



Challenges and opportunities for fishery rights negotiations in disputed waters – A Taiwanese perspective regarding a fishing boat case incident

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ARTICLE INFO

Keywords:

Taiwan
Philippines
Maritime disputes
Fishery enforcement
Temporary enforcement line

ABSTRACT

Maritime and territorial disputes have created tension among States bordering the South China Sea for decades. Such problems are exacerbated for Taiwan because of its special political status. Further, because it is not a party to the United Nations Convention on the Law of the Sea (UNCLOS), Taiwan cannot refer to that treaty to resolve disputes. A tense and tragic incident that illustrates the challenge for resolving maritime disputes that involve Taiwan is the 2013 Guang Da Xing No. 28 conflict in which a Taiwanese fisherman was killed by shots fired from a Philippine maritime enforcement vessel. Taiwan demanded that the Philippines officially apologize, take appropriate compensatory and punitive actions, and negotiate to prevent future incidents. However, little information has been made public about what was achieved. Taiwan subsequently invoked a series of sanctions against the Philippines. This created the opportunity for both sides to negotiate and establish a liaison officer mechanism to facilitate early resolution of future incidents. After several rounds of negotiations over the past few years, Taiwan and the Philippines concluded the Agreement Concerning the Facilitation of Cooperation on Law Enforcement in Fisheries. The intention of this Agreement is to achieve safety and mutual benefits and to avoid damage to the bilateral relationship between the parties. This is a pragmatic and diplomatic approach to resolve disputes outside of, but in the spirit of, UNCLOS. This paper examines the incident in question, and the subsequent Taiwan-Philippines agreement on cooperation in fisheries law enforcement in disputed waters.

1. Introduction

Surrounded by the oceans, Taiwan possesses rich marine environments and resources. The livelihood of its population is dependent on the ocean. Its maritime waters have proven to be productive fishing grounds [1,2]. Yet Taiwan faces challenges in capitalizing on, and securing, its marine resources because of its unique international status. For example, it is not able to become a party to the United Nations Convention on the Law of the Sea (UNCLOS), under which State Parties have been eager to declare Exclusive Economic Zones (EEZs) extending where possible to a maximum distance of 200 nautical miles (measured from Territorial Sea baselines). Taiwan and surrounding States face several issues regarding the territorial sea, the delimitation of the continental shelf, EEZs, and fishing rights [3]. Currently, Taiwan's claimed

EEZ to the north-east overlaps with that of Japan, while the EEZ in the South China Sea overlaps with those claimed by Vietnam, the Philippines, and China. Regarding the delimitation of the continental shelves, Taiwan overlaps with Japan and China in the north, with Japan and the Philippines in the east and south, and with China in the west [4]. Disputes about these overlaps have led to conflicts between States regarding maritime rights, marine resources, and fisheries [5]. This is especially the case when fishers from one State fish at a location claimed as within the EEZ of their flag state and another State.

On May 9, 2013, the Taiwanese fishing boat, the Guang Da Xing No. 28 (a 15-ton fishing vessel registered in Pingtung County, southern Taiwan), was strafed by a Philippines patrol vessel – killing a 65-year-old fisherman – while the vessel was operating in the overlapping exclusive economic zones (EEZs) of Taiwan and the Philippines at

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<https://doi.org/10.1016/j.marpol.2019.103755>

Received 12 February 2019; Received in revised form 10 November 2019; Accepted 12 November 2019

Available online 18 December 2019

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approximately 164 nautical miles (NM; 304 km) southeast of Oluanpi (south of Taiwan) and approximately 40 NM (70 km) east of Balintang Island in the northern Philippines (Fig. 1). This area is claimed by both the Philippines and Taiwan.

The Philippines patrol vessel was a Monitoring, Control and Surveillance 3001 boat belonging to the Bureau of Fisheries and Aquatic Resources (BFAR). The examination by the Pingtung District Prosecutors' Office of the Guang Da Xsing No. 28 incident revealed a total of 52 bullet holes, including 10 holes on the port side where the bullets penetrated thick parts of the boat (Figs. 2 and 3), suggesting that these bullets may have been from "heavy weapons" such as machine guns.

The incident sparked an outcry in Taiwan. In the wake of the incident, the Taiwanese government demanded that the Philippines issue an official apology, compensate the victim's family, punish the responsible parties and commence negotiations over fishing rights to prevent the

recurrence of similar incidents. The Guang Da Xsing No. 28 incident illustrates the tensions that can arise between countries with overlapping EEZs and the need to have mechanisms in place to foster cooperation and the resolution of disputes when they arise. As the South China Sea region is widely considered to be rich in oil deposits, mineral reserves and marine biodiversity, and parts of this region are claimed either entirely or in part by up to seven parties [6], this paper suggests that the Philippines and Taiwan should finalize the negotiations they have started regarding how they can cooperate and share their fishing resources for their mutual benefit and the safety of their fishing fleets.

2. Data and methods

This paper aims at providing possible negotiation and notification mechanisms for law enforcement issues in the disputed maritime area,

