

TAIWAN'S SOVEREIGNTY AND ITS POSITION TO THE SOUTH CHINA SEA DISPUTE UNDER THE INTERNATIONAL LAW

Iin Karita Sakharina, Hasanuddin University
Farida Patittingi, Hasanuddin University
Ahwal Hidayat, Hasanuddin University
Zulkifli Aspan, Hasanuddin University
Hamzah Halim, Hasanuddin University
Muh. Hasrul, Hasanuddin University
Kadarudin, Hasanuddin University
Ahsan Yunus, Hasanuddin University

ABSTRACT

International dispute has occurred to almost of the countries over the world, but the most imprinted and the most memorable is the occurrence of World War I and World War II, duet o it caused losses and prolonged misery in the history of human life. These day, conflicts between state regions still occur, especially if they relate to the determination and claims of boundary or overlapping territorial boundaries, between one country and another, because each party has the right to the territory. Similarity to international dispute, including conflicts that have occurred in the South China Sea) in recent years. The purpose of this paper is to examine Taiwan (Republic of China) as a country or at least a political entity that has fulfilled the basic criteria as a sovereign state. Taiwan has been able to exercise sovereignty in its territorial territory under a legitimate government. Disputes in the South China Sea involving Taiwan indicate indirect recognition of the existence of Taiwan as a sovereign nation that is capable and continues to be taken into account in maritime border disputes with several countries in the South China Sea region.

Keywords : Taiwan, South China Sea, Maritime Bondaries Dispute, State Sovereignty

INTRODUCTION

International dispute have ocured to almost all countries over the world, despite of, the biggest one and easy to remember was the world war I and the world war II. As the name implies, world war is a conflict that involves many parties on this planet. When World War I broke out, there were two large camps, the Triple Alliance (Germany, Austria-Hungary, and Italy) against Triple Entente (Britain, France, and Russia). ¹Until now, international disputes often occur, including disputes that have occurred in the South China Sea in recent years. Disputes involving countries outside the South China Sea region and countries in the South China Sea as well as between countries within the South China Sea concern territorial disputes and maritime boundaries, as happened between the Philippines and the People's Republic of China several years ago (Amiruddin & Asikin 2013).

The International Court of Justice provides an explanation of an international dispute as a situation when two countries have different views about whether or not the obligations contained in an agreement so that international disputes contain only a narrow understanding because the dispute is only related to default², which is, one of the parties did not conducted its obligations as stipulated

in the agreement (Amiruddin & Asikin, 2013). In another book it is stated that international disputes occur when disputes arise involving a government, legal entity or individual, in different parts of the world, due to a misunderstanding of a matter, one party intentionally violates the rights or interests of another country, the two countries differ in their establishment or interpretation of a matter, (Schubert, 2004) and in violation of international law Burgess, (2003) or agreements.³

The South China Sea Region covers the waters and land area of the archipelago of two large islands, namely the Spratly and Paracels, as well as the Macclesfield River and Scarborough Reef stretching from the country of Singapore starting from the Malacca Strait to the Taiwan Strait.⁴ Because of this vast expanse of territory, and the history of succession of turns took place by the traditional rulers of nearby countries. Today several countries, such as the People's Republic of China (PRC), Taiwan, Vietnam, the Philippines, Malaysia and Brunei Darussalam, are involved (Chiang, 2004) in disputes in the South China Sea region by mutually claiming sovereignty over some or all of the land area in the form of natural features in several island groups (Territorial disputes) as well as by mutually defining maritime delimitation lines in South China Sea waters (Dumbaugh, 2019).

Taiwan claims itself to be a disputing party to the South China Sea region, is under the spotlight of several countries, because until now the People's Republic of China still claims that Taiwan is one of the provinces that must applied to the sovereignty of the People's Republic of China and strongly opposes any action by Taiwan that is deemed to want to separate from China. This has an impact on the unclear status of Taiwan in disputes in the South China Sea. Based on the description above, this paper intends to examine and provide answers to questions about: (1) What is the status of Taiwan's sovereignty in relations with other countries? (2) What is Taiwan's position in the dispute in the South China Sea? (Hussain & Hassan, 2020).

RESEARCH METHOD

This research is a normative legal research.⁵ It employs the statutory and case approaches.⁶ The data used are secondary data in the form of primary legal materials (international and national legal instruments) and secondary legal materials (books, journals, research reports, and news media, both printed and online) obtained through literature study. The legal materials collected were analysed qualitatively and presented descriptively in order to answer the questions in this paper or manuscript (Hussain & Hassan, 2020).

RESULTS AND DISCUSSION

Taiwan (Republic of China)

The Republic of China or better known as Taiwan is a country, an island, or a special administrative area of the People's Republic of China (like Hong Kong and Macau), at least, the definition of Taiwan if we try to define it now. The ambiguity in Taiwan's status as a sovereign state is the impact of not achieving an agreement between the PRC and Taiwan in terms of the reunification sought by the PRC, as well as various efforts made by Taiwan itself in fighting for its sovereignty. From the historical perspective of the existence of Taiwan up to now, the following matters can be stated. First inhabited by Austronesian people, Taiwan became home to Han immigrants beginning in the late Ming Dynasty (17th century). In 1895, military defeat forced China's Qing Dynasty to cede Taiwan to Japan, Hussain, Qudus, Pham, Rafiq & Pavelková (2020) which then governed Taiwan for 50 years⁷. Taiwan came under Chinese Nationalist (Kuomintang, KMT) control after World War II. With the communist victory in the Chinese civil war in 1949, the Nationalist-controlled Republic of China government and 2 million Nationalists fled to Taiwan and

