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Opportunity and Challenge for Cross-Strait Cooperation in the South China Sea

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Introduction

In recent years, there has been a resurgence of tensions in the South China Sea. Competition among claimants surrounding the semi-enclosed sea over territorial sovereignty, jurisdiction, and hydrocarbon and fishery resources in disputed waters has intensified since 2007, particularly between China, Vietnam and the Philippines. Major incidents include cable cutting by Chinese maritime surveillance and fishing vessels of Vietnamese survey ships during May and June 2011; stand-offs between the Philippines and China near Reed Bank in March 2011 and Scarborough Shoal between April and May 2012. China's demonstrated assertiveness in defending its territorial claims and interests in the South China Sea has inadvertently provided a catalyst for US's "return" to Asia. The involvement of the US and increased interest of other external powers such as India, Russia or Japan has added complexity to the dispute. The overall situation in the region appears to be volatile, and there is a need for all parties concerned to carefully manage the conflict.

In contrast with developments in the South China Sea, relations across the Taiwan Strait have been moving in a relatively positive direction since May 2008. Under President Ma Ying-jeou, Taipei revived institutional dialogue with Beijing, based on the so-called "1992 consensus". This also brought about new impetus for

possible cross-Strait cooperation in the South China Sea. Proposals for cooperation have ranged from functional aspects like increased scholarly exchange on relevant legal or policy issues, joint exploration of offshore oil and gas resources, humanitarian search and rescue, environmental conservation, to jointly protecting fishery interests or defending territorial sovereignty. It is observed that, while Taiwan and Mainland China (China) have achieved some important breakthroughs in functional cooperation relating to the South China Sea, further cooperation between the two sides would likely be constrained by several factors: Taiwan's domestic politics; fundamental issues in cross-Strait relations particularly Taiwan's international space and perceived military threat from China; and the role of the US. It is suggested that a more open and flexible approach from China toward Taiwan's participation in cooperative efforts in managing the South China Sea dispute not only will enable both sides to play a more constructive role in promoting regional peace, but could also help improve cross-Strait trust significantly.

Progress in Cross-Strait Functional Cooperation

Since 2008, President Ma has made cross-Strait energy cooperation a priority. Cross-Strait cooperation in the development of offshore hydrocarbon resources had begun in 1993, but was suspended in 2004 as a result of serious political stalemate in cross-Strait relations. As soon as President Ma took office, he instructed the administration to study how Taiwan and China could resume cooperation. In December 2008, the China National Offshore Oil Corporation (CNOOC) and Taiwan's China Petroleum Corporation (CPC Taiwan) signed four agreements, whereby the two companies will conduct joint exploration in the Taiwan Strait and off the southern Guangdong coast of China in undisputed areas within northern South

China Sea.¹ The business model created by the two entities for hydrocarbon joint development might be applied in the future to joint hydrocarbon exploratory efforts in the Spratly area under appropriate conditions.

Moreover, since mid-2008, Taiwan and China have negotiated and concluded 16 agreements. Some of those agreements, including the Cross-Strait Sea Transportation Agreement, Agreement on Joint Crime Fighting and Judicial Mutual Assistance, and Cross-Strait Agreement on Cooperation in respect of Fishing Crew Affairs, offer possible legal foundations for future cross-Strait cooperation in areas of humanitarian assistance, anti-piracy, combating illegal trafficking, or conservation of fishing resources in the South China Sea.

In November 2009, the two sides also successfully initiated a joint project entitled “Southeast Asia Network for Education and Training” at the 19th Indonesian Workshops on Managing Potential Conflicts in the South China Sea. This was the first cross-Strait joint initiative since the inception of the workshop in 1990.²

Finally, the first report co-authored by experts from Taiwan and mainland China on South China Sea was published in July 2011. The report assessed the situation in the South China Sea throughout 2010 and provided a comprehensive review of the increasing complexity of the regional situation. It was worth-noting that the final chapter, entitled “Prospects of Cooperation in the South China Sea,” calls for the creation of cross-Strait mechanisms to deal with South China Sea issues together. In particular, it suggests that a cross-Strait military coordination mechanism be established to defend their territorial claims together, and if necessary, the two sides should create positive conditions for joint patrol of the South China Sea. The report

¹ Yuanming Alvin Yao, “Energy Cooperation beyond the Taiwan Strait”, <<http://www.mac.gov.tw/public/Attachment/04115571725.pdf>>.