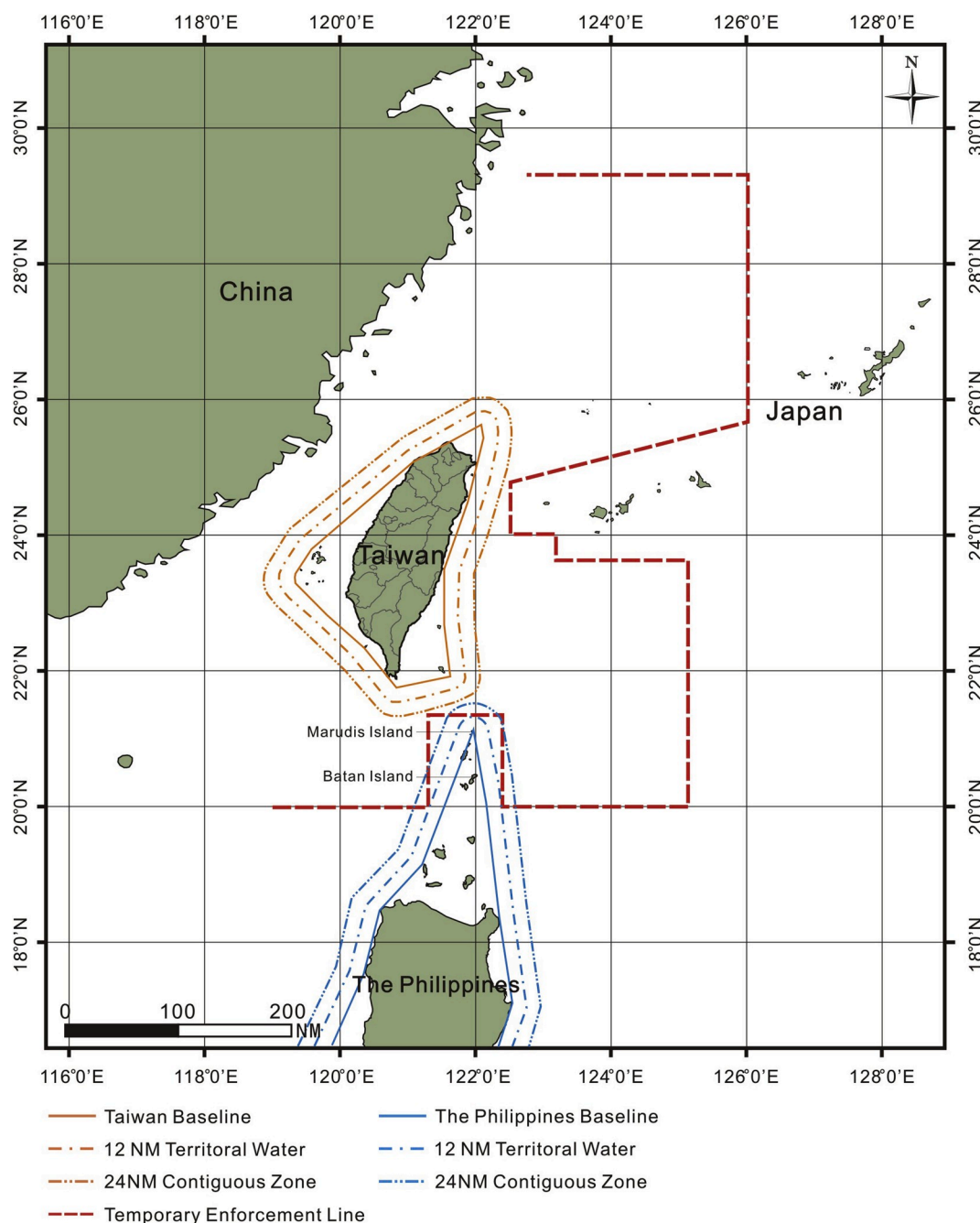


Fig. 1. Marine areas surrounding Taiwan and the Philippines.

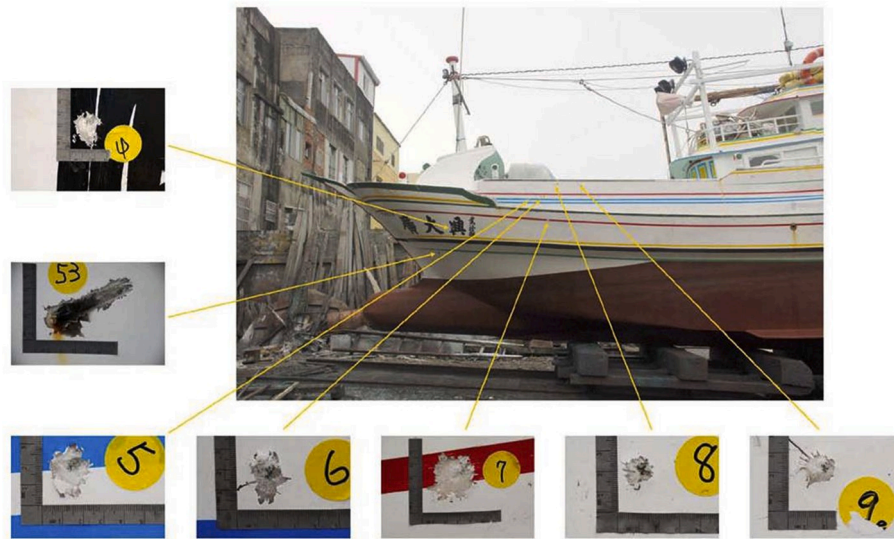


Fig. 2. Bullet holes in the stem of Guang Da Xsing No. 28.



Fig. 3. Bullet holes in the stern of Guang Da Xsing No. 28.

with the hope of these measures eventually contributing to settling disputes in the SCS region. In serving the abovementioned purpose, it is necessary to provide the whole picture of the incident in terms of the development time-line and the actions taken. It is also important to discuss the geopolitical issues regarding the region, which will in turn contribute to better understanding of the causes underlying the incident.

2.1. Background of research area

The UNCLOS came into effect in 1994, every country has eager to declare Exclusive Economic Zone of 200 nautical miles. Because of the special political issues and geographical location, Taiwan and other surrounding countries have several issues about the territorial sea, the delimitation of the continental shelf, Exclusive Economic Zones (EEZs), and fishing rights. Currently, EEZs in South China Sea are overlap with Vietnam, the Philippines, and China. About the delimitation of the continental shelves, Taiwan overlaps with the Philippines in the south

part. The disputes of overlap have led to conflicts in marine rights, marine resources, and fisheries between countries. The status of the announcement of the exclusive economic zone areas of both countries (see Fig. 1).

2.2. Data

This research data were collected from May 2013 till October 2019, the author conducted many times research trips to southern Taiwan and overlap water between the Philippines and Taiwan. During the field study trips, the author had extensive talks with the related government officers, the representatives' opinions who participated in the negotiations of the Guang Da Xsing No. 28, fishing crews and fishing boat captains who have personally had encounters with the Philippine fisheries and law enforcement agencies in the overlap areas. The author also interviewed many scholars, negotiating representative and several government officials of both sides. However, due to the sensitivity of

these issues, the identities of the interviewees are not revealed in this paper. In the meantime, part of the material is based on the first-listed author's participation in the event and personal work experience. The author also relies on data from Ministry of Foreign Affairs, the Fisheries Agency, the Council of Agriculture, and the Coast Guard Administration, Executive Yuan, Taiwan, and other sources such as government reports, news articles, and existing literature. Moreover, the Philippines data from the press release of the related government, MECO, news articles, and existing literature.

2.3. Objective of this study

The objectives of the study were to:

1. To fine out the possible negotiation and notification mechanisms for law enforcement issues in the disputed water area.
2. To find out the solution mechanism for both sides.
3. To provide the reference of this case for the countries of the South China Sea or other disputes water.

2.4. The result of this research

The research put forward in this paper was carried out over a period of 6 years, beginning in 2013. Through participant observation and person many times, effective analysis of the causes of change in participants within the management structure of opportunities and negotiation mechanism can be put forward.

See Table 1 both sides (The Manila Economic and Culture Office, MECO and Taipei Economic and Culture Office, TECO) have TWG (Technical Working Group) meeting every year to establish the

Table 1

The historical of the TWG meeting.