continued to claim to be the legitimate government for mainland China and Taiwan based on a 1947 Constitution drawn up for all of China. Until 1987, however, the Nationalist government ruled (Napang & Hendrapati, 2019) Taiwan under a civil war martial law declaration dating to 1948. Beginning in the 1970s, Nationalist authorities gradually began to incorporate the native population into the governing structure beyond the local level. The democratization process expanded rapidly in the 1980s, leading to the then illegal founding of Taiwan's first opposition party (the Democratic Progressive Party or DPP) in 1986 and the lifting of martial law the following year. Taiwan held legislative elections in 1992, the first in over forty years, and its first direct presidential election in 1996. In the 2000 presidential elections, Taiwan underwent its first peaceful transfer of power with the KMT loss to the Democratic Progressive Party (DPP) and afterwards experienced two additional democratic transfers of power in 2008 and 2016. Throughout this period, the island prospered, became one of East Asia's Economic "Tigers," and after 2000 became a major investor in mainland China as cross-Strait ties matured. The dominant political (Napang & Hendrapati, 2019) issues continue to be economic reform and growth as well as management of sensitive relations between Taiwan and China.⁸

Early May 2005, a historic point in what was referred to as "The Taiwan Problem" occurred in Beijing: Kuomintang (KMT) chairman Lien Chang visited and was officially welcomed by President Hu Jintao. Lien's one-week visit to the "Journey of Peace" was his first time since leaving the mainland at the age of 10 in 1949. Lien's visit in Beijing certainly invited pros and cons in Taiwan, moreover he visited only 6 weeks after Beijing announced the enactment An anti-separation law that allows China Junef (2018) to use armed force if Taiwan declares its independence. Vice President of Taiwan (Annette Lu) even said, "Lien Chang is cooperating with the communist to downgrade the president's Marzuki (2010) legitimacy and power"⁹.

There are 2 major parties in Taiwan, namely the Kuomintang party (KMT) from the Pan Blue Coalition and the Democratic Progressive Party (DPP) from the Pan Green Coalition.¹⁰ The Progressive Democracy Party is a party that is at the centre of the left wing, liberal and transitional. This party upholds the values determined by the international community. Through the point of approval of rights, the DPP requests full sovereignty from Taiwan (Republic of China). Therefore, they support the struggle of Taiwan. The Kuomintang party on the other hand is known as the nationalist party in Taiwan (Nainggolan, 2013). In recent years the party has supported democracy, capitalism, and also the unification of China so that they would rather look for those who use the People's Republic of China (PRC/PRC)¹¹. Basically, these two major parties support the existence of democracy, but what distinguishes and makes KMT and DPP very contradictory is the difference in ideology and perspective on the issue of unification of Taiwan to the PRC. Taiwan's future regarding sovereignty is closely related to the PRC government's response on the issue of unification, this is because until today the PRC still considers that Taiwan is part of the PRC (Robert, Smith & Thomas, 1997).

Dispute between People Republic of China and Taiwan

The dispute between the PRC and Taiwan (ROC) has been going on for a long time, starting with the defeat of the Republic of China (ROC) official government during the civil war in 1949. With the victory of Mao Tse-tung and his armed soldiers from the Communist Party in mainland China, the remnants the rest of the government led by Chiang Kai-shek and government support groups at that time fled to the island of Formosa (Taiwan). For the next thirty years, both regimes claimed their respective legitimacy as the sole legal government of the Chinese people. In Beijing on October 1, 1949, a victorious Mao proclaimed the creation of the People's Republic of China (PRC) (Librayanto, 2013). Meanwhile, Chiang Kai-shek established a temporary capital for his government in Taipei, Taiwan, declaring the ROC still to be the (Wiranto, 2016). legitimate

Chinese government-in-exile and vowing that one day he would "retake the mainland" and drive out communist forces¹².

Since year 1949 until now, the PRC and Taiwan (ROC) control their respective territories, with their own governments. The difference between the two parties is their foreign policy, although on the one hand Taiwan is eager to exist in the political arena in the international world, but thanks to the economic power it has and the Chinese foreign policy which implements the One China Policy, it is almost impossible for Taiwan to exist as a sovereign nation on the international field¹³.

Status of Taiwan Sovereignty

Sovereignty or in some languages known as *souvereniteit* (Dutch), *souverainite* (French), *sovranus* (Italian), *superanus* (Latin) which means supremacy. Sovereignty is defined as the highest authority, that is, power that does not originate and is not under other powers¹⁴. Based on the ideas of Jean Bodin and Grotius about sovereignty, sovereignty can be classified or divided based on the type and nature as follows:¹⁵

- a. Based on the type, sovereignty can be divided into:
 - a. Internal sovereignty (*interne souverainiteit*) which means that the country's power is obeyed and can force it to be obeyed by its people.
 - b. External sovereignty (*externe souverainiteit*), namely that the country's power is able to defend itself against attacks that come from outside and is able to establish relations with foreign countries. Outward sovereignty is usually called "independence".
- b. 2. Based on its nature, sovereignty can be divided into:
 - a. De facto sovereignty, is state power in reality.
 - b. De jure sovereignty, is state power according to law.

Based on the principle of sovereignty above, Taiwan has been (*interne souverainiteit*), this is proven by the ongoing functioning of governmental functions and continuous in Taiwan which indicates that the government is accepted and obeyed by its people. In relation to outside sovereignty as the separation of sovereignty previously discussed, Taiwan already has an armed force (military) to protect its people and territories from attacks by other parties, and Taiwan is also able to appear in the international world primarily in the economic field including by Wiranto (2016). Becoming a member of the World Trade Organization, even though its membership status is not as a country. The sovereignty that can be attached to Taiwan is inseparable from its history.

