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# China's Dashed Line in the South China Sea: Legal Limits and Future Prospects

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## Abstract

The so-called nine-dash line drawn by China in the South China Sea has recently been a hot issue in the field of international law. The Philippines' unilateral institution of an arbitral procedure against China over the issue of the dashed line, in particular, has attracted the world's attention. The legal nature and meaning of the dashed line are not clear, and its validity under the current law of the sea is very controversial. China's traditional but peculiar way of interpreting situations involving the South China Sea and its own specific state practice, which includes some legislative measures, are among the unclear and confusing factors to consider in applying international law. The history of the dashed line, the political environment of East Asia, the complex development of the law of the sea, and some other related maritime and territorial issues make the issue more difficult to deal with. The purpose of this paper is to examine the legal meaning of the dashed line in the South China Sea in light of its historical background, the development of the law of the sea, and the state practice of China and Taiwan, to name a few factors. The paper concludes that practical, comprehensive, and multifaceted approaches to this issue may be more useful than the strict application and interpretation of law, since the limited scope and nature of the current rules and principles of international law renders them unable to facilitate a full solution to the dispute over the South China Sea.

**Key words:** South China Sea, Nine Dash Line, Historic Rights, Historic Waters, territorial and maritime dispute

## I . Introduction

The so-called nine-dash line (“九段線”) drawn by China in the South China Sea has been named, cited, and referred to in many ways in both Chinese and English<sup>1</sup>. The form and geographical position of the line is variously shown on maps and atlases disseminated throughout the world<sup>2</sup>. Today, the legal connotation of the line, and particularly the manner of interpreting it, is a hot debate in and around China<sup>3</sup>. One of the reasons why there is no fixed name or meaning for the line may be that China itself has not so far made any official account on this issue. Therefore, despite the fact that there have been various analyses and arguments made with respect to the dashed line, an enigmatic situation has emerged in which numerous speculations and secondary debates have proliferated, puzzling the practitioners in the diplomatic realm engaged in actual consultations and negotiations. This has not been helped by the unclear and vague contributions of the debates and analyses mentioned above.

At the beginning of 2013, the Philippines<sup>4</sup> unilaterally submitted a dispute with China<sup>5</sup> concerning the dashed line to an arbitral tribunal under the procedure prescribed by the United Nations Convention on the Law of the Sea (UNCLOS)<sup>6</sup>. The arbitral tribunal addressing this dispute was formed without China's participation in the procedure<sup>7</sup>, and has recently begun its work<sup>8</sup>. Since the issues around the formation of this arbitral tribunal and other related procedural aspects are beyond the scope of this paper, the author will not focus on this case more than necessary<sup>9</sup>.

In this paper, the author discusses the significance of and particular perspective on the ‘dashed line’ (a term that will be used to describe the line discussed above, unless otherwise indicated) with special reference to the arguments and opinions of Chinese scholars and writers. This aspect has not been fully paid attention to in the study of the South China Sea dispute, partly due to the Eurocentric viewpoints of international law and international relations. Thus, this article also sheds light on some often neglected issues such as Chinese approaches to this dispute as a whole. Although one focus of the present study is the meaning of the dashed line in light of international law and the law of the sea, an understanding of the traditional ideas and historical background of China<sup>10</sup>, would certainly enable a better understanding of China's standpoint with respect to international law and territorial disputes as

a whole<sup>11</sup>. This paper is limited in its scope: it examines the significance of and perspective on the dashed line in the realm of the South China Sea dispute, leaving a more detailed analysis of this issue for another occasion.

## II. Four Interpretations for Interpreting the Dashed Line

It seems that in China, which has proudly enjoyed its long history as a great power, most of people have taken it for granted that the South China Sea has fallen within the geographical limits in which China has enjoyed special rights. However, considering China's complicated domestic situation, the People's Republic of China (the Beijing government) has apparently followed the claims over the South China Sea actively made by the Taiwanese government ever since the Republic of China fled to Taiwan in response to a revolution<sup>12</sup> which in turn has resulted in a situation in which the Beijing government appears to be aligned with Taiwan with respect to the South China Sea issues<sup>13</sup>. The historical and political factors deeply rooted in the 'One-Country, Two-Systems' scenario described above, though not negligible at all, are beyond the scope of this study. On the contrary, it is noteworthy that the perspectives and arguments of both governments contain subtle nuances and differences.

Many writers in China categorise the grounds and legal interpretations of the dashed line that Chinese (and Taiwanese) commentators<sup>14</sup> rely on into the following four viewpoints. (1) the idea that the line serves as the 'line of attribution of the islands therein' or the line drawn on the map in order to display the will or intention regarding the occupation of the islands within the dashed line; (2) the line delineates the 'scope of the historical rights', indicating the realm in which the rights to conduct fishery and develop resources have historically been exercised; (3) the interpretation of the line as the 'limits of the historic waters' that indicate the bounds to which China's sovereignty historically and traditionally reaches; (4) the concept of the line as the 'traditional border line', according to which the traditional sphere of Chinese influence is delineated<sup>15</sup>. The present author briefly summarises and analyses these four interpretations or doctrines below.

The first interpretation, that is, the 'line of attribution of the islands therein', may be the most meaningful explanation under international law,

irrespective of its acceptance by the international community. The first reason for this seems to be that, in light of the usually accepted years of its origin (ca. 1946 – 1947), the dashed line was initially drawn on the maritime part of the map in relation to, or as a representation for, the display of China's intention to possess as its own territory the islands and other geographical features circumscribed by the line, although it is not clear at this point whether it intended to assert possession over the entire maritime area surrounding the islands and other geographical features within the dashed line. The second reason is that it appears from the drawing of the dashed line on the map and the surrounding conditions<sup>16</sup> that the line used to designate the land border with its neighbouring states was also used in drawing the nine-dash line on the map. Accepting this first interpretation, however, does not necessarily mean that China's claims of possession are admitted under international law; rather its attribution is considered separately under international law.

According to the second interpretation, under which the line means the 'scope of China's historical rights', China's possession of historical rights within the dashed line vests itself sovereignty over the islands, reefs, atolls, etc., within the dashed line and sovereign rights over all the natural resources in the maritime area thereof, admitting other countries' freedom of navigation, overflight, laying of submarine pipelines, and so on. This interpretation can be assumed to hold that the integration of 'historic' factors into its own claims enables China to exercise its rights under international law especially effectively. As is shown below<sup>17</sup>, however, the concrete contents of the interpretation may readily raise various doubts under international law, since China, which refers to the 'historical rights' in its domestic law, has not clarified its intent.

The third interpretation, 'historic waters', which is mostly supported by certain scholars in Taiwan, positions the area within the dashed line as China's historic waters, where historical rights can be possessed over the islands, reefs, and atolls, as well as their surrounding maritime area, within the dashed line. As is discussed below<sup>18</sup>, there has been no acceptance of this doctrine by the international community, including the states concerned. China has never advocated this kind of historic maritime area, and Taiwan recently ceased official use of the term 'historic waters'.

The last interpretation, 'traditional border line (territorial boundary)', maintains that the dashed line is the national boundary line, with the interior

belonging to China and the area outside comprising foreign countries or the high seas, and that the dashed line makes clear the division between the islands of the South China Sea and the sphere outside of them<sup>19</sup>. This kind of traditional standpoint concerning China's territory, peculiar to China, and its unique viewpoint on borders, do not necessarily have a basis in international law (which is based on Western-centric historical views)<sup>20</sup>, and, accordingly, lack any support from the states concerned. Moreover, this interpretation cannot fully explain the nature of the maritime areas within the dashed line in a manner consistent with international law; it is also incompatible with both state practice and the laws and regulations related to China's own treatment of maritime areas, as is shown below. However, if China, with its own way of thinking distinct from current international law, intends to oppose international law, which has been developed principally by Western countries, the assumption underlying its arguments will be flawed.

Here arises the question of whether the arguments described above with respect to the classification of the dashed line interpretations or doctrines will be at all useful for the solution of the territorial dispute. Although these categorisations and summaries may be academically or dogmatically interesting, whether they are beneficial to diplomatic practice is another matter, for the following reasons. First, whether these categories fully comprehend the substance that China formerly intended or currently intends is not clear, since the Chinese government has never officially pronounced them. Second, an agitation of states resulting from these interpretations or doctrines that may be said to be predictable only in 'hindsight' and the possible misleading of public opinion in the international community may provide China with an opportunity to prepare legal arguments and historical meanings that might enable it to underhandedly develop a comprehensive tactic for diplomatic negotiation between the states concerned.

In sum, considering that China has not clarified its legal viewpoints concerning the dashed line, the substantive matters involved in the South China Sea dispute may become rather entangled as a result of the hindsight with which not the authorities, but the academic community and experts, who could be easily assumed to have certain communications with the Chinese government, try to give meaning to the dashed line. Another thing to keep in mind is that the interpretation and explanation of the dashed line may have

become incomprehensible under international law (or the law of the sea) that has developed over time, since the dashed line may have changed and ended up taking the form that had not been intended when the line was first drawn<sup>21</sup>. In the next chapter, therefore, this article will examine the dashed line in light of history and state practice, touching upon some features and meanings included in these doctrines.

### III. The Recent Movements Concerning the Dashed Line

The theoretical study of the doctrines mentioned above regarding the interpretation and meaning of the dashed line seems to have developed in China by the 1980s, when the question whether these doctrines were compatible with UNCLOS was also considered<sup>22</sup>. The actual worldwide debate over the dashed line<sup>23</sup> derived from the dashed line drawn on the map attached to the documents officially submitted by China to an international organ, probably for the first time.