Meeting	Date	Agenda	Venue
TWG 1	May 11, 2015	1 Adoption of fisheries law enforcement notification procedure. 2 Adoption of fisheries law enforcement notification responding authorities. 3 Discussion administrative measures on CZ (Contiguous Zone) of the PH.	Taipei city, Taiwan
TWG 2	3/15/2016	1Administrative fine to violated fishing vessels. 2Updating notification contact information of both sides. 3Cooperation on combating IUU. 4 Discussion on administrative measures on the CZ of the PH against Taiwanese fishing vessels.	Taipei city, Taiwan
TWG 3	September 3, 2017	1Administrative fines to violate fishing vessels. 2Discussion administrative measures on the CZ of the PH against Taiwanese fishing vessels. 3Information sharing on fisheries law enforcement.	Quezon city, Philippines
TWG 4	December 3, 2018	1Updating notification contact information of both sides. 2Fisheries notification communication. 3Information sharing on fisheries regulations.	Taipei city, Taiwan
TWG 5	2/27–28/2019	1Fisheries notification communication. 2Information sharing on fisheries law enforcement. 3Fisheries technology exchanging program.	Quezon city, Philippines

Source: created by this research.

awareness for fisheries issues and marine law enforcement. In the meanwhile, the statistics of detainment by the Philippines after both sides established the negotiation and notification mechanisms, no Taiwanese fishing boat has detained since 2013 (Fig. 8).

3. The development timeline of the incident

The Guang Da Xsing No. 28 is based in a shipyard in southern Pingtung County's Donggang Township. On May 4, 2013, the boat departed from a Pingtung County harbour with Bashi Channel as its destination and without a vessel monitoring system. Consequently, the authorities could not easily track the boat's position. Early in the morning of May 9, Guang Da Xsing No. 28 was operating approximately 170 NM off the southern coast of Taiwan (at 19°50' N and 123°24' E). At 09:30, while the boat was fishing in Taiwan's EEZ (at 19°58' N and 122°58' E) (Fig. 4), an unidentified 80-foot boat approached it and opened fire with automatic weapons, killing a 65-year-old Taiwanese fisherman, Mr. Hung Shih-cheng, during the ensuing high-speed chase in waters off Balintang Island. The unidentified vessel was later confirmed to be a Philippine BFAR patrol boat.

On May 11, 2013, the Philippines expressed its willingness to investigate in cooperation with Taiwanese authorities. In the meantime, Taiwanese prosecutors examined physical evidence obtained during previous inspections and ruled out the possibility that scratches on the Taiwanese boat were the result of a collision with the Philippine patrol boat. A ballistics analysis was also conducted on the bullets found on the boat (Figs. 2 and 3). On May 12, the Ministry of Justice in Taiwan responded twice to mutual judicial assistance requests from the Philippines. On May 14, the Taipei Economic and Cultural Office in the Philippines (TECO) forwarded a request for mutual judicial assistance from the Philippines and then replied to the request. On May 15, Taiwan's President launched the first round of sanctions against the Philippines over its failure to meet Taiwan's demands and pressure the Philippines to adopt the principle of reciprocity. On May 16, an investigative team was dispatched to Manila, and investigators, prosecutors, and justice personnel were convened to examine the scene of the incident. The investigation covered which weapons were used, what led to the shooting and who was responsible. On May 17, the Philippines declined a joint investigation because it would not meet relevant regulations and policies. On May 18, the Taiwanese delegation held a brief press conference at the Taoyuan International Airport upon their return to Taiwan. They reported that progress had been made in initiating a judicial investigation with the Department of Justice in the Philippines, but that further negotiations were required.

On May 27, 2013, Taiwan and the Philippines agreed to launch parallel probes and exchange of evidence. The Department of Justice in the Philippines agreed to allow Taiwanese investigators to board the Philippines BFAR vessel that was involved in the incident, which was a positive move for bilateral relations. The Philippines delegation then arrived in Taiwan under the mutual judicial assistance agreement, and consisted of experts from various fields, including forensic science, firearms, ballistics testing and forensic medicine. On June 7, investigators from both parties reached an initial consensus about their respective investigations regarding the shooting. The two sides also reached a consensus, stating that the site of the incident did not occur in the Philippines' territorial waters. Officials from Taipei and Manila held a meeting on June 14, 2013 to address fishing disputes in waters in which their EEZs overlap. The two sides reached consensus on the non-use of force when policing fishing grounds, and the establishment of a mechanism to enable each side to notify the other in the event of an incident.

On August 7, the governments of both the Philippines and Taiwan announced the results of their investigative reports regarding the shooting that divided relations between the two parties. Importantly, the Philippines government indicated that it would press homicide charges against the coastguard officers who allegedly opened fire on the

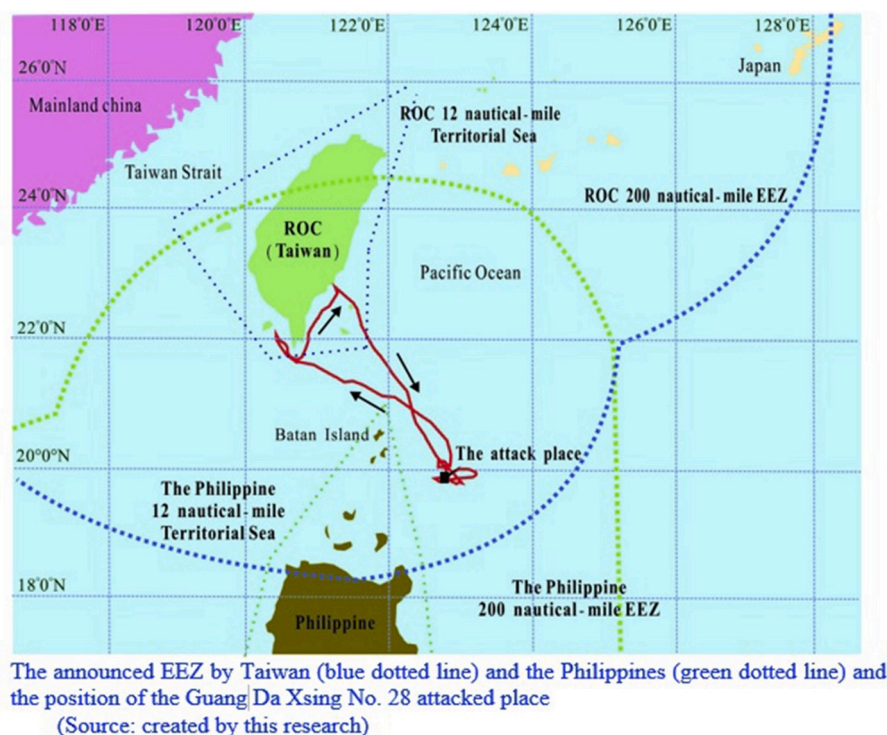


Fig. 4. The announced EEZ by Taiwan and the Philippines and the position of the Guang Da Xsing No. 28.

unarmed vessel. Regarding the investigation, a report from the Philippines National Bureau of Investigation (NBI) was sent to the Philippines President. However, the Philippines President was in a difficult position because he was under pressure to approve a report that Taiwan could accept, without generating domestic criticism. Finally, on August 8, 2013, the Taiwanese government lifted the 11 sanctions on the Philippines because the President of the Philippines had authorized the Chairman of the Manila Economic and Cultural Office (MECO) to travel to Taiwan as his representative to express his deep regret and to apologize to the family of the Taiwanese fisherman for the shooting incident. On Oct. 21, 2013, both sides met to discuss how to implement proposals suggested at the June meeting and to highlight law enforcement cooperation between Taiwan and the Philippines [7].

