

Legal Aspects of the ROC's Position on the U-Shaped Line

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Abstract

In 1947, the Republic of China (ROC) government published a map on which a “U-Shaped Line” was drawn to enclose the four groups of islands, a large part of the waters, and other features of the South China Sea. The “U-Shaped Line” has been a pivotal focus in the South China Sea’s territorial and maritime boundary delimitation disputes since 2009. Its legality was challenged by the Philippines in an arbitration case in 2013. This paper analyzes the legal aspects of the ROC’s position on the “U-Shaped Line.” It first provides a brief background on the history of the line. Then, it reviews a variety of interpretations on the legal status of the “U-Shaped Line” with special reference to the ROC’s state practices. After examining implications of the “U-Shaped Line” on the South China Sea disputes, some observations are made in the conclusion section.

Keywords: U-Shaped Line, South China Sea, UNCLOS, Historic Waters, Taiping Island

I. Introduction

What is the “U-shaped Line”? In December 1947, the Republic of China (ROC)¹ government, based upon information collected by its navy, published a map, named *Nanhai Zhudao Weizhi Tu* (南海諸島位置圖, the Location Map of the South China Sea Islands), and the Cross Reference Table of the New and Old Names of the South China Sea Islands.² On this map, eleven line dashes were drawn to enclose the four groups of South China Sea islands, namely, the Dongsha (Pratas), the Xisha (Paracels), the Zhongsha (Macclesfield Bank), and the Nansha (Spratlys), a large part of the waters, and other features of the South China Sea (see Figure 1). Because of its shape, the line has often been referred to as the “U-shaped Line” in Taiwan. It frequently has been called the eleven-dashed line, the eleven-dotted line, the nine interrupted-lines, the nine-dashed intermittent line, the line of national boundary, the dotted-line, the dashed lines, as well as the tongue-shaped line.³

1. In this article, the terms “Taiwan” and “ROC,” as well as the terms “mainland China” and “PRC,” will be used interchangeably. Cross-Strait relations, instead of ROC-PRC relations, is used here in order to avoid reference to sovereignty disputes.

2. Keyuan Zou, “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,” *The International Journal of Marine and Coastal Law*, Vol. 14, Issue 1, January 1, 1999, p. 33; ROC Ministry of Foreign Affairs, “Statement on the South China Sea,” July 7, 2015, *ROC Ministry of Foreign Affairs*, <http://www.mofa.gov.tw/en/News_Content.aspx?n=1EADDCFD4C6EC567&s=EDEBCA08C7F51C98>.

3. For various names of this line, see Keyuan Zou, “China’s U-Shaped Line in the South China Sea Revisited,” *Ocean Development and International Law*, Vol. 43, Issue 1, February 2012, p. 18.

