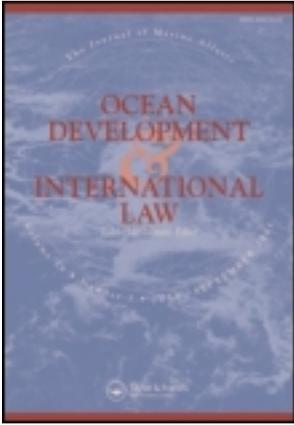


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### The U-Shaped Line and a Categorization of the Ocean Disputes in the South China Sea

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# The U-Shaped Line and a Categorization of the Ocean Disputes in the South China Sea

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*A principal aspect of the territorial and boundary delimitation disputes in the South China Sea is the so-called U-shaped line. This article addresses the genesis and substantiation of the U-shaped line claims as well as the possible change in positions of the governments of the Republic of China and the People's Republic of China with respect to the historical waters claim, which is an integral part of their U-shaped line positions. A legal analysis of the various communications of the South China Sea players with respect to the U-shaped line helps to clarify and identify the nature of four kinds of legal disputes. It is also possible to differentiate the various degrees of difficulty involved in settling each of these disputes.*

**Keywords** Dispute settlement, South China Sea, U-shaped line

## Introduction

The center of territorial disputes and maritime boundary delimitation disputes in the South China Sea region is the so-called eleven dotted lines or U-shaped line, first published by the Republic of China (ROC) government in December 1946.<sup>1</sup> Later the People's Republic of China (PRC) government succeeded to the position after it had taken over the mainland China territory from the ROC. The PRC's legal position, as well as its map of the South China Sea, was clearly stated in its 2009 communications with respect to the Malaysia/Viet Nam Joint Submission and the Viet Nam Submission on Extended Continental Shelf made to the Commission on the Limits of Continental Shelf (CLCS).<sup>2</sup> Not only did the two submitting states respond to the communications made by the PRC, but other coastal states in the South China Sea responded. The exchange of arguments helps to clarify the legal issues that arise with respect to the U-shaped line. This article will provide an analysis of the legal arguments made by the different claimants for sovereignty, sovereignty rights, and jurisdiction in the South China Sea.

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### The Eleven Dotted Lines (U-Shaped Line) and the ROC

The ROC first published the “Map of Location of the South China Sea Islands” in December 1946. On this map the eleven dotted lines create a shape like the letter U. The title of the map shows clearly the legal nature of the U-shaped line—the islands, or groups of islands, enclosed by the lines are part of territories of the State of China then represented by the ROC Government before the success of Communist Revolution in Mainland China in 1949.

What is left unanswered is the legal nature of the water or maritime area enclosed by the U-shaped line. On 13 April 1993, when the 1982 UN Convention on the Law of the Sea (LOS Convention)<sup>3</sup> was about to enter into force, the Executive Yuan of the ROC adopted Policy Guidelines for the South China Sea (SCS Guidelines), which answered the above question as follows:

In terms of history, geography, international law and facts, the Nansha Islands (Spratly Islands), Shisha Islands (Paracel Islands), Chungsha Islands (Macclesfield Islands) and Tungsha Islands (Pratas Islands) are part of inherent territory of the Republic of China; the sovereignty over those islands belongs to the Republic of China. The South China Sea area *within the historic waters limit* is the maritime area under the jurisdiction of the Republic of China, where the Republic of China possesses all rights and interests.<sup>4</sup> (emphasis added)

The SCS Guidelines take the view that the U-shaped line, as historic waters limit, serve to define the ROC’s historic waters. In other words waters beyond the ROC’s territorial waters, exclusive economic zone (EEZ), continental shelf, and archipelagic waters,<sup>5</sup> if any, generated by the insular features in the South China Sea<sup>6</sup> and enclosed by the U-shaped line are subject to the jurisdiction of the ROC as its historic waters.

During the presidency of Chen Shui-Bian, the ROC Ministry of the Interior quietly terminated the SCS Guidelines on 15 December 2005 by an internal note.<sup>7</sup> Two months later, the Guidelines for National Unification, one of the bases of the SCS Guidelines, was also abolished.<sup>8</sup> As observed by a scholar from mainland China, between 2000 and 2008 the Chen administration was unresponsive to the actions of Viet Nam and the Philippines relating to certain islands in the South China Sea.<sup>9</sup> This was consistent with the failed separatism once advocated by the Chen administration.<sup>10</sup> While the SCS Guidelines were terminated, the U-shaped line in the South China Sea was not renounced.

After Ma Ying-Jeou won the ROC presidential election in 2008, the South China Sea policy of the ROC changed halfway back. Ma advocated a new mainland affairs policy called the “Three-Nos Policy” standing for “No Unification, No Independence, and No Armed Conflict.” The SCS Guidelines have not been reactivated as they embraced the Unification Goal. The current attitude of the ROC toward the idea of historic waters in the South China Sea should be considered negative, unless proven otherwise by clear and concrete actions.

