

## ABSTRACT

**Title of Dissertation:** RECONCILING HISTORY AND INTERNATIONAL LAW:  
TERRITORIAL AND MARITIME CLAIMS IN THE SOUTH  
CHINA SEA AND EAST CHINA SEA

Kimberly L. Wilson, Doctor of Philosophy, 2016

**Dissertation directed by:** Professor Margaret M. Pearson

High-ranking Chinese military officials are often quoted in international media as stating that China cannot afford to lose even an inch of Chinese territory, as this territory has been passed down from Chinese ancestors. Such statements are not new in Chinese politics, but recently this narrative has made an important transition. While previously limited to disputes over land borders, such rhetoric is now routinely applied to disputes involving islands and maritime borders. China is increasingly oriented toward its maritime borders and seems unwilling to compromise on delimitation disputes, a transition mirrored by many states across the globe. In a similar vein, scholarship has found that territorial disputes are particularly intractable and volatile when compared with other types of disputes, and a large body of research has grappled with producing systematic knowledge of territorial conflict. Yet in this wide body of literature, an important question has remained largely unanswered - how do states determine which geographical areas will be included in their territorial and maritime claims? In other words, if nations are willing to fight and die for an inch of national territory, how do governments draw the boundaries of the nation? This dissertation uses in-depth case studies of some of the most prominent territorial and maritime disputes in East Asia to argue that domestic political processes play a dominant and previously under-explored role in both shaping claims and determining the nature of territorial and maritime disputes. China and Taiwan are particularly well suited for

this type of investigation, as they are separate claimants in multiple disputes, yet they both draw upon the same historical record when establishing and justifying their claims. Leveraging fieldwork in Taiwan, China, and the US, this dissertation includes in-depth case studies of China's and Taiwan's respective claims in both the South China Sea and East China Sea disputes. Evidence from this dissertation indicates that officials in both China and Taiwan have struggled with how to reconcile history and international law when establishing their claims, and that this struggle has introduced ambiguity into China's and Taiwan's claims. Amid this process, domestic political dynamics have played a dominant role in shaping the options available and the potential for claims to change in the future. In Taiwan's democratic system, where national identity is highly contested through party politics, opinions vary along a broad spectrum as to the proper borders of the nation, and there is considerable evidence that Taiwan's claims may change in the near future. In contrast, within China's single-party authoritarian political system, where nationalism is source of regime legitimacy, views on the proper interpretation of China's boundaries do vary, but along a much more narrow range. In the dissertation's final chapter, additional cases, such as South Korea's position on Dokdo and Indonesia's approach to the defense of Natuna are used as points of comparison to further clarify theoretical findings.

RECONCILING HISTORY AND INTERNATIONAL LAW: TERRITORIAL AND MARITIME  
CLAIMS IN THE SOUTH CHINA SEA AND EAST CHINA SEA

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## LIST OF ABBREVIATIONS AND ACRONYMS

ADIZ	Air Defense Identification Zone
ASEAN	Association of Southeast Asian Nations
CSSTA	Cross-Strait Service Trade Agreement
CLSC	Commission on the Limits of the Continental Shelf
DPP	Democratic Progressive Party (Taiwan)
ECS	East China Sea
EEZ	Exclusive Economic Zone
KMT	The Kuomintang or Chinese Nationalist Party (Taiwan)
MOFA	Ministry of Foreign Affairs
PRC	People's Republic of China
ROC	Republic of China (Taiwan)
ROK	Republic of Korea (South Korea)
SCS	South China Sea
UNCLOS	United Nations Convention on the Law of the Sea

# Chapter One

## CLAIMS IN TERRITORIAL AND MARITIME DISPUTES

### 1.1 *Introduction*

Across East Asia, territorial and maritime disputes are inspiring a diverse range of activities. New maritime research centers, museums of maritime history, and historical exhibits are being launched. Tourists, students, and political activists are traveling to disputed islands and waters, entering space already occupied, and increasingly occupied, by commercial and military activities. Countries are enacting new maritime laws, issuing security white papers, and government spokespeople are daily denouncing the actions of rival governments. Small specks of land are being reformed into islands, while fishermen race to outrun the policing authorities of neighboring states.

Such activities can be dramatic and politically charged, but can also be viewed as a natural progression in the expansion of state boundaries and influence. Military conquest of land is less common today than in the past, with land borders relatively fixed and reinforced by international law and norms.<sup>1</sup> Yet states continue to compete for territory and resources, and efforts to establish internationally recognized maritime boundaries are a prominent and salient example. Incentives to establish maritime borders are high: the oceans are an immense source of untapped resources, centrally important to world transportation

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<sup>1</sup>Scholarship attests to a norm of fixed borders, see: Boaz Atzili. “When Good Fences Make Bad Neighbors: Fixed Borders, State Weakness, and International Conflict.” *International Security* 31.3 (2007), pp. 139–173; Tanisha M. Fazal. “State Death in the International System.” *International Organization* 58.02 (2004), pp. 311–344

and telecommunications, and a formidable policing challenge. Moreover, disputes over islands, shoals, and reefs have become focal points for domestic political narratives of nationalism and state legitimacy. Maritime delimitation disputes are an enduring problem for governments, with little sign of lessening in the near future.

On a fundamental level, territorial and maritime disputes exist because states at times draw territorial and maritime boundaries that overlap with the boundaries drawn by neighboring states. A small difference in how a boundary or baseline is drawn can dictate whether or not an international dispute even exists, and the significance of such decisions is not limited to the time at which the claim is initiated.<sup>2</sup> As the cases in this dissertation will illustrate, all throughout disputes, claimant state behavior is shaped by elite beliefs about how and why boundaries should be drawn. Therefore, explanations of claimant behavior that do not account for the processes by which territorial and maritime boundaries are established are incomplete. However, in the vast majority of research on territorial and maritime disputes, territorial and maritime claims are taken as given, with no detailed investigation into how the boundaries that ignited the dispute were drawn. In fact, claims to territory are usually viewed as static, with no expectation that states might unilaterally change their claims. While claim characteristics can be difficult to change, this dissertation will show claims to be much more pliable than traditionally assumed.

To more deeply engage the process of claim formation and its implications, this dissertation first asks, how do states determine which geographical areas will be included in their territorial and maritime claims? History and international law are the two main sources of justification states draw upon when explaining their claims, but these two rationales often provide inexact or contradictory guidelines for drawing boundaries. Without coherent guidelines for drawing boundaries, how does a state decide where its sovereignty should begin and where it should end? Additionally, when and why might states unilaterally change their own claims? As Chapter 2 and Chapter 3 will illustrate, China and Taiwan have both made changes to their claims, at times unilaterally decreasing the area and jurisdiction each

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<sup>2</sup>By way of illustration, very small differences in how China depicts its South China Sea claim dictate whether or not Indonesia and China even have a dispute in the South China Sea, leading to considerable debate within Indonesia about how to handle a dispute that may or may not exist, as discussed further in Chapter Six.

government claims in the South China Sea. Why would a state ever decide to unilaterally decrease its claim? Scholarship currently has no coherent explanation for such behavior.

In seeking answers to these questions, this dissertation includes comparative case studies of China's and Taiwan's claims in the South China Sea and East China Sea. These disputes are timely case studies. Hardly a day passes without new media coverage of South China Sea and East China Sea confrontations.<sup>3</sup> The disputes threaten regional or even global conflict and serve as a highly visible stage for a rising China, with the potential for confrontation with the United States. China's claims have been the subject of widespread speculation, yet many important questions about China's claims remain unanswered. In contrast, Taiwan has been underutilized in analyses of territorial and maritime disputes. While Taiwan is frequently studied as the object of a territorial dispute with Mainland China, it is rarely studied as a claimant in either the East China Sea or South China Sea. Taiwan's precarious international position and exclusion from many international bodies are no doubt major reasons for this omission, yet the exclusion remains unfortunate, as Taiwan's domestic political environment presents a fascinating and dynamic context in which to study claim development and changes. Additionally, comparing China's and Taiwan's claims presents an invaluable opportunity. Both governments start with the same historical record for establishing their claims, yet important differences quickly become apparent when comparing the claims side-by-side, differences which shed light on the process of establishing and changing claims. The dissertation's final chapter includes several additional case studies, serving to build on observations from the main case studies.

The overarching finding in this dissertation is that domestic political processes and institutions play a dominant and previously under-explored role in both shaping claims and determining the nature of territorial and maritime disputes. While most previous studies of the cases presented in this dissertation have not focused on the establishment of

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<sup>3</sup>The South China Sea encompasses the area from the Singapore and Malacca Straits to the Strait of Taiwan, and includes hundreds of land features such as the Spratly Islands, the Paracel Islands, the Pratas Islands, the Macclesfield Bank, and the Scarborough Shoal. China, Taiwan, Malaysia, the Philippines, Indonesia, Vietnam, and Brunei all have claims in the South China Sea. There is some disagreement as to whether or not Indonesia is a party to any territorial disputes in the South China Sea, as will be discussed further in Chapter Six. The East China Sea includes the area ranging from the Taiwan Strait down to the Ryukyu Islands of Japan, and over to the Korea Strait. China, Taiwan, and Japan are the main claimants involved in the East China Sea dispute, although South Korea also maintains claims that are at times relevant to the dispute.

claims, findings do provide evidence in favor of the vital role played by domestic political factors within these disputes.<sup>4</sup> In this dissertation, the importance of domestic political and institutional factors is clear when comparing across cases, such as the differences found when comparing claim making across differing political systems, but also within cases, as party politics and national identity will be shown to directly shape territorial and maritime claims. Particularly when history and international law provide differing standards for a boundary or baseline, elites will compete within the domestic political arena to advocate their favored version of a boundary. Under such conditions, claims that are both ambiguous and expansive are more likely to be established. Moreover, this dissertation argues that while it is difficult to change claims, claims are nonetheless more dynamic than traditionally depicted in scholarship. In the cases investigated in this dissertation, it is perhaps more helpful to conceive of establishing a boundary as an ongoing process, one in which outcomes of elite competition ultimately determine the claim. Such competition allows room for a claim to change, as previously marginalized ideas can gain traction and become mainstream as their advocates rise in influence.

Important to note at the outset, factors initially assumed to be of central importance were found to play more nuanced roles upon completion of the case studies. For instance, the dominance of regime type was a central hypothesis guiding the initial case selection in this dissertation. China and Taiwan, drawing on a similar history but with starkly different regime types, were expected to demonstrate the differing operations of democracies and authoritarian governments when shaping claims. Yet these case studies have not clearly demonstrated that differences between the two governments' claims are primarily due to regime type. Instead, the flexibility of differing political systems, and particularly the space available for ideas of history and political identity to compete within differing political systems, carries more weight when explaining claims characteristics. Regime type plays a role in determining flexibility, but is not the only factor at work.

International law is another factor initially assumed dominant, and preliminary evidence from the case studies only further reinforced this expectation. All states examined in this

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<sup>4</sup>For example, see: John W. Garver. "China's Push through the South China Sea: The Interaction of Bureaucratic and National Interests." *The China Quarterly* 132 (Dec. 1992), pp. 999–1028

dissertation have worked to articulate their claims in terms appropriate to international law, have funded legal research with the goal of strengthening their claims, and have taken practical measures assumed to strengthen claims in reference to international law. However, the story does not end with international law. Determining if a claim is consistent with international law is important, but other principles are also relied upon when shaping claims. The case studies in this dissertation portray international law as a factor filtered through domestic political processes, while also in competition with other principles throughout the process of making claims. History often appears as a rival justification for shaping claims, while also overlapping with international law in the places where international law is understood to provide for history. In some cases it is clear that political actors favor either history or international law, but at other times combinations of the two seem to be driving expressions of claims. Moreover, as this dissertation will demonstrate, while history and international law play crucial roles in shaping claims at the outset, the justifications they provide for establishing claims continue to reverberate past the earliest expressions of a claim, shaping political debates about policy in even the least ambiguous and most stable claims.

With this context in mind, the remainder of this chapter proceeds as follows. First, an outline is proposed for conceptualizing the effects several factors have on the characteristics of claims. Second, the dissertation's empirical approach is discussed. Third, theoretical findings from the dissertation's case studies are briefly summarized. The chapter concludes with an outline of the dissertation's contents.

## **1.2** *A Conceptual Overview of the Factors that Shape Claims*

Which factors help explain the characteristics of territorial and maritime claims? For instance, if a state maintains an expansive but ambiguous claim in a disputed geographical area, which factors led the state to select these qualities?

The literature on both territorial disputes and maritime issues is relevant to answering the question of how claims are established. Yet neither of these bodies of literature directly grapple with how claims are formed. Scholarship has consistently found territorial disputes

to be the most common issue over which states go to war.<sup>5</sup> Therefore, a sizable body of literature has sought to better understand territorial conflict. Among these studies, the dependent variable is perhaps most often the onset of conflict.<sup>6</sup> Claim characteristics or changes are rarely, if ever, the direct focus of a study. The limited amount of scholarship that does directly address claim formation has indicated strategic concerns and the presence of natural resources, particularly in the case of developing countries, both play key roles in determining where claims will arise.<sup>7</sup> History has also been found to play an important role in claim formation. As historical possession is accepted internationally as a legitimate justification for a territorial claim, claims will often arise in places where states can make a claim based on history.<sup>8</sup>

Literature specifically addressing maritime issues also largely overlooks claim formation or changes in claims. Legal scholars produce most works on maritime delimitation, often seeking to explain or apply maritime law rather than systematize aspects of conflict within maritime disputes. Jonathan I Charney produced some of the most well-known and widely-cited texts on maritime law, and although he did write on East Asia toward the end of his career, he and his coauthors did not focus on processes of establishing or changing claims.<sup>9</sup> Other widely cited texts follow in a similar tradition, of seeking to explain aspects of legal claims and border delimitation, but not directly grappling with changes in claims.<sup>10</sup> Another approach within literature on maritime disputes is to address how law should be applied to specific cases. Many studies of China's claims are pertinent examples.<sup>11</sup>

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<sup>5</sup>Kalevi Jaakko Holsti. *Peace and War: Armed Conflicts and International Order, 1648-1989*. Cambridge University Press, 1991; John A. Vasquez. *The War Puzzle*. Cambridge University Press, 1993; John A. Vasquez and Marie T Henehan. "Territorial Disputes and the Probability of War, 1816-1992." *Journal of Peace Research* 38.2 (Mar. 2001), pp. 123-138.

<sup>6</sup>Paul D Senese and John A Vasquez. "A Unified Explanation of Territorial Conflict: Testing the Impact of Sampling Bias, 1919-1992." *International Studies Quarterly* 47.2 (June 2003), pp. 275-298; Paul D. Senese. "Territory, Contiguity, and International Conflict: Assessing a New Joint Explanation." *American Journal of Political Science* 49.4 (Oct. 2005), pp. 769-779; Vasquez and Henehan, "Territorial Disputes and the Probability of War, 1816-1992."

<sup>7</sup>Paul K. Huth. *Standing Your Ground: Territorial Disputes and International Conflict*. University of Michigan Press, 1998.

<sup>8</sup>Alexander B Murphy. "Historical Justifications for Territorial Claims." *Annals of the Association of American Geographers* 80.4 (Dec. 1990), pp. 531-548; Alexander B Murphy. "National Claims to Territory in the Modern State System: Geographical Considerations." *Geopolitics* 7.2 (2002), pp. 193-214.

<sup>9</sup>Jonathan I. Charney and Lewis M. Alexander, eds. *International Maritime Boundaries*. en. Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 1998.

<sup>10</sup>J. Ashley Roach and Robert W. Smith. *Excessive Maritime Claims: Third Edition*. en. Leiden, The Netherlands: Martinus Nijhoff Publishers, 2012.

<sup>11</sup>Michael Sheng-Ti Gau. "The U-Shaped Line and a Categorization of the Ocean Disputes in the

One study of China's claims in the South China Sea emphasizes domestic pressures in shaping Chinese leaders' decision-making. While this study does focus some on variation in claim characteristics, the primary dependent variable is the likelihood of conflict in island dispute.<sup>12</sup>

A growing body of literature investigates specific claims directly. China's South China Sea claim in particular has drawn a great deal of attention, and numerous studies, such as that done by Jacques deLisle, have productively investigated China's claims.<sup>13</sup> However, such studies largely focus on deciphering possible explanations for China's claim or how China's claim might align with international law rather than specifically grappling with what factors shaped China's claim.<sup>14</sup> Similarly, strategic action within maritime disputes, such as studies of China's actions in support or defense of its claims, is another major focus.<sup>15</sup> Taylor Fravel's explanations of China's actions in support of its maritime and island claims is a prime example of this approach.<sup>16</sup> With respect to Taiwan's claims, much scholarly literature clarifies Taiwan's claims and the legal rationales for those claims,<sup>17</sup> while other studies compare Taiwan's and China's maritime legislation to track side-by-side the legal approaches taken by the two governments.<sup>18</sup>

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South China Sea." *Ocean Development & International Law* 43.1 (2012), pp. 57–69; Masahiro Miyoshi. "China's "U-Shaped Line" Claim in the South China Sea: Any Validity Under International Law?" *Ocean Development & International Law* 43.1 (2012), pp. 1–17; Shigeyoshi Ozaki. "Territorial Issues on the East China Sea: a Japanese Position." *Journal of East Asia and International Law* 3 (2010), pp. 151–174; Keyuan Zou. "The Chinese Traditional Maritime Boundary Line in the South China Sea and Its Legal Consequences for the Resolution of the Dispute over the Spratly Islands." *International Journal of Marine and Coastal Law* 14 (1999), p. 27; Keyuan Zou. "China's U-Shaped Line in the South China Sea Revisited." *Ocean Development & International Law* 43.1 (2012), pp. 18–34.

<sup>12</sup>Chien-Peng Chung. "Resolving China's Island Disputes: A Two-Level Game Analysis." *Journal of Chinese Political Science* 12.1 (Mar. 2007), pp. 49–70.

<sup>13</sup>Jacques deLisle. "Troubled Waters: China's Claims and the South China Sea." *Orbis* 56.4 (2012), pp. 608–642.

<sup>14</sup>For additional examples of legal analyses of China's South China Sea claim, see: Florian Dupuy and Pierre-Marie Dupuy. "A Legal Analysis of China's Historic Rights Claim in the South China Sea." *The American Journal of International Law* 107.1 (Jan. 2013), pp. 124–141; Peter Dutton. "Through a Chinese Lens." *Proceedings Magazine* 136.4 (Apr. 2010), pp. 24–29

<sup>15</sup>Peter Dutton. "Three Disputes and Three Objectives." *Naval War College Review* 64.4 (2011), pp. 42–67.

<sup>16</sup>M. Taylor Fravel. *Strong Borders, Secure Nation: Cooperation and Conflict in China's Territorial Disputes*. Princeton University Press, Aug. 2008; M. Taylor Fravel. "China's Strategy in the South China Sea." *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 33.3 (2011), pp. 292–319.

<sup>17</sup>Kuan-Hsiung Wang. "The ROC's Maritime Claims and Practices with Special Reference to the South China Sea." *Ocean Development & International Law* 41.3 (Sept. 2010), pp. 237–252.

<sup>18</sup>Keyuan Zou and Yann-Huei Song. "Maritime Legislation of Mainland China and Taiwan: Developments, Comparison, Implications, and Potential Challenges for the United States." *Ocean Development & International Law* 31.4 (2000), pp. 303–345.

As a final note, while literature addressing territorial disputes and maritime issues often each maintain a theoretical division between issues of sovereignty over territory and maritime rights, this dissertation does not enforce such a division, primarily due to three reasons. First, source material for the case studies presented in this dissertation rarely separates territorial and maritime claims. Apart from specific maritime legislation, particularly that drafted to claim rights available under UNCLOS, the majority of statements on claims address both sovereignty over territory and maritime jurisdiction, when relevant. In fact, as this dissertation's case study on China's claims in the East China Sea will illustrate, even in legislation or legal statements specifically addressing maritime rights, claims to sovereignty over territory are often reaffirmed. Second, an obvious difference between claims to land features surrounded by waters and larger areas of territory, as it is traditionally studied, is the volume of human occupants. However, claimant governments have all worked to increase human occupation and connection to disputed land features, as will be documented extensively in this dissertation's case studies. Media in claimant states heavily cover these human connections and occupants, and while it is true that a majority of claimant state nationals will never visit disputed land features, even in the smallest of countries it is rare for an individual to have visited the majority of their nation's claimed territory. Third, the key theoretical insights drawn from the limited available literature on claim formation point to natural resources, strategic value, history, and international law as key factors that shape claims. There is no clear theoretical reason why these concepts would not be applicable to claims that combine both territory and maritime rights. In fact, the disputes addressed in this dissertation are regularly portrayed in popular media as being fundamentally linked to such factors. With this approach in mind, in the next section insights drawn from previous literature are combined with theoretical findings from this dissertation's case studies, providing an overview of how multiple factors can affect the characteristics of claims.

### **1.2.1** *A Claim as a Dependent Variable*

Before delving into the factors shaping claims, it is necessary to specify the aspects of claims being investigated in this dissertation. When states draw boundaries and baselines, or

designate geographical areas as belonging to their country, they are making a claim. These claims are expressed on official maps, in national legislation, through documents submitted by the state to international organizations, and through the statements of government officials. There are many different ways we might characterize claims. In this dissertation, degree of ambiguity and expansiveness are of primary concern. Collectively, these two aspects capture much of the variation in claims, and also include the aspects of claims that potential competitor states are most likely to find concerning. Moreover, ambiguity and expansiveness are likely to have ramifications after claim formation.

Claims are ambiguous when there are multiple competing explanations for what is included in the claim (geographical areas or jurisdictional rights), but claims can also be ambiguous when there are multiple competing explanations for the justification of the claim. In this dissertation's case studies, official expressions of claims are examined, and a claim is deemed ambiguous when such official sources are either inexact regarding the area or rights claimed, leaving room for multiple interpretations, or when official sources provide differing versions of the claim, also leaving room for multiple interpretations.

Expansiveness is more difficult to define concisely. As a starting point, expansiveness occurs when a claim appears to designate a larger geographical area or include greater jurisdictional rights than a state would normally be entitled to under international law. For assessing the case studies in this dissertation, claims are conceived of as either expansive or standard, meaning that they reflect a relatively straight-forward application of international law.<sup>19</sup> As the term is used in this dissertation, expansiveness includes aspects of both territorial and maritime claims. While maritime law and law regarding the acquisition of territory are separate bodies of law, states often conflate maritime and territorial legal components when expressing their claims. Even in documents that should strictly apply to either territorial or maritime law and issues, support for claims relevant to the other body of law are often included.<sup>20</sup> Therefore, when referring to expansiveness, this dissertation

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<sup>19</sup>Of course, there is also the possibility that claims could be circumscribed in their expressions, in that they could include less than is possible under international law. However, this is not discussed in depth in this dissertation, as it was not observed in the case studies and the author is not aware of any case in which this has occurred. Circumscribed claims do, however, remain a possibility and the addition of such a case would provide valuable data.

<sup>20</sup>One such example is the timing and wording of China's submissions to the Commission on the Limits of the Continental Shelf (CLCS), as discussed in Chapter Four.

seeks to capture aspects of both the acquisition of territory and maritime law, as reflective of observed expressions of claims.

### 1.2.2 *A Brief Overview of Relevant International Law*

How does a state acquire title to a piece of territory? When describing methods for the acquisition of territory, R.Y. Jennings, a legal scholar and one-time judge for the International Court of Justice, emphasized that title is inherently connected to actual effective control. As he explained:

*When we come to look more closely at the various modes which international law recognizes as creating a title to territorial sovereignty, we shall find that all have one common feature: the importance, both in the creation of title and of its maintenance, of actual effective control. . . Not since the 16th century, for example, has it been possible to argue that a mere discovery, coupled with an intention eventually to occupy, is sufficient to create a title.<sup>21</sup>*

The “various modes” Jennings references are well-established categories for the acquisition of title. Although the list fluctuates slightly from source to source, generally international law has recognized the following methods for acquiring territory:

1. **Cession** - when one state transfers title over territory to another state by means of a treaty
2. **Occupation** - when a state acquires title over territory that was previously *terra nullius*, or not subject to the ownership of any state. Territory can be *terra nullius* when it was never subject to the sovereignty of any state, or when the state with previous sovereign rights intentionally relinquished those rights. In order to gain title by occupation, a state must establish effective control over the *terra nullius* area.
3. **Prescription** - when a state acquires territory through effective control, but in this case the territory belonged to another state. Under these circumstances, the standards for effective control are higher, as loss of title for the former state is not assumed. If the former state protests the title or shows other opposition, this is likely to weaken the currently occupying state’s claim to sovereignty over the territory.
4. **Operations of nature** - when acts of nature change territory in ways that alter title.
5. **Conquest** - when a state acquires territory through force. This method is no longer recognized under international law, although the modern day prohibition of this type of acquisition is not applied retroactively.<sup>22</sup>

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<sup>21</sup>Robert Yewdall Jennings. *The acquisition of territory in international law*. Manchester University Press, 1963.

<sup>22</sup>Peter Malanczuk. *Akehurst’s Modern Introduction to International Law*. 7th. New York: Routledge, 1997.

As is frequently mentioned in the texts outlining these principles, the above list includes legal explanations for acquiring territory, and not political ones. For instance, the concept of self-determination is notably absent.<sup>23</sup>

For the purposes of this dissertation, a claim is considered expansive when a state claims territory without evidence of at least one of the broad legal principles for territorial acquisition, as summarized above. This dissertation is agnostic regarding the relative strength of legal arguments presented in opposing claims. A state only has to have evidence (and not necessarily the best evidence) that their claim fulfills one of the legal principles listed above in order to avoid the label of expansive claim. Admittedly, the standard for designating a claim expansive in terms of territory is high, and very few claims will be defined as expansive based solely on the territorial aspects of their claim. However, it is still important to include considerations of territory in the concept of expansiveness, as land features are at the center of the claims examined in this dissertation. That being said, the claims in this dissertation that are labeled expansive are defined that way largely due to the maritime aspect of the claim.

When designating a claim as expansive based on its maritime aspects, a helpful starting point is the concept of excessive maritime claims, as defined by J. Ashley Roach and Robert W. Smith. According to Roach and Smith, excessive maritime claims are claims to “sovereignty, sovereign rights or jurisdiction over ocean areas that are inconsistent with the terms of the LOS Convention [Law of the Sea Convention].”<sup>24</sup> Basically, a claim can be thought of as excessive, or expansive for our purposes, when a state makes claims that go beyond that allowed by the United Nations Convention on the Law of the Sea (UNCLOS). Roach and Smith provide an exhaustive list of examples of such claims, including “unrecognized historic waters claims” and “territorial sea claims greater than 12 miles.”<sup>25</sup> In each case study in this dissertation, relevant law will be discussed alongside each state’s claim. However, at the outset it is helpful to lay a basic groundwork of the rights provided for in UNCLOS.

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<sup>23</sup>Both Jennings and Malanczuk also note that the list lacks a comprehensive explanation for states made newly independent after colonialism or that achieve independence by succession. However, these concepts are beyond the scope of this dissertation.

<sup>24</sup>Roach and Smith, *Excessive Maritime Claims*.

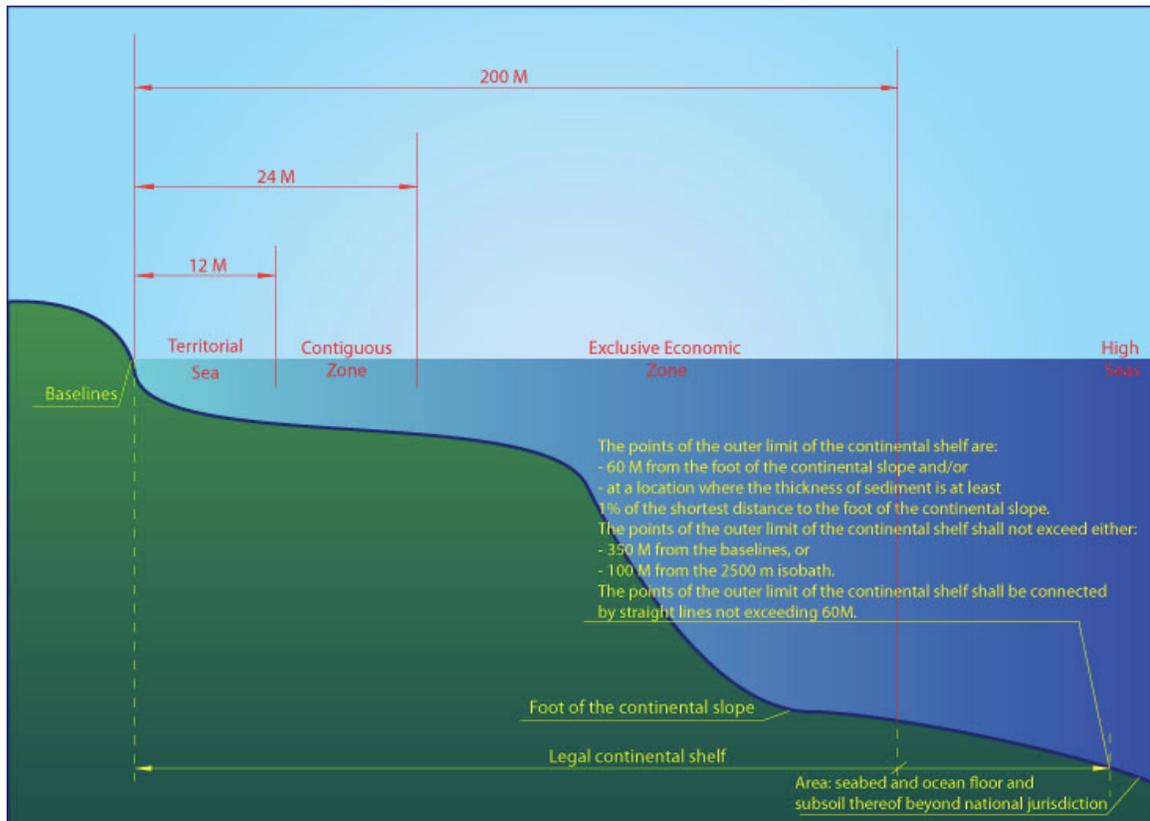
<sup>25</sup>Roach and Smith, *Excessive Maritime Claims*.

Concluding negotiations in 1982, UNCLOS established a comprehensive body of law governing state rights and responsibilities with respect to the world's oceans. The convention was designed to replace earlier systems of law governing the ocean, such as the 1958 Geneva Conventions on the Law of the Sea, with ratifying states agreeing to adhere to the principles outlined in UNCLOS. UNCLOS came into effect in 1994, after the sixtieth country ratified the convention. The system of maritime zones described in UNCLOS is structured around baselines. UNCLOS requires states to draw baselines, which serve as the starting point for designating jurisdictional rights. The baseline is generally the low water mark, although exceptions can be made based on geographical considerations. The jurisdictional zones described below are all measured in relation to the location of a baseline:

1. **Internal Waters** - bodies of water that are located inside a state's baselines. In other words, internal waters are located landward of the baseline. Examples include bays, rivers, or lakes. Other states do not have the right to innocent passage through these waters, as states exercise complete sovereignty over internal waters.
2. **Territorial Waters** - states have sovereign control over the waters up to 12 nautical miles from their baselines. States have complete control in this area, with one exception: they must allow innocent passage by other states through their territorial waters. States also control the air space above the territorial waters, as well as the subsoil below the territorial waters.
3. **Contiguous Zone** - area up to 24 nautical miles from the baseline, within which the coastal state has the authority to enforce domestic legislation over issues such as customs, immigration, and pollution.
4. **Exclusive Economic Zone (EEZ)** - states have exclusive rights to the exploration and extraction of living and nonliving natural resources superjacent to the seabed and of the seabed and its subsoil, up to 200 nautical miles from each state's baseline. Within this area, states also have jurisdiction over activities such as the construction of artificial features, marine research, and the protection and preservation of the marine environment.
5. **Continental Shelf** - the natural prolongation of land territory, in which states have the right to explore and exploit the natural resources in the seabed and subsoil. The continental shelf cannot exceed 350 miles from the baseline.

Also highly relevant to the case studies in this dissertation is the definition of an island under UNCLOS. Article 121 (1) of UNCLOS states that for a land feature that is surrounded by water to fit the definition of an island, the land feature must be above water at high tide.

Figure 1.2.1: Maritime Zones, as Illustrated by the United Nations<sup>26</sup>



Islands receive maritime jurisdictional rights as outlined in UNCLOS, including rights to a territorial sea, a contiguous zone, an exclusive economic zone and a continental shelf. However, Article 121 (3) notes that if a land feature that cannot sustain human habitation or economic life on its own, it is not entitled to an exclusive economic zone or continental shelf.<sup>27</sup> As many South China Sea and East China Sea land features are uninhabited specks of land, the possibility they would not qualify for exclusive economic zones or continental shelf rights under UNCLOS Article 121 (3) is a strong possibility.<sup>28</sup>

States are tasked with establishing baselines and maritime jurisdictional zones that comply with UNCLOS, and the research necessary for completing this task properly is often demanding. As evidence, if a state wishes to claim an extended continental shelf, it was

<sup>26</sup> *The United Nations, Division for Ocean Affairs and the Law of the Sea*  
 Illustration available at: [http://www.un.org/Depts/los/clcs\\_new/marinezones.jpg](http://www.un.org/Depts/los/clcs_new/marinezones.jpg)

<sup>27</sup> UNCLOS Article 121 is available at: [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/part8.htm](http://www.un.org/depts/los/convention_agreements/texts/unclos/part8.htm)

<sup>28</sup> For a discussion of how UNCLOS Article 121 should be applied, see: Jonathan I. Charney. "Rocks that Cannot Sustain Human Habitation." *The American Journal of International Law* 93.4 (1999), pp. 863–878

originally required to submit its claims to the Commission on the Limits of the Continental Shelf (CLCS) within ten years of its ratification of UNCLOS. For states ratifying UNCLOS before it came into effect, the deadline was set for 2004 (ten years after UNCLOS came into effect in 1994). However, as 2004 approached it became apparent that due to the technical requirements of preparing an extended continental shelf claim, the majority of states would not meet the ten-year deadline, so the deadline was pushed back to 2009. In 2008, the requirement was adjusted again, with states only asked to make preliminary filings by 2009 and to complete their full submissions at a later date.<sup>29</sup>

In sum, when using claims as a dependent variable, this dissertation examines ambiguity and expansiveness. Both of these aspects are measured as either present or not present. Figure 1.2.2 provides a simple illustration of how the two aspects of claims can vary, and shows the possibilities that exist for the dependent variable when using this scheme. As will be discussed in Chapter 2 and Chapter 3, China's and Taiwan's South China Sea claims would fit in the bottom right box in Figure 1.2.2, ambiguous and expansive, reflecting the difficulties of establishing a claim when historical and legal justifications are not easily combined. The first box, "clear and standard," is where China's and Taiwan's East China Sea claims would be categorized, as discussed in Chapters 4 and 5. In these cases, areas which would potentially be claimed under the justification of history are readily subsumed within explanations based on international law.<sup>30</sup>

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<sup>29</sup>As will be discussed further in the relevant chapters, Taiwan adheres to UNCLOS although it was not able to ratify due to its ambiguous international status. China has ratified UNCLOS and made submissions on an extended continental shelf in the East China Sea. China has issued baselines for the Paracel land features in the South China Sea, but not the Spratly features. China has more recently issued baselines for land features in the East China Sea.

<sup>30</sup>While not addressed in depth in this dissertation, an example fitting in the box in the top right corner, "clear and expansive," is Japan's claim over Okinotorishima. Okinotorishima was originally roughly the size of a double mattress, and would likely not be granted an EEZ or continental shelf under UNCLOS Article 121. Japan has since built Okinotorishima into a larger, artificial structure. UNCLOS is clear that artificial structures do not qualify as islands, and do not warrant the jurisdictional rights of islands. However, Japan claims a full EEZ around Okinotorishima, as if the feature qualified as an island. Arguably, Japan maintains a clear and expansive claim with regards to Okinotorishima because it is located in an area where no other state would also claim an EEZ, and no state disputes Japan's sovereignty over Okinotorishima. Therefore, Japan faces less opposition to its claim, although the Chinese government does periodically issue a statement in opposition to Japan's EEZ surrounding Okinotorishima. Okinotorishima is considered to be in an important strategic location, and experts also predict valuable resources in the surrounding seabed. The author knows of no examples of a claim that fits in the bottom left box, "ambiguous and standard." This is consistent with the main findings in this dissertation, that ambiguity is related to establishing a claim with problematic and contradictory justifications. If a state were following a standard interpretation of international law only, it would embrace the interpretation of international law that would provide it with the greatest rights, without ambiguity.

Figure 1.2.2: Possible Values for Claims

		<b>expansive</b>	
		<i>no</i>	<i>yes</i>
<b>ambiguous</b>	<i>no</i>	clear & standard	clear & expansive
	<i>yes</i>	ambiguous & standard	ambiguous & expansive

### 1.2.3 *Accounting for History in International Law*

How does international law provide for history? In the case of territorial sovereignty claims, relevant to the land features in this dissertation’s case studies, the use of historical evidence is relatively straight forward. Historical evidence is relevant to claims if it shows that a state has acquired title to territory through one of the modes of territorial acquisition, as outlined above. For instance, evidence of uninterrupted effective occupation of territory is relevant to a claim of sovereignty. However, not all historical evidence of connection to a place or knowledge of that place is relevant. For instance, evidence of traveling past a land feature and placing that land feature on navigational maps is not direct evidence of territorial sovereignty, as will be discussed in greater detail in Chapters Four and Five. Moreover, the standards for territorial acquisition are high, and even if a state has some historical evidence of sovereignty, competitor states may have more comprehensive evidence of sovereignty over the same feature.

History as it applies to maritime delimitation is less clear. UNCLOS only mentions history three times: in Article 10 (6) with reference to historic bays that do not fit the legal standards of bays but have been acknowledged over time as bays, in Article 15 with respect to historic title and the delimitation of territorial waters, and a third time in Article 298 (1), in which disputes where historic titles and historic bays are excluded from compulsory

dispute settlement.<sup>31</sup> Yet these references are in themselves ambiguous, and the terms are not clearly defined. For instance, when discussing the delimitation of territorial waters in Article 15, UNCLOS states, "[t]he above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two states in a way which is at variance therewith." Apart from clearly being related to the delimitation of territorial waters, as opposed to other types of maritime jurisdiction, UNCLOS gives little indication of what was envisioned as a "historic title."

One approach to conceptualizing the relationship between UNCLOS and historic claims is view UNCLOS as an effort to standardize maritime jurisdiction, therefore eliminating historic titles and rights. Before UNCLOS was established, states across the globe unilaterally established their own maritime zones. Several proclamations by President Truman were the forerunners for the concepts of continental shelf and exclusive economic zone rights, and are also an example of such unilateral action. In this line of thinking, UNCLOS was an effort to standardize maritime jurisdiction and therefore phase out historic rights.

Ultimately, decisions over claims of historic rights should be decided by international courts. The courts have only addressed this issue in very limited cases, and have very narrowly interpreted any historic rights. The only historic right acknowledged in recent years by the courts has been to fishing within another state's EEZ, and even in this case, the rights acknowledged were only to fish one particular type of fish.<sup>32</sup>

#### **1.2.4** *Outline of the Factors Affecting Claims*

The case studies in this dissertation illustrate the important roles played by historical and legal justifications in shaping claims and policy debates, salience of disputed territory, and the flexibility present in domestic policies and policy making.

The case studies presented in this dissertation provide evidence that elites within both China and Taiwan have grappled with how to reconcile issues of history and international

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<sup>31</sup>Clive R. Symmons. "Historic Waters and Historic Rights in the South China Sea: A Critical Appraisal." *UN Convention on the Law of the Sea and the South China Sea*. Ed. by Dr Nong Hong, Dr Shicun Wu, and Dr Mark Valencia. Burlington, VT: Ashgate Publishing, Ltd., 2015, pp. 191–238.

<sup>32</sup>Symmons, "Historic Waters and Historic Rights in the South China Sea: A Critical Appraisal."

law when establishing their claims. While there is no comprehensive explanation of claim formation available in scholarly literature on territorial and maritime disputes, this finding does have support. In one of the few analyses that directly addresses how claims are formed, Alexander B. Murphy argues that both historical justifications and international law play central roles in shaping claims. In terms of historical justifications, Murphy argues that principles of individual property rights are routinely applied to states, resulting in the use of historical loss of property as a rationale for claims. Now it is universally recognized that “a state is not entitled to seize territory from another unless that territory itself was originally wrongfully seized.”<sup>33</sup> Murphy argues that such justifications have ramifications for both the areas claimed and the solutions considered, and that many other possible justifications for claims have already been discredited. Justifications of ethnicity, economic gain, and conquest more generally have been discredited through the events of the last century, and historical narratives of loss remain dominant when justifying claims to both domestic and international audiences.<sup>34</sup> Although Murphy is focused exclusively on territorial claims, this dissertation finds evidence of historical justifications in disputes that combine territorial and maritime claims. As will be demonstrated in the case studies presented here, a focus on previous loss of property is common in these disputes. In the East China Sea dispute such arguments are notably prominent, but all actors in the South China Sea also level similar accusations of theft against competitor states, and these allegations shape claims and related policies.

In this dissertation, history is therefore an independent variable. However, this approach should not be interpreted as denying the many ways in which history itself is shaped by state interests. The process of selectively including, omitting, or interpreting historical evidence, particularly in service of the state and of national unity, has been studied extensively and well-documented.<sup>35</sup> Yet as the cases in the following chapters will illustrate, state efforts to

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<sup>33</sup>Murphy, “Historical Justifications for Territorial Claims.”

<sup>34</sup>Murphy, “Historical Justifications for Territorial Claims” For an additional, in-depth analysis of the decline of the use of conquest as a justification in territorial acquisition, see: Sharon Korman. *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice: The Acquisition of Territory by Force in International Law and Practice*. Clarendon Press, 1996.

<sup>35</sup>Benedict Anderson. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. Revised Edition. New York: Verso, 2006; Prasenjit Duara. *Rescuing History from the Nation: Questioning Narratives of Modern China*. Chicago: University of Chicago Press, 1995; Henrietta Harrison. *China*. London : New York: Bloomsbury Academic, 2001.

shape historical narrative are still inherently limited by historical evidence. China cannot, for example, claim Australia on the basis of historical justifications, as historical evidence to support such a claim simply does not exist. This dissertation uncovered no evidence of any claimant states falsifying historical documents or creating forgeries of historical relics, and the author knows of no such case in disputes anywhere else in the world. Therefore, while it should be acknowledged that states can manipulate historical narrative, available historical evidence still places inherent limitations on claims, and it is inaccurate to portray historical evidence as solely subject to state interests.

Further, this dissertation finds an at times complementary but also potentially contradictory role for international law. In the case studies presented here, international law is particularly applicable due to the claims' maritime aspects, with recently established international conventions directly shaping these claims. When UNCLOS III, the finalized codification of the maritime rights outlined above, was finalized in 1982, states across the globe were granted rights to maritime zones they were most often not claiming before that point. From 1982 up to the present, states have been tasked with setting baselines and submitting maritime claims to the United Nations, claiming geographical areas and jurisdictional rights on the basis of international law. Several studies have demonstrated the role of international law in settling disputes, such as the role of international law in providing focal points for division of territory or the ability of international legal proceedings to provide leaders with domestic cover when explaining unfavorable outcomes to a domestic audience.<sup>36</sup> However, this dissertation finds a conceptually distinct role for international law, in which international law shapes initial and ongoing articulations of claims, both unilaterally and in the context of disputes unlikely to be subject to bilateral negotiations or international arbitration in the near future.

As a whole, the cases in this dissertation demonstrate the at times contradictory and complementary roles of historical and legal justifications for claims. When the guidelines of history and international law would separately produce similar claims, or when claims based

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<sup>36</sup>Todd L. Allee and Paul K. Huth. "The Pursuit of Legal Settlements to Territorial Disputes." *Conflict Management and Peace Science* 23.4 (2006), pp. 285–307; Paul K. Huth, Sarah E. Croco, and Benjamin J. Appel. "Does International Law Promote the Peaceful Settlement of International Disputes? Evidence from the Study of Territorial Conflicts Since 1945." *American Political Science Review* 105.02 (2011), pp. 415–436.

on history can be subsumed within the areas dictated by international law, states have no difficulty setting claims. As illustrated in Figure 1.2.3, when history and international law are more or less in agreement, a clear claim is produced. The claim is not likely to be expansive, and is likely to be stable, in that it is not likely to change. Cases illustrating these circumstances are included in Chapters Four (China’s claim in the East China Sea), Chapter Five (Taiwan’s claim in the East China Sea), and Six (Indonesia’s claim in the South China Sea and South Korea’s claim over Dokdo) of this dissertation. Yet even in these cases, where clear and stable claims exist, these two justifications continue to impact the dispute, as advocates of each justification see the dispute differently and advocate diverging approaches to managing the dispute.

The bottom half of Figure 1.2.3 maps the effects on claims when historical justifications and international law do not readily coalesce. Such circumstances present a challenge for leaders. While historical justifications play an important role in rationalizing claims to both domestic and international audiences, leaders still feel pressure to articulate claims as reflective of international law. When international law does not readily account for claims over areas dictated by historical narrative, this presents an unwanted challenge for government officials.<sup>37</sup> States seek to maintain international reputations for compliance with international law.<sup>38</sup> Noncompliance may also open a government to audience costs, as domestic constituencies have been shown to care about a country or leader’s international reputation.<sup>39</sup> Officials will therefore seek to articulate claims in ways consistent with international law.

Therefore, when faced with historical and legal justifications that do not easily match, officials can choose either not to pursue a claim or to establish a claim that is expansive and will likely face opposition due to the challenges of adapting it to international legal

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<sup>37</sup>Both Chinese and Taiwanese officials describe the challenges faced when history and international law do not readily conform, as documented in Chapters 2 and 3 on each government’s South China Sea claims.

<sup>38</sup>The effects of violating international law can be admittedly specific and states appear to maintain multiple reputations, but the concern by states for their reputation of compliance remains, see: George W. Downs and Michael A. Jones. “Reputation, Compliance, and International Law.” *Journal of Legal Studies* 31 (2002), S95–S114; Andrew T. Guzman. *How International Law Works: A Rational Choice Theory*. Oxford University Press, 2007

<sup>39</sup>Michael Tomz. “Domestic Audience Costs in International Relations: An Experimental Approach.” *International Organization* 61.04 (2007), pp. 821–840.

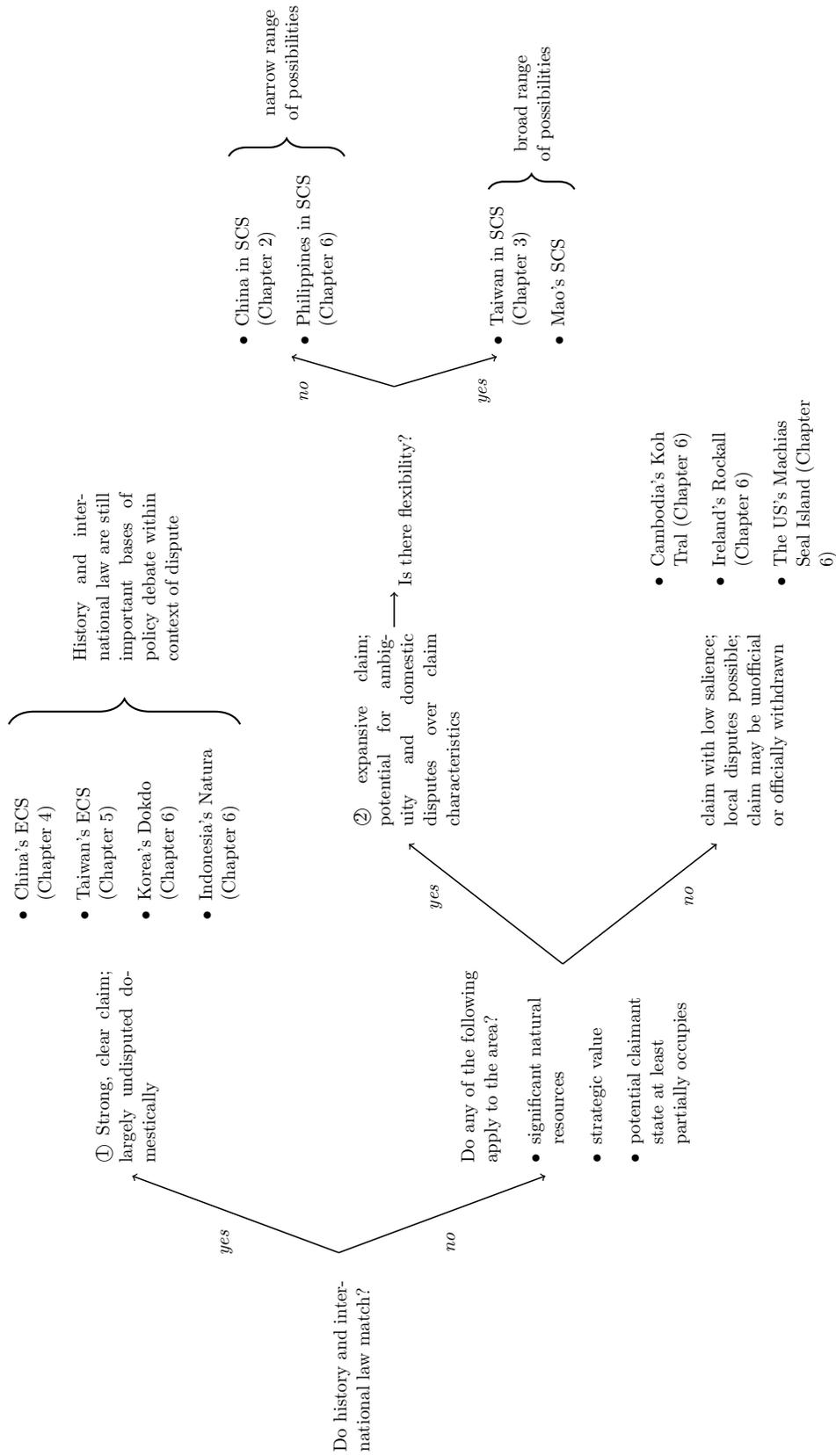


Figure 1.2.3: An Outline of the Factors Affecting Claims

standards.<sup>40</sup> Additional factors can be expected to influence the government's decision. For instance, territory with a strategic location has been found to motivate territorial claims.<sup>41</sup> Similarly, territory with economic value, such as natural resources, has been found to motivate territorial claims, most notably for developing countries.<sup>42</sup> Physical presence or occupation of the disputed area can also be expected to motivate territorial claims, as connections to territory grow over time.<sup>43</sup> As indicated in Figure 1.2.3, each of these three factors is listed as a possible reason a state may pursue a claim despite a problematic combination of historical and legal justification. These factors raise the saliency of the disputed area, and make a state more willing to pursue a potentially problematic claim. When pursuing a problematic claim, a state will face both domestic and international pressure to articulate the claim in terms of international law. In the midst of such pressure, a state is more likely to produce an ambiguous claim. An ambiguous claim can be both a stall tactic as the state works to better articulate the claim in terms of international law, but can also be reflective of disagreements over the claim present at the domestic level.

With high salience to the disputed area, a problematic combination of historical and legal justifications, and a likely ambiguous and expansive claim (as located in Figure 1.2.3 at the node labeled with a number 2) domestic politics and institutions will further shape the claim. As mentioned in the introduction to this chapter, an initial expectation of this study was that regime type would play a determinant role in distinguishing between cases, but the case studies in this dissertation indicate that flexibility, broadly defined, has more explanatory power. In this dissertation, flexibility is conceived of as having two main components: (a) a domestic political atmosphere allowing for a range of ideas to be considered, and (b) the ability of the government to choose claim characteristics across a range of options. A country must have both of these characteristics to be defined as flexible.

