



The South China Sea: Historical and legal background

By Bill Hayton

In the South China Sea, the Chinese leadership is intent on controlling all the rocks, reefs, and resources in the waters encompassed by what has become known as the ‘nine-dash’ or ‘U-shaped’ line. This line, which first appeared on an official map published by the Republic of China (ROC) in 1948, has no legal or historical basis. It is the product of misunderstandings and mistranslations by officials and private individuals in China during the 1930s. Unfortunately, this line is the basis for ongoing confrontations and escalating geopolitical tension between the People’s Republic of China (PRC), its Southeast Asian neighbours and other countries.

The current leadership of the PRC, the Chinese Communist Party (CCP), believes that time is on its side. As the Chinese economy grows, and the country’s military power increases relative to its neighbours and rivals, Beijing assumes that resistance to its territorial and other claims in the South China Sea will wither. Furthermore, based on misreadings of history, Beijing believes that it has ‘right’ on its side and that its neighbours and rivals are either puppets controlled by the United States (US) or hostile powers intent on undermining the PRC’s rise. This stance is underpinned by a strong sense of Chinese nationalism and



determination to restore China's historical position as a major global power. These core assumptions lead the CCP to discount objections to its behaviour.

The PRC's behaviour in the South China Sea oscillates between two modes: 'rights protection' (asserting claims against its neighbours through confrontation) and 'stability maintenance' (reconciliation with its neighbours after a confrontation). Overall, Chinese behaviour is like a ratchet – tightening things up and then sitting still. And, like a ratchet, the process only goes one way, towards ever tighter Chinese control.

Two types of dispute

It is important to remember that there are two kinds of disputes in the South China Sea:

1. **Territorial disputes** over which country is the rightful owner of the various rocks and reefs; and,
2. **Maritime disputes** over what countries can do in the spaces in between the rocks and reefs.

The PRC has never formally outlined its claims in the South China Sea, but Chinese academics and think tank leaders have talked about a three-part claim:

1. A territorial claim to all the rocks and reefs within the nine-dash line. The history of this claim will be outlined below;
2. A claim to maritime resources anchored in the United Nations Convention on the Law of the Sea (UNCLOS), agreed in 1982 and subsequently ratified by almost every country, including the PRC. One of the most important elements of UNCLOS was the creation of the 'Exclusive Economic Zone' (EEZ) under which countries can own the resources (such as fish, oil and gas) in and under the sea (but not the sea itself) up to 200 nautical miles from their coasts; and,
3. A claim to certain 'historic rights' within the line, such as fishing rights, navigation rights and priority rights of resource development.¹

While neighbouring countries dispute the PRC's territorial claims and disagree over its interpretation of UNCLOS, it is the third element – the vague formulation

¹ Shicun Wu and Keyuan Zou, *Arbitration Concerning the South China Sea: Philippines Versus China* (London: Routledge, 2016) p. 132.



of ‘historic rights’ – that is the most problematic. It is leading the PRC into confrontation with Vietnam, the Philippines, Malaysia and Indonesia. Despite its name, however, this ‘historic rights’ claim dates only to the late 1980s and the work of a small group of nationalists in Taiwan.²

The emergence of Chinese claims in the South China Sea

Although PRC statements often assert that Chinese claims to the islands of the South China Sea date back centuries, these assertions crumble when subjected to historical analysis. As late as 1899, Qing officials denied responsibility for the Paracel Islands in a dispute over an insurance claim following a shipwreck³ and as late as 1933, senior officials of the ROC were unaware of the existence of the Spratly Islands.⁴ In the years since, a considerable amount of historiography has been reverse engineered to justify Chinese claims over the two island groups.

China’s claims in the South China Sea emerged from three diplomatic crises in the first half of the 20th century. In 1909, following a dispute with Japan, the Qing Empire asserted a claim to Pratas Island (*Dongsha* in Chinese), which lies between Taiwan and Hong Kong, and the Paracel Islands, in the northwestern part of the South China Sea.⁵ In 1933, a confused response to a territorial dispute with France led some Chinese officials and intellectuals (but not the central government) to assert a claim to the Spratly Islands in the southern part of the South China Sea.⁶ Finally, between 1946–1948, the government of the ROC made a formal claim to the Spratlys, marking them on official maps and including them within national boundaries.⁷

² Bill Hayton, ‘The Modern Creation Of China’s “Historic Rights” Claim In The South China Sea’, *Asian Affairs*, 49:3, (2018), pp. 370–382.

³ Bill Hayton, ‘Strategic forgetting: Britain, China, and the South China Sea, 1894–1938’, *Modern Asian Studies*, 57, (2023), p. 972.