Unlike the Chen administration, the Ma administration has been quick to respond to perceived challenges in the region. However, the protests and communications made public by Ma administration contain no mention of historic waters. The English version of some protests made by the ROC contain an ambiguous claim to the island archipelagoes.<sup>11</sup> Although the definition of archipelagoes in the LOS Convention has an historic element,<sup>12</sup> the ROC has taken no action on the drawing of straight archipelagic baselines in the South China Sea region and thus has not made an archipelagic claim. Neither has the ROC under

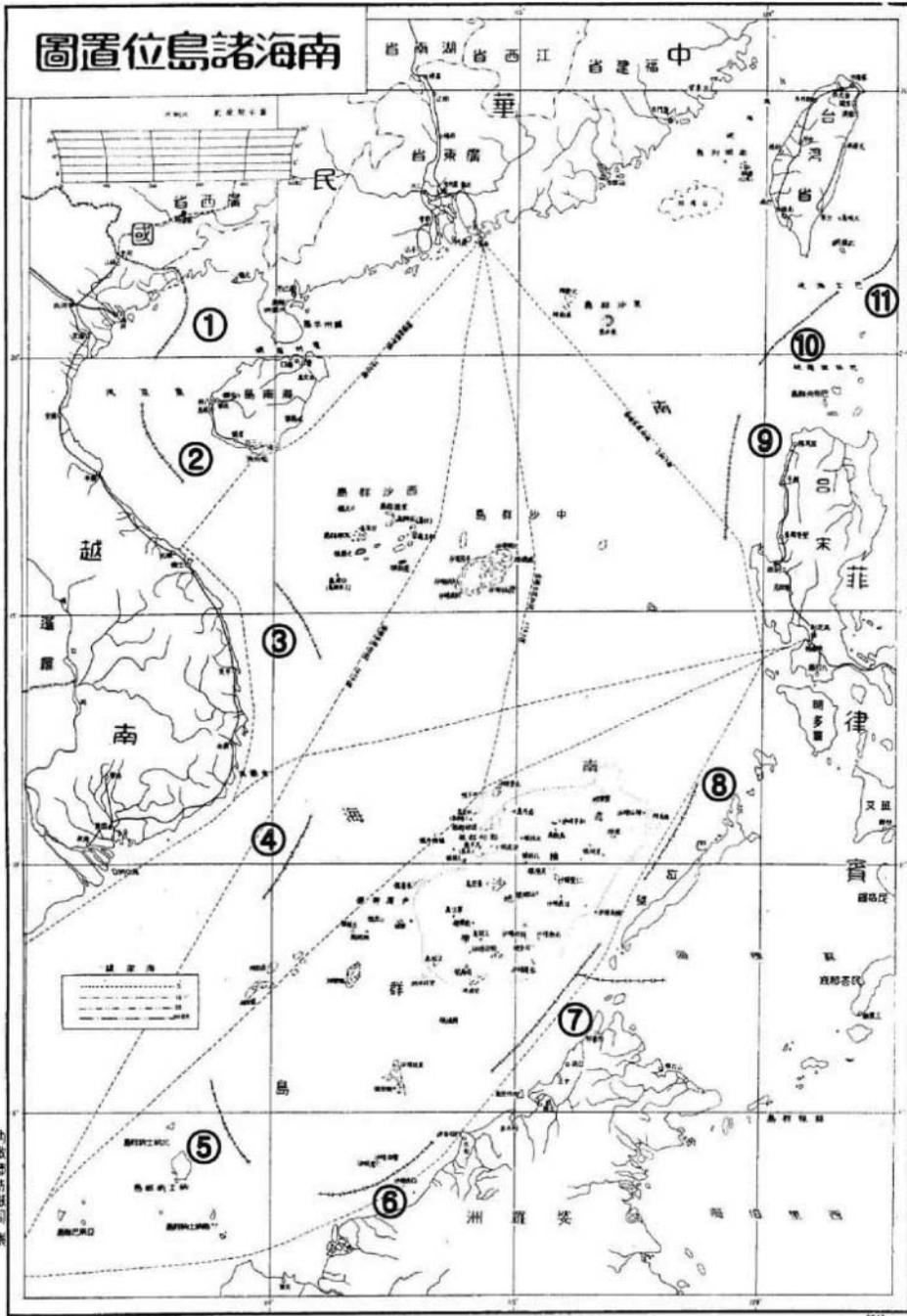


Figure 1. Map of location of the South China Sea islands: Ministry of the Interior of the Republic of China in Taiwan. <http://maritimeinfo.moi.gov.tw/marineweb/img/南海1.jpg>.

Ma made any claim on historic waters, nor does it appear to have defended the claim of historic waters in the South China Sea region.<sup>13</sup>

### **The Nine Dotted Lines and the PRC**

The position of the PRC concerning the U-shaped line is similar to the position of the ROC. However, the map instead of having eleven sections, has nine dotted-line sections. Most recently, the map was attached to the Notes Verbale presented by the PRC to the United Nations on 7 May 2009<sup>14</sup> in response to the Malaysia/Viet Nam Joint Submission<sup>15</sup> and the Viet Nam Submission<sup>16</sup> to the Commission on the Limits of the Continental Shelf concerning extended continental shelf in certain areas located in South China Sea.<sup>17</sup> The language used by the PRC in these two notifications is identical:

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 map). The above position is consistently held by the Chinese Government, and is widely known by the international community.<sup>18</sup>

This statement shows what the PRC claims in the South China Sea. The PRC claims sovereignty over the insular features within the U-shaped line. As for the maritime areas within the U-shaped line, they are differentiated into: adjacent waters of the islands owned by China; and relevant waters that are beyond the adjacent waters and the seabed and subsoil thereof. While the PRC claims to have sovereignty over the adjacent waters,<sup>19</sup> the rights that the PRC claims to have with respect to “relevant waters and the attaching seabed and subsoil” are sovereign rights and jurisdiction.<sup>20</sup> Compared with the ROC’s position, the PRC’s view is more precise in identifying the legal nature of the different parts of the maritime areas within the U-shaped line.

