

The South China Sea and Great Power Politics: Implications for U.S.-China-Taiwan Relations

Yeh-chung Lu, Associate Professor, Department of Diplomacy, National Chengchi University

I. Introduction

Maritime security has become a salient issue since 2010, as disputed sovereignty and resource claims in the Asia Pacific region have escalated. In 2010, when the South China Sea disputes became a more prominent issue in U.S.-China relations, many scholars and policy analysts reached the tentative conclusion that the risk of conflict between the two giants was growing. Claimants such as Vietnam and the Philippines also strongly expressed their positions. In the East China Sea, the sovereignty issue over the Diaoyu Islands (Senkakus to the Japanese) has become particularly sharp since September 2012, when Japan “nationalized” three of the islands. In November 2013, China unilaterally declared the establishment of an air defense identification zone (ADIZ) over the East China Sea, including the area of the Diaoyu Islands, further complicating the situation. Domestic political considerations and nationalism within each of the claimants involved are narrowing the opportunities for cooperation and peaceful resolution.

This paper suggests that maritime disputes in East Asia are more than a legal and economic issue, and a political perspective is necessary to further understanding of the issue and to provide possible solutions. As a responsible stakeholder in the Asia-Pacific region, Taiwan has continued to express its willingness to broker a peaceful resolution on these disputes. Taiwan has long claimed sovereignty for the Republic of China (ROC) over these disputed islands, based on history and international legal frameworks. However, with the acknowledgement of the indivisibility of sovereignty, Taiwan has proposed to share resources with all parties involved rather than emphasize exclusive rights entitled to Taiwan.

II. The South China Sea and the Claimants

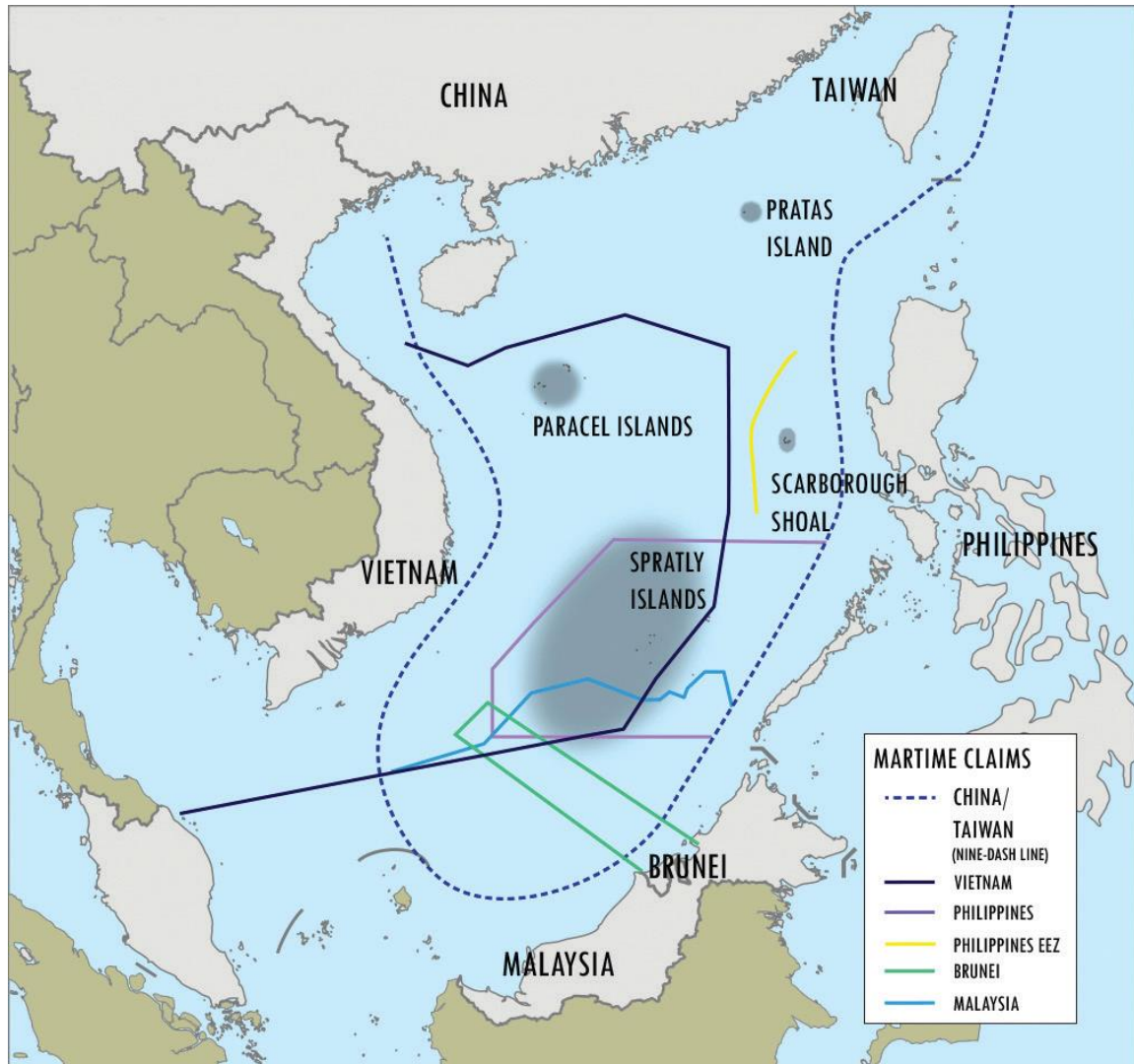
Maritime territorial disputes have been growing as a grave concern in the Asia-Pacific region since 2010. In the South China Sea, there are over 250 small islands, shoals, and reefs; virtually none of them is self-sustainable for habitation. These islets and reefs are primarily gathered into three archipelagos, the Spratly