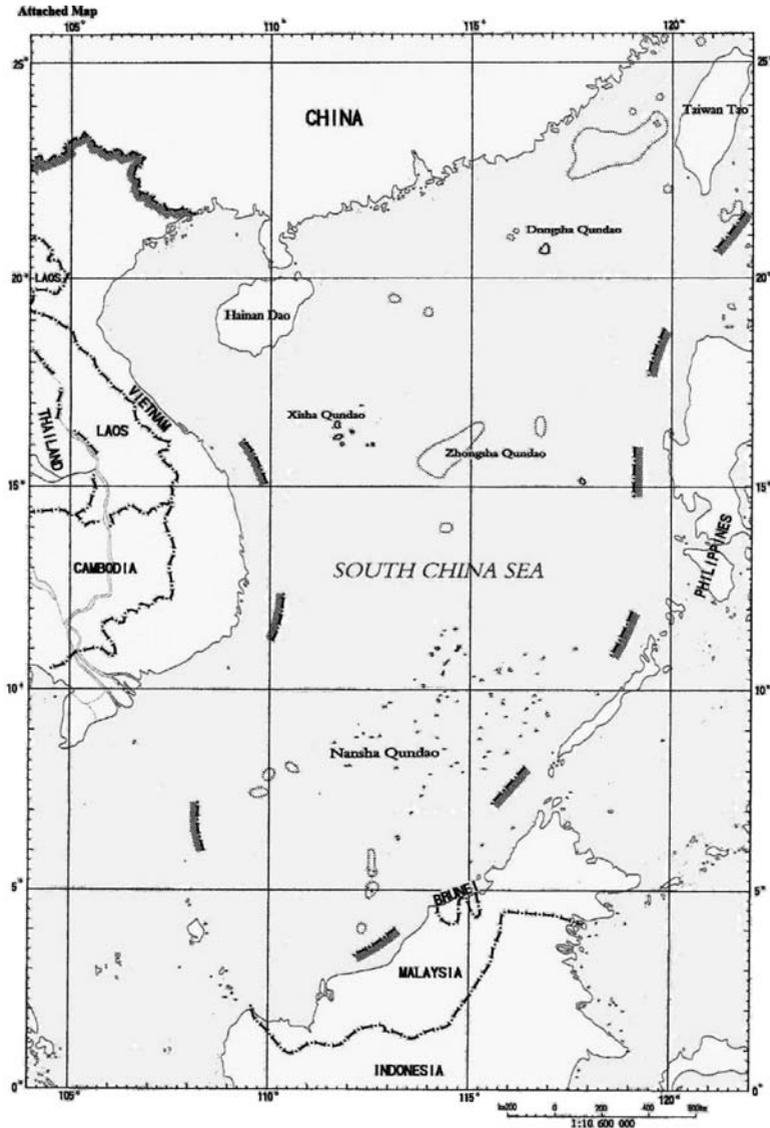
#### 1. China

In order to justify its own claims, the People's Republic of China submitted to the Commission on the Limits of the Continental Shelf (CLCS) a note verbalee dated 7 May 2009, whose attached map (see **Map 1**) shows a U-shaped line consisting of nine segments of a dashed line drawn in the South China Sea<sup>24</sup>. The map and the dashed line attracted considerable attention because this was a very rare opportunity for the Chinese government to introduce, by way of an official document in the United Nations (UN) (or its specialised agencies), the map on which the U-shaped dashed line was drawn in the South China Sea. The notes verbales, which were submitted in opposition of the joint submission made by Malaysia and Vietnam on 6 May 2009, and of the Vietnam's single submission on 7 May 2009<sup>25</sup> on the grounds that '[The continental shelf beyond 200 nautical miles as contained in the Joint Submission by the two countries] has seriously infringed China's sovereignty, sovereign rights, and jurisdiction in the South China Sea', objected to the respective submissions<sup>26</sup> as follows:

'China has indisputable sovereignty over the islands in the South China

[Map 1] The Map attached to an English Translation of the Note verbale of the People's Republic of China dated 7 May 2009 (CML/17/2009)

(Source: [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf) (accessed 29 September 2013))



Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map). The above position is consistently held by the Chinese Government, and is widely known by the international community’.

The first thing that should be borne in mind is that the note verbale clearly states that China enjoys sovereignty over the islands in the South China Sea and its sovereign rights and jurisdiction concerning the relevant waters as well as the seabed and subsoil thereof, but does not concretely identify the islands and their scope. The second is that the note verbale only states the unilateral judgment, without any grounds for its claim that its ‘consistently held’ position ‘is widely known by the international community’<sup>27</sup>. This is why China has been criticised for its failure to provide a concrete and detailed explanation of the dashed line.

In a note verbale dated 5 April 2011<sup>28</sup>, the Philippines<sup>29</sup> objected on the basis of its own archipelagic baselines<sup>30</sup>, stating that China’s claims ‘would have no basis under international law, specifically under UNCLOS’<sup>31</sup>. Objecting to this note verbale of the Philippines, China again protested in a note verbale, dated 14 April 2011, to the UN Secretary General<sup>32</sup> on the following two grounds: first, the fact that China has ‘indisputable sovereignty over the islands in the South China Sea and the adjacent waters’ is ‘supported by abundant historical and legal evidence’; and second, that the Philippines did not start invading or occupying any of the islands and coral reefs of the Spratly Islands until the 1970s, before which it had never made a claim to them. Moreover, China stressed the clarity of its sovereignty over, and the scope of, the Nansha (or Spratly) Islands, as well as UNCLOS and its domestic laws as legal grounds for the territorial sea, the exclusive economic zones (EEZs), and the continental shelf of the Islands, stating as follows:

‘Since[the] 1930s, the Chinese Government has given publicity several times[to]the geographical scope of China’s Nansha Islands and the names of[their]components. China’s Nansha Islands[are]therefore clearly defined. In addition, under the relevant provisions of the 1982 *United Nations Convention on the Law of the Sea, as well as the Law of the People’s Republic of China on the Territorial Sea and the Contiguous Zone*

(1992) and the Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China (1998), China's Nansha Islands is[*sic*]fully entitled to Territorial Sea, Exclusive Economic Zone (EEZ) and Continental Shelf'. (Stress in original)

Furthermore, one should note that this passage (and the one immediately after it)<sup>33</sup> apparently refers to the grounds for the territorial claims over the Islands, their geographical scope, the definition of the objects, and, as it were, the origin of the dashed line on the grounds that, 'since[the] 1930s', China 'has given publicity several times[to] the geographical scope of China's Nansha Islands and the names of [their] components'. Strictly speaking, the questions of whether the Nansha Islands can be really regarded as the ones defined under Article 121, paragraph 1, of UNCLOS<sup>34</sup> and what legal status is given to the other islands in the South China Sea have not yet been answered conclusively, although China might have wanted to claim that the Nansha Islands have the status of the islands in the sense that they are surrounded by the territorial sea, the EEZs, and the continental shelf<sup>35</sup>.

Against the above mentioned notes verbales submitted respectively by the Philippines and by China, Vietnam also made a protest in its note verbale dated 3 May 2011<sup>36</sup>, stating that China's claims based on the dashed line are without legal, historical, or factual grounds, that 'Hoang Sa (Paracel) and Truong Sa (Spratly) Archipelagos are integral parts of Vietnamese territory', and that Vietnam has 'sufficient historical evidences and legal foundation' to assert her sovereignty over these two archipelagos.

Behind the confrontations among China, the Philippines, and Vietnam at the CLCS of the UN concerning the debate over the islands in the South China Sea and its adjacent waters, lies a certain long period of history regarding the above mentioned U-shaped dashed line, before the paper war of diplomatic protest by way of notes verbales described above emerged. Accordingly, in the next part of this article, the meaning of the dashed line is investigated through its historical background.

Some writers have reported<sup>37</sup> that the first appearance of the dashed line with respect to the South China Sea can be found in the personal views of a Chinese cartographer, expressed in December 1914, although the dashed line was first officially published by the Republic of China<sup>38</sup> in December 1946 on

the 'Map of the Location of the Islands in the South China Sea' ( "南海諸島位置圖" ) (see **Map 2**)<sup>39</sup>. In 1949, the People's Republic of China also started publishing official maps that showed the dashed line, but it appears that no explanation of its legal meaning has ever been found, aside from explanations of its historical origin<sup>40</sup>.

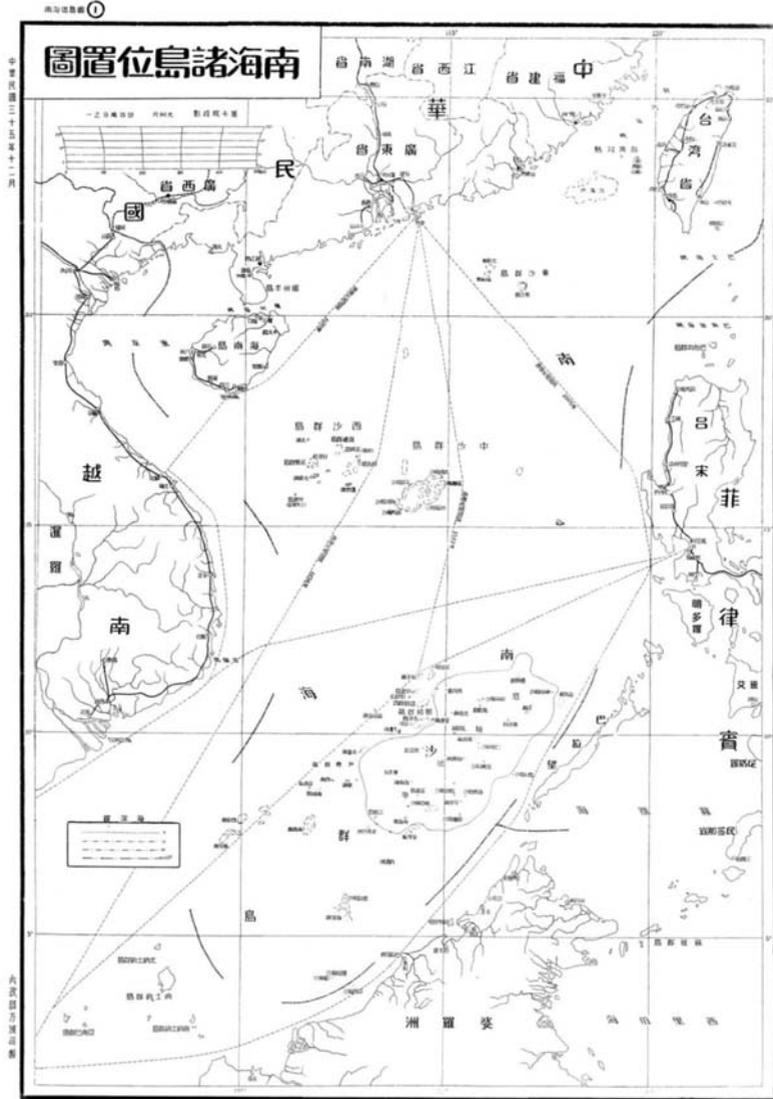
It seems that the dashed line was originally drawn as a dashed line consisting of eleven segments, but that it was modified to a dashed line consisting of nine segments, lacking, in the maps published in China after 1953, the two segments drawn in the Bay of Tonkin<sup>41</sup>. Though the reason for this modification is not necessarily clear, some writers point out that then Prime Minister Zhou Enlai (Chou En-lei) approved the deletion of the two segments from the dashed line<sup>42</sup>, and others suggest that the two segments were deleted in connection with the transfer of the territorial sovereignty over the Island of Bach Long Vi (Bai Long Wei) in the Bay of Tonkin<sup>43</sup> from China to Vietnam<sup>44</sup>.

In fact, it can be construed that the 'Declaration on China's Territorial Sea' dated 4 September 1958, in which China declared the twelve-mile territorial sea (around the mainland and the islands) on the basis of straight baselines<sup>45</sup>, may have given China momentum to start claiming its territorial sovereignty over the Dongsha, Shisha, Zhongsha, and Nansha Islands, as follows:

- 1 ) The breadth of the territorial sea of the People's Republic of China shall be twelve nautical miles. This provision applies to all territories of the People's Republic of China, including the Chinese mainland and its coastal islands, as well as Taiwan and its surrounding islands, the Penghu Islands and all other islands belonging to China which are separated from the mainland and its coastal islands by the high seas.