Taiwan (ROC) is a country even older than the People's Republic of China (PRC). Since the collapse of the Qing dynasty in 1912 which marked the end of the imperial period in mainland China, and was born a country called the Republic of China (ROC). In 1949 with the outbreak of civil war in the ROC and the communist party headed by Mao Tse Tung came out victorious after successfully overthrowing the government which was then controlled by the nationalist party so that the President of the ROC and his government regime was forced to establish a temporary administrative center in Taipei and remain to this day. At the same time in mainland China was declared the establishment of a country with the name People Republic of China PRC,¹⁶ which will then replace the role and position of Taiwan (ROC) in the arena of international politics including Taiwan's membership in the United Nations. The change in Taiwan's position as a member of the United Nations, especially as a member of the UN Security Council, came after the PRC government (PRC) under Prime Minister Chou En Lai opened diplomatic relations with the US government under President Richard Nixon in mutual terms. Along with the opening of diplomatic relations between the two countries, the PRC placed its ambassadors and diplomats at the UN so that Taiwan's membership in the world organization ended because the UN only recognized the One

China which represented all the people on the mainland of China and Taiwan was only a province of the PRC (One China Policy).

In year 1951 have signed the San Fransisco treaty ¹⁷ which began of international debating about the status of yang kemudian menjadi awal perdebatan internasional tentang status Formosa island (Taiwan) that became one of the island from many island that have released from Japan as the consequence of that agreement.¹⁸ Although the Cairo Declaration was issued in 1943 stating that after World War II Japan had to return Japanese islands seized from the ROC including the islands of Manchuria, Formosa (Taiwan), and Pascadores, but the declaration was not legally binding¹⁹.

Under one article published in Fordham International Law Journal, Y. Frank Chiang, have mentioned there are 3 implication when concluded that China has no sovereignty over Taiwan, like these following: ²⁰

1. The first implication is that China has no sovereignty over Taiwan. A modern State's sovereignty is based on ownership and control of territory. This concept is known as territorial sovereignty. Any sovereignty of China over Taiwan must be based on title to the island of Taiwan and since China has not acquired title to the island of Taiwan, it has no sovereignty over the island of Taiwan and its inhabitants. The one-China principle advocated by the PRC government is correct in its claims that there is only one China and the PRC is its representative government, but is wrong in its claim that Taiwan is a part of China.
2. The second implication is that under international law, the Taiwan issue is not a domestic issue for the state of China. Selling weapons to Taiwan or sending contingents to the island by the United States does not encroach on China's sovereignty or territory. This also means that the United Nations or other States may rightfully intercede to prevent an invasion of the island of Taiwan.
3. The third implication is that the island of Taiwan has an unusual status, it may be described as a territorial entity. The Peace Treaty of San Francisco put Taiwan in an unusual situation. As explained before, a territorial treaty, by its nature, provides final settlement of title to a territory. When the Allied Powers forced Japan to abandon title to the island of Taiwan without making any reservations in the Peace Treaty of San Francisco, both Japan and the Allied Powers lost the power and right to dispose of the island. Therefore, the island is no longer owned by any State and has not been subject to any sovereignty since then. This is true even though the Allied Powers retained the authority to control the island under the principle of agency by appointing the ROC government to administer Taiwan.
4. To became state sovereign or at least meet the requirement as a state, According to Montevideo Convention year 1933, there are 4 unsure which are:
 - 1) A permanent population; ²¹
 - 2) A defined territory; ²²
 - 3) Government; ²³
 - 4) Capacity to enter into relatiios with the other states. ²⁴

Under his book, Samidjo has given unsur relating to the existent of the State refer to Montevideo Convention 1933 by add one poin, like these following: ²⁵

1. There must be residents (people, residents, citizens)
2. There must be a (certain) area or sphere of power
3. There must be the highest authority (sovereign ruler)
4. Ability to deal with other countries.
5. Confession (Declarative).

The four elements, namely occupants, territories, governments, and the ability to relate to other countries, are constitutive elements. While the fifth element, namely the existence of recognition is a declarative element. The state as a concept of Political Science has been realized, if the three constitutive elements (occupants, territories and governments) have been fulfilled by a political unity, namely population, territory, and sovereign government. These three elements are traditional constitutive elements of the state. ²⁶

Romi Librayanto under his book “State Science” (an Introduction)” described the unsure of the states in classical way while a state must be meet those following: ²⁷

- 1) Certain territory.
- 2) People.
- 3) Government.

If we take a look from a number of views above, it can be concluded that in principle there are only 3 basic elements that must be met for an entity called the state, namely (certain) territory, population, and government. Based on these three elements, Taiwan can already be categorized as a country, because they have a certain area, namely the island of Taiwan (Formosa) as the mainland and several small islands around it, they have residents and the population is subject to/obey the government in power in Taiwan. But in reality, the element of recognition for a country is very important in order to be treated as an equal to other countries in international politics. Although recognition is not a determining factor regarding the presence or absence of a state, the acknowledgment only explains that the state that it has recognized already exists and is recognized by the state that acknowledges it. Recognition is not a determining factor in the formation or establishment of the country, but is merely explaining and declaring it. ²⁸

There are inhibiting factors for Taiwan to truly be recognized as a sovereign nation in the eyes of the international community, that is, if Taiwan still sees itself as a country that existed before the 1949 civil war, and still sees itself as a country entitled to the entire territory of China (including PRC region). This will make all of Taiwan's efforts to exist internationally be in vain because as is happening now, the PRC has first and successfully applied the concept (One China Policy) internationally with political and economic strength so that the international world or at least most countries recognize that there is only one Chinese country, called China that has the right to be its representative, but that does not mean that China has sovereignty on Formosa Island (Taiwan).

