

China's Maritime Strategy: Three Levels of Legal Issues

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China is a great maritime country based on its long coastline, which is more than 14000 kilometers, and over 32000 kilometers in total in addition with the approximately 18000-kilometer-long island coastline. The population of Germany is one-seventeenth that of China and the coastline one-eighteenth, but the per capita length is twenty-five times than that of China. China is now implementing the strategy of maritime power building, yet cannot get rid of inhibitions and limitations. They keep saying that China hasn't abiding by the Law of the Sea Treaty when we exploit the East and the South China Seas, and complaining that the historical right we claim is without merit. I've heard these criticisms for almost a hundred of times when I attended international or national conferences on the affair of the South China Sea. There are some misunderstandings among many countries, even some domestic scholars and media, on the issue of the South China Sea.

Hence, three levels need to be taken into consideration fundamentally when it comes to the South China Sea issue.

1. China is a geographically disadvantaged state in a comparative view.

According to the United Nations Convention on the Law of the Sea (UNCLOS), there are two kinds of geographically special states: geographically disadvantaged states and land-locked states. However, among coastal states in the world, there is no certain legal standard to judge which one is geographically disadvantaged state and which one is not. Some states, which embrace the ocean with quite long coastlines though, cannot properly enjoy their maritime rights in proportion. China, for instance, is not generally considered as a geographically disadvantaged state. But compared with Germany, a geographically disadvantaged state recognized by the whole world, China's per capita coastline length is only one-twenty fifth that of Germany's. However, Germany can enjoy all sorts of preferential treatment for the above mentioned geographically disadvantaged state while China enjoys nothing. Worse still, China is often asked to control its activity and legal practice of interest on the sea. This is not reasonable at all.

2. When it comes to the South China Sea issue, three levels of legal concepts need to be concerned.

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Firstly, the South China Sea is a semi-enclosed sea. According to UNCLOS, coastal states have rights and obligations to coordinate and cooperate with each other on the issues of marine scientific research, marine environmental protection and living resources exploitation and management in the semi-enclosed sea, and to invite, when necessary, other outside states or international organizations to cooperate with them. As a coastal country who has the largest population in this area, China has the rights and obligations to coordinate and cooperate with the neighboring countries, and exclude those outside countries such as the U.S., Japan and India.

Secondly, legal characterization and name rectification of "U-shaped line" in the South China Sea need to be faced squarely. Mr. Fu pointed out that he had already suggested using the term of "U-shaped line" as much as possible in his book *On the Legal Status of the South China Sea* which was published in Taiwan in 20 years ago. This line marks the outer limits of the historical waters of the South China Sea. For over 2000 years, Chinese people keep fishing, working and recuperating in that sea; and the government dispatching naval to patrol, conducting astronomical measurements, punishing pirates, strengthening coastal defense, rescuing ships in distress and so on. Based on these historical activities and the historical interests that China has long enjoyed, China enjoys abundant historical rights in the historical waters. Meanwhile, the U-shaped line [-(.)-(.)-(.)-(.)-(.)-(.)] shared the same painting with the "undecided national boundary" on land when first released in 1947. The waters within this undecided national maritime boundary line do not belong to the internal waters, or the territorial seas, or the exclusive economic zone, or the high seas. Indeed it is the historical waters which is agreed and respected by UNCLOS. Historical rights are highly supported time and time again by many articles in UNCLOS, which can serve as an adequate proof that these rights are compatible with the convention without any contradiction.

Thirdly, China can legally claim sovereignty to its preoccupied islands as well as the 12 sea miles territorial seas in the South China Sea, based on the long shared historical rights. Historical proofs support the historical rights. China's preoccupation of these uninhabited small islands according to the international law is not the result of deliberate attempts by our ancestors. In fact, it results from the effects of the East-Asian monsoon (blowing from the northeast to southwest in winter; in summer it reverses) for hundred thousands of years. Needless to date back to the Han and the Tang Dynasties (202 B.C.--907 A.D.), it is just quite enough to talk about the Ming and the Qing Dynasties (1368 A.D.--1912 A.D.). During that period of some 600 years, the population in the coastal region

of southeastern China multiplied. A lot of people travelled around the Southeast Asia to do business, and more people set sail for the South China Sea to make a living by fishing. Due to the several bans on the sea carried out by the government, sailing on the South China Sea became illegal. As a result, a large number of migrants from Southeast Asia settled down in China and lots of pirates emerged--many of them were part-timer whose main characters were ordinary maritime businessmen and fishermen. These natural conditions and historical facts are colorful, clear and indelible.

