

# ISSUE BRIEF

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## Helping Southeast Asia Come to Grips with the Reality of Taiwan

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The Philippines' National Bureau of Investigations (NBI) has recommended that criminal charges be filed against Filipino coast guard personnel involved in an incident that sparked a major dispute between the Philippines and Taiwan last month.

On May 9, a Taiwanese fisherman, Hung Shih-cheng, was shot and killed by Filipino authorities when his fishing boat and a Philippines Bureau of Fisheries and Aquatic Resources (BFAR) vessel met in waters between the two countries. The response from the Taiwanese government was furious. It included everything from demands for apologies and financial compensation to sanctions on Filipino workers and demonstrations of military force. The Philippines counter-response was lower-key, but in its way, also pointed: It was easy to read a disregard for Taiwan founded on the Philippines' "One China" policy and Taiwan's mostly unrecognized claim to sovereignty.

The NBI recommendation for prosecution is a watershed development in the dispute. It lends credibility to the Taiwanese explanation of what happened that day. At the same time, it is positive reassurance of the Philippines' capacity to investigate this incident and future ones with integrity.

Pending the full release of parallel national investigations, it is a good point for the U.S. to take stock of the diplomatic lessons the incident offers, and with the Association of Southeast Asian Nations (ASEAN) meetings coming up in Brunei, help its friends in Southeast Asia absorb them.

### Lessons.

**Lesson 1.** Taiwan must be integrated into the regional diplomatic architecture. Taiwan's isolation conditioned the responses from both sides and often exacerbated the dispute. Taiwan has a population of 23 million and a gross domestic product (GDP) larger than all but one member of ASEAN. Its armed forces are on the more capable end of the regional spectrum. The complete lack of venues for Taiwan's leaders, ministers, and military to interact with others in the region is absurd. Habits of interaction would provide a basis for trust and contact during times of crisis. There would be less cause for Taiwan to press its case through the media.

**Lesson 2.** Taiwan's appeal to customary international law is a good thing. Taiwan has stressed that its fishing boats were operating in its exclusive economic zone (EEZ)—an area that overlaps that of the Philippines. Taiwan need not ratify the United Nations Convention on the Law of the Sea (UNCLOS) in order to declare EEZs. The fact that Taiwan is not a party to UNCLOS is a factor of its exclusion from the United Nations, not objection to the treaty.

Taiwan should be encouraged to go one step farther in its appeal to international law. Taiwan's claim to the nine-dash map enclosing most of the South China Sea is identical to China's. Taiwan should define this extensive claim with reference to land

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features only and the maritime rights that derive from them. China is a party to UNCLOS, and yet has refused to make this clarification. A move by Taiwan to comply with international law could ultimately induce Beijing to do the same. The South China Sea dispute is a complex problem, but all six parties defining their claims in the same language would serve as a good start to safely managing it. Taiwan could play a positive role in making this happen.

In exchange for clarifying its claims, Taiwan's integration into the region's diplomatic architecture should start with formal inclusion in regional mechanisms for managing the South China Sea dispute. Taiwan occupies more territory in the Spratly Islands than does China. It should be part of the process.

**Lesson 3.** The nations of Southeast Asia should take a fresh look at their One China policies. ASEAN and its constituent members need not officially recognize the Republic of China (Taiwan) in order to recognize the practical need for greater bilateral "diplomatic" interaction with it.

Throughout the current dispute, questions have arisen on such issues as whether President Aquino can apologize to Taiwan's government and in what form, whether compensation can be paid by the Philippines government, and whether the two sides can enter into a fisheries agreement. All were commonsense elements of a resolution, yet their delivery has been complicated by concerns for the Philippines' overly strict One China policy. This time, the dispute with Taiwan involved the Philippines; next time, it could be with another Southeast Asian nation.

The U.S. has managed a One China policy for more than 30 years that enables extensive, though insufficient, "unofficial" official interaction with Taiwan. Japan and Australia demonstrate prudent flexibility in their policies. Southeast Asian nations should consider China policies that allow similar flexibility in dealing with Taiwan. In the process, the Philippines and Vietnam especially ought to weigh whether their excessive deference to Chinese claims on Taiwan has resulted in reciprocal respect for their own claims in the South China Sea.

**Lesson 4.** The Philippines and other regional powers, including ASEAN and Japan, should work toward agreements and diplomatic mechanisms on fisheries that include Taiwan, both at the bilateral and regional levels. Taiwan and the Philippines have begun exploring the prospects and contours

of a bilateral fisheries agreement. Such an agreement would be a major achievement. Building on the recent Taiwan–Japan fisheries agreement, it could serve as a model for bilateral agreements between other ASEAN countries and Taiwan. It could also spur formal inclusion of Taiwan in regional bodies like the Southeast Asian Fisheries Development Center (SEAFDEC) and SEAFDEC–ASEAN consultations and conferences, and the Asia–Pacific Fisheries Commission. Fisheries issues are the trigger for many of the maritime flare-ups in the region. As both disputes with Japan (also a member of SEAFDEC) and the Philippines demonstrate, Taiwan is as susceptible as any other country to become embroiled in the resulting conflict. It should be involved in managing the resources.

**Lesson 5.** Taiwan must also be flexible. The onus for reaching out and finding systemic solutions to the problems presented by Taiwan's isolation predominately rests on its Southeast Asian neighbors. It is their diplomatic problems with Taiwan that stand in the way. Taiwan, however, must also be far-sighted. At some points in the current dispute, reasonable compromises presented by the Philippines—President Aquino's apology for instance—seemed to be rejected out of hand by Taiwan.

In the future, particularly if the Philippines and other Southeast Asian nations make efforts to reform relations with Taiwan, Taiwan would be wise to accept face-saving compromises in pursuit of the larger cause of breaking Taiwan's isolation. Taiwan's very existence is testament to the exercise of such flexibility with key partners. The Philippines may be a much less influential power than the U.S., Japan, or Australia. But it is not Philippine power that needs to be accommodated. As is the case for the U.S., Japan, and Australia, it is the Philippine relationship with China that is the complicating factor. In that regard, the Philippines, as well as other members of ASEAN require no less flexibility, and in fact, probably more flexibility, than more powerful nations.

**Conclusion.** Taiwan is the beneficiary of a virtual American security guarantee against the standing threat from the People's Republic of China. The way Taiwan relates to its neighbors—particularly American security treaty allies like the Philippines—is of vital interest to the U.S. Its diplomats should bring the lessons learned in the Taiwan–Philippines dispute to friends in ASEAN. The U.S. can also lead

by example by asserting the Taiwan-friendly side of its own One China policy by, among other things, relaxing restrictions on Taiwanese government travel, resuming cabinet-level visits, pursuing a free trade agreement with Taiwan or encouraging its membership in the Trans-Pacific Partnership, and filling the dangerous deficiencies in Taiwan's air force.

Under the current circumstances, few outside Beijing would fault the Philippines and Taiwan for

pursuing formal mechanisms in order to prevent future incidents at sea. This may yet happen. The root of the dispute, however, is Taiwan's isolation. Governments in Southeast Asia may not call Taiwan a "country" or a "nation," but whatever they choose to call it, Taiwan's existence is a reality. The region, with American encouragement, has to find a more systematic way of dealing with it.

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