⁴ Bill Hayton, ‘The Modern Origins of China’s South China Sea Claims: Maps, Misunderstandings, and the Maritime Geobody’, *Modern China*, 45:2, (2019), p. 147.

⁵ Chris Pak Cheong Chung, ‘Fluid Realms: Chinese Visions of Maritime Space in the South China Sea Islands’ (Phd), *Department of History University of Toronto*, (2022).

⁶ Bill Hayton, ‘The Modern Creation Of China’s ‘Historic Rights’ Claim In The South China Sea’, *Asian Affairs*, 49:3 (2018), pp. 370–382.

⁷ Tsung-Han Tai and Chi-Ting Tsai ‘The legal status of the U-shaped line revisited from the perspective of intertemporal law’, in Szu-shen Ho and Kuan-Hsiung Wang (eds.), *A Bridge over Troubled Waters: Prospects for Peace in the South and East China Seas* (Taipei: Prospect Foundation, 2014), pp. 177–208.



The origin of the ‘U-shaped’ or ‘nine-dash’ line

In the early 20th century, there was considerable doubt about the actual borders of the ROC. Tibet and Outer Mongolia had declared independence, Xinjiang was de facto independent, and the rest of the country was divided between rival regimes. The central government of the ROC faced territorial disputes with rival powers, notably Japan and France. It was in this context that a Chinese government committee, the ‘Land and Water Maps Review Committee’ (*Shuilu ditu shencha weiyuanhui* 水陸地圖審查委員會), was established to try to clarify the country’s frontiers. In 1935, this committee produced a list of ‘Chinese’ names for the rocks and reefs of the South China Sea, most of which were simply translations or transliterations of the names found on British maps. Some of these translations were misleading. In particular, English words referring to underwater features, such as ‘bank’ and ‘shoal’ were rendered as *tan* [灘 or 滩], which in Chinese specifically refers to a ‘sandbank’ and thus implies a different type of geographical feature.

The following year, Bai Meichu, a self-taught professor of geography, published his ‘New Atlas of China’s Construction’ [*Zhonghua jianshe xintu* 中华建设新图] using the committee’s new translated names for these islands.⁸ Bai’s map was full of mistakes. He seems to have copied a British atlas, published by Stanfords of London in 1918, and misinterpreted its markings and the committee’s poor translations. As a result, Bai drew a line around three non-existent islands: Vanguard Bank off southeastern Vietnam, James Shoal off Brunei and Seahorse Shoal off the Philippines. All three are underwater features whose names had been translated as *tan* by the committee.

Bai was a private individual, not a government official, but his line became the basis of China’s modern-day claims in the South China Sea. The line was incorporated into the ROC’s official claim when two of Bai’s students (who subsequently became geography professors) were seconded to the ROC’s Department of Territorial Administration after the end of the Second World War. Fu Jiaojin [傅角今] and Zheng Ziyue [郑资约] appear to have taken Bai’s misinterpretations as the foundation for a new Chinese territorial claim. The map published by their department in 1948 included an 11-dash line broadly following Bai’s original line. In 1949, when Mao Zedong’s CCP emerged victorious after the Chinese civil war, the PRC ‘inherited’ the ROC’s territorial claims, although it

⁸ ‘Zou Keyuan, ‘The Chinese traditional maritime boundary line in the South China Sea and its legal consequences for the resolution of the dispute over the Spratly Islands’, *International Journal of Marine and Coastal Law*, 14: 1 (1999), p. 33.



removed two of the 11 dashes (both in the Gulf of Tonkin) in the early 1950s as part of a, still-unseen, agreement with the Vietnamese communists.

The line has remained broadly the same since the 1950s. A map supplied by the PRC delegation to the United Nations Commission on the Limits of the Continental Shelf in May 2009 contained dashes in slightly different places but in essence, they followed the 1948 line.⁹

Chinese occupation of islets in the South China Sea

The first time any Chinese official claimed any of the islands in the South China Sea was in 1909. However, the actual ‘occupation’ of the Paracel Islands that year lasted only a few hours. The next occupiers were Japanese guano miners, whose activities prompted the interest of the French colonial authorities in Indochina in the late 1920s.¹⁰ This resulted in a dispute between the governments of France and China that lasted throughout the 1930s. France claimed the Spratly Islands in 1933 and the Chinese government, after much internal discussion, chose not to protest.

