

Position Paper on ROC South China Sea Policy

Republic of China (Taiwan)

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1. Preface

The Nansha (Spratly) Islands, Shisha (Paracel) Islands, Chungsha (Macclesfield Bank) Islands, and Tungsha (Pratas) Islands (together known as the South China Sea Islands) were first discovered, named, and used by the ancient Chinese, and incorporated into national territory and administered by imperial Chinese governments. Whether from the perspective of history, geography, or international law, the South China Sea Islands and their surrounding waters are an inherent part of ROC territory and waters. The ROC enjoys all rights over them in accordance with international law. This is indisputable. Any claim to sovereignty over, or occupation of, these areas by other countries is illegal, irrespective of the reasons put forward or methods used, and the ROC government recognizes no such claim or occupation.

With respect to international disputes regarding the South China Sea, the ROC has consistently maintained the principles of safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint development, and in accordance with the United Nations Charter and international law, called for consultations with other countries, participation in related dialogue and cooperative mechanisms, and peaceful

resolution of disputes, to jointly ensure regional peace.

2. Grounds for the ROC position

History

The early Chinese have been active in the South China Sea since ancient times. Historical texts and local gazetteers contain numerous references to the geographical position, geology, natural resources of the South China Sea waters and landforms, as well as the activities of the ancient Chinese in the region. The South China Sea Islands were discovered, named, used over the long term, and incorporated into national territory by the early Chinese, so even though most of the islands and reefs are uninhabited, they are not terra nullius.

2.1 Islands in the South China Sea were first discovered by the ancient Chinese.

The chapter “Treatise on Geography” of the *Book of Han*, written by Ban Gu (32-92 CE), a historian and court official of the Eastern Han dynasty in the first century CE, recounts how Emperor Wu (137-87 BCE) of the Western Han (206 BCE-9 CE) sent envoys to island countries in the southern seas, ushering in future descriptions of isles, reefs and shoals in that region by navigators, indicating that the South China Sea was the route for trade between the Eastern Han and the Roman Empire in the first century BCE.

The *Yiwu Zhi*, by Yang Fu, a court official of the Eastern Han (25-220 CE), says that “Zhang Hai contains *qitou* that feature shallow waters and many rocks.” Zhang Hai, literally the “Rising Sea,” was the ancient Chinese name for the South China Sea, referring to the choppy waves and rough seas noted by sailors there. *Qitou* is an ancient word for isles, reefs and shoals.

In the last years of the Eastern Han, during the era of the Three Kingdoms (220-280 CE), Xie Cheng, magistrate of Wuling in the Kingdom of Wu, in his book *History of the Later Han Dynasty* (6-189 CE), wrote that “it has been told that there is a vast sandbank in the Rising Sea, which lies east of the country of Funan [an ancient country on the Indochina Peninsula]. The bark of trees on this sandbank turns black during spring, and turns white when set on fire. The bark can be used for the production of handkerchiefs or lamp oil.” The same book notes that during the Western Han dynasty sea routes had been opened up between Indochina and ancient China through the South China Sea.

Emperor Sun Quan of Wu (one of the Three Kingdoms) sent Zhu Ying and Kang Tai as envoys to Funan. Kang Tai later described the geological characteristics of islands of the South China Sea in his book *History of Funan*, mentioning that “the base of the Coral Islands was actually rock, with coral growing on its surface.” Kang’s description of the region was also cited in the *Taiping Yulan* (984 CE), compiled by Li Fang during the Northern Song dynasty.

2.2 The South China Sea Islands were first named by the ancient Chinese people and governments.

According to historical records and ancient literature, fishermen and seamen from ancient China, to assure safe navigation and identify sea routes, named islands of the South China Sea based on their features. Examples include Coral Islands, mentioned in *History of Guangzhou* by Pei Yuan (372-451 CE) of the Jin dynasty; Jiuru Luozhou, mentioned in *Collection of the Most Important Military Techniques* (1044 CE) by the scholar Zeng Gongliang of the Northern Song dynasty; and Changsha Shitang, mentioned in *Notes from the Land beyond the Passes* (1178 CE) by Zhou Qufei, an official of the Southern Song dynasty.

As sea travel expanded, the ancient Chinese learned more about the South China Sea and its islands, and began to use collective names for the South China Sea Islands based on their location and extent. These names include Qianli Changsha and Wanli Shitang, recorded by the high-ranking official Wang Xiang-zhi of the Southern Song dynasty in *Yu Di Ji Sheng* (1221), Wanli Changsha and Wanli Shitang, used by Huang Zhong, a ranking official of the Ming dynasty, in his book *Hai Yu* (1536), and Nan Ao Qi, mentioned by the high-ranking military official Chen Lun-jiong of the Qing dynasty in *Hai Guo Jing Wen Lu* (1730).

In 1909, when Japanese citizen Yoshiji Nishizawa attempted to illegally occupy Tungsha (Pratas) Island, the Qing court dispatched Admiral Li Zhun to patrol the Shisha Islands on the vessels *Fu Bo* and *Chen Hang*. Li also established marker stones there to proclaim sovereignty. Upon

returning from patrol, he received approval from the Viceroy of Liangguang to rename individual islands, confirming names for fifteen of the Shisha Islands.

