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## ▶ 東協與中共協商南海區域行為準則及對我可能影響

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# 東協與中共協商南海區域行為準則 及對我可能影響

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## 摘 要

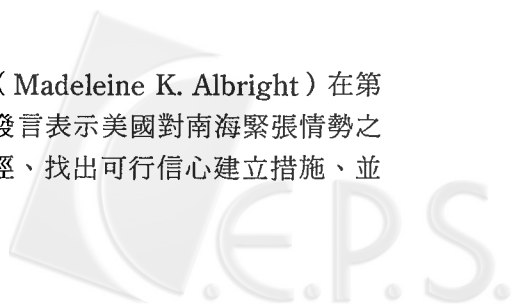
自一九九八年以來，東協與中共持續協商是否通過一個南海區域行為準則。雙方在最近一次假馬來西亞古晉（Kuching）所舉行之第六屆資深官員諮商會議當中並未達成通過此準則之協議。倘東協與中共南海區域行為準則獲通過，且被忠實遵守履行，將構成一項有用的「信心建立措施」，對降低南海衝突、增進互信、區域穩定與和平，會有正面價值。我國係南海六個島嶼主權及海域管轄權聲索國之一，唯我非東協會員國、非其對話夥伴、亦受東協在中共施壓下持「一個中國」政策立場之制約，無法參與此項有關信心建立措施之區域安全對話，也未曾被徵詢任何意見。東協未能主動邀請台灣參與有關南海區域行為準則之協商談判或對話過程違反了一九九二年東協南海宣言以及一九九五年東協南海政策聲明，亦與東協「預防外交」暨「促進信心建立」之宗旨明顯背道而馳。未來，倘南海區域行為準則獲得通過，對我國南海島嶼主權與附近海域管轄權之主張與行使，將造成負面影響。本文析論東協與中共協商南海區域行為準則之現況，及其通過後對我可能影響。

關鍵字：中共、東協、台灣、南海、行為準則

\* \* \*

## 一、前 言

一九九九年七月二十六日，美國國務卿歐布萊特（Madeleine K. Albright）在第六屆「東協區域論壇」（ASEAN Regional Forum）發言表示美國對南海緊張情勢之高度關切。她呼籲各相關國家應竭力尋求外交解決途徑、找出可行信心建立措施、並



採取具體行動去協助穩定區域情勢，使爭端之和平解決成為可能。<sup>①</sup>一般認為，區域行為準則係屬信心建立措施之一。十月，美國國防部長柯恩表示南海區域行為準則若通過的話，將對區域穩定和平有所幫助。<sup>②</sup>十二月，第十屆「處理南海潛在衝突研討會」(Workshop on Managing Potential Conflicts in the South China Sea)假印尼物茂(Bogor)召開。與會者注意到東協與中共正協商是否通過南海區域行為準則，並同意在南海會議中針對南海區域行為準則之通過繼續交換意見。<sup>③</sup>

今(二〇〇〇)年三月九至十一日，「亞太安全合作理事會」(Council for Security Cooperation in the Asia-Pacific)美國分會——「太平洋論壇」(Pacific Forum)與菲律賓「戰略與發展研究中心」(Institute for Strategic and Development Studies)聯合舉辦「南海信心建立措施非正式會議」(Informal Workshop on Confidence Building Measures in the South China Sea)，會中對南海區域行為準則之發展與現況曾進行討論。<sup>④</sup>東協於三月十四日假泰國曼谷召開「東協南海區域行為準則小組」(ASEAN Task Force on the Regional Code of Conduct on the South China Sea)會議。次日，東協與中共之工作小組會議緊接著舉行，主要目的也是討論是否通過南海區域行為準則議題。此外，將於六月上旬假挪威奧斯陸大學舉行之「南中國海人類與區域安全學術國際會議」(the Oslo Conference on Human and Regional Security Around the South China Sea)也將對南海區域行為準則進行討論。<sup>⑤</sup>

我國係南海六個島嶼主權及海域管轄權聲索國之一，且一直實際有效占領南沙群島中之最大島嶼——太平島。唯我非東協會員國、非其對話夥伴、亦受東協在中共施壓下持「一個中國」政策立場之制約，無法參與此項有關信心建立措施之區域安全對話，也未曾被徵詢任何意見。國際政治現實，導致我國是南海六個島嶼主權及海域管轄權聲索國當中，唯一被排除於對話過程者。

東協未能主動邀請台灣參與有關南海區域行為準則之協商談判或對話過程，違反了東協在一九九二年所通過之馬尼拉南海宣言(the 1992 Manila Declaration on the South China Sea)(見附件一)<sup>⑥</sup>以及一九九五年東協南海政策聲明(見附件二)，亦與東協「預防外交」暨「促進信心建立」之宗旨明顯背道而馳。未來，倘南海區域行為準則獲得通過，將對我國南海島嶼主權與附近海域管轄權之主張與行使造成負面影響。

註① Security Challenges Confronting the Asia-Pacific Region, Secretary Albright's Intervention at Sixth ASEAN Regional Forum, Singapore, July 26, 1999. 參見 U.S. Department of State Dispatch, Vol. 10, No. 7 (August/September 1999), pp. 3~6.

註② "U.S. Supports Code of Conduct in South China Sea," *Kyodo World News Service*, October 3, 1999.

註③ 參見 paragraph 13 of Statement of the Tenth Workshop on Managing Potential Conflicts in the South China Sea, Bogor, West Java, Indonesia, December 5~8, 1999.

註④ 筆者實際參與此會議之討論。菲律賓與會者 Carolina Fernandez 教授提出報告，但未提交書面論文。

註⑤ 有關此會議之資訊，可上網查詢。網址是：<http://www.sum.uio.no/southchinasea/>。

註⑥ 此宣言可上東協首頁查詢。網址是：<http://www.aseansec.org/>。

本文主要目的在於析論東協與中共協商南海區域行為準則之現況暨其通過後對我可能影響。文章架構安排上，除前言外，共分以下五節：第一，南海區域行為準則之性質；第二，南海區域多邊行為準則發展源起與現況；第三，東協與中共所提南海區域行為準則版本之異同；第四，南海區域行為準則通過之可能；第五，東協與中共南海區域行為準則通過後對我可能影響。

## 二、南海區域行為準則之性質

「行為準則」(code of conduct)就國內法而言，是一套以君子協定、社會規範、或法律條文等方式所呈現出來的行為規定。就國際關係或國際法而言，「行為準則」是一個政治性文件，簽署此文件是國家自由意願之行使。<sup>⑦</sup>一般而言，簽署此文件的國家無類似條約之法律義務去忠實遵守執行所簽署同意之「行為準則」。但是，如果所簽署同意之「行為準則」中包含有習慣國際法規定、或列有已生效之多邊或雙邊國與國間條約之條款，那麼此一「行為準則」是具有法律效力的。美國的「武器移轉行為準則」(The Arms Transfers Code of Conduct)是有關限制美國將武器銷售至非民主、人權紀錄不佳、從事侵略行為、以及不遵守聯合國傳統武器註冊有關規定等國家的國內法律規定。歐洲聯盟會員國當中，英國與法國亦曾提議通過一個「歐洲武器移轉行為準則」(A European code of conduct on arms sales)。<sup>⑧</sup>