Besides the Guang Da Xsing No. 28 case, a number of Taiwan's fishing boats have been detained and accused of poaching in the waters of the overlapping Philippine EEZ. The Philippines does not recognize Taiwan's self-proclaimed EEZ – the majority of which overlaps with the Philippines' EEZ. According to Taiwan's interpretation, the navigational record of the Guang Da Xsing No. 28 voyage data recorder (VDR) showed that the incident occurred while the boat was in Taiwan's EEZ and that it had not entered the Philippine territorial waters (Fig. 5). Taiwan has promulgated a temporary enforcement line to preserve its maritime rights and to protect the safety of its fishermen. The temporary enforcement line is a concept created by executive order of the Fisheries Administration in Taiwan to facilitate the enforcement of a safe zone for Taiwanese fishery operations. However, this enforcement line lacks international legal status and requires bilateral or multilateral agreements to become effective as a means of fisheries law enforcement (see Fig. 6).

4. A geopolitical analysis of the region

The South China Sea is bounded by China, Taiwan, Vietnam, Malaysia, Indonesia, the Philippines and Brunei. These parties have all claimed jurisdiction over all or a portion of the South China Sea. There are overlapping jurisdictions and everpresent opportunity for incidents to occur that would lead to international conflict. Many resources,

particularly hydrocarbons (gas hydrates) and fisheries, make the region valuable and thus exacerbate territorial disagreements. In addition, China, Taiwan, the Philippines, Vietnam, Malaysia and Brunei all make exclusive claims to various parts of the sea, and the area has, for decades, been regarded as a potential trigger for military conflict [5], including a recent series of disputes in addition to the Guang Da Xsing No. 28 incident. Conflicts over the changing availability of fishing rights are not unusual and occur worldwide (for example, Morocco-Spain, Iceland-UK, Canada-USA) [5]. Disputes over the exploration or exploitation of natural resources are also common [7]. Moreover, claims to fishing grounds have divided many nations in the South China Sea and have played a conspicuous role in ongoing crises in the region. Serious wrangling for fishing rights in East Asia includes nations in the Yellow Sea through the East China Sea and south to the South China Sea [5].

The issue is further complicated due to the involvement of the United States (US). During the post Cold War era, the US has undoubtedly been the most powerful state in the world. Facing an emerging China, it is clear that the US is concerned about maintaining its leading status in the Asia-Pacific region. In 2009, President Obama proposed a “return-to-Asia” (or “rebalancing”) strategy that emphasized U.S. leadership. For this strategy to be effective, it must curb China's growing regional influence. This strategy complicates – and is complicated by – various Asia-Pacific island dispute cases involving Japan and the Philippines, both of which are staunch allies of the US. There is a Japanese-funded training program to assist the Philippine Coast Guard, and the two sides have established a system of intelligence exchange. Identical complications attend island disputes between South Korea and Japan – both of which are also US allies – and the US hopes to defuse tension between them through dialogue and peaceful dispute resolution. A similar situation also applies to the relationship between the Philippines and Taiwan.

The Philippines' strafing of an unarmed Taiwanese fishing boat was almost certainly a violation of international law relating to the use of force where the fundamental principles for lethal force are necessity and proportionality. The excessive use of force is also completely unrelated to the “one China” policy [8]. In contrast, the US has managed its “one

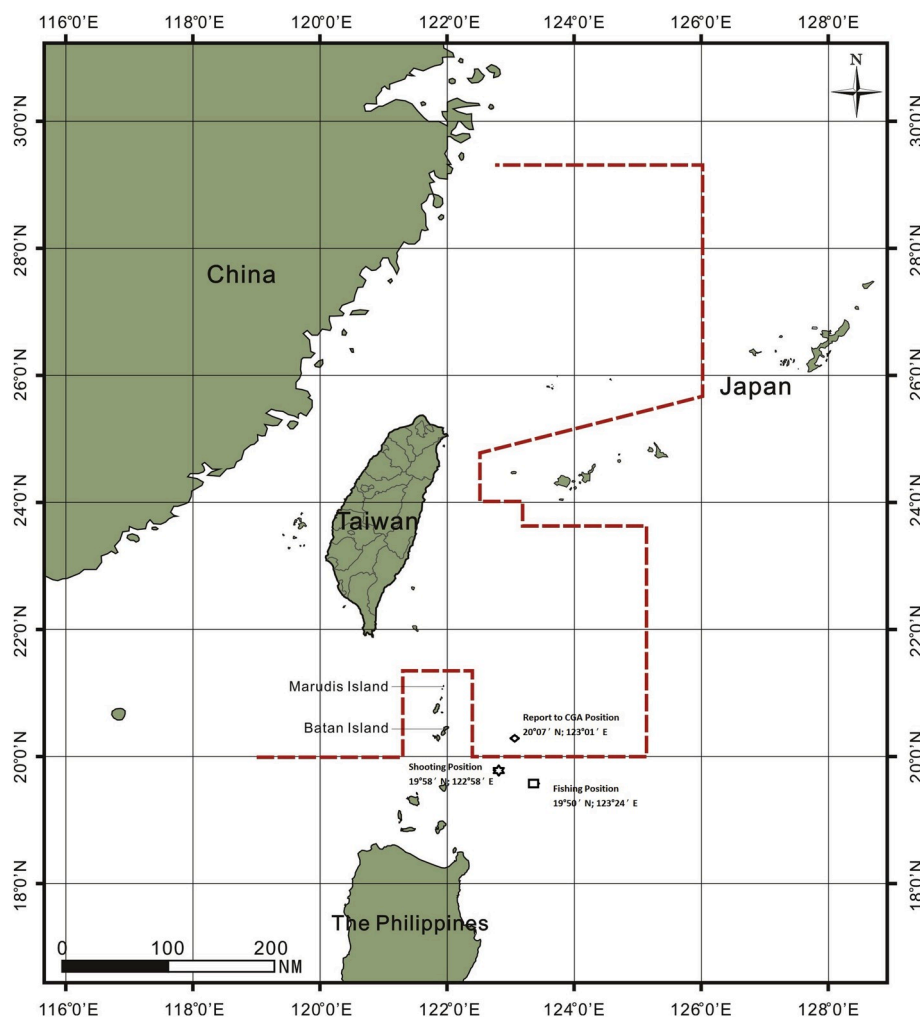


Fig. 5. The waters in which Guang Da Xing No. 28 was operating.