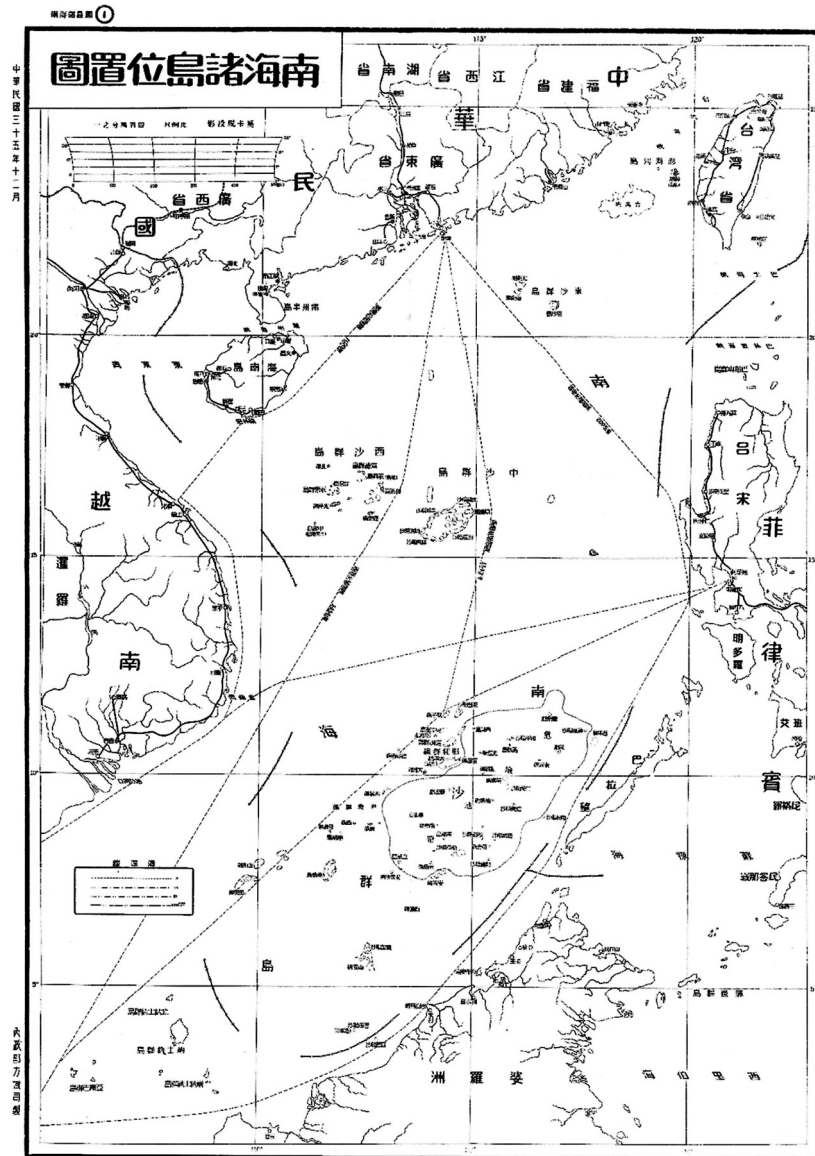


Figure 1: The Location Map of the South China Sea Islands

Sources: ROC Ministry of Interior, "The Location Map of the South China Sea Islands," 1947, *ROC Ministry of Interior*, <<http://maritimeinfo.moi.gov.tw/marineweb/img/南海1.jpg>>.

The “U-shaped line” has been a focal point in the South China Sea’s territorial and maritime boundary delimitation disputes. In 2009, in order to protest Vietnamese and joint Malaysian-Vietnamese submissions to the Commission on the Limits of the Continental Shelf (CLCS), mainland China attached a map showing the “U-Shaped Line” to support its claims.⁴ In 2013, the legality of the “U-Shaped Line” itself was challenged by the Philippines in an arbitration case before the Permanent Court of Arbitration (PCA).⁵ In the memorial presented on March 30, 2014, among other submissions, the Philippines requested the tribunal to adjudge and declare “(1) China’s maritime entitlements in the South China Sea, like those of the Philippines, may not extend beyond those permitted by the United Nations Convention on the Law of the Sea; and (2) China’s claims to sovereign rights and jurisdiction, and to ‘historic rights,’ with respect to the maritime areas of the South China Sea encompassed by the so-called ‘nine-dash line’ are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China’s maritime entitlements under UNCLOS.”⁶

4. The Permanent Mission of the People’s Republic of China, “Letter to Secretary-General of the United Nations,” Doc. CML/17/2009, May 7, 2009, *United Nations*, <http://www.un.org/Depts/los/clcs_new/submissions_files/my-svnm33_09/chn_2009re_mys_vnm_e.pdf>; The Permanent Mission of the People’s Republic of China, “Letter to Secretary-General of the United Nations,” Doc. CML/18/2009, May 7, 2009, *United Nations*, <http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf>.

5. Permanent Court of Arbitration, “Award on Jurisdiction and Admissibility,” PCA Case No. 2013-19, October 29, 2015, *Permanent Court of Arbitration*, <<http://www.pcacases.com/web/sendAttach/1506>>.

6. Michael Sheng-ti Gau, “The Sino-Philippine Arbitration on the South China Sea Dispute: Ineffectiveness of the Award, Inadmissibility of the Claims, and Lack of Jurisdiction, with Special Reference to the Legal Arguments Made by the Philippines in the Hearing on 7-13 July 2015,” *China Ocean Law Review*, Vol. 2015, No. 2, December 2015, p. 94.