另外一個國際上重要行為準則實例是聯合國糧農組織的「責任制漁業行為準則」(Code of Conduct for Responsible Fisheries)。<sup>⑨</sup>此行為準則第一條將「行為準則」的性質與適用範圍作了規定。依據此條款之說明，「責任制漁業行為準則」之適用性質是「自願性的」(voluntary)，但基於此準則之部分規定係依據相關國際法規定而擬，其中包括「一九八二年聯合國海洋法公約」(the United Nations Convention on the Law of the Sea, 1982)<sup>⑩</sup>及「一九九三年促進公海漁船遵守國際保育與管理措施協定」(the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993)，<sup>⑪</sup>因此「責任制漁業行為準則」之部分規定對上述條約之締約國而言是具有法律約束效力的。「責任制漁業行為準則」主要是訂出一些與漁業保育管理與開發活動相關之原則標準。

註⑦ 參見 Kriangsak Kittichaisaree, "Code of Conduct in International Law and Relations," paper presented at The Third Meeting of the Technical Working Group on Legal Matters in the South China Sea, Pattaya, Thailand, October 12~16, 1998.

註⑧ The Arms Transfers Code of Conduct, 查詢 Peace Action Education Fund 之首頁。網址是：<<http://www.peace-action.org/codefs.html>>.

註⑨ 此準則可上聯合國糧農組織首頁查詢得到。網址是：<<http://www.fao.org>>.

註⑩ 此公約於一九九四年十一月十六日生效。公約批准現況，見聯合國首頁。網址是：<<http://www.un.org/Depts/los/los94st.html>>.

註⑪ 此協定向未生效。可上聯合國糧農組織首頁查詢得到此協定內容。網址是：<<http://www.fao.org>>.

東協與中共所協商中的南海區域行為準則之性質與「責任制漁業行為準則」類似，但主要目的是訂出南海島嶼主權及海域管轄權聲索國彼此間在南海爭議區內所進行或與南海相關所採取之行為予以規範限制。南海區域行為準則雖然不是一個法律文件，倘一旦獲得通過，基於準則中所納入之原則有可能是擷取自國際法律文件、習慣國際法、或雙邊協定之相關條款或規定，南海區域行為準則還是有一些法律約束力之存在。即使不是純法律文件，南海區域行為準則仍將帶來政治、道德、國際輿論之壓力，當然也有重大象徵意義。

事實上，東協與中共分別所提出之南海區域行為準則版本，主要係依據以下幾個國際或區域性之現存法律、政治文件而起草：(一)「聯合國憲章」；(二)「一九八二年聯合國海洋法公約」；(三)「一九七六年東南亞友好暨合作條約」；(四)「一九九二年馬尼拉南海宣言」；(五)「一九九七年河內行動計畫」(the 1997 Hanoi Plan of Action)；(六)「一九九七年東協與中共面向二十一世紀聯合聲明」(the 1997 Joint Statement on ASEAN-China Cooperation Towards the 21st Century)；(七)「一九九五年菲律賓與中共有關南海及其他領域合作諮商聯合聲明」(the 1995 Joint Statement of RP-PRC Consultations on the South China Sea and on Other Areas of Cooperation)；以及(八)中共所提出之「和平共處五原則」等。如前所言，基於中共與東協會員國全係聯合國會員國，以及中共和東協四個南海島嶼聲索國均已批准「一九八二年聯合國海洋法公約」，因此，南海區域行為準則之部分原則規定的確是具有法律效力。

### 三、南海區域行為準則發展源起與現況

起草「南海行為準則」之提議可追溯到一九九二年之東協外長會議。當時與會之東協外長建議所有相關爭端國引用「東南亞友好暨合作條約」原則作為建立行為準則之基礎，並決定另外發表針對處理南海問題的單獨宣言。依此，東協在一九九二年通過了馬尼拉南海宣言，其中一項宣言是呼籲所有相關各造自制以促成南海爭端解決的有利氣氛。<sup>⑩</sup>另外一項是以「東南亞友好暨合作條約」(the Treaty of Amity and Cooperation in Southeast Asia)原則作為南海的國際行為準則。<sup>⑪</sup>

一九九五在汶萊召開的第二屆「東協區域論壇」當中，菲律賓外長 Domingo L. Siazon 曾提議：「南海基本主權問題最終解決之前，所有相關國家應努力達成一項非正式協定、暫訂協議 (*modus vivendi*)、或行為準則」。<sup>⑫</sup>一九九六年七月舉行之第二十九屆東協外長會議當中，與會外長支持菲律賓所提達致一份南海地區行為準則的

註⑩ 馬尼拉南海宣言第二條。

註⑪ 馬尼拉南海宣言第四條。

註⑫ “Philippines Raises Regional Security Concerns in ARF,” Department of Foreign Affairs, the Philippines, DFA News Release, No. BSB 23, August 1, 1995.



建議，認為此可對地區長期穩定奠基及培養爭端國相互諒解。<sup>⑤</sup>一九九八年十月舉行之「處理南海潛在衝突研討會」（國內一般稱之為南海會議）下的第三屆「南海法律工作小組會議」就擬訂南海地區行為準則文件進行討論。<sup>⑥</sup>一九九八年十二月十六日在越南河內舉行之第六屆東協高峰會，會中東協會員國領袖同意推動擬訂一份爭端國間之南海地區行為準則。<sup>⑦</sup>

一九九九年五月，經東協資深官員會議（ASEAN SOM）建議，由菲律賓向東協資深官員會議下之「和平、自由、中立區（ZOPFAN）和東南亞非核武區（SEANWFZ）工作小組」，在下屆會議中提出南海地區行為準則草案。<sup>⑧</sup>一九九九年七月二十三至二十四日，第三十二屆東協外長會議在新加坡舉行。基於馬來西亞之反對，南海地區行為準則問題並未列入會議議程當中。緊接著，第六屆「東協區域論壇」在七月二十六日召開。會中曾討論南海地區行為準則問題。但主要因為受到馬來西亞與中共之反對，第六屆「東協區域論壇」主席聲明第十一款僅提及注意到東協正在草擬南海地區行為準則。<sup>⑨</sup>一九九九年八月十六日，菲律賓完成南海行為準則之草擬工作（見附件三）。中共所擬之南海行為準則版本不久之後也出爐（見附件四）。菲律賓非常期盼在一九九九年十一月二十六日所召開之第三屆東協非正式高峰會期間能通過南海區域行為準則。

一九九九年十一月初，馬來西亞、越南、汶萊等東協會員國紛紛表態支持菲律賓所草擬之南海區域行為準則。<sup>⑩</sup>第三屆東協非正式高峰會召開前夕，東協十國外長均表示支持南海區域行為準則之通過，認為有助區域和平與穩定之維持。但菲律賓對中共所提出南海區域行為準則版本內的一些重要原則表示無法接受。<sup>⑪</sup>一九九九年十一月二十八日所召開之東協與中共（ASEAN + 1）非正式高峰會議期間，東協與中共並未能就通過南海區域行為準則達成共識。中共表示無法接受東協之版本，但同意日後

註⑤ 見 paragraph 11 of the Joint Communique of the Twenty-Ninth ASEAN Ministerial Meeting, Jakarta, July 20 ~ 21, 1996. 此文件可上東協首頁查詢。網址是：<<http://www.aseansec.org/politics/pramm29.htm>>.