China” policy for more than 30 years and enabled extensive – albeit limited and insufficient – “unofficial” interaction with Taiwan [8]. The US has urged the Philippines and Taiwan to take appropriate measures to clarify disagreements and prevent the recurrence of tragic events. In the meantime, it has been suggested that Taiwan may make its own territorial claims and resort to various mechanisms to demarcate the zones within which fishing vessels can continue their operations. When disputes over territorial delimitation arise, certain issues might be considered further. The principles can be summarized as follows: 1) military force should not be used to settle disputes; 2) diverse approaches may be applied, in addition to diplomacy; 3) each side must adopt a positive attitude in addressing the disputes; and 4) the goal is not necessarily to settle disputes but to proactively generate solutions.

4.1. Taiwan’s reaction to the incident

After the incident, the Taiwanese government issued four requests to the Philippines government: Firstly, it should offer an official apology. Secondly, it should officially compensate the victim’s family. Thirdly, it should hold those responsible for the incident accountable. Fourthly, it should open talks to prevent future incidents. Beginning at 00:00 on May 12, 2013, the Taiwanese government offered the Philippines 72 h to comply. An additional 11 punitive measures were implemented on May 15 because the Philippines government failed to meet Taiwan’s requests.

Noting that the apology received from the Philippines was not officially stated on behalf of the Philippines government and was therefore considered to be insincere, Taiwan expressed dissatisfaction with what it

characterized as the perfunctory nature of the Philippines’ reply. Taiwan, therefore, decided to launch the first round of sanctions against the Philippines. On May 15, it announced that it had suspended t worker applications for Filipinos, recalled its representative to the Philippines and asked the Philippines representative to Taiwan to return to Manila.

Several hours later, the Taiwanese government enacted a second round of sanctions after Manila failed to meet the same requests before a revised deadline. Taiwan announced eight additional punitive measures – including a halt to bilateral commerce – to be levied against the country and to take effect immediately. The other seven sanctions were a travel warning discouraging Taiwanese from visiting the Philippines, the suspension of high-level meetings at the World Health Assembly, the suspension of economic exchanges, the suspension of cooperation on agriculture and fisheries, the suspension of cooperation on technology, the suspension of negotiations on air space rights, and the suspension of the visa-free program for Philippines nationals. Taiwan also decided to hold military exercises in disputed waters. Taiwan announced a total of 11 punitive measures against the Philippines in this second wave of sanctions.

The Taiwanese government indicated that it would lift its punitive measures only after Manila responded appropriately. Until that time, there would be no bilateral economic exchanges, agricultural and fishery cooperation projects, technology research exchanges and cooperation projects, aviation rights negotiations or visa-free treatment for Filipino workers or visitors. On August 8, the Taiwanese government lifted the 11 retaliatory measures after the Philippines, on August 7, offered a formal apology and promised compensations. Indeed, after the

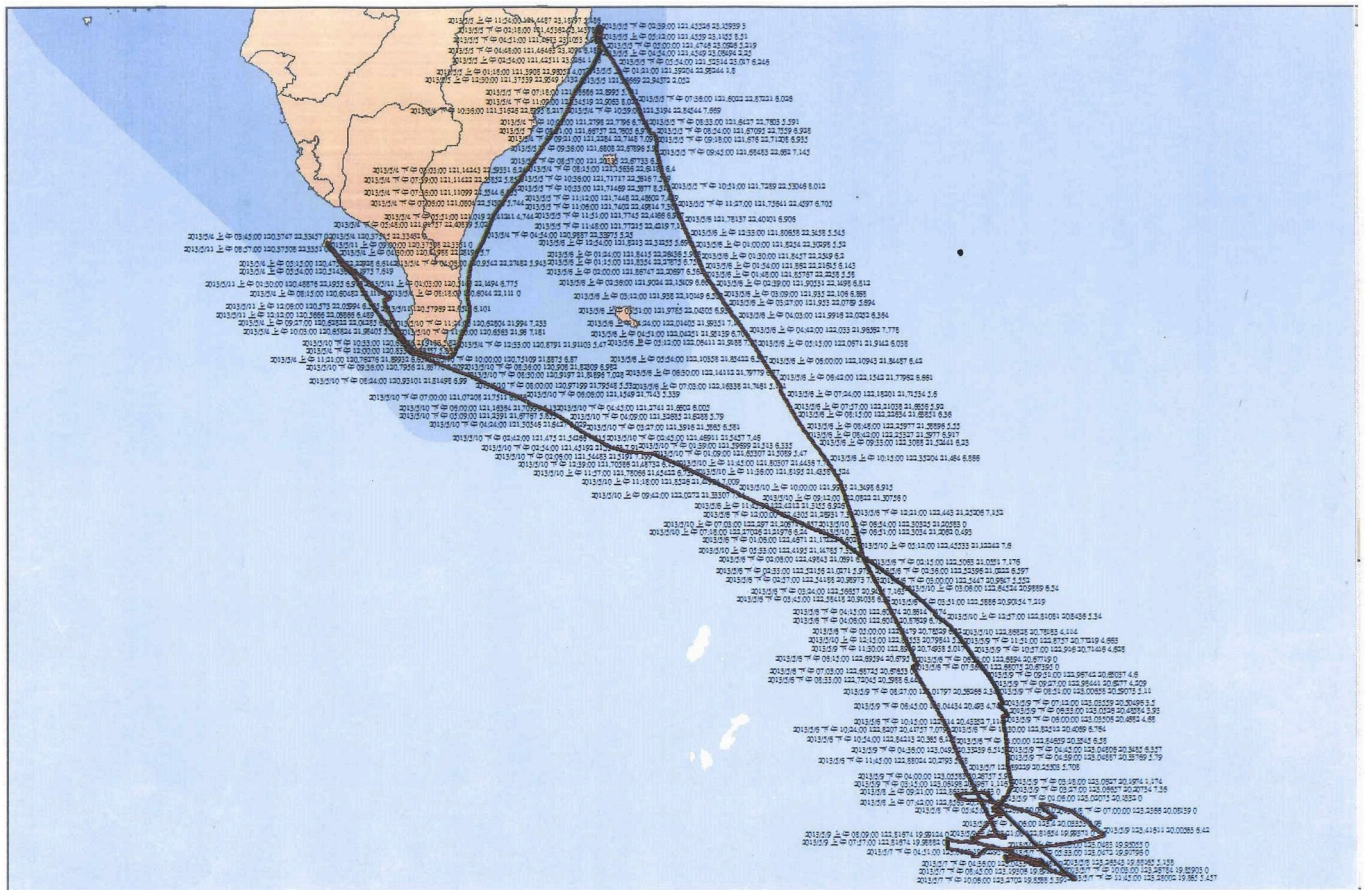


Fig. 6. The voyage data recorder (VDR) of Guang Da Xing no. 28.

Philippines offered concrete commitments to four of Taiwan's requests, the Executive Yuan suggested that all 11 sanctions should be lifted so that the two countries might return to an amicable relationship.