Here again, however, there is no evidence that the nine-dash line was used, and there is no indication of these four islands in the South China Sea. The sentence 'all other islands belonging to China which are separated from the mainland and its coastal islands by the high seas' may permit some nuance in interpretation, since no identification of these islands has been so far publicised. It can also be construed that China's sovereignty and jurisdiction

【Map 2】 “Map of the Location of the Islands in the South China Sea” (「南海諸島位置圖」) of December 1946 made by the Ministry of the Interior, Republic of China (Source: <http://maritimeinfo.moi.gov.tw/marineweb/img/%E5%8D%97%E6%B5%B71.jpg> (accessed 29 September 2013))



over that part of the high seas are assumed to be under control in light of the law of the sea valid in 1958 on the ground that it is expressly prescribed that the high seas may exist<sup>46</sup>. If China, at that moment, had borne in mind that the high seas might exist around the islands in the South China Sea, it would not be possible to say that China had the intent to claim (or extend its sovereignty to), in the name of 'historic waters', the entire South China Sea<sup>47</sup>.

In addition, all of the four groups of islands except for the Zhongsha are clearly prescribed in China's 'Law on the Territorial Sea and the Contiguous Zone of 25 February 1992'<sup>48</sup>, as follows:

Article 2, paragraph 2

The PRC's territorial land includes the mainland and its offshore islands, Taiwan and the various affiliated islands including Diaoyu Island, Penghu Islands, Dongsha Islands, Xisha Islands, Nansha (Spratly) Islands, and other islands that belong to the People's Republic of China.

Before its ratification of UNCLOS on 7 June 1996<sup>49</sup>, China publicised in its 'Declaration on the Baselines of the Territorial Sea, 15 May 1996'<sup>50</sup> the establishment of baselines only with respect to the mainland and the Xisha Islands on the basis of the straight baselines, but has not yet announced the baselines of the other islands. Furthermore, in its 'Exclusive Economic Zone and Continental Shelf Act of 26 June 1998'<sup>51</sup> (hereinafter cited as the EEZ & Continental Shelf Act), China explicitly refers to its 'historical rights'<sup>52</sup>, as follows:

Article 14

The provisions of this Act shall not affect the historical rights of the People's Republic of China.

Since China has not yet explained the meaning of the 'historical rights' referred to here or answered the question whether these rights are fishery rights or the rights to other natural resources, China, as a state party to UNCLOS, is certainly still required to explain this in accordance with international law, presenting the historical facts. China also passed a legislative measure after establishing the EEZ and its continental shelf to prescribe the scope of the

‘Protection of the Marine Environmental Protection Law of 1982’, amended on 25 December 1999, as follows:

#### Article 2

This law shall apply to the internal waters, territorial seas and the contiguous zones, exclusive economic zones and continental shelves of the People’s Republic of China and all other sea areas under the jurisdiction of the People’s Republic of China. ...

The wording of this provision reveals the existence ‘all other sea areas under the jurisdiction of the People’s Republic of China’ as the maritime area not categorised into the internal water, territorial sea, EEZ, or continental shelf, and, at the same time, suggests that, accordingly, this law is applicable even to the wide maritime areas whose legal natures or concrete geographical locations are vague. It is not easy to say that a State party to UNCLOS is entitled to such a vast and comprehensively wide maritime area through this type of phraseology under its domestic legislation. Moreover, there remain some questions as to the legal relationship of ‘all other sea areas under the jurisdiction of the People’s Republic of China’ with the waters where ‘historical rights’ are claimed and with ‘historic waters’. These points are also considered below.

## 2. Taiwan

As is briefly discussed above<sup>53</sup>, the Republic of China first introduced the idea of the dashed line, while the Beijing government of the People’s Republic of China established after the 1949 revolution has almost completely followed the claims of the Taipei government in spite of certain departures. Though it may be often understood that the claims of the Taiwanese government concerning the South China Sea are almost the same as those of the Chinese government, a number of writers point out that the dashed line used by each government represents subtly different meanings<sup>54</sup>. It is therefore not easy for a third party to make a clear-cut distinction between the two standpoints.

In the ‘Maritime Policy Guidelines Concerning the South China Sea’ adopted on 13 April 1993<sup>55</sup>, the Taiwanese government, using the term ‘historic waters’, claimed sovereignty over the islands in the South China Sea<sup>56</sup>, stating as follows:

'In light of history, geography, international law, and facts, the islands in the South China Sea are part of the inherent territory of the Republic of China, to which sovereignty over the islands belongs. The maritime area of the South China Sea within the limits of the *historic water* is the one under the jurisdiction of the Republic of China, where the Republic of China possesses all the rights and interests.' (Stress added by the author)

Though the concrete meaning is unclear, it has been suggested that the ground for the claim of 'historic water' lies in the line on the map published in 1948<sup>57</sup>. However, the 'Law on the Territorial Sea and the Contiguous Zone of the Republic of China' of 21 January 1998 does not include the term 'historic water' any longer. It has also been suggested that, after the policy change adopted by the Chen Shui-bian administration in December 2005, the reconciliation between the Beijing and Taipei governments has been sought through the 'Three Noes Policy'<sup>58</sup> that was undertaken by the Ma Ying-jeou administration (which was born on 20 May 2008).

Regarding the joint submission of 6 May 2009 made to the CLCS by Malaysia and Vietnam and the Vietnamese submission of 7 May 2009, the Foreign Ministry of the Republic of China claimed sovereignty over the islands of the South China Sea, as follows<sup>59</sup>:

'From the viewpoints of history, geography and international law, the Nansha, Xisha, Zhongsha and Tongsha Islands and their adjacent waters and their subsoil thereof belong to the existent territory. Since it is an undeniable fact that sovereignty of these archipelagos belongs to our government, Taiwan enjoys, and is entitled to enjoy, all the rights.'

'Diaoyudao, Nansha, Xisha, Zhongsha, and Tongsha, and their adjacent waters, are inherent territory and waters of the Republic of China based on the title of indisputable sovereignty justified on the grounds of history, geography and international law....'

Thus, the standpoint of 'historic waters' seems generally unsupported partly because Taiwan has recently ceased using the term 'historic waters' which it had used in the past<sup>60</sup>, and partly because there has been no official document in which the Beijing government actually used the term of 'historic

waters’, even though very little evidence shows that the Beijing government and Taipei government share the same position<sup>61</sup>.

## IV. Some Considerations

### 1. The origin and the significance of the dashed line

The question is often asked whether China (or Taiwan) has ever officially explained the meaning of the dashed line. Though the question arises in connection with the vagueness and arbitrariness of the line drawn on the map, China does not necessarily have a general obligation to answer the question<sup>62</sup>. China may, or may purport to, feel no need to explain the meaning of the dashed line, if the line still means the same thing, irrespective of whether it was drawn before or soon after the Second World War. This point can be presumed from the phrase in China’s note verbale that ‘[Its position] is widely known by the international community’.

In addition, it is often asked why the dashed line is not a single line but a dashed line consisting of nine segments<sup>63</sup>. The dashed line on the often cited ‘Map of the Location of the Islands in the South China Sea’ of 1946 (see **Map 2**) has eleven segments in the maritime area in the form of a broken line (which is made of dots and lines, in particular) construed as the border between the (then) Republic of China and Vietnam. The length of each segment of this broken line is not necessarily same: some of the gaps between the broken lines are comparatively wide (e.g. the gap west of the Philippines); some are relatively narrow (e.g. the gap west-southwest of the most southern tip of the Taiwan Island); and there is a part where a ‘Y’-shaped line is diagonally drawn (e.g. between the Island of Borneo and the Islands of Parawan). The comparison between this map of 1946 and the one attached to the 2009 note verbale (see **Map 1**) shows us some similarities, such as the rough shape of the dashed line (i.e. the U-shape) and the use of the broken line construed as the boundary between China and Vietnam, on one hand, and some differences, on the other. The nine segments of broken line forming the dashed line on the 2009 map<sup>64</sup> are rather shorter than those on the 1946 map; each segment of the broken line on the 2009 map has three dots and lines respectively, with the gaps between the segments evenly spaced in relation to each other. The two maps’ dashed lines seem to have large overlaps, but their

respective location on each map does not seem to be the same. Moreover, the aforementioned 'Y-shaped' broken line cannot be identified on the 2009 map.

The dashed lines drawn on the two maps have no clear indication of their precise geographical position in terms of latitudes and longitudes, and they do not overlap identically. Therefore, one cannot easily conclude that the dashed line was precisely drawn with a view to clearly indicating the correct location of anything<sup>65</sup>. The fact that there is no published information on the meaning or the concrete and precise location of the dashed line may critically reduce the general value of a map with the dashed line.

Taking an honest look at the original map, it may well be said that the original intention was only to indicate that the islands within the dashed line that had been initially used to indicate the boundary line, that is, the islands in the South China Sea, including the Nansha, Zhongsha, Xisha, and Dongsha Islands, were China's territory<sup>66</sup>. It may be assumed that there was probably no precedent for drawing on the maritime area a dashed line using a continuous line (or curve) in order to indicate a border line, without indicating the starting point or the ending point, clarifying the correct position, or having any probable intention to possess even the waters within the line as the drawer's own territory<sup>67</sup>. The present writer's presumption is that these ideas may lie behind the background of the 1946 map (see **Map 2**).

The point is that the shape and the apparent scope of intention to possess was so extraordinary and incomparable that the concerned neighbouring states have made increasingly more objections, and that at the same time, intellectual games, as it were, have been played in China in order to enable the dashed line to signify anything, or to indicate possession of the islands within its limits, and to imply any of various meanings regarding the waters within the dashed line.

Although China has been strongly expected to explain the presumptive meaning of the line, it has adopted a firm and consistent stance declining to do so. Dr Zhang Haiwen, Vice-Director of the China Institute of Marine Affairs (CIMA) in the China's State Oceanic Administration (SOA), is of the opinion that China has no obligation or need to explain to foreign countries the legal nature or meaning of this maritime area<sup>68</sup>. It is true that no state is under a general obligation to explain to the international community as a whole the existence and the legitimacy of sovereignty over its own territory. In relation to the procedures of dispute settlement, including international litigation, no

country is obliged to refer, outside the procedure, to anything that may work against itself. It may also be natural that a country would normally try to avoid any explanation to that effect. Her opinion may be construed to indicate that China deliberately refrains from offering an explanation. In an interview of *Chinanews* dated 6 January 2012, Mr Yi Xianliang, a Chinese official in the Department of Border and Ocean Affairs of the Chinese Ministry of Foreign Affairs, made a comment on the dashed line, merely saying that since UNCLOS is not applicable to matters occurring before it became valid, the dashed line ‘defines China’s territorial sovereignty and its related maritime interests’<sup>69</sup>.

