
REGIONAL FOCUS & CONTROVERSIES

Taiwanese Position in the South China Sea Dispute: Before and After the Permanent Court of Arbitration Award*

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This note aims to explore the Taiwanese position before and after the Permanent Court of Arbitration Award regarding the South China Sea dispute. The findings suggest that the new Taiwanese Authority, led by Tsai Ing-Wen, has taken a slightly different approach toward the South China Sea, compared to Ma Ying-Jeou's administration. The new Taiwanese Authority makes no comment on the eleven-dash line claim, which, in turn, implies that its approach is closer to that of the American orientation. It is suggested that the South China Sea Peace Initiative, proposed by Ma Ying-Jeou's administration, should be followed by Tsai's administration. In addition, the recognition of the 1992 Consensus by Tsai's administration will encourage mainland China to consider Taiwan as one of the key players in future South China Sea negotiations.

Keywords

South China Sea Disputes, Taiwanese Position, Permanent Court of Arbitration Award

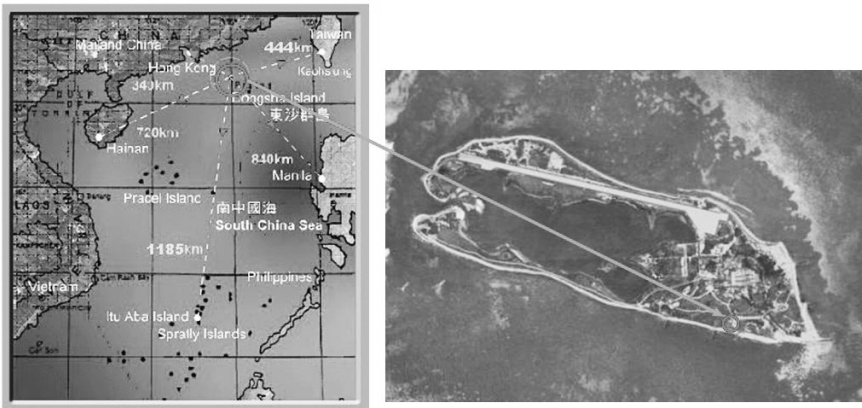
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1. Introduction

In recent years, the dispute concerning the South China Sea has intensified among the surrounding States. Finally, the release of the South China Sea Arbitration Award (hereinafter PCA Award)¹ on July 12, 2016, has caused the South China Sea dispute to reach new heights. The situation is further complicated due to the fact that the Taiwanese Authority² has also made claims over the South China Sea islands and related waters.³ Prior to 1949, China as a unified entity, occupied and exercised jurisdiction over the South China Sea islands. After 1949, however, the People's Republic of China (mainland China) and the Taiwanese Authority exercised their claims separately in the South China Sea. Taiwan has actually occupied two maritime features in the South China Sea, namely, Dongsha (also known as Pratas) and Taiping (also known as Itu Aba) as the largest ones of the Spratly.⁴

Figure 1: The Location Map of Dongsha and Taiping Islands⁵



¹ The South China Sea Arbitration Award before An Arbitral Tribunal Constituted under Annex VII to the UNCLOS between the Philippines and P.R. China (PCA Case N° 2013-19) [hereinafter Merits Award], ¶ 36, available at <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Award.pdf> (last visited on Nov. 1, 2016).

² This paper refers to the governmental representative on Taiwan as the 'Taiwanese Authority.'

³ Position Paper of ROC South China Sea Policy, available at <http://www.mofa.gov.tw> (last visited on Nov. 1, 2016).

⁴ Jianming Shen, *International Law Rules and Historical Evidences Supporting China's Title to the South China Sea Islands*, 21 HASTINGS INT'L & COMP. L. REV. 2 (1998).

⁵ Environmental Protection Administration Executive Yuan (Taiwan), available at <http://taqm.epa.gov.tw/dongyin-dongsha/images/b0101-2.jpg> (last visited on Nov. 1, 2016).