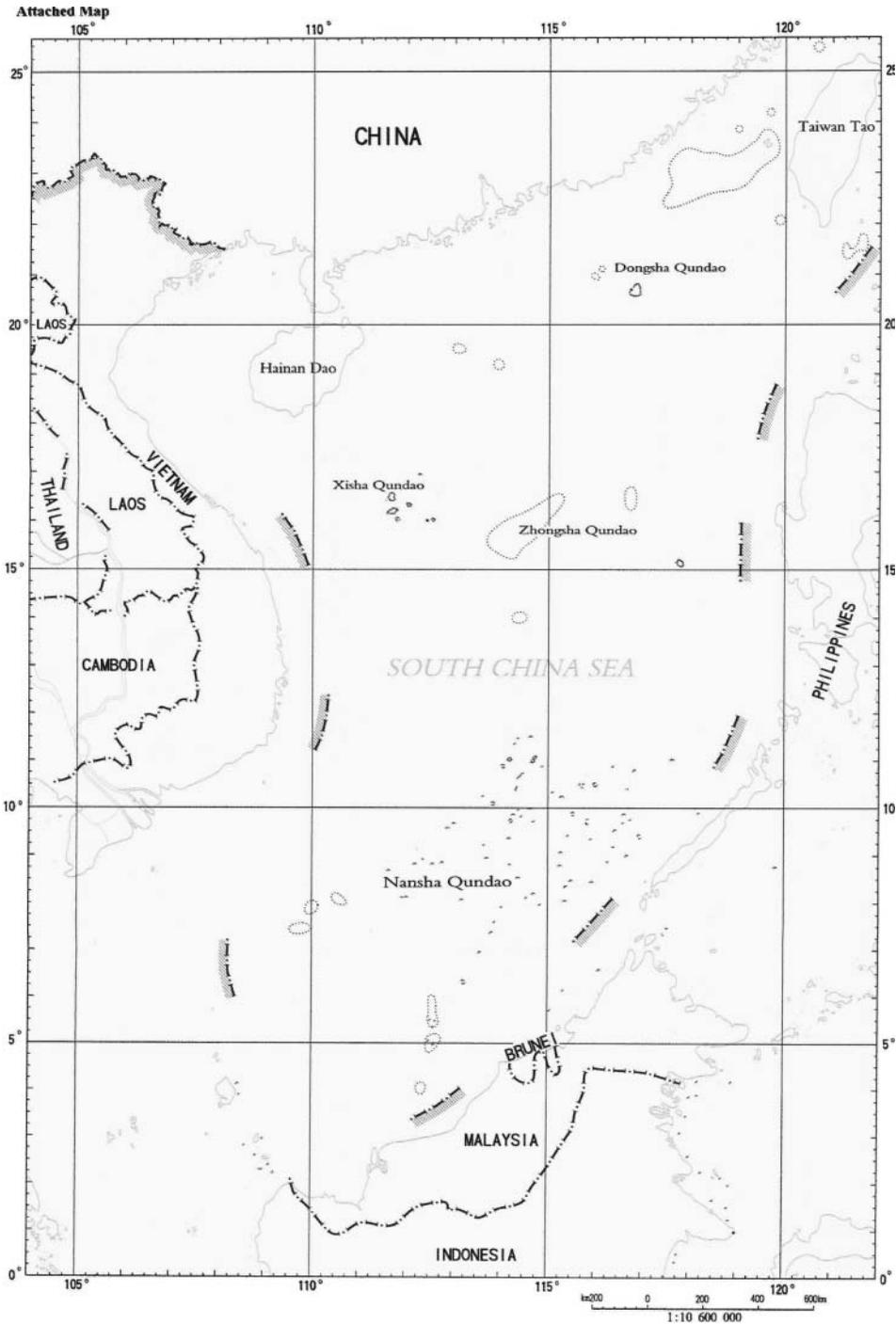
Historic waters, as a distinct type of maritime area, are not mentioned here. It is possible that “relevant waters” can be construed as including historic waters. Whether the PRC has such an intention depends on its practices. I submit that the response of the PRC of 14 April 2011 to the Note Verbale of the Philippines of 5 April 2011 clarifies the PRC’s position on historic waters and discuss this further below.

### **Challenges to the U-Shaped Line**

The focus of discussion in this section is the recent exchange of positions by all of the states bordering the South China Sea regarding the submissions delivered to the CLCS for the extended continental shelf located in this region. In order to facilitate an analysis of the communications, it is helpful to group the communications.

