

2013-09-13

"Since Time Immemorial": China's Historical Claim in the South China Sea

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Chung, C. P. (2013). "Since Time Immemorial": China's Historical Claim in the South China Sea (Master's thesis, University of Calgary, Calgary, Canada). Retrieved from

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“Since Time Immemorial”:
China’s Historical Claim in the South China Sea

by

Chris P.C. Chung

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE
DEGREE OF MASTER OF ARTS

DEPARTMENT OF HISTORY

CALGARY, ALBERTA

SEPTEMBER, 2013

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Abstract

Four archipelagos in the South China Sea are territorially disputed: the Parcel, Spratly, and Pratas Islands, and Macclesfield Bank. The People's Republic of China and Republic of China's claims are embodied by a nine-dashed U-shaped boundary line originally drawn in an official Chinese map in 1948, which encompasses most of the South China Sea. Neither side has clarified what the line represents. Using ancient Chinese maps and texts, archival documents, relevant treaties, declarations, and laws, this thesis will conclude that it is best characterized as an islands attribution line, which centres the claim simply on the islands and features themselves. It does not delineate a historic rights waters zone, which confer certain exploitation and regulation privileges over all of the waters the line contains on the basis of historic Chinese dominance. The period of time examined is from 1644 to 2013; from the Qing Dynasty to the present.

Acknowledgements

This thesis would never have reached fruition without the assistance of many people and organizations. I would first like to thank Dr. David Wright of the University of Calgary, my supervisor, for his invaluable advice, guidance, and editing, as well as for connecting me to scholars in Taipei. I also thank Dr. John Ferris of the University of Calgary, my co-supervisor, for his significant editorial input. I want to thank the other two members of my defence committee, Dr. Paul Chastko and Dr. Philip Chang of the University of Calgary, for critiquing my thesis, and Dr. George Colpitts of the University of Calgary for serving as the neutral chair.

The Social Sciences and Humanities Research Council of Canada (SSHRC) and the Choquette Family Foundation receive my utmost gratitude. Both the SSHRC Joseph-Armand Bombardier Canada Graduate Scholarships Program Master's Scholarship and the Choquette Family Foundation Global Experience Graduate Scholarship provided me with the financial means to travel to Taipei, attain a competent reading knowledge in Chinese, access two historical archives there, and sustain my writing.

I am indebted to Dr. Wu Jen-shu and Dr. Tang Shi-Yeoung of the Academia Sinica and Mr. Ma Yu-Cheng of the Republic of China National Archives Administration for directing me to a number of important sources and guiding me through procedures in archives in Taipei. The staff at both the National Archives Administration of the Republic of China and the Historical Archives of the Department of Modern History at the Academia Sinica deserve special mention for the level of assistance rendered.

Last but certainly not least, the everyday support and care that my family and friends have provided me has been substantial, whether moral or financial. I am very thankful that they have stood by me during the writing of this thesis.

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List of Abbreviations

ASEAN: Association of Southeast Asian Nations.

CCP: Chinese Communist Party of the People's Republic of China.

CLCS: United Nations Commission on the Limits of the Continental Shelf.

EEZ: Exclusive Economic Zone.

MHTO: Republic of China Military History and Translation Office of the Ministry of Defence (*Guofangbu Shi Zheng Bianyi Ju* 國防部史政編譯局).

MOD: Republic of China Ministry of Defence (*Guofangbu* 國防部).

MOFA: Republic of China Ministry of Foreign Affairs (*Waijiaobu* 外交部). In footnote and bibliographic citations, this acronym refers to the MOFA archival collection (*Waijiaobu Dang'an* 外交部檔案), 1928-1975, at the Academia Sinica.

MOI: Republic of China Ministry of the Interior (*Neizhengbu* 內政部).

NHQ: Republic of China Navy General Headquarters (*Haijun Zongsi Lingbu* 海軍總司令部).

NM: Nautical mile.

ROC: Republic of China.

PRC: People's Republic of China.

UNCLOS: United Nations Convention of the Law of the Sea, 1982.

Introduction

The South China Sea dispute is among the most pressing issues in Southeast Asia and one of the most complex territorial disputes in the world. Six nations — the People’s Republic of China (PRC), Vietnam, the Philippines, Malaysia, Brunei, and the Republic of China (ROC, or Taiwan) — vie for control over some or all of the Spratly Islands, the Paracel Islands, Pratas Islands, and Macclesfield Bank, which consist of well over a hundred islands, reefs, and banks throughout the South China Sea. The islands and features¹ are miniscule, inhospitable, hazardous to the unwary sailor, and contain negligible economic resources, but they matter in other ways. These islands stand close to one of the busiest shipping routes in the world. Nearby waters teem with seafood, while the seabed holds the prospect of a “second Middle East” in terms of oil and natural gas.² Political and patriotic necessity drives disputant governments to claim these waters; to do otherwise likely would invite political suicide from a nationalistically inflamed populace and rivals who would seize the opportunity to strike. As Shen Hongfang, a professor at The Center of Southeast Asian Studies at Xiamen University, stated during a conference on the South China Sea in Manila in July 2011, “if China lost more territory [i.e. the Spratlys] to foreign states ... the people and the army would question the legitimacy of the government... It is of

¹ From here on in, “features” refers to those that are permanently or semi-permanently submerged depending on the tide, such as reefs, banks, corals, and sandbars.

² US Energy Information Administration, “Oil and Natural Gas,” in *South China Sea*, <http://205.254.135.7/countries/regions-topics.cfm?fips=SCS>. Estimates of oil and natural gas reserves vary considerably due to the territorial dispute, which prevents a thorough surveying of resources. The United States Energy Information Administration estimates that the South China Sea contains about 11 billion barrels of oil and 190 trillion cubic feet of natural gas in proved and probable resources. On the high end is the figure calculated by the Chinese National Offshore Oil Company (CNOOC) in November 2012: 125 billion barrels of oil and 500 trillion cubic feet of natural gas in undiscovered resources. A more modest calculation comes from the 2010 US Geological Survey, which put the figure between 5 and 22 billion barrels of oil and between 70 and 290 trillion cubic feet of gas. This does not include the Gulf of Thailand and areas on the extremities of the South China Sea. All estimates are of unproven resources. However, in April 2006, Husky Energy and CNOOC announced the discovery of a significant field of natural gas southeast of Hong Kong, totalling 4 to 6 trillion cubic feet in proved and probable reserves.

utmost importance that the government is not considered by people or the army as internally or externally weak which in turn could have severe political consequences.”³

The dispute can best be characterized by one word: “antagonistic.” Despite efforts by disputants and others to resolve this spat peacefully, conflicts over the question of sovereignty abound. The Philippines’ proposed Zone of Peace, Freedom, Friendship, and Cooperation (ZoPPF/C) plan, its calls for international arbitration on January 22, 2013, and the PRC’s proposal for joint economic development and solely bilateral negotiations, have all either been refused by other claimants or fallen by the wayside. Only a few non-binding statements of goodwill have been made, like the 2002 Declaration on the Conduct of Parties in the South China Sea (DoC), the occasional scientific or surveying cooperation pact like the Joint Marine Seismic Undertaking (JMSU) in 2005 — which since has become void due to the Philippines’ failure to ratify it — and non-enforceable promises of adhering to the United Nations Convention of the Law of the Sea (UNCLOS), exercising self-restraint, building mutual trust, and maintaining freedom of navigation.

Meanwhile, strong, paranoid, and xenophobic language is associated with official claims and arguments. PRC officials accuse Vietnam of “cherishing hegemonic designs,” falsifying historical facts, and “perfidy.”⁴ The Vietnamese government similarly charges China with conjuring lies, fabricating historical documents, and plotting to conquer Vietnam and Southeast Asia.⁵ Popular protests, Chinese hacking, military build-ups, unilateral offshore oil grants to local and foreign oil companies, construction of buildings on disputed territories, harassment of

³ Ellen Tordesillas, “Chinese hardliners want ‘lesson’ for Spratly intruders,” *Manila Times*, July 11, 2011, <http://www.manilatimes.net/index.php/opinion/editorials/1627-chinese-hardliners-want-lesson-for-spratly-intruders>.

⁴ Ministry of Foreign Affairs of the People’s Republic of China, *China’s Indisputable Sovereignty over the Xisha and Nansha Islands* (Beijing: Foreign Languages Press, 1980), 1-2, 21-22, 28.

⁵ Ministry of Foreign Affairs of the Socialist Republic of Vietnam, *The Hoang Sa and Truong Sa Archipelagos: Vietnamese Territories* (Hanoi: Socialist Republic of Vietnam, Ministry of Foreign Affairs, 1981), 29, 33, 43. It is accessible online: <http://www.scribd.com/drt2002/d/56818051-VN-White-Paper-1981>.

ships in disputed waters, undersea cable cutting, and confrontations between coastal guard ships and fishing boats are the norm.⁶ The ASEAN 2012 summit ended without a joint communique for the first time in its 45-year history, due to disagreement over the dispute; China officially established Sansha city in July 22, 2012, with the task of administering the disputed islands; China published its disputed claim on its passport in May 15, 2012; and Vietnam accused China of firing on a Vietnamese fishing vessel on March 20, 2013.⁷ Although differences are to be expected in any territorial dispute, the level of distrust in this quarrel is unusual.

To be sure, every non-Chinese claimant has conflicting claims with each other. China, however, causes the greatest consternation from other parties due to the sheer size of its claim, its military and economic strength, and the regularity of provocative actions. China's claim is primarily historical. It asserts that the islands and its "adjacent waters" have been Chinese territory since "ancient times," which is "supported by abundant historical and legal evidence."⁸ As such, it is "superior" to other claims that rest more on concepts found in modern international law. The claim is illustrated by a nine-dashed U-Shaped line encompassing nearly all of the

⁶ Carlyle Thayer, "Chinese Assertiveness in the South China Sea and Southeast Asian Responses," *Journal of Current Southeast Asian Affairs* 30:2 (2011): 77-104; "Vietnam and China hackers escalate Spratly Islands row," *BBC News*, June 9, 2011, <http://www.bbc.co.uk/news/world-asia-pacific-13707921>; Esmer Golluoglu, "Vietnamese protest against 'Chinese aggression,'" *Guardian*, July 22, 2012, <http://www.guardian.co.uk/world/2012/jul/22/vietnamese-protesters-chinese-aggression>; Jerry Esplanada, "Meeting on Spratlys turns ugly," *Philippine Daily Inquirer*, July 6, 2011, <http://newsinfo.inquirer.net/21599/meeting-on-spratlys-turns-ugly>.

⁷ Bagus Saragih, "ASEAN's communiqué failure disappoints SBY," *The Jakarta Post*, July 16, 2012, <http://www.thejakartapost.com/news/2012/07/16/asean-s-communicu-failure-disappoints-sby.html>; Li Qiaoyi, "Sansha city established amid tensions in South China Sea," *Global Times*, July 25, 2012, <http://www.globaltimes.cn/content/723135.shtml>; Barbara Demick, "China passports inspire territorial flap in Asia," *Los Angeles Times*, November 25, 2012, <http://articles.latimes.com/2012/nov/25/world/la-fg-china-passports-20121125>; "China denies starting fire on Vietnamese fishing boat," *Guardian*, March 27, 2013, <http://www.guardian.co.uk/world/2013/mar/27/china-denies-fire-vietnamese-boat>).

⁸ People's Republic of China, "China Note Verbale No. CML/8/2011, 14 April 2011," in *Oceans and Law of the Sea, United Nations*, http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2011_re_phl_e.pdf; Ministry of Foreign Affairs of the People's Republic of China, "Historical Evidence To Support China's Sovereignty Over Nansha Islands," in *The Issue of the South China Sea*, <http://www.fmprc.gov.cn/eng/topics/3754/t19231.htm>; Zhao Hong, "The South China Sea Dispute and China-ASEAN Relations," *Asian Affairs* 44:1 (2013), 28. The extent of the term "adjacent" waters, or variants such as "relevant" and "nearby" waters, is not clearly defined due to the fact that the Chinese claim is not explained in detail as of yet.

South China Sea, thus causing a dispute with every other claimant. This Line first officially appeared in 1947, when the Republic of China Ministry of the Interior (內政部 *Neizhengbu*) issued *The Location Map of the South China Sea Islands* (南海諸島位置圖 *Nanhai zhudao weizhi tu*). This map, initially used only for internal government purposes, was officially released to an international audience with the publication of the *Atlas of Administrative Areas of the Republic of China* (*Zhonghua Minguo xingzheng quyū tu* 中華民國行政區域圖) in 1948; see Map 1.⁹ Though the collapse of the ROC occurred shortly after, these claims were followed by its successor, the PRC, from 1949.

The map shows which islands and features of the South China Sea the ROC claimed as Chinese territory. Whether this U-Shaped Line denotes something more is debated intensely among PRC and ROC scholars alike. Most of them, like PRC historian Li Jinming and PRC international law scholar Zhao Lihai, advocate a conservative interpretation: an islands attribution line (*Yihuo daoyu guishu xian* 抑或島嶼歸屬線) that simply shows which islands, features, and adjacent water zones derived by international law are Chinese.¹⁰ Many other PRC

⁹ Zou Keyuan, "South China Sea Studies in China: Achievements, Constraints and Prospects," *Singapore Year Book of International Law* 11 (2007): 89.

¹⁰ Li Jinming, "An Overview of Reviews on the Legal Status of the U-shaped Line in the South China Sea [*Guo Nei Wai Youguan Nanhai Duanxuxian Falü Diwei De Yanjiu Shuping* 国内外有关南海断续线法律地位的研究述评]," *Southeast Asian Affairs* 2 (2011): 60-61; Zhao Lihai, *A Study of the Issue of Maritime Law* [*Haiyang Fa Wenti Yanjiu* 海洋法问题研究] (Beijing: Beijing University Press, 1996), 38. Zou does concede that this majority is still somewhat debatable (Zou, "South China Sea Studies in China," 89). For the purposes of this thesis, depending on the time period, and not including chapter three, these "adjacent" "relevant" or "conferred" water zones surrounding the islands and features refer to those emanating from their coasts or their baselines that are derived by international law, such as internal waters, standard pre-United Nations Convention of the Law of the Sea (UNCLOS) three nautical mile (nm) territorial waters zone, a post-UNCLOS 12 nm limit one, a 24 nm contiguous waters zone, a 200 nm Exclusive Economic Zone (EEZ), and/or a continental shelf zone. For a definition of baselines, UNCLOS, and these various sea zones, please refer to the glossary.

Whether an EEZ can legally be claimed from all the islands and submerged features is disputed by claimants and other countries. This is due to mixed perceptions of Article 121 of UNCLOS, which states that "an island is a naturally formed area of land... above water at high tide... Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf" (See United Nations, "United Nations Convention of the Law of the Sea [UNCLOS]," December 10, 1982, in *Oceans and Law of the Sea: Division for Ocean Affairs and the Law of the Sea*,

and ROC academics, however, such as Taiwanese international law scholar and former ROC politician Fu Kuen-chen and PRC international law scholar Huang Wei, argue that by virtue of its interaction with and dominance of the South China Sea since “time immemorial,” China possesses special historic rights over *all* of the waters in the South China Sea within this U-Shaped Line (特殊的歷史性水域 *Teshu de lishixing shuiyu*).¹¹ Even more, the Line’s geographical coordinates have not been published officially, meaning that other claimants do not know what areas China specifically claims, nor has China stated whether the line denotes ownership over a special and vast waters zone.

Clarification of the vagueness surrounding the U-Shaped Line is central to the resolution of the South China Seas dispute. China’s ambiguity on the matter causes misrepresentation of the

https://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm). Many features are either permanently submerged or only temporarily so during high tide. Many formerly and naturally uninhabitable islands and features have since been artificially modified to sustain human settlement.

¹¹ Fu Kuen-chen, *Legal Status of the South (China) Sea* [*Nan (Zhongguo) Hai Falü Diwei Zhi Yanjiu* 南（中國）海法律地位之研究] (Taipei: 123 Information Co. Ltd., 1995), 35-42; Huang Wei, “Discussing the historical rights of ‘other waters’ within the U-shaped Line [*Lun Zhongguo Zai Nanhai U Xing Xian Nei ‘Qita Haiyu’ De Lishi Xing Quanli* 论中国在南海 U 形线内‘其他海域’的历史性权利],” *Journal of Ocean University in China* 3 (2011): 36-40. The term “historic rights” should not be confused with “historic waters.” As Clive Symmons notes, historic waters usually give the coastal state the same rights found in internal waters (see glossary) under UNCLOS in 1982 — the regulation of *all* foreign maritime traffic, the legal ability to stop and search ships it deems “suspicious,” and the possession of sole exploitation, exploration, and research rights in the historic waters zone and seabed. The International Court of Justice (ICJ) officially adopts this definition. Historic rights entail only a few privileges — usually sole rights to fishing and exploitation, or the right to regulate such activities. Historic waters must necessarily be adjacent to the coastal state, but not necessarily historic rights waters (Clive Symmons, *Historic Waters in the Law of the Sea: a modern re-appraisal* (Leiden: Martinus Nijhoff Publishers, 2008), 1-11). Although Fu’s term 特殊的歷史性水域 (*Teshu de lishixing shuiyu*) literally translates to “special historical waters,” the meaning is “special waters conferred by historic rights.” Fu clearly does not interpret all of the seas within the U-Shaped Line as internal or territorial waters (Fu, *Legal Status of the South (China) Sea*, 35, 38). That being said, Fu’s conception of non-internal and territorial waters appears to be quite suspect. The rights that China is entitled to in this historic rights waters zone according to Fu are in reality strongly similar to those found in historic and territorial waters. He lists four: “1) Sole right to marine resource management and exploitation, protection of marine species, marine research, and seabed surveillance; 2) priority to environmental protection rights; 3) priority to scientific research rights; and 4) regulation of foreign marine and aerial transportation — even related transportation undertaken by peripheral countries such as Vietnam, the Philippines, Malaysia, and India [i.e. transportation that involves going into the South China Sea as *part* of their trips]” (Fu, *Legal Status of the South (China) Sea*, 210). Granted, the fourth right is not as extensive as it may initially seem. As mentioned previously, Fu made clear that foreign maritime traffic is not prevented in this zone as one would in territorial waters. It is better to say that Fu’s “historic rights waters” align with *Chinese conceptions* of an EEZ. As the third chapter of this thesis will reveal, China (PRC) has treated Exclusive Economic Zones in the past as ones conferring certain passage regulation rights, such as the prevention of foreign actions it deems hostile and non-innocent.

Line from all sides, feeding the fire of this dispute. It prompts confusion and concern from other parties. They do not know what to dispute or discuss with China and assume the worst: that China claims sole rights to exploitation and even to passage regulation across most of the South China Sea, as a gigantic historic waters zone.¹² Such misunderstandings contribute to calls for stronger action against China, such as welcoming an increased American military presence, as in the recent Pacific “pivot to Asia.” Such actions anger the Chinese government, which regards the “pivot” as one intended to stunt its rise, so driving the PRC to provocative actions.¹³ By not knowing or stating exactly what the U-Shaped Line means, Chinese policymakers pursue inconsistent actions, sometimes suggesting that they accept the islands attribution line interpretation, and sometimes not. The grasp of history on all sides, so central to this dispute, is flawed from the beginning due to the U-Shaped Line’s vague nature. The dispute cannot be resolved peacefully if its parties do not know what is being disputed.

This thesis seeks to overcome that problem by evaluating China’s claims to the South China Sea and Islands from the eighteenth century to the present. This historical record demonstrates that the U-Shaped Line was and continues to be best characterized as an islands attribution line. Nothing indicates that the Qing, ROC, and PRC governments believed that China owned a special historic rights waters or historic waters zone over most of the South China

¹² Nguyen-Dang Thang and Nguyen Hong Thao, “China’s Nine Dotted Lines in the South China Sea: The 2011 Exchange of Diplomatic Notes Between the Philippines and China,” *Ocean Development & International Law* 43:1 (2012): 42; Katherine Tseng, “The South China Sea Disputes: Current State of Play and Future Prospects,” in *China: Development and Governance*, eds. Wang Gungwu and Zheng Yongnian (Singapore: World Scientific, 2013), 518; “Southeast Asia to reach out to China on sea disputes,” *Thanh Nien News*, April 25, 2013, <http://www.thanhniennews.com/index/pages/20130425-southeast-asia-to-reach-out-to-china-on-sea-disputes.aspx>; Aurea Calica, “Asean pushes sea code, talks with China,” *The Philippine Star*, April 26, 2013, <http://www.philstar.com/headlines/2013/04/26/935041/asean-pushes-sea-code-talks-china>. As Nguyen-Dang Thang and Nguyen Hong Thao outline, it was because the Chinese did not officially explain what the U-Shaped Line denoted that the Philippines’ Note Verbale of denounced China’s claim to interpret the Line as including “relevant waters as well as the seabed and subsoil thereof,” rather than merely an island attribution line.

¹³ Jane Perlez, “China Suggests That U.S., Projecting Power, Is Stirring Asia-Pacific Tensions,” *New York Times*, April 16, 2013, http://www.nytimes.com/2013/04/17/world/asia/china-suggests-us-is-stirring-tensions-in-asia.html?_r=0.

Sea until 1974. While the *possibility* for these views officially emerged in PRC declarations and laws during this year, the islands attribution line remains likelier.

This thesis examines three periods. Chapter one focuses on the Qing Dynasty (1644-1911), the most recent monarchy in China's history. Although China has interacted with these islands for over a millennia and a half, if the historical waters thesis is correct — that China has had historic rights over all of the waters within the U-Shaped Line, due to a prolonged and dominant presence over the South China Sea since “time immemorial” — that claim should be evident in the historical record of the Qing. Consequently, one need not cover the entire history of China's interaction with the islands. Examining the Qing records also assesses the argument that China could not physically maintain its ‘longstanding’ claims and occupation of the South China Sea Islands due to Western and Japanese imperialism after 1840. This chapter assesses issues such as Qing views of the islands as shown in texts and maps, maritime conceptions and naval defence, and how arguments centred on the tributary system, discovery, and intertemporal law affect China's claim. It concludes that no historical basis existed in the Qing dynasty to merit a historic rights waters claim.

The second chapter covers the period from 1946 to 1958, the last years of Republican China and the first years of the PRC. In these tumultuous times emerged the exact shape of the PRC and ROC's modern claims: the U-Shaped Line. To discover how the ROC viewed the islands and sea areas within this Line, the records of the ROC Ministry of the Interior, Ministry of Foreign Affairs, Ministry of National Defence, Navy General Headquarters (海軍總司令部 *Haijun Zongsi Lingbu*), and Air Force General Headquarters (空軍總司令部 *Kongjun Zongsi Lingbu*) will be examined. Most of this evidence involves either telegrams between government departments, situation reports about the islands, plans for construction and resource development

on and around the islands, or summaries of meetings. A significant number of these archival files were declassified only recently, in 2008 and 2009.¹⁴ These primary sources remain ignored by the few English language works devoted to the U-Shaped Line and China's historical interaction with the South China Sea and Islands.¹⁵ Such articles and monographs rely on secondary Chinese and English sources, which often are outdated. This study makes new findings through ROC archival files. Meanwhile, the PRC's early usage of the U-Shaped Line will be addressed through an examination of relevant government documents, laws, declarations, and actions. Unlike the ROC, PRC archival files on the issue continue to be classified. This chapter concludes that both the ROC and PRC at this time clearly construed the U-Shaped Line as an islands attribution line.

The third chapter assesses PRC and ROC claims, attitudes, and actions regarding the South China Sea and Islands from the late 1950s to the present. Contemporary PRC and ROC maritime laws, declarations, and other governmental documents will be examined to address significant developments to them. The focus of this chapter, however, is on the PRC. It became

¹⁴ Many declassification notices are interspersed throughout the archive files. One such can be found in: ROC Ministry of the Interior [內政部 *Neizhengbu*], "Jinzu Xi Nan Sha Qundao An [進駐西南沙群島案, or File on the Stationing of Troops in the Paracel and Spratly Archipelagos]," The ROC National Archives Administration [*Dang'an Guanli Ju* 檔案管理局], file series 0036/E41502/1, file 0006/012/0002.

¹⁵ English language works on the South China Sea dispute focus primarily on political science and international law. Authors often reiterate basic dates and provide brief summaries of notable events as background. Books devoted to China's historical interaction and claims to the islands are limited and dated. These works are: Heinzig Dieter's *Disputed islands in the South China Sea: Paracels, Spratlys, Pratas, Macclesfield Bank* (1976), Marwyn Samuels' *Contest for the South China Sea* (1982), and Chi-kin Lo's *China's Policy Towards Territorial Disputes: The Case of the South China Sea Islands* (1989). Monique Chemilier-Gendreau's *Sovereignty over the Paracel and Spratly Islands* argues that Vietnam's historic claim is superior to that of China, and employs Chinese history only as a foil to her argument. It does not thoroughly assess China's historical interaction in the South China. Her work, in any case, has a decidedly international law focus. Chi-Kin Luo only examines events from about 1950, and attends primarily to China's interaction with the islands and certain non-Chinese claimants. Other books, such as *War or Peace in the South China Sea Region?* edited by Timo Kivimäki, have a few chapters on China's history, while only a few historical articles comprehensively address these issues, such as Ulises Granados' "The South China Sea and its Coral Reefs during the Ming and Qing dynasties: levels of geographical knowledge and political control." Heinzig Dieter, *Disputed islands in the South China Sea* (Wiesbaden: Otto Harrassowitz, 1976); Marwyn Samuels, *Contest for the South China Sea* (New York: Methuen, 1982); Chikin Lo, *China's Policy Towards Territorial Disputes: The Case of the South China Sea Islands* (London: Routledge, 1989); Monique Chemillier-Gendreau, *Sovereignty over the Paracel and Spratly Islands* (The Hague: Kluwer Law International, 2000); Timo Kivimäki, ed. *War or Peace in the South China Sea Region* (Copenhagen: NIAS, 2002); Ulises Granados, "The South China Sea and its Coral Reefs during the Ming and Qing dynasties: levels of geographical knowledge and political control," *East Asian History* 32 (2006): 109-128.

the sole representative of China in the UN on October 25, 1971, and has continued to be the most active state in the region ever since. This chapter concludes that although the *potential* for a historic rights waters or historic waters interpretation arose in the PRC from 1974, the principle of islands attribution remains likelier. The Line, however, has likely become a historic rights waters zone *in effect*. The ROC, meanwhile, officially adopted a historic waters view of the U-Shaped Line in 1993, but remains committed to the islands attribution line in practice.

The thesis concludes with a brief thematic analysis of changes and continuities in Chinese views and claims to the South China Sea and Islands since the Qing Dynasty. Suggested courses of actions and prospects of resolution will then be proposed. Doing so will illustrate the importance that a sound historical knowledge of the dispute provides to the issue's peaceful resolution, or at least to the prevention of escalating antagonism.

Some points about methodology must be mentioned. Firstly, unless otherwise specified, the term "China" refers to the dominant government in that country at any time: the Qing government during the Qing Dynasty (chapter one), the Republic of China during the late Republican years (chapter two), and the People's Republic of China from 1971 (most of chapter three). The appellations "PRC" and "ROC" will be used when more specificity is required. Secondly, this is a multidisciplinary work incorporating the disciplines of history, political science, and international law. Its central emphasis, however, is historical, and on how the Chinese themselves *perceived* the South China Sea and Islands throughout history. Finally, some notes on language are required. This thesis uses the Pinyin romanization system for Mandarin, unless referring to names that were famous in earlier transliteration systems like Chiang Kai-Shek, or when citing an author or figure whose legal name is not spelled in Pinyin. As regards translation, Chinese characters and their Pinyin romanization usually will be included

when citing Chinese sources. For purposes of convenience, Traditional Chinese is used whenever dealing with texts initially written in this script; so too with Simplified Chinese. Chinese is a tonal language. Thus, any romanized word can denote several possible characters. Avoiding a simple listing of romanization eliminates confusion. Finally, all references to the glossary and maps can be found in the Appendix of the thesis. The glossary is particularly important. Chapter three uses many terms found in international law, especially regarding maritime zones. To avoid excessive footnotes, their definitions are found in the glossary. Footnotes will direct the reader to the glossary when a term requiring special attention is first used.

Chapter 1: Qing China and the South China Sea Islands, 1644-1902

1.1 The Historical Nature of the U-Shaped Line

From the standpoint of China, the U-Shaped Line shows that it has owned the South China Sea Islands since ancient times. For instance, the ROC Ministry of the Interior, Ministry of Foreign Affairs, Ministry of Defence, and General Naval Command decided on September 25, 1946, a year before the creation of the 1947 U-Shaped Line map, that China's claims to the islands and features of the South China Sea after World War Two would follow a specific precursor map.¹⁶ This map, drawn in 1946 by the Ministry of the Interior, was titled the *Location Sketch Map of the South China Sea Islands (Nanhai Zhudao Weizhi Lüetu 南海諸島位置略圖)*; see Map 2. In 1946, these four departments held that the ROC's claims to the Paracel and Spratly islands rested on “geography and history.”¹⁷ Adamant assertions of the Paracels having “always” (*yixiang* 一向) been Chinese territory are evident in other ROC reports.¹⁸ Many ROC reports on the islands briefly outlined the historical justification for China's reclaiming of sovereignty over them. On June 14, 1947, one memorandum on the need to develop facilities on the Paracel islands sent by the Ministry of Defence to the Executive Yuan (行政院 *Xingzhengyuan*) — the executive branch of the ROC civilian government — argued that the appearance of the features

¹⁶ The ROC Ministry of Foreign Affairs [*Waijiaobu Dang'an* 外交部檔案, herein referred to as MOFA], “Nansha Qundao [南沙群島, or the “Spratly Archipelago”],” the Historical Archives of the Department of Modern History in the Academia Sinica [*Zhongyang Yanjiuyuan Jindaishi Yanjiusuo Dang'an Guancang* 中央研究院近代史研究所檔案館藏], file series 019.3/0012, file 097.

¹⁷ MOFA, “Nansha Qundao [南沙群島],” file series 019.3/0012, file 154.

¹⁸ MOFA, “Xisha Qundao Wenti [西沙群島問題, or the “Issue of the Paracel Archipelago”],” file series 019.3/0001, file 011. The example here was written in February 29, 1947.

in Chinese historical records since the Song dynasty (960-1279) showed that the islands always had been an “inherent” part of Chinese territory.¹⁹

Subsequent authors use the same logic to support a historic rights waters zone. Huang Wei argues that “... although the U shaped Line has only been officially marked in maps for 60 years, the culture and civilization the Line encompasses shows the accumulation and result of thousands of years of production [i.e. work] and daily life practices of the Chinese people.”²⁰ Fu claims that the U-Shaped Line confers historic rights over all of the waters it encompasses, by arguing that China “since time immemorial (自古 *zigu*) was the first to use the South China Sea for navigation and other uses [such as fishing]. Moreover, the number of countries that used this sea was limited... for a long period of time [here referring to ancient and imperial Chinese times], the Chinese government played the part of Master of the [South China] Sea and encountered no difficulties [挑戰 *tiaozhan*, here meaning “opposition to”] regarding this state of affairs. This special historical relationship with these waters merits their treatment as something slightly different from the ordinary high seas.”²¹ This chapter examines the last link of this supposedly

¹⁹ ROC Military History and Translation Office of the Ministry of Defence [*Guofangbu shi zheng bian yi ju* 國防部史政編譯局, herein referred to as MHTO], “Jinzhū Xīshā Qūndǎo Àn [進駐西南沙群島案, or “File on the Stationing of Troops in the Paracel and Spratly Archipelagos”],” the ROC National Archives Administration [*Dāng’ān Guǎnli Jū* 檔案管理局], file series 0035/061.8/3030, file 005/012/0010. The Chinese passage is: “... 中國南海諸島總屬我國固有領土，見諸宋元明清歷代史籍由來久遠 *Zhongguo nanhai zhudao zongshu wo guo gu you lingtu, jianzhu Song Yuan Ming Qing lidai shiji youlai jiuyuan*.” In English: “The South China Sea islands definitely classify as Chinese territory, the origins of which have been long established through the historical records of the Song, Yuan, Ming, and Qing dynasties.” The purpose of historical summaries in reports such as this was to argue that the islands were ‘without a doubt’ Chinese, thereby justifying to the recipient of the telegram, often the Executive Yuan, the need to effectively occupy and protect them.

²⁰ Huang, “Discussing the historical rights of ‘other waters,’” 37. The quote in Chinese is: “... 南海 U 形线在地图上被标识出来虽仅有 60 余年, 可是, 它所包含的民族文化和海洋文明却是经过千百年中国人生产和生活实践积累、积淀形成的 [*Nanhai U xing xian zai ditu shang bei biaozhi chulai sui jin you 60 yunian, keshi, ta suo baohan de minzu wenhua he haiyang wenming que shi jingguo qian bai nian zhongguo ren shengchan he shenghuo shijian jilei, jidian xingcheng de*].” “Production” supposedly means the fishing and guano exploitation efforts of Chinese fishermen and miners throughout the centuries.

²¹ Fu, *Legal status of the South (China) Sea*, 41. The Chinese passage is: “中國人自古航行, 利用此一水域, 且四周是用此一水域的國家有限。。中國政府在此一水域長期, 不受挑戰地, 扮演著主宰者的角色。這種特殊的歷史關係, 應使此一水域與一般水域稍有不同之處 *Zhongguoren zigu hangxing, liyong ciyi shuiyu, qie*

rich and continuous historical experience, the Qing dynasty, and whether it supports the historic rights waters zone interpretation. The feasibility of the islands attribution interpretation will be examined using many pre-Qing and Qing dynasty sources and international legal concepts. Qing documentation alone will be used to assess the historic rights waters zone thesis.

1.2 The Feasibility of the Island Attribution Line

Many pro-Chinese scholars²² such as Shen Jianming stress that China's discovery and knowledge of the South China Sea islands constitute the best bases for its claim of sovereignty over them.²³ Moreover, of all the claimants in this dispute, China possesses the earliest and thickest documentation about these islands. References in Chinese literature abundantly demonstrate awareness of the South China Sea and its islands since the Song dynasty (960-1279 CE), and possibly under the Zhou dynasty (1046-256 BCE).²⁴ However, works written before the early twelfth century, such as the *Scattered Books of the Zhou Dynasty* (*Yi Zhou Shu* 逸周書, third century BCE) and Wang Zhen's *Records of Rarities in the Southern Boundary* (*Nanzhou Yiwu Zhi* 南州異物志, third century CE) provide references that are too vague to be confidently correlated with the South China Sea islands.²⁵ The earliest clear association between at least

sizhou shi yong ciyi shuiyu de gujia you xian ... Zhongguo zhengfu zai ci yi shuiyu changqi, bu shou tiaozhande, banyan zhe zhuzai de jiaose. Zhezhong teshu de lishi guanxi, yingshi ciyi shuiyu yu yiban shuiyu shaoyou butong zhi chu."

²² The term "pro-Chinese scholars" indicates academics who argue at least that the South China Sea islands are Chinese, and includes advocates of the historic rights waters zone interpretation of the U-Shaped Line.