Between 1934 and 1935, the ROC Ministry of the Interior's Waters and Land Map Review Committee completed the *Comparison Table of the Names of the South China Sea Islands in Mandarin and English*, and issued the *Map of the South China Sea Islands and Maritime Features*, for the first time dividing the South China Sea Islands into four distinct groups. These were named, from north to south, the Tungsha Islands, Shisha Islands, Nansha Islands (now the Chungsha Islands), and Tuansha Islands (now the Nansha Islands). In 1945, the ROC government recovered the South China Sea Islands from Japan after its surrender at the end of WWII, returning them to ROC territory, and confirmed their names as the Tungsha Islands, Shisha Islands, Chungsha Islands, and Nansha Islands. These names are still in use today.

2.3 The South China Sea Islands were first used by the ancient Chinese.

Both Chinese historical records and foreign maritime navigation logs have made reference to the fact that people from southern China used the South China Sea for transportation, fishing, and habitation. For example, in the aforementioned *History of Guangzhou* written by Pei Yuan of the Jin dynasty, it is stated that “the Coral Islands are 500 *li*, or roughly 250 kilometers, from southern Guangzhou. People in the past used to fish and collect coral there.”

Foreign navigators of the 19th and early 20th centuries noted the longtime presence of the early Chinese in the South China Sea engaged in economic activities and development. For example, in Volumes Two (1879) and Three (1884) of *The China Sea Directory*, published by the Hydrographic Office of the Royal Navy, Volume One of the *China Sea Pilot*, published by the British in 1923, and Volume Four of the *Asiatic Pilot*, published by the Hydrographic Office of the US Secretary of the Navy in 1925, descriptions can be found of Chinese fishermen from the ROC living in the Nansha Islands and taking advantage of the monsoons to conduct related activities. These sources also include detailed accounts of Chinese fishermen from Hainan who had lived on the islands of the Zhenghe Reefs (Tizard Bank) for a long time and made their living collecting sea cucumbers and turtle shells. At that time, hand-dug wells already existed on Taiping (Itu Aba) Island and *The China Sea Directory* states that “the water found in the wells on that island was better than elsewhere.”

Between 1930 and 1933, French people made illegal landings on Taiping Island, Nanwei (Spratly) Island, Nanyao (Loaita) Island, Zhongye (Thitu) Island and Beizi Reef (N.E. Cay), discovering some of them were inhabited by ROC fishermen, including children, who made a living by fishing and catching turtles, and raised chickens, vegetables, and sweet potatoes.

Tombstones dating to the Qing dynasty still exist on Taiping Island, confirming that ancient Chinese people lived on the islands and reefs in the South China Sea and pursued economic activities there.

2.4 The South China Sea Islands were first incorporated into national territory by the early Chinese, as is clearly shown in government documents and both domestic and foreign maps.

In his book *Zhu Fan Zhi* (1225), Zhao Rushi (1170-1228), a Song dynasty official, describing projects in Hainan and the region's geographical location, says it faces Champa to the south and Zhenla to the west. To its east are Qianli Changsha and Wanli Shichuang in an endless sea where the sky meets the water, with ships plying back and forth. The *Records of Qiongzhou*, edited by Chen Yuchen and Ouyang Can of the Ming dynasty, also explains the history and geographical location of the Hainan region.

The official publication *Records of Quanzhou*—published during the reign of the Qianlong Emperor in the Qing dynasty—clearly records that Wu Sheng, adjutant general at Guangdong, was transferred (no later than 1721) to Qiongzhou, Hainan Island, and made a tour of territory including Qiongyai and Tonggu on Hainan, the Shisha Islands (Qizhouyang) and back to Sigengsha on Hainan, covering 3,000 li and observing peacefulness in the area. This indicates that no later than the mid-Qing dynasty the government had incorporated the South China Sea Islands into the national maritime defensive system and exerted jurisdiction over them.

The *Unified World Map of the Great Qing Dynasty*, published in 1767, the 32nd year of the reign of the Qianlong Emperor, includes Wanli Changsha and Wanli Shitang (ancient terms for the South China Sea Islands) in its territory. This map was reprinted in 1811 during the reign of the Jiaqing Emperor and is now housed at Taipei's National Palace Museum.

Following the founding of the Republic of China in 1912, the government published the *Map of the South China Sea Islands and Maritime Features* in the second issue of the Waters and Land Map Review Committee Journal in April 1935. This was the first time that it published a map of the South China Sea Islands, and showed ROC territory in the South China Sea reaching as far south as 4° north latitude, marking Zengmu Bank (James Shoal; renamed Zengmu Shoal in 1946) as ROC territory. The map also served as a prototype for the 11-dash line. In addition, the ROC Waters and Land Map Review Committee completed the *Comparison Table of the Names of the South China Sea Islands in Mandarin and English*, and issued the *Map of the South China Sea Islands and Maritime Features*.