Republic of China and Islands of the South China Sea

The Dispute that happened in South China Sea until today, has not been a clear resolution on the sovereignty and sovereign rights of the archipelago and the establishment of maritime boundaries between countries in the in South China Sea region. There are 6 parties that dispute and are directly related to the in South China Sea, namely China, Vietnam, Taiwan, Malaysia, the Philippines, and Brunei Darusalam. The South China Sea dispute is composed of two aspects: the overlapping jurisdictional claims and the territorial dispute over groups of mid-ocean islands. It is regarded as one of the most complex disputes in East Asia, if not of the world ²⁹ and remains a dangerous source of potential conflict which could turn into a serious international conflict if it is not properly managed and resolved.

In order to comprehend the complexity of the South China Sea dispute, it is necessary to grasp the correspondingly complex geography of the SCS the SCS is categorised as a semi-enclosed sea ³⁰ covering an area of 648,000 square miles (equivalent to 3,000,000 square kilometres) of the Pacific Ocean, stretching roughly from the Strait of Malacca in the southwest, to the Strait of Taiwan in the northeast. The SCS is surrounded by most of the ASEAN States, China and Taiwan territory, that is, to the north by China and Taiwan, to the west by the Socialist Republic of Vietnam, to the south and southwest by Malaysia, Brunei, Indonesia and Singapore, and to the east by the Philippines. ³¹

In various articles and international law journals, many times Taiwan was included as a disputing party on the LTS, and apart from the PRC, this certainly indicated that in fact Taiwan had gained a special position to exist internationally.

As mentioned earlier, there are at least 6 countries that are in dispute directly in the South China Sea, and there are 5 disputed locations, namely the Spratly Islands, Paracel Islands, Scarborough Shoal, Mischief Reef, and Pratas Island. The following are the countries that are in dispute in the South China Sea and are involved in conflicts of interest:³²

Tutorial Dispute	Dispute States					
	PRC	Vietnam	Filipina	Brunai	Malaysia	Taiwan
Spratly Island	x	x	∞	x	x	x
Paracel Island	x	x				x
Scarborough Shoal	x	x	x			x
Mischief Reef	x		x			x
Pratas Island	x		x			x

Note:

x = Sovereignty Dispute

∞= Sovereign Rights Dispute

Claims made by the PRC, Taiwan and Vietnam are based on the history of the discovery and occupation of islands in the Spratly and Paracel Islands, the Philippines claims based on the natural continuation of its land area on the continental shelf, while Malaysia and Brunei claim the extension of the EEZ and continental shelf from the island or natural features to the maximum extent.³³ Negara-negara ASEAN countries that have claimed their territorial based on the international Law regulation under UNCLOS 1982.³⁴ Taiwan's claim which is based on the history of control of various regions that it claims is identical to the claims submitted by the PRC (PRC). Things like this can be understood because both Taiwan and the PRC (PRC) use the same historical background related to the mastery of the LTS during the RoC (Taiwan) and PRC (PRC) was still one country before the civil war in 1947.³⁵

Taiwan's historical claim was confirmed by the Taiwan Authority in a document titled "Position Paper on the ROC South China Sea Policy" on March 21, 2016. This document states that the island clusters in the South China Sea were first discovered, named, and used by ancient Chinese and administered and managed by successive dynasties (successive dynasties). The claim of ownership or ownership of the South China Sea is based on the pacific occupation principle, which is directed against what is called terra nullius, which is an uninhabited area, never discovered by people and not under the control of society or politics. According to classical international law before the 18th century, a State that discovered terra nullius could enjoy full sovereignty over the area or through the discovery of terra nullius created rights and sovereignty for the State who first discovered it. But since the 18th century, there has been a development in which the State can only enjoy full sovereignty if the State carries out effective occupation of terra nullius and takes legislative, judicial or administrative actions or carries out sovereignty effectively which is called the principle of effectiveness,³⁶ as clearly mentioned under the decision of international arbitrariness and International Court of Justice, like, seperti Clipperton Island, Eastern Greenland Case, Sipadan Ligitan Case³⁷.

Since year 1830 until the end of World War II, the islands of the South China Sea were attacked and occupied by France and Japan. In 1946, the Taiwan government (ROC) took control of the Spratly and Paracel islands based on the 1943 Cairo Declaration and the 1945 Potsdam Declaration, and rebuilt the sovereign monument over the group of islands. In addition to

