CHAPTER FOUR

THE DECLARATION ON THE CONDUCT OF PARTIES AND
A CODE OF CONDUCT IN THE SOUTH CHINA SEA:
RECENT ACTIONS TAKEN BY ASEAN

Yann-huei Song*

I. Introduction

Recent developments in the South China Sea (SCS) has shown the ineffectiveness of the Declaration on the Conduct of Parties in the South China Sea (DOC) that was signed by the foreign ministers of the member states of the Association of Southeast Asian Nations (ASEAN) and special envoy and vice minister of the foreign ministry of the People’s Republic of China (China) in Phnom Penh, Cambodia in November 2002.1 All of the parties involved in the sovereignty and maritime disputes in the SCS signed the declaration, with the exception of the government of the Republic of China (Taiwan) due to the sensitive political issue relating to the Chinese insistence on the so-called “One China” principle.

Under the declaration, the parties concerned in the SCS agreed “to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.”2 Since the signing of the DOC, however, all of the parties concerned, perhaps with the exception of Brunei and Taiwan,3 have conducted a series of activities that not only are con-

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* Research Fellow, Institute of European and American Studies, Academia Sinica.
2 Id. at para 5.
3 Brunei is the only party involved with the sovereignty and maritime disputes in the Spratly Islands which has not sent military forces to occupy her claimed island. While it is clear that Taiwan is a party concerned in the SCS issues, she has been excluded from signing the 2002 DOC and therefore, politically speaking, is not bound by the DOC.
sidered breaking their political commitments made under the declaration, but also lead to increasing tensions in the SCS area.

In April 2010, the ASEAN-China Joint Working Group on the Implementation of the DOC (JWG-DOC) met in Hanoi, Vietnam to review the implementation of the DOC and discussed concrete measures for co-ordination and the effective realization of the declaration. In July 2010, Hillary Clinton, the U.S. Secretary of State, stated in Hanoi that the United States supports the DOC, encourages the parties to reach agreement on a full code of conduct (COC), and is prepared to facilitate initiatives and confidence building measures consistent with the declaration. Both ASEAN and China are also taking the position on the need to enhance the effectiveness of the DOC and the eventual conclusion of a regional COC in the SCS.

The year 2011 was designated as the ASEAN-China Exchange and Friendship Year that marked the 20th anniversary of the ASEAN-China dialogue relations. Are there any possibilities for ASEAN and China to establish a regional COC in the SCS in the coming years?

The purpose of this chapter is to examine recent developments in the SCS by focusing on the actions taken by ASEAN over the past few years to ensure the effective implementation of the DOC and move toward the eventual conclusion of a regional COC in the SCS. After the introductory section, a summary report on recent rising tensions in the SCS will be provided. This will be followed by a discussion of the adoption of the DOC, the difficulties ASEAN encountered in dealing with the SCS issues as a group, and recent actions taken by ASEAN in relation to the implementation of the DOC and adoption of a regional COC in the SCS. This chapter will conclude with remarks on the prospect for implementation of the DOC and adoption of a regional COC, and a call for Taiwan’s inclusion in the negotiating process that deals with the SCS issues and in particular the DOC and COC-related matters.

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4 ASEAN-China joint working group discusses East Sea conduct, VNA NEWS AGENCY WEBSITE (Hanoi), Apr. 17, 2010 (citing BBC MONITORING ASIA-PAC. POLITICAL, Apr. 18, 2010).