The state of the South China Sea disputes and their relevance to international law and affairs have interested scholars and practitioners around the world, and much has been written on issues, such as the Sino-Philippine Arbitration, the legal status of the South China Sea islands, and their security considerations.⁷ Thus, the “U-Shaped Line” certainly is worthy of further discussion.

This paper analyzes the legal aspects of the ROC's position on the “U-Shaped Line.” Following this introduction, it provides a brief background on the history of the line. Then, it reviews a variety of interpretations on legal status of the “U-Shaped Line,” with special reference to the ROC's state practices. After examining implications of the “U-Shaped Line” on the South China Sea disputes, the conclusions of this article will be presented.

7. Yann-huei Song & Peter Kien-hong Yu, “China's ‘historic Water’ in the South China Sea: An Analysis from Taiwan, ROC,” *American Asian Review*, Vol. 12, No. 4, Winter 1994, pp. 83-101; Kuan-Hsiung Wang, “The ROC's Maritime Claims and Practices with Special Reference to the South China Sea,” *Ocean Development & International Law*, Vol. 41, Issue 3, August 2010, pp. 237-252; Michael Sheng-ti Gau, “The U-Shaped Line and a Categorization of the Ocean Disputes in the South China Sea,” *Ocean Development & International Law*, Vol. 43, Issue 1, February 2012, pp. 57-69; Peter Kien Hong Yu, “The Chinese (Broken) U-shaped Line in the South China Sea: Points, Lines, and Zones,” *Contemporary Southeast Asia*, Vol. 25, No. 3, December 2003, pp. 405-430; Jinming Li & Dexia Li, “The Dotted Line on the Chinese Map of the South China Sea: A Note,” *Ocean Development & International Law*, Vol. 34, Issue 3-4, Winter 2003, pp. 287-295; Michael Sheng-ti Gau, “The Prospects for the Sino-Philippine Arbitration on the South China Sea (U-Shaped Line) Dispute,” *Chinese (Taiwan) Yearbook of International Law and Affairs*, Vol. 31, September 2015, pp. 195-230.

II. Origin and Evolution of the “U-Shaped Line”

When studying the origin of the “U-Shaped Line,” one may find it likely first appeared on a map compiled by a Chinese cartographer in December 1914.⁸ At that time, it only included the Pratas and the Paracels.⁹ Then, in response to France reasserting claims to the Paracels in 1931 and the Spratly Islands in 1933, a Review Committee for Sea and Land Maps was established in June 1933.¹⁰ In 1935, the ROC government issued a revised “Review Regulation for Sea and Land Maps,” and published the *Zhongguo Nanhai gedao yu tu* (中國南海各島嶼圖, Map of the Islands of the South China Sea),¹¹ where the line was extended to 7° to 9° north latitude to indicate clearly that China enjoyed so-verignty over the Nansha (Spratly) Islands.¹²

After World War II, the ROC government reclaimed the Tungsha (Pratas), Shisha (Paracel), and Nansha (Spratly) Islands under ju-

8. Keyuan Zou, “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,” p. 19.

9. Keyuan Zou, “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,” p. 19.

10. Choon-ho Park, “The South China Sea Disputes: Who Owns the Islands and the Natural Resources,” *Ocean Development and International Law*, Vol. 5, Issue 1, January 1978, p. 33.

11. Zhiguo Gao & Bing Bing Jia, “The Nine-Dash Line in the South China Sea: History, Status, and Implications,” *American Journal of International Law*, Vol. 107, No. 1, January 2013, p. 102; Michael Sheng-ti Gau, “The Sino-Philippine Arbitration of the South China Sea Nine-Dash Line Dispute: Applying the Rule on Default of Appearance,” *Ocean Yearbook*, Vol. 28, Issue 1, January 2014, p. 104.