²³ Shen Jianming, "Territorial Aspects of the South China Sea Island Dispute," in *Security Flashpoints: Oil, Islands, Sea Access and Military Confrontation*, eds. Myron Nordquist and John Moore (The Hague: Martinus Nijhoff, 1998), 186-87.

²⁴ Shen, "Territorial Aspects of the South China Sea Island Dispute," 150.

²⁵ Samuels, *Contest for the South China Sea*, 10. Shen notes that the *Yizhou Shu* recorded six barbarians that the Western Zhou ordered to provide hawksbill turtles as tribute, which Wang Zhen later recorded in his *Nanzhou Yiwu Zhi* as being found in the South China Sea (Shen, "Territorial Aspects of the South China Sea Island Dispute," 150). This reference, however, does not specify whether the locations mentioned were the South China Sea islands. Meanwhile, as Marwyn Samuels notes, the correlation of Wang Zhen's mention of "magnetic rocks (*cishi* 磁石)" in a sea area called *Zhanghai* (漲海, literally "Expansive Sea") to the South China Sea islands is not satisfactory, due to uncertainty of what geographical scope the *Zhanghai* encompassed. The passage also records that the magnetic

some South China Sea islands and their ancient Chinese names — the *Wanli Shitang* (萬里石塘, or literally, “ten thousand mile stone embankments”), *Qianli Changsha* (千里長沙, literally “thousand mile long sandbanks”), or close variants thereof²⁶ — did not emerge until almost a thousand years later. Zhou Qufei’s *Substitute Replies from Lingwai* (*Lingwai Daida* 嶺外代答), written in 1178, and Zhao Rugua’s *Records of the Various Barbarian Peoples* (*Zhu Fan Zhi* 諸藩志), written between 1225 and 1242, were chronicles on sea routes and foreign places. They described the geographical locations and surroundings of the South China Sea islands and their neighbouring landmarks quite accurately; for instance, the placement of the *Qianli Changsha* and *Wanli Shitang*²⁷ south of Hainan island, east of Vietnam, and in the centre of the South China Sea. They also mention the three main currents in the South China Sea that drag boats into shallows of the features.²⁸

Generally speaking, the ancient Chinese appellation that included the term “Changsha (長沙)” indicates the Paracels, while the words “Shitang (石塘)” — and with one exception in Zhao’s work, “Shichuang (石床)” — denotes at least part of the Spratlys, if not all.²⁹ Chinese and Western scholars debate the specific correlation of the *Wanli Shitang* with the Spratlys. Xu

rocks lay beyond China’s frontiers (*jiaowai* 郊外), which would not bolster China’s claim to the South China Sea islands even if the correlation was proven.

²⁶ Ancient Chinese texts frequently switch the length portion of the terms *Wanli Shitang* and *Qianli Changsha* around. That is, the “Wanli” (“ten thousand miles”) in *Wanli Shitang* will sometimes be written as “Qianli” (“thousand miles”), as in *Qianli Shitang*. The same goes for the “Qianli” in *Qianli Changsha*; after the change, it becomes *Wanli Changsha*. Very occasionally, words other than the pairings *Changsha* and *Shitang* were used. Usually, these variants include at least the “sand (沙 *sha*)” and “stone (石 *shi*)” characters, a useful way to maintain the differentiation between the terms.

²⁷ Zhao Rugua used the variant *Wanli Shichuang* (萬里石床), literally “bed of rock/gravel.” Samuels, *Contest for the South China Sea*, 16.

²⁸ Samuels, *Contest for the South China Sea*, 15-17.

²⁹ Samuels, *Contest for the South China Sea*, 15-17.

Zhiliang and Shen Jianming take the correlation as given.³⁰ Heinzig Dieter and Samuels argue that the feature was correlated with Macclesfield Bank in Chinese documents written before the travel chronicle *Records of Sights and Sounds of the Maritime Countries* in 1730 (*Hai Guo Wenjian Lu* 海國聞見錄).³¹ Many other exceptions occurred after this date.³² The correspondence between the *Qianli Shitang* and Paracel Islands, however, is not in contention after Zhou's Qufei's work in 1178.

Ming and Qing dynasty works stated a claim to the islands. Zhang Yuesong and Yi Ming's *Records of Qiongzhou* (*Qiongzhou Fu Zhi* 瓊州府志), completed in 1841, addresses topics related to Qiongzhou prefecture (*Qiongzhou* 瓊州, or present-day Hainan). It quotes the following: "The (sub-prefecture) of Wanzhou [萬州] has [i.e. encompasses] the *Qianli Shitang* and *Wanli Changsha*. These are the most dangerous areas in the Qiong Sea [short form for the waters around Hainan Island]."³³ Here, Wanzhou described one of the five old sub-prefectures of Hainan Island, plainly indicating that the *Qianli Changsha* and *Wanli Shitang*, by this time solidly correlated with the Paracels and Spratlys, were administratively part of China.³⁴ Although Shen does not mention an earlier Qing work that asserted the two island groups as part of China, Chinese texts of the Ming dynasty and before group the *Wanli Shitang* and *Qianli Changsha* with Hainan prefecture.³⁵ Given this data, the islands attribution line interpretation is

³⁰ Xu Zhiliang, "The Evolution of Maritime Territory in Republican China and the Formation of the Interrupted Border Line in the South China Sea [民国海疆版图演变与南海断续国界线的形成 *Minguo Haijiang Bantu Yanbian Yu Nanhai Duanxu Guojiexian de Xingcheng*]," *Pacific Journal* 18:4 (2010), 93; Shen, "Territorial Aspects of the South China Sea Island Dispute," 156-57.

³¹ Dieter, *Disputed islands in the South China Sea*, 22-23; Samuels, *Contest for the South China Sea*, 36, 38.

³² Samuels, *Contest for the South China Sea*, 35-36.

³³ Shen, "Territorial Aspects of the South China Sea Island Dispute," 171. In Chinese: "萬州有千里石塘、萬里長沙，為瓊洋最險之處 *Wanzhou you Qianli Shitang, Wanli Changsha, wei Qiong yang zuixian zhi chu*."

³⁴ Not to be confused with present day Wanzhou district in Chongqing city, Sichuan province (located within the Chinese mainland and far from the coast).

³⁵ Shen, "Territorial Aspects of the South China Sea Island Dispute," 167. Examples include Tang Zhou's *Zhengde Qiong Tai Zhi* (正德瓊台志, or *Records of Qiongzhou and Taiwan During the Reign of Emperor Zhengde*), 1521,

feasible. The U-Shaped Line stemmed from a longstanding historical basis from China's viewpoint. It denotes Chinese *claims* to the islands, regardless of whether they always have been Chinese in practice, or effectively occupied.

Whether the islands have been historically Chinese is another matter. Shen asserts that discovery confers sovereignty over the islands to China precisely because he cannot make a stronger claim about continuous habitation.³⁶ Until the late nineteenth century, the islands were not conducive to permanent human habitation. They are miniscule and never have sustained native populations; only a few of the hundred or so features of the South China Sea Islands have a freshwater source; strong currents flowing towards the islands, combined with the many shallows, endanger navigation there; many features are hundreds of nautical miles (nm) from the nearest country; many lack food sources; saline soil makes the establishment of farms in most of the Spratly Islands difficult; and tropical storms frequent these islands.³⁷ Shen also asserts that discovery before the eighteenth century had more weight when determining sovereignty than in years afterwards.³⁸ These two arguments prompt Shen to conclude that intertemporal law and regional context must be taken into account when resolving the dispute. That is, international law at the time and place — East Asia before the eighteenth century — and the disputed islands' inhospitable nature that discouraged early human habitation there need to be considered just as much as modern international law, if not more.

Much of Shen's argumentation is debatable. Monique Chemilier Gendreau rates the Vietnamese claim to the Spratlys and Paracels over China's primarily because of the

and the *Qiong Guan Gu Zhi* (瓊管古志, or *Ancient records on the Jurisdiction of Qiongzhou Province*), written sometime during the Ming Dynasty.

³⁶ Shen, "Territorial Aspects of the South China Sea Island Dispute," 189-91.

³⁷ Samuels, *Contest for the South China Sea*, 183-194; Chemillier-Gendreau, *Sovereignty over the Paracel and Spratly Islands*, 1-21. Freshwater containing islands are as follows: Lincoln Island, Robert Island, Duncan Island, Itu Aba island, Nam Yit island, Southwest Cay, Thitu Island, and Spratly Island.

³⁸ Shen, "Territorial Aspects of the South China Sea Island Dispute," 186-87.

conventional idea that effective occupation must be exercised alongside an inchoate claim to discovery; Vietnam supposedly had the earliest sign of this correlation.³⁹ Shen's description of territorial acquisition under Western international law before the eighteenth century, moreover, is erroneous. It did not solely emphasize discovery as the criteria for a claim. Many European works advocating the colonization of North America during the sixteenth century ridiculed the Papal Bull of 1493 and Treaty of Tordesillas in 1494, through which the Pope granted Spain and Portugal all of North and South America, explored and unexplored. The *Discourse of Western Planting*, written in 1584 by Richard Hakluyt, one of the most important English advocates for North American colonization, used Justinian law to assert that something indicating *corpus*, or effective occupation, was required to justify any inchoate claim, labelled *animus*, over a certain piece of territory.⁴⁰ *Animus* entailed factors such as discovery, fishing, and claims in written discourse, while *corpus* involved physically working and defending the land with a sovereign's blessing. *Animus* alone cannot sustain a claim without *corpus*.⁴¹ By the mid Qing period, major figures of Western international law, such as Francisco de Vitoria, Alberico Gentili, or Hugo Grotius, advocated the principle of the necessity for effective occupation of territories. Even more, Shen employs what he thinks are *European* notions when describing international law before the eighteenth century. Yet, China did not know of or respect these ideas.

In any case, Shen's argument that the islands were not conducive to permanent human habitation *at the time*, and that other limited signs of sovereignty like territorial claims and fishing in the region must stand in their place, sustains the feasibility of an islands attribution

³⁹ Chemillier-Gendreau, *Sovereignty over the Paracel and Spratly Islands*, 1-143.

⁴⁰ Ken MacMillan, *Sovereignty and Possession in the New World* (Cambridge: Cambridge University Press, 2006), 68, 108-109; Richard Hakluyt, *A Particular Discourse Concerning The Greate Necessitie And Manifold Commodities That Are Like To Grow To This Realme of Englande By The Western Discoveries Lately Attempted, Written in the Yere 1584 [Known as Discourse of Western Planting]*, eds. David Quinn and Alison Quinn (London: Hakluyt Society, 1993), 96-112.

⁴¹ MacMillan, *Sovereignty and Possession in the New World*, 68, 108-109.

interpretation. The uncertainty surrounding this argumentation will remain until it is resolved in a court case. This uncertainty stems from many different procedures for resolution and contradictory rulings about the importance of intertemporal law and history to territorial disputes. Article 38(1) of the Statute of the UN International Court of Justice (ICJ), for instance, draws on the following to decide its rulings:

- a. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. International custom, as evidence of a general practice accepted as law;
- c. The general principles of law recognized by civilized nations;
- d. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rule of law.⁴²

The first three of these sources are problematic in dispute resolutions, because they hinge on conventions, customs, and principles accepted by all “civilized” nations or “expressly recognized by the contesting states.” Chinese views almost certainly will not match those of other disputants; that is why the South China Sea dispute exists at all. China insists that arguments based on history and intertemporal law should dominate the resolution of territorial rulings. Vietnam and the Philippines rely more on modern international law, and denounce China’s conception of the matter. All disputants, not just China, have overlapping claims with others, causing further disagreements over the islands. The Philippines and especially Malaysia and Brunei, with little to no historical interaction with the islands, rely on more legal argumentation than Vietnam. This vagueness about and disagreement over international law also explains the irrelevance of arguments that China cannot use discovery and intertemporal law because it was outdated by modern international law.

⁴² United Nations, “Statute of the International Court of Justice,” June 6, 1945, Article 38, in *Basic Documents*, <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>. Article 59 merely states that “The decision of the Court has no binding force except between the parties and in respect of that particular case.”

“Past judicial decisions and the writings of the most highly qualified authors on international law” are even more problematic. Not only are they secondary in importance, as the ICJ admits, but their conclusions are contradictory. For instance, the *Island of Palmas* and *Eastern Greenland* cases of 1928 and 1933 emphasized the importance of historical, social, and administrative links with the disputed territory as recorded in ancient and recent history. The *Minquiers and Ecrehos* case of 1953 placed manifestations of effective occupation from the seventeenth century supreme over historical title.⁴³ More generally, two methods for the resolution of territorial disputes exist through international arbitration. The International Court of Justice (ICJ) stresses the importance of technical concepts via modern international law, such as acquiescence, recognition, or preclusion (estoppel). Arbitrary tribunals, with panels composed of experts put forth by the disputants, give more attention to controversial and disputed factors, like claimants’ historical, economic, social, and cultural links to a territory.⁴⁴ The ICJ considers such factors less significant. The convening of a tribunal to solve the dispute is as unlikely as arbitration from the ICJ, because China rejects anything but bilaterally concluded settlements.⁴⁵ Other disputants have thus rejected China’s proposal.

The feasibility of the islands attribution line is thus partially established from a historical and legal standpoint. It is both vindicated by the existence of Chinese historical claims to the islands, and has the potential to fit conventional definitions of international law. Conversely, the historic rights waters zone interpretation has no historical basis at all.

⁴³ Sharma, 289-290.

⁴⁴ Surya Sharma, *Territorial Acquisition, Disputes and International Law* (The Hague: Martinus Nijhoff, 1997), 210-211.

⁴⁵ Ministry of Foreign Affairs of the People’s Republic of China, “Basic Stance and Policy of the Chinese Government in Solving the South China Sea Issue,” in *The Issue of the South China Sea*, <http://www.fmprc.gov.cn/eng/topics/3754/t19230.htm>.

1.3 The Feasibility of the Historic Rights Waters Zone Interpretation

The historic rights waters zone demands the presence and validation of Chinese control of the islands and the South China Sea that cannot be conferred merely by claims. As Symmons notes, historic rights are derived from the continuous and prolonged usage and dominion over certain waters with acquiescence from nearby states.⁴⁶ Qing texts that merely mention the *Wanli Shitang*, *Qianli Changsha*, or variants thereof in passing do not make this case. While many books refer to these islands, they rarely do so in detail.

Three themes emerge in an examination of the Qing texts. The first concerns the mere description of the islands. The first Qing work to do so was Chen Lunjiong's *Records of Sights and Sounds of the Maritime Countries* (海國聞見錄 *Haiguo Wenjian Lu*). Completed in 1730, it stemmed from the Kangxi Emperor's request for a comprehensive survey of the South China Sea after the pro-Ming resistance in Taiwan surrendered in 1683.⁴⁷ The document describes the geography, location, and maritime routes to many foreign kingdoms, similar in spirit to Zhao's *Records of the Various Barbarian Peoples*. A few passages mention the *Qianli Shitang* and *Wanli Changsha*. For example:

[Sailing] by oneself in the Greater Sea of Qizhou [七州大洋 *Qizhou dayang*⁴⁸]: The beginning of the sea lies off [of Hainan Island]. The waters here are lively and swing back and forth. There is a ridge of mountains marking the start of the Sea of Qizhou [七州洋 *Qizhou Yang*].⁴⁹ Sail with the correct compass bearings and with strong yet smooth winds. Six to seven days is needed for one to cross [the *Qizhou Yang*], after which one will be able to spot Tiebiluo Mountain [咕囉囉, or present day Cham Islands], which lies off the coast of *Guangnan* [廣南, or Vietnam as it was known to the Chinese at the time]. To the east, one will encounter [犯 *fan*] the *Wanli Changsha* [Ten Thousand *li* Sandbank] and *Qianli Shitang* [Thousand *li* Stone Embankments].

⁴⁶ Symmons, *Historic Waters in the Law of the Sea*, 1, 2, 4.

⁴⁷ Samuels, *Contest for the South China Sea*, 34.

⁴⁸ Traditionally correlated with part of the South China Sea.

⁴⁹ That is, if one starts off from Hainan Island.

To the west are currents that flow into Guangnan Bay (present day Gulf of Tonkin). Without a western wind, one cannot leave this area.⁵⁰

Here, as throughout the text, the South China Sea Islands (the *Qianli Changsha* and *Wanli Shitang*) and the area around them are mentioned solely by *describing* their geographical location and nearby maritime routes. While valuable information for historians, it provides no basis for a historic rights waters zone. If it did, one could use Ming and Qing documents to prove a claim for Chinese ownership of Europe. Chen simply noted the presence of the *Qianli Changsha* and *Wanli Shitang*, but did not list them as destinations or even landmarks. He noted only that if one strayed east from his described route, these islands would be encountered. The word “encounter” requires clarification.⁵¹ The corresponding Chinese character *fan* 犯, here possessing the meaning “to encounter”, normally denotes “illegality,” “trespassing,” and “violating.” The term better translates as “stray into,” or “intrude into,” indicating that the Chinese regarded the islands as locations to be avoided.

Another passage in the book mentions the South China Sea in passing, but it is no more illuminating. It merely describes sea routes by outlining the relative locations of the *Nan’ao qi* (南澳氣, or Pratas Island), *Wanli Changsha*, *Qianli Shitang*, *Changshamen* (長沙門, or Macclesfield Bank), their surroundings, and geographical distances between certain landmarks

⁵⁰ Chen Lunjiong, “Haiguo Wenjian Lu [海國聞見錄, or Records of Sights and Sounds of the Maritime Countries],” in *Zhongguo Nanhai Zhu Qun Dao Wenxian Huibian* [中國南海諸群島文獻彙編 *The Collection of Documents on the South China Sea Islands*], 15 vol. (Taipei: Taiwan Xuesheng Chuban She, 1984), reprinted ed., vol. 3: 120. The Chinese text is as follows: “獨於七洲大洋。大洋頭而外。活活蕩蕩。岡有山形標識。風極順利對針。亦必六七日始能渡過而見廣南帖囉羅。。偏東則犯萬里長紗。千里石塘。偏西則恐溜入廣南灣。無西風不能外出。” In pinyin: “*Du yu Qizhou Dayang. Dayang tou er wai. Huohuo dangdang. Gang you shan xing biaoshi. Feng ji shunli dui zhen. Yi bi liu qi ri shi neng duguo er jian Tiebiluo shan. Waiyang zhi Wailuoshan. Fang you zhunsheng. Pian dong ze fan Wanli Changsha. Wanli Shitang. Pian xi ze kong liu ru Guangnanwan. Wu xifeng bu neng wai chu.*”

⁵¹ As in, “To the east, one will encounter [犯 *fan*] the *Wanli Changsha* [Ten Thousand li Shoals] and *Qianli Shitang* [Thousand li Bank].”

within the South China Sea.⁵² Knowledge of sea routes indicates familiarity with the islands, but they do not equate to an effective expression of sovereignty over them.

Chen's *Records of Sights and Sounds of the Maritime Countries* merely described the geographical location of the islands and surrounding regions. Yet, it was the earliest work on these islands for the ruling Manchu founders of the Qing, who originated inland, far removed from oceanic matters. The *Records of Sights and Sounds of the Maritime Countries* met the Kangxi emperor's request for a maritime *reconnaissance* of the South China Sea. Chen's work, the start of Qing official documentation of maritime affairs, aimed simply to describe the South China Sea region.

The same tendency merely to list the existence of the islands, however, continues in virtually all Qing works, such as Yan Ruyou's *Essentials of Maritime Defence* (*Yangfang Jiyao* 洋防輯要) in 1838 and Wei Yuan's *Illustrated Gazetteer of the Maritime Countries* (*Haiguo Tuzhi* 海國圖志) in 1847.⁵³ Shen states that the *Maritime Records* (*Hailu* 海錄), orated by Xie Qinggao and written by Yang Pingnan in 1844, divided the South China Sea islands into four groups: *Jichuan*, *Dongsha*, *Changsha*, and *Shitang*,⁵⁴ the latter two referring to the Paracels and Spratlys.⁵⁵ Nothing indicates that China regularly used the seas surrounding the islands, a key point to prove that China dominated these waters.

⁵² Granados, "The South China Sea and its coral reefs during the Ming and Qing dynasties," 117; Samuels, *Contest for the South China Sea*, 36.

⁵³ Samuels, *Contest for the South China Sea*, 40.

⁵⁴ Shen, "Territorial Aspects of the South China Sea Island Dispute," 170-71. Shen and Granados lists Xie Qinggao as the author of the *Maritime Records*, while Samuels list Yang Bingnan. They disagree on when the book was written. Shen believes it to be 1844, Samuels states that it was begun in 1820, and Granados asserts that it was written from 1820-1821 (Granados, "The South China Sea and its coral reefs during the Ming and Qing dynasties," 116; Samuels, *Contest for the South China Sea*, 37; Shen Jianming, "Territorial Aspects of the South China Sea Island Dispute," 170). Shen notes that Chinese scholars still debate what *Jichuan* and *Dongsha* specifically mean.

⁵⁵ Samuels by and large accepts this correlation, although he believes the *Qianli Shitang* could have referred to just a part of the Spratly Islands (Samuels, *Contest for the South China Sea*, 38).

The second common theme in Qing passages on the islands was danger. They stressed the hazard of the islands' shallows to maritime navigation and warned sailors against travelling far from the coast into the South China Sea. Yang Bingnan's *Maritime Records (Hailu)* recorded what awaited unwary sailors who wandered into these waters:

Ships that stray into [the *Wanli Changsha* 萬里長沙] cannot return due to these floating sands. Many ships are destroyed here. Sailors who encounter this fate have no choice but to lie on wooden planks [i.e. the flotsam of their shipwreck] and spend many days floating towards the sands. If there are ships that appear, they can dispatch small boats (*sanban* 三板) to rescue the sailors and enable them to live... To the south of the Sea of Qizhou [*Qizhou* 七州洋] is the *Qianli Shitang* [千里石塘]. Here, there are a great many terrible and furious waves. If ships stray into this area, they will be smashed to pieces...⁵⁶

Shallows, storms, and frequently changing winds and currents that can push boats towards the islands and features (“floating sands”) characterize the area, prompting Yang to remark that ships straying into the area cannot escape.⁵⁷ Qing records stressed these hazards, although sailors had known this danger for centuries. As Granados and Samuels note, major trading routes avoided the dangerous centre of the South China Sea.⁵⁸ The most utilized route hugged the coastline of Southeast China and eastern Vietnam, down south to the coasts of Thailand, Indonesia and Malaysia. That Chinese sailors largely avoided a significant portion of the South China Sea — the waters that surrounded the islands — attenuates any claim to a historical rights waters zone within the U-Shaped Line.

⁵⁶ Yang Bingnan, “Hailu [海錄, or Maritime Records],” in *Zhongguo Nanhai Zhu Qun Dao Wenxian Huibian* [中國南海諸群島文獻彙編 *The Collection of Documents on the South China Sea Islands*], 15 vol. (Taipei: Taiwan *Xuesheng Chuban She*, 1984), reprinted ed., vol. 3: 265-266. The Chinese passage is as follows: “船誤入其中必為沙所湧不能復行多破壞者遇此須取木板浮于沙面人臥其上數日內若有海船經過放三板拯救可望生。。。七洲洋正南則為千里石塘萬里林立洪濤怒激船若誤經立見破碎。。。 *Chuan wu ru qi zhong bi wei suo sha yong bu neng fuxing duo pohuai zhe yu ci xu qu mu ban fu yu sha mian ren wo qi shang shu ri nei ruo you hai chuan jingguo sanban zhengjiu kewang sheng... Qizhouyang zhengnanze wei Qianli Shitang Wanli linli hong ji nu chuan ruo wu jing li jian posui...*”

⁵⁷ [US] National Geospatial Intelligence Agency, “South China Sea and the Gulf of Thailand,” *Sailing Directions*, vol. 162, 9th edition (Annapolis: ProStar, 2004), 3-14.

⁵⁸ Granados, “The South China Sea and its coral reefs during the Ming and Qing dynasties,” 116-18; Samuels, *Contest for the South China Sea*, 23.

A third theme in Qing works on the South China Sea involved naval defence. Shen quotes the following from Xu Jiagan's *A Brief Introduction to the Defense on the Sea* (*Yangfang Shuolüe* 洋防說略), written in 1887: "[The *Qianli Shitang* and *Wanli Shitang* were] the natural moat of the Yue Sea and are known as most [sic] dangerous and difficult areas, where caution must be exercised by all who talk about ocean defense."⁵⁹ This allusion parallels a passage in Yang Pingnan's *Maritime Records* (*Hailu*) about the *Wanli Changsha*'s relation to Vietnam: "Floating sands can be found in the middle of the sea. They are several thousand *li* in length and constitute the outer screen for Annam."⁶⁰ This "ocean defence" does not equate to Chinese patrols or bases in the Paracels, but simply described a natural geographic feature.

One of the greatest Chinese works on maritime security, the *Compendium of Maritime Defence of Guangdong* (*Guangdong Haifang Huilan* 廣東海防彙覽), repeats this vagueness. This work was completed in 1838 by Lu Kun and Deng Tingzhen, Governor Generals of Guangxi and Guangdong Province (Deng succeeded Lu in 1835). It filled a demand from the Qing government for a thorough compilation of all materials about the coastal and naval defence of Guangdong. The Qing focused on Guangdong because the Canton system of trading, established by the Qianlong emperor in 1759, was situated in this province.⁶¹ The document's value stems from its comprehensive summation of Qing naval thought and management on the eve of the Opium War, alongside the preservation of earlier documents.⁶² It describes naval

⁵⁹ Shen, "Territorial Aspects of the South China Sea Island Dispute," 171-72.

⁶⁰ Yang Bingnan, "Hailu [海錄, or Maritime Records]," 265. The original passage in Chinese is "海中浮沙也長數千里為安南外屏 *Hai zhong fusha ye chang shu qian li wei Annan wai ping*." The preceding sentence talks about the *Wanli Changsha* [萬里長沙], and the sea refers to the same one that encompasses that feature.

⁶¹ Wang Hongbin, "Introduction," in Lu Kun and Deng Tingzhen, *Guangdong Haifang Huilan* [廣東海防彙覽, or *Compendium of Maritime Defence of Guangdong*], ed. Wang Hongbin et al. (Shijiazhuang: Hebei renmin chubanshe, 2009), 1. The Canton system of trade was one that was characterized by heavy trade restrictions often unfavorable to the Western merchants. The designation stems from the fact that Western traders were only allowed to trade at Canton, or present day Guangzhou.

⁶² Wang, "Introduction," in *Guangdong Haifang Huilan*, 1.

patrols undertaken in the Guangdong region, along with military administrative units, jurisdictions, and groupings.⁶³ Although Qiongzhou (Hainan) prefecture administered the *Wanli Shitang and Qianli Changsha*, it was overseen by Guangdong province.⁶⁴ That the *Compendium of Maritime Defence of Guangdong* was written before the beginning of Western imperialism also answers whether China earlier exercised a dominant presence in the South China Sea and Islands. Virtually no English language work on China's interaction with the islands examines this significant work.

The maps in the first chapter, indicating the coast of Guangdong province, are divided into three sections: the “Eastern Route Map,” “Western Route Map,” and “Central Route Map” (*donglutu* 東路圖, *xiliutu* 西路圖, and *zhonglutu* 中路圖).⁶⁵ Three maps of Nan'ao Island (南澳), Macau (*Ao'men* 澳門), and Humen (虎門) also are included. Nearly every island just off the coast of Guangdong is drawn and labelled, noteworthy and obscure. The few absences are irrelevant. The maps do not show any of the South China Sea islands. Granted, their purpose was to show the mainland coast of Guangdong province. Lu and Deng did not state that these maps showed the scope of Chinese naval patrols in all territories administered by Guangdong, although that interpretation seems likely for a compendium on the naval defence of the province that administered the South China Sea islands. However, this argument weakens the historic rights waters zone argument. The wholesale exclusion of islands and sea areas just a few miles from the mainland reveals the insignificance of naval attention to the South China Sea and its islands.

The depiction of the region surrounding Hong Kong illustrates how close this zone of naval defence stood from the mainland.⁶⁶ The words “*Xianggang Waiyang* [香港外洋],” or the

⁶³ Wang, “Introduction,” in *Guangdong Haifang Huilan*, 2.

⁶⁴ Hainan island was administered by Guangdong province until 1988.

⁶⁵ Lu Kun and Deng Tingzhen, *Guangdong Haifang Huilan*, 1-28.

⁶⁶ Lu Kun and Deng Tingzhen, *Guangdong Haifang Huilan*, 10.

“Outer Sea of Hong Kong,” are indicated beside the western extremity of Hong Kong island and to the eastern side of Kau Yi Chau island (*Jiaoyizhou* 校椅州).⁶⁷ The distance from this mark to Kowloon Fort, the military outpost of Hong Kong, was roughly five kilometres, or three miles.⁶⁸ The word “*Neiyang* [内洋],” or inner sea, is written in areas throughout the map that lie roughly within this distance from the coastal mainland, but not beyond it. The term *waiyang* [外洋], or “outer sea,” is written repeatedly in all sea areas beyond this point.⁶⁹

This designation illustrates traditional Chinese concepts of maritime defence and statecraft. Both matters drew major distinctions between “inner” and “outer” areas. Domestic affairs, such as ensuring internal security and cohesion, were more important to Chinese governments than maritime ventures. Of course, the Qing did not entirely neglect maritime matters, which was precisely the point of the distinction between “outer seas (*waiyang*)” and “inner seas (*neiyang*).”⁷⁰ As Sun Lixin notes, the ocean served as a barrier and a boundary, where the *neiyang* denoted the domestic while the *waiyang* denoted the extraterritorial.⁷¹ Anything within the *neiyang* received immediate and regular attention, whether expressed through maps in works on maritime defence or through physical expressions such as resource allocation, fortification building, and naval patrols. Anything within the *waiyang* received little consideration. To exclude the South China Sea Islands from these maps places them beyond the *neiyang* zone.

The text of the book repeats this characteristic. Two sections particularly stand out.

Volume five, titled *Daoli* (道里), outlines the geographical scope of maritime defence and the

⁶⁷ Kau Yi Chau Island today is referred to with the characters 交椅州. The slight deviation in the first character nevertheless possesses the same pronunciation.

⁶⁸ Kowloon Fort can be found on the top left hand corner of the top left map on page 10 if using the Hebei Remin Chuban She 2009 print edition (Lu Kun and Deng Tingzhen, *Guangdong Haifang Huilan*, 10).

⁶⁹ Lu Kun and Deng Tingzhen, *Guangdong Haifang Huilan*, 1-28.

⁷⁰ This can also be variously translated as *haiwai* and *hainei* 海外/海内

⁷¹ Sun Lixin, “Chinese Maritime Concepts,” *Asia Europe Journal* 8:3 (2010): 329.

distances of specific patrols. Volumes eight and nine, both titled *Yingzhi* (營制), assessed the arrangements of troops in ports, rivers, islands, and the mainland.⁷² The *Qianli Shitang* and *Wanli Changsha* are never mentioned in these two chapters, and are discussed in other chapters only to a tiny extent. One passage on sea routes is as follows:

The “**Compass Path of the Eastern Sea:**” ... **Sea of Seven Islands**⁷³ (One hundred *li* towards the sea to the east of Wenchang [文昌, a city in the northeast coast of Hainan island] are seven peaks [七峰 *qifeng*], where freshwater springs and ships⁷⁴ can be found. When one passes beyond this [area], one will encounter extreme danger. Deviate but a bit to the east,⁷⁵ and one will shortly reach the *Wanli Shitang* and the Shitang Sea of the east).⁷⁶

The “Sea of Seven Islands,” or *Qizhou Yang* (七洲洋), traditionally denoted the waters of the South China Sea that lay south of China, east of Hainan, and bounded to the west by the Gulf of Tonkin. Chen Lunjiong’s *Records of Sights and Sounds of the Maritime Countries* (*Haiguo Wenjian Lu*) later expanded the breadth of the area as indicated by its map titled the “Map of the Four Seas (*Sihai Zongtu* 四海總圖).” Its southeast limit was marked by the *Qianli Shitang*

⁷² Wang Hongbin, “Introduction,” in *Guangdong Haifang Huilan*, ed. Wang Hongbin, 2.

⁷³ The bolding here is mine. It indicates that this clause is a subheading.

⁷⁴ If one takes the 泉 (*quan*) to be a qualifier of ships (舟 *zhou*) when translating *nei you quanzhou* (內有泉舟), the 泉 becomes “money,” thus warranting a translation of “merchant ships.” However, this translation does not seem to be accurate because virtually the same passage occurs in an earlier work, the *Examination of the Eastern and Western Oceans* (*Dongxi Yangkao* 東西洋考), written in 1618 by Zhang Xie. Here, immediately after the phrase “... 連起七峰 [*lian qi you qifeng*],” occurs the sentence clause “內有泉, 甘冽可食 [*nei you quan, gan lie ke shi*]” occurs. This sentence translates to “... the Seven Peaks [*qifeng* 七峰] has freshwater springs that are sweet, pure, and drinkable.” Here, freshwater springs, not ships, are referred to. The *Compendium of Maritime Defence of Guangdong* thus likely added ships to its reiteration of this passage, and indeed may have been referring to “merchant ships.” At the least, ships of some sort are referenced here (Zhang Xie, *Examination of the Eastern and Western Oceans* [*Dongxi Yangkao* 東西洋考], ed. Ming Wanli (Beijing: Zhong Hua Shu Ju, 1981), 172).

⁷⁵ Literally, “if one is a little too greedy [when] going east... [*shao tan dong* 稍貪東]”

⁷⁶ Lu Kun and Deng Tingzhen, *Guangdong Haifang Huilan*, 969. The passage in Chinese is as follows: “西羊針路：... 七洲洋 [my bolding] (在文昌東一百海里中，連起七峯，內有泉舟，過此極險，稍貪東便是萬里石塘，東之石塘海也...)。 **Xiyang Zhen Lu : ... Qizhou Yang** (Zai Wenchang dong yibai haili zhong, lianqi qifeng, nei you quanzhou, guo ci ji xian, shao tan dong bianshi Wanli Shitang, dong zhi shitanghai ye...)”

(Spratlys), the northeast by the Wanli Changsha (Paracels), and the south by Kunlun Island (崑崙島, Poulo Condore, or present day Côn Sơn Island).⁷⁷

Although Lu and Deng did not define the “seven peaks” (*qifeng* 七峰), these probably described some set of islands or maritime features to the east of Wenchang in the South China Sea. The passage mentioning the “seven peaks” (*qifeng*) being about one hundred *li* east of Wenchang⁷⁸ appeared virtually word for word 220 years earlier in the Ming dynasty work *Examination of the Eastern and Western Oceans* (*Dongxi Yangkao* 東西洋考), written in 1618 by Zhang Xie.⁷⁹ In this treatise, the sentence clause “*hai zhong you shan* (海中有山)” appears immediately after “*Zai Wenchang dong yibai li zhong* (在文昌東一百里中)” and right before “*lianqi qifeng* [連起七峯].”⁸⁰ “The clause “*hai zhong you shan* (海中有山)” equates to “in the middle of the sea are mountain peaks.” In this context, Lu and Deng’s passage suggests that the *qifeng* indicated certain features above or close to sea level in the South China Sea — likely islands, or at least shallows.⁸¹ While Lu and Deng’s *Compendium of Maritime Defence of Guangdong* does not cite Zhang Xie, the replication of the sentence, and the fact that they were compiling older documents about maritime affairs, suggests that these authors were referring to the same places. Zhang also cites an earlier work, the *Qiongzhou Zhi* (瓊州志), when quoting this passage, further solidifying this interpretation.