註⑥ 議程四討論 Code of Conduct in the South China Sea。

註⑦ 參見 paragraph 39 of the Joint Communique of the 32nd ASEAN Ministerial Meeting held in Singapore, July 23 ~ 24, 1999. 此文件可上東協首頁查詢。網址是：<<http://www.aseansec.org/politics/pramm32.htm>>.

註⑧ 參見 “South China Sea Code Would be More Force,” *Reuters*, May 10, 1999.

註⑨ 參見 paragraph 11 of the Chairman’s Statement of the Sixth Meeting of the ASEAN Regional Forum held in Singapore on July 26, 1999. 此文件可上東協首頁查詢。網址是：<[http://www.aseansec.org/politics/pol\\_arf6.htm](http://www.aseansec.org/politics/pol_arf6.htm)>.

註⑩ “Malaysia, Philippines Agree on Spratly Conduct Code,” *Kyodo World News Service*, November 4, 1999, <<http://dailynews.muzy.com>>; “Draft ‘Code of Conduct’ Approved on South China Sea Issues,” *The Washington Times*, November 25, 1999, <<http://www.washtimes.com>>.

註⑪ 參見 paragraph 16 of the press statement of the Chairman of the Special Joint Ministerial Meeting held in Manila on November 26, 1999。此文件可上東協首頁查詢。網址是：<[http://www.aseansec.org/summit/inf3rd/ps\\_sjmm.htm](http://www.aseansec.org/summit/inf3rd/ps_sjmm.htm)>.

繼續協商討論。基此，今年三月十四日，「東協南海區域行為準則小組」會議與次日隨即舉行之東協與中共工作小組會議於泰國召開，繼續討論是否通過南海區域行為準則。

#### 四、東協與中共所提南海區域行為準則 版本之異同

東協與中共於去年分別所提出之南海區域行為準則版本詳細內容請參見附件三與附件四。中文要點可參閱陳鴻瑜教授刊載於去年十二月二日中央日報之專論。<sup>②</sup>值得一提的是，今年三月東協所提出之版本較去年之版本有所修正。（見附件五）主要的兩點修正是：第一，新的版本明確界定南海爭議區主要是包括南沙與西沙群島；第二，新的版本刪除資源的探勘與開發此一爭端國共同合作項目。很明顯的，倘若南海區域行為準則只適用於南沙群島，越南勢必反對，此亦對菲律賓企圖重振東協處理南海領土爭議時採取一個共同立場之目標會有負面影響。菲律賓的策略是擬藉東協十國之集體力量，去制約中共在南海之擴張活動。因此，其所負責草擬之南海區域行為準則版本必須獲致所有會員國之支持方可。此外，東協會員國當中，菲律賓、越南、以及馬來西亞等對中共所提「擱置爭議，共同開發」南海資源之提議事實上是有所保留的。因此，新的版本將資源探勘與開發之合作予以刪除。中共仍以去年所提出之版本作為討論之基礎，並無改變。

東協與中共分別所提出之南海區域行為準則版本相同點包括：（一）以和平方式解決爭端，不使用或威脅使用武力；（二）採取自我克制行為，不將問題擴大、複雜化，致影響到區域和平與穩定；（三）基於合作精神，建立彼此信任，並在無損主權和管轄權主張，進行研議一些有關海洋環境保護、海洋科學研究、海上航行安全與通訊、執行海上搜救、打擊海上犯罪等計畫合作事項；（四）雙方高層國防軍事將領進行對話與意見交換；（五）遵守國際法及「一九八二年聯合國海洋法公約」相關規定；（六）同意以公義、人道對待爭議區內其他相關國國民；以及（七）透過外交管道現存對話機制進行定期諮商。

東協與中共分別所提出之南海區域行為準則版本主要歧異點包括：（一）中共版本主要是針對南沙島嶼主權爭議而擬；但東協版本是以南沙與西沙島嶼主權爭議為適用範圍；（二）中共強調南沙島嶼主權爭端應由相關主權國家，依據國際法及「一九八二年聯合國海洋法公約」相關規定，直接透過雙邊友好諮商與協商；東協版本傾向兼採雙邊與多邊協商對話途徑解決整個南海問題；（三）東協版本要求聲索國不去占領爭議區內目前尚未被占據之島礁；中共版本對此隻字未提，但同意避免採取使爭議擴大或複雜化之行為；（四）中共版本要求不對爭議區內進行撈獲活動之漁船或其他民間船隻，使用或威脅使用武力，採取包括拿捕、拘留或逮捕之強制措施；東協版本無此規定；（五）中共版本明確提出相關國進行雙邊漁業合作、建立處理與漁撈作業相關問題

註② 陳鴻瑜，「南海準則空泛，忽略台灣立場」，中央日報，民國88年12月2日，版10。

之諮商對話管道、以及透過協商處理解決漁業糾紛；東協版本無此條文；(六) 東協版本中要求爭端各方，自願的知會對方對爭議區會有影響之重要政策和措施，以達透明化目的，但中共版本無此文字；以及(七) 中共版本提出不在南沙群島暨其鄰近海域進行針對其他國為假想敵之軍事演習、不進行任何危險、近接軍事偵察以及海上軍事巡邏活動；東協版本對此隻字未提。

## 五、南海區域行為準則通過之可能性

一九九九年四月，第五屆中共與東協資深官員諮商會議在昆明舉行。會中菲律賓提議通過一個南海區域行為準則。但中共反對，指出「一九九七年東協與中共面向二十一世紀聯合聲明」當中有關南海爭端之解決原則已經足夠，並不需要再通過其他南海區域行為準則。<sup>②</sup>此一聯合聲明的文字是：中華人民共和國主席和東南亞國家聯盟成員國國家元首及政府首腦認為，

維護本地區的和平與穩定符合所有各方的利益。他們承諾通過和平的方式解決彼此之間的分歧或爭端，不訴諸武力或以武力相威脅。有關各方同意根據公認的國際法，包括一九八二年《聯合國海洋法公約》，通過友好協商和談判解決南海爭端。在繼續尋求解決辦法的同時，他們同意探討在有關地區合作的途徑。為促進本地區的和平與穩定，增進相互信任，有關各方同意繼續自我克制，並以冷靜和建設性的方式處理有關分歧。他們還同意不讓現有的分歧阻礙友好合作關係的發展。<sup>③</sup>

一九九九年十一月二十八日中共總理朱鎔基出席東協與中共之非正式高峰會議時也重申此一立場。當時，中共並未提出其所草擬之南海區域行為準則版本。儘管如此，中共還是表示願意繼續協商。

據媒體報導，中共與東協在今年三月十五日之工作小組會議當中，就通過不具法律約束力之南海區域行為準則已達共識。雙方對依據未來通過之準則處理爭議、強化彼此聯繫與信心建立、研議進行合作項目、以及繼續諮商此四點達成共同看法。<sup>④</sup>四月二十五日、二十六日，第六屆東協與中共資深官員諮商會議（ASEAN-China Senior Officials Consultations）在馬來西亞的古晉（Kuching）舉行，會中曾繼續討論南海區域行為準則問題，但準則之具體內容有待日後進一步之協商。<sup>⑤</sup>

註<sup>②</sup> “Philippines Receive Short-Shrift on South China Sea Dispute,” *Agence France Presse*, April 6, 1999, <<http://dailynews.muji.com>>.