To illustrate these concepts, Figure 1.2.4 maps generic positions an individual, group, or political party may adopt with respect to a country's claim. The figure depicts possible

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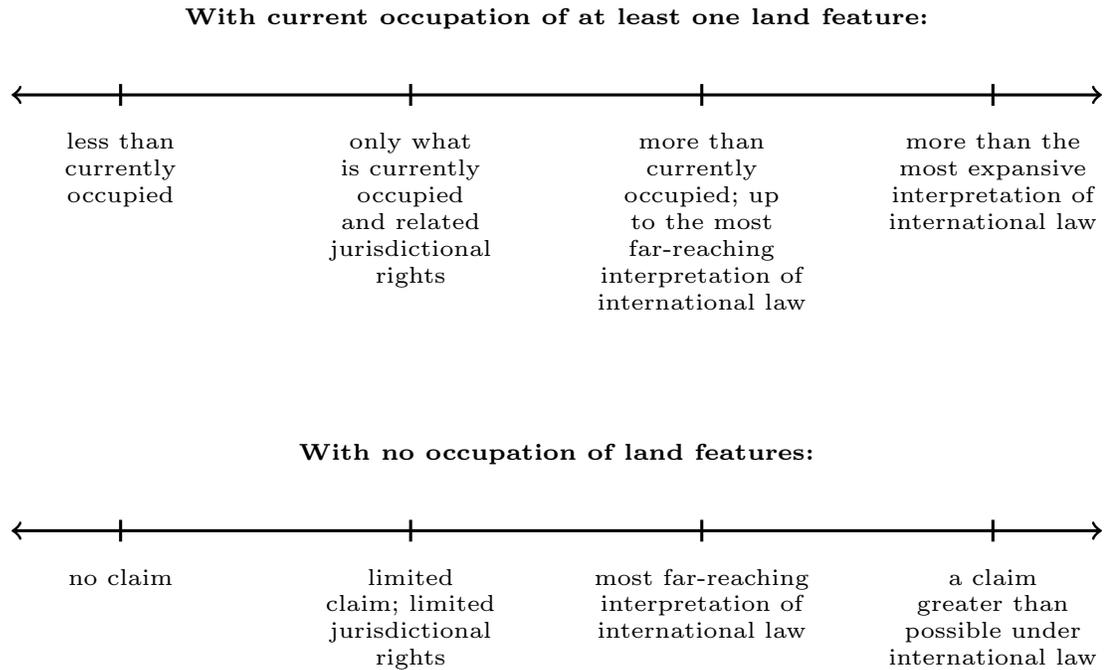
<sup>40</sup>A third option is for the state to establish a claim strictly in conformity with international law, disregarding historical justifications. Such an approach was not observed in the case studies for this dissertation, but would make for a valuable addition to this research.

<sup>41</sup>Huth, *Standing Your Ground*.

<sup>42</sup>Huth, *Standing Your Ground*.

<sup>43</sup>Ron E. Hassner. "The Path to Intractability: Time and the Entrenchment of Territorial Disputes." *International Security* 31.3 (2006), pp. 107–138.

Figure 1.2.4: Possible Positions on the Claim at the Domestic Level



positions regarding claims, both with some current occupation of an area and with no current occupation, although the range is essentially the same for both, starting with positions advocating the state make no claim ranging up to advocating the state make an expansive claim, as defined earlier in this chapter.<sup>44</sup> The outline provided in Figure 1.2.4 is a rough one, and should not be assumed to be reflective of all possible positions on a claim. However, it does serve as a starting point for conceptualizing the role of domestic politics in shaping claim characteristics. One central assumption in this dissertation is that while a government may choose to remain ambiguous as to the characteristics of a

<sup>44</sup>While expansiveness as a claim characteristic does not include circumscribed claims, or claims less than international law would allow, actors at the domestic level may advocate for claims perceived to be less than maximum rights granted under international law. As will be discussed in the following chapters, advocating a circumscribed claim tends to be a minority position, and while its advocates can influence the outcome of claim characteristics, their view tends not to dominate a claim's ultimate form. Put another way, a claim can be thought of as an initial bargaining position in a dispute. A state is not likely to establish an initial bargaining position that is less than the rights granted under international law, even if the state's leaders doubt the strength of their claim when compared to a rival claimant's position. Therefore, while expansiveness in claim characteristics does not allow for circumscribed claims here, the domestic political environment in a claimant state may still have advocates for a circumscribed claim, and such views can still shape the claim and related policy debates.

claim, individuals, political parties, and political groups will often hold relatively clear positions on the claim. These positions can be mapped on the spectrum for claims, and are inputs into the political system. Moreover, while Figure 1.2.4 is presented as relevant to an ambiguous claim, a similar spectrum will also exist for a claim that is not ambiguous. After all, a government's clear statement of a claim does not necessarily prevent the public and political groups from disagreeing with the government's position. Throughout this dissertation, variations on the chart presented in Figure 1.2.4 will be used to illustrate the range of viewpoints observed for the claim within each of the major case studies.

At first glance, one might assume that democracies will allow for the greatest range of ideas to be considered, and a nondemocracy to have the narrowest. This can be true, and regime type does play a role in shaping the options considered for a claim. However, autocracies are not all the same. For instance, in Barbara Geddes' typology of regimes, a personalist dictatorship is described as one in which a single leader does not depend on a party or the military for support, while single-handedly controlling access to office and policy.<sup>45</sup> In such a regime, a wide range of options may be considered and the government may choose from a wide range of claim characteristics, as policy is subject to the whims of an individual. Mao Zedong's South China Sea policies, as discussed in Chapter Two, help illustrate this possibility.

Moreover, regime type is not adequate for deciphering between the second aspect of flexibility, the ability of the government to choose claim characteristics across a range of options. While democracies are likely to allow a wide range of opinions to be voiced, there are reasons to believe they may be limited to a narrow range of policy options. For instance, threats by democracies have been found to be more credible, as leaders in a democracy may suffer audience costs for backing down in the context of a dispute, and are therefore less likely to do so.<sup>46</sup> At the same time, single party autocratic governments have also been found to generate audience costs, as evidence indicates elites in such autocracies may punish leaders for backing down at the international level.<sup>47</sup> In other words, both democracies and

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<sup>45</sup>Barbara Geddes. *Paradigms and Sand Castles: Theory Building and Research Design in Comparative Politics*. University of Michigan Press, 2003.

<sup>46</sup>James D. Fearon. "Domestic Political Audiences and the Escalation of International Disputes." *The American Political Science Review* 88.3 (Sept. 1994), pp. 577–592.

<sup>47</sup>Jessica L. Weeks. "Autocratic Audience Costs: Regime Type and Signaling Resolve." *International*

single party autocratic regimes may generate audience costs, limiting the options available in establishing claims.

Another source of inflexibility may be the reliance of a government on nationalism as a source of legitimacy, as the government runs the risk of being obligated to nationalist principles. Nationalism often identifies an "enemy of the nation," a particular group or rival country which must be defeated or excluded. This narrative can lead to "popular nationalist bidding wars," in which rising elites can level challenges against old elites for not doing enough to defeat the nation's enemies.<sup>48</sup> Such bidding wars are highly relevant when a historical justification for a claim is being used. The narrative of theft by an enemy state common to a historical justification, when combined with nationalist narratives that also emphasize foreign enemies, ensures that explanations for an ambiguous claim and policy options within the dispute will be limited only to those conforming to nationalist thinking. Such circumstances can arise in a range of regimes, but seem particularly likely for regimes in transition, as well as nondemocracies, as both regimes are more likely to rely on nationalism as sources of legitimacy. Under such conditions, change will be difficult as a government will not want to risk the appearance of weakness and inadequacy when handling a foe.

Finally, institutional inflexibility has been studied in great detail with respect to veto players, and such inflexibility can occur across regime types.<sup>49</sup> As Chapter 6 will explain, the Philippines' claims in the South China Sea are one case study that has not been developed in this dissertation, but would serve as a good future test case. Also with an arguably ambiguous claim, preliminary evidence indicates that inflexibility in the Philippines' claims, despite its open democratic political environment, may be due to difficulties in amending the Philippines' constitution in the presence of a high number of veto players. At the same time, the broad debate and proclivity toward change exhibited within the case of Taiwan's South China Sea claims, as presented in Chapter 3 of this dissertation, appears related

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*Organization* 62.01 (Jan. 2008), pp. 35–64.

<sup>48</sup>Jack L. Snyder. *From Voting to Violence: Democratization and Nationalist Conflict*. New York: Norton, 2000; Gretchen Schrock-Jacobson. "The Violent Consequences of the Nation Nationalism and the Initiation of Interstate War." *Journal of Conflict Resolution* 56.5 (Oct. 2012), pp. 825–852.

<sup>49</sup>For examples, see:George Tsebelis. *Veto players: how political institutions work*. Princeton University Press, 2002; Andrew MacIntyre. "Institutions and Investors: The Politics of the Economic Crisis in Southeast Asia." *International Organization* 55.01 (2001), pp. 81–122.

to Taiwan's combination of national identity politics and a relatively flexible democratic political system. While Taiwan may be unique in some ways, the findings derived from the case study of Taiwan's South China Sea claims can be tested further in future cases.

Returning to the very bottom path on Figure 1.2.3, geographical areas without strategic value, natural resources (particularly in the case of a developing country), and occupation or physical presence, a state is more likely to forgo making a claim under these conditions. If a state does decide to make this claim, even with low salience to the territory and difficulties aligning historical and legal justifications, the claim will not be a priority for the state, as maintaining this claim will be difficult in light of its problematic justification and the low value of the territory will not justify a strong defense of a problematic claim. However, the claim will not necessarily be ambiguous. States that decide to forgo a claim may definitively indicate they are declining to pursue a claim. Under these circumstances, historical justifications for a claim are still likely to be raised among the public, despite the government's decision to forgo a claim. Examples of cases fitting these conditions are discussed in Chapter Six.

### 1.3 *Empirical Approach*

This dissertation endeavors to shed light on a largely overlooked area of state behavior, the formation of claims. When subjects of inquiry are relatively undeveloped, with limited previous research, qualitative case studies with an inductive approach are particularly appropriate. At early stages of research, there is a high probability of left-out variables, but as Alexander L. George and Andrew Bennett explain, "inductive field research methods typically lie behind every newly identified variable."<sup>50</sup> Theoretical insights outlined in this chapter were developed through an inductive approach using the case studies contained in this dissertation, and can be tested further in future research. Further, George and Bennett argue that when combining quantitative and qualitative research, case study research is best done at the beginning, in order to identify relevant variables, and then again at the end of

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<sup>50</sup>Alexander L. George and Andrew Bennett. *Case Studies and Theory Development in the Social Sciences*. MIT Press, 2005.

the research process, to investigate deviant cases revealed through quantitative methods.<sup>51</sup> Case studies, with an inductive approach, are therefore the most appropriate approach to identifying relevant variables relevant to making claims.

### 1.3.1 *Case Selection*

China's and Taiwan's claims in the South China Sea and East China Sea provide a rare opportunity for studying claim development. The complexity, ambiguity, and long history surrounding the development of each of these claims make these cases well suited for in-depth, theory building analyses. When considered over time, the claims in each case present considerable variation. Both the geographical depictions of the claims on maps and the justifications given for the claims have changed over time. Further, while a large amount of material has been published on China's claims in particular, theoretical findings on these cases have been limited. Considerable data exists on claims in these disputes, yet few studies have worked toward comprehensive theoretical contributions from available data.

These cases are also well suited for cross-case comparison, allowing further insight into the factors at work in processes of claim formation. While significant differences exist between China and Taiwan in terms of regime type, economic size, military might, and international standing, China's and Taiwan's claims largely originated from the same rationales and a common historical record, and still share a great deal in common. Yet over the years their claims have at times diverged. In sum, the variation in these claims, both across and within cases, provides important evidence as to how claim characteristics develop over time.

Each case also individually promises to provide valuable data on claims and conflict in East Asia. As a rising power, China's maritime and territorial claims have important implications for East Asian security. Understanding how the characteristics of its claims develop and change is policy relevant and salient to understanding political dynamics in the entire region. Moreover, China's transition from a weaker state to a rising power creates an important context within which claim development should be studied. Taiwan

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<sup>51</sup>George and Bennett, *Case Studies and Theory Development in the Social Sciences*.

is also a valuable case study on claim formation and changes in claims. A claimant in numerous volatile disputes, in-depth studies of Taiwan's claims are rare. Further, Taiwan has experienced a relative power decline in recent years, most notably when compared to Mainland China, and provides evidence on the role of strategic considerations in shaping claims when faced with declining power. Taiwan's transition from an authoritarian to democratic system presents an opportunity for studying variation of regime type over time and across regime type, and its current democratic system can help to elucidate in detail how democratic processes impact claim formation and changes.<sup>52</sup>

While a comparative study of claims maintained by China and Taiwan has significant advantages, there are also limitations to this approach. Some of these limitations are inherent to inductive case studies. When research is limited to a small number of inductive cases, generalizability of findings is always a central concern. The unique characteristics of China's and Taiwan's claims in the South China Sea make this concern even more pronounced. In an effort to address this limitation, additional case studies are included in the final chapter of this dissertation. However, generalizability is still admittedly a challenge, and any theoretical findings in this dissertation should be further tested for applicability to additional cases.

### **1.3.2** *Data and Methodological Approach*

Data for this dissertation has been compiled primarily through fieldwork in Taiwan, China, and Washington DC. Interviews with experts and government officials as well as documentary evidence are used as primary data sources.

This dissertation draws on 60 elite interviews for data collection as well as to provide insight into how claims are formed and when they might change.<sup>53</sup> In the case of Taiwan in particular, government officials and members of political parties represent a sizable portion

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<sup>52</sup>It is helpful to note, although Taiwan's ambiguous international status causes it to be frequently excluded from official talks on maritime disputes in the region, Taiwan has continued to defend its claims in the South China Sea and East China Sea, with methods of defense and reaffirmation that are similar to those actions taken by other claimant states. Moreover, in a study such as this, where domestic political factors are of central theoretical concern, Taiwan's unusual diplomatic status does not preclude it as a case for comparison. Taiwan's claims are produced through a domestic institutional structure comparable to any other actor in the disputes.

<sup>53</sup>Interview subjects were admittedly hard to secure during fieldwork within China on this topic, undoubtedly due to the sensitive nature of the topic.

of the interview sample. When investigating the development of a state's claims, the motivations and perceptions of leaders are of central importance. Further, elite interviewing has been deemed particularly well-suited for investigating the actions and motivations of political decision-makers in a strategic setting.<sup>54</sup> Information gained from interviewees will be triangulated with that gained from other interviewees.

Throughout the dissertation, data is compiled from a wide range of documentary sources. States have innumerable methods of communicating and reaffirming the characteristics of their claims. As a general rule, national legislation on territory and submissions to the United Nations can be thought of as the strongest indicators of state claims and as the most binding on states. Such actions are difficult to change and involve lengthy processes of preparation, ratification, and submission. Moreover, changes in such statements tend to be highly visible and therefore more vulnerable to audience costs if changed. Also heavily indicative of state claims are statements by chief executives, legislators, and government agencies with foreign policy responsibilities. Yet the actions of other relevant actors must also be taken under consideration with interpretation dependent on contextual considerations. For instance, the regulations and behaviors of local governments, such as those tasked with enforcing national fishing regulations, can be crucial indicators of the nature of territorial claims. For fleshing out the nature of claims and seeking indicators of potential future change, newspaper editorials, academic and policy literature, and public opinion information are also fruitful sources of information.

#### 1.4 *Case Summaries*

China's claim in the South China Sea has been widely cited by commentators, scholars, and global media as being highly expansive and ambiguous, and therefore worrying in light of China's rising power. This dissertation argues that while the claim is ambiguous, possible explanations of the claim from within China largely coalesce around two positions:

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<sup>54</sup>Brian C Rathbun. "Interviewing and Qualitative Field Methods: Pragmatism and Practicalities." *The Oxford handbook of political methodology*. Ed. by Janet M. Box-Steffensmeier, Henry E. Brady, and David Collier. New York: Oxford University Press, 2008, pp. 685–701; Elizabeth Jean Wood. "Field Research." *The Oxford handbook of comparative politics*. Ed. by Carles Boix and Susan Carol Stokes. New York: Oxford University Press, 2007, pp. 123–146.

(1) what might be considered the most expansive interpretation of China's South China Sea claim based on international legal principles, and (2) an expansive interpretation based on historical narrative of exploration and discovery. The dissertation argues that the nationalistic orientation of China's political system has limited the range of possible interpretations for this ambiguous claim, but that even within these limitations, historical justifications and international law are still shaping domestic debate over policy within the dispute. Domestic political factors also create an environment of inflexibility, and a low possibility of unilateral change in the claim. This is not strictly due to China's authoritarian system, as China previously showed itself to be more flexible under Mao Zedong's personalist authoritarian rule.

While Taiwan maintains a claim similar to China's in the South China Sea, domestic political debate over Taiwan's most appropriate South China Sea claim is much broader in scope. In Taiwan's democratic system, where national identity is highly contested through party politics, opinions vary along a broad spectrum as to the proper borders and jurisdiction of the nation. When asked about the claim, people in Taiwan frequently resort to a description of national identity in order to explain the claim, and the conception of Taiwan's identity directly impacts the expansiveness of the area and the scope of the rights claimed. Evidence available indicates that conceptions of national identity and their implications for Taiwan's claims play out through party politics and ultimately impact Taiwan's official claim within the disputes. Moreover, related to Taiwan's flexible domestic political environment, there is considerable evidence that Taiwan's claims may change in the near future.

China's claims in the East China Sea provide an example where claims created through an arguably standard interpretation of international law largely allow for the same areas to be claimed as would be dictated by historical narrative. Therefore, there is a near universal consensus on the East China Sea claim within China. However, even in this context, some within China have advocated the application of historical rationales beyond the Chinese government's official East China Sea claim. Based on evidence of historical tributary systems, some military officials and academics have argued the status of Okinawa should also be challenged. However, these are minority opinions, and the easy agreement

between historical and legal justifications in this case ensures that China's claim is not likely to change, without any need to address flexibility or inflexibility.

Similar to Taiwan's claims in the South China Sea, a range of positions on Taiwan's proper claim in the East China Sea are present within Taiwan. Also similar to Taiwan's South China Sea claims, positions based on historical narrative and international law compete to dictate the claim. Yet in this case the competition between the two justifications is much less visible. As historical narrative and international law can both be used to justify claims of similar geographical areas, it is the rationales behind the claim, rather than prescriptions for the claim, that significantly differ. In this case, identity politics continues to play an important role in dictating opinions on what claim is appropriate, but evidence of the role of identity politics in Taiwan's East China Sea claims is most apparent in the positions furthest right and furthest left on the political spectrum. Apart from the underlying justification of the claim, Taiwan's two main political parties are largely in agreement on Taiwan's East China Sea claims, yet both parties face criticism regarding policy in the dispute from other societal groups based on rationales of identity politics. Similar to China's claim in the East China Sea, Taiwan's claim is not likely to change. Although Taiwan has a flexible system, the ease of combining history and international law in this case ensures there is much less open debate surrounding the components of the claim, although justifications of history and international law underlie policy debates surrounding the dispute.

When taken as a whole, the factors dictating claim formation are consistent across all four cases. In each claim, international law and historical narrative are used both to draw lines and to justify them. When these two rationales provide differing standards for a claim, producing an ambiguous claim, they compete in the domestic political arena, where groups advocate one rationale or the other. When these two rationales provide largely similar standards for a claim, the claim is clear, but justifications of the claim will still vary along the two rationales, with these contrasting justifications having important implications for the dispute. Additionally, an environment of heightened nationalism can have a chilling effect, essentially limiting the range of debate permissible when discussing a nation's maritime and territorial claims.

Cases in the final chapter further elaborate on these principles, illustrating that many of the factors observed in China and Taiwan are also present under markedly different circumstances. South Korea's claim over Dokdo illustrates how even a democracy with a clear and stable claim can find its actions dictated by a public emphasis on nationalistic historical narrative. Indonesia's domestic political dialogue regarding Natuna shows that the political dynamics surrounding China's South China Sea claim are not unique. The Philippines' claim in the South China Sea, Cambodia's relationship with Koh Tral, Ireland's relationship to Rockall, and the United States' position on Machias Seal Island are all proposed as future test cases, with preliminary predictions for each case provided.

## **1.5** *Dissertation Overview*

The remainder of this dissertation includes four chapter-length case studies and several shorter case studies. The order of the chapters is as follows: Chapter Two explores China's claim in the South China Sea. Chapter Three investigates Taiwan's claim in the South China Sea. China's claim in the East China Sea is the subject of the fourth chapter, and Taiwan's claim in the East China Sea is in the fifth chapter. Throughout each of these four chapters, comparisons will be drawn to findings in other chapters. The final chapter includes the preliminary results for several shorter case studies and plans for future research.

# Chapter Two

## CHINA'S CLAIMS IN THE SOUTH CHINA SEA

### 2.1 *Introduction*

The South China Sea is one of the world's most important transportation and shipping hubs, is believed to hold significant oil and gas reserves beneath its seabed, and is highly valued for its fisheries.<sup>1</sup> China, Taiwan, Malaysia, the Philippines, Brunei, and Vietnam all claim parts of the South China Sea, with Indonesia at the very least tangentially involved.<sup>2</sup> While claimants have largely avoided armed conflict in support of their overlapping South China Sea claims, instances of armed aggression have occurred, with recent incidents adding tension to the dispute.<sup>3</sup>

China's claim in the South China Sea is perhaps the most publicized maritime claim in the world, and China's recent actions, such as its land reclamation efforts and construction of military facilities on South China Sea land features, have only drawn increased attention.<sup>4</sup> The ambiguity of the claim, combined with China's rising military power, has reinforced concerns that China may have expansionist goals in the South China Sea. Unfortunately,

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<sup>1</sup>The South China Sea encompasses the area from the Singapore and Malacca Straits to the Strait of Taiwan, and includes hundreds of land features such as the Spratly Islands, the Paracel Islands, the Pratas Islands, the Macclesfield Bank, and the Scarborough Shoal.

<sup>2</sup>The complications surrounding Indonesia's South China Sea claim will be discussed in the final chapter of this dissertation.

<sup>3</sup>In 1974, China and South Vietnam clashed over control of the Paracels. China quickly defeated South Vietnam, consolidating control over the entire archipelago, which it has maintained since that time. In 1988 China and Vietnam also fought on Johnson Reef in the Spratly Islands, which resulted in seventy-four Vietnamese casualties and Chinese control over numerous reefs in the Spratlys. In 1994, the Chinese occupied Mischief Reef, previously under Filipino control.

<sup>4</sup>China has recently turned seven land features into artificial islets, complete with military buildings and airstrips. See: Derek Watkins. "What China Has Been Building in the South China Sea." *The International New York Times* (October 27, 2015)

such concerns are often connected to mischaracterizations of China's claim. Figure 2.1.1, for example, is one illustration of the dispute frequently used in international media. This illustration indicates that China claims the entire South China Sea as territorial waters. As will be discussed later in this chapter, there is virtually no evidence supporting this interpretation of China's claim, yet this and similar illustrations are often used as shorthand for understanding claims in the dispute. More to the point, depicting China's claim as explicitly designating any jurisdictional rights in the South China Sea is also a mischaracterization. China's claim is ambiguous, with many different interpretations of the claim present in China. Similar to other countries in the South China Sea Dispute, China must resolve a mismatch between historical and legal justifications for its claim in the South China Sea, and throughout this process domestic actors advocate differing interpretations of the claim. In this context, the challenges of resolving historical and legal sources of justification have resulted in an ambiguous claim.<sup>5</sup>

China's claim in the South China Sea demonstrates that when historical narrative calls for a claim significantly larger than that readily justified by a standard application of international law, an ambiguous claim will result as the country struggles with how best to articulate the claim. Under these circumstances, domestic opinion regarding the claim will be divided, and domestic political factors will play a central role in shaping the claim. Some groups and actors will emphasize a claim overtly linked to the application of international law, while other groups emphasize the more expansive historical claim. In the case of China, this difference largely coalesces around two interpretations of China's South China Sea claim: (1) an interpretation of China's South China Sea claim as only referring to South China Sea land features and the legal rights that can be based on those land features, and (2) an expansive claim based on historical narrative and at times encompassing all waters and land features within the U-Shaped Line. As will be discussed below, there are many variations across explanations of the claim, but these two explanations serve as helpful starting points

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<sup>5</sup>China is not the only country to make ambiguous and expansive maritime claims, but it is the only country of its size, power, and growth projections to make such claims. As will be discussed in the next chapter, Taiwan maintains a claim very similar to China's claim. Yet Taiwan's claim is rarely, if ever, characterized as aggressive or expansionist. Vietnam also maintains a claim encompassing much of the South China Sea, but little media or scholarly attention focuses on characterizing that claim or Vietnam's actions, apart from how they relate to China's claims. In fact, Figure 2.1.1 might lead one to believe that Vietnam only claims a 200 mile EEZ drawn from its coast.

Figure 2.1.1: BBC Media Depiction of the South China Sea Dispute<sup>6</sup>



for understanding dominant trends. Figure 2.1.2 illustrates how these dominant positions map on to a generic scale of possible claims, as discussed in Chapter One.

As the discussion of Taiwan's claim in the next chapter will illustrate, the two dominant interpretations found in China are also present in Taiwan. However, the array of viewpoints on Taiwan's likewise ambiguous South China Sea claim spans a much broader range of possibilities than that found in China, and Taiwan's claim appears much more likely to change in the near future. Moreover, when taken as a whole, the dominant interpretations of China's South China Sea claim include broader geographical areas than the positions frequently advocated in Taiwan. This is because in many ways, the current Chinese system is inflexible. The nationalistic underpinnings of China's current regime, combined

<sup>6</sup>This figure is frequently used in BBC stories on the South China Sea, as well as across other media outlets. For one recent example, see: *BBC (The British Broadcasting Corporation)*. "South China Sea: US defence chief Ash Carter wades into row." (November 5, 2015), <http://www.bbc.com/news/world-asia-34737051>

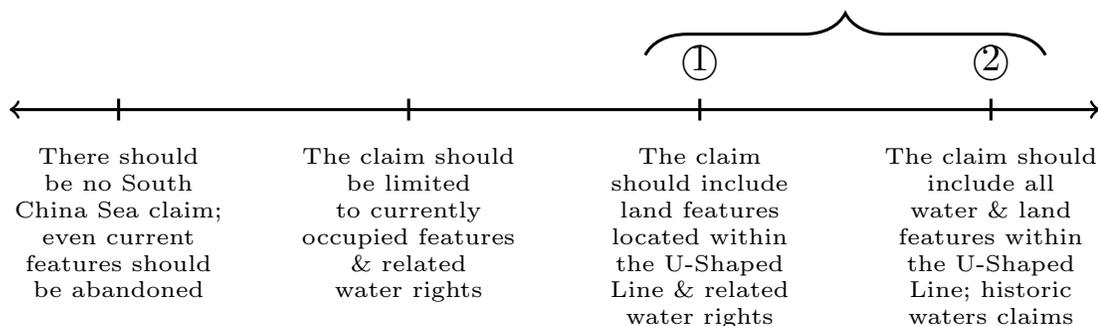


Figure 2.1.2: Dominant Interpretations of China's South China Sea Claim

with a single-party authoritarian rule and its related system of accountability, ensure that seemingly weak or unpatriotic options for the claim are not seriously entertained and that China's claim has a narrow range of options. Such inflexibility can be contrasted to China's South China Sea claim when China was under the personalist rule of Mao Zedong, as Mao exercised a much greater degree of flexibility when making decisions about the claim.

To illustrate the centrality of historical and legal justifications, as well as the domestic political context in which these justifications compete, this dissertation will explore China's claim in three parts. First, an overview of China's South China Sea claim and its many aspects is provided. In the second section, differing explanations for the claim are discussed. Finally, the chapter concludes with a summary of findings.

## 2.2 *Overview of China's South China Sea Claim*

This section provides an overview of China's claim, with a particular emphasis on Chinese government actions and statements in defining the claim. The section includes information gathered from various sources: China's South China Sea maps, domestic legislation, China's stated position on Taiwan, China's response to the Philippines' recent legal challenge of China's claim, and actions by the Chinese government that characterize and reinforce the claim.

### 2.2.1 *China's South China Sea Maps*

China's claim is in many ways defined and understood through maps. As Figure 2.1.1 illustrates, many of the maps used to understand China's claim are created by actors other than the Chinese government. However, the Chinese government has also used several maps to illustrate and reinforce its South China Sea claim, ultimately providing evidence as to how China's claim has developed over time.

Current maps of China's South China Sea claim date back to a map originally drawn by the Republic of China government in the aftermath of World War II. Multiple early versions of the map were produced, but the most influential version of the map, and the one still used by Taiwan today, was drawn in 1947 (Figure 2.2.1). The 1947 map, as pictured, originally included eleven dashed lines. The PRC government dropped two lines from the map in the 1950s, leaving nine dashes and producing the version most widely cited today as reflective of China's South China Sea claim (one example of the version with nine dashes is available in Figure 2.2.2).<sup>7</sup> The map's original title, 南海諸島位置圖, can be translated to, "Map of the South China Sea Islands," which provides some evidence that the map in its original form was designating sovereignty claims to land features. However, the title is only included on the original version.

All versions of the U-Shaped Line map are considered to be ambiguous, in that not only is it unclear what exactly the line designates, but the line's basis of justification is also unspecified. More precisely, rival claimants and observers are uncertain as to whether or not the dashed line is meant to designate the whole area included in the U-shaped line as historic waters, if the line is meant only to claim only the land features included within the line, if the line is meant to be a maritime delimitation, if the line is meant to be a national boundary, or if it is meant to designate something else altogether.<sup>8</sup> The relevant basis of legal justification for the claim also has multiple interpretations.<sup>9</sup> Moreover, the map does

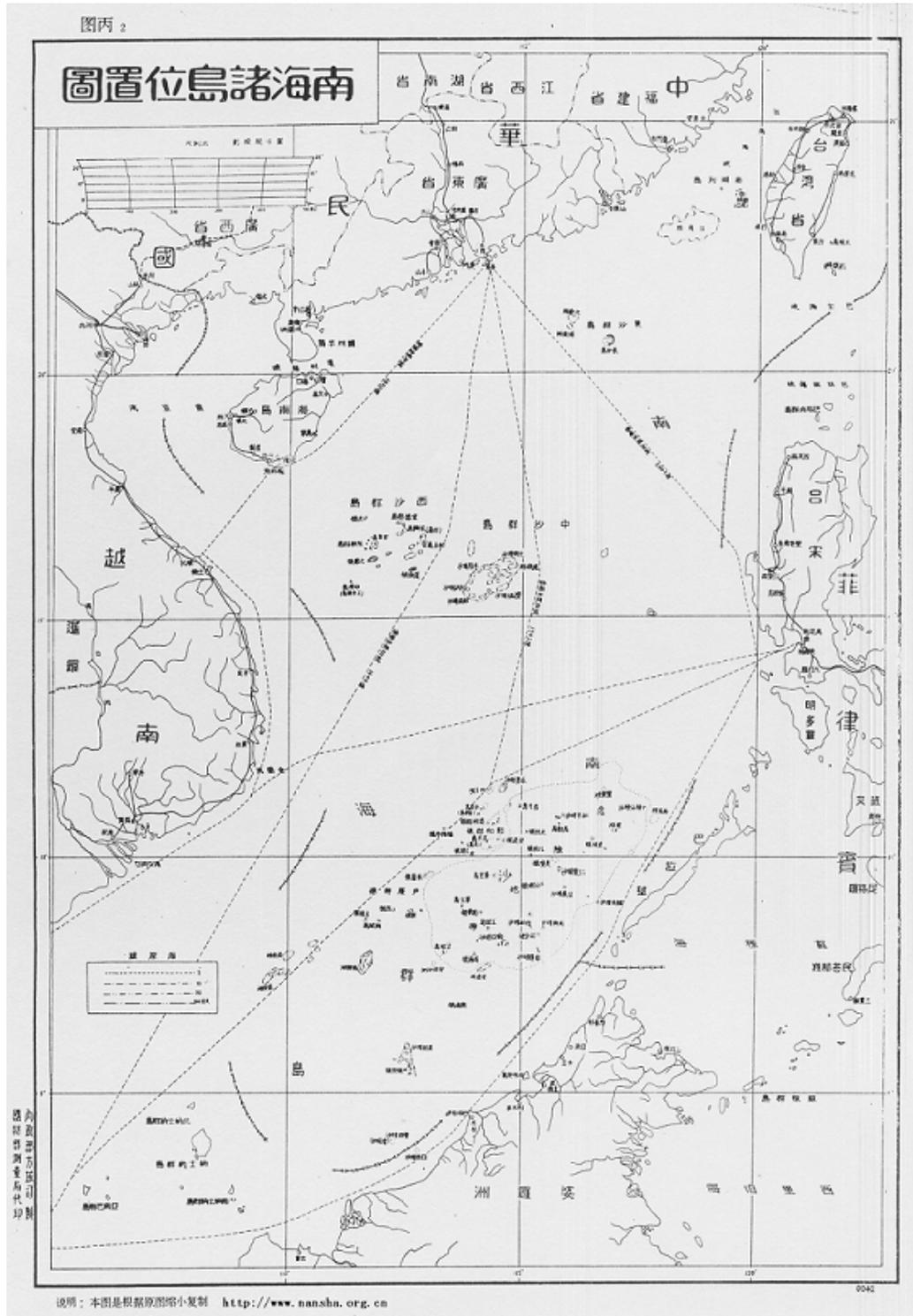
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<sup>7</sup>The 1947 11-Dash Line map and the 9-Dash Line map China later submitted to the United Nations in 2009 can both be referred to as the "U-Shaped Line" claim. Other names they have been called include: "The Cow's Tongue Map," "The 9-Dotted Line," "The 11-Dotted Line," or even the "10-Dash Line" or "10-Dotted Line." Context determines the exact version being referenced.

<sup>8</sup>Dutton, "Through a Chinese Lens"; Zou, "China's U-Shaped Line in the South China Sea Revisited."

<sup>9</sup>Li Jinming and Li Dexia. "The Dotted Line on the Chinese Map of the South China Sea: A Note." *Ocean Development & International Law* 34.3/4 (July 2003), p. 287; Keyuan Zou. "Historic Rights in International Law and in China's Practice." *Ocean Development & International Law* 32.2 (Apr. 2001),

Figure 2.2.1: The Republic of China's 1947 U-Shaped Line Map



*This map was first published by the Republic of China government in 1947, and is widely cited as the first published illustration of the U-Shaped Line claim. In this depiction, the map has eleven dashes. The People's Republic of China government later adopted nine and ten-dash versions of this map.*

not provide exact latitude and longitude for the U-Shaped Line, leaving questions as to what specific areas fall within the line. Despite calls for clarification, neither the ROC or PRC governments have ever fully explained the claim.

While Taiwan has never altered the original 1947 version of the map, China's map has varied over the years. As mentioned above, China moved away from the original map with eleven dashes in the 1950s, when it dropped two of the original lines. These two lines were the far northwestern segments of the U-Shaped Line, designating a claim in the Gulf of Tonkin. If left in place, the original version of the U-Shaped Line would have had implications for a Chinese claim over White Dragon Tail Island (assuming the line is applicable to claims over land features). In 1957, Mao Zedong and Zhou Enlai, China's first Premier, retracted a previous Chinese claim over White Dragon Tail Island in favor of Vietnamese ownership.<sup>10</sup> As Taylor Fravel points out in *Strong Borders Secure Nation*, the transfer of White Dragon Tail Island is the only time China has compromised on an offshore island dispute, and little is known about what brought about the compromise. Fravel argues that China's decision to abandon a claim to White Dragon Tail Island represents a Chinese willingness to compromise on territorial disputes when facing an external threat, in this case, the United States.<sup>11</sup> Chinese scholars interviewed for this dissertation also cited external threat as a factor affecting Mao's decision, particularly the external threat of the United States. However, they also argued that the decision was only possible through China's political system under Mao. One expert pointed out that at the time of the White Dragon Tail Island compromise, the Chinese leader was "paramount," and China's domestic audience was both unaware of the compromise and did not play a major role in foreign policy. However, the same expert argues that today, "there is strong domestic pressure" from the public on island disputes.<sup>12</sup> Another expert made a very similar argument, but was more explicit in arguing that the Chinese government is now held accountable to the public through nationalism. While during the "Mao-era" there was "no voice from the people," the

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pp. 149–168.

<sup>10</sup>White Dragon Tail Island (白龙尾岛) is known as Bạch Long Vĩ Island in Vietnamese, but also has many other names. For instance, the island was previously called Nightingale Island in China, a name still used in editorials critical of the transfer (夜莺岛).

<sup>11</sup>Fravel, *Strong Borders, Secure Nation*.

<sup>12</sup>Interview. Beijing. April 2014

Chinese public is now aware of events surrounding China's disputes through social media and technology. China's leaders today can no longer ignore the public, as they "don't want to appear soft" and "don't want to be accused of being traitors."<sup>13</sup> Indeed, while little information is available in English on Chinese public opinion regarding the compromise over White Dragon Tail Island, the internet has a number of editorials and news stories in Chinese criticizing the Chinese government for the "secret surrender" of White Dragon Tail Island.<sup>14</sup> With little information publically available on the original compromise, it is hard to know for certain what caused China to concede to Vietnam's claims in this dispute, but preliminary evidence indicates the compromise was a function of the flexibility China's government had during Mao's personalist regime.

While China has used variations of the U-Shaped Line map at the domestic level for decades, the map garnered little international attention until 2009, when China attached one version of the map to a *note verbal* submitted to the Commission on the Limits of the Continental Shelf (Figure 2.2.2). China's *note verbal* was a response to a joint submission by Malaysia and Vietnam, challenging most directly the aspects of the joint submission related to Vietnam. The entirety of the *note verbal*'s statement on China's claim is as follows:

*China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map). The above position is consistently held by the Chinese government, and is widely known by the international community.*<sup>16</sup>

While the statement could be interpreted as a claim limited to the land features of the

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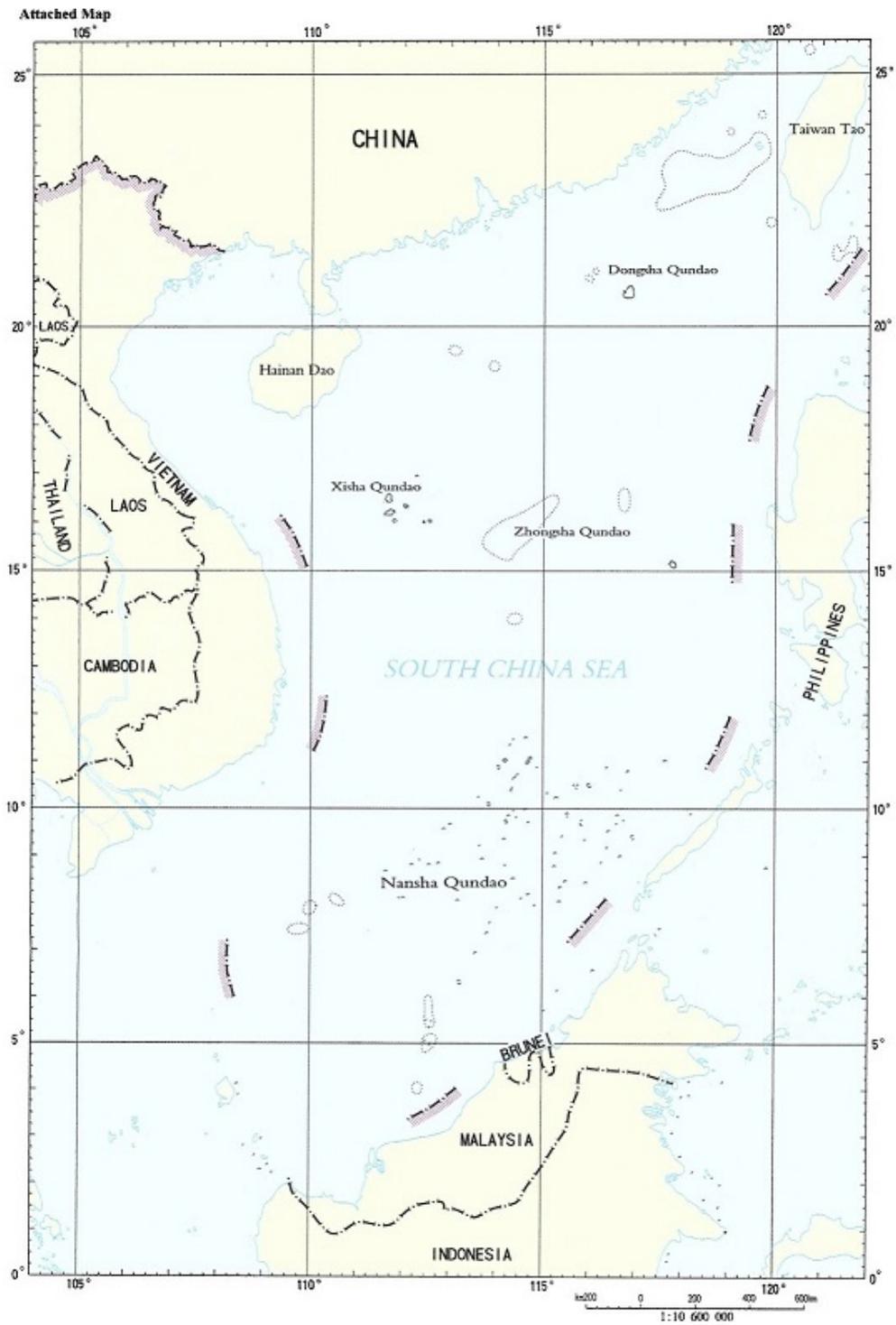
<sup>13</sup>Interview. Shanghai. April 2014

<sup>14</sup>China and Vietnam signed a Gulf of Tonkin maritime and fisheries agreement in 2000. As Jiang Zemin was president of China in 2000, he is sometimes accused of being a traitor for his role in completing the loss of Chinese territory in the Gulf of Tonkin. For one example of such criticisms in English, see the Falun Gong-founded New Tang Dynasty Television (NTD Television) website: *NTD.TV*. "News Article Exposing Jiang Zemin's Treason by Giving Up Territory Becomes Hot Again." (May 31, 2014), <http://www.ntd.tv/en/programs/news-politics/china-forbidden-news/20140531/151891-news-article-exposing-jiang-zemins-treason-by-giving-up-territory-becomes-hot-again.html#sthash.cjXFXGQm.dpuf>. For an example in Chinese of articles critical of the original transfer, see: "夜莺岛（浮水洲岛）秘密“移交”越南始末," available at: <http://view.news.qq.com/zt2012/blwd/index.htm>.

<sup>15</sup>China's two-page *note verbal* can be viewed at: [http://www.un.org/depts/los/clcs\\_new/submissions.files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/depts/los/clcs_new/submissions.files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf)

<sup>16</sup>A translation of China's May 2009 *note verbal* can be viewed at: [http://www.un.org/depts/los/clcs\\_new/submissions.files/vnm37\\_09/chn\\_2009re\\_vnm.pdf](http://www.un.org/depts/los/clcs_new/submissions.files/vnm37_09/chn_2009re_vnm.pdf)

Figure 2.2.2: The 9-Dash Line Map as Submitted by China to the United Nations



*On May 7, 2009, China submitted a note verbale to the United Nations Secretary General with the above map attached. The note verbal was in response to Malaysia's and Vietnam's joint submission to the Commission on the Limits of the Continental Shelf.<sup>15</sup>*

South China Sea and related water rights, the attachment of the ambiguous U-Shaped Line map leaves open the possibility of a greater claim. Moreover, the wording of the statement is itself unclear, as "adjacent" does not directly refer to any specific rights granted under international law.

The ambiguous nature of the U-Shaped Line map has led to widespread speculation about China's claim, particularly as new versions of the map are released. For instance, in 2013 rumors began circulating that China would release a new map with a national boundary replacing the U-Shaped Line in the South China Sea. At a May 2013 meeting at the International Institute for Strategic Studies, Southeast Asian leaders raised their concerns about the new map. However, Wu Shicun, Director of the National Institute for South China Sea Studies, based in Hainan, claimed the new map did not include a national boundary in the South China Sea, and that the only major change was new lines drawn around the Diaoyu Islands. Wu pointed out that an update was necessary, as an official map of the South China and East China Seas had not been drawn for about 20 years.<sup>17</sup> The new map, which was eventually released, added a dash to China's U-Shaped Line to make a total of ten dashes. The tenth line is located by Taiwan and the Diaoyu Islets (for one example, see Figure 2.2.3). After the map was released, Chinese media ran news stories emphasizing that previous horizontal maps gave the wrong impression of China's territory being horizontal, whereas China is actually vertically shaped. News coverage also explained that the new map will raise Chinese public awareness of China's maritime features and South China Sea islands.<sup>18</sup>

After the release of the map, one scholar pointed out that the significance of the map is not the dashes, but another important change added to the map. Carl Thayer, professor at the University of New South Wales at the Australian Defence Force Academy said, "The significance of China's latest map of the South China Sea lies not in its ten-dash lines but the naming of numerous features in the South China Sea that had not been listed on previous maps." Thayer speculated that the naming of the features was an effort toward

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<sup>17</sup>Jane Perlez. "Hagel, in Remarks Directed at China, Speaks of Cyberattack Threat." *The New York Times*, (June 1, 2013)

<sup>18</sup>For one example in Chinese, see: 新京报 *The Beijing News*. 竖版中国地图南海诸岛不再用插图表示. 2014年06月25日.

Figure 2.2.3: China's 10-Dash Line Map, Released in 2013



This map was printed in a SinoMaps Press atlas published in 2013. The atlas was purchased in a Beijing bookstore. SinoMaps is China's only national-level map publisher.

claiming sovereignty over every land feature in the South China Sea.<sup>19</sup>

As will be discussed further in Chapter Six, the ambiguity of China's claim in the South China Sea combined with its many iterations can lead to speculation about whether or not China's claim has changed. After the Chinese government began issuing new passports in 2012, the pages of which included the U-Shaped Line, speculation arose within Indonesia that the passport version of the map appeared to include territory claimed by Indonesia. One military official cited "new maps" in passports recently issued to Chinese citizens as evidence that China's U-shaped Line now includes Indonesian waters. The same official ultimately pointed out the uncertainty surrounding the dispute as China does not provide "the coordinates included in their territory."<sup>20</sup> Disagreements within Indonesia regarding the dispute indicate the varied sources through which claims are communicated, as well as the difficulty in determining when changes have or have not taken place in China's South China Sea claim based on its maps. Whether or not changes have taken place in the claim is hard to decipher, but the map itself has changed over time. In 2014, the United States Department of State issued a report on China's South China Sea claims, and one finding of the report is that the dashed lines in the U-Shaped Line map are in different geographical locations across various iterations of the map.<sup>21</sup>

### **2.2.2** *Domestic Legislation*

Similar to China's claims as expressed through maps, domestic legislation relevant to China's South China Sea claim is ambiguous. China has explicitly claimed the land features of the South China Sea. In 1992, China enacted its Law on the Territorial Sea and the Contiguous Zone, which states that China's territorial water extends 12 nautical miles from its baselines, and that China has sovereignty over the following territory:

*The PRC's territorial land includes the Mainland and its offshore islands,*

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<sup>19</sup>Michaela Del Callar. "China's New '10-Dash Line Map' Eats into Philippine Territory." *GMA News Online* (July 26, 2013), <http://www.gmanetwork.com/news/story/319303/news/nation/china-s-new-10-dash-line-map-eats-into-philippine-territory>.

<sup>20</sup>Kanupriya Kapoor and Jonathan Thatcher. "Indonesia Military Worries over Asia Arms Race, Territorial Tensions." *Reuters* (April 3, 2014), <http://www.reuters.com/article/2014/04/03/us-indonesia-military-idUSBREA320GD20140403>.

<sup>21</sup>United States 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." December 5, 2014.

*Taiwan and the various affiliated islands including Diaoyu Island, Penghu Islands, Dongsha Islands, Xisha Islands, Nansha (Spratly) Islands and other islands that belong to the People's Republic of China.*<sup>22</sup>

Relevant to the South China Sea dispute, China has thus far elected not to draw baselines around the Spratly Islands, while it has drawn them around the Xisha Islands (Paracel Islands), leaving open questions as to what jurisdictional rights China might claim with respect to the Spratly land features. China's recent statements regarding an October 2015 United States freedom of navigation operation at Subi Reef (Zhubi or 渚碧礁 in Chinese), are characteristic of its ambiguous approach to describing its jurisdictional claims in relation to the Spratly land features.<sup>23</sup> Subi Reef is a feature that is submerged except during low tide, and therefore should not merit territorial sea rights under international law.<sup>24</sup> After the United States' USS Lassen sailed within 12 nautical miles of Subi Reef, with the stated intention of reinforcing the right to freedom of navigation in the South China Sea, Chinese Foreign Ministry Spokesperson Lu Kang stated, "The USS Lassen illegally entered waters near relevant islands and reefs of China's Nansha Islands without the permission of the Chinese government on October 27."<sup>25</sup> Spokesperson Kang's statement would seem to indicate the Chinese government believes it has territorial waters surrounding Subi Reef, although other statements from Chinese foreign ministry officials denounced American actions as provocative but avoided outwardly calling the action illegal.<sup>26</sup> In many ways, it appears an intentional policy of ambiguity has been adopted, in which the American freedom of navigation operation is denounced without explaining which rights the United States violated.<sup>27</sup>

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<sup>22</sup>An English translation of China's 1992 law can be viewed at: [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN\\_1992\\_Law.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1992_Law.pdf)

<sup>23</sup>For China's Xisha (Paracel) baselines in English, see: [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN\\_1996\\_Declaration.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1996_Declaration.pdf)

<sup>24</sup>UNCLOS Part II, Section 2, Article 13 states, "Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the Mainland or an island, it has no territorial sea of its own." Subi Reef's location would appear to fit this standard. This article of UNCLOS can be viewed at: [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/part2.htm](http://www.un.org/depts/los/convention_agreements/texts/unclos/part2.htm)

<sup>25</sup>See Spokesperson Lu Kang's statement translated into English at: [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/2535\\_665405/t1309567.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2535_665405/t1309567.shtml)

<sup>26</sup>Lu Kang later added that the United States violated UNCLOS and Chinese domestic law with its freedom of navigation operation, see his additional statement in English at: [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/t1309900.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1309900.shtml)

<sup>27</sup>For a discussion of ambiguity in China's official statements after the USS Lassen freedom of navigation operation, see: Graham Webster. "How China Maintains Strategic Ambiguity in the South China

Another piece of national legislation relevant to the South China Sea dispute is China's Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf, adopted in June 1998. While the law does not explicitly reference the South China Sea dispute, Article 14 states, "The provisions of this Act shall not affect the historical rights of the People's Republic of China."<sup>28</sup> This statement is ambiguous, but has been interpreted as leaving open a possibility of claiming historic rights in the South China Sea.<sup>29</sup> Yet including a claim of historic rights in legislation regarding an EEZ and Continental Shelf is problematic, as UNCLOS only refers to historic rights in relation to territorial sea, and even further, the use of the word "historical" instead of "historic" is in itself ambiguous.<sup>30</sup>

Finally, even local legislation relevant to the South China Sea dispute is ambiguous. Over the years, the province of Hainan has on several occasions announced fishing laws regulating the South China Sea. In December 2013, Hainan updated its law, promising to expel illegal foreign fishing vessels from its areas of jurisdiction.<sup>31</sup> However, Hainan's jurisdiction is not clearly stated in the law, leading to concerns that China intended to evict all foreign fishermen from the South China Sea. An article that ran in the state-sponsored Xinhua News at the time noted that Hainan has a maritime jurisdiction of 2 million square kilometers.<sup>32</sup> As the entire area of the South China Sea is roughly 3.5 million square kilometers, and Hainan is the provincial government tasked with administering the South China Sea, this might be some evidence for a Chinese South China Sea claim less than that designated by the U-Shaped Line map. But the evidence for this interpretation is slim. During an interview for this dissertation, a researcher employed in a Chinese government research institute explained that Hainan's fishing regulations "have no clear

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Sea." *The Diplomat* (October 29, 2015), <http://thediplomat.com/2015/10/how-china-maintains-strategic-ambiguity-in-the-south-china-sea/>

<sup>28</sup>For a copy of the law in English, see: [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/chn.1998\\_eez\\_act.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/chn.1998_eez_act.pdf)

<sup>29</sup>Zou and Song, "Maritime Legislation of Mainland China and Taiwan."

<sup>30</sup>Dupuy and Dupuy, "A Legal Analysis of China's Historic Rights Claim in the South China Sea."