establishing stone markers and placing military personnel on the main islands, the Taiwanese government (ROC) published improved names for the islands on the LTS, as well as the Location Map of the South China Sea islands in December 1947, all this took place without opposition by neighboring countries at that time. Through a peace agreement in 1951 between Taiwan (ROC) and Japan, Japan relinquished all of its rights and claims of sovereignty over the islands of the Spratly and Paracel islands. Based on the Exchange of Notes No.1 of the Treaty of Peace, the provisions of the present agreement must be applicable to all regions currently under the control of the Taiwanese government. Thus, the sovereignty of the maritime features of the Spratly and Paracel islands naturally returns to Taiwan in accordance with applicable international law. In practice the focus of Taiwanese authority claims is on islands (such as 'the Pratas garrison area' and 'the Spratly garrison district'), relevant waters and continental shelf rather than all water bodies in a U-shaped line of waters in the U-shaped line). They are suspending claims over all waters in a U-shaped line, while still fighting for ownership of natural features contained in such a line. In order to resolve the sovereignty dispute, the Taiwan Authority submitted what is called the South China Sea Peace Initiative on May 26, 2015, which urged the parties to the dispute to exercise self-restraint and maintain the status quo of peace and stability in the South China Sea. Taiwan wants to cooperate with other parties to develop natural resources in the South China Sea, while upholding the principle of sovereignty, removing disputes, maintaining peace and mutual respect. Taiwan is also willing to actively participate in negotiations and cooperation to resolve disputes, while maintaining regional peace and promoting regional development. On January 28, 2016, former Taiwanese leader Ma Ying-Jeou led a delegation to Taiping by reviewing various infrastructure projects. He announced the road map of the South China Sea Peace Initiative Roadmap, initiative to advance peace in the region. He took Taiping as a starting point for implementing peace initiatives, transforming peace initiatives as a platform for search and rescue operations, and as a friendly island environment and low carbon. Taiping Island will be used as one of the main ports required for the implementation of the South China Sea Peace Initiative, providing avenues for dispute resolution, integrated planning and regional development³⁸ decision of the Permanent Arbitration Court Regarding PRC and Philippine Disputes in the South China Sea.

South China Sea dispute actually have applied to the international arbitray in 2013 especially when Phillipina refused to accept the claim of “Nine-Dash Line”³⁹ PRC has applied the dispute into the international arbitration or Permanent Court of Arbitration in Den Haag based on article 42 from the 1907 Convention for the Pasific Settlement of Internasional Disputes⁴⁰ mentioned that permanent court have authority to all of the arbitrary cases, except all the parties agree to applied the case into the special tribunal. Apart from article 42 From Den Haag 1907 Convention (Convention for The Pasific Settlement of Internasional Disputes), applied the dispute by the Philippine especially used and implemented Article 288 and Article 9 of Annex VII of the UNCLOS address the situation where a party objects to the jurisdiction of a tribunal and declines to participate in the proceedings. Firstly, Article 288 provides: “In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by a decision of that court or tribunal.” Secondly, Article 9 of Annex VII of the convention provides as follows:

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue with the proceedings and make its award. The absence of a party or failure of a party to defend its case shall not constitute a barrier and handicap to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

After China took control of a reef about 140 miles from the Philippine coast in 2013, the Philippines filed a complaint, accusing China of violating international law by interfering with fishing, endangering ships and failing to protect the marine environment at the reef, known as

Scarborough Shoal.⁴¹ The Philippines did not go through the International Court of Justice (“ICJ”), since the jurisdiction of the ICJ requires an agreement of the disputing states. Clearly, China would not give its approval regarding the jurisdiction of the ICJ because, since early times, China has stated its wishes for settling the dispute regarding sovereignty and maritime delimitation through dialogue and bilateral negotiations with the respective parties, including the Philippines.⁴²

Further more Arbitration Permanent Court (PCA) subsequently issued a ruling which among others stated that the claim of Chinese sovereignty in South China Sea using the concept of "Nine-dash line" was baseless and incompatible with UNCLOS 1982 in which the PRC was one of the parties to the convention (Hussain, Quddus, Pham, Rafiq & Pavelková, 2020).

“The Tribunal concludes that, as between the Philippines and China, China’s claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the ‘nine-dash line’ are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China’s maritime entitlements under the Convention. The Tribunal concludes that the Convention superseded any historic rights or other sovereign rights or jurisdiction in excess of the limits imposed therein”.⁴³

The PCA verdict certainly not only had an impact on the PRC, but also on countries whose claims were based on the history of South China Sea control, such as Taiwan, which used the same history as the PRC regarding sovereignty claims and sovereign rights in the South China Sea, and Vietnam which refuted Chinese claims with said Beijing had never claimed sovereignty over the islands until the 1940s and said the two islands were within their territory. In addition Vietnam also said they had mastered Paracel and Spratly since the 17th century, and had documentary evidence.⁴⁴ Taiwan's position in the South China Sea dispute is at a disadvantage with the Arbitration Permanent Court. Due to the non-recognition of the "nine-dash line" concept which forms the basis of the PRC (PRC) claim for South China Sea, it is certain that Taiwan's claim for South China Sea also has no basis because Taiwan's basis in the South China Sea dispute also uses the "nine-dash line" concept as used by the PRC. On the other hand, Taiwan benefits from the non-recognition of the tenure concept proposed by the PRC, because by this Taiwan can measure its territorial sea boundaries as a country according to the rules and provisions contained in UNCLOS 1982. This is done so that Taiwan can determine its territorial control as a country in accordance with applicable international law and thus strengthen Taiwan's status as a country in the international eye⁴⁵.

Taiwan's Reaction to the Decision of the Permanent Arbitration Court Related the South China Sea Philippines versus PRC Dispute

The decision of the Permanent Arbitration Court regarding the dispute between the Philippines and the PRC regarding the issue of sovereignty over the Spratly islands was rejected by the PRC and Taiwan (Republic of China). Although Taiwan is not a party to the dispute in front of the tribunal, the decision turns out to target natural features of the Spratly Islands which are controlled by Taiwan, including natural features which are under Taiwan's control so that the Taiwanese Foreign Minister rejects and declares the decision unacceptable overall (totally unacceptable). The ruling was considered to undermine Taiwan's government as a sovereign state, because Taiping Island was not originally included in the object disputed by the Philippines through the Arbitration Court. However, the island which is controlled by Taiwan is related to the court through the full authority of the court. The ruling stated that Taiping Island and other features in the disputed Nansha Islands (Spratly) of Vietnam, the Philippines, and Malaysia, were declared as rocks which "did not produce exclusive economic zones the decision seriously jeopardizes the legal status of the islands in the South China Sea, especially Taiwan's sovereignty and the maritime rights of the countries concerned. In facing and responding to the ruling, the Taiwan Authority

strengthened the Coast Guard patrol to protect its fishermen, especially those around the Taiping island which is indeed controlled by the State. This is proven by the presence of a patrol boat (Wei Hsing) which has a dead weight of more than 1800 tons, where the ship has been around Taiping waters since July 10, 2016 shortly after the tribunal verdict was handed down. A few days later the Taiwan authorities sent a Navy ship from the frigate class (La Fayette) to conduct patrol activities in the waters in order to show the strictness of his government to protect the interests of his country (Hussain & Hassan, 2020).