註<sup>③</sup> 筆者有此聯合聲明之中文文件。

註<sup>④</sup> “Code for Sea Disputes Takes Shape,” *Bangkok Post*, March 16, 2000; and “China, ASEAN Reach Accord on Spratlys,” *The Manila Times* (Internet Edition), March 16, 2000, <<http://www.manilatimes.net>>.

註<sup>⑤</sup> 6th ASEAN-China Officials consultations, Kuching, April 25 ~ 26, 2000, press release of the Ministry of Foreign Affairs, Malaysia, April 24, 2000. For the release, visit home page of Malaysia's Ministry of Foreign Affairs at: <<http://www.kln.gov.my>>.



如果東協與中共南海行為準則之通過係依照中共所提出之草案版本，那麼大贏家會是北京，因為中共一向主張將南海島嶼主權爭端侷限於南沙群島、堅持爭端國間進行雙邊談判、反對第三國（尤其是美國）之介入、反對南海問題國際化、堅持採「擱置爭議、共同開發」為原則、不在有爭議海域以武力扣捕大陸作業漁船、不派遣軍事偵察機低空飛近或飛越中共所占南沙島礁（舉如美濟礁）、以及軍事演習不得衝著南沙其他國家（主要指中共）而進行的政策立場都能納入「東協與中共南海區域行為準則」。

但是菲律賓與越南不太可能對中共所提出版本中的一些準則照單全收。如前所言，越南與中共除了對南沙群島之島嶼主權有所爭議之外，雙方也對西沙群島存有領土糾紛。越南肯定會反對將此準則侷限於南沙群島。菲律賓一向主張採取多邊協商方式處理南沙問題，不但大力拉攏南海周邊國家，也盡其所能要求美國以及國際社會國際組織之介入。菲律賓也反對中共所提出不在有爭議海域以武力扣捕大陸作業漁船、不派遣軍事偵察機進行偵搜、監控任務、以及干預其與美國軍事演習之進行。今年二月初，中共針對美國與菲律賓恢復進行在菲國靠南沙群島附近水域舉行稱為巴厘勘坍（Bali-katan）之聯合軍事演習表示反對並抗議。<sup>②</sup>馬尼拉不予理會。此外，菲律賓海軍巡邏船隻仍然向駛入南沙群島附近海域作業之漁船開砲警告驅離。其他國家，舉如馬來西亞與印尼等國對中共所提出之草案版本也不太可能完全同意。基此，倘若未來東協與中共南海區域行為準則果真通過，筆者相信其內容會是納入大部分第四節所整理出雙方版本之相同點。

## 六、東協與中共南海區域行為準則通過後 對我可能影響

未來，倘中共與東協南海區域行為準則果真通過，雖然對制約聲索國在南海採取片面挑釁激進行動、減少彼此猜疑、增加區域內相關國家彼此間信任合作、降低南海緊張情勢或有所助益，但若認為中共與東協南海區域行為準則之通過是南海緊張情勢或衝突事件不再發生之保證，此乃天真不實際想法。一九九五年中共與菲律賓、以及越南及菲律賓分別通過雙邊的南海行為準則，但其後彼此衝突不斷。一九九七年十二月，中共與東協發布面向二十一世紀聯合聲明，但隨後不久，中共擴建其美濟礁建築工事。簽署了一九九二年馬尼拉南海宣言的菲律賓繼續以武力扣捕在南沙群島附近水域作業之大陸漁船。同樣也簽署了一九九二年馬尼拉南海宣言的馬來西亞占據榆亞暗沙及簸礁箕，並在所占島礁上建築工事，也出現其戰機與菲國偵察機在南沙群島海域上空對峙情事。越南在南沙所占據無乜礁（Tennent Reef）上之駐軍向菲律賓偵察機開砲示警等。這些片面作為迫使美國國務卿歐布萊特在去年七月第六屆「東協區域論

註② “Beijing Warns Against Joint Military Games,” *South China Morning Post*, March 16, 2000, <<http://www.scmp.com>>.

壇」上表示對此一連串片面行為以及其所可能造成區域和平與穩定之破壞相當關切，因此呼籲各國採取具體措施防止緊張情勢的升高及衝突的擴大。<sup>28</sup>今年元月初，美國東亞與亞太事務助理國務卿陸士達（Stanley Roth）也再度對南海潛在衝突表示高度關切與憂心。<sup>29</sup>

但不管如何，南海區域行為準則一旦獲得通過，勢必對我國南海島嶼主權與附近海域管轄權之主張與行使造成負面影響。舉如說，倘若中共與東協之南海爭端果真依據南海區域行為準則在有爭議地區進行一些有關海洋環境保護、海洋科學研究、海上航行安全與通訊、執行海上搜救、打擊海上犯罪等計畫，卻又排除台灣之參與，此發展情勢對我相當不利。再者，一些區域內之安全對話機制，舉如「東協區域論壇」或「亞太安全合作理事會」亦有可能依據已通過之南海區域行為準則研擬合作計畫。

東協未能主動邀請台灣參與有關南海區域行為準則之協商談判或對話過程違反了東協在一九九二年所通過之馬尼拉南海宣言以及一九九五年所發布有關南海之政策聲明。一九九二年馬尼拉南海宣言當中第四項是：「薦請所有相關各方將『東南亞友好與合作條約』所列之原則作為擬訂南海國際行為準則之基礎。」，<sup>30</sup>第五項寫到：「邀請所有相關各方簽署同意遵守一九九二年馬尼拉南海宣言所列之原則」。<sup>31</sup>一九九五年東協南海政策聲明最後一段指出：「吾人鼓勵所有聲索國與東南亞其他國家在不同論壇——包括印尼主辦之處理南中國海潛在衝突研討會系列——去討論南海問題。」東協未能邀請台灣參與對話過程，與該組織「預防外交」暨「促進信心建立」之宗旨明顯背道而馳。

東協會員國，尤其是越南與菲律賓，在過去也都一直強調南海問題之討論或解決應由所有相關各方參與及同意。一九九五年八月下旬，越南針對中共與菲律賓所達成之雙邊南海行為準則提出保留意見（見附件六）。其中，越南表示該準則應包括所有南海六個島嶼主權及海域管轄權聲索國。越南亦強調，南海爭端之解決應由六個聲索國全部同意方可。<sup>32</sup>但該年十一月，越南與菲律賓也協議達成性質類似的雙邊南海行為準則（見附件七）。一九九八年十二月，正當中共與菲律賓協商討論共同使用美濟礁可能性時，越南再度放話，表示南沙群島爭議區內之任何合作均須交由六個聲索國討論並獲得同意才可。<sup>33</sup>一九九九年五月下旬，菲律賓總統 Estrada 指出，「倘若只有菲律賓與中共討論（南沙問題），其他聲索國怎麼辦？」基此，他強調南沙問題之談

註<sup>28</sup> 同註<sup>1</sup>。

註<sup>29</sup> 參見陸士達之新聞訪問稿，U.S. Department of State, International Information Programs' home page Washington File at <<http://www.usia.gov/products/washfile.htm>>.