<sup>31</sup>Mark J Valencia. "Ambiguous fisheries law sets up in-your-face conundrum for China." *The Japan Times* (January 20, 2014)

<sup>32</sup>The original statement in Chinese was, "当前, 海南省管辖 2 0 0 万平方公里相关海域." For the entire article, see: *Xinhua*, "海南: 外国人、外国渔船进入管辖水域作业需经批准." (December 1, 2013), <http://news.xinhuanet.com/local/2013-12/01/c.118367109.htm>. For further commentary on the broader implications of the legislation, see: Taylor Fravel. "Hainan's New Fishing Rules: A Preliminary Analysis." *The Diplomat* (January 10, 2014), <http://thediplomat.com/2014/01/hainans-new-fishing-rules-a-preliminary-analysis/>

cut line,” adding, “We can’t say where the line is. If we say, we make it more disputed.” The same researcher added that the fishing regulations clearly apply to the area surrounding the Paracels, where China has set baselines, but that the area surrounding the Spratlys, where there are no baselines, is “the only area where it is not clear.”<sup>33</sup>

### 2.2.3 *The Taiwan Connection*

Another aspect of China’s claim with important implications that is also consistent with China’s claim in the East China Sea as discussed in Chapter Four, is its assumption that actions and claims by Taiwan are subsumed within Mainland China’s claim. Mainland China has been supportive of Taiwan’s actions in the South China Sea, with the mindset that as Taiwan is part of China, any acts by Taiwan that reaffirm sovereignty ultimately provide evidence in favor of China’s claim. As one Mainland scholar of Taiwan studies explains:

*If Taiwan claims the South China Sea, this is okay. China will not publically go against it. It doesn’t matter if the South China Sea belongs to the ROC or PRC; it belongs to China...In the 1970s during the confrontation between China and Vietnam, at that time, Chiang Kai-shek allowed the PRC to cross the Taiwan Strait...Faced with international confrontation, the two sides will come together...If Taiwan needs help [defending Taiping Island] we will offer help.*<sup>34</sup>

Editorials with similar themes regularly run in China’s media, indicating that Taiwan and Mainland China should approach the South China Sea dispute as an opportunity for cooperation, jointly combating territorial infringements posed by other countries.<sup>35</sup>

### 2.2.4 *The Republic of the Philippines v. The People’s Republic of China*

While some claimants in the South China Sea, such as Malaysia, have opted for a non-confrontational approach when dealing with China’s U-Shaped Line claim, the Philippines has overtly challenged China in international court. Currently, legal proceedings initiated by the Philippines are being heard by the Permanent Court of Arbitration. China

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<sup>33</sup>Interview. Hainan, China. May 2014

<sup>34</sup>Interview. Beijing. May 2014

<sup>35</sup>For one example in Chinese, see:谭丽. ”家太平可作岸手南海重要基地.” 世界新*News of the World*. 2009年12月02日.

refuses to participate in the arbitration and has heavily criticized the Philippines for its suit. China's state owned media, Xinhua, has repeatedly called the Philippines a "crying baby" for bringing the suit and for other appeals for assistance with the South China Sea dispute in multilateral forums such as ASEAN.<sup>36</sup> In more official forums, the Chinese government has also derided the Philippines for its efforts to seek outside help in the dispute. As Foreign Ministry Spokesperson Hua Chunying said during her regular press conference on May 26, 2015, "Here is a gentle reminder to the Philippines: China will not bully small countries, meanwhile, small countries shall not make trouble willfully and endlessly."<sup>37</sup>

Although the Chinese government is not participating in the tribunal and has repeatedly emphasized that it will not recognize the Court's ruling, China did issue a position paper on the dispute in December 2014. One of the position paper's central arguments is that the tribunal does not have jurisdiction over the dispute, as the Philippines' complaint ultimately addresses territorial sovereignty over land features rather than issues of maritime delimitation under UNCLOS. Although China made no formal submission of its legal arguments, the tribunal responded to China's position paper by holding a hearing to determine jurisdiction in July 2015. After the tribunal ultimately ruled in October 2015 that it does have jurisdiction over several issues in the suit, the Chinese Ministry of Foreign Affairs posted a statement on the proceedings to its website. The statement includes a summary of China's claim in the South China Sea:

*China has indisputable sovereignty over the South China Sea Islands and the adjacent waters. China's sovereignty and relevant rights in the South China Sea, formed in the long historical course, are upheld by successive Chinese governments, reaffirmed by China's domestic laws on many occasions, and protected under international law including the United Nations Convention on the Law of the Sea (UNCLOS). With regard to the issues of territorial sovereignty and maritime rights and interests, China will not accept any solution imposed on it or any unilateral resort to a third-party dispute settlement.*<sup>38</sup>

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<sup>36</sup>For examples, see: *Xinhua*. "Commentary: Manila will not benefit from playing with fire over South China Sea." (May 26, 2015); *Xinhua*. "Commentary: Manila's attempt to poison China-ASEAN ties selfish, futile." (January 30, 2015); Huang Yinjaizi. "Commentary: Manila's unilateral move on South China Sea dispute unhelpful." *Xinhua* (December 7, 2014)

<sup>37</sup>*Ministry of Foreign Affairs of the People's Republic of China*. "Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference on May 26, 2015." English version available at: [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/2511\\_665403/t1267054.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/t1267054.shtml)

<sup>38</sup>*Ministry of Foreign Affairs of the People's Republic of China*. "Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award on Jurisdiction and Admissibility of the South China Sea Arbitration by the Arbitral Tribunal Established at the Request of the Republic of the Philippines."

The above statement is a prime example of the Chinese Ministry of Foreign Affairs approach to defining China's claim. China's MOFA is consistent in claiming South China Sea land features and "adjacent waters," although the meaning of "adjacent waters" is not immediately clear. One might assume that "adjacent waters" is meant to refer to water rights that can be based on South China Sea land features, but recent evidence drawn from Chinese statements after American military activities near South China Sea land features, such as that discussed previously in this chapter, provides evidence that words such as "adjacent waters" have been carefully chosen for their ambiguity. Another key feature of the above statement is that it does not mention the U-Shaped Line. This is consistent with other recent Chinese government statements, especially those coming from the foreign ministry, as the U-Shaped Line is rarely mentioned in descriptions of the claim issued by the Chinese government. As the Philippines' suit against China specifically challenges the validity of the U-Shaped Line, the consistent omission of direct references to the line is notable. However, China's MOFA does say that the claim was formed "in the long historical course," and in this way does not exclude the possibility of a claim based on historical justifications.

### **2.2.5** *Actions that Further Define China's South China Sea Claim*

China's efforts to solidify and reaffirm its position in the South China Sea take myriad forms, providing valuable contextual evidence for understanding China's claim. Such activities are far too extensive to cover comprehensively in this chapter. What can be stated about these activities in general is that the Chinese government is careful to include the Chinese public in its efforts, both framing actions in terms of previously established nationalistic principles while encouraging further nationalistic feelings in relation to the disputed area. South China Sea activities are regularly publicized in the media, and through tourism the Chinese public is itself encouraged to participate directly in efforts to solidify China's claims.

Among China's many South China Sea activities, one of the most significant recent actions was the 2012 establishment of a new city, Sansha. Sansha is located in the Xisha Islands (Paracel Islands), which are disputed with Vietnam, on Yongxing Island (or Woody

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(October 30, 2015), [http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1310474.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1310474.shtml)

Island). Sansha has been given administrative responsibilities over the Nansha (Spratly), Xisha (Paracel), and Zhongsha (Macclesfield Bank) island groups and their surrounding waters in the South China Sea. After the establishment of Sansha, the Hainan Maritime Safety Administration praised the move as a step toward greater administration of the Xisha, Zhongsha and Nansha islands.<sup>39</sup>

China's development of Sansha has implications for the way Chinese people view Chinese territory. As the China's state-run Global Times points out, "Chinese people used to think Hainan Island was the forefront of the South China Sea. The establishment of Sansha city has made China's presence in the South China Sea more tangible."<sup>40</sup> Media coverage of Sansha highlights every day life on the island, the construction of a school, and even weddings. The island has also become a popular tourist destination. In April 2013, major tour operators began offering cruises to the islands, with tour companies and experts openly admitting the cruises primarily served political purposes rather than being particularly profitable or enjoyable for tourists. One industry expert compared a trip to the Xisha Islands with a trip to Taiwan, stating that the trip "involves national sentiment, but more importantly, it helps declare our territorial integrity."<sup>41</sup> Tourism in Xisha (the Paracels) is openly promoted as a means to demonstrate China's "effective administration over the islands," and in September 2014, a tourism company running the cruises announced that the Coconut Princess, the only ship completing the tours at the time, had already carried more than 3,000 Chinese tourists to the Xisha Islands since the cruises began the previous year.<sup>42</sup> Early in 2015, a new transportation ship, the Sansha Number One, cut the travel time between Hainan and Sansha by a third – the trip now takes ten hours. Media reports indicated that Sansha Number One is "helping with efforts to defend China 'blue territory'

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<sup>39</sup> *China Daily*. "Maritime Administration Weak in Sansha." (July 9, 2012), [http://www.chinadaily.com.cn/china/2012-07/09/content\\_15561721.htm](http://www.chinadaily.com.cn/china/2012-07/09/content_15561721.htm).

<sup>40</sup> *The Global Times*. "Sansha new step in managing S. China Sea." (June 25, 2012), <http://www.globaltimes.cn/content/716822.shtml>. The same editorial ominously advocates war over China's South China Sea claims: "What's the worst case scenario for the South China Sea disputes? It is not necessarily war. An even worse situation is countries like Vietnam and the Philippines, backed by the US, becoming more provocative against China. There might be a group activity of small nations extorting big ones, greatly restricting China's activities in its surrounding sea area. Sansha city should be a new development of China's maneuvers in the South China Sea."

<sup>41</sup> Yingying Shi. "Cruises Sail to Xisha Islands." *China Daily* (May 24, 2013), [http://www.chinadailyasia.com/news/2013-05/24/content\\_15074721.html](http://www.chinadailyasia.com/news/2013-05/24/content_15074721.html).

<sup>42</sup> *Xinhua*. "China to Shorten Cruise Time to Xisha Islands." (August 28, 2014), [http://news.xinhuanet.com/english/china/2014-08/28/c\\_133596692.htm](http://news.xinhuanet.com/english/china/2014-08/28/c_133596692.htm).

and protecting its interests in the sea.”<sup>43</sup>

Some of China’s actions creatively engage both its citizens and rival states in its efforts to reaffirm sovereignty over disputed areas, such as the South China Sea. In May 2012, China began issuing new passports with images of the South China Sea, Arunachal Pradesh and Aksai Chin (two areas disputed with India), and multiple Taiwanese landmarks on their pages. Notably, the passports did not include a visible illustration of the East China Sea, which may simply be too small to see on the passport pages, or as one commentator indicated, may also reflect a lower level of saliency for the claim at the time the passport was issued.<sup>44</sup> The new passports were particularly creative, as they made each of China’s citizens traveling abroad a vehicle for transmitting the claim to foreign governments. To avoid any indication of acquiescing to China’s territorial claims by stamping the passports, India responded by issuing special visas for China’s new passports, which included maps reflecting India’s claims. Vietnam responded by refusing to stamp the new passports, instead issuing a separate document with an entry stamp for Chinese citizens.<sup>45</sup>

Scientific and cultural activities in the South China Sea are often used to reaffirm China’s claims in the South China Sea. For example, in August 2010, China announced having successfully used a manned submarine to plant a Chinese flag at the bottom of the South China Sea. Over the course of 17 dives carried out during May and June 2010, the submarine achieved a depth of 3,759 meters or 12,330 feet, which was deeper than any Chinese submersible had previously achieved. Video footage of the crew’s celebration upon reaching that depth was shown on Chinese media, along with video footage of the crew planting the Chinese flag at the bottom of the South China Sea.<sup>46</sup>

In the international media, the most publicized of China’s South China Sea actions

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<sup>43</sup> *Xinhua* “New vessel to supply South China Sea islands.” (January 5, 2015), [http://news.xinhuanet.com/english/china/2015-01/05/c\\_133898494.htm](http://news.xinhuanet.com/english/china/2015-01/05/c_133898494.htm).

<sup>44</sup> The passports were issued in May 2012, but the dispute in the East China Sea heated up in September 2012 after the Japanese government purchased the Diaoyu Islands from a private individual. J. Michael Cole. “China’s New Passport Sparks Controversy.” *The Diplomat* (November 27, 2012)

<sup>45</sup> *Voice of America News*. “Philippines, Vietnam Refuse to Stamp New Chinese Passport.” (November 28, 2012)

<sup>46</sup> Chris Buckley. “China Plants Flag in South Sea amid Disputes.” *Reuters* (August 26, 2010), <http://www.reuters.com/article/2010/08/26/oukwd-uk-china-sea-idAFTRE67P11320100826>; *Telegraph*. “Chinese State TV Broadcasts Launch of New Submarine.” *Telegraph.co.uk* (August 26, 2010), sec.newsvideo, <http://www.telegraph.co.uk/news/newsvideo/7965562/Chinese-state-TV-broadcasts-launch-of-new-submarine.html>.

is its overtly strategic means of solidifying its claim. On May 2, 2014, one of China's government-owned oil companies, China National Offshore Oil Corporation, placed its Haiyang Shiyou 981 oil rig 17 nautical miles from Triton Island, one of the Paracel Islands. The placement of the oil rig led to a standoff between Vietnam and China, clashes at sea between Chinese and Vietnamese ships, and domestic turmoil within Vietnam that eventually led to violent riots targeting foreign businesses. While China's official explanations for the positioning of the oil rig cited oil exploration purposes, followed by corresponding affirmations of China's indisputable rights to sovereignty in the area, the Chinese media were explicit in highlighting the political motivations behind the move. Once the rig was moved out of the disputed area ahead of schedule on July 15, 2014, Phoenix Media pointed out the placement of the oil rig had political goals, "to declare territorial rights" as well as economic ones, "investigating economic feasibility." As these goals were achieved, the timing of the rig's departure was appropriate. Moreover, "The operations have achieved a major breakthrough, changing the status quo."<sup>47</sup> In an editorial at least in part aiming to deflect domestic criticisms of the Chinese government for the ahead-of-schedule move, the Chinese language version of the government-owned Global Times stated, "There is no doubt of the Chinese government's determination to protect (our) territory and rights; there is no room for compromise... Some people with bad intentions confuse others. We cannot listen to rumors. We cannot doubt China's will and determination to defend national sovereignty."<sup>48</sup>

Such highly nationalistic language is commonplace in China's government-sponsored media, where conflict with competitor states is openly discussed as a viable option. In the context of legal challenges from the Philippines and widespread anti-Chinese riots in Vietnam, China's Global Times wrote:

*The South China Sea disputes should be settled in a peaceful manner, but that doesn't mean China can't resort to non-peaceful measures in the face of provocation from Vietnam and the Philippines. Many people believe that a forced*

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<sup>47</sup> 在某种程度上讲, 这种活动属于政治探底, 宣示主权存在, 兼顾经济可行性的考察。现在这种目的已经达到, 目前转场理由充分, 时机比较合适。此次行动取得了重大突破, 改变了现状。此次行动取得了重大突破, 改变了现状。 *Phoenix Net* (July 17, 2014), [http://finance.ifeng.com/a/20140717/12738368\\_0.shtml](http://finance.ifeng.com/a/20140717/12738368_0.shtml)

<sup>48</sup> "中国政府维护领土和管辖权的决心不容置疑, 没有任何妥协的余地...一些不怀好意的人蛊惑人心, 我们不能听其谣言, 怀疑中国捍卫国家主权的决心和意志。 *Global Times* (July 17, 2014), [http://opinion.huanqiu.com/opinion\\_world/2014-07/5069200.html](http://opinion.huanqiu.com/opinion_world/2014-07/5069200.html)

*war would convince some countries of China's sincerely peaceful intentions, but it is also highly likely that China's strategy would face more uncertainties.*<sup>49</sup>

China's confrontational policing efforts in the South China Sea also send clear messages about China's priorities in the region. In April 2015, Chinese coast guard vessels sprayed a group of Filipino fishermen with water cannons, boarded their boats and threw away their catch and fishing gear. The fishermen were located near Scarborough Shoal (or Huangyan Island in Chinese), the location of which is included in Figure 2.2.4. When asked about this encounter during a press conference, Chinese Foreign Ministry Spokesperson Hong Lei defended the Coast Guard's actions:

*Recently, we have seen a large number of Philippine fishing boats lingering in the waters off the Huangyan Island with no permission from the Chinese side and disobeying China's management. That constitutes a violation of China's sovereignty and jurisdiction, impedes the performance of duty by Chinese government vessels and endangers the order and security of navigation in waters off the Huangyan Island. The Chinese side calls on the Philippine side to show earnest respect for China's territorial sovereignty, step up its regulation and education of the fishermen and stop all actions infringing upon China's territorial sovereignty, and rights and interests.*<sup>50</sup>

This incident is far from being an isolated event. Fishermen and maritime law enforcement officials as far south as the waters adjacent to Indonesia have also been confronted by Chinese patrol boats seeking to exercise Chinese authority in South China Sea waters, as will be discussed further in Chapter Six.

Finally, China has launched massive reclamation and construction projects in the South China Sea. The United States government estimates that as of June 2015, China had reclaimed 2,900 acres of land in the South China Sea, all since the reclamation efforts began in late 2013. In fact, over the twenty months from December 2013 until June 2015, China reclaimed 17 times more land in the disputed area than all other claimants combined have reclaimed over the past 40 years.<sup>51</sup> Construction thus far has focused on projects such

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<sup>49</sup> *Global Times*. "Diplomatic Risks Grow with China's Rise." (May 16, 2014), <http://www.globaltimes.cn/content/860580.shtml>.

<sup>50</sup> "Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on April 22, 2015." English transcript located at: [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/2511\\_665403/t1256932.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/t1256932.shtml).

<sup>51</sup> David Alexander, Michael Martina, and Dean Yates. "China's land reclamation in South China Sea grows: Pentagon report." *Reuters* (August 21, 2015)

Figure 2.2.4: The Location of Scarborough Shoal (Huangyan Island)



as runways and lighthouses.<sup>52</sup> The Chinese government has defended these activities in the South China Sea, and consistently noted that the areas of construction are within its sovereign territory. When asked about criticisms of China’s South China Sea construction projects by US congressmen, Foreign Ministry Spokesperson Hong Lei answered:

*Foreign Minister Wang Yi . . . said that China is not like some countries, who engage in illegal construction in another person’s house. And we do not accept criticism from others when we are merely building facilities in our own yard. We have every right to work in the South China Sea which is sensible, justified and lawful.*<sup>53</sup>

<sup>52</sup> Reuters. “UPDATE 1-China completes construction of lighthouses in disputed South China Sea.” (October 9, 2015)

<sup>53</sup> Ministry of Foreign Affairs of the People’s Republic of China. “Foreign Ministry Spokesperson Hong Lei’s Regular Press Conference on March 20, 2015.” English translation available at: [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/t1247438.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1247438.shtml)

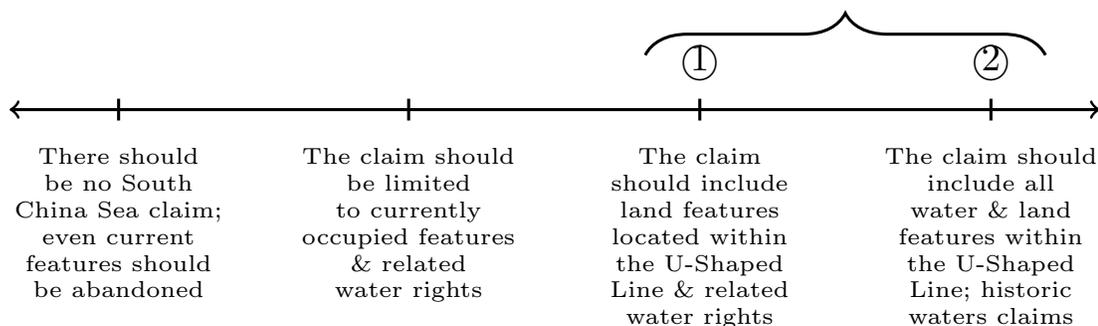


Figure 2.3.1: Dominant Interpretations of China’s South China Sea Claim

### 2.3 *Ambiguity and Differing Explanations of the Claim*

China’s claim is widely recognized as ambiguous, both inside and outside of China.<sup>54</sup> Amid this atmosphere of ambiguity, viewpoints of Chinese elites largely coalesce around two explanations of the claim: (1) an interpretation of China’s South China Sea claim as only referring to South China Sea land features and the maritime jurisdictional rights that can be based on those land features, and (2) an expansive claim based on historical narrative and encompassing all waters and land features within the U-Shaped Line. Figure 2.3.1 illustrates these two possible explanations for China’s South China Sea claim.

This section will first discuss ambiguity, moving after to a survey of observed explanations of China’s South China Sea claim.

#### 2.3.1 *China’s Ambiguous Claim*

The ambiguous nature of China’s claim has drawn widespread criticism, both from other South China Sea claimants but also from states outside the dispute. For example, Prof. Shunmugam Jayakumar, a lawyer, professor, and Singaporean politician who has held numerous positions in the Singaporean government including Deputy Prime Minister of

<sup>54</sup>For studies that grapple with this ambiguity, and lay out possible explanations of the claim, see Peter Dutton. “Through a Chinese Lens.” *Proceedings Magazine* 136.4 (Apr. 2010), pp. 24–29; Li Jinming and Li Dexia. “The Dotted Line on the Chinese Map of the South China Sea: A Note.” *Ocean Development & International Law* 34.3/4 (July 2003), p. 287; Jacques deLisle. “Troubled Waters: China’s Claims and the South China Sea.” *Orbis* 56.4 (2012), pp. 608–642; Florian Dupuy and Pierre-Marie Dupuy. “A Legal Analysis of China’s Historic Rights Claim in the South China Sea.” *The American Journal of International Law* 107.1 (Jan. 2013), pp. 124–141

Singapore and Senior Minister, has succinctly summed up the concerns of many Southeast Asian countries. When calling for China to clarify its South China Sea claims, he explained:

*China should not continue to leave unaddressed the concerns and questions raised by many over its puzzling and disturbing nine-dotted lines map. I say it is “puzzling” because it does not seem to have any basis under the 1982 UN Convention on the Law of the Sea (UNCLOS), which China has repeatedly said it respects. I say it is “disturbing” because it can be interpreted as being a claim on all the maritime areas within the nine dotted lines. This ambiguity has led to concerns not just among claimant states, and it is clearly in China’s interests to clarify the extent of its claims and thereby dispel any apprehensions over its intentions. Failure to do so could jeopardize the trust essential for any peaceful resolution and undermine all the gains of Chinese diplomacy made in the last two decades.*<sup>55</sup>

Yet ambiguity is not necessarily the preferred policy for many in China. One scholar interviewed for this dissertation explained that he actually saw outside calls for the Chinese government to clarify its South China Sea claim in a positive light. He said he felt “excited that the Chinese government may clarify, because we [Chinese scholars] cannot push them to do so.”<sup>56</sup> The same scholar explained that ambiguity in the claim was simply due to the difficulties of agreeing on a claim. He pointed out that Chinese scholars cannot agree on the claim at conferences, and that the lack of a South China Sea white paper, when one exists for the East China Sea dispute, was also reflective of disagreement. The South China Sea claim is “ambiguous because it is ambiguous,” he said, “even within the Foreign Ministry they may disagree.”<sup>57</sup>

Prominent Chinese scholars have made clear that Beijing is struggling to explain its historically based claims in terms of international law. Wu Shicun explained that China is seeking to explain its territorial claims through international legal means, but first needs more international law scholars to work on this “daunting” task. He also noted that laws governing territorial disputes have European and American foundations, and that China sometimes finds these rules less than helpful. “China wants to maintain its interests using the existing international rules,” he said. “But if the existing rules cannot function, then

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<sup>55</sup>Shunmugam Jayakumar. “Keynote Address by Professor S Jayakumar.” *CIL Conference on Joint Development and the South China Sea* (Singapore, June 16, 2011)

<sup>56</sup>Interview. Beijing. April 2014

<sup>57</sup>Interview. Beijing. April 2014

China may seek to change such rules.”<sup>58</sup> As Wu Shicun is the President of the National Institute for South China Sea Studies in Hainan, and tends to be a relatively moderate voice on the South China Sea, his statement on changing international law is notable, and is consistent with proposed explanations for China’s behavior in the South China Sea presented by other Chinese scholars.<sup>59</sup>

### 2.3.2 *Differing Explanations of the Claim*

China’s South China Sea claim is a sensitive topic, and specific statements indicating how the claim should be interpreted are relatively uncommon, particularly from government officials.<sup>60</sup> Despite the claim’s sensitive and ambiguous nature in Mainland China, some important aspects of the claim are evident from a review of the material to this point. First, at a minimum, China’s South China Sea claim includes the Xisha (Paracel) land features, Nansha (Spratly) land features, the submerged Zhongsha land features (chief among them being Macclesfield Bank and the Scarborough Shoal), and any water rights related to sovereignty over these features. Second, government statements on the claim are often centered around ownership of these features. For instance, President Xi Jinping recently said in a speech that the islands of the South China Sea “have been China’s territory since ancient times.”<sup>61</sup> This matches the vast majority of China’s Ministry of Foreign Affairs statements. For example, China’s Ministry of Foreign Affairs explains that China has sovereignty over the South China Sea land features as “[a]mple historical and legal evidence shows that China is the first country that discovers, names and develops the islands in the South China Sea, and also the first that exercises continuous sovereign jurisdiction over those islands.”<sup>62</sup> Third, the Chinese government’s statements use both

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<sup>58</sup>Teddy Ng. “Crack international law team to join in China’s hunt for fugitives.” *South China Morning Post* (May 5, 2015)

<sup>59</sup>For another example, see Zou Keyoun’s argument that by including a reference to historic rights in China’s 1998 Law on the Exclusive Economic Zone and Continental Shelf, China may be claiming a type of historic right not previously established under international law, see: Keyuan Zou. “Historic Rights in International Law and in China’s Practice.” *Ocean Development & International Law* 32.2 (Apr. 2001), pp. 149–168

<sup>60</sup>This can be contrasted to the openness of discussing the claim in Taiwan, as included in the next chapter.

<sup>61</sup>Edward Wong. “Xi Again Defends China’s Claim to South China Sea Islands.” *The New York Times* (November 7, 2015)

<sup>62</sup>*Ministry of Foreign Affairs of the People’s Republic of China*. “Foreign Ministry Spokesperson Hua Chunying’s Remarks on the Philippines’ Playing up and Airing of a Documentary on the South China Sea Issue.” (June 29, 2015), [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/t1276947.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1276947.shtml)

historical and legal justifications, but centering the claim on the land features rather than the U-Shaped Line indicates a notable desire to be in conformity with international law, as international law emphasizes that territorial features generate maritime rights (the oft repeated expression referring to this concept is, 'the land dominates the sea'). That being said, historical justifications still play a central role even in these government statements of the claim. For instance, naming is not generally recognized as a standard for territorial acquisition, but is frequently mentioned in the Chinese government's explanations of both its South China Sea and East China Sea claims.

When interviewed for this dissertation, many Chinese experts argued that China's claim is to the land features of the South China Sea, as opposed to a territorial waters claim for example, and is therefore consistent with international law. When explaining the claim in this way, scholars frequently noted that when the U-Shaped Line Map was drawn, the authors had no clear conception of maritime rights, as UNCLOS was established long after the U-Shaped Line map was published. Additional evidence in support of this argument is that the title of the 1947 map indicates the map is designating the islands of the South China Sea. As one scholar emphasized, the official Chinese position has been "consistent," in that the claim refers to "the island features and adjacent waters and related jurisdiction."<sup>63</sup> During a May 2014 presentation at the National Institute for South China Sea Studies (NISCSS), Hainan, China, institute president Wu Shicun explained, "China claims sovereignty over all features in the South China Sea and all relevant waters," and added, "China does not claim the entire waters of the South China Sea." But Wu left room open for other historic rights to be claimed, "From my personal perspective, the U-shaped line is a line of ownership of all insular features and also shows that China enjoys historic rights."<sup>64</sup> However, Wu did not elaborate on the type of historic rights.

In any event, while China's government may be relatively consistent in emphasizing sovereignty over South China Sea land features its public statements on the claim, its continued use of the U-Shaped Line map, such as its 2009 submission to the United Nations, or its printing of the U-Shaped Line map on new Chinese passports, leaves open

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<sup>63</sup>Interview. Hainan. May 2014

<sup>64</sup>Wu Shicun. National Institute for South China Sea Studies (NISCSS). Hainan, China. May 15, 2014

the possibility that the claim may include greater rights than those that can be generated from a claim solely to land features and related jurisdictional rights. After all, even if all land features in the South China Sea were entitled to the maximum amount of maritime jurisdiction allowed through UNCLOS (which is highly unlikely as many could not fulfill the definition included in Article 121 of UNCLOS), and even if all land features are Chinese territory, China's maritime rights would still not fill the entire U-Shaped Line area.<sup>65</sup>

Under these circumstances, many Chinese scholars have explained what they believe China's South China Sea claim includes, and these explanations vary from a claim to only the land features and related water rights up to a claim of historic waters encompassing the entire U-Shaped Line. Due to the high salience of the South China Sea dispute, several Chinese scholars have now published surveys of academic viewpoints on the U-Shaped Line, with no scholarly explanations of the claim that advocate anything less than all South China Sea land features and related jurisdictional rights. Some Chinese scholars argue the U-Shaped Line is a maritime boundary, but this interpretation appears to always include the assumption that land features are also claimed as China's territory.<sup>66</sup> One scholar who was originally born in Taiwan but has since moved to Mainland China and is a well-known advocate of the historic waters position will be discussed in the next chapter on Taiwan's claim.

Another theme that emerges when considering the varied perspectives on China's claim is that ownership of land features and related water rights represents a bare minimum Chinese claim, even for those who might dare to be critical of the claim. Research for this dissertation failed to uncover any scholar or government official living in the Mainland who openly advocates a claim less than all the relevant South China Sea land features and related

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<sup>65</sup>The inability of the Chinese to fill the entire U-Shaped Line map with jurisdictional rights provided for by UNCLOS has long been assumed, but was shown definitely in the State Department report of December 2014. In the 2014 report, EEZs of 200 miles were drawn from all South China Sea features, and portions of the U-Shaped Line were still left without any explanation for a claim in those areas. See: United States 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." December 5, 2014.

<sup>66</sup>For overviews of the stated viewpoints of Mainland scholars on the South China Sea claim, which only vary between a minimum position of claiming all land features and related jurisdictional rights up to a claim that adds some form of historic rights or broader maritime jurisdictional rights, see: Keyuan Zou. "China's U-Shaped Line in the South China Sea Revisited." *Ocean Development & International Law* 43.1 (2012), pp. 18–34; Li Jinming and Li Dexia. "The Dotted Line on the Chinese Map of the South China Sea: A Note." *Ocean Development & International Law* 34.3/4 (July 2003), p. 287

maritime jurisdictional rights. Media in Southeast Asian countries occasionally cites one Chinese scholar, Li Linghua (李令华), as being critical of the U-Shaped Line. Li maintains a blog that is critical of the U-Shaped Line, and is a rare example of one person willing to openly question the claim, but an examination of his writings failed to uncover advocacy of a claim for anything less than all South China Sea land features and related rights, which is essentially the position consistently advocated by the Chinese Ministry of Foreign Affairs (apart from an occasional reference to history).<sup>67</sup> Still, throughout Li's blog, his advocacy of international law is in itself notable, and represents a complete reliance on principles of international law as a justification for forming a maximum claim for China in the South China Sea. Moreover, Li has interesting observations on how the U-Shaped Line map is used in practicality. As he explains:

*Except the northern bay, in the South China Sea our country has not negotiated with neighboring sea countries to determine the location of the 200 mile exclusive economic zone and continental shelf, but when dealing with whether the location of foreign oil and gas wells and fishing boats are in our maritime jurisdiction, the "9-Dash Line" has generally been the standard. Our position has already caused a controversy regarding whether or not all waters within the line are Chinese waters, and has caused controversy with other coastal countries.*<sup>68</sup>

In the above excerpt, Li points out that the 9-Dash Line is often used as a reference point for oil and gas wells as well as fishing regulations. Taking Li's logic a small step further, China has advanced a sovereignty claim over the South China Sea land features and related water rights, while the U-Shaped Line is approached as if it were akin to an EEZ boundary - a framework that is consistent with Chinese government policies surveyed throughout this dissertation. To be clear, Li is critical of this approach to China's South China Sea claim, but other scholars have raised explanations along a similar vein in a positive light.

This framework for China's South China Sea claim, where a territorial claim to the land features is used as a starting point while other jurisdictional rights are used to fill in the gaps remaining in the U-Shaped Line, was also raised in a recent noteworthy editorial. In the *Global Times*, Qi Huaigao (祁怀高), a professor at Fudan University, argues that

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<sup>67</sup>Li Linghua's maritime and international law blog can be viewed at: [http://blog.163.com/lilinghua\\_cool/](http://blog.163.com/lilinghua_cool/)

<sup>68</sup>Original in Chinese: 除了北部湾外,我国在南海并没有与其他海洋邻国谈判确定本国的200海里专属经济区和大陆架边界位置,但是在处理外国油气井和渔船所在位置是否在我国管辖海域时通常却以“九段线”作为标准。我国的立场已经产生了线内的全部水域是否是中国水域的争论,并且造成与其他沿海国家的争议。

China should quickly strengthen the legal quality of the U-Shaped Line claim. While using highly critical language, saying that ambiguity in China's South China Sea has created a very "awkward" or "embarrassing" situation ("非常尴尬"), Qi ultimately advocates that China embrace an explanation of the U-Shaped Line claim that is not at all controversial. Qi explains that if drawing an Exclusive Economic Zone (from the land features) does not reach all the way to the U-Shaped Line, then historic rights can be used as a supplement. Qi explains that historic rights would allow China first priority for the exploitation of ocean and marine fishing resources, seabed oil and gas resource, and mineral resource exploitation. Qi goes on to say that combining legal claims to the islands with a historic rights interpretation will enable other South China Sea countries to understand China's South China Sea claim.<sup>69</sup> In this way, Qi appears to be advocating that the U-Shaped Line should essentially be viewed as an outline of China's EEZ, using historic rights as the explanation for any gaps that cannot be filled. As mentioned previously, UNCLOS only mentions historic rights in relation to the delimitation of territorial waters, not EEZs, and even that reference is unclear. Therefore, the justification for Qi's use of historic rights in this manner is unclear, and he does not provide further explanation in his editorial.<sup>70</sup>

The view Qi advocates is a common one among Chinese scholars. Hong Nong, currently Executive Director and Senior Fellow at the Institute for China-America Studies (a Washington DC offshoot of the National Institute for South China Sea Studies in Hainan) argues in one editorial on the U-Shaped Line that "sovereignty + UNCLOS + historic rights" dominates Chinese scholarly thinking on the U-Shaped Line and that "China enjoys certain historic rights [within the U-Shaped Line], such as fishing rights, navigation rights and priority rights of resource development." Ultimately, Hong is honest about the difficulty of making such historic rights claims in the South China Sea, as historic rights are not clearly provided for in international law, but she is also optimistic there still may be a way to account for China's South China Sea claims:

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<sup>69</sup> 祁怀高: 尽快强化南海U形线法律性质, 环球时报 *Global Times* (August 12, 2014)

<sup>70</sup> This is not to imply that Chinese scholars are ignoring the lack of provision for historic rights in UNCLOS. Many Chinese scholars simply argue that additional international agreements need to be established that will clarify and provide for historic claims. For one example, see: Zheng Zhihua. "Why Does China's Maritime Claim Remain Ambiguous?" *Asia Maritime Transparency Initiative* (June 12, 2015), <http://amti.csis.org/why-does-chinas-maritime-claim-remain-ambiguous/>

*Since there are no definitive rules in international law which govern the status of maritime historic rights, China's claim is not a violation of international law. Similarly, since there are no such rules, it is doubtful whether China's claim could be established in international law... As the ICJ once stated, general international law does not provide for a single 'regime' of historic waters or historic bays, but only for a particular regime for each of several specific, generally recognized cases of historic waters or historic bays. From this point of view, China's claim can be regarded as one of these particular cases, which may stand up in international law as doctrine evolved over time.*<sup>71</sup>

In a recent publication by one of China's foremost maritime scholars, the advocacy of "sovereignty + UNCLOS + historic rights" continues. Zou Keyuan, with coauthor Liu Xinchang, recently argued that in the South China Sea, historic rights supplement China's sovereignty claims and rights as provided for through UNCLOS. Zou and Liu survey much of the historical information that is frequently drawn upon in justifying China's historic claim. They note activities as varied as traveling through the South China Sea to map making to naval and military activities. Zou and Liu ultimately argue that China can claim historic rights to fishing, navigation, and priority rights of resource development within the U-Shaped Line.<sup>72</sup> They survey the limited legal cases available that address historic fishing rights, but it is unclear from their discussion how other historic rights would be established through international law.

If "sovereignty + UNCLOS + historic rights" has become the most common scholarly interpretation of China's South China Sea claim, as the evidence above indicates, then Chinese scholars are clearly advocating an expansive claim, as by their own explanations of the claim, the historic rights aspect goes beyond the provisions of UNCLOS, or of the provisions of international law. Yet China's scholars are consistent in their efforts to explain China's U-Shaped Line claim within the terms of international law, an effort that can be contrasted with the activities of China's military.

China's military is particularly prone to explaining China's South China Sea claim in historical and nationalistic terms, and to sending signals that China's claim may include all

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<sup>71</sup>Hong Nong. "Interpreting the U-shape Line in the South China Sea." *China-US Focus* (May 15, 2012), <http://www.chinausfocus.com/peace-security/interpreting-the-u-shape-line-in-the-south-china-sea/>

<sup>72</sup>Keyuan Zou and Xinchang Liu. "The Legal Status of the U-shaped Line in the South China Sea and Its Legal Implications for Sovereignty, Sovereign Rights and Maritime Jurisdiction." *Chinese Journal of International Law* 14.1 (2015), pp. 57-77.

areas - land and water - and all rights within the U-Shaped Line. A historic rights claim as described above would be limited to specific rights, such as fishing, but the Chinese military at times acts in ways that appears to envision control of the South China Sea at a much more comprehensive level. For instance, a January 2014 report in Xinhua, one of China's state-owned news agencies, claimed that three Chinese vessels, including two destroyers and an amphibious landing craft, sailed to James Shoal where the crew "held an oath-taking ceremony to safeguard sovereignty." James Shoal, which the Chinese call Zengmu Reef, is a submerged reef approximately 50 miles from Malaysia's coast. As Xinhua reported, "During the ceremony held in the Zengmu Reef area, soldiers and officers aboard swore an oath of determination to safeguard the country's sovereignty and maritime interests."<sup>73</sup> The action was alarming to many observers, as not only is James Shoal far from the Chinese coast, the feature is also submerged, and should not warrant any jurisdictional rights under UNCLOS. In other words, the action by default seems to indicate a claim of rights beyond that possible through international law.

Statements by Chinese military leaders have also lead to concerns of an expansive and intractable claim based on nationalistic and historical justifications. For instance, statements by General Fang Fenghui, Chief of Staff of the People's Liberation Army, helped illustrate the concepts of history and inheritance underlying China's claim. During a visit to the US, General Fang said, "territory which has passed down from our ancestors into the hands of our generation – we cannot afford to lose an inch."<sup>74</sup>

At a 2015 naval conference held in the United Kingdom, Chinese Vice Admiral Yuan Yubai, commander of the People's Liberation Army Navy's northern fleet, emphasized China's peaceful efforts to establish a new Maritime Silk Road. Through a translator he summed up China's claims in the South China Sea:

*The South China Sea, as the name indicates, is a sea area that belongs to China. And the sea from the Han dynasty a long time ago where the Chinese people have been working and producing from the sea.*<sup>75</sup>

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<sup>73</sup>Sui-Lee Wee. "Chinese ships patrol area contested by Malaysia." *Reuters* (January 26, 2014)

<sup>74</sup>Phil Stewart and David Alexander. "UPDATE 2-China blames Vietnam, says will not cede inch of disputed territory." *Reuters* (May 15, 2014)

<sup>75</sup>Christopher P. Cavas. "UK Progress, Pacific Tensions Key Naval Conference." *Defense News* (September 16, 2015)

While only a summary can be provided here, these examples indicate an expansive view of the claim is held by many in the Chinese military. This expansive view of the claim appears to be based in a historical narrative of Chinese ancestry and South China Sea sovereignty. When such viewpoints and activities are publicized in international media, as they always are, it impacts the overall South China Sea dispute, as observers assume China as a whole has a highly expansive view of its South China Sea claim. In fact, when asked generally about expansive claims in the South China Sea, particularly the possibility of a historic waters claim (essentially the viewpoint that the entire South China Sea should be viewed as a Chinese lake, with full Chinese sovereignty), a Chinese scholar interviewed for this dissertation immediately pointed out that any support for this viewpoint is largely connected to the military. The scholar added that people in the military generally do not have a deep understanding of international law.<sup>76</sup>

## 2.4 *Conclusion*

The ambiguity in China's claim is often assumed by scholars and journalists to be a long-term strategic move by China, as China bides its time while it gains military strength. However, the overall theoretical structure of this dissertation argues that ambiguity is a result of historical justifications calling for a claim bigger than that readily justified through international law, and the difficulties faced when attempting to reconcile these different rationales. Additionally, one scholar interviewed for this dissertation indicated that ambiguity in China's South China Sea claim is related to China's current political climate, particularly the fear of being locked into defending a claim by the demands of a nationalistic public.<sup>77</sup> The institutional structure of the single-party Chinese government, its reliance on nationalism for legitimacy, and its nondemocratic nature has limited the options available for China's claim. The Chinese government finds itself in an inflexible position, where both historical and legal justifications do not easily coalesce to form a claim, but where a claim must account for both in order to remain consistent with nationalistic narratives of Chinese history and the Chinese Communist Party's role in protecting Chinese

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<sup>76</sup>Interview. Washington DC. September 2015.

<sup>77</sup>Interview. Hainan. May 2014

territory. Moreover, different actors within China hold differing viewpoints on the claim, and competition between these actors impacts public expressions of China's claim. The role of nationalism in limiting China's claims will be discussed in greater detail in Chapter Four, which addresses China's East China Sea claim.

In the next chapter, Taiwan's South China Sea claim will be examined. As a whole, the range of viewpoints on Taiwan's claim, as expressed by those within Taiwan, is broader in scope than Chinese viewpoints on the South China Sea. Moreover, on average, the dominant viewpoints on Taiwan's claim represent a claim over a smaller geographical area and less jurisdictional rights than the average claim advocated in China. Taiwan's open democratic political system and contested national identity combine to ensure a much broader range of views are accounted for when shaping Taiwan's South China Sea claim.

# Chapter Three

## TAIWAN'S SOUTH CHINA SEA CLAIM

### 3.1 *Introduction*

While China's South China Sea claims and actions are frequently highlighted in media and scholarly work, Taiwan (The Republic of China or ROC) has similar claims in the South China Sea that are often overlooked.<sup>1</sup> Undoubtedly due to Taiwan's disadvantaged international status, as well as its arguably pacific foreign policy, the omission is nonetheless unfortunate, as Taiwan's domestic political environment provides a fascinating context for maritime and territorial claims to develop, particularly when contrasted with China's process of developing a claim based on the same historical record.

Both China's and Taiwan's claims in the South China Sea demonstrate that when historical narrative calls for a claim significantly larger than that readily justified by a standard application of international law, an ambiguous claim will result as the country struggles with how best to articulate the claim. At the domestic level, viewpoints regarding the claim will be divided. Some groups and actors will emphasize a claim overtly linked to the application of international law, while others will advocate an expansive claim based on historical justifications. In the case of China, this difference largely coalesces around two dominant interpretations of China's South China Sea claim: (1) the claim refers to South China Sea land features and the jurisdictional rights that can be based on those land features, and (2) the claim includes historic rights, potentially encompassing all waters and land features within the U-Shaped Line.

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<sup>1</sup>For the sake of brevity, the Republic of China (ROC) is referred to as either Taiwan or the ROC throughout this dissertation.

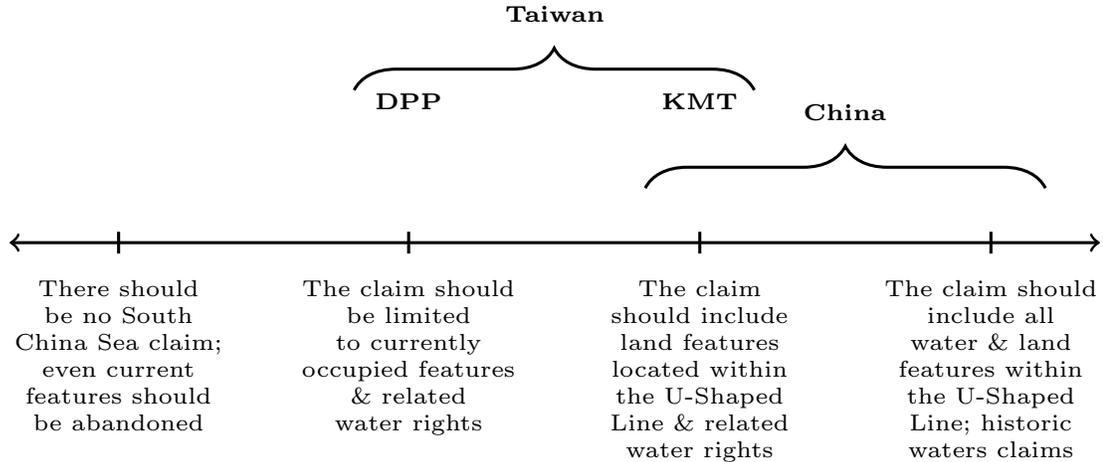


Figure 3.1.1: Comparing Dominant Views in China and Taiwan

As the discussion of Taiwan’s claim below will illustrate, the two dominant interpretations found in China are also present in Taiwan. However, the range of viewpoints on Taiwan’s South China Sea claim is much broader than that found in China. This wider range can be largely attributed to two main factors. First, Taiwan’s democratic system allows greater flexibility for dissenting viewpoints to be expressed without fear of reprisal. Although seemingly unpatriotic views are not always well received in Taiwan, they are nonetheless allowed, whereas in China such opportunities are more limited. Second, historical narrative is itself a contested issue in Taiwan. Taiwan’s identity politics ensures there is no uniform agreement on which historical information is relevant to Taiwan’s claim, resulting in a much broader range of viewpoints.

Also important to note, the dominant positions in China, when taken as a whole, advocate a South China Sea claim encompassing a larger area and more jurisdictional rights than that advocated by dominant positions in Taiwan. This difference is illustrated in Figure 3.1.1, and appears related to differences in the overall range of viewpoints permitted in each system. In China’s system, nationalism is a base of legitimacy, ensuring that less patriotic views on the claim are muted, whereas such ideas are much more common in Taiwan, ultimately impacting the dominant claims advocated by Taiwan’s two main political parties.

This chapter will demonstrate that domestic political dynamics ultimately dictate Taiwan's official claim within the South China Sea dispute. Similar to the median voter theorem, where government policies converge toward the political center, Taiwan's South China Sea claim largely fluctuates between two median positions, with each of Taiwan's two dominant political parties advocating one of these median positions. The Democratic Progressive Party (DPP), which emphasizes Taiwanese identity and openly questions Taiwan's Chinese legacy, articulates its position on the claim largely in terms of international law, particularly Taiwan's effective occupation of Taiping Island.<sup>2</sup> The Nationalist Party (KMT), which frequently underscores a Republic of China legacy and Chinese history in its policy statements, combines justifications of international law and history when articulating its position on the claim, and largely advocates a claim that includes all land features and related jurisdictional rights within the U-Shaped Line. As will be illustrated below, these positions are directly related to each party's respective bases, while at the same time pushed toward the center by practical considerations and each party's efforts to appear moderate in front of both domestic and international audiences.

With each party embracing its own position, the outcomes of electoral competition between the two major parties plays a decisive role in determining Taiwan's claim. Taiwan's claim has shown a surprising amount of flexibility in recent years, able to change due to the range of viewpoints entertained in Taiwan's political system, as well as the ease with which the claim can be altered through legislative and presidential actions. Amid an overarching atmosphere of ambiguity, the claim fluctuates based on electoral outcomes, a result that is not mirrored in less flexible systems, either democratic or nondemocratic.

To illustrate the centrality of domestic political dynamics in shaping Taiwan's South China Sea claims, this dissertation will explore Taiwan's claim in four parts. In the next section, an overview of Taiwan's South China Sea claim is provided. Next, the range of viewpoints on Taiwan's South China Sea claim is presented. Third, factors that cause each party to maintain relatively moderate positions are highlighted. Finally, the chapter concludes with a summary of findings.

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<sup>2</sup>Taiwan occupies one disputed land feature in the South China Sea, Taiping Island. Other land features occupied by Taiwan are only claimed by China, and no other parties.

### 3.2 Overview of Taiwan's Claim

Well-documented in media and scholarship, Taiwan's and China's South China Sea claims originated from a common historical record, and still share a great deal in common. As discussed in Chapter Two, both Taiwan's and China's claims are based on a map originally established by the Republic of China government in 1947 (Figure 3.2.1). The line included in this map, which encompasses the vast majority of the South China Sea, is frequently referred to as the "U-Shaped Line" or the "11-Dash Line." Taiwan has never altered the line in the map's original version, but over time China's versions of the map have varied, particularly in terms of the number of dashes in the map (for reference, see one illustration of China's 9-Dash Line map in Figure 3.2.2).<sup>3</sup> In discussions of this line which largely refer to China's claim, the claim is considered to possess a high degree of ambiguity, in that not only are competing states unclear as to exactly what the line designates, they are also unclear on the line's justification. More specifically, rival claimants and observers are uncertain as to whether or not the line is meant to designate the whole area included in the U-shaped line as historic waters, if the line is meant only to claim the islands included within the line, if the line is meant to be a maritime delimitation, or if it is meant to designate something else altogether.<sup>4</sup> Relatedly, the relevant basis of legal justification for the claim also has multiple interpretations.<sup>5</sup> Despite widely publicized calls for both the PRC and

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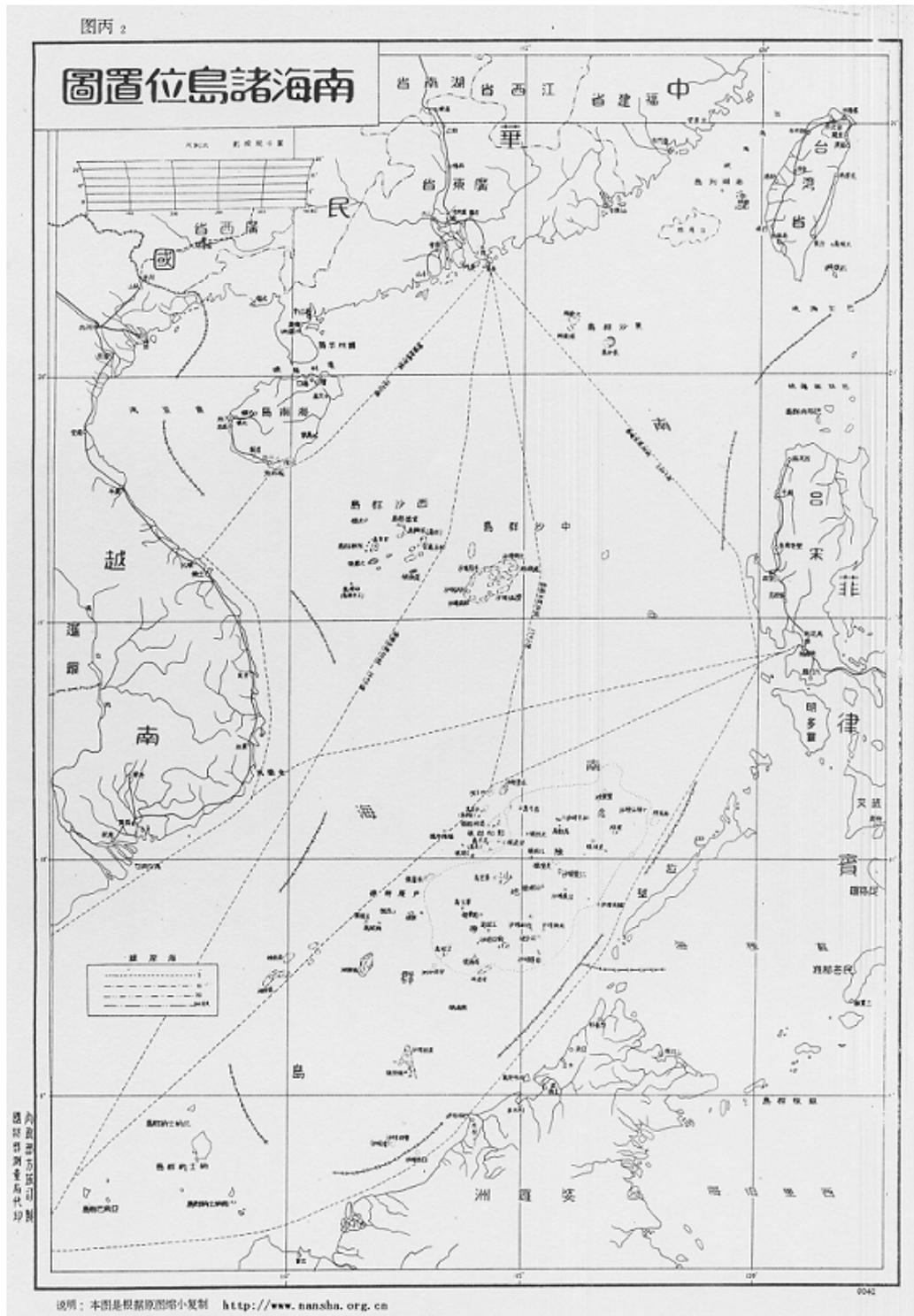
<sup>3</sup>China has recently moved to a version of the map with ten dashes, having previously used a version with nine dashes. During interviews with the author, many maritime experts in Taiwan noted some public misunderstanding over how many dashes are included in Taiwan's version of the U-Shaped line map. For instance, one expert noted with some exasperation that China's 9-Dash line map is periodically displayed in Taiwan's media, presented as Taiwan's claim without the public noticing any difference, Interview, Taipei, June 2014. The author has also observed similar inconsistencies in the way Taiwan's claim is portrayed and discussed, particularly among Western media and experts. In Western media it is often stated that Taiwan and China have the same South China Sea claim, although strictly speaking this is not true. The author has not found any official statements from the ROC government depicting anything less than eleven dashes with respect to the U-Shaped Line claim, and officials in Taiwan's government periodically reaffirm that Taiwan uses the original 1947 11-Dash Line map, without the PRC's changes. That being said, while some portrayals of Taiwan's U-Shaped Line claim with nine or ten dashes can be attributed solely to confusion regarding an already ambiguous claim, the author has also found that some blurring of differences between China's and Taiwan's South China Sea claims appear to reflect political identification with Mainland China, as discussed further below.