The Taiwan authorities made an official statement regarding Taiwan's attitude towards the arbitral tribunal's ruling. The official statement which is the government's policy was poured into the RoC Position on the South China Sea Arbitration emphasizing that the tribunal's ruling was totally unacceptable and did not have juridical binding power over the Taiwan Authority. Why does the Taiwan government absolutely reject and cannot accept the arbitral court's ruling? The reasons for not accepting the entire decision by the Taiwan Authority can be stated as follows. The first reason, in the text of the court's ruling, the Republic of China (RoC) in question is the Taiwan Authority of China. This term or nomenclature is not appropriate because it undermines the Republic of China (RoC) status as a sovereign State. The second reason, Taiping Island (originally) was not included in the Philippine lawsuit brought before the arbitration court, but the court expanded its authority, stating that Taiwan-controlled Taiping Island and other features in the occupied Nansha (Spratly) archipelago by Vietnam, the Philippines and Malaysia, these must be treated as rocks so they cannot create an exclusive economic zone. Such a verdict seriously seriously jeopardizes the legal status of the islands in the South China Sea, on which Taiwan exercises sovereignty and maritime rights related to the islands owned or controlled by Taiwan (Taiwan Authority of China).

In addition to the position of Taiwan which reiterated its rejection of all decisions of the arbitral tribunal, the Taiwanese Authority submitted the following statement of attitude. The first statement of position is that Taiwan has ownership rights over the islands in the South China Sea and relevant waters in accordance with international law and applicable sea law, in this case islands and waters that beyond dispute. Since the arbitration court did not formally invite Taiwan to participate in the trial process, the court also did not support and reinforce Taiwan's views so that the ruling did not have binding legal force against Taiwan.

The Taiwanese government has repeatedly declared the South China Sea islands to be part of Taiwan's territory and that Taiwan will take decisive action to improve the country's territory and relevant maritime rights.

The Taiwanese government requests and encourages disputes in the South China Sea to be resolved through multilateral negotiations, with the spirit of setting aside differences and enhancing development cooperation (joint development). Through negotiations conducted on the basis of equality, Taiwan intends to facilitate all countries wishing to advance peace and safety in South China Sea (Hussain, Nguyen, Nguyen & Nguyen, 2021).

The statement of Taiwan's attitude and military deployment is certainly pleasing to mainland China because the mainland Chinese government has found a perfect ally in accelerating territorial claims and rejecting the verdicts of the law. Compared to previous statements which specifically indicate that the Paracel, the Macclesfield, the Pratas, and the Spratly Islands are part of the territory of Taiwan, the leadership of the Democratic Progressive Party is now ambiguous towards the South China Sea problem. Tsai Ing-Wen did not even mention the South China Sea Peace Initiative put forward by the Ma Ying-Jeou administration. It seems that the Taiwan Authority has a political stance not to affirm such claims or not discuss them openly. By observing the statement given by the Taiwanese Ministry of Foreign Affairs, the Tsai Ing-Wen Government would not have put forward historical rights as a legal basis for making claims on disputed seas. Even the government does not mention the eleven-dash line. Tsai's administration struggled to maintain satisfactory

communication channels and implemented some middle ground policy between the pro-independence Democratic Progressive Party and Beijing (Hussain, Ahmad, Quddus, Rafiq, Pham & Popesko, 2021).

Taipei's attitude does not appear to indicate a desire to improve ties with mainland China by supporting mainland China over the South China sea issue, perhaps because the new government is perceived to have a greater nationalism attitude than the previous government. Taiwan's reaction is particularly problematic, because its actions have angered other claimant countries, and may have lost some of the friends needed in the long run. The Taiwanese authorities want to approach territorial issues from a pragmatic and diplomatic perspective, rather than using excessive nationalism sentiments. Ma Ying-Jeou's previous call to approach sovereignty and territorial issues from a political and economic perspective seems wise. If Taipei has to continue this new approach, which seems more nationalistic, Taipei can be isolated. The Tsai Ing-Wen government might also recognize that developments like this were happening at a time when mainland China had already been determined under Xi Jinping's leadership. The apparent change in disposition in Taiwan was not welcomed specifically by Beijing, and cross-strait relations were not very good. So Taiwan must be very careful not to be isolated from the wider Asian community.

Special bounding between Taiwan and the US provide continuous security guarantees for Taiwan. But Taiwan's dispute over the South China Sea with American allies in the region created a conflict of interest between the US and Taiwan. The US does not agree with Taiwan, which is actively involved in the South China Sea dispute. The US publicly denounced Ma Ying-Jeou's visit to Taiping Island. Even though President Obama actively follows the development of the Asia-Pacific region, inconsistency is occurring in America's relations with Taiwan regarding the South China sea. On the one hand the US wants to manage disputes that are currently peacefully under international law, so that the country supports Taiwan's participation in regional negotiations and cooperation activities in the South China Sea. On the other hand the US is rather reluctant to directly ask the mainland China to invite Taiwan to participate, especially Beijing which is suspicious of US interference in the South China sea region so that US involvement is definitely counterproductive.