註<sup>30</sup> 原文是：“COMMEND all parties concerned to apply the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea.”

註<sup>31</sup> 原文是：“INVITE all parties concerned to subscribe to this Declaration of principles.”

註<sup>32</sup> “Spratlys Code of Conduct Must Include All, Says Vietnam,” *Kyodo News International*, August 28, 1995.

註<sup>33</sup> “Cooperation: All Parties Should Take Part,” *The Strait Times*, December 1, 1998, <<http://straitstimes.asial.com>>.

判協商應是多邊的。<sup>④</sup>美國海軍太平洋總司令布萊爾（Dennis Blair）也同時表示，南沙爭端之討論除中共與菲律賓之外，亦應納入另外之四個聲索國，亦即我國、越南、馬來西亞與汶萊。<sup>⑤</sup>

台灣雖為南海六個主權爭端當事國之一，且事實占有南沙最大島之太平島，但基於我國並非東協會員國，亦非其對話夥伴，因此被排除參與此第一軌道之區域安全對話。基於國際政治之現實，以及與國與國外交關係之運作實踐，台灣沒有太多可有效運用之籌碼，也不必去阻擾南海區域行為準則之通過。但是在未來作法上，台灣應強調東協未能主動邀請台灣參與有關南海區域行為準則之協商談判或對話過程的確違反了東協在一九九二年所通過之馬尼拉南海宣言以及一九九五年所發布有關南海之政策聲明。台灣亦應研議可行因應措施，就東協排我參與有關南海議題之對話過程之不當性，透過外交管道——正式或非正式——表示抗議，並重申我主權主張立場；在國際文宣上加強說明我被排除參與有關南海議題對話過程之不公平現象，以及其對南海領土主權爭議達致最終解決所可能造成之負面影響。最後，台灣也可以研議主動向越南以及菲律賓提出協商通過雙邊南海行為準則的可行性，或草擬一份片面的南海行為準則，將我國之立場、作法，以及要求其他聲索國遵守之行爲予以闡明。

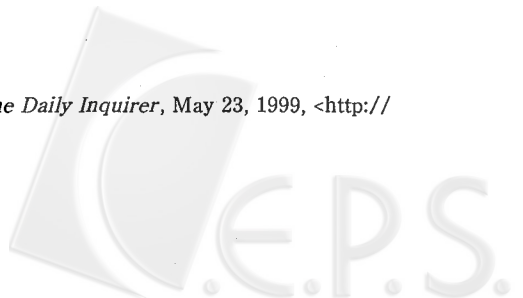
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註④ “US Echoes Erap's Line on Spratly Row,” *The Philippine Daily Inquirer*, May 23, 1999, <<http://inquirer.net>>.

註⑤ 同前註。



附件一：一九九二年東協南海宣言

ASEAN DECLARATION ON THE SOUTH CHINA SEA

(Manila, Philippines, 22 July 1992)

WE, the Foreign Minister of the member countries of the Association of Southeast Asian Nations;

RECALLING the historic, cultural and social ties that bind our peoples as states adjacent to the South China Sea;

WISHING to promote the spirit of kinship, friendship and harmony among our peoples who share similar Asian traditions and heritage;

DESIROUS of further promoting conditions essential to greater economic cooperation and growth;

RECOGNIZING that we are bound by similar ideals of mutual respect, freedom, sovereignty and jurisdiction of the parties directly concerned;

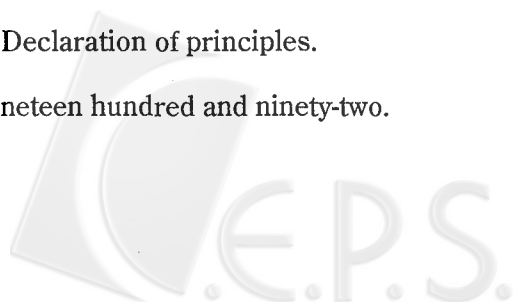
RECOGNIZING that South China Sea issues involve sensitive questions of sovereignty and jurisdiction of the parties directly concerned;

CONSCIOUS that any adverse developments in the South China Sea directly affect peace and stability in the region.

HEREBY

1. EMPHASIZE the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force;
2. URGE all parties concerned to exercise restraint with view to creating a positive climate for the eventual resolution of all disputes;
3. RESOLVE, without prejudicing the sovereignty and jurisdiction of countries having direct interests in the area, to explore the possibility of cooperation in the South China Sea relating to the safety of maritime navigation and communication, protection against pollution of the marine environment, coordination of search and rescue operations, efforts towards combatting piracy and armed robbery as well as collaboration in the campaign against illicit trafficking in drugs;
4. COMMEND all parties concerned to apply the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea;
5. INVITE all parties concerned to subscribe to this Declaration of principles.

Signed in Manila, Philippines, this 22nd day of July, nineteen hundred and ninety-two.



附件二：一九九五年東協外長有關南海最近發展聲明

STATEMENT BY THE ASEAN FOREIGN MINISTERS ON THE RECENT DEVELOPMENT IN THE SOUTH CHINA SEA. March 18, 1995

We, the ASEAN Foreign Ministers, express our serious concern over recent developments which affect peace and stability in the South China Sea.

We urge all concerned to remain faithful to the letter and spirit of the Manila Declaration on the South China Sea which we issued in July 1992 and which has been endorsed by other countries and the Non-Aligned Movement. The Manila Declaration urges all concerned to resolve differences in the South China Sea by peaceful means and to refrain from taking actions that de-stabilize the situation.

We call upon all parties to refrain from taking actions that destabilize the region and further threaten the peace and security of the South China Sea. We specifically call for the early resolution of the problems caused by recent developments in Mischief Reef.

We urge countries in the region to undertake cooperative activities which increase trust and confidence and promote stability in the area.

We encourage all claimants and other countries in Southeast Asia to address the issue in various fora, including the Indonesia-sponsored Workshop Series on Managing Potential Conflicts in the South China Sea.