Since May 20, 2016, when the Democratic Progressive Party took over the leadership of the Taiwanese Authority, its position toward the South China Sea has been ambiguous; the new Taiwanese leader, Tsai Ing-Wen, has remained mute regarding the South China Sea policy. Tsai's policy will be influenced by one critical dilemma, in that Taiwan has a similar position to that of mainland China regarding the South China Sea, while aiming to pursue international standards of best practice.⁶

The 1992 Consensus – “One China, respective interpretations” – agreed to by both mainland China and the Taiwanese Authority, poses preconditions on Taiwan's foreign relations.⁷ Although both have been working towards “the gradual institutionalisation of the cross-strait relationship,” Taiwan does not have influential voice in the international community. It has been barred from participating in international and regional legal regimes and dialogues, including the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”). During the oral hearing of the merits phase of the arbitration, the Tribunal asked the Philippines about the legal status of Taiwan – whether ‘Taiwan’ can be differentiated from the People's Republic of China.⁸ In response, the Philippines stated that “there is only one China in the world,” which is the People's Republic of China.⁹ Before 1949, the actions of the then Republic of China government, (currently Taiwanese Authority) should be attributed to the government of People's Republic of China, since the new authority established in mainland China inherited all rights and obligations from the Republic of China.¹⁰ Since 1949, however, the actions of the authority in Taiwan cannot be attributed to the government of People's Republic of China.¹¹ As a result, the Tribunal's view, i.e., the actions of the Taiwanese Authority could be attributed to the government of People's Republic of China, has affected the outcome of the arbitration.

The primary purpose of this research is to explore the Taiwanese position

⁶ Jiye Kim, *Where Does Taiwan Stand on the South China Sea?*, NAT'L INTEREST, available at <http://nationalinterest.org/blog/the-buzz/where-does-taiwan-stand-the-south-china-sea-16099?page=2> (last visited on Nov. 1, 2016).

⁷ During their talks in Hong Kong on October 28-30, 1992, representatives of the mainland based Association for Relations across the Taiwan Straits (“ARATS”) and the Straits Exchange Foundation (“SEF”) in Taiwan, discussed the definition of the “One China Principle” in cross-Straits commercial exchanges. The ARATS offered the opinion that the definition can be left open to discussion, so long as the Taiwanese side acknowledges the “One China Principle.” After more rounds of discussions, a SEF representative proposed: the “One China Principle” shall be interpreted by each side in such a way as it sees fit. On November 16, 1992, the ARATS delivered an official notification to the SEF that its proposal would be respected and accepted and that the political meaning of ‘One China’ is not to be discussed further in cross-Straits commercial talks. In its reply on December 3, 1992, the SEF expressed agreement and the ultimate accord came to be commonly referred to as the ‘1992 Consensus.’

⁸ Hearing on the Merits and Remaining Issues of Jurisdiction and Admissibility, Nov. 24, 2015, at 98.

⁹ Hearing on the Merits and Remaining Issues of Jurisdiction and Admissibility, Nov. 25, 2015, at 6.

¹⁰ *Id.*

¹¹ *Id.*

before and after the PCA Award. Specifically, the author will examine the different positions of Taiwan corresponding to the PCA Award; how the current dilemma has shaped Taiwan's South China Sea policy so far and its likely evolution. This paper is composed of four parts including a short Introduction and Conclusion. Parts two and three will discuss Taiwanese positions over the South China Sea dispute before and after the PCA Award in a chronological manner.

2. Taiwanese Position before the PCA Award

On March 21, 2016, the Taiwanese Authority launched an official document, namely, the "Position Paper on ROC South China Sea Policy." It states that the South China Sea islands were first discovered, named, and used by ancient Chinese peoples and administered by successive dynasties.¹² Taiwan has claimed its 'ownership' over the South China Sea islands, based upon the principle of 'pacific occupation':¹³

... acquisition of territory that had been uninhabited or considered to be under no social or political control and thus belonging to no one – territory that is *terra nullius*. Title based on [pacific] occupation would be conditioned on effective occupation of such territory with the intention of acquiring sovereignty over it.¹⁴

The object of occupation is *terra nullius*, which indicates that the territory has never before been discovered by human beings or over which any prior sovereignty has been relinquished.¹⁵ According to classical international law prior to the 18th century, a State could enjoy the full sovereignty of *terra nullius*, if it met the requirement of 'discovery.'¹⁶ Since the 18th century, however, the dominant doctrine has been accepted by scholars based on State practice, stating that a country will only enjoy full sovereignty when it exercises effective occupation over the *terra nullius* and undertakes proper legislative, judicial or administrative action or performs its

¹² *Supra* note 3.