Islands, the Paracel Islands, and the Pratas Islands, and two other grouped land features, the Macclesfield Bank and the Scarborough Shoal.

Central to the dispute and delineation issue is the eleven-dotted line/U-shaped line, first published by the ROC government in 1947. The People's Republic of China (PRC) succeeded the ROC's legal rights internationally in 1949, but the extent and nature of its claim in the South China Sea has remained unclear until this day. Although the exact nature and extent of Taiwan's claim is also less than totally clear, nevertheless, the ROC government has responded to neighboring countries' claims regarding territorial sea and exclusive economic zones (EEZs) since 1979 (with the Philippines) and has consistently expressed willingness to negotiate with other parties.

The Pratas islands are under the effective control of Taiwan. Taiwan, mainland China and Vietnam have respective claims over the Paracel Islands in the northern part of the South China Sea. However, the PRC has controlled the Paracel Islands in practice since 1974, after a military conflict with South Vietnam. China, Vietnam, the Philippines, Malaysia, Taiwan, and Brunei all assert sovereignty claims to at least some portion of the Spratly Island chain; except Brunei, each party exerts more or less effective occupation on at least one islet or shoal in the South China Sea. The largest island of the Spratlys, Taiping Island (also known as Itu Aba), is under the effective control of Taiwan. Indonesia's maritime claims in the South China Sea lie southwest of China's nine-dash line and therefore do not collide with those made by China. However, Indonesia has been concerned that China's declaration of EEZs might precipitate conflict in the region.

Figure 1. Maritime Boundary Claims in the South China Sea



Source: Jeffrey Bader, Kenneth Lieberthal, and Michael McDevitt, “Keeping the South China Sea in Perspective,” *The Foreign Policy Brief*, Brookings Institution, August 2014, p. 2.

Some of these islets under contestation over sovereignty are too small for habitation and some are even submerged under the sea, but according to international law, the effective control over them as a method of acquisition of sovereignty can give a claimant exclusive rights to energy resources in the area (the geographic extent of such maritime rights depending on the nature of the land in question, whether qualifying as an “island” or something less). As a result, some claimants such as

Vietnam and the Philippines have begun construction or have stationed troops on these small islets, even those without fresh water.