For the Malaysia/Viet Nam Joint Submission, there are four sets of connected communications: (1) the Note Verbale by the PRC<sup>21</sup> and the responses made by Viet Nam<sup>22</sup> and Malaysia;<sup>23</sup> (2) the Note Verbale by the Philippines<sup>24</sup> and the responses made by Viet Nam<sup>25</sup> and Malaysia;<sup>26</sup> (3) the Note Verbale by Indonesia<sup>27</sup> in response to the PRC’s Notes Verbale;<sup>28</sup> and (4) the Note Verbale by the Philippines<sup>29</sup> in response to the PRC’s Note Verbale and the response by the PRC<sup>30</sup> and the response by Viet Nam to both the Philippine and the PRC communications.<sup>31</sup>

For the Viet Nam Submission, there are three sets of connected notifications. There are (1) the Note Verbale by the PRC<sup>32</sup> to this submission and the response made by Viet Nam;<sup>33</sup>



**Figure 2.** Nine dotted lines claimed by the People’s Republic of China in the South China Sea. See Notification of the PRC dated 7 May 2009 to challenge the Joint Submission of Viet Nam and Malaysia to the CLCS dated 6 May 2009. The lines are indicated in the map to be downloaded from [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf).

(2) the Note Verbale by the Philippines<sup>34</sup> and the response by Viet Nam;<sup>35</sup> and (3) the Note Verbale by the Philippines<sup>36</sup> to the PRC's Note Verbale,<sup>37</sup> the response by the PRC<sup>38</sup> and the response by Viet Nam<sup>39</sup> to both the Philippine and the PRC communications.

The statements made by the states in the context of submissions to the CLCS reveal three major challenges to the foundations of the PRC/ROC U-shaped line.

The first challenge is against the asserted ownership or sovereignty of insular features or groups of islands. There are three pairs of states involved in such disputes: (1) the PRC and Viet Nam, which dispute the sovereignty of Hoang Sa (Paracels, also called Xisha Qundao) and Truong Sa (Spratlys, also called Nansha Qundao); (2) the PRC and the Philippines, which dispute the sovereignty of the Kalayaan Island Group (KIG); and (3) Malaysia and the Philippines, which dispute the sovereignty of North Borneo (the Malaysian state of Sabah). With the exception of the Sabah/North Borneo dispute, if any or all the arguments are accepted, then the surrounding waters of the islands concerned would not be subject to sovereignty, sovereign rights, or the jurisdiction of the PRC/ROC.

The second kind of challenge is against the legal capability of the insular features (islands or rocks) in the South China Sea to generate maritime zones under the LOS Convention. If these arguments are accepted, the surrounding waters of the insular features would not be subject to sovereignty, sovereign rights, or the jurisdiction of the PRC/ROC except for a territorial sea for the features. If an island meets the conditions provided by Article 121(3) of the LOS Convention, then it can generate only a territorial sea and not an EEZ or continental shelf. If a feature fails to meet the conditions of Article 121(1) because it is permanently submerged, then it does not generate even a territorial sea.

There are three pairs of states involved in such disputes. They are: (1) the PRC and the Philippines, which dispute the legal status of certain rocks in the KIG; (2) Indonesia and the PRC, which dispute the legal status of some small features, uninhabited rocks, reefs, and atolls; and (3) Malaysia and Viet Nam, which made a Joint Submission to the CLCS claiming extended continental shelf for the area in the center of the U-shaped zone.<sup>40</sup> The submission does not rely on the small islands, rocks, and features within the U-shaped line claimed to generate an EEZ or continental shelf. This position indirectly negates the claims of the PRC/ROC to have maritime zones generated by these islands, rocks, and figures within the U-shaped line.

The third kind of challenge is against the establishment or existence of the so-called historic waters enclosed by the nine dotted lines. Two states have raised this challenge. Indonesia has questioned the legal capability of the disputed small features in the South China Sea to generate maritime zones under the LOS Convention and, as a result, has indirectly negated the claims of the PRC to additional maritime zones considered as historic waters.<sup>41</sup> The Philippines has opposed the so-called relevant waters, seabed and subsoil thereof, as claimed by the PRC, which constitute maritime zones subject to sovereign rights and jurisdiction of the PRC under international law, yet are not regulated by the UNCLOS legal regime.<sup>42</sup> If this argument is accepted, then the PRC/ROC may not claim maritime zones within the U-shaped line that are not defined in the LOS Convention.

While the ROC has ceased to defend publicly the concept of historic waters in the South China Sea, the PRC seems to have abandoned the position by making negative remarks. The evidence can be found in the 2011 PRC Note Verbale in response to the Philippine Note Verbale. It was argued by the Philippines that:

THIRD, since the adjacent waters of the relevant geological features are definite and subject to legal and technical measurement, the claim as well by the People's

Republic of China on the “*relevant waters as well as the seabed and subsoil thereof*” . . . outside of the aforementioned relevant geological features in the KIG and their “adjacent waters” would have no basis under international law, specifically UNCLOS. . . .<sup>43</sup> (emphasis in original)

The PRC mentioned in its Note Verbale that:

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. In addition, under the relevant provisions of the *1982 United Nations Convention on the Law of the Sea*, as well as the *Law of the People’s Republic of China on the Territorial Sea and the Contiguous Zone (1992)* and the *Law on the Exclusive Economic Zone and the Continental Shelf of the People’s Republic of China (1998)*, China’s Nansha Islands is fully entitled to Territorial Sea, Exclusive Economic Zone (EEZ) and Continental Shelf.<sup>44</sup> (emphasis in original)

The PRC Note Verbale makes no mention of relevant water or historic waters. Nor did the PRC say that it is entitled to have historic waters in the South China Sea region. This may justify the view that the PRC has abandoned such an idea so as to facilitate bilateral maritime delimitation negotiations with the Philippines.

