

Diplomatic Academy of Viet Nam

The 10th South China Sea International Conference:

Continuity and Evolution of Taiwan's South China Sea Policy

Chi-Ting Tsai

Associate Professor of International Law, Department of Political Science

National Taiwan University, TAIWAN

JSD, Cornell Law School

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Research Questions

- ▶ What is the historical context of Taiwan's South China Sea policy?
- ▶ What is the evolution of Taiwan's legal position after the issuance of U-shaped line, before and after the South China Sea Arbitration?
- ▶ What kind of the effect the arbitration has on Taiwan's South China Sea policy debates?

Three Stages of Taiwan's South China Sea Policy Context

- Consolidation of territorial sovereignty and maritime rights (1930s - 1947)
 - 1933 Preliminary U-shaped line map drawn by Mei-Chu Pai
 - 1947 U-shaped line map
- Struggling between the history and contemporary (1947 - 2000)
 - 1993 South China Sea Policy Guidelines
 - 1998 Two basic maritime area laws
- Facing the challenge of China's rise (2000 - present)
 - Chen Administration: suspension of 1993 SCS Policy Guidelines
 - Ma Administration: clarification of the U-shaped line before the SCS Arbitration?
 - Tsai Administration: accepting the SCS Arbitration?

Taiwan and the South China Sea Arbitration: A Primer

- The U-shaped line issue
 - The legal character of the U-shaped line
- The status of Taiping Island
 - Whether Taiping Island is entitled to EEZ and continental shelf
- Arbitration
 - Taiwan Authority of China
 - The claim within the U-shaped line cannot be historical rights in accordance with international law
 - Taiping Island cannot generate EEZ and continental shelf

Taiwan's Legal Position before the Arbitration

- ROC government position on SCS Arbitration (May 13, 2016 by MOFA)
 - Whether **from the perspective of history**, geography, or international law, the Nansha (Spratly) Islands, Shisha (Paracel) Islands, Chungsha (Macclesfield Bank) Islands, and Tungsha (Pratas) Islands, and their surrounding waters, are an **inherent part of ROC territory and waters**. The ROC enjoys all rights over them **in accordance with international law**.
 - The Philippine government, without first consulting with the ROC, has distorted the original meaning of ROC government documents on numerous occasions during the proceedings, and has aimed to downgrade the legal status of Taiping Island, undermining regional peace and stability. Because the **ROC was not invited to participate in the arbitration proceedings, and the arbitral tribunal has not solicited its views**, the ROC government has actively presented related evidence to the international community in response to the erroneous statements made by the Philippines
 - Any aspect of **the award that undermines ROC sovereignty** over the South China Sea Islands **and affects ROC maritime entitlements** will not be binding on the ROC. The ROC government **will neither acknowledge nor accept** such an award.

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Taiwan's Legal Position after the Arbitration

- ROC government position on the South China Sea arbitration (July 12, 2016 by Office of the President, R.O.C.)
 - The government of the Republic of China stresses that the ROC is entitled to all rights over the South China Sea Islands and their relevant waters **in accordance with international law and the law of the sea.**
 - **The arbitral tribunal did not formally invite the ROC to participate in its proceedings, nor did it solicit the ROC's views.** The decisions of the tribunal which impinge on the interests of the ROC, especially with regard to the status of Taiping Island, have seriously undermined the rights of the ROC over the South China Sea Islands and their relevant waters. **The ROC government does not accept any decisions that undermine the rights of the ROC, and declares that they have no legally binding force on the ROC.**
 - The ROC government reiterates its firm position that the ROC has sovereignty over the South China Sea Islands and their relevant waters. **The government will staunchly safeguard the country's territory and sovereignty,** and ensure that national interests are not jeopardized.
 - **The ROC government urges** that disputes in the South China Sea be settled peacefully through **multilateral negotiations.** The ROC is also willing, through negotiations conducted on the basis of equality, to work with all States concerned to advance peace and stability in the South China Sea.

