

## **2013 ILA-ASIL Asia-Pacific Research Forum**

May 15-16, 2013

Taipei, Taiwan, Republic of China

### **Keynote Address**

#### **President Ma Ying-jeou**

Good morning! I am delighted to be here today at the opening ceremony of the 2013 ILA-ASIL Asia-Pacific Research Forum. The theme of this Forum is "International Law and Dispute Resolution: Challenges in the Asia Pacific." Given the state of world affairs today, and particularly the situation in East Asia, I dare say this Forum could not have come at a better time.

As all of you know, Western concepts of international law spread to China during the mid-19th century. China's first textbook on international law is a Chinese version of Henry Wheaton's Elements of International Law, translated by W. A. P. Martin in 1864. The fact that it was introduced to Chinese readers is an indication that many Chinese intellectuals at that time recognized the importance of international law, and hoped to use it to resolve China's many disputes with foreign countries and safeguard China's national interests. It has now been almost 150 years since the book was first published in Chinese, and while the content of international law has changed greatly since then, people's desire to resolve disputes peacefully through the application of international law remains the same. Article 141 of the Constitution of

the Republic of China requires that the ROC foreign policies "abide by treaties and the Charter of the United Nations." This provision is in our Constitution because respecting international law is a guiding principle for the conducts of our foreign relations.

Today I would like to take this opportunity to review how the Republic of China has used peaceful means to handle cross-strait relations and deal with controversies over sovereignty and marine resources in the East China Sea.

Let me begin with dispute resolution across the Taiwan Strait.

As you know, following the end of the Chinese Civil War in 1949, the Chinese communists took over the mainland, and the Republic of China government retreated to Taiwan. Over the 64 years since then, the mainland and Taiwan have been administered by separate authorities. The Communist Party claims that it overthrew the ROC government in 1949 and founded the new government called "Central People's government of the People's Republic of China", but in fact the ROC government has not vanished. It continues to exercise effective rule over Taiwan, Penghu, Kinmen, and Matsu. The ROC Constitution was enacted and entered into force in 1947. China had not yet come under divided rule at that time, so this constitution is, ipso facto, a "one China" constitution. The Chinese mainland still falls within our "existing national boundaries" as referred to in the ROC Constitution, and even with the two sides of the Taiwan Strait under divided rule, the ROC government still could not possibly recognize the existence of

another state in our mainland China territory. Therefore, cross-strait relations are not state-to-state relations but special relations, which means that the international law issues regarding recognition of states does not even exist in cross-strait context. However, the Communist Party has ruled Mainland China for 64 years. This is an objective fact. We cannot and need not deny that. The Communist authority is the actual governing authority in Mainland China. How could the two sides possibly conduct cross-strait ties if we denied each other's authority to govern? This is a matter of fact and a matter of reality.

This is also the basis of my call for "mutual non-recognition of sovereignty and mutual non-denial of governing authority". This is a concept also appeared in the Basis of Relations Treaty between West Germany and East Germany in 1972. In Article 6 of that Treaty, the two sides mentioned not the word "sovereignty" but rather a word in German called "Hoheitsgewalt," which means "supreme power". By doing that, they had effectively separated the concept of sovereignty and that of the governing authority.

My call for "mutual non-recognition of sovereignty and mutual non-denial of governing authority" not only conforms to the ROC Constitution, but also completely consistent with our mainland policy of maintaining the cross-strait status quo of no unification, no independence, and no use of force under the framework of the ROC Constitution. Moreover, it is also in line with the consensus reached by two sides in 1992, which is commonly known as 92 Consensus. The two sides recognized the one China principle but deferred same

definition of that China. This is the most pragmatic way to describe and interpret the cross-strait status quo. It is a necessary approach, and the best way to reduce mutual hostility, shelve our sovereignty dispute, and foster cross-strait development.

I was pleased to learn that Louis Henkin, the late American authority on international law, mentioned my call for "mutual non-denial" in his 2009 textbook "International Law: Cases and Materials." We believe that this approach is beneficial not only to the two sides of Taiwan Strait but also the peaceful development in East China as well to the world.

Under this framework, the two sides have held eight rounds of official talks and signed 18 agreements since I took office in May 2008. The agreements address such issues as: the cross-strait flight, the admission of mainland tourists to Taiwan; food safety; the employment of mainland fishing crews; animal and plant quarantine; law enforcement cooperation and mutual judicial assistance; financial supervision of banks and other financial services providers; economic cooperation; IPR protection; nuclear safety; and investment guarantees. These agreements have brought concrete benefits to the people of two sides of Taiwan Strait. Since my presidency began, the number of cross-strait direct flights has risen from zero to 616 per week, for an average of 86 flights per day. The number of annual tourist visits has expanded eightfold from 270,000 to 2.5 million. Five years ago, only about 800 Mainland Chinese students came to study in Taiwan. By last year, the number is 17,000 and the number will go up again this coming full

when we extend our recognition of diploma. The universities been recognized will rise from 41 to 111. So you can see, there's a very important aspect of cooperation in join effort to combat crime. In the last couple of years, the two sides have cooperated in the arrest of more than 4,700 people engaged in scam operations. By doing that, we were able to cut the number of scam cases in Taiwan by half, and reduced the resulting financial losses by three-quarters, or NT\$14 billion.