² Yann-Hui Song, “The South China Sea Workshop Process and Taiwan’s Participation”, *Ocean Development and International Law*, 41 (2010): 260-263.

received mixed reactions within Taiwan as well as abroad, and Taiwan officials have reacted by dismissing the possibility of cooperation in this regard.³ Nonetheless, the report still represented a serious effort by academics and policy thinkers across the Taiwan Strait in helping build cross-Strait confidence.

Constraints for Cross-Strait Cooperation

Notwithstanding progresses shown in certain aspects of functional cooperation, there was some real limitations in cross-Strait cooperation. Such limitations have been reflected through the hesitation of Ma's government in cooperating with the mainland in defending territorial sovereignty or maritime interests in disputed waters of the South China Sea, even though Beijing's legal claims are reminiscent to those of Taiwan's (Republic of China). During the past few years, numerous calls for cross-Strait cooperation in defending the Chinese claim of sovereignty and jurisdiction in the South China Sea have emerged from mainland Chinese military, scholarly and overseas circles. One suggestion is that defending Chinese territorial sovereignty together in the South China Sea could serve as a testing stone for cross-Strait military confidence-building.⁴ For example, Taiwan that controls the Taiping Island (Itu Aba) – the largest island with fresh water in the Spratly archipelago – could provide logistic supply to mainland China in case of a conflict. Should China and Taiwan cooperate this way, China's leverage in the Spratly dispute could increase significantly.

Although China's top leadership has not made the same proposition to Taiwan,

³ *An Assessment Report of the South China Sea Regional Situation in 2010* (Taipei: Institute of International Relations and National Institute for South China Sea Studies, 2011), pp. 101-102; Shih Hsu-chuan, "Academics Suggest Cross-Strait Effort on Sea Dispute", *Taipei Times*, <<http://www.taipeitimes.com/News/front/print/2011/08/06/2003510050>>, 6 August 2011.

⁴ "Liang an he zuo shi feng qi shi" [It's time for cross-strait cooperation in the South China Sea], *China Review News*, <<http://www.chinareviewnews.com/doc/1012/8/1/5/101281568.html?coluid=137&kindid=4701&docid=101281568&mdate=0410001310>>, 10 April 2010.

similar ideas have been expounded through China's bureaucratic agencies such as the State Oceanic Administration Bureau. In June 2011, Yang Yi, the State Council's Taiwan Affairs Office spokesperson stated at a press conference that, China has indisputable sovereignty over the South China Sea islands and their surrounding waters, and that people from both sides of the Taiwan Strait have a shared responsibility to safeguard sovereignty over the islands and their surrounding waters.⁵ All these reflect mainland China's general anticipation toward moving ahead with the cross-Strait agenda, namely, from economic cooperation onto military and political issues toward eventual unification.

Within Taiwan, the idea of cross-Strait joint defense has been echoed by some veterans and pro-unification advocates. Some scholars have also suggested that, as a tactic, Taiwan could take advantage of the similar legal claims made by Beijing, to express its own stance over the disputed islands and waters to highlight the Republic of China as one of the claimants and to refute all other claims, since the ROC sees the mainland as part of its territory. Nevertheless, the prevailing view, including the official position of Ma's government, remains cautious. For example, in response to a proposal that Taiwan and the mainland could build a new airport on the Taiwan-controlled Taiping Island, former Government Information Office Minister Johnny Chi-chen Chiang said the feasibility of such a project would have to be carefully evaluated before a decision could be made. According to him, "any decision we make will be in the best interests of the people of Taiwan."⁶ Other officials including heads of both the Mainland Affairs Council and the Foreign Ministry have repeatedly made it plain that the ROC has its own claims toward the

⁵ Russell Hsiao, "Taiwan Pivots in the South China Sea", *China Brief*, no. 11, issue 11, <http://www.jamestown.org/programs/chinabrief/single/?tx_ttnews%5Btt_news%5D=38067&tx_ttnews%5BbackPid%5D=25&cHash=b82c5e4665167be7186e90886b9a9069>, June 17 2011.

⁶ Frühere Ausgaben, "GIO minister reaffirms ROC sovereignty over Spratlys", *Taiwan Review*, <<http://taiwanreview.nat.gov.tw/site/tr/ct.asp?xitem=116228&ctnode=293&mp=1>>, 2 September 2010.

islands and their surrounding waters in the South China Sea. Taiwan does not need to consult or cooperate with Beijing regarding ROC's sovereignty in the South China Sea.