This was not the first time that the Philippines had used violence against Taiwanese fishermen. Thus, Taiwan's Coastguard Administration (CGA) will take necessary steps to protect Taiwanese fishermen and prevent future fishing conflicts. The Ministry of National Defense (MND) supports the CGA by means of the navy, with the primary purpose of protecting local fishermen. The CGA announced that it had dispatched additional vessels to protect Taiwanese fishing boats operating in the Bashi Channel. All are prepared for combat if another encounter with the Philippines vessels turns violent. The MND and CGA can also take a stronger stance on protecting fishermen such as by holding exercises in disputed waters, deploying at least three patrol boats from the CGA and two warships from the MND daily, negotiating law enforcement boundaries, and establishing a task force to undertake responses.

In response to this incident and to the mounting tensions in both the East China Sea and the South China Sea, Taiwan has ordered the CGA and MND to formulate a long-term plan to protect Taiwanese fishing vessels. The CGA and the navy regularly patrol Taiwanese territorial waters and have also set up a joint patrol. Protecting the territorial waters and fishermen will be a major goal of these operations. The CGA has dispatched more vessels to patrol the area because it is primarily responsible for safeguarding Taiwanese fishermen, and the navy will provide cover and support [10].

The exercise joined the CGA and the Taiwanese navy for the first time to hold drills in waters that overlap the Philippine EEZ in the South China Sea. Meanwhile, the US and the Philippines are scheduled to hold joint naval manoeuvres in the South China Sea between the main island of Luzon and a reef claimed by both Beijing and Manila. During the

immediate period after the incident, the US government (including senior congressional representatives Ileana Ros-Lehtinen and John Carter, and Senator Bob Dole) also continued to urge Taiwan and the Philippines to ensure maritime safety, to refrain from actions that could further escalate tensions, and to take steps to minimize the likelihood of future confrontations [11].

4.2. The bilateral relations between the Philippines and Taiwan

Taiwan and its population were outraged by the shooting and demanded redress. Yet the response to this incident was complicated because the Philippines does not officially recognize Taiwan as a State. The embassy of the People's Republic of China (PRC) in Manila, meanwhile, called on countries with diplomatic ties with Beijing to defer to its "one China" policy in its response to the incident. Consequently, the Philippines government reiterated its "one China" principle in its first public comments on the incident. This approach prompted the Taiwanese government to heavily criticize the Philippines for politicizing the incident. Taiwan's leaders rejected the concept that a "one China" policy should be involved in talks between Taiwan and the Philippines, arguing that the incident had nothing to do with the "one China" model.

As discussed above, in response to the Guang Da Xing No. 28 incident – and unhappy with what it perceived as the Philippines government's cavalier attitude – Taiwan imposed a number of sanctions against the Philippines. These sanctions have affected some 80,000 Filipino workers in Taiwan and 6,000 Filipinos who had received permits to work in Taiwan but were unable to start their jobs. In total, the sanctions had prevented 10,000 Filipinos from working in Taiwan as of July 2013. This development costs the Philippines an estimated 200 million

Philippine pesos per month in foreign exchange earnings based on the average monthly remittance per worker of 20,000 pesos (NT\$13,863 or US\$462).

In addition, approximately 140,000 Taiwanese visited the Philippines in 2010; such visits increased steadily to 178,000 in 2011 and 211,000 in 2012. Conversely, some 92,000 Filipinos visited Taiwan in 2010, which increased to 102,000 in 2011 and 105,000 in 2012. However, the majority of Filipinos go to Taiwan for work, with only 20% visiting for tourism. According to the Tourism Bureau of Taiwan, approximately 180,000 Taiwanese tourists travel to the Philippines annually, placing Taiwan in the top 10 nationalities of tourists visiting the Philippines. However, the Taiwan Travel Agency Association (TAA) reported that approximately 210,000 Taiwanese visit the Philippines annually, which would constitute approximately 5% of all Taiwanese travel, and would make Taiwanese the fifth-largest national group of tourists in the Philippines [12]. This tourism was subsequently affected because the Ministry of Foreign Affairs listed the Philippines as being in the “red” travel alert zone after sanctions were imposed.

4.3. The bilateral notification mechanism between the Philippines and Taiwan

After this incident, the Taiwan government announced its fishery standard operating procedures for fishery protection [13] in order to avoid recurrence of conflicts and to set up a law enforcement and notification mechanism for both sides. The two sides conducted in-depth discussions and reached consensus on various important issues, thereby further advancing bilateral relations and strengthening future law enforcement cooperation in fisheries matters. After several rounds of negotiations at the time, Taiwan and the Philippines concluded the Agreement concerning the facilitation of cooperation on law enforcement in fisheries matters on November 5, 2015 [14]. The mechanism included: enhancement of a law enforcement notification mechanism; establishment of a communication hotline; prompt release of detained crews and vessels; innocent passage of Taiwanese vessels through Philippine waters; sharing of fisheries information; joint prevention of illegal, unreported, and unregulated (IUU) fishing; creation of greater stability within the fishing industry; and sharing of resources. In order to strengthen communication, Taiwan and the Philippines agreed to notify the other party within 4 h of taking law enforcement action and, within 24 h, to send relevant basic information, reasons for the action taken, and available evidence for the other side's reference. Taiwan and the Philippines will continue to proactively build mutual trust and engage in further negotiations on law enforcement cooperation in order to bolster friendly bilateral relations and safeguard the rights of fishermen of both nations.

5. Law enforcement at sea and fishery negotiations

At present, there is a lack of a legal framework to clarify the boundary of the respective maritime rights between Taiwan and the Philippines in the South China Sea. In the future, it will still be difficult to avoid disputes in fishery law enforcement [15]. The fishery disputes in the South China Sea between the two sides should be resolved through diplomatic and administrative means between governments. This raises the issues of the legal basis for the negotiations and the specific content that should be included in any agreement.

First of all, Taiwan and the Philippines could learn from the “Red Crusader” mode [16], forming an investigation committee based on agreement, carrying out investigations and resolving disputes according to current international law. This is most relevant to settling the EEZ boundary. For this to occur, guidance should be drawn from Article 83 of UNCLOS which provides that the delimitation of the continental shelf between States with opposite coasts shall be effected by agreement on the basis of international law in order to achieve an equitable solution. Pending any such agreement, UNCLOS continues by providing that

States shall, “in a spirit of understanding and cooperation, ...make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation”. Due to their opposing coasts of Taiwan and the Philippines, there is an overlapping area in the two declared EEZs. It is recommended that Taiwan and the Philippines should attempt to delimit an EEZ boundary based on the principles in UNCLOS and State practice. In the case that the final agreement cannot be reached, Taiwan and the Philippines should endeavor to agree on practical temporary arrangements [17].