<sup>4</sup>Dutton, "Through a Chinese Lens"; Zou, "China's U-Shaped Line in the South China Sea Revisited."

<sup>5</sup>Jinming and Dexia, "The Dotted Line on the Chinese Map of the South China Sea"; Zou, "Historic Rights in International Law and in China's Practice."

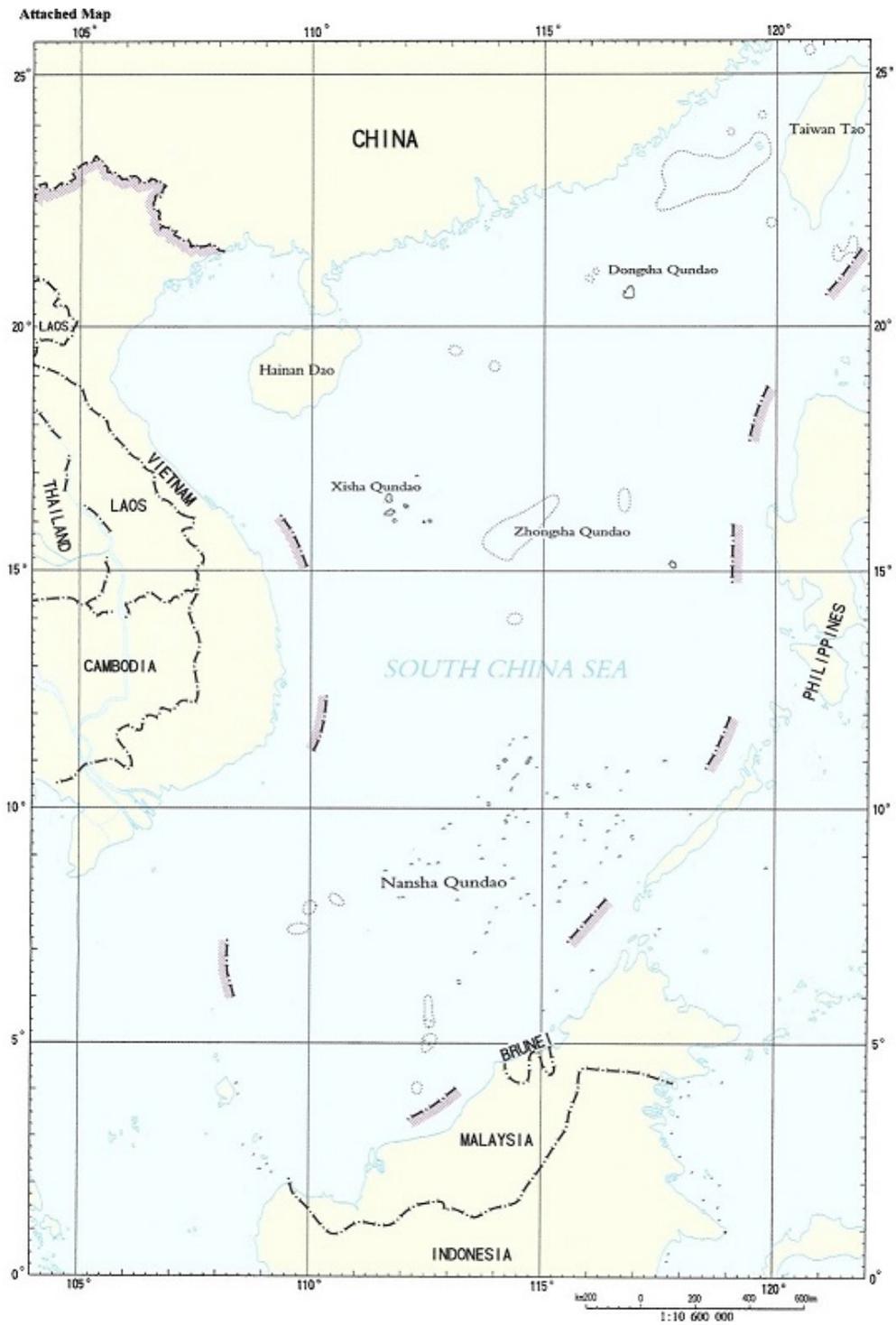
<sup>6</sup>China's two-page *note verbal* can be viewed at: [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf)

Figure 3.2.1: The Republic of China's 1947 U-Shaped Line Map



*This map was first published by the Republic of China government in 1947, and is widely cited as the first published illustration of the U-Shaped Line claim. In this depiction, the map has eleven dashes. The People's Republic of China government later adopted nine and ten-dash versions of this claim.*

Figure 3.2.2: The 9-Dash Line Map as Submitted by China to the United Nations



*On May 7, 2009, China submitted a note verbale to the United Nations Secretary General with the above map attached. The note verbal was in response to Malaysia's and Vietnam's joint submission to the Commission on the Limits of the Continental Shelf.<sup>6</sup>*

ROC to clarify the claim, both governments have yet to provide any comprehensive official explanations for the line.

Official statements of Taiwan's claim have changed over time. In 1993, Taiwan announced its South China Sea Policy Guidelines, which stated that Taiwan claimed the area designated by the eleven-dash line under the principle of historic water rights, as designated by customary international law.<sup>7</sup> However, when later drafting Taiwan's Territorial Sea Law, early drafts referred to the South China Sea as having "historic waters" but in revised drafts the term "historic waters" was dropped from the legislation.<sup>8</sup> There is evidence to believe the decision to remove the historic waters focus was a compromise to pacify the DPP (Democratic Progressive Party), as the DPP had expressed a desire to distance Taiwan from the U-shaped line claim and Mainland China, while the KMT (Kuomintang) and New Party advocated the U-Shaped Line.<sup>9</sup> Evidence gained through interviews also indicates that the change was due to disagreements between those who identified with Mainland China and those who wanted to distance Taiwan from China.<sup>10</sup> The 1993 Guidelines themselves were eventually eliminated by a DPP administration. During Chen Shui-Bian's administration, the original 1993 South China Sea Policy Guidelines were frozen. When the Ma Ying-jeou administration replaced the Chen administration, it did not reinstate the South China Sea Policy Guidelines, leading scholars to speculate that Taiwan has largely moved away from

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<sup>7</sup>The South China Sea Guidelines, announced on April 13, 1993, refer to South China Sea historic water rights. They state, "南海歷史性水域界線內之海域為我國管轄之海域，我國擁有一切權益，" indicating the authors were claiming Taiwan's rights to historic waters in the South China Sea. The sentence translates to, "The sea areas within the South China Sea historic maritime boundary are all under the jurisdiction of our country, and our country has all the rights and interests." The 1993 Guidelines also state, "南沙群島，西沙群島，中沙群島及東沙群島，無論就歷史，地理，國際法及事實，向為我國固有領土之一部分，其主權屬於我國。" This language translates to: "Whether looked at from the perspective of history, geography or international law and reality, Nansha Islands (Spratly Islands), Shisha Islands (Paracel Islands), Chungsha Islands (Macclesfield Bank) and Tungsha Islands (Pratas Islands), are part of our country's inherent territory and its sovereignty belongs to our country." This phrase clearly designates claims over each group of land features in the South China Sea, and a similar version of this wording is now the standard phrasing in Taiwan's official government statements on the disputes, an example of which follows a few paragraphs below. The 1993 South China Sea Policies can be viewed at: <http://www.cga.gov.tw/GipOpen/wSite/public/Attachment/f1259488571867.pdf> (Accessed November 1, 2014).

<sup>8</sup>Zou, "China's U-Shaped Line in the South China Sea Revisited."

<sup>9</sup>Kristen Nordhaug. "Explaining Taiwan's policies in the South China Sea, 1988–99." *The Pacific Review* 14.4 (2001), pp. 487–508.

<sup>10</sup>According to multiple interviews, one person in particular was an influential advocate for the historic waters claim. Fu Kuen-chen was a member of Taiwan's legislature when the 1993 Guidelines were written, and reportedly played a key role in drafting the legislation. However, interviews indicated that opposition to Fu's positions later arose among the DPP and independence advocates (Interview. Taipei. June 2014). Fu's positions on the South China Sea will be discussed in greater depth below.

using historic waters as a basis to claim the entire eleven dash line area.<sup>11</sup>

Notwithstanding uncertainty surrounding the claim, Taiwan's government has consistently asserted Taiwan's rights in the South China Sea. Over time these expressions have varied in nature, although the Ministry of Foreign Affairs of the Republic of China has remained relatively consistent in recent years when describing Taiwan's claim. In its current version, the claim emphasizes sovereignty over South China Sea land features and maritime claims to waters surrounding those features. Whenever a major event relevant to the South China Sea dispute occurs, MOFA issues statements with this standard language included. By way of example, the following excerpt is from a public statement issued by MOFA after the Philippines replaced the previously used "South China Sea" with the name "West Philippine Sea" in official government documents and maps:

*Whether looked at from the perspective of history, geography or international law, Nansha Islands (Spratly Islands), Shisha Islands (Paracel Islands), Chungsha Islands (Macclesfield Bank) and Tungsha Islands (Pratas Islands), as well as their surrounding waters, sea beds and subsoil, are an inherent part of the territory of the Republic of China (Taiwan). These archipelagoes therefore fall under the sovereignty of the Republic of China (Taiwan). The government reasserts that it enjoys all rights over the islands and their surrounding waters, and that it denies all claims to sovereignty over, or occupation of, these areas by other countries.*<sup>12</sup>

As illustrated by the excerpt above, Taiwan's MOFA appears to be advocating an interpretation of Taiwan's claim centered on South China Sea land features. No separate historic waters claim is mentioned, and the U-Shaped Line is also notably absent. This is arguably the most common expression of Taiwan's South China Sea claim from the current administration in Taiwan. While the official ROC claim has seemingly moved away from a historic waters claim in the South China Sea, MOFA still adamantly maintains a claim on the rocks, shoals, and islands within the U-shaped line, including waters rights based on these features.

The question remains as to why Taiwan would effectively reduce its claim in the South

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<sup>11</sup>Gau, "The U-Shaped Line and a Categorization of the Ocean Disputes in the South China Sea"; Zou, "China's U-Shaped Line in the South China Sea Revisited."

<sup>12</sup>*Ministry of Foreign Affairs, Republic of China (Taiwan)*. "The government of the Republic of China (Taiwan) reiterates its claim to sovereignty over the South China Sea and refuses to accept any unilateral action taken by other concerned parties." (September 12, 2012)

China Sea by focusing on the land features instead of the broader U-shaped line claim. During interviews on this topic, experts highlighted three main explanations: (1) legal weaknesses in the U-shaped line claim make it too hard to pursue, (2) many outside observers appear to believe that Taiwan and China have the same claim, but dropping the U-shaped line claim distinguished Taiwan from Mainland China in the dispute (3) many of the land features within the U-shaped line, particularly those that are further south, are very far from Taiwan and therefore difficult to feasibly protect. However, it should be noted that during interviews, experts were quick to point out that while the U-shaped line claim has been deemphasized in recent years, it hasn't been dropped or denounced. The claim could still resurface.<sup>13</sup>

Despite the relative consistency in Taiwan's recent South China Sea statements, ambiguity remains the defining characteristic of Taiwan's South China Sea claims. This ambiguity has several sources. First, ambiguity on South China Sea claims has been and continues to be a consciously selected policy of the Taiwanese government. As one official in MOFA's Department of East Asian and Pacific Affairs explains, disagreement within Taiwan's government produces ambiguity:

*There are a lot of arguments about what the claim should be. Every four scholars has five different views. There is some internal discussion between MOFA, the Ministry of Interior, and the National Security Council, and we also need to consider the United States and cross-Strait relations. It's not easy. President Ma says that so far we haven't reached a position of agreement among all parties within the government.*<sup>14</sup>

Moreover, strategic considerations factor into Taiwan's policy of ambiguity. As the same official explained, Taiwan's main goal right now regarding the South China Sea is to join the Code of Conduct discussions, and upsetting any of the other parties would disadvantage these efforts. He concluded, "We have a delicate role, and so far we haven't figured out a better policy than ambiguity."<sup>15</sup>

In terms of challenges to the U-Shaped Line claim, the ROC government consistently responds to calls for it to clarify its claim in similar ways. In September 2014, William

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<sup>13</sup>Interview. Taipei. February 2014; Interview. Taipei. February 2014; Interview. Taipei. June 2014

<sup>14</sup>Interview. Taipei. June 2014

<sup>15</sup>Interview. Taipei. June 2014

Stanton, former director of the American Institute of Taiwan (AIT), said at a conference in Taipei that Taiwan should drop its U-Shaped Line claim in the South China Sea. Taiwan's Ministry of Foreign Affairs immediately responded by reaffirming Taiwan's sovereignty over the Spratly Islands, Paracel Islands, Macclesfield Bank and Pratas Islands, as well as their related waters.<sup>16</sup> A few days after, another official within Taiwan's MOFA further explained Taiwan's claim. Jason Lien (連建辰), deputy director-general of MOFA's Department of Treaty and Legal Affairs, first pointed out that Taiwan uses the 11-dash line map, which is different from China's 9-dash line map, and that, contrary to Stanton's claims, the U-Shaped Line does have a basis in international law. Lien argued that because the U-Shaped Line was established before UNCLOS took effect, it should also be recognized as international law.<sup>17</sup> As illustrated here, the standard response by MOFA is to insist on sovereignty over South China Sea land features, but occasionally officials will go further in their statements on the claim. Instances such as this illustrate that while Taiwan's government generally follows a policy of ambiguity on the U-Shaped Line and emphasizes South China Sea land features only, the U-Shaped Line claim does occasionally resurface.<sup>18</sup>

In sum, Taiwan's South China Sea claim possesses a significant degree of ambiguity. Government officials, scholars, and analysts around the globe have expressed uncertainty as to what the line includes, the exact coordinates of the line, and the basis of justification for the line. Additionally, Taiwan's claim has changed over time. In the next section, the range of viewpoints within Taiwan regarding the South China Sea claim will be explored.

### **3.3** *Party Politics and National Identity in Taiwan's South China Sea Claim*

While in many countries the political spectrum is conceived of as ranging from conservatives on the right to progressives on the left, in Taiwan it is also important to integrate political

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<sup>16</sup>Hsieh Chia-chen and Scully Hsiao. "Taiwan rejects advice to drop South China Sea claims." *Focus Taiwan News Channel* (September 13, 2014), <http://focustaiwan.tw/search/201409130019.aspx?q=stanton>.

<sup>17</sup>Joseph Yeh. "South China Sea claim legitimate: MOFA." *The China Post* (September 19, 2014), <http://www.chinapost.com.tw/taiwan/national/national-news/2014/09/19/417559/South-China.htm>.

<sup>18</sup>It can also be argued that such statements are reflective of the current administration's greater willingness to defend the U-Shaped Line than a DPP administration might be under similar circumstances.

contestation over issues of national identity into the range of political positions. In the case of Taiwan's South China Sea claim, evidence indicates that a Taiwanese person's conception of what the claim is or should be, both in terms of geographical area and in terms of rights claimed, varies in direct relation to their conceptions of Taiwan's relationship with Mainland China. Yet national identity is admittedly far from being the only issue dictating Taiwan's South China Sea claims and actions. In interviews with experts, academics, and government officials within Taiwan, the most dominant point of consensus that emerges regarding the South China Sea, across all interviews and all political persuasions, is the desire to be acknowledged by other claimants in the dispute, and to not be exiled from international political processes. In almost all interviews, experts emphasized the difficulties Taiwan faces in remaining relevant. National identity is particularly relevant to the points where interview responses diverged, most notably the range of area claimed or the scope of rights claimed, as well as how to explain Taiwan's South China Sea claim.

As an illustration, those experts emphasizing commonality with Mainland China tend to stress the necessity of pursuing a full claim within the South China Sea. During one interview, a scholar of international relations who meets frequently with Mainland scholars to discuss South China Sea claims stated that the ROC and PRC have "the same stake" in the South China Sea dispute, and that cross-strait cooperation within the dispute would therefore be fruitful. The same scholar consistently emphasized that Taiwan should pursue expansive South China Sea claims based on the U-Shaped Line.<sup>19</sup>

In a similar but conceptually distinct vein, other experts emphasize the necessity of protecting and maintaining Chinese rights in the South China Sea, although not necessarily in relation to the PRC, but rather as a more general notion of Chinese ancestry. When asked why MOFA statements only claim islands in the South China Sea and do not reference either the U-Shaped Line or historic water rights, one MOFA official explained, "We know we face challenges under current international law, on the other hand, we think this is traditional water and land our ancestors passed to us." He added, "We're still trying to develop a better way to explain; the claim is not gone." When asked if MOFA felt pressure from the US and other parties to explain the U-Shaped Line, the same official stated, "We

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<sup>19</sup>Interview. Taipei. February 2014

feel pressure from ourselves. We know our explanation needs to be updated. We need a better explanation under international law.”<sup>20</sup>

As these excerpts begin to illustrate, issues of identity within Taiwan are directly linked to one’s position on the South China Sea. Yet also important is the notion that claim formation is ongoing. Due to the challenges posed when historical justifications for a claim do not readily combine with international law, the ROC government is still working on defining and explaining its South China Sea claims, and much of this process has played out and will continue to play out through political party competition.

Evidence indicates that positions on Taiwan’s appropriate South China Sea claim vary along a spectrum (Figure 3.3.1). It is important to note at the outset that this spectrum only roughly maps possible positions, as a wide range of views on Taiwan’s South China Sea claim are possible. On the far left side of the illustration, one possible position is for Taiwan to reject any claim in the South China Sea entirely. The next possible position, which is commonly expressed by the DPP, is to emphasize effective occupation as a legal basis for the claim, with the result of centering Taiwan’s claim on Taiping Island, which Taiwan currently occupies. A third position, the one most commonly advocated by the KMT, is that the U-Shaped Line claim is properly interpreted as referring to the land features within the line. From this viewpoint, any water rights claimed in the South China Sea should be based on sovereignty over these land features. Finally, another possible position is to claim that the U-Shaped Line designates historic waters, and that Taiwan has rights to all land features and waters within the line. Figure 3.3.1 shows how Taiwan’s broad political coalitions map onto such a spectrum. The Pan-Green, which includes the DPP, generally emphasizes a limited South China Sea claim, while the Pan-Blue, which includes the KMT, emphasizes broader claims.

In the following two sections, an outline is provided of the viewpoints represented within Taiwan’s two main political coalitions. It is important to note, the examples provided here are only intended to illustrate general trends, and cannot be viewed as an exhaustive list of viewpoints on Taiwan’s claim.

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<sup>20</sup>Interview. Taipei. February 2014

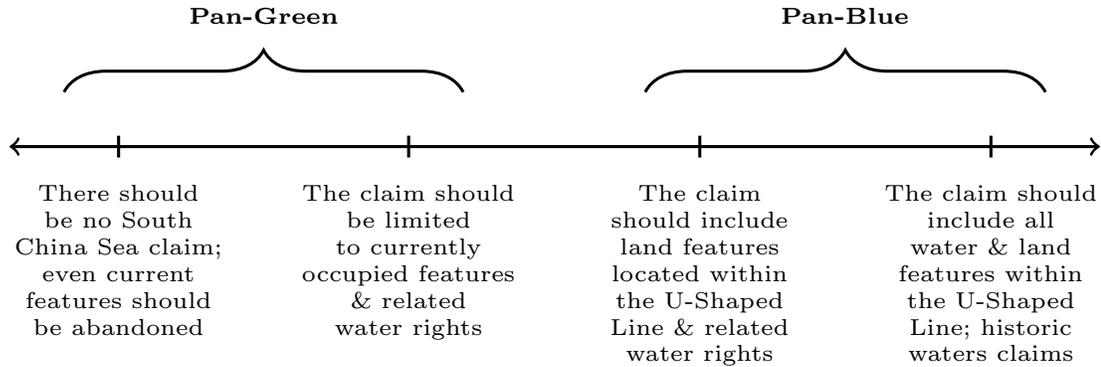


Figure 3.3.1: Range of Viewpoints on Taiwan’s South China Sea Claims

### 3.3.1 *Pan-Green and Independence Advocates*

Party politics in Taiwan can be roughly divided into two broad coalitions, the Pan-Green and Pan-Blue coalitions (the Pan-Blue will be discussed in the next section). Political parties and groups that emphasize independence and Taiwanese identity are part of the Pan-Green, such as the Taiwan Solidarity Union, Taiwan Independence Party, Taiwan Constitution Association, as well as the largest party in the coalition, the DPP.

**Deep Green.** For independence advocates in Taiwan, the South China Sea is not often a central issue of importance, so many of the Pan-Green parties, apart from the DPP, have not issued detailed statements on the South China Sea. The lack of statements by these groups, combined with the limited amount of available evidence, indicates that such groups feel less committed to South China Sea claims. People broadly grouped under this category generally question Taiwan’s connections to the South China Sea, have reservations about Taiwan’s broad claims based on the U-Shaped Line, and often advocate using Taiping Island for strategic purposes (as opposed to being valued inherently as an inherited responsibility). At times, they even go so far as to question whether Taiwan should continue to occupy Taiping Island.

Members of Taiwan’s recent Sunflower Movement are prime examples of such a perspective. The Sunflower Movement was a student-led protest movement that occupied both Taiwan’s Legislative Yuan and Executive Yuan (the government buildings for both Taiwan’s legislative and executive branches of government). The protests were an effort

to block the Cross-Strait Service Trade Agreement (CSSTA) between Taiwan in China, as participants in the Sunflower movement were concerned about the effects of the trade deal on Taiwan's economy as well as potential vulnerabilities to political pressure from Beijing.

When asked about how Taiwan's younger generation views disputes between China and other claimant states in the South China Sea, one leader in the Sunflower Movement explained:

*Every time China has a problem, people think Taiwan is involved. We think, why are we involved in it? The young generation will always think, why us? What happened that people think Taiwan is China? Why are we the same in other people's eyes?*<sup>21</sup>

During the Sunflower Movement occupation of Taiwan's Legislative Yuan, the demonstrators invited a scholar to speak about the East China Sea dispute, but did not invite a speaker on the South China Sea dispute. The same leader explained this difference is because the occupiers generally do not have a strong sense of the South China Sea dispute. She said they are aware of Taiping Island, because there are coast guard members stationed on the island, but in terms of Taiwan's territorial reaches, most of them think of Taiwan as consisting of "Tai Peng Jin Ma" (台澎金馬). "Tai Peng Jin Ma" is a short Chinese expression used to refer to Taiwan, Penghu, Jinmen, and Matsu.<sup>22</sup> She reasoned that "Tai Peng Jin Ma" resonates with young people because domestic tourists in Taiwan can travel to all four of these places without restriction, while conversely, "people will not know" a place they cannot visit.<sup>23</sup> Similarly, during a group interview, five Taiwanese graduate students who study in America and are each self-proclaimed Taiwanese independence advocates all emphasized occupation in their conceptions of Taiwan's territory. For instance, in response to the question of where Taiwan's boundaries should be drawn, one student answered, "Where has Taiwan stationed troops? That is where Taiwan's territory is."<sup>24</sup>

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<sup>21</sup>Interview. Washington DC. December 2014

<sup>22</sup>台澎金馬 refers to Taiwan, Penghu, Jinmen, and Matsu. In this expression, Taiwan refers to the main island of Taiwan. Penghu refers to an archipelago of roughly 64 islands and islets located between Taiwan and Mainland China. Jinmen is a small archipelago of islands close to China's Fujian Province, but administered by the Republic of China (Taiwan) government. Matsu is another small archipelago of approximately 36 islands that is also in the Taiwan Strait and governed by the ROC. Absent from this definition of Taiwan's territory are the disputed land features located in either the East China Sea or South China Sea.

<sup>23</sup>Interview. Washington DC. December 2014

<sup>24</sup>Interview. College Park, Maryland. August 2014

The Formosan Association for Public Affairs (FAPA) is a nonprofit organization with primarily Taiwanese-American membership that strongly advocates Taiwanese independence, and presents another example of thinking among the independence-minded. FAPA has been clear about its position on the East China Sea, but has been less vocal on the South China Sea. Gerrit van der Wees, Senior Political Advisor of FAPA, noted that FAPA has no formal statement on the South China Sea, but that there is a concern the Ma Administration's portrayal of Taiwan's claims in the South China Sea has been too close to that of Mainland China. As van der Wees explained, "Taiwan is not a discussant at the table, and can only be one with an approach that distinguishes it from China." Taiwan should be allying itself with other claimants in the South China Sea, and together, "draw a common line vis-à-vis China." On the claim itself, van der Wees noted it would be best if Taiwan "just stays with the islands occupied, not making claims to the blue waters of the South China Sea."<sup>25</sup>

One maritime scholar living in Taiwan who openly identified himself as favoring independence for Taiwan questioned Taiwan's continued occupation of Taiping Island, and also questioned any strategic value in maintaining Taiping. As he stated:

*There was recently an interesting meeting at MOFA. They said they need to spend a lot of money on Taiping personnel because security is so intense lately. The concern is with the Vietnamese, but they could have taken Taiping by force already. Vietnam has (decided not) to do that because of fear of China... I'm thinking, what's the point for Taiwan to have this [Taiping Island]? There is the argument that Taiwan should take part in negotiations and processes, and should join the COC, [Code of Conduct] but for me this is an illusion. Taiping is not a key factor.<sup>26</sup>*

In the above excerpt, the scholar is questioning the logic, commonly expressed by those in the DPP and among the independence-minded, that Taiping can be used to Taiwan's advantage in international forums. He openly questions whether Taiwan should maintain Taiping, and this position is related to his ideas about Taiwanese identity. As he stated:

*If one day Taiwan really got its independence, it could get rid of this nationalistic, old thinking that really makes no sense, including the current constitution and the two branches of government... The constitution was written*

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<sup>25</sup>Interview. Washington DC. December 2014

<sup>26</sup>Interview. Taipei. June 2014.

*for China. How this country [Taiwan] is run is not decided by its people, but by ancient thinking and ancient doctrine.*<sup>27</sup>

**The DPP.** The Democratic Progressive Party (DPP), Taiwan’s current minority party, has a position on Taiwan’s South China Sea claim that directly maps to DPP positions on cross-strait relations and Taiwanese identity, and ultimately reflects an effort to combine Pan-Green concerns with moderate approaches. The DPP has consistently advocated defending Taiwan’s sovereignty rights in the South China Sea, particularly in relation to Taiping Island, yet the DPP has not promoted the U-Shaped Line or related land feature claims in the South China Sea. In stating their positions on Taiwan’s claim, DPP officials consistently emphasize a reliance on international law as a guideline in shaping Taiwan’s claim, particularly the principle of effective occupation. Indeed, evidence indicates the DPP will continue to distance itself from the U-Shaped Line claim, with important implications for Taiwan’s South China Sea claim if the DPP regains a legislative majority or the presidency in 2016.

The DPP has made the defense of Taiwan’s sovereignty in the South China Sea a priority. On February 2, 2008, the DPP’s Chen Shui-bian became the first Taiwanese president to visit Taiping Island, his visit commemorating the opening of a new runway on Taiping Island.<sup>28</sup> The 1,150-meter-long runway was commissioned by his administration, with the express purpose of humanitarian purposes. While Chen was visiting Taiping, he announced his “Spratly Initiative,” which the DPP still cites as foundational to their policies on the South China Sea.<sup>29</sup> Emphasizing environmental and humanitarian cooperation, Chen framed his visit and infrastructure improvements on Taiping Island as part of Taiwan’s humanitarian and environmental efforts in the region. On February 10, Chen visited Pratas Island, in the Pratas Archipelago (Dongsha Archipelago). During this visit he reaffirmed his “Spratly Initiative” and highlighted his administration’s efforts at

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<sup>27</sup>Interview. Taipei. June 2014

<sup>28</sup>Taiping Island is often described as the largest land feature in the South China Sea, although recent land reclamation efforts by China may have caused Chinese-occupied land features to eclipse Taiping Island in size.

<sup>29</sup>During one interview, a former DPP official that worked on the Spratly Initiative explained that in drafting the Spratly Initiative, then DPP government officials debated the name extensively. Reflective of their views on the dispute, they joked that they could not name the initiative “The South China Sea Initiative,” because then the title would have the word “China.” The former official added, we joked about it, “but actually we all thought about it.” Interview. Taipei. June 2014

environmental conservation in the region, such as the previous year's establishment of Dongsha Marine National Park. Throughout its time in office, the Chen Administration was quiet on the U-Shaped Line as well as the South China Sea land features that are not currently occupied by Taiwan.

Since Chen's Administration left office, DPP statements and actions have continued support for defending Taiwan's claims in the South China Sea. Yet diverging from the KMT and other blue coalition groups, the DPP emphasizes that Taiwan's and China's claims in the South China Sea are not the same. For instance, Tsai Ing-wen, the current DPP Chairperson, has consistently maintained that Taiwan's position on the South China Sea is different from Mainland China's, and therefore multilateral approaches are more appropriate for addressing the dispute than a cross-strait bilateral framework.<sup>30</sup> DPP Secretary-General Joseph Wu has said that Taiwan should "clarify its claim of sovereignty" in the dispute. As Wu explains, "Taiwan's adherence to the UN Convention on the Law of Sea is clear with regard to its sovereignty claim; it is in active control and administration of Taiping, the largest island in the South China Sea."<sup>31</sup>

Such viewpoints are also reflected in DPP internal documents. In the DPP's internally distributed South China Sea Policies and Positions (民進黨對南海政策及主張), the English translation states, "Taiwan has its own viewpoint regarding the Spratly Islands – one that is founded on sovereignty originating from Taiwan, and which is different from China's [claims over the territory]."<sup>32</sup> Throughout the document, emphasis is frequently placed on following UNCLOS and allowing for freedom of navigation in the South China Sea. As one DPP scholar explained, this DPP internal South China Sea policy document intentionally refers to "South China Sea exclusive economic zone" to indicate that the DPP disagrees with a historic waters claim in the South China Sea. Moreover, the same document refers to South China Sea "high seas" (the original Chinese version refers to 公海 or "high seas" while the English translation says "international waters"), which was carefully worded to

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<sup>30</sup>*Democratic Progressive Party (Official Website)*. "DPP statement regarding the South China Sea." (July 24, 2011), <http://english.dpp.org.tw/dpp-statement-regarding-the-south-china-sea/>.

<sup>31</sup>Paul Berry. "No Opposition Party is an Island: Taiwan's Defense and Domestic Politics." *Chicago Policy Review* (July 14, 2014), <http://chicagopolicyreview.org/2014/07/14/no-opposition-party-is-an-island-taiwans-defense-and-domestic-politics/#prettyPhoto>.

<sup>32</sup>民進黨對南海政策及主張 (The Democratic Progressive Party's South China Sea Policies and Viewpoints)

indicate a DPP skepticism regarding the ability of most South China Sea land features to qualify as islands under the UNCLOS definition of an island as included in Article 121. This is because, as discussed in Chapter 1, if each land feature in the South China Sea qualified as an island, the resulting EEZs, when combined with the EEZs of coastal states, would completely encompass the area, leaving no high seas in the South China Sea.<sup>33</sup>

In their public statements, DPP officials consistently cite a desire to keep Taiwan's claim consistent with international law. A particular emphasis is placed on basing Taiwan's claim on the legal principle of effective occupation. For example, in an Op-Ed on the future of US-Taiwan relations, Joseph Wu argued Taiwan should not invest itself in strengthening relations with "an expansionist power which claims unsubstantiated historical rights," a clear reference to China and its claims. Wu went on to include a policy point specifically on the South China Sea, as follows:

*South China Sea issue: 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; Taiwan should also make it very clear that it will not cooperate with China on the sovereignty issue against any other claimants.*<sup>34</sup>

The omissions in Wu's statement on Taiwan's South China Sea policy are noteworthy. Immediately after criticizing Beijing for its claims based on "historical rights," Wu limits his legal references to UNCLOS Article 121 and the principle of actual ownership in describing Taiwan's claim. The only land feature mentioned is Taiping Island and there is no mention of the U-Shaped Line. In other words, Wu's statement clearly articulates what is a consistent expression of Taiwan's South China Sea claims among the DPP – an emphasis on applying principles of international law to the defense of Taiping Island, and nothing beyond Taiping Island.<sup>35</sup>

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<sup>33</sup>Interview. Taipei. June 2014

<sup>34</sup>Accessed on July 29, 2014 at: <http://dpptaiwan.blogspot.com/2014/05/dpp-us-representatives-5142015-op-ed-in.html>. Also available at <http://thediplomat.com/2014/05/the-future-of-u-s-taiwan-relations/>

<sup>35</sup>While there are prominent examples of the government and members of civil society reaffirming and pursuing Taiwan's South China Sea claims, there is also an interesting degree of ambivalence reflected within Taiwan regarding the claims. When reporting on China's May 2012 passport change, the passport update that included a new map with a dashed line claim in the South China Sea, the Taipei Times reported on DPP criticisms of the Ma government for perceived failures in protecting the ROC's sovereignty. However, the article mainly seems to portray concern with Taiwan itself falling under Beijing's influence rather than

During an interview, Michael Tsai, former Secretary of Defense during the Chen Administration, stated that, “Taiwan should only claim Taiping Island and the surrounding waters, areas with actual control. If Taiwan made this claim, it would be relatively undisputed. Only China would challenge ROC control of Taiping.” Tsai also pointed out that when Chiang Kai-Shek was in power, no one else was strong enough to claim the South China Sea. Therefore, the ROC claimed the area. Yet time has put distance between those events and the present. As Tsai concludes, “this [ROC actions in the aftermath of World War II] is not real to me” or to the people of Taiwan.<sup>36</sup>

In a similar statement, former Deputy Secretary General of the National Security Council during the Chen Administration, Parris Chang (張旭成), told Voice of America in September 2014 that if the DPP regains the government in 2016, the DPP will consider changing Taiwan’s South China Sea claim. According to Chang:

*After the 2016 change of government in Taiwan, there is this kind of possibility [changing the claim], because DPP members, including myself, have already said Taiwan should adjust our territorial claims in the South China Sea. After World War II, the Kuomintang government in 1947 put forward the 9 or 11 dash line position, which has no relationship with Taiwan’s government today. If we have a DPP government, I believe, we are willing to reconsider. We believe that Taiwan, in the capacity of an independent country, is in the Asian and world democratic camps. Our position and our obedience to international law are different from China, which emphasizes its history and sovereignty.<sup>37</sup>*

The DPP has also expressed a desire to alter the way in which Taiping is being used. In a December 2014 defense policy blue paper, New Frontier Foundation, a DPP think tank, outlined DPP plans for humanitarian assistance and disaster relief. The report includes a letter signed by Tsai Ing-wen stating that the DPP aims to deemphasize military uses for Taiping and instead use the island as a base for foreign humanitarian assistance and foreign disaster relief. The DPP plans to build a 10,000 ton hospital ship and to use Taiping Island

the South China Sea. Without at any time pointing out Taiwan’s similar claims in the South China Sea, the article ends by pointing out, “China maintains it has ancient claims to all of the South China Sea, despite much of it being within the exclusive economic zones of its Southeast Asian neighbors” (Taipei Times).

<sup>36</sup>Interview. Taipei. February 2014

<sup>37</sup>Author’s translation. The original text reads: “台湾2016年换了政府之后就有这种可能。因为民进党的人, 包括本人, 都已经表示台湾应该调整我们对南海领土的主张。国民党政府1947年在二次战后所提出的九条线或十一条线的立场, 跟今天台湾的政府没有关系。如果民进党执政, 我相信, 我们愿意重新考虑。我们认为台湾作为一个独立的国家, 我们在亚洲和全世界民主阵营里, 我们的立场、对国家法[sic]的遵守跟中国强调历史、强调中国的主权是不一样的。”黎堡, “台湾前高官称应放弃南中国海主张,” 美国之音(VOA) (September 1, 2015), <http://www.voachinese.com/content/taiwan-20140913/2449107.html>.

as a base for hospital ship operations.<sup>38</sup>

Recent statements by DPP leaders have reaffirmed that the DPP will continue to make defending Taiping Island a priority, but will continue to distance itself from the broader U-Shaped Line claim. In May 2015, immediately after Ma Ying-jeou announced his South China Sea Peace Initiative, DPP Chairperson Tsai Ing-wen told reporters that the DPP will not abandon Taiwan's claim to sovereignty over Taiping Island. Tsai expressed surprise that anyone would question the DPP's commitment to defending Taiping. It is notable that Tsai did not make any statements about Taiwan's South China Sea claims beyond Taiping Island. Tsai also took the opportunity to emphasize the DPP position that the South China Sea dispute should be handled in accordance with international law, particularly the United Nations Convention on the Law of the Sea.<sup>39</sup> Similarly, in response to Ma's South China Sea Peace Initiative announcement, DPP Secretary General Wu questioned how South China Sea claims of sovereignty related to Ma's plan aligned with international law. Although Wu does not explicitly mention the U-Shaped Line in his statements, the implication is to question the legal basis of South China Sea claims apart from Taiping Island, mainly the U-Shaped Line claim.<sup>40</sup> When taken together, Tsai and Wu's statements present a clear picture of the DPP position on Taiwan's appropriate claim in the South China Sea – Taiwan has sovereignty over Taiping Island but claims to other land features in the South China Sea have a questionable legal basis and Taiwan ultimately should conform to standards of international law in its claims. These positions correspond with the DPP's characteristic suspicions of Mainland China, and DPP statements on the South China Sea predictably do

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<sup>38</sup>Humanitarian Assistance and Disaster Relief, New Frontier Foundation Defense Policy Advisory Committee. Defense Policy Blue Paper No. 8. December 2014. <http://english.dpp.org.tw/wp-content/uploads/PUB-08.pdf>.

<sup>39</sup>Tsai was explicit in her statement regarding Taiping Island. In the original Chinese, she states that the DPP will not abandon or renounce Taiwan's Taiping Island sovereignty: “民進黨不會放棄太平島的主權。” She also directly linked the DPP's position on sovereignty in the South China Sea to international law, as demonstrated in the original statement in Chinese: “民進黨主張的是說，對於南海各方所作的主權主張...我們應該要依據國際法來處理。” In statements one might infer were directed at China, Tsai said that the DPP insists on the right of freedom of navigation and that the DPP does not accept any act of provocation. In the original Chinese, she stated: “不接受任何挑釁的行為。” CNA, “DPP has no plan to give up Taiping sovereignty: Tsai.” *The China Post* (May 27, 2015); 蔡守鈺, “蔡英文：不會放棄太平島的主權,” 即時報導, (May 26, 2015).

<sup>40</sup>When criticizing Ma, Wu specifically said, “同時任何南海方面的主權主張，都要依據國際法，尤其是聯合國海洋法公約。” In English, this translates to “At the same time, any aspect of [Taiwan's] South China Sea sovereignty claim must be in accordance with international law, particularly the United Nations Convention on the Law of the Sea.” Shih Hsiu-chuan. “S China Sea claims in line with law: Ma.” *Taipei Times* (May 28, 2015); 林修卉, “總統提南海和平倡議 吳釗燮：須說明是否與中國聯合,” 蘋果日報 (May 26, 2015)

not contain references to Chinese heritage as a reason for maintaining the South China Sea, but instead advocate the application of international law and using Taiwan's position in the dispute to improve its relations with other claimant states. As one scholar closely affiliated with the DPP explained, the DPP sees occupation of Taiping Island as an opportunity to work with other nations. When explaining the differences between KMT and DPP views on Taiping Island, he said, "the KMT says this is traditional territory, but the DPP thinks it is just leverage to do something with South China Sea countries."<sup>41</sup>

### 3.3.2 *Pan-Blue*

Taiwan's Pan-Blue Coalition is an alliance between three political parties: the Kuomintang (KMT), the People First Party (PFP), and the New Party (CNP). As a whole, the Pan-Blue Coalition tends to emphasize Chinese national identity, as opposed to a separate Taiwanese identity, and is more accepting of economic connections with Mainland China than its political opponents, the Pan-Green Coalition. Taiwan's current ruling party, the KMT, will be discussed first in this section. The section concludes with an outline of how groups and individuals that can be loosely grouped as Deep Blue tend to view Taiwan's South China Sea claims.

**The KMT.** The KMT, also known as the Chinese Nationalist Party in English, is Taiwan's current ruling party and the same party that fought the CCP in the Chinese Civil War and fled to Taiwan under the leadership of Chiang Kai-shek. As the current ruling party, many official actions by the ROC government might be used as evidence of the KMT position on the South China Sea. Even more narrowly, President Ma's views on the dispute are particularly telling of KMT thinking on South China Sea claims. A legal scholar specialized in maritime disputes, President Ma wrote his thesis at Harvard Law School on Taiwan's position in the East China Sea dispute. His views are therefore highly relevant when examining Taiwan's South China Sea claims. When taken as a whole, the KMT position reflects an identification with the Republic of China, meaning that the KMT still identifies with having a Chinese legacy, but that legacy is of a government separate from the People's Republic of China. Such a position emphasizes Chinese ancestry, but will

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<sup>41</sup>Interview. Taiping. June 2014

not rely on China's 9-Dash Line claim when justifying the claim and will rarely highlight any commonality in the claims made by both China and Taiwan. President Ma's views on Taiwan's South China Sea claim are a prime example of how this distinct ROC identity shapes KMT positions on Taiwan's claim.<sup>42</sup>

In a 2014 interview with the New York Times, President Ma said, "In 1947, the Republic of China published a map of its territories in the South China Sea, so our claim is very clear."<sup>43</sup> Here, President Ma is referring to the U-Shaped Line map, which was published in 1947. One might infer from Ma's wording that he views the map as a claim over territory, and not necessarily a historic waters claim. That impression is strengthened when combined with Ma's other statements on the subject.

In September 2014, President Ma spoke at the opening ceremony for "The Exhibition of Historical Archives on the Southern Territories of the Republic of China." During the ceremony Ma outlined Taiwan's activities and claims in the South China Sea. After listing recent activities, Ma stated, "Our government's actions in the South China Sea area are all peaceful, are not military, the purpose is to let our compatriots better understand our territory, the islands in the South China Sea."<sup>44</sup> Specific to the U-Shaped Line Map, Ma said:

*As early as year 24 of our republic, that is, in 1935, (we) announced the 'The Islands in the South China Sea Map.' After victory in the War of Resistance, in year 36 of our republic (1947), we recovered many of the islands occupied by the Japanese. At that time, we announced 'The Positions of the South China Sea Islands Map,' so our sovereignty claims over the South China Sea islands can be said to have started very early.*<sup>45</sup>

The map President Ma refers to as 'The Positions of the South China Sea Islands Map' is

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<sup>42</sup>The statement by MOFA's Jason Lien (連建辰), deputy director-general of MOFA's Department of Treaty and Legal Affairs, that Taiwan uses the 11-Dash Line and not China's 9-Dash Line is also reflective of this type of thinking (see footnote 10).

<sup>43</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?gwh=A8284DC3C560DAF774AEB60854D7A757&gwt=pay&r=0>.

<sup>44</sup>Author's translation, original statement in Chinese: "我政府在南海地區的作為是和平的，不是軍事的，目的在讓國人更加瞭解我國的領土南海諸島。" Video available at: <http://www.president.gov.tw/Default.aspx?tabid=131&rmid=514&itemid=33125>.

<sup>45</sup>Author's translation, original in Chinese: 我們早在民國24年，就是1935年，就公布「南海各島嶼圖」，以及在36年抗戰勝利後我們收復了許多遭日本占領的島嶼，那麼再公佈得「南海諸島位置圖」，所以我們對於南海群島，主權的主張，可以說在很早就開始了。

the now famous U-Shaped Line map, published in 1947 as the ROC sought to map land features in the South China Sea that were previously occupied by the Japanese. In Ma's description of the claim and of the map itself, he only emphasizes sovereignty over islands. There is no evidence in his speech of a historic waters claim, at least in relation to his description of the U-Shaped Line map. Moreover, Ma's explanation of the claim cites the actions of the ROC government in establishing the claim, as well as referencing that ancient people used these areas, an apparent reference to Chinese sovereignty over these areas since 'ancient times.' These statements demonstrate a KMT proclivity toward identifying with a Chinese legacy and the ROC, making this Chinese legacy distinct from that associated with the People's Republic of China.

During a May 2015 speech at the opening ceremony of the 2015 ILA-ASIL Asia-Pacific Research Forum, President Ma announced his South China Sea Peace Initiative (南海和平倡議). During his speech, he clearly and succinctly detailed his position on Taiwan's sovereignty claims in the South China Sea. His explanation is as follows:

*With respect to issues in the South China Sea, as I have repeatedly stressed in the past, the ROC government maintains that from the perspectives of history, geography, and international law, the Nansha (Spratly), Shisha (Paracel), Chungsha (Macclesfield Bank), and Tungsha (Pratas) Islands, as well as their surrounding waters, are an inherent part of ROC territory and waters. It is indisputable that the ROC enjoys all rights over them in accordance with international law. On this position, we have never wavered. In fact, the ROC has stationed personnel on Taiping Island, the largest natural island in the Nansha—the Spratly group—and the only island in that group that has fresh water, proving that it is fit for human habitation, and able to maintain its own economic life. We have thus demonstrated the exercise of ROC sovereignty in this region.<sup>46</sup>*

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<sup>46</sup>This excerpt of President Ma's speech comes from the official transcript on the Office of the President Republic of China (Taiwan) website. The transcript was posted in the news releases section and titled, "President Ma's remarks at opening ceremony of '2015 ILA-ASIL Asia-Pacific Research Forum.'" The transcript can be viewed here: <http://english.president.gov.tw/Default.aspx?tabid=491&itemid=34796&rmid=2355>. Although the speech was given in English, a Chinese version is also available on the Office of the President website. It can be viewed here: <http://www.president.gov.tw/Default.aspx?tabid=131&itemid=34788&rmid=514>. Although the Office of the President has at times posted versions of Ma's speeches which vary in content across the Chinese and English versions, for this excerpt the Chinese matches the English: 關於南海問題，如同本人過去一再強調的，中華民國政府的基本立場是：無論就歷史、地理及國際法而言，南沙群島、西沙群島、中沙群島、東沙群島及其周遭海域係屬中華民國固有領土及海域，中華民國享有國際法上的權利，不容置疑。此一堅定立場，從未改變。事實上，我國持續在南沙群島最大自然島太平島駐有人員，說明南沙群島唯一擁有淡水資源的太平島能維持人類居住並能維持其自身之經濟生活，是中華民國在此一區域行使主權的明證。

In this most recent statement, Ma again emphasizes an ROC claim over the land features included in the U-Shaped Line, but does not refer to the line itself, or to any historic waters claim. He does note that the ROC claim to these land features is based on international law, but does not explain how they are claimed under international law, apart from his description of the occupation of Taiping Island. The characteristics of Taiping Island cited by Ma, that Taiping has fresh water, is fit for human habitation, and is able to sustain economic life, is a clear reference to UNCLOS Article 121.<sup>47</sup>

The legal basis under which Ma claims Taiping Island appears to have some similarities to the DPP rationale. Ma is arguing that Taiwan's stationing of personnel on Taiping Island indicates ROC sovereignty over a land feature that fits the definition of an island, with the full maritime rights granted to an island. However, what is less clear from Ma's statement is under what basis Ma believes Taiwan has indisputable rights under international law to the other land features in the South China Sea. In fact, after Ma announced his South China Sea Peace Initiative, the DPP criticized his initiative for being vague. DPP Secretary General Joseph Wu emphasized that Ma must clarify his plan on two points: (1) whether or not the plan is a collaboration with Mainland China, with the potential to alienate Japan and (2) how the claim of sovereignty in the South China Sea conforms to international law. Ma responded to DPP criticisms by arguing that Taiwan established its claims before Mainland China, and therefore Mainland China follows Taiwan on this issue.<sup>48</sup> He further elaborated, "[e]specially on the South China Sea, the 'Location Map of the Islands in the South China Sea (南海諸島位置圖)' published in 1947 clearly states our claims." Ma added, "The claims

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<sup>47</sup>UNCLOS 121 provides the definition of an island under international law. UNCLOS 121 is as follows: Article 121: Regime of islands: 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. UNCLOS 121 can be viewed here: [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/part8.htm](http://www.un.org/depts/los/convention_agreements/texts/unclos/part8.htm).

<sup>48</sup>Wu's first criticism is arguably little more than politicking. There is scant evidence of collaboration between Mainland China and Taiwan on the issue of Ma's South China Sea Peace Initiative. In fact, when China's Foreign Ministry Spokesperson Hua Chunying was asked about Ma's initiative during her regular press conference, she gave a neutral if somewhat cold response. From the official English-language transcript: "We have noted the relevant "initiative" brought up by Taiwan. Chinese people across the Taiwan Straits are obliged to jointly safeguard national territorial sovereignty and maritime rights and interests, and maintain peace and stability in the South China Sea." Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference on May 26, 2015 can be viewed at: [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/2511\\_665403/t1267054.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/t1267054.shtml).

remain unchanged.”<sup>49</sup> This short exchange very clearly illustrates the differences between Taiwan’s two main political parties on the issue of South China Sea claims. While their legal explanations for sovereignty over Taiping Island have important commonalities, they differ on land features beyond Taiping. President Ma believes Taiwan has a legal claim under international law to the land features within the original 1947 U-Shaped Line claim, and he cites an ROC legacy in defending that claim. At the same time, the DPP questions the legal basis for any such claim. Finally, KMT rationales for keeping Taiping differ from DPP rationales. While the KMT views Taiping as an inheritance, valuable in its own right, the DPP emphasizes the strategic opportunities presented through Taiping.