12. Keyuan Zou, “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,” pp. 32-33.

jurisdiction of the Kwangtung provincial Government in 1946, and garrisoning erecting stone markers on some of the major islands. In December 1947, the government renamed the South China Sea islands and issued the Location Map of the South China Sea Islands, which showed the Pratas Islands, the Paracel Islands, and Spratly Islands within the 11 dotted “U-Shaped Lines,” as mentioned above. In 1948, the ROC dispatched warships to the four groups of islands to conduct surveys and erect landmarks. The Atlas of Administrative Areas of the Republic of China, including the above map, was published as the first official map showing the “U-Shaped Line” in the South China Sea.¹³

In 1949, the ROC transferred jurisdiction of the Spratly Islands from the Kwangtung provincial Government to the Hainan Special Administrative District, based upon the “Organizational Statutes Governing the Office of the Special Administrator of Hainan.” In 1950, the ROC Government withdrew its forces from Hainan Island and the Paracels, as well as the Spratly Islands, due to the defeat in the civil war. In 1956, in response to Filipino Tomas Cloma claiming ownership by discovery and occupation of “Freedomland,” the ROC protested to the Philippine Government and sent forces to Taiping Island (Itu Aba Island), the largest natural island in the Spratly Islands, and has remained there ever since.¹⁴ In 1990, the Executive Yuan placed Tungsha Island (Pratas Island) and Taiping Island (Itu Aba Island) under the jurisdiction of the Kaohsiung City Government.

13. Erik Franckx, “Dots and Lines in the South China Sea: Insights from the Law of Map Evidence,” *Asian Journal of International Law*, Vol. 2, Issue 1, January 2012, p. 90.

14. Kuan-Hsiung Wang, “The ROC’s Maritime Claims and Practices with Special Reference to the South China Sea,” p. 243.

On the other hand, after the People's Republic of China was established in 1949, the "U-Shaped Line" always has appeared on maps officially published by mainland China, with one particular change, where the two dashes in the Gulf of Tonkin were erased.¹⁵

From 1947 to the 1970s, no country, including Southeast Asian countries, protested or challenged the validity of the "U-Shaped Line".¹⁶

III. Legal Status of the "U-Shaped Line"

There are several possible interpretations of the "U-Shaped Line" provided by scholars: the line of boundary, a baseline, the line of historic waters, the line of historic rights, and the line of ownership of the features.¹⁷ Among them, some thoughts on the interpretation of this line shall be examined in the following discussion.

First, some scholars have indicated that the "U-Shaped Line" is the line of boundary to define the limit of ROC territory. The basis of this assertion is the manner of depicting the "U-Shaped Line" is the same as the regular boundary line between China and other states, such as Vietnam. This theory is comparatively weak because it would not have a proper legal basis under the law of the sea. It is generally agreed that one country may not establish unilaterally its own maritime boundary with other countries.¹⁸ For example, the UNCLOS provides,

15. Jinming Li & Dexia Li, "The Dotted Line on the Chinese Map of the South China Sea: A Note," p. 290.

16. Kuan-Hsiung Wang, "The ROC's Maritime Claims and Practices with Special Reference to the South China Sea," p. 249.

17. Nong, Hong, "Interpreting the U-shape Line in the South China Sea," *China-U.S. Focus*, May 15, 2012, <<http://www.chinausfocus.com/peace-security/interpreting-the-u-shape-line-in-the-south-china-sea/#sthash.bwblaeLP.dpuf>>.

with respect to the EEZ and continental shelf, that boundary delimitation “shall be effected *by agreement* on the basis of international law in order to achieve an equitable solution.”¹⁹

Then, there also exists an argument that the waters enclosed by the “U-Shaped Line” are internal waters²⁰, no matter whether under the legal regimes of baseline or the line of historic waters.²¹ After

18. U.S. Department of State, “China: Maritime Claims in the South China Sea,” *Limits in the Seas*, No. 143, December 5, 2014, p. 14.

19. Division for Ocean Affairs and the Law of the Sea, *United Nations Convention on the Law of the Sea*, Article 74, 83, December 10, 1982, *United Nations*, <http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>.