The situation in the South China Sea is particularly complicated by the rich resources that are thought to be in this area. According to the United Nations Convention on the Law of the Sea (UNCLOS) that was concluded in 1982 and came into force in 1994, coastal states can claim rights to resources based upon the EEZs that are limited to 200 nautical miles from the coastal line and continental shelves that extend to the “continental margin” or from “islands”; lesser land features do not merit such extensive EEZs.

In response to other claimants in the South China Sea, China has adopted a multifaceted strategy. First, China demonstrated its resolve to protect sovereignty claims and corresponding resources such as oil and fishing rights through domestic legalization. This has included China’s official rhetoric that Beijing was ready for “any escalation” and the patrols of fisheries administration ships in the contested area. On July 24, 2012, China established Sansha City on Yongxing Island, to be in charge of civil and administrative work of the Spratlys, Paracels, and the Macclesfield Bank. This is considered to be a reaction to Vietnam’s passage of its “law of the sea” in June 2012. In December 2013, China unilaterally issued new fishing regulations that require all vessels working in the South China Sea to have prior official approval from China, effective in January 2014.

The second strategy has been to block possible challenges in international meetings. In July 2010, the United States challenged China’s stance on the South China Sea issue at ASEAN Regional Forum (ARF), and with U.S. support, the claimants of the dispute from ASEAN have tried to persuade China to adopt a binding code of conduct that goes beyond the generalities of the 2002 Declaration of Conduct and to settle the issues peacefully. However, China advanced its cordial relationship with the 2012 ASEAN chair, Cambodia, to diplomatically prevent any conclusions concerning the South China Sea disputes at the ASEAN Foreign Ministerial Meeting that year. The participants therefore failed to reach a joint communique for the meeting.

The third strategy has been to flex muscle. In some cases, China upgraded its patrols from civilian (Coast Guard) vessels to People’s Liberation Army (PLA) warships. One such instance was a naval fleet of the PLA entering the so-called “West Philippine Sea,” (which China considers territorial waters) for patrol and training missions on February 1, 2013 – after the Philippines submitted its brief for international arbitration. The PLA again conducted military exercises with all three naval fleets in the Philippine Sea in October 2013. These two events constituted a

special example rather than common practice of PLAN. Meanwhile, land reclamation on the Fiery Cross Reef and other shoals controlled by China has continued at a fast pace, raising lots of concerns in the past few years. Vietnam and the Philippines are also building up land areas in their occupied shoals respectively, further complicating the situation.

On the other hand, China has reassured other ASEAN countries, including Brunei and Malaysia, that peace and development are still China's top priority for dealing with the South China Sea issue. Chinese Foreign Minister Yang Jiechi, during his meeting with ASEAN foreign ministers on July 11, 2012, reaffirmed China's sovereignty claims but suggested all parties should exercise self-restraint in accordance to the 2002 Declaration on the Conduct of the Parties in the South China Sea upheld by ASEAN claimants and China. In addition, China has repeatedly emphasized the importance for both China and ASEAN countries to cooperate economically to maintain the win-win status.

III. U.S. Proposal to Moratorium on Activities in Disputed Areas

The United States has continued to encourage all parties to seek peaceful resolution and to secure freedom of navigation in the South China Sea since the 1990s. In a recent article, Jeffrey Bader and his colleagues aptly summarized the national interest of the U.S. in the South China Sea. These interests include: freedom of navigation, freedom of overflight, unimpeded commerce, peaceful resolution of disputes and abstaining from coercion, conforming claims to the UN Convention on the Law of the Sea (UNCLOS), a collaborative diplomatic process to resolve territorial disputes, and negotiation of a Code of Conduct.¹ In other words, access to the region, development of a peaceful process for coping with differences, and negotiation of a code of conduct by regional disputants are essential to U.S. interests.

The U.S. longstanding position was once again revealed in official statements in 2014. In February, Assistant Secretary Daniel Russel testified before the House Committee on Foreign Affairs Subcommittee on Asia and the Pacific that China's provocative behavior and the lack of clarity in its claims have created uncertainty, insecurity and instability in this region.²

¹ Jeffrey Bader, Kenneth Lieberthal, and Michael McDevitt, "Keeping the South China Sea in Perspective," *The Foreign Policy Brief*, Brookings Institution, August 2014.