CONCLUSION

The current Taiwan government headed by Tsai Ing-Wen should follow the South China Sea Peace Initiative initiated by its predecessor, Ma Ying Jeou, because with this idea Claiming countries can see that Taiwan really wants and is able to play a constructive role in managing disputes and their roles can be done according to the 'One China Policy'. In determining its political position on the South China Sea, Taiwan should explain its maritime claims regarding islands ruled under UNCLOS and based on international law, especially how to interpret the eleven-dashed line as a claim for expanding waters surrounded by such lines, but the US is certainly not happy with the eleven-dashed line. Taiwan must prioritize maintaining stable relations with mainland China by maintaining the eleven-dashed line, because if Taiwan prioritizes its interests in the islands it controls and relevant waters, this attitude can actually weaken the legitimacy of China's claims to dashed lines based on rights historical rights in the South China Sea region. Supporting Taiwan's participation in cooperative activities should also be in line with mainland China's approach to disputes from two sides, namely seeking bilateral negotiations on sovereignty issues and multilateral agreements to advance peace and stability in the South China Sea.

FOOTNOTE REFERENCES

1. Oxford, Big Ideas History World War I (1914-1918), 2012, p.236

2. Default in civil law is defined as an event if one of the parties in the agreement does not carry out their obligations in accordance with what was agreed.
3. Boer Mauna, *Pengertian, Peranan dan Fungsi Hukum Internasional Dalam Era Dinamika Global*, (Definition, Role and Function of International Law in the Era of Global Dynamics),Bandung: Alumni, 2005) p.193.
4. Poltak Portogi Nainggolan, *Konflik Laut Cina Selatan dan Implikasinya Terhadap Kawasan*, (South China Sea Conflict and Its Implications for the Region), (Jakarta: P3DI Secretariat General of the Indonesian Parliament and Azza Grafika, 2013), p. vii, see also Martin Sieff, "Sengketa Nama Laut China Selatan atas Kepulauan Spratly dan Paracel Ungkap Konflik yang Lebih Dalam," ("South China Sea Name Disputes over the Spratly Islands and Paracel Reveal Deeper Conflict) Asia Pacific Defense Forum, 13 September 2012.
5. Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (an Introduction to the Method of Legal Research) Jakarta: Rajawali Pers, 2013, p.118
6. Peter Mahmud Marzuki, *Penelitian Hukum*, (Legal Research) (Jakarta: Kencana Prenada Media Group, 2010), p. 96
7. Yen Chiang Chang, *Taiwanese Position in the South China Sea Dispute: Before and After the Permanent Court of Arbitration Award*, *Journal of East Asia and International Law*, Volume 9 Number 2 (2016), p.472.
8. Taiwan, Central Intelligence Agency, <https://www.cia.gov/library/publications/the-world-factbook/geos/tw.html#top>, access on July 4th 2019 at 14:55.
9. Nur Rachmat Yuliantoro, *Hubungan China-Taiwan dan Pandangan Asia Tenggara*,
10. (Relationship of China-Taiwan and Point Of View about South East Asia) Yogyakarta, 29 Mei 2005, See also in Guest of Honor, TIME Asia, May 9, 2005, p 24-5
11. Id
12. Schubert, *Taiwan's Political Parties and National Identity: The Rise of an overarching Consensus*, *Asian Survey*, Vol. 44, No. 4 (July/August 2004), p. 534
13. Kerry Dumbaugh, *Taiwan's Political Status: Historical Background and Its Implications for U.S. Policy*, Congressional Research Service, 3 November 2019, p. 1
14. Samidjo, *Ilmu Negara*, (State Of Science). Bandung. Armico, 1986, p.137
15. Romi Librayanto, *Ilmu Negara, Suatu Pengantar (State of Science, an Introduction)*,Makassar Arus Timur, 2013, p. 161-162
16. *History Of People Republic Of China*, Wikipedia (https://id.wikipedia.org/wiki/Republik_Tiongkok) access on 24 July 2019 at 16.57
17. *Peace Treaty 1951, Marking the end of World War II and the end of Japanese imperialism, as well as the impact on the release of Japanese territories including Formosa Island (Taiwan)*.
18. *San Fransisco Peace Treaty 1951, Article 2, point (b)*
19. *Cairo Declaration, 22-26 November 1943*
20. Y. Frank Chiang, *One China Policy and Taiwan*, *Fordham Internasional Law Journal* Vol.28, 2004, p. 77
21. *Montevideo Convention on the Rights and Duties of States, 1933, Article 1 point (a)*
22. *Montevideo Convention on the Rights and Duties of States, 1933, Article 1 point (b)*
23. *Montevideo Convention on the Rights and Duties of States, 1933, Article 1 point (c)*
24. *Montevideo Convention on the Rights and Duties of States, 1933, Article 1 point (d)*
25. Samidjo, *Op.Cit.*, hlm 34.
26. Id.
27. Romi Librayanto, *Supra Note* ., p72.
28. *id*,p. 84.
29. Robert W. Smith and Bradford Thomas, "Island Disputes and the Law of the Sea: An Examination of Sovereignty and Delimitation of Disputes" in Myron H. Norquist and John Norton Moroe (eds), *Security Flashpoints: Oil, Islands, Sea Access and Military Confrontation*, 1997, p.59
30. Article 122 of the UNCLOS defines the closed or semi-closed sea as "a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.
31. J. Peter Burgess, "The Politic of the SCS: Territoriality and International Law", *Security Dialogue*, (2003) Vol. 34, No. 1, p.7.
32. Muhar Junef, *Sengketa Wilayah Maritim Di Laut Tiongkok Selatan (Maritime Territorial Dispute In South China Sea)*, *Journal of Legal Research of De Jure* Vol. 18 No. 2, June 2018, p.226.
33. Surya Wiranto, *Resolusi Konflik Menghadapi Sengakta Laut Tiongkok Selatan Dari Perspektif Hukum Internasional*, (Conflict Dispute in facing the South China Sea from The Internasional Law Perspective),Yogyakarta: PT.Leutika Nouvalitera, 2016, p. 8
34. *United Nation Convention of the Law of The Sea 1982*, is International instrument of the sea that legally binding and became guideline for many problems about the boundaries sea territory.