It is worth noting, other observers paying close attention to President Ma’s statements on the South China Sea have concluded that Ma believes the U-Shaped Line applies to land features and related water rights, as opposed to historic waters rights. The Philippines’ Supreme Court Justice Antonio Carpio, an expert on the South China Sea dispute, has stated, “President Ma’s interpretation of the 9-dash lines drastically reduces the area of dispute from nearly the entire South China Sea to only the Spratly islands and their surrounding territorial seas, comprising less than 5% of the waters of the South China Sea.”<sup>50</sup> However, it is also worth noting this dissertation has not found evidence that President Ma’s interpretation is only limited to the Spratly land features and territorial waters surrounding them, rather than all the land features within the U-Shaped Line and other water rights based on land features such as an EEZ.

**Deep Blue.** In many ways, those to the right of center in Taiwan’s political system, who might be grouped loosely as the Deep Blue, tend to hold views of the South China Sea that are very similar to viewpoints held in the Mainland, particularly the views held by those who emphasizing historical justifications for a South China Sea claim. Beyond ideological similarities, professional and in-person connections between these two groups also tend to be close. Professor Fu Kuen-chen (傅成), a prominent Taiwanese scholar closely associated with the historic waters interpretation of the U-Shaped Line, is a prime example. Fu is currently a law professor at Shanghai Jiao Tong University Law School and

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<sup>49</sup>Shih Hsiu-chuan. “S China Sea claims in line with law: Ma.” *Taipei Times* (May 28, 2015)

<sup>50</sup>Victor C. Agustin. “COCKTALES: Carpio cites Taiwan leader in fight to stop China’s territorial grab.” *Interaksyon* (August 31, 2015)

an adjunct professor at Xiamen University Law School, both located in Mainland China. Before moving to the Mainland, Fu was a professor at National Taiwan University and a politician with the New Party, serving as national legislator and in government advisory roles.

Fu is an advocate of a historic waters claim in the South China Sea, and argues that Chinese naval expeditions, migration patterns, and the dominance of Chinese pirates in the South China Sea help establish Chinese traditional rights in the area.<sup>51</sup> In terms of the qualities of the 1947 U-Shaped Line map, Fu maintains that dashed lines were used to designate national boundaries at the time of the map's drawing, and that all later maps have referred to the line as a national boundary. In a recent commentary, Fu argued against scholars who say the line only designates South China Sea islands. He argues that the broken line was used to designate disputed national boundaries, and that saying the line only refers to the islands implies the islands themselves might be disputed (with the implication that this clearly cannot be the right interpretation).<sup>52</sup> In terms of how to define China's South China Sea historic rights, Fu provides a list of Chinese traditional rights in the South China Sea, including: "fishing, navigation, security control, anti-piracy, scientific research, environmental and resources, and other related ones." Fu says it may be possible

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<sup>51</sup>During one conference presentation, Fu explained that after the Yuan Dynasty, of Mongol ethnicity, "the Han people returned to the government and created the Ming Dynasty. Beginning from the Ming Dynasty, China entered a new era of glory, and Zheng He (郑和)...sailed with a fleet of 100, more than 100, vessels from China to East Africa, through all these areas, for seven times." Fu also highlights the migration of Chinese people to Southeast Asia, as well as rampant Chinese piracy in the South China Sea. Fu argues that Chinese pirates preferred the South China Sea because they had connections with the Chinese communities of Southeast Asia. Later, in 1933, the Republic of China government was motivated to put Chinese South China Sea claims into writing after French warships invaded nine South China Sea islands. The ROC eventually drew the 1947 U-Shaped Line map as part of the "blue enclosure" movement ignited in response to the Truman Proclamations of 1945. Fu explains, "Obviously as a feedback, as a response to the Truman Proclamation, the Chinese government had in its mind, in 1947, that some exclusive rights on the natural resources should be preserved for the Chinese people." Kuen-chen Fu. "The Chinese U-shaped Line & Its Historic Water in the SCS." *Canada, US & China: Maritime Security Issues International Conference* (University of Alberta, Edmonton, Canada, September 22, 2011)

<sup>52</sup>The above summary is a paraphrase of the original Chinese, which is as follows: 其次,有些大陆学者认为,U形线仅仅是一条“岛屿归属线”,这种说法并不完整。一是此一海域邻国众多,关系繁杂,故有区分海域而非仅区分岛屿主权之必要,中国其他海洋地区也没有划定“岛屿归属线”的习惯。第二,世界各现代国家一般多在海上划定海域界限者,甚少在海上仅划一岛屿归属线者。第三,此一U形线的划定时间是1947年,亦即美国杜鲁门在1945年宣布建立美国渔业保护区及大陆架之后的两年。与此同时,世界各国因杜鲁门宣言引发了海洋圈地。当时中国政府之主张,实此全球风潮的回应。第四,U形疆界线的名称、绘制方法,均与陆地上中国之疆界线无异,其位置正处于我国南海诸岛屿与邻国海岸线之间的中线,加以当时U线系由十一大段落之“断线”组成,足以证明当时划U形线时,将其认定为中国在此海域的“未定疆界”,仍然保留了未来与邻国正式签订疆界线的弹性。倘若将U形线解释为单纯的“岛屿归属线”,则此种“断线”的“未定性格”将难以自圆其说——难道中国政府认为线内诸岛屿之主权归属“未定”,仍有与邻邦谈判区分的弹性吗? 傅成,“傅成:南海U形疆界线的法律性质,” 社会观察, 2014年第03期, pages 55-57.

that other countries in the region have their own historic water claims, even overlapping with China's, and therefore the countries should have bilateral negotiations and agreements, similar to the agreements China has negotiated for its land boundaries.<sup>53</sup>

Fu's explanations of the U-Shaped Line also make clear his own sense of identity. When explaining why the U-Shaped Line should not be considered a designation of internal waters, Fu says, "The Chinese government, from the Ming Dynasty, or even early Yuan Dynasty, when Mongolians were in Beijing, we never hindered the freedom of navigation, of any people, any country." Fu is from Taiwan, but refers to the actions of the Chinese government as "we." Fu also sees no reason to separate the PRC and ROC claim. He argues that the designation "9-Dash Line" is inadequate, as the 1947 version with 11 dashes predates the nine-dash version by roughly ten years. Fu argues this is giving up ten years on the claim.

On September 24, 2014, China's state-run Global Times newspaper ran an editorial by Chiu Yi (邱毅), a former KMT legislator and People's First Party candidate, who is well known for his public campaigns against DPP officials. In an apparent response to reports that the DPP might drop the U-Shaped Line claim if they regain the presidency (discussed in greater detail below), Chiu argued that Taiwan cannot and should not drop the U-Shaped Line claim. Chiu's version of Taiwan's claim differs markedly from other accounts, in that he claims both Taiwan and China use the same nine-dash line claim. He stated, "In 1947, the Republic of China drew the 11-dash line. The People's Republic of China continued to use this line. Then in 1953 it was adjusted into the nine-dash line." On the overall similarities he states, "... both the mainland and Taiwan use the nine-dash line as the boundary line of the South China Sea." Chiu went on to argue that Taiwan must side with Mainland China in the South China Sea dispute:

*Taiwan cannot avoid being involved in this dispute. 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. Otherwise it will hurt the interests of the mainland and destroy the peaceful development of relations between the two sides. . . . Meanwhile, the nine-dash line has been clearly written in the current "constitution" and textbooks in Taiwan. If Ma gives up the nine-dash line, he will violate the "constitution" and be treated with contempt*

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<sup>53</sup>Kuen-chen Fu. "The Chinese U-shaped Line & Its Historic Water in the SCS." *Canada, US & China: Maritime Security Issues International Conference* (University of Alberta, Edmonton, Canada, September 22, 2011)

*by the pan-blue public.*<sup>54</sup>

The excerpts above, along with Chiu's background, demonstrate the relationship between his views on Mainland China and his views on the South China Sea claim. With clear connections to the Mainland, demonstrated both through his previous affiliation with the People First Party and his ability to publish an editorial in a state-run Chinese newspaper, Chiu advocates an expansive claim based on the U-Shaped Line. Moreover, he presents his belief that Taiwan has already embraced the Mainland's nine-shaped line claim, and that the claims are essentially the same.

Chiu's viewpoint is in line with officials in Mainland China. In response to the same reports about Taiwan potentially dropping the U-Shaped Line claim, Ma Xiaoguang of China's Taiwan Affairs Office (TAO) said,

*Our attitude is very clear. The South China Sea Islands and their adjacent waters are China's inherent territory. Safeguarding China's sovereignty and territorial integrity, and safeguarding the overall interests of the Chinese nation, is the common responsibility of compatriots on both sides.*<sup>55</sup>

When answering a related question about the cooperation between Taiwan and Mainland China in the East China Sea, Spokesperson Ma said that Taiwan and China are "blood brothers."<sup>56</sup>

### 3.4 Moderating Factors

As Figure 3.3.1 and the preceding discussion illustrate, there is a broad range of viewpoints within Taiwan as to Taiwan's proper South China Sea claim. Despite this broad range of

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<sup>54</sup>Chiu Yi. "Taiwan abandoning nine-dash line in South China Sea would be disastrous." *Global Times* (September 24, 2014), <http://www.globaltimes.cn/content/883219.shtml>. The quotations used around the word "constitution" in the excerpt is the style used in Mainland China when referring to any governing body or institution in Taiwan, as the Republic of China government is not recognized in Mainland China.

<sup>55</sup>Here, "both sides" means both sides of the Taiwan Strait, as in both China and Taiwan. Taiwan Affairs Office Press Conference on September 24, 2014. 国台办新闻发布会辑录(2014-09-24), [http://www.gwytb.gov.cn/xwfbh/201409/t20140924\\_7449368.htm](http://www.gwytb.gov.cn/xwfbh/201409/t20140924_7449368.htm).

<sup>56</sup>The full text of the relevant questions and answers, in the original Chinese, during this press conference are as follows: 中国国际广播电台记者: 日前, 美国前驻台人士司徒文针对南海主权争议问题表示, 台湾应该放弃南海“九段线”的主张, 请问发言人对此如何评价? 马晓光: 我们的态度很清楚。南海诸岛及其附近海域是中国的固有领土。维护中国主权和领土完整, 维护中华民族的整体权益, 是两岸同胞共同的责任。香港凤凰卫视记者: 前几天两岸公务船携手在钓鱼岛救起了大陆渔民, 请问以后双方会不会有进一步的合作? 会不会在更大范围, 包括防务机制交流方面会有所推进? 马晓光: 确实, 前不久两岸公务船共同营救遭遇灾害的大陆渔民。这说明, 这些年来, 在海上共同救助方面两岸合作取得的进展, 也体现了两岸同胞是骨肉兄弟这样一种特殊的人道主义关怀。

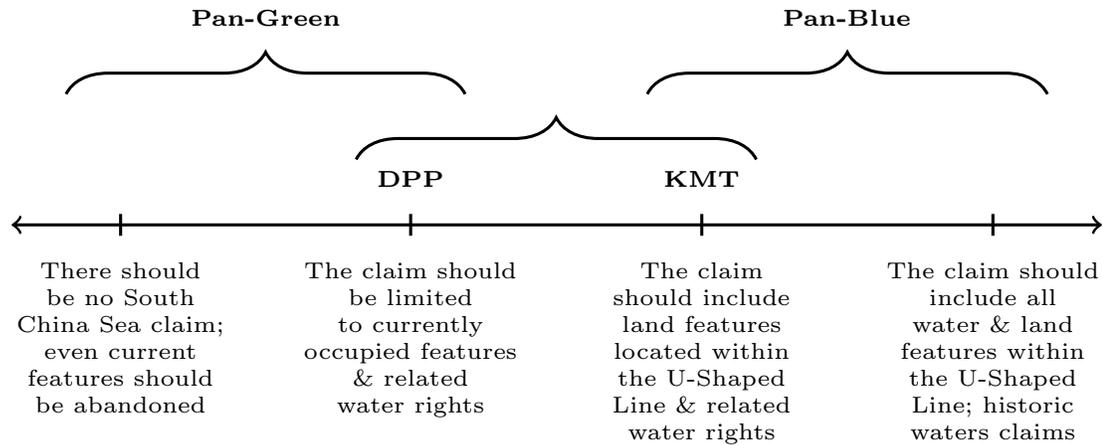


Figure 3.4.1: Taiwan's Two Main Political Parties Compared to their Bases

viewpoints, each political party takes a relatively moderate approach to Taiwan's claim. The DPP consistently emphasizes that Taiwan's claim must adhere to international law, deemphasizes connections to China and the U-Shaped Line, and in many ways limits their South China Sea claim to Taiping Island. The KMT emphasizes justifications of both history and international law, while maintaining a claim to the land features within the U-Shaped Line, and to maritime rights that can be based on those land features. As illustrated in Figure 3.4.1, both parties take positions further to the center than the average of the coalitions they represent.

What Figure 3.4.1 illustrates is that Taiwan's main political parties must always work to appeal to their bases while also ensuring their policies do not upset Taiwan's relationships with foreign governments, both because of the pressure foreign governments can place on Taiwan but also because these relationships are of central concern to Taiwan's public. For the DPP, this means staying away from policies that are too closely connected to Taiwanese independence, as that might upset cross-Strait relations. For instance, during her current presidential candidacy, Tsai Ing-wen has been plagued with demands that she clarify her position on cross-Strait relations, a struggle for any DPP candidate as the DPP must cater to its pro-independence constituencies while also selling itself as a mainstream party capable of maintaining good foreign relations amid a potentially volatile cross-Strait relationship. In one interview, a previous DPP official who worked during Chen's Administration explained that President Chen would have been more explicit about his rejection of the U-Shaped

Line and claims over South China Sea land features other than Taiping Island, were it not for pressures on the DPP to appear moderate. As the official explained, “Chen could not publically say he would abandon the islands [South China Sea land features other than Taiping Island], because we would be criticized as being an independence party, so we just put some hints [in the Spratly Initiative and other policies].”<sup>57</sup>

For the KMT, a pressure to be moderate entails not appearing too close to China, as this might concern foreign governments such as Japan and the US, but as the Sunflower Movement illustrates, becoming too close to China can also concern domestic audiences. As one Ministry of Foreign Affairs (MOFA) official elaborated, “There is a common expression of knowledge [within the Taiwanese government] that if you mess up relations with any of the three: Japan, China, or the US, all three will think you are a troublemaker. We have to keep good relations with all three.”<sup>58</sup> Officials emphasize that Taiwan should avoid angering China but must also ensure that other countries, such as the US or Japan, do not suspect Taiwan is moving too close to China. As another official explained, the ROC government feels constant pressure to “say something to let Japan and the US see that Taiwan is not standing with China.”<sup>59</sup> As the description of the Deep Blue positions presented above illustrates, if the KMT took a position that was closer to an average of its coalition members, that position would undoubtedly appear close to Mainland China, and would no doubt increase already present criticisms from both international and domestic audiences that the KMT is too close to Mainland China in the South China Sea.

### 3.5 *Conclusions*

Literature examining the South China Sea dispute, while quite extensive, often neglects detailed analyses of Taiwan’s position in the dispute. This is unfortunate, as Taiwan’s dynamic political environment provides important evidence on how claim characteristics are determined.

Similar to China’s South China Sea claim, the historical narrative the ROC draws upon

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<sup>57</sup>Interview. Taipei. June 2014

<sup>58</sup>Interview. Taipei. February 2014

<sup>59</sup>Interview. Taipei. January 2014

does not readily match standard applications of international law, resulting in disagreement at the domestic level over Taiwan's appropriate claim. Where Taiwan is distinct is in the complications added to the process by Taiwan's contested national identity, as some within Taiwan dispute whether or not Chinese history is even applicable to Taiwan's claims. However, key differences between positions on the claim still align with either a focus on international law or on historical narrative as a justification, just as in China's South China Sea claim. The DPP advocates a claim based more directly on legal justifications, while the KMT combines both international law and historical justifications when expressing its claims. When comparing the Pan-Green to those in the Pan-Blue, these differences become even more pronounced.

This overview also provides evidence that the range of viewpoints within Taiwan concerning its South China Sea claim is broad, and that Taiwan has a relatively flexible system in that many viewpoints are allowed and changes in the claim are comparatively easy, being at least partially based on electoral outcomes and the decisions of parties in power, such as President Chen's decisions to freeze Taiwan's South China Sea Policies and the historic waters claim. As a whole, Taiwan's claim remains ambiguous, but official descriptions of the claim fluctuate between the positions of Taiwan's two main political parties, the DPP and KMT, based on which party is currently in power. The DPP and KMT both experience pressure to keep their positions moderate, and evidence indicates Taiwan's South China Sea official policy may also change in the future if the DPP returns to power.

# Chapter Four

## CHINA'S CLAIMS IN THE EAST CHINA SEA

### 4.1 *Introduction*

Although China's claim in the East China Sea has many different components, official explanations of the claim, media coverage, and public demonstrations primarily center on China's territorial claims to the Diaoyu Islets, land features located in the East China Sea that are also claimed by Japan and Taiwan.<sup>1</sup> Japan currently administers the islets, after the United States returned administration of the land features to Japan in 1971 as part of the Okinawa Reversion Agreement. China refutes Japanese sovereignty over the islets, arguing the land features have been an inherent part of China since the Ming and Qing dynasties. In recent years, the dispute has risen in saliency, incentivizing the Chinese government to carefully document and articulate its claims in the East China Sea, which has created a wide range of information for studying China's approach to explaining and justifying territorial and maritime claims. China's explanations of Diaoyu sovereignty, as well as its broader claims in the East China Sea, provide an important case study of territorial and maritime claims.

Comparing China's claims in the South China Sea and the East China Sea reinforces the central finding of this dissertation, that when a straightforward application of international law allows a state to claim the area outlined by national historical narratives as being part of national territory, the claim will be relatively unambiguous and statements of that

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<sup>1</sup>These land features are referred to as Diaoyu (钓鱼) or Diaoyu Dao (钓鱼岛) in China, which literally translates to "Fishing Island" and is also the name of the largest land feature in the group. In Taiwan they are called Diaoyu Tai (钓鱼台), which means fishing platform. In Japan they are called the Senkaku.

claim will be largely consistent across different actors. Whereas China's claim in the South China Sea has different expressions across different actors, due to difficulties in combining international law and historical narrative, China's East China Sea claim is very consistent in its expressions. This is true with one exception – historical conceptions of China's imperial tributary system have led some within China to openly question Japanese sovereignty over Okinawa. While references to Okinawa in connection to China's East China Sea claim are currently very limited, they are an important reflection of the role of historical justifications in shaping claims, as at least in this case, a historical narrative seems to lend itself to an expansive claim. Another important point of comparison is the differences between China's approach to its maritime and territorial claims historically compared to its approach now. Evidence from both Chapter Two and this chapter indicate that China's maritime claims were more volatile during Mao Zedong's personalist rule. Comparing China's East China Sea claim with Taiwan's East China Sea claim also provides important evidence on the making of territorial and maritime claims. While both China and Taiwan have strikingly similar claims in the East China Sea, within Taiwan there is open questioning of Taiwan's claim, with many going so far as to advocate aspects of the Japanese position. Research for this dissertation has been unable to locate instances of a pro-Japanese position being expressed in Chinese politics. This difference arises because of two interrelated factors. First, the nationalistic political environment within China discourages open challenges to China's claims, unless those challenges are more expansive and nationalistic, such as an expansion of the claim to include Okinawa. The same is not true within Taiwan, where pro-Japanese viewpoints are not always popular, but are nonetheless permissible. Relatedly, national identity is contested in Taiwan, where some people identify more with Japanese heritage than Chinese heritage, while national identity is not contested in the same open manner in China. Taiwan's identity politics ensures that historical justifications are questioned, as the history relevant to such considerations is disputed.

To better clarify China's claim and the domestic environment surrounding this claim, the chapter will proceed as follows. First, official statements of China's East China Sea claim will be discussed. As mentioned above, these statements provide a coherent and consistent narrative of China's claim, apart from some uncertainty regarding Okinawa.

Second, an overview of the relationship between China's East China Sea claim and public nationalism will be provided. China's nondemocratic and nationalistic political environment permits little questioning of the claim, but does facilitate eager demonstrations of Chinese sovereignty by many within China. The chapter concludes with a summary of findings.

## 4.2 *Overview of China's East China Sea Claim*

China's sovereignty claim in the East China Sea over the Diaoyu Islet land features is relatively consistent and coherent, and the Chinese government has provided ample explanation in both English and Chinese as to the claim and its justifications. However, during previous instances in which the East China Sea issue arose, there has been some uncertainty surrounding China's maritime claims.<sup>2</sup> For example, on December 22, 2001, the Japanese Coast Guard pursued and exchanged fire with a ship flying Chinese flags and decorated with Chinese characters, which the Japanese nonetheless believed was a North Korean spy ship. As a result of the encounter, the suspected spy ship sank and all fifteen crewmembers were lost.<sup>3</sup> Media reports on the encounter varied, but the Chinese government was at least initially under the impression that the ship was pursued and sank in Chinese waters. A Chinese Ministry of Foreign Affairs statement is very telling of the Chinese perspective on claims in the East China Sea at this time:

*China's and Japan's exclusive economic zone and continental shelf boundaries in the East China Sea have not yet been delineated, but the location of the December 22nd exchange of fire and ship sinking is on the Chinese side of the two sides overlapping maritime claims. China has expressed serious concern about Japan's use of force while pursuing an unidentified vessel, and about the sinking of a ship in the exclusive economic zone of China. We are asking the Japanese side to provide further information on the situation.*<sup>4</sup>

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<sup>2</sup>It should be noted that the Chinese government has been relatively consistent on its explanation of Diaoyu sovereignty since 1971, when it issued a statement denouncing the Okinawa Reversion Agreement. This statement and China's Diaoyu claim will be discussed in greater detail below.

<sup>3</sup>For media coverage on the encounter, see: Jonathan Watts. "Japan defiant over boat sinking." *The Guardian* (December 24, 2001); James Brooke. "North Korea Calls Japan's Sinking of Mystery Boat 'Brutal Piracy'." *International New York Times* (December 27, 2001)

<sup>4</sup>Author's translation, original in Chinese: 中日两国在东海海域专属经济区和大陆架的界线尚未划定, 但是12月22日发生交火和沉船事件的地点在双方主张重叠海域之外的中方一侧。中方已对日方在追击不明国籍船只过程中使用武力, 和该船在中国专属经济区内沉没的事件表示了严重关切。我们正在要求日方进一步通报有关情况。

As the above statement indicates, China's foreign ministry openly acknowledged uncertainty about China's jurisdictional boundaries in the East China Sea, and Japanese military actions that resulted in the sinking of a ship and the death of its crew was met with a relatively restrained statement about "serious concern." Current statements on Chinese claims in the East China Sea, as will be illustrated in more depth below, do not express uncertainty about the claim and are clear in their opposition to Japan's presence in the area, let alone military activities by the Japanese Coast Guard.

Greater precision over time in China's statements on its East China Sea claim can be attributed to at least two factors. First, as will be discussed further in the next section on China's continental shelf claim in the East China Sea, the scientific aspects of measuring a continental shelf and submitting that claim to the United Nations is time consuming. As with other countries making extended continental shelf claims, solidifying the boundaries of such a claim takes a significant amount of time, and uncertainties about a country's exact maritime boundaries will exist while scientific research is ongoing. Second, the saliency of the East China Sea dispute has risen in recent years. A wide range of factors might explain this increased saliency, but two particular events are often cited as heightening tension in the dispute. First, in 2010, the Japanese Coast Guard arrested the crew of a Chinese fishing boat after their fishing ship collided with two Japanese Coast Guard vessels near the Diayu Islets. While the crew was quickly released, the Japanese held the captain in custody, leading to severe strains in Sino-Japanese relations and backlash against Japan among the Chinese public.<sup>5</sup> Second, in 2012, the Japanese government purchased the disputed islets from a private Japanese owner. While evidence indicates the Japanese government hoped to avoid further escalation through the purchase, the opposite resulted.<sup>6</sup> No matter the exact cause, heightened tensions have caused the Chinese government to carefully craft a wide range of statements on the dispute, producing a unified approach to how the claim should be explained and justified within the Chinese government.

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<sup>5</sup>For an example, see: Martin Fackler and Ian Johnson. "Arrest in Disputed Seas Riles China and Japan." *International New York Times* (September 19, 2010)

<sup>6</sup>For an in-depth discussion of Japanese motivations behind the purchase of the Diaoyu/Senkaku islets, see: "Dangerous Waters: China-Japan Relations on the Rocks." *International Crisis Group*, Asia Report No. 245 (April 8, 2013)

Much of the information in this description of China's claim is drawn from websites created by the Chinese government as well as official statements issued by Chinese government agencies and officials. One source heavily drawn on in this chapter is the State Oceanic Administration's official Diaoyu website, and the establishment of this website provides a picture of the politics involved in the production of this information. In December 2014, the Chinese government launched this Diaoyu website to publicize its claims over the Diayu Islets. Located at [www.diaoyudao.org.cn](http://www.diaoyudao.org.cn), it is likely a response to the Japanese website detailing Japan's claims, which has been up since soon after the Japanese purchase of the Diayu Islets in 2012. Initially only in Chinese, China's website is now in English and is run by the National Marine Data and Information Service, part of China's State Oceanic Administration. As media coverage of the website has indicated, expanding the website to English and Japanese helps to tell China's version of events in the East China Sea. In one story about the website, Yang Bojiang, deputy director of the Institute of Japanese Studies under the Chinese Academy of Social Sciences, explains that the English and Japanese versions have important significance, "[w]hat the international community really needs is the truth and facts regarding the islands. The versions in English and Japanese present critical historical details of the Diaoyu Islands in a reasoned and acceptable way."<sup>7</sup>

As it is expressed throughout official Chinese statements on the dispute, China's East China Sea claim draws on justifications from both international law and historical narrative. As plotted in Figure 4.2.2, China maximizes its legal explanations in this claim, and although the claim does have components relevant more directly to historical justifications than legal, international law allows China to claim the areas historical justifications would include, with one possible exception. A minority view within China questions the status of Okinawa, and provides some limited evidence of a claim greater than permitted by international law, and based on historical narrative. This preliminary evidence is designated with an "x" on Figure 4.2.2. However, such evidence should not be construed as disagreement over the claim, as the claim is consistent and oft repeated across many different sources.

China's claim includes four main components: an extended continental shelf claim based on international law as detailed in UNCLOS, a territorial claim to the Diayu Islets which

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<sup>7</sup>Zhang Yunbi. "Website spreads Diaoyu messages." *China Daily* (March 5, 2015)

Figure 4.2.1: Diaoyu Islets Map Published by CCTV (China Central Television)



*In 2012, after the Chinese government published a white paper titled, “Diaoyu Dao, an Inherent Territory of China,” CCTV (China Central Television), China’s state television broadcaster, developed a website explaining and displaying information from the report. The map provided above was published on that website. An English version of the website, including the above map, can be viewed at: [english.cntv.cn/special/diaoyuchina](http://english.cntv.cn/special/diaoyuchina).*

draws on both historical and legal justifications, a claim to the Diaoyu Islets as a function of China’s sovereignty over Taiwan, and an exclusively historical open challenge to Japan’s sovereignty over Okinawa. This section covers each of these aspects in turn, concluding with a section on how China’s actions in the East China Sea also help to characterize its claim. As there is such a wide range of information available on China’s East China Sea claim, the following description can only be viewed as an overview.

**With no occupation of any land features:**

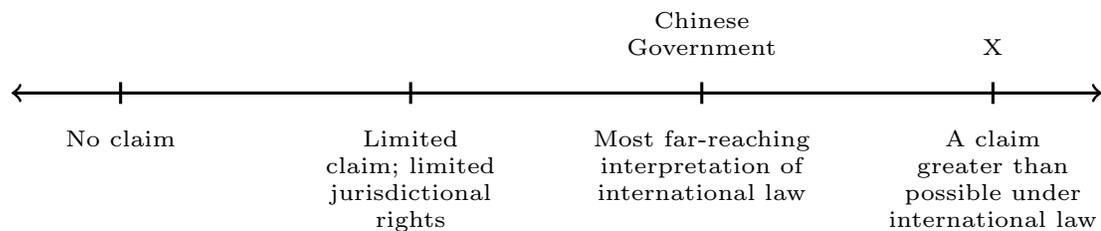


Figure 4.2.2: Range of Viewpoints on China’s East China Sea Claim

#### 4.2.1 *East China Sea Extended Continental Shelf*

While it receives little attention in media or scholarly work, China's claim to an extended continental shelf is a central component of its East China Sea claim, and this portion of the claim represents a relatively straightforward effort to apply international law to the dispute. Moreover, this continental shelf claim includes within it the entire area China claims through historical justifications (putting aside the issue of Okinawa).

UNCLOS allows every coastal country a 200 nautical mile (nm) continental shelf, granting the coastal state rights to exploitation and regulation of resources within the seabed and subsoil of that 200 nm area. UNCLOS also allows coastal countries the right to claim a continental shelf beyond 200 miles, when the ocean floor naturally extends the coastal state's continental shelf. China has opted to pursue an extended continental shelf in the East China Sea, arguing that the East China Sea continental shelf is a natural prolongation of China's land mass. China's continental shelf claim overlaps with Japan's EEZ claim in the East China Sea, and also has implications for the status of the Diaoyu land features.<sup>8</sup>

Countries claim extended continental shelves by making submissions to the United Nations Commission on the Limits of the Continental Shelf (CLCS), which was established by UNCLOS. The CLCS will review submissions and issue recommendations, although the CLCS can only issue scientific opinions. The CLCS cannot adjudicate between Japan's and China's legal claims, but it is a mechanism by which countries can register claims with the United Nations and receive feedback on their scientific findings. Moreover, the CLCS cannot issue opinions on sovereignty over territory, so it will not issue an opinion on ownership of the Diaoyu Islets. In fact, all sovereignty disputes over land features are beyond the authority of UNCLOS.

Thus far, China has made two submissions to CLCS, one in 2009 and one in 2012, while

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<sup>8</sup>An EEZ and a continental shelf represent two separate systems of rights, while they exist in the same 200 nautical mile area. Therefore, an extended continental shelf does not extend a coastal country's EEZ. While each system grants rights to resource exploitation, they have some subtle differences. For instance, the EEZ includes the rights to regulate pelagic fish (those not living near the shore or the bottom, but living in the water column), while the extended continental shelf does not. The extended continental shelf focuses on the exploitation of resources within the seabed and subsoil, such as petroleum. For more information, see: *U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs*. "Extended Continental Shelf Fact Sheet." (March 9, 2009), <http://www.state.gov/e/oes/rls/fs/2009/120185.htm>

still reserving the right to make future submissions. The 2009 submission was submitted days before the May 2009 deadline for countries such as China that ratified UNCLOS in 1996, and the 2012 submission added greater detail to China's extended shelf claim.

In the executive summary of its 2012 submission, China explains that the East China Sea is a combination of three distinct geomorphologic units: the continental shelf, the slope and the Okinawa Trough. Most importantly, China argues that the continental shelf of the East China Sea is the natural prolongation of China's landmass. China argues that based on the continental shelf's gradation, plate tectonics and geological features, the East China Sea shelf should be viewed as a unified whole with Mainland China, whereas the Okinawa Trough is a separate and distinct feature based on these same factors. Ultimately, China is arguing that the Okinawa Trough is the natural termination of China's continental shelf, and that China has continental shelf rights up to the Okinawa Trough.<sup>9</sup>

While China relies on continental shelf provisions in UNCLOS to justify its maritime claims in the East China Sea, Japan emphasizes EEZ rights. Japan has not claimed a full 200 nautical mile EEZ in the East China Sea, but draws a median line between its coast and China's coast, arguing that the median line principle should be used to resolve China's and Japan's overlapping maritime claims in the East China Sea. Yet even with Japan foregoing a full 200 mile EEZ, there is still significant overlap between the two country's claims, including the area of the Diaoyu Islets. Instead of the median line principle, China has argued that the East China Sea dispute should be solved through principles of equity, which would factor in geography and social factors, such as the length of China's coast, in deciding the outcome of the dispute.

As mentioned above, UNCLOS does not speak to sovereignty disputes over land features, and the CLCS will not issue an opinion on the Diaoyu islet dispute. However, both China and Japan have taken China's submission as an opportunity to emphasize their respective positions on the disputed features. When China submitted its 2012 submission to CLCS, the Japanese government responded with a note verbale stating that China's submission to the CLCS should not be considered, as there is less than 400 nautical miles between

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<sup>9</sup> "Submission by the People's Republic of China Concerning the Outer Limits of the Continental Shelf beyond 200 Nautical Miles in Part of the East China Sea: Executive Summary," English translation available at: [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/chn63.12/executive%20summary\\_EN.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/chn63.12/executive%20summary_EN.pdf)

Figure 4.2.3: Map Included in China's 2012 Submission to the CLCS

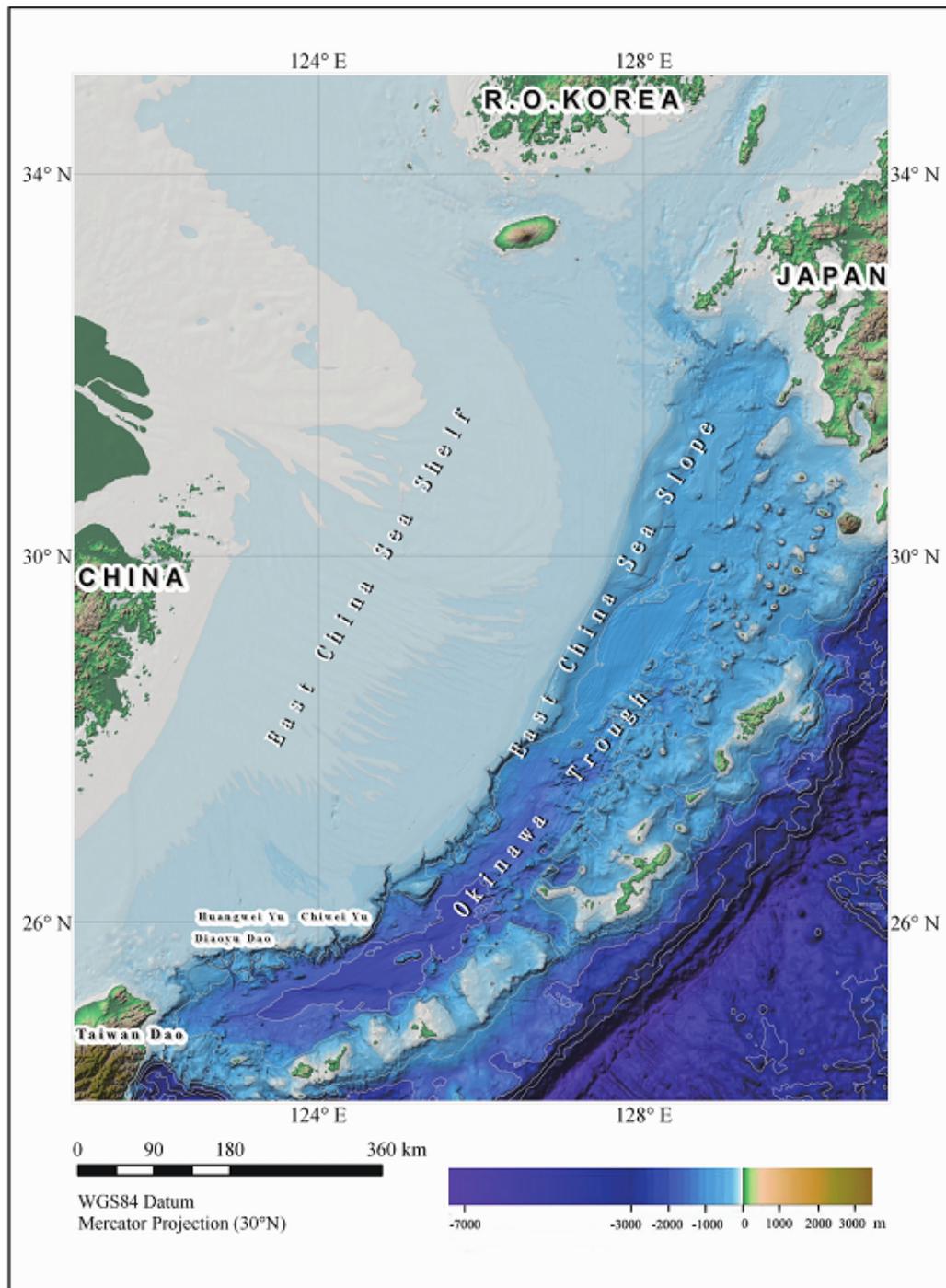


Figure 4.2.3, above, was included in China's 2012 CLCS submission on page 4 and was labeled, "Figure 1 Geomorphologic map of ECS." In this image, China provides evidence for its claim that the East China Sea continental shelf is a natural prolongation of Mainland China. China argues that the East China Sea shelf is generally flat with a gradual gradient, which abruptly decreases in depth in the south and more gradually declines at the East China Sea slope in the north. In this map, the Diaoyu Islets are labeled in the bottom left portion of the map, and are included within the area China claims as its continental shelf.

Japan's and China's respective coasts. Therefore, Japan argues, China cannot unilaterally establish its continental shelf in the area, and maritime delimitation must be determined by agreement of the two parties. Japan also argued that “[t]here is no doubt that the Senkaku Islands are an inherent part of the territory of Japan in light of historical facts and based upon international law. The Senkaku Islands are under the valid control of Japan.”<sup>10</sup> China immediately responded to Japan's statement with a note verbale of its own, arguing, “Diaoyu Dao and its affiliated islands have been inherent territory of China since ancient times.”<sup>11</sup>

#### 4.2.2 *Sovereignty Claim to the Diayu Islets*

Whereas China's extended continental shelf claim receives little media or scholarly attention, China's position on the Diayu Islets is well documented and highly publicized.<sup>12</sup> From this wide range of available information, a coherent and consistent narrative emerges, and this narrative combines both historical and legal justifications. While different actors may emphasize different pieces of evidence, the complementary nature of historical and legal justifications regarding this aspect of China's East China Sea claim ensures that there is little disagreement on the claim within China. As one Chinese scholar noted, within China, there is “no one who argues Diaoyu is not China's.”<sup>13</sup>

Generally speaking, there are two possible paths for China to take when establishing its legal claim to the Diayu Islets, and China has been careful to provide evidence for both. The first option is to argue through UNCLOS that Diaoyu is a land feature appertaining to China's (or Taiwan's) continental shelf, and therefore cannot be the sovereign territory of another country.<sup>14</sup> As will be discussed in the next chapter, Taiwan has explicitly taken this approach when establishing its East China Sea claim, going so far as to indicate that

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<sup>10</sup>Japan's *note verbale* dated December 28, 2012 can be viewed at: [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/chn63\\_12/jpn\\_re\\_chn\\_28\\_12\\_2012.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/chn63_12/jpn_re_chn_28_12_2012.pdf)

<sup>11</sup>China's *note verbale* dated January 7, 2013 can be viewed at: [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/chn63\\_12/chn\\_re\\_jpn07\\_01\\_2013e.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/chn63_12/chn_re_jpn07_01_2013e.pdf)

<sup>12</sup>One Chinese scholar suggested during an interview that Diaoyu sovereignty is emphasized more than other aspects of the East China Sea claim because the history of the dispute stands out in Japan-China relations. Interview. Washington DC. September 2015

<sup>13</sup>Interview. Shanghai. April 2014

<sup>14</sup>The Philippines is making a similar argument with respect to land features claimed by China in the South China Sea.

Taiwan does not believe the Diaoyu (Diaoyutai) Islets qualify as islands according to the qualifications of UNCLOS Article 121.<sup>15</sup> As discussed in the previous section, China does leave this option open in its descriptions of its extended continental shelf claim.

The second option is for China to demonstrate it has the territorial title to Diaoyu. While China has provided evidence for both legal avenues, the argument that China is the rightful owner of the Diaoyu Islets has been made more prominently, perhaps because this path allows for an argument that combines both history and international law. China has argued its title predates Japanese claims to the Diaoyu, and that when the Ming and Qing Dynasties originally incorporated the Diaoyu, the Diaoyu land features were *terra nullius*, or territory not subject to the ownership of any state. This is ownership through occupation, as described in Chapter 1. Japan makes a similar argument in support of its ownership, only Japan argues that when it incorporated the territory in 1895, the territory was at that time *terra nullius*, and that the Chinese had not previously established title through occupation.<sup>16</sup> China counters that Japan annexed the islets secretly and with the awareness that the land features were already claimed by China. According to China, Japan's only possible claim to the islets was as islands appertaining to Taiwan, as China ceded Taiwan to Japan in the Treaty of Shimonoseki, which was also in 1895 and ended the Sino-Japanese War. Therefore, according to China, Japan lost any claim to the islets when Taiwan and its appertaining land features were returned to Chinese sovereignty after World War II as part of the Cairo Declaration and the Potsdam Proclamation. China argues that Japan now illegally occupies the islets, having lost any claim to the land features when it promised to return any territory annexed as part of its imperialistic rise.<sup>17</sup>

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<sup>15</sup>Wang, "The ROC's Maritime Claims and Practices with Special Reference to the South China Sea."

<sup>16</sup>Japan also presents a consistent and coherent claim to the Diaoyu/Senkaku. Japan claims that in 1885 it began investigating the status of the land features, and determined in 1895 that the islets were *terra nullius*, without ownership, and therefore incorporated the islets into Okinawa prefecture. Japan argues that the treaties ending World War II were not applicable to the disputed Diaoyu/Senkaku land features, as the islets had already been lawfully incorporated into Okinawa prefecture in a move separate from the Treaty of Shimonoseki and the resolution of the Sino-Japanese War. Japan also argues China's historical evidence is not sufficient to demonstrate sovereignty over the land features during the Ming and Qing dynasties. The Japanese government has established websites to document and justify its claims. For further information on Japan's East China Sea claims in English, see: <http://www.mofa.go.jp/region/asia-paci/senkaku/>

<sup>17</sup>For a brief summary of this argument in Chinese, including China's perspective on its continental shelf as well as Diaoyu sovereignty, see page 7 in the following: 傅岷成, "中国周边大陆架的划界方法与问题," 中国海洋大学学报 (社会科学版), [Journal of Ocean University of China (Social Sciences Edition)], 2004 年第3期:5-12.

Without assessing whether Japan or China has the stronger claim to title over the Diaoyu/Senkaku, it is fair to say that both have evidence that meets minimum standards for claiming territory in terms of international legal principles for acquiring title. On the surface, neither claim should be considered expansive. However, the evidence China presents in support of its argument is a combination of data, some of which may be more appropriately thought of as related to historical justifications than legal justification, strictly speaking. That is to say, some history is relevant to international law, such as historical evidence that establishes occupation and control of a disputed territory. Some evidence is more generally related to historical justifications for territory, in that it does show some historical connection to a place but does not demonstrate a connection directly relevant to the specific legal standards for territorial acquisition.

China often references specific categories of evidence in support of its Diaoyu claim, such as China's Ming and Qing dynasties placing the Diaoyu Islets on maps and giving them names, along with historical evidence indicating that these same dynasties exploited resources in the area or set up administrative areas surrounding the Diaoyu. Chinese government agencies presenting such evidence on Diaoyu repeat much of the same language in explaining their conclusions. For example, in information on China's Diaoyu claim compiled and presented by China's National Marine Data and Information Service, the government agency sums up the evidence that Diaoyu is part of China by stating:

*Diaoyu Dao has been China's inherent territory since ancient times. Numerous documents and historical evidence attest to the fact that Diaoyu Dao and its affiliated islands were first discovered, named and exploited by the Chinese people. Diaoyu Dao has been part of China's territory since the early years of the Ming Dynasty. Chinese fishermen have exploited the islands and their adjacent waters for generations.*<sup>18</sup>

In the above excerpt, China is using fishing and resource extraction as evidence of sovereignty over the Diaoyu, but this type of evidence seems more appropriate to a claim of historic fishing rights than territorial title over the Diaoyu, as it does not necessarily demonstrate occupation and effective control over the Diaoyu.<sup>19</sup>

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<sup>18</sup>*The National Marine Data and Information Service of the People's Republic of China.* "Diaoyu Dao, An Inherent Territory of China." English version available at: [http://www.soa.gov.cn/xw/ztbd/2012/dydszgdssl/dydszgdssl\\_549/201212/t20121230\\_23451.htm](http://www.soa.gov.cn/xw/ztbd/2012/dydszgdssl/dydszgdssl_549/201212/t20121230_23451.htm)

<sup>19</sup>For an in-depth discussion of the evidence necessary for claiming historic fishing rights and the availability

In fact, much of the evidence presented by these agencies is particularly historical in nature, as while it does establish a historical connection between China and the disputed area, it is unclear how the evidence relates to international law and exactly how this evidence establishes sovereignty. For instance, soon after the Japanese government purchased the islets from a private owner in September 2012, China's State Council Information Office issued a white paper summarizing the evidence for Chinese sovereignty over the Diaoyu Islets. In a section titled, "Diaoyu Dao was first discovered, named and exploited by China," the report explains that at the time of the Ming dynasty, people within China were aware of the existence of the Diaoyu Islets and had given them names. The earliest record of the land features can be found in the book *Voyage with a Tail Wind*, which was published in 1403 during the Ming Dynasty. The white paper explains that this shows China had already discovered and named the Diaoyu Islets by the 14th and 15th centuries.<sup>20</sup>

The white paper goes on to explain that from 1372 during the Ming Dynasty until 1866 during the Qing Dynasty, the Ryukyu Kingdom paid tribute to China, and imperial envoys from the Qing and Ming dynasties traveled 24 times to Ryukyu from China, requiring these officials to travel past the Diaoyu Islets. The envoys documented their journeys, using the Diaoyu Islets as navigation markers and noting that the Ryukyu kingdom began at land features beyond the Diaoyu, such as "the Gumi Mountain." The white paper explains that it was clear at this time that the Diaoyu Islets were not part of the Ryukyu Kingdom.<sup>21</sup>

Such historical data is presented in Chinese explanations of its claims over Diaoyu without an explanation of how historical use of land features as navigational tools demonstrates long-standing sovereignty over those features. It appears as if any mention of the land features in Chinese historical documents is provided as evidence of sovereignty over the features. In a similar vein, other historical data is presented without documentation and only as narrative of a Chinese historical connection to the area, such as a history of

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of these rights after the establishment of UNCLOS, see: Leonardo Bernard. "Securing the Ocean for the Next Generation." *LOSI Conference Papers* (2012), <https://www.law.berkeley.edu/files/Bernard-final.pdf>

<sup>20</sup>*State Council Information Office of the People's Republic of China*. "Diaoyu Dao, an Inherent Territory of China (white paper)." (September 2012), English translation available at: [http://www.diaoyu dao.org.cn/en/2015-01/25/content\\_34649357.htm](http://www.diaoyu dao.org.cn/en/2015-01/25/content_34649357.htm)

<sup>21</sup>*State Council Information Office of the People's Republic of China*. "Diaoyu Dao, an Inherent Territory of China (white paper)." (September 2012), English translation available at: [http://www.diaoyu dao.org.cn/en/2015-01/25/content\\_34649357.htm](http://www.diaoyu dao.org.cn/en/2015-01/25/content_34649357.htm)

Chinese fishermen exploiting resources in the area.<sup>22</sup> For instance, the 2012 white paper explains:

*The waters surrounding Diaoyu Dao are traditionally Chinese fishing ground. Chinese fishermen have, for generations, engaged in fishery activities in these waters. In the past, Diaoyu Dao was used as a navigation marker by the Chinese people living on the southeast coast.*<sup>23</sup>

In many instances, evidence that seems to reference historical justifications and legal justifications are combined. In a China Daily editorial, one scholar points to an instance in which British naval ships asked permission from the Chinese government before entering waters surrounding the Ryukyu Islands and Diaoyu land features as evidence of Chinese sovereignty over Diaoyu. This is evidence that might indicate effective control of the area, and speak to legal justifications. In the same editorial, the scholar argues that foreign maps created at the time appear to use names derived from Fujianese dialect.<sup>24</sup> As naming is not a standard for establishing title, this evidence is better characterized as in reference to historical justifications.

Maps are often presented as evidence of China's sovereignty in the East China Sea. The Chinese government's official Diaoyu Dao website includes color copies of maps with explanations as to what each map demonstrates regarding Chinese sovereignty over the Diaoyu Islets. Many of these maps are navigation maps, including the maps used by Chinese envoys for their voyages to Ryukyu. Figure 4.2.4 is one example of the navigation maps presented as evidence of Chinese sovereignty over the Diaoyu land features. Other maps indicate that the Diaoyu were within a Chinese anti-piracy maritime defense zone, while additional maps are navigation maps or navigation lists created by foreign mapmakers that appear to affiliate the Diaoyu Islets with Taiwan or Mainland China. These maps potentially represent both historical and legal justifications for China's claim over the Diaoyu, and

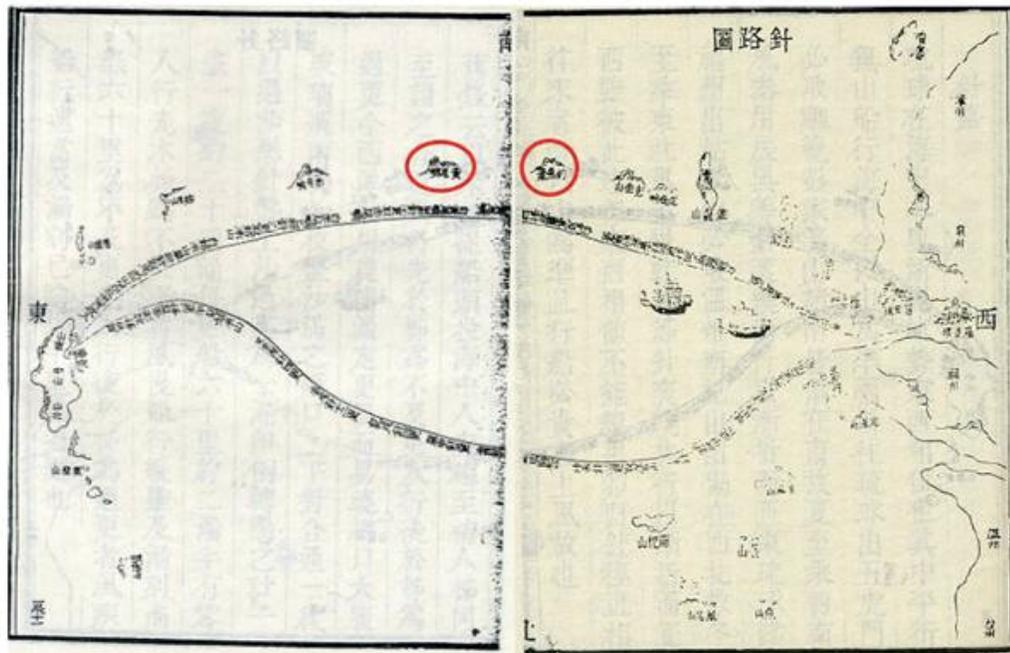
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<sup>22</sup>It is worth noting that the length of time the area has been a traditional fishing grounds has been questioned, particularly within Taiwan, and that other documents providing information on China's claims in the area go so far as to say that the area is a traditional fishing grounds for "fishermen from China's Taiwan." For an example of this wording, see: *The National Marine Data and Information Service of the People's Republic of China*. "Diaoyu Dao, An Inherent Territory of China." English version available at: [http://www.soa.gov.cn/xw/ztbd/2012/dydszgdsslt/dydszgdsslt\\_549/201212/t20121230\\_23451.htm](http://www.soa.gov.cn/xw/ztbd/2012/dydszgdsslt/dydszgdsslt_549/201212/t20121230_23451.htm)

<sup>23</sup>*State Council Information Office of the People's Republic of China*. "Diaoyu Dao, an Inherent Territory of China (white paper)." (September 2012), English translation available at: [http://www.diaoyu dao.org.cn/en/2015-01/25/content\\_34649357.htm](http://www.diaoyu dao.org.cn/en/2015-01/25/content_34649357.htm)

<sup>24</sup>Zheng Hailin. "True history of Diaoyu Islands." *China Daily* (May 21, 2013)

Figure 4.2.4: Qing Dynasty Navigational Map Posted on Official Diaoyu Dao Website



The above map is posted under the “Evidence of Maps” section of *DiaoyuDao.org.cn*. The full English description of the map reads: “The map was included in *Records of Messages from Chong-shan (Zhong Shan Chuan Xin Lu)*, a book by Xu Baoguang, a deputy title-conferring envoy to Ryukyu in 1721 (the 60th year of the reign of Emperor Kangxi of the Qing Dynasty). Showing the sailing route between China and Ryukyu, the map clearly demonstrates that Diaoyu Dao and its affiliated islands must be passed on the way from China to Ryukyu.”<sup>26</sup>

illustrate how historical and legal justifications can overlap.<sup>25</sup> Under such circumstances, there is no reason for wide disagreement over the claim at the domestic level, as those inclined toward either justification find complementary evidence for claiming the Diaoyu.