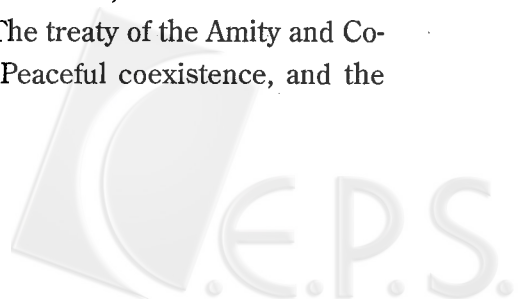
附件三：東協與中共南海行為準則（一九九九年八月東協版本）

ASEAN-CHINA CODE OF CONDUCT IN THE SOUTH CHINA SEA  
(Philippine Draft As of 16 August 1999)

The heads of State/Heads of government of the member states of ASEAN and the Premier of the Peoples Republic of China:

COGNIZANT of the imperative need to establish a peaceful, friendly and harmonious environment in the South China Sea for the enhancement of economic growth and prosperity in the region;

COMMITTED TO the spirit and principles of international law, the Charter of United Nations the UN Convention on the Law of the Sea. The treaty of the Amity and Cooperation in Southeast Asia, the five Principles of Peaceful coexistence, and the ASEAN Declaration on the South China Sea; and

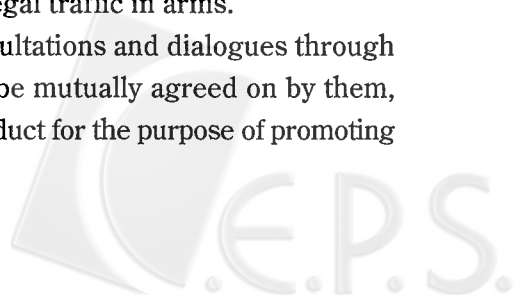




WISHING TO FURTHER the mandate and objectives of the Hanoi Plan of Action and the 1997 Joint Statement on ASEAN-China Cooperation Towards the 21st Century:  
DO HEREBY AGREE

To abide by the following regional Code of Conduct in the South China Sea:

1. Disputes relating to sovereignty and jurisdiction in the South China Sea shall be resolved by peaceful means, without resort to the use of force or threat of the use of force on the basis of sovereign equality and mutual respect among nations, consistent with the recognized principles of international law, including those in the UN Convention on the Law of the Sea;
2. The Parties undertake to exercise self-restraint in the conduct of activities in disputed areas, and to desist from any act that should affect stability in the region;
3. Without prejudice to existing claims of sovereignty and jurisdiction and pending peaceful resolution of disputes in areas subject to overlapping or competing claims, the parties concerned shall seek to find ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, to include:
  - a. refraining from new occupation of presently unoccupied islands, reefs, atolls, shoals, cays or other features in disputed areas;
  - b. ensuring just and humane treatment of nationals of other parties concerned who are in the disputed areas;
  - c. holding dialogues and exchanges among high level defense and military officials of the parties concerned; and,
  - d. observing transparency by voluntarily informing other parties concerned of significant policies and measures that affect the disputed areas.
4. Without prejudice to existing claims of sovereignty and jurisdiction, the parties concerned may explore or carry out cooperation through bilateral or multilateral agreement with respect to:
  - a. marine environmental protection;
  - b. marine scientific research;
  - c. safety of navigation and communication;
  - d. exploration and exploitation of resources;
  - e. search and rescue operations and
  - f. Combating transnational crime, including, but not limited to, trafficking and illicit drugs, pirate and armed robbery at sea, and illegal traffic in arms.
5. The parties concerned undertake to conduct consultations and dialogues through existing mechanisms or through modalities to be mutually agreed on by them, including regular consultations on this Code of Conduct for the purpose of promoting



transparency, establishing harmony, mutual understanding and cooperation and achieving peaceful resolution or prevention of disputes among them.

Adopted this 30th day of November

附件四：南海行為準則（一九九九年十月中共版本）

CODE OF CONDUCT IN THE SOUTH CHINA SEA  
(Draft of the Chinese side)

The Government of the People's Republic of China and Government of the member states of ASEAN.

REAFFIRMING their determination to considerate and develop the friendship and cooperation among Asian people, who have a similar tradition, and to establish a 21st century-oriented partnership of good-neighbourliness and mutual trust;

RECOGNIZING that permanent peace, stability and prosperity in the Southeast Asian Region serve the fundamental and long-term interest of their countries;

CONSCIOUS of their common responsibility for and firm commitment to peace, stability and prosperity in Southeast Asia;

WISHING to promote the region's economic growth and prosperity, enhance mutual friendship and cooperation among people in the region, and establish a peaceful, friendly and harmonious environment in the Southeast China Sea;

DESIRING to create a favorable condition for final resolution of differences and disputes between the countries concerned; and

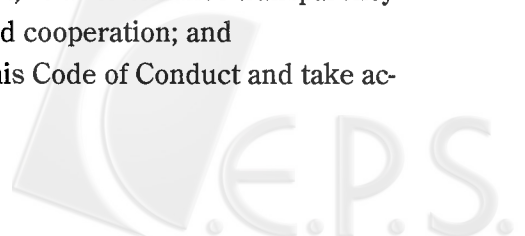
PROCEEDING from the objectives and principles set forth in *The 1997 Joint statement of the Meeting of the President of the People's Republic of China and the Heads of State/Government of the Member States of ASEAN*;

HAVE AGREED,

To adopt and abide by the following Code of Conduct in the South China Sea:

1. The purpose and principles of *The Charter of the United Nations*, the Five Principles of Peace Coexistence and other universally recognized principles of international law shall serve as the basic norms governing state-to state relation;
2. Explore ways for building trust and confidence and for resolving differences or disputes by peaceful means in accordance with the above principles and on the basis of equality and mutual respect;
3. Refrain from use or threat of force, or other action that may affect the good-neighbourly and friendly relations among countries, and regional stability;

4. Disputes relating to the Nansha Islands shall be resolved by the sovereign states directly concerned through bilateral friendly consultations and negotiations, in accordance with universally recognized international law, including *The 1982 UN Convention on the Law of the Sea*;
5. In order to maintain peace and stability in the region, the parties concerned shall, pending the settlement of disputes, continue to exercise self-restraint and handle their disputes and differences in a cool and constructive manner and through diplomatic channels, and refrain from taking actions that will; complicate or magnify the disputes;
6. The countries concerned shall, in a spirit of “ putting aside disputes and engaging in joint development” , explore or carry out cooperation in areas such as marine environmental protection, marine scientific research, safety of navigation and communication at sea, exploration and exploitation of resources, search and rescue operations, and combating transnational crimes (including but not limited to, trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms).
7. The countries concerned shall be encouraged to develop bilateral fishery cooperation, establish channels of consultation and dialogue over issues that may arise in fishing operation, and manage and resolve fishing disputes through consultation. Refrain from use or threat of force, or taking coercive measures, such as seizure, detention or arrest, against fishing boats or other civilian vessels engaged in normal operation in the disputed areas, nor against nationals of other countries thereon. Just and humane treatment shall be guaranteed to these nationals.
8. The countries concerned shall hold dialogues and exchanges of views between or among their high level defense and military officials;
9. Refrain from conducting and military exercise directed against other countries in the Nansha Islands and other adjacent waters, and from carrying any dangerous and close-in military reconnaissance. Military patrol activities in the area shall be restrained.
10. Maintain safety of international navigation in South China Sea and ensure freedom of navigation of ships and aircraft in normal passage in accordance with universally recognized international law and the relevant principles and provisions of The UN Convention on the Law of the Sea;
11. China and ASEAN member states are ready to continue their dialogues on the relevant issues, including this Code of the Conduct, so as to enhance transparency and promote harmony, mutual understanding and cooperation; and
12. The Parties undertake to abide by provision of this Code of Conduct and take actions consistent therewith.