¹³ J. Charney & J. Prescott, *Resolving Cross-Strait Relations between China and Taiwan*, 94 AM. J. INT'L L. 453-77 (2000). See also TIEYA WANG, INTERNATIONAL LAW 国际法 171 (Law Press, 1995).

¹⁴ E. Beneniti, *Occupation, Pacific*, 7 MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 941-2 (2012).

¹⁵ *Super* note 4, at 7.

¹⁶ G. VON GLAHN, LAW AMONG NATIONS 311 (1986). See also R. JENNINGS & A. WATTS (EDS.), OPPENHEIM'S INTERNATIONAL LAW ch. 5. (9th ed. 1992); J. VERZIJL, W. HEERE & J. OFFERHAUS, INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE ch. 6 (1998).

sovereignty, called the ‘effectiveness principle.’¹⁷

As early as the 2nd Century B.C., during the ruling period of Emperor Wudi of the Han Dynasty, the Chinese began sailing in the South China Sea and found the islands in this maritime area through longer voyages.¹⁸ Up until then, the South China Sea islands had not been set foot upon, which meets the condition of occupation, whereby land discovered should be deemed *terra nullius*.¹⁹ According to the principle of ‘inter-temporal law,’²⁰ China should enjoy full sovereignty over the South China Sea islands, based on ‘discovery.’²¹

A series of activities conducted by earlier Chinese, during various dynasties - such as naming maritime features, exploitation, management, measurement, observation, inspection and stationing troops - shows the jurisdiction of Chinese, which is in compliance with the “principle of effective occupation.”²² Schwarzenberger and Brown maintain:

¹⁷ See JENNINGS & WATTS, *id.* at 686-9; WANG, *supra* note 13, at 171; *supra* note 4, at 10-1; Gaoqiang Cai & Yang Gao, *International Law Approach to Resolve the South China Sea Dispute* 论解决南海争端的国际法路径, 35 J. XIANGTAN U. 40 (2011); Dexin Gu, *The Application of Law of the Sea in the South China Sea Dispute* 南海争端中的海洋法适用, 6 STRATEGY & MGMT. 97 (1995); Xiaoxuan Zhang, *The South China Sea Dispute between China and the Philippines and Legal Protection of Maritime Sovereignty* 中菲南海争端与海洋主权的法律保护, 5 THEORETICAL CIRCLES 54 (2010).

¹⁸ Jia Yu, *International Legal Theory behind the South China Sea Issues* 南海问题的国际法理, 6 CHINA LEGAL SCI. 26-35 (2012). See also *supra* note 3.

¹⁹ Gu, *supra* note 17, at 97. See also Xiaoxuan Zhang, *South China Sea Dispute between China and the Philippines and Legal Protection of Maritime Sovereignty* 中菲南海争端与海洋主权的法律保护, 5 THEORY HORIZON 54 (2010); Cai & Gao, *supra* note 17, at 39.

²⁰ ‘Inter-temporal law’ was first proposed by Huber, the arbitrator in the Island of Palmas Arbitration case in 1928. It indicates that: “A juridical fact must be appreciated in the light of the law contemporary with it and not of the law in force at the time when a dispute with regard to it rises or falls to be settled.” Huber further explained when there is a sovereignty dispute it should be determined whether there is a continued existence of right at the time dispute rises, according to the progressed international law. See M. Huber, *The Island of Palmas Arbitration case*, 2 RIAA 829 & 845 (1928). After the *Island of Palmas Arbitration case*, ‘Inter-temporal law’ becomes a universally recognized principle of international law. Therefore, sovereignty of the South China Sea maritime features should be determined according to the principles of international law at the time, i.e., “Acquisition of Property by Discovery” principle. See Lingling Sun, *Analysis of the Sovereignty of the Diaoyu Islands from the Perspective of International Law* 从国际法角度分析钓鱼群岛主权问题, 2 J. JAPANESE STUD. 140-1 (2004). The generally accepted view is that the validity of an acquisition of territory depends on the law in force at the moment of the alleged acquisition. See also P. MALANCZUK, *AKHURST’S MODERN INTRODUCTION TO INTERNATIONAL LAW* 155-6 (7th ed. 1997).

²¹ Zhang, *supra* note 17, at 55.

