

Making Dangerous Ground Safe: The Role of Taiping Island

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Abstract

In the South China Sea Arbitration, the Philippine argument on the legal status of Taiping Island is just a tactic that does not contribute to actual resolution of disputes in the region. By challenging the legal status of Taiping Island, the Philippines is in fact undermining its own case with a misleading interpretation of the UNCLOS as well as of judgments from other international judicial bodies. Moreover, such an argument creates more conflicts and misunderstandings between claimants than it could deal with, which would make the South China Sea disputes more intricate.

With fresh water wells, natural vegetation, agricultural products, a lighthouse, wharf, communications equipment, a hospital, as well as Guanyin Temple, the naturally formed Taiping Island has become a solid foundation for a peaceful South China Sea, and a perfect showcase of the ROC government's long-time peaceful efforts in the region and the model for easing tensions in the South China Sea. The absurd defense provided by the Philippines in the arbitration is not only disrespectful of Taiwan, but also threatens the peaceful resolution of the South China Sea disputes. This paper suggests that Taiwan could play a more contributive role and promote the

peaceful joint cooperation and development of the South China Sea from Taiping Island. Claimants should pay more attention to non-traditional security cooperation matters with a zonal perspective.

Keywords: Taiping Island, South China Sea Arbitral Tribunal, Taiwan, Peace Initiative, Regime of Island

I. Legal Status of Taiping Island in the Arbitration Tribunal

The South China Sea Arbitration Tribunal has concluded two hearings, one for the decision on jurisdiction and admissibility which took place July 7-13, 2015,¹ and the other for the merits of the case November 24-30, 2015.² It is a great pity that, according to the released transcripts of the two rounds of hearings of the South China Sea Arbitration Tribunal, the Philippines described Taiping Island (also known as Itu Aba) as a “rock” rather than an “island.” The Philippines argued that Taiping Island is a “rock,” because its area is less than 0.43 sq. km, nothing more than a military base; it has no permanent civilian habitants other than a military garrison; It depends

1. Permanent Court of Arbitration, “The Arbitral Tribunal Commences Hearing on Jurisdiction and Admissibility,” 5th Press Release, July 7, 2015, *Permanent Court of Arbitration*, <<http://www.pcacases.com/web/sendAttach/1301>>; Permanent Court of Arbitration, “The Arbitral Tribunal Concludes Hearing on Jurisdiction and Admissibility,” 6th Press Release, July 13, 2015, *Permanent Court of Arbitration*, <<http://www.pcacases.com/web/sendAttach/1304>>.

2. Permanent Court of Arbitration, “The Tribunal Commences Hearing on Merits,” 8th Press Release, November 24, 2015, *Permanent Court of Arbitration*, <<http://www.pcacases.com/web/sendAttach/1521>>; Permanent Court of Arbitration, “The Tribunal Concludes Hearing on the Merits,” 9th Press Release, November 30, 2015, *Permanent Court of Arbitration*, <<http://www.pcacases.com/web/sendAttach/1524>>.

entirely on the regular delivery of supplies; it provides no water suitable for drinking because the underground water is salty and undrinkable; it does not have life-sustaining natural vegetation, nor soil sufficient for agricultural purposes; the agricultural produce is done by military personnel who are stationed there in their spare time, not by farmers engaged in real agricultural production; and even the soil is shipped in from the outside.³

However, what the Philippines alleges about Taiping Island is inappropriate for it is based on a set of factual flaws.

II. Facts on Taiping Island

Contrary to the Philippine challenges, Taiping Island,⁴ which has a land area of 0.50 square kilometers and is about 5 meters above sea level at high tide, has consistently sustained more than 120 people, including personnel from the Coast Guard Administration, navy, air force, as well as 2 doctors, 1 dentist and 2 nurses serving Nansha hospital.

Taiping Island possesses an adequate water supply. There are several groundwater wells on the island, some of which were in use long before Taiwan's Coast Guard Administration took over management of Taiping Island in 2000 from the ROC Ministry of National

3. Permanent Court of Arbitration, "Hearing on Jurisdiction and Admissibility," Day 1, PCA Case No. 2013-19, July 7, 2015, p. 88, *Permanent Court of Arbitration*, <<http://www.pcacases.com/web/sendAttach/1399>>; Permanent Court of Arbitration, "Hearing on the Merits and Remaining Issues of Jurisdiction and Admissibility," Day 2, PCA Case No. 2013-19, November 25, 2015, pp. 110-112, *Permanent Court of Arbitration*, <<http://www.pcacases.com/web/sendAttach/1548>>.