On December 1, 1947, the ROC Ministry of the Interior (MOI) issued the *Location Map of the South China Sea Islands* to serve as a basis for recovering and stationing forces on the Shisha and Nansha Islands. The map showed an 11-dash line (also known as the U-shaped line) surrounding the South China Sea Islands, the southernmost point of which is 4° north latitude. The Tungsha Islands, Shisha Islands, Chungsha Islands, and Nansha Islands are included on this map and designated as ROC territory. The MOI submitted to the Executive Yuan for reference the *Comparison Table on the Old and New Names of the South China Sea Islands*, as well as the *Location Map of the South China Sea Islands*.

2.5 The South China Sea Islands and their surrounding waters were first administered by the early Chinese.

The volume *Border Defense* in the *Collection of the Most Important Military Techniques* (1557) by the scholar Zeng Gongliang of the Northern Song dynasty described patrols of the South China Sea Islands by early Chinese naval officers.

Similar descriptions can be found in the *Principles of Maritime Defense* (1838) by the Qing dynasty scholar Yan Ruyu and the *Records of Quanzhou* (1763), written during the reign of Emperor Qianlong. These official records show that waters around the South China Sea Islands were patrolled by military officers since before the Qing dynasty, indicating that ancient China had already exercised jurisdiction over them.

As mentioned above, Japanese citizen Yoshiji Nishizawa attempted to illegally occupy Tungsha Island in 1909. The Qing court lodged a protest with Japan and negotiated for its return. Admiral Li Zhun from Guangdong was dispatched to patrol the Shisha Islands, in a demonstration of effective jurisdiction over the region.

In the early years of the ROC, the government, following the practice of the ancient Chinese dynasties, placed the Tungsha and Shisha Islands under the naval zone administered by the coast guard, stationing personnel on and regularly delivering supplies to the islands. When France attempted to occupy nine of the Shisha and Nansha Islands in 1931 and 1933 during its colonization of Annam (present-day Vietnam), the ROC Ministry of

Foreign Affairs ordered its embassy in France to issue statements of sovereignty and sent warships to patrol the region.

In 1945 the Allies defeated Japan, ending World War II. The ROC government, with assistance from the Allies, in 1946 resumed sovereignty over and garrisoned the South China Sea Islands that had been seized by Japan. In May 1956, Tomás Cloma, a Philippine national, illegally landed on several of the Nansha Islands, claiming that he had discovered them and enjoyed the rights associated with discovery-occupation. However, these islands had long belonged to the ROC and were not *terra nullius*. The ROC ambassador to the Philippines immediately issued a statement stressing that the Nansha Islands were ROC territory, and sent a letter of protest to Philippine Vice President and Foreign Secretary Carlos P. Garcia. The Philippine government stated that these were individual actions by Cloma and had nothing to do with the Philippine government.

A naval fleet was dispatched to patrol the South China Sea in June 1956 to safeguard ROC sovereignty over the Nansha Islands. In October of the same year, the Ning Yuan naval fleet, while patrolling the Nansha Islands, delivering supplies, and conducting training, intercepted a training boat from the Philippine Maritime Institute at Beizi Reef (N.E. Cay) in the Nansha Islands. Naval personnel boarded the boat for inspection and, in addition to seizing weapons and ammunition, brought its captain—Filemon Cloma (younger brother of Tomás Cloma)—aboard the naval vessel *Tai He* for interrogation. Captain Cloma signed an affidavit acknowledging illegal entry into ROC territorial waters surrounding the Nansha Islands and promising not to enter those waters again. The incident underscores the fact that the ROC had effective jurisdiction over the region.

Consistent and continuous early Chinese jurisdiction over the South China Sea region has been exercised at least since the Ming and Qing dynasties.

Geography

The South China Sea Islands refer to the many islands, cays, reefs, shoals, and sandbars in the South China Sea extending about 1,800 kilometers north to south and more than 900 kilometers east to west. They include four groups, namely—from north to south—the Tungsha Islands, Shisha Islands, Chungsha Islands, and Nansha Islands. The South China Sea Islands refers to the islands, reefs, shoals, and sandbars in the *Location Map of the South China Sea Islands* issued by the ROC government in 1947.

Monsoons originate in the South China Sea. According to ancient literature and official documents and books dating back more than two thousand years to the Western Han dynasty (206 BCE-9 CE), the government and people of ancient China used seasonal winds to their advantage, relying on the monsoons to transport goods and fish back and forth as well as to conduct economic activities and government patrols in the region. Given their geographical proximity, ancient Chinese people also engaged in traditional activities in the South China Sea Islands and their surrounding waters. Hence, historical facts about the South China Sea, its geography, geology, economic activities, navigation, commerce and trade were recorded in local gazetteers and ancient books from different periods.

The geographical features of the South China Sea islands are given below.

2.6 Boundaries

Tungsha (Pratas) Islands: Tungsha Island is the only one of this island group that rises above the waterline. It has an area of 1.74 square kilometer. Located at 20°42' north latitude and 116°43' east longitude, it lies about 243 nautical miles southwest of Taiwan's Kaohsiung Harbor and 170 nautical miles southeast of Hong Kong. The group comprises mainly Tungsha Island, Tungsha Atoll, Beiwei (N. Verker) Bank, and Nanwei (S. Verker) Bank, which surround a lagoon about 300 square kilometers in area. The broad northern rim of Tungsha Atoll is above water at low tide.