After the Second World War, both France and the ROC renewed their rival claims to the Paracels, resulting in French Indochina occupying the western half of the archipelago and the ROC occupying the eastern half. In December 1946, Chinese officials landed in the Spratly Islands for the first time and formally claimed them, shortly after France had renewed its own claim. After its victory in the Chinese civil war in 1949, the communist PRC inherited the territorial claims of the previous nationalist ROC government, which had, by then, retreated to Taiwan. ROC forces withdrew from their positions in both the Paracels and the Spratlys in May 1950. In 1955, forces of the PRC occupied the ROC’s previous positions in the eastern half of the Paracels.

In 1974, PRC forces expelled Republic of Vietnam (South Vietnam) units from the western half of the archipelago. Then, in 1988, PRC forces occupied six features in the Spratlys, adding a seventh in late 1994. Since 2013, the PRC has greatly expanded its bases on these seven features, building runways and extensive harbours on three of them.¹¹

⁹ ‘No. 143 China: Maritime Claims In The South China Sea’, Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State (US), 05/12/2014, <https://www.state.gov/>, p. 6, (checked: 28/08/2024).

¹⁰ Paul Kreitman, ‘Sand Dunes and Soldiers’, *Japan’s Ocean Borderlands: Nature and Sovereignty*, (New York City: Cambridge University Press, 2023) and Ulises Granados, ‘Japanese expansion into the South China Sea: colonisation and conflict, 1902–1939’, *Journal of Asian History*, 42:2 (2008), pp. 117–142.

¹¹ See the website of the Asia Maritime Transparency Initiative for satellite photographs of the development of the Chinese-occupied artificial islands: ‘Island Tracker’, *Asia Maritime Transparency Initiative*, <https://amti.csis.org/> (checked: 28/08/2024).



In 2013, the Philippines brought a legal case against the PRC under UNCLOS. The case was heard at an International Arbitral Tribunal in The Hague. The Tribunal had no powers to make any ruling on which country is the rightful owner of any of the rocks and reefs. It could only examine the maritime disputes involving ownership of the resources in the waters around the Spratlys and another isolated reef called Scarborough Shoal. In 2016, the Tribunal ruled that the U-shaped line did not constitute a legal basis for any claims to resources in the South China Sea and that none of the Spratlys qualified as full islands capable of generating an EEZ. The PRC immediately rejected the ruling and continues to do so.

The present day

Xi Jinping, General Secretary of the Chinese Communist Party (CCP), has firmly linked territory to what he calls ‘the great rejuvenation of the Chinese nation’. While most of his rhetoric is focused on Taiwan, it is clear from the behaviour of PRC forces that Beijing regards the U-shaped line in the South China Sea as some kind of boundary.

The CCP’s motivations

Observations of PRC forces’ behaviour over several decades suggest that Beijing seeks to control all the rocks, reefs and resources within the U-shaped line. The various actors involved appear to be motivated by a combination of revanchist nationalism, strategic calculations and economic interests. While the activities of these actors – which include the People’s Liberation Army Navy (PLAN), the China Coast Guard (CCG), the Maritime Militia, coastal provinces, state-owned enterprises and private companies – generally align with state goals, they also pursue their own interests in securing government subsidies and prestige, which can sometimes diverge from national objectives. A final factor is the likelihood that the PLAN regards the South China Sea as a ‘bastion’ in which to hide its nuclear ballistic missile submarine (SSBN) fleet. These SSBNs are based in an underground facility near Sanya on Hainan Island and operate in the deep water between the Paracels and the Spratlys.¹² By remaining within the South China Sea, the submarines avoid the need to pass through the heavily monitored gaps

¹² Tong Zhao, ‘Tides of Change: China’s Nuclear Ballistic Missile Submarines and Strategic Stability’, Carnegie Endowment for International Peace, 24/10/2018, <https://carnegieendowment.org/> (checked: 28/08/2024).



in the 'island chain' formed by Japan, Taiwan and the Philippines, which are under US Navy surveillance. In effect, the South China Sea bastion is the last line of defence for the Chinese leadership.

The Maritime Militia and the similarly tasked 'Spratly Backbone Fishing Fleet' [*Nansha guban yuchuan* 南沙骨干渔船] operate in coordination with the CCG and PLAN in what has been called the 'grey zone' of operations, confusing the line between state and civilian actions.¹³ These three forces (navy, coast guard and militia) have developed what are referred to as 'cabbage leaf' tactics, forming blockades composed of concentric layers. Boats from the militia force are civilian vessels which can be quickly mobilised for state directed operations, and form the 'active' layer closest to the adversary. The maritime militia thus projects a civilian facade which frustrates military responses from other nations. Behind the maritime militia and reinforcing the blockade are the larger and more capable vessels of the CCG. The outermost layer comprises the PLAN, which waits just over the horizon, ready to intervene if the situation escalates beyond the capabilities of the Maritime Militia and CCG. The target is thereby enveloped and isolated from outside support.