Yet there are also maps, and other documents, indicating that the Chinese have at times recognized Japanese rule over the islets.<sup>27</sup> In 2015, when the Japanese Foreign Ministry

<sup>25</sup>It is important to note, deeming a piece of evidence as more reflective of historical justification than legal justification does not to indicate it is of lesser value. While it may be harder to use such evidence in court, evidence related to historical justifications still resonates with domestic audiences in particular, but may even resonate with international audiences, as historical justifications are still widely recognized as legitimate. Alexander B Murphy. “Historical Justifications for Territorial Claims.” *Annals of the Association of American Geographers* 80.4 (Dec. 1990), pp. 531–548

<sup>26</sup>This map is one example of the maps presented on the Chinese government’s official Diaoyu Dao website. The map can be viewed here: <http://www.diaoyudao.org.cn/en/index.htm>. Other maps, with English descriptions, are also available on the website’s main page: <http://www.diaoyudao.org.cn/en/>

<sup>27</sup>The Japanese Foreign Ministry has compiled documentary evidence indicating that the Chinese government at least periodically used the name “Senkaku” for the Diaoyu Islets during the 20th century. This appears to be particularly true during the 1950s in China, when the People’s Daily printed a story using the name Senkaku to refer to the islets. A 1958 map produced in China, which was later reprinted in 1960, showed the islets as part of Okinawa. For reproductions of this documentary evidence, see the

posted an official Chinese map made in 1969 on its website, with the map labeling the islets as “the Senkaku Islands” rather than the Diaoyu Dao, Foreign Ministry Spokesperson Hong Lei told reporters:

*I want to tell you that the Diaoyu Dao and its affiliated islands are China’s inherent territory, and this is an indisputable fact backed by sufficient historical and jurisprudential evidence. No one can ever deny this historical fact by wasting their contrivances on one or two maps. If you need, I can find you one hundred, even one thousand maps that clearly mark the Diaoyu Dao as Chinese territory.<sup>28</sup>*

The next day, Foreign Ministry Spokesperson Hong Lei revised his earlier statements by indicating the Chinese map from 1969 ultimately indicates Chinese sovereignty over the Diaoyu, even with the Japanese title on the islets:

*China is the first country to discover the Diaoyu Dao and has exercised long-term effective administration over it. Dozens of Chinese maps drawn in the Ming and Qing dynasties explicitly marked the Diaoyu Dao as Chinese territory. Before the Sino-Japanese war of 1894, the name of “Diaoyu Dao” was widely used in maps drawn by western countries, with clear marks showing that it belongs to China. After the war in 1894, Japan imposed long-time colonial rule over Taiwan and its affiliated islands including the Diaoyu Dao, which explains the change to the name of the Diaoyu Dao on relevant maps. After the Second World War, the Diaoyu Dao was given back to China following relevant international legal instrument. Be it Japan’s colonial rule or its repercussions on map-drawing, nothing can change the fact that the Diaoyu Dao belongs to China.<sup>29</sup>*

As Hong Lei’s statements above indicate, from the Chinese perspective, sovereignty over the Diaoyu was established historically by the Ming and Qing dynasties, and it was done so through naming, map-making, recognition by other nations, and by establishing administrative control. Also, from the Chinese perspective, Taiwan and Diaoyu are inherently connected, and Chinese sovereignty over Taiwan means Chinese sovereignty over the Diaoyu.

In recent statements of China’s East China Sea claims, an emphasis on East China Sea Ministry of Foreign Affairs of Japan’s website on the Senkaku dispute, located at: <http://www.mofa.go.jp/region/asia-paci/senkaku/>

<sup>28</sup> *Ministry of Foreign Affairs of the People’s Republic of China.* “Foreign Ministry Spokesperson Hong Lei’s Regular Press Conference on March 17, 2015.” English translation available at: [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/t1246361.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1246361.shtml)

<sup>29</sup> *Ministry of Foreign Affairs of the People’s Republic of China.* “Foreign Ministry Spokesperson Hong Lei’s Regular Press Conference on March 18, 2015.” English translation available at: [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/t1246655.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1246655.shtml)

land features and historical evidence continues. In response to the Japanese government posting a link on the Cabinet's website, China's Foreign Ministry summed up the situation in the East China Sea as follows:

*Diaoyu Dao and its affiliated islands have been China's inherent territory since ancient times. I would like to stress that whatever the Japanese side may devise to advertise its illegal claims, the objective fact that Diaoyu Dao belongs to China cannot be changed. We urge the Japanese side to face up to history, respect facts, and stop all the provocative behavior that undermines China's territorial sovereignty.*<sup>30</sup>

Throughout official explanations of Chinese sovereignty over Diaoyu, historical evidence of a connection to the area is presented as proof of sovereignty. While it is not always clear how this historical evidence connects to an overarching argument of sovereignty, the entire area claimed through historical justifications is encompassed within the area claimed through a continental shelf claim, and some historical evidence presented in relation to Diaoyu offers evidence of territorial acquisition as provided for in international law. This means that those within China who might favor claims based on international law and those who might resonate more with claims based on historical narrative have little to disagree about in this case. In many ways, the evidence for both justifications is complementary, producing a clear and stable claim.

#### **4.2.3** *The Taiwan Connection*

A key aspect of China's Diaoyu sovereignty claim is that the Diaoyu land features are an integral part of Taiwan. By this logic, because the islets are part of Taiwan and Taiwan is part of China, the islets are also part of China. In fact, as Figure 4.2.5 and Figure 4.2.6 illustrate, Taiwan and the Diaoyu Islets are usually mapped as a whole entity in Chinese atlases. As will be discussed in the next chapter on Taiwan's claims in the East China Sea, Chinese spokespeople often remind Taiwan that it is the responsibility of both sides of the Strait to defend the East China Sea claim.<sup>31</sup>

<sup>30</sup>*Ministry of Foreign Affairs of the People's Republic of China.* "Foreign Ministry Spokesperson Hua Chunying's Remarks on the Japanese Government Opening a Link about Diaoyu Dao on the Official Cabinet Website." English translation available at: [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/t1293468.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1293468.shtml)

<sup>31</sup>For one example in Chinese, see: *Ministry of Foreign Affairs of the People's Republic of China.* "2012年9月7日外交部发言人洪磊举行例行记者会." (Foreign Ministry Spokesperson Hong Lei's Regular

Although the logic by which China claims Diaoyu through Taiwan is relatively straightforward, the Taiwan aspect is one element of China's claim that is somewhat inconsistently emphasized. For instance, compare Figure 4.2.1 in this chapter to Figure 4.2.5 and Figure 4.2.6, which are included below. In Figure 4.2.1, distance between Mainland China and the Diaoyu is emphasized, whereas in Figure 4.2.5 and Figure 4.2.6, which were taken from an atlas purchased in a Beijing bookstore in May 2014, the Diaoyu are officially categorized as part of Taiwan. Moreover, in China's continental shelf claim, discussed earlier in this chapter, aspects of Mainland China's geography are used to lend credibility to China's claim over Diaoyu, with China arguing that the East China Sea continental shelf is a natural extension of Mainland China that ends only at the Okinawa Trough, a claim clearly including the Diaoyu land features (as shown in Figure 4.2.3). Yet claiming the Diaoyu land features through Taiwan is important because it provides China with one explanation for labeling practices used during Mao Zedong's rule. As discussed in the previous section on China's Diaoyu sovereignty claim, the Japanese government has been able to locate and display several maps and pieces of documentary evidence in which the Chinese government and official media referred to the Diaoyu Islets by their Japanese name, the Senkaku. As Hong Lei's above statement indicates, one official Chinese explanation for this evidence is that Taiwan and its appertaining land features were ceded to Japan at the end of the Sino-Japanese War, and that any labeling with Japanese names only reflected Japan's previous rule resulting from the Treaty of Shimonoseki.

Another explanation for these statements, which China's Foreign Ministry spokesperson would not be able to cite, is that all the references to the Diaoyu as Senakaku, as well as other evidence seeming to indicate a Chinese recognition of Japanese sovereignty over the Diaoyu, were produced during Mao Zedong's personalist rule of China. During interviews for this dissertation, experts have argued that during Mao's rule, maritime issues were of

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Press Conference on September 7, 2012), Chinese version available at: [http://www.fmprc.gov.cn/mfa\\_chn/fyrbt\\_602243/jzhsl\\_602247/t967207.shtml](http://www.fmprc.gov.cn/mfa_chn/fyrbt_602243/jzhsl_602247/t967207.shtml). During this regular press conference, Foreign Ministry Spokesperson Hong Lei was asked about Ma Ying-jeou's plans to visit Pengjia Islet and speak about the East China Sea dispute. Hong Lei replied by stating, "The Diaoyu Island and its affiliated islands have been China's inherent territory since ancient times. Chinese people on both sides of the Strait and all sons and daughters of the Chinese nation have a responsibility to defend (Chinese) sovereignty over the Diaoyu Islands." (Author's translation, original in Chinese: 钓鱼岛及其附属岛屿自古以来就是中国的固有领土。海峡两岸中国人和全体中华儿女都有责任维护对钓鱼岛的主权).

Figure 4.2.5: Taiwan Map with Diaoyu Addition



The above map was included in an atlas of China purchased in a bookstore in Mainland China. The map itself has not been edited or cropped, and was printed in a section of the atlas describing Taiwan. The insert at the top of the page to the right is the area representing the Diaoyu land features.

Figure 4.2.6: Taiwan Map with Diaoyu Included



The map pictured above, in Figure 5, was on the opposite page from the image pictured in Figure 4. The bottom of the page contained more text related to Taiwan, but that text has been cropped out of this image. The red circle at the top of the page was added to the image by the author, and indicates where the Diaoyu are located on this map of Taiwan.

lower importance to the Chinese government than other issues such as domestic policies and threats from foreign governments, and therefore subject to compromise.<sup>32</sup> Yet, similar to findings on Mao's rule presented in Chapter Two, this is also evidence that Mao's rule may have been a time of flexibility for Chinese foreign policy, as Mao was not held accountable in the same manner that we might expect for the leaders of a single-party regime.<sup>33</sup> This observation is strengthened by the fact that 1971, still during Mao's rule, was a time in which the Chinese government also issued strong statements of sovereignty claims over the Diaoyu (see below). Regardless of the cause, these references are now an issue China's current administration is tasked with explaining.<sup>34</sup>

<sup>32</sup>Interview. Beijing. April 2014; Interview. Hainan. May 2014

<sup>33</sup>As per the expectations for differences in authoritarian regime type accountability outlined in Geddes' work, see: Barbara Geddes. *Paradigms and Sand Castles: Theory Building and Research Design in Comparative Politics*. University of Michigan Press, 2003

<sup>34</sup>For a detailed explanation of the Japanese legal position on acquisition of territory in relation to the

Recalling the issue of Taiwan's role in China's East China Sea claim, occasional inconsistencies notwithstanding, in the wide range of evidence China brings to bear on its East China Sea claims, there are frequent references to Taiwan. In 1971, in the midst of American moves to return the Diaoyu to Japanese administration, the Chinese government issued a statement on the disputed islets, which helps illustrate the role Taiwan plays in China's Diaoyu claim:

*The Diaoyu Islands have been China's territory since ancient times. As early as in the Ming Dynasty (1368-1644), they were placed under the jurisdiction of China's naval defenses as affiliated islands of Taiwan. . . The area has always been a fishing ground for fishermen from China's Taiwan. However, during the First Sino-Japanese War of 1894, Japan illegally occupied the Diaoyu Islands and in April 1895 forced the Qing court to sign the unequal Treaty of Shimonoseki that ceded to Japan "the island of Formosa (Taiwan), together with all islands appertaining or belonging to the said island of Formosa", as well as the Penghu Islands. . . The Chinese people are determined to liberate Taiwan! We will also recover sovereignty over the Diaoyu Islands and other islands affiliated to Taiwan!*<sup>35</sup>

#### 4.2.4 *Okinawa*

Although the Chinese government has not openly claimed Okinawa or the Ryukyu Island chain (of which Okinawa is part), statements by Chinese government officials, particularly military officials, as well as articles run in state-sponsored newspapers have questioned the appropriateness of Japanese sovereignty. For the most part, it would be unfair to characterize these statements as advocating Chinese sovereignty over the Ryukyu island chain, as the main alternative most explicitly raised has been an independent Ryukyu nation. Still, related statements and articles often emphasize Ryukyu connections to Mainland China while deemphasizing Japanese connections. For instance, in July 2012 the Global Times, a state-sponsored newspaper, ran an article by high-ranking Chinese

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Diaoyu/Senkaku land features, the legal positions of all parties to the dispute, and a survey of the instances in which both the ROC and PRC governments seemed to acknowledge Japanese sovereignty over the land features, see: Shigeyoshi Ozaki. "Territorial Issues on the East China Sea: a Japanese Position." *Journal of East Asia and International Law* 3 (2010), pp. 151–174

<sup>35</sup>Statement of the Ministry of Foreign Affairs of the People's Republic of China, December 30, 1971, a Chinese version of the statement can be viewed on the Chinese government's official Diaoyu Dao website at: [http://www.diaoyudao.org.cn/2014-12/11/content\\_34291910.htm](http://www.diaoyudao.org.cn/2014-12/11/content_34291910.htm). An English translation of the statement (from which the above quote is excerpted) can be viewed as Appendix II at: [http://www.soa.gov.cn/xw/zxbd/2012/dydszgdssl/dydszgdssl\\_549/201212/t20121230\\_23451.htm](http://www.soa.gov.cn/xw/zxbd/2012/dydszgdssl/dydszgdssl_549/201212/t20121230_23451.htm)

military official Luo Yuan (罗援) in which he questioned Japanese ownership of the Ryukyu Islands. Luo argued that according to history, the Ryukyu Island chain was a vassal state of China's, initially paying tribute to the Ming Dynasty, before eventually being annexed by Japan in 1879. The article claims that before Japanese annexation, the residents of the Ryukyu island chain were predominantly from Mainland China.<sup>36</sup> As the official elaborated in the media, "I am not saying all former tributary states belong to China, but we can say with certainty that the Ryukyus do not belong to Japan."<sup>37</sup>

In many instances, discussions of Okinawa in Chinese media and scholarship is overtly connect to the East China Sea dispute, with the viewpoint that if Japanese sovereignty over Okinawa is questionable, then sovereignty over the Diaoyu Islands is even more questionable. Such considerations are in light of geographical considerations and Japan's administration of the Diaoyu/Senkaku through Okinawa. In a commentary penned by Fudan University Professor Shen Dingli, the initial purpose of US occupation of Okinawa is questioned, with the implication that Okinawa must have been territory Japan acquired by force. The article argues that Okinawa was originally a Chinese vassal state during the Ming and Qing Dynasties, and that US trusteeship of Okinawa was granted through the United Nations, with the purpose of removing land from Japan that it acquired by force. The US had the power to end the trusteeship, but altering the terms of the trusteeship cannot be done by the US alone. Any alterations to the trusteeship must be completed by the UN Security Council, and the Security Council has not discussed the matter. Therefore, if Japanese sovereignty over Okinawa cannot be confirmed, saying that the Diaoyu islands belong to Japan is an absurd argument.<sup>38</sup>

Such arguments predominantly rely on historical justifications drawn from China's former tributary system, and if this logic was applied to a Chinese claim over Okinawa, the claim would be expansive. Such a claim would be based entirely on historical justifications, and not legal justifications (as illustrated by an "x" on Figure 4.4.2). However, the questioning of Japan's title over Okinawa with implications that China might instead be

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<sup>36</sup>罗援, "罗援:战后安排,日本不服不行," 环球时报 *Global Times* (July 26, 2012), <http://opinion.huanqiu.com/1152/2012-07/2950432.html> (Accessed December 18, 2013).

<sup>37</sup>Jane Perlez. "Calls Grow in China to Press Claim for Okinawa." *The New York Times* (June 13, 2013)

<sup>38</sup>沈丁立 (Shen Dingli). 2013. "有关冲绳主权美国自相矛盾." 新民晚报 *Xinmin Evening News*: A10.

the proper sovereign should not be considered a mainstream view. In fact, one scholar specializing in China's maritime delimitation was surprised when questioned about China's claims in relation to Okinawa during an interview for this dissertation, indicating the position can hardly be characterized as a dominant viewpoint.<sup>39</sup>

As a final note on the issue of Okinawa, a local political party advocating Okinawa's independence draws modest crowds for independence conferences and events. Recent years have seen growth in such activities, although participants note that Chinese support for Okinawan independence would likely hurt their cause more than help. Some Japanese officials have dismissed members of the Okinawan independence movement as pawns of China.<sup>40</sup>

#### 4.2.5 *Actions that Further Define China's East China Sea Claim*

As a final note on China's claims in the East China Sea, China has also reaffirmed its claim through passing domestic legislation designed to regulate the East China Sea and by maintaining a physical presence in the East China Sea. On September 9, 2012, the Chinese government issued baselines for the Diaoyu land features.<sup>41</sup> In November 2013, China announced an East China Sea Air Defense Identification Zone (ADIZ), requiring aircraft flying through that zone to submit flight plans, maintain radio contact with Chinese authorities, leave radar transponders on if equipped with a transponder, and to be clearly marked with national and registration identification. China's announced ADIZ in the East China Sea is pictured in Figure 4.2.7, and overlaps with preexisting ADIZs established by Japan, Taiwan, and South Korea. Figure 4.2.8 illustrates how China's ADIZ overlaps with Japan's ADIZ, and also helps to illustrate the location of the Diaoyu land features in this zone.

Chinese patrol boats have maintained a constant presence in the East China Sea,

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<sup>39</sup>Interview. Washington, DC. September 2015

<sup>40</sup>Martin Fackler. "In Okinawa, Talk of Break From Japan Turns Serious." *The New York Times* (July 5, 2013)

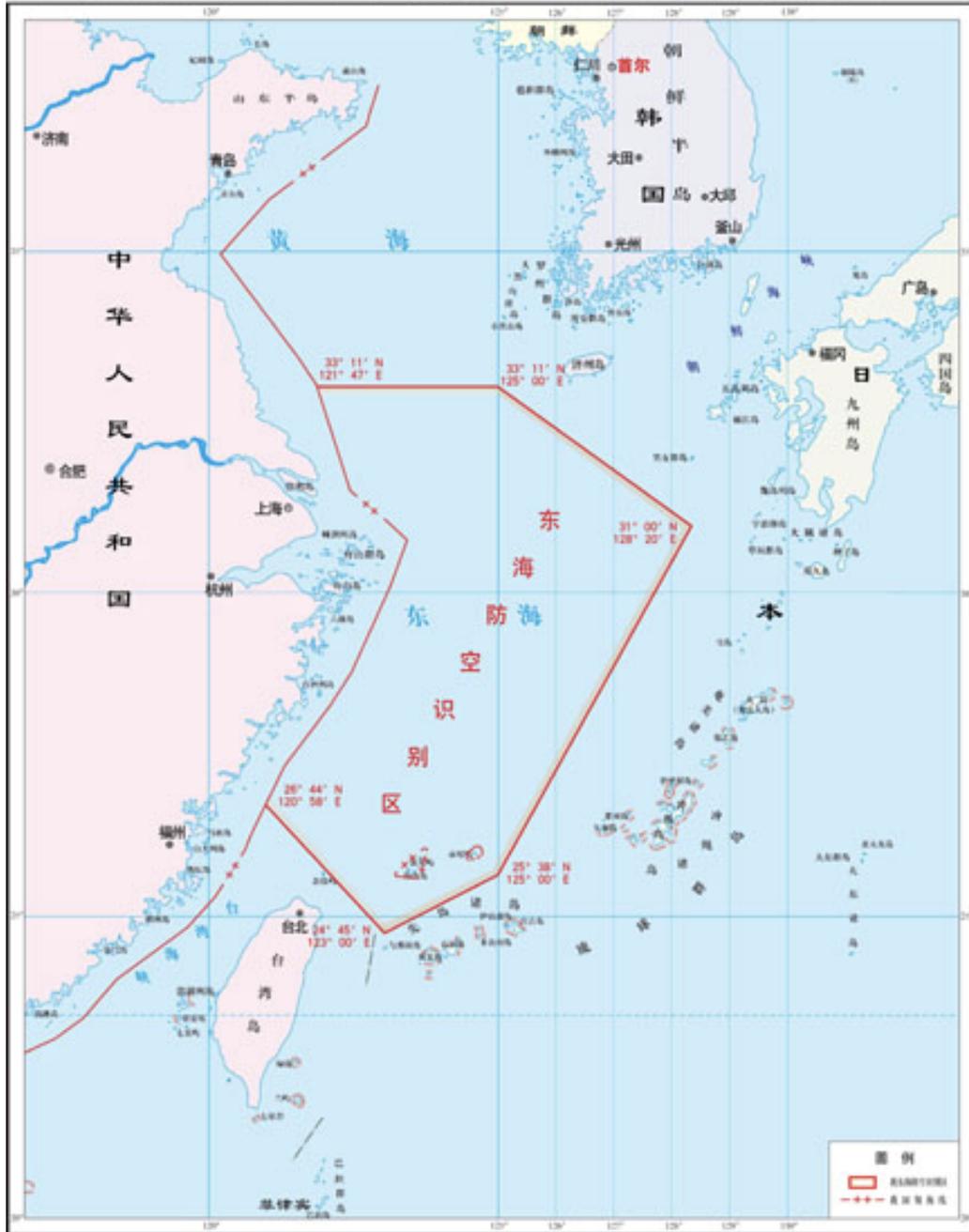
<sup>41</sup>These baselines can be viewed in Chinese at: [http://www.diaoyudao.org.cn/2014-12/11/content\\_34291865.htm](http://www.diaoyudao.org.cn/2014-12/11/content_34291865.htm)

<sup>42</sup>To read the original announcement in English, see: [http://news.xinhuanet.com/english/china/2013-11/23/c\\_132911634.htm](http://news.xinhuanet.com/english/china/2013-11/23/c_132911634.htm)

<sup>43</sup>The original illustration and description of China's ADIZ from the perspective of the Japanese Ministry of Defense can be viewed at: [http://www.mod.go.jp/e/d\\_act/ryouku/](http://www.mod.go.jp/e/d_act/ryouku/)

Figure 4.2.7: China's East China Sea Air Defense Identification Zone

## 东海防空识别区划设示意图

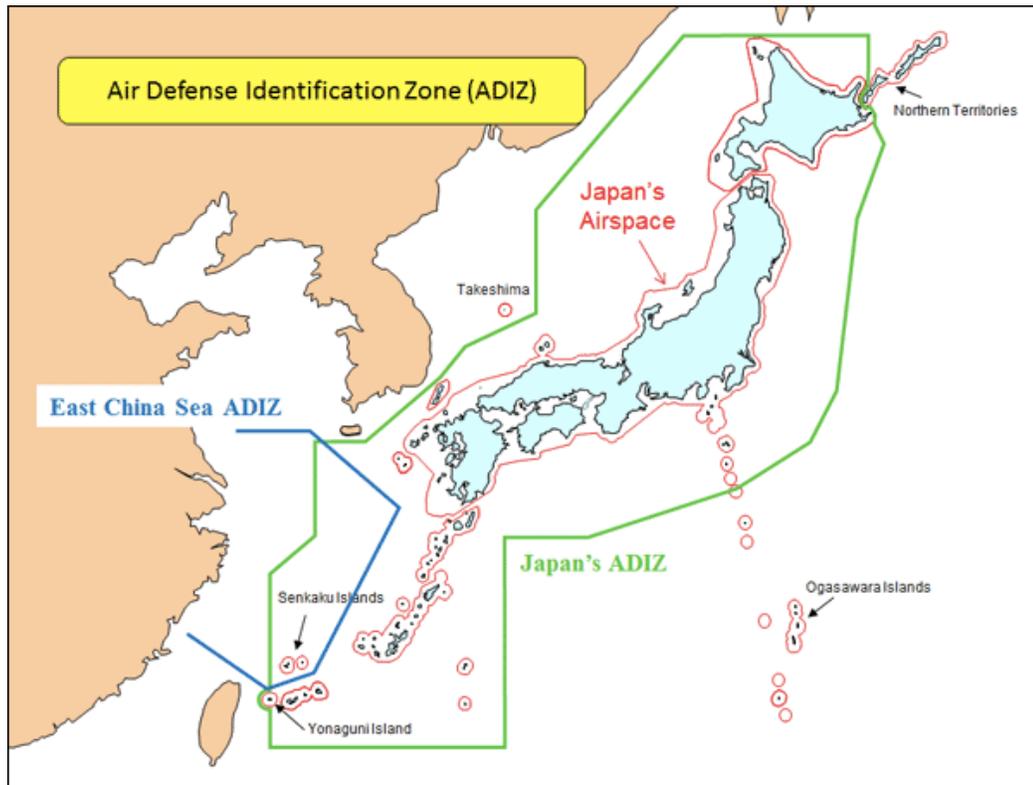


资料来源：中华人民共和国国防部

新华社发

The above illustration of China's East China Sea Air Defense Identification Zone was included in an announcement of the zone in China's state-owned media outlet, Xinhua, on November 23, 2013.<sup>42</sup>

Figure 4.2.8: A Japanese Government Illustration of China's East China Air Defense Identification Zone



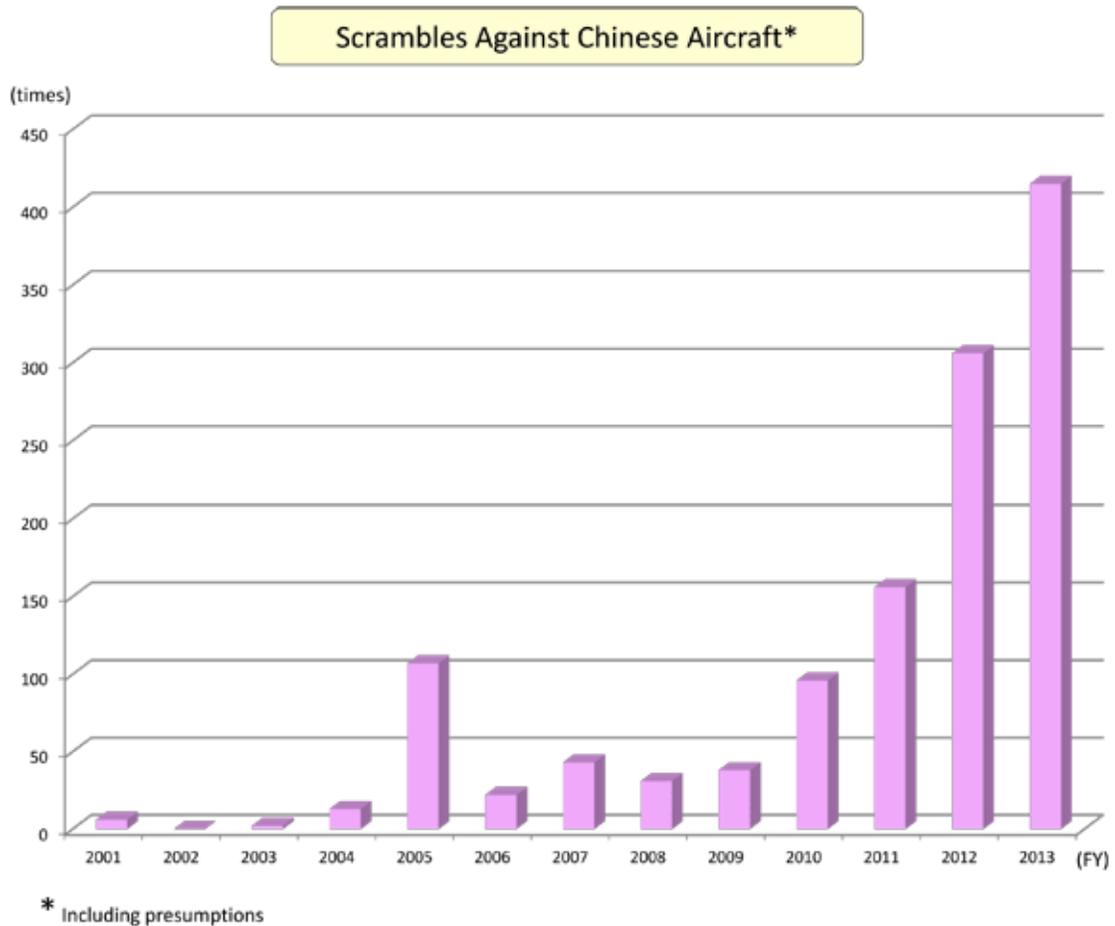
The illustration in the above figure was produced by the Japanese Ministry of Defense, and illustrates the overlap between China's East China Sea ADIZ and Japan's ADIZ. Note the location of the Diaoyu / Senkaku islets on the bottom left of the illustration.<sup>43</sup>

although this presence has notably fluctuated over the years, with some speculation that ebbs and flows in patrol boat volume reflects fluctuations in Chinese policy toward Japan.<sup>44</sup> The Japanese have reported scrambling jets at near Cold War levels in response to Chinese and Russian aircraft approaching Japanese airspace, although this activity has also fluctuated over time.<sup>45</sup> The Japanese Ministry of Defense has carefully documented Chinese activity near and within Japanese airspace, and has made that information available to the public. Figure 4.2.9 is a graphic posted on the Japanese Ministry of Defense website showing the rate at which the Japanese have scrambled aircraft to meet Chinese aircraft in the East China Sea. As Figure 4.2.9 illustrates, over recent years the number of scrambles

<sup>44</sup>M. Taylor Fravel and Alastair Iain Johnston. "Chinese signaling in the East China Sea?" *The Washington Post, The Monkey Cage* (April 12, 2014)

<sup>45</sup>BBC. "Japan jet scrambles 'near Cold War record'." (April 16, 2015); *Reuters* "Japan fighter jet scrambles down by half in April-June." (July 15, 2015)

Figure 4.2.9: Japanese Ministry of Defense Scrambles Against Chinese Aircraft



by Japanese aircraft in response to Chinese aircraft has risen dramatically.<sup>46</sup>

In July 2015, it was reported in Japanese media that China is constructing a platform near the Japanese-designated median line in the East China Sea. While the platform appears to be on the Chinese side of the line, as one article pointed out, “the boundary between Japan and China’s EEZs in the East China Sea is not clearly demarcated.”<sup>47</sup> Moreover, there are concerns within Japan that the platform will be used to exploit resources on the median line, as well as for military purposes such as the stationing of

<sup>46</sup>More information on Chinese airspace activities in the East China Sea is available on the Japanese Ministry of Defense website. *Ministry of Defense of Japan*. “China’s Activities Surrounding Japanese Airspace.” Available at: <http://www.mod.go.jp/e/d-act/ryouku>

<sup>47</sup>*The Japan News by The Yomiuri Shimbun*. “China making new platform in East China Sea.” (July 12, 2015)

radar and drones.<sup>48</sup> While China has been clear about its preference for principals of equity in settling the East China Sea dispute, rather than the median line principle, the location was likely selected for its suitability in reaffirming China's claim while also avoiding direct confrontation by building in area clearly claimed by Japan. In previous statements on similar issues, China has reaffirmed its position that principles of equity are most appropriate for the dispute, while pointing out that its resource extraction activities in the East China Sea are conducted in areas not claimed by Japan.<sup>49</sup>

### 4.3 *Nationalism, Demonstrations of Sovereignty, and the East China Sea*

Similar to China's claims in the South China Sea, China's claims in the East China Sea are deeply connected to Chinese Communist Party (CCP) legitimacy. Scholarship has carefully documented CPP strategies of controlling and utilizing nationalistic narratives to justify its rule, as well as the potential repercussions of these policies.<sup>50</sup> The Century of Humiliation is a prominent and well-known example of such narratives, with the CPP portraying itself as the party responsible for saving China from its past humiliations at the hands of foreign powers, and as capable of continuing to protect China from foreign aggression. As Japan has been deemed one of the worst offenders against China's people and territory, anti-Japanese sentiment is a central component of this narrative. This type of thinking is present in statements by Chinese officials. For instance, when interviewed by Japanese reporters in the aftermath of the Japanese government's purchase of the Diaoyu Islets, Vice-Foreign Minister Fu Ying explained that Japanese actions in the East China Sea brought back memories of previous Japanese imperialism:

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<sup>48</sup>Tim Kelly. "Japan demands China halt oil exploration in part of East China Sea." *Reuters* (July 21, 2015)

<sup>49</sup>For a clear statement of this idea in Chinese, see: "我驻日大使举行记者招待会: 阐述中国对日之策" (The Chinese Ambassador to Japan Holds a Press Conference: Elaborating on China's Policies Toward Japan), *人民日报 The People's Daily* (2004年, 10月, 19日)

<sup>50</sup>For examples, see: Zheng Wang. *Never Forget National Humiliation: Historical Memory in Chinese Politics and Foreign Relations*. English. Columbia University Press, Apr. 2014; Peter Hays Gries. *China's New Nationalism: Pride, Politics, and Diplomacy*. en. University of California Press, Jan. 2004; Suisheng Zhao. *A Nation-State by Construction: Dynamics of Modern Chinese Nationalism*. en. Stanford University Press, Sept. 2004

*Like people in other countries, the Chinese are capable of strong emotions over things they truly care about. What the Japanese government has done over the Diaoyu Islands was like rubbing salt into a deep open wound on the heart of the Chinese people*

*The Diaoyu Islands issue is highly sensitive as it not just concerns territory and sovereignty, but also brings back memories of the Sino-Japanese sea war of 1895 and Japan's invasion of China during World War II. It's hardly surprising that it should have stirred strong emotions among the Chinese people, who expect and trust that today's China is better able to protect its national interests.*<sup>51</sup>

This political environment limits the space available for criticizing the Chinese government, while leaving space open for enthusiastic demonstrations of support for Chinese claims in the East China Sea and for anti-Japanese demonstrations.<sup>52</sup> In this way, both public efforts and private efforts to explain and reinforce the claim are oftentimes complimentary.

#### **4.3.1** *Public Efforts*

Museums and government offices work to educate the public on China's claims in the East China Sea, and the documents they display for public viewing are highly indicative of the way Chinese officials and the Chinese public view China's East China Sea claim. For example, China frequently cites records of trips to Ryukyu as part of imperial business as evidence that the Diaoyu belong to China. In September 2012, a document detailing an 1808 journey to Ryukyu by imperial officials of Emperor Jiaqing (1796-1820) was put on display for the public in Beijing. Media reports stated that the journal indicated the Diaoyu did not belong to Japan because it took an additional day for the envoy to travel past the Diaoyu on their way to Ryukyu, and at that time, Ryukyu was a vassal state of China. Commentators concluded from this evidence that the Diaoyu did not belong to either Japan or Ryukyu at this time, but was a part of China. A Qing dynasty map showing a maritime boundary that includes the Diaoyu was also put on display with the journal.<sup>53</sup>

Significant efforts have been made in scholarship to defend China's sovereignty claims

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<sup>51</sup>An English translation of this press conference, held on September 14, 2012, is available on the Ministry of Foreign Affairs of the People's Republic of China website, located at: [http://www.fmprc.gov.cn/mfa\\_eng/topics\\_665678/diaodao\\_665718/t981210.shtml](http://www.fmprc.gov.cn/mfa_eng/topics_665678/diaodao_665718/t981210.shtml)

<sup>52</sup>Erica Strecker Downs and Phillip C. Saunders. "Legitimacy and the Limits of Nationalism: China and the Diaoyu Islands." *International Security* 23.3 (Dec. 1998), pp. 114-146.

<sup>53</sup>Qin Zhongwei. "Artifacts offer ancient proof on Diaoyu Islands." *China Daily* (September 25, 2012); *Xinhua*. "Beijing display for exhibit proving China's Diaoyu sovereignty." (September 25, 2012)

in the East China Sea. Scholars from Mainland China, Hong Kong, Taiwan, and other locations periodically meet to discuss China's East China Sea claims and present information on the dispute.<sup>54</sup> In June 2015, the Chinese government established an East China Sea research center at Ningbo University of Technology, which is located in China's Zhejiang Province. Similar to research centers focused on the South China Sea, the East China Sea research center (called 宁波工程学院中国东海研究院 in Chinese), will provide policy recommendations, promote international academic exchanges, conduct East China Sea research and serve as a repository for data relevant to the East China Sea.<sup>55</sup>

#### 4.3.2 *Private Efforts*

Private citizens and businesses within China are often eager participants in creative efforts to assert and maintain China's claims in the East China Sea, both for domestic audiences and for audiences abroad. In July 2012, Shenzhen ZQGame Co. released an iPad game called 保卫钓鱼岛 (Defend the Diaoyu Islands) in which users were encouraged to "annihilate any attempt by the Japanese devils to come ashore our islands."<sup>56</sup> Although the game was quickly taken down, apparently due to violations of Apple's online store policies, such "red games" are common according to Chinese experts.<sup>57</sup> In January 2013 a Shanghai restaurant advertised that it would be serving fish caught near the Diaoyu islands.<sup>58</sup> Similarly, anti-Japanese media has increased in recent years as the East China Sea dispute has become more salient. In 2012, approximately 200 anti-Japanese movies were made in China. While China does have a tradition of anti-Japanese movies, some experts argue that the trend is increasing as recent movie regulations have taught movie companies that they must make anti-Japanese movies in order to get their films approved by government censors. One

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<sup>54</sup>For media coverage of one such meeting, see: *Xinhua*. "Scholars defend China's island sovereignty with evidence." (September 26, 2012)

<sup>55</sup>*Xinhua*. 中国首家综合战略性东海问题研究智库成立 (China's First Comprehensive East China Sea Think Tank Established). (June 13, 2015), available in Chinese at: [http://news.xinhuanet.com/2015-06/13/c\\_1115606648.htm](http://news.xinhuanet.com/2015-06/13/c_1115606648.htm)

<sup>56</sup>The same company has also marketed other nationalistic games directed at the Japanese, such as a game called "Nanjing Trial"; Paul Mozur. "All the Rage: China-Japan Diaoyu Dispute, Now an iPad Game." *The Wall Street Journal: China Real Time* (July 4, 2012), <http://blogs.wsj.com/chinarealtime/2012/07/04/all-the-rage-china-japan-diaoyu-dispute-now-an-ipad-game/>

<sup>57</sup>Zheng Xin. "Diaoyu Islands Game Pulled from App Site." *China Daily* (July 11, 2012), [http://www.chinadaily.com.cn/china/2012-07/11/content\\_15566881.htm](http://www.chinadaily.com.cn/china/2012-07/11/content_15566881.htm)

<sup>58</sup>Wang YuXia. "Seafood from Diaoyu Islands to Be Sold in City." *Shanghai Daily* (January 25, 2013), <http://www.ecns.cn/2013/01-25/47191.shtml>

actor, who frequently plays Japanese soldiers in such movies, explains that with his acting, he aims to show viewers the type of Japanese soldier who is “really really evil.” Due to the high volume of filming and the frequency with which he is cast as a Japanese soldier, this same actor explains that during filming he has been killed up to 31 times in one day.<sup>59</sup>

Perhaps the most prominent involvement of citizens in reaffirming China’s East China Sea claims is through public protests. For example, in August 2012, a series of encounters in the East China Sea between activists from Greater China and the Japanese Coast Guard ignited protests across China. Western media reported protests in the thousands in cities such as Shenzhen and Guangzhou, with vandalism of Japanese businesses, restaurants and cars made by Japanese companies. Protesters burned Japanese flags and threw bottles of water at the police.<sup>60</sup> In Shenzhen, protesters even overturned and vandalized a police car because it was a Honda.<sup>61</sup> The protests died down, but eventually reignited around September 15, 2012, when the Japanese government announced it had finalized its plans to nationalize the disputed East China Sea land features by purchasing them from a private owner. Thousands of protesters surrounded the Japanese embassy and major demonstrations took place in at least 50 cities across China (some estimates place the number of cities with significant protests at over 80). Protesters threw eggs and paint at the Japanese embassy, and fought with the riot police placed in front of the embassy. Vandalism against Japanese businesses continued, with Japanese stores ransacked across China and two Japanese factories (a Panasonic factory and a Toyota factory) set on fire in the port city of Qingdao.<sup>62</sup> As one protester in Beijing told a Reuter’s reporter, “I think the government is encouraging this,” he said. “They could have stopped all of us approaching when we were at the subway station. The government has taught us to be anti-Japanese at school, so if they want us to stop it would be like slapping their own mouths.”<sup>63</sup> The August-September protests in 2012 are just one example of anti-Japanese

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<sup>59</sup> *Reuters TV*. “Anti-Japan Dramas Turn Serial in China.” (March 19, 2013), [http://www.youtube.com/watch?v=9uXoKj3rZ4U&feature=youtube\\_gdata\\_player](http://www.youtube.com/watch?v=9uXoKj3rZ4U&feature=youtube_gdata_player)

<sup>60</sup> *BBC News*. “Anti-Japan protests across China over islands dispute.” (August 19, 2012)

<sup>61</sup> Tania Branigan. “China protests over Japanese activists’ visit to disputed island.” *The Guardian* (August 19, 2012)

<sup>62</sup> Dexter Roberts. “Anti-Japanese Protests Flare in China Over Disputed Islands.” *Bloomberg Business* (September 17, 2012)

<sup>63</sup> *BBC News*. “Anti-Japan protests hit China cities amid island row.” (September 15, 2012)

protests in China.<sup>64</sup>

One of the more prominent citizen movements embracing a strong nationalistic approach to the East China Sea dispute is the Defend the Diaoyu Islands Movement (In Chinese, 保釣運動, but often shortened to 保釣 or “Baodiao”). The Baodiao Movement has members in Hong Kong, Mainland China, and Taiwan, and the group has made headlines for their trips to the disputed land features. Yet China has shown that there are some limits to what it will allow from those eager to demonstrate Chinese sovereignty over the Diaoyu Islets. Since August 2012, when the Baodiao successfully landed on one of the Diaoyu Islets, the group has found itself more heavily restricted by the governments of both Hong Kong and Mainland China. Chan Miu-tak, former head of the Baodiao, and two companions, were prevented from entering Beijing in 2014 when Prime Minister Shinzo Abe was on an official visit to the capital.<sup>65</sup>

#### 4.4 *Conclusion*

China’s East China Sea claim helps illustrate one manner in which stable and consistent maritime and territorial claims are formed. When international law allows for a state to claim the entire area it would claim based on historical justifications, the claim will be relatively consistent and stable. Under these conditions, there will be little disagreement at the domestic level concerning the aspects of the claim. In the case of China’s East China Sea claim, the only small divergence in domestic opinion on the claim is that some within China question the status of Okinawa, implying that the area has a closer historical connection to China than Japan. When comparing China’s claim in the South China Sea and its claim in the East China Sea, evidence indicates that historical justifications can at times be used to make claims that would be considered expansive under international law.

Moreover, when looking at China’s claims in the East China Sea over time, it appears that differences across types of authoritarian regimes (personalist versus single-party) may

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<sup>64</sup>For an in-depth discussion of anti-Japanese protests in China and the Chinese government’s strategic uses of such protests, see: Jessica Chen Weiss. *Powerful Patriots: Nationalist Protest in China’s Foreign Relations*. New York: Oxford University Press, 2014

<sup>65</sup>Kyodo. “China foils H.K. Senkaku protest targeting Abe in Beijing.” *The Japan Times* (November 7, 2014)

impact expressions of a claim, as a personalist regime appears to have more flexibility when making decisions relevant to the claim. In this case, as in Chapter Two's discussion of China's South China Sea claim, it appears that Mao Zedong, during his personalist rule, enjoyed greater flexibility when making decisions about the claim than China's current regime is able to exercise.

Finally, comparing China's East China Sea claim with Taiwan's East China Sea claim demonstrates that even when the claim is largely noncontroversial, with a high degree of agreement regarding the claim, government openness and flexibility will still impact the domestic debate surrounding the dispute. In China, the promotion of nationalism has fostered an atmosphere in which nationalistic activities are encouraged and less debate surrounding the dispute takes place. In a sense, the government's position serves as a nationalist baseline, and any critiques of the claim must take the government's nationalist logic even further, in this case by suggesting a larger claim based on nationalistic historical narratives. In Taiwan, an open political environment has allowed the airing of different viewpoints on the East China Sea dispute. While the claim is consistent across government agencies and the main political parties are largely in agreement, even public calls for the claim to be decreased are widely known and recognized. Taiwan's East China Sea claim is the subject of the next chapter.

# Chapter Five

## TAIWAN'S EAST CHINA SEA CLAIM

### 5.1 *Introduction*

In many ways, the East China Sea dispute is more salient to the Taiwanese public than the South China Sea dispute. As discussed in the previous chapter, the primary focus of the dispute, the Diaoyutai islets (Tiaoyutai islets), are uninhabited rock features located roughly 100 nautical miles north of Keelung, one of Taiwan's largest port cities.<sup>1</sup> Proximity, geographical factors, and practice have all ensured that the East China Sea has long been used as fishing grounds for Taiwanese fishermen. Moreover, while an expansive South China Sea claim based on the U-Shaped Line is largely associated with Chinese history, Taiwan's East China Sea claim has been linked to both Chinese and Taiwanese history, ensuring greater public attention as the dispute attracts the concern of those who identify with either China or Taiwan. Identification with Japan also plays a role in Taiwanese politics, and while less relevant to Taiwan's South China Sea claim, it is highly relevant to the East China Sea dispute.

Similar to the South China Sea dispute, Taiwan's position in the East China Sea is often overlooked. The East China Sea dispute has only three claimants: China, Japan, and Taiwan, with two of these claimants (both China and Taiwan) arguing that the disputed land features are an integral part of Taiwan.<sup>2</sup> Yet analyses of the dispute in both media and

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<sup>1</sup>In Taiwan, the land features of the East China Sea dispute are called the Diaoyutai (釣魚台) or Diaoyutai. In mainland China they are called the Diaoyu and in Japan they are referred to as the Senkaku.

<sup>2</sup>While China's activities in the East China Sea are highly scrutinized, less attention is paid to China's actual claim, of which Taiwan is at the center. The Chinese government argues the Diaoyu Islands were seceded to Japan in 1895 as part of Taiwan's outlying islands and are included in agreements to return Taiwan to China after World War II. According to the Chinese government, administration over the Diaoyu

academic publications portray the dispute as largely between China and Japan, a regrettable oversight as Taiwan's role in the dispute is complex and the people of Taiwan are directly impacted by events in the East China Sea.

Both China's and Taiwan's claims in the East China Sea demonstrate that when a relatively straightforward application of international law will allow a country to fully claim the area that would be dictated by historical justifications, the claim will be clear and stable. This is particularly true regarding the overall area claimed, although at the domestic level, divergences do exist in how the claim is justified. Some domestic political groups and actors will emphasize historical explanations for the claim, while others will advocate a claim more overtly linked to the application of international law. Overall, because the two different rationales (history and international law) dictate similar claims with similar geographical scopes, there will be little domestic debate over the characteristics of the claim. However, there will be debates over how best to defend the claim. Under these circumstances, rationales of historical narrative and international law will again become relevant, as these underlying logics for establishing the claim also impact thinking on how to defend the claim. Under these circumstances, both Taiwan and China have developed similar claims in the East China Sea, with the caveat that China also claims Taiwan and bases its claim over the East China Sea on its sovereignty over Taiwan.

Although China and Taiwan have similar official claims in the East China Sea, parallel to evidence presented in Chapters Two and Three, Taiwan's domestic political environment is much more open than China's to the expression of potentially unpopular views. Taiwan's democratic system allows for seemingly unpatriotic views to be openly expressed, whereas in China such opportunities are limited. Moreover, national identity is contested in Taiwan, ensuring there is no uniform agreement on which historical information is relevant to Taiwan's claim, and ultimately making the application of historical justifications less uniform than it is Mainland China.

Perhaps even more than Taiwan's claims in the South China Sea, Taiwan's East China Sea claim offers important evidence as to how national identity can impact the political

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Islets belongs to Taiwan's Yilan County local government. See Chapter Four for a more in-depth discussion of this dynamic.

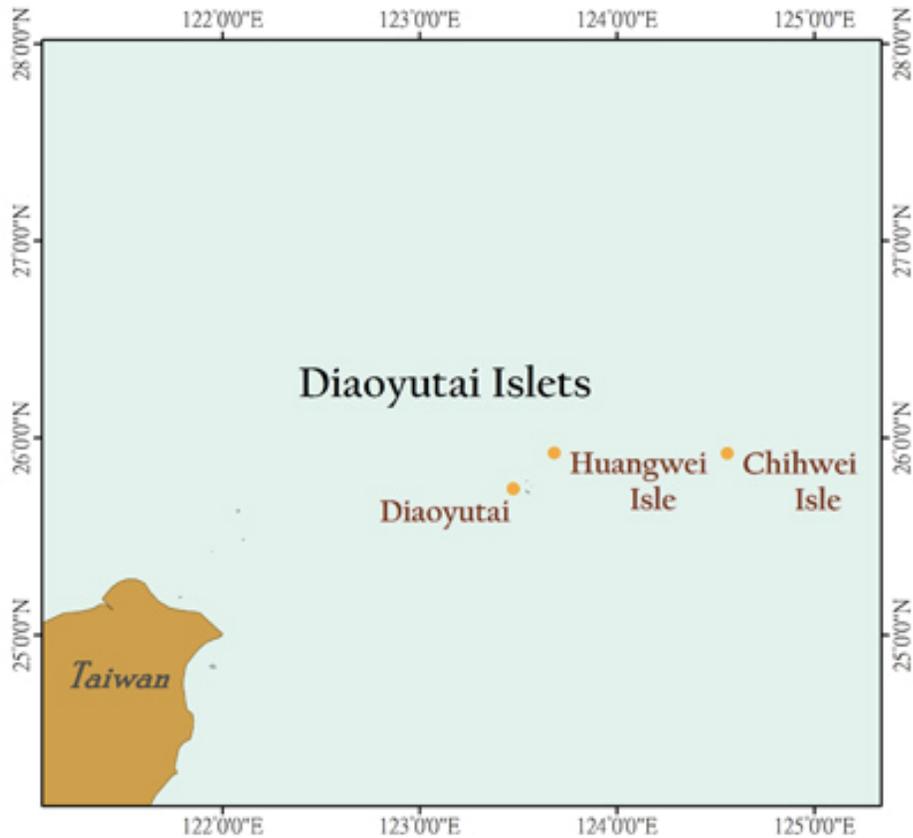
environment surrounding a claim. This chapter will demonstrate that notions of national identity directly influence political party positions on Taiwan's East China Sea claim. While the two main political parties largely agree on the geographical reach of the claim, they diverge in their explanations of the claim. The Democratic Progressive Party (DPP), which emphasizes Taiwanese identity and openly questions Taiwan's Chinese legacy, articulates its position on the claim in terms of Taiwanese historical use in the area, aspects of Taiwan's geography, and international law. They are careful never to say that the area belongs to China. The Nationalist Party (KMT), which consistently identifies with a Republic of China legacy and Chinese historical legacy before the People's Republic of China, combines justifications of Chinese history and international law when articulating its position on the claim. The wings of Taiwan's political spectrum also provide important evidence on how identity impacts views on the claim. While those favoring Taiwanese independence who in some ways identify with Japan tend to see Japan's claim in a more favorable light, some even going so far as to say the Diaoyutai islets belong to Japan, those who favor Taiwanese independence and reject Japanese identity are often critical of both Taiwan's main political parties for not adequately defending Taiwan's sovereignty claims. In an interesting twist, on this issue Taiwan's political spectrum comes full circle as the independence-minded who emphasize a strong Taiwanese identity can find themselves agreeing with those who strongly identify with Mainland China. Both groups have criticized Taiwan's two dominant parties for not adequately defending Taiwan's East China Sea sovereignty, and both groups have accused the dominant two parties of sacrificing sovereignty claims over the Diaoyutai in exchange for fishing access and improved relations with Japan.