While not a challenge to the U-shaped line per se, the communications clearly indicate the existence of a fourth category of disputes: disputes over overlapping maritime areas not involving island sovereignty disputes. Three pairs of states are involved in this less complicated type of dispute. They are: (1) Malaysia and the PRC, which dispute an area in the southern part of the South China Sea; (2) the Philippines and Viet Nam, which dispute an area in the North Area of Viet Nam’s Eastern Sea (South China Sea); and (3) Malaysia and Viet Nam, which share an extended continental shelf as demonstrated in their Joint Submission to the CLCS.

### **The Dispute Matrix in the South China Sea**

The above-mentioned four kinds of challenges produce four different matrices of issues involving different degrees of difficulty in reaching a resolution of maritime boundaries in the South China Sea.

#### ***Situation One***

Situation One is a combination of a sovereignty dispute over an island, rock, and feature and a dispute over the legal status of the island, rock, or feature under Article 121 of the LOS Convention, or a dispute over the legal status of the maritime area surrounding the island, rock, or feature as historic waters. Based on the communications of the Philippines and the PRC, the disputes over KIG and its surrounding waters, falls into this situation. Furthermore, as indicated by the Malaysia/Viet Nam Joint Submission and the PRC Note Verbale in response, certain islands whose sovereignty are disputed by the PRC and Viet Nam have not been used to generate maritime zones for Viet Nam.

From the perspectives of the ROC or the PRC, the best way to handle the islands under their effective control is probably to monopolize the use of the surrounding maritime zones justified by the LOS Convention (i.e., territorial sea, EEZ, and continental shelf, including

the continental shelf beyond 200 nautical miles) and by general international law (i.e., historic waters). However, since sovereignty over the islands is disputed, the other claimant states would oppose such exclusive use and exercise of sovereignty, sovereign rights, and jurisdiction. The compromise will probably be the creation of a zone surrounding the islands, rocks, or features and some kind of provisional arrangement established within the zone. Because neither the ROC or the PRC has a mainland bordering the South China Sea, the mid-ocean island features are critical for them to claim maritime zones. Maximizing the size of zones would serve their best interests. However, other claimant states that have large islands or a mainland capable of generating maritime areas in the South China Sea will think otherwise. It is more likely for them to try to reduce to zero the size of zones surrounding the disputed islands, rocks, or features. The core issues in the negotiations between the PRC/ROC and other states bordering the South China Sea will be to decide how big a maritime area that the disputed islands deserve under the LOS Convention and general international law or to decide on the legal status of the islands under Article 121 of the LOS Convention.

For the PRC/ROC, handling the insular features in the South China Sea not under their control is even more difficult. The other claimant states most probably would argue that these islands, rocks, or features do not generate any maritime zones under the LOS Convention. Having a mainland or large islands bordering the South China Sea, the states need not rely on mid-ocean islands for maritime areas. They would oppose the idea of cut-off zones surrounding such disputed islands to accommodate provisional arrangements between them and the PRC/ROC. The worst case scenario for the ROC/PRC would be for the insular features to be ignored by the other states bordering the South China Sea as these states negotiate with each other for the delimitation of the maritime areas that surround such disputed islands, rocks, or features. Under such circumstances, the PRC/ROC could look to the practice of Japan, which has successfully negotiated with Korea and Russia provisional arrangements for the areas surrounding Takeshima/Dokdo and the Northern Territories, respectively.<sup>45</sup>

### *Situation Two*

Situation Two occurs when two or more states have a sovereignty dispute over an island or a group of islands whose capability to generate an EEZ or continental shelf is not disputed. As demonstrated by the communications sent to the CLCS, this type of dispute seems to exist between Malaysia and the Philippines.<sup>46</sup>

The way for the states to settle their maritime boundary delimitation dispute is probably to have a zone surrounding the disputed islands. Since there is no dispute concerning the legal status of such islands under Article 121 of the LOS Convention, there may be less difficulty in deciding the size of the zone. The greater issue would probably be the determination on the nature of provisional arrangements to be implemented in the zone.

### *Situation Three*

Situation Three occurs where there is a dispute over the capability of a small island, rock, or feature to generate maritime zones under the LOS Convention, but no sovereignty dispute exists. The ROC's sovereignty over the Pratas Islands (called Dongsha Qundao by the PRC) is not challenged by other states. The PRC also claims sovereignty over Dongsha Qundao. If the PRC is considered as one of the governments of the State of China with the name of People's Republic of China while the ROC is considered as another government of the same

state with a different name, the Republic of China, then Pratas Islands (Dongsha Qundao) is not subject to a sovereignty dispute.<sup>47</sup>

Both the PRC and the ROC claim that the islands within the U-shaped line are entitled to an EEZ and a continental shelf under the LOS Convention. The Philippines, Indonesia, Malaysia, and Viet Nam all hold the contrary view. Moreover, the possible PRC/ROC argument of historic waters within the U-shaped line has been rejected by Indonesia and the Philippines.