² Daniel R. Russel, "Maritime Disputes in East Asia," Testimony Before the House Committee on Foreign Affairs Subcommittee on Asia and the Pacific, Washington, DC, February 5, 2014, <http://www.state.gov/p/eap/rls/rm/2014/02/221293.htm>.

This position was soon restated in Deputy Assistant Secretary of State Michael Fuchs' speech at the Fourth Annual South China Sea Conference in July 2014.³ The U.S. has highlighted the importance for all parties involved to lower tensions by voluntarily freezing certain actions and activities that cause instability. Employing the 2002 Declaration on Conduct as the point of reference, the U.S. has sought to persuade parties involved to commit to not seizing features that another claimant occupied before the signing of the Declaration. Land reclamation is another source of tensions, and the U.S. has urged all claimants to identify which types of alterations are considered routine maintenance and can continue in accordance with the 2002 status quo, and which are provocations and should be suspended. Furthermore, all claimants should refrain from taking unilateral enforcement actions against other claimants' longstanding economic activities in disputed areas.

In August 2014, the U.S. Secretary of State John Kerry encouraged the claimants to respond to calls to freeze the status quo in the South China Sea in the ARF meeting in Naypyidaw, Myanmar. Although this proposal seemed to get a cool response from China and some other members of ASEAN, many countries in the Asia-Pacific region welcomed the idea or have seen it as an appropriate starting point for cooperation.

The U.S. proposal of a moratorium on activities in the disputed areas is essential to conflict management. Without taking sides on the sovereignty disputes, the U.S. has expressed the view that China's behavior has caused unnecessary trouble. In the meantime, it is fair to say that, like China, the Philippines and Vietnam have also been building up land areas on reefs and islets under their control in the past few years. Hence, before reaching a binding Code of Conduct, a settlement on moratorium seems reasonable to arrest the downward spiral of the security situation in the South China Sea. Nevertheless, Chinese Foreign Minister Wang Yi challenged the need for a moratorium, insisting at ARF that there has not been any problem regarding navigation in the South China Sea.

In addition, China and the other parties involved seem to be in a security dilemma, wherein each has the motive to act only to advance its own interest, but is aware of the potentially devastating outcomes if they refuse to cooperate due to traditional zero-sum thinking. It is unclear what China's real intention is for the South China Sea. China's fast pace of reclamation raises lots of suspicion in Asia-Pacific. The Fiery Cross Reef, for instance, is now four times larger than before and, although such reclamation activity does not affect the legal status of the reef under UNCLOS, it is expected to serve as an outpost for Chinese military and civilian activities in the

³ Michael Fuchs, "Remarks at the Fourth Annual South China Sea Conference," CSIS, Washington, DC, July 11, 2014, <http://www.state.gov/p/eap/rls/rm/2014/07/229129.htm>.

near future. China remains unclear as to the nature and definition of the nine-dash line, and its interpretation of permitted activities in EEZs is different from the majority of international community.

IV. Taiwan's Position as Peacemaker

Against this backdrop, the ROC government on Taiwan has continued to express willingness to work with other claimants in lowering tensions and ensuring stability across the disputed area, as evidenced by its position and behavior with regards to international law and practice.

First, Taiwan has continued to claim sovereignty over all land features in the South China Sea, though these claims are not recognized by many others. More important, the ROC's statement has become more defined and aligned with international law over time. In 1993, the ROC government issued Policy Guidelines for the South China Sea, stating:

In terms of history, geography, international law and facts, the Nansha Islands [Spratly Islands], Shisha Islands [Paracel Islands], Chungsha Islands [Macclesfield Islands], Tungsha Islands [Pratas Islands] are part of inherent territory of the Republic of China; the sovereignty over those islands belongs to the Republic of China. The South China Sea area within the historic water limit is the maritime area under the jurisdiction of the Republic of China, where the Republic of China possesses all rights and interests.⁴