4. Taiping means "calm and peaceful" in Chinese.

Defense. According to a more detailed description, personnel stationed on the Island have routinely relied on drinking water from the wells since Taiping Island was restored to the ROC government's jurisdiction in 1946. There are at least four wells usually used on Taiping Island. In terms of water quality, the proportion of freshwater in them is 99.1%, 75.8%, 97.5%, and 96.8%, respectively, averaging 92.3%. It is clear that the well water is safe for daily consumption. About 65 metric tons of water can be pumped from these wells daily to provide drinking water and meet cooking and everyday needs. Apart from well water, there are water-retaining facilities mainly used for farming.⁵

Furthermore, soil samples were taken for examination and the study's results revealed that soil on the island is naturally formed. There are two main sections for the soil composition. One is the soil section which with about 20 centimeters of greyish-black topsoil mixed with dry twigs and fallen leaves, the other one, which is deeper, presented a calcareous well-formed soil structure whereas the topsoil, about 40 centimeters in thickness, consisted primarily of sand mixed with dry twigs and leaves, and large amounts of guano. Most importantly, both types of soil are naturally formed through thousands of years of accumulation and are sufficiently nutrient-rich to support indigenous vegetation growth.⁶

5. ROC Ministry of the Interior, "ROC Minister of the Interior Chen Wei-zen presides over a ceremony marking the opening of a wharf and lighthouse on Taiping Island," *ROC Ministry of the Interior*, December 12, 2015, <<http://maritimeinfo.moi.gov.tw/marineweb/LayFrom0.aspx?icase=T03&pid=0000001989>>.

6. ROC Ministry of Foreign Affairs, "Taiping Island is an island, not a rock, and the ROC possesses full rights associated with an exclusive economic zone and continental shelf in accordance with UNCLOS," Press Release No. 023, *ROC Ministry of Foreign Affairs*, January 23, 2016, <http://www.mofa.gov.tw/en/News_

Meanwhile, despite a runway constructed in the middle of the Island, the primeval coastal forest areas on the two sides are well-protected. Trees taller than 10 meters and dense forest areas can be seen everywhere on the island. In fact, one of the largest trees is a lantern tree, 12 meters in height and is over 200 years old. Moreover, ROC Coast Guard Administration personnel stationed there have also managed to build their own version of “Happy Farm” by cultivating various tropical vegetables and fruits, such as corn, sweet potato, okra, pumpkin, loofah gourd, bitter melon, cabbage, mangoes, guavas, scallions, aloe vera, and red beans, which along with wild coconut, papaya as well as banana provided for the dietary needs of the people on the island. In addition, 6 guard dogs, 12 goats, and 180 chickens live on the island. The goats and chickens provide sources of food that meet the needs of people on the island.⁷

Apart from these natural conditions, there is a hospital on Taiping Island with advanced facilities. As mentioned, two doctors, one dentist and two nurses are stationed there to provide emergency internal medicine, general surgery and dentistry services. Apart from providing regular health and medical services to the personnel stationed on Taiping, the Hospital also provides emergency medical treatment to foreign fishermen in the neighborhood. It has also provided emergency treatment to 12 foreign nationals in 11 search and rescue cases. They were fishermen from neighboring countries. For example, 5 Philippine fishermen, until present, have been treated.⁸

Content.aspx?n=539A9A50A5F8AF9E&sms=37B41539382B84BA&s=542A8C89D51D8739>.

7. ROC Ministry of Foreign Affairs, “Taiping Island is an island, not a rock, and the ROC possesses full rights associated with an exclusive economic zone and continental shelf in accordance with UNCLOS.”

8. On file with the author.

A Guanyin Temple was built in 1959 to meet the spiritual needs of personnel stationed on Taiping Island. The original temple was built in the form of a big shrine using readily available materials, with its pillars made from cans strung together. It has since been renovated several times. Near the Guanyin Temple is a tombstone dating back to the Qing dynasty, as well as a stone marker erected during the Japanese colonial period when Japan incorporated Taiping Island and the Shinnan Gunto (part of the Nansha Islands) into Takao City of Takao Prefecture (today's Kaohsiung City and Pingtung County), under the jurisdiction of the Japanese governor-general of Taiwan. Also in the vicinity there is a memorial stele marking the recovery of the island by the ROCS Taiping on December 12, 1946 and this is the origin of the island's name. All of this demonstrates that humans have long been active on Taiping Island, offering powerful evidence that Taiping Island has the capability to sustain human habitation.⁹

The aforementioned natural conditions of Taiping Island are in accord with the stipulation of the UNCLOS Article 121(1).¹⁰ In addition, the good quality of fresh water from ground wells, naturally formed fertile soil, growing plants and agricultural crops, as well as

9. ROC Ministry of Foreign Affairs, "Taiping Island is an island, not a rock, and the ROC possesses full rights associated with an exclusive economic zone and continental shelf in accordance with UNCLOS."

