



# IDSS COMMENTARIES (30/2002)

*IDSS Commentaries are intended to provide timely and, where appropriate, policy relevant background and analysis of contemporary developments. The views of the authors are their own and do not represent the official position of IDSS.*

---

## **ASEAN, CHINA AND THE SOUTH CHINA SEA: AN OPPORTUNITY MISSED**

Ralf Emmers \*

19 November 2002

After years of negotiations, the ASEAN foreign ministers and China's Vice Foreign Minister Wang Yi finally signed a Declaration on the Conduct of Parties in the South China Sea on the sidelines of the eighth ASEAN summit in Phnom Penh in early November 2002. The agreement is intended to prevent further tensions over the disputed territories and to reduce the risks of military conflict in the South China Sea. To that end the parties:

- reaffirmed their respect and commitment to the freedom of navigation in and through the South China Sea;
- agreed to resolve their territorial disputes by peaceful means without resort to the use of force;
- pledged to exercise self-restraint in activities that could spark disputes, such as inhabiting still uninhabited features, and to enhance their efforts to build trust among them;
- agreed to exchange views among defence officials, to give advance notice of military exercises on a voluntary basis, and to provide humane treatment to any person in danger or distress;
- and announced that they might cooperate in marine environmental protection and scientific research, safety of navigation, search and rescue operations and in combating transnational crime.

The Declaration on the Conduct of Parties in the South China Sea is an important step in the right direction. The claimant states have indicated a shared interest in promoting Southeast Asian peace and stability by avoiding any confrontation over the South China Sea. They have accepted that a potential source of threat can be reduced through respect of standard international norms.

The declaration is an attempt to ensure a peaceful management of the territorial dispute and to promulgate an informal code of conduct based on self-restraint, the non-use of force and the freedom of navigation. In this regard, the document derives from the ASEAN Declaration on the South China Sea signed by the ASEAN foreign ministers in July 1992.

Nevertheless, the declaration represents a significant move away from the original goal of having a detailed and binding code of conduct for the South China Sea. Malaysia had first proposed at the ASEAN Ministerial Meeting of July 2002 that ASEAN and China consider issuing a political declaration instead of a long hoped for code of conduct and Malaysia was especially keen for the document to be approved at the summit in November 2002. The political declaration is essentially an interim accord. The parties involved reaffirmed that adopting a code of conduct would 'promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.'

However, it remains uncertain whether the ASEAN members and China will ever succeed to agree on a legally-binding code of conduct for the South China Sea. All the claimants have stood firm on the question of sovereign jurisdiction and they failed to make any concession on this issue in the political declaration. Moreover, approval of this watered down document demanded concessions that demonstrated once again the difficulty of ever concluding a code of conduct.

As a result of China's requests, the ASEAN members agreed to include 'on the basis of consensus' when referring to the eventual attainment of a code of conduct and to drop the phrase 'erection of structures' from the paragraph invoking the exercise of self-restraint. Vietnam had demanded that the declaration includes a commitment not to build new structures on the islands and China's refusal might have indicated its intentions to erect additional foundations to strengthen its military presence in the Spratlys. Finally, the political declaration made no reference to its specific geographical scope, primarily because China opposed any mention of the Paracel Islands. The language may be ambiguous enough for the Vietnamese to expect that the Paracel question could be included in future negotiations. In short, the document cannot be expected to prevent the occurrence of new incidents over territorial claims in the South China Sea.

ASEAN's inability to develop a binding code of conduct among the claimant states results from several factors. First, the PRC has constantly repeated that its sovereignty over the South China Sea is indisputable. Partly due to a need to preserve their domestic political legitimacy, Chinese leaders refuse to make any concession on the issue. Second, China has held bilateral talks with ASEAN claimants and has succeeded in dividing them by offering bilateral codes of conduct that would benefit their separate interests. This has further weakened ASEAN's ability to conduct itself as an associative body. Third, Beijing seems only prepared to support a non-binding multilateral code of conduct that would be limited to the Spratly Islands and focus on dialogue and the preservation of regional stability rather than the problem of sovereign jurisdiction. In short, the formulation of an ASEAN diplomatic stand has been undermined by China's intransigence and its ability to control negotiation on the territorial question. Unable to impose its initiatives, ASEAN's influence on the South China Sea dispute is limited.

Nevertheless, the absence of a consensus among the ASEAN states over the South China Sea needs to be kept in mind. The members have differential relationships with China and contrasting views on its potential threat. In addition, some members have conflicting claims in the Spratlys while others are not concerned about the problem of sovereignty. These sources of disunity have complicated the attainment of a collective stance. The ASEAN claimants involved in the dispute are unwilling to make concessions with regard to

their territorial claims and have failed to address the problem of sovereign jurisdiction. This has weakened ASEAN in its talks with the PRC. Cooperation on the South China Sea has been affected by persisting mistrust among the ASEAN claimants. The strained relations between Malaysia and the Philippines are significant for instance when examining the lack of consensus. Finally, the absence of cohesion also results from the fact that the problem of sovereignty over the Spratly Islands does not yet represent a direct danger to the national security of individual members. Explicit threats do not yet exist in the case of the South China Sea. Still, Vietnam and the Philippines feel threatened by China's actions in the Spratlys.

In sum, attempts to formulate a binding code of conduct for the South China Sea continue to face significant obstacles. As an interim accord, the declaration is a step in the right direction, though certainly not a landmark agreement as stated in some media reports. China and ASEAN have signed a Declaration on the Conduct of Parties in the South China Sea; a non-binding and watered-down document. ASEAN now needs to work harder and use the declaration as the basis for developing a binding code of conduct, which would add another cornerstone to the security architecture of the Asia-Pacific.

---

\* Dr. Ralf Emmers is a Post-Doctoral Fellow in Asian Security at the Institute of Defence and Strategic Studies, Nanyang Technological University. His research interests are linked to the international politics of the Asia-Pacific, multilateralism, and non-traditional security issues in Southeast Asia.