The core issue in a possible settlement is the size of the maritime area that can be generated by such island, rock, or feature. The problem concerns the legal status of the islands, rocks, or features under Article 121 of UNCLOS, and the legal status of the maritime area under general international law if it is historic waters. If the islands, rocks, or features are unable to generate any maritime zones under the LOS Convention and in general international law, then the delimitation dispute between the PRC/ROC and the other states in the South China Sea will cease to exist since the PRC/ROC does not have a mainland or large island close to the region capable of generating maritime zones.

What the PRC/ROC may do is to maximize the size of the maritime area surrounding the islands supported by arguments based on the LOS Convention and general international law. By doing this a controversial zone will emerge, given that other states bordering the South China Sea do not consider it legitimate for the PRC/ROC to have such maritime zones surrounding the islands. What is important is the presence of armed forces on some of the islands. The more effective such forces are, the greater the controversial zone may be. As Ambassador Hasjin Djalal always wonders, PRC Government never clearly identifies the outer limits of the maritime zones that overlap with the zones claimed by the South China Sea adjacent countries, so it is impossible to start a maritime boundary negotiation.

#### ***Situation Four***

Situation Four is the simple overlapping of maritime areas claimed and it covers the disputes between: Malaysia and the PRC over an area in the southern part of the South China Sea; the Philippines and Viet Nam over an area in the North Area of Viet Nam's Eastern Sea (South China Sea); and Malaysia and Viet Nam over their extended continental shelf indicated in their Joint Submission.

The ways to handle this kind of dispute are either through bilateral negotiations to draw the boundaries, third party determination of the applicable principles for delimitation for the parties to use, or third party drawing of maritime boundaries lines.

#### **Conclusion**

The legal issues arising from the U-shaped line are too complicated to envision a single solution that has a chance of being acceptable to all the claimant states in the South China Sea. Before the legal problems can be solved, there is a need to clarify the nature of the problems involved. What I have done in this article is to provide an analysis of the communications presented by states to the CLCS in response to the Malaysia/Viet Nam Joint Submission and the Viet Nam Unilateral Submission on the extended continental shelf.

Three kinds of challenges to the three pillars of the U-shaped line are evidenced by the various communications. The three pillars are: (1) that the sovereignty of the islands enclosed by the U-shaped line are under the sovereignty of the State of China represented by the PRC or the ROC; (2) that the islands enclosed by the U-shaped line are capable of

generating maritime zones (e.g., territorial seas, EEZ, and continental shelf) provided for by the LOS Convention; and (3) that the remainder of the waters within the U-shaped line are historic waters belonging to the State of China represented by the PRC or the ROC. The examination on the positions of both the ROC and the PRC shows that at present they are not interested in defending the third pillar: the historic waters argument.

The way forward seems to be for the claimant states to prioritize the issues according to the degree of difficulty involved. I attempted to differentiate the legal issues into four categories based on the degree of complication or accumulation of different legal issues involved. Of course, the South China Sea issues are interwoven, involving not only legal problems, but also political, strategic, economic, environmental, security, transportation, and other concerns of importance. These problems cannot be solved by lawyers. However, a legal categorization, analysis, and prioritization could help those responsible for dealing with the disputes.

## Notes

1. See Kuan-Hsiung Wang, "The ROC's Maritime Claims and Practices with Special Reference to the South China Sea," *Ocean Development and International Law* 41 (2010): 243.

2. See People's Republic of China, Letter to the U.N Secretary-General, Doc. CML/17/2009, 7 May 2009, and Letter to the U.N. Secretary-General, Doc. CML/18/2009, 7 May 2009, in response to the Malaysia-Viet Nam Joint Submission to the Commission on the Limits of the Continental Shelf (CLCS), Executive Summary, May 2009, and Viet Nam Submission to the Commission (Northern Area), April 2009. All are available at the CLCS Web site, [www.un.org/los/clcs\\_new/clcs\\_home](http://www.un.org/los/clcs_new/clcs_home).

3. United Nations Convention on the Law of the Sea, 1833 *U.N.T.S.* 397.

4. Cited in Wang, *supra* note 1, at 245. The Republic of China, "South China Sea Policy Guidelines" are attached as an appendix to Kuan-Ming Sun, "Policy of the Republic of China Towards the South China Sea," *Marine Policy* 19 (1995): 408. For the SCS Guidelines in Chinese, see the Web site at [www.land.moi.gov.tw/law/chhtml/historylaw1.asp?Lclassid=224](http://www.land.moi.gov.tw/law/chhtml/historylaw1.asp?Lclassid=224).

5. The ROC Foreign Ministry spoke of archipelagoes when it protested the Joint Submission made by Viet Nam and Malaysia to the CLCS on 6 May 2009. The official English translation of the statement is available at [www.mofa.gov.tw/webapp/fp.asp?xItem=38046&ctnode=1548](http://www.mofa.gov.tw/webapp/fp.asp?xItem=38046&ctnode=1548). It states:

(No. 002 11 May, 2009) On 6 May 2009, the governments of Malaysia and Vietnam filed a Joint Submission to the Commission on the Limits of the Continental Shelf of the United Nations, extending the outer limits of their respective continental shelf 200 nautical miles beyond their shorelines. In addition, on 7 May, 2009, the government of Vietnam filed a new Submission to the Commission, extending the outer limits of its continental shelf 200 nautical miles beyond its shoreline. The Ministry of Foreign Affairs of the Republic of China hereby solemnly declares the following statement:

1. In terms of either historical, geographical or international legal perspective, the Nansha Islands (Spratly Islands), Shisha Islands (Paracel Islands), Chungsha Islands (Macclesfield Islands), Tungsha Islands (Pratas Islands), as well as their surrounding waters, their respective sea bed and subsoil belong to the existent territories of the Republic of China. The sovereignty of these *archipelagoes* belongs to our government is an undeniable fact, Taiwan therefore enjoys and deserves all rights accordingly. Any sovereignty claims over, or occupation of, these islands and their surrounding waters will not be recognized by the government of the Republic of China.
2. The Government of the Republic of China especially calls on the governments of Malaysia and the Socialist Republic of Vietnam to abide by the principles and spirit enshrined in the Charter of the United Nations, UN Convention on the Law of the

Sea, and the Declaration on the Code of Conduct on the South China Sea, in order to peacefully resolve the dispute of the South China Sea through negotiation and rational dialogue. (emphasis added)

The most recent statement made on 18 April 2011 by Ministry of Foreign Affairs (MOFA), which used similar wording, is available at [www.mofa.gov.tw/webapp/fp.asp?xItem=51791&ctnode=1901](http://www.mofa.gov.tw/webapp/fp.asp?xItem=51791&ctnode=1901).

The “Declaration” mentioned in paragraph 2 is a mistranslation. The official name of the declaration is the Declaration on the Conduct of Parties in the South China Sea, available at [www.aseansec.org/13163.htm](http://www.aseansec.org/13163.htm). See Nguyen Hong Thao, “The 2002 Declaration on the Conduct of Parties in the South China Sea: A Note,” *Ocean Development and International Law* 34 (2003): 279–285.

6. Although the ROC is not able to become a party to the LOS Convention, it has been observing the legal regimes established and codified by the Convention. On 21 January 1998, the ROC promulgated the Law on Territorial Waters and Contiguous Zone of the Republic of China as well as the Law on Exclusive Economic Zone and Continental Shelf of the Republic of China. The texts of these laws are available at [db.lawbank.com.tw/FLAW/FLAWDAT0202.asp](http://db.lawbank.com.tw/FLAW/FLAWDAT0202.asp) and [db.lawbank.com.tw/FLAW/FLAWDAT0202.asp](http://db.lawbank.com.tw/FLAW/FLAWDAT0202.asp).

7. See internal note dated 15 December 2005, No. Tai-Nei-Di-Zh 09400162932, available at [www.land.moi.gov.tw/law/chhtml/lawcontext.asp?lclid=224](http://www.land.moi.gov.tw/law/chhtml/lawcontext.asp?lclid=224) (accessed 17 May 2011).

8. The ROC’s Unification Guidelines were adopted by the third meeting of the Committee of National Unification on 23 February 1991 and then adopted by the 2223rd session of the Executive Yuan of the ROC on 14 March 1991, at which time the Guidelines became the official policy of the ROC. On 1 March 2006, the Executive Yuan abolished the Guidelines at its 2980th session. See [www.mac.gov.tw/ct.asp?xItem=68276&CtNode=5836&mp=4](http://www.mac.gov.tw/ct.asp?xItem=68276&CtNode=5836&mp=4) (accessed 2 July 2011).

9. “Expert: Will Governments on Both Side of the Straits Cooperate in Defending the Territorial Waters of China?” released by Xin-Hua-Net on 1 April 2009, available at [big5.xinhuanet.com/gate/big5/news.xinhuanet.com/tw/2009-04/01/content\\_11110210.htm](http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/tw/2009-04/01/content_11110210.htm) (accessed 2 July 2011).

10. According to this policy, the ROC is to abandon what is not under its effective control (e.g., the Chinese mainland). Thus, the infringement of the rights of the PRC under international law would not be an infringement of the rights of Taiwan. Hence, Taiwan need not defend the rights under international law claimed by the PRC. This policy is contrary to the Unification Guidelines that demand cross-strait cooperation in, inter alia, defending the rights and claims under international law in the South China Sea made by the ROC and the PRC. See, generally, [www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A9815-2003Oct10&notFound=true](http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A9815-2003Oct10&notFound=true) (accessed 2 July 2011).

11. ROC, Declaration of 2009, supra note 5. See also similar statements made on 18 April, 10 May, and 15 June 2011, available at [www.mofa.gov.tw/webapp/fp.asp?xItem=51791&ctnode=1901](http://www.mofa.gov.tw/webapp/fp.asp?xItem=51791&ctnode=1901); [www.mofa.gov.tw/webapp/ct.asp?xItem=52209&ctNode=1901&mp=6](http://www.mofa.gov.tw/webapp/ct.asp?xItem=52209&ctNode=1901&mp=6); and [www.mofa.gov.tw/webapp/ct.asp?xItem=52921&ctNode=1901&mp=6](http://www.mofa.gov.tw/webapp/ct.asp?xItem=52921&ctNode=1901&mp=6).

12. LOS Convention, supra note 3, Article 46(b), defines an *archipelago* as a “group of islands, including parts of islands, interconnecting waters and other natural features which are so closely inter-related that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.”

13. The lack of defense of historic waters in the South China Sea by the Ma administration is further evidenced by the echoing the importance of the freedom of navigation in a press release of Ministry of Foreign Affairs of the ROC on 7 June 2011. There is no English translation for this release. The Chinese text is available at [www.mofa.gov.tw/webapp/content.asp?cuItem=52800&mp=1](http://www.mofa.gov.tw/webapp/content.asp?cuItem=52800&mp=1) (accessed 2 July 2011).

14. PRC, Letter CML/17/2009, 7 May 2009; and Letter, CML/18/2009, 7 May 2009, supra note 2.

15. Malaysia-Viet Nam Joint Submission, supra note 2.

16. Viet Nam Submission (Northern Area), supra note 2.

17. The Commission on the Limits of the Continental Shelf is a body established pursuant to the LOS Convention, *supra* note 3. See the CLCS Web site, *supra* note 2.

18. PRC, Letter CML/17/2009, 7 May 2009; and Letter, CML/18/2009, 7 May 2009, *supra* note 2.

19. It means that the so-called adjacent waters are the territorial sea of the PRC.

20. It means that the so-called relevant waters are included as part of the exclusive economic zone (EEZ) and the continental shelf of the PRC.

21. PRC, Letter, CML/17/2009, 7 May 2009, *supra* note 2.

22. Viet Nam, Letter to the U.N. Secretary-General, Doc. 86/HC-2009, 8 May 2009, available at the CLCS Web site, *supra* note 2.

23. Malaysia, Letter to the U.N. Secretary-General, Doc. HA 24/09, 20 May 2009, available at the CLCS Web site, *supra* note 2.

24. The Philippines, Letter to the U.N. Secretary-General, Doc. 000819, 4 August 2009, available at the CLCS Web site, *supra* note 2.

25. Viet Nam, Letter to the U.N. Secretary-General, Doc. 240/HC-2009, 18 August 2009, available at the CLCS Web site, *supra* note 2.

26. Malaysia, Letter to the U.N. Secretary-General, Doc. HA 41/09, 21 August 2009, available at the CLCS Web site, *supra* note 2.

27. Indonesia, Letter to the U.N. Secretary-General, Doc. 480/POL-703/VII-10, 8 July 2010, available at the CLCS Web site, *supra* note 2.

28. PRC, Letter CML/17/2009, 7 May 2009; and Letter, CML/18/2009, 7 May 2009, *supra* note 2.

29. The Philippines, Letter to the U.N. Secretary-General, Doc. 000228, 5 April 2011, available at the CLCS Web site, *supra* note 2.

30. The People's Republic of China, Letter to the U.N. Secretary-General, Doc. CML/8/2011, 14 April 2011, available at the CLCS Web site, *supra* note 2.

31. Viet Nam, Letter to the U.N. Secretary-General, Doc. 77/HC-2011, 3 May 2011, available at the CLCS Web site, *supra* note 2.

32. PRC, Letter, CML/18/2009, 7 May 2009, *supra* note 2.

33. Viet Nam, Letter, 8 May 2009, *supra* note 2.

34. The Philippines, Letter, 4 August 2009, *supra* note 24.

35. Viet Nam, Letter, 18 August 2009, *supra* note 25.

36. The Philippines, Letter, 5 April 2011, *supra* note 29.

37. PRC, Letter, CML/18/2009, 7 May 2009, *supra* note 2.

38. PRC, Letters, 14 April 2011, *supra* note 30.

39. Viet Nam, Letter, 3 May 2011, *supra* note 31.

40. Malaysia-Viet Nam Joint Submission, *supra* note 2.

41. Indonesia, Letter, 8 July 2010, *supra* note 27.

42. The Philippines, Letter, 5 April 2011, *supra* note 29; and see PRC, Letter, 14 April 2011, *supra* note 30.

43. The Philippines, Letter, 5 April 2011, *supra* note 29.

44. PRC, Letter, 14 April 2011, *supra* note 30.

45. See Michael Sheng-ti Gau, "Problems and Practices in Maritime Delimitation in East Asia: With Special Reference to Taiwan," *Journal of East Asia and International Law* 4, no. 2 (Autumn 2011).

46. The Philippines, Letter, 4 August 2009, *supra* note 24; and Malaysia, Letter, 21 August 2009, *supra* note 26.

47. This seems to be the ROC's position. See ROC, Act Governing Relations Between the People of the Taiwan Area and the Mainland Area, available at [www.mac.gov.tw/ct.asp?xItem=51158&ctNode=5914&mp=3](http://www.mac.gov.tw/ct.asp?xItem=51158&ctNode=5914&mp=3) (accessed 21 July 2011).

Article 1 provides:

This Act is specially enacted for the purposes of ensuring the security and public welfare in the Taiwan Area, regulating dealings between the peoples of the Taiwan Area and the Mainland Area, and handling legal matters arising there from before national unification. With regard to matters not provided for in this Act, the provisions of other relevant laws and regulations shall apply.

Article 21(1–2) provides:

1. “Taiwan Area” refers to Taiwan, Penghu, Kinmen, Matsu, and any other area under the effective control of the Government. 2. “Mainland Area” refers to the territory of the Republic of China outside the Taiwan Area.