10. UNCLOS, Article 121:

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

poultry and livestock can meet the needs of personnel stationed there. It is obvious that the conditions on Taiping qualify it as an “island” in accordance with UNCLOS, so why does the Philippines argue it is a “rock”?

III. The Philippines’ Ambitious Ploy

The Philippines submitted 15 issues to the Tribunal:

1. *China’s maritime entitlements in the South China Sea, like those of the Philippines, may not extend beyond those permitted by the United Nations Convention on the Law of the Sea (“UNCLOS” or the “Convention”);*
2. *China’s claims to sovereign rights and jurisdiction, and to “historic rights”, with respect to the maritime areas of the South China Sea encompassed by the so-called “nine-dash line” are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China’s maritime entitlements under UNCLOS;*
3. *Scarborough Shoal generates no entitlement to an exclusive economic zone or continental shelf;*
4. *Mischief Reef, Second Thomas Shoal and Subi Reef are low-tide elevations that do not generate entitlement to a territorial sea, exclusive economic zone or continental shelf, and are not features that are capable of appropriation by occupation or otherwise;*
5. *Mischief Reef and Second Thomas Shoal are part of the exclusive economic zone and continental shelf of the Philippines;*
6. *Gaven Reef and McKennan Reef (including Hughes Reef) are low-tide elevations that do not generate entitlement to*

a territorial sea, exclusive economic zone or continental shelf, but their low-water line may be used to determine the baseline from which the breadth of the territorial sea of Namyit and Sin Cowe, respectively, is measured;

- 7. Johnson Reef, Cuarteron Reef and Fiery Cross Reef generate no entitlement to an exclusive economic zone or continental shelf;*
- 8. China has unlawfully interfered with the enjoyment and exercise of the sovereign rights of the Philippines with respect to the living and non-living resources of its exclusive economic zone and continental shelf;*
- 9. China has unlawfully failed to prevent its nationals and vessels from exploiting the living resources in the exclusive economic zone of the Philippines;*
- 10. China has unlawfully prevented Philippine fishermen from pursuing their livelihoods by interfering with traditional fishing activities at Scarborough Shoal;*
- 11. China has violated its obligations under the Convention to protect and preserve the marine environment at Scarborough Shoal and Second Thomas Shoal;*
- 12. China's occupation and construction activities on Mischief Reef:*
 - (a) violate the provisions of the Convention concerning artificial islands, installations and structures;*
 - (b) violate China's duties to protect and preserve the marine environment under the Convention; and*
 - (c) constitute unlawful acts of attempted appropriation in violation of the Convention;*
- 13. China has breached its obligations under the Convention by operating its law enforcement vessels in a dangerous manner causing serious risk of collision to Philippine vessels navigating in the vicinity of Scarborough Shoal;*

14. *Since the commencement of this arbitration in January 2013, China has unlawfully aggravated and extended the dispute by, among other things:*
- (a) *interfering with the Philippines' rights of navigation in the waters at, and adjacent to, Second Thomas Shoal;*
 - (b) *preventing the rotation and resupply of Philippine personnel stationed at Second Thomas Shoal; and*
 - (c) *endangering the health and well-being of Philippine personnel stationed at Second Thomas Shoal; and*
15. *China shall desist from further unlawful claims and activities.*¹¹

The Arbitral Tribunal finds that it has jurisdiction to consider the Philippines' Submissions Nos. 3, 4, 6, 7, 10, 11, and 13. However, the Tribunal reserves consideration of its jurisdiction to rule on Submissions Nos. 1, 2, 5, 8, 9, 12, and 14 to the merits phase. In addition, it also directs the Philippines to clarify the content and narrow the scope of its Submission 15 and reserves consideration of its jurisdiction over Submission No. 15 to the merits phase.¹²

Obviously, there is no submission item concerning the legal status of Taiping Island. Nevertheless, it is important to understand the tactic behind these submissions. The Philippines expressed it clearly during the hearings,

Our written pleadings do address the largest features in the Spratlys, including Itu Aba, Thitu and West York. And we have

11. Permanent Court of Arbitration, "Award on Jurisdiction and Admissibility," PCA Case No. 2013-19, October 29, 2015, *Permanent Court of Arbitration*, <<http://www.pcacases.com/web/sendAttach/1506>>.

