Implementation of East China Sea Peace Initiative: Perspective from Non-Claimant States

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Although I am based in Hong Kong and cannot at any rate represent the European Union (EU) or my country, France, I will here take the perspective of a European citizen on President Ma Ying-jeou’s East China Sea Peace Initiative (ECSPI) and its implementation.

As we all know, this initiative was launched on August 5, 2012.1 “Based on the principle of “safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint exploration and development”, it is divided, in its implementation, into two stages: 1. Shelve territorial disputes though meaningful dialogue and 2. Share resources through joint development. It has made to date one major achievement: the conclusion, less than a year later, on April 10, 2013, of a fisheries agreement between Taiwan and Japan, delineating the respective fishing zones of each country in the seas around the Senkaku/Diaoyutai, a group of islands occupied by Japan since 1895 but also claimed by the Republic of China (ROC), Taiwan’s official name, as well as the People’s Republic of China (PRC). This agreement was presented by the Taiwanese government as “embodying the spirit of the East China Sea Peace Initiative with regard to resolving disputes through peaceful means, successfully protecting the rights and interests of ROC fishermen operating in the East China Sea”.2

However, this initiative includes more ambitious goals: “calling upon all parties concerned to demonstrate restraint and avoid escalating confrontational acts, to shelve controversies and not abandon dialogue, to respect international law and deal with disputes through peaceful means”, it aims at “seeking consensus and drafting an East China Sea Code of Conduct, and establishing a mechanism for cooperation on exploring and developing resources in the East China Sea”. The resources listed do not only include fishing but also mining and marine science research. And in the area of maritime security, this initiative should foster “marine rescue agency cooperation, and establishing a collaborative marine security and crime-enforcement mechanism”.

Seeing its role as a “facilitator of peace”, the Taiwanese government has also made this initiate to help China and Japan “replace confrontation with negotiation and set aside their controversies by means of temporary measures, so as to maintain peace and stability in the region” at a time the tension between both countries was rising very fast. But “over the long run”, Ma also hopes that Beijing, Tokyo and Taipei “can move from three parallel tracks of bilateral dialogue… to one track of trilateral negotiations and realize peace and cooperation in the East China Sea”.

All in all, although it has fulfilled one of its objectives, Ma’s East China Sea Peace Initiative has laid down a very ambitious program and perhaps too ambitious a program which implementation does not only depend upon Taiwan but also Japan and, more importantly, China. For these reasons, while the EU has been very supportive of this initiative, it is far from certain that it believes that all its goals will be realized.

A Positive Initiative

In a nutshell, a most Europeans, I see Ma’s ECSPI in a very positive light as it tries to solve practical issues, particularly Taiwanese and Japanese respective fishing rights in the areas around the disputed Senkaku/Diaoyutai islands on the basis of “reciprocity”, while abiding to two key principles that the EU keeps referring two when two or more countries are stuck in territorial and maritime disputes: 1) respect of the status quo, in other words, refrain from attempting to solve the issue by force or unilateral actions; 2) respect of international law, and specifically the United Nations Convention on the Law of the Sea (UNCLOS) and its arbitration mechanisms.

President Ma admitted himself that his initiative had been inspired by the European experience, in particular in settling dispute in the Northern Sea among Germany, Belgium, Britain and Norway. He specifically referred to the fact that this dispute case was submitted to the International Court of Justice and after it was settled, all the parties involved divided the maritime area and started sharing the exploration and exploitation of hydrocarbons deposits.

This initiative was warmly supported by the EU as the way forward for settling territorial and maritime disputes not only in the East China Sea but also in the South China Sea where tension has flared up again since the PRC took control in the spring of 2012 of the Scarborough Shoals, a group of emerging features controlled before by the Philippines, and upgraded its status from “shoals” to an island (called Huangyan dao in Chinese), probably in order to consolidate its claim.

Ma’s ECSPI also received on October 24, 2012, the support from the ECR (European Conservatives and Reformists) in the European Parliament, a conservative, anti-federalist and moderately Eurosceptic political group, through a statement of its then

leader, Martin Callanan, a British Tory. That statement was put on the ROC Ministry of Foreign Affairs website.\(^5\)

However, the true question is: beyond the Taiwan-Japan fisheries agreement that was mentioned earlier, can this initiative bear more fruits and achieve its major objectives?

**Difficulties on the Japanese Side**

It should first be acknowledged that Taiwan’s weakened international status has complicated its position on these matters: as it is well known, even if Tokyo does not recognize that the Senkaku are contested islands, on such territorial and sovereignty issues, it can only trade with Beijing. And without modifying its basic stance, the Abe administration is currently working with the Xi Jinping government to find a way to better manage this dispute in order to improve and stabilize their bilateral relations, and in the short term, clear the way to a meeting between the two leaders at the next APEC meeting due to take place in November 2014 in the Chinese capital.