Only when we fully understand these three levels of legal concepts, can we figure out what activities are allowed to be conducted in what area. Fishing, for example, is our right in the historical waters of the South China Sea according to our historical rights in this area. And as for the origin of right to develop oil and gas in the South China Sea, which can't be claimed according to the historical rights because such technology was not developed until modern times, we can still do that based on our sovereignty to the islands and reefs, its 12 sea miles territorial waters and 200 sea miles exclusive economic zone, according to "land controls the sea"—a basic principle in the International Law of the Sea.

3. The marine system shall be ordered by law.

I am fully aware of the greatest fear of the ASEAN countries--the emphasis of China on the historic rights, after my double check in the national archives, the national library and the national university library of the surrounding countries surrounding the South China Sea. Because China does have abundant clear historical evidences in this area from the Han Dynasty while other countries do not. According to my investigation, the U-shaped line was agreed by the surrounding countries before the 1970s. It was even recognized in geography textbooks of Indonesia's middle school in the 1960s. Until 1965, an American investigation ship called Hunter claimed a great discovery of a large number of oil and natural gas resources in the South China Sea, which has caused a commotion among the surrounding countries. And until the end of the 1960s, Captain Thomas Cloma of Philippines set out to explore no man's land, which turned to be today's so-called Kalayaan Island and West Philippine Sea in the recent two years.

There are always evidences to proof that China has the right to preoccupy the islands and reefs in the South China Sea according to the international law. Original records are found on the Xisha, Nansha and Dongsha islands that China has discovered, exploited and managed these areas in history. Even 600 years ago, during Zheng He's Seafaring period, there were detail records. Zheng led over 100 ships to the southern end of Indian Peninsula,

who anticipated Columbus for decades.

It is worth emphasizing that "prescription acquisition" territorial sovereignty has never existed. Though it is written in the textbook of international law, it never works. We should encourage and support fishermen to do fishing in the South China Sea, the traditional fisheries and waters of China, though it is getting more and more difficult due to the obstacles set by countries like Philippines and Vietnam who has taken some islands by force in the South China Sea from China. We cannot give up these historical rights through hundreds and thousands of years.

4. An equitable delimitation plan is under seeking.

Maritime delimitation in the South China Sea is the ultimate solution to this problem. Yet, how to conduct the final delimitation in such a complex area? An equitable delimitation plan is needed. The word equitable has been translated as "gongping"(fair) for many years in China, which is actually a misunderstanding. In the English context, "fair and equitable" is usually used as a phrase. "Fair" means "公平", and if "equitable" is translated as "公平", the above-mentioned phrase "fair and equitable" would mean "公平且公平"(fair and fair). This is obviously wrong. Simply put, "equity" is a gerund, while "fair" is a pure adjective. The so-called principle of equity means to take all relevant situations and conditions into consideration before we draw a conclusion. This is the meaning of "equitable solution".

Which relevant conditions need to be considered when we conduct maritime delimitation? For example, the natural extension of territory, the length of coastline, the general coastal appearance, geology, landscape, historical interests, social and economical elements and so on. Only with agreed delimitation, can these countries settle on their own positions and carry out management. Thus, it becomes easier to determine the range of co-developing waters and make it works.

5. It is necessary to resume the national self-confidence.

Last but not least, Chinese scholars should have full confidence in China's position, viewpoint and argument, without a blind faith in things that are written in English. Many materials of developed Western countries contradict that of China, do not tell the truth of China, and even demonize China's national image and position. To conclude, we must have national confidence.

Translator/ Li Tianqi

Introduction:

Research Base for National Ocean and Strategic Interests, Shanghai

Jiao Tong University (University Think-tank of Shanghai)

The organizational foundation of the Research Base for National Ocean and Strategic Interests is the Center for Polar and Deep Ocean Development of Shanghai Jiao Tong University. The think tank and the center are the extension of the SJTU-Center for Oceans Law and Policy, which was established in 2009. The Research Base has been designated as a social science key base of SJTU. Together with the Center for Oceans Law and Policy, the research base is one of the first batch of university think tanks officially approved and supported by the Shanghai Municipal Education Commission (SMEC). Through the integration of scholarship, the think tank takes the study of marine challenge and solution as its task, targets to build a research team on marine rights and interests and development issues which China badly needs, and provides advice for the government. The think tank is led by Prof. Kuen-chen Fu, professor of the Koguan Law School, vice dean of the Institute of Oceanology, and founding chief editor of China Oceans Law Review. The think tank has its own annual budget and staff, and also has one independent library and two databases.

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