One may, therefore, assume that China definitely pronounces the geographic scope of, and its own will to possess, the islands (including coral reefs and shoals) in the South China Sea, and that the reason why a *dashed line* (or a broken line) but not a single *continuous line* was used is that the dashed line is not a *boundary line* of the maritime area. It may be said that the dashed line, which is from time to time referred to as the ‘traditional maritime boundary’ of China, does not correspond to a strict maritime boundary, but only represents, for the sake of convenience, the scope of territory (including islands and similar geographical features) on a map. If the appearance of the dashed line on a map raises the question of the attribution of the islands, the real core issue is the legal status and the scope of ‘adjacent waters’ of the ‘islands’ (including coral reefs and shoals) within the dashed line<sup>70</sup>.

Thus, the ascertainment of the international legal status of the ‘islands’ (including coral reefs and shoals) in the South China Sea under Article 121, paragraph 1 of UNCLOS also results in the determination of the legal nature and the scope of the adjacent waters of the islands in question<sup>71</sup>. Needless to say, however, the practical task of determining the legal status of the islands includes considerably difficult problems<sup>72</sup>.

## 2. Questions Concerning the Historic Waters and the Historic Rights<sup>73</sup>

It is normally said that China has not officially claimed that the South China Sea constitutes the ‘historic waters’. Is it valid under international law for China to claim that the waters inside the dashed line are the historic waters? In this case, what is the nature of the historic waters? Historic rights are usually considered to have not the scope, but a wider scope, than the concept of historic

waters<sup>74</sup>.

Some writers presume that since the wording of Article 14 of the EEZ & Continental Shelf Act refers to the 'historical rights', China will not maintain the claim of historic waters going forward. However, China does not seem to have determined that it would be better to claim an area on the basis of historic rights than to claim within the regime of the 200-nautical-mile EEZ prescribed in UNCLOS to which it is a state party and its own EEZ & Continental Shelf Act. This is because China has clarified that the provision of Article 14 mentioned above expresses the position of principle concerning the question of the historic rights, interpreting the relevant provisions<sup>75</sup> that refer to the 'historic bay' and 'historic title' in UNCLOS as embodying the 'recognition and respect' of the 'historical rights', and that this provision functions to express that, even after the establishment of the regime of EEZ and the continental shelf, China will not renounce the 'historical rights' that it has enjoyed in the adjacent waters<sup>76</sup>.

Certainly, it may be possible for China to seek to maximise, in the name of historic waters, its maritime interest in all of the islands and their adjacent waters in the South China Sea within the dashed line. On the other hand, a question also arises as to whether relying upon the concept of historic rights that may not be bound by the regime of the 200-nautical-mile EEZ under UNCLOS is intended to assert historic rights to natural resources other than fishery. If the answer is affirmative, a question arises with respect to whether the claim for the historic rights will be accepted in the international community including the states concerned<sup>77</sup>.

In fact, the claim to the historic waters incurs a great risk in international relations, since there has long been huge debate over the concept itself. Normally, the following three requirements must be met for historic waters to be recognised: first, the coastal states' exercise of title in the region in question; second, continuity of the period of exercising this competence; and third, the attitude of other foreign countries towards the claim of historic waters<sup>78</sup>. However, what lies at the bottom of the concept of historic waters is the idea that an origin based on what is initially 'an illegal situation' subsequently becomes valid or complete not only by the lapse of time but also through acquiescence by the legitimate possessor or toleration by other countries. The concept of historic waters is, therefore, not considered as an established legal

principle under international law, because one cannot easily ascertain who the original legitimate possessor is or how to evaluate the existence and form of any acquiescence.

UNCLOS contains some provisions referring to ‘historic bays’ and ‘historic rights’<sup>79</sup>. It is certainly difficult to claim that the South China Sea is a normal bay, and whether South China Sea is a historic bay is also a controversial issue. Judging from the wording of the Preface of UNCLOS<sup>80</sup>, these concepts will certainly be governed by general international law, that is, customary international law. However, the rules of customary international law concerning these concepts are unclear and not necessarily defined.

Some judicial precedent is noteworthy. The International Court of Justice (ICJ) found, in its judgment of 1951 in the *Fisheries* case, that a Norwegian fishery held historic title mainly on the ground that consistent practice over a long period had not been objected to by foreign countries<sup>81</sup>, and pronounced, in the judgment of 1992 in the *Land, Island and Maritime Frontier (El Salvador/Honduras; Nicaragua intervening)* case, that the Bay of Fonseca as an object of the dispute was a historic bay under ‘joint sovereignty’ and that the waters of it were qualified as historic waters<sup>82</sup>. These legal regimes that govern historic meanings presuppose that each individual case is recognised as unique, as was found in the 1982 judgment in the *Continental Shelf (Tunisia/Libya)* case<sup>83</sup>. This judgment has been followed in the ICJ cases since then<sup>84</sup>.

With respect to China’s state practice in the South China Sea, it is important to examine questions such as to what extent China has exercised its jurisdiction within this dashed line and whether, in the course of these actions, there has been any protest from other countries. One may also include in these important questions how far state practice has gone in comparison with that of other countries<sup>85</sup>.

What are, then, the ‘historical rights’ that China can claim under its EEZ & Continental Shelf Act, provided that, as mentioned above, China has never claimed the maritime area within the dashed line as historic waters?<sup>86</sup> According to a doctrine, suggested by one writer, that among the historic rights is a right to fishery that has been conducted for a long time by Chinese fishermen, for example, the maritime area that does not fall into the category of the EEZ or the continental shelf may also become entitled to the same legal status as the area of the EEZ and the continental shelf and their subsoil,

whereas the maritime area where the 'historical rights' are claimed will exceed 200 nautical miles and will be, even within 200 nautical miles, subject to domestic laws and regulations different from those of the EEZ regime<sup>87</sup>. Another writer states that the claim of the dashed line has been clarified because China used a combination of the concept of sovereign rights in the EEZ and the continental shelf under UNCLOS with the concept of the 'historical rights' to claim all the living and non-living resources within the dashed line<sup>88</sup>.

In 2011, in fact, a Chinese foreign minister and a spokesperson of the Foreign Ministry, respectively, made official statements to the effect that the dashed line was what China's sovereignty rights over the South China Sea have established and developed 'in the long process of history'. China's contention that there had been no criticism or protest from foreign countries even after the publication of the map in which the dashed line was drawn<sup>89</sup>, if true, may to a certain degree account for the view that there had been tolerance or acquiescence by the international community including the states concerned about China's unilateral actions such as the publication of the map containing the dashed line<sup>90</sup>.

In light of China's state practice, therefore, it is difficult to think that China intends to claim the concept of historic waters that may be treated as internal waters or the territorial sea, as far as the provisions of China's EEZ & Continental Shelf Act indicate<sup>91</sup>. In the discussion of the International Law Commission (ILC), the historic bay was widely pointed out as a concept that was disadvantageous to the countries with shorter histories but advantageous to the countries with longer histories<sup>92</sup>. As it is not easy, at any rate, to find a rule of international law that governs the 'historical rights' of China, it seems that one can neither definitively rule out the idea that the claim of China is contrary to international law, nor definitively identify a basis in international law.

## V. Conclusions

Noteworthy developments have also recently occurred with respect to the conflict among states concerned about the meaning of the dashed line claimed by China, in relation to the dispute over the South China Sea. For instance, China and the ASEAN states parties have, through diplomatic negotiations,

continued their effort to upgrade the 2002 'Declaration of the Conduct of the States concerned in the South China Sea' (DOC)<sup>93</sup> as a political document to a 'Code of Conduct' (COC) as a legally binding normative instrument. The 'initiative of Zone of Peace, Freedom, Friendship and Cooperation' (ZoPFF/C)<sup>94</sup> proposed by the Philippines in 2011 withered all too soon without considerable support from other ASEAN states<sup>95</sup>. Probably due to the lack of strong initiative from the chairing country and of concerted action by the ASEAN states, the negotiation process has not necessarily been very fruitful. Behind this lies the tug of war between China, who, on the basis of the dashed line, maintains an assertive position in the South China Sea, and opposing states that deny the dashed line and claim their own maritime interests<sup>96</sup>.

It has been reported that the Chinese government unofficially told a high-ranking American official<sup>97</sup> that the South China Sea is its own 'core interest'<sup>98</sup>. Some writers regard China's assertive attitude as the most remarkable recent development<sup>99</sup>. While the unilateral submission by the Philippines of the dispute with China over the South China Sea may somehow enable the clarification of the meaning of the dashed line in the litigation process, the prospects for negotiation on a COC between China and the ASEAN states parties have become bleaker. Even though the arbitral procedure instituted by the Philippines may, to a certain degree, lead to the disentanglement of the issue of the dashed line without a result in favour of China, it is not certain that a judgment or award made by a third party under the procedure that is not in accordance with the will of a party to the dispute will guarantee favourable consequences<sup>100</sup>. One should not always look at the South China Sea dispute through the lens of Eurocentric international law<sup>101</sup>.

In my view, the solution to the dispute over the South China Sea is not confined to the arguments regarding a judgment on the legal meaning of the dashed line that is issued within the framework of international law, but also entails a plan for maintaining peace and stability in the maritime area by eradicating the fundamental confrontational factors including the territorial dispute through peaceful means and cooperation among all the states concerned<sup>102</sup>. In this sense, therefore, one cannot be too optimistic about the prospects of this arbitral procedure.

It is at the same time necessary for the states concerned to make every effort to change or even soften the attitude of China, which is supposed to have

maintained, ever since, the idea of joint development of the resources therein with the idea of shelving the territorial problem in the South China Sea<sup>103</sup>. The problem of the dashed line, which is deeply rooted in the long history of this region, is too difficult to solve solely under international law and requires more practical, comprehensive and multifaceted approaches.

Note: This paper partially reflects the results of research that has been funded by the 2013 Special Research Grant of Waseda University. The author of this article acknowledges the various views given by the following people, among others: Prof HU Nien-Tsu Alfred; Prof LIN Cheng-yi; Dr Nguyen Thi Lan Anh; Prof SONG Yann-Huei; Dr Tran Truong Thuy; Dr ZHANG Haiwen; and Prof ZHU Feng. Ms HO Shumin and Ms TSAI Pee-fan, librarians of National Taiwan University Library, kindly provided the author with some necessary materials for this research.

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<sup>1</sup> See, for example, the following: Senate of the United States, 'S. RES. 167: A Resolution Reaffirming the strong support of the United States for the peaceful resolution of territorial, sovereignty, and jurisdictional disputes in the Asia-Pacific maritime domains', 29 July 2013, p. 2 (which refers to 'the contested "nine-dash line" as China's national border') (<http://www.gpo.gov/fdsys/pkg/BILLS-113sres167ats/pdf/BILLS-113sres167ats.pdf>) (accessed 29 September 2013).