Since 1997, the Philippines, Malaysia and Vietnam have made their claims and the ROC has continued to respond, based upon the 1993 Policy Guidelines and domestic laws such as the Law on the Territorial Sea and the Contiguous Zone of the Republic of China and the Law on the Exclusive Economic Zone and the Continental Shelf of the Republic of China, both of which were promulgated in 1998. In February 1999, Taiwan began to announce its baselines of territorial sea. In January 2000, Taiwan's Coast Guard Administration replaced the Marine Corps station in Taiping Island of the Spratly Islands as well as in the Pratas Islands, indicating Taiwan's political will to lower possible tensions in the disputed area. In December 2005, the Policy Guidelines for the South China Sea were suspended. This was a political decision by then-President Chen Shui-bian, and its implication is at least two-fold: one the one hand, the government committed to elevating the task force on the South

⁴ Please refer to Kuan-Ming Sun, "Policy of the Republic of China towards the South China Sea," *Marine Policy*, Vol. 19, No. 5 (1995), pp. 401-409.

China Sea affairs from the cabinet to the National Security Council. On the other hand, the Policy Guidelines originally indicated that Taiwan and mainland China can work together to exploit and share resources, as well as to conduct joint research in the South China Sea. This was not in the interest of President Chen and his political party.

In 2009, with the adoption of new domestic legislation in Vietnam and the Philippines, the situation began to heat up. Further, Vietnam and Malaysia filed a Joint Submission to the Commission on the Limits of the Continental Shelf of the UN on May 6, 2009. On May 12, 2009, the ROC MOFA stated:

In terms of either historical, geographical or international legal perspective, Tiao-Yu-Tai Islands and the Nansha Islands (Spratly Islands), Shisha Islands (Paracel Islands), Chungsha Islands (Macclesfield Islands), Tungsha Islands (Pratas Islands), as well as their surrounding waters, their respective sea bed and subsoil are the existent territories of the Republic of China. [That]the sovereignty of these archipelagoes belongs to our Government is an undeniable fact. The ROC enjoys and deserves all rights given by international law over the said islands and the surrounding waters, sea-bed and subsoil. Any sovereignty claims over or occupation of these islands under any reason or any means by any other country shall be null and void.⁵

A prominent international law professor in Taiwan, Kuan-Hsiung Wang notes, recent ROC statements have focused more on the islands and the surrounding waters rather than the whole water body enclosed by the U-shaped lines.⁶ Another point worth noting is Taiwan has put less emphasis on the concept of “historical waters.” This is a moderation of position regarding its claims in the South China Sea.

Second, Taiwan argues that sovereignty and sovereign rights belong to Taiwan, but Taipei is willing to negotiate with neighboring countries in accordance with international laws and norms. In practice, Taiwan effectively controls Taiping and Pratas Islands and does not see the body of water circled by the U-shaped line as the territorial sea. In other words, freedom of navigation in this area is an essential principle upheld by Taiwan.

In recent years, Taiwan has contributed to humanitarian aid and disaster relief (HA/DR) in this area. By one count, Taiwan’s cooperation in search and rescue (SAR)

⁵ Statement made by the ROC MOFA, 4 February 2009. A compilation of ROC’s official statements on the South China Sea issues from July 1969 to May 2009 is available at: <http://www.roc-taiwan.org/public/Attachment/2101618311971.doc>.

⁶ Kuan-Hsiung Wang, “The ROC’s Maritime Claims and Practices with Special Reference to the South China Sea,” *Ocean Development & International Law*, 41 (2010), pp. 237-252.

with Japan, the Philippines, and China has resulted in 45 cases and 398 persons rescued between January 2011 and August 2014. Taiwan's Coast Guard Administration conducts exercises with counterparts from other countries on a regular basis to maintain marine safety.

Third, Taiwan has demonstrated its political will to broker peace and stability. In the midst of tensions in the Asia-Pacific, Taiwan has become a relatively responsible stakeholder and assumed the role of peacemaker. In the case of the South China Sea, while maintaining that sovereignty over that area belongs to the ROC, Taiwan considers the negotiation of the Code of Conduct proposed by ASEAN countries to emphasize the importance of the freedom of navigation and other obligations under the UNCLOS as positive. However, at present, negotiations on this code of conduct have not been concluded due to political considerations between China and the ASEAN countries.