From a Japanese point of view, therefore, the fishing right agreement signed with Taiwan in April 2013 was a model of diplomatic flexibility. China’s increasing assertiveness and aggressiveness around the Senkaku after the “nationalization” of three of the island by Prime Minister Noda (a center-left administration led by the Democratic Party of Japan) in September 2012 directly contributed to convincing Abe, after the conservative Liberal Democratic Party (LDP) won the legislative election and he became Prime Minister in December 2012, to show fresh openness toward Taiwan. In a rather short lap of time, when the 17\(^{th}\) round of negotiations between both sides was held, a deal was reached. In the sixteen rounds that had taken place between 1996 and 2009, Japan-Taiwan negotiations aimed at delineating fishing zones around the Diaoyutai islands had been stuck in apparently unsolvable differences, particularly on the co-management of waters and Taiwan’s claim to fish in an area that had already been marked as a zone of joint control between China and Japan in their bilateral fisheries agreement signed in 1997.\(^6\)

In the April 10, 2013 agreement, the zone where both Japanese and Taiwanese fishing boat can operate is very small and the Taiwanese fishermen’s traditional rights (particularly from Ilan county on the Northeastern coast of the island) have been largely recognized by Japan.

But can Taipei and Tokyo go further?

**Hurdles with China**

Much depends upon China’s attitude: its reaction to the Taiwan-Japan fisheries agreement has been rather subdued but clearly negative. Of course, it immediately understood that the Abe administration has rapidly concluded this agreement in order to show the region and the world the Chinese government’s aggressiveness and


\(^6\) Taipei Times, April 11, 2013.
stubbornness, as well as to demonstrate that an another approach to maritime and territorial disputes was possible.

The approach explored with Taiwan has some obvious ramifications in Japan-China relations: in 2008, Prime Minister Fukuda Yasuo and President Hu Jintao had concluded “in principle” an accord to organize joint exploration and share resources in the contested Shirakaba-Chunxiao area of the East China Sea. For Tokyo therefore, the fisheries agreement concluded with Taipei was also aimed at reminding Beijing that instead of constantly sending its coastguards within 12 nautical mile perimeter around the Senkaku, a more productive solution could be found if both sides agreed to shelf their territorial dispute.

However, as expected, China moved in an opposite direction: in November 2013, it unilaterally created a new Air Defense Identification Zone (ADIZ) in the East China Sea that overlaps not only with Japan’s own ADIZ over the Senkaku but also South Korea’s ADIZ (although to a much smaller extent). Since then, the relations between Tokyo and Beijing have remained tense. As the APEC meeting is approaching, the Chinese government has reopened multiple channels of communication with its Japanese counterpart as well as the LDP; and the Abe administration has started to soften its position on the Senkaku-Diaoyu without directly admitting the existence of a territorial dispute over these islands. But any revival of the 2008 agreement appears unlikely in the foreseeable future.

There is another difficulty: China’s approach to international law and interpretation of the Law of the Sea. Be it about territorial or maritime disputes, Beijing refuses international arbitration by the International Court of Justice in The Hague or the UNCLOS tribunal in Hamburg and keeps asking for bilateral negotiations. In January 2013, the Philippines felt that its negotiations with China were in a prolonged impasse and opted for bringing part of its case to the UNCLOS arbitration tribunal (about maritime boundaries as the 9-dash line and the nature of the emerging features of the Scarborough Shoals). The Chinese government has quickly reacted in announcing that it will not recognize any arbitration decision. Even if such a decision may exert some additional political and moral pressure on China, it won’t be able to be implemented without its consent.

In the longer run, can Ma’s initiative have a positive impact on Japan-China relations? Can it help alleviating tensions among competitive claimants, not only in the East China Sea but also in the South China Sea?

The Regional Impact of Ma’s Initiative

Let’s look at every step of Ma’s ECSPI: shelve territorial disputes and hold dialogue; sharing resources; adopt a Code of Conduct, and hold trilateral negotiations and realize peace and cooperation among East China Sea countries.

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The first thing that must be underscored regarding Taiwan-Japan fisheries agreement is that it does not organize joint exploitation of resources: apart from a small zone at the east of the Senkaku-Diaoyutai called special cooperation sea area (tebie he zuo haiyu) where Japanese fishermen do not go often anyway, both governments have designed respective fishing zones. To date, if we put aside some very specific bilateral fishery agreements concluded between China, Japan, South Korea and Vietnam, the only joint agreement of the kind evoked in Ma’s ECSPI was reached by China and Taiwan in the 1990s to explore and exploit oil and natural gas in the sea located southwest of the Taiwan Strait (Tainan Basin and Zhaoshan sunken area) and not claimed by any other country. Signed by Beijing’s China National Offshore Oil Company (CNOOC) and Taipei’s Chinese Petroleum Corporation (CPC) in July 1996, it was finally approved in April 1998. It also led to another agreement reached in May 2002.