Shisha (Paracel) Islands: This group is situated between 15°47' and 17° 5' north latitude, and 111°12' and 112°54' east longitude. It lies about 566 nautical miles from Kaohsiung Harbor, between Vietnam, Hainan Island, and the Zhongsha Islands. Known as Qianli Changsha in ancient times, it consists of 30 islets, shoals, and reefs divided into the Yongle Islands (Crescent Group) and Xuande Islands (Amphitrite Group). The northeast group is the Xuande Islands, which include Yongxing (Woody), Hewu (Lincoln), Shidao (Rocky), South, and North Islands. The southwest group is the Yongle Islands, which comprise Shanhu (Pattle), Ganquan (Robert), Jinyin (Money), Chenhang (Duncan), and Zhongjian (Triton) Islands. Yongxing is the largest of the Shishas, with an area of 2.6 square kilometers prior to recent land reclamation.

Chungsha (Macclesfield Bank) Islands: Previously called the Nansha, the Chungsha Islands lie to the east and slightly to the south of the Shisha Islands, roughly 467 nautical miles from Kaohsiung Harbor (the closest feature being Minzhu Reef, also known as Huangyan Island or Scarborough Reef). They are distributed between 13°57' and 19°12' north latitude and 113°43' and 117°48' east longitude. Only Minzhu Reef rises

above the waterline, while the rest are submerged coral reefs. The Chungsha Islands occupy an important position along major routes for fishing and commercial vessels, with surrounding waters rich in marine resources.

Nansha (Spratly) Islands: Previously known as the Tuansha Islands, this is the southernmost of the ROC's four South China Sea island groups. It comprises small islets formed by coral reefs, extending from Wan'an (Vanguard) Bank in the west to Haima (Seahorse) Bank in the east, and from Zengmu Shoal in the south to Lile (Reed) Bank in the north. Compared to the other island groups, the Nansha Islands are distributed over the largest expanse of water and have the largest number of islets. In 1947, the MOI announced the names of 97 islands, cays, and reef flats distributed between 3°58' and 11°55' north latitude and 109°36' and 117°50' east longitude. All are low-lying coral islets. The Zhenghe Reefs (Tizard Bank), comprising seven reefs, is the largest collection of reefs in the Nanshas. The principal island is Taiping (Itu Aba) Island, with an area of 0.51 square kilometer, located 864 nautical miles to the southwest of Kaohsiung Harbor.

2.7 Early Chinese relied on monsoons to conduct economic activities in the South China Sea.

The formation of monsoons in the South China Sea makes these seasonal winds a special geographical feature of the region: Before modern navigation technology was developed, early Chinese relied for over a thousand years on the southwest monsoons that blow each year between spring and fall, as well as the northeast monsoons between fall and spring to travel to and from the South China Sea for trade, exploration,

immigration, and fishing. These favorable winds, along with favorable ocean currents, made such travel very convenient.

Early Chinese had long used the monsoons to their advantage, relying on them to conduct economic activities and government patrols in the South China Sea: During the era of the Three Kingdoms (184-280), Xie Cheng, in his book *History of the Later Han Dynasty*, wrote that people in the Western Han period utilized the monsoons to establish a navigation route between ancient China and Indochina that passed through the Rising Sea (now the South China Sea). Later, Eastern Han dynasty officials (25-220) also took advantage of the monsoons to patrol the South China Sea when Jiaozhi (an ancient name for Vietnam) was governed by ancient China.

Since the 19th century, foreign navigators have recorded that the early Chinese, traveling with the monsoon winds, had long engaged in development and economic activities in the South China Sea Islands: On page 124 of Volume One of the *China Sea Pilot* published by the British in 1923, and in Volume Four of the *Asiatic Pilot* published by the Hydrographic Office of the US Department of the Navy in 1925, descriptions can be found of fishermen from Hainan who had lived on the Zhenghe Reefs for a long time and made their living by collecting sea cucumbers and turtle shells. These books also include accounts of fishermen bartering sea cucumbers and other items for rice and other basic necessities transported to the Zhenghe Reefs each year by flatboats sailing from Hainan in December or January and beginning their homeward journey when the southwest monsoons began to blow.

International law

The South China Sea Islands and their surrounding waters are an inherent part of ROC territory and waters. Modern international law, including the principle of intertemporal law, provides ample support for ROC sovereignty, which also meets the standards of the traditional East Asian legal order and international law as it gradually evolved in Europe in the 16th and 17th centuries prior to the maturation of modern international law. The reasons are as follows:

2.8 The South China Sea Islands are an inherent part of ROC territory. They were not *terra nullius*, and other countries may not lay claim to them by virtue of discovery-occupation.

The South China Sea Islands were first discovered, named, and used by the ancient Chinese, and administered by successive dynasties. They were not *terra nullius*. Other countries may not claim the islands and annex them by virtue of discovery-occupation.