²² Early Chinese had long used the monsoons to their advantage, relying on them to conduct economic activities and government patrols in the South China Sea. During the era of the Three Kingdoms (184-280), Xie Cheng, in his book *History of the Later Han Dynasty*, wrote that people in Western Han period utilized the monsoons to establish a navigation route between ancient China and Indochina that passed through the Rising Sea (now the South China Sea). Later, Eastern Han dynasty (25-220) officials also took advantage of the monsoons to patrol the South China Sea when Jiaozhi (an ancient name for Vietnam) was governed by ancient China. For details, see Lihai Zhao, *China’s Indisputable Sovereignty over the South Sea Islands from International Law* 从国际法看我国对南海诸岛无可争辩的主权, 3 J. PEKING UNIVERSITY (Philosophy and Social Sciences) 32-42 (1992).

It is worth noting that the effective occupation or control is a comparative concept, which means its criterion varies depending upon the nature of the *terra nullius*, involving its size, geographical location, climatic conditions and whether there is human inhabitation.²³

It is much easier to effectively occupy an uninhabited land than a primitive tribal land because a State's troops may be stationed in the latter, while not in the former.²⁴ Take the *Clipperton Island Arbitration*²⁵ between France and Clipperton Island, the *Eastern Greenland case*²⁶ between Norway and East Greenland Denmark and *Western Sahara* advisory opinion of the International Court of Justice as examples.²⁷ All those cases reflect a common characteristic that the criterion of effective occupation in international law for sparsely populated or uninhabited *terra nullius*, is not significant. Just a tiny or symbolic activity of sovereignty declaration will enable a country to enjoy full sovereignty over *terra nullius*, without continuous exercise of sovereign acts. There are a large number of sparsely populated or uninhabited islands in the South China Sea. According to ancient literature and official records, the South China Sea Islands were long ago discovered, named, and used by the ancient Chinese, and incorporated into the nation's naval defense and maps by the government.²⁸

From the 1830's until the end of the Second World War, the South China Sea islands were invaded and occupied by France and Japan. In 1946, the Chinese (ROC) Government took over the Spratly and the Paracel islands under the 1943 Cairo Declaration,²⁹ and the 1945 Potsdam Declaration,³⁰ and re-erected a sovereignty monument on them.³¹ In addition to erecting stone markers and stationing military personnel on the main islands, the then ROC Government issued revised names for the South China Sea islands, as well as the Location Map of the South China Sea Islands, in December 1947. No objections were raised by neighbouring States at that time. Article 2 of the 1951 Treaty of Peace between the Republic of China (Taiwan)

²³ G. SCHWARZENBERGER & E. BROWN, A MANUAL OF INTERNATIONAL LAW 97 (1976).

²⁴ M. AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW 143 (1984).

²⁵ *Clipperton Island Arbitration* (Fr. v. Mex.), 2 R.I.A.A. 1105, 26 Am. J. Int'l L. 390 (1931).

²⁶ *Legal Status of Eastern Greenland Case* (Den. v. Nor.), 1933 P.C.I.J. (Ser. A/B) No. 53 (Apr. 5).

²⁷ *The Status of Western Sahara, Advisory Opinion*, 1975 I.C.J. Rep. 12, 43 (Oct. 16), available at <http://www.icj-cij.org/docket/files/61/6195.pdf> (last visited on Nov. 1, 2016).

²⁸ *Supra* note 3.

²⁹ Final text of the Communiqué, Dec. 1, 1943, 3 Bevans 858.

³⁰ Proclamation by the Heads of Governments, United States, China and United Kingdom, July 26, 1945, ¶ 8, 3 Bevans 1204.

³¹ Zhao, *supra* note 22, at 53.

and Japan stipulated that: “Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands.”³² Moreover, the Exchange of Notes No. 1 of the 1951 Treaty of Peace stipulated that: “The terms of the present Treaty shall, in respect of the Republic of China, be applicable to all the territories which are now, or which may hereafter be, under the control of its Government.”³³ Thus, sovereignty over the Spratly and Paracel maritime features returned to Taiwan under international law.