China has proposed a similar formula to neighbors as Japan or Vietnam, with which it has had long-unsolved territorial disputes. Some initial agreements have even been reached with both countries. Nevertheless, they have never been fleshed out, let alone implemented. Again, recent developments head in another direction: China’s unilateral exploration and exploitation of oil (or other natural resources) in the contested waters of the East and South China Seas. The deployment by CNOOC of a US$1 billion oil rig in the vicinity of the Paracel islands in May 2014, in spite of its removal three months later, is the most recent illustration of China’s assertiveness and unilateralism.

One can argue of course that the timing of Ma’s initiative has not been favorable to bearing important immediate or short-term results. In the East China Sea, the condition of any progress is a return of Sino-Japan relations to some kind of normalcy. In the current circumstances, can Ma’s most ambitious objectives be reached, particularly the establishment of a Code of Conduct and the opening of a trilateral negotiation among Taipei, Tokyo and Beijing?

For the time being, regarding the drafting of a Code of Conduct, there is not much of a precedent. The “Declaration on the Conduct of Parties in the South China Sea” approved in Phnom Penh in 2002 is not a binding document. Since then, China has moved away from negotiating any kind of multilateral accord, privileging bilateral and asymmetrical negotiations that give it much more leverage and, as a result, a clear advantage on the other claimants. More recently, China has seemed again interested in drafting a Code of Conduct in the South China Sea. But in August 2014, at the ASEAN Regional Forum held in Rangoon, it has not really responded to and addressed ASEAN countries’ insistent request for the rapid adoption of such a binding document. The Shangri La Dialogue held just two months before in

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11 Zou Keyuan, op. cit.
12 South China Morning Post, August 8, 2014.
Singapore only confirmed Beijing’s intention to confront its major strategic challengers in the region, particularly the US and Japan.

In such a context, can we really expect trilateral negotiations to take off ground? One unsolvable difficulty is of diplomatic nature: Beijing does not want to associate Taipei to any kind of multilateral international negotiation since it does not consider Taiwan as a state. Only second-track dialogues can be envisaged. But, even if such a format is adopted, China would be very reluctant in the present circumstances, and probably also in the foreseeable future, to let its “experts” sit at the same table as their Japanese and Taiwanese colleagues and together discuss territorial and maritime issues, matters that it regards as too sensitive to be taken over meaningfully by second-track talks and actors.

The Way Forward

Yet, Ma’s ECSPI and Taiwan-Japan fisheries agreement have shown the way forward, not only for both countries but also for China in the East China Sea as well as in the South China Sea.

Ma’s initiative has, on the one hand, demonstrated that a Chinese government, representing the ROC, can fully abide by international law and the UNCLOS. The Taiwan-Japan agreement has, on the other hand, exerted some pressure on Beijing to revive an approach that it once favored but has abandoned after 2008, because of its new great power status, but also hubris and assertive strategy.

As a European, I think that it would be useful that the Ma administration clearly endorses all the arbitration mechanisms proposed by the international law and the UNCLOS. Taipei has made the first step in this direction in publishing in 2014 a large set of historical documents aimed at backing its territorial claims in the East and the South China Seas.

In that respect, Taiwan has already shown that it can be a “peace facilitator”.

But Taiwan can go further in accepting without reservation third party arbitration for all the disputed island or waters that it controls. And it can also go further, as Bonnie Glaser of the Center for Strategic and International Studies in Washington D.C. proposed, in clarifying its position regarding the nature of 11-dash line drawn by Chiang Kai-shek in 1947 (and as a result the PRC’s 9-dash line) and its claims in the South China Sea.13

Can it also act as a “peace facilitator” and help China and Japan improving their relationship?

Although the above mentioned agreement may have indirectly played a positive role, in putting fresh pressure on Beijing to move back to its former approach, it remains to be seen whether Taipei can do more. Actually, it is rather in keeping its distance from

China in terms of legal principles, strategies and behaviors that Taiwan has a better change to influence Japan’s policy, and more broadly other East Asian countries’ attitude, on territorial and maritime issues. Conversely, any close cooperation with Beijing in the East or the South China Seas may contribute to sabotaging the spirit and the effectiveness of Ma’s ECSPI.

**The Limits of the European Experience**

President Ma has clearly mentioned the European experience as a source of inspiration of his Peace Initiative. However, there are three important and interrelated limits to the relevance of European precedents for managing tensions and building peace in the East and the South China Seas: a piecemeal endorsement of international law and UNCLOS by some of the claimants, particularly China; the lack of common political values among the region’s countries, some being authoritarian other democratic; and the rise of nationalisms in most of them.

Consequently, following the modus operandi adopted by the Northern Sea countries will remain unlikely in the foreseeable future in East Asia. East China Sea and South China Sea claimants will need to be creative and find their own recipes to alleviate tensions and cooperate. Ma’s ECSPI is one of these useful recipes. But more ideas, coming from the other parties involved in the disputes that have been briefly presented above, will need to be tested in the coming years, if the region wants to remain peaceful and continue to prosper.
「協議適用海域」範圍外之其他暫定執法線區域內，維持現有作業規範，海巡署均會依規定派艦護漁。

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