Historical records show that the islands were first discovered and occupied by the ancient Chinese, who proceeded to develop and manage them. They were incorporated into ancient Chinese territory and placed under continuous and consistent jurisdiction by successive dynastic governments through administrative measures taken in different eras, including patrol of maritime territory, and naming, surveying, and mapping of the islands. The South China Sea islands were categorically not *terra nullius*.

In the well-known Palmas Island arbitration of 1928, the arbitrator stated that “a juridical fact must be appreciated in the light of the law contemporary with it.” Under intertemporal law, entitlement should be upheld in accordance with contemporaneous law, and not of the law in

force at the time when a dispute in regard to it arises. This principle should also apply when determining whether such an entitlement still exists, taking into account how the law has changed over time. The ROC management of the South China Sea Islands not only meets the principle of discovery-occupation in international law, but moreover, the ROC government's high-level and effective exercise of jurisdiction over the islands after the end of World War II in 1945 meets the important criterion of intertemporal law that it has maintained continuous and effective control over its sovereign territory.

Under modern international law, developed in 18th-century Europe, any country that discovers and occupies *terra nullius* can claim sovereignty over the territory without having to meet any other requirements. For example, when the Qing court published the *Unified World Map of the Great Qing Dynasty* in 1767 during the reign of the Emperor Qianlong, it incorporated into early Chinese territory Wanli Changsha and Wanli Shitang, which are ancient names for the Shisha and Nansha Islands, respectively. This was in conformity with international law established in Europe at the time. Moreover, no other country claimed sovereignty over the South China Sea Islands around 1767.

The Guano Islands Act of 1856, for example, allows US citizens to peacefully conduct low-level development on any island that is beyond US borders and not under the jurisdiction of any other country, which the US government, once informed, will then consider to appertain to the United States and over which it will have jurisdiction. This means that when the government of a country is informed and understands that its people are utilizing a neighboring island, it may extend its jurisdiction over said island even if it has not been officially incorporated into its territory. Furthermore,

according to ancient literature and official records, the South China Sea Islands were long ago discovered, named, and used by the ancient Chinese, and incorporated into the nation's naval defense and maps by the government.

2.9 During World War II, France and Japan illegally occupied the Nansha and Shisha Islands for brief periods of time, but this does not detract from the ROC's rights in the South China Sea as accorded by international law. When the ROC reclaimed the islands soon after the war, no objections were raised in the international community.

During World War II, when the ROC was engaged in an all-out war of resistance against Japan and safeguarding world peace as an Allied nation, France and Japan occupied parts of the Nansha and Shisha Islands. The ROC lodged protests via diplomatic channels and declared its refusal to recognize their claims. These illegal occupations did not last long, and both countries later relinquished sovereign claims to the islands. This does not undermine the ROC's rights over the South China Sea Islands as accorded by international law.

After the end of World War II, the ROC government, with support from other Allied nations, stationed forces on the South China Sea Islands in 1946. Its exercise of jurisdiction through continued administration, management, and development of the islands strengthened its sovereign claim under international law. An absence of protest from countries in the region—the Philippines, Vietnam, Malaysia, and Brunei—and their tacit recognition of ROC sovereignty over the islands further bolstered the ROC's claim.

From 1938 to 1939, the Japanese armed forces occupied the Tungsha Islands, Shisha Islands, and Nansha Islands. On March 30, 1939, Japan integrated the Nansha Islands as Shinnan Gunto into Takao Prefecture (now Kaohsiung City and Pingtung County) through Announcement No. 122 of the Taiwan Governor-General's Office. After Japan surrendered to the Allies on August 15, 1945, ROC officials responsible for reclaiming the South China Sea Islands embarked from Hainan on the vessels *Taiping*, *Zhongye*, *Yongxing*, and *Zhongjian* in November 1946, to recover the Shisha and Nansha Islands. ROC forces were stationed on Yongxing Island in the Shishas and Taiping Island in the Nanshas. The Ministry of the Interior re-erected national markers on the major islands, drew up detailed maps of them, renamed them, and published the *Location Map of the South China Sea Islands*. Recovery of the South China Sea Islands was completed on February 4, 1947.

After the end of World War II, the nations possessing territory around the South China Sea at that time, including the French colony Annam (later Vietnam) and the Philippines, as well as the Allied countries, raised no objections to the ROC sovereignty claim nor to its dispatch of military personnel to enforce control over the islands. Due to their long-term inaction and tacit recognition of the ROC's jurisdiction over the islands, the countries are now bound under the doctrine of estoppel in international law; that is, they are prevented from now asserting the contrary to that which they have tacitly recognized.

2.10 The Treaty of Peace between the ROC and Japan confirms the restoration of the Shisha Islands and Nansha Islands to the ROC.