12. Permanent Court of Arbitration, "Award on Jurisdiction and Admissibility."

demonstrated that the features in the Spratly area are “rocks” within the meaning of Article 121 of the Convention, so that none is capable of generating an entitlement to any EEZ or continental shelf.....

.....And our position is simple: if the largest of the Spratly features is incapable of generating an EEZ and continental shelf entitlement, then it is most unlikely that any of the other 750 features will be able to do so.¹³

With such an understanding, the Philippines alone can enjoy sovereign rights and jurisdiction extending from Palawan under the UNCLOS. Another geographical fact might answer why the Philippines is eager to demote the legal status of Taiping Island. The distance between Taiping Island and the Philippine owned Palawan Island¹⁴ is about 199.6 nautical miles. Owing to the fact that Taiping Island is an “island,” then each would be capable of generating a 200 nm EEZ, which would definitely create a wide overlapping maritime area between them. This would be a thorn in the Philippines’ side.

On the one hand, if Taiping Island is designated a “rock,” Taiwan could not assert sovereign rights within an EEZ generated from it, nor could Taiwan claim surrounding submerged features outside a 12 nm radius as part of Taiping Island’s continental shelf on which it could build structures or installations. On the other hand, if Taiping Island is deemed capable of generating a 200 nm EEZ and a continental

¹³ Permanent Court of Arbitration, “Hearing on Jurisdiction and Admissibility,” Day 1, pp. 88-89.

¹⁴ Palawan Island, with land area of 12,189 sq. km, is the largest island of the Palawan Province, the Philippines. The western coast of the island is along the South China Sea.

shelf, then the whole area which is the subject of the arbitration would require the delimitation of a maritime boundary before anything could be decided, and that would take the case out of the jurisdiction of the tribunal.

Obviously, “whether Taiping Island is a rock” is a false issue. The Philippines manipulates such issue just wanting to argue there is no island in the Spratlys under other Parties’ occupation so that only it could claim an EEZ from Palawan. However, such an argument is also contrary to its previous position on claiming “geological features” against the PRC’s position on its rights in the South China Sea.

In responding to a joint submission by Malaysia and Vietnam about the information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured in respect of the southern part of the South China Sea on May 6, 2009,¹⁵ and the Vietnamese claim on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured in respect of the North Area on May 7, 2009,¹⁶ China issued two almost identical *Notes Verbales* stating “China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys

15. United Nations, “Commission on the Limits of the Continental Shelf (CLCS), Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Joint Submission by Malaysia and the Socialist Republic of Viet Nam,” May 3, 2011, *United Nations*, <http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm>.

16. United Nations, “Commission on the Limits of the Continental Shelf (CLCS), Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Submission by the Socialist Republic of Viet Nam,” May 3, 2011, *United Nations*, <http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm>.

sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof.”¹⁷

Against China’s position on the islands in the South China Sea and the adjacent waters, the Philippines issued a communication on April 5, 2011 to argue that,

[T]he Philippines, under the Roman notion.....the land dominates the sea, necessarily exercises sovereignty and jurisdiction over the waters around or adjacent to each relevant geological feature in the Kalayaan Island Group (KIG) as provided for under the United Nations Convention on the Law of the Sea (UNCLOS).

*At any rate, the extent of the waters that are “adjacent” to the relevant geological features are definite and determinable under UNCLOS, specifically under Article 121 (Regime of Islands) of the said Convention.*¹⁸

In other words, the Philippines claims there will be possibilities of having maritime area claims in the around or adjacent waters. Moreover, the Philippines’ argument regarding Taiping Island is just a legal tactic that does not contribute to the practical resolution of

17. The Permanent Mission of the People’s Republic of China, “CML/17/2009,” May 7, 2009, *United Nations*, <http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf>; The Permanent Mission of the People’s Republic of China, “CML/18/2009,” May 7, 2009, *United Nations*, <http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf>.