⁷⁷ Samuels, *Contest for the South China Sea*, 36.

⁷⁸ I.e. “*Zai Wenchang dong yibai haili zhong, lianqi qifeng*... [在文昌東一百海里中，連起七峯...].”

⁷⁹ Zhang Xie, *Dongxi Yangkao*, 172. The overall general structure of the paragraph, even the headings of the sea route and sub section of said route, “西羊針路” and “七洲洋,” are replicated.

⁸⁰ Zhang Xie, *Dongxi Yangkao*, 172. As in, “在文昌東一百海里中，海中有山，連起七峯... *Zai Wenchang dong yibai haili zhong, hai zhong you shan, lianqi qifeng*...”

⁸¹ The “seven peaks (七峰 *qifeng*)” cannot literally be read as a set of seven mountains. There are no large groupings of mountains in the South China Sea just to the east of Hainan. The “mountains” instead seem to indicate land or earth in general.

The short distances described by Lu and Deng in the above passage, like “one hundred *li* towards the sea to the east [from Wenchang]” and “deviate but a bit to the east [from one hundred *li* east of Wenchang],” places the *Wanli Shitang* closer to the location of the Paracels or Macclesfield Bank than the Spratlys. Even the correlation between the *qifeng* and the Paracels is doubtful, as it (and the Spratlys) lies southeast, not east, of Wenchang and Hainan Island. Of course, Lu and Deng’s usage of “east” may be very general, encompassing all sub-directions such as southeast and northeast. Ancient Chinese scholars tended to use general directions such as “east” or “south,” rather than more particular directions like “southeast.”⁸² Equally, if one looked east from Wenchang’s coast towards the Pacific Ocean, one would face a southeasterly direction. Finally, caution must be exercised whenever ancient Chinese literature uses numbers like multiples of 100 (e.g. 1000, 10,000, and so forth). A “hundred *li*” may simply have conveyed the idea that the *qifeng* laid “very far,” rather than literally one hundred *li*, from Wenchang.⁸³ No major feature exists exactly one hundred Chinese *li*, or fifty kilometres, east of Wenchang. If one correlates the *qifeng* with the Paracels, as Samuels suggests⁸⁴, and if the alternative vantage point from Wenchang was being utilized in this passage, the *Wanli Changsha* described here may well have been the Spratlys.

Nevertheless, even this view is questionable given the description of the *Wanli Shitang* being but a *slight* deviation east of the *qifeng* (*shao tan dong bian* 稍貪東便). The Spratlys do not lie close to the Paracels. If by “shortly” encountering the *Wanli Shitang*, Lu and Deng meant the ease with which careless sailors could be trapped by the strong currents flowing towards the Spratlys, perhaps the above interpretation is warranted. However, this passage did not mention these currents. Samuels believes that the same passage in the 1618 *Examination of the Eastern*

⁸² Shen, “Territorial Aspects of the South China Sea Island Dispute.” 158.

⁸³ Shen, “Territorial Aspects of the South China Sea Island Dispute.” 158.

⁸⁴ Samuels, *Contest for the South China Sea*, 18-19.

and *Western Oceans* correlated the *Wanli Shitang* with Macclesfield Bank.⁸⁵ He also believes the *qifeng* were the Paracels, which fits the description well; Macclesfield Bank lies just over 100 kilometers east of them. His view is perhaps the best, accounting for the short distances described between Wenchang, the *qifeng*, and the *Wanli Shitang* situated slightly to the east of *qifeng*, while minimizing assumptions about vantage points and distance embellishments.

At the least, Lu and Deng described some major and hazardous grouping of islands and maritime features in the South China Sea. Whether it denoted the Paracels, Spratlys, or Macclesfield Bank, however, the same problem emerges with using this text to prove China's age-old and continuous presence in the South China Sea and Islands. That is, Lu and Deng employed the *Wanli Shitang* to guide the reader to their destinations. Their passage simply described landmarks, locations, and distances between features of part of a particular sea route — the “Sea of Seven Islands (*Qizhou Yang* 七洲洋)” and the “Eastern Sea Compass Path (*Xiyang Zhen Lu* 西洋針路),” respectively.⁸⁶

The *Wanli Shitang* was never a gazetteer of the geography of the Sea of Seven Islands (*Qizhou Yang*). One cannot automatically conclude that a mere mention of the *Wanli Shitang* and/or *Qianli Changsha* in a Chinese naval text indicates that the Chinese navy patrolled them. Lu and Deng never defined the islands as stops or destinations for patrols, or even as sea routes. On the contrary, far from encouraging patrols in the South China Sea islands, they actively warned sailors from “being too greedy” when going east and straying into the hazardous area of the *Wanli Shitang*. The text also situated the danger zone as lying close to the coast of China, being just “a little bit” further than one hundred *li* from Hainan Island. That is, much of the South

⁸⁵ Samuels, *Contest for the South China Sea*, 18-19.

⁸⁶ Lu Kun and Deng Tingzhen, *Guangdong Haifang Huilan*, 969. Literally, *Xiyang Zhen Lu* (西洋針路) translates to “the compass path of the East Sea.” The “*zhenlu*” 針路 or “compass path” refers to “sea route,” while the “*xiyang*” 西洋, or “East Sea,” indicated a maritime area off of the coast of Guangdong that at least encompassed parts of the South China Sea, due to the inclusion of the *Wanli Shitang* and Sea of Seven Islands (*Qizhou Yang*).

China Sea — its centre — comprised a region where sailing was opposed, which hardly supports the theory of a deep-rooted and continuous history of effective domination.

Once again, China seems to have paid little real attention to the South China Sea and its islands. This case, however, has first-rank significance. Unlike books written by private individuals in a non-official capacity, the *Compendium of Maritime Defence of Guangdong* was an *official* government work.⁸⁷ Its sole and explicit purpose was to supply information to the Qing government on the maritime defence of Guangdong province, which supposedly administered the South China Sea islands. If these islands and waters constituted core Chinese territories for countless centuries, this report should reflect facts like Qing patrols to the area. Equally, such insignificant attention to the *Wanli Shitang* and thus much of the South China Sea in a central and lengthy Chinese document on maritime defence from the Qing dynasty also weakens the historical rights waters thesis. That force is redoubled because the same complacency toward the South China Sea islands region emerges in all Qing dynasty works on the region.

This work compiled all earlier local sources about China's maritime knowledge just before the advent of Western imperialism. It wrecks the argument that the Qing could not uphold a longstanding and uninterrupted domination of the South China Sea simply because of Western power starting with the Opium War in 1839. Instead, the Qing displayed little interest and no presence in the islands and surrounding seas before that challenge. True, many of the records examined thus far were written after the end of the Opium War, such as Xie Qinggao and Yang Pingnan's *Maritime Records (Hailu)* in 1844, Wei Yuan's *Illustrated Gazetteer of the Maritime Countries (Haiguo Tuzhi)* in 1847, and Xu Jiagan's *A Brief Introduction to the Defense on the*

⁸⁷ Matthew Mosca, *From Frontier Policy to Foreign Policy: The Question of India and the Transformation of Geopolitics in Qing China* (Stanford: Stanford University Press: 2013), 231; Wang, "Introduction," in *Guangdong Haifang Huilan*, 1.

Sea (*Yangfang Shuolüe* 洋防說略, 1887). Nevertheless, other important and earlier works such as Chen Lunjiong's *Records of Sights and Sounds of the Maritime Countries* (*Haiguo Wenjian Lu*) in 1730 and Zhang Yuesong and Yi Ming's *Records of Qiongzhou* (*Qiongzhou Fu Zhi*) in 1841 showed the same complacency towards the islands of the South China Sea. Many of these works also were written within the first decade of this "Century of Humiliation," when the Chinese imperial court viewed Britain's victory in 1842 as a fluke. The Qing government did not take the foreign threat seriously until 1861, when it embarked on its first modernization movement, the Self-Strengthening Movement. Even then, foreigners mattered less in that process than a myriad of pressing *domestic* issues such as an explosion of population growth, massive government corruption, currency instability, and internal rebellions.⁸⁸ The Qing military really was wrecked only after its defeat in the First Sino Japanese War in 1895.⁸⁹ While its strength declined relative to foreign opponents from 1842, foreign imperialism did not run roughshod over China until decades later.

Another factor erodes the argument for a dominant and uninterrupted Chinese presence in the South China Sea since "time immemorial." The early Qing upheld the late Ming dynasty's policy of withdrawal from maritime affairs, by imposing a fifteen kilometer wide zone of mandatory evacuation from the coast of the mainland.⁹⁰ The aim was to starve the Ming resistance on Taiwan of supplies and recruits. This policy lasted for almost four decades until the Ming resistance surrendered in 1683, after which the Kangxi emperor's demand for a reconnaissance of the South China Sea began a slow revival of interest in maritime affairs. Chen Lunjiong's *Records of Sights and Sounds of the Maritime Countries* (*Haiguo Wenjian Lu*) in

⁸⁸ Richard Horowitz, "Beyond the Marble Boat: The Transformation of the Chinese Military, 1850-1911," in *A Military History of China*, eds. David Graff and Robin Higham (Boulder: Westview, 2002), 153-55.

⁸⁹ Horowitz, "Beyond the Marble Boat," 156, 158-59.

⁹⁰ Granados, "Levels of geographical knowledge and political control," 120; Samuels, *Contest for the South China Sea*, 33.

1730 reflected this renewal. By this time, however, European sailors and traders had established a major presence in the South China Sea for decades: the Dutch in Indonesia and Malacca, the Spanish in the Philippines, and frequent trade missions undertaken by English, French, Dutch, Portuguese, and Spanish ships. The *Records of Sights and Sounds of the Maritime Countries* emphasized the presence of these “red-haired barbarians of the Western ocean.”⁹¹ Not every Asian trader, moreover, was Chinese, while the Qing never lost its continental focus, especially in regards to expanding their internal Asiatic frontiers.⁹² As Samuels concludes, while China may have made the South China Sea a “Chinese lake” before the end of Zheng He’s voyages and the beginning of the Ming dynasty’s isolationist policy in the late 1400s, the lack of a Chinese presence and the extent of non-Chinese actions after made it an open sea.⁹³

1.4 Qing Cartography

Almost all pro-Chinese articles asserting that the islands have been Chinese territories for centuries employ Chinese maps. Wong Kam, for instance, states that, “Starting with the Qing and later [sic] in the Ming dynasty, the Xisha [Paracel] and Nansha [Spratly] Islands were shown on official Chinese maps as Chinese territories... The fact that the Xisha and Nansha Islands have been China’s territory since ancient times is... corroborated by many official maps.”⁹⁴ Shen asserts that “various maps charted and published by the Qing dynasty, without exception, included the islands of the South China Sea within the territory of the Great Qing,” and provides

⁹¹ Samuels, 37.

⁹² Paul Lococo Jr., “The Qing Empire,” in *A Military History of China*, eds. David Graff and Robin Higham (Boulder: Westview, 2002), 115-132.

⁹³ Samuels, *Contest for the South China Sea*, 31-32, 37.

⁹⁴ Wong Kam, “Who Owns the Spratly Islands? The Case of China and Vietnam,” *China Report* 38:3 (2002): 353, 355.

an extensive list of eleven maps that purportedly prove this claim.⁹⁵ As with Qing texts, however, automatically correlating the depiction of island features in these maps with Chinese ownership over them and dominance in their surrounding waters presents many problems.

With the arrival of Jesuit cartographical knowledge in the late sixteenth century, geographically accurate styles of mapmaking began to develop in China. One genre of maps, the *Tianxia Quantu* [天下全圖, or “Complete Maps of All Under Heaven], became prevalent in Chinese cartography from the late seventeenth to mid nineteenth centuries.⁹⁶ Unlike earlier styles, it focused on the political make up of China, especially on the changes created by the Qing’s incessant campaigns and territorial expansion. New achievements were described on each map with the same phrase: “The land ruled by the present dynasty is unprecedented in its extent.”⁹⁷ These maps paid extremely close attention to national administration, through a set of about eight symbols denoting different levels of governance, such as provinces (*sheng* 省), prefectures (*fu* 府), Zhili province (*Zhili zhou* 直隸州⁹⁸), subprefectures (*ting* 廳), departments (*zhou* 州), districts (*xian* 縣), passes (*guan* 關), and garrison towns (*yingzhen* 營鎮).⁹⁹

Virtually all maps in the *Tianxia Quantu* category include the South China Sea islands. Features indicated with the words *Wanli Changsha* and *Wanli Shitang* appear in maps such as the *Da Qing Wannian Yitong Tianxia Quantu* (大清萬年一統天下全圖, or *The Complete Maps of the Whole Unified Country of Great Qing for Ten Thousand Years*), drawn in 1767 by Huang Qianren and reproduced in a later version in 1811, and the *Gu Jin Di Yu Quan Tu* (古今地輿全

⁹⁵ Shen Jianming, “International Law Rules and Historical Evidences Supporting China’s Title to the South China Sea Islands,” *Hastings International and Comparative Law Review* 21:1 (1998): 34-35.

⁹⁶ Richard Smith, *Mapping China and Managing the World: culture, cartography and cosmology in late imperial times* (London: Routledge, 2013), 70-71.

⁹⁷ Smith, *Mapping China and Managing the World*, 74.

⁹⁸ A special region directly administered by the capital at Beijing. It included present day Tianjin, most of Hebei and Henan province, and parts of Shandong province.

⁹⁹ Smith, *Mapping China and Managing the World*, 74.

圖, or *The Complete Maps of the Lands and Territories Then and Now*), created in 1895.¹⁰⁰ The latter is a revised re-engraving of a Ming dynasty map titled the *Qiankun Wanguo Quantu Gujin Renwu Shiji* (乾坤萬國全圖古今人物事蹟, or the *Universal Map of the Myriad Countries of the World, with Traces of Human Events, Past and Present*), drawn in 1593 by an official in Wuxi named Liang Zhou.¹⁰¹ To simply denounce the Chinese claim based on the few maps that do not contain these islands is doubtful, for many Qing maps included the islands.

Nonetheless, the very level of administrative detail characteristic of these maps confuses the issue of whether the Qing believed the islands were theirs. The islands possess none of the administrative symbols found in the legend, which would definitively have marked a claim of sovereignty. Instead, the *Wanli Shitang*, and sometimes the *Wanli Changsha* (as in the 1811 version of the *Da Qing Wannian Yitong Tianxia Quantu*), are drawn in the same fashion as other outlying areas that China considered tributary states, such as Korea, Japan, various Southeast Asian kingdoms, and Europe. To further complicate the picture, the same general method of depiction was replicated in island territories that clearly were Chinese at the time, such as Hong Kong (香港), Humen (虎門), and Macau (*Ao'men* 澳門).

Whether Qing maps depicted the South China Sea islands as administratively Chinese is unclear. However, the South China Sea islands, either in part or in whole, are depicted in a manner rare in any other section of a map. Chen Lunjong's *Sihai Zongtu* (四海總圖, or *Map of*

¹⁰⁰ Huang Qianren, *Da Qing Wannian Yitong Tianxia Quantu* (大清萬年一統天下全圖, or *The Complete Maps of the Whole Unified Country of Great Qing for Ten Thousand Years*), 1767; *Da Qing Wannian Yitong Tianxia Quantu* (大清萬年一統天下全圖, or *The Complete Maps of the Whole Unified Country of Great Qing for Ten Thousand Years*), 1811, in *Geography and Map Division, Library of Congress*, <http://hdl.loc.gov/loc.gmd/g3200.ct003403>; *Gu Jin Di Yu Quan Tu* (古今地輿全圖, or *The Complete Maps of the Lands and Territories Then and Now*), 1895, reprinted in Hong Kong: Tong luo wan fu lun she [銅鑼灣扶輪社], 1997.

¹⁰¹ See the Introductory Note attached in *Gu Jin Di Yu Quan Tu* (古今地輿全圖 *The Complete Maps of the Lands and Territories Then and Now*), Hong Kong: Tong luo wan fu lun she [銅鑼灣扶輪社], 1997; Qiong Zhang, "Matteo Ricci's World Maps in Late Ming Discourse of Exotica," *Horizons* 1:2 (2010): 243.

the Four Seas), included in his *Records of Sights and Sounds of the Maritime Countries (Haiguo Wenjian Lu)* in 1730, depicts the *Changsha* as a series of dots. This pattern is used again only for some unmarked South Asian islands and an unlabelled area of India.¹⁰² Wei Yuan's *Dongnan Yang Ge Guo Yang Tu (東南洋各國沿革圖, or Historical Map of the Countries of the Eastern and Southern Seas)* in 1847, found in his *Illustrated Gazetteer of the Maritime Countries (Haiguo Tuzhi)*, only use dots to portray the *Qianli Shitang* and *Wanli Changsha*.¹⁰³

Depictions of the *Wanli Changsha* in the 1767 version of the *Da Qing Wannian Yitong Tianxia Quantu* are like those found elsewhere in the map, but only in a location that suggests the islands were regarded solely as landmarks, not as administrative territories. The islands are depicted in brown, as outlined ellipses textured within a series of black specks, whereas every other island feature is drawn in plain white, surrounded by an outline of light blue colored mountains, and filled with Chinese characters. The only other area within the map possessing the same denotation style as the *Wanli Changsha* was a long bar of desert extending along the northern, or top, extremity of the map. It stretched west from Mongolia (the Gobi Desert), past present day Xinjiang province, and ended at the coast of a maritime region surrounding European states and Africa, which are portrayed as islands.¹⁰⁴ One can conclude that this area was well outside the core of China, since it did not possess any administrative symbol. This same trend, without colour, reoccurs in the *Gu Jin Di Yu Quan Tu* in 1895. That Inner Mongolia was considered a Qing home territory while Europe and the Middle East were not, combined with the *Wanli Changsha*'s uncommon style of denotation, throws further doubt on what the islands

¹⁰² Chen Lunjiong, "Haiguo Wenjian Lu," 162-63. In the map, India is labelled as 天竺國 (*Tian Zhu Guo*).

¹⁰³ Wei Yuan, "Haiguo Tuzhi [海國圖志 *Illustrated Gazetteer of the Maritime Countries*]," in *Zhongguo Nanhai Zhu Qun Dao Wenxian Huibian* [中國南海諸群島文獻彙編 *The Collection of Documents on the South China Sea Islands*], 15 vol. (Taipei: Taiwan Xuesheng Chubanshe, 1984), reprinted ed., vol. 3: 191.

¹⁰⁴ Huang Qianren, *Da Qing Wannian Yitong Tianxia Quantu*, 1767.

represented on Qing maps. Certainly, Qing maps do not unequivocally show Chinese administrative control over these islands as in their home territory.

Of course, one can infer that since the *Wanli Changsha* included the word “sand,” as did the areas indicated by the bar of desert along the top of the map, the brown speckled pattern simply could have been an artistic device to indicate that substance. However, this possibility presents another problem for the use of Chinese maps to prove that the South China Sea islands were territorially Chinese. Qing maps also were expressions of art. They conveyed a mapmaker’s individual motivations, artistic license, political biases, and understandings of the world around him.

1.5 The Tributary System

Another problem concerns the tributary system, and Sino-centric conceptions of imperial China’s ‘superior’ status over the known world — “All under Heaven [*tianxia* 天下]” — whether directly or indirectly, explicitly or implicitly. An institutionalized hierarchical arrangement of the world existed in official Chinese circles and across East and Southeast Asia. China viewed itself as the epitome of civilization. The emperor of China expected all other rulers to pay tribute and declarations of vassalage to him. These actions symbolically secured a crucial pillar of political legitimacy, the “Mandate of Heaven,” for the emperor to rule all men (either practically or in theory). In return, the emperor lavished gifts on tributaries, promised to protect them from aggression, and conferred international legitimacy to them.¹⁰⁵

Not all scholars accept this view of the tributary system, as elucidated by John Fairbank and Ssü-Yu Teng. James Hevia’s case study of Lord Macartney’s mission to China in 1793

¹⁰⁵ John Fairbank and Ssü-Yu Teng, *Ch’ing Administration: Three Studies* (Cambridge: Harvard University Press, 1960), 137-40.

rejects the usual interpretation of a clash of cultures, between Britain and China's inflexible Confucian culture alongside its irrational tributary system. Instead, he describes an encounter between two expansive empires that knew what the other wanted and refused to yield, and sought to force onto the other side incompatible understandings of "the meaning of sovereignty and the ways in which power relations were constructed."¹⁰⁶ The Chinese believed all states to have been inherently inferior, while Western countries such as Britain worked off of the understanding of diplomacy that all states were equal in status. Hevia's arguments are tangential for the purposes of this thesis. Virtually all large-scale maps that addressed foreigners used language and themes characteristic of the tributary system described by Fairbank and Teng.¹⁰⁷ Textual descriptions of foreign countries described their tributary relations with China. The preface of *Tianxia Quantu* maps also wrote of the process whereby 'barbarian' envoys came to China as vassals.¹⁰⁸ Fairbank and Teng translated many excerpts of Qing works recording tributary missions by vassal states to China.¹⁰⁹ Perhaps Smith best sums up the tributary system, as one that "could be considered a political myth, not in the sense of 'backwardness' or falsity, but one which buttressed and maintained the traditional notion of the 'Mandate of Heaven' for Chinese emperors; that is, the affirmation of their legitimacy to rule."¹¹⁰ This view evades apologetics for imperialism and refers the debate to the point of the tributary system itself: the symbolic affirmation of the supremacy of the Chinese emperor as the "Son of Heaven."

The tributary system confuses arguments of historic ownership over the South China Sea islands and waters. Vietnam, once a vassal state under China's tributary system, is of special concern here. Many pro-Chinese scholars assume that the tributary system confers ownership of

¹⁰⁶ James Hevia, *Cherishing Men from Afar: Qing guest ritual and the Macartney Embassy of 1793* (Durham Duke University Press, 1995), 25, 28.

¹⁰⁷ Minus any connotations or denotations of backwardness, of course.

¹⁰⁸ Smith, *Mapping China*, 75.

¹⁰⁹ Fairbank and Teng, *Ch'ing Administration*, 174-76.

¹¹⁰ Smith, *Mapping China*, 79.

the islands to China, even if the islands were administered by and belonged to Vietnam (or any other state) since ancient times.¹¹¹

However, the tributary system was not so simple. Fairbank and Teng maintained that it was not a “dogma of conquest or universal dominion,” but rested on culture, symbolic ritual, traditional Confucian morals and hierarchy rather than brute force.¹¹² As David Kang and Chemilier-Gendreau note, moreover, the tributary system actually conferred little control to China, if any: “When [vassal] envoys bowed before the Chinese emperor, they were in effect acknowledging the *cultural* superiority of the Chinese emperor, not his *political* authority over the states.”¹¹³ The closest manifestation of the system in practice was its economic aspect — the exchange of tribute and trade — and the occasional Chinese military protection of vassal states and their rulers from military threats. The Qianlong emperor, for instance, agreed to invade Annam (i.e. Vietnam) in 1788 because the family of the deposed Annam emperor that fled to China had faithfully paid tribute for centuries.¹¹⁴ Vietnam was not controlled by Qing China. It repelled Qing invasions in 1788, and afterwards only accepted the tributary system in name.¹¹⁵ The Qianlong emperor himself admitted that his control over Vietnam was nominal despite his major losses: “Yet in Annam to have the name of victory is the same as having real victory: have I not obtained a nominal victory?”¹¹⁶ Furthermore, if one argues that China controlled the islands *through* the administration of Vietnam, they would legally have belonged to France after 1884, when Vietnam was conquered and China repudiated Vietnam’s vassalage status. After 1884, the

¹¹¹ Shen, “International Law Rules and Historical Evidences Supporting China’s Title to the South China Sea Islands,” 58; Chemilier-Gendreau, *Sovereignty over the Paracel and Spratly Islands*, 76.

¹¹² Fairbank and Teng, *Ch’ing Administration: Three Studies*, 137-139.

¹¹³ David Kang, *East Asia before the West: five centuries of trade and tribute* (New York: Columbia University Press: 2010), 56-57; Chemilier-Gendreau, *Sovereignty over the Paracel and Spratly Islands*, 77-78.

¹¹⁴ Peter Perdue, “Embracing Victory, Effacing Defeat: Rewriting the Qing Frontier Campaigns,” in *The Chinese State at the Border*, ed. Diana Lary (Vancouver: University of British Columbia Press, 2007), 119.

¹¹⁵ Chemilier-Gendreau, *Sovereignty over the Paracel and Spratly Islands*, 78; Perdue, “Embracing Victory, Effacing Defeat,” 118-122.

¹¹⁶ Perdue, “Embracing Victory, Effacing Defeat,” 122.

Chinese never asserted that Vietnam was a vassal. The islands would consequently belong to Vietnam after World War Two when it gained independence from France.

The applicability of the tributary system to islands in Asia was also confusing at times. China has never claimed historic ownership over the Dokdo/Tsushima Islands: the territorial dispute there is solely between Japan and Korea.¹¹⁷ The Ryukyu Islands, meanwhile, subscribed to dual subordination under both China and Japan until it was annexed by the latter in 1873. While the Ryukyus' subservience to China was largely nominal in practice, the Japanese considered it a fief of Satsuma province (*han*).¹¹⁸ When Japan requested clarification of whether the Ryukyu Kingdom considered itself under China or Japan during the Ryukyu crisis of 1873, its government ambiguously replied that it "regarded China as a father and Japan as a mother."¹¹⁹ Japan, meanwhile, repudiated the tributary system in the mid sixteenth century and created an idea of one centred on itself.¹²⁰ This was especially evident in Toyotomi Hideyoshi's invasion of Korea in 1592, which hinged on the idea that Japan was an equal, if not greater power than China. Hideyoshi did not believe the Chinese tributary system made Korea a dependent state and intended to conquer both it and China.¹²¹

While vassal states of the tributary system were not part of an empire in practice, this does not end the discussion on the tributary system. One must consider whether China used the system to express ownership over the islands and waters directly, and not through vassal states like Vietnam. This issue is murky, but the answer leans towards the negative. The tributary

¹¹⁷ Jinman Cho, HeeMin Kim and Jun Young Choi, "The Dokdo/Takeshima Dispute between Korea and Japan: Understanding the Whole Picture," *Pacific Focus* 24:3 (2009): 368-70.

¹¹⁸ Sakai, "The Ryukyu Islands (Liu-ch'iu) as a Fief of Satsuma," 115.

¹¹⁹ Robert Sakai, "The Ryukyu (Liu-ch'iu) Islands as a Fief of Satsuma," in *The Chinese World Order: Traditional China's Foreign Relations*, ed. John Fairbank (Cambridge: Harvard University Press, 1968), 112-15.

¹²⁰ Kang, *East Asia before the West*, 60-61. Japan previously stopped sending vassal envoys to China from 890 to the mid fourteenth century. The brief period from 1370 to the 1550s, when Japan accepted tributary vassalage, represented an aberration in Sino-Japanese relations.

¹²¹ Kenneth Swope, "Deceit, Disguise, and Dependence: China, Japan, and the Future of the Tributary System, 1592-1596," *International History Review* 24:4 (2002): 758, 760, 762-63.

system focused primarily on *peoples* and states, not territorial space. It hinged on representatives of foreign kingdoms presenting tribute to the Chinese court and affirming their ‘lower’ status. Chinese emperors, as Smith outlines, were concerned with “the management of foreign *peoples* [my italics],” with the overall aim being the gaining of their submission as his *subjects*, his vassals.¹²² Fairbank and Teng note that through such procedures of the tributary system, the “Son of Heaven [i.e. the Chinese emperor] represented all of mankind... adherence to the Chinese way of life automatically entailed the recognition of the Emperor’s mandate to rule all men.”¹²³ The maps of this time support this interpretation of the tributary system, as no clear territorial borders are listed outside China.¹²⁴ The only territories that bore a sign of detachment from China were islands. However, some like Hong Kong and Macau were considered homeland territory while others such as Japan and Spain were not. The South China Sea islands never were inhabited, while the drawing methods used to depict them conformed to those applied to European states, which were never considered core Chinese territories, or controlled by China.

In sum, these maps did not express a Qing claim that the islands were Chinese. The view that the maps, interpreted through the tributary system, indicated ownership of the South China Sea islands and adjacent waters in the eyes of the Chinese also contradicts the evidence. More generally, East Asian concepts of sovereignty over islands in the early modern period are complicated and often contradictory. They cannot easily be employed to denote ownership over the disputed islands. While some islands, such as Hong Kong, Hainan, and Taiwan, were effectively occupied and administered by the Chinese, others like the *Qianli Changsha* and *Wanli Shitang* were not. No imperial Chinese work specifies under what criteria islands were identified as homeland territories. However, one pattern does emerge, which the *Compendium of*

¹²² Smith, *Mapping China*, 55.

¹²³ Fairbank and Teng, *Ch’ing Administration: Three Studies*, 138.

¹²⁴ See all previously mentioned Qing maps for this.

Maritime Defence of Guangdong clearly presented in its series of maps of the coast of Guangdong province. Those islands that lay close to the coast of the Chinese mainland, such as Hong Kong, Macau, and Hainan, were effectively occupied. Taiwan was on the fringes of this proximity. Indeed, not until the Qing dynasty was it effectively administered as a core territory, and then only because a Ming loyalist regime based there created a threat for four decades. The South China Sea islands, lying hundreds of miles from the Chinese mainland, were thus likely ignored in practice due to their remote location, inhospitable environment, and the many hazards they presented to maritime navigation. The waters around them, subsequently, were not “dominated.”

Nor does the evidence support Fu Kuen-chen’s assertion that non-Chinese countries’ longstanding but “limited” usage of the South China Sea counts for nothing legally because they were vassal states that used the waters to pay tribute to China.¹²⁵ Fu ignores longstanding maritime activities by other peoples in the South China Sea — including those waters near the South China Sea islands — that had nothing to do with the tributary system, such as fishing and trading. The infrequency of Qing Chinese maritime activity around and lack of attention towards the islands cannot be replaced by the tributary system. Nothing points to Chinese historical domination of the South China Sea areas surrounding the islands, as so confidently asserted by Fu Kuen-chen.

¹²⁵ Fu, *Legal status of the South (China) Sea*, 40-41.

1.6 Conclusion

In 1902, the first Chinese naval patrol to the Paracel islands was undertaken, representing the first official and *effective* recorded Qing reinforcement of sovereignty over any part of the South China Sea islands.¹²⁶ Before this time, the Chinese historical record does not support assertions for longstanding and continuous control. The islands were inhospitable, but other forms of occupation such as maritime patrols are not evident among Qing documents. Nevertheless, Qing documents did claim the *Qianli Changsha* and *Wanli Shitang*, or variants of these names, as administratively part of China. The island attribution line thus remains stronger than the historic rights waters zone. Evidence of this view appears in the historical record, in contrast to the absence of evidence indicating “dominance” of the majority of the South China Sea waters. China’s claims and actions to the islands region during the post war late Republican period — when the U-Shaped Line was published — will not change this conclusion.

¹²⁶ Authors like Granados usually ascribe the year 1909 as the date of the first official Chinese naval inspection and patrol of the Paracel Islands (Granados, “The South China Sea and its coral reefs during the Ming and Qing dynasties,” 109-110). Samuels, however, asserts that an earlier one was undertaken by China in 1902. The Spratlys do not seem to have been effectively occupied by China until 1946 (Samuels, *Contest for the South China Sea*, 53-54, 68). Samuels does, however, miss the fact that China diplomatically protested against France when the latter occupied nine islands of the Spratlys in 1933 (MOFA, “Nansha Qundao,” file series 019.3/0012, files 145). Because of this protest, it is likely that the Qing claim to the Spratlys carried over to after World War Two.

Chapter 2: The Genesis of the U-Shaped Line and its Early Years of Usage, 1946-1958

The official U-Shaped Line map of 1947 and 1948, the *Location Map of the South China Sea Islands* (南海諸島位置圖 *Nanhai Zhudao Weizhi Tu*), was the last of a long line of maps of the South China Sea drawn from the 1910s to 1930s. Hu Junjie, a Chinese cartographer, drew the first such map in 1914, which included only the Pratas and Paracel islands. Maps of the region largely continued this pattern until the mid-1930s. In 1933, however, the ROC established the Land and Water Maps Inspection Committee (水陸地圖審查委員會 *Shuilu Ditu Shencha Weiyuan Hui*) to standardize Chinese maps, borders, and the names of the country's reefs and islands. In 1935, the committee created *The Map of Chinese Islands in the South China Sea* (中國南海各島嶼圖 *Zhongguo Nanhai Ge Daoyu Tu*). It placed the southernmost edge of China's maritime boundary at 4° north latitude, thus incorporating the Spratly Islands and James Shoal. Bai Meichu, another prominent Chinese geographer, drew the last notable map on the eve of the Second Sino-Japanese War in 1936, *The Map of Chinese Domain in the South China Sea* (海疆南展後之中國全圖 *Haijiang Nan Zhan Hou Zhi Zhongguo Quan Tu*). It did not include a boundary line.¹²⁷ These maps never were officially authorized or published by the ROC government, though they had some influence on its later claims.

This chapter focuses on the formation of the official U-Shaped Line map from 1946-48, and its usage by the ROC and PRC until 1958. It examines three collections of ROC archival files: those of the Military History and Translation Office of the Ministry of Defence, (*Guofangbu Shi Zheng Bianyi Ju* 國防部史政編譯, or "MHTO"), Ministry of the Interior

¹²⁷ Zou Keyuan, "South China Sea Studies in China: Achievements, Constraints and Prospects," *Singapore Year Book of International Law and Contributors* 11 (2007): 88-89.

(*Neizhengbu* 內政部, or “MOI”), and the Ministry of Foreign Affairs (*Waijiaobu* 外交部, or “MOFA”). Together, these three collections represent a treasure chest of archival materials illustrating the genesis of the U-Shaped Line. They include most, if not all, of the files written during the pivotal years of the formation of China’s modern claim to the South China Sea islands. The National Archives Administration of Taiwan (*Dang’an Guanli Ju* 檔案管理局) holds the first two collections, while the Historical Archives of the Department of Modern History in the Academia Sinica (*Zhongyang Yanjiuyuan Jindaishi Yanjiusuo Dang’an Guancang* 中央研究院近代史研究所檔案館藏) holds the third.