In practice, the Taiwanese Authority exercised jurisdiction over the South China Sea, *e.g.*, the “Pratas garrison area” and the “Spratly garrison district,” which were set up in 1956. Ships were dispatched to inspect the Spratly, in both 1963 and 1966. Spratly islands were hosted by the Kaohsiung City of Taiwan in 1980, and a ‘district office’ was also set up.³⁴ All these facts satisfy the elements of the “principle of occupation,” as discussed above. Recently, the Taiwanese Authority seems to have adjusted the focus of its claim. Taiwanese claim has focused more on the islands, their relevant waters and continental shelf, rather than the whole body of waters in the U-shaped line. In December 2005, the Taiwanese Authority suspended its claim to the entire waters within the U-shaped line, while still advocating its ownership over the land features within the line.³⁵

In order to provide a meaningful solution for settling disputes, the Taiwanese Authority proposed the South China Sea Peace Initiative on May 26, 2015.³⁶ The Initiative urges parties concerned, to exercise self-restraint and maintain the *status quo* of peace and stability in the South China Sea.³⁷ While consistently upholding the principles of safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint development, Taiwan is willing to work with other parties to develop resources in the South China Sea. Taiwan is also prepared to actively participate in related dialogue and cooperation mechanisms to settle disputes through peaceful means, while maintaining regional peace and promoting regional development.³⁸

Meanwhile, the former leader of Taiwan, Ma Ying-Jeou led a delegation to Taiping on January 28, 2016. He inspected the wharf, airstrip, lighthouse, farm,

³² Treaty of Peace with Japan, Sept. 8, 1951, 3 U.S.T. 3169; 136 U.N.T.S. 45.

³³ *Supra* note 3.

³⁴ *Id.*

³⁵ Yann-Huei Song, *Legal Status of Taiping Island under the United Nations Convention on the Law of the Sea—Taiwan’s View*, 3 KOREAN J. INT’L & COMP. L., 115-38 (2015); Jiye Kim, *Where Does Taiwan Stand on the South China Sea?*, NAT’L INTEREST, May 7, 2016, available at <http://nationalinterest.org/blog/the-buzz/where-does-taiwan-stand-the-south-china-sea-16099?page=2> (last visited on Nov. 1, 2016).

³⁶ *Supra* note 3.

³⁷ *Id.*

³⁸ *Id.*

hospital, post office, freshwater wells, Guanyin Temple and solar power facilities. Ma Ying-Jeou then announced the South China Sea Peace Initiative Roadmap, in order to show the way forward toward peace in the region.³⁹ He took ‘Taiping’ as one of the starting points for implementing the peace initiative, transforming it as a platform for peace and rescue operations, as well as an ecologically friendly and low-carbon island.⁴⁰ Ma stressed that the roadmap will make Taiping one of the first ports of call for the implementation of the South China Sea Peace Initiative and offered a viable path for shelving disputes, integrated planning and zonal development.⁴¹ The Roadmap’s three phases of progress are as follows:

In the short-term, jointly shelving disputes and launching multilateral dialogue and consultations; integrated planning in the midterm; and over the long-term, the establishment of a mechanism for zonal development through bilateral or multilateral cooperation which will, in turn, lead to fair and reciprocal win-win results.⁴²

3. Taiwanese Position after the PCA Award

Following the PCA Award, the Presidential Office spokesman Alex Huang has stated: “We hereby stress that the Republic of China [ROC] enjoys rights as afforded by international law and the UN Convention on the Law of the Sea over South China Sea islands and their relevant waters.”⁴³ Rejecting the verdict of the Tribunal, Foreign Minister of Taiwan David Tawei Lee stated it was totally ‘unacceptable.’⁴⁴ A day after the PCA Award, the Cabinet spokesperson, Tung Chen-Yuan stated: “[Taipei will] strengthen its Coast Guard patrols in order to protect its fishermen [on Taiping Island].”⁴⁵ An 1800-ton *Wei Hsing* patrol vessel has been in the area since July 10, 2016, for the same purpose. On July 13, 2016, the Taiwanese Authority also sent a La Fayette-class Navy frigate to the area, on a patrol mission. Before it set sail for the island, the current leader, Tsai Ing-Wen addressed the crew on the vessel:

³⁹ See Ma Ying-Jeou’s speech on Taiping, available at <http://www.aisixiang.com/data/96777.html> (last visited on Nov. 1, 2016).

⁴⁰ *Supra* note 3.