18. The Permanent Mission of the Republic of the Philippines, “No. 000228,” April 5, 2011, *United Nations*, <http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/phl_re_chn_2011.pdf>.

disputes in the South China Sea. On the contrary, such a false accusation might cause more conflicts than it may solve.

IV. The Philippines' Misleading Scheme

In its statement to the Arbitral Tribunal, the Philippines also quotes out of context by saying that,

*China only claimed islands south of the Paracels for the first time in 1935, when it prepared a map depicting various insular features in the Spratlys.President Ma refers to this map as "proclaiming sovereignty" over these features "for the first time."*¹⁹

Actually, President Ma Ying-jeou mentioned the history of the claim in the Preface of the same source,

*In the early 20th century the ROC government not only defended its sovereignty over the South China Sea islands through diplomatic means, but also issued a map of the islands in 1935 dividing them – for the first time – into four different groups and giving each a name, thereby proclaiming sovereignty over them.*²⁰

Obviously, "for the first time" does not imply the ROC government proclaimed sovereignty over them for the first time, but denotes

19. Permanent Court of Arbitration, "Hearing on the Merits and Remaining Issues of Jurisdiction and Admissibility," Day 1, November 24, 2015, p. 92, *Permanent Court of Arbitration*, <<http://www.pcacases.com/web/sendAttach/1547>>.

20. ROC Ministry of the Interior, *Compilation of Historical Archives on the Southern Territories of the Republic of China* (Taipei: Ministry of the Interior, 2015), pp. 8-9.

dividing the islands claimed in the South China Sea into four groups. There is another instance of a garbled quotation by the Philippines, ie, the citation from a second source, Professor Ji Guoxing's paper, saying that "President of Taiwan, Ma Ying-jiu, has written that: 'The Diaoyu Islands themselves are not entitled to have a continental shelf or EEZ.....'"²¹ therefore,

*Because the Diaoyu Islands are larger and more significant than any of the Spratly features. The largest, Diaoyu Dao, measures 4.32 square kilometers in area, making it ten times larger than Itu Aba.If the former does not generate entitlement to an EEZ and continental shelf, as China and Taiwan both agree, there can be no serious argument about the latter.*²²

The Philippine side said this without knowing, or deliberately ignoring, the context in which President Ma wrote about the Diaoyu Islands delimitation issue. His point was a consideration of the limitation of islands when they are in a maritime delimitation case. Here again, President Ma did not mean islands should not enjoy any maritime claims at all.

Moreover, the Philippines make the same mistake when they argued that Taiping Island's maritime area should be confined within 12 nm by citing judgments from the ICJ: Serpents' Island ruling (Maritime Delimitation in the Black Sea, Romania v. Ukraine, 2009),²³ and

21. Permanent Court of Arbitration, "Hearing on the Merits and Remaining Issues of Jurisdiction and Admissibility," Day 2, p. 122.

22. Permanent Court of Arbitration, "Hearing on the Merits and Remaining Issues of Jurisdiction and Admissibility," Day 2, pp. 122-123.

23. International Court of Justice, "Reports of Judgments, Advisory Opinions and Orders: Maritime Delimitation in the Black Sea (Romania V. Ukraine)," February

Territorial and Maritime Dispute (Nicaragua v. Colombia, 2012),²⁴ and from ITLOS: St. Martin's Island (Delimitation of the Maritime Boundary Between Bangladesh and Myanmar, 2012).²⁵ Take the Nicaragua v. Colombia case for instance. The ICJ decided that the single maritime boundary should follow, respectively, a 12-nautical-mile envelope of arcs around Quitasueño Cay and Serrana Cay.²⁶ For other cases, the maritime boundary of the related land features are confined to a 12 nm of limit. Therefore, the Philippines jumps to a conclusion on defining the maritime area for an island as follows:

We made the point, which we consider beyond any serious argument, that in any future delimitation that might be performed by a duly constituted tribunal, applying the Convention,

3, 2009, *International Court of Justice*, <<http://www.icj-cij.org/docket/files/132/14987.pdf>>.

24. International Court of Justice, "Judgement of Territorial and Maritime Dispute (Nicaragua v. Colombia)," November 19, 2012, *International Court of Justice*, <<http://www.icj-cij.org/docket/files/124/17164.pdf>>.

25. International Tribunal for the Law of the Sea, "Judgement of Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/ Myanmar)," No. 16, March 14, 2012, *International Tribunal for the Law of the Sea*, <https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_16/C16_Judgment_14_03_2012_rev.pdf>.