Generally speaking, the files in the MHTO and MOI collections largely recorded the daily administration of the islands, while those of the MOFA collection focused on national and international matters, especially regarding how the U-Shaped Line was formulated. The MHTO, MOI, and MOFA collections themselves consist of telegrams, government reports, meeting summaries, and geographic materials (maps, aerial pictures of the islands, and lists of island names and their geographical coordinates) written and drawn by several government departments, namely the Ministry of the Interior, Ministry of Foreign Affairs, Ministry of Defence (國防部 *Guofangbu*, or “MOD”), ROC Navy General Headquarters (*Haijun Zongsi Lingbu* 海軍總司令部, or “NHQ”), and ROC Air Force General Headquarters (空軍總司令部 *Kongjun Zongsi Lingbu*, or “AFHQ”). Some international correspondence and newspaper articles also are found within the MOFA collection.

These files are rarely used, even in works written after much of them were declassified in 2009. One exception, Ma Yu-Cheng’s recent article on the Qing Dynasty and the ROC’s historical development and management of the South China Sea islands, was published in *Archives Quarterly*, run by the ROC National Archives Administration, which solely covers

information found in its holdings.¹²⁸ Ma is a researcher there. Thus, a historical examination of what many scholars regard as ‘basic knowledge’ of the history of the U-Shaped Line is long overdue. These files outline certain themes that reveal the nature of the U-Shaped Line. Analysis of these files supports the interpretation that the original meaning of the U-Shaped Line from 1946 to 1958 was an islands attribution line, and not a historic rights waters zone.

The PRC’s adoption and maintenance of the ROC claim, starting from 1949, also supports this conclusion. This chapter, however, does not utilize PRC archival files due to their inaccessibility. They remain classified because the topic is sensitive to the Chinese Communist Party (CCP). Instead, the PRC’s official claims to and actions in the South China Sea will be examined.

2.1 Sovereignty and Development in the South China Sea Islands after the Second World War

The earliest archival files examined in this chapter were written in 1946, which marked a continuance of the scramble for the South China Sea islands before World War Two had intervened. The first manifestations of conflicting claims were underway in the early 1930s, when France and Japan began formally to express claims to the region. This caused a series of counter claims, diplomatic protests, and attempts at effective occupation, including government sanctioning of mining operations in and naval patrols to the islands, between France, Japan, and China.¹²⁹ In effect, Japan’s military occupation of the islands from 1939 to 1945 temporarily

¹²⁸ Ma Yu-Cheng, “The History of Development and Management regarding the Sovereignty over the South China Sea Islands of Republic China- Based on the Archival Holding of the National Archives Administration [中華民國對南海諸島的開發與經營 — 以檔案管理局管有之檔案為主要史料 *Zhonghua Minguo dui Nanhai Zhudao de Kaifa yu Jingying — Yi Dang’an Guanliju Guan You Dang’an wei Zhuyao Shiliao*],” *Archives Quarterly* [檔案季刊 *Dang’an Jikan*] 3:11 (2012): 72-92.

¹²⁹ Samuels, *Contest for the South China Sea*, 55-64.

ended that dispute. An immediate task at hand for the ROC after the war was, in its view, to “reassert” and “protect China’s sovereignty” over these islands from foreign “infringement.” In late 1946, ROC Commanding Officer Lin Zun (林遵) and Captain Yao Ruyu (姚汝鈺) led several naval expeditions to land troops on the islands and formally ‘reclaim’ them from the Japanese.¹³⁰ These efforts were not without difficulty. On November 12, 18, and 19, 1946, heavy storms repeatedly forced Yao Ruyu to return to the port of Yulin (榆林港) in Hainan.¹³¹ The main islands of the archipelagos, however, were secured next month. ROC troops landed on Woody Island of the Paracels on November 28, 1946 and Itu Aba Island of the Spratlys on December 12, 1946.¹³²

Interestingly, Heinzig Dieter and Marwyn Samuels assert that the expedition left Canton in December 9, 1946. They reached that conclusion from a ROC report compiled in 1957 by Mo Yunyu, whom Dieter described as one of the two commanding officers.¹³³ Dieter dismisses the November version of accounts as unofficial. When Dieter’s book was published, this account had been publicly listed only in a Taiwanese newspaper article in the *Central Daily News* (中央日報 *Zhongyang Ribao*) of February 2, 1974, and a PRC newspaper article in the *People’s Daily* (人民日報 *Renmin Ribao*) of February 28, 1959.¹³⁴ The ROC archival records, however, overturn this verdict. The archival report on Yao’s expedition was officially written by the ROC Navy General Headquarters in December 13, 1946, one day after the Spratlys expeditions

¹³⁰ MHTO, “Jinzhu Xi Nan Sha Qundao An,” file series 0035/061.8/3030, files 002/001/0002, 002/003/0002; MOI, “Jinzhu Xi Nan Sha Qundao An,” file series 0036/E41502/1, file 0005/007/0001.

¹³¹ MHTO, “Jinzhu Xi Nan Sha Qundao An,” file series 0035/061.8/3030, files 002/003/0002.

¹³² MHTO, “Nansha Qundao Diaocha Gaikuang [南沙群島調查概況, or “Survey Overview of the Spratly Archipelago],” the ROC National Archives Administration [*Dang’an Guanli Ju* 檔案管理局], file series 0036/002.2/4022, files 001/001/0005; MHTO, “Jinzhu Xi Nan Sha Qundao An,” file series 0035/061.8/3030, files 002/003/0002. Curiously, Granados states the Paracels expedition arrived on November 24, although archival reports state that storms delayed the ships past this date (Ulises Granados, “Chinese Ocean Policies Towards the South China Sea in a Transitional Period, 1946-1952,” *China Review* 6:1 (2006): 158).

¹³³ Samuels, *Contest for the South China Sea*, 76; Heinzig, *Disputed islands in the South China Sea*, 31.

¹³⁴ Heinzig, *Disputed islands in the South China Sea*, 31.

reached Itu Aba Island and eleven years before Mo Yunyu's report.¹³⁵ Moreover, the archives do not mention Mo Yunyu's name at all. They record either Yao Ruyi and Lin Zun, or only the latter, when describing who led the expeditions to occupy the islands.¹³⁶

These expeditions constituted the basis for the U-Shaped Line. Their "recapture" of these islands shortly led to government discussions about the need for a clear expression and protection of sovereignty over the islands. Situation reports — reconnaissance or survey reports of the islands describing their geographic coordinates, topography, vegetation, resources, personnel, buildings, monuments, and other noteworthy details, sometimes including histories of the islands and almost always concluding with recommendations for future actions — began to call for the stationing of troops to and the construction of buildings on these islands. A survey of the Paracel islands written by the AFHQ in December 25, 1946, titled *Report on the Reconnaissance of the Paracel Islands in the South China Sea* (南海西沙群島勘察報告書 *Nanhai Xisha Qundao Kancha Baogaoshu*), recommended that more naval personnel be dispatched to safeguard the islands.¹³⁷ In February 4, 1947, the AFHQ *Report on the Reconnaissance of the Spratly Islands in the South China Sea* (南海南沙群島勘察報告書 *Nanhai Xisha Qundao Kancha Baogaoshu*) noted that "the Chinese navy has already sent a platoon of soldiers to garrison the islands and set up weather observation and radio stations to prevent foreigners from coveting, invading, and occupying the islands."¹³⁸

¹³⁵ MHTO, "Jinzhu Xi Nan Sha Qundao An," file series 0035/061.8/3030, files 002/002/0015; Heinzig, *Disputed islands in the South China Sea*, 31.

¹³⁶ MOI, "Jinzhu Xi Nan Sha Qundao An," file series 0036/E41502/1, file 0005/007/0001; MHTO, "Jinzhu Xi Nan Sha Qundao An," file series 0035/061.8/3030, files 002/001/0002.

¹³⁷ MHTO, "Xi Nan Sha Qundao Kancha Baogaoshu [西南沙群島調查報告書, or Reconnaissance Reports on the Paracel and Spratly Archipelagos]," The ROC National Archives Administration [*Dang'an Guanli Ju* 檔案管理局], file series 0035/944/1060, file 001/001/0007.

¹³⁸ MHTO, "Xi Nan Sha Qundao Kancha Baogaoshu," file series 0035/944/1060, file 001/002/0007. The quote in Chinese is: "... 我海軍已派兵一排駐守島上, 并設立氣象及無線電臺以免被外人覬覦而侵佔 *Wo haijun yi paibing yi pai zhushou dao shang, bing sheli qixiang ji wuxian diantai yimian bei wairen jiyu er qinshan.*"

The report suggested that Itu Aba Island (太平島 *Taiping Dao*), the largest island in the Spratlys, become an outpost and supply station for China, with a 1,200 metre air strip constructed on artificial land. These ideas fit a strategy proposed by the AFHQ for the establishment of a string of “island bases in the South China Sea, akin to American bases in the Pacific Ocean.”¹³⁹

The ROC government soon held plenary meetings to discuss plans to develop the islands to “safeguard” national defence. One such meeting was written by the MOD and sent to the Executive Yuan on June 19, 1947, titled “File on Increasing Defence and Building Facilities in the Parcel and Spratly Islands for Ensuring the Protection of Sovereignty [over the Islands] and the Strengthening of National Defence [加強建設西南沙力保主權而固國防案 *Jiaqiang Jianshe Xi Nan Sha Libao Zhuquan Er Gu Guofang An*].”¹⁴⁰ It recommended increasing the ROC’s military presence in the South China Sea islands by garrisoning troops “wherever possible in the archipelagos;” the protection of fishermen who “come from Hainan Island and go to the islands” to fish; to “vigorously construct” lighthouses, weather stations, and radio stations; to improve food and water equipment; decide on the islands’ system of governance; investigate mines, soil quality, weather, fauna, marine resources, economy, defence, and governance of the islands in order to aid the development of facilities there; and compile research about the islands to expound Chinese sovereign rights and impress its importance on the Chinese population.¹⁴¹ The ROC supported the garrisoning and development of the islands in order to show to the world that the islands were theirs, actions that led to the creation of the U-Shaped Line.

These files strongly support the island attribution line. As with Qing documents, they focused almost exclusively on matters pertaining to the islands’ land territories. While the plans for development never saw completion because of the Chinese Civil War (1946-50), the ROC

¹³⁹ MHTO, “Xi Nan Sha Qundao Kancha Baogaoshu,” file series 0035/944/1060, file 001/002/0007.

¹⁴⁰ MHTO, “Jinzhu Xi Nan Sha Qundao An,” file series 0035/061.8/3030, files 005/012/0009 to 0011.

¹⁴¹ MHTO, “Jinzhu Xi Nan Sha Qundao An,” file series 0035/061.8/3030, files 005/012/0010 and 0011.

nevertheless strove to assert ownership over the land territories of the archipelagos for the explicit purpose of “reclaiming,” demonstrating, and protecting its sovereignty from foreigners.¹⁴²

The same cannot be said for the waters around the islands. Neither report made any mention of plans for naval protection over a large special waters zone of any kind. There were only two, and rare, exceptions to the absence of maritime affairs in these archival files. The first was the establishment of naval patrols in order to safeguard supplies to troops stationed on the islands, as distinct from those established to protect a waters zone.¹⁴³ These patrols simply were meant to escort supply ships. The second exception was the protection of Chinese fishermen. For instance, as the *File on Increasing Defence and Building Facilities in the Paracel and Spratly Islands for Ensuring the Protection of Sovereignty [over the Islands] and the Strengthening of National Defence* advocated, the ROC government should “implement immigration [to the islands] for fishermen who regularly and seasonally travel from Hainan to the Paracel and Spratly archipelagos to fish, and to provide greater protection to their fishing permits.”¹⁴⁴ To “provide greater protection to their fishing permits,” the ROC navy was to ensure that no one challenged the fishermen’s activities.

Although such reports did not specify the exact scope of fishing waters to be guarded by the ROC navy, only fishermen who “[went] to the islands” from Hainan were to be protected. This passage, coupled with the ROC’s focus on the islands’ land territory, strongly indicates that Chinese fishermen stayed close to the islands, and not everywhere in the vastness of the South China Sea. This interpretation fits the ROC’s contemporary conception of waters zones. In the

¹⁴² Granados, “Chinese Ocean Policies Towards the South China Sea in a Transitional Period, 1946-1952,” 173-74.

¹⁴³ For instance, see MHTO, “Jinzhū Xi Nán Shā Qúndào Ān,” file series 0035/061.8/3030, files 005/012/0010.

¹⁴⁴ MHTO, “Jinzhū Xi Nán Shā Qúndào Ān,” file series 0035/061.8/3030, files 005/012/0010. The Chinese passage is: 實行移民對於我國接季節經常來往西南沙群島捕水產之瓊州漁民應加保護獎助 *Shixing yimin duiyu woguo jie jijie jingchang laiwang Xi Nan Sha Qundao bu shuichan zhi Qiongzhou yumin yingjia baohu jiangzhu*.

Hague Codification Conference of 1930, the last international meeting to discuss the standardization of the scope of territorial waters before the creation of the U-Shaped Line maps, the ROC supported a three nautical mile territorial waters zone, and a twelve mile contiguous waters zone beyond it.¹⁴⁵ A contiguous waters zone is adjacent to a state's territorial waters. It does not confer sovereignty rights to the coastal state, but it does provide certain jurisdiction rights such as customs, anti-smuggling measures, and sometimes fishing rights.¹⁴⁶ Although the conference never reached a consensus, the ROC government nevertheless officially implemented the three nautical mile territorial waters limit in 1931 and the twelve mile contiguous zone in 1934.¹⁴⁷ The ROC allowed fishing within both zones.¹⁴⁸ It did not support any other waters zone beyond these two until the concept of the continental shelf zone was first discussed internationally in the UN Geneva Convention of 1958.¹⁴⁹ That the scope of protection of fishermen was not specified in any archival document, especially those focused on increasing the ROC's defence and development of the islands, compromises any argument that the ROC held the historic rights waters zone interpretation of the U-Shaped Line on the eve of its creation.

The nature of the U-Shaped Line is most clearly conveyed by the workings of the ROC government that created it. In September 26, 1946, representatives of the MOFA, MOD, NHQ, and MOI convened in the Ministry of the Interior to resolve several issues pertaining to the South China Sea islands.¹⁵⁰ The minutes listed each issue and the resolution agreed upon. The first topic, the most significant, determined the scope of what the ROC would claim in the South China Sea region:

¹⁴⁵ Tommy Koh, "The Origins of the 1982 Convention on the Law of the Sea," *Malaya Law Review* 29 (1987): 7-8. For an explanation of territorial waters, refer to the glossary.

¹⁴⁶ For a more detailed definition of contiguous waters, refer to the glossary.

¹⁴⁷ Hungdah Chiu, "China and the Question of Territorial Sea," *Maryland Journal of International Law* 1:1 (1975): 38-41.

¹⁴⁸ Granados, "Chinese Ocean Policies Towards the South China Sea in a Transitional Period, 1946-1952," 167.

¹⁴⁹ For a definition of continental shelf zones, please refer to the glossary.

¹⁵⁰ MOFA, "Nansha Qundao," file series 019.3/0012, file 097 and 098.

Resolved matters:

1. The case of how to designate [i.e. demarcate] the scope of what is to be received¹⁵¹ for the purpose of receiving each of the islands in the South China Sea.

Resolution: As according to the scope shown in the Ministry of the Interior's copy of the *Location Sketch Map of the South China Sea Islands* [南海諸島位置略圖 *Nanhai Zhudao Weizhi Lüetu*]. After the Executive Yuan has checked and approved [the scope], it will order the Guangdong provincial government to comply [and carry it out].¹⁵²

This passage clearly conveys the ROC government's view of the U-Shaped Line. It referred solely and directly to the *Location Sketch Map of the South China Sea Islands* — the 1946 U-Shaped Line map that would translate into the official version the following year (see Map 2) — when demarcating the area of what was to be under Chinese sovereignty. However, the entirety of this area included within the U-Shaped Line was not to be ROC territory. The above passage merely defined the *islands* to be reclaimed: “the scope of what is to be received *for the purpose of receiving each of the islands* of the South China Sea [my italics].”¹⁵³ The U-Shaped Line, in other words, was created to delineate China's sovereignty over the *land* territories of the islands and other features. Matters pertaining to the waters around the islands are absent from the minutes of this meeting.

It is doubtful that the summary of this conference — and, generally, all other meetings and reports found in the ROC archival collections — would leave out reference to a special waters zone as massive as the U-Shaped Line, if one existed. One of the specific purposes of this matter was to define the geographical scope of what was to be Chinese. They covered a wide

¹⁵¹ Here meaning “to be owned.”

¹⁵² MOFA, “Nansha Qundao,” file series 019.3/0012, file 097. In Chinese: 決議事項：1. 接收南海各島應如何劃定接收範圍案。決議：依照內政部擬製之「南海諸島位置略圖」所示範圍呈由。行政院核定令廣東省政府遵照 *Jueyi shixiang: Jieshou Nanhai ge dao ying ruhe heading jieshou fanwei an. Jueyi: Yizhao Neizhengbu nizhi zhi “Nanhai Zhudao Weizhi Lüetu” suoshi fanwei chengyou. Xingzheng Yuan heding ling Guangdong sheng zhengfu zunzhao.*

¹⁵³ In Chinese: “接收南海各島應如何劃定接收範圍案 *Jieshou Nanhai ge dao ying ruhe huading jieshou fanwei an.*”

range of topics dealing with sovereignty and management over the islands, and occasionally touched upon maritime matters. The remaining six resolutions of the conference concerned other details about the islands, such as the physical expression of Chinese sovereignty or the approval of the translations of the names of these islands and features by referendum among the attendees of the conference.¹⁵⁴ This conference, furthermore, eliminates another possibility: that a historic rights waters zone could have emanated from the mainland and not the South China Sea islands, thus explaining the absence of references to waters zones amongst the papers in the files. As the conference summary showed, the ROC purposely created and used the U-Shaped Line to handle all matters pertaining to the islands. One cannot dissociate a historic rights waters zone from the islands, since the waters were represented by the Line, whose existence hinged on the islands. Any historic rights waters zone as delineated by the U-Shaped Line must emanate from the South China Sea islands, as must any discussion of the idea. Even authors who support the historic rights claim such as Fu Kuen-chen and Huang Wei indirectly admit this much, as they unfailingly assert that the Line represented and enforced a historic rights waters zone *in addition* to showing Chinese sovereignty over the islands.¹⁵⁵

Similarly, plans to develop marine resources shortly after the genesis of the U-Shaped Line also focused exclusively on the islands. One example, written in March 1951, was titled “The Hainan Fisheries Authority’s Pilot Project on the Development of Marine Resources in the Paracel Archipelago [海南特區水產管理局西沙群島水產開發試驗計劃 *Hainan Tequ Shuichan Guanliju Xisha Qundao Shuichan Kaifa Shiyan Jihua*].” The report proposed several ways to expand fishing activities in the waters around the islands. Four objectives were listed: to process useful marine fauna; relieve unemployed fishermen by resuming development of these

¹⁵⁴ MOFA, “Nansha Qundao,” file series 019.3/0012, file 097 and 098.

¹⁵⁵ Fu Kuen-chen, *Legal Status of the South (China) Sea*, 204-10; Huang Wei, “Discussing the historical rights of ‘other waters’ within the U-shaped Line,” 36-40.

marine resources; to “clearly understand” (明瞭 *mingliao*, or “gain knowledge of”) the situation of the Paracel and Spratly archipelagos and plan their future development; and to increase the improvement of facilities.¹⁵⁶ This report listed the necessary funds and equipment needed to support the expansion of fishing in the region, conditions of investment in the fishing expansion proposal, and plans for radio communication between fishing boats and islands.¹⁵⁷

As with the *File on Increasing Defence and Building Facilities in the Paracel and Spratly Islands for Ensuring the Protection of Sovereignty [over the Islands] and the Strengthening of National Defence*, however, this report does not mention protection of Chinese fishermen or of a special waters zone to be ensured by the ROC navy, further weakening the historic rights argument.¹⁵⁸ The area of fishing activities also was not specified. The first objective talked only vaguely about harvesting “the resources of the islands.” In contrast, the second, third, and fourth objectives solely and repeatedly referred to the islands and their land territories. The very title of the report — the portion that stated “西南沙群島水產開發 *Xi Nan Sha Qundao Shuichan Kaifa*,” or “Development of the Marine Resources of the Paracel and Spratly archipelagos” — indicated that these waters emanated from the islands, rather than being anywhere within nearly all of the South China Sea, as the historic rights interpretation requires.

Moreover, ROC protests against the actions of other countries and its patrols of the islands were always in reaction to challenges to its sovereignty over the islands’ *land*, not waters. Shortly after the war, the ROC identified France, through its colony in Vietnam, as the immediate threat to ‘China’s sovereignty’ over the South China Sea islands. Many reports provided brief historical backgrounds that recounted how France “invaded and occupied”

¹⁵⁶ MHTO, “Jinzhu Xi Nan Sha Qundao An,” file series 0035/061.8/3030, files 007/013/0011.

¹⁵⁷ MHTO, “Jinzhu Xi Nan Sha Qundao An,” file series 0035/061.8/3030, files 007/013/0011 to 0014.

¹⁵⁸ MHTO, “Jinzhu Xi Nan Sha Qundao An,” file series 0035/061.8/3030, files 007/013/0011 to 0014.

China's islands in the region.¹⁵⁹ By 1950, another threat emerged. ROC reports began to warn that "Communist bandits have taken over Itu Aba Island."¹⁶⁰ Granted, the trend regarding France could have been a mere formality, while the latter was a genuine warning. Nevertheless, the repetition of these threats in the archival files constantly reminded government departments of the urgent need to reclaim and protect the islands, with the implication that doing so would prevent a repeat of such incursions. For instance, a reconnaissance report of the Spratly Islands of February 4, 1947 discussed the successive French and Japanese infringements of Chinese sovereignty in Itu Aba Island.¹⁶¹ The report reminded readers that Vietnam (controlled by France), the Philippines, and the English in Borneo lay beside the islands. It noted that the NHQ dispatched troops to garrison the island so to prevent foreign powers from "coveting," invading, and occupying them. The mention of historical grievances from foreigners, alongside their geographical proximity to the islands, created an indirect, almost subliminal, yet logical reasoning for why the ROC garrisoned troops to Itu Aba Island. In all cases, however, urgency was expressed about the islands themselves, and never with issues of maritime jurisdiction.

ROC protests against "infringements" of sovereignty over the islands after the publication of the U-Shaped Line continued this trend. One related to Filipino plans and actions in the Spratly region provided a telling distinction between the islands' land and maritime jurisdictions, and their importance to the ROC government. On April 13, 1949, ROC Ambassador Chen Chih-Ping told Felino Neri, the Filipino Undersecretary of Foreign Affairs, that newspaper articles stated that the Filipino government planned to send Commodore Jose

¹⁵⁹ MOFA, "Xisha Qundao Wenti," file series 019.3/0001, file 011; MOFA, "Nansha Qundao," file series 019.3/0012, files 031, 145-46; MOFA, "Nansha Qundao [南沙群島, or the "Spratly Archipelago]," The Historical Archives of the Department of Modern History in the Academia Sinica [*Zhongyang Yanjiuyuan Jindaishi Yanjiusuo Dang'an Guancang* 中央研究院近代史研究所檔案館藏], file series 019.3/013, file 058.

¹⁶⁰ MOFA, "Nansha Qundao," file series 019.3/013, file 028.

¹⁶¹ MHTO, "Xi Nan Sha Qundao Kancha Baogaoshu," file series 0035/944/1060, file 001/002/0006 to 0007.

Andrada to inspect Itu Aba Island.¹⁶² One article stated that “Upon learning that Filipino fishermen from Palawan often visit Itu Aba, some cabinet members suggested that their people be induced to settle there preparatory to making a claim for the annexation of this group to the Philippines, if necessary, as a security measure.” Chen requested confirmation of the veracity of these statements and emphasized that “Taiping [i.e. Itu Aba] Island is the territory of the Republic of China.” Felino’s reply, written nearly a month later, on May 11, 1949, reassured Chen that there was no cause for worry:

In the meeting referred to, the Cabinet simply discussed the need for affording greater protection to Filipino fishermen who are reportedly operating in the waters surrounding Itu Aba... I would... appreciate it if Your Excellency could find it possible to furnish the Department [i.e. Filipino Ministry of Foreign Affairs] with additional data on the island for the Department’s further information and guidance. I refer specifically to the basis of the claim of Your Excellency’s Government thereto in connection with its past and present relationship with the island of Formosa [i.e. Taiwan].¹⁶³

Both Chen and Felino’s letters indicated that the islands’ land territories were of main concern to the ROC government. Chen worried that the Filipino cabinet had authorized an inspection of Itu Aba Island and discussed the settlement of Filipino fishermen there, thus ‘infringing’ on the ROC’s sovereignty. Felino recognized Chen’s worry, and through the word “simply” refuted the validity of the newspaper reports. Felino, however, clearly thought the presence of Filipino fishermen “operating in the waters surrounding Itu Aba Island” — well within the limit delineated by the U-Shaped Line — *was not an issue*. He never mentioned maritime jurisdiction, which presumably he considered a relatively trivial issue.

Chen never replied to Felino’s response, which suggests that the Filipino explanation satisfied the ROC. Again, the ROC did not issue any diplomatic protest against the Philippines involving sovereignty issues in the South China Sea region until late May 1956, after a private

¹⁶² MOFA, “Nansha Qundao,” file series 019.3/0013, file 039.

¹⁶³ MOFA, “Nansha Qundao,” file series 019.3/0013, file 038.

citizen, Thomas Cloma, proclaimed the formation of “Freedomland” over some of the Spratly islands to the Filipino and world press on May 15.¹⁶⁴ The ROC further responded by sending three expeditions to reclaim the Spratly islands from June 1 to September 24, 1956 — ROC garrisons on the islands earlier had been recalled to defend against an anticipated Communist invasion of Taiwan.¹⁶⁵ The islands, in short, were the key aspect of the South China Sea archipelagos to the ROC, not the exclusion of foreign fishermen from the surrounding waters. The ROC did not consider the waters of the U-Shaped Line as providing special rights.

The “Kingdom of Humanity” was another foreign threat to ‘Chinese sovereignty’ over the islands. While the private American citizen Morton Meads’ attempt to establish an independent country over part of the Spratlys was seen as bizarre or comical by most of the international community — searches by air to locate the kingdom using coordinates provided by Meads proved fruitless — the ROC treated the affair seriously.¹⁶⁶ On July 9, 1955, Chow Shu-Kai, ROC Chargé d’affaires ad interim in Manila, notified Filipino Vice President Carlos Garcia, who also was serving as the Filipino Secretary of Foreign Affairs, that the ROC was

... conducting investigation [sic] in the waters around the Spratley Islands in connection with alleged violation of Chinese territory by the so called “Kingdom of Humanity”... the “Kingdom’s” territory appears to be so delineated as to include the Spratley Island Group, which constitutes part of the territory of the Republic of China. The Chinese Government has therefore initiated action to conduct investigation in said area with a view of determining whether infringement on Chinese territorial rights has been committed by the said “Kingdom.”¹⁶⁷

¹⁶⁴ Samuels, *Contest for the South China Sea*, 82. Thomas Cloma did not formally declare “Freedomland’s” founding until July 6, 1956 (MOFA, “Nansha Qundao [南沙群島, or the “Spratly Archipelago”],” the Historical Archives of the Department of Modern History in the Academia Sinica [*Zhongyang Yanjiuyuan Jindaishi Yanjiusuo Dang’an Guancang* 中央研究院近代史研究所檔案館藏], file series 019.3/0005, files 071 to 073).

¹⁶⁵ Samuels, *Contest for the South China Sea*, 84.

¹⁶⁶ MOFA, “Nansha Qundao [南沙群島, or the “Spratly Archipelago”],” The Historical Archives of the Department of Modern History in the Academia Sinica [*Zhongyang Yanjiuyuan Jindaishi Yanjiusuo Dang’an Guancang* 中央研究院近代史研究所檔案館藏], file series 019.3/0003, files 045 to 046.

¹⁶⁷ MOFA, “Nansha Qundao,” file series 019.3/0003, file 077.

This statement did not constitute a diplomatic protest to Manila, as it did not involve actions by the Philippines and simply warned of Chinese activity near Filipino sovereignty. It may, however, have been an indirect warning, for the former Filipino senator Camilo Osías officially believed that the Kingdom existed and the Philippines should establish diplomatic ties with it.¹⁶⁸ He was the only significant politician in his country to take that claim seriously. In any case, the focus again was solely on the islands' land *territory*. That the “Kingdom” appeared to include the Spratlys precipitated the ROC's protests and a resolution to send investigative patrols to the islands. While the investigation was conducted in the waters surrounding the island, its purposes were to ensure that Chinese sovereignty was not infringed on the Spratly Islands and to prevent further incursions there by foreign elements.

2.2 The Japanese Administration of the South China Sea Islands and its Devolution to China

The issue of devolution presents certain possibilities that could undermine the islands attribution line argument. From 1939, Japan militarily occupied some of the Spratly and Paracel islands through Taiwan province. This administrative area was named the *Shinnan Guntō* (新南群島, or *Xinnan Qundao* in Mandarin).¹⁶⁹ Its boundaries (see Map 4) were solid and encompassed a significant area of water, while its corners possessed specific geographic coordinates. Plausibly, the boundary encompassed the *Shinnan Guntō*'s waters, indicating that the zone conferred certain exclusive maritime rights. While no written document directly verifies this assumption, the Imperial Japanese Navy acted as if the South China Sea were Japanese territorial waters during World War Two.

¹⁶⁸ MOFA, “Nansha Qundao,” file series 019.3/0003, file 046.

¹⁶⁹ Samuels, *Contest for the South China Sea*, 64. The Japanese and Chinese characters are the same.

If the *Shinnan Guntō*'s boundaries simply denoted an islands attribution line, there would be no waters to hand over to the ROC in the first place when China reacquired Taiwan province after the war. Even if the *Shinnan Guntō*'s boundaries denoted a waters zone, however, it is implausible to assert that China inherited this claim, or any rights to its waters, through the postwar devolution of Taiwan, so contributing to the shape of the U-Shaped Line. The *Shinnan Guntō* did significantly shape the formation of the Line, but not through incorporating the *Shinnan Guntō*'s delineated sea zone, but rather, through the islands the *Shinnan Guntō* encompassed. As a telegram order sent by the MOD to the NHQ on August 5, 1947, indicated, the ROC was simply preparing to take back the *islands* of the *Shinnan Guntō*. It wanted to be sure that they were the same as those within China's pre-1939 administrative area of the Tuansha Islands (團沙群島 *Tuansha Qundao*), which encompassed a portion of the Spratlys and centred on Tizard Bank.¹⁷⁰ In December 1946, the ROC government dropped the Tuansha appellation and subsumed the area within the Nansha (南沙), or Spratly archipelago.¹⁷¹ This double-checking was intended to prevent the ROC government from accidentally occupying islands that were not originally theirs.¹⁷²

So too, the report itself again only addressed the islands.¹⁷³ It listed them individually, gave general descriptions of them, and concluded that the *Shinnan Guntō* and Tuansha Islands were two names for the same place.¹⁷⁴ Another ROC report of August 24, 1946 concluded that

¹⁷⁰ MOFA, "Nansha Qundao," file series 019.3/0012, files 014 and 016. In Chinese: "查新南與團沙是否同地兩名, 我方已否接收? *Cha Xinnan yu Tuansha shifou tongdi liangming, wofang yifou jieshou?*" In English: "Check whether the Tuansha [Islands] and Shinnan [Guntō] are the same places with different names. Have we received [i.e. taken] them yet [the islands marked by the Shinnan Guntō area]?"

¹⁷¹ MOFA, "Nansha Qundao," file series 019.3/0013, file 030.

¹⁷² MOFA, "Nansha Qundao," file series 019.3/0012, file 014.

¹⁷³ MOFA, "Nansha Qundao," file series 019.3/0012, file 014.

¹⁷⁴ MOFA, "Nansha Qundao," file series 019.3/0012, files 016 to 019.

the *Shinnan Guntō* also included part of the Paracel islands.¹⁷⁵ In other words, the logic behind the inheritance of the *Shinnan Guntō* was that its *islands* should be recovered because they were the same ones the Chinese thought always had been theirs. It had nothing to do with inheriting the waters of the *Shinnan Guntō*. Indeed, the concern with double checking whether the Tuansha coincided with the *Shinnan Guntō* directly showed that the ROC was not interested in inheriting the *Shinnan Guntō* administration, because doing so harboured the possibility of taking something that was not theirs. The ROC sought *only* to restore the previous Tuansha administration by reclaiming the *Shinnan Guntō* islands, the latter of which coincided with the former. These files wreck any argument that the ROC inherited the waters delineated by the boundaries of the *Shinnan Guntō*.

To the ROC, moreover, immediately after the Second World War in 1945 all Chinese borders compromised by Japanese aggression since 1894 were restored to their original pre-occupation state.¹⁷⁶ Thus, if China never possessed the same Spratly islands claimed in the *Shinnan Guntō* area, it could not have inherited them and their waters through devolution of the *Shinnan Guntō*.¹⁷⁷ If the islands actually had been Chinese before the war, the same problem persists. Administratively, the *Shinnan Guntō* and the Tuansha Islands were not the same. The Tuansha area was not originally attached to Taiwan by China, as was the *Shinnan Guntō* by Japan, nor did they have the same boundaries proscribed by the *Shinnan Guntō*. During the Qing

¹⁷⁵ MOFA, “Nansha Qundao,” file series 019.3/0012, file 031.

¹⁷⁶ Although the official surrender of Japan to China did not occur until 1952 (the ROC held the Treaty of San Francisco in 1951 invalid, since it was not invited to the conference), China believed that the surrender in 1945 meant the automatic implementation of the Cairo and Potsdam Declarations, which respectively stressed that “all the territories Japan has stolen from the Chinese... shall be restored to the Republic of China,” and that “Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku.” Granted, these declarations were not legally binding, and only the Potsdam Declaration was referenced in the Japanese Instrument of Surrender in 1945. However, the ROC’s determination to “receive back (接收 *jieshou*)” the islands from Japan shows that it believed it was entitled to retake its territories due to these declarations. See *Cairo Declaration*, December 1, 1943, http://www.ndl.go.jp/constitution/e/shiryo/01/002_46/002_46tx.html; *Potsdam Declaration*, July 26, 1945, <http://www.ndl.go.jp/constitution/e/etc/c06.html>; *Japanese Instrument of Surrender*, September 2, 1945, <http://www.ndl.go.jp/constitution/e/etc/c05.html>; Samuels, *Contest for the South China Sea*, 75, 78-80.