⁴¹ *Id.*

⁴² *Id.*

⁴³ R. Rajagopalan, *South China Sea Is Taiwan on the right path?*, July 16, 2016, ORF, available at <http://www.orfonline.org/expert-speaks/south-china-sea-is-taiwan-on-the-right-path> (last visited on Nov. 1, 2016).

⁴⁴ *Id.*

⁴⁵ *Id.*

“This patrol mission will demonstrate our determination to protect our country’s interests.”⁴⁶

In addition, the Taiwanese Authority launched an official statement (ROC Position on the South China Sea Arbitration). It states that the award is completely unacceptable and the tribunal’s decisions have no legally binding force on the Taiwanese Authority, for the following reasons:

1. In the text of the award, the ROC [Republic of China] is referred to as “Taiwan Authority of China.” This inappropriate designation is demeaning to the status of the ROC as a sovereign state.
2. Taiping Island was not originally included in the Philippines’ submissions for arbitration. However, the tribunal took it upon itself to expand its authority, declaring ROC-governed Taiping Island, and other features in the Nansha (Spratly) Islands occupied by Vietnam, the Philippines, and Malaysia, all to be rocks that “do not generate an exclusive economic zone.” This decision severely jeopardises the legal status of the South China Sea Islands, over which the ROC exercises sovereignty, and their relevant maritime rights.

That the ROC is entitled to all rights over the South China Sea Islands and their relevant waters in accordance with international law and the law of the sea is beyond dispute. The arbitral tribunal did not formally invite the ROC to participate in its proceedings, nor did it solicit the ROC’s views. Therefore, the award has no legally binding force on the ROC.

The ROC government reiterates that the South China Sea Islands are part of the territory of the ROC and that it will take resolute action to safeguard the country’s territory and relevant maritime rights.

The ROC government urges that disputes in the South China Sea be settled peacefully through multilateral negotiations, in the spirit of setting aside differences and promoting joint development. The ROC is willing, through negotiations conducted on the basis of equality, to work with all States concerned to advance peace and stability in the South China Sea.⁴⁷

⁴⁶ *Id.*

⁴⁷ Public Diplomacy Coordination Council, ROC Position on the South China Sea Arbitration, No. 002, July 12, 2016, available at http://www.mofa.gov.tw/en/News_Content.aspx?n=0E7B91A8FBEC4A94&sms=220E98D761D34A9A&s=5B5A9134709EB875 (last visited on Nov. 1, 2016).

Recent statements from the Taiwanese Authority, as well as military deployments, must be particularly pleasing to Beijing. Mainland China may have found a perfect ally in raising tempo concerning these territorial claims and in rejecting the legal verdict.⁴⁸ In comparison to the previous statement which specifically indicated that the Paracel, the Macclesfield Bank,⁴⁹ the Pratas, and the Spratly Islands are part of its territory, the Democratic Progressive Party leadership is maintaining an ambiguous position toward the South China Sea question. Tsai Ing-Wen has not even mentioned the South China Sea Peace Initiative proposed by the Ma Ying-Jeou administration. It appears that the Taiwanese Authority had made a political call not to assert those claims or talk about them openly. Tsai's administration may not invoke historical rights as a foundation for legal claims in the disputed seas, observing statements given by the Taiwan Ministry of Foreign Affairs. It has not even mentioned the eleven-dash line. Tsai's administration has been struggling to maintain sufficient communication channels and establishing some middle ground between her pro-independence Democratic Progressive Party and Beijing.⁵⁰

Taipei's position does not appear to indicate any desire to improve ties with mainland China by supporting it on the South China Sea issue, possibly as a consequence of the perceived greater nationalism of the new government. This makes Taipei's reaction particularly problematic, since these actions will anger the other claimant States, and possibly lose some friends that it may need in the long term. The Taiwanese Authority is willing to approach territorial issues from a pragmatic and diplomatic perspective, rather than excessive nationalistic sentiment. Ma Ying-Jeou's earlier call to approach the sovereignty and territorial issues from a political and economic perspective seemed judicious. If Taipei were to continue with this new, apparently more nationalist approach, it could get further isolated. Tsai's administration might also recognize that these developments are taking place at a time when mainland China has become assertive under the nationalist leadership of Xi Jinping. The apparent change of disposition in Taiwan has not been particularly welcomed by Beijing, and "cross-strait relations" are not at their best. Taiwan, therefore, has to take extra care not to isolate itself from the larger Asian community.⁵¹

It is also noteworthy that Taiwan's special ties with the US have provided a

⁴⁸ *Supra* note 43.