<sup>2</sup> See the following for the recent study of the dash line: Erik Franckx & Marco Benatar, 'Dots and Lines in the South China Sea: Insights from the Law of Map Evidence', 2 *Asian JIL* 89 (2012), at p. 106, footnote 91; LI Guoqiang (李国强), 'About Certain Theoretical Thoughts on the South China Sea Dispute' (『关于南海问题的若干理论思考』), *Foreign Affairs Review* (*Journal of China Foreign Affairs University*) (『外交评论 (外交学院学报)』) 2013, Vol. 29, No. 129, pp. 5-13 (in Chinese), (<http://www.1think.com.cn/thinktank/201301/2013012318635.shtml>) (accessed 29 September 2013).

<sup>3</sup> See the recent study, as follows: 'Agora: The South China Sea' of *AJIL* (2013) (Lori Fisler Damrosch & Bernard H. Oxman, 'Editor's Introduction' 107 *AJIL* 95 (2013)); Zhiguo Gao & Bing Bing Jia, 'The Nine-Dash Line in the South China Sea: History, Status, and Implications', 107 *AJIL* 98 (2013); Florian Dupuy & Pierre-Marie Dupuy, 'A Legal Analysis of China's Historic Rights Claim in the South China Sea', 10 *AJIL* 124 (2013); Robert Beckman, 'The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea', 107 *AJIL* 142 (2013); Melda Malek, 'A Legal Assessment of China's Historic Claims in the South China Sea', 5 *Australian JMOA* 28-36 (2013); Nong Hong, *UNCLOS and Ocean Dispute Settlement: Law and Politics in the South China Sea*, Routledge, 2012, pp. 5-33 (For a book review of this work, see Taisaku Ikeshima, 'Book Review: *UNCLOS and Ocean Dispute Settlement: Law and Politics in the South China Sea*', *Waseda Global Forum*, No. 9, 2013, pp. 279-

284.); the 2012 special issue of *Ocean Development & International Law (ODIL)* on this issue (Masahiro Miyoshi, 'China's "U-Shaped Line" Claim in the South China Sea: Any Validity Under International Law?', 43 *ODIL* 1 (2012); Zou Keyuan, 'China's U-shaped Line in the South China Sea Revisited', 43 *ODIL* 18 (2012); Michael Sheng-Ti Gau, 'The U-shaped Line and a Categorization of the Ocean Disputes in the South China Sea', 43 *ODIL* 57 (2012)).

<sup>4</sup> For the written notification of Vietnam to China (No. 13-0211, 22 January 2013) and the related statement, see the following site: <http://www.gov.ph/2013/01/22/statement-the-secretary-of-foreign-affairs-on-the-unclos-arbitral-proceedings-against-china-january-22-2013/> (accessed 29 September 2013).

<sup>5</sup> See China's declaration made upon the ratification of UNCLOS on 25 August 2006 to exclude all the kinds of disputes provided for in Article 298, paragraph 1 (a), (b) and (c) at the following site: [http://www.un.org/Depts/los/convention\\_agreements/convention\\_declarations.htm#China](http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm#China) Upon ratification (accessed 29 September 2013).

<sup>6</sup> See the official site of the Permanent Court of Arbitration (PCA) ([http://www.pca-cpa.org/shownews.asp?ac=view&nws\\_id=384&pag\\_id=1261](http://www.pca-cpa.org/shownews.asp?ac=view&nws_id=384&pag_id=1261)) (accessed 29 September 2013). For China's attitude towards the implementation of UNCLOS, see Guifang (Julia) Xue, 'China and the Law of the Sea: A Sino-U.S. Maritime Cooperation Perspective', in *China, the United States and 21st Century Sea Power: Defining a Maritime Security Partnership*, edited by Andrew S. Erickson, Lyle J. Goldstein & Nan Li, Naval Institute Press, 2010, pp. 175-196, at pp. 177-179.

<sup>7</sup> In this connection, see, for the analysis of China's consent on a maritime dispute from a different viewpoint, Taisaku Ikeshima, 'The Legal Status of an Island and the Procedures of Dispute Settlement under UNCLOS' (in Japanese), *Waseda Global Forum*, No. 7, 2010, pp. 107-134.

<sup>8</sup> See the composition of the Arbitral Tribunal at the following: [http://www.pca-cpa.org/showpage.asp?pag\\_id=1529](http://www.pca-cpa.org/showpage.asp?pag_id=1529) (accessed 29 September 2013).

<sup>9</sup> For a rather optimistic view concerning the question of preliminary jurisdiction of a tribunal, see Irina Buga, 'Territorial Sovereignty Issues in Maritime Disputes: a Jurisdictional Dilemma for Law of the Sea Tribunals', 27 *IJMCL* 59, 89-90 (2012). For an opposite view, which seems for the author of the present article to be more persuasive, see Stephan Talmon, 'No Case to Answer for Beijing before Arbitral Tribunal in [the] South China Sea', *Global Times*, 20 May 2013 (<http://www.globaltimes.cn/content/782734.shtml#UpHRLsQrem4>) (accessed 29 September 2013).

<sup>10</sup> For a historical overview of the South China Sea dispute, see, for example, Jianming Shen, 'China's Sovereignty over the South China Sea Islands: A Historical Perspective', 1 *Chinese JIL* 94 (2002); Geoffrey Till, 'The South China Sea Dispute: An International History', in *Security and International Politics in the South China Sea: Towards a Cooperative Management Regime*, edited by Sam Bateman & Ralf Emmers, Routledge, 2009, pp. 26-41; Bruce A. Elleman, 'Maritime Territorial Disputes and Their Impact on Maritime Strategy: A Historical Perspective', in *ibid.*, pp. 42-57. For China's arguments on

historical and traditional viewpoints, see the following: KAWASHIMA Shin (川島真), 'The Memory of the National Border in Modern and Contemporary China: China's Imagined Original Territory' (「近現代中国における国境の記憶 — 「本来の中国の領域」をめぐる —」), *Japan Border Review* (『境界研究』), No. 1, 2010, pp. 1-17 (in Japanese); SATO Koichi (佐藤考一), 'China's "Frontiers": Issues Concerning Territorial Claims at Sea' (「中国と「辺疆」: 海洋国境 — 南シナ海の地図上のU字線をめぐる問題 —」), *Japan Border Review* (『境界研究』), No. 1, 2010, pp. 19-43 (in Japanese); Martin Jacques, *When China Rules the World*, Second Edition, Penguin Books, 2012, pp. 342-405.

<sup>11</sup> For other aspects on China's views on international law, see the following: Jerome Alan Cohen & Hungdah Chiu, *People's China and International Law: A Documentary Study*, Princeton University Press, 1974, pp. 1-22; Byron N. Tzou, *China and International Law: The Boundary Disputes*, Praeger, 1990, pp. 1-4 & 7-14; Jeanette Greenfield, *China's Practice in the Law of the Sea*, Clarendon Press, 1992, pp. 1-14; Q. Edward Wang, 'History, Space, and Ethnicity: The Chinese Worldview', 10 *Journal of World History* 285 (1999); Li Zhaojie, 'Traditional Chinese World Order', 1 *Chinese JIL* 20 (2002); Richard S. Horowitz, 'International Law and State Transformation in China, Siam, and the Ottoman Empire during the Nineteenth Century', 15 *Journal of World History* 445 (2004); Hugh R. Clark, 'Frontier Discourse and China's Maritime Frontier: China's Frontiers and the Encounter with the Sea through Early Imperial History', 20 *Journal of World History* 1 (2009); Andrew Coleman & Jackson Nyamuya Maogoto, "'Westphalian" Meets "Eastphalian" Sovereignty: China in a Globalized World', 3 *Asian JIL* 237 (2013). For China's attitude towards the concept of naval sea power, see Peter Howarth, *China's Rising Sea Power: The PLA Navy's Submarine Challenge*, Routledge, 2006, pp. 1-14; Bernard D. Cole, *The Great Wall: China's Navy in the Twenty-First Century*, Second Edition, Naval Institute, 2010, pp. 19-42.

<sup>12</sup> For the various viewpoints of Taiwan, see FU Jun (符駿), *The Four Sha-Islands in the South China Sea* (『南海四沙群島』) (in Chinese), Century Publication (世紀書局), 1981; Cheng-yi Lin, 'Taiwan's South China Sea Policy', 37 *Asian Survey* 323 (1997); YU Kuan-ci (俞寬賜), *History and Legal Arguments Concerning the Dispute over the Islands in the South China Sea* (『南海諸島領土爭端之經緯與法理 — 兼論東海釣魚臺列嶼之主權問題』) (in Chinese), National Press (國立編譯館), 2000; Nien-Tsu Alfred Hu, 'South China Sea: Troubled Waters or a Sea of Opportunity?', 41 *ODIL* 203 (2010); Yann-huei Song, 'The South China Sea Workshop Process and Taiwan's Participation', 41 *ODIL* 253 (2010); Yann-huei Song, 'Recent Developments in the South China Sea: Taiwan's Policy, Response, Challenges and Opportunities', a conference paper of 2013, at the following site of CSIS ([http://csis.org/files/attachments/130606\\_Song\\_ConferencePaper.pdf](http://csis.org/files/attachments/130606_Song_ConferencePaper.pdf) (accessed 29 September 2013)).

<sup>13</sup> See Sato, *supra* note 10, at p. 36.

<sup>14</sup> In Chinese language, see ZHAO Lihai (赵理海), 'About Certain Legal Problems of the South China Sea' (「关于南海诸岛的若干法律问题」), in *Research on the Questions*

*Concerning the Law of the Sea* (『海洋法问题研究』), Beijing University Press (北京大学出版社), 1996, pp. 21-40, at pp. 37-38 (in Chinese); LIU Nanlai (刘楠来), 'About the Legal Status of the U-shaped Line from the Viewpoints of International Law of the Sea' (『从国际海洋法看“U”形线的法律地位』), *Selected Studies of the Study Group on the South China Sea Dispute 2002* (《南海问题研讨会论文集》(2002年版)), Hainan Research Center for the South China Sea (海南南海研究中心), 2005, pp. 19-57 (in Chinese), (cited from the following site: <http://www.nansha.org.cn/study/9.html>); JIA Yu (贾宇), 'On the Law Status of Duanxuxian of South China Sea' (『南海“断续线”的法律地位』), *China's Borderland History and Geography Studies* (『中国边疆史地研究』), Vol. 15, No. 2, 2005, pp. 112-120 (in Chinese) (cited from the following site: <http://wenku.baidu.com/view/flf1e3140b4e767f5acfceba.html> (accessed 29 September 2013)); LI, *supra* note 2; LI Guoqiang (李国强), 'The Frontier Issue between China and its Neighboring Countries' (『中国与周边国家的海上国境问题』), *Japan Border Review* (『境界研究』), No. 1, 2010, pp. 45-56 (in Japanese). For the Vietnamese viewpoints, see Tran Truong Thuy, 'China's U-Shaped Line in the South China Sea: Possible Interpretations, Asserting Activities and Reactions from Outside', 2012, at <http://southchinaseastudies.org/en/publications/vietnamese-publications/784-chinas-u-shaped-line-in-the-south-china-sea-possible-interpretations-asserting-activities-and-reactions-from-outside-by-tran-truong-thuy> (accessed 29 September 2013).