In order to avoid similar incidents of excessive use of force in the future, there should be a clear “law enforcement standard” in the agreement [18]. The standard should specify the non-use of force principle in maritime law enforcement. The order to stop must be delivered by using auditory, visual and radio signals at the same time. After exhausting all modest methods, if the law enforcement purpose still cannot be achieved, the warning of use of force must be provided. A warning shot is necessary before and solid shots are fired. This may be achieved by using blank shots or shooting in the air. If this proves to be unsuccessful in bringing the targeted vessel to a stop, then a graduated increase in actions can be taken, such as firing shells across the bow. Deliberate shooting at the hull of a fisheries vessel is likely to be considered unlawful due to the risk to human life it presents, unless no other method is available and all non-lethal force options have been utilized. Only in a progressive manner can law enforcement vessels use force to effect an inspection or seizure [19].

Further, any further Taiwan-Philippines maritime agreement would benefit from a dispute settlement mechanism [20]. Its terms should ensure transparency in investigation procedures, including making surveillance videos and all radio records during the law enforcement process publicly accessible. In order to ensure fairness and impartiality, both parties should participate during the investigation procedures at the same time and in full. The investigation report should be signed by the representatives from both parties to ensure its credibility.

Taiwan and the Philippines had different interpretations of the Guang Da Xing No. 28 incident. Importantly, the Philippines government described the incident as involving an “unintended loss of life” [21]. During the investigation, the two sides disagreed with the possible criminal charges and the punishment. They eventually agreed to withhold their investigative reports until a consensus was reached, and then they would release their reports simultaneously [22]. On August 7, 2013, the NBI released its completed report. The conclusions of the Philippines investigation are generally consistent with those of Taiwan, and the subsequent decision by the government of the Philippines to prosecute the offenders generally met the expectations of Taiwan [23]. Taiwan and the Philippines held their first formal fishery negotiations on Oct. 21, 2013, in Taipei. In the meantime, officials from both sides signed off on meeting minutes of the bilateral fishery negotiations, in which both sides agreed to establish a hot-line to inform each other of any fishery-related incidents and disavowed the use of force in patrols within overlapping fishing zones. This mechanism and hot-line were implemented immediately.

5.1. A gap remains

At the beginning of the investigation, the Taiwanese authorities announced that they had obtained the voyage data recorder (VDR) from the Guang Da Xing No. 28. In response, the Philippines noted that the boat had turned off its VDR and accused its occupants of faking the voyage record. It was subsequently confirmed that the VDR was linked to a GPS satellite, which obtained its navigational position every 3 min during its operation.

The Philippines government initially asserted that the fishing boat was operating in the Philippines territorial waters. On May 21, the Taiwanese Fishing Agency of the Council of Agriculture released the

route of the Guang Da Xsing No. 28 (after examining the boat's VDR) and noted that the Philippines government had erred in its reporting. The vessel had departed from Pingtung County on May 4, heading south to the point of a confrontation with a Philippines vessel on May 9 and returned to its arrival point on May 11 (Fig. 7). This plot showed that the vessel did not enter the Philippines territorial waters. According to the vessel's records, the fishermen were operating in Taiwan's EEZ and did not enter the Philippines territorial waters, i.e., within 12 NM [24] but were still within the Philippines' claimed EEZ. It was accepted that in these circumstances it was legitimate for the Philippines to monitor or investigate the Guang Da Xsing No 28.

According to media reports, approximately 18 Coast Guard personnel were involved in the incident. The official investigation from Taiwan found that eight Filipinos were suspected of being involved in the killing, but the Philippines investigation held that only two were involved and that these individuals should be prosecuted for manslaughter. Thus, the two sides were of different opinions at the initial stages of the investigation, which was the reason why the report remained unpublished for so long. The Philippines investigators then indicated that they would bring their evidence back to Manila for further examination. Finally, the Philippines NBI recommended homicide charges against eight Philippines Coast Guard (PCG) personnel [25,26].

According to the mutual judicial assistance agreement between Taiwan and the Philippines, when either side requires legal assistance, it should contact its counterpart. In this instance, the Philippines government issued a formal statement asking for a joint investigation. However, when the Taiwanese team arrived in Manila on May 16, no official reception awaited the delegation at the Manila airport. The Philippines presidential office insisted that it was "not aware" that the Taiwanese delegation would be visiting Manila. The Taiwanese investigation concluded that the PCG personnel who fired the fatal shots should be charged with "intentional killing." However, the Philippines probe resulted only in suggesting that the personnel should be charged with "using excessive force in self-defence." The NBI and the Taiwanese government announced the results of their investigative reports on the incident on August 7, 2013, as discussed above.

The Philippines BFAR vessel was approximately six times larger than the Taiwanese fishing boat, rendering implausible the Philippines' claim that the shots were fired in self-defence after the Taiwanese boat had

tried to ram it [21]. The Department of Justice in the Philippines initially refused to share the video record with Taiwanese investigators and delayed clearance for the NBI investigation team to travel to Taiwan. The Philippines government presented Taiwan with four vacillating responses during the initial stages of the negotiations. The fourth and final version was not accepted by Taiwan.

Taiwan and the Philippines have agreed to set up a technical working group (TWG) (Table 1) [27] in order to deal with fishery issues, such as fisheries cooperation, maintenance of order in fishing operations, resource management and conservation. Both sides have also established mechanisms to inform each other of any fishery-related incidents, including a hot-line and a mechanism they can use to inform each other of incidents such as maritime chases, boarding and inspections of fishing boats, or the arrest and detention of fishermen. Even though both sides touched on the issue of fishery boundaries, no consensus has been reached relating to this issue (Table 2).

5.2. Further developments regarding fishing rights

The goals of Taiwan in the negotiations are to ensure the safety of its fishermen operating in overlapping waters and to prevent incidents from recurring. The Taiwanese government hopes to establish fishing protocols for fishermen from both sides about measures to curtail the over-fishing that has degraded marine resources and impelled Taiwanese fishing boats to travel far from traditional fishing areas in the face of increased risks to catch fish. There are also other irregularities that must be addressed to avoid the detention of Taiwanese fishing boats (Fig. 8). For example, to promote local economic development, Pingtung County in 2001 initiated a blue-fin tuna festival during the tuna-fishing season. Many Taiwanese boats fish for tuna in their traditional fishing areas near the Philippines waters during this season. The Philippines have detained several boats for encroachment in overlapping waters. Despite a large number of detentions, fishermen were not deterred because the individual risk was not substantial, and both the government and fishermen were anxious to maintain traditional fishing rights. Thus, in 2002, 20 local fishing boats were detained by the Philippines for fishing for blue-fin tuna in the same waters (see Fig. 9).