During the War of Resistance Against Japan, Japan seized numerous ROC territories, including in 1939 the South China Sea Islands. Japan annexed the Shisha and Nansha Islands, renamed the Nansha Islands Shinnan Gunto and integrated them into Takao Prefecture. After Japan's defeat in the war, the territories Japan seized from the ROC and illegally occupied were to be returned to the ROC. Relevant international documents include the Cairo Declaration, Potsdam Proclamation, Japanese Instrument of Surrender, San Francisco Peace Treaty, and Treaty of Peace between the ROC and Japan, which are interconnected documents effective in accordance with international law:

- (1) Cairo Declaration: On December 1, 1943, the ROC, the US, and the UK jointly released the Cairo Declaration, which clearly stated the Allies' mission in holding the Cairo Conference was to ensure that "all the territories Japan has stolen from the Chinese such as Manchuria, Formosa, and The Pescadores shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed."
- (2) Potsdam Proclamation: On July 26, 1945, Allies including the ROC, the US, the UK, and the USSR jointly issued the Potsdam Proclamation, in which Article 8 clearly stipulated that "the terms of the Cairo Declaration shall be carried out."
- (3) Japanese Instrument of Surrender: On September 2, 1945, the Japanese Emperor formally surrendered unconditionally to the Allies and signed the Japanese Instrument of Surrender, which clearly stated Japan's

acceptance of the Potsdam Proclamation. In fact, the Japanese Instrument of Surrender accepts the Potsdam Proclamation, which in turn stipulates that the terms of the Cairo Declaration shall be carried out. Clearly, the Japanese Instrument of Surrender has combined these three documents together. They are all included in Volume 3 of *Treaties and Other International Agreements of the United States of America 1776-1949*, published by the US Department of State in 1969, and in Volume 1 of Series 26 in a collection of treaties published by the Japanese Ministry of Foreign Affairs in 1948. The Japanese Instrument of Surrender is also included in volume 59 of *The United States Statutes at Large* published in 1946, as well as Volume 139 of The United Nations Treaty Series issued in 1952. In other words, relevant countries, and the United Nations, view these documents as treaties, and so they are, of course, legally binding for Japan, the US, and the ROC.

- (4) San Francisco Peace Treaty and Treaty of Peace between the ROC and Japan: After the end of World War II, the ROC government recovered the Tungsha, Shisha, and Nansha Islands in 1946 according to the Cairo Declaration, Potsdam Proclamation, and Japanese Instrument of Surrender. In addition to erecting stone markers and stationing military personnel on the main islands, the government issued revised names of the South China Sea Islands, as well as the *Location Map of the South China Sea Islands* in December 1947. No objections were raised by other countries at that time. Paragraph 6 of Article 2 of the San Francisco Peace Treaty, which took effect on April 28, 1952, stipulated that “Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands.” Article 2 of the Treaty of Peace between the ROC and Japan, which was signed on the same day and took effect on

August 5 of the same year, stated the same. Moreover, the Exchange of Notes No. 1 of the Treaty of Peace between the ROC and Japan stipulated that “the terms of the present Treaty shall, in respect of the Republic of China, be applicable to all the territories which are now, or which may hereafter be, under the control of its Government.” Thus, that sovereignty over the Nansha and Shisha Islands returned to the ROC is irrefutable under international law.

2.11 Actions taken by international organizations confirm ROC control over South China Sea islands and reefs.

On April 29, 1930, at the Far Eastern Meteorological Conference held in Hong Kong, the Philippine representative for the Manila Observatory suggested that the ROC government set up meteorological observatories in the Shisha and Chungsha Islands to enhance navigation safety, acknowledging the observatory set up by the ROC government in the Tongsha Islands as the most important observatory in the South China Seas. This proposal was put forth for resolution and none of the delegations objected. This shows that countries participating in that conference, including the UK, Japan, and the Philippines, as well as the organization itself, all recognized ROC authority over the South China Sea Islands.

On October 27, 1955, at the first conference of the International Civil Aviation Organization on aviation in the Asia-Pacific region in Manila, the 16 member nations present also passed a resolution requesting that the ROC would provide weather reports on the Tungsha, Shisha, and Nansha

Islands, and added high-altitude weather observations four times a day from the Nansha Islands. This demonstrates that the organization confirmed ROC sovereignty over the South China Sea Islands.

2.12 Foreign governments have recognized ROC sovereignty over islands and reefs in the South China Sea.

On September 7, 1955, Donald E. Webster, First Secretary of the US Embassy to the ROC, queried the Ministry of Foreign Affairs regarding which islands in the South China Sea belong to the ROC. The ROC Ministry of Foreign Affairs responded explicitly to the US that all of the South China Sea Islands mentioned above are ROC territory.

In August 1956, First Secretary Webster informed the ROC Ministry of Foreign Affairs that a US Air Force crew planned to travel on US naval vessels to survey the Chungsha Islands and five of the Spratly Islands—Minzhu Reef, Shuangzi (N. Danger) Reefs, Jinghong (Sin Cowe) Island, Hongxiu (Namyit) Island, and Nanwei Island—and requested that the ROC government expedite the trip.

On December 21, 1960, the US Military Assistance Advisory Group (MAAG) requested permission from the ROC Ministry of National Defense to dispatch personnel to survey Jinghong Island, Nanwei Island and Shuangzi Reefs. These actions confirm that the US was aware of ROC sovereignty over the Spratly Islands.

2.13 Filipinos who illegally entered ROC South China Sea island territory were expelled, demonstrating the ROC's competent jurisdiction.