<sup>15</sup> Besides the four doctrines mentioned above, one writer maintains that the line means the outer-limit of the Exclusive Economic Zone (EEZ) and continental shelf of the islands claimed by China in the South China Sea. See Tran Truong Thuy, *supra* note 14, p. 6.

<sup>16</sup> Among these conditions includes the fact that the eleven-dash line at the very beginning was later modified to the nine-dash line.

<sup>17</sup> See the discussion of historic waters in 'IV Some Considerations, 2', below.

<sup>18</sup> See, for instance, Dupuy & Dupuy, *supra* note 3, pp. 138-140. See, in particular, the last paragraph of 'IV Some Considerations, 2' (the discussion of historic waters), below.

<sup>19</sup> See JIA, *supra* note 14, p. 116. Moreover, another view says that the line is positioned as the median line between China and foreign countries, regardless of an interesting question of whether there had already been an idea of 'median line' in those days when the original line was first drawn.

<sup>20</sup> See, for example, Kawashima, *supra* note 10, pp. 10-14, where he discusses the concept of China's national border and boundary lines. See also Coleman & Maogoto, *supra* note 11, pp. 258-269.

<sup>21</sup> This may be said despite the fact that it is also uncertain whether this happened in the 1930s or the 1940s. For the secret surveys often conducted by Britain, France, Japan, and the US in the period from 1926 to 1938, see David Hancox & Victor Prescott, *Secret Hydrographic Surveys in the Spratly Islands*, ASEAN Academic Press, 1999. According to this book, an American Army Map Service sheet, which was reprinted in 1945 by the British Geographical Section General Staff, 'includes a dotted line enclosing most of the Spratly Islands' without any 'explanation of what this line represents'. *Ibid.*, p. 191. See

also Till, *supra* note 10, pp. 28-30.

- <sup>22</sup> Even in the following articles written in the 1970s to discuss the territorial disputes over the islands in the South China Sea, very little reference to the legal meaning and character of the dash line can be seen: Hungdah Chiu & Choon-Ho Park, 'Legal Status of the Parcel and Spratly Islands', 3 *ODIL* 1 (1975); Choon-Ho Park, 'The South China Sea Disputes: Who Owns the Islands and the Natural Resources?', 5 *ODIL* 27 (1978).
- <sup>23</sup> In fact, there were already various articles and books on the issue of the dashed line in the 1990s, such as ZHAO, 'About Certain Legal Problems of the South China Sea', *supra* note 14, though this was first published in 1995.
- <sup>24</sup> See the following documents: CML/17/2009 ([http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf)) (accessed 29 September 2013) & CML/18/2009 ([http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/vnm37\\_09/chn\\_2009re\\_vnm.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf)) (accessed 29 September 2013).
- <sup>25</sup> For the analysis of these submissions, see Nguyen Hong Thao & Ramses Amer, 'Coastal States in the South China Sea and Submissions on the Outer Limits of the Continental Shelf', 42 *ODIL* 245 (2011). For the official position of the Vietnamese government (Ministry of Natural Resources and Environment), see Nguyen Hong Thao, 'The "9-dashed line" – an irrational claim', at <http://www.monre.gov.vn/v35/default.aspx?tabid=675&CateID=60&ID=103109&Code=CYZC103109> (accessed 29 September 2013).
- <sup>26</sup> See paragraph 2 and the beginning of paragraph 3 of both CML/17/2009 and CML/18/2009, *supra* note 24.
- <sup>27</sup> For a similar expression to this phrase, see the last paragraph of ZHAO, 'About Certain Legal Problems of the South China Sea', *supra* note 14, p. 38.
- <sup>28</sup> See its note verbale, 11-00494, No. 000228, at [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/vnm37\\_09/phl\\_re\\_chn\\_2011.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/phl_re_chn_2011.pdf) (accessed 29 September 2013).
- <sup>29</sup> For the legislative measures of the Philippines submitted in compliance with the deposit obligations pursuant to UNCLOS, see the following site: <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/PHL.htm> (accessed 29 September 2013).
- <sup>30</sup> See the Act of the Philippines on Archipelagic Baselines (Republic Act No. 9522, 10 March 2009) ([http://senate.gov.ph/republic\\_acts/ra%209522.pdf](http://senate.gov.ph/republic_acts/ra%209522.pdf)) (accessed 29 September 2013). This is an act to 'amend certain provisions of Republic Act No. 3046, as amended by Republic Act No. 5446, to define the Archipelagic Baseline of the Philippines'.
- <sup>31</sup> The Philippines particularly refers to Article 121 of UNCLOS for the scope of the adjacent waters of an island, and to Articles 3, 4, 55, 57, and 76 for the nature of its EEZ and continental shelf.
- <sup>32</sup> See CML/8/2011 ([http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2011\\_re\\_phl\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl_e.pdf)) (accessed 29 September 2013).
- <sup>33</sup> China states that 'China's Nansha Islands is[*sic*] therefore clearly defined.' See CML/8/2011, *supra* note 32, paragraph 4.
- <sup>34</sup> Under this provision, an island is 'a naturally formed area of land, surrounded by water,

which is above water at high tide’.

- <sup>35</sup> Article 121, paragraph 2, of UNCLOS provides that all islands in principle can serve as the baseline for all maritime zones, including the territorial sea, contiguous zone, EEZ, and continental shelf. However, Article 121, paragraph 3, of UNCLOS also makes an exception for ‘rocks which cannot sustain human habitation or economic life of their own’. See also the discussion given in the following: R. R. Churchill & A.V. Lowe, *The Law of the Sea*, Third Edition, Manchester University Press, 1999, pp. 49-50; Donald R. Rothwell & Tim Stephens, *The International Law of the Sea*, Hart Publishing, 2010, pp. 86-87. It is also important to note that ‘[n]one of the claimants [of the geographic features] in the South China Sea have clarified which features they consider to be islands, rocks, low-tide elevations, artificial islands, and so on’, and that ‘[t]he claimant states have also not clarified which features they believe are islands’. See Beckman, *supra* note 3, p. 151.
- <sup>36</sup> See 77/HC-2011 ([http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/vnm\\_2011\\_re\\_phlchn.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/vnm_2011_re_phlchn.pdf)) (accessed 29 September 2013).
- <sup>37</sup> See Peter Kien-Hong Yu, ‘The Chinese (Broken) U-shaped Line in the South China Sea: Points, Lines, and Zones’, 25 *Contemporary Southeast Asia* 405, 407 (2003); Zou Keyuan, ‘3 The Chinese Traditional Maritime Boundary Line in the South China Sea and Its Legal Consequences’ in *Law of the Sea in East Asia: Issues and Prospects*, Routledge, 2005, pp. 47-60, at p. 50 (For a book review of this work, see Taisaku Ikeshima, ‘Book Review: *Law of the Sea in East Asia: Issues and Prospects & China’s Marine Legal System and the Law of the Sea*’, *Waseda Global Forum*, No. 5, 2008, pp. 129-132.).
- <sup>38</sup> For the justification of the position of the (then) Republic of China, see GUO Yuan (郭渊), ‘The Formation of the Intermittent Line of the South China Sea and the Analysis of Its Historical Significance’ (‘南海斷統線的形成及其歷史涵義的解析’), *Journal of Zhejiang Ocean University (Humanities Sciences)* (浙江海洋學院學報(人文學版)), Vol. 28, No. 3, 2011, pp. 1-6 (in Chinese).
- <sup>39</sup> For the significance of the original work that contained the map, see ZHENG Ziyue & FU Chiao-chin (鄭資約編著·傅角今主編), *Geography and Brief History of the Islands in the South China Sea* (『內政部方域叢書 南海諸島地理誌略』) (in Chinese), Commercial Press (商務印書館), 1947 (For the details of the author of this book, see “‘Beijing Normal University’: The Beijing Normal University Graduates who Lined out the boundary of the South China Sea’ (【北京師範大學】圈画出南海疆域的北師大人) (in Chinese) at <http://www.cunews.edu.cn/Article/huabei/xiaoyuan/201205/53980.html> (accessed 29 September 2013)). For the detailed explanation of the historic background of the dash line, see also ZHAO, *supra* note 14, p. 38.
- <sup>40</sup> For the historic origin, see an article (reprinted, though, from *Renmin Zhengxie Bao* (『人民政協報』)) on the website of the Chinese Ministry of National Defence, HE Libo (何立波), ‘The Recovery of the Islands in the South China Sea and the Origin of “Nine Dash Line”’ (‘1946年收復南海諸島與“九段線”的由來’) (in Chinese), *Renmin Zhengxie Bao* (*Journal of the CPPCC*) (『人民政協報』), 19 December 2011, at [http://www.mod.gov.cn/big5/hist/2011-12/19/content\\_4328901.htm](http://www.mod.gov.cn/big5/hist/2011-12/19/content_4328901.htm) (accessed 29 September

2013).

- <sup>41</sup> See Li Jinming & Li Dexia, 'The Dotted Line on the Chinese Map of the South China Sea: A Note', 34 *ODIL* 287, 290 (2003). China and Vietnam continued negotiation on the delimitation of the territorial sea, EEZ and continental shelf of the Gulf of Tonkin (Gulf of Beibu in Chinese) from 1992, and came to an agreement in 2000 (into effect in 2004) (see Agreement between the People's Republic of China and the Socialist Republic of Viet Nam on the delimitation of the territorial seas, exclusive economic zones, continental shelves of the two countries in Beibu Gulf/Bac Bo Gulf, *UNTS*, Vol. 2336, No. I-41860, 2005, pp. 179-205 (<http://treaties.un.org/doc/Publication/UNTS/Volume%202336/v2336.pdf>) (accessed 29 September 2013)). One writer says that the border line drawn by this agreement is the median line, which is an extension of the dashed line. See Sato, *supra* note 10, p. 37.
- <sup>42</sup> See Li & Li, *supra* note 41, p. 290; Zou, *supra* note 3, p. 24.
- <sup>43</sup> From a Vietnamese viewpoint, the Island of Bach Long Vi was succeeded by the Prime Minister's Decree of No. 49/TT dated 16 January 1957. On this point, the explanation and interpretation concerning the transfer of sovereignty over the Island differs between China and Vietnam.
- <sup>44</sup> See *supra* note 42. For the historical background of the bilateral relations between China and Vietnam with respect to the land border, see Pierre Grosser, 'Chinese Borders and Indigenous Parallels: France, Vietnam, and the "Korean Model"', *Eurasia Border Review*, Vol. 3 Special Issue, 2012, pp. 55-73; Till, *supra* note 10, pp. 30-31.
- <sup>45</sup> For China's straight baselines, see Library of Congress, 'China's Claimed Straight Baselines', 1996, at <http://www.loc.gov/item/2005629220> (accessed 29 September 2013); Daniel J. Dzurek, 'The People's Republic of China Straight Baseline Claim', *IBRU Boundary and Security Bulletin*, Summer 1996, pp. 77-89 ([https://www.dur.ac.uk/resources/ibru/publications/bsbfirstpages/bsb4-2\\_dzurek\\_p1.pdf](https://www.dur.ac.uk/resources/ibru/publications/bsbfirstpages/bsb4-2_dzurek_p1.pdf)) (accessed 29 September 2013). As Beckman points out, it is noteworthy that although the straight baselines employed by some of the states bordering the South China Sea are 'of questionable legality' under UNCLOS, the other states bordering the South China Sea 'have not formally objected to the baselines' of their neighbours. See Beckman, *supra* note 3, p. 146.
- <sup>46</sup> However, one writer states that this suggests that the 'islands' in the South China Sea are separated from the mainland by the high seas, whose existence China admits. See Tran Truong Thuy, *supra* note 14, p. 4.
- <sup>47</sup> On this point, China's position needs to be compared with Taiwan's attitude explained in the following section of the present article.
- <sup>48</sup> See at the following site: [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN\\_1992\\_Law.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1992_Law.pdf) (accessed 29 September 2013).
- <sup>49</sup> For China's legislative measures submitted in compliance with the deposit of obligations pursuant to UNCLOS, see the following site: <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/CHN.htm> (accessed 29 September

2013).

