

New Opportunities for Taiwan in International Maritime Law

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I. Introduction

The 21st meeting of State parties to the 1982 United Nations Convention on the Law of the Sea (the 21st UNCLOS meeting) was held at the U.N. Headquarters in New York from June 13 to June 17, 2011. The main task of the meeting was to consider the annual report of the International Tribunal for the Law of the Sea (ITLOS), to review its budget and elect seven new judges to the Tribunal, and to receive reports by the International Seabed Authority (ISA) and the Commission on the Limits of the Continental Shelf (CLCS). Among these, the reelection of Tribunal member Gao Zhi-guo, a Chinese national, drew particular attention in international legal circles.

Gao presently serves as executive director of the China Institute for Maritime Affairs under the State Oceanic Administration. His specialties are oil resources in the Ocean and maritime border delimitation issues of the East China Sea. Over the past decade, Gao has also published a number of academic papers on territorial disputes in the South China Sea. Therefore, China's reaction was closely watched when Philippine Foreign Secretary Albert Del Rosario suggested during a visit to China on July 8 that South China Sea disputes shall be handled by the Tribunal. Eventually, the Chinese Foreign Ministry declared its stance in a press conference July 12, stating that "the Chinese side has always advocated direct negotiations between the concerned parties to solve disputes in the South China Sea, based on universally accepted

international law." With the statement Beijing indirectly rejected the Philippine proposal, while maintaining its original policy of solving South China Sea issues bilaterally.

II. Old Territory, New Emphasis

As for the focus of the work reports presented to the 21st UNCLOS meeting by the Continental Shelf Commission and the Seabed Authority, the Commission has been burdened with a huge workload since 2005. Particularly complex and taxing are the scientific and technical sides of reports submitted by signatories on the external limits of the continental shelf. As countries around the globe eagerly search for new mineral and energy resources, the Seabed Authority, for its part, has to deal with the fact that the (seabed and ocean floor) "area" has emerged as a new option for nations to satisfy their energy needs in the coming 50 years, because it is located beyond the limits of national jurisdiction and deep seabed mineral resource exploration techniques have improved. In 1994 the U.N. General Assembly adopted the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, commonly known as deep seabed agreement, which paved the road for the effective implementation of UNCLOS.

China took advantage of a collision between Chinese fishing boats and Japan Coast Guard vessels in waters near the disputed Diaoyutai

Islands (Senkaku Islands) in September 2010 to adopt a hardline foreign policy that restricted the export of rare earths. In early July 2011 the World Trade Organization ruled that Chinese export restrictions on nine rare earth minerals violated international trade laws and regulations, sparking China to pledge that rare earth exports would be doubled to 15,738 tons in the latter half of the year. The European Union (EU), however, still voiced misgivings. Since precious rare minerals are sought-after resources, countries around the world keep looking for possible substitutes (for Chinese rare earths). A study by University of Tokyo Professor Yasuhiro Kato, quoted in the Japanese daily Asahi Shimbun, found that rare earth elements can be recovered from deep sea mud at depths of 3,500-6,000 meters in the middle of the Pacific Ocean, in an area that covers 8.8 million square kilometers of seabed around the Hawaiian Archipelago and some 2.4 million square kilometers of seabed southeast of islands that belong to French Polynesia. Should it be possible to efficiently develop these resources, they could substitute rare earths from China, and reduce worldwide reliance on Chinese rare earth minerals.

III. New Opportunities for Taiwan's Maritime Interests

However, under UNCLOS regulations, resources that are located in the “area,” constitute “the common heritage of mankind.” No state may claim or exercise sovereignty or sovereignty rights over any part of the “area” or its resources. No

state, natural or juridical person may appropriate any part of the area or its resources to itself. All rights to its resources belong to mankind as a whole, and the Seabed Authority mentioned above represents mankind in exercising these rights.

Although Taiwan is not a signatory to the 1982 UNCLOS, it can still assert shared rights to the (international seabed) “area.” On top of that the commercial arm of the Seabed Authority can engage in the exploration and exploitation of the “area” independently or in joint ventures with other entities under a so-called “parallel system.” This provides an opportunity for Taiwan-funded companies or even state-owned enterprises to participate in such development activities. Moreover, the Taiwanese people have the right to share the profits of such development.

Upon request by the Tribunal, the Seabed Disputes Chamber of the Tribunal in February 2011 issued an advisory opinion on the Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area. The opinion looked into the responsibilities of the two signatory states Nauru and Tonga with respect to activities in the “area” conducted by Nauru Ocean Resources Inc. and Tonga Offshore Mining Ltd. This case showed that development in the “area” is not the exclusive right of the developed nations and that even small island states actively assert their claims. As a maritime country, Taiwan must, of course, not remain absent from this field.

IV. Conclusion

Since taking power in May 2008, President Ma Ying-jeou has not actively implemented the maritime policy that counted among his campaign pledges. Also since the Ma government fully concentrates on cross-strait affairs, it has neglected the business opportunities that huge global ocean resources present and has failed to take concrete action as part of its maritime policy to expand and protect the rights of the Taiwanese people in their use of the world's oceans. Given that the 21st UNCLOS meeting showed a trend in international maritime law toward safeguarding and developing resources in the continental shelf and deep seabed "area," the government ought to think hard how the rights of the Taiwanese people can be ensured amid this trend. **B**