On October 1, 1956, when the ROC naval vessels *Taihe* and *Yongshun* were patrolling the South China Sea Islands, personnel boarded and inspected a Philippine ship at Beizi Reef. Captain Filemon Cloma, Chief Engineer Benito Danseco, and other crew members were questioned aboard the *Taihe*. In addition to turning over carbines and ammunition, Captain Cloma signed an affidavit acknowledging illegal entry into ROC territory and promising no repetition of such action. This incident underscores the fact that the ROC had effective jurisdiction over the region.

2.14 The ROC has demonstrated maintenance of sovereignty through the lodging of protests over incursions by neighboring countries.

As mentioned above, the French colonial government in Annam attempted to occupy nine islands in the Shisha and Nansha groups in 1931 and 1933, respectively. In each case the ROC government reiterated its sovereignty. Following the defeat of Japan in WWII, the ROC government officially restored sovereignty over the South China Sea Islands, confirming it with the publication of the *Location Map of the South China Sea Islands* in 1947.

The ROC recovered the South China Sea Islands in 1946. When Vietnam landed personnel in the Nansha Islands in August 1956, the Ministry of Foreign Affairs delivered a protest through its minister stationed in Vietnam.

In 1963, a navy patrol of the Nanshas found that Vietnam had landed in the islands and illegally erected a stone marker. The navy demolished the marker and re-erected the ROC marker. MOFA again registered a protest with Vietnam. The government's actions to safeguard ROC sovereignty have been unceasing.

Since 1970, in addition to continuing to dispatch naval patrols to the Nansha Islands to defend its sovereignty, the ROC has continuously and consistently used related channels to protest the periodic incursions into the Nanshas by the Philippines, Vietnam and Malaysia, expressing its solemn position to the international community. MOFA statements have reiterated that it is indisputable that the Nansha Islands and their surrounding waters are an inherent part of ROC territory and waters.

3. The ROC South China Sea Peace Initiative

South China Sea Peace Initiative and Roadmap

To provide means for resolving disputes effectively, the ROC government proposed the South China Sea Peace Initiative May 26, 2015, urging parties concerned to exercise self-restraint and maintain the status quo of peace and stability in the South China Sea. While consistently upholding the principles of safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint development, the ROC government is willing to work with other parties to develop resources in the South China Sea and prepared to actively participate in related dialogue and cooperation

mechanisms to settle disputes through peaceful means, maintain regional peace and promote regional development.

President Ma Ying-jeou led a delegation to Taiping Island January 28, 2016, inspecting the wharf, airstrip, lighthouse, farm, hospital, post office, freshwater wells, Guanyin Temple, and solar power facilities. He unveiled the South China Sea Peace Initiative Roadmap to show the way forward to peace in the region, taking Taiping Island as one of the starting points for implementation of the peace initiative, transforming it into an island for peace and rescue operations, as well as an ecologically friendly and low-carbon island.

President Ma stressed that the roadmap will make Taiping Island one of the first ports of call for implementation of the South China Sea Peace Initiative, and put forth a viable path of shelving disputes, integrated planning, and zonal development. The roadmap's three phases of progress include: in the short term, jointly shelving disputes and launching multilateral dialogue and consultations; integrated planning in the midterm; and over the long term the establishment of a mechanism for zonal development through bilateral or multilateral cooperation leading to fair and reciprocal win-win results.

Tangible results of the South China Sea Peace Initiative

After two years of consultations, the ROC and the Philippines signed the Agreement Concerning the Facilitation of Cooperation on Law Enforcement in Fisheries Matters November 5, 2015, in Taipei, ROC. The

accord establishes three principles for law enforcement: no use of force of arms, one-hour notification prior to enforcement actions, and release of detained crews and boats within three days. It has greatly reduced the number of bilateral fishery disputes, making it the most outstanding outcome of the South China Sea Peace Initiative so far.

The agreement is significant in several ways: (1) For Taiwan and the Philippines to establish an effective settlement mechanism concerning fishery disputes in their overlapping exclusive economic zones (EEZ) in accordance with international law, including the United Nations Charter and the UN Convention on the Law of the Sea, is of great political significance; (2) the contents of the accord are in line with the principle of provisional arrangements under UNCLOS, as well as common international practice, giving it substantial import under international law; and (3) the technical group established under the agreement gives the two sides an institutionalized negotiation mechanism.

Making Taiping Island into a peaceful and low-carbon island, as well as an ecological reserve, in the spirit of the South China Sea Peace Initiative

ROC government management over nearly 70 years is turning Taiping Island into an island for peace and rescue operations, as well as an ecologically friendly and low-carbon island, demonstrating the government's investment of resources in the nation's southern territories, effective administration, concern for human rights, attention to environmental protection, and efforts to preserve peace and stability in the

region, in the spirit of the South China Sea Peace Initiative. The following developments are especially noteworthy:

In 2000, the Coast Guard Administration took over defense of Taiping Island, showing the world that the island has been demilitarized and is dedicated to peaceful purposes.