⁴⁹ Kuen-Chen Fu, *Insight into the South China Sea Arbitration - The U-Shaped Line is the Invitation for further Negotiation* 南海仲裁看门道—U形线其实是谈判的邀请, CHINA TIMES (Published in Taiwan), July 12, 2016, at 10.

⁵⁰ Jeremy Chiang, *Taiwan's South China Sea Dilemma*, Australian Institute of International Affairs, available at http://www.internationalaffairs.org.au/australian_outlook/taiwans-south-china-sea-dilemma (last visited on Nov. 1, 2016).

⁵¹ *Supra* note 43.

continued guarantee of security for Taiwan. Taiwan's dispute over the South China Sea with American allies in the region, however, has created a clash of interests between the US and Taiwan. The US disagrees with Taiwan on its active involvement in the South China Sea dispute. It openly criticized Ma Ying-Jeou's visit to Taiping Island. Although President Obama has actively paid attention to the Asia-Pacific region, the American approach toward Taiwan regarding the South China Sea seems inconsistent and unclear.⁵² On the one hand, the US wants to manage the current dispute peacefully under international law, so that it supports Taiwan's participation in regional negotiations and cooperative activities. On the other hand, the US is somewhat reluctant to directly appeal to China to encourage Taiwan's participation, given Beijing's tendency to regard it as meddling with suspicion. The US involvement in this regard may thus be counterproductive.⁵³

4. Conclusion

The author would suggest the current administration of Taiwan to follow Ma Ying-Jeou's South China Sea Peace Initiative. Promoting these tenets will help demonstrate to other players that Taiwan is willing and able to constructively engage in managing the dispute. This can be done in consistent with the "One-China Policy."

Taiwan has participated in organisations and meetings as a territorial or governmental representative. It can thus be invited to the Code of Conduct negotiations, as an observer or guest. Taiwan could also declare that it will abide by the terms of the Code of Conduct, without full membership. Cooperative activities between claimants can be negotiated and agreed to between the agencies directly involved, rather than through formal treaties. Those include fishery resources management, marine environmental protection, marine scientific research, safety of navigation and communication at sea, search and rescue operations, and combating transnational crime.⁵⁴

In order to carve out a modest political place for itself in the South China Sea, Taiwan should clarify its maritime claims concerning the islands over which it

⁵² Kameer Kasim, *Taiwan's Perspective on the South China Sea Dispute*, available at http://retiredanalyst.blogspot.jp/2016_03_26_archive.html (last visited on Nov. 1, 2016).

⁵³ Lynn Kuok, *Taiwan's Evolving Position in the South China Sea and Why Other Actors Should Take Notice*, ASIA MARITIME TRANSPARENCY INITIATIVE, available at <https://amti.csis.org/taiwans-evolving-position-in-the-south-china-sea-and-why-other-actors-should-take-notice> (last visited on Nov. 1, 2016).

⁵⁴ *Id.*

claims sovereignty, in accordance with the UNCLOS and under international law. An important consideration in this respect is to interpret the eleven-dashed line as a claim to the wide expanse of water enclosed within it. However, it would not be particularly welcomed by the US - its single most important ally. Although Taiwan should also clarify the meaning of 'relevant waters,' it should not expressly abandon the dashed line claim. While important, Taiwan's interests in the South China Sea should be second to the maintenance of stable relations with mainland China. If expressly abandoning the dashed line claim, mainland China would be dissatisfied, since it would undermine the legitimacy of Chinese claim to the dashed line enclosing historic rights within that maritime area.⁵⁵ It is also suggested that supporting Taiwan's participation in cooperative activities should also be in keeping with the China's dual-track approach to the dispute, seeking one-on-one negotiations on sovereignty issues and multilateral arrangements to promote peace and stability in the South China Sea. Peace and stability in the South China Sea must be promoted by all important actors regardless of their legal status. Bringing Taiwan into the fold will help demonstrate China's sincerity in seeking a peaceful solution for the dispute. This can only be realized based on Tsai's administration recognition of the 1992 Consensus.

⁵⁵ *Id.*