Taipei's cautiousness may have been caused by its concerns on three levels. On the first level, cross-Strait relations remain a highly sensitive and divisive issue in Taiwan's domestic politics. The two main political parties – the nationalist party (Kuomintang or KMT) and the Democratic Progressive Party (DPP) disagree on their cross-Strait policies. Thus, former DPP chairperson and candidate for the 2012 presidential election – Tsai Ing-wen accused the incumbent Ma of undermining Taiwan's political and economic independence by conducting negotiation and cooperation with China on the basis of “one China”, even though Ma's definition for “China” is different from that of Beijing's. On South China Sea dispute, President Ma's policy is guided by the 16-word principle: “Safeguarding sovereignty, shelving disputes, peace and reciprocity, and joint exploration”(捍衛主權, 擱置爭議, 和平互惠, 共同開發). Among others, Ma has advocated the opening up of the South China Sea and working with other stakeholders in resolving disputes peacefully. In particular, he proposed that an international research center be created on Tungsha (Pratas) Islands for the conservation of marine ecology and human heritage. He also calls for cooperation with international conservation organizations to turn Taiping Island and Zhong Zhou Sand into a South China Sea peace park. That said, a DPP government would likely pursue more actively a multilateral approach to manage conflict and cooperation in the South China Sea. In the National Security Chapter of DPP's Ten Year Policy Platform released on 23 August 2011, the party believes that “the disputes and conflicts related to waters surrounding Taiwan, including the South China Sea, should be resolved by those countries whose interested are affected, as well as within a multilateral framework, and in the spirit of “joint development and setting aside

controversies.” The DPP also states its support for “the establishment of a multi-lateral consultation in areas such as maritime resource development, pollution prevention, and navigation security, with the goal of jointly maintaining the sustainability of maritime resources as well as peace and security on the seas.”⁷ Apart from party politics, the people of Taiwan expect as much its government to guard ROC’s national territory as in any other country. In a vibrant democracy like Taiwan, no political leader can freely conduct its affairs with Beijing without some forms of scrutiny from the people; nor could he/she afford to appear lenient or even weak toward external challenges against the country’s sovereignty or territorial integrity.

The second concern lies in cross-Strait relations per se. Taiwan and China continue to face the challenge in building more mutual trust. China’s missile deployment toward Taiwan and its refusal to renounce the possibility of using force against Taiwan renders China the primary threat to Taiwan’s national security. Furthermore, Taipei and Beijing still have to overcome ideological and political hurdles to enable Taiwan to deepen and widen its international space in its own right. Up until now, Taiwan has been excluded from all the multilateral mechanisms such as the ASEAN Regional Forum, ASEAN-plus where the South China Sea disputes could be discussed officially. Recently, Taiwan has formally voiced its discontent with being excluded from the process leading to the adoption of the *Guidelines for Implementing the 2002 Declaration of Conduct of Parties in the South China Sea* (the Guidelines) and other regional efforts aimed at bringing about a binding code of conduct. In a press release issued by ROC’s foreign ministry as soon as ASEAN and China had agreed on the Guidelines on 20 July 2011, Taiwan reiterated its basic South China Sea principles of “safeguarding sovereignty, shelving disputes, promoting peace and

⁷ “DPP Releases 10 Year Policy Platform –National Security Strategy Chapter,” <<http://dpptaiwan.blogspot.com/2011/08/dpp-releases-10-year-policy-outlook.html>> 23 August 2011.

reciprocity, and encouraging joint exploration”, as well as its readiness to work with other relevant parties in the region to find resolutions to disputes. At the same time, it stressed that: “As the government should be included in the dispute dialogue mechanism, it will not recognize any resolution reached without its participation.”⁸

Thirdly, military cooperation with China in the South China Sea risks alienating Taiwan from Southeast Asian claimants’ as well as the US. Some Southeast Asian countries have pointed out that, while Taiwan has been objecting to the Southeast Asian countries’ unilateral acts during recent controversies, it has made no challenge towards PRC’s claims. This, together with an identical legal claim, has been interpreted as a sign that Taiwan has decided to side with Beijing and the two has at least reached a tacit understanding toward a “common Chinese front”. The US has become more actively involved in the disputes since 2010, and has been in loggerheads with China over issues of freedom of navigation, the appropriate legal bases for territorial and maritime claims, as well as approach for resolving disputes. Although the US has long claimed to maintain a neutral position on the competing territorial claims,⁹ the Obama administration clearly disagrees with China’s legal claims, particularly the nine-dotted line. Moreover, the US joint military exercises with Vietnam and the Philippines are perceived as attempts to balance PRC’s growing power in the region. The concern over a potential conflict between US and PRC in the South China Sea region¹⁰ presents a strategic dilemma for Taiwan. If Taiwan allies itself closely with PRC in the South China Sea territorial disputes, the US might face more domestic calls for re-considering its role in defending Taiwan against a PRC use

⁸ MOFA Press Release No. 232 of 20 July 2011, English translation
<<http://www.boca.gov.tw/content.asp?culItem=4736&mp=1>>.