¹⁷⁷ Samuels, *Contest for the South China Sea*, 68.

dynasty, the South China Sea islands, including the Tuansha region, was administered by Hainan prefecture under Guangdong province. Supposedly, this status continued until after World War Two. As one file on plans to develop the South China Sea islands, dated to mid-September 1946, wrote, the Spratly Islands officially were incorporated into Guangdong province in 1909.¹⁷⁸ While there is little concrete evidence for this claim — the 1909 Qing expedition to the South China Sea Islands did not visit the Spratlys — what the ROC *thought* constituted the original administration of the South China Sea islands during the creation of the U-Shaped Line still was not the *Shinnan Guntō*. In either case, before 1947 no maritime boundary lines existed in the region, and China never exercised a dominant presence in the waters surrounding the islands.¹⁷⁹ Consequently, after the Second World War the islands would have reverted to its pre-war status, as administered by Guangdong province, not to the Japanese administrative configuration of the *Shinnan Guntō*. The *Shinnan Guntō* sea zone, if its boundaries really did demarcate such a thing, could not have been claimed by China because it would have represented a wartime conquest that did not exist in China prior to 1939. Whether Japan's *Shinnan Guntō* boundary line actually delineated a waters zone is irrelevant. Its waters did not and could not translate into those laying within the U-Shaped Line.

2.3 Physical Characteristics of the U-Shaped Line

Another topic that merits close examination regards the appearance and physical characteristics of the U-Shaped Line in its three major manifestations: the 1946 and 1947 versions of the *Location Sketch Map of the South China Sea* and the 1947 *Location Map of the*

¹⁷⁸ MOI, “Jinzhu Xi Nan Sha Qundao An,” file series 0035/E41502/1, file 0001/002/0009.

¹⁷⁹ See chapter one.

South China Sea (which was the map publicly published in 1948). The way the Line was drawn supports the conclusion that it was an islands attribution line, not a historic rights waters zone.

Chinese scholars often state that the U-Shaped Line was an equidistant marker between China and neighbouring states. As Li Jinming and Li Dexia note, Wang Xiguang, a ROC official who helped formulate the U-Shaped Line, stated that “the dotted national boundary line was drawn as the median line between China and the adjacent states.”¹⁸⁰ A line equidistant to the shores of countries claiming the same waters can suggest a maritime boundary. It was one of many basic methods of compromise between competing spheres of maritime sovereignty at the time. Indeed, the distances between the southeasternmost Spratly islands, the U-Shaped Line, and Borneo and Palawan Island, are roughly equidistant in the U-Shaped Line maps. However, this equidistance principle did not feature in most of the U-Shaped Line, in the sections closest to the Indonesian Natuna Islands (納土納群島 *Natuna Qundao*); Macclesfield Bank (中沙群島 *Zhongsha Qundao*); the southern and eastern coasts of Vietnam; the Pratas Islands (東沙群島 *Dongsha Qundao*); the gap of sea between the Spratly and Paracel Islands; and the stretch of sea between the Paracels/Macclesfield Bank and the Chinese mainland.¹⁸¹ In these cases, the distance from the Line to the nearest land feature was either much shorter or longer compared to that of the opposite side of the same section of the Line. Hence, to claim that the Line was a maritime boundary because of its employment of the equidistance principle is suspect.

Virtually all scholars on the South China Sea dispute, moreover, overlook another noteworthy feature. On all three maps of the U-Shaped Line, an inconspicuous section branches off from the main boundary line and sits between the southern tip of Palawan island (巴拉望

¹⁸⁰ Li Jinming and Li Dexia, “The Dotted Line on the Chinese Map of the South China Sea: A Note,” *Ocean Development & International Law* 34:3-4 (2003): 290.

¹⁸¹ See Maps 2, 4 and 5.

Balawang) of the Philippines (菲律賓 *Feilübin*) and northern Borneo (婆羅洲 *Boluo Zhou*).¹⁸²

This section was attached to and marked identically with the same pattern as the rest of the boundary, using a series of dots, lines, and in the two 1947 maps, incomplete circles. What it denotes presumably held true for the rest of the Line.

This segment of the Line clearly did not delineate a maritime boundary. It extended eastward into and past the Philippines' border with northern Borneo, as defined in the Filipino constitution of 1935.¹⁸³ According to the Government of the Philippines, the nation's boundaries stemmed from the "Philippine Treaty Limits," consisting of three treaties: the Treaty of Paris between Spain and the US on December 10, 1898; the Treaty of Washington between Spain and the United States on November 7, 1900, and the "Convention Between the United States of America and Great Britain Delimiting the Boundary Between the Philippine Archipelago and the State of North Borneo" in January 2, 1930.¹⁸⁴ The third treaty is the most recent and relevant one concerning the boundary set between North Borneo and the Philippines.

Granted, the boundary set by this treaty appeared to have been only an islands attribution line. It established "the line separating the islands belonging to the Philippine Archipelago on the one hand and the islands belonging to the State of North Borneo which is under British protection on the other..."¹⁸⁵ The treaty did not specify "waters" of any sort. Furthermore, not

¹⁸² See Maps 1, 2, and 3. Borneo is marked differently depending on the map. It is labelled as 英属婆羅洲 *Yingshu Boluo Zhou* in the 1946 *Location Sketch Map of the South China Sea*, and simply 婆羅洲 *Boluo Zhou* in the 1947 version of the map and the 1947 *Location Map of the South China Sea*.

¹⁸³ Lowell Bautista, "Philippine Territorial Boundaries: Internal Tensions, Colonial Baggage, Ambivalent Conformity," *Jati* 16 (2011): 37-39. For a map that shows the boundaries set by the coordinates provided by the 1930 US-Great Britain Convention, see page 37 of this article.

¹⁸⁴ Bautista, "Philippine Territorial Boundaries," 38-39.

¹⁸⁵ *Convention Between the United States of America and Great Britain Delimiting the Boundary Between the Philippine Archipelago and the State of North Borneo*, January 2, 1930, <http://www.gov.ph/1932/12/15/convention-between-the-united-states-of-america-and-great-britain-delimiting-the-boundary-between-the-philippine-archipelago-and-the-state-of-north-borneo-1930/>.

until 1961 did the Filipino government officially declare that its territorial waters lay between its straight baselines and the boundaries set by the “Philippine Treaty Limits.”¹⁸⁶

Nevertheless, if the boundary set by the 1930 Convention had indicated only the islands of the Philippines and Borneo and not their waters, the same conclusion would hold. As Tommy Koh notes, for over a hundred years before World War Two, Great Britain was the champion of the three nautical mile limit concept for territorial waters.¹⁸⁷ It constantly strove to maintain this range unless agreed otherwise in special arrangements with foreign states. Two months after the US-Great Britain Convention of 1930, Britain reiterated that stance by supporting the standardization of the territorial waters limit in the Hague Codification Conference.¹⁸⁸ This international conference was the first and last of its kind to address the scope of a nation’s waters before the creation of the U-Shaped Line maps. The segment of the U-Shaped Line in question, however, did not reflect such long-established maritime borders. According to the distance conversion scale provided by the three U-Shaped Line maps, the segment of the Line between British-held Borneo and the Philippines lay roughly 25 km, or 13.5 nm, from the nearest coast of either state, far past the three nautical mile mark.¹⁸⁹ Whether the Philippine Treaty Limits denoted a waters zone in 1946 and 1947 is inconsequential to this thesis. In either scenario, this segment of the U-Shaped Line did not conform to *any* maritime boundary or principle previously recognized in the region, whether by one or all parties.

¹⁸⁶ Government of the Philippines, “Republic Act No. 3046 of 17 June 1961. An Act to Define the Baselines of the Territorial Sea of the Philippines,” June 17, 1961, in *Maritime Space: Maritime Zones and Maritime Delimitation* http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1961_Act.pdf.

¹⁸⁷ Koh, “The Origins of the 1982 Convention on the Law of the Sea,” 9.

¹⁸⁸ Koh, “The Origins of the 1982 Convention on the Law of the Sea,” 7-8.

¹⁸⁹ Using a ruler, the distance from the U-shaped Line and the nearest island of the Philippines (菲律賓 *Feilübin*) or Borneo is a quarter of the length indicating 100 km, as provided by the distance scales of the 1946 and 1947 versions of the *Location Sketch Map of the South China Sea Islands* and the 1947 *Location Map of the South China Sea Islands*. See Maps 1, 2, and 3.

In contrast, arguably the ROC drew this segment of the U-Shaped Line merely to specify where the land territories of the Philippines ended and that of Borneo began. These states possessed islands that were close to each other, particularly the three visible in the U-Shaped Line maps: Balabac, Banggi, and Balambangan.¹⁹⁰ The Line correctly marked as Filipino the same islands established by the 1930 Convention. This segment of the Line, furthermore, does not extend longitudinally past the western half of the width of Palawan Island. Why it was cut short and not enclosed can best be explained by the ROC's main preoccupation with denoting which *islands* were whose via the U-Shaped Line *from their viewpoint*. The digression of the Line from the main U-Shaped body was extended just enough to serve a useful purpose: to avoid confusion in the map. This argument again supports the islands attribution line. Carried over to the rest of the Line, this underlying intent would especially explain those parts that were equidistant from neighbouring lands, like between Palawan and Borneo islands and the South China Sea islands, where the two groups lay close to each other and had to be divided for demarcation purposes.

2.4 The 1945 Truman Proclamation and Continental Shelf Zones

It also would be unconvincing to argue that the archival files did not mention historic rights waters around the islands simply because waters zones had not yet been internationally standardized and were seen as a natural extension of the land that did not merit mention.

Although the Hague Codification Conference in 1930 did not produce an international standardization of territorial waters, countries nevertheless thereafter unilaterally specified maritime borders. On September 28, 1945, for instance, the United States proclaimed the “1945

¹⁹⁰ See Maps 1, 2, and 3. Balabac Island was part of the Philippines, while Banggi Island and Balambangan Island were held by Borneo.

US Presidential Proclamation No. 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf.” Also known as the Truman Proclamation of 1945, the United States here broke precedent in international law by unilaterally declaring an extended fisheries protection and continental shelf zone.¹⁹¹ Several other countries followed suit with this practice, such as Saudi Arabia and Kuwait in 1949; Chile, Ecuador, and Peru in 1952; Israel in 1953; Iran in 1955; and Venezuela in 1956.¹⁹² This trend led to a convention on continental shelves in the First United Nations Conference on the Law of the Sea, held in Geneva on April 29, 1958.¹⁹³ By no means were countries disinterested in defining the scope of their waters around the time of the creation of the U-Shaped Line.

The ROC was no exception. It officially announced the extent of its maritime boundaries in 1931 and 1934, before the creation of the Line. Yet, a historic rights waters zone as massive as the U-Shaped boundary would have broken precedent with the ROC’s existing borders, and with regards to the whole world. The Line was created at a time when the idea of continental shelves was seen as a revolutionary element in international law, never mind an even larger historic rights waters zone. If the latter concept was what the ROC intended with the U-Shaped Line, it would not have overlooked the matter out of “insignificance,” given the sheer level of detail contained in the reconnaissance reports, plans for island development, and conference summaries that defined the scope of the Line.

Fu Kuen-chen’s conclusion that the U-Shaped Line denoted historic rights waters precisely because it was China’s own Truman Proclamation, however, is problematic.¹⁹⁴ He

¹⁹¹ Government of the United States of America, *1945 US Presidential Proclamation No. 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf*, September 28, 1945, <http://cil.nus.edu.sg/rp/il/pdf/1945%20US%20Presidential%20Proclamation%20No.%202667-pdf.pdf>.

¹⁹² Suzette Suarez, *The Outer Limits of the Continental Shelf: Legal Aspects of their Establishment* (Berlin: Springer, 2008), 28-29.

¹⁹³ Suarez, *The Outer Limits of the Continental Shelf*, 29.

¹⁹⁴ Fu Kuen-chen, *Legal Status of the South (China) Sea*, 204.

provides no evidence to conclude that the coincidence between the two stemmed from cause and effect. He merely assumes this to be the case. The Truman Proclamation, however, did not enter the calculations of the Chinese officials who created the U-Shaped Line. The ROC archival files — most importantly those detailing the exact determination of the U-Shaped Line — never mentioned the Truman Proclamation, continental shelves, the scope of fishing waters, and scarcely even the United States. Moreover, Fu overlooks the common logic that prevailed amongst the Truman Proclamation and all similar claims by other countries: the claiming of a fisheries and resource development zone within countries' *continental shelves*.¹⁹⁵ Most of the waters that the U-Shaped Line delineated, however, especially those surrounding the Spratly Islands, extended far past China's continental shelf. The ROC, furthermore, had not officially declared its support and adherence to the concept of a continental shelf zone when the U-Shaped Line maps were created. It only advocated a three-mile territorial waters zone and a twelve-mile contiguous zone.¹⁹⁶ The ROC first officially approved the continental shelf concept nearly a decade after the creation of the U-Shaped Line, when it helped draft and signed the Geneva Convention in 1958. The latter was not ratified by the ROC government until October 12, 1970.¹⁹⁷

So too, Xu Zhiliang states that “some South American countries ‘created’ a concept similar to America’s continental shelf [as created by the Truman Proclamation in 1945] — a 200 nm zone entailing territorial waters rights [200 海里领海权 *200 haili linghai quan*].”¹⁹⁸ Since Xu

¹⁹⁵ Suarez, *The Outer Limits of the Continental Shelf*, 28-29.

¹⁹⁶ Chiu, “China and the Question of Territorial Sea,” 38.

¹⁹⁷ UN, “Convention on the Continental Shelf: Entry into Force,” June 10, 1964, page 4, in *Treaty Collection*, <http://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXI/XXI-4.en.pdf>.

¹⁹⁸ Xu, “The Evolution of Maritime Territory in Republican China and the Formation of the Interrupted Border Line in the South China Sea,” 94. In Chinese: “南美一些国... 就“创造”了一个接近美国大陆架宽度的概念 — 200 海里领海权 *Nanmei yixie guo... jiu “chuangzao” le yige jiejin Meiguo dalujia kuandu de guannian — 200 haili linghai quan.*”

argues that the U-Shaped Line was one of many responses to this Truman Proclamation, he believes the Line denoted territorial waters.¹⁹⁹ This claim is problematic for several reasons. For one, these South American countries did no such thing; they simply pronounced a continental shelf zone.²⁰⁰ Secondly, the Truman Proclamation did not advocate this type of waters zone. It declared a continental shelf zone and only for maritime resource exploitation, which Xu inadvertently affirmed.²⁰¹ Above all, the assertion that the ROC drew the U-Shaped Line to denote its territorial waters is entirely unsupported by subsequent events. As Li Jinming notes, the ROC and PRC governments have never prohibited or regulated all forms of foreign maritime passage within all of the waters of the U-Shaped Line, a defining right of pre-UNCLOS territorial waters.²⁰² The Chinese navy did not regulate maritime and aerial traffic outside of its 24 nm territorial and contiguous waters in the South China Sea during the mid-1940s to late 1950s, nor did it diplomatically protest against “maritime infringements” in these areas. Instead, Chinese diplomatic protests at this time were limited to perceived infringements of sovereignty in the islands’ land territories. Nothing suggests that the Truman Proclamation ever mattered to the ROC during the genesis of the U-Shaped Line, and indeed, for decades after.

Besides the lack of a claim to historic rights or broad territorial waters, nothing indicates that the ROC attempted to enforce such zones throughout the South China Sea. The United States Navy by this time reigned supreme in the waters of the South China Sea. Chinese naval activity in the islands regions in 1946 and 1947 was largely confined to landing expeditions, supplying of garrisons, and protecting a limited fishing zone. The ROC government had more

¹⁹⁹ Xu, “The Evolution of Maritime Territory in Republican China,” 95.

²⁰⁰ Suarez, *The Outer Limits of the Continental Shelf*, 28-29.

²⁰¹ Xu, “The Evolution of Maritime Territory in Republican China,” 94.

²⁰² Li Jinming, “The Legal Status of the U-Shaped Line in the South China Sea: Historical Waters, Maritime Boundary, or a Line of Islands Ownership? [南海断续线的法律地位：历史性水域、疆域线、抑或岛屿归属线 *Nanhai Duanxu Xian de Falü Diwei: Lishi Xing Shuiyu, Jiangyu Xian, Yihuo Daoyu Guishu Xian*]” *Southeast Asian Affairs* 4 (2010): 26.

pressing matters to attend to, chief among them the Chinese Civil War. As the tide of the war swung irreversibly in the favour of Mao Zedong's Communist Chinese forces, and the threat of an invasion in Taiwan loomed in 1949, the South China Sea islands became increasingly trivial to the ROC government. By 1950, the last ROC troops stationed on the islands were recalled to Taiwan.²⁰³ While the ROC sent some troops back to the islands in 1955, only Itu Aba and the Pratas Islands were secured. Naval activity afterwards in the South China Sea islands region focused on the mere supplying of this garrison, and expeditions to ensure that the islands were not infringed upon by others. The eviction of Thomas Cloma and his men was a major goal in 1955 and 1956. Developments on the ground during this period confirmed that the ROC's sole concern was the islands' land territories, and not a massive waters zone emanating from them.

There is one last consideration. Jacques deLisle notes that the U-Shaped Line generally ran along the 200 meter isobaths line, a feature usually associated with continental shelves as set out by the Truman Proclamation and the Geneva Convention of 1958.²⁰⁴ Therefore, this “implies that China claimed everything beyond the outer limits of rival states' continental shelves (under the pre-UNCLOS regime).”²⁰⁵ While interesting, this logic is flawed. It would imply that the ROC was affected by the Truman Proclamation, of which there is no direct evidence for as previously explained. DeLisle also fails to recognize the implication of associating the Truman Declaration with the U-Shaped Line in such a manner. If the ROC had indeed made a historic claim over the waters of the South China Sea, it willingly let the Truman Proclamation of 1945 — which espoused a principle unprecedented and as yet legally unfounded in international law — detract from a “patriotically sacred” claim that had as its origin well over a millennia of history, for the sake of respecting a zone that none of the southeast Asian colonies bordering the

²⁰³ Granados, “Chinese Ocean Policies Towards the South China Sea in a Transitional Period, 1946-1952,” 160, 162.

²⁰⁴ An isobath line connects points in the seabed that have the same depth; 200 metres in this case.

²⁰⁵ Jacques deLisle, “Troubled Waters: China's Claims and the South China Sea” *Orbis* 56:4 (2012): 615.

U-Shaped Line respected at the time save the US in the Philippines. Notwithstanding the inherent contradiction, there is simply no evidence for this decision making in the ROC government.

2.5 Enter the PRC

With the declaration of the People's Republic of China in October 1, 1949, another player to the dispute emerged. The conclusions regarding the ROC's U-Shaped Line, however, remained true of the PRC. It believed itself to be the sole legitimate representative of China and the ROC as a rogue breakaway province. Anything the ROC claimed were taken as its own, including the unofficial adoption of the U-Shaped Line in several PRC maps of China from 1949.²⁰⁶ Although the Line underwent a slight change in 1953 — in particular, the removal of the two dashes separating Vietnam and China in the Bay of Tonkin — the same shape remained.²⁰⁷ Thus, the PRC retained the same physical attributes of the ROC line, pointing towards an islands attribution line.

The PRC's claims to the region and maritime boundaries further supports the islands attribution line interpretation. The first official claim occurred in 1951, when Premier Zhou Enlai denounced the joint US/UK draft for the Treaty of San Francisco:

... the Paracel Archipelago and Spratly Island, as well as the whole Spratly archipelago, and the Chung-sha (Macclesfield Bank), and Tung-sha (Pratas) archipelagos have always been Chinese territory. Though occupied for some time during the war of aggression unleashed by Japanese imperialism, they were taken over by the then Chinese government following Japan's surrender. The Central People's Government of the People's Republic of China declares herewith: The inviolable sovereignty of the People's Republic of China over Spratly Island and

²⁰⁶ Shen Jianming, "China's Sovereignty over the South China Sea Islands: a Historical Perspective," *Chinese Journal of International Law* 1:1 (2002): 129. The PRC government did not officially endorse the U-Shaped Line until 2009, in its rebuttal of the Malaysian-Vietnamese joint submission and Vietnamese individual submission to the UN of the limits of their continental shelves (Erik Franckx and Marco Benatar, "Dots and Lines in the South China Sea: Insights from the Law of Map Evidence," *Asian Journal of International Law* 2 (2012): 91-92).

²⁰⁷ Franckx and Benatar, "Dots and Lines in the South China Sea: Insights from the Law of Map Evidence," 91.

the Paracel archipelago will by no means be impaired, irrespective of whether the American-British draft for a peace treaty with Japan should make any stipulations and of the nature of any such stipulations.²⁰⁸

The PRC simply announced that the South China Sea islands were an inherent part of Chinese territory. It did not mention any special waters zone. That the PRC may have made this statement only because it lacked the naval strength to enforce such a zone is irrelevant, because it did not make an official claim to any waters zone remotely approaching the size of the U-Shaped Line for several decades afterwards. Indeed, the PRC did not even implement a 12 nm territorial waters zone until September 4, 1958, a decade after the release of the U-Shaped Line.²⁰⁹ It rejected the Convention of the Continental Shelf of the Geneva Conference in 1958.²¹⁰ The establishment of an adjacent 12 nm contiguous zone occurred nearly four decades later, in 1992.²¹¹ The PRC did not accept the concept of a continental shelf until it signed UNCLOS in 1982, which it did not ratify until 1996.²¹² The PRC did not officially bring its Exclusive Economic Zone (EEZ) and Continental Shelf Zone into effect until the formulation of the “Law of the People’s Republic of China on the Exclusive Economic Zone and the Continental Shelf” two years later on June 26, 1998.²¹³ These proclamations and laws, and especially the PRC’s interest solely in the islands as evidenced by the San Francisco Treaty, indicate that the PRC saw the U-Shaped Line as the ROC did: simply as an islands attribution line. While chapter three will describe some caveats with the EEZ law in greater detail — generally, that it “shall not affect the

²⁰⁸ Samuels, *Contest for the South China Sea*, 79.

²⁰⁹ Zou Keyuan, “China’s Exclusive Economic Zone and Continental Shelf: Developments, Problems, and Prospects,” *Marine Policy* 25 (2001): 72. The territorial waters zone applied to the Paracels, Spratlys, Pratas, and Macclesfield Bank.

²¹⁰ Zou Keyuan, *China’s Marine Legal System and the Law of the Sea* (Leiden: Martinus Nijhoff, 2005), 282.

²¹¹ Zou, “China’s Exclusive Economic Zone and Continental Shelf: Developments, Problems, and Prospects,” 72.

²¹² Nong Hong, *UNCLOS and Ocean Dispute Settlement: Law and Politics in the South China Sea* (Abingdon: Routledge, 2012), 109, 110, 114.

²¹³ Zou, *China’s Marine Legal System and the Law of the Sea*, 342. Refer to the glossary for an explanation of EEZs.

historic rights enjoyed by the People's Republic of China" — the same idea holds.²¹⁴ There was no evidence that the PRC *originally* harboured the notion that it could claim any waters zone beyond territorial waters, the most basic of waters, from the PRC's inception and adoption of the Line to 1958. To argue that the U-Shaped Line could have or did represent any sort of large special waters zone — never mind a historic rights waters one — at or around the time of China's claims to the South China Sea Islands is unsubstantiated. This trend carried on through the words and actions of the PRC government. The year 1974, however, brought an important change.

²¹⁴ Zou, *China's Marine Legal System and the Law of the Sea*, 345.

Chapter 3: PRC and ROC Claims and Actions in the South China Sea, 1958-2013

Until 1974, the U-Shaped Line can best be characterized as an islands attribution line. In this year, the PRC began to adopt ambiguous language, which opened the *possibility* of a historic rights waters or historic waters zone interpretation of the Line, although still an islands attribution line remains likely. On the opposite side of the Taiwan Strait, the ROC officially changed its approach toward the U-Shaped Line in 1993, claiming all seas within the U-Shaped Line as its historic waters. In practice, however, it continued to adhere to an islands attribution line. A brief background of events in the South China Sea from the late 1950s to 1980s will first provide context for this change. A thorough examination of relevant PRC and ROC documents will then follow.

Although historical methodologies continue to be used, this chapter frequently employs those of international law and political science. PRC archival files that document the government's decision making on the South China Sea issue remain classified. Those that are available largely are legal in nature, such as maritime laws and relevant declarations. Examining how and why China interprets international law is crucial to documenting the progress of the U-Shaped Line. Many events covered in this chapter are recent and inherently political, meaning they fall more within the realm of political science rather than history. Finally, academics commonly employ political science or international law methodologies when examining the U-Shaped Line. These views must be discussed.

3.1 From Lull to Resurgence in the South China Sea

From the late 1950s to the mid-1970s the dispute de-escalated in physical terms. In 1956, France abandoned the Paracels, following its general withdrawal from Indochina. South Vietnamese forces subsequently established a military presence there. Although France never surrendered its claims to the Spratlys, its claim faded into obscurity. Besides twice evicting some Chinese fishermen living temporarily in parts of the Paracel Islands throughout February and March 1959, Vietnam remained inactive in the region.²¹⁵

The same pattern held true for the PRC. It maintained the troops it had stationed in the Amphitrite group of the Paracels since the 1950s.²¹⁶ The PRC merely protested the Vietnamese arrests of its fishermen and over 200 American infringements of its claimed territorial waters from 1959 to 1971. The new PRC regime lacked the naval power to oppose them for several decades.²¹⁷ The Korean War (1950-53) deepened the distrust between the US and Communist China, prompting the Truman administration to deploy the American Seventh Fleet in the Taiwan Strait in 1950. In 1954, the US and ROC formed a defence pact, and the US dominated the South China Sea.

Apart from a lack of naval capability, the PRC's priorities lay elsewhere until the mid-1970s. Its government focused heavily on internal recovery. An ROC invasion remained a real prospect for Mao Zedong, although it subsided by 1960, while the PRC faced other threats through Korea or from internal subversion. The Sino-Soviet split in 1960 diverted Mao's military attention towards the defence of the Sino-Soviet border, providing little reason for the

²¹⁵ Taylor Fravel, *Strong Borders, Secure Nation: Cooperation and Conflict in China's Territorial Disputes* (Princeton: Princeton University Press, 2008), 274; Lo, *China's Policy Towards Territorial Disputes*, 28.

²¹⁶ Samuels, *Contest for the South China Sea*, 67. The Paracels consist of two groups of islands. The northeastern half centres on Woody Island and is named the Amphitrite Group. The southeastern half centres on Pattle Island and is called the Crescent Group.

²¹⁷ Lo, *China's Policy Towards Territorial Disputes*, 28-29; Samuels, *Contest for the South China Sea*, 87-88. The 200 plus American incursions all took place within the PRC's claimed 12 nm wide territorial waters.

development of a navy. The doctrine of People's War, focused on land-based guerilla warfare, massed infantry, and political indoctrination rather than high technology, dominated Chinese strategic thinking. Under this thinking, the PLAN's role merely was to support land operations.²¹⁸ Naval funding remained low.

The ROC was little better prepared. Since 1956, its possessions in the South China Sea consisted of Itu Aba Island and the Pratas Islands. Preoccupied with blocking an invasion of Taiwan and conducting operations on the coast of mainland China, the ROC navy was too weak to undertake extensive operations in the Spratlys. The ROC government, meanwhile, focused on strengthening its domestic integrity.

This calm in the South China Sea ended in 1970. A Filipino marine surveillance ship surveyed part of the seabed near its waters, and concluded that it probably possessed abundant reserves of oil and natural gas. Test drilling in 1971 did not yield any oil, but discovered rock formations in the seabed that confirmed the likelihood of its presence. A substantial economic incentive was introduced to the issue. The Philippines officially incorporated "Freedomland" into its territory shortly afterwards on July 10, 1971, resulting in protests from Beijing, Taipei, and Hanoi. These other claimants moved to consolidate their holdings in the archipelagos.²¹⁹

From January 16 to 20, 1974, in the first armed clash over the South China Sea since 1945, the PRC invaded and occupied the Crescent group of the Paracel Islands from South Vietnam.²²⁰ A myriad of strategic developments encouraged this. Vietnam had formally

²¹⁸ Bernard Cole, "More Red than Expert: Chinese Sea Power during the Cold War," in *China Goes to Sea: Maritime Transformation in Comparative Historical Perspective*, eds. Andrew Erickson, Lyle Goldstein, and Carnes Lord (Annapolis: Naval Institute Press, 2009), 325, 327.

²¹⁹ Samuels, *Contest for the South China Sea*, 89-92.

²²⁰ Samuels, *Contest for the South China Sea*, 100-101. Considerable divergences occur concerning the events prior to the battle. While the Vietnamese side claims that the Chinese opened fire first by bombing Robert, Money, and Pattle Island, and then landing troops there, the Chinese version maintains that the Vietnamese were attacking and expelling innocent Chinese fishermen in Robert, Money, and Duncan Island. Accordingly, Chinese marines

incorporated eleven of the Spratly islands into Phuoc Tuy Province on September 6, 1973. The Sino-Soviet split, North Vietnam's alliance with the USSR, a deterioration of Sino-North Vietnamese relations, and North Vietnam's seemingly imminent victory in the Vietnam War caused the PRC to fear that the Soviets soon would establish a threatening naval presence in the South China Sea via Vietnamese bases. Occupying the Paracels would strengthen China's geostrategic position against that possibility, and prevent Soviet ships from operating off of the Crescent group of the Paracels, close to China's mainland.²²¹ In addition, the US government lacked any enthusiasm to help its South Vietnamese ally over a handful of tiny and barren islands. It sought to withdraw US troops from Vietnam, and to improve relations with the PRC in order to provide diplomatic leverage against the Soviet Union and pressure Hanoi to end the Vietnam War. American acquiescence to a Chinese invasion of the Paracels appeared likely. Mao's gamble was vindicated when the US Seventh Fleet was ordered to observe neutrality in the battle; at most, it could transport Vietnamese troops out of the Paracels. American personnel aboard Vietnamese ships and aircraft operating within the vicinity of the battle were ordered to withdraw from their posts.²²² Finally, the PRC had added more vessels to its fleet, including a Soviet ballistic missile submarine and ten cruise missile-capable Soviet patrol boats. The PLAN, therefore, could undertake limited operations in the Paracels, which were situated close to the mainland. It also had a small amount of experience in amphibious assaults on offshore ROC islands, such as against the Dachen islands in 1954.²²³

By the 1980s, due to Deng Xiaoping's modernization of the PLAN, the PRC conducted an increasing number of operations into the South China Sea islands, including a successful

stationed on Woody Island came to their aid, eventually escalating into a complete takeover of the rest of the Paracels.

²²¹ Lo, *China's Policy Towards territorial Disputes*, 72.

²²² Samuels, *Contest for the South China Sea*, 111.

²²³ Cole, "More Red than Expert," 325-26, 328.

engagement against the Vietnamese navy in 1988, which established an effective PRC presence on some of the Spratly islands for the first time. Several factors enabled this development. China's poor performance during its invasion of Vietnam in 1979 alerted the CPC to the need for modernization. It vindicated Deng's announcement to the Central Military Commission (CMC) that the military was "overstaffed, lazy, arrogant, ill-equipped, and ill-prepared to conduct modern warfare." The Sino-Soviet split also was defused by 1985, prompting the CPC leadership to switch its emphasis to preparing for "small wars on the periphery," where technologically advanced forces would apply. General Liu Huaqing rose to prominence in the early 1980s. As a naval commander from 1982 to 1987, vice-chairman of the CMC from 1982 to 1997, and a close friend of Deng, he used his influence to effect a series of measures that modernized the PRC navy. Finally, under Deng's acceptance of a market economy, the PRC developed a large merchant fleet and interest in maritime affairs, which required increased naval protection.²²⁴

3.2 Ambiguity in PRC Claims and Protests from 1974

PRC claims in the South China Sea mirrored this new pattern in Chinese actions.²²⁵ Official PRC statements about China's position on the South China Sea islands before 1974 claimed *only* the islands and features themselves, or in addition to a clearly defined territorial waters. For instance, the PRC's denunciation of the US-Britain San Francisco Treaty draft in 1951 simply stated that "... the Paracel Archipelago and Spratly Island, as well as the whole Spratly archipelago, and the Chung-sha (Macclesfield Bank), and Tung-sha (Pratas) archipelagos

²²⁴ Cole, "More Red than Expert," 330-32

²²⁵ Note that "China" from here on in refers to the PRC unless otherwise specified. It became the sole representative of China in the UN in 1971.

have always been Chinese territory.”²²⁶ The PRC Declaration of Territorial Waters in 1958 stated that:

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* [my italics].²²⁷

This clearly simply provided for a 12 nm territorial waters zone around all Chinese territories, and explicitly indicated that a belt of high seas separated the Chinese mainland from the South China Sea islands, through the phrase “all other islands.”

As Chi-Kin Lo notes, however, from 1974 Chinese diplomatic claims and protests regarding the South China Sea adopted language that harboured the *possibility* of historic rights waters or historic waters.²²⁸ An official PRC statement in January 11, 1974, five days before the Battle of the Paracels, in reaction to South Vietnam’s incorporation of the Spratly islands on September 6, 1973, stated:

The government of the People’s Republic of China solemnly reiterates that the Nansha [Spratly], Hsi-sha [Paracel], Chung-sha [Macclesfield Bank], and Tung-sha [Pratas] archipelagos are all part of Chinese territory. The People’s Republic of China has complete, indisputable sovereignty over these islands and islets. The resources of these islands and their *adjacent seas* also belong entirely to China [my italics].²²⁹

Subsequent statements on the issue used the same language, such as one on January 18, 1974: “The People’s Republic of China has indisputable sovereignty over these islands. The natural

²²⁶ Samuels, *Contest for the South China Sea*, 79.

²²⁷ PRC, “Declaration on China’s Territorial Sea [herein referred to as “Territorial Sea Declaration, 1958”],” September 4, 1958, in Bureau of Intelligence and Research of the United States Department of State, “Straight Baselines: Peoples Republic of China,” *Limits in the Seas* 43 (1972): 2.

²²⁸ Lo, *China’s Policy Towards Territorial Disputes*, 38-39. The clause “historic rights waters or historic waters” has to be used in this chapter because as will later be shown, the PRC government’s ambiguity on the matter makes both interpretations possible.

²²⁹ Samuels, *Contest for the South China Sea*, 100.

resources in the sea areas *around* them also belong to China.... [my italics].”²³⁰ Unlike the statements of 1951 and 1958, that of 1974 introduced the term “around” without specifying its meaning, what kind of seas was claimed, the extent, and what rights it conferred to China. While the sole right to resource exploitation was the only claim listed, other rights could be attached to this, such as varying degrees of security or transportation regulations.

Lo suggests that this development stemmed from China’s involvement from 1971 in the UN Committee of the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction, a direct precursor to UNCLOS.²³¹ The committee examined relevant laws, research studies, and venues of action regarding peaceful international cooperation over the exploitation of maritime and seabed resources.²³² On the basis of its work, on December 18, 1972, the UN declared the first of many conferences that created UNCLOS.²³³ Participation in this body perhaps informed the PRC for the first time of the maritime rights it could assert, and also of the dangers posed by foreign “invasions” of the islands.²³⁴ While this reasoning is sound, PRC archival files on the matter are closed.

The same ambiguity emerges in most official PRC statements afterwards.²³⁵ For instance, Article 14 of the PRC’s EEZ law implemented on June 26, 1998, specifically stated that “the provisions of this Law shall not affect the *historic rights* enjoyed by the People’s Republic of

²³⁰ Lo, *China’s Policy Towards Territorial Disputes*, 34.