20. Under the legal regime of “internal waters,” a coastal state exercises full sovereignty over those waters and foreign ships enjoy no right of innocent passage through a state’s internal waters, unless granted by the state as a privilege. For provisions relating to “internal waters” see United Nations, *Convention on the Territorial Sea and the Contiguous Zone*, *Treaty Series*, vol. 516, Article 5(1), 8, 9, 10, 11, September 10, 1964, *United Nations*, <http://legal.un.org/ilc/texts/instruments/english/conventions/8_1_1958_territorial_sea.pdf>; Division for Ocean Affairs and the Law of the Sea, *United Nations Convention on the Law of the Sea*, Article 50.

21. There is no universally accepted definition of historic water that exists, but it has its root in historic fact and it is closely related to the legal regime of historic bays, Although related to the development of the concept of “historic waters,” the terms “historic waters” and “historic bays” are not synonymous. International Law Commission, “Juridical Regime of Historic Waters, Including Historic Bays,” *Yearbook of the International Law Commission*, Vol. II (1962), Document: A/CN.4/143, 1962, pp. 6-7. The UN Secretariat’s Office of Legal Affairs (OLA) at the request of the International Law Commission also indicated “at least three factors have to be taken into consideration in determining whether a State has acquired a historic title to a maritime area. These factors are: (1) the exercise of authority over the area by the State claiming the historic right; (2) the continuity of this exercise of authority; (3) the attitude of foreign States.” International Law Commission, “Juridical Regime of Historic Waters, Including

carefully reviewing the nature of the “U-shaped line,” Prof. Kuan-Hsiung Wang emphasized the “U-Shaped Line” is not a baseline system, neither a normal baseline nor a straight baseline.²²

What needs to be answered, however, is whether or not the “U-Shaped Line” is intended to be used as a historic claim. Under this possible interpretation, the line would be a “historic water” limit, within which a state enjoys sovereignty over the maritime space, or a line to preserve both a state’s title to territory and its historic rights.²³ Judge Zhiguo Gao and Prof. Bing Bing Jia of mainland China believe that, within the “U-Shaped Line” in the South China Sea, mainland China “has sovereignty over the islands and other insular features, and has sovereignty, sovereign rights, and jurisdiction—in accordance with UNCLOS—over the waters and seabed and subsoil adjacent to those islands and insular features.”²⁴ They also emphasize the “U-Shaped Line” “preserves Chinese historic rights in fishing, navigation, and such other marine activities as oil and gas development in the waters and on the continental shelf sur-

Historic Bays,” p. 13. The United States has taken the view that burden of proof on historical waters is on the claimant, and to establish the existence of a such claim, three conditions must be fulfilled: “(1) open, notorious, and effective exercise of authority over the body of water in question; (2) continuous exercise of that authority; and (3) acquiescence by foreign States in the exercise of that authority.” U.S. Department of State, “China: Maritime Claims in the South China Sea,” p. 10; Bernard H. Oxman, “Dep’t of State Ass’t Legal Adviser for Ocean Affairs,” *Digest of U.S. Practice in International Law* 1973, September 17, 1973, p. 244.

22. Kuan-Hsiung Wang, “The ROC’s Maritime Claims and Practices with Special Reference to the South China Sea,” p. 248.

23. Zhiguo Gao & Bing Bing Jia, “The Nine-Dash Line in the South China Sea: History, Status, and Implications,” pp. 123-124.

24. Zhiguo Gao & Bing Bing Jia, “The Nine-Dash Line in the South China Sea: History, Status, and Implications,” p. 124.

rounded by the line.”²⁵

The ROC government once officially stated the view the water areas within the “U-Shaped Line” are its historic waters in 1993 when it issued the South China Sea Policy Guideline. Since this guideline was terminated in 2005, the U.S. Department of State suggests Taiwan may no longer officially make a historic water claim.²⁶ On the other hand, mainland China has not officially made a cognizable historic claim to the waters within the “U-Shaped Line.”²⁷

Some believe, given the title and developments of the map outlined above, it is clear that the major purpose of the “U-Shaped Line” is to identify that the islands, or groups of islands, enclosed by the lines are part of territories of the Republic of China.²⁸ For example, Prof. Steven K.T. Yu argues that the purpose of drawing the “U-Shaped Line” was to show the public that the four large groups of islands in the South China Sea belong to China.²⁹ Prof. Kuan-Hsiung Wang took a similar position, indicating “according to later practices, the ROC Government took the ‘U-Shaped Line’ to justify

