




# **Tides of Change:**

## **Taiwan's evolving position in the South China Sea**

And why other actors should take notice

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# Executive Summary

Taiwan, along with China and four Southeast Asian countries, is a claimant in the South China Sea, though this fact is sometimes overlooked. On paper, Taiwan and China share the same claims. The dashed or U-shaped line encapsulating much of the South China Sea appears on both Taiwanese and Chinese maps.

Neither China nor Taiwan has officially clarified the meaning of the dashed line which could be seen as making a claim to the wide expanse of water enclosed within the dashed line or (merely) to the land features contained therein and to maritime zones made from them in accordance with the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and international law.

In the past year, Taiwan has taken small but significant steps toward clarifying that its claims are from land and in accord with UNCLOS and international law. It has also adopted a more conciliatory position by advocating that its East China Sea Peace Initiative, which calls on parties to shelve disputes and promote joint exploration and development in the East China Sea (where China, Taiwan and Japan have competing claims), be applied in the South China Sea as well.

These movements are significant in that they could have a stabilizing effect in the South China Sea.

The People's Republic of China (PRC) inherited its claims from the Republic of China (ROC) after the Chinese civil war. Thus, the ROC's interpretation of its claims is relevant to the PRC's claims. Notably, a more limited reading of the claims would not be inconsistent with China's official position as set out in its 2009 and 2011 statements to the United Nations.

Taiwan's overtures have largely, however, been ignored. At the root of this is China's "one-China" principle, which has cast a long shadow over Taiwan. This paper argues that in order to carve out a modest political space for itself in the South China Sea, Taiwan should:

1. Clarify that its claims accord with UNCLOS and international law without expressly eschewing the dashed line.
2. Tread carefully on any public education on Taiwan's claims in the South China Sea to avoid unleashing nationalist sentiment, which would limit policy options.
3. Continue promoting President Ma Ying-jeou's plan for the East China Sea in the South China Sea.
4. Push behind the scenes for participation in code of conduct negotiations and in cooperative activities involving all claimants.

5. Provide evidence that Taiping Island is an “island” capable of sustaining human habitation or economic life under UNCLOS Article 121.

The paper also argues that all parties who have an interest in better management of the dispute and a more peaceful region—including China—have an interest in supporting Taiwan’s inclusion in negotiations and activities relating to the South China Sea. This can be done in ways consistent with China’s one-China principle. Proper management of the dispute necessarily involves Taiwan: Taiwan controls the largest land feature in the South China Sea, its vessels regularly patrol the area, and it has one of the biggest fishing industries in the Pacific.

For China, supporting Taiwan’s participation in cooperative activities would support both Beijing’s desire for better cross-strait relations, and its dual-track approach to the South China Sea dispute, which seeks one-on-one negotiations on sovereignty issues and multilateral arrangements within the region to promote peace and stability in the South China Sea.

The paper lays the foundation for these arguments by taking a closer look at calls within the United States for Taipei to “clarify” or “abandon” its dashed line; examining Taiwan’s claims in and evolving position on the South China Sea; and highlighting salient Chinese responses and the broader context within which Taiwan operates as a means by which to gauge the viability of various courses of action.

# Tides of Change:

## Taiwan's evolving position in the South China Sea

### And why other actors should take notice

Taiwan (also known as the Republic of China), along with China (the People's Republic of China) and four Southeast Asian countries—the Philippines, Vietnam, Malaysia and Brunei—is a claimant in the South China Sea. But even its most important ally, the United States, appears to sometimes overlook this fact. As recently as in December 2013, a senior U.S. State Department official equivocated on whether Taiwan was a claimant in the South China Sea, labeling the question of whether Taiwan was a claimant an “interesting theological” one.<sup>1</sup>

On paper, Taiwan and China share the same claims. The dashed or U-shaped line encapsulating much of the South China Sea appears on both Taiwanese and Chinese maps. The meaning of the dashed line is ambiguous: it could be seen as making a claim to the wide expanse of water enclosed within the dashed line or (merely) to the land features contained therein and to maritime zones made from them in accordance with the 1982

United Nations Convention on the Law of the Sea (UNCLOS) and international law. Neither Taiwan nor China has officially clarified the dashed line's intended meaning.

In the past year, however, Taiwan has taken small but significant steps toward clarifying that its claims are from land and in accord with UNCLOS and international law. It has also adopted a more conciliatory position by advocating that its East China Sea Peace Initiative, which calls on parties to shelve disputes and promote joint exploration and development in the East China Sea (where China, Taiwan and Japan have competing claims), be applied in the South China Sea as well. Under UNCLOS, a coastal state is entitled to a territorial sea extending up to 12 nautical miles from its coast, as well as an exclusive economic zone (EEZ) extending up to 200 nautical miles over which it has sovereign rights to explore, exploit, conserve and manage natural resources; territorial seas and EEZs are measured from land territory.<sup>2</sup> An

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<sup>1</sup> “Background Briefing En Route Ho Chi Minh City, Vietnam,” special briefing, Office of the Spokesperson, Senior State Department Official, en route Ho Chi Minh City, Vietnam, December 13, 2013, <http://www.state.gov/r/pa/prs/ps/2013/218719.htm>.

<sup>2</sup> UNCLOS Articles 3, 56 and 57.

“island,” a naturally formed area of land, surrounded by water, which is above water at high tide, is also entitled to its own territorial sea. It is entitled to an EEZ if it can sustain human habitation or economic life of its own.<sup>3</sup>

The clarification of Taiwan’s claims, though not (as yet) formalized, is significant in that it could have a stabilizing effect in the South China Sea. The PRC inherited its claims from the ROC after the Communist Party defeated the ROC government in a civil war. Thus, the ROC’s interpretation of its claims is relevant to the PRC’s claims. Notably, a more limited reading of claims would *not* be inconsistent with China’s official position as set out in its 2009 and 2011 statements to the United Nations, which are discussed below.

Taiwan’s recent moves and approach notwithstanding, very little has been made of the role Taipei can play in contributing to better management of the dispute and overall stability in the South China Sea. At the root of this is China’s “one-China” principle, namely, “there is only one China in the world, Taiwan is a part of China and the government of the PRC is the sole legal government representing the whole of China.”<sup>4</sup> The principle has cast a long shadow over Taiwan and has resulted in Taiwan’s exclusion from regional negotiations and forums relating to the South China Sea, such as negotiations on a code of conduct, as well as cooperative activities with claimants.

The Association of Southeast Asian Nations (ASEAN) and its member states are worried about being seen to fall foul of China’s one-China principle. Moreover, they see little benefit in including Taiwan in the fray. To them, Taiwan’s claims are

virtually indistinguishable from China’s and there are lingering concerns about cross-strait co-operation to defend claims in the South China Sea, despite clear statements from Taipei that this is out of the question.

China is cautious about Taiwan’s involvement in the South China Sea as it regards this as a slippery slope toward recognition of ROC sovereignty. Beijing also appears to have linked flexibility on Taiwan’s regional and international participation to Taipei demonstrating a greater willingness to discuss the island’s political relationship with the mainland. Till then, China’s default position is to stand firm against it. This, however, is counterproductive insofar as it is resented by Taiwan and undermines cross-strait relations.

Proper management of the South China Sea dispute *necessarily* involves Taiwan. *It can also be undertaken without falling foul of China’s one-China principle.* Since 1956, the ROC has controlled Taiping Island, which is also known as Itu Aba Island, the South China Sea’s largest land feature. Taiping Island is significant in that if there were any feature in the South China Sea capable of generating an EEZ of up to 200 nautical miles, this would be it, given its size and water source. An EEZ from Taiping Island would, in turn, create a series of overlapping claims. In addition, Taiwan operates one of the largest fishing industries in the Pacific. Failing to include the ROC in any fisheries agreement would undermine the efficacy of such an agreement. Taiwan also has coast guards stationed on Taiping Island and its vessels regularly patrol the South China Sea. In the past year, Taipei considered (then rejected) the possibility of deploying missiles and stationing military vessels

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<sup>3</sup> UNCLOS Article 121.

<sup>4</sup> Taiwan Affairs Office of the State Council PRC, “White Paper—The One-China principle and the Taiwan issue,” undated, [http://www.gwytb.gov.cn/en/Special/WhitePapers/201103/t20110316\\_1789217.htm](http://www.gwytb.gov.cn/en/Special/WhitePapers/201103/t20110316_1789217.htm).

on Taiping.<sup>5</sup> Accordingly, Taiwan's exclusion from code of conduct negotiations and any confidence building measures opens the door to misunderstanding, and increases the risk of conflict in the tinderbox that is the South China Sea.<sup>6</sup>

Further, while Beijing generally regards Taipei's involvement in regional and international life as a *function* of overall cross-strait relations, that is, the better relations are the more likely China is to allow Taiwan's involvement,<sup>7</sup> Taipei's regional and international participation is an important *means* by which ties between Taiwan and China can be improved.

This paper takes a closer look at Taiwan's claims and its role in the South China Sea. While some in the United States have made calls for Taiwan to clarify its position on the dashed line, the issue of Taiwan and the South China Sea has largely not gotten the attention it merits. This paper seeks to rectify this and is structured as follows. First, it takes a closer look at calls within the United States for Taipei to "clarify" or "abandon" its dashed line. Second, it examines Taiwan's claims in and evolving position on the South China Sea. In the third and fourth sections, it highlights salient Chinese responses and examines the broader context within which Taiwan operates as a means by which to gauge the viability of various courses of action.

Fifth, it makes recommendations on how Taipei can seek to maximize its political space with respect to the South China Sea, while allaying China's concerns. The paper concludes by examining why and how other actors, including China, should support greater Taiwanese participation in the South China Sea, rather than almost reflexively refusing to consider it.