26. Quitasueño is the largest reef complex of the Quitasueño Archipelago. In consequence it is particularly rich in fishing, and has been given special protection by Colombian agencies charged with the preservation of coral reefs and the environment. Serrana Cay is some 1,000 meters in length and has an average width of 400 meters. It is covered by grass and stunted brushwood, 10 meters in height. Permanent Court of Arbitration, "Territorial and Maritime Dispute (Nicaragua v. Colombia), Counter-Memorial of the Republic of Colombia," Vol. 1, November 11, 2008, *Permanent Court of Arbitration*, <<http://www.icj-cij.org/docket/files/124/16969.pdf>>; International Court of Justice, "Judgement of Territorial and Maritime Dispute (Nicaragua v. Colombia)," p. 720.

*features like Itu Aba and Thitu, as well as the other even smaller Spratly features, would without question be confined within 12-mile enclaves.*²⁷

Clearly, the Philippine argument on the legal status of Taiping Island is based on the supposition that the issue of marine delimitation has already been fixed. In international practice, and in cases decided by international courts, only once a request for delimitation exists can there be any consideration of possible restrictions posed by the maritime limits that an island may give rise to. One should not first determine what effect a given island may have before touching on the issue of delimitation. Moreover, the arbitration tribunal has no authority over the issue of delimitation, nor can it be asked to rule on this issue. If the Philippine's argument were to be accepted, then the opinions and practices of other states regarding even smaller reefs would be seriously undermined. For example, it would have an impact on Japan's claimed EEZ surrounding Okinotorishima,²⁸ Australia's claimed EFZ surrounding McDonald Island,²⁹ and so on.

It is also interesting to know that a "three-step-principle" is created when dealing with maritime delimitation issues. Take the *Black Sea Case* between Romania and the Ukraine. The ICJ started the process of delimitation "by drawing a provisional equidistance

27. Permanent Court of Arbitration, "Hearing on the Merits and Remaining Issues of Jurisdiction and Admissibility," Day 4, PCA Case No. 2013-19, November 30, 2015, pp. 10-11, *Permanent Court of Arbitration*, <<http://www.pcacases.com/web/sendAttach/1550>>.

28. Area of the Okinotorishima reefs is 1.58 sq. meters and 7.4 centimeters above the sea level at high tide.

29. McDonald Island is 2.45 sq. km in area size. No population. UNESCO, "Heard and McDonald Islands," February 10, 2016, Accessed, *UNESCO*, <<http://whc.unesco.org/en/list/577>>.

line” between the adjacent and opposite coasts of Romania and the Ukraine in the north part of the Black Sea, and then examined “whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result” so that the resolution could be consistent with Articles 74 and 83 of UNCLOS. The court would then verify that the line did not lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each state by reference to the delimitation line. A final check for an equitable outcome involved a confirmation that no apparent disproportionality of maritime areas is evident by comparing the ratio of coastal lengths.³⁰ It is the “disproportion effect” that the Court would like to avoid during the decision on maritime delimitation issues rather than confining the effect of an island from the very beginning.

V. The Way Ahead

Water wells, natural vegetation, agricultural products, a lighthouse, wharf, communications equipment, Nansha Hospital, and Guanyin Temple have made the naturally formed Taiping Island a solid foundation for a peaceful South China Sea, and the perfect showcase of the ROC government’s long-time peaceful efforts in the region and the model for easing tensions in the South China Sea. The absurd argument provided by the Philippines in the arbitration case is not only disrespectful of the ROC, but also threatens the peaceful resolution of the South China Sea disputes.

³⁰ International Court of Justice, *Reports of Judgments, Advisory Opinions and Orders: Maritime Delimitation in the Black Sea (Romania V. Ukraine)*,” pp. 119, 120, 122.

The Philippine argument regarding the legal status of Taiping Island is just a tactic that does not contribute to actual resolution of disputes in the South China Sea. By challenging the legal status of Taiping Island, the Philippines is in fact undermining its own case with a misleading interpretation of the UNCLOS. Moreover, such an argument creates more conflicts and misunderstandings between claimants than it could deal with, which would make the South China Sea disputes more intricate.