Taiwan and the Philippines signed the "Fisheries Affairs Law Enforcement Cooperation Agreement" in November 2015. The two sides reached an initial consensus on not using force to police fishing grounds, but they did not address the more sensitive issue as to where Taiwanese fishermen can actually operate. Meanwhile, both sides will continue to negotiate fisheries matters, fisheries cooperation and notification mechanisms for fisheries incidents involving chases, boarding and inspections of fishing boats (and the arrest and detention of fishermen).

6. Conclusions

As a way forward, the Taiwanese government has adopted the following principles: 1) to remain a peace-loving country and

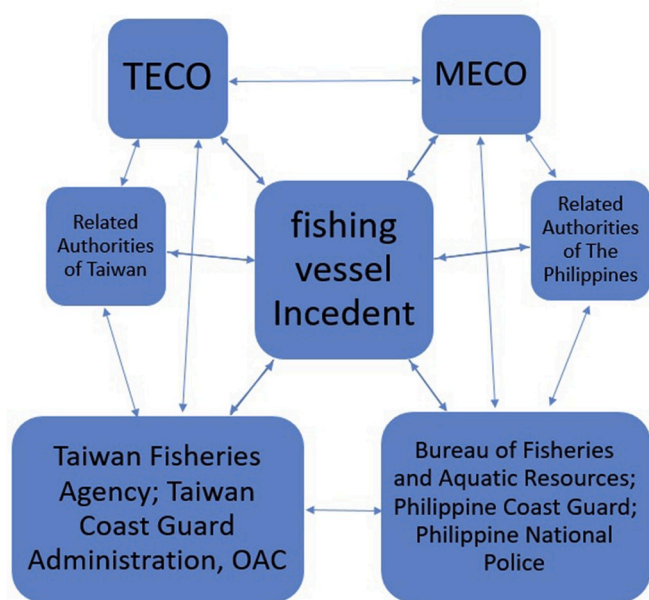


Fig. 7. The Philippines and Taiwan marine law enforcement action notification mechanism for fishing vessels.

Table 2

The arguments on event of the Guang Da Xing No. 28.

	The Philippines	Taiwan
Sea area identified	Taiwanese fishing boat operated in the Philippines waters within 200 nautical miles of EEZ	Taiwanese fishing boat operated in the southern end of the protection fishing line, but it is still Taiwan's EEZ within 200 nautical miles
Cause of dispute	Taiwanese fishing boat attempted to cross bounds and collide the Philippines official vessel.	Taiwanese fishing boat has no bounds and impact behaviour.
Law enforcement behaviours	After firing on the air, the law enforcement attempt to fire at machinery and equipment.	The Philippines official vessel did not follow the procedures.

Source: created by this research.

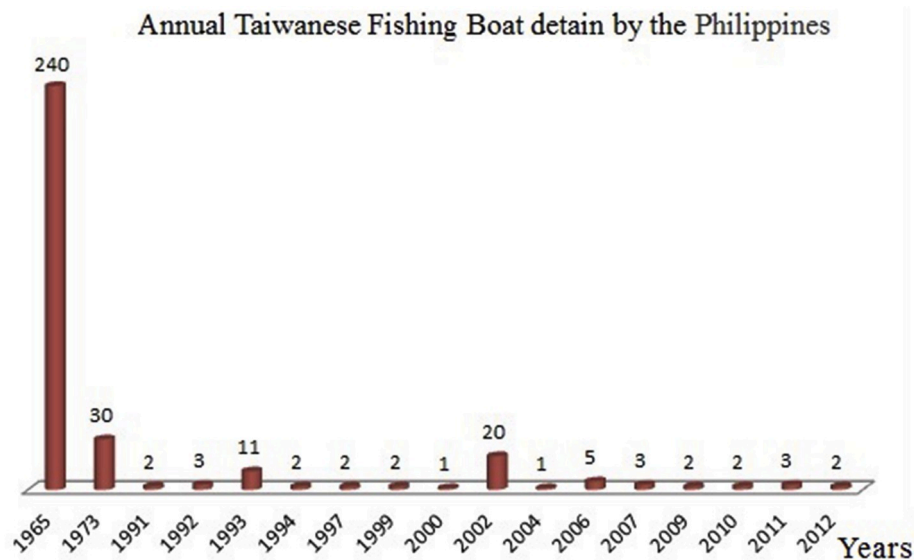


Fig. 8. The route of Guang Da Xing No. 28.

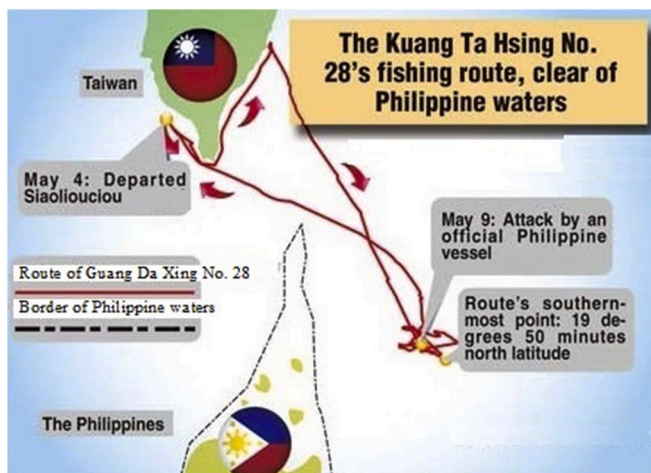


Fig. 9. The number of Taiwanese fishing boats detained annually by the Philippines.

responsible stakeholder; 2) to protect its sovereignty, dignity and the rights of its fishermen; 3) to sign an Agreement on law enforcement cooperation through negotiations; and 4) to arrive at a peaceful and just resolution of the incident. It is clear that Taiwan is attempting to obtain a win-win solution by peaceful means.

The South China Sea dispute is a complex problem. There are many proposed resolutions that, if achieved by the related parties, promise to promote the region as “the sea of peace, cooperation and friendship.” In this respect, the best choice for the Philippines and Taiwan is to “defer the disputes and explore together.” Both sides have agreed that such an incident should not recur. The Taiwanese government actively seeks temporary arrangements with neighbors that explore the feasibility of engaging in resource sharing. These arrangements may draw in part on the experience of negotiating agreements to share resources, including provisions for the management of overlapping resources and plans for regional dialogue regarding development management.

The alternative method to resolve the Guang Da Xing No. 28 impasse is to reach the consensus of fishing agreements by way of third-party assistance with the negotiation and to reach an agreement with the goal of attaining a win-win solution. In this case, the Philippines and Taiwan can put aside the sovereignty issue and actively negotiate fishing

matters, fisheries cooperation, notification and implementing mechanisms, which would promptly mend the bilateral cooperative relationship. In addition, the countries should promote the execution of an economic cooperation agreement for their mutual benefit in the future.

Acknowledgements

The authors wish to thank Dr. Hongzhou Zhang and the anonymous reviewers from the Marine Policy for their highly valuable comments and to thanks my Coast Guard Administration, OAC and Ocean Affairs Council (OAC) colleagues for their contributions.

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