To illustrate the centrality of domestic political dynamics in shaping Taiwan's East China Sea policies, this chapter will explore Taiwan's claim in three parts. First, an overview of Taiwan's East China Sea claim is provided. Second, the range of viewpoints on Taiwan's East China Sea claim is discussed. Third, the moderating factors affecting the main political parties are examined. Finally, the chapter concludes with a summary of findings.

Figure 5.1.1: Location of the Diaoyutai Islets in the East China Sea



Figure 5.1.2: Diaoyutai Islets



Source: Republic of China (Taiwan), Ministry of the Interior, Maritime Information Service Center  
Website: <http://maritimeinfo.moi.gov.tw/>

## 5.2 *Overview of Taiwan's East China Sea Claim*

Within Taiwanese politics and across official ROC policies, the area of Taiwan's East China Sea claim is largely undisputed, with notable exceptions discussed in the proceeding sections. Before exploring these differences, it is necessary to first have a picture of Taiwan's claim as presented by those responsible for articulating Taiwan's foreign policy. As Taiwan's East China Sea claim is not ambiguous, and the issue is highly salient to the Taiwanese public, a wide range of information is available on Taiwan's East China Sea claim (similar to that seen in the previous chapter on China's claim). To make this wide range of information easier to evaluate, this section divides sources of information on Taiwan's official claim into parts – Taiwan's national maritime legislation, President Ma's East China Sea Peace Initiative, and statements by the Ministry of Foreign Affairs of the Republic of China (MOFA). As will be demonstrated below, many of these sources include a wide range of justifications for Taiwan's claim, essentially listing all possible justifications. Within Taiwan, political groups more explicitly favor one justification or another, as discussed in the next section.

### 5.2.1 *National Legislation*

With respect to Taiwan's East China Sea claim, the most relevant legislation and government statements are those explicitly referring to sovereignty over the Diaoyutai islets as well as ROC legislation and statements that describe continental shelves.<sup>3</sup> This is because as Kuan-Hsiung (“Dustin”) Wang succinctly points out in a comprehensive discussion of Taiwan's maritime claims, Taiwan's claim to the East China Sea essentially rests on two main arguments. The first argument is that sovereignty over the Diaoyutai islets belongs to the Republic of China or Taiwan, and that Japan illegally occupies the islets. In this line of thinking, any rights generated by the islets belong to Taiwan. The second argument rests on Taiwan's approach to continental shelves. Taiwan has stated that the boundaries

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<sup>3</sup>According to UNCLOS Part VI, Article 76, “The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.” Available at: [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm)

of a country's continental shelf should be determined by natural prolongation, and that "exposed rocks and islets shall not be taken into account" when determining the boundary of the ROC continental shelf.<sup>4</sup> As Wang points out, the second argument is, in effect, the "second line of defense." If Taiwan loses the contest for sovereignty over the Diaoyutai, the backup argument is that the islets do not generate a continental shelf on their own, that the islets are appertaining to Taiwan's continental shelf, and that they are geographically distinct from Japan's Ryukyu Islands.<sup>5</sup>

These legal rationales consistently appear throughout Taiwan's legislation, as well as throughout official government statements on the dispute. In defining the principles relevant to its continental shelf, Taiwan has been consistent. The ROC was a signatory of the 1958 Geneva Convention on the Continental Shelf, but was not invited to participate in the creation of UNCLOS III, as by that time the PRC had replaced the ROC in the United Nations. Regardless, Taiwan's national legislation is largely in conformity with UNCLOS III.<sup>6</sup> In short, Taiwan has stated that its continental shelf is defined by natural prolongation and that any disputes will be resolved through principles of equity.<sup>7</sup> This is in contrast to Japan's position, that disputes in the East China Sea should be resolved through the equidistance or median line principle.<sup>8</sup>

In Article 2 of Taiwan's *Law on the Exclusive Economic Zone and the Continental Shelf of the Republic of China*, which was promulgated in 1998, Taiwan states its position on natural prolongation and its continental shelf:

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<sup>4</sup> *Gazette of the Legislative Yuan* (立法院公) 59, No. 64, 22 August 1970, 3, as cited in Kuan-Hsiung Wang. "The ROC's Maritime Claims and Practices with Special Reference to the South China Sea." *Ocean Development & International Law* 41.3 (Sept. 2010), pp. 237–252

<sup>5</sup> As Wang also notes, this argument jeopardizes the possibility for Taiwan to claim that any South China Sea land features can generate continental shelves of their own. Kuan-Hsiung Wang. "The ROC's Maritime Claims and Practices with Special Reference to the South China Sea." *Ocean Development & International Law* 41.3 (Sept. 2010), pp. 237–252

<sup>6</sup> *United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs*. Limits in the Sea No. 127, Taiwan's Maritime Claims (November 15, 2005)

<sup>7</sup> As discussed in Chapter Four, when attempting to resolve maritime delimitation disputes, parties can advocate that the median line principle or principles of equity be used to resolve the dispute. The median line principle is clearly stated in UNCLOS, but principles of equity have also been recognized as legally valid through the rulings of international courts. Principles of equity have previously been raised in connection to continental shelves, similar to the way both China and Taiwan raise the principle of equity in their East China Sea claims.

<sup>8</sup> Taiwan embraces the principle of equity with the belief that Taiwan will benefit if geographical considerations, most notably features of its continental shelf, are taken into account when drawing the East China Sea maritime boundary. As Japan would be disadvantaged by a focus on geographical features, it is logical for the Japanese government to advocate the drawing of an equidistant line.

*The continental shelf of the Republic of China is the submarine area that extends beyond its territorial sea through the natural prolongation of its land territory to the outer edge of the continental margin.*<sup>9</sup>

The ROC government has since further explained this position, in a statement that addresses both Taiwan's continental shelf and its position on the East China Sea and South China Sea land features:

*As a matter of fact, this Government promulgated the Law on the Exclusive Economic Zone and Continental Shelf of the Republic of China on 21 January 1998, in which Article 2 stipulates that the continental shelf of the Republic of China is the submerged area that extends throughout the natural prolongation of its land territory to the outer edge of the continental margin. The Government of the Republic of China reiterates that the Diaoyutai Islands, Nansha Islands (Spratly Islands), Shisha Islands (Paracel Islands), Chungsha Islands (Macclesfield Islands), and Tungsha Islands (Pratas Islands) as well as their surrounding waters are the inherent territories and waters of the Republic of China based on the indisputable sovereignty titles justified by historic, geographic and international legal grounds.*<sup>10</sup>

As illustrated here, Taiwan's East China Sea claim is that Taiwan has sovereignty over the Diaoyutai land features as well as an East China Sea continental shelf through natural prolongation.

### **5.2.2** *The East China Sea Peace Initiative*

On August 5, 2012, President Ma announced his "East China Sea Peace Initiative," which uses the tagline, "safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint exploration and development." Ma has repeatedly emphasized that this initiative calls on parties to shelve sovereignty disputes, and that Taiwan is not sacrificing its sovereignty claim.<sup>11</sup> Government statements on the peace initiative reveal a great deal about Taiwan's East China Sea claim.

MOFA has worked to publicize the East China Sea Peace Initiative, and in a pamphlet titled, "The Republic of China's Sovereignty Claims over the Diaoyutai Islands and the East

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<sup>9</sup>An English translation of his law can be found on Taiwan's Ministry of Justice website at: [http://law.moj.gov.tw/Eng/news/news\\_detail.aspx?id=1116](http://law.moj.gov.tw/Eng/news/news_detail.aspx?id=1116)

<sup>10</sup>"Declaration of the Republic of China on the Outer Limits of Its Continental Shelf." No. 003 (May 12, 2009), available in English at: [http://www.mofa.gov.tw/en/News\\_Content.aspx?n=1EADDCF D4C6EC567&sms=5B9044CF1188EE23&s=1DE6A7BA5C27CED3#](http://www.mofa.gov.tw/en/News_Content.aspx?n=1EADDCF D4C6EC567&sms=5B9044CF1188EE23&s=1DE6A7BA5C27CED3#)

<sup>11</sup>Chris Wang. "Ma proposes East China Sea initiative." *Taipei Times* (August 6, 2012), pg 1.

China Sea Peace Initiative,” MOFA clearly lays out the ROC position on the East China Sea. After listing the East China Sea land features by name and describing their location, Taiwan’s Ministry of Foreign Affairs explains:

*Ming dynasty references show that the Chinese had discovered, named, and used these islands by the early 15th century. From the perspective of history, geography, geology, practical use or international law, they constitute an integral part of the sovereign territory of the Republic of China (Taiwan), and their surrounding waters remain traditional fishing grounds for ROC fishermen.*<sup>12</sup>

This excerpt is a concise statement of the many issues involved in Taiwan’s East China Sea claim. First, the statement repeats Taiwan’s claim to sovereignty over the Diaoyutai, with references to concepts relevant to acquisition of territory through occupation (i.e., ‘discovery’ indicates the territory was *terra nullius* before the Ming dynasty’s incorporation). Second, some language in this statement is very similar to MOFA’s statements on the South China Sea, with a few notable additions. MOFA’s oft-repeated South China Sea language (as described in Chapter Three) claims the South China Sea land features on the basis of “history, geography or international law.”<sup>13</sup> But East China Sea language, as illustrated in the excerpt above, has two additional words added. The words, “geology” and “practical use” are not generally included in South China Sea statements, but are consistently used in statements on the East China Sea. Moreover, the statement includes a claim that waters surrounding the Diaoyutai land features “remain traditional fishing grounds for ROC fishermen,” a statement not frequently connected to the South China Sea. These additions reflect specific aspects of the ROC East China Sea claim, mainly the continental shelf (“geology”) and long tradition of Taiwan’s activity in the area (fishing activities in particular). All of the concepts listed are interrelated parts of Taiwan’s claim

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<sup>12</sup> *Ministry of Foreign Affairs, Republic of China (Taiwan)*. “The Republic of China’s Sovereignty Claims over the Diaoyutai Islands and the East China Sea Peace Initiative.” 1st Edition (November 2013), available at: <http://www.mofa.gov.tw/en/cp.aspx?n=38CD1D3C91067AEC>

<sup>13</sup> MOFA’s oft-repeated South China Sea statement is as follows: “Whether looked at from the perspective of history, geography or international law, Nansha Islands (Spratly Islands), Shisha Islands (Paracel Islands), Chungsha Islands (Macclesfield Bank) and Tungsha Islands (Pratas Islands), as well as their surrounding waters, sea beds and subsoil, are an inherent part of the territory of the Republic of China (Taiwan). These archipelagoes therefore fall under the sovereignty of the Republic of China (Taiwan). The government reasserts that it enjoys all rights over the islands and their surrounding waters, and that it denies all claims to sovereignty over, or occupation of, these areas by other countries.” Ministry of Foreign Affairs, Republic of China (Taiwan), “The government of the Republic of China (Taiwan) reiterates its claim to sovereignty over the South China Sea and refuses to accept any unilateral action taken by other concerned parties,” September 12, 2012.

in the East China Sea.

In the context of Taiwan's East China Sea claim and policy-making related to the dispute, it is important to note that Taiwan and Japan signed an East China Seas fisheries agreement in April 2013. President Ma's statements, the official MOFA pamphlet cited above, and numerous other statements produced by the ROC government claim that Ma's East China Sea Peace Initiative directly led to the Japan-Taiwan fisheries agreement. As Ma's initiative was announced in August 2012 and the fisheries agreement was signed in April 2013, official statements imply that chronology in this case provides evidence of causation.<sup>14</sup>

### 5.2.3 *The Ministry of Foreign Affairs*

Apart from its publicity effort for the East China Sea Peace Initiative and the Japan-Taiwan fisheries agreement, MOFA has also issued numerous statements and published a wide range of material specifically on Taiwan's claims in the East China Sea dispute. The evidence presented here can only be viewed as a short summary of the arguments presented by Taiwan's MOFA.

Among MOFA's statements on the East China Sea, explanations of geology are a noteworthy example of how MOFA defends Taiwan's claims. MOFA argues the Diaoyutai are on the East China Sea continental shelf, which they argue is an undersea extension of mountain ranges in northern Taiwan, such as Datun Mountain 大屯山 and Guanyin Mountain 觀音山. Moreover, they argue the water depth of the Okinawa Trough (between 500 and 2,717 meters deep) creates a natural boundary between Okinawa and the Diaoyutai, whereas there is no such barrier between Taiwan and the Diaoyutai. According to MOFA, "Chinese historical records refer to this natural boundary between China and the Ryukyu Islands as Heishuigou 黑水溝 (Black Water Trough) due to its dark water."<sup>15</sup>

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<sup>14</sup>MOFA also argues the East China Sea Peace Initiative and the fisheries agreement are connected because the fisheries agreement "embodies the spirit of the East China Sea Peace Initiative with regard to resolving disputes through peaceful means." *Ministry of Foreign Affairs, Republic of China (Taiwan)*. "The Republic of China's Sovereignty Claims over the Diaoyutai Islands and the East China Sea Peace Initiative." 1st Edition (November 2013), available at: <http://www.mofa.gov.tw/en/cp.aspx?n=38CD1D3C91067AEC>

<sup>15</sup>*Ministry of Foreign Affairs, Republic of China (Taiwan)*. "The Republic of China's Sovereignty Claims over the Diaoyutai Islands and the East China Sea Peace Initiative." 1st Edition (November 2013), available at: <http://www.mofa.gov.tw/en/cp.aspx?n=38CD1D3C91067AEC>

On the point of history, MOFA provides detailed explanations of Chinese legacy in the area. One summary of such evidence is as follows:

*The Diaoyutai Islands are part of the sovereign territory of the Republic of China and an island group that is part of Taiwan. A reference was made to the islands in a book Seeing Off with a Favorable Tailwind dating to 1403 during the Ming dynasty. They were also mentioned several times in Records of Imperial Missions to Ryuku written by dozens of envoys sent on investiture missions to the Ryukyu Kingdom by the Ming and Qing courts and who used the islands as a landmark. Official Qing documents, such as Record of Missions to Taiwan and Adjacent Waters (1722) and Recompiled General Gazetteer of Fujian (1871), listed the Diaoyutais as a naval base and strategic transportation hub. The islands are marked as Chinese territory in both Chinese and foreign maps from the 18th and 19th centuries. Numerous historical documents showed that the Diaoyutai Islands were first discovered, named, and used by the Chinese. They were not terra nullius before they were occupied by the Japanese in 1895.<sup>16</sup>*

An important aspect of the excerpt above is its uniformity with Mainland China's explanations of Diaoyu sovereignty. Change the name of the government claiming sovereignty rights in the excerpt above, and the explanation could have been written by either the PRC or the ROC.

Regarding the application of international law to the historical data MOFA outlines, MOFA argues that strictly speaking, international law is not applicable. Regardless, MOFA maintains that ROC claims still fulfill the standards of international law:

*The origin of modern international law extends back to 16th- and 17th-century Europe. When the Diaoyutai Islands were found, named and used by the Chinese in the 15th century, modern international law had yet to come into existence. Therefore, it would not be appropriate to apply the principles of modern international law to Asian countries of the past, as such legislation was non-existent at the time. Nevertheless, by the strict standards of modern international law, the ROC's sovereignty claim over the Diaoyutai Islands still stands.<sup>17</sup>*

The argument that Chinese claims to the Diaoyu/Diaoyutai predate the establishment of international law is periodically made by both the PRC and ROC governments, although

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<sup>16</sup> *Ministry of Foreign Affairs, Republic of China (Taiwan)*. "That Japan's Occupation of the Diaoyutai Islands is Illegal is an (sic) Historical Fact." Available at: [http://www.mofa.gov.tw/en/News\\_Content.aspx?n=539A9A50A5F8AF9E&sms=37B41539382B84BA&s=C1778E86611A3CEE](http://www.mofa.gov.tw/en/News_Content.aspx?n=539A9A50A5F8AF9E&sms=37B41539382B84BA&s=C1778E86611A3CEE)

<sup>17</sup> *Ministry of Foreign Affairs, Republic of China (Taiwan)*. "The Republic of China's Sovereignty Claims over the Diaoyutai Islands and the East China Sea Peace Initiative." Available at: <http://www.mofa.gov.tw/en/cp.aspx?n=38CD1D3C91067AEC>

usually as a secondary argument after presenting evidence that the acquisition does nonetheless fulfill Western legal standards of territorial acquisition. Excluding Western principles of territorial acquisition, another possibility is that the Chinese may claim the territory through “possession from time immemorial,” which is perhaps what the many references to “from ancient times” are referring to in many ROC and PRC statements on the dispute.<sup>18</sup> Territorial possession from time immemorial would be a type of title that has existed for so long, the owner of the title does not have to prove how the original title was established.

Apart from publications specific to East China Sea claims, MOFA also issues statements when events relevant to the dispute arise. For example, in April 2015 Japan’s Ministry of Education, Culture, Sports, Science & Technology released the results of its most recent review of secondary education textbooks. Observers noted that every geography, history, and civics textbook approved by the Ministry emphasized that the Senkakus (the Diaoyutai) as well as Takeshima (known as Dokdo in South Korea and discussed in the sixth chapter of this dissertation) are the “inherent territory” of Japan. Combined with many other changes deemed particularly concerning, Japan’s neighbors immediately voiced their opposition to the ministry’s actions.<sup>19</sup> Taiwan’s MOFA added its opposition, repeating its standard position on the Diaoyutai:

*The Diaoyutai Islands are an inherent part of the Republic of China and are islands appertaining to Taiwan, whether considered from the perspective of history, geography, geology, use, or international law. This is an uncontestable fact. The ROC’s unchanging position as concerns the Diaoyutai Islands is to safeguard sovereignty, shelve disputes, pursue peace and reciprocity, and promote joint exploration and development. The ROC calls on all parties concerned to adhere to the East China Sea Peace Initiative, to replace confrontation with dialogue, to shelve territorial disputes and engage in negotiation, to establish a code of conduct for the East China Sea and to jointly develop resources in the area so that the East China Sea becomes a sea of peace and cooperation.*<sup>20</sup>

This statement is again a very succinct statement of the wide range of interrelated

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<sup>18</sup>For a Japanese perspective with a clear agenda but nonetheless clear and coherent legal assessment of a Chinese claim of “ancient possession from time immemorial” over the Diaoyu/Diaoyutai/Senkaku, see: Shigeyoshi Ozaki. “Territorial Issues on the East China Sea: a Japanese Position.” *Journal of East Asia and International Law* 3 (2010), pp. 151–174

<sup>19</sup>*The Economist*. “History in East Asia: Hearts and minds.” (April 10, 2015)

<sup>20</sup>*Ministry of Foreign Affairs, Republic of China (Taiwan)*. “The ROC government protests Japan’s false claims concerning the Diaoyutai Islands made in its secondary school textbooks.” (April 7, 2015)

justifications brought to bear on Taiwan’s claim within Taiwan. Republic of China rights, which trace back to Chinese history, are included, while at the same time a statement that the islets are appertaining to Taiwan itself is also present. The list of justification categories, longer than that present in South China Sea claims, again includes “geology” and “use,” indicative of a continental shelf claim and evidence of activities in the area such as fishing.

Statements of Taiwan’s East China Sea claim as described by national legislation, government statements, and particularly statements by MOFA include many of the justifications emphasized by different political groups engaged in Taiwan’s domestic politics. As will be described in greater depth below, while the KMT and DPP each emphasize a range of justifications for Taiwan’s claims in the East China Sea, with a fair amount of overlap, the DPP is careful in only mentioning Taiwan’s rights, particularly on the basis of geography and use over time, while the KMT will also raise Chinese history as a basis for ROC rights. Identity politics plays a central role in dictating how Taiwan’s claims are articulated and which policies are advocated in defending the claim, most notably in that identity dictates which history each actor and group deems relevant to the dispute. This fact is particularly relevant when considering the views of those who overtly favor independence and those who favor greater connection with China.

### **5.3** *Party Politics and National Identity in Taiwan’s East China Sea Claim*

This section provides an overview of the various explanations and viewpoints that exist within Taiwan’s domestic political arena with respect to Taiwan’s East China Sea claim. As illustrated in Figure 5.3.1, the range of observed viewpoints is not as broad as that which exists for Taiwan’s South China Sea claim. This is due to the ease with which historical and legal justifications can be combined to establish an East China Sea claim. However, the observed viewpoints do illustrate a tolerance within Taiwan for views that might be considered unpatriotic, which is consistent with the findings in Chapter Three on Taiwan’s South China Sea claim, and continues to illustrate a contrast between the PRC and ROC governments. As Figure 5.3.1 illustrates, one openly expressed view within

**With no occupation of any land features:**

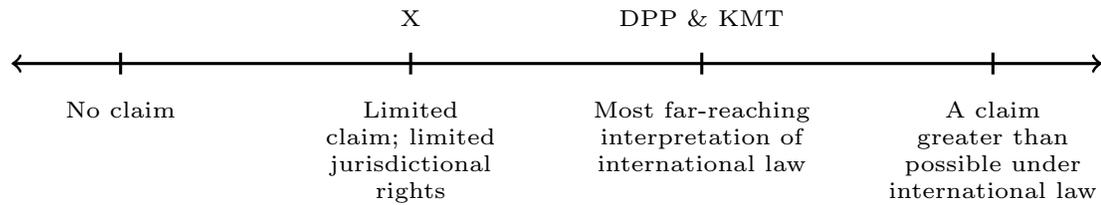


Figure 5.3.1: Range of Viewpoints on Taiwan's East China Sea Claim

Taiwan is that the Japanese sovereignty claim to the Diaoyutai/Senkaku is the strongest, and that Taiwan's claim should ultimately be limited to fishing rights in the area. Below, the political spectrum is considered again through the lens of Taiwan's two broad coalitions, with special attention to the positions of Taiwan's two dominant political parties.

### 5.3.1 *Pan Green and Independence Activists*

As discussed in Chapter Three, political parties and groups that emphasize independence and Taiwanese identity are part of the Pan-Green, such as the Taiwan Solidarity Union, Taiwan Independence Party, Taiwan Constitution Association, as well as the largest party in the coalition, the DPP.

**Deep Green.** Those belonging to the Deep Green (the Pan-Green far to the left), most notably the independence activists, are the most difficult to generalize about in terms of their views on the East China Sea. This is because among the Pan-Green, there are those who identify with the Japanese, even going so far as to agree with many aspects of Japan's position in the dispute. In fact, there are many within Taiwan who view Japan's former colonization of Taiwan in a favorable light. At the same time, there are many independence advocates who are fiercely opposed to Japanese sovereignty in the East China Sea, and view Japan as an imperialist power occupying Taiwan's territory. National narratives of the importance of Diaoyutai have been expressly linked to traditional Taiwanese fishing rights and Taiwanese identity, meaning that Taiwanese independence advocates can also be

opposed to Japan's presence in the East China Sea, despite the fact that the Pan-Green is frequently accused of being too close to Japan.

Often referred to as the father of Taiwan's democracy, former Taiwan President Lee Teng-hui has been an outspoken advocate for Taiwanese independence, and is the founder of the Taiwan Solidarity Union (TSU), a political party openly advocating Taiwanese independence. Educated in the United States and Japan, Lee grew up in Taiwan during Japan's colonial rule. He briefly served in the Japanese Navy during World War II, and his brother died fighting for the Japanese in the Philippines.<sup>21</sup> Lee's viewpoints on the dispute help illustrate the complexities of Taiwanese identity politics in shaping Taiwan's policies within the East China Sea dispute.

On numerous occasions, Lee has said that the land features in the East China Sea belong to Japan.<sup>22</sup> In an interview with the Okinawa Times, Lee said, "The land of the Senkaku Islands belongs to Okinawa, therefore it is a territory of Japan."<sup>23</sup> In 2011 Lee told a Japanese magazine, "no matter how many times I have to say it, the islet chain is simply Japan's territory."<sup>24</sup>

Lee has also emphasized that what is most important to Taiwan is to resolve the fishing rights issue, as Taiwanese have used the area as a traditional fishing grounds since Japanese colonial period. He also speculates that most people in Taiwan do not care about the dispute beyond accessibility for fishermen. In 2012 he said, "This has always been an issue of fishing rights. It is not a sovereignty issue." He added, "I really don't think that ordinary people care about the islets."<sup>25</sup>

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<sup>21</sup>Lee Teng-hui's brother is enshrined along with other war dead at the Yasukuni Shrine in Tokyo. Lee periodically travels to the Yasukuni Shrine to honor his brother, and has defended the right of Japanese leaders to visit the Yasukuni Shrine as well. During one press conference, Lee dismissed Chinese and Korean criticisms of Yasukuni visits, saying, "The Yasukuni problem has arisen because China and Korea have their own problems that they can't solve. . . There is no reason for foreign governments to make criticisms regarding Yasukuni." Hugh Lawson. "Taiwan's Lee defends Tokyo war shrine visit." *Reuters* (June 9, 2007). Another news article cites Lee as saying, "It is natural for a premier of a country to commemorate the souls of people who lost their lives for their country." The statement was in reference to then Prime Minister Junichiro Koizumi's Yasukuni visit. Kyodo News. "Ex-Taiwan leader Lee backs Koizumi's visits to Yasukuni." *The Japan Times* (October 17, 2005).

<sup>22</sup>For examples see two articles with the same name in the same publication, published 12 years apart: Kyodo News. "Japan owns Senkaku isles: Taiwan's Lee." *The Japan Times* (September 25, 2002); JiJi Press. "Japan owns Senkakus: Taiwan's Lee." *The Japan Times* (January 17, 2014)

<sup>23</sup>Agence France-Presse (AFP). "Lee Teng-hui arrives in Japan." *Taipei Times* (September 5, 2009)

<sup>24</sup>Garfie Li and S.C. Chang. "Taiwan government rebuts ex-President Lee's claim about island dispute." *Taiwanese Central News Agency (CNA)* [Accessed through BBC Worldwide Monitoring].

<sup>25</sup>Chris Wang. "Diaoyutais a fishing rights issue: ex-president." *Taipei Times* (September 13, 2012)

While some may argue that Lee's position is a minority position, his words are not without impact. As one person heavily involved with the Sunflower Movement explains:

*President Lee is still an icon. He is the father of democracy. When he says something, he speaks clearly. He is one who has an idea of national defense. When he says Fish Island belongs to Japan, we young people, we buy it.*<sup>26</sup>

Yet this does not mean that independence-minded young people in Taiwan completely disregard the East China Sea dispute. As mentioned in Chapter Three, during the Sunflower Movement occupation of Taiwan's Legislative Yuan, experts were invited to speak to the demonstrators about issues relevant to Taiwan's future. The demonstrators invited a scholar to speak about the East China Sea dispute, but did not invite a speaker on the South China Sea dispute. As one Sunflower Movement leader explained, many young people understand the East China Sea dispute is important to Taiwan, especially because the subject is covered in Taiwan's national textbooks, although young people are unclear on the rationale behind the importance and feel distant at times from the dispute. As she explains, "we understand Fish Island is important for our defense, but we have no way to explain why; our textbooks tell us its important."<sup>27</sup>

As a sign of how complex the issue can be, some Deep Green parties heavily criticize the government's defense of rights relevant to the East China Sea, while at the same time it is unclear how these groups view the dispute. The Taiwan Solidarity Union (TSU), the party founded by Lee Teng-hui, often focuses its activities on domestic issues and cross-strait relations, but has filed charges with the Taiwan High Prosecutors' Office against President Ma due to his muted response after China's announced its East China Sea ADIZ. The TSU claimed Ma's failure to adequately oppose China's ADIZ, which includes islets and waters claimed by Taiwan, reflected a lack of loyalty.<sup>28</sup> While the TSU did not elaborate their positions on the claim in great depth, it is clear they feel that Taiwan's claims in the area are important, but most importantly should separate from the Mainland.

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<sup>26</sup>Interview. Washington DC. December 2014. In this excerpt, when the speaker says "Fish Island," she is referring to the Diaoyutai Islands. The Taiwanese name for the islands, Diaoyutai or 釣魚台, can be literally translated to "fishing platform" in English.

<sup>27</sup>Interview. Washington DC. December 2014

<sup>28</sup>Rich Chang. "TSU sues Ma over China 'inaction'." *Taipei Times* (November 30, 2013), <http://www.taipetimes.com/News/front/archives/2013/11/30/2003577977>.

The Formosan Association for Public Affairs (FAPA) is a nonprofit organization with primarily Taiwanese-American membership, and strongly advocates Taiwanese independence. FAPA's position on the East China Sea helps illustrate one independence perspective on the dispute. Generally speaking, FAPA views China as an aggressor in the dispute and Japan as a reliable, democratic ally. In 2012, FAPA concisely laid out its views on the East China Sea dispute in a position statement titled: "FAPA Position on the Senkakus/Diaoyutai." In the statement, FAPA's sense of identity and priorities are stated clearly:

*As Taiwanese Americans, we believe that Taiwan needs to contribute to peace and stability in the region, and refrain from positions and actions that increase tension and estrange our home country from its most important security allies in the region, Japan and the United States.*

On the specific issue of Taiwan's East China Sea claim, FAPA again prioritizes relations with Japan, advocating that Taiwan adopt the following position: "Taiwan does not take a position on the sovereignty over the Senkakus/Diaoyutai, but acknowledges that historically they have been administered by Japan." Moreover, FAPA is also clear on its assessment of China's claims in the East China Sea - Taiwan should disassociate itself "from the unfounded historic or political claims made by the PRC."<sup>29</sup> In an interview, Gerrit van der Wees, Senior Political Advisor of FAPA, explained the rationale behind FAPA's overall position, "The idea grew that our position should be as close as possible to the American position; for Taiwan to make claims to the Senkakus conflicts with a major ally in the fight against China."<sup>30</sup>

Yet many independence advocates also strongly advocate Taiwan's sovereignty in the East China Sea, and actually express negative views toward Japan and even Taiwan's main political parties in light of a strong sense of Taiwanese identity. One scholar of maritime issues, who clearly stated preference for Taiwanese independence and emphasized Taiwan's history of fishing in the East China Sea, explained that he has found both parties to be inadequate in defending Taiwan's claim:

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<sup>29</sup> "FAPA Expresses Concern Over Ma Administration's Position and Actions Regarding Senkaku / Diaoyutai." Formosan Association for Public Affairs Press Release on December 12, 2012.

<sup>30</sup> Interview. Washington DC. December 2014

*A responsible government of Taiwan should insist on this, that the Diaoyutai belongs to Taiwan. Then, whether or not the Diaoyutai is part of China will hinge on the future of Taiwan. That's what a responsible government should do. The blue will argue there's no difference, Taiwan is part of China. The DPP was also cold with Diaoyutai [hasn't said much about the East China Sea dispute]. In the bottom of their hearts they don't have passion for this topic. But in my opinion they should keep what belongs to Taiwan.*

*There appears to be a Blue-Green consensus that they should be soft on Diaoyutai... Maybe the East China Sea dispute is an inconvenient truth that the Taiwan government doesn't want to admit... Maybe the concern with sovereignty is really a phantom, and not a real concern.<sup>31</sup>*

**The DPP.** Former President Lee's position on the East China Sea dispute has made some concerned that the DPP would follow his lead and denounce any Taiwanese claim, with a spokesman for President Ma's office going so far as to publically call on Tsai Ing-wen to reaffirm Taiwan's sovereignty over the Diaoyutai.<sup>32</sup> Yet these concerns appear to be largely unfounded, as the DPP has consistently advocated Taiwanese claims in the East China Sea.

In 2005, Chen Shui-bian became the first head of state to visit Pengjia Islet, which is 76 nautical miles west of the Diaoyutais. He made his visit overtly political. During a speech he said, "The Diaoyutais belong to us, belong to Taiwan, there is no doubt about it... I'm here to show our determination to protect our territory."<sup>33</sup> During the speech, Chen noted that fishing issues and sovereignty disputes over the East China Sea should be handled separately, and emphasized that fishing talks with the Japanese were ongoing. He also pointed out that "Taiwan, as a liberal, democratic and peace-loving country is obliged to resolve international disputes through negotiations in line with international law and precedents and not use unilateral confrontational moves."<sup>34</sup>

The DPP's current presidential candidate has also expressed similar views. During a November 2010 breakfast meeting in Taipei with Japanese Prime Minister Shinzo Abe, DPP Chairperson Tsai Ing-wen used four points to explain DPP policy on the East China Sea dispute:

*First, sovereignty over Diaoyutai belongs to Taiwan. Second, peaceful and*

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<sup>31</sup>Interview. Taipei. June 2014

<sup>32</sup>Garfie Li and S.C. Chang. "Taiwan government rebuts ex-President Lee's claim about island dispute." *Taiwanese Central News Agency (CNA)* [Accessed through BBC Worldwide Monitoring].

<sup>33</sup>Tai-lin Huang. "Chen: Diaoyutais belong to Taiwan." *Taipei Times* (August 11, 2005)

<sup>34</sup>Tai-lin Huang. "Chen: Diaoyutais belong to Taiwan." *Taipei Times* (August 11, 2005)

*rational methods should be used (in the dispute). Third, the DPP will not consider cooperation with China in dealing with the Diaoyutai issue. Fourth, (the DPP) hopes the two sides can dialogue, and have an attitude of joint cooperation when dealing with fishing rights and the development of natural resources.*<sup>35</sup>

While this policy may look very similar to KMT policies (discussed below), or even to Mainland China's policies on the East China Sea dispute, a key aspect of Chairman Tsai's statement is claiming that the Diaoyutai islets belong to Taiwan. Rather than using the official title of Taiwan's government, the Republic of China, she referred specifically to Taiwan.<sup>36</sup>

Moreover, similar to the independence activists described above, the DPP has also expressed concerns about maintaining a positive relationship with Japan. In fact, many interviewees emphasized that difference between the DPP and KMT positions arises not only from how each party views Mainland China but also in how they view Japan. While the KMT has worked to improve ties with Mainland China, DPP representatives often emphasize the importance of maintaining a healthy relationship with Japan.<sup>37</sup> Moreover, the DPP frequently expresses concerns about the ROC government either appearing to work with China or working with China in actuality. A frequent criticism of Ma administration East China Sea policies by DPP officials is that Ma is too close to China, giving the impression that Taiwan and China have a unified position on the East China Sea dispute.<sup>38</sup> For instance, while the DPP continues to insist on Taiwan's sovereignty and fishing rights in the East China Sea, members have argued against protest actions in the East China Sea when those actions appeared to coincide with Chinese efforts.<sup>39</sup>

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<sup>35</sup>This text is the author's translation. The original text is as follows: 第一，釣魚台主權屬於台灣；第二，應以和平、理性方式處理；第三，民進黨不考慮與中國合作處理釣魚台問題；第四，希望雙方以對話，共同合作的態度來處理漁權及天然資源開發問題。 <http://www.dpp.org.tw/news.content.php?sn=4615>

<sup>36</sup>The nuance of Tsai Ing-wen's statement was not lost on observers in Mainland China. Tsai Ing-wen's statement was addressed during Foreign Minister Hong Lei's Regular Press Conference on November 2, 2010. The official English translation of the question and answer are as follows:

Q: Tsai Ing-wen, Chairperson of Taiwan's Democratic Progressive Party said in her recent meeting with former Japanese Prime Minister Shinzo Abe that the sovereignty of the Diaoyu Islands belonged to Taiwan. How do you comment? Besides, China once said that issues such as Taiwan and Tibet bear on China's core interest. Is the Diaoyu island issue also part of China's core interest?

A: The Diaoyu Island and its affiliated islands have been China's inherent territory since ancient times. Embassy of the People's Republic of China in the United States (Official Website): <http://www.china-embassy.org/eng/fyrth/t766610.htm>

<sup>37</sup>Interview, Taipei, June 2014; Interview, Washington DC, November 2014.

<sup>38</sup>Interview. Taipei. June 2014; Interview. Washington DC. November 2014

<sup>39</sup>For an example of such criticisms, see DPP caucus whip Pan Men-an (潘孟安) argue that Taiwan's

While the claims may look superficially similar, justifications for the claims also show important variation related directly to identity politics. As one DPP representative emphasized, an important factor to consider is whether the claim is based on the rights of the ROC or the rights of Taiwan. “The DPP is focused more on historical and geographical aspects of the claim, which is related to Taiwan.”<sup>40</sup> It should be noted, in this quote, the speaker was referring to historical aspects of Taiwan’s relationship with the East China Sea, such as usage by Taiwanese fishermen. During interviews, DPP officials frequently emphasized Taiwanese fishermen’s long-standing traditions in the area as reflective of Taiwan’s rights.<sup>41</sup> International courts have provided for historic fishing rights, although the standards of proof are high.<sup>42</sup>

Ultimately, the DPP does maintain a focus on keeping Taiwan’s claim consistent with international law, and rejects what it considers to be an improper use of historical justifications when international law is the proper standard. In one editorial, a former DPP legislator argued that the KMT’s approach to using Chinese history when justifying Taiwan’s East China Sea claim is flawed. After arguing that the concept of Chinese maritime rights is actually a very recent invention, Lin Cho-shui 林濁水 explains:

*The crucial event that brought the Diaoyutai Islands . . . into the realm of modern sovereignty disputes was the invasion by the Japanese imperialist state . . . The Diaoyutais were only integrated into the fishing grounds of Taiwanese fishermen with the introduction of modern engine-driven fishing boats. The basis for these two claims [The South China Sea and East China Sea claims] thus have nothing to do with Chinese history.*

*Modern international law stipulates that territorial water claims can be based on practical occupation, prescription, being part of a continental shelf and inclusion in economic waters. “Historic sovereignty” is conspicuous by its absence from this list of legitimate claims. The Diaoyutais sit right on the continental shelf that extends from Datun Mountain [Datun Mountain is a mountain in northern Taiwan].<sup>43</sup>*

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legislature should not endorse a fishing vessel protest voyage to the East China Sea when it appeared to correspond with China’s simultaneous efforts to exert sovereignty in the area. *Taipei Times*. “Taiwanese flotilla sails to Diaoyutais.” (September 25, 2012), pg 1.

<sup>40</sup>Interview. Washington DC. 2014

<sup>41</sup>Interview. Washington DC. 2014

<sup>42</sup>While difficult to establish, historic fishing rights are nonetheless one area in which international law might account for historical evidence that does not establish full sovereign rights, see: Leonardo Bernard. “Securing the Ocean for the Next Generation.” *LOSI Conference Papers* (2012), available at: <https://www.law.berkeley.edu/files/Bernard-final.pdf>

<sup>43</sup>For an English translation of Lin Cho-shui’s editorial, see: Lin Cho-shui 林濁水. “Historical sovereignty

Consistent with other DPP statements, the above excerpt indicates a rejection of using Chinese history in Taiwan's East China Sea claim, particularly historical justifications that do not readily match to international law. Moreover, the DPP tends to emphasize Taiwanese fishermen's use in the area, and to have a relatively more accepting view of a Japanese role. Finally, international law is emphasized, in that Taiwan's geological and geographical features (a continental shelf claim measured from Taiwan) are highlighted as a superior justification for Taiwan's claim.

### 5.3.2 *Pan-Blue*

As discussed in Chapter Three, Taiwan's Pan-Blue Coalition is an alliance between three political parties: the Kuomintang (KMT), the People First Party (PFP), and the New Party (CNP). As a whole, the Pan-Blue Coalition tends to emphasize Chinese national identity, as opposed to a separate Taiwanese identity, and is more accepting of economic connections with Mainland China than its political opponents. Taiwan's current ruling party, the KMT, will be discussed first in this section. The section concludes with an outline of how groups and individuals that can be loosely grouped as Deep Blue tend to view Taiwan's East China Sea claims.

**The KMT.** President Ma Ying-jeou has been vocal about Taiwan's claims in the East China Sea, and he has a personal history of involvement in East China Sea protest groups. His views help illustrate KMT thinking on the dispute.

As discussed in Chapter Three of this dissertation, the KMT still identifies with the Republic of China, and views ROC actions and Chinese history before 1949 as directly relevant to Taiwan's claims. President Ma exemplifies this approach, consistently citing ROC history and Chinese history in explaining Taiwan's East China Sea claims.<sup>44</sup> When attending a conference titled, "Examining the Diaoyutai/Senkaku Islands Dispute Under New and Multiple Perspectives," President Ma outlined four periods of history relevant to Taiwan's Diaoyutai claim. According to Ma, the first period is during the centuries leading

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won't wash." *Taipei Times* (September 21, 2012), pg. 8, Perry Svensson (translator).

<sup>44</sup>For an example, see Ma Ying-jeou's speech at the opening ceremonies of the Exhibition Commemorating Victory in the War of Resistance Against Japan and Retrocession of Taiwan. An English transcript is available here: <http://english.president.gov.tw/Default.aspx?tabid=491&itemid=32799&rmid=2355&word1=Diaoyutai>

up to 1895, when the activities of the Ming and Qing dynasties demonstrated Chinese sovereignty over the Diaoyutai. Second, from 1895 to 1945, Japan ruled over the Diaoyutai due to the Treaty of Shimonoseki, which states that territories ceded to Japan included “the island of Formosa, together with all the islands appertaining or belonging to the said island of Formosa.” The third period was from 1945 to 1972, when numerous agreements such as the Potsdam Declaration, the Cairo Declaration, and the 1952 Treaty of Peace between the Republic of China and Japan were established, with all of these agreements stating that Japan will return every part of Chinese territory it has stolen. According to President Ma, sovereignty over the Taioyutai islets returned to the ROC during this time. Fourth, from 1972 until the current day, Japan has administered the Diaoyutai islands due to the Okinawa Reversion Treaty between the United States, which only returned administrative powers to Japan.<sup>45</sup>

Oftentimes, KMT references to international law build on the above historical narrative. As Japan claims the Diaoyutai were *terra nullius* when it announced its claim over the islets in 1895, KMT officials cite the above historical narrative to argue that the territory already had an owner, China. As David Lin, Taiwan’s current Foreign Minister and a KMT appointee explains in a *Foreign Policy Magazine* editorial:

*Japan’s claim of sovereignty over the Diaoyutai Islands by virtue of “discovery-occupation” under international law is invalid ab initio (from the onset), as such claims can only be made to terra nullius (land without owner).<sup>46</sup>*

Most KMT references to international law in the East China Sea are of a similar nature, where international law is used to frame a historical narrative of ROC and Chinese sovereignty in the area. Other references to international law are more indirect. While emphasizing that his East China Sea Peace Initiative and the Japan-Taiwan Fisheries agreement do not sacrifice ROC sovereignty claims to the Diaoyutai islets, President Ma frequently repeats statements that appear to refer to Taiwan’s continental shelf claim. As he explained in an interview with the New York Times:

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<sup>45</sup>Office of the President, Republic of China (Taiwan). “President Ma attends ‘Examining the Diaoyutai/Senkaku Islands Dispute Under New and Multiple Perspectives’ international conference.” (March 17, 2014), <http://english.president.gov.tw/Default.aspx?tabid=491&itemid=32129&rmid=2355&word1=Diaoyutai#>

<sup>46</sup>Yung-lo Lin. “Those Islands Belong to Taiwan.” *Foreign Policy* (October 18, 2012)

*When we signed the fisheries agreement with Japan, we did not abandon our sovereignty claim. We regard the Diaoyutais as territory of the Republic of China, and offshore islands appertaining to Taiwan. This stance has never changed.*<sup>47</sup>

Here, the words “offshore islands” and “appertaining” appear to refer to continental shelf claims. However, the dominant narrative of justification from President Ma and from the KMT is that the ROC has sovereignty over the Diaoyutai on the basis of the 1952 Treaty of Peace between the Republic of China and Japan, the Potsdam Declaration, and the Cairo Declaration, which all negated the Treaty of Shimonoseki. In this line of thinking, Japan only had the right to occupy the Diaoyutai for 50 years, from 1895 to 1945, and since that time has been illegally occupying ROC territory. This explanation of ROC sovereignty relies heavily on a combination of historical and legal justifications, as demonstrated in the previous chapter on China’s claims in the East China Sea.

**Deep Blue.** Both Taiwanese national identity and Chinese national identity have been linked to an East China Sea claim. In fact, on the East China Sea issue, many on the far left and far right of Taiwan’s political spectrum begin to coalesce in their positions on the East China Sea. Activists from both sides of the political spectrum have expressed dissatisfaction with DPP and KMT efforts to protect the Diaoyutai, due to the importance both groups place on Taiwan (or ROC) sovereignty in the area.

Huang Hsi-lin (黃錫麟), executive director of the World Chinese Alliance in Defense of the Diaoyu Islands (世界華人保釣聯盟, WCADDI) and secretary-general of the Chung Hwa Baodiao Alliance, explains that the Japan-Taiwan Fisheries Agreement damaged Taiwan’s sovereignty claims in the East China Sea:

*As President Ma has signed the agreement with Japan, it is technically an international law, and it is Japan’s territorial sea, also Diaoyu Island belongs to Japan. Before signing the contract, everyone can claim the Diaoyu Island belongs to him/her, but now we no longer have a say. That’s why I blame President Ma that he sold our country. The reason is that when you signed the agreement, you use our sovereignty to exchange for fishery rights.*<sup>48</sup>

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<sup>47</sup>*The New York Times*. “Transcript of New York Times Interview With President Ma Ying-jeou of Taiwan.” (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>

<sup>48</sup>Interview. Taipei. June 2014. Original in Chinese: 那馬英九就跟日本簽了，所以就國際法來說，這就算是日本的領海，釣魚台是日本的領土。以前是你說你的，我說我的。但是，現在已經簽死了。我就罵馬英九賣國賊，因為你簽了這個協定，就是用漁權出賣了主權。

Huang His-lin has been featured in the media for his journeys to the Diaoyutai islets, including one trip in which he carried a PRC flag on his boat. Various media reported that Huang claimed the alliance had forgotten to bring an ROC flag.<sup>49</sup> Regardless, Huang does not hide his feelings about the Mainland. In expressing his future plans to expand his organization's efforts to include the South China Sea, he emphasizes cooperation with China. As he explains:

*The current situation is that our fishermen at Diaoyu Island will not be bothered and China will protect them. And we hope to use the same model for the South China Sea. So, after we get our own boat and finish dealing with East China Sea, we will go to the South China Sea Taiping Island and claim our sovereignty, ask for cross strait cooperation, do not let the Vietnam and Philippines fishermen/pirates to bother us and affect our fishermen.*<sup>50</sup>

While generally positive about the KMT, and perhaps not accurately placed within the heading of “Deep Blue,” one interview subject still argued the government was slow to act strongly on the East China Sea dispute. Suao Fishermen's Association Director Chen Chun-sheng (陳春生), who led a large group of fishing boats on a trip to the Diaoyu Islets as a protest against the Japanese government's 2012 purchase of the land features, said during an interview that sometimes protesting was necessary in order to encourage the government to act on the East China Sea issue. As Chen explained:

*For example, if your home is here and your ancestors have a piece of land in Taipei, after 50 years pass, [other] people will say ‘this is mine, this is mine.’ If you do not go to possess it, and say, ‘excuse me, this is mine,’ another 50 years will pass and you will have nothing. . . . If you do not touch it, after fifty years it will definitely belong to another. At that time your descendants may criticize you, they certainly will!*

*[With respect to the East China Sea] because the government does not touch it, we must go on our own. At least from the view of history, we show it is ours, because history will show, fifty years later, that even though [the Japanese had] so many warships, so many guns, so many boats, at least we fishermen took some seventy boats and went. We two hundred to three hundred people went, because this is a responsibility to history, a responsibility owed to our next generation.*<sup>51</sup>

<sup>49</sup>For an example see: Chiu Chun-fu and Jake Chung. “CGA says did not see Chinese flag in Diaoyutais protest.” *Taipei Times* (June 6, 2012), pg 3.

<sup>50</sup>Interview. Taipei. June 2014. Original in Chinese: 那最重要的問題是要以同一個模式，目前釣魚台的狀況主要是我們的漁民在那裡不會受到日本的干擾，而且有大陸的保護。那就是希望能夠套用釣魚台這個模式，應用到南海上面。所以等到我們處理好將要購買船以及東海的問題之後，我們會到南海太平島去宣誓我們的主權，要求兩岸政府聯手，不要讓菲律賓以及越南的漁民海盜等來干擾我們，而影響到我們漁民的作業。

<sup>51</sup>Interview. Suao Township, Taiwan. June 2014. Translation by the author, original in Chinese (full

Director Chen's views on the necessity of political action in the East China Sea repeat a dissatisfaction many have with the Taiwanese government regarding the East China Sea dispute, and this dissatisfaction is not limited to one party. However, Chen's ideas also illustrate how conceptions of property ownership transfer to island and water disputes, and moreover, that actors involved in the dispute see value in historical justifications and evidence. In this case, Chen relishes the role he and his colleagues played in building historical evidence for the future to rely upon in their claims to the area.

At times groups with differing perspectives on Taiwan's national identity have encountered each other face-to-face. At a September 2012 rally organized by the Alliance to Protect Diaoyu Islands by Everyone (a separate organization from the two headed by Huang Hsi-lin as mentioned above), participants carried flags of both the People's Republic of China and the Republic of China. A scuffle broke out when pro-unification protestors confronted a pro-independence protestor, who was carrying a sign that said the Diaoyutai are traditional fishing grounds for Taiwanese fishermen, and that Taiwan is not part of China. In contrast, when describing why he was attending the event, another protestor explained, "I am Chinese, there is only one China and there is nothing wrong in holding a Chinese flag... I am displaying a Chinese flag, so the Japanese will know that Taiwan is backed by its motherland and will cease being so arrogant."<sup>52</sup> On this particular issue, a strong Taiwanese identity and a strong Chinese identity can lead groups with very different political orientations to similar conclusions about the East China Sea.

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excerpt from larger interview): 所以兩個政府都不好，但至少這個政府我們去碰時，都有回應，表示這個政府好一點，因為像你看我們去的時候，民進黨還在後面修理我們，講說什麼釣魚台本來就台灣的，幹嘛還要主張，那是你在台灣自述的啊，自己喊的，因為每個你要講說，我舉例一下喔，你的房子在這裡，你祖先有一塊土地在台北市，經過五十年後，人家在那邊這個我的、這個我的，你如果沒去擁有，說這是我的，不好意思，再過五十年，你什麼都沒有，變成說這土地有三個人再搶，但經過五十年後政府有公權力下來，經過大家沒辦法用，這個道理講人文自然、地形性質、規劃性都是你家的，你沒有去碰，五十年之後一定別人的啊，那時候你後代會不會罵你，一定的啊，那既然政府不去碰，我們就自己去啊，至少在歷史定位上，我們主張是我們的，因為歷史會證明，等到五十年之後，軍艦那麼多、砲那麼多、船那麼多，但至少我們漁民七十幾艘漁船有去吧，我們兩三百個人有去吧，所以這是一個對歷史的負責、對我們下一代負責。

<sup>52</sup>Iok-sin Loa and Stacy Hsu. "Hundreds march in support of islands." *Taipei Times* (September 24, 2012), pg 1.

## 5.4 *Moderating Factors*

Both the DPP and the KMT maintain the same position on Taiwan's East China Sea claim. They claim Diaoyu sovereignty while also emphasizing geographical features related to Taiwan's continental shelf claim. They also emphasize Taiwan's history of fishing in the area. Where they depart is in the KMT incorporation of a mix of historical and legal justifications in relation to Chinese sovereignty, an argument rejected by the DPP in favor of international legal explanations based on Taiwan's circumstances alone. Nonetheless, this difference does not affect claim characteristics in any practical way, as international law provides a basis for claiming the same area that would be claimed at least partially through historical justifications. There is little ambiguity in Taiwan's claim, as well as in the positions advocated by Taiwan's two main parties, and all three are largely in agreement, apart from variations in the underlying justifications for the claim. Moreover, the claim is not expansive.

In terms of their relations with their respective bases, the same moderating factors apply that were relevant to the parties with respect to the South China Sea, as discussed in Chapter Three. The DPP has to be wary of appearing too independence prone, while the KMT must be careful not to appear too close to Mainland China. Relevant to the East China Sea dispute, the DPP must also be careful not to appear too close to Japan, particularly with the TSU allied with the DPP through the Pan-Green Coalition. For the DPP, it's base in some ways balances itself, as the Pan-Green Coalition has both independence activists who favor Japan's claim but also Taiwanese nationalists who want to see Taiwan stand strongly against its former colonizer, Japan. For the KMT, the same considerations apply as discussed in Chapter Three. Any ruling party in Taiwan must constantly balance relations with China, Japan, and the US, always careful to maintain close relations with each while assuring that relations with any one government are not too close, so as not to alarm the others.