35. The country in question was the Republic Of China (RoC) before the civil war took place which finally made the ROC Government move in Taiwan while the PRC was established in mainland China by the Communist Party.
36. Yen Chiang Chang, Taiwanese Position in the South China Sea Dispute: Before and After the Permanent Court of Arbitration Award, *Journal of East Asia and International Law*, Volume 9 Number 2 (2016), pp.470-472.
37. Clipperton Island Case between French and Mexico. Eastern Greenland Case involves Danish and Norway. Sipadan-Ligitan Case involves Republic of Indonesia and Malaysia.
38. Yen Chiang Chang, Taiwanese Position in the South China Sea Dispute: Before and After the Permanent Court of Arbitration Award, *Journal of East Asia and International Law*, Volume 9 Number 2 (2016), pp.470-474.
39. "Nine-dash line" is a concept that applied by the People Republic Of China in order to claimed the authority of South China Sea based on history in past time.
40. Convention of The Pasific Of International Disputes, 1907, article 42.
41. Marthen Napang, Marcel Hendrapati, et al, Contesting Views of the Philippines and China over
42. the Nine-Dash Line in the South China Sea, *Journal of East Asia and International Law*, Volume 12 Number 1 (2019), p.184.
43. Id, p.184.
44. The South China Sea Arbitration Award, Paragraf 278, p.117.
45. Sengketa Kepemilikan Laut Cina Selatan, BBC Indonesia (The Dispute of property right of the South China Sea) https://www.bbc.com/indonesia/laporan_khusus/2011/07/110719_spratlyconflict access on July 30th 2019, at 15:44.

REFERENCES

- Amiruddin, & Asikin, Z. (2013). *Introduction to legal research methods*. Jakarta: Rajawali Pers.
- Mauna, B. (2005). Understanding the role and function of international law in the era of global dynamics. Bandung: Alumni.
- Schubert, G. (2004). Taiwan's political parties and national identity: The rise of an overarching consensus. *Asian Survey*, 44(4), 534
- Burgess, J.P. (2003). "The politic of the SCS: Territoriality and international law". *Security Dialogue*, 34(1), 7.
- Chiang, F.Y. (2004). One china policy and taiwan. *Fordham International Law Journal*, 28, 77.
- Chang, Y.C. (2016). Taiwanese position in the south china sea dispute: Before and after the permanent court of arbitration award. *Journal of East Asia and International Law*, 9(2),472.
- Chang, Y.C. (2016). Taiwanese position in the south china sea dispute: Before and after the permanent court of arbitration award. *Journal of East Asia and International Law*, 9(2),470-472.
- Dumbaugh, K. (2019). Taiwan's political status: Historical background and its implications for U.S. policy, Congressional research service, 3 November.
- Hussain, S., & Hassan, A.A.G. (2020). The reflection of exchange rate exposure and working capital management on manufacturing firms of Pakistan. *Journal of Talent Development and Excellence*, 12(2s), 684-698.
- Hussain, S., Ahmad, N., Quddus, A., Rafiq, M., Pham, T.P., & Popesko, B. (2021). Online education adopted by the students of business science. *Academy of Strategic Management Journal*, 20, 1-14.
- Hussain, S., Nguyen, Q.M., Nguyen, H.T., & Nguyen, T.T. (2021). Macroeconomic factors, working capital management, and firm performance. A static and dynamic panel analysis. *Humanities and Social Sciences Communications*, 8(1), 1-14.
- Hussain, S., Quddus, A., Pham, P.T., Rafiq, M., & Pavelková, D. (2020). The moderating role of firm size and interest rate in capital structure of the firms: Selected sample from sugar sector of Pakistan. *Investment Management and Financial Innovations*.
- Napang, M., & Hendrapati, M. (2019). Contesting views of the philippines and china over the nine-dash line in the south china sea. *Journal of East Asia and International Law*, 12(1), 184.
- Sieff, M. (2012). "South china sea name dispute over spratly and paracel islands reveals deeper conflict." *Asia pacific defense forum*, September 13.
- Junef, M. (2018). Maritime territorial dispute in South China Sea. *Journal of Legal Research of De Jure*, 18(2), 226.
- Oxford, Big ideas history of world war I (1914-1918), 2012.
- Marzuki, P.M. (2010). *Legal research*, Jakarta: Kencana Prenada Media Group.
- Nainggolan, P.P. (2013). The south china sea conflict and its implications for the region, Jakarta: P3DI Secretariat general of the indonesian parliament and azza graphic.
- Robert, W., Smith., & Thomas, B. (1997). "Island disputes and the law of the sea: An examination of sovereignty and delimitation of disputes". 59
- Librayanto, R. (2013). *State science an introduction*. Makassar Flow East.

Wiranto, S. (2016). *Conflict resolution facing South China Sea disputes from an international law perspective*. Yogyakarta: PT. Leutika Nouvalitera, 8.