²³¹ Lo, *China’s Policy Towards Territorial Disputes*, 39.

²³² UN, *General Assembly Resolution 2467(XXIII) A: Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind*, December 21, 1968, http://untreaty.un.org/cod/diplomaticconferences/lawofthesea-1982/docs/res/a_res_2467_xxiii.pdf.

²³³ UN, *General Assembly Resolution 3029 (XXVII) A: Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a Conference on the law of the sea*, December 18, 1972, http://untreaty.un.org/cod/diplomaticconferences/lawofthesea-1982/docs/res/a_res_3029_xxvii.pdf.

²³⁴ Lo, *China’s Policy Towards Territorial Disputes*, 39.

²³⁵ Lo, *China’s Policy Towards Territorial Disputes*, 34-36.

China.”²³⁶ This was the first time that the PRC government indicated that it possibly held such rights in the region, but again, it did not clarify what these entailed. The start of a Chinese EEZ also remains uncertain.²³⁷ The declared Chinese baselines of May 15, 1996 did not define those for the Spratlys, Pratas, and Macclesfield Bank, although it did for its coast and the Parcel Islands.²³⁸ Perhaps the PRC believes the archipelagos hold an EEZ, but wishes not to clarify this claim at this time. The 1992 Declaration of Territorial Seas stated that China would apply the straight baseline method of delineation for all of its territories, including the South China Sea Islands.²³⁹ The 1996 Declaration of Baselines stated that the PRC government would “announce the remaining baselines of the territorial sea of the People’s Republic of China at another time,” but has not done so.²⁴⁰

Recent official statements continued this pattern of ambiguity. On May 7, 2009, China submitted a Note Verbale to the UN, responding to Vietnam and Malaysia’s joint submission of their claim to an extended continental shelf to the Commission on the Limits of the Continental Shelf (CLCS). It attached a map of the U-Shaped Line, the first time that the PRC officially

²³⁶ PRC, “Law of the People’s Republic of China on the Exclusive Economic Zone and the Continental Shelf [herein referred to as “EEZ Law, 1998”],” June 26, 1998, in Zou, *China’s Marine Legal System and the Law of the Sea*, 345.

²³⁷ Refer to the glossary for an explanation of EEZs.

²³⁸ PRC, “Declaration of the Government of the People’s Republic of China on the Baseline of the Territorial Sea of the People’s Republic of China [herein referred to as “Baselines Declaration, 1996”],” May 15, 1996, in Bureau of Oceans and International Environmental and Scientific Affairs of the United States Department of State, “Straight Baselines Claim: China,” *Limits in the Seas* 117 (1996): 9, 10. Also, see the map attached at the end of the document, which shows the baselines claimed under this Declaration.

²³⁹ PRC, “Law of the People’s Republic of China on the Territorial Sea and Contiguous Zone [herein referred to as “Territorial Sea Law, 1992”],” February 25, 1992, in Zou, *China’s Marine Legal System and the Law of the Sea*, 338-39. Article 3 is particularly important, which states that “The method of straight baselines composed of all the straight lines joining the adjacent base points shall be employed in drawing the baselines of the territorial sea of the People’s Republic of China.” Article 2 specifically states that baselines are to be drawn around all of China’s land territory, and that the latter includes the Dongsha (Pratas), Xisha (Paracels), Zhongsha (Macclesfield Bank), and Nansha (Spratlys) islands. The PRC use of straight baselines around archipelagos is problematic because, according to Article 47 of UNCLOS, only archipelagic states can use straight baselines to enclose archipelagos. China does not qualify as an archipelagic state, which is defined in Article 46 of UNCLOS as one that is “constituted wholly by one or more archipelagos and may include other islands.” See UN, *UNCLOS*, December 10, 1982, https://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm.

²⁴⁰ PRC, “Baselines Declaration, 1996,” 10.

presented the Line on an international level to illustrate its claim and rebut that of others.

However, its only explanation relating to the map was that:

China has indisputable sovereignty over the islands in the South China 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 map²⁴¹). The above position is consistently held by the Chinese Government, and is widely known by the international community.

The continental shelf beyond 200 nautical miles as contained in the Joint Submission by Malaysia and the Socialist Republic of Viet Nam has seriously infringed China's sovereignty, sovereign rights and jurisdiction in the South China Sea.²⁴²

While terms such as “adjacent waters,” “sovereign rights,” and “jurisdiction” were used, their scope was not specified. The words “relevant waters” were followed by a reference to the U-Shaped Line map, without stating whether it equalled to all or some of the waters contained within the Line. The confusion was evident in the Filipino Note Verbale of April 5, 2011, its response to China's Note. The Philippines denounced the Line as illegal, because its scope and the term “relevant waters” were not clarified, while the U-Shaped Line overlapped with Filipino claims in the Spratlys. Given the ambiguity, the Philippines assumed the worst: the Line delineated the scope of China's “relevant waters.”²⁴³

In turn, on April 14, 2011, China denounced the Philippines' Note Verbale on the basis that its claimed Kalayaan Island Group (KIG), or “Freedomland,” was Chinese territory:

China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof. China's sovereignty and related rights and jurisdiction in the South China Sea are supported by abundant historical and legal evidence.²⁴⁴

²⁴¹ This refers to the attached U-Shaped Line Map.

²⁴² PRC, *China Note Verbale to the United Nations*, CML/17/2009, May 7, 2009, http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf.

²⁴³ Government of the Philippines, *Philippines Note Verbale to the United Nations*, No. 000228, April 5, 2011, http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/phl_re_chn_2011.pdf.

²⁴⁴ PRC, *China Note Verbale to the United Nations*, CML/8/2011, April 14, 2011, http://www.un.org/depts/los/clcs_new/submissions_files/vnm37_09/chn_2011_re_phl_e.pdf.

Once again, the term “adjacent waters” left the exact scope of China’s claim uncertain. More significantly, China did not address the Philippines’ assumption that the term “relevant waters” equated to the Line.²⁴⁵ The PRC did not assuage the fears of the Philippines, for uncertain reasons. Perhaps ambiguity was pursued deliberately, to avoid commitment to a claim that was difficult or impossible to prove, or so to not inflame domestic popular opinion by seeming to surrender home territory. Perhaps the PRC genuinely saw the Line as a historic rights waters or historic waters zone. In any case, this ambiguity means that the PRC may hold to a historic rights waters or historic waters interpretation of the U-Shaped Line.

Recent official statements have not strayed from this theme. In January 22, 2013, China’s Ambassador in Manila, Ma Keqing, responded to the Philippines’ efforts to bring the South China Sea dispute before international arbitration, and again asserted Chinese sovereignty “over the islands in the South China Sea and its *adjacent* waters [my italics].”²⁴⁶ This official ambiguity prevents a confident argument for the PRC’s *complete* adherence to an islands attribution interpretation of the U-Shaped Line after 1974. As Jacques deLisle summarizes, “the fact that China most often makes specifically ‘land-based’ arguments cannot settle the question [of what the Line means and what China claims in the South China Sea]; it merely reflects that claims to sovereignty over landforms and rights to adjacent maritime areas are among the types of claims China makes, not that they are the only one.”²⁴⁷

²⁴⁵ PRC, *China Note Verbale to the United Nations*, CML/17/2009, May 7, 2009.

²⁴⁶ “Chinese ambassador: China has indisputable sovereignty over South China Sea islands,” *Xinhua News*, January 22, 2013, http://news.xinhuanet.com/english/china/2013-01/22/c_132120518.htm.

²⁴⁷ deLisle, “Troubled Waters,” 619.

3.3 The Likelier Case for an Islands Attribution Line

Although deLisle's conclusion is correct, one can ask which interpretation is *likelier*. This is a matter of relativity. Neither interpretation can be completely disproven given the PRC's ambiguity on the matter. Nonetheless, Chinese actions generally point less to a historic rights waters or historic waters zone interpretation of the U-Shaped Line, and more to an islands attribution line view.

3.3.1 Potential and Clarity

Admittedly, the PRC language potentially pointing to a historic rights waters or historic waters interpretation of the U-Shaped Line can just as easily support an islands attribution line. The use of the term "historic" to describe China's claims in the region is not new. Similar wording was used in its place before. The 1951 denunciation of the US-Britain draft of the San Francisco Treaty stated that the South China Sea archipelagos "have *always* been Chinese territory [my italics]." ²⁴⁸ The word "always" implies historical title over land features, though not explicitly. Historic maritime zones were not necessarily involved in the claim, as land features were only stated.

The inclusion of the term "historical rights" in Article 14 of China's EEZ Law of 1998 is peculiar. ²⁴⁹ The EEZ Law centred on maritime jurisdictional matters, largely apart from land affairs. However, the use of the term "historic rights" in Article 14 of the EEZ Law may not necessarily refer to historic waters or historic rights waters. This clause was included to remove all foreseen and unforeseen negative possibilities that the EEZ law could have imposed on China and its options. Due to China's lack of specification over what "historic rights" entailed, one

²⁴⁸ Samuels, *Contest for the South China Sea*, 79.

²⁴⁹ That is, "the provisions of this Law shall not affect the historic rights enjoyed by the People's Republic of China." See PRC, "EEZ Law, 1998," 345.

could equally assume this to include, or even be solely consisted of, potential concerns related to the submerged features of the archipelagos that China claims individual historic ownership to.

Terms such as “adjacent waters” or “relevant waters” again can refer to territorial/contiguous waters and other maritime zones that originated from international law. While UNCLOS had not yet been established when the PRC’s 1974 statement about the Spratlys first introduced the term “adjacent seas,” it could have referred to territorial waters, due to the ambiguous nature of the statement.²⁵⁰ Again, after the introduction of UNCLOS, the PRC could have subsumed EEZs under this category.

Just as importantly, whether terms such as “adjacent seas,” “relevant waters,” and “historic rights” were even employed to refer to all of the waters enclosed by the U-Shaped Line remains unclear. On this point, China’s Note Verbale of 2011 is revealing. It replied to the Philippines’ Note Verbale of 2011, issued in response to the PRC Note Verbale of 2009. The 2009 Note was the first time the PRC used the U-Shaped Line on an international level to characterize its claims in the South China Sea region.²⁵¹ The Note Verbale of 2011, then, can be indirectly construed as a “clarification” of the Note Verbale of 2009. It stated that

China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof. China’s sovereignty and related rights and jurisdiction in the South China Sea are supported by abundant *historical* and *legal* evidence [my italics].²⁵²

The document later specified the basis for this “historical evidence”: “since [sic] 1930s, the Chinese Government has given publicity several times the geographical scope of China’s Nansha Islands and the names of its components. China’s Nansha Islands is [sic] therefore clearly

²⁵⁰ Samuels, *Contest for the South China Sea*, 100.

²⁵¹ PRC, *China Note Verbale to the United Nations*, CML/17/2009, May 7, 2009.

²⁵² PRC, *China Note Verbale to the United Nations*, CML/8/2011, April 14, 2011.

defined.”²⁵³ Significantly, it referred to this early period of time. As chapter two concluded, China’s claims then were focused solely on the islands and features.²⁵⁴ The sentence itself mentioned only the islands and features. Meanwhile, due to ambiguity, “adjacent” and “relevant” waters could have meant territorial waters and/or other maritime zones derived from international law, like an EEZ. Interpreted this way, the Note’s use of China’s claims to the region “since the 1930s” to characterize its claim today implies that the PRC likely holds to an islands attribution view of the U-Shaped Line.

To be sure, the PRC could have held a different interpretation of the Line in 1949 and 2011 than the ROC did in 1948. Even so, ambiguity surrounds the nature of the U-Shaped Line. The words “geographical scope of China’s Nansha Islands” in China’s 2011 Note Verbale could mean either a historic rights waters/historic waters interpretation of the U-Shaped boundary line or an islands attribution line interpretation.²⁵⁵ Ambiguity works both ways.

The sole legal basis for China’s claim and protest against the Filipino Note Verbale of 2011 also was specified:

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 [Spratly] Islands is fully entitled to Territorial Sea, Exclusive Economic Zone (EEZ) and Continental Shelf.²⁵⁶

In contrast to the ambiguity surrounding the historical basis for China’s maritime claims, its legal basis is more clearly expounded. It asserts measurable zones of marine jurisdiction and draws straight from UNCLOS, the PRC Territorial Waters/Contiguous Zone Law of 1992, and the PRC EEZ Law of 1996. These are all products of international law, not of a vague historic claim.

²⁵³ PRC, *China Note Verbale to the United Nations, CML/8/2011*, April 14, 2011.

²⁵⁴ See chapter two.

²⁵⁵ PRC, *China Note Verbale to the United Nations, CML/8/2011*, April 14, 2011.

²⁵⁶ PRC, *China Note Verbale to the United Nations, CML/8/2011*, April 14, 2011.

This characteristic suggests that the islands attribution line interpretation is more likely than any other interpretation. Any claim to a historic rights waters or historic waters zone, especially one as massive as the Line, would have to be clearly expounded, over the sheer area and scope of rights entailed. The PRC EEZ Law of 1998 uses the term “historic rights,” but only as a disclaimer to potentially protect maritime zones that China *may* claim.²⁵⁷ While the Note Verbale of 2011 indicated that the legal basis was postulated “in addition” to a historical basis, the latter seemed to have pointed to an islands attribution line. Ambiguity is not in China’s favour if it does claims historic rights waters or historic waters.

3.3.2 The Role of Patriotism and Political Legitimacy

As Ben Saul notes, “it is... significant that China’s assertion of a strong sovereignty over its maritime territory [in the South China Sea] is cast in elaborate legal terms, and does not take the form of simple rule-breaking.”²⁵⁸ Even if, arguably, Chinese interpretations of maritime law are skewed, they still stem from legal language. This is contradictory if China believes itself to possess an indisputable historic ownership to all of the waters within the U-Shaped Line. It indicates that China prefers not to clearly and directly assert its sovereignty over disputed places.

To be sure, China could be maintaining ambiguity over a historic rights waters or historic waters claim for political reasons. Such an approach would keep China’s options open, thus maximizing potential benefit for its future, while avoiding the need to prove a difficult claim and while pleasing a patriotically sensitive domestic population. This likely informs Chinese policy in the South China Sea to a certain degree. However, such explanations alone are ultimately unsatisfactory if the historic rights waters or historic waters interpretation of the U-Shaped Line

²⁵⁷ PRC, “EEZ Law, 1998,” 345.

²⁵⁸ Ben Saul, “China, Natural Resources, Sovereignty and International Law,” *Asian Studies Review* 37:2 (2013): 204.

was truly held. China is acutely sensitive, both on an official and popular level, to what it perceives as “unjust” occupation of its territories, anti-Chinese oppression, and generally anything that hints at China’s “Century of Humiliation,” its negative experiences with foreign imperialism from the mid-nineteenth to mid-twentieth century. Patriotism has repeatedly ignited when China took offense at unfavorable foreign actions, such as America’s accidental bombing of the Chinese embassy in Yugoslavia in 1999, repeated visits by high-level Japanese officials to the Yasakuni shrine,²⁵⁹ the Diaoyu/Senkaku islands dispute, America’s recent “Pivot to Asia” strategy,²⁶⁰ and perhaps most tellingly, the South China Sea dispute itself.

This patriotism is intimately bound with the CPC leadership. By 1991, the CPC was gravely concerned for its political legitimacy. Its support base traditionally consisted of the assumed superiority of Maoist-Leninist ideology and the notion that the party existed solely to serve the Chinese populace. Many developments had eroded this belief. Deng Xiaoping’s endorsement of free market practices demonstrated to China’s populace that centralized economic policies were not better than any alternative. The Tiananmen Square Incident of 1989 endangered the narrative that the Party worked with and for the people. The collapse of the USSR shattered the dogmatic correctness of Communist ideology. All these events added to whatever doubts the Chinese populace held from earlier domestic disasters such as the Cultural Revolution (1966-76).²⁶¹

²⁵⁹ This Shinto shrine memorializes Imperial Japan’s war dead from 1869-1945. Fourteen were Japanese war criminals who inflicted atrocities against China’s populace during the Second World War.

²⁶⁰ This refers to America’s aligning of diplomatic and military attention to Asia in response to China’s growing power. It also comes at a time when many American forces have been freed from duty in parts of the Middle East. Former Secretary of State Hillary Clinton laid down the policy’s main objectives in an article she wrote for the *Foreign Policy Magazine*, dated October 11, 2011: “strengthening bilateral security alliances; deepening working relationships with emerging powers, including China; engaging regional multilateral institutions; expanding trade and investment; forging a broad-based military presence; and advancing democracy and human rights” (Hillary Clinton, “America’s Pacific Century,” *Foreign Policy Magazine*, October 11, 2011, accessible at <http://www.state.gov/secretary/rm/2011/10/175215.htm>)

²⁶¹ Zheng Wang, “National Humiliation, History Education, and the Politics of Historical Memory: Patriotic Education Campaign in China,” *International Studies Quarterly* 52 (2008): 788; Zhao Suisheng, “A state-led

In a “National Morality Conference” convened by the government in 1990 to discuss the Tiananmen Square Incident, the CPC concluded that a lack of “moral” and political education of the youth had enabled the “subversive” student protests. Only instilling this education into the population would prevent such an occurrence from happening again.²⁶² Accordingly, the CPC implemented a campaign of “Patriotic Education (爱国主义教育 *aiguo zhuyi jiaoyu*)” in 1991, which turned the focus of official political and historical narrative away from communist ideology and almost exclusively towards nationalism.²⁶³ Whereas Chinese triumphs during its “Century of Humiliation” (real or imagined) and the superiority of Communist ideology were previously extolled, the education movement focused on China’s humiliation during that period.²⁶⁴ Gone was the traditional narrative explaining that the CPC was to be followed because it was leading China towards Communist salvation, “guaranteed” under Marxist notions of the dialectic of history.²⁶⁵ The CPC’s eventual victory over foreign imperialists instead served as a “parable”: adherence to its leadership was an act of patriotism, because it secured independence and stability.²⁶⁶ It was the CPC that quelled internal chaos in the mid-twentieth century and continues to prevent it. The Party adopted the title “firmest and most thoroughgoing patriot,” which supposedly stops at nothing to denounce, prevent, and fight anything that infringes its independence and sovereignty — real or imagined.²⁶⁷ The CPC is “restoring” China to its past greatness; the Century of Humiliation was an aberration compared to thousands of years of

nationalism: The Patriotic Education Campaign in post-Tiananmen China,” *Communist and Post-Communist Studies* 31:3 (1998): 288-89.

²⁶² Edward Vickers, “Selling ‘Socialism with Chinese Characteristics’ ‘Thought and Politics’ and the legitimisation of China’s developmental strategy,” *International Journal of Educational Development* 29:5 (2009): 526.

²⁶³ Zhao, 289-98.

²⁶⁴ Zheng, 789-91.

²⁶⁵ Zhao, 296; Zheng 789.

²⁶⁶ Zheng, 790, 793.

²⁶⁷ Zheng, 793.

greatness.²⁶⁸ This recovery is the main goal of another pillar of the CPC's political legitimacy: economic growth, which is inherently bound to notions of prosperity, internal stability, international influence, and military strength.²⁶⁹ Although Communist ideology was abandoned,²⁷⁰ this move from strict adherence to communist ideology would have been considered unthinkable during Maoist times.

Under this movement, the CPC changed historical textbooks *en masse*, made history a mandatory subject in university entrance exams, built or renovated museums covering the Century of Humiliation, and tailored the tone of political statements to meet this narrative.²⁷¹ The many large displays of patriotism in Chinese popular protests in response to “displays of foreign aggression” testify to the campaign's success.

An unassertive claim would be illogical and dangerous if the CPC adhered to a historic rights waters or historic waters interpretation of the U-Shaped Line. It could jeopardize the CPC's rule by contravening a pillar of its legitimacy: patriotism. It would paint the Party as weak and hypocritical, and contradict its title as the “firmest and most thoroughgoing patriot.” Economic stability, the other pillar of the CPC's legitimacy, again encourages a clear assertion of its territory in the South China Sea, because of the prospect for significant oil and natural gas reserves in the seabed surrounding the islands. While the PRC may be adopting an unwise strategy, it is unlikely. Ensuring legitimacy of rule and internal stability matter more to the CPC than international favour, although it would obviously like to retain them all if possible.

²⁶⁸ Zheng, 794.

²⁶⁹ Recall that patriotism is the first pillar of political legitimacy for the CCP.

²⁷⁰ The CPC still believes that communist ideology is superior and correct, but does not yet feel that China is ready for a full communist revolution. Under Marxist conceptions of the dialectic of history, a country needs to go through the stage of capitalism first before advancing to the stage of socialism and later communism. Deng Xiaoping charged that Mao had attempted to rush straight into communism from feudalism without first thoroughly experiencing capitalism and socialism. Therefore, China needed to “backtrack” and go through the dialectic of history properly. This ‘necessity’ for capitalism and socialism means that at present, the CPC is comfortable with not adhering as radically to Communist ideology as Mao Zedong was.

²⁷¹ Zheng, 794-83.

In contrast, strategic utility works well as an explanatory model for ambiguity if paired with an islands attribution interpretation of the U-Shaped Line. As section 3.3.1 concluded, there is no ambiguity regarding such a view. It is clearly elucidated except in areas that the PRC has chosen to postpone, such as the issuing of baselines around the Spratlys. Any ambiguity, such as the term “adjacent waters,” is compatible with and complements this islands attribution interpretation while also allowing China to retain flexibility in its options to potentially attain the greatest amount of benefit in the future. Maintaining ambiguity would not contradict the political legitimacy factor because charges of hypocrisy against the CPC would lack any provable basis. Pursuing a larger claim in the future, meanwhile, would likely boost its political legitimacy.

3.3.3 The Role of History and Chinese Interpretations of International Law

Another reason why the islands attribution line is the more likely interpretation is the potential confusion between a historic rights waters or historic waters view of the U-Shaped Line, and China’s interpretations of international law. As Robert Beckman argues:

... based on some form of historic rights, [China] is also asserting rights, jurisdiction, and control over the resources in and under the waters inside the nine-dash line.

Evidence... is found in China’s objections to the Philippines’ announcement that it is issuing new contracts for oil exploration in Reed Bank, off the island of Palawan, and in the issuance by the Chinese national oil company (CNOOC) of new oil concession blocks just inside the nine-dash line, very close to the coast of Vietnam and very far from any island claimed by China. These CNOOC oil blocks are too far from any island over which China claims sovereignty for it to assert rights and jurisdiction on the basis of the blocks being within an EEZ of Chinese islands. The Chinese action can be justified, if at all, only on the basis that China has rights, jurisdiction, and control over the natural resources in and under the waters inside the nine-dash line, notwithstanding that those areas are within the EEZ of Vietnam.²⁷²

²⁷² Robert Beckman, "The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea," *American Journal of International Law* 107:1 (2013): 157.

Beckman's usage of the term "islands" uses the UNCLOS definition²⁷³ because it fits his description — that is, a theoretical Chinese EEZ extending from the islands it claims in the Spratlys does not cover CNOOC oil blocks situated next to Vietnam's coast. Thus, China must adhere to direct and conventional readings of UNCLOS. As the concerned locations are not situated near Chinese claimed islands, and instead are located within the EEZs of foreign states, Beckman argues that no alternative rationale prompts these Chinese actions other than a historic rights waters or historic waters interpretation.

This criticism has force. All of these incidents involving China have occurred close to semi-permanently and permanently submerged features — usually within a 12 nm territorial waters zone, and at least within a theoretical 200 nm EEZ surrounding them.²⁷⁴ These areas often lie within the claimed EEZs of foreign states, and outside any that China can claim under UNCLOS. For instance, on February 8, 1995, the Philippines protested that China was building structures on Mischief Reef, a semi-permanently submerged feature that sits 135 nm west from Palawan Island, and stationing armed vessels to guard it.²⁷⁵ In the Scarborough Shoal incident of 2012, a two month standoff between Chinese maritime surveillance ships and Filipino naval vessels occurred after Chinese fishing boats allegedly were caught poaching sharks and collecting clams and rare corals.²⁷⁶ The atoll, a formation of rocks and a semi-permanently submerged reef, lays 124 nm west of Zambales province of the Philippines. Only a few rocks stay above high tide. Reed Bank is permanently submerged and located 80 nm west of Palawan.

²⁷³ That is, it is a landform that naturally sustains human habitation, is surrounded by water, and remains above sea level during high tide.

²⁷⁴ This theoretical EEZ extends either from the limits of the features individually or from straight baselines drawn around the whole archipelago.

²⁷⁵ Mark Valencia, *China and the South China Sea Disputes: conflicting claims and potential solutions in the South China Seas*, Adelphi Paper no. 298 (Oxford: Oxford University Press, 1995), 44.

²⁷⁶ Tina Santos, "PH, Chinese naval vessels in Scarborough Shoal standoff," *Philippine Daily Inquirer*, April 11, 2012, <http://globalnation.inquirer.net/32341/ph-chinese-naval-vessels-in-scarborough-shoal-standoff>.

UNCLOS clearly states that semi-permanently or permanently submerged features cannot generate EEZs. According to article 121, an island is “a naturally formed area of land, surrounded by water, which is above water at high tide.” Only islands and coasts are entitled to an EEZ. Anything else, such as “rocks that cannot sustain human habitation or economic life of their own shall have no exclusive economic zone...”²⁷⁷ Under Article 13, semi-permanently submerged features — labelled “low-tide elevations” — can be used as a baseline point for a 12 nm territorial seas zone only if situated in part or whole within the territorial sea of a coastal state’s mainland, or another island. Otherwise, its low tide elevation cannot generate a 12 nm territorial seas zone on its own.²⁷⁸ UNCLOS does not support individual ownership over permanently submerged features, which constitute part of the seabed. Finally, many locations of disputes, such as the CNOOC oil blocks, would lie within a foreign state’s EEZ even after the principle of equidistance was applied to overlapping Chinese EEZ claims emanating from islands²⁷⁹ in the Spratlys. It is legally difficult, if not impossible, for China to claim submerged features in waters beyond an EEZ generated by its nearest land or island, and within a foreign EEZ. Under UNCLOS, it is especially difficult to claim an EEZ around straight baselines surrounding the Spratlys.

However, scholars like Beckham miss the point regarding China’s motivations for its actions in these areas. It does not matter to China whether these features are permanently or

²⁷⁷ UN, *UNCLOS*, December 10, 1982, https://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm. By “permanently or semi-permanently submerged,” I am referring to the feature’s original state. Claimants have placed structures and/or artificial land on top of most, if not all of the submerged features of the South China Sea. This does not change their legal nature. Under Article 60 of UNCLOS, “artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.” See UN, *UNCLOS*, December 10, 1982, https://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm.

²⁷⁸ UN, *UNCLOS*, December 10, 1982, https://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm.

²⁷⁹ Here, I am referring to “islands” as defined by UNCLOS — naturally formed land surrounded by water that is above sea level during high tide and is not a rock. This is important to note, as will be shortly explained.

semi-permanently above sea elevation, nor does it matter whether certain islands can naturally sustain human habitation, a vital requirement for an island under UNCLOS. Proximity to foreign coasts also is completely irrelevant. Submerged or not, China claims ownership over all of the South China Sea islands *and features* within the U-Shaped Line, as they do with land territory. Subsequently, there is at least the potential that these islands and features can confer a territorial waters zone and an EEZ.

Two sources inform this stance. Neither invokes a historic rights waters or historic waters interpretation of the U-Shaped Line. The first is historical, in a sense that adheres to an islands attribution line. China claims that the South China Sea islands and features *always* have been theirs, before and during the official release of the U-Shaped Line. The ROC created and published official lists of South China Sea islands and features in 1946 and 1947, while the U-Shaped Line, at this time an islands attribution one, also showed the islands and features it claimed.²⁸⁰ The PRC later adopted these documents in 1949. The frequent appearance of semi-permanently and permanently submerged features in these lists and maps indicates that the ROC and PRC claimed them individually. Thus, China's reference to documents dating "since [sic] 1930s" as its *sole* historical basis to denounce the Filipino claim over the Kalayaan Island Group (KIG) in its Note Verbale of 2011 makes sense.²⁸¹

A few features admittedly did not appear either on the listings or the U-Shaped Line, such as Prince of Wales Bank (廣雅灘 *Guangya tan*), for reasons uncertain.²⁸² Archival files indicate

²⁸⁰ MHTO, "Jinzhu Xi Nan Sha Qundao An," file series 0035/061.8/3030, files 001/001/0003 to 0008, 001/003/0005 to 0008; Maps 1, 2, and 3.

²⁸¹ PRC, *China Note Verbale to the United Nations, CML/8/2011*, April 14, 2011. "Since 1930s, the Chinese Government has given publicity several times the geographical scope of China's Nansha Islands and *the names of its components*. China's Nansha Islands is *therefore clearly defined* [my italics]."

²⁸² MHTO, "Jinzhu Xi Nan Sha Qundao An," file series 0035/061.8/3030, files 001/001/0003 to 0008, 001/003/0005 to 0008; Maps 1, 2, and 3.

that the ROC knew all islands and features in the South China Sea.²⁸³ However, it would be erroneous to conclude that the ROC omitted them from contemporary lists and maps because it felt it had no claim over them. The U-Shaped Line was drawn to denote ownership over *all* of Macclesfield Bank and the Paracel, Spratly, and Pratas archipelagos.²⁸⁴ The ROC still would have considered all “overlooked” features within this Line as Chinese. Unlabelled outlines of most of these features also existed on the U-Shaped Line maps within the boundary.²⁸⁵ Their existence confirms that the “overlooked” features were unmarked likely due to their lack of significance, or perhaps to a lack of space for labelling. The ROC knew of the features’ existence and claimed them despite their absence in contemporary official lists and maps.

This would explain the occurrence of certain incidents that were concerned solely with the individual features themselves, or within a theoretical 12 nm territorial waters limit extending from semi-permanently submerged ones. One instance is the disputed control over Mischief Reef and Scarborough Shoal. Non-PRC fishermen who tried fishing on the features themselves (they provide excellent fishing grounds) were also chased away by China, on the grounds that they are Chinese. An example is Scarborough Shoal.²⁸⁶ However, this framework does not explain other events that transpired beyond this geographical limit. For instance, Chinese ships roped off a 15 nm no-fishing zone around Scarborough Shoal in April 2013.²⁸⁷

²⁸³ MHTO, “Jinzhu Xi Nan Sha Qundao An,” file series 0035/061.8/3030, file 005/003/0002. The term “overlooked” refers to features that did not appear on either the lists or the U-Shaped Line maps from 1946-48. However, I am arguing that they were not actually overlooked by the ROC and PRC — hence the use of quotation marks.

²⁸³ MHTO, “Jinzhu Xi Nan Sha Qundao An,” file series 0035/061.8/3030, file 005/003/0002. Cited is a map of the South China Sea the Guangdong government compiled in January 1947 “from various sources” dating up to 1943. This map did not contain the U-Shaped Line. It primarily recorded the various oceanic depths throughout the South China Sea. However, it meticulously labelled all of the islands and features of the region, including those “overlooked” by the ROC in its lists and U-Shaped Line maps.

²⁸⁴ MHTO, “Jinzhu Xi Nan Sha Qundao An,” file series 0035/061.8/3030, files 001/001/0003.

²⁸⁵ See Maps 1, 2, and 3.

²⁸⁶ Manuel Mogato, “Insight: China consolidates sea claims as Asian diplomacy struggles,” *Reuters*, April 22, 2013, <http://www.reuters.com/article/2013/04/23/us-asean-southchinasea-insight-idUSBRE93L16V20130423>.

²⁸⁷ Laude, “China imposes 15-mile fishing rule in Panatag Shoal,” *Philippine Star*, May 1, 2013.

The next reason for China's recent claims and actions in the South China Sea is admittedly subject to some uncertainty, but nevertheless remains likely. It concerns China's own interpretation of maritime international law, which deviates substantially from conventional readings of UNCLOS. China's first official claim to the archipelagos in 1951, its Territorial Sea Declaration of 1958, its Territorial Sea and Contiguous Zone Law in 1992, its Declaration of Baselines in 1996, and its EEZ Law in 1998 are all revealing in this regard.²⁸⁸ Because China claims the entire Paracel and Spratly archipelagos as its land territory, these documents in principle constitute the islands *and features* as base points from which straight baselines, and thus maritime zones based on international law such as EEZs, can be established.

Further reinforcing this is that one baseline point of the Paracels is North Reef, a reef fringed by rocks protruding above sea level at high tide.²⁸⁹ While the rocks can be used as a point for baselines to establish territorial seas, they cannot be used to confer an EEZ as stipulated under Article 121 of UNCLOS.²⁹⁰ The PRC nevertheless maintains that these baselines do confer EEZs. Meanwhile, the Note Verbale of 2011, as will be recalled, additionally stated that

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 [Spratly] Islands is fully entitled to Territorial Sea, Exclusive Economic Zone (EEZ) and Continental Shelf.²⁹¹

The "Nansha [Spratly] Islands" mentioned above did not just refer to islands as defined in UNCLOS. The original Chinese version of the Note Verbale used the term "archipelago [群岛 *qundao*]," meaning that China was referring to all of the islands, components, and

²⁸⁸ PRC, "Territorial Sea Law, 1992," 338-39; PRC, "Baselines Declaration, 1996," 9-10, 17; PRC, "EEZ Law, 1998," 342-43.

²⁸⁹ [US] National Geospatial Intelligence Agency, "South China Sea and the Gulf of Thailand," 5; PRC, "Baselines Declaration, 1996," 10, 17.

²⁹⁰ UN, *UNCLOS*, December 10, 1982,

https://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm.

²⁹¹ PRC, *China Note Verbale to the United Nations, CML/8/2011*, April 14, 2011.

features of the Spratlys.²⁹² In theory, then, the PRC has officially acknowledged that there is at least a *de facto* Chinese EEZ in the Spratlys region.

China also has a distinct and well-demonstrated view of EEZ rights. Although all forms of navigation under Article 58 of UNCLOS are allowed in a foreign EEZ, innocent or not, China holds that military vessels must first obtain permission to enter its EEZ and are subject to Chinese regulation.²⁹³ China believes that the presence of foreign military vessels in its EEZ challenges national security.²⁹⁴ It also believes that it enjoys sole rights to exploitation, scientific research, conservation within its EEZ, and the ability to regulate such activities engaged by foreign countries there.²⁹⁵

These interpretations of EEZs under UNCLOS explain virtually every incident involving China and a foreign state in the region, since they all occurred within a theoretical Chinese EEZ. For example, the confrontations between Vietnamese and Filipino fishermen and Chinese vessels in the South China Sea always occur on or close to submerged features, since they are excellent fishing grounds.²⁹⁶ The CNOOC oil blocks Beckman mentioned are situated beside Vanguard

²⁹² PRC, *China Note Verbale to the United Nations*, CML/8/2011, April 14, 2011, original Chinese translation, http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl.pdf. In Chinese: “按照《联合国海洋法公约》，1992年《中华人民共和国领海及毗连区法》和1998年《中华人民共和国专属经济区大陆架法》的有关规定，中国南沙群岛拥有领海，专属经济区和大陆架 *Anzhao 'Lianhe Guo Haiyang Fa Gongyue,' 1992 nian 'Zhonghua Renmin Gonghe Guo Linghai Ji Pilian Qu Fa,' he 1998 nian 'Zhonghua Renmin Gonghe Guo Zhuanshu Jingji Qu Dalu Jia Fa,' de youguan guiding, Zhongguo Nansha Qundao yongyou linghai, zhuanshu jingji qu he dalu jia.*” In English: “Under the relevant provisions of UNCLOS, the PRC Territorial Waters and Contiguous Zone Law of 1992, and the PRC EEZ and Continental Shelf Law of 1998, China’s Spratly archipelago possesses [i.e. is entitled to] a territorial sea, EEZ, and continental shelf zone.” My underlining.