## Calls in the United States for Taiwan to "clarify"/"abandon" the dashed line

Since early 2014, U.S. scholars or ex-officials in their private capacity have called for Taiwan to "clarify" or "abandon" the dashed line. Publicly, the U.S. administration has remained silent on this issue; privately, however, it too has "encouraged" Taiwan (along with other claimants) to clarify its claims in the South China Sea.<sup>8</sup>

In February 2014, in testimony before the House Committee on Foreign Affairs Subcommittee on Asia and the Pacific, Assistant Secretary of State Daniel Russel urged China to "clarify or adjust its nine-dash line claim to bring it in accordance with the international law of the sea."<sup>9</sup> Following Russel's testimony, former principal advisor to President Barack Obama on Asia and current senior fellow at the Brookings Institution, Jeffrey Bader, urged the United States to discuss with *Taiwan*

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<sup>5</sup> Claudia Liu & Bear Lee, "Defense Ministry: no plans to deploy missiles on Taiping Island," *Focus Taiwan*, November 6, 2014, <http://focustaiwan.tw/news/aip/201411060033.aspx>.

<sup>6</sup> On the need for more confidence-building measures, see Yann-Huei Song, "Cross-strait interactions on the South China Sea issues: A need for CBMs," *Marine Policy*, 29 (2005), 265-280, at 265-266. In this paper, I focus on the need to include Taiwan in code of conduct negotiations and cooperative activities as a means to contribute to stabilizing the situation in the South China Sea. For a broader discussion on Taiwan's exclusion from multiple maritime organizations and the problems this gives rise to, see Bonnie Glaser and Jacqueline Vitello, "Taiwan's marginalized role in international security: Paying a price," report of the Center for Strategic and International Studies (CSIS Freeman Chair in China Studies), January 2015, 16-18, <http://csis.org/publication/taiwans-marginalized-role-international-security>.

<sup>7</sup> See, for example, Yann-huei Song, "Recent developments in the South China Sea: Taiwan's policy, response, challenges and opportunities," paper submitted for the "Managing tensions in the South China Sea" conference, CSIS, June 5-6, 2013.

<sup>8</sup> Private conversation with Taiwan officials. At their request, the location and date of our meeting has been omitted. Conversation with Taiwan expert from the United States, Boao, Hainan, China, March 29, 2015.

<sup>9</sup> "Maritime disputes in East Asia," Daniel Russel, Assistant Secretary, Bureau of East Asian and Pacific Affairs, 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>

whether it could “clarify” its position on the nine-dash line.<sup>10</sup> As Bader noted during an interview, “if the inventors of the position (i.e., Taiwan) clarify the dashed line to mean something different from what the PRC is now saying, that will ultimately undermine the PRC’s claims to sovereignty or historic waters up to the dashed line.”<sup>11</sup>

Bader’s call for Taiwan to clarify its position on the dashed line was motivated by a desire for the United States to take a principled position: “you go at anyone who is asserting claims that are contrary to UNCLOS. ... Taiwan’s position is as expansive as the PRC’s position in principle.” It was also prompted by earlier conversations with PRC counterparts who, when pressed on clarifying the dashed line, made what Bader regards as a tactical argument that the PRC could not without impunity take a position that was less nationalistic than the ROC.<sup>12</sup>

Two months after Bader’s piece was published, Bonnie Glaser, a senior adviser for Asia at the Center for Strategic and International Studies (CSIS), reiterated the call for Taiwan to clarify its position on the dashed line on the basis that the following benefits would be reaped: first, it reminds the other claimants and the international

community that Taiwan has important interests at stake in the South China Sea and is willing to be a constructive player in managing the disputes; second, ASEAN might respond to Taiwan’s positive action by supporting its inclusion in discussions with Beijing on establishing a code of conduct for the South China Sea; and third, it puts pressure on Beijing to also clarify its maritime claims in the South China Sea.<sup>13</sup> To these, one might also add that it could help reassure ASEAN claimants that Taiwan will not cooperate with China to defend territorial and maritime claims. This was of particular concern to ASEAN claimants during the late 1980s, when Taiwan indicated a military preparedness to help China defend its islands.<sup>14</sup> As recently as in May 2014, China publicly proposed cross-strait cooperation, though Taipei was quick to reject this in no uncertain terms.<sup>15</sup>

A former director of the American Institute in Taiwan, William Stanton, has also made repeated calls for Taiwan to “abandon” the dashed line.<sup>16</sup> These calls struck a raw nerve and various news outlets in Taiwan carried an article from the Central News Agency declaring, “Taiwan rejects advice to South China Sea claims.”<sup>17</sup> Another carried the headline, “Academics slam US experts’ maritime ideas.”<sup>18</sup> An interview with the AIT spokes-

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<sup>10</sup> Jeffrey Bader, “The U.S. and China’s nine-dash line: Ending the ambiguity,” opinion, Brookings Institution, February 6, 2014, <http://www.brookings.edu/research/opinions/2014/02/06-us-china-nine-dash-line-bader>.

<sup>11</sup> Interview with Jeffrey Bader, Brookings Institution, February 12, 2015.

<sup>12</sup> Interview with Jeffrey Bader, Brookings Institution, February 12, 2015.

<sup>13</sup> Bonnie Glaser, “A role for Taiwan in promoting peace in the South China Sea,” commentary, CSIS, April 15, 2014.

<sup>14</sup> Reported in Shim Jae Hoon, “Blood thicker than politics: Taiwan indicates a military preparedness to back China,” *Far Eastern Economic Review*, May 5, 1998.

<sup>15</sup> “Mainland proposes cross-strait cooperation on South China Sea issue,” *Xinhua*, May 14, 2014, [http://news.xinhuanet.com/english/china/2014-05/14/c\\_133333018.htm](http://news.xinhuanet.com/english/china/2014-05/14/c_133333018.htm); “No room for cross-strait cooperation on S China Sea: MAC,” *Want China Times*, May 16, 2014, <http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20140516000091&cid=1101>.

<sup>16</sup> Remarks at a September 2014 international symposium on “U.S. presence in Asia and regional peace and security.” See William Stanton, “The U.S. pivot to Asia and Taiwan’s role,” World United Formosans for Independence, undated, <http://www.wufi.org.tw/the-u-s-pivot-to-asia-and-taiwans-role/>. Stanton was also quoted in Joseph Yeh, “‘Nine-dash line’ sovereignty claims make no sense: ex-AIT chief,” *The China Post*, September 14, 2014, <http://www.chinapost.com.tw/taiwan/intl-community/2014/09/14/417196/p2/Nine-dash-line.htm>.

<sup>17</sup> Central News Agency, “Taiwan rejects advice to drop South China Sea claims,” *Focus Taiwan*, September 13, 2014, <http://focustaiwan.tw/news/aip/201409130019.aspx>; *Want China Times*, September 14, 2014, <http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20140914000066&cid=1101>.

<sup>18</sup> Alison Hsia, “Academics slam US experts’ maritime ideas,” *Taipei Times*, September 14, 2014, <http://www.taipetimes.com/News/front/archives/2014/09/14/2003599680>.



person making clear that the former director's views were his own failed to mollify.<sup>19</sup> *The China Post* maintained that “the fact [remains] that Uncle Sam wants Taiwan to give up its claims based on the ‘U-shaped line,’ which is almost exactly the same as the ‘nine-dash line’ on which the People’s Republic of China bases its sovereignty claim over the disputed South China Sea islands.” The commentary goes on to accuse President Barack Obama of “pressur[ing]” President Ma Ying-jeou to drop the claims based on the dotted line to erode China’s legal basis for its claims. Objections were thus not only to calls for Taiwan to abandon the dashed line, but also to perceptions that it was being pressured to do so.

Notwithstanding the outcry, Taiwan’s Ministry of Foreign Affairs simply reiterated its claim to the land features in the South China Sea as well as their “surrounding waters”:

The Spratly Islands [Nansha Islands, 南沙群島], Parcel Islands [Xisha Islands, 西沙群島], Macclesfield Bank [Zhongsha Islands, 中沙群島] and the Pratas Islands [Dongsha Islands, 東沙群島], as well as their surrounding waters, are inherent parts of Republic of China [ROC] territory.<sup>20</sup>

In other words, while the Ministry of Foreign Affairs did not accept Stanton’s call to abandon the

dashed line, it did nothing to (re)assert the line. As discussed in the next section, “surrounding waters” is open to interpretation and can be read to be a claim to maritime zones compliant with the UNCLOS.

Stanton’s call in December 2014 went even further. He urged Taiwan to seriously consider basing its claims on UNCLOS and the islands and reefs it already has under its control (namely, Taiping Island and the nearby Zhongzhou Reef), rather than the dashed line.<sup>21</sup> This would not only mean Taiwan abandoning the dashed line, but also giving up sovereignty claims to other land features in the South China Sea and any maritime zones that these might generate under UNCLOS.

### Taiwan’s claims in and evolving position on the South China Sea

Officially, Taiwan’s claims in the South China Sea are reflected in a map titled “Location Map of South China Sea Islands” published between 1946 and 1948,<sup>22</sup> referred to here as the “1947 map.” (The 1947 map appears to have originated from a 1936 “Map of Chinese Islands in the South China Sea.”<sup>23</sup>) The 1947 map contains eleven dashes that enclose much of the South China Sea and is widely regarded as the predecessor to China’s nine-dash line maps—the PRC removed the two dashes originally depicted inside the Gulf of Tonkin.<sup>24</sup>

<sup>19</sup> Central News Agency, “Former director’s views on maritime claims his own: AIT,” *Taipei Times*, September 17, 2014, <http://www.taipeitimes.com/News/taiwan/archives/2014/09/17/2003599906>.

<sup>20</sup> Quoted in “Taiwan rejects advice to drop South China Sea claims,” *supra* n 17 and “Former director’s views on maritime claims his own: AIT,” *supra* n 19.

<sup>21</sup> “The U.S. pivot to Asia, China’s challenge, the maritime cauldron, and Taiwan’s role by Bill Stanton,” remarks prepared for the international conference on “The new Asian dynamics and the role of Taiwan,” December 6, 2014, [http://www.braintrust.tw/article\\_detail/2015](http://www.braintrust.tw/article_detail/2015).

<sup>22</sup> U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, *Limits in the seas No. 143; China: Maritime claims in the South China Sea* (“U.S. Department of State Report”), December 5, 2014, footnote 5, <https://www.google.com.sg/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fwww.state.gov%2Fdocuments%2Forganiza-tion%2F234936.pdf&ei=IwfoVKeQJskJuAStzYD4BA&usq=AFQjCNFP2ZdQJeRaCqWX0Nz-V01m4tiSNQ&bv=87269000.d.c2E>.

<sup>23</sup> U.S. Department of State Report, *ibid.*, 3. Cf Charles Chen, “Ma’s peace initiative in South Chinese Sea is feasible,” *The China Post*, October 10, 2014, <http://www.chinapost.com.tw/commentary/letters/2014/10/10/419077/Mas-Peace.htm>, which appears to link the 1947 map to a 1935 rather than 1936 issue.

<sup>24</sup> U.S. Department of State Report, *supra* n 22, 3.

Like China, Taiwan could be seen as making a claim to the wide expanse of water enclosed within the dashed line, or (merely) to the land features contained therein and maritime zones compliant with UNCLOS from these land features.<sup>25</sup>

Taiwan's statements in this respect have not been consistent and are open to interpretation. For instance, its 1993 Policy Guidelines for the South China Sea suggests an expansive claim: "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* [emphasis added]." Similarly, a 1999 Ministry of Foreign Affairs statement protesting the occupation of Investigator Shoal and Erica Reef in the Spratly Islands, as well as the inclusion of Scarborough Shoal in a Philippine territorial map, refers to the South China Sea as "a body of water of the Republic of China."

Other statements, particularly recent ones, are more restrictive in that they appear to conform to UNCLOS or at least may be read as such. Taiwan's 2009 statement in response to Malaysia and Vietnam's joint submission to the Commission on the Limits of the Continental Shelf of the United Nations claimed the Spratly Islands, Paracel Islands, Macclesfield Islands and Pratas Islands, "as well as their surrounding waters, their respective sea bed and subsoil."<sup>26</sup> Depending on how "surrounding

waters" is defined, Taiwan's statement could be UNCLOS-compliant.

In September 2014, the Ministry of the Interior and Academia Historica published a chronology of major events for the Exhibition of Historical Archives on the Southern Territories of the Republic of China. 1947 was listed as the year in which President Chiang Kai-shek ordered the ROC Foreign Ministry to lodge a protest against the French government for the forcible landing of its troops on the Coral Island in the Paracel Islands. It was also the year in which the ROC Ministry of the Interior "submitted a new glossary of the names and the locations of all the islands in the South China Sea to the Executive Yuan ... [and] made public the names of all the islands in the South China Sea"—presumably through the publication of the 1947 map. The focus was thus on territorial features within the South China Sea and where they were located; *neither the chronology nor any other official document issued at the time of the publication of the 1947 map made a reference to the dashed line or a claim to historical waters therein.*<sup>27</sup>

President Ma's speech at the exhibition's opening ceremony was even more instructive. He affirmed that "the principle that 'sovereignty over land determines ownership of the surrounding waters,' which is set out in the United Nations Convention on the Law of the Sea, applies to disputes concerning sovereignty over both land and sea."<sup>28</sup>

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<sup>25</sup> For interpretations of Taiwan's dashed line taken by academics, see, for example, Tsung-han Tai and Chi-ting Tsai, "The legal status of the U-shaped line: Revisited from the perspective of intertemporal law" in Szu-shen Ho and Kuan-hsiung Wang (eds) (2014) *A bridge over troubled waters: Prospects for peace in the South and East China Seas* (Taipei: Prospect Foundation).

<sup>26</sup> "Statement of the Ministry of Foreign Affairs of the Republic of China concerning a Joint Submission presented by Malaysia and Vietnam to the UN Commission on the Limits of the Continental Shelf," Statement No. 2, May 11, 2009, [http://www.mofa.gov.tw/EnMobile/News\\_Content.aspx?s=A0C1B617608178CA](http://www.mofa.gov.tw/EnMobile/News_Content.aspx?s=A0C1B617608178CA). For a comprehensive overview of relevant statements up to 2009, see Kuan-Hsiung Wang, "The ROC's maritime claims and practices with special reference to the South China Sea," *Ocean Development & International Law*, 41(2010):3, 237-252, at 243-247.

<sup>27</sup> "Exhibition of historical archives on the southern territories of the Republic of China: A chronology of major events," September 9, 2014, <http://www.kmt.org.tw/english/page.aspx?type=article&mnum=115&anum=15104>.

<sup>28</sup> Official report of remarks found at Office of the President, Republic of China (Taiwan), "Spotlight issues: Safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint exploration and development," September 1, 2014, <http://english.president.gov.tw/Default.aspx?tabid=1124&rmid=3048&itemid=33217>.

This statement—likely personally drafted by the president,<sup>29</sup> whose doctoral work at Harvard Law School was on the East China Sea—was the clearest indication to date that Taiwan was limiting its claims to accord with UNCLOS.

An *Economist* article published after the opening ceremony, however, had the effect of muddying the waters. The article asserted, “Mr Ma was clear that the claim was limited to islands and 3 to 12 nautical miles of their adjacent waters,”<sup>30</sup> thereby suggesting that Taiwan was giving up claims to an EEZ, although there was no report of President Ma in fact stating this in official transcripts of his speech.

Soon after the publication of the *Economist* article, the spokesperson and director of the International Department of the Kuomintang (KMT), the ruling party, stated in a commentary that the *Economist* article was wrong in “mistakenly present[ing] that Taiwan would hugely limit its claim to only the Taiping (Itu Aba) and Tungsha (Pratas) islands and 3 to 12 nautical miles of their adjacent waters . . . . Taiwan still bases its claim on the Location Map of the South China Sea, which was issued in 1935 and announced in 1947. The map covers all the islands, reefs and shoals and their surrounding waters.”<sup>31</sup>

In November 2014, President Ma had the opportunity to echo the statement he made at the exhibit

of historical archives in an interview with *The New York Times*: “There is a basic principle in the Law of the Sea, that land dominates the sea. Thus marine claims begin with land.”<sup>32</sup> In adhering to the principle that maritime claims must stem from sovereignty over land, the president appeared once again to be bringing Taiwan’s claims more clearly in accord with international law.<sup>33</sup>

Taiwan’s recent statements have had the effect of distancing it from any expansive Chinese claims in the South China Sea. China’s own claims are ambiguous. In its *Notes Verbales* to the United Nations Secretary General of May 2009 and April 2011, China claims “sovereignty” over the islands in the four archipelagos in the South China Sea, as well as to the “waters adjacent to the islands”; it also claims “sovereign rights and jurisdiction” over the “relevant waters” as well as the seabed and subsoil thereof. If the reference to “adjacent waters” is read to refer to the territorial sea and the reference to “relevant waters” is read to refer to the EEZ, China’s claims would be consistent with UNCLOS and international law.<sup>34</sup> Beijing’s rhetoric and actions, however, sometimes imply that it enjoys historic rights to and jurisdiction over the resources anywhere within the dashed line.<sup>35</sup>

A senior Taiwan navy official’s presentation in the United States in December 2014 made clear that Taipei regarded Beijing’s claims as expansive:

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<sup>29</sup> Interview with Richard Bush, Brookings Institution, January 27, 2015.

<sup>30</sup> “Joining the dashes,” *The Economist*, October 4, 2014, <http://www.economist.com/news/asia/21621844-south-china-seas-littoral-states-will-fight-museums-archives-and>.

<sup>31</sup> Charles Chen (2014), *supra* n 23.

<sup>32</sup> “Transcript of *New York Times* interview with President Ma Ying-jeou of Taiwan,” *The 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?smid=tw-share&\\_r=0](http://www.nytimes.com/2014/11/01/world/asia/transcript-of-new-york-times-interview-with-president-ma-ying-jeou-of-taiwan.html?smid=tw-share&_r=0).

<sup>33</sup> Robert Beckman, “The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea,” *The American Journal of International Law*, 107 (2013), 142-163, at 149-150, notes that the principle that “the land dominates the sea” is long-standing and has been cited with approval by international courts and tribunals.

<sup>34</sup> Robert Beckman and Clive Schofield, “Defining EEZ claims from islands: A potential South China Sea change,” *The International Journal of Marine and Coastal Law*, 29 (2014), 193-243, 209.

<sup>35</sup> Jeffrey Bader, Kenneth Lieberthal and Michael McDevitt, “Keeping the South China Sea in perspective,” *The Foreign Policy Brief*, Brookings, August 2014, 5, <http://www.brookings.edu/~media/research/files/papers/2014/08/-%20south-china-sea-perspective-bader-lieberthal-mcdevitt.pdf>.

“China’s position is that everything from sea up to air within the nine-dash line is under their control.” The presentation evinced a clear concern, even alarm, within Taiwan about China’s intentions and ambitions.<sup>36</sup> A subsequent conversation made evident that, in contrast to China, Taiwan is not claiming all the waters within the dashed line but only the isles and surrounding waters, unlike China’s claims that everything belongs to China.

Quite apart from appearing to make more limited claims, Taiwan has also clearly moved toward a more conciliatory tone. When asked if Taiwan could play a role in the peaceful management of the South China Sea disputes, President Ma responded that the spirit of his East China Sea Peace Initiative, which was unveiled in 2012, could apply.<sup>37</sup>

President Ma’s East China Sea Peace Initiative calls upon all parties concerned to (i) refrain from taking any antagonistic actions; (ii) shelve controversies and not abandon dialogue; (iii) observe international law and resolve disputes through peaceful means; (iv) seek consensus on a code of conduct; and (v) establish a mechanism for cooperation on exploring and developing resources.<sup>38</sup> By adopting this approach, Ma was able to reach an accord with Tokyo last year relating to the Japanese-controlled Senkaku Islands, which Taiwan also claims and calls the Diaoyutai. Under the agreement, fishermen from both sides can operate in waters around the disputed islands, without either side abandoning its sovereignty claim.

In short, Taiwan’s more recent statements, which focus on land features within the dashed line (such as its 2009 statement), as well as on the principle of land dominating the sea (rather than historic waters or rights) are in keeping with calls in the United States for Taiwan to clarify its position on the dashed line, though they do not go so far as to explicitly eschew the line. This has had the effect of more clearly distinguishing Taiwan’s claims from any expansive Chinese claims.

## China’s responses to Taiwan’s recent actions and statements

China’s approach to Taiwan on issues relating to the South China Sea has always been a subset of its broader one-China principle. For example, Beijing sees Taiwan’s development work on Taiping Island (discussed below) as a long-term strategic asset.<sup>39</sup> In this vein, the Chinese Foreign Ministry’s response to Taiwan’s plan to station armed vessels permanently on Taiping was phlegmatic: “Taiwan and the mainland are both part of one China. Relevant activities by Chinese people in the Spratly islands and its nearby seas, including on Tai Ping, are beyond reproach.”<sup>40</sup> China has reportedly gone so far as to say that it would be “pleased” if Taiwan won possession of the contested islands “because Taiwan is part of China anyway.”<sup>41</sup>

Understanding the lens through which Beijing views the South China Sea makes it possible to almost entirely rule out China taking Taiping

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<sup>36</sup> Discussion with high-ranking navy official from Taiwan, Washington, DC, December 11, 2014. The senior official was in the United States in his personal capacity.

<sup>37</sup> Frank Ching, Taiwan can play peacemaker in South China Sea disputes, May 21, 2014, <http://www.scmp.com/comment/article/1516102/taiwan-can-play-peacemaker-south-china-sea-disputes>.

<sup>38</sup> Ministry of Foreign Affairs Republic of China (Taiwan), “The government of the Republic of China (Taiwan) proposes the East China Sea Peace Initiative,” August 5, 2012, [http://www.mofa.gov.tw/en/News\\_Content.aspx?n=0E7B91A8FBEC4A94&sms=220E98D761D34A9A&s=2E64DDC5075263C0](http://www.mofa.gov.tw/en/News_Content.aspx?n=0E7B91A8FBEC4A94&sms=220E98D761D34A9A&s=2E64DDC5075263C0).

<sup>39</sup> Yann-Huei Song, “Taiwan’s development work on Taiping Island,” Asia Maritime Transparency Initiative, February 18, 2015, <http://amti.csis.org/taiwans-development-work-on-taiping-island/>.

<sup>40</sup> Quoted in Michael Gold, “Taiwan considers permanent armed ships for disputed South China Sea island,” *Reuters*, October 16, 2014, <http://www.reuters.com/article/2014/10/16/us-taiwan-southchinasea-idUSKCN01509I20141016>.

<sup>41</sup> Joel Brinkley observes this in “Conflicting claims: China, Japan, Taiwan on edge,” *World Affairs*, January/February 2014, <http://www.worldaffairsjournal.org/article/conflicting-claims-china-japan-taiwan-edge>.

Island by force. As Richard Bush, Brookings senior fellow and Chen-Fu and Cecilia Yen Koo Chair in Taiwan Studies notes, a hostile takeover of Taiping Island makes little sense in terms of China's political objectives vis-à-vis Taiwan, namely, political incorporation of Taiwan into the mainland: the political fallout in Taiwan would just be too great.<sup>42</sup> China might, however, consider this as part of a broader series of actions against Taiwan should it declare de jure independence. In such a situation, reprisals would not just be in the South China Sea, but would extend to Taiwan itself.<sup>43</sup> This would more clearly be a trigger of Section 3(3) of the U.S. Taiwan Relations Act, which requires the U.S. President to inform Congress of any threat to the security of "the people on Taiwan" and any danger to the interests of the United States. Even then, there would be no unequivocal obligation to come to Taiwan's defense: the U.S. President and Congress have the discretion to determine an appropriate response.<sup>44</sup>

Beijing has not said anything about President Ma's statements clarifying that maritime claims are to be made from land features. It has also refrained from commenting on Taipei's decision to hold the Exhibition of Historical Archives on the Southern Territories of the Republic of China, whose name itself suggests a focus on land rather than maritime claims. The exhibition is significant in that it released previously confidential maps and documents and arguably weakens Beijing's hand insofar as a claim to historic waters or rights within the

dashed line is concerned by revealing part of Beijing's cards. Given official Chinese presence at the exhibit,<sup>45</sup> one can reasonably assume that if there were indeed evidentiary support for the dashed line encapsulating a claim to historic waters or rights, something would have been made of this.

Thus, while light has emerged between Taiwan's and China's positions—in the sense that Taipei is making it clearer that its maritime claims are from land—Beijing has refrained from challenging Taiwan's position. It is far from clear, however, that this will continue to be the case should Taiwan formally disclaim the dashed line. Beijing is likely to view this as an inflammatory act with potentially severe repercussions for cross-strait relations.

### Taiwan's strategic considerations

Several important factors form the backdrop to determining Taiwan's course of action in the South China Sea. Of these, the pressures that the United States and particularly China can bring to bear on Taiwan are the most important: the United States is Taiwan's buffer and protector, but China is the spouse it ultimately has to live with. Taipei thus has to navigate between the two carefully.

The *first* relevant factor is growing concerns within Taiwan about military expansion and land reclamation activities in the South China Sea. Taiwan has singled out two countries in this respect: Vietnam, which Taiwanese satellite information

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<sup>42</sup> Interview with Richard Bush, Brookings Institution, January 27, 2015.

<sup>43</sup> Interview with Jeffrey Bader, Brookings Institution, February 12, 2015.

<sup>44</sup> In the case of reprisals against Taiping Island or other features in the South China Sea, the Taiwan Relations Act would technically not be triggered. Section 15 of the Act defines "Taiwan" to include, "as the context may require, the islands of Taiwan and the Pescadores [Penghu Islands], the people on those islands, corporations and other entities and associations created or organized under the laws applied on those islands, and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and any successor governing authorities (including political subdivisions, agencies, and instrumentalities thereof)." See Taiwan Relations Act, January 1, 1979, Public Law 96-8 96<sup>th</sup> Congress, a full text is available on the American Institute in Taiwan website: <http://www.ait.org.tw/en/taiwan-relations-act.html>. Reference to the "islands of Taiwan" would arguably be read as Taiwan and its immediately adjacent islands.

<sup>45</sup> Tzou Jiing-wen and Jake Chung, "Chinese official's presence at exhibit arouses concern," *Taipei Times*, September 5, 2014, <http://www.taipei-times.com/News/taiwan/archives/2014/09/05/2003599057>.



reportedly shows has begun work to artificially expand Sand Cay Island,<sup>46</sup> and China.

China's land reclamation activities have raised concerns even within the KMT government, which traditionally favors closer ties with China, about the mainland's intentions and broader ambitions. Taipei publicly red-flagged this in October 2014 when the director of Taiwan's National Security Bureau expressed concerns and a KMT legislator pointed out that, with reclamation, Johnson South Reef, Hughes Reef, Gaven Reefs and Cuarteron Reef could be used to encircle Taiping Island.<sup>47</sup> In a December 2014 trip to the United States, a senior Taiwan navy official highlighted how the PRC was attempting to "bolster control" by "planting islands" and noted that this was particularly alarming since the PRC has never renounced the use of force to resolve the Taiwan issue. In the Taiwan navy's estimate, the PRC would be in control of both the East and South China Seas by 2020.<sup>48</sup>

Other actions that Beijing has taken have also been eyed warily in Taiwan. Beijing's unilateral decision to establish commercial flight routes less than eight kilometers from the middle line that

divides control over the Taiwan Strait has added to anxiety,<sup>49</sup> as have the recent events in Hong Kong.<sup>50</sup>

In response to heightened tensions in the region, in May 2014 Taiwan held its largest South China Sea military drill since 2000.<sup>51</sup> It is also undertaking what its officials describe as "maintenance works" on Taiping Island.<sup>52</sup> This involves the construction of two new piers and improvements to its 1200-meter long runway, an access road, navigation guidance and other auxiliary facilities, rain water drainage improvement, landing light repairs and a refueling facility, as well as, possibly, the construction of a new lighthouse.<sup>53</sup> In addition, IHS Janes reports that Taipei is planning the construction of a new wharf on the island capable of handling 2,000-ton frigates and satellite imagery shows the building of a breakwater off the island's southwest corner that may be one element of the wharf.<sup>54</sup>

A *second* factor in considering Taiwan's options is that while its interests in the South China Sea are important, particularly under the current administration, they are second to maintaining stable relations with China and the ability to protect the

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<sup>46</sup> Prashanth Parameswaran, "Vietnam a growing threat to Taiwan's South China Sea Claims: Report," *The Diplomat*, December 31, 2014, <http://thediplomat.com/2014/12/vietnam-a-growing-threat-to-taiwans-south-china-sea-claims-report/> and Jason Pan and Lo Tien-pin, "Threat to Spratlys outposts 'growing,'" *Taipei Times*, December 26, 2014, <http://www.taipetimes.com/News/taiwan/archives/2014/12/26/2003607646>, citing a Taiwan Ministry of Defense report submitted to the Legislative Yuan. Cf Jason Pan, "Itu Aba military outpost not under threat by Vietnam: defense minister," *Taipei Times*, December 30, 2014, <http://www.taipetimes.com/News/taiwan/archives/2014/12/30/2003607936>.

<sup>47</sup> "Mainland launches land reclamation project in the South China Sea," all Taipei newspapers, October 21, 2014, <http://www.taiwannpfnews.org.tw/english/page.aspx?type=article&mnum=112&anum=15215>.

<sup>48</sup> Discussion with high-ranking navy official from Taiwan, Washington, DC, December 11, 2014. The senior official was in the United States in his personal capacity.

<sup>49</sup> Jenny Hsu, "Taiwan anxious over China's plans for new Air Routes," *The Wall Street Journal*, January 15, 2015, <http://blogs.wsj.com/chinarealtime/2015/01/15/taiwan-anxious-over-chinas-plans-for-new-air-routes/>.

<sup>50</sup> Eva Dou and Jenny Hsu, "Taiwan watching Hong Kong protests closely," *The Wall Street Journal*, October 2, 2014, <http://www.wsj.com/articles/taiwan-watching-hong-kong-protests-closely-1412260833>; Kerry Brown, "How Hong Kong's protests swayed Taiwan's elections," *The Diplomat*, December 1, 2014, <http://thediplomat.com/2014/12/how-hong-kongs-protests-swayed-taiwans-elections/>. Public attention in Taiwan to the Hong Kong protests waned, however, after the first few days.

<sup>51</sup> Gavin Phipps and James Hardy, "Taiwan holds biggest Spratly islands drill in 15 years," *IHS Jane's 360*, April 29, 2014, <http://www.janes.com/article/37245/taiwan-holds-biggest-spratly-islands-drill-in-15-years>.

<sup>52</sup> Private conversation with Taiwan officials.

<sup>53</sup> Song (2015), *supra* n 39.

<sup>54</sup> Phipps and Hardy (2014), *supra* n 51.

island of Taiwan itself from any mainland attack.<sup>55</sup> For this reason, the mainstream view in U.S. defense circles is that Taiwan should be dedicating (military) resources to its primary mission of defending Taiwan proper and its adjacent islands, rather than to secondary missions such as its claims over the South China Sea with little consideration of the extent to which Taiping Island is vital to Taiwan's fundamental security interests (and may actually detract from them).<sup>56</sup>

*Third*, Taiwan's ability to effectively protect its interests in the South China Sea by non-military means is limited by China's objections to Taiwan's participation in international and regional political life, in particular its exclusion from code of conduct negotiations and cooperative activities among claimants. Beijing's (flawed) political logic is that allowing Taiwan participation in this respect would necessarily be recognition of its sovereignty.<sup>57</sup>

While China displayed a degree of flexibility in other contexts in the past, it considers the concessions it made—such as on Taiwan attending the World Health Assembly (WHA) as an “observer” and the International Civil Aviation Organization (ICAO) Assembly as a “guest”—to have been unreciprocated. On the other hand, officials from Taiwan consider Taiwan's greater international participation to have been the result of years of hard diplomatic

work, Taiwan's compliance with international rules and regulations, and the support of the international community.<sup>58</sup> Still, Beijing's current position is that if Taiwan wants flexibility in terms of international participation, Taipei has to talk to Beijing about fundamental political issues concerning Taiwan's relationship with the mainland.<sup>59</sup>

*Fourth*, while Taiwan faces severe constraints in protecting its interests in the South China Sea, it is not entirely without leverage in seeking greater participatory opportunities. The legal pressure against China is building as various countries have enunciated strong positions against an expansive Chinese claim. Shortly after the U.S. Department of State issued its December 2014 report stating that any assertion that the dashed line is a national boundary or a historic claim would hold no water under UNCLOS and international law,<sup>60</sup> Vietnam issued a statement to the arbitral tribunal in the proceedings between the Philippines and China. This was aimed at protecting Vietnam's “legal rights and interests in the East Sea which may be affected in the South China Sea Arbitration case”<sup>61</sup> and was supportive of the Philippines case,<sup>62</sup> which asserts that the tribunal has jurisdiction; that the nine-dash line is invalid; and that none of the features mentioned by the Philippines in its proceedings can generate maritime entitlements in excess of 12 nautical miles.<sup>63</sup>

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<sup>55</sup> The clarity of Taiwan's interests and their prioritization are hampered by the lack of a national interests document akin to Robert Ellsworth, Andrew Goodpaster and Rita Hauser, Co-Chairs, *America's national interests: A report from The Commission on America's National Interests* (Washington, DC: 2000).

<sup>56</sup> Interview with Richard Bush, Brookings Institution, January 27, 2015.

<sup>57</sup> Conversation with Chinese diplomat, February 6, 2015.

<sup>58</sup> Private conversation with Taiwan officials.

<sup>59</sup> Interview with Richard Bush, Brookings Institution, January 27, 2015.

<sup>60</sup> U.S. Department of State Report, *supra* n 22.

<sup>61</sup> “Remarks by MOFA Spokesperson Le Hai Binh on the South China Sea Arbitration case,” Vietnam Ministry of Foreign Affairs, December 11, 2014, [http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns141212143709/view](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns141212143709/view).

<sup>62</sup> “Vietnam's sea dispute arbitration case vs China promotes peace – Manila,” *Reuters*, December 13, 2014, <http://www.reuters.com/article/2014/12/14/philippines-southchinasea-idUSL3N0TY02520141214>.

<sup>63</sup> Republic of the Philippines, “Notification and statement of claim on West Philippine Sea,” No. 13-0211, January 22, 2013, [https://www.google.com.sg/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fwww.dfa.gov.ph%2Findex.php%2F-component%2Fdocman%2Fdoc\\_download%2F56-notification-and-statement-of-claim-on-west-philippine-sea%3FItemid%3D546&ei=G-2f2VLizH4b88QXUxYHgBg&usq=AFQjCNHII04H6rZcxRQcXNdbxoaA2SYQXQ&bvm=bv.87269000,d.dGc](https://www.google.com.sg/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fwww.dfa.gov.ph%2Findex.php%2F-component%2Fdocman%2Fdoc_download%2F56-notification-and-statement-of-claim-on-west-philippine-sea%3FItemid%3D546&ei=G-2f2VLizH4b88QXUxYHgBg&usq=AFQjCNHII04H6rZcxRQcXNdbxoaA2SYQXQ&bvm=bv.87269000,d.dGc).

China is not immune to how it is perceived internationally<sup>64</sup> and will want, as far as possible, to appear reasonable and avoid the further discrediting of its claims in the South China Sea. One should not overstate this leverage: it will not stop China taking steps to reinforce its strategic position in the South China Sea such as its land reclamation activities, which it sees as “defensive and legitimate.”<sup>65</sup> China will also not bend on its one-China principle. However, as awareness that its actions in the South China Sea have not endeared it to the region rises, we see unofficial channels within China peddling a softer version of Beijing’s claims.

For example, in January 2015, two research fellows based at the National Institute for South China Sea Studies, a think tank affiliated with the Chinese Ministry of Foreign Affairs and State Oceanic Administration, published a commentary stating that when the Chinese government released the “Map of the Location of South China Sea Islands” in February 1948, China was claiming “sovereignty over all the insular features *rather than maritime jurisdiction* [emphasis added].” Ye Qiang and Jiang Zongqiang also suggest that China’s 2009 *Notes Verbales* was worded so that it complied with UNCLOS:

[A]ccording to modern law of the sea, China is entitled to maritime jurisdiction in certain maritime zones in light of Chinese sovereignty. That is the reason why China claims “sovereignty over the islands in the South China Sea and the adjacent waters” and “sovereign rights

and jurisdiction over the relevant waters as well as the seabed and subsoil thereof” in the 2009 *Notes Verbales*.<sup>66</sup>

The *fifth* factor that must be kept in mind in considering Taiwan’s course of action is that there are factions within Taiwan that believe that everything within the dashed line belongs to Taiwan—without specifying what this means—and that any clarification of its claim would require a change to Taiwan’s constitution, which would in turn rock the boat with China. For instance, an academic argues, “once one attempts to amend the Constitution, issues such as ‘one China, one Taiwan,’ ‘two Chinas,’ ‘the two-state theory,’ ‘one state on either side,’ or even ‘Taiwan independence’ will emerge.”<sup>67</sup> Another prominent Taiwan academic echoed the fear that clarifying Taiwan’s claim would cause constitutional problems, but declined to elaborate.<sup>68</sup>

It is far from evident that clarifying sovereignty claims within the dashed line will in fact require constitutional change. Article 4 of the Taiwan Constitution states, “The territory of the Republic of China within its *existing national boundaries* shall not be altered except by a resolution of the National Assembly [emphasis added].” One could thus legitimately ask whether the dashed line in fact represents a national boundary. The recent U.S. Department of State Report on China’s maritime claims in the South China Sea argues that China’s, and by implication Taiwan’s, dashed line is not a national boundary since this would need to be negotiated with States with opposing coastlines and

<sup>64</sup> For a discussion of this issue, see Dingding Chen, “Does China Care About its International Image?” *The Diplomat*, June 12, 2014, <http://thediplomat.com/2014/06/does-china-care-about-its-international-image/>.

<sup>65</sup> Interview with Li Mingjiang, Rajaratnam School of International Studies, Singapore, March 16, 2015.

<sup>66</sup> Ye Qiang and Jiang Zongqiang, “China’s ‘nine-dash line’ claim: U.S. misunderstands,” RSIS Commentary, No. CO15011, January 14, 2015, <https://www.rsis.edu.sg/rsis-publication/rsis/co15011-chinas-nine-dash-line-claim-us-misunderstands/#.VS66UZRp38>.

<sup>67</sup> Edward Chen, “Abandoning U-shaped line might cause constitutional controversy,” *United Daily News / National Policy Foundation*, September 19, 2014, <http://www.taiwannpfnews.org.tw/english/page.aspx?type=article&mnum=112&anum=15085>.

<sup>68</sup> Conversation with Taiwan academic, Boao, Hainan, China, March 28, 2015.



the dashes also lack other important hallmarks of a maritime boundary, such as a published list of geographic coordinates and a continuous, unbroken line that separates the maritime space of two countries.<sup>69</sup>

Even if the dashed line could be said to be a national boundary, one could question whether it existed at the time the ROC government promulgated its current Constitution on January 1, 1947. In a footnote, the Department of State's report noted the discrepancy between the publication or release dates of the so-called 1947 map containing the dashed line—scholars have variously put the date from December 1946 to February 1948.<sup>70</sup> The map on the ROC's Ministry of Interior website bears the date December 1946 [*min guo* year 35].<sup>71</sup> However, the *link* to the map on the Ministry of Interior webpage states that the map was published in 1947 [*min guo* year 36],<sup>72</sup> so there is little clarity there.

The *sixth* factor relevant to how Taiwan should proceed is that the U.S. Department of State report analyzing China's maritime claims in the South China Sea, specifically its dashed line, is also an indirect pronouncement on *Taiwan's* claims, since both China and Taiwan rely on the same map for their claims. Accordingly, should Taiwan seek to assert that the dashed line represents a national boundary or a historic claim over the maritime space within it, it would win itself no favors with the United States, its single most important ally.

The U.S. Department of State report sets out clearly that the modern international law of the sea does

not recognize history as the basis of maritime jurisdiction, save in a narrow category of near-shore “historic bays” (Article 10) and “historical title” in the context of *territorial sea* boundary delimitation (Article 15).<sup>73</sup> Even if a historic claim had validity, the report finds in the case of China that there was no law, declaration, proclamation, or other official statement describing and putting the international community on notice of a historic claim to the waters within the dashed line so that other states are given the opportunity to protest; the mere publication of the dashed-line map in the 1940s could not have constituted official notification of a maritime claim.<sup>74</sup> These arguments apply equally to Taiwan.

The importance of how the United States views Taiwan's claims in the South China Sea is reinforced by Section 3 of the Taiwan Relations Act, which states, “The President and the Congress shall determine the nature and quantity of such defense articles and services *based solely upon their judgment of the needs of Taiwan* [emphasis added].”<sup>75</sup> While the starting point for any U.S. decision on Taiwan's needs are proposals that come from Taiwan, the United States may well take into account the reasonableness of Taiwan's claims in determining its needs.

### ***The Democratic Progressive Party and the South China Sea***

With Taiwan's January 2016 presidential and legislative elections looming, it is also important to consider the Democratic Progressive Party's (DPP) position on the dashed line as this affects

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<sup>69</sup> U.S. Department of State Report, *supra* n 22, 14-15.

<sup>70</sup> U.S. Department of State Report, *supra* n 22, footnote 5.

<sup>71</sup> <http://maritimeinfo.moi.gov.tw/marineweb/img/%E5%8D%97%E6%B5%B71.jpg>.

<sup>72</sup> See the Ministry of Interior webpage: [http://maritimeinfo.moi.gov.tw/marineweb/layout\\_C20.aspx](http://maritimeinfo.moi.gov.tw/marineweb/layout_C20.aspx) (“民國36年内政部公布南海諸島位置圖下載”).

<sup>73</sup> U.S. Department of State Report, *supra* n 22, 19.

<sup>74</sup> U.S. Department of State Report, *supra* n 22, 18.

<sup>75</sup> Taiwan Relations Act, *supra* n 44.

Taiwan's strategic milieu. The DPP's executive director for policy and representative to the United States, Jaushieh Joseph Wu, laid out his vision in a May 2014 commentary, arguing that "Taiwan should make it clear that it follows the UN Convention on the Law of Sea, article 121 specifically, in defining its territorial claims based on the actual ownership of Itu Aba (Taiping islet) and adheres to the principle of the freedom of navigation."<sup>76</sup> In September 2014, a former deputy secretary-general of Taiwan's National Security Council reportedly stated that if the DPP wins the 2016 presidential election, it would seriously consider abandoning its claims to the entire South China Sea that is based on the U-shaped line.<sup>77</sup> These calls stem from a desire to distance Taiwan from China and its version of the one-China framework.

Whether or not the DPP actually follows through on its expressed intention to confine Taiwan's territorial claims to islands under its control and (explicitly) abandon the dashed line is open to question. The DPP has not issued a Blue Paper on this and opposition parties tend to be more moderate in power given wider interests that have to be taken into account. As a governing party, the DPP would have to answer to the rest of the Legislative Yuan (Taiwan's parliament) as well as the broader populace who might have concerns about Taiwan being seen to abandon territory, namely, land features Taiwan currently claims but does not control. It would also face opposition and possible legal action from those factions within Taiwan that believe that everything within the dashed line belongs to Taiwan. Although the level of nationalistic sentiment in Taiwan with respect to the South China Sea is still relatively low, this

could change if the issue were spotlighted in parliament or the popular media. A more fundamental reason why any express abandonment of the dashed line might face resistance is that it would lead to concerns about whether the government is moving Taiwan toward independence and therefore onto a collision course with China. As noted above, considerations of cross-strait relations outweigh territorial and maritime claims for Taiwan.

## Recommendations for Taiwan

Given Taiwan's interests and concerns, as well as constraints to its freedom of action, preserving its interests in the South China Sea is no easy task. Taipei has sought to do this through maintaining a degree of ambiguity about the basis for its claims. This has been unsettling particularly for ASEAN claimants and has led to calls within the United States for Taiwan to clarify its position on the dashed line.

The on-again, off-again negotiations on the code of conduct have resumed after China re-committed to discussing it. Taiwan remains the only claimant not involved in negotiations, though it controls the largest natural island, has coast guards patrolling the South China Sea, is a major fishing entity, and seeks to be a constructive player. With China growing in strength and Taiwan's 2016 elections approaching, Taipei might well see its political and diplomatic space narrow further.

The following are some steps that Taiwan can take to carve out a modest political space for itself in the South China Sea. *These steps should all be clearly premised on adherence to President Ma's*

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<sup>76</sup> Jaushieh Wu, "The future of U.S.-Taiwan relations," *The Diplomat*, May 14, 2014, <http://thediplomat.com/2014/05/the-future-of-u-s-taiwan-relations/>.

<sup>77</sup> Quoted in Yann-Huei Song, "KMT-DPP South China Sea debate," Asia Maritime Transparency Initiative, December 23, 2015, <http://amti.csis.org/kmt-dpp-south-china-sea-debate/>.

*“Three Noes,” namely, no unification, no independence, and no use of force to resolve differences,<sup>78</sup> which Taipei should publicly reaffirm.*

***1. Clarify that its claims are in conformity with UNCLOS without expressly eschewing the dashed line***

Moving toward greater clarity that Taiwan’s claims are in keeping with UNCLOS (without having to expressly abandon the dashed line) will be a positive development. Taiwan can clarify what it means by “surrounding waters” or consistently pronounce that its maritime claims are from the islands over which it claims sovereignty and that these claims are in accordance with international law and UNCLOS.

China may consequently be more inclined to interpret the dashed line in a way that accords with international law—namely, that it marks out claims to islands rather than maritime claims—and act accordingly, though it too would not disavow the dashed line. As noted at the outset, this interpretation of the dashed line would not be inconsistent with China’s official claims.

Clarification of Taiwan’s claims are also likely to have a salutary *domestic* effect that has largely been overlooked: incremental adjustments to Taiwan’s position in the South China Sea will make any subsequent changes the DPP might introduce or threaten to introduce less dramatic and destabilizing.

Although Taiwan should clarify what it means by “surrounding waters” or make clear that its

maritime claims are from the islands over which it claims sovereignty and that these claims are in accordance with international law and UNCLOS, it should not *expressly abandon* the dashed line (nor be expected to do so). This is unlikely under a KMT government, but a DPP government might be more inclined to pursue this course. Jaushieh Joseph Wu recently came close to stating that the dashed line lacked legitimacy: “Our strategic priority should be placed upon strengthening relations with the U.S. and its allies, and *not with an expansionist power which claims unsubstantiated historical rights* [emphasis added].”<sup>79</sup>

Expressly abandoning the dashed line is likely to be counterproductive. It would anger China since it would explicitly undermine the legitimacy of any Chinese claim to the dashed line as national boundary or enclosing historic rights and put China in a bad light. Jeffrey Bader acknowledges that while it will be desirable for Taiwan to say that the dashed line has no validity as a marker of boundaries, Taiwan would pay such a cost in terms of cross-strait relations that it would hardly seem worth it to Taiwan.<sup>80</sup> Beijing might proclaim Taiwan a renegade province (without the authority to make such pronouncements) and Taipei can almost certainly forget about any Chinese flexibility in allowing it participation in code of conduct negotiations and in cooperative activities involving claimants. A commentary in a Chinese daily late last year warned:

If Taiwan insists on the nine-dash line and offers proof for the 11-dash line, it will be of great help in settling the dispute. It will also show cross-Straits cooperation.

<sup>78</sup> The “Three Noes” were outlined by President Ma as a presidential candidate and reiterated in his 2008 inaugural address: “Taiwan’s renaissance: Inaugural address,” May 20, 2008, 5, <http://tecohc.org.vn/en/data/president-ma.pdf>.

<sup>79</sup> Wu (2014), *supra* n 76.

<sup>80</sup> Interview with Jeffrey Bader, Brookings Institution, February 12, 2015.

Otherwise it will hurt the interests of the mainland and destroy the peaceful development of relations between the two sides.<sup>81</sup>

Further, while some within the United States might be calling for Taiwan to clarify or abandon the dashed line, it is not clear what the United States would be willing to do to support this. When asked this question, Bonnie Glaser said that although she would personally like to see Taiwan included at the code of conduct negotiation table, Taiwan should do so because it is the right thing to do and demonstrates that it is a responsible player.<sup>82</sup> Bader concedes that the incentives for Taiwan to clarify the dashed line “aren’t great.”<sup>83</sup> Not surprisingly, some Taiwan officials privately wonder why Taiwan should be so clear when it is not getting anything in return (such as being included in code of conduct negotiations), either from the United States or from ASEAN and its member states.<sup>84</sup>

In short, Taiwan should, as a senior Taiwanese official offered, “say what we claim, and in an ambiguous way say what we are not claiming.”<sup>85</sup>

## ***2. Tread carefully on any public education on Taiwan’s claims in the South China Sea***

The salience of the South China Sea as an issue among the broader populace in Taiwan is relatively low. This is in contrast to the situation in other claimant states, with the exception of Brunei and,

arguably, Malaysia—though this could of course change. For instance, in Vietnam, violent protests erupted after China deployed an oil rig to contested waters off the Paracel Islands in May 2014. It is also in contrast to the situation in the Diaoyutai/Senkakus dispute with China and Japan where, by virtue of physical proximity, the issue is far more in Taiwan’s public eye and mind.<sup>86</sup>

Nationalism in Taiwan with respect to the South China Sea could, however, easily spike if not properly managed. Students and academics visit Taiping Island under navy escort as Taipei seeks to educate on “its sovereignty over the Spratly Island chain.”<sup>87</sup> Increasing the visibility of the issue is arguably playing with wildfire: nationalism, once unleashed, is a genie let out of a bottle. In order to maximize its policy options in the South China Sea and not tie its hands, it is imperative that Taipei, broach any public education—whether in schools and universities or in briefings with the media—on this subject carefully so that it clearly focuses on Taiwan’s territorial claims to the islands inside the dashed line and maritime zones compliant with UNCLOS and international law.

## ***3. Continue promoting Ma’s plan for the East China Sea in the South China Sea***

Taiwan should also continue promoting President Ma’s East China Sea Peace Initiative in the South China Sea. Its broad principles, namely, “safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint exploration

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<sup>81</sup> Chiu Yi, “Taiwan abandoning nine-dash line in South China Sea would be disastrous,” *Global Times*, September 24, 2014, <http://www.global-times.cn/content/883219.shtml>. The author of this commentary is a former KMT legislator, but is expressing a viewpoint that arguably aligns with Beijing’s.

<sup>82</sup> Bonnie Glaser, speaking at CSIS Asia Pacific Forecast, Washington, DC, January 29, 2015.

<sup>83</sup> Interview with Jeffrey Bader, Brookings Institution, February 12, 2015.

<sup>84</sup> Private conversation with Taiwan officials.

<sup>85</sup> Conversation with Taiwan official, Washington, DC, January 30, 2015.

<sup>86</sup> Private conversation with Taiwan officials.

<sup>87</sup> “Taiwan’s students, scholars visited Taiping Island,” *Focus Taiwan*, May 31, 2013, <http://focustaiwan.tw/news/aip/201305310040.aspx>.

and development,” can usefully be applied to the South China Sea.<sup>88</sup>

Promotion of these tenets, along with clarifying that its claims accord with UNCLOS and international law, will help to demonstrate to the other players that Taiwan is willing and able to constructively engage in managing the dispute. In addition to demonstrative effects, a serious discussion of the peace initiative can function as a starting point for dialogue among parties.<sup>89</sup> Its broad principles are in keeping with the recommendations made by this author in another report for claimants to jointly define EEZ claims from the largest islands on a “without prejudice” basis so that joint development can take place in areas of overlapping claims (and claimants can develop undisputed areas without encumbrances).<sup>90</sup>

#### ***4. Push behind the scenes for participation in code of conduct negotiations and in cooperative activities involving all claimants***

Taiwan’s exclusion from regional consultations and negotiations on the code of conduct, as well as from cooperative activities involving all claimants, arises from sensitivities concerning China’s one-China principle. In principle, there is no reason why Taiwan should not be able to participate since care can be taken to frame participation in a way that does not fall foul of the principle. Taiwan is an important actor in the South China Sea

by virtue of its control of the largest natural land feature, its large fishing industry, and its willingness and ability to play a constructive role in the dispute.

Paragraph 4 of the Declaration on the Conduct of Parties in the South China Sea, which limits consultations and negotiations to the “sovereign states directly concerned [emphasis added],” poses an obstacle to Taiwan’s participation,<sup>91</sup> but need not completely preclude it. There is precedent for Taiwan participating in organizations and meetings where it cannot be a member because of the requirement of statehood. As noted above, Taiwan is an “observer” in the annual meetings in Geneva of the World Health Organization’s (WHO) government body, the WHA. Taiwan’s civil aviation officials were also invited to participate as “guests” in the ICAO Assembly.<sup>92</sup> In the United Nations Fish Stocks Agreement (UNFSA), the concept of “fishing entity” is used to get around the political problems associated with Taiwan’s status in international law and to allow for Taiwan’s participation in international fisheries forums and treaties.<sup>93</sup>

These models for informal, or formal in the case of UNFSA, participation can be used in the context of negotiations and activities with respect to the South China Sea. For example, Taiwan can be invited to participate in code of conduct negotiations as an observer or guest. If necessary, invitations can be extended on an ad hoc basis (for

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<sup>88</sup> Ministry of Foreign Affairs Republic of China (Taiwan), *supra* n 38; Charles Chen, (2014), *supra* n 23.

<sup>89</sup> Yeh-chung Lu, “The South China Sea And Great Power Politics: Implications For U.S.-China-Taiwan Relations,” December 19, 2014, 10, <http://www.stimson.org/about/news/the-south-china-sea-and-great-power-politics-implications-for-us-china-taiwan-relations/>.

<sup>90</sup> Lynn Kuok, “Overcoming the impasse in the South China Sea: Jointly defining EEZ claims,” Brookings Institution, December 2014, East Asia Policy Paper 4, <http://www.brookings.edu/~media/research/files/papers/2014/12/south-china-sea-impasse-kuok/overcoming-impasse-south-china-sea-kuok.pdf>

<sup>91</sup> Yann-Huei Song observes that it is believed that this wording was included to exclude Taiwan (and other international organizations) from being involved in processes that deal with South China Sea issues. See Yann-Huei Song, “The South China Sea Declaration on Conduct of Parties and its implications: Taiwan’s perspective,” *Maritime Studies*, 129, March-April 2003, 13-23, at 19.

<sup>92</sup> For a discussion of Taipei’s “international space”, see Shirley Kan and Wayne Morrison, “U.S.-Taiwan relationship: Overview of policy issues,” Congressional Research Service, 7-5700, R41952, April 22, 2014, <http://fas.org/sgp/crs/row/R41952.pdf>.

<sup>93</sup> Martin Tsamenyi, “The legal substance and status of fishing entities in international law: A note,” *Ocean Development & International Law*, 37(2006):2, 123-131.

example, meeting-by-meeting), as is the case for both WHA and ICAO participation. Taiwan could also be invited to declare that it will abide by the terms of the code of conduct without it being a party to it. The point is for *all parties*, including Taipei, to be flexible and creative in facilitating Taiwan's inclusion.

Cooperative activities, such as marine environmental protection; marine scientific research; safety of navigation and communication at sea; search and rescue operations; and combating transnational crime, can be negotiated and agreed to between the agencies directly involved, rather than formal treaties.

The problem lies less in the format that Taiwan's participation should take; this problem is solvable. In the absence of formal diplomatic relations, the fishing pact between Japan and Taiwan, which was concluded in 2013 and modified in 2015, was signed between the Association for East Asian Relations, the Taiwanese agency in charge of handling ties with Japan, and the Interchange Association, Japan's de facto embassy in Taipei.<sup>94</sup> The main issue is one of *political will* to pave the way for Taipei's participation in regional negotiations. This has been stunted by fear of reprisal from China, on the part of ASEAN and its member states. The Philippines and Taiwan are said to be about to ink an agreement covering fishery law enforcement cooperation in their overlapping economic waters.<sup>95</sup> This agreement, however, was negotiated under unique circumstances. It transpired in the

wake of a Philippine Coast Guard patrol shooting and killing a Taiwanese fisherman in May 2013. The agreement, whose likely signatories are the Manila Economic and Cultural Office (MECO) and the Taipei Economic and Cultural Office (TECO),<sup>96</sup> may thus be said to be an attempt to improve badly frayed relations between neighbors. Taipei could, in this way, turn the tragic event to its advantage in negotiating an agreement that will help prevent future incidents. In any event, the Philippines' relations with China had already taken a turn for the worse with the former's commencement of an arbitration case against China in January 2013. The Philippines would no doubt have calculated that any additional costs China inflicts are likely to be marginal.

How ASEAN and its member states, as well as the United States and China, should respond to the issue of Taiwan's participation is dealt with in greater detail below. Taipei also needs to make its own case for inclusion (as an observer or guest in code of conduct negotiations). Constrained as it is by its limited official channels of communication to Beijing, it should seek to leverage unofficial channels, such as the Workshops on Managing Potential Conflicts in the South China Sea, which were initiated by Indonesia in 1989 and funded by Canada. Government and military officials in their private capacities as well as academics attend these workshops. The workshops are the only regional dialogue mechanism where scholars and government officials from Taiwan, China and the member states of ASEAN meet regularly and

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<sup>94</sup> "Japan, Taiwan agree to modify landmark fishing pact off Senkakus," *The Japan Times*, March 7, 2015, <http://www.japantimes.co.jp/news/2015/03/07/national/politics-diplomacy/japan-taiwan-agree-to-modify-landmark-fishing-pact-off-senkakus/#.VRJLZTsdH39>. The Japan-Taiwan fisheries agreement was praised by the Obama administration: "The promise of the Taiwan Relations Act," Kin Moy, Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs, written statement before the House Foreign Affairs Committee, Washington, DC, March 14, 2014, <http://www.state.gov/p/eap/rls/rm/2014/03/223461.htm>.

<sup>95</sup> Elaine Hou, "Taiwan mum on timing for Philippine law enforcement cooperation pact," *Focus Taiwan*, January 20, 2015, <http://focustaiwan.tw/news/aip/201501200033.aspx>.

<sup>96</sup> Sheila Manalac, "TECO envoy seeks to finalize fishing pact," *The Manila Times*, December 23, 2014, <http://www.manilatimes.net/teco-envoy-seeks-finalize-fishing-pact/150942/>. Conversation with Philippine academic, Boao, Hainan, China, March 28, 2015.



exchange views on the South China Sea. Yet, they have largely limped along since Canadian funding was cut off in early 2000 and the scope of activities reduced.<sup>97</sup> Jointly rejuvenating the workshops could shore up goodwill and provide a useful platform for making the case for Taiwan's participation.

##### **5. Provide evidence that Taiping Island is an “island” capable of sustaining human habitation or economic life under UNCLOS Article 121**

Taiping Island was reportedly included in the Philippines' 4,000 page memorial in its arbitral case against China, though “not raised as a legal issue,”<sup>98</sup> meaning that Manila did not specifically ask for a ruling on the status of Taiping Island. It is not publicly known whether the arbitral tribunal asked Manila to submit evidence on Taiping Island in the 26 questions it sent to Manila in December 2014. But given that the Philippines' 3,000 page supplemental submission included “detailed information about 49 islands, reefs and other features in the South China Sea,”<sup>99</sup> it is highly likely that evidence on Taiping Island, the largest land feature in the South China Sea, was included.