附件五：南海區域行為準則（二〇〇〇年三月東協版本）

REGIONAL CODE OF CONDUCT IN THE SOUTH CHINA SEA  
(As of March, 2000)

The Heads of State and Government of the member states of ASEAN and the People's Republic of China:

COGNIZANT of the need to promote a peaceful, friendly and harmonious environment in the South China Sea for the enhancement of stability, economic growth and prosperity in the region;

COMMITTED TO the spirit and principles of international law, the Charter of the United Nations, the 1982 U.N. Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and the ASEAN Declaration on the South China Sea;

REAFFIRMING respect for the freedom of navigation and air traffic in the South China Sea, as provided for by international law, including the 1982 U.N. Convention on the Law of the Sea; and

WISHING TO FURTHER enhance the principles and objectives of the 1997 Joint Statement of the Meeting of the Heads of State/Government of the Member States of ASEAN and President of the Peoples Republic of China,

HEREBY ADOPT the following Code of Conduct in the disputed areas or the Spratlys and the Paracels in the South China Sea, hereinafter referred to as the Disputed Area.

1. The Parties concerned undertake to resolve disputes relating to sovereignty or jurisdiction in the Disputed Area by peaceful means, without resort to the use of force or threat of the use of force, on the basis of respect for sovereignty, equality and mutual respect among nations, and non-interference into each other's internal affairs, consistent with the recognized principles of international law, including those in the 1982 U.N. Convention on the Law of the Sea;
2. The Parties concerned undertake to refrain from action of inhabiting or erecting structures in presently uninhabited islands, reefs, shoals, cays and other features in the Disputed Area;
3. The Parties concerned undertake to exercise self-restraint in the conduct of activities that affect peace and stability in the Disputed Area and to handle their differences in a constructive manner;
4. The Parties concerned undertake to intensify efforts to find a comprehensive and durable solution to the disputes over the Disputed Area. Without prejudice to existing claims of sovereignty or jurisdiction, the Parties concerned undertake to seek ways, in the spirit of cooperation and understanding, to build trust and confidence

between and among them, including:

- a. holding dialogues and exchanges of views as appropriate among defense and military officials of the Parties concerned;
  - b. informing voluntarily other Parties concerned of significant policies and measures that affect the Disputed Area; and
  - c. ensuring just and humane treatment of nationals of other Parties concerned who are either in danger or in distress in the Disputed Area
5. Without prejudice to existing claims of sovereignty or jurisdiction, the Parties concerned may explore or undertake activities in the Disputed Area. These may include the following:
- a. marine environmental protection;
  - b. marine scientific research;
  - c. safety of navigation and communication;
  - d. search and rescue operations; and
  - e. combating transnational crime, including, but not limited to, trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.

The modalities, scope and locations in respect of bilateral and multilateral cooperation should be agreed upon by claimant countries prior to their actual implementation.

6. The Parties concerned undertake to conduct consultations and dialogues concerning the Disputed Area through modalities to be agreed by them, including regular consultations on the observance of this Code of Conduct, for the purpose of promoting good neighborliness and transparency, establishing harmony, mutual understanding and cooperation; and facilitating peaceful resolution of disputes among them.
7. Other countries and international organizations are encouraged to subscribe to the principles contained in this Code of Conduct.

Adopted this \_\_\_\_\_ in the \_\_\_\_\_





附件六：一九九五年中共與菲律賓就南海及其他合作領域諮商共同聲明

Joint Statement RP-PRC Consultations on the South China Sea and on Other Areas of Cooperation

(9~10 August 1995)

Delegations from the Philippines and China met in Manila on 9-10 August 1995 for consultations on the South China Sea and on other areas of cooperation.

The consultations were held in an atmosphere of cordiality and in a frank and constructive manner.

The two sides reiterated the importance they attach to their bilateral relations. They recognised that the continued prosperity of their economies depends upon the peace and stability of the region. They reaffirmed their commitment to regional peace, stability and cooperation.

Frank discussions on Mischief Reef ( " Meiji Reef" ) were held. The two sides expressed their respective positions on the matter. They agreed to hold further consultations in order to resolve their differences. On the South China Sea issue as a whole, they exchanged views on the legal and historical bases of their respective positions. Pending the resolution of the dispute, the two sides agreed to abide by the following principles for a code of conduct in the area:

1. Territorial disputes between the two sides should not affect the normal development of their relations. Disputes shall be settled in a peaceful and friendly manner through consultations on the basis of equality and mutual respect.
2. Efforts must be undertaken to build confidence and trust between the two parties, to enhance an atmosphere of peace and stability in the region, and to refrain from using force or threat of force to resolve disputes.
3. In the spirit of expanding common ground and narrowing differences, a gradual and progressive process of cooperation shall be adopted with a view to eventually negotiating a settlement of the bilateral disputes.
4. The two sides agree to settle their bilateral disputes in accordance with the recognized principles of international law, including the UN Convention on the Law of the Sea.
5. Both sides shall keep an open-minded attitude on the constructive initiatives and proposals of regional states to pursue multilateral cooperation in the South China Sea at the appropriate time.
6. The two sides agree to promote cooperation in fields such as protection of the marine environment, safety of navigation, prevention of piracy, marine scientific research, disaster mitigation and control, search and rescue operations, meteo-

rology, and maritime pollution control. They also agree that on some of the above-mentioned issues, multilateral cooperation could eventually be conducted.

7. All parties concerned shall cooperate in the protection and conservation of the marine resources of the South China Sea.

8. Disputes shall be settled by the countries directly concerned without prejudice to the freedom of navigation in the South China Sea.

In order to push the process forward, the two sides agreed to hold discussions among experts on legal issues and sustainable economic cooperation in the South China Sea. They agreed further that experts from the two countries shall hold consultations at a mutually acceptable date in order to explore the possibilities of fisheries cooperation in the disputed area.

The two sides agreed on the importance of bilateral cooperative activities as useful in and of themselves, and as confidence-building measures. They are dedicated to a pragmatic approach to cooperation.

In addition to the South China Sea issue, the two sides reviewed other fields of bilateral cooperation. They emphasized the usefulness of exchanging contacts at various levels in strengthening cooperation. They noted the successful conclusion of the 18th Philippines-China Joint Trade Committee Meeting. They looked forward to concluding negotiations on the avoidance of double taxation and fiscal evasion. They noted the ratification by the Philippine side of the Bilateral Agreement on the Promotion and Mutual Protection of Investments.

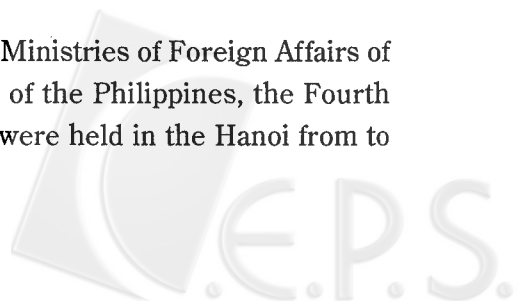
The talks ended with both sides satisfied that some progress had been made in terms of substantially improving the atmosphere of relations and identifying and expanding areas of agreement by holding frank exchanges directly addressing contentious issues. They pledged to continue consultations in the same constructive spirit.

附件七：一九九五年越南與菲律賓第四屆年度雙邊諮商共同聲明

JOINT STATEMENT ON THE FOURTH ANNUAL BILATERAL CONSULTATIONS  
BETWEEN THE SOCIALIST REPUBLIC OF VIETNAM AND THE REPUBLIC OF  
PHILIPPINES

Hanoi, 7 November 1995

1. In furtherance of the agreement between the Ministries of Foreign Affairs of the Socialist Republic of Vietnam and the Republic of the Philippines, the Fourth Vietnam-Philippines Annual Bilateral Consultations were held in the Hanoi from to 6-7 November, 1995.