- <sup>50</sup> See the following site: [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN\\_1996\\_Declaration.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1996_Declaration.pdf) (accessed 29 September 2013).
- <sup>51</sup> Article 2 of this Law stipulates the delimitation in accordance with agreement, and Article 11 provides that the freedom of navigation in accordance with China's laws and regulations is admitted in the EEZ. See the following site: [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/chn\\_1998\\_eez\\_act.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/chn_1998_eez_act.pdf) (accessed 29 September 2013).
- <sup>52</sup> Stating that this provision is unique, one writer points out that it is 'widely known' that Article 14 has the relation with the dashed line. Zou Keyuan, 'Chapter 4 The Exclusive Economic Zone and Continental Shelf Regime', in *China's Marine Legal System and the Law of the Sea*, Martinus Nijhoff Publishers, 2005, pp. 89-107, 94-95 (For a book review of this work, see *supra* note 37). In this work (*Ibid.*, p. 95), Professor Zou states that the dashed line is generally the line to indicate the 'ownership' of the islands within it. For this unique terminology, see also Dupuy & Dupuy, *supra* note 3, pp. 139-140.
- <sup>53</sup> See the first paragraph of Chapter II, above.
- <sup>54</sup> See Lin, *supra* note 12, pp. 332-335; Koichi Sato, 'China's "Frontiers": Issues Concerning Territorial Claims at Sea – Security Implications in the East China Sea and the South China Sea (Part II)', 3 *Eurasia Border Review* 71, 75 (footnote 23) (2012). Sato points out that Taiwan draws the dashed line composed of eleven segments to the north of China's dashed line composed of nine segments. For the details of Taiwan's position, see the works cited in *supra* note 12.
- <sup>55</sup> This 'Maritime Policy', however, was finished on 15 December 2005. For the historical development of this policy, see Lin, *supra* note 12, pp. 325-326; Song (2013), *supra* note 12, pp. 4-7.
- <sup>56</sup> See Yu, 'Chapter V "Historic Waters" and the Legal Nature of China's U-shaped Line in the South China Sea', *supra* note 12, pp. 59-78 (in Chinese).
- <sup>57</sup> See, for example, *Central Daily News (Taiwan)* ("台灣 中央日報"), 9 August 1993 (in Chinese).
- <sup>58</sup> Under this policy, Taiwan is generally supposed to pursuit 'no unification, no independence, and no use of force'. See, for example, Ralf Cossa, 'How Ma's "three nos" policy could impact cross-strait ties', *The Japan Times*, 24 January 2008, at [http://www.japantimes.co.jp/opinion/2008/01/24/commentary/how-mas-three-nos-policy-could-impact-cross-strait-ties/#.Ukj\\_YZLO1U](http://www.japantimes.co.jp/opinion/2008/01/24/commentary/how-mas-three-nos-policy-could-impact-cross-strait-ties/#.Ukj_YZLO1U) (accessed 29 September 2013).
- <sup>59</sup> See the following two declarations: the Declaration of No. 002 of 11 May 2009 (<http://www.mofa.gov.tw/EnOfficial/ArticleDetail/DetailDefault/890fb320-603c-49b2-a2cc-7842923e66c8?arfid=0b12b1ae-64ff-4e4b-b6bd-e20fbf2c7a13&copno=49be2475-017b-4647-8ac1-9a0ec20d892c>); and the 'Declaration concerning the Outer-limits of the Continental Shelf of the Republic of China' (No. 003 of 12 May 2009). None of these documents refers to the term 'historic waters'.
- <sup>60</sup> See Franckx & Benatar, *supra* note 2, p. 98.

- <sup>61</sup> In fact, the Taiwanese government effectively occupies the Tongsha (Pratas) Islands, while the Chinese government also claims territorial sovereignty over the islands. For China's historic rights claim, see Dupuy & Dupuy, *supra* note 3, pp. 136-140.
- <sup>62</sup> China is certainly not free from criticism due to its own lack of effort to explain its own position. See Zhang, *infra* note 68. One may even call this kind of China's general attitude towards the law of the sea 'a policy of "strategic ambiguity"', regardless of its legal significance. See Beckman, *supra* note 3, p. 142. In this sense, one should take a very careful look at the maps with the dashed line that one can find in daily life, since the significance of those maps are, strictly speaking, very limited for the inaccurate description of the dashed line drawn on themselves, in particular. For a recent general explanation on the dash line from a Chinese point of view, see Gao & Jia, *supra* note 3, pp. 100-110.
- <sup>63</sup> With respect to this question, the other the side of the coin may be the question of why the line is not drawn in the form of a single line/curve. A question may also arise as to the existence or non-existence of a method of delimitation to enclose a certain maritime area by way of a single line/curve drawn on a map without using the designated points along parallels of latitude and meridians of longitude. In connection with this, it is noteworthy that, under Article 1, paragraph 4, of the Convention on the Conservation of Antarctic Marine Living Resources, the 'Antarctic Convergence' is only 'deemed to be a line joining the following points along parallels of latitude and meridians of longitude', since the line, often drawn in the form of a dashed line, is regarded as a movable line/curve with some degree of width.
- <sup>64</sup> These are different from each of the border line of Laos, Thailand, Cambodia, and Vietnam (made of a broken line with dots and lines without any shadow on them), because these nine segments are drawn in the form of a broken line with shadow like a broken line indicating the border between China and Vietnam.
- <sup>65</sup> See Franckx & Benatar, *supra* note 2, pp. 109-110; Daniel J. Dzurek, 'The Spratly Islands Dispute: Who's On First?', *Maritime Briefing*, Volume 2, Number 1, 1996, p. 12; Zou, *supra* note 37, p. 51.
- <sup>66</sup> In this sense, one can say that ZHAO's 'About Certain Legal Problems of the South China Sea', *supra* note 14, which is relatively widely supported in China, is also meant to suggest this position in the end.
- <sup>67</sup> China is supposed to generally admit the freedom of navigation of other countries in the South China Sea. With respect to the scientific research activities of the United States in China's EEZ, however, a separate examination is necessary. See, among the special issue titled 'AGORA: Military Activities in the EEZ' of 9 *Chinese JIL* 1 (2010), Zhang Haiwen, 'Is It Safeguarding the Freedom of Navigation or Maritime Hegemony of the United States? - Comments on Raul (Pete) Pedrosa's Article on Military Activities in the EEZ', 9 *Chinese JIL* 31 (2010).
- <sup>68</sup> See ZHANG Haiwen (張海文), 'Considering the South China Sea Dispute from the perspective of International Law' (「从國際法視角看南海爭議問題」), *World*

*Affairs* (『世界知識』), 2012, No. 4, pp. 14-22 (in Chinese) (reprinted at <http://www.globalview.cn/ReadNews.asp?NewsID=28404> (accessed 29 September 2013)).

<sup>69</sup> See the following site for the details. YI Xianliang (interviewed) (易先良(談)), 'Holding the Concept of Win-Win Cooperation, Proper Handling of the Surrounding Maritime Disputes' (『堅持合作共贏理念 妥善處理周邊海洋爭議』) (in Chinese), *Chinanews* (『中國新聞網』), at <http://www.chinanews.com/shipin/313/2012/0104/257.html> (accessed 29 September 2013). In particular, it is noteworthy in his remarks that (1) since the dashed line promulgated by China is, chronologically, prior to the 1982 UNCLOS, they are not compatible with each other; (2) since the dashed line defines China's territorial sovereignty and its related maritime interests, its legality cannot be examined in light of UNCLOS; and (3) UNCLOS itself cannot apply in judging a claim over the territory of a country as the claim was made prior to UNCLOS.

<sup>70</sup> For the discussion of the relevant provisions of UNCLOS, see *supra* note 35.

<sup>71</sup> See also Article 121, paragraph 2, of UNCLOS, which provides that all islands in principle can serve as the baseline for the territorial sea, contiguous zone, EEZ and continental shelf.

<sup>72</sup> With respect to the legal status of an island, a question arises as to the meaning of the 'rocks' under Article 121, paragraph 3, of UNCLOS. This is beyond the scope of this paper. See *supra* note 35, for a brief note of the current situation of the claimant states' position concerning the geographic features in the South China Sea.

<sup>73</sup> See Nong Hong, *supra* note 3, pp. 62-71; Elleman, *supra* note 10, pp. 42-46.

<sup>74</sup> See, for example, Zou, *supra* note 52, p. 95.

<sup>75</sup> Articles 10, 15, and 298, paragraph 1 (a), of UNCLOS.

<sup>76</sup> See 'Chapter III China's Maritime Interests, 1 Maritime Interests in General, (3) Historic Rights', in *China's Ocean Development Report 2012* (『中國海洋發展報告 2012』), edited by Research Team in China Institute of Marine Affairs, State Oceanic Administration (國家海洋局海洋發展戰略研究所課題組), Ocean Press (海洋出版社), 2012, pp. 46-47 (in Chinese), in which the Chinese government clearly states this point.

<sup>77</sup> See, for example, a critical comment of Tran Truong Thuy, *supra* note 14, p. 4. Professor Zou, for example, states that China is accountable for the criticism from the international society. See Zou, *supra* note 52, p. 95.

<sup>78</sup> See, for example, 'Juridical Regime of Historic Waters, including Historic Bays', UN Doc. A/CN.4/143, dated 9 March 1962, *YBILC*, 1962, Vol. II, pp. 1-26, at p. 25.

<sup>79</sup> See *supra* note 75.