25. Zhiguo Gao & Bing Bing Jia, “The Nine-Dash Line in the South China Sea: History, Status, and Implications,” p. 124.

26. U.S. Department of State, “China: Maritime Claims in the South China Sea,” p. 15, note 44.

27. U.S. Department of State, “China: Maritime Claims in the South China Sea,” p. 17; Michael Sheng-ti Gau, “The U-Shaped Line and a Categorization of the Ocean Disputes in the South China Sea,” p. 63.

28. Michael Sheng-ti Gau, “The Sino-Philippine Arbitration of the South China Sea Nine-Dash Line Dispute: Applying the Rule on Default of Appearance,” p. 106.

29. Steven K. T. Yu, “On the Legal Status of ROC’s Nanhai U-shaped Line: Based Upon the Regime of ‘Historic Waters,’” 《理論與政策》 (*Theory and Policy*), Vol. 8, No. 1, November 1993, pp. 104-120.

its position that they are a series of lines that embrace all the islands and represent sovereignty over those islands.”³⁰

Reviewing the ROC’s practices in the South China Sea, no doubt the ROC claims sovereign over all the islands with the “U-Shaped Line”.³¹ The ROC Ministry of Foreign Affairs (MOFA) reiterated “the South China Sea islands were first discovered, named, and used, as well as incorporated into national territory by the Chinese.”³² Also, they were “returned to the Republic of China according to the *San Francisco Peace Treaty*, which entered into effect on April 28, 1952, as well as the *Treaty of Peace* between the ROC and Japan which was signed that same day, together with other international legal instruments.”³³ The MOFA also indicates “in the several decades since, the fact that the ROC owns and exercises effective control over these islands has been recognized by foreign governments and international organizations.”³⁴

Nevertheless, what is unanswered in MOFA’s statement is the legal nature of the water enclosed by the “U-Shaped Line”. Since the “U-Shaped Line” map was published in 1947, the ROC government has never claimed the waters of the South China Sea enclosed by the “U-Shaped Line” are internal waters or territorial waters. In addition, foreign vessels, including warships, have continuously and freely navigated the waters of the South China Sea enclosed by the line.³⁵

30. Kuan-Hsiung Wang, “The ROC’s Maritime Claims and Practices with Special Reference to the South China Sea,” p. 248.

31. Kuan-Hsiung Wang, “The ROC’s Maritime Claims and Practices with Special Reference to the South China Sea,” p. 248.

32. ROC Ministry of Foreign Affairs, “Statement on the South China Sea.”

33. ROC Ministry of Foreign Affairs, “Statement on the South China Sea.”

34. ROC Ministry of Foreign Affairs, “Statement on the South China Sea.”

Then, on April 13, 1993, the ROC seemed to provide a legal basis for this line. The Executive Yuan of the ROC adopted the Policy Guideline for the South China Sea, 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 Bank) 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.*³⁶

Therefore, under the SCS Guideline, the “U-Shaped Line” serves to define the ROC’s historic waters.³⁷ Nevertheless, developments have indicated the government has changed its original position, as evidenced by the SCS Guidelines. First, the 1998 Law on the Territorial Sea and the Contiguous Zone of the ROC did not adopt the concept of historic waters.³⁸ Then, on December 15, 2005, the SCS Guideline

35. Hungdah Chiu, “The Legal Regime of our Nanhai Historic Waters,” 《問題與研究》 (*Issues & Studies*) Vol. 32, No. 8, August 1993, p. 23.

36. ROC Ministry of Interior, “Policy Guideline for the South China Sea,” February 14, 2016, Accessed, *MOI*, <<http://www.land.moi.gov.tw/law/chhtml/historylaw1.asp?Lclassid=224>>; Kuan-ming Sun, “Policy of the Republic of China towards the South China Sea Recent Developments,” *Maritime Policy*, Vol. 19, Issue 5, September 1995, p. 408.