Taiwan's Legal Position after the Arbitration

- ▶ ROC position on the South China Sea Arbitration (July 12, 2016, Ministry of Foreign Affairs)
 - ▶ In the text of the award, the ROC is referred to as “Taiwan Authority of China.” This inappropriate designation is **demeaning to the status of the ROC as a sovereign state.**
 - ▶ **Taiping Island was not originally included in the Philippines' submissions for arbitration.** However, the tribunal took it upon itself to expand its authority, declaring ROC-governed Taiping Island, and other features in the Nansha (Spratly) Islands occupied by Vietnam, the Philippines, and Malaysia, all to be rocks that “do not generate an exclusive economic zone.” This decision severely jeopardizes the legal status of the South China Sea Islands, over which the ROC exercises sovereignty, and their relevant maritime rights.

The Four Principles and the Five Actions

▶ The Four Principles

- ▶ Disputes in the South China Sea should be settled peacefully in accordance with international law and the law of the sea, **including the United Nations Convention on the Law of the Sea (UNCLOS)**;
- ▶ The ROC should be included in **multilateral mechanisms** aimed at resolving disputes;
- ▶ States concerned have an obligation to uphold the **freedom of navigation and overflight** in the region; and
- ▶ Disputes should be resolved by setting aside differences and promoting **joint development**. Through negotiations conducted on the basis of equality, the ROC is willing to work with other States concerned to advance peace and stability, as well as protect and develop resources, in the region.

The Four Principles and the Five Actions

➤ The Five Actions

- **Protection of fishing rights:** The ROC government shall strengthen its capabilities to ensure the safety of fishermen and fishing operations.
- **Multilateral consultations:** The Ministry of Foreign Affairs shall enhance dialogue and communication with the States concerned, so as to reach consensus on cooperation.
- **Scientific collaboration:** The Ministry of Science and Technology shall increase quotas for international experts invited by related government agencies to travel to Taiping Island to conduct scientific research on ecological, geological, seismological, meteorological, and climate change matters.
- **Humanitarian assistance and rescue:** The Ministry of Foreign Affairs shall work with relevant international and nongovernmental organizations to make Taiping Island a center of humanitarian assistance and rescue operations, as well as a supply base.
- **Cultivation of experts on the law of the sea:** The ROC government shall strengthen its ability to deal with issues pertaining to international law.

Legal Policy Positions of Taiwan after the Arbitration

► Changes

- Does not mention “history” in the statements
- Respect international law and UN Law of the Sea
- Does not specifically mention four island groups

► Continuity

- Safeguarding territorial sovereignty and maritime entitlements
- Does not mention exclusive historical rights in the statements and domestic laws
- Joint development and setting aside disputes
- Willing and able to provides common good in the South China Sea

South China Sea Policy Debates after the Arbitration in Taiwan

- Accept the Arbitration or not?
- Abandon the U-shaped line or not?
- Clarify the legal meaning of the U-shaped line or not?
- Clarify other maritime area claims in the South China Sea or not?
- Declaration of territorial sea baseline at Taiping Island or Spratly Island or not?
- Continue claiming Taiping Island as a full entitlement island or not?
- Declaration of the EEZ area in South China Sea or Taiping Island or not?
- How to manage or operate Taiping Island in the future?
- Adjust Taiwan's South China Sea discourse or not?
- Revisit or draft the South China Sea Policy Guideline or not?

Why Taiwan should be included in the Regional Mechanisms?

- Mainly complies with international law
- Supports regional multilateral mechanisms in accordance with international law and solve the disputes in multilateral way
- Never intervene other countries' freedom of navigation rights
- Conservation of maritime environment, including Pratas Island National Park and Sea Turtle protection zone at Taiping Island
- Capacity of providing joint marine environmental protection, marine scientific research, maritime crime and humanitarian rescue

Takeaway Messages

- ▶ Taiwan's legal position is mainly gradually shifting toward UN Law of the Sea and consistent with the arbitral award in practice by not mentioning history in the South China Sea.
- ▶ The Four Principles and the Five Actions policy guidelines and practices thereof sent a clear signal to international society that we are willing to regard South China Sea as common resources for mankind and to manage the conflict in multilateral mechanisms.
- ▶ Because of Taiwan's compliance with international law and capacity to cooperate with other countries regarding non-traditional security subject matters, various regional mechanisms should also include Taiwan into them.