<sup>80</sup> The Preface of UNCLOS provides that 'matters not regulated by this Convention continue to be governed by the rules and principles of general international law'.

<sup>81</sup> See *ICJ Reports*, 1951, p. 138. The Court finds that the 'general toleration of foreign States with regard to Norwegian practice is an unchallenged fact.'

<sup>82</sup> See *ICJ Reports*, 1992, p. 588, paragraph 383, and p. 608, paragraph 420.

<sup>83</sup> See *ICJ Reports*, 1982, p. 74, paragraph 100. The famous passage is the following:

There are, however, references to 'historic bays' or 'historic titles' or historic reasons in a way amounting to a reservation to the rules set forth therein. It seems clear that the matter continues to be governed by general international law which does not provide for a *single* 'régime' for 'historic waters' or 'historic bays', but only for a particular régime for each of the concrete, recognized cases of 'historic waters' or 'historic bays'. It is clearly the case that, basically, the notion of historic rights or waters and that of the continental shelf are governed by distinct legal régimes in customary international law. The first régime is based on acquisition and occupation, while the second is based on the existence of rights '*ipso facto* and *ab initio*'.

<sup>84</sup> See *ICJ Reports*, 1992, p. 589, paragraph 384. For the analysis of historic rights and historic bays, in particular, see Churchill & Lowe, *supra* note 35, pp. 43-45; Hugh Thirlway, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence*, Volumes I & II, Oxford University Press, pp. 534-538 & 1419-1424.

<sup>85</sup> In fact, China, for its certain purpose, once supported the former Soviet Union's claim that the Bay of Peter the Great was a historic bay, but it denied the nature of the Bay of Tonkin as the historic waters.

<sup>86</sup> For China's historic rights, see Zou Keyuan, '10 Maritime Historic Rights and China's Practice', in *Law of the Sea in East Asia*, *supra* note 37, pp. 157-174.

<sup>87</sup> See Zou, *supra* note 86, pp. 169-172.

<sup>88</sup> Tran Truong Thuy, *supra* note 14, p. 10.

<sup>89</sup> Li & Li, *supra* note 41, p. 290. For a similar view, see Gao & Jia, *supra* note 3, pp. 121 (footnote omitted), where they state: 'The Chinese people have, *without challenge*, enjoyed and exercised certain rights in the South China Sea *throughout recorded history*. Those rights do not derive from UNCLOS. The nine-dash line reflects that *long attachment* of the Chinese nation to the South China Sea' (emphasis added).

<sup>90</sup> For an opposing view, see Franckx & Benatar, *supra* note 2, pp. 111-112.

<sup>91</sup> This China's Act saw the Vietnamese objection to the effect that the so-called 'historic interests' were not recognised.

<sup>92</sup> See the remarks of Mr Garcia Amador of the International Law Commission (ILC). *YBILC*, 1955, Vol. 1, p. 214. See also Zou, *supra* note 86, p. 173; Malek, *supra* note 3, p. 33. One must note that the concept of historic waters was originally in a special category of either internal waters or territorial sea, as is pointed out by the ILC report. Dupuy & Dupuy, *supra* note 3, p. 139.

<sup>93</sup> For China, this instrument may have been welcome as a political one not to settle the territorial dispute but only to ascertain common interests and strengthen cooperative relations with ASEAN countries. See Wu Shicun & Ren Huaifen, 'More Than a Declaration: A Commentary on the Background and the Significance of the Declaration on the Conduct of the Parties in the South China Sea', 2 *Chinese JIL* 311, 319 (2003).

But one may evaluate this document as a diplomatic achievement, as far as it remains to be only a non-binding one.

<sup>94</sup> For the original document, see the following site: [http://nghiencuubiendong.vn/en/database-on-south-china-sea-study/doc\\_download/182--philippine-paper-on-asean-china-zone-of-peace-freedom-friendship-and-cooperation-in-the-scs](http://nghiencuubiendong.vn/en/database-on-south-china-sea-study/doc_download/182--philippine-paper-on-asean-china-zone-of-peace-freedom-friendship-and-cooperation-in-the-scs) (accessed 29 September 2013).

<sup>95</sup> For the response of ASEAN to the Philippine proposal, see paragraph 4, which refers to the Joint Communiqué which ‘noted with appreciation’ the proposal, at the following site: <http://www.asean.org/news/asean-secretariat-news/item/initiatives-on-south-china-sea-conflict-resolution-and-peacekeeping-cooperation-people-engagement-among-many-issues-noted-in-comprehensive-asean-joint-communiqué> (accessed 29 September 2013).

<sup>96</sup> For a greater effort required in this region to promote functional cooperation, see Sam Bateman, ‘Good Order at Sea in the South China Sea’, in *Maritime Security in the South China Sea: Regional Implications and International Cooperation*, edited by Wu Shicun & Zou Keyuan, Ashgate, 2009, pp. 15-34, at p. 34.

<sup>97</sup> For China-US relations in terms of the South China Sea, see the following: Michael J. Green, ‘U.S.-China Maritime Cooperation: Regional Implication and Prospects’, in *China, the United States and 21st Century Sea Power: Defining a Maritime Security Partnership*, *supra* note 6, pp. 355-364; Wu Shicun, ‘Opportunities and Challenges for China-U.S. Cooperation in the South China Sea’, in *China, the United States and 21st Century Sea Power: Defining a Maritime Security Partnership*, *ibid.*, pp. 365-376.

<sup>98</sup> See Edward Wong, ‘China Hedges over Whether South China Sea is a “Core Interest” Worth War’, *The New York Times*, 30 March 2011, at [http://www.nytimes.com/2011/03/31/world/asia/31beijing.html?pagewanted=print&\\_r=0](http://www.nytimes.com/2011/03/31/world/asia/31beijing.html?pagewanted=print&_r=0) (accessed 29 September 2013); Toshi Yoshihara & James R. Holmes, ‘Can China Defend a “Core Interest” in the South China Sea?’, *The Washington Quarterly*, Vol. 34, No. 2, 2011, pp. 45-59; Caitlin Campbell, Ethan Meick, Kimberly Hsu & Craig Murray, ‘China’s “Core Interests” and the East China Sea’, *U.S.-China Economic and Security Review Commission Staff Research Background*, 10 May 2013, pp. 4-5 (<http://origin.www.uscc.gov/sites/default/files/Research/China's%20Core%20Interests%20and%20the%20East%20China%20Sea.pdf>) (accessed 29 September 2013). Besides the S. RES. 167 with respect to US strong support for the peaceful resolution of the dispute in the region (see *supra* note 1), see, for US support for COC, Senate of the United States, ‘S. RES. 524: A Resolution Reaffirming the strong support of the United States for the 2002 declaration of conduct of parties in the South China Sea among the member states of ASEAN and the People’s Republic of China, and for other purposes’, 2 August 2012, pp. 3-4 (<http://www.gpo.gov/fdsys/pkg/BILLS-112sres524ats/pdf/BILLS-112sres524ats.pdf>).

<sup>99</sup> See, for example, the following: Tran Truong Thuy, ‘Recent Developments in the South China Sea: Implications for Regional Security and Cooperation’, Center for Strategic & International Studies (CSIS), South Asia Program, pp. 14 & 17 (<http://csis.org/files/>

publication/110629\_Thuy\_South\_China\_Sea.pdf) (accessed 29 September 2013); Tomotaka Shoji (庄司智孝), 'Territorial Dispute over the South China Sea – China's Growing Assertiveness and Responses from Southeast Asia' (「南シナ海の領有権問題 — 中国の再進出とベトナムを中心とする東南アジアの対応 —」), *NIDS (National Institute for Defence Studies) Security Studies* (『防衛研究所紀要』), Vol. 14, pp. 1-22, at pp. 5-6 (in Japanese); Wu Shicun (吴士存), 'The South China Sea Dispute: the Reality and Challenges' (「南海問題：现实与挑战」), *China International Strategy Review (Center for International & Strategic Studies (CISS), Peking University)* (『中国国际战略评论』), 2012, pp. 117-125 (in Chinese).

<sup>100</sup> For China's attitude towards the dispute settlement under UNCLOS, See Xue, *supra* note 6, p. 178; Ikeshima, *supra* note 7, pp. 114-116.

<sup>101</sup> It is noteworthy, in this connection, that some writers state that 'we should not judge China's (and Asia's) rise through the "lens of Europe"'. See Jacques, *supra* note 10, pp. 375-381; Coleman & Maogoto, *supra* note 11, p. 268 (footnote omitted). For a traditional distinction between the Chinese world and the Western one, see Li, *supra* note 11, pp. 57-58. For a view that China is a benign giant in this region with the golden means, see Su Hao, 'China's Positions and Interests in the South China Sea: A Rational Choices in its Cooperative Policies', a CSIS conference paper of 2011, at the site of CSIS ([http://csis.org/files/publication/110912\\_Hao\\_South\\_China\\_Sea.pdf](http://csis.org/files/publication/110912_Hao_South_China_Sea.pdf) (accessed 29 September 2013)), pp. 9-11.

<sup>102</sup> For the necessity of consent of the parties to a dispute, see Ikeshima, *supra* note 7, pp. 117-119.

<sup>103</sup> See the remarks of Mr Yi, *supra* note 69, p. 4, and the following site on the advice of the late Deng Xiaoping, 'Set aside dispute and pursue joint development' (<http://www.fmprc.gov.cn/eng/ziliao/3602/3604/t18023.htm> (accessed 29 September 2013)). For a critical view towards this approach, however, see also the following: Nguyen Hong Thao & Ramses Amer, 'A New Legal Arrangement for the South China Sea?', 40 *ODIL* 333, 342-343 (2009); Hasjim Djalal, 'The South China Sea: The Long Road Towards Peace and Cooperation', in *Security and International Politics in the South China Sea*, *supra* note 10, pp. 175-188. For a more positive idea of joint development, see Mark J. Valencia, Jon M. Van Dyke & Noel A. Ludwig, *Sharing the Resources of the South China Sea*, University of Hawai'i Press, 1999, pp. 17-60 (Chapter III); *War or Peace in the South China Sea?*, edited by Timo Kivimäki, NIAS Press, 2002, pp. 151-158; Wu Shicun & Hong Nong, 'The Energy Security of China and Oil and Gas Exploitation in the South China Sea', in *Recent Developments in the Law of the Sea and China*, edited by Myron H. Nordquist, *et al.*, Martinus Nijhoff Publishers, 2006, pp. 145-154; Zou Keyuan, 'A New Model of Joint Development for the South China Sea', in *ibid.*, pp. 155-171; Zou Keyuan, 'Cooperative Development of Oil and Gas Resources in the South China Sea', in *Security and International Politics in the South China Sea*, *supra* note 10, pp. 80-92; Beckman, *supra* note 3, pp. 158-159. For a reserved view of joint development as a provisional arrangement, see Gao & Jia, *supra* note 3, pp. 122-123.