We have adopted pragmatic policies toward mainland China, negotiated agreements with them, and created an institutionalized arrangement for cross-strait talks. In this manner, we have established mutual trust step by step, and achieved a level of peace that is unprecedented stable situation across Taiwan Strait. We plan to do more in the future in order to expand and deepen the cross strait exchange. In addition, we want to set up offices in each other's places for the ground to provide services for the 7 million people moving across the Taiwan Strait. In addition to that, we are also overhauled the Act Governing Relations between the People of the Taiwan Area and the Mainland Area. This is the basic law govern the relation between the two sides. By doing all this, we are also able to resolve the dispute we encounter in the process. By doing that, as I said, we are not only building mutual trust but actually achieve peace and prosperity. This is something we believe that we will continue and create even more opportunities.

Let me move on to how the ROC has addressed recent tension in the East China Sea.

In August 2012, prior to the Japanese government's move to nationalize the Diaoyutai Islets in September, I proposed the East China Sea Peace Initiative.

I already foresee a major controversy will arise, so we call upon all the countries to exercise caution in deal of each other, no to escalate the tension and try to solve the dispute with peaceful means. I particularly propose that while sovereignty is indivisible but national resource can be share. We might achieve peace in a step-by-step fashion. Actually, when I was a student in collage, I joined the defend Diaoyutai Islands movement and I was a very active one. But after 40 years of research and experience, I understand we continue to hold the view that Diaoyutai Islands are the inherent territory of ROC and a continuous Island of Taiwan. But I also believe, if we really want to solve the dispute, we must use peaceful means. So I proposed the peace initiative. But it is very difficult to start the process. My idea is that we could start with join efforts in the living or non-living resources.

In last November, we started to prepare the talk with Japan and we were able to reach an agreement with Japan in April 10<sup>th</sup>. In that agreement, we established a join conservation zone in the area of Diaoyutai Island where the fishermen of the two sides could fish without any interference from another side. The area is about twice of the size of Taiwan. This is the first time in 40 years of the controversy between the ROC and Japan over the Diaoyutai Islands. We had spent 17 years in negotiating fishery agreement but in vein. Now, in addition

to show good news for our fishermen, this also serves as a good example that we can use peaceful means to settle down difficult international dispute.

History tells us that peaceful resolution of international disputes is only possible when the disputing parties acknowledge reality, shelve controversies, and respect international law. In the course of its efforts to improve cross-strait relations and resolve its fishing dispute with Japan, the Republic of China has acted as a position of peacemaker, trying to create the possibility for the counter sides to coming to yes.

Before I conclude my address, I would like to say a few words about the incident on May 9th in which a Philippine government vessel attacked an ROC fishing boat, the Guang Da Xing No. 28. The Philippine government ship sprayed fire indiscriminately, resulting in the death of a Taiwan crewmember and seriously damaging the fishing boat. Such excessive use of force in an area under overlapping claims of Exclusive Economic Zone is without any justification whatsoever under either general international law or the 1982 United Nations Convention on the Law of the Sea. We believe such outrageous behavior cannot be tolerated by the international community, so the Government solemnly calls upon the Philippine Government, first, to issue a formal apology; second, to provide compensation for the losses of life and property; third, to promptly and thoroughly investigate the incident and severely punish those responsible for the killing; and fourth, to initiate talks related to fishery negotiations between the two countries. These demands are fully supported by international law and practice.

At the same time, this incident also provides an opportunity for the Philippine government to act responsibly in handling international affairs. Unfortunately, when we demanded that they respond in 72 hours, their response, two days ago, failed to meet the four demands by our government. So we decided to launch 11 peaceful sanctions against the Philippine government, which includes the calling back of diplomatic representatives; the suspension of application of the migrant workers; the announcement of reference of travel; the matters concerning cooperation of agricultural and scientific affairs. The ROC actually wants to deal with other country in a peaceful way. So far, we have conducted the relations with all other countries in the same way. Once again, I want to let you know we will continue to deal with the Philippine government in that way. And I do hope, they will understand they have to be a responsible stakeholder in international community. Killing unarmed innocent person in the high sea is not an act tolerated by civilized nations.

In closing, I hope you can make use of this opportunity to learn more about the Republic of China, Taiwan. Particularly, we have a very unique situation with the Mainland China. Although we do not consider international law applies. Once again, as the president of ROC, I want to welcome you to my country and hope you will enjoy the rest of the days.

Thank you very much.