2. The Vietnamese delegation was led by H. E. Mr. Vu Khoan, Deputy Foreign Minister. The Philippine delegation was led by H. E. Mr. Rodolfo C. Severino, Undersecretary of Foreign Affairs.

3. The leaders of both delegations shared the views that these consultations were helpful in enhancing the mutual understanding, friendship and cooperation between Vietnam and the Philippines.

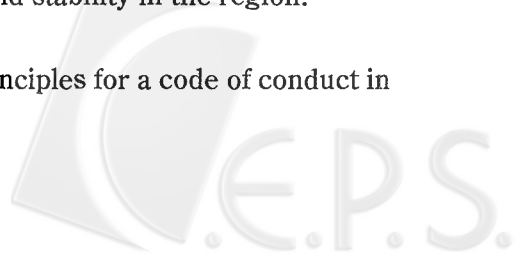
4. The two delegations briefed each other on their respective national situations and exchanged views on bilateral, regional and international issues of mutual interest. The two delegations agreed on many issues. They reaffirmed their determination to consolidate and strengthen further the friendship and cooperation between the two countries.

5. The two delegations noted with satisfaction the excellent state of relations between Vietnam and the Philippines and the favourable developments in the South East Asia. They stressed the historic significance of the forthcoming official visit of H.E. President Le Duc Anh to the Republic of the Philippines before the end of this year. They agreed to encourage more people-to-people contacts, especially in the areas of trade and investment, science and technology, and human resource development in order to strengthen further the mutual understanding, trust and cooperation between the two countries.

6. The two sides agreed to recommend the early conclusion of an Agreement on Cooperation in Science and Technology and an Agreement on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion. The two sides also agreed to update the 1978 Trade Agreement: before the end of this year and to expedite the implementation of the Agreement on Cultural Cooperation between the two countries.

7. On the territorial dispute in the South China Sea (Eastern Sea), they recalled the understanding between the leaders of the two countries on the peaceful settlement of such disputes. They reaffirmed the contents and spirit of the ASEAN Declaration on the South China Sea of 1992, which has been endorsed by many countries and organizations around the world and serves as a good basis for the prevention of conflict, the maintenance of stability, and the promotion of cooperation in the area. The Two sides committed themselves to promote bilateral and multilateral efforts in the search for a fundamental and long-term solution to the disputes relating to sovereignty over the Spratlys. They acknowledged that the growth and development of their respective economies depend greatly on the sustained peace and stability in the region.

The two sides agreed on the following basic principles for a code of conduct in the contested areas:



- a. They shall settle all disputes relating to the Spratlys through peaceful negotiation in the spirit of friendship, equality, mutual understanding and respect.
- b. They shall solve their disputes on the basis of respect international law, including the 1982 United Nations Convention on the Law of the Sea.
- c. While endeavoring to promote negotiations for a fundamental and long-term solution to the Spratlys dispute, they shall exercise self-restraint, refrain from using force or threat of force, and desist from any act that would affect the friendship between the two countries and the stability in the region.
- d. They shall promote suitable forms of bilateral and multilateral cooperation in the fields of marine environment protection, safety of navigation, marine scientific research, meteorological data, disaster mitigation and control, search and rescue operations, prevention of piracy, and maritime pollution control.
- e. They shall cooperate in the protection and conservation of marine living resources in the Spratlys in accordance with the relevant provisions of the 1982 UN Convention on the Law of the Sea.
- f. They affirm that shipping and air traffic in the area should be respected in conformity with the principles and practice of international law.
- g. They shall continue dialogues and consultations on these principles, including ways of building confidence and trust between them, pending resolution of the disputes. They shall promote such dialogue, consultations and confidence-building measures on a multilateral as well as bilateral basis.
- h. They support a gradual and progressive process, based on certain targets and benchmarks, aimed at close cooperation in the Spratlys area and the eventual settlement of the dispute. Such cooperation shall not prejudice existing sovereignty claims.
- i. Other parties are encouraged to subscribe to the principles herein stated.

The two Delegations agreed to designate their respective experts to discuss concrete forms of cooperation in marine scientific research as an initial step towards implementation of these principles. Future consultations will also consider specific confidence-building measures.

8. With regard to the question of Vietnamese non-refugees in the Philippines, the two sides reviewed the implementation of the Comprehensive Plan of Action (CPA) and the Memorandum of Understanding on the Principles and Agreements Concerning the Return of Vietnamese Non-refugees from the Philippines. Aware of the termination of the CPA on 31 December 1995, they agreed to take urgent measures to implement the MOU on the orderly repatriation program, and to expedite the

issuance of clearances. They reaffirmed that repatriation to the country of origin remains the only durable solution to this problem. The two sides also agreed on the urgent need to find a solution to the problem of Vietnamese nationals brought to the Philippines by the United States under the Orderly Departure Program.

9. The two sides expressed their confidence that Vietnam's admission into ASEAN would create more favourable conditions and open up more channels for cooperation between Vietnam and the Philippines, both bilaterally and multilaterally.

10. Both sides affirmed their commitment to the success of the forthcoming ASEAN Summit, which will be held in Thailand in December 1995, and expressed the hope that Southeast Asian Nuclear Weapon-Free Zone Treaty will be signed on this occasion.

11. Both delegations acknowledged the existence of non-traditional security challenges such as the large-scale movement of workers across national borders, the increase of international terrorism in the region, and the trafficking in women and children. They agreed to explore ways to address the political, economic and social implication of these challenges.

12. The delegation agreed to hold the Fifth Annual Bilateral Consultations in the Philippines in 1996, on a date to be mutually agreed upon through diplomatic channels.

13. The Philippines delegation expressed its appreciation for the warm reception and hospitality that it received from the Government of Vietnam and for the arrangements made for the consultations.

14. The consultations were held in the spirit of traditional friendship and cordiality between Vietnam and the Philippines.

FOR THE VIETNAMESE  
DELEGATION

FOR THE PHILIPPINES  
DELEGATION





# ASEAN-China Negotiations for a Regional Code of Conduct in the South China Sea: Implications for Taiwan

*Yann-huei Song*

## Abstract

China and ASEAN are in the process of formulating a regional code of conduct in the South China Sea. The two sides were not able to reach agreement to adopt such a code at the 6th ASEAN-China Senior Officials Consultations, held on April 25-25, 2000, in Kuching, Malaysia. If the code is adopted in the future, it will be an important confidence building measure useful to reduce tensions, build up trust, and maintain peace and stability in the Spratlys/South China Sea area. Taiwan is one of the six parties directly involved in the sovereignty and maritime jurisdictional disputes in the area. However, Taipei has been excluded from participating in the regional efforts to formulate a code of conduct. This paper examines the development and current situation of the formulation of an ASEAN-China regional code of conduct in the South China Sea and its potential impact on Taiwan.

Keywords: China; ASEAN; Taiwan; South China Sea; Code of Conduct