²⁹³ UN, *UNCLOS*, December 10, 1982, https://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm; Zou, *China’s Marine Legal System and the Law of the Sea*, 30-33, 43, 54.

²⁹⁴ Zou, *China’s Marine Legal System and the Law of the Sea*, 60.

²⁹⁵ PRC, “EEZ Law, 1998,” 342-45.

²⁹⁶ For instance, on March 20, 2013, Vietnam accused China of opening fire on one of its fishing trawlers operating “near the Paracel Islands” (Martin Petty and Ben Blanchard, “Vietnam accuses China of attack on fishermen in South China Sea,” *Reuters*, March 26, 2013, <http://www.reuters.com/article/2013/03/26/us-vietnam-china-idUSBRE92P0A420130326>). Admittedly, a specific location as not given. However, that it apparently occurred “close” to features claimed by China is significant. An example on the Philippines’ side is the Scarborough Shoal standoff in 2012. Starting April 2012, Chinese ships maintained a presence in and around the feature. Shortly after, China implemented a 15 nm wide no-fishing zone. Filipino fishing ships were reported to have been chased by

Bank, which is just inside the southwesternmost edge of the U-Shaped Line. China's harassment of an American naval auxiliary surveillance vessel, the USNS *Impeccable*, in 2009 occurred within the claimed Chinese EEZ. Since it was affiliated with the US Navy, the fact that it was unarmed was irrelevant to China. On March 10, the PRC Foreign Ministry charged the ship with conducting military activities in its "special economic zone" without permission.²⁹⁷ The cutting of Vietnamese deep-sea cables conforms to Article 11 of the PRC EEZ Law, stating that the routes of foreign submarine cables and pipelines "are subject to the consent of the competent authority of the People's Republic of China."²⁹⁸

These interpretations also explain China's confidence in exercising its annual fishing ban north of the 12th parallel starting in 1999. Under Article 5 of its EEZ law, "the competent authority of the People's Republic of China shall have the right to adopt various necessary measures of conservation and management to prevent the living resources in the exclusive economic zone from any harm of over-exploitation."²⁹⁹ The southerly limit of the ban, furthermore, roughly matches a claimed EEZ extending 200 nm south from the Paracels, following the PRC's implementation of baselines around those islands but not the Spratlys in 1996.³⁰⁰ Perhaps China believes a measure as provocative as a fishing ban would work best in an area already declared as an EEZ. China completely dominates the Parcel region. Only Vietnam and Taiwan claim the Paracels, but the PRC has blocked a Vietnamese presence on the Paracels since 1974, while Taiwan was diplomatically isolated. In contrast, four countries disputed the

Chinese vessels until reaching this distance. See Mogato, "Insight: China consolidates sea claims as Asian diplomacy struggles," *Reuters*, April 22, 2013; Jaime Laude, "China imposes 15-mile fishing rule in Panatag Shoal," *Philippine Star*, May 1, 2013, <http://www.philstar.com/headlines/2013/05/01/937121/china-imposes-15-mile-fishing-rule-panatag-shoal>. See also: Tridib Chakraborti, "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict-Peace-Trepidation' Syndrome," *China Report* 48: 283 (2012): 290-91.

²⁹⁷ "China says U.S. naval ship breaks int'l, Chinese law," *Xinhua News*, March 10, 2009, http://news.xinhuanet.com/english/2009-03/10/content_10983647.htm.

²⁹⁸ PRC, "EEZ Law, 1998," 345.

²⁹⁹ PRC, "EEZ Law, 1998," 343.

³⁰⁰ PRC, "Baselines Declaration, 1996," 9-10.

Spratlys: The Philippines, Vietnam, Brunei, and Malaysia, of which the first three have established a military presence in the region.

China's adherence to its own interpretations of international law, however skewed, explains many of its actions in the region, although it does not justify them. Claimed maritime zones were derived from international law and emanated from land territory and baselines surrounding the South China Sea islands and features. Its claims did not follow a vague historic rights waters or historic waters interpretation of the U-Shaped Line. Only the EEZ Law contained the term "historic rights," which was used just to clarify that China should not be prejudiced in any way by this law.³⁰¹ The islands attribution line interpretation is thus likely.

There are caveats to this framework. Some uncertainty exists over whether the PRC treats the South China Sea as a massive EEZ. As stated earlier, it has not officially declared baselines for the Spratlys, Pratas, and Macclesfield Bank. Chinese statements also rarely include foreign infringement of its EEZ as a rationale for its protests or actions around features in the Spratlys. Granted, they also do not preclude it, since China often defends itself on the basis that it was protecting its jurisdictional rights.

Where exactly an EEZ would emanate from if applied to the Spratlys, Pratas, and Macclesfield Bank is also unclear. Although straight baselines in the Spratlys are advocated in principle, the PRC may choose to forego them to prevent more international condemnation. Finally, it is not known whether China will apply baselines around permanently submerged features. They are prevalent in the southwestern edge of the Spratlys and in Macclesfield Bank. China has never used these features as baseline points in practice. However, those in the Paracels were encompassed within the archipelago's straight baselines or territorial waters, foregoing the necessity of issuing baselines around them. The same cannot be said for the southwestern edge of

³⁰¹ PRC, "EEZ Law, 1998," 345.

the Spratlys if only islands as defined under UNCLOS possessed baselines, territorial waters, and EEZs. James Shoal, for instance, would be excluded. China clearly views all components of the South China Sea archipelagos as Chinese territory, submerged or not, and naturally habitable or not. It has also demonstrated that it will not be bound by conventional readings of UNCLOS. The possibility that the PRC is subconsciously or *de facto* in adherence to an EEZ surrounding all components of the South China Sea archipelagos is perhaps better supported given the evidence.

Another caveat is the Crestone concession. In May 1992, China granted shared exploratory and drilling rights to Crestone, an American oil company, in a 7,347 nm² concession zone centred on Vanguard and Prince of Wales Bank.³⁰² Zou concludes that this agreement *may* indicate that China claims historic rights to all of the waters and its resources within the U-Shaped Line. As the banks the concession block sits on are permanently submerged, they are difficult to claim individually except through ownership based on historic waters or an EEZ emanating from the nearest island as defined under UNCLOS.³⁰³ China, however, ratified UNCLOS four years later in 1996 and implemented its EEZ Law in 1998.

Zou's reasoning is partially incomplete. China claims "historic right" to all of the features of the South China Sea archipelagos, submerged or not, as earlier explained. Also, Vanguard Bank was clearly mentioned in the ROC's official U-Shaped Line map of 1947, which the PRC adopted in 1949.³⁰⁴ However, even if the PRC had at this time felt that the two banks were entitled to territorial seas in principle, it is unknown why the concession limits extended past this,

³⁰² Zou Keyuan, *Law of the Sea in East Asia: Issues and Prospects* (Abingdon: Routledge, 2005), 51.

³⁰³ Zou, *Law of the Sea in East Asia*, 51. Article 121 states that an island is "a naturally formed area of land, surrounded by water, which is *above water at high tide* [my italics]." Besides coastal land, only they may be entitled to an EEZ. Anything else, such as "rocks that cannot sustain human habitation or economic life of their own shall have no exclusive economic zone..." See UN, *UNCLOS*, December 10, 1982, https://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm.

³⁰⁴ See Map 1. Vanguard Bank is labelled as 萬安灘 *Wan'an Tan*.

six years before China officially implemented EEZs.³⁰⁵ While hard to explain, this on its own is inadequate to support a historic rights waters or historic waters claim given the lack of evidence. China's official response to Vietnam's protest of the Crestone concession merely stated that it had indisputable sovereignty over the Spratlys, Paracels, and their adjoining waters.³⁰⁶ Perhaps the CPC generally accepted EEZs in principle due to its signing of UNCLOS in 1982, and that the adjoining waters referred to this EEZ.

3.3.4 *The Security Paradigm*

Certain scholars such as Peter Dutton and Jacques deLisle propose another explanation of Chinese claims and actions in the South China Sea: security. Under this view, they are meant to create a strategic buffer zone and prevent anything from infringing on China's security interests.³⁰⁷ This viewpoint makes much sense, given that Chinese actions in the region often occur just outside or close to a theoretical 12 nm territorial waters zone surrounding a permanently or semi-permanently submerged feature, not just anywhere within the U-Shaped Line. For instance, Chinese ships roped off a 15nm no-fishing zone around Scarborough Shoal in April 2013, allowing time for Chinese vessels to intercept Filipino fishing vessels before they reached the feature.³⁰⁸

This framework must work side by side with Chinese interpretations of history and international law when explaining China's claims in the South China Sea, since it does not

³⁰⁵ Valencia, *China and the South China Sea Disputes*, 4. See Map 5. Using the distance conversion scale found in the map, which shows the area of the Crestone concession, the farthest limit is 77 nm from the nearest land feature, but well within the U-Shaped Line boundary. The farthest boundary limit still exceeds 24 nm even if one measures from a theoretical straight archipelagic baseline around the Spratlys, as China's Territorial and Contiguous Waters Law of 1992 advocates in principle.

³⁰⁶ Zou, *Law of the Sea in East Asia*, 51.

³⁰⁷ Peter Dutton, "Three Disputes and Three Objectives: China and the South China Sea," *Naval War College Review* 64:4 (2011): 48-49; deLisle, "Troubled Waters," 632-35.

³⁰⁸ Laude, "China imposes 15-mile fishing rule in Panatag Shoal," *Philippine Star*, May 1, 2013.

explain why certain areas became “protected” by China in the first place. For example, on May 28, 2011, PRC Foreign Ministry Spokeswoman Jiang Yu protested Vietnamese oil and gas exploration activities close to the Vietnamese coast on the grounds that they “have undermined China’s interests and jurisdictional rights in the South China Sea.”³⁰⁹ In response to reports that Chinese maritime surveillance vessels interfered with Vietnamese vessels there, she replied that “what relevant Chinese departments did was completely normal marine law-enforcement and surveillance activities in China’s jurisdictional sea area.” Security here is a recurrent theme. However, the PRC never clarified under what rationale the area came to be viewed as Chinese, and hence why it “protected” it.

3.4 A Troubling Implication

After the introduction of UNCLOS in 1982 and the PRC’s formal adoption of its principles in the 1990s, China’s adherence to an islands attribution line would become very concerning if it accepted a de facto EEZ in the Spratlys. The historic rights waters line would continue to be distinct from an islands attribution line, but only in principle. The islands attribution emphasizes sovereignty over the islands and land features, and by definition, all maritime zones extending from their baselines under Chinese interpretations of UNCLOS. An EEZ theoretically conferred by all of the islands and features of the South China Sea archipelagos would exceed the U-Shaped Line in scope; see Map 6. There is not much difference if only the islands, as defined under UNCLOS, possessed baselines.³¹⁰ If straight baselines are

³⁰⁹ Mu Xuequan, “China opposes Vietnam oil, gas exploration in China’s jurisdictional sea area: FM spokeswoman,” *Xinhua News*, May 28, 2011, http://news.xinhuanet.com/english2010/china/2011-05/28/c_13899118.htm.

³¹⁰ See image at Centre for Strategic and International Studies, “10 – China Habitable Island EEZ,” in *Centre for Strategic and International Studies Southeast Asian Program Photostream*, <http://www.flickr.com/photos/csisseap/6808771331/>. This image shows theoretical EEZs extending from all *islands* in the South China Sea, as opposed to permanently and semi permanently submerged features. It supposes that these

applied as advocated in principle by Chinese maritime laws and declarations, the scope would be even larger.³¹¹ The rights conferred by a historic rights waters interpretation of the U-Shaped Line, moreover, are largely identical to those in China's interpretation of an EEZ.³¹² Since 1998, then, an islands attribution interpretation of China's claim may well have turned into a historic rights waters line in effect.

The security paradigm is not any more assuring. As deLisle and Dutton note, China would stop anything that it judges as prejudicial to its national safety, whether it lies beyond China's jurisdiction or not.³¹³ Only China's judgement would determine when, where, and in what form to ensure its security. There is no maximum geographical range for such actions, nor limits to them.

3.5 A Reassuring Implication: The South China Sea vs. the Arctic

China's South China Sea policy, however, provides an unexpected effect on a similar territorial dispute: the Arctic. China is of the belief that global warming will soon melt the ice in the Northwest Passage and the Northern Sea Route.³¹⁴ Such a development would shorten maritime traffic between the Atlantic and Pacific Oceans by thousands of miles, although the perilousness of the journey will likely continue to render certain forms of maritime shipping infeasible. It would make resource exploitation far easier. China's also has significant scientific interests in the area. It has carried out three research expeditions there since 1999, and has heavily involved itself with foreign researchers on the subject.

islands are considered habitable, an important criterion distinguishing an island from a rock. The latter cannot confer an EEZ, as earlier mentioned.

³¹¹ See description under Map 6.

³¹² That is, sole exploitation, scientific, and conservation rights.

³¹³ deLisle, "Troubled Waters," 632-35; Dutton, "Three Disputes and Three Objectives," 48-49.

³¹⁴ The Northwest Passage is a waterway situated to the north of Canada, while the Northern Sea Route is situated to the north of Russia.

However, considering that China has never claimed Arctic territory, and other states surrounding the Arctic Ocean have maritime claims there, China has every reason to strictly follow international law so as to render the Arctic — especially the Northwest Passage — the “common heritage of mankind.” Many scholars observe just this in China’s stance and actions in the Arctic.³¹⁵ Its policy and actions there are not contentious. They are almost solely scientific-oriented and not geared towards potential resource exploitation there in the future. As Frédéric Lasserre points out, “China’s research does not relate to the geology of the continental shelf in the Beaufort Sea, where oil and gas exploration by North American and European oil firms has been very active for many years now.”³¹⁶

There are some Chinese commentators on the issue who argue that China deserves a greater role in the Arctic, and criticize the exclusivity of Arctic states in the issue. Li Zhenfu advocates greater Chinese involvement in the regulatory mechanisms of the region, which he characterizes as unjustly dominated by Western conceptions of international law, in order to secure China’s interests in science and freedom of navigation there. He bemoans Canada and Russia’s claim of continental shelves over Arctic waters.³¹⁷ Mei Hong and Wang Zengzhen concede that Canada’s claim in the Arctic is sounder than other Arctic claimants but view with disdain its usage of straight baselines to enclose key Arctic sea routes as internal waters.³¹⁸

It is important, however, to note that China has thus far officially respected Arctic states’ claims. For instance, it has not officially challenged Canada’s claims to Arctic internal waters.³¹⁹

Certain Chinese ships, such as the *Xuelong* in 2012, have even acceded to Russian regulations in

³¹⁵ For instance, see Frédéric Lasserre, *China and the Arctic: Threat or Cooperation Potential for Canada*, China Papers, no. 11 (Toronto: Canadian International Council, 2010), 4-7; Olya Gayazova, “China’s Rights in the Marine Arctic,” *The International Journal of Marine and Coastal Law* 28:1 (2013): 61-95.

³¹⁶ Lasserre, *China and the Arctic*, 7.

³¹⁷ David Wright, *The Dragon Eyes the Top of the World: Arctic Policy Debate and Discussion in China*, China Maritime Study, no. 8 (Newport: Naval War College, 2011), 8-9, 19-23, 30.

³¹⁸ Wright, *The Dragon Eyes the Top of the World*, 15. See glossary for a definition of internal waters.

³¹⁹ Wright, *The Dragon Eyes the Top of the World*, 8-9, 19-23.

the Arctic.³²⁰ An aggressive Chinese stance is unlikely to happen in the Arctic because it would have a difficult, if not impossible task of explaining a blatantly hypocritical stance. As Olya Gayazova, and indeed this chapter, have pointed out, China's policies towards the South China Sea are very assertive. It stems from China's strong support of non-interference and respect of a country's territory in international law. China does not believe in innocent passage for military vessels in territorial seas. Foreign non-scientific survey activities and routes for submarine cables and pipelines are subject to prior approval if pursued in China's EEZ. China believes it has sole exclusive right to develop artificial structures and islands in its EEZ and continental shelf, regardless of whether it is solely for economic purposes. Foreign military aircraft flying into China's EEZ are subject to a certain degree of monitoring and regulation. Finally, China believes that it has historic right to at least the South China Sea archipelagos, which then are entitled to various UNCLOS-derived maritime zones. To challenge Arctic states' claims to the area would therefore greatly draw suspicion and denunciation from the international community.³²¹ Unlike the Arctic, the CPC views the South China Sea as an issue of immediate importance to its national security. Therefore, nothing prompts China to pursue such risky stances and actions.

In this sense, the South China Sea dispute works as a restraint against a significant and non-scientific Chinese involvement in the Arctic. It is likely the main factor behind the PRC's cautious policy in the Arctic, since it is in China's best interest to maintain it. It does not stop China from attempting to press for an internationally open Arctic passage in the future, but its options for arguing this are both limited and weakened due to the contrast between its Arctic and South China Sea policies — at least, so long as the dispute in the South China Sea ensues.

³²⁰ Gayazova, "China's Rights in the Marine Arctic," 74.

³²¹ Gayazova, "China's Rights in the Marine Arctic," 86-94.

3.6 The ROC

Since the 1950s, ROC actions in the South China Sea have generally been quiet. This restrained policy illustrates an islands attribution line interpretation. Its attention in the South China Sea is focused on the land territory of Itu Aba island and the Pratas, with the primary task of supplying personnel stationed there and protecting their land sovereignty. The ROC responded only to “infringements” of the territories of these islands from the late 1940s, such as Thomas Cloma’s “intrusions” during the early 1950s and the ROC’s diplomatic protest against the Philippines’ formal claim to Kalayaan (Freedomland) in July 1971.³²² In 1992, the ROC proclaimed a 4km prohibited sea/air zone and a 6km restricted sea/air zone.³²³ Unlike the PRC, incidents with other states were infrequent and non-violent. Thus, on March 25, 1995, when warning shots were fired on a Vietnamese cargo vessel, Hanoi filed a protest, but the incident eventually fizzled out.³²⁴ In 1998, the ROC proclaimed its Law on the Territorial Sea and Contiguous Zone, which established a 12 nm territorial sea and 24 nm contiguous zone. In 1999, it declared baselines for Taiwan and the Pratas, which deliberately excluded Itu Aba Island for fear that establishing them could cause negative repercussions from the other disputants. The replacement of most marines with Coast Guard personnel in 2000 was also designed to be a confidence building measure to spearhead demilitarization in all of the South China Sea islands. Almost all notable development of the islands focused on their land territories, such as the opening of Itu Aba Island to tourism, the construction of an airstrip there to bolster the island’s defence in 2007, and the completion of a solar power plant in 2011.³²⁵

³²² Samuels, *Contest for the South China Sea*, 82, 84-85, 89-90.

³²³ Cheng-yi Lin, “Taiwan’s South China Sea Policy,” *Asian Survey* 37:4 (1997): 325.

³²⁴ Lin, “Taiwan’s South China Sea Policy,” 325.

³²⁵ Cheng-yi Lin and Anne Hsiu-An Hsiao, “Taiwan’s South China Sea Policy, 1999-2011” in Center for Asia-Pacific Area Studies of the Research Centre for Humanities and Social Sciences, Academia Sinica, *2012 Workshop on the South China Sea Dispute: Political and Security Implications for the Region’s Future* (Taipei: East-West Center, 2012), 1-2, 6-7, 13-14.

This restraint has many causes. The ROC lacks the resources for a more assertive policy, or one that holds more islands and features than its current possessions: Itu Aba Island and the Pratas. In 1999, the ROC Ministry of Defence even expressed concern over its capability to defend Itu Aba Island, which led to the replacement of most marines garrisoned there with Coast Guard personnel.³²⁶ While the ROC navy since has expanded and modernized, the primary mission of the ROC military by far remains to defend the island of Taiwan from invasion by the PRC. Most of its resources go towards this endeavour, not the South China Sea islands.³²⁷ Secondly, the US has no reason to support an assertive ROC policy on the matter, and every reason to dissuade it from expanding the dispute. Many disputants, including the ROC itself, are American allies or friends. It officially stated that it takes no side on the matter. America itself is concerned with stability, adherence to international law, and freedom of navigation in the South China Sea, home to one of the busiest shipping lanes in the world. At an Asian regional security meeting in Vietnam on July 23, 2010, US Secretary of State Hilary Clinton stated that America had a core interest in seeing the dispute resolved peacefully according to international law.³²⁸ Without US support, the ROC cannot afford a bellicose strategy over the South China Sea islands. Its loss of diplomatic recognition in 1971 and the PRC's "one China policy"³²⁹ bars it from any meaningful international interaction with the disputants over the matter.³³⁰

On April 13, 1993, the ROC's official rhetoric over the dispute took a major turn. The PRC-Vietnamese Spratly skirmish of 1988 and the Crestone concession of 1992 likely urged a

³²⁶ Lin and Hsiao, "Taiwan's South China Sea Policy," 2.

³²⁷ Lin, "Taiwan's South China Sea Policy," 330-31.

³²⁸ Mark Landler, "Offering to Aid Talks, U.S. Challenges China on Disputed Islands," *New York Times*, July 23, 2010, http://www.nytimes.com/2010/07/24/world/asia/24diplo.html?_r=0.

³²⁹ That is, the notion that the PRC is the sole legitimate representative of China in the world. Those who accede to this principle cannot communicate to the ROC in a diplomatic level. The same applies to those countries that diplomatically recognize the ROC and not the PRC.

³³⁰ Lin, "Taiwan's South China Sea Policy," 329.

more active policy in the South China Sea.³³¹ Under its “South China Sea Policy Guidelines (南海政策綱領 *Nanhai Zhengce Gangling*),” the ROC explicitly stated that “the waters within the South China Sea historic waters boundary [歷史性水域界線 *lishi xing shuiyu jiexian*] are under the jurisdiction of the Republic of China. Our country possesses all rights and interests in these waters.”³³² The “historic waters boundary” referred to the U-Shaped Line created in 1948, as the Chairman of the Research, Development, and Evaluation Commission of the Executive Yuan (行政院研究發展考核委員會 *Xingzheng Yanjiu Fazhan Kaohe Weiyuan Hui*) clarified shortly afterwards in a press conference.³³³ Other statements also contained ambiguity that could have potentially supported this view. For instance, on July 29, 2011, President Ma Ying-jeou reiterated the ROC’s stance on the dispute:

No matter what perspective one uses — history, geography, or international law — the [South China Sea islands], as well as their *surrounding waters* and respective seabed and subsoil, all consist of the inherent territory of the Republic of China... it enjoys all rights over the islands and their surrounding waters [my italics].³³⁴

Like the PRC, the word “surrounding” is used without specifying the exact limits it entails. Thus, the ROC does officially endorse a historic rights waters or historic waters interpretation of the U-Shaped Line.

The Policy Guidelines did not articulate what “all rights and interests” entailed. A literal reading of “historic waters” would make nearly the entire South China Sea equivalent to the ROC’s internal waters, which does not reflect reality: the Republic of China has never stated that

³³¹ Kuan-Ming Sun, “Policy of the Republic of China towards the South China Sea,” *Marine Policy* 19:5 (1995): 401-03.

³³² Executive Yuan of the Republic of China, *South China Sea Policy Guidelines* [南海政策綱領 *Nanhai Zhengce Gangling*], April 13, 1993, <http://ym.nthu.edu.tw/southsea/politics2.htm>. In Chinese: “南海歷史性水域界線內之海域為我國管轄之海域，我國擁有一切權益 *Nanhai lishi xing shuiyu jiexian nei zhi haiyu wei woguo guanxia zhi haiyu, woguo yongyou yiqie quanyi*.”

³³³ Sun, “Policy of the Republic of China towards the South China Sea,” 403.

³³⁴ Lin and Hsiao, “Taiwan’s South China Sea Policy,” 11-12.

it is entitled to prohibit or regulate foreign maritime and aerial traffic across the South China Sea, before or after the implementation of the Policy Guidelines.³³⁵

Despite the South China Sea Policy Guidelines and other non-binding diplomatic statements, the ROC's maritime laws contradict this historic rights waters or historic waters interpretation of the U-Shaped Line. In the first draft of the ROC's Law on the Territorial Seas and Contiguous Zone, the term "historic waters" was used to describe the maritime area of the South China Sea, but was then dropped in the second reading in the Legislative Yuan (立法院 *Lifa Yuan*).³³⁶ Neither the ROC's Law on the Territorial Sea and Contiguous Zone, its EEZ Law, nor its baselines declaration included such terms as "historic rights," "adjacent," or "relevant" waters.³³⁷ Only measurable sea zones such as territorial waters and EEZs were claimed, and all language in these laws was derived solely from international law. Neither its Territorial Sea Law nor EEZ Law even mentioned the South China Sea islands, or its "surrounding seas." They simply stated that its territorial waters and EEZ will emanate from baselines that are to be decided by the Executive Yuan.³³⁸ On February 10, 1999, in "The First Part of the Baselines of the Territorial Sea of the Republic of China," the Executive Yuan stated that

All islands and atolls of the Nansha Islands surrounded by the Chinese traditional U-shape line are the territory of the Republic of China. The delimitation of the baselines in this region shall be determined by a combination of straight baselines and normal

³³⁵ Kuan-Hsiung Wang, "The ROC's Maritime Claims and Practices with Special Reference to the South China Sea," *Ocean Development & International Law* 41:3 (2010): 249.

³³⁶ Zou, "China's U-Shaped Line in the South China Sea Revisited," 20.

³³⁷ Government of the Republic of China, "Law on the Territorial Sea and Contiguous Zone [herein referred to as the "ROC Territorial Seas Law, 1998"]," January 21, 1998, in Bureau of Oceans and International Environmental and Scientific Affairs of the United States Department of State, "Taiwan's Maritime Claims," *Limits in the Seas* 127 (2005): 20-24.; ROC, "Law on the Exclusive Economic Zone and the Continental Shelf [herein referred to as "ROC EEZ Law, 1998"]," January 21, 1998, in the United States Department of State, "Taiwan's Maritime Claims," 26-33; ROC, "The First Part of the Baselines of the Territorial Sea of Taiwan [herein referred to as "ROC Baselines Declaration, 1999"]," February 10, 1999, in the United States Department of State, "Taiwan's Maritime Claims," 25.

³³⁸ Bureau of Oceans and International Environmental and Scientific Affairs of the United States Department of State, "Taiwan's Maritime Claims," *Limits in the Seas* 127 (2005): 20-33.

baselines. The related information concerning names of the base points, their coordinates, and charts shall be promulgated in the future.³³⁹

Only the actual islands and atolls of the Spratly islands are mentioned here. The ROC again only used language derived solely from UNCLOS.

While the ROC's claim to the South China Sea and its islands is theoretically more encompassing than the PRC's, its actions are less assertive. The ROC's policy of restraint indicates an adherence to an islands attribution line view of the U-shaped Line in practice, as opposed to theory. Its military's scope of patrol is limited to a narrow 10km (approximately 5.4 nm) belt of exclusionary waters around Itu Aba Island. The ROC did not attempt to physically hold all of the Spratly islands, and since 1945 has focused mostly on defending the territory of its island possessions in the South China Sea. It calls for restraint in the dispute, and like Brunei and Malaysia, generally avoids physical provocation in the area unless very close to its territory. Barring the 1993 South China Sea Policy Guidelines, ROC domestic maritime laws clearly do not indicate a historic rights waters or historic waters interpretation of the U-Shaped Line.

³³⁹ Wang, "The ROC's Maritime Claims and Practices," 243.

Chapter 4: Conclusion- Changes, Continuities, Implications, and Prospects

Ambiguity and contradiction are two themes of the U-Shaped Line since the 1970s. To focus exclusively on them, however, is constrictive. More is gained by looking at the changes and continuities in Chinese views of the U-Shaped Line throughout history. They illuminate PRC foreign policy and decision making and the values it holds most dear. It reinforces sensitivity to others' positions, and dispels many misconceptions that keep the dispute antagonistic.

4.1 Change

Chinese governments have not always claimed most of the South China Sea as historic rights waters or historic waters. Until quite recently, the Line clearly possessed an islands attribution characteristic. The Qing dynasty provided no ancient historical basis to justify a historic rights waters or historic waters interpretation of the Line. Its sole focus was on the islands, which reigned supreme in Chinese official circles until the 1970s under the PRC. Ambiguity and contradiction in relevant PRC declarations and laws provide the *potential* for a historic rights waters or historic waters interpretation of the U-Shaped Line. The ROC went beyond even this by calling all of the maritime areas within the U-Shaped Line “historic waters” in 1993. Other changes address where a physical Chinese presence was established in the South China Sea. Until its last years, the Qing had largely stayed away from the islands and the centre of the sea. The ROC from the mid to late 1940s instituted a military presence in the main islands of the archipelagos, with limited naval protection around them. The PRC eventually expanded these naval and development activities to include most of the South China Sea.

Three sources drove these changes. The first is the development of standardized maritime zones and international law. During the early to mid-Qing Dynasty, China merely possessed an inchoate claim to the South China Sea archipelagos based on discovery. They were not effectively occupied or patrolled, and rightly so. The islands were remote, inhospitable, barren, and unchallenged by foreign powers. The Qing had more pressing continental matters to attend to, no notion of Western international law for most of its history, and thus no reason to abide by it.

By the Republican period, standard three nautical mile territorial waters zones were normal across the world. As countries began to adopt an extended 12 nm territorial seas, the ROC followed suit. Its expansion of marine jurisdiction can be explained by the evolution of maritime law. The U-Shaped Line did not delineate historic rights waters, much less historic waters.

Similarly, the PRC adopted a 12 nm territorial waters zone until 1992, when it claimed an additional 24nm contiguous waters zone as codified under UNCLOS. Nothing indicates that the CPC even *potentially* held a historic rights waters or historic waters interpretation of the Line until the 1970s. Likely, China's participation in the UN Committee of the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction in 1971 informed the PRC for the first time the maritime rights it could assert, and also to the dangers posed by foreign assertions of those rights to areas surrounding the South China Sea islands.³⁴⁰ The PRC adopted continental shelves and EEZs shortly after the advent of UNCLOS.

The second source of change is security. When no powers threatened China's coast, never mind the South China Sea islands, the Qing did not feel compelled to defend them from "incursions." In the mid to late 1940s, however, the ROC stressed invasions of the islands and

³⁴⁰ Lo, *China's Policy Towards Territorial Disputes*, 39.

the possibility of future attacks to explain the need to reclaim, defend, and develop them. They also reminded readers that foreign countries were situated close to the islands. Finally, the PRC's participation in the UN Committee of the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction in 1971 likely led to the PRC's policy of ambiguity over the nature of the U-Shaped Line.

Security is bound intimately with contemporary PRC understandings of international law. The "Century of Humiliation" taught the PRC to stand strong against any threats to national security. Therefore, any provisions in international laws that were deemed unfair or detrimental to China were removed or revised, such as Chinese interpretations of EEZs, their opposition to the right of innocent passage for foreign naval vessels, and Article 14 of China's EEZ Law in 1998, stating that the EEZ Law will not prejudice the historical rights of China. The insistence on bilateral negotiations and exclusion of non-claimants over the issue, especially the US, follows this pattern. China feels that its claims are supported by international law and is angered when ASEAN claimants and other countries oppose them.

This focus on security also explains China's heavy handedness in the South China Sea region, its use of strong language such as "indisputable sovereignty" over the islands, and generally why China is so adamant on the archipelagos. To lose these areas could inflame anti-CPC popular feeling, leading to internal unrest, and produce increased foreign pressure on China to give up Taiwan, Tibet, Xinjiang, and its stances on internal issues — to produce another Century of Humiliation, where foreign powers dictate China on what to do.

The third source of this change is capability. The early to mid-Qing Dynasty possessed the naval capabilities to patrol the islands, but not the late. The ROC could project force into the South China Sea after 1945, until forced to focus on an increasingly dangerous Communist

China. Today, the ROC's precarious position prevents an expansive policy. Until 1974, the PRC lacked the power to stop "incursions" into its sovereignty. Since 1980, its naval modernization has provided an increasing ability to do so.

Chinese interpretations of UNCLOS are inconsistent and worrying, but identifying their causes is vital to a full and peaceful resolution of the issue. PRC actions that potentially support the claim to a historic rights waters or historic waters view of the Line were mainly defensive from its viewpoint. Their expansion mirrored developments such as changing international law, the advent of new concepts of maritime jurisdiction, and a perceived increase in threats. Changes in military capabilities determined how Chinese governments responded to such trends.

Simply labelling Chinese views and actions as aggressive³⁴¹ and unfounded only encourages China's determination to maintain a hard stance and disinclines others from negotiating with flexibility and level-headedness. For example, the Philippines' ZoPPF/C plan called for leaving alone undisputed areas of the South China Sea and working out a cooperative management scheme over those that are disputed.³⁴² In a brief footnote, however, the Philippines dismissed the U-Shaped Line as invalid.³⁴³ It denied China from employing the U-Shaped Line as a basis with which to participate in the proposed resolution plan. It stated that China's entire claim to the South China Sea islands did not merit consideration, even in areas not disputed with the Philippines. The Philippines dismissed China's perception of the need of security and its views on history and international law so abruptly and without adequate elaboration that China refused to comply with the plan. Had the Philippines taken China's claim into consideration,

³⁴¹ That is, the idea that these claimants must win everything they claim partly because of the notion that China is "expansionist." If one concedes just a little bit, China will keep pressing for more.

³⁴² Government of the Republic of the Philippines. *Philippine Paper on ASEAN-China Zone of Peace, Freedom, Friendship and Cooperation (ZoPPF/C) in the WPS [West Philippine Sea] (SCS [South China Sea])*, 2011. page 1, http://nghiencuubiendong.vn/download/doc_download/364-philippine-paper-on-asean--china-zone-of-peace-freedom-friendship-and-cooperation-in-the-south-china-sea. Herein referred to as "ZoPPF/C."

³⁴³ Government of the Republic of the Philippines, *ZoPPF/C*, 2.

which does not necessarily equate to recognition of it, China may have participated and definitively removed ambiguity over the Line.

The same concern of sensitivity applies for China. It must realize that its views of defence are *legitimately* alarming to other claimants. Its gravest error in the region is that it inadequately addresses these concerns or dismisses them, whether from an idea that China is a large nation and cannot be bullied, or that it has “indisputable sovereignty” to its claims. China’s stance is too inflexible. Because history supposedly has vindicated its position, nobody can negotiate over matters of sovereignty over the islands and features. Thus, China refuses to consider the weaknesses in its historic claims, takes the U-Shaped Line for granted without assessing its origins and intent, and does not address the consequences of its inflexibility. The PRC does not grasp that it shares much fault in heightening the dispute, particularly by interpretations of international law that are not supported by UNCLOS. China’s flawed use of history shapes the continued antagonism of the dispute.