In August 2012, President Ma Ying-jeou of the ROC declared the East China Sea Peace Initiative (ECSPI) based on the concept that "while sovereignty is indivisible, resources can be shared." Therefore, the guiding principle of this initiative is "safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint exploration and development." The ECSPI as a mechanism is to be carried out in two separate but sequential phases. The first phase would involve three separate bilateral dialogues, while the second would involve a single trilateral negotiation process. By "replacing confrontation with dialogue" and "shelving controversies through consultations," the parties can examine the feasibility of jointly exploring and developing resources in the East China Sea. The fishery agreement reached between Taiwan and Japan in April 2013 is a reflection of the spirit of ECSPI, and was applauded by the U.S. Congress and Secretaries Chuck Hagel and John Kerry in 2014.

Taiwan's latest effort in elucidating its position regarding the dispute in the South China Sea focuses on linking the claims with international laws. In September 2014, President Ma stated that disputants should follow the principle of inter-temporal laws⁷ while coping with the South China Sea issue. In the meantime,

⁷ "Inter-temporal law" is a legal theoretical concept as expressed in the Island of Palmas Case in 1928. According to the arbitration, that means "a juridical fact must be appreciated in the light of the law contemporary with it." And "As regards the question which of different legal system prevailing at successive periods is to be applied in a particular case (the so-called inter-temporal law), a distinction must be made between the creation of rights and the existence of rights. The same principle which subjects the act creative of a right to the law in force at the time the rights arises, demands that the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law." In other words, the creation of the rights and the existence of the rights need

President Ma has been clear that Taiwan's claim is limited to land features and their adjacent waters. In an interview with the *New York Times*, President Ma opined that a basic principle in the Law of the Sea is "land dominates the sea" and thus "marine claims begin with land."⁸

With its claims in line with international laws and practice, Taiwan's efforts stand in stark contrast to China's behavior, especially when the latter has emphasized reclamation and upheld somewhat different interpretations of international norms and practices.

V. By Way of Conclusion

The freedom of navigation and other norms are essential to peace and stability in the South China Sea. The U.S. latest proposal to lower tensions and peacefully resolve disputes is worth exploring but requires cooperation from China and others.

To arrest the downward spirals resulting from great power politics in this disputed area, Taiwan's efforts can serve as a point of reference for regional great and middle powers alike. A serious discussion of peace initiatives such as ECSPI can function as a starting point for dialogue among parties. This is conducive to information sharing and can help set the foundation for further cooperation. It would be unrealistic for parties involved to expect to settle the sovereignty issues immediately, but dialogue is beneficial to each party if it aims to lower tensions. Once responsive and positive interactions can be established to deal with the South China Sea issue even if a Code of Conduct is yet to be produced, then we can expect to see a more institutionalized mechanism that can monitor and reward cooperation among parties involved in resource exploration.

For the U.S. and leading powers, this is the moment not only to encourage parties to talk, but also to demonstrate political will to facilitate the process. Negotiation in world politics is not an easy task, and if parties involved can begin to

to be distinguished, because the passage of time leads to significant changes subsequently in the international legal system. Here, President Ma argued that ROC's delimitation of the water area of the South China Sea actually predated the UN Convention on the Law of the Sea and was in accordance with international customs and practices in the 1940s. However, as to the existence of the rights, President Ma continued, ROC is willing to negotiate with all parties involved on how to share the resources in that area while shelving the disputes over sovereignty.

⁸ "Transcript of New York Times Interview with President Ma Ying-jeou of Taiwan," *New York Times*, October 31, 2014, http://www.nytimes.com/2014/11/01/world/asia/transcript-of-new-york-times-interview-with-president-ma-ying-jeou-of-taiwan.html?_r=0.

discuss the current situation and perhaps reach a consensus, the situation can be dramatically changed from the current dynamic.