It would be more realistic to find a way out of the midst of the conflict. The *South China Sea Peace Initiative* proposed by President Ma Ying-jeou on May 26, 2015 would be a conceptual and, at the same time, a practicable idea. The *Initiative* includes:

1. *Exercising restraint, safeguarding peace and stability, and refraining from taking any unilateral action that might escalate tension.*
2. *Respecting the principles and spirit of international law, settling disputes peacefully, as well as upholding the freedom and safety of navigation and overflight jointly.*
3. *Ensuring that all parties concerned participate in maritime cooperation and shared codes of conduct in order to enhance peace and prosperity.*
4. *Shelving sovereignty disputes and establishing a regional cooperation mechanism for the development of resources under integrated planning.*
5. *Coordinating and cooperating on nontraditional security issues such as environmental protection, scientific research,*

maritime crime fighting, humanitarian assistance and disaster relief.

In addition, President Ma announced the *Roadmap of the South China Sea Peace Initiative* which could be divided into three phases:

1. *In the short term, we need to jointly shelve disputes. All parties concerned in the region should launch multilateral dialogue and consultations as soon as possible with a view to reaching a consensus that sovereignty disputes be shelved. In accordance with the spirit and principles of the UN Charter, the UN Convention on the Law of the Sea, and other relevant international law, the parties should pledge to replace military confrontation with peaceful consultations, refrain from taking any actions that might affect stability and peace in the South China Sea, and ensure the freedom and safety of navigation and overflight through the South China Sea. After building sufficient mutual trust, the parties should negotiate codes of conduct regarding unexpected sea or air encounters in the South China Sea area, as well as the establishment of hotlines and other security mechanisms.*
2. *In the midterm, we will push for integrated planning. All parties concerned in the region, in accordance with the spirit and principles of relevant international law, should jointly establish cooperation mechanisms so as to engage in coordination and cooperation on important issues such as living resources conservation and management, non-living resources exploration and exploitation, marine environmental protection and scientific research, maritime crime prevention, humanitarian assistance and disaster re-*

lief.

3. *In the long term, as part of overall integrated planning, we look forward to the establishment of a mechanism for zonal development. Through bilateral or multilateral cooperation, parties concerned could designate specific maritime areas for provisional cooperation and development, with a view to establishing a joint management and monitoring mechanism so as to engage in cooperation and development on an area-by-area, stage-by-stage basis. Thus, fair and reciprocal win-win results can be achieved.*³¹

In a more detailed sense, Taiwan supports the idea of joint development or joint cooperation based on a zonal arrangement mechanism and full participation by the claimants. Only through this arrangement might a complete mechanism be achieved.

Peace is not an easy thing to find and should not be taken for granted. This applies also to the possibility of peace in the South China Sea. States surrounding the area pay too much attention to the issues of sovereignty over the islands/islets, expanding their maritime areas, as well as the exploration of resources. They seem to forget nothing would be secured if peace is not maintained. The *South China Sea Peace Initiative* and its *Roadmap* are significant in the present chaotic and tense situation because “promoting joint development/cooperation” would be a better way to alleviate the disputes.

31. Office of President Republic of China (Taiwan), “Remarks by President Ma on Taiping Island,” *Office of President Republic of China (Taiwan)*, January 28, 2016, <<http://english.president.gov.tw/Default.aspx?tabid=1124&itemid=36634&view=home>>.

It is noteworthy that, during the process of joint development, every party concerned should restrain itself so that joint development/cooperation can be successfully carried out and disputes kept under control — at the very least — that any further aggravation of the conflict is avoided. It is understandable that sovereign rights are for exploring, exploiting, managing and conserving living or non-living resources within the areas of an EEZ or continental shelf. Therefore, in practice, if the parties concerned agree, it is possible for them to explore and exploit resources without touching upon the issues of delimitation or sovereignty, which means to distinguish the issue of sovereign rights from that of sovereignty.

It is true that there are many players involved in the South China Sea disputes, and so it will take time and patience to build up a more substantial cooperation mechanism. One point in the *South China Sea Peace Initiative* might be attended to: the idea of “zonal development of resources in the South China Sea under integrated planning.” Building up a joint development mechanism would be a pertinent interpretation to it.

It is not difficult to locate opportunities for cooperation in the South China Sea. Joint development of hydrocarbon resources, joint management and conservation of living resources, cooperation in scientific marine research, and joint protection of the marine environment are all possible options. Apart from these, cooperation on non-traditional security issues is also important and feasible. This includes deterring maritime crime, constructing a scientific research center on living and non-living resources, setting up a search and rescue mechanism, or a humanitarian assistance and disaster relief center.

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