The PRC must realize that its stance on the Line is *not* widely known by the international community, despite its assertions to the contrary.³⁴⁴ China must clarify its stance over the U-Shaped Line because this history is dynamic. Its meaning has changed over time. Even if a country understood what the Line meant during the ROC period, this would not explain what the PRC currently believes. Clarifying its view of the Line would lessen the worry and frustration of the other claimants. They would know what to expect from China and how to negotiate with it. The dispute cannot be resolved unless the claimants know what is being argued.

Thus, the PRC must decide what the Line means. Ambiguity can just as easily indicate ignorance rather than prudence. China’s indecisiveness about the meaning of the Line prevents it from fully understanding its own position in the dispute, since it perplexes Chinese scholars and

³⁴⁴ For instance, see PRC, *China Note Verbale to the United Nations, CML/17/2009*, May 7, 2009.

officials as much as other claimants on the Line. They constantly contradict themselves or refuse to answer when asked what the Line represents.³⁴⁵

Individual opinions and biases, however, increase confusion. Time is not on China's side if it wishes to clarify its stance. If the CPC knows the Line's meaning, varying views create further divergence from an officially desired stance, which it must rectify. It may even have to accommodate for some of them before clarification; for instance, if it contradicted a respected senior official's views or if it is not hardline enough. If China does not know what the Line represents, it must sort through a growing number of commentaries, articles, and official statements to formulate an official stance that avoids hypocrisy, maintains patriotism, and also adheres to its own interests. In either case, the dispute becomes harder to resolve the longer ambiguity is maintained.

4.2 Continuity

In spite of changes, the U-Shaped Line has continuity in certain respects. The islands attribution line continues to shape the PRC and ROC's policy over the South China Sea islands, preserving at least the possibility for negotiation regarding maritime zones in the South China Sea. This is especially the case for the PRC, since it has not yet articulated its stance on maritime jurisdiction in the Spratlys. In addition, its adamant stance on its sovereignty over the South China Sea islands and features did not stem from a spontaneous and "mindless" aggression. Since the Ming Dynasty, and probably earlier, China has claimed the islands and features. Qing records clearly evidenced this. Both the ROC and PRC have officially laid claim to them all, whether submerged or not. Nevertheless, continuities are problematic if they do not fit with

³⁴⁵ Robert Beckman, "UNCLOS and the Maritime Security of China," in *China and East Asian Strategic Dynamics: The Shaping of a New Regional Order*, eds. Mingjiang Li and Dongmin Lee (Lanham: Lexington, 2011), 244; Dutton, "Three Disputes and Three Objectives," 45-49.

current times. The PRC freely acceded to UNCLOS in 1982 and 1996, which revoked earlier and incompatible versions of international law. Therefore, it must reassess its history with the archipelagos and South China Sea, decide what should and should not be claimed, and clarify these claims on an informed and objective basis in order for the resolution process to move forward.

PRC-ROC relations remain largely unaffected by the dispute. From a practical standpoint, both sides avoid policies that jeopardize cross-strait relations for little immediate reason and return, such as publishing baselines around the ROC-held Pratas Islands. From a matter of principle, each side maintains that it is the sole representative of “China.” Because the PRC asserts that Taiwan is a breakaway province, it views ROC assertions of sovereignty as “assistance” in upholding “China’s” claims. It can dismiss or denounce ROC policies that do not accord with its own, such as the ROC’s South China Sea Policy Guidelines or its replacement of marines with Coast Guard personnel in Itu Aba Island. The ROC, meanwhile, passively supports PRC assertions of sovereignty in the South China Sea. Nevertheless, the dispute is not a rallying cry for improved PRC-ROC relations. ROC politicians that support a joint defence of South China Sea territories with the PRC are in the minority. The government stresses that it, not the PRC, owns them.³⁴⁶

4.3 Prospects

The level of antagonism in this dispute may indicate that there is no viable solution. Scholars such as Michael Swaine, Michael Yahuda, and Zhao Hong argue that since 2008, the PRC has been exhibiting a new assertiveness in foreign policy, such as provocative actions in the South China Sea; an uncooperative stance in the UN Climate Change Conference in Copenhagen;

³⁴⁶ Lin and Hsiao, “Taiwan’s South China Sea Policy,” 5, 11-17.

a large build-up of its military, especially its South Sea Fleet based in Guangdong and Hainan province; retaliatory responses to American arms sales to Taiwan in 2010 and America's hosting of the Dalai Lama; the Diaoyu/Senkaku Islands dispute flare up; China's refusal to sanction Iran for its nuclear program; and defence of provocative North Korean actions in 2010.³⁴⁷ While Alastair Iain Johnston argues that such behaviour is not new, they have not become helpful to a resolution.³⁴⁸

However, all hope is not lost. China has not undertaken any violent military actions against its neighbours since 1988, and has recently indicated a willingness to discuss a binding Code of Conduct, which it repeatedly had rejected.³⁴⁹ Better cross-strait relations and the declassification of ROC archival files have also begun to end the U-Shaped Line's ambiguity. In a press conference in October 23, 2012, Wu Shicun, president of the National Institute for South China Sea Studies (中國南海研究院 *Zhongguo Nanhai Yanjiu Yuan*), announced that leading scholars from the PRC and ROC will investigate the nature of the U-Shaped Line — an academic and historic milestone.³⁵⁰

To resolve the dispute will take years. There is simply not enough trust and goodwill between the claimants at the moment for such a development, and far too many conflicting interests. Resolution will also be gradual. Less sensitive topics or avenues of engagement that will not gravely affect the interests of the claimants must first be tackled, like non-binding declarations of goodwill, academic conferences, and a willingness to draw a binding Code of

³⁴⁷ Michael Swaine, "Perceptions of an Assertive China," *China Leadership Monitor* 32 (2010), 2-4; Michael Yahuda, "China's New Assertiveness in the South China Sea," *Journal of Contemporary China* 22:81 (2013): 447-5; Zhao Hong, "The South China Sea Dispute and China-ASEAN Relations," *Asian Affairs*, 44:1 (2013): 31;

³⁴⁸ Alastair Iain Johnston, "How New and Assertive Is China's New Assertiveness?" *International Security* 37:4 (2013): 7-48.

³⁴⁹ Natasha Brereton-Fukui, "Asean, China Seek to Ease Tension Over Sea Dispute," *Wall Street Journal*, June 30, 2013, <http://online.wsj.com/article/SB10001424127887324251504578577631456952080.html>.

³⁵⁰ "Chinese scholars to study South China Sea borderline, says expert," *Xinhua News*, October 24, 2012, http://news.xinhuanet.com/english/china/2012-10/24/c_131927426.htm. The National Institute for South China Sea Studies is the largest academic institute in the PRC that specializes on research relating to the South China Sea.

Conduct. More and more sensitive issues thereafter will probably be discussed, including every claimant's determination to hold the islands and features. As Taylor Fravel points out, China has never participated in negotiations over land sovereignty in the dispute.³⁵¹ It is best to first settle areas of maritime jurisdiction in the South China Sea. Unlike the islands, such claims still possess room for interpretation in Chinese official circles, meaning a better possibility that China will agree to discuss it.

The process of resolution continues to move forward, albeit slowly, sustaining optimism over the resolution of the dispute. Of course, the maintenance of this trend depends on the collective will of the claimants to see the dispute through to a peaceful end. The line between failure and success is extremely frail. China's usage of history will be especially crucial in this regard because it informs China's claims and policies in the region to such a large degree. Much depends on whether China adopts a more stable policy borne from a sound historical knowledge of the U-Shaped Line, or continues to adhere to an incomplete historical view to bolster national interests. This in turn will determine whether the meaning of the U-Shaped Line will remain the same or change, for better or worse.

³⁵¹ Fravel, *Strong Borders, Secure Nation*, 270.

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Appendix

Glossary

Baselines: A series of straight lines that connect the outermost features of a state's coast or island(s). Maritime areas landward of these lines are internal waters, unless the state is an archipelago. There are certain limitations to the application of baselines under UNCLOS. For instance, they "must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain" (Article 7 of UNCLOS). Only archipelagic states may apply straight baselines connecting the outer points of an archipelago (Articles 6, 7, and 47 of UNCLOS). Nevertheless, many states abuse the concept of straight baselines, meaning a larger internal waters zone.

Contiguous zone: This belt of sea and airspace extends 24 nm seaward from a state's baselines under UNCLOS. As with territorial waters, the width varied from state to state before UNCLOS. Here, the coastal state has the right to "exercise the control necessary to a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; b) punish infringement of the above laws and regulations committed within its territory or territorial sea." See Article 33 of UNCLOS.

Continental shelf zone: This belt of sea and airspace extends seaward from a coastal state's coast or island(s) towards the limits of its undersea continental margin. Until UNCLOS in 1982, the maximum limit for such a zone was usually the 200 metre isobaths line; that is, the point where the sea depth is 200 m. Under UNCLOS, the limit is usually 200 nm seaward from its baselines, but may be extended up to 350 nm provided the continental margin extends that far and the depth of the water at that point does not exceed 100 nm from the 2,500 metre isobaths line. In a continental shelf zone, the state has sole exploratory and exploitation rights in the water column and seabed. It does not have any other rights. See Articles 76 to 85 of UNCLOS.

Equidistance: A principle that establishes the median line between two states' opposing shores. It is used often when the distance between the two is shorter than the combined limits of a maritime zone emanating from them. For instance, if a body of water between the baselines of each state is 200 nm, each state would only be entitled to a 100 nm EEZ, instead of one dominating more or all of the 200 nm.

Exclusive Economic Zone (EEZ): A belt of sea and airspace that emanates 200 nm seaward from a coastal state's baselines. In an EEZ, the coastal state is entitled to sole exploitation rights in the water column and seabed, sole scientific rights, sole conservation rights, and the ability to regulate certain activities that jeopardize the environmental well-being of the EEZ. The coastal state otherwise has no right to regulate any form of foreign maritime or aerial traffic, military or not. See Articles 55 to 75 of UNCLOS.

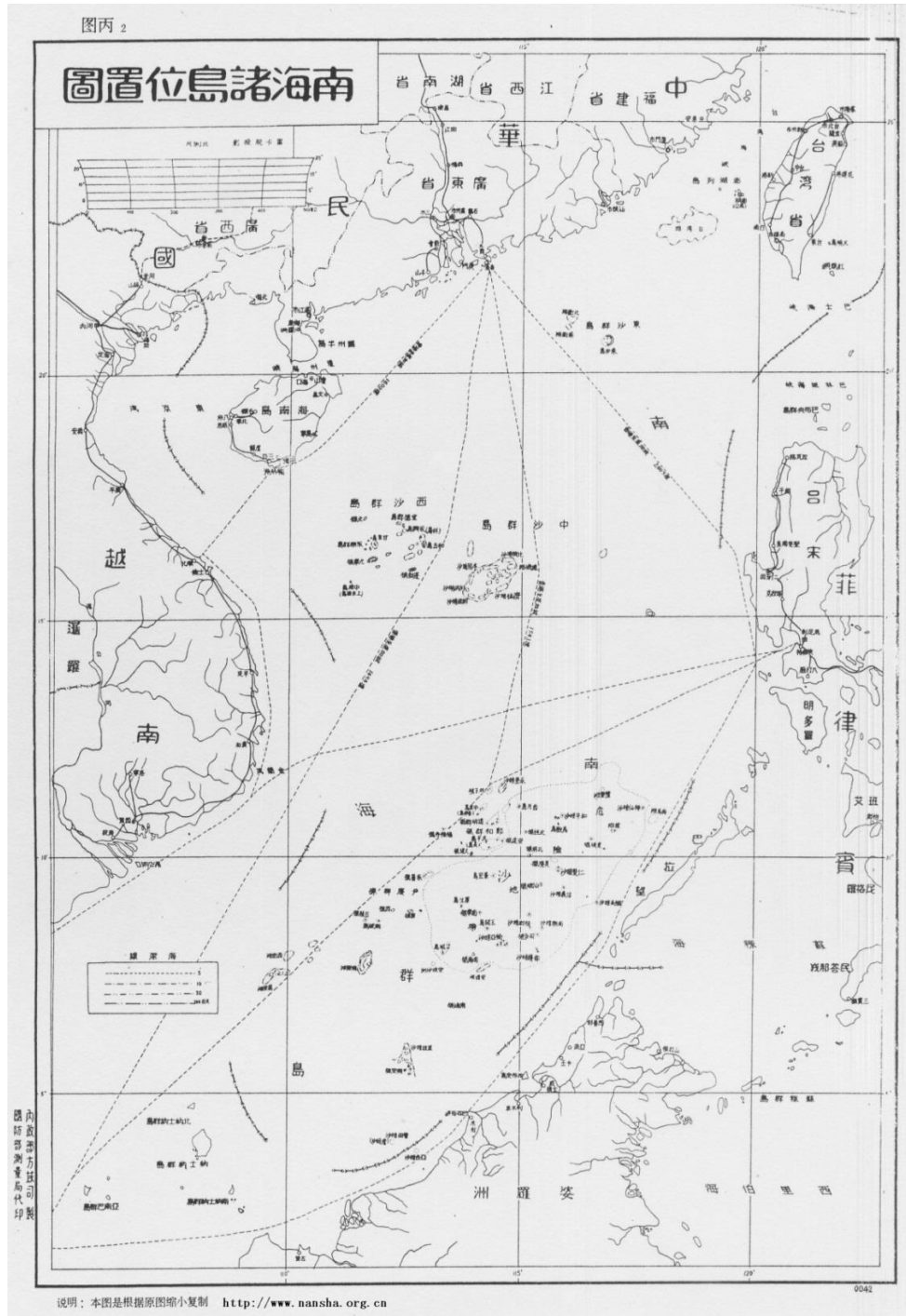
Internal waters: Waters landward of a state's baselines. This includes bodies of water not connected to the sea, such as lakes and rivers. The coastal state has all rights to the waters, seabed, and airspace here as they would with land territory.

Nautical mile: One arc minute of latitude in distance at sea level. Equivalent to exactly 1.852 km (1.15078 miles) by international agreement.

Territorial waters: Before UNCLOS, the extent of this belt of sea varied. States by the late nineteenth century usually extended this belt of sea roughly three nm, although other measurements were used, such as three miles or “within cannon shot.” Under UNCLOS, the width is 12 nm seaward from a state’s baselines. The coastal state has all right of regulation and exploitation in the sea, seabed, and airspace here except regarding foreign innocent passage, which “is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State.” See Articles 2 to 26 of UNCLOS.

United Nations Convention of the Law of the Sea (UNCLOS): Created in 1982, it is the foremost piece of modern maritime international law. It supersedes all previous maritime international laws except in areas that it does not cover.

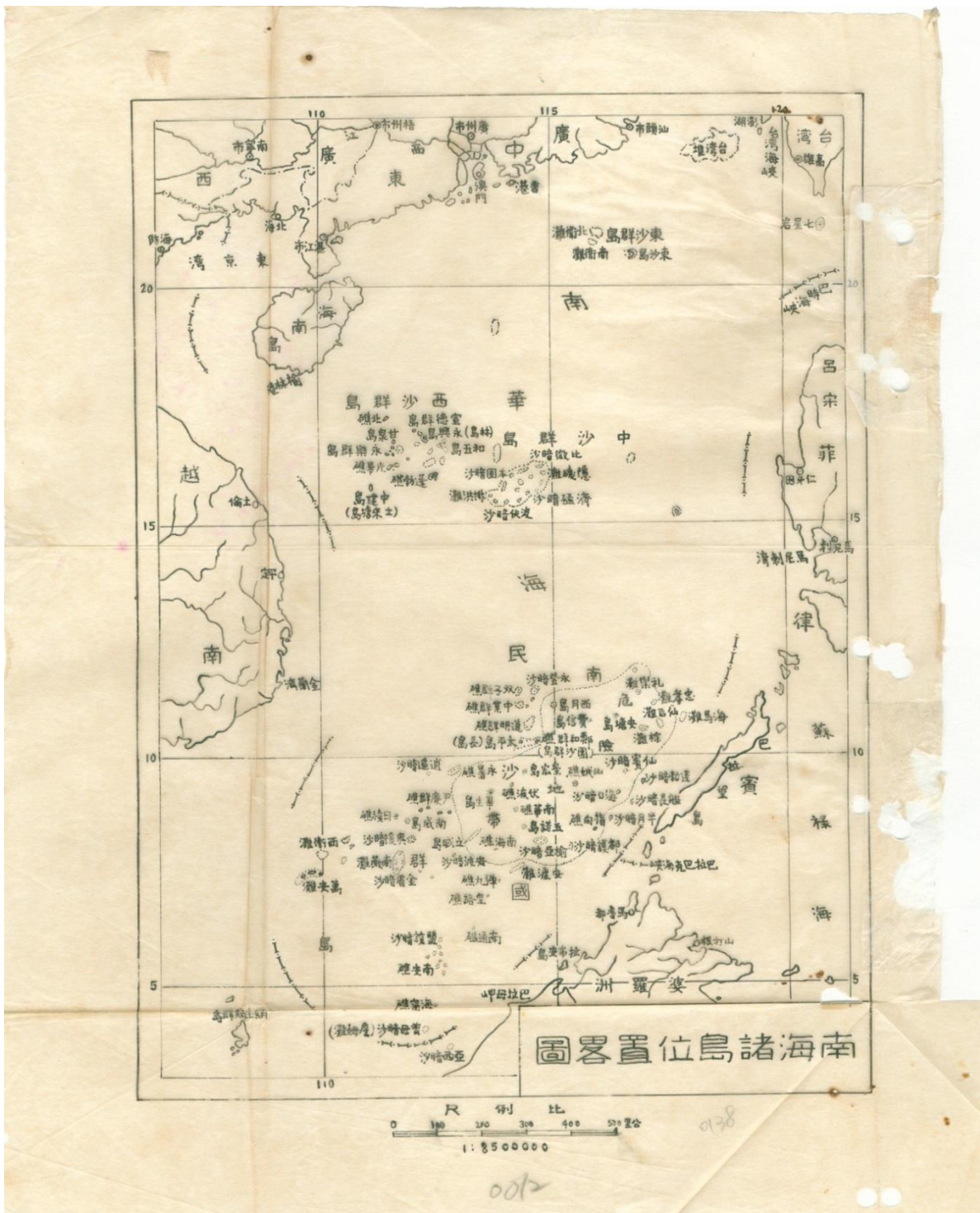
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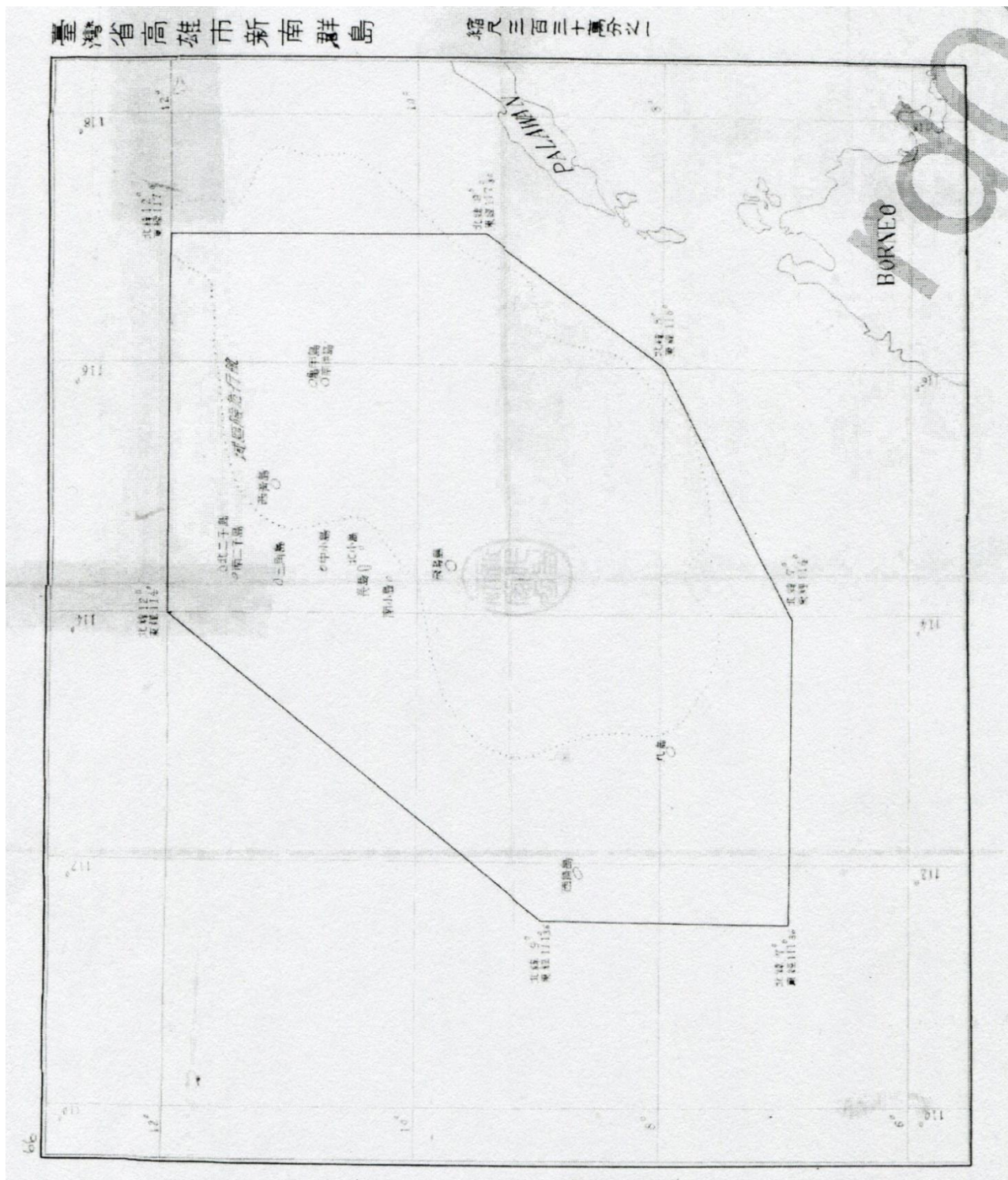
Map 1: *The Location Map of the South China Sea (Nansha Zhudao Weizhi Tu 南海諸島位置圖)*, 1947. “Nansha Qundao Ditu [南沙群岛地图]- 1947,” in *Nansha Qundao Zaixian* [南沙群岛在线, or “Spratlys online”], http://www.nansha.org.cn/maps/3/1947_South_China_Sea_Map.html. Reproduced with permission from *Nansha Qundao Zaixian* [南沙群岛在线, or “Spratlys online”]. The same map was publicly published in 1948.



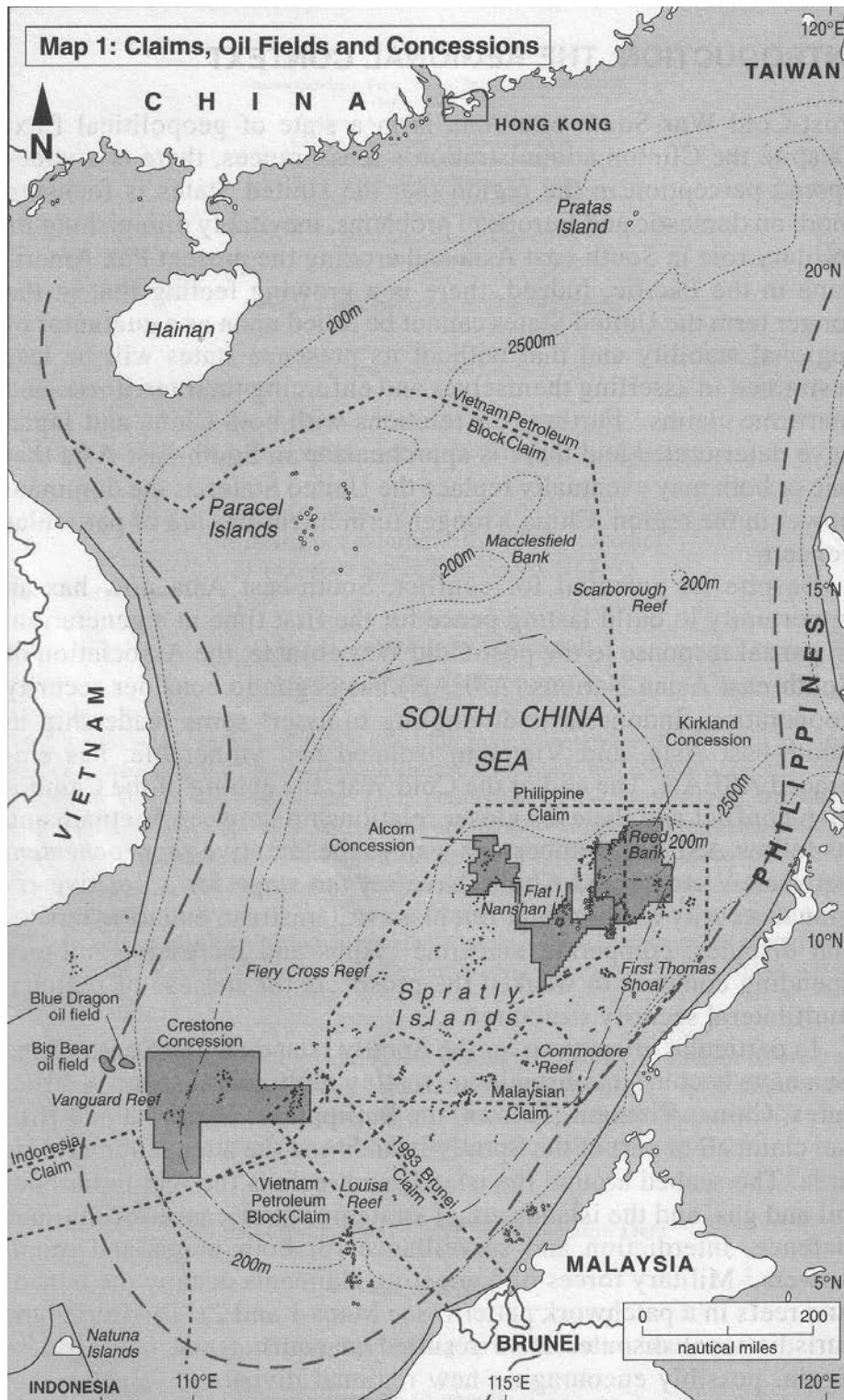
Map 2: *The Location Sketch Map of the South China Sea Islands (Nanhai Zhudao Weizhi Luetu 南海諸島位置略圖), 1946. MHTO, “Jinzu Xi Nan Sha Qundao An [進駐西南沙群島案],” the ROC National Archives Administration, file series 0035/061.8/3030, file 001/001/0009. Reproduced with permission from the ROC National Archives Administration.*



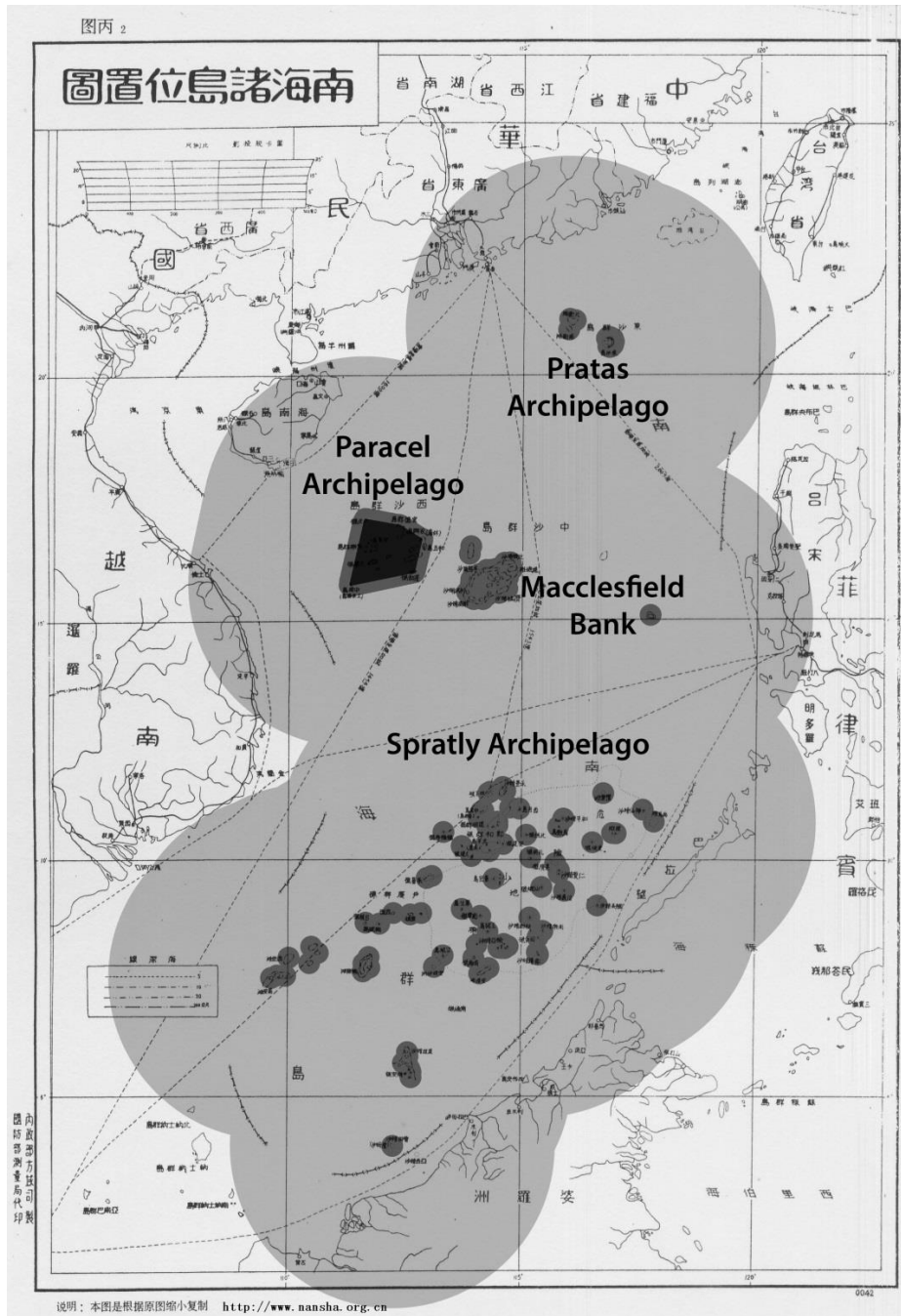
Map 3: The 1947 version of *The Location Sketch Map of the South China Sea Islands*. MHTO, “Jinzu Xi Nan Sha Qundao An [進駐西南沙群島案],” the ROC National Archives Administration, file series 0035/061.8/3030, file 006/008/0012. Reproduced with permission from the ROC National Archives Administration. Map 1 came from this version. Note the eleven dashes, soon to be standard, as opposed to the eight in the 1946 version. The shape, however, is identical.



Map 4: Map of the *Shinnan Guntō*, titled “Xinnan Qundao of Taiwan Province, Kaohsiung City [臺灣省高雄市新南群島 *Taiwan Sheng Gaoxiong Shi Xinnan Qundao*].” MOFA, “Nansha Qundao [南沙群島],” the Historical Archives of the Department of Modern History in the Academia Sinica, file series 019.3/0012, file 066. Reproduced with permission from the Historical Archives of the Department of Modern History in the Academia Sinica. Note the presence of geographical coordinates on the corners of the borders.



Map 5: The Crestone concession limits are shown in the bottom left hand corner. Original source: Mark Valencia. *China and the South China Sea Disputes: conflicting claims and potential solutions in the South China Sea*. Adelphi Paper no. 298. Oxford: Oxford University Press, 1995. Pg. 4. Reproduced with permission from Taylor & Francis Group (<http://www.tandfonline.com>).



Map 6: A theoretical EEZ emanating from all islands and features, submerged or not, but without straight baselines. The Paracels have straight baselines because they have been officially declared by the PRC. Intrusion into land territory, equidistance with conflicting foreign EEZs, and EEZs from the mainland coast and Taiwan have not been factored here. Internal waters are indicated in dark gray, 12 nm territorial waters in medium gray, and 200 nm EEZs in light gray. Note that this theoretical EEZ already exceeds the U-Shaped Line. Applying straight baselines would not add much more EEZ space; only the three “indentations” northeast of Natuna Island, southeast of Vietnam, and inside Borneo would be connected by straight lines. It would, however, establish a significant area as Chinese territorial waters; simply connect the outermost islands and features of each archipelago. The original image is Map 1.

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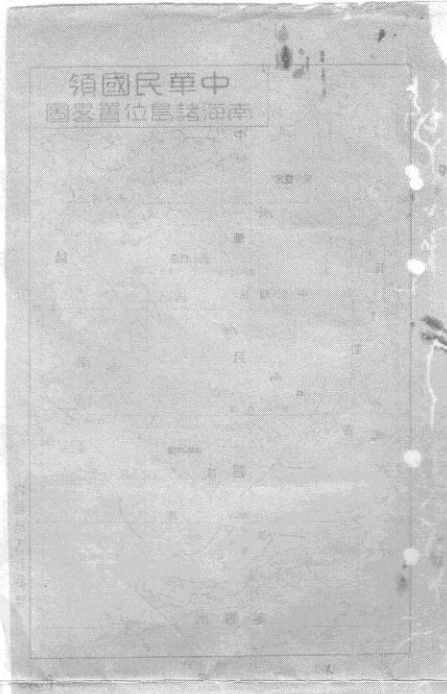
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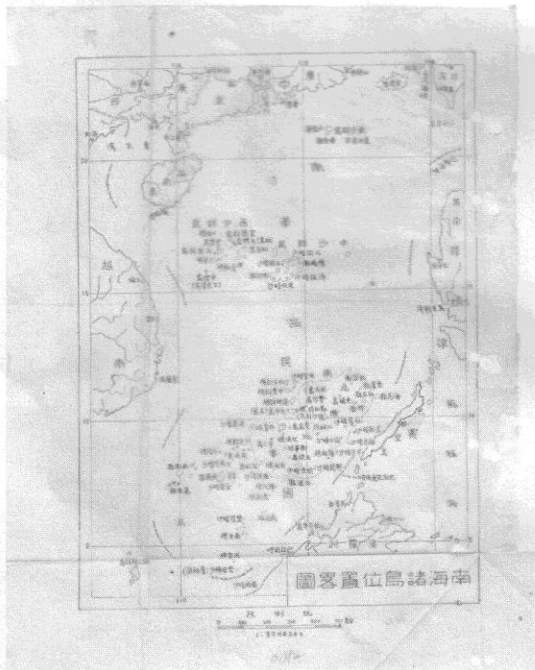
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