There are limits to PRC behaviour. It has not used armed force against any of the other claimants since a clash with Vietnamese forces in the Spratly Islands in 1988, for example. However, this may well change in the future. For example, in 2021, a new Coast Guard Law afforded the CCG powers to deploy force in 'maritime areas under Chinese jurisdiction.' In the meantime, the PRC frequently uses other forceful methods to deter and intimidate its rivals. These include ramming hostile vessels, targeting them with powerful water cannons and using large numbers of vessels to 'swarm' targets.

Standard propaganda lines

Chinese officials rely on a few standard tropes in their comments on the South China Sea. Many of these can be found in the PRC's 'White Paper' issued after the 2016 Tribunal ruling.¹⁴ They include:

China's sovereignty over *Nanhai Zhudao* is established in the course of history: *Nanhai Zhudao* is a recent term, coined to create the idea of a single 'South China Sea Archipelago' encompassing every feature within the U-shaped (or

¹³ Gregory B. Poling, Tabitha Grace Mallory, Harrison Prétat and The Centre for Advanced Defense Studies, 'Pulling Back the Curtain on China's Maritime Militia', *Centre for Strategic and International Studies*, 18/11/2021, <https://www.csis.org/> (checked: 28/08/2024).

¹⁴ 'China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea', *State Council Information Office of the People's Republic of China*, 13/07/2016, <https://english.www.gov.cn/> (checked: 28/08/2024).



nine-dash) line. Geographically, there is no single archipelago but, rather, a number of isolated features spread across a huge area of sea. China has never established sovereignty over these features. Its sovereignty efforts began only in the early 20th century and were haphazard.

China's sovereignty over Nanhai Zhudao is widely acknowledged in the international community: This is completely untrue.

Zhongsha Qundao ('Central Sands' Archipelago): Misunderstandings of maps and names in the 1930s led the ROC to claim that the 'Macclesfield Bank', a series of underwater features in the centre of the South China Sea, were islands. The PRC sticks to this claim even today, even though these islands do not exist.

China is the first to have discovered, named, and explored and exploited Nanhai Zhudao: There is no archaeological or textual evidence of any Chinese ship sailing across the South China Sea before the tenth century. All the early navigation was conducted by Malay, South Asian and Persian merchants.¹⁵ The current Chinese names of the rocks and reefs are either translations/transliterations of English names or names that were chosen by Chinese government committees in 1947 and 1983. For example, 'Money Island' in the Paracels is named after a manager of the East India Company (William Taylor Money) and the Chinese name *Jinyin Dao* [金银岛] is simply a translation. *Zengmu Ansha* [曾母暗沙], an underwater feature that is officially the southernmost point of Chinese territory is simply a transliteration of the English name 'James Shoal' (the Chinese name was revised from *Zengmu Tan* in 1947).

Conclusion

The PRC's actions in the South China Sea are driven by a misplaced sense of right, founded upon nationalist misreadings of history. Augmenting these narratives are self-interested claims to marine resources and Beijing's intent to gain strategic advantage over neighbouring states and other countries, most notably the US and Japan. At the root of the ongoing confrontations in the South China Sea are numerous misreadings of history, based upon mistakes in translation and

¹⁵ Michael Flecker, 'Early Voyaging in the South China Sea: Implications on Territorial Claims', ISEAS - Yusok Ishak Institute Nalanda-Sriwijaya Centre, 08/2015, <https://www.iseas.edu.sg/> (checked: 28/08/2024).



map-making from the 1930s. Unless the basis of the PRC's actions is challenged, confrontation will continue.

Almost no Chinese officials or academics have any understanding of the origins of China's claims in the South China Sea. When confronted with evidence they tend to fall silent. They find it impossible to reconcile the evidence with the imposed orthodoxy of the CCP, or are unwilling to do so for fear of repercussions. All of the PRC's interlocutors should arm themselves with better information. At every opportunity, they should make clear that the PRC's territorial claims in the South China Sea have no logical or historical basis and that its maritime claims are incompatible with UNCLOS, which the PRC has ratified.

In its regional diplomacy, the United Kingdom (UK) should aim to bolster the resolve of those Southeast Asian countries facing intimidation from the PRC. Vietnam, the Philippines, Malaysia, Brunei and Indonesia are, in effect, on the frontline of the defence of international law. The PRC is constantly pushing them to renounce their rights under UNCLOS but so far, they are holding firm. These five countries are performing a huge service to the international community, holding together the framework of the free and open international order underwritten by rules and norms against Beijing's attempts to undermine it. Britain should also seek to coordinate its private and public diplomacy with its like-minded partners, including the European Union and Japan.

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