## 5.5 *Conclusion*

Taiwan's two dominant political parties agree on the basic aspects of Taiwan's East China Sea claim. They each emphasize Taiwan's sovereignty over the Diaoyutai islets and continental shelf rights. However, the justifications they use for these claims are separate. While the DPP emphasizes Taiwan's historical use and Taiwan's geography, the KMT emphasizes Chinese history and treaties made by the ROC government. While their overall claims appear to be the same, the justifications vary, as national identity differences ensure they will also disagree over the history relevant to the claim. Moreover, national identity affects the views of those on the wings of Taiwan's political spectrum. Independence activists that nonetheless view Japan in a favorable light see merits to Japan's claim, especially to its claims of sovereignty over the Diaoyutai. At the same time, those with strong senses of Taiwanese independence who reject a Japanese identification have been observed to feel strongly about the Diaoyutai dispute, arguing their government has not done enough to protect Taiwanese sovereignty in the area. Finally, those with closer identifications to the Mainland also tend to be dissatisfied with ROC actions in the East China Sea, arguing the area is Chinese territory and should be defended from the Japanese.

Overall, Taiwan's claim is clear and not likely to change in the near future. This is because international law, UNCLOS provisions relevant to continental shelves in particular, readily provides for a claim that matches many of the historical narratives on the dispute found in Taiwan, across all different viewpoints. In this way, Taiwan's claim has important similarities to China's claim in the East China Sea, although differences are still evident as to the type of dissent permitted in each system. The Taiwanese system allows for open advocacy of the Japanese claim, while any evidence of divergence in China is toward a more expansive claim, and ultimately represents a furthering of nationalist historical narratives.

# Chapter Six

## CONCLUSIONS, ADDITIONAL CASES, AND FUTURE RESEARCH

### 6.1 *Introduction*

How do states determine which geographical areas they will include within their territorial and maritime claims? Thus far, the factors dictating claim formation are consistent across the cases presented in this dissertation. For each claim, international law and historical narrative are used both to draw lines and to justify them. When these two rationales provide significantly differing standards for a claim, most notably where historical justifications dictate a claim larger than that readily justified through international law, an ambiguous claim results. Under these conditions, the two rationales compete in the domestic political arena, where individuals and groups advocate claims based on one rationale or the other. When these two rationales provide largely similar standards for a claim, justifications of the claim will still draw upon the two rationales, and these at times contrasting justifications may have important implications for the dispute. For instance, these differing justifications may cause political actors to advocate contrasting policies for defending a claim. Moreover, an additional finding of the case studies thus far is that in an environment of heightened nationalism, particularly where government legitimacy is based on nationalism, there can be a chilling effect in which the range of debate permissible when discussing a nation's maritime and territorial claims is limited. This has been demonstrated through China's claims. However, such inflexibility is not necessarily due to regime type, as Mao's China

was more flexible in its claims.

As a reminder of the dissertation's overall theoretical structure and argument, as well as where each case fits in the dissertation's theoretical argument, the illustration originally included in Chapter One titled "An Outline of the Factors Affecting Claims," is reproduced here as Figure 6.1.1.

As illustrated in the figure, several additional cases from this chapter are also included in the dissertation's overall findings. However, two of these cases - Korea's claim to Dokdo and Indonesia's position on Natuna - are only short preliminary case studies, while additional cases - The Philippines claims in the South China Sea, the Rockall Dispute, Cambodia's claim over Koh Tral, and the United States position on Machias Seal Island, are presented as opportunities for future research. In other words, all of the cases presented in this chapter require further in-depth research, and any findings should only be considered a preliminary effort for extending the dissertation's findings. The Philippines' South China Sea claim, Ireland's claim over Rockall, Cambodia's position on Koh Tral, and the United States' claim over Machias Seal Island, are placed on the figure based on preliminary hypotheses for those claims.

With these caveats in mind, the dissertation proceeds as follows: first, several short case studies are presented which further explore and extend the dissertation's findings. Second, several potential cases for future research are proposed. Finally, the chapter concludes with a brief summary of the dissertation's findings and contributions.

## **6.2** *Additional Cases*

The two additional cases included in this chapter help to further illustrate several of the political processes found in China's and Taiwan's claims. These cases were each selected because, at least superficially, the case appeared to have conditions that would help further elucidate an important aspect of the observations found in China's and Taiwan's claims. These initial expectations were in some ways validated, but each case also provided additional information that was not anticipated. However, it is essential to note at the outset, these case studies are limited due to language barriers and a lack of field research,

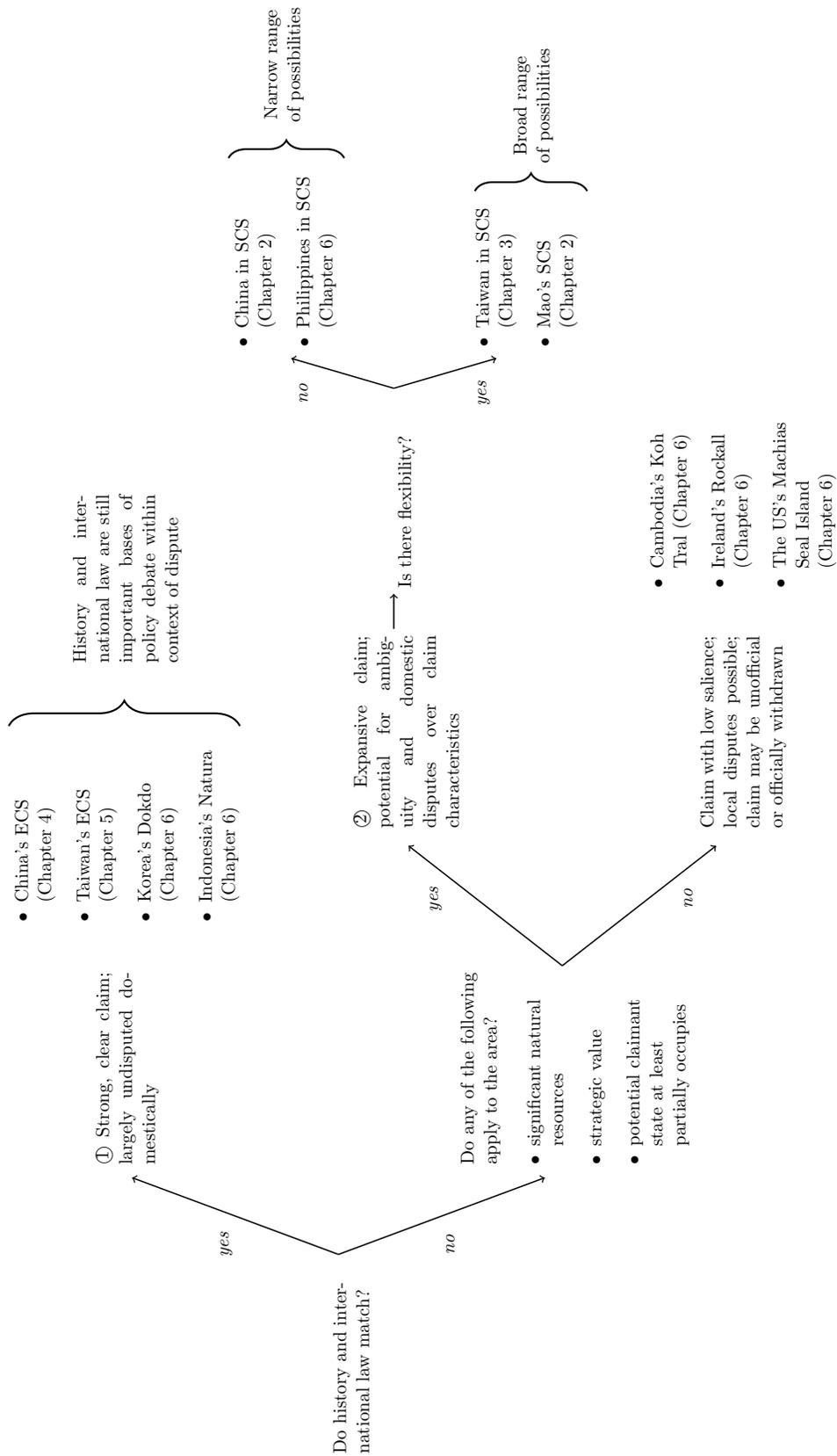


Figure 6.1.1: An Outline of the Factors Affecting Claims

and primarily rely on information gathered from news coverage of each dispute.

South Korea's claims over Dokdo were selected as a case study with the hope that the claim could serve as a direct comparison to China's and Taiwan's East China Sea claims. As will be discussed below, South Korea disputes Dokdo with Japan, and shares similar historical grievances against Japan as that found in China and Taiwan. South Korea's Dokdo claim illustrates that when historical narrative and international law readily coalesce in establishing a claim, the claim will be clear and stable. However, South Korea provides unexpected insight into the role of regime type. As discussed in Chapter One, an initial expectation of this dissertation was that regime type would create clear differences between how governments established and justified claims. As the case study below will illustrate, apart from differences in circumstances, such as occupation of disputed features, South Korea's approach to its Dokdo claim and China's approach to the East China Sea have important similarities, particularly in terms of the range of viewpoints brought to bear on the claim. When comparing these three cases, Taiwan presents the greatest range of viewpoints brought to bear on the claim domestically.

Indonesia's approach to Natuna was initially selected as a case that may possess important evidence on how domestic politics play out under conditions of ambiguity. However, unlike China's and Taiwan's South China Sea claims, this ambiguity comes from an external actor. While the Philippines, Vietnam, Malaysia, and Brunei, all know they have disputes with China, ambiguity in China's claim has left Indonesia uncertain as to whether or not it is involved in a dispute with China. Indonesia's claim over Natuna is clear and stable, but Indonesia's policy debates surrounding Natuna share common ground with political divisions exhibited in China's South China Sea claim, particularly with respect to the role played by military leaders in the context of a dispute.

### **6.2.1** *South Korea and Dokdo*

The dispute over Dokdo, also known as the Liancourt Rocks in English or Takeshima in Japanese, has been a serious stumbling block for Japanese-Korean relations in recent years. Both sides claim sovereignty over the land features, which include two main islets and a large number of surrounding rocks. Since 1954, Dokdo has been administered by South

Korea and guarded by a South Korean Coast Guard detachment stationed on the islets. Similar to the East China Sea dispute, the main point of contention is whether or not the islets were included in Japan's post-World War II renunciations of territory gained through imperialism.<sup>1</sup> In 1954, 1962, and 2012, Japan proposed submitting the dispute to the International Court of Justice, but each time South Korea refused.<sup>2</sup> Figure 6.2.1 is an illustration of Dokdo's location, as provided by the Ministry of Foreign Affairs of the Republic of Korea on their official Dokdo website. The Oki Islands are Japanese territory, while Ulleungdo is South Korean.



Figure 6.2.1: Location of Dokdo in Relation to South Korea and Japan<sup>3</sup>

The South Korean government's claim over Dokdo is clear and consistent, with statements of the claim drawing on both historical and legal justifications, as well as evidence that brings together both bases of justification. Throughout the Korean government and Korean public, expressions of the claim are widespread and uniform, with those emphasizing

<sup>1</sup>Jon M. Van Dyke. "Legal Issues Related to Sovereignty over Dokdo and Its Maritime Boundary." *Ocean Development & International Law* 38.1-2 (2007), pp. 157–224.

<sup>2</sup>In this respect, South Korea's approach to Dokdo has some important similarities to Japan's approach to the East China Sea dispute. Japan has refused to acknowledge any dispute over the East China Sea land features, and has refused calls for international arbitration. Similarly, South Korea refuses to acknowledge a dispute over Dokdo and has refused international arbitration. In both cases, the party refusing to acknowledge the dispute and refusing arbitration is the party that currently occupies and administers the disputed land features. In each case, the occupying party has strong legal arguments for sovereignty, but chooses to maintain the status quo rather than facing any potential risks from arbitration.

<sup>3</sup>*Ministry of Foreign Affairs, Republic of Korea.*  
Available at: <http://dokdo.mofa.go.kr/eng/introduce/location.jsp>

law and those favoring historical justifications having little to disagree about. The Ministry of Foreign Affairs sums up South Korea's position on Dokdo in the following way:

*Dokdo is an integral part of Korean territory, historically, geographically and under international law. No territorial dispute exists regarding Dokdo, and therefore Dokdo is not a matter to be dealt with through diplomatic negotiations or judicial settlement.*

*The government of the Republic of Korea exercises Korea's irrefutable territorial sovereignty over Dokdo. The government will deal firmly and resolutely with any provocation and will continue to defend Korea's territorial integrity over Dokdo.*<sup>4</sup>

The South Korean government's official Dokdo website and publications provide a range of historical documents indicating Korean ownership of the islets over previous centuries, as well as evidence of the Japanese either disputing or recognizing Korean ownership. While the evidence presented by the Ministry of Foreign Affairs directly links to international law and methods of territorial acquisition, government officials also link the dispute to historical justifications.<sup>5</sup> The connections made by public officials also indicate how general historical justifications and nationalist narrative are often combined, even in a democracy where leaders gain legitimacy through elections. Moreover, these statements illustrate how concepts of theft and an enemy nation are attached to justifications for claims in such disputes. For instance, in 2006, then president Roh Moo-hyun gave an impassioned presidential announcement on television, framing Dokdo as emblematic of a Korean struggle for independence and nationhood. Excerpts of his speech are as follows:

*Dokdo is our land. It is not only part of our territory but also our own soil of historic significance where forty years of painful history is engraved vividly*

*Japan's present claim to Dokdo is claiming a right to what it had once occupied during an imperialist war of aggression, and what is worse, it is claiming a right to a former colonial territory of bygone years. This is an act of negating the complete liberation and independence of Korea. Moreover, this is an act of contending the legitimacy of Japan's criminal history of waging wars of aggression and annihilation as well as forty years of exploitation, torture,*

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<sup>4</sup> *Ministry of Foreign Affairs, Republic of Korea.* "The Korean Government's Basic Position on Dokdo." Available in English at: [http://dokdo.mofa.go.kr/eng/dokdo/government\\_position.jsp](http://dokdo.mofa.go.kr/eng/dokdo/government_position.jsp)

<sup>5</sup> Historical documents provided on South Korea's official Dokdo page all directly relate to legal standards for territorial acquisition, such as administration over Dokdo and recognition by other actors of Korean sovereignty. This can be contrasted with China's approach to providing evidence on its East China Sea claim, where many historical documents can be directly linked to legal standards for territorial acquisition while other documents seem to indicate a broader historical connection (such as the navigational maps discussed in Chapter Four)

*imprisonment, forced labor, and even military sexual slavery. We cannot tolerate this for anything.*

*For Koreans, Dokdo is a symbol of the complete recovery of sovereignty. . .*

*Dokdo for us is not merely a matter pertaining to territorial rights over tiny islets but is emblematic of bringing closure to an unjust history in our relationship with Japan and of the full consolidation of Korea's sovereignty. It is a matter that calls for a public and dignified response.*<sup>6</sup>

While this statement and many of the expressions below sound severely nationalistic and intransigent, during negotiations with Japan, the South Korean government has shown good faith when applying UNCLOS to the maritime zones associated with Dokdo. UNCLOS requires parties to jointly determine disputed maritime boundaries, and when negotiating with Japan, South Korea has advocated a median line be drawn between of Japan's Oki Islands and South Korea's Ulleungdo.<sup>7</sup> Such a median line would include Dokdo within Korean maritime jurisdiction (Figure 6.2.1). However, quite significantly, such a median line would also mean that South Korea is conceding that Dokdo fits under the UNCLOS Article 121(3) definition of a rock that cannot sustain human habitation. In other words, South Korea would be foregoing any attempt to claim that Dokdo generates the maritime jurisdictional rights of an island, such as a 200 mile EEZ. Considering the nationalistic atmosphere surrounding the Dokdo dispute within South Korea, as well as the fact that South Korea has stronger evidence to claim Dokdo is an island than many other claimants in East Asia do for a range of land features currently being claimed as islands (for example, Japan's Okinotorishima, as mentioned in Chapter One, footnote 21), this is a significant unilateral move to faithfully apply international law to maritime delimitation.

While South Korea has shown some good faith on maritime zones in relation to Dokdo, expressions of South Korea's territorial claim over Dokdo provide little indication of any intention to compromise on Dokdo sovereignty. Expressions of commitment to defending Dokdo are pervasive in South Korean politics. Oftentimes the most significant affirmations of Korean sovereignty over Dokdo are ignited in response to actions taken by Japan. In

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<sup>6</sup>Special Message by President Roh Moo-hyun on Korea-Japan Relations (April 25, 2006), <http://www.mofa.go.kr/webmodule/htsboard/template/read/korboardread.jsp?typeID=12&boardid=514&seqno=304487>

<sup>7</sup>Seokwoo Lee. "South Korea's maritime challenges and priorities." *Maritime Challenges and Priorities in Asia: Implications for Regional Security*. Ed. by Joshua Ho and Sam Bateman. New York: Routledge, 2013, pp. 219-229.

Japan, one of the most visible actions of Japan's claims in the dispute has been "Takeshima Day," an event celebrated annually in Japan's Shimane prefecture since 2005. Each year the event elicits strong protests from South Korea. Another prime example is the annual release of Japan's white defense paper in which the Dokdo islets, among other disputed areas, are mentioned as Japanese territory. Each year when the white paper is published, the South Korean government is expected to rebuke the white paper, particularly on the point of Dokdo. Soon after the 2012 defense paper was released, South Korea President Lee Myung-bak flew to Dokdo. President Lee was the first South Korean president to visit Dokdo and during his trip he drank tea, prayed, visited soldiers and spoke about Korean sovereignty over Dokdo. When speaking with those stationed on Dokdo, President Lee said, "Dokdo is indeed our territory and a place worth staking our lives to defend. Let's make sure to safeguard (the islets) with pride."<sup>8</sup> In a memoir published in 2015, former President Lee explained that he decided to visit Dokdo before he took office, but was delayed due to weather. Still, the timing is not likely to have been coincidental.<sup>9</sup>

In South Korea's domestic political environment, government responses to Japanese actions are closely monitored and critiqued. For instance, after the Japanese Embassy delivered 57 copies of their 2014 defense white paper, translated into Korean, to South Korea's Defense Ministry in January 2015, the Defense Ministry was publically criticized for not responding quickly enough to the white paper, having taken five days to respond.<sup>10</sup>

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<sup>8</sup>Chang Jae-soon. "Lee's surprise visit to Dokdo raises tensions with Japan." *Yonhap News Agency* (August 10, 2012), <http://english.yonhapnews.co.kr/national/2012/08/10/32/0301000000AEN20120810006451315F.HTML>

<sup>9</sup>While Lee may have planned to visit before assuming the presidency, the timing of the actual visit worked well to refute Japan's white paper, as did the timing of President Lee's statements four days after his Dokdo trip, when he implied that if Emperor Akihito would like to visit South Korea, he should first apologize for the Japanese colonization of Korea. Kyodo News. "Lee decided before becoming South Korean president to visit disputed islets." *The Japan Times* (January 29, 2015), <http://www.japantimes.co.jp/news/2015/01/29/national/lee-decided-becoming-south-korean-president-visit-disputed-islets/#.VNY0XbDF-5K>.

<sup>10</sup>In light of public criticism, a Defense Ministry official explained the Japanese originally delivered the white paper copies to the Defense Ministry's information division on a Friday, and the copies had only been passed along to the East Asian affairs division on the following Tuesday, as the information division did not realize the importance of the document. On Wednesday of the same week, the Defense Ministry summoned Japan's defense attaché to register their opposition to the white paper. They also returned all copies of the white paper to the attaché. These copies of the 2014 white paper represent the first time Japan's claims over Dokdo were translated into Korean by the Japanese, as in the past the Japanese had avoided including this segment in the translation they distributed to Korean agencies. They have included the claim in their Japanese version of the white paper since 2005. Song Sang-ho. "Defense Ministry blasted for late response to Japan's Dokdo claim." *The Korea Herald* (January 21, 2015), <http://www.koreaherald.com/view.php?ud=20150121001130>.

Even the smallest of Dokdo-related activities are scrutinized. In September 2014, South Korean Assemblyman Shim Jae-won, of the New Politics Alliance for Democracy party, criticized government efforts to promote Korean claims over Dokdo. Shim cited lower view counts for the Korean Ministry of Foreign Affairs' English-language Dokdo video, titled "Dokdo, Beautiful Island of Korea," when compared to the Japanese Foreign Ministry's official Dokdo video, "Takeshima - Seeking a Solution based on Law and Dialogue." News reports indicated that at the time of the criticism, the South Korean Ministry of Foreign Affairs' video had only been viewed approximately 48,000 times on YouTube whereas the Japanese video had been seen around 211,000 times.<sup>11</sup>

Similar to the Chinese people with respect to their claim over the Diaoyu Islets, Korean people have actively engaged in promoting and reaffirming South Korea's claims. Such activities link Dokdo with various aspects of Korean culture, nationalism, reunification with North Korea, and perhaps most prominently grievances against Japan, such as the issue of comfort women. These activities also help illustrate the Korean public's understanding of the claim's justifications, as well as their expectations for the South Korean government.

Celebrities have taken prominent roles in promoting South Korea's position on Dokdo. Korean pop star Kim Jang-hoon has personally funded many expensive Dokdo campaigns. Notable among his Dokdo involvement is his sponsorship of advertisements in various Western news publications such as the New York Times, the Wall Street Journal, and the Washington Post. He sponsored an informational video that was played for months in Times Square and a Visit Korea promotional advertisement with a picture of Dokdo, also displayed in Times Square. In 2011, he held a Dokdo festival aboard a cruise ship. The ship sailed to Dokdo and Kim held a concert at the islets. In 2013, Kim opened a Dokdo art show in New York City, including various models and illustrations of Dokdo, and held a concert to promote the opening.<sup>12</sup> In 2014, Kim moved the Dokdo art show to the Korean Cultural Center in Shanghai and also held a concert during the exhibition opening.<sup>13</sup> In 2012, Kim swam with Korea National Sports University students and actor Song Il-kook in a relay

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<sup>11</sup>It should be noted that the author of this dissertation has viewed both videos several times. "South Korean Government under Fire for Lackluster Dokdo Promotion." *The Korea Times* (September 5, 2014), <http://www.koreatimesus.com/south-korean-government-under-fire-for-lackluster-dokdo-promotion/>.

<sup>12</sup>Chun Sung-woo. "Singer opens Dokdo Art Show in New York." *The Korea Herald* (November 22, 2013)

<sup>13</sup>*Korea Times*. "Kim Jang-hoon to hold Dokdo Show." (March 16, 2014)

from Jukbyeon to Dokdo. The 220 kilometer distance took the swimmers over 48 hours to complete and was planned to commemorate the 67th anniversary of Korean independence from Japanese colonial rule.<sup>14</sup> Kim did the narration for a 2008 documentary film named, “Sorry, Dokdo.” The film argues that Japanese efforts to claim sovereignty over Dokdo have been systematic and focused on collecting historical documents and lobbying for name changes, whereas Korean efforts have been emotional and less focused on producing evidence adhering to academic standards. The movie is highly critical of the Korean government, particularly the Ministry of Foreign Affairs, and the Korean public for failing to properly prioritize the Dokdo issue.<sup>15</sup>

On August 14, 2014, another Korean pop star, Lee Seung Chul, traveled to Dokdo with a choir of young North Koreans defectors now living in South Korea, where the group performed songs about Korean unification. During the performance one choir member gave a speech. “Dokdo is our land, loved by both South and North Koreans,” the choir member stated, “Dokdo is like a bridge that connects the South and the North.”<sup>16</sup> The event was planned to coincide with the National Liberation Day of Korea, which commemorates the Japanese surrender during World War II. The concert was further highlighted when Lee Seung Chul traveled to Japan in November 2014 but was denied entry due to unspecified reasons, joining a list of Korean celebrities barred entry to Japan after Dokdo-related activities. In response to news he would be denied entry, Lee made a pointed reference to the names of his three sons, which combined spell out a Korean phrase with the meaning “long live Korea.”<sup>17</sup> A documentary about the performance on Dokdo and Lee’s efforts was later released.

High profile activities in favor of South Korean sovereignty over Dokdo are not limited to celebrities. The Japanese Embassy in Seoul is a frequent site for Dokdo protests, including

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<sup>14</sup>Kim Ji-soo. “Koreans have special feelings for Dokdo.” *Korea Times* (April 30, 2014); *Yonhap News Agency*. “Rock star-led swimming team reach Dokdo.” (August 15, 2012), <http://english.yonhapnews.co.kr/national/2012/08/15/73/0301000000AEN20120815002100315F.HTML>

<sup>15</sup>Yang Sung-jin. “[MOVIE REVIEW] First film dedicated to Dokdo ‘Sorry, Dokdo’ highlights indifference to disputed islets.” *The Korea Herald*, (December 25, 2008)

<sup>16</sup>Lee, Min-Jeong. “Korea’s Lee Seung-chul Denied Entry to Japan.” *The Wall Street Journal*. *Korea Real Time* (November 11, 2014), <http://blogs.wsj.com/korearealtime/2014/11/11/koreas-lee-seung-chul-denied-entry-to-japan/>

<sup>17</sup>Lee, Woo-young. “[Newsmaker] Celebs barred from Japan amid Dokdo dispute.” *The Korea Herald* (November 11, 2014), <http://www.koreaherald.com/view.php?ud=20141111001048>

a 2008 protest in which approximately 20 former South Korean soldiers slaughtered birds from a species of pheasants similar to Japan's national bird, and spread the birds' blood over Japanese flags.<sup>18</sup> In 2012, a man drove his truck into the Japanese embassy gate to protest Japan's claims over Dokdo.<sup>19</sup> In Pohang, one baker sells dessert bread shaped like the Dokdo islands. Publicized in the media, each piece of bread is decorated with a Korean flag, and the baker explains, "I am not trying to make a profit with the bread. All the profits from the bread sale will be donated to help victims of Japan's enforced sexual slavery."<sup>20</sup>

Many activities of average Korean citizens are aimed at increasing awareness of Dokdo abroad. For example, in 2006, a group of five South Korean university students took time off from their studies to travel around the world and promote South Korea's claims to the islets. Riding motorcycles and performing traditional Korean music, the group called themselves the "Dokdo Riders."<sup>21</sup> The Dokdo Riders inspired other students to follow, such as a group named Dokdo Racer 3, which completed a cross-continental awareness trip in a Dokdo-decorated promotional car in 2014. Dokdo Racer 3 attended the 2014 Brazil World Cup, wearing traditional Korean attire and engaging in street performances for World Cup attendees. They also traveled to schools around the globe, giving presentations on Korean culture and Korean views on Dokdo. Similarly, a man living in Los Angeles has spent the last ten years promoting the Dokdo cause, going so far as to legally change his name to Dokdo. Choi Dokdo travels to various festivals and even police stations throughout the US to distribute promotional items on Dokdo, and has been made a "Dokdo promotional ambassador" by the Dokdo Foundation in Korea.<sup>22</sup> Finally, the Korean Dry Cleaners Association in 2008 produced dry cleaning bags printed with a picture and map of Dokdo. The bags had, "Dokdo Island is Korean territory" and "The Japanese government must acknowledge this fact," written in English. It is estimated that about 100 dry cleaners in

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<sup>18</sup>Jack Kim and Isabel Reynolds. "S.Korea to spurn Japan minister over island row." *Reuters* (July 17, 2008)

<sup>19</sup>*BBC* (British Broadcasting Corporation). "Japan anger after protester rams truck at embassy in South Korea." (July 9, 2012), <http://www.bbc.com/news/world-asia-18766166>

<sup>20</sup>Jhoo Dong-chan. "Baker sells 'Dokdo bread'." *The Korea Times* (February 6, 2015), <http://www.koreatimes.co.kr/www/news/people/2015/02/178.173139.html>.

<sup>21</sup>Charles Burrell. "BAY AREA / 'Dokdo Riders' on world tour for rocks / Korean students promote rights to 2 disputed islands." *San Francisco Chronicle* (April 1, 2006), <http://www.sfgate.com/politics/article/BAY-AREA-Dokdo-Riders-on-world-tour-for-rocks-2500910.php>

<sup>22</sup>*Korea Times*. "His name is Dok-do, Choi Dok-do." (September 17, 2014), <http://www.koreatimes.us.com/his-name-is-dok-do-choi-dok-do/>

New York City switched to using these bags after their release.<sup>23</sup>

The examples highlighted here are just a small sample of how South Korea's Dokdo claim is expressed, both by the government and the South Korean people. South Korea's claim is unambiguous. In fact, research for this dissertation was unable to locate any statement, both public or private, that in any way challenged the standard statement of South Korea's claims, as presented by South Korea's Ministry of Foreign Affairs. This is because historical justifications and international law readily coalesce in shaping South Korea's claim over Dokdo. Any criticisms leveled at the South Korean government are simply that its policies in defense of the claim are not strong enough, rather than criticizing aspects of the claim itself.

When comparing South Korea's Dokdo claim to China's and Taiwan's East China Sea claims, many questions arise. South Korea's claim can in some ways be contrasted to Taiwan's East China Sea claim, as in Taiwan many are in favor of the government's official claim while a vocal minority still expresses favorable views of Japan's East China Sea claims. Despite their differences in regime type, South Korea's position on Dokdo and China's position on the East China Sea bear important similarities. That being said, in China nationalism still seems to be pushing the claim to be at least slightly more expansive than in South Korea, even when considering the highly nationalistic aspects of South Korea's domestic political environment surrounding the issue of Dokdo. While both South Korea and China bring to bear strong evidence for sovereignty over the land features they claim in their respective disputes, and both have at least initially applied UNCLOS to maritime delimitation in their respective disputes in a relatively straightforward way, research for this dissertation did not uncover South Korean claims going beyond Dokdo, such as those found in China's East China Sea claim. While some within China extend their East China Sea claims to Okinawa, similar claims were not readily available in data available on South Korea's Dokdo claim. However, further research is needed on this case, particularly as this research was done with English language sources only. One variable that should be further explored, based on the Dokdo case, is the role played by fully occupying the disputed area,

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<sup>23</sup>*The Christian Science Monitor*. "Whose Islands are they? South Korea tries branding in its dispute with Japan." (May 24, 2014), <http://www.csmonitor.com/World/Global-News/2012/0524/Whose-Islands-are-they-South-Korea-tries-branding-in-its-dispute-with-Japan>

an issue not addressed directly in this dissertation.

### 6.2.2 *Indonesia and Natuna*

Natuna is an archipelago administered through Indonesia's Riau Province. The waters surrounding Natuna are believed to possess highly valuable natural gas reserves, and are indisputably valuable for their fisheries. Unlike other areas examined in this dissertation, Natuna has a considerable population of roughly 100,000 people, with fishing and farming being primary industries in the area.

The Indonesian government has on many occasions denied that it is party to the South China Sea dispute, but questions surround whether or not Natuna is included within the ambiguous U-Shaped Line claim. Since China's 2009 submission of the U-Shaped Line to the United Nations, the Indonesian government has protested the line on numerous occasions, asking for clarifications, both publically and through diplomatic channels. At the very least, it is possible that China's claim overlaps with the EEZ claimed by Indonesia in relation to the Natuna Islands, but due to the inexact nature of the U-Shaped Line and its various iterations, many have also questioned whether or not China's claim might also include the Natuna Islands themselves. China's ambiguous claims, combined with its at times assertive actions in the South China Sea, have created space for domestic contestation to grow in Indonesia around the subject of Natuna's defense.

Indonesia's claim to Natuna and its EEZ is unambiguous and consistent, but that should not be surprising considering its long-standing administration of the islands and the people living there, as well as the relatively unchallenged nature of Indonesian sovereignty in the area (only China poses a potential challenge). In fact, because Natuna's significant population distinguishes it from other case studies in this dissertation, this particular case study focuses more squarely on insights drawn from domestic political processes in the context of ambiguity rather than claim formation. As discussed above, studying domestic politics within a context of an ambiguous claim was the original motivation for this case selection. While an external actor, and not the Indonesian government, created the ambiguity surrounding Natuna's status, points of comparison are still relevant. Mainly,

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<sup>24</sup> *Wikimedia Commons*. [https://commons.wikimedia.org/wiki/File:Karta\\_CN\\_SouthChinaSea.PNG](https://commons.wikimedia.org/wiki/File:Karta_CN_SouthChinaSea.PNG)

Figure 6.2.2: Location of the Natuna Islands in the South China Sea<sup>24</sup>



this case study shows that under conditions of ambiguity, Indonesia's foreign ministry consistently advocates a reliance on principles of international law and cooperation, while military leaders serve as a counterpoint, often arguing that the Indonesian government should be more realistic about facing the Chinese threat and should enhance its military protection of Natuna. While this may not be a counter-intuitive finding, it does provide a point of comparison for China's South China Sea claims.

Indonesia's uncertainty regarding the U-Shaped Line has spanned recent decades, but for brevity's sake this case study largely focuses on recent flareups. In 2010, concerns raised by China's 2009 *note verbale* were confirmed for many when an Indonesian patrol ship was threatened at gunpoint by Chinese vessels off the coast of the Natunas. The patrol ship had arrested Chinese trawlers illegally fishing in the area. Again in March 2013, an Indonesian patrol boat arrested Chinese fishermen caught illegally fishing in Natuna waters, but was forced to release the fishermen when confronted by aggressive actions by Chinese Maritime

Law Enforcement vessel Yuzheng 310.<sup>25</sup>

While the military has emphasized strategic actions against Chinese claims, the foreign ministry has downplayed or denied any potential for conflict. When Indonesia announced it would hold the 2014 Komodo multilateral joint exercise, Commodore Amarullah Octavian, Sea Combat Task Force chief of the Indonesian Navy Western Fleet, highlighted the political motivations behind hosting the event. He said exercises would focus on disaster relief, but that “we will also pay attention to the aggressive stance of the Chinese government by entering the Natuna area.” He noted that maps with Indonesia’s claimed maritime boundaries, notably including the maritime boundaries around Natuna, would be distributed during the event and that “Therefore, diplomatically all countries have recognized all Indonesian borders.”<sup>26</sup>

In March and April of 2014, officials in the Indonesian government gave conflicting statements as to whether or not China’s U-Shaped Line overlaps with Indonesia’s claims. In March, Commodore Fahru Zaini, a high-ranking Indonesian military official, cited new maps in passports recently issued to Chinese citizens as evidence that “China claimed Natuna waters as their territorial waters.” Commodore Fahru emphasized the uncertainty surrounding the dispute as China does not provide “the coordinates included in their territory.”<sup>27</sup> Days after Fahru’s statements, Indonesia’s Foreign Minister announced that there were no outstanding territorial or maritime disputes with China, explaining that Indonesian diplomatic officials had “inferred” from China that the line did not cross waters claimed by Indonesia. After traveling to China in February 2014, Indonesian Armed Forces commander General Moeldoko stated that he told his Chinese counterparts, “we are a sovereign country, we will protect our territory, and we will do whatever is necessary to protect our sovereignty.”<sup>28</sup> Moeldoko later announced the Indonesian military would be sending more troops to Natuna “to anticipate any instability in the South China Sea and

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<sup>25</sup>Scott Bentley. “Mapping the nine-dash line: recent incidents involving Indonesia in the South China Sea.” Australian Strategic Policy Institute (ASPI). *The Strategist* (October 29, 2013), <http://www.aspi.org.au/mapping-the-nine-dash-line-recent-incident-involving-indonesia-in-the-south-china-sea/>

<sup>26</sup>Fadli. “Batam to Host Komodo Naval Joint Exercise.” *The Jakarta Post* (June 15, 2013)

<sup>27</sup>*Antara News*. “China Includes Part of Natuna Waters in Its Map.” (March 13, 2014), <http://www.antara.com/en/news/93178/china-includes-part-of-natuna-waters-in-its-map>

<sup>28</sup>Kanupriya Kapoor and Jonathan Thatcher. “Indonesia Military Worries over Asia Arms Race, Territorial Tensions.” *Reuters* (April 3, 2014), <http://www.reuters.com/article/2014/04/03/us-indonesia-military-idUSBREA320GD20140403>

serve as an early warning system for Indonesia.” In April 2014, Moeldoko was even more direct in describing his perceptions of China’s claims in an opinion piece he wrote for The Wall Street Journal. After describing the importance of the South China Sea, he stated:

*Indonesia is dismayed, therefore, that China has included parts of the Natuna Islands within the nine-dash line, thus apparently claiming a segment of Indonesia’s Riau Islands province as its territory. An image showing the line features in newly issued Chinese passports. The affected archipelago is off the northwest coast of Borneo.*<sup>29</sup>

During a March 2014 interview, Foreign Minister Marty Natalegawa summed up the foreign ministry’s consistent position on the dispute. He pointed out there are three seemingly interrelated problems, although they are actually separate. First, he said Indonesia has no territorial dispute with China, especially over Natuna, and that the Indonesian government is actually trying to attract Chinese foreign investment to Natuna. He added that Natuna is part of the Indonesian homeland and that every inch of Natuna would be defended if under threat. Second, Indonesia is not a party to the South China Sea dispute. Third, the Indonesian government is opposed to the 9-Dash Line and has asked for clarification from the Chinese government, but has not yet received it.<sup>30</sup>

The South China Sea dispute illustrated differences between the two main presidential candidates in Indonesia’s 2014 presidential race, and further demonstrates the divisions within Indonesia on how to approach the dispute. During his campaign, former special forces general Prabowo Subianto supported taking a hard line on the island disputes including increased defense spending and stationing troops on the islands. During a televised debate he went so far as to say that a claim to Indonesia’s territory in the South China Sea by “a certain country in the dispute” was the biggest external threat Indonesia currently faces. Presidential candidate and Jakarta Governor Joko “Jokowi” Widodo, who went on to win the election, argued that there is no dispute between China and Indonesia in the South China Sea and that diplomacy should be relied upon even if a dispute did arise. During the same televised debate Jokowi said of the South China Sea, “We’re not involved in

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<sup>29</sup>Moeldoko. “China’s Dismaying New Claims in the South China Sea.” *The Wall Street Journal* (April 24, 2014), <http://online.wsj.com/articles/SB10001424052702304279904579515692835172248>

<sup>30</sup>Original interview in Indonesian available at: <http://www.antaraneews.com/berita/424961/indonesia-per-nah-sampaikan-keberatan-atas-peta-natuna>

any dispute there.” In a statement reflecting his overall perspective on the dispute, Jokowi stated: “This is another country’s problem with another country. It is better if we can play a role, though we also need to check if it would sour our ties with China.” After the presidential debate, Foreign Minister Marty Natalegawa reaffirmed his earlier statements that Indonesia is not involved in a territorial dispute with China in the South China Sea.<sup>31</sup>

Regardless, the Indonesian government has warned the inhabitants of the Natuna archipelago that they may be at the forefront of the South China Sea dispute, and that they should stay abreast of international developments.<sup>32</sup> In the meantime, the government has also announced plans to increase security measures around Natuna. In September 2014, Defense Minister Purnomo Yusgiantoro announced plans to move an F16 fighter jet squadron to the islands and to add an Apache helicopter squadron to South China Sea defenses. He openly stated the move was based on a need to defend the Natuna oil reserve, but would not comment on territorial disputes in the area.<sup>33</sup> In early 2015, after the announcement that greater air force resources would be moved to the South China Sea, General Moeldoko explained that competition in the South China Sea is getting tougher, and that he hopes “the Indonesian Air Force will be able to boost our sovereignty, especially in the South China Sea.”<sup>34</sup>

Although Jokowi argued during the presidential debates leading up to his election that Indonesia does not have a territorial dispute with China, the leader still places high priority on Indonesia’s maritime security. In a policy he referred to as “shock therapy,” Jokowi instructed Indonesian officials to sink unlicensed fishing boats captured in Indonesian waters. In December 2014, Indonesian officials captured three Vietnamese fishing boats near Natuna waters. A camera crew recorded the officials arresting the crews and using projectile explosives to sink the ships.<sup>35</sup> When asked about the widely publicized event, Jokowi cited

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<sup>31</sup>Ismira Lutfia Tisnadibrata. “Indonesian presidential candidates differ on South China Sea.” *Rappler* (June 25, 2014), <http://www.rappler.com/world/regions/asia-pacific/indonesia/61594-indonesian-presidential-candidates-south-china-sea>

<sup>32</sup>Fadli. “Natuna residents told to be aware of territorial conflict.” *The Jakarta Post* (October 1, 2014), <http://www.thejakartapost.com/news/2014/10/01/natuna-residents-told-be-aware-territorial-conflict.html>

<sup>33</sup>Fadli. “RI to strengthen defense in South China Sea.” *The Jakarta Post* (September 29, 2014), <http://www.thejakartapost.com/news/2014/09/29/ri-strengthen-defense-south-china-sea.html>

<sup>34</sup>Nani Afrida. “Air Force to bolster presence in South China Sea.” *The Jakarta Post* (January 16 2015), page 4

<sup>35</sup>Ben Otto. “President Jokowi Orders ‘Shock Therapy’ For Illegal Fishing Boats.” *Indonesia Real Time – WSJ Blog* (December 9, 2014), <http://blogs.wsj.com/indonesiarealtime/2014/12/09/president->

losses to Indonesia caused by illegal fishing. He said, “Therefore I instructed the ministry, the military commander, that this couldn’t continue. I instructed them three or four weeks ago to sink ships involved in illegal fishing. Sink them! No more! But thank Allah, last Friday, we started sinking several ships.”<sup>36</sup> Critics of the policy argued that Jokowi risked damaging Indonesia’s relations with its neighbors for the sake of populist approval within Indonesia.<sup>37</sup> Critics both within and outside of Indonesia also noted Jokowi’s willingness to sink Vietnamese, and later Thai fishing boats, while opting not to use the same policy after capturing Chinese fishing boats.<sup>38</sup>

During a December 2014 talk at CSIS in Washington DC, Luhut Binsar Panjaitan, one of Jokowi’s presidential advisors, who only weeks later was appointed to a post equivalent to presidential chief of staff, discussed the Jokowi Administration’s perspective on the Natuna dispute. After being asked directly about disagreements between the Indonesian Foreign Ministry and the Indonesian military on the issue of Natuna, Luhut merely said the administration intends to pursue dialogue in the dispute, and that “we’re not going to use any military force in this area.” On the Natuna issue specifically, Luhut said, “[Natuna] is the territory of Indonesia, and I don’t think there have been any problems so far.” Luhut did add that cooperation between Indonesia’s Pertamina oil company and Chevron on Natuna oil exploration sent a signal to China, the message being: “you cannot play a game here because of the presence of the US.”<sup>39</sup>

During the CSIS talk, Luhut was also asked about Jokowi’s appointment for Minister of Defense, Ryamizard Ryacudu. Viewed as a controversial choice, Ryamizard’s appointment raised concerns owing to his human rights record while serving as Army Chief of Staff.<sup>40</sup>

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jokowi-orders-shock-therapy-for-illegal-fishing-boats/

<sup>36</sup>Andy Lala. “Indonesia Touts Sinking of Illegal Fishing Ships.” *Voice of America* (December 10, 2014), <http://www.voanews.com/content/indonesia-touts-sinking-of-illegal-fishing-ships/2554087.html>

<sup>37</sup>Carlos Paath and Ezra Sihite. “Ships So Far Sunk Serve as ‘Only a First Warning.’” *Jakarta Globe* (December 16, 2014), <http://thejakartaglobe.beritasatu.com/news/ships-far-sunk-serve-first-warning/>; Farish Noor. “Troubling display of populism.” *New Straits Times Online* (December 15, 2014), <http://www.nst.com.my/node/62627>

<sup>38</sup>Bagus BT Saragih. “When the fish row turns diplomatic.” *The Jakarta Post* (January 25, 2015), <http://m.thejakartapost.com/news/2015/01/25/when-fish-row-turns-diplomatic.html>

<sup>39</sup>Luhut Binsar Panjaitan. “The Banyan Tree Leadership Forum with Luhut Binsar Panjaitan, Indonesian Presidential Adviser.” *Center for Strategic & International Studies, Washington, DC* (December 9, 2014), <http://csis.org/event/banyan-tree-leadership-forum-he-luhut-binsar-panjaitan>

<sup>40</sup>Richard C. Paddock. “Indonesian Leader’s Defense Appointment Draws Criticism.” *The Wall Street Journal* (October 27, 2014), <http://www.wsj.com/articles/indonesian-leaders-defense-appointment-draws-criticism-1414423427>

When asked if Ryamizard's appointment was sending any message, Luhut said there was "no message" but that Ryamizard is a "good guy" and he has proven he will "work in line with the policy of the president."<sup>41</sup> In Indonesia, where military has a long history of political control, such statements are significant. As a four star general with a reputation for being "ruthless," Luhut's appointment to chief of staff was viewed as an effort by Jokowi to consolidate control by adding an enforcer to his administration.<sup>42</sup>

In sum, Indonesia's claim over Natuna is clear and consistent, but this case illustrates the potential for a strong military to act within the context of an ambiguous dispute. In a similar fashion, many instances in which China's South China Sea claim appears to be expansive are connected to actions by the Chinese military. In any event, this case study of Indonesia's position on Natuna is brief, was completed only with English language materials, particularly news articles, and the subject ultimately requires more in-depth study. The case does provide some preliminary evidence that a strong military can play a key role in such disputes. More research on military-government relations in the contexts of such disputes is warranted.

### 6.3 *Future Research*

Although the main case studies in this dissertation provide preliminary evidence on how claims are formed, aspects of China's and Taiwan's claims that make them attractive for a study such as this also raise the possibility that findings based on their circumstances may be unique. Their shared histories, China's status as a rising power, and Taiwan's distinct international position, are all factors that allow for relevant phenomenon to be observed, but also raise important questions of generalizability. Therefore, additional study into the factors that shape claims is necessary. This section briefly proposes four additional cases for further study.

**The Philippines' South China Sea Claim.** The Philippines claim in the South China Sea is the most promising future case study for building upon the cases in this

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<sup>41</sup>Luhut. Washington DC (December 9, 2014)

<sup>42</sup>Amy Chew. "Appointment of former general as chief of staff shows Indonesia president's need for an enforcer." *South China Morning Post* (January 7, 2015), <http://www.scmp.com/news/asia/article/1675903/appointment-former-general-chief-staff-shows-indonesia-presidents-need>

dissertation. Similar to China and Taiwan, the Philippines has a long history that is directly relevant to its territorial and maritime claims. Also similar to China and Taiwan, the Philippine's historical justifications for claiming portions of the South China Sea are not necessarily straight-forward. In the case of the Philippines, this history comes in the form of maritime claims inherited from Spain and the United States, claims that were established long before UNCLOS was written. Moreover, the Philippines' democratic system allows for open questioning of the claim, and a wide range of viewpoints to be expressed, but institutional restrictions make any changes to previously established claims very difficult to alter. In recent years, the Philippines claim has also been ambiguous due to the challenges of altering the claim.<sup>43</sup>

**Rockall.** Rockall is an uninhabited granite islet in the North Atlantic Ocean, and is relevant to claims by Ireland, Britain, Denmark (representing the Faroe Islands), and Iceland. When research for this dissertation revealed that both China and Taiwan have at some point unilaterally changed their claims, a search began for an additional case where a government unilaterally changed a claim. England's claims over Rockall were eventually recommended by one interview subject, who pointed out that England unilaterally dropped a previously established claim to a 200 mile EEZ around Rockall.<sup>44</sup>

When Britain originally claimed Rockall in 1955, its chief motivation was strategic. Most notably, the British Ministry of Defence believed that if the British did not claim Rockall, the Soviets would be able to claim the rock and use it as a staging area for surveillance of British military activities, such as tests of its first nuclear weapons over the Atlantic.<sup>45</sup> Rockall's potential for claiming natural resources in the surrounding seabed was not realized until the 1970s, when greater awareness of resources in the seabed grew alongside the development of UNCLOS. In this environment, Britain claimed the rock was an island and generated a 200 mile EEZ, but by 1998, when Britain joined UNCLOS, it retracted the 200 mile EEZ claim. Now, the islet is located within Great Britain's EEZ, and still a subject of controversy for area nations. England's decision to unilaterally drop the claim is puzzling, and represents

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<sup>43</sup>Lowell Bautista. "The Historical Background, Geographic Extent and Legal Bases of the Phillipine Territorial Water Claim." *The Journal of Comparative Asian Development* 8.2 (2009), pp. 365-395.

<sup>44</sup>Interview. Washington DC. July 2014

<sup>45</sup>Fraser MacDonald. "The last outpost of Empire: Rockall and the Cold War." *Journal of Historical Geography*. *Historical Geographies of the Sea* 32.3 (July 2006), pp. 627-647.

a prime opportunity to study claim development and changes.

Preliminary research on Rockall also revealed that not only England's but also Ireland's claims over Rockall help illustrate the role of international law and natural resources in shaping claims. Moreover, the resilience of the Irish public and the Irish navy in claiming Dokdo, despite the government's abandonment of the claim, provide important evidence on how quickly and deeply even a potential claim can take root when connected to nationalistic narrative. While Ireland has no direct history to speak of in relation to Rockall (unlike the English and the Scottish), an open consideration by the Irish government during the 1970's of whether or not to establish a claim based on proximity alone caused the idea of Ireland's sovereignty over Rockall to take hold in the minds of the Irish public. Despite the Irish government's repeated statements that it has no claim over Rockall, media regularly report that Ireland claims Rockall, and the Irish navy continues to post photos on its official Facebook account of its patrols of Rockall to protect Irish sovereignty rights.

Figure 6.3.1: Irish Navy's LÉ Róisín Patrolling the Waters Surrounding Rockall



**Machias Seal Island.** While many of the cases discussed in this dissertation are relevant to large supplies of natural resources relevant to the whole country, such as oil, natural resources can also be relevant at the local level. The Machias Seal Island is located off the coast of Maine, and is claimed by both the US and Canada. High lobster prices and

local competition by tourism operators have caused the dispute to flare up in recent years.<sup>46</sup> While the dispute is largely unknown, a case study of the Machias Seal Island dispute would help further explore the varying considerations of national and local governments.

**Koh Tral.** Cambodia's claims to Koh Tral are reportedly weak both in terms of historical justifications and legal ones, but a minority party continues to make the Cambodian government's decision not to pursue a claim over Koh Tral an issue of domestic political contestation.<sup>47</sup> A case study of the political dynamics surrounding Cambodia's decision not to pursue a claim over Koh Tral promises to shed further light on the domestic political dynamics surrounding claims in island and maritime disputes.

## 6.4 *Conclusion*

How do states establish maritime and territorial claims? This dissertation uses in-depth case studies of China's and Taiwan's South China Sea and East China Sea claims to argue that domestic political processes play a dominant and previously under-explored role in both shaping claims and determining the nature of territorial and maritime disputes. Evidence from this dissertation indicates that officials in both China and Taiwan have struggled with how to reconcile history and international law when establishing their claims, and that this struggle has introduced ambiguity into China's and Taiwan's claims, particularly claims in the South China Sea. Moreover, in the cases studied for this dissertation, historical justifications have facilitated expansive claims.

Amid the process of establishing claims, domestic political dynamics have played a dominant role in shaping the options available and the potential for claims to change in the future. In Taiwan's democratic system, where national identity is highly contested through party politics, opinions vary along a broad spectrum as to the proper borders of the nation, and there is considerable evidence that Taiwan's claims may change in the near future. In contrast, within China's single-party authoritarian political system, where nationalism is source of regime legitimacy, views on the proper interpretation of China's boundaries do

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<sup>46</sup>Jacques Poitras. "Lobster fishery intensifies Machias Seal Island boundary dispute." *CBC News*. (Jun 01, 2015)

<sup>47</sup>Jeff Mudrick. "Cambodia's Impossible Dream: Koh Tral." *Cambodia's Impossible Dream: Koh Tral*. (June 17, 2014), <http://thediplomat.com/2014/06/cambodias-impossible-dream-koh-tral/>

vary, but along a much more narrow range. Additional cases, such as South Korea's Dokdo claim and Indonesia's approach to handling ambiguity in relation to Natuna, indicate that further research is needed to understand with greater clarity the many factors that impact claim formation.

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