If the status of Taiping Island was addressed by the Philippines in its memorial and supplementary submission, Taiwan has a strong interest in providing evidence that it is in fact an “island” capable of sustaining human habitation or economic life (and therefore entitled to an EEZ and continental

shelf under Article 121). The ROC is in the best position to provide this evidence having occupied Taiping Island since 1956. Doing so would, at the very least, assist the tribunal in giving due regard to Taiwan's rights and interests in the South China Sea. It would also indirectly support consistency between Taiwan's claims and UNCLOS and international law.

The form Taiwan's statement should take requires some consideration. One potential complication is Taiwan's status under international law and its relations with China. In December 7, 2014, China released a position paper rejecting the tribunal's jurisdiction on its Ministry of Foreign Affairs website, rather than file it with the tribunal, to avoid being seen as accepting or participating in the arbitration.<sup>100</sup> To side-step possible complications, Taiwan could similarly put out a statement on a ministry website fully setting out all available evidence for its case that Taiping Island is an “island” capable of sustaining human habitation or economic life under Article 121 UNCLOS.

### **How ASEAN, its member states and the United States should respond to Taiwan's overtures in the South China Sea**

Although Taiwan has moved toward a more clearly limited claim and conciliatory approach, this has received scant attention from ASEAN, its member states, and the United States, who have done little to support these moves.

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<sup>97</sup> Yann-Huei Song, “The South China Sea workshop process and Taiwan's participation,” *Ocean Development & International Law*, 41(2010):3, 253-269, at 257.

<sup>98</sup> Ellen Tordesillas, “Justice Carpio explains Itu Aba issue in the PH suit vs China,” ABS-CBN, February 9, 2015, <http://www.abs-cbnnews.com/blogs/opinions/02/08/15/justice-carpio-explains-itu-aba-issue-ph-suit-vs-china>.

<sup>99</sup> Republic of the Philippines Department of Foreign Affairs, “Statement on the Philippines' supplemental submission to the arbitral tribunal,” March 17, 2015, <http://www.dfa.gov.ph/index.php/newsroom/dfa-releases/5667-statement-on-the-philippines-supplemental-submission-to-the-arbitral-tribunal>.

<sup>100</sup> Position paper of the government of the People's Republic of China on the matter of jurisdiction in the South China Sea arbitration initiated by the Republic of the Philippines,” Ministry of Foreign Affairs of the People's Republic of China, December 7, 2014, [http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1217147.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1217147.shtml).

There are several reasons for this neglect within Southeast Asia. First, as noted at the outset, ASEAN and its member states are fearful of falling foul of China's "one-China" principle. Though being more receptive toward Taiwan's overtures in the South China Sea need not necessarily mean this, given China's huge economic and political clout,<sup>101</sup> ASEAN and its member states are arguably unduly conservative in this regard. A Singaporean official questioned why Singapore would rock the boat: although it might mean Taiwan's gratitude, it would incur China's "lasting suspicion."<sup>102</sup>

Second, ASEAN and its member states have traditionally been fearful of Taiwan and China cooperating to defend the islands from a third party attack or to bolster claims to the South China Sea. The possibility of this waxed in the late 1980s and early 1990s, and waned with worsening cross-strait relations from the mid-1990s with President Lee Teng-hui's (1988–2000) visit to the United States and China's decision to "test-fire" missiles in the water areas near Taiwan's two largest sea ports.<sup>103</sup> Since then, Taipei has consistently rejected the possibility of cooperating with Beijing on claims in the South China Sea. Still, there remains, at best, wariness over the possibility of the two sides of the strait cooperating. When asked how ASEAN countries view Taiwan's involvement, a keen observer of Southeast Asian affairs responded simply, "ASEAN countries do not think about Taiwan."<sup>104</sup> This reading was confirmed by a meeting with foreign affairs officials of an important ASEAN member state when the question of Taiwan and the South China Sea drew blank stares.

A third possible reason is that ASEAN claimants could legitimately argue that, in the event an agreement to jointly develop contested areas were agreed upon, this could split the South China Sea pie into additional slices. For those who regard China and Taiwan as indistinguishable, China would, through Taiwan, get a larger share than would otherwise have been the case.

ASEAN and its member states might want to re-evaluate their position toward Taiwan and be more open to its involvement in negotiations and activities in the South China Sea. Taiwan's involvement recognizes facts on the ground, namely, its control of the largest natural island, the regular patrol of the seas by its coast guard, and its huge fishing industry. Including Taiwan is a pragmatic and necessary way of managing conflict. Japan's fisheries agreement with Taiwan in the East China Sea, which was concluded in April 2013, was a nod to this reality. The same may be said about the pending agreement between the Philippines and Taiwan covering fishery law enforcement cooperation.

Crucially, Taiwan and what it claims (and by implication does not claim) can help stabilize the South China Sea dispute. China, with high levels of nationalism within its country—and because it can get away with it—will not denounce the dashed line.<sup>105</sup> It will, however, likely want to avoid being perceived as riding roughshod over international law. It still cares what the international community thinks and it is important for ASEAN countries to work this leverage.

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<sup>101</sup> An official from an ASEAN state highlighted how, in his calculations, nine of Malaysia's thirteen states were in Chinese pockets, so Beijing had tremendous sway with Kuala Lumpur. Conversation, March 20, 2015.

<sup>102</sup> Conversation with Singapore diplomat, Washington, DC, January 30, 2015.

<sup>103</sup> For a discussion of this, see Song (2005), *supra* n 6, 269-273.

<sup>104</sup> Conversation, Singapore, February 18, 2015.

<sup>105</sup> Conversation with Chinese diplomat, February 6, 2015.



The United States is hampered in its ability to directly appeal to China to support Taiwan's participation, given Beijing's tendency to regard the United States as meddling and its proposals with suspicion. U.S. involvement in this regard may thus be counterproductive; it needs to be broached quietly and sensitively, if at all.

On the other hand, the United States can and should do all it can to support Taiwan clarifying its claims so that it more clearly accords with UNCLOS and international law. Privately, it should reassure Taiwan that it does not expect it to explicitly abandon the dashed line. The United States should also work behind the scenes to encourage ASEAN and its member states to welcome Taiwan's participation in the code of conduct negotiations and any cooperative activities between claimants, making a strong case for why Taipei's involvement will have a salutary effect on reducing tensions in the South China Sea. This course would be consistent with the United States' declaratory policy that Taiwan should have a voice in international organizations where it is not a member and, by implication, a voice in international negotiations where it has an interest.<sup>106</sup> More importantly, it will help move a dispute with potentially severe regional and international ramifications toward greater stability.

### Why China should support Taiwan's participation

China has many reasons to regard Taiwan's inclusion as a positive thing. As noted at the outset, participation should not be conceived as a reward for improved cross-strait relations and movement

toward political unification, but rather as a means by which better relations can be achieved. As President Ma noted in his 2008 inaugural address, "Only when Taiwan is no longer being isolated in the international arena can cross-strait relations move forward with confidence."<sup>107</sup>

In light of Taiwan's upcoming and potentially raucous 2016 elections, it is particularly important for China to put cross-strait relations on firmer foundations. Encouraging or at least acquiescing in Taiwan's participation in the South China Sea will help pre-empt criticism that China obstructs Taiwan's participation in regional initiatives and take the wind out of any punches the DPP may throw in this respect.

Supporting Taiwan's participation in cooperative activities will also be in keeping with the Chinese foreign ministry's dual-track approach to the dispute, which is to seek one-on-one negotiations on sovereignty issues, and multilateral arrangements within the region to promote peace and stability in the South China Sea.<sup>108</sup> The promotion of peace and stability in the South China Sea must, as a matter of efficacy, include *all* important actors regardless of their legal status. To use an analogy, rules of the road apply to all who use it; accepting this says little, if anything, about the status of individual road users. Beijing would do well to separate as issues Taiwan's international status from how best to manage the South China Sea dispute.

Bringing Taiwan into the fold will help demonstrate China's sincerity in seeking a peaceful solution to the dispute. Beijing has come to realize that its actions in the South China Sea have scared

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<sup>106</sup> Interview with Richard Bush, Brookings Institution, January 27, 2015.

<sup>107</sup> "Taiwan's renaissance: Inaugural address," *supra* n 78, 6.

<sup>108</sup> "Foreign minister encourages a 'dual-track' approach to sea issue," *China Daily* and *Xinhua*, August 11, 2014, [http://www.chinadaily.com.cn/china/2014-08/11/content\\_18282602.htm](http://www.chinadaily.com.cn/china/2014-08/11/content_18282602.htm). See also Li Kaisheng, "Claimants should recognize China's sincerity in South China Sea disputes," *Global Times*, March 9, 2015, <http://www.globaltimes.cn/content/911042.shtml>.

off its neighbors and led many of them to seek closer ties with the United States, Japan and India. The United States has increased its security presence in the region and there are calls within the country for a more energized U.S.-Taiwan relationship. In other words, China is realizing that an unintended consequence of its actions in the South China Sea has been to raise the costs of exerting greater influence in its backyard.

China has, to a certain extent, embarked on a course to address anxieties over its behavior in the region. It also needs to step up its cultivation of Taiwan. Whatever China might see as the island's international legal status, the reality is that it is not in China's interests to have bad relations with multiple parties, particularly if that party is Taiwan and meant to be family. In short, a less intransigent approach in the South China Sea will have positive international and domestic effects for China.

To conclude, Taiwan has been taking tentative steps toward clarifying that its claims are in keeping with UNCLOS and international law. It has also adopted a more conciliatory approach by seeking to promote the East China Sea Peace Initiative in the South China Sea. These steps, which could help stabilize the situation in the South China Sea, have largely been met with a deafening silence, whether on the part of ASEAN, its member states, or the United States. Proper management of the South China Sea dispute necessarily involves Taiwan. It can also be undertaken in ways that are consistent with China's one-China principle. All parties who have an interest in better management of the dispute and a more peaceful region have an interest in supporting Taiwan through including it in code of conduct negotiations (as an observer or guest) and cooperative activities. In China's case, the stakes are even higher, not least because of its interest in better cross-strait relations.

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