construction activities. Vietnam's Foreign Ministry spokesperson Le Dung branded Taiwan's handiwork as "an act of land grabbing expansion that seriously violated Vietnam's territorial sovereignty" and warned against the possible consequences of Taiwan's "adventurism."

Taiwan's action didn't go unanswered. Two days after the Ban Than Reef incident, Vietnam reaffirmed its sovereignty over the Truong Sa (Spratley) and the Hoang Sa (Paracel) atolls by announcing that it would hold the inaugural tourist boat trip to the contested islands. China decided to conduct a PLA Navy drill in the South China Sea on April 12, sending signals to the other claimants to back off.

The Chinese display of naval capability in the South China Sea didn't stop Vietnam. Unfazed, Hanoi gave its white navy ship HQ988 the go signal to sail for the atolls with about 60 tourists and 40 officials on April 19. Many saw the controversial eight-day round trip as the beginning of more Vietnamese tourism activities in the area – a development that follows the Malaysian lead of a few years ago.

What Happened to the 2002 Declaration?

The maneuvering for advantage in the South China Sea reveals the frailty of the aforementioned *non-binding* Declaration. In November 2002, the region celebrated the signing in Phnom Penh of the landmark Declaration between ASEAN and China in which the claimants agreed to avoid

actions that could raise tension in the South China Sea. The nonbinding nature of the Declaration, however, has been a concern for some of the signatories. Two years after it was signed, the parties are almost back to where they started. Most, if not all, do not seem ready to allow regional concerns to supersede their national interests. This is why, at least for some critics, the Declaration has been reduced to a "flimsy piece of paper."

There are two views on the value of the Declaration. Mark Valencia, an ocean policies expert at the Honolulu-based East-West Center, typifies the skeptic's view. He anticipated that the Declaration was doomed, considering it a flawed attempt to reduce the heat over territory in the South China Sea. This view sees the Declaration to be a self-deceiving exercise that satisfied ASEAN's thirst for political accomplishment, but did not offer profound changes in the security situation in the South China Sea. Valencia emphasizes that no loose agreement would prevent claimants from positioning themselves strategically in the lingering dispute.

The other view takes a more cautious position. Aileen Baviera of the University of the Philippines' Asian Center, for instance, cautions against a rush to judgment and outright dismissal of the Declaration, arguing the claimants' constant reference to it whenever there is a problem suggests that parties continue to find value and purpose in its spirit. In this sense, the Declaration has value as a referent, and modifies the behavior of the parties to the SCS dispute. The Philippines' and China's efforts to downplay their navy drills as either part of a regular security routine or unrelated to the maritime territorial disputes indicate a turnaround in their more self-assured positions in the past.

Quo Vadis?

The recent moves by Taiwan and Vietnam cannot be downplayed, however. It's time to reassess the Declaration and see how similar incidents can be avoided. For one, the parties should start molding a set of guidelines that will diminish the gray areas in the Declaration. The Declaration should define the 10 points that the parties have agreed on and seek strategies to operationalize them as soon as possible. The mounting criticisms of the Declaration should create momentum for greater interest in a more binding agreement.

In addition, the parties should build on the prospects for regional cooperation that emerged out of China's decision to sign the Treaty of Amity and Cooperation (TAC) with ASEAN on Oct. 8, 2003. Not only does the TAC commit ASEAN and China to a non-aggression pact, but it also increases the possibility of a more binding agreement on the South China Sea in the future.

Optimists and skeptics share the view that dialogue is a basic need in the South China Sea. But any fresh initiative

should emphasize the need for progress in cooperative endeavors, rather than dwell on *infractions*. The parties can begin with the six proposed areas of cooperation in the Declaration, which include marine environmental protection, marine scientific research, safety of navigation and communication at sea, search and rescue operation, and combating transnational crime.

Taiwan will continue to be a problem, however. To date, China has refused to allow Taiwan to become a signatory to any legal accord in the South China Sea. Yet any failure to consider Taiwan's interests will allow it to play spoiler. A peaceful resolution to the disputes requires effective management of the Taiwan problem.

In hindsight, it was probably the lack of sustained dialogue that has weakened the foundations of the Declaration. The parties overlooked the fact that continuous interaction is an equally important element of the signed Declaration. While

an informal working group still convenes, the gradual retreat of catalysts like Canada and Indonesia, as well as key individuals like Hasjim Djalal, has had an impact. The parties may not readily agree, but it appears that the South China Sea needs another intermediary.

Takers anyone?

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