⁹ See Yann-huei Song, *United States and Territorial Disputes in the South China Sea: A Study of Ocean Law and Politics* (Baltimore: School of Law, University of Maryland, 2002).

¹⁰ E.g. Robert Kaplan, “The South China Sea Is the Future of Conflict: The 21st Century’s Defining Battleground Is Going to be on Water”, *Foreign Policy*, Issue 188 (September/October 2011):76-83.

of force.¹¹ However, if Taiwan openly supports an increased US presence in the South China Sea, it could rekindle Beijing's suspicion toward Taiwan's intentions and possibly lead to setbacks in the furtherance of cross-Strait economic and functional cooperation.

Conclusion

Under President Ma's first term between May 2008 and May 2012, improved cross-Strait relations have indeed opened a window of opportunity for Taiwan and mainland China to explore how they might cooperate in the South China Sea. However, there exist clear differences between Taiwan's objectives and those of the PRC's. Taiwan hopes better cross-Strait relations would not only create a win-win situation for each side to address its growing economic and energy needs, but it could also lead Beijing to adopt a more flexible approach towards ROC's status as a party in the South China Sea dispute and its participation in relevant multilateral fora where cooperation between governments of PRC and the ASEAN claimants have been conducted, such as implementing the 2002 *Declaration of Conduct on Parties in the South China Sea*, drafting a code of conduct, joint cooperation on maritime security or environmental conservation, or joint development of natural resources. By contrast, the PRC seems to be more interested in cross-Strait efforts aimed at strengthening the Chinese legal claims and position relative to other claimants. Meanwhile, Beijing will also ensure that Taiwan's unilateral measures to reiterate ROC's sovereignty and jurisdiction over the islands and waters in the South China Sea, or its vocal support for joint cooperation with other concerned parties, do not amount to Taiwan's *de jure*

¹¹ A summary of various arguments for why the US should abandon its defense commitment for Taiwan can be viewed in Shelly Rigger, "Why Giving Up Taiwan will not Help US with China", American Enterprise Institute, <<http://www.aei.org/article/foreign-and-defense-policy/regional/asia/why-giving-up-taiwan-will-not-help-us-with-china/>>, 29 Nov 2011.

independence, two Chinas, or the “internationalization” of the South China Sea dispute. As long as such differences remain intact, Taiwan’s South China Sea policy-makers will continue being challenged by the need to protect ROC’s sovereignty and interests as a claimant in the midst of the ongoing dispute, without pushing back progresses already achieved in cross-Strait relations or hampering its relations with Southeast Asian claimants and in particular the US. Under such circumstance, it would also be difficult to see cross-strait cooperation expand significantly in Ma’s second term. One can realistically expect to see increased exchange and cooperation on academic and “track II” levels and maybe more cooperation in non-disputed areas of northern South China Sea. However, given the sensitivity, it might not be feasible at this stage for the two sides to cooperate on patrolling or jurisdiction in highly contested areas like the Taiping Islands. A different angle, though perhaps still further-reaching, would be for China to see cross-Strait cooperation in the South China Sea from the perspectives of “laying aside dispute without prejudice to respective positions and eventual solution” and regional peace-promotion. China could be more open to some of Taiwan’s proposals, such as turning Taiping and Zhong Zhou Sand into a South China Sea peace park. The two sides could conduct joint feasibility studies on the proposal and explore together how to develop the idea further, and invite regional or international experts to participate in the brain-storming or more. Also, China could be more flexible toward Taiwan’s participation in implementing the 2011 Guidelines or deliberating a binding South China Sea code of conduct. This way, not only could cross-Strait plays a constructive role in managing the South China Sea dispute in a manner consistent with international law and the law of the sea, a major misgiving on the part of Taiwan toward Beijing’s hostility could also be alleviated.