The medical services available on Taiping Island have been gradually expanded. Three doctors (including one dentist) and three nurses now staff the 10-bed Nansha Hospital, with a telemedicine service with Taiwan proper allowing for immediate consultations at any time, providing medical care to personnel stationed on the island as well as fishermen from different countries operating in neighboring waters. Over the past 20 years, more than 20 fishermen from the ROC, Myanmar, the Philippines, and mainland China have been rescued and treated.

The first phase of Taiping Island's photovoltaic system, solar power water heating, and energy-saving facilities went on line in 2011. Paired with storage batteries in 2014, the photovoltaic system can now provide up to 170,000 kWh of power annually (nearly one-fifth of the islands needs), reducing carbon emissions by 107 metric tons. Taiping is thus well on its way to becoming a low-carbon island.

Taiping is an island capable of sustaining human habitation and an economic life of its own

On his inspection tour of Taiping Island, President Ma pointed out that it is clearly an island, not a rock, with respect to the question raised in the arbitration brought by the Philippines at the Permanent Court of Arbitration in The Hague concerning competing claims with mainland China vis-à-vis the South China Sea. Taiping has its own sources of natural, abundant, potable freshwater, as well as naturally formed and fertile soil, while fruits, vegetables, chickens, and goats are raised there, providing ample evidence that it is fit for human habitation and can support an economic life of its own, meeting all the qualifications of an island.

As recounted above, in 1879 and 1884, the Royal Navy's *The China Sea Directory*, in Volumes 2 and 3, records the presence on Taiping of wells dug by early inhabitants, with water "better than elsewhere"; forest cover; shrubs; and wild coconut, plantain, and papaya. When Japan occupied Taiping Island in 1935, one name they used for it was Papaya Island, due to its many papaya trees. These records also demonstrate that the island is capable of sustaining human habitation and an economic life of its own. Moreover, in September 1980, eight civilian researchers from the Taiwan Provincial Fisheries Research Institute went to Taiping to conduct related research, officially registering their domiciles there September 25, and holding the first Townhall Meeting for citizens in the Nansha Region November 16. And in 2016, three civilian nurses employed at the Nansha Hospital registered their domiciles on Taiping.

On December 12, 2015, Minister of the Interior Chen Wei-zen led a group of related government officials to Taiping Island to preside over a

ceremony marking the opening of the island's renovated wharf and airstrip, as well as the new lighthouse. On January 23, 2016, Minister of Foreign Affairs David Y. L. Lin visited Taiping with a survey team of water, soil, vegetation, and legal experts. Upon its return to Taiwan, the team announced the following findings:

- (1) Taiping is the largest of the naturally formed islands in the Nanshas, with abundant natural resources.
- (2) Geologically, the Holocene layer of coral rock under the topsoil, together with the lower strata of fissure-ridden Pleistocene coral, has resulted in excellent underground water storage through rainwater percolation, giving Taiping, alone among the Nanshas, abundant groundwater and potable freshwater. There are four operational groundwater wells on the island, averaging 92.3 percent freshwater. The best quality water (in well no. 5) is 99.1 percent freshwater, with total dissolved solids of just 427 mg/L, comparable to Evian (whose website reports total dissolved solids of 330 mg/L). The four wells produce 65 metric tons of water daily for drinking water, cooking, and other everyday needs.
- (3) Plant cover on the island has over long periods of time produced natural, fertile soil suitable for agriculture, with an abundance of natural vegetation. There are hundreds of tropical trees growing to heights of 10 to 20 meters, including the lantern tree (*Hernandia nymphaeifolia*), Indian almond (*Terminalia catappa*), and fish poison tree (*Barringtonia asiatica*). Coconut, papaya, and plantain grow wild.
- (4) Personnel stationed on the island have long utilized the natural

environment, cultivating a wide variety of vegetables, such as pumpkin, sweet potato, calabash, bitter melon, loofah gourd, okra, cabbage, water spinach, and sweet potato leaves, as well as raising guard dogs, chickens, and goats, and drawing on the plentiful fishery resources in surrounding waters to provide for daily needs.

- (5) For these reasons, whether from the perspective of law, economics, or geography, Taiping Island meets the requirements for an island as stipulated in Article 121 of UNCLOS, and can sustain human habitation and economic life of its own.

4. Conclusion

The South China Sea Islands and their surrounding waters were first discovered, named, and used by the early Chinese, as well as administered by successive governments, and have been considered inherent national territory and waters since ancient times, as is attested in numerous historical records, local gazetteers, and maps. Although Japan occupied the islands during World War II, the ROC moved swiftly to recover them after the war, as can be seen by the *Location Map of the South China Sea Islands*, issued by the Ministry of the Interior in 1947.

Article 4 of the ROC Constitution states that “the territory of the Republic of China according to its existing national boundaries shall not be altered except by resolution of the National Assembly.” The ROC government, responsible for the defense of national territory, steadfastly maintains that the South China Sea Islands are an inherent part of ROC

territory.

The ROC government, upholding the basic principles of safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint development, has issued the South China Sea Peace Initiative and its Roadmap. Based on consultations conducted on an equal footing, the ROC is willing to work with other countries concerned to jointly ensure peace and stability in the South China Sea, as well as conserve and develop resources in the region, making it, like the East China Sea, a sea of peace and cooperation.