37. Kuan-Hsiung Wang, “The ROC’s Maritime Claims and Practices with Special Reference to the South China Sea,” p. 237; Michael Sheng-ti Gau, “The U-Shaped Line and a Categorization of the Ocean Disputes in the South China Sea,” pp. 58-61.

was terminated by the Ministry of Interior during the presidency of Chen Shui-Bian.³⁹

Since being elected as President in 2008, President Ma Ying-jeou has not reactivated the SCS Guidelines, but he has been taking a much more active approach for the ROC's South China Sea Policy⁴⁰ and is willing to make claims on islands in the South China Sea. For example, on May 25, 2015, in addition to calling on claimants for the South China Sea to temporarily shelve their disagreements to enable negotiations on sharing resources, President Ma's South China Sea initiative emphasized the following:

*The government of the Republic of China (Taiwan) reiterates that, whether from the perspective of history, geography, or international law, the Nansha (Spratly) Islands, Shisha (Pratacel) Islands, Chungsha Islands (Macclesfield Bank), and Tungsha (Pratas) Islands, as well as their surrounding waters, are an inherent part of ROC territory and waters. The ROC enjoys all rights over them in accordance with international law.*⁴¹

38. ROC Ministry of Interior, "Law on the Territorial Sea and the Contiguous Zone of the Republic of China," January 21, 1998, *MOI*, <<https://www.land.moi.gov.tw/law/efile/76-1.doc>>.

39. ROC Ministry of Interior, 臺內地 No. 0940016293, February 15, 2016, Accessed, *MOI*, <<http://www.land.moi.gov.tw/law/chhtml/lawmain1.asp>>.

40. Yann-huei Song, "Recent Developments in the South China Sea: Taiwan's Policy, Response, Challenges and Opportunities," paper presented at CSIS Sumitro Chair for Southeast Asia Studies Managing Tensions in the South China Sea (Washington, D.C.: Center for Strategic and International Studies, June 2013), *CSIS*, <http://csis.org/files/attachments/130606_Song_ConferencePaper.pdf>; Michael Sheng-ti Gau, "The U-Shaped Line and a Categorization of the Ocean Disputes in the South China Sea," p. 58.

41. ROC Ministry of Foreign Affairs, "South China Sea Peace Initiative," May 25,

Nevertheless, as in public statements made by the MOFA after 2005, the above initiative contained no mention of historic waters and made no claim on historic waters. On January 28, President Ma Ying-jeou led government officials and scholars to visit Taiping Island in the Nansha Islands and made remarks as follows:

*Whether from the perspective of history, geography, or international law, the Nansha (Spratly) Islands, Shisha (Paracel) Islands, Chungsha (Macclesfield Bank) Islands, and Tungsha (Pratas) Islands, as well as their surrounding waters, are an inherent part of ROC territory and waters, and the ROC enjoys all rights over these islands and their surrounding waters in accordance with international law. This is indisputable.*⁴²

Once again, this remark did not clarify the legal status of the claimed waters by the ROC government, neither did President Ma indicate the scope of “surrounding waters.” Based upon the above analysis, however, we may see that the purpose of the Location Map of the South China Sea Islands issued in 1947 is to delineate “the scope of ROC territory and waters in the region.”⁴³ During the Ma administration, the ROC government has made it clear that freedom of navigation in the South China Sea will be respected, in accordance with the rules under the international law of the sea.

2015, ROC Ministry of Foreign Affairs, <http://www.mofa.gov.tw/News_Content.aspx?n=604CBAA3DB3DDA11&sms=69594088D2AB9C50&s=4589151C339E71C5>.

42. Office of the President, ROC (Taiwan), “Remarks by President Ma on Taiping Island,” January 28, 2016, *Office of the President*, <<http://english.president.gov.tw/Default.aspx?tabid=491&itemid=36616&rmid=2355>>.

43. ROC Ministry of Foreign Affairs, “Statement on the South China Sea.”

IV. Implications of the “U-Shaped Line” for the South China Sea Disputes

The status of the “U-Shaped Line” has had a great impact on the South China Sea disputes.⁴⁴ Observing the statements made by the states in the context of submissions to the Commission on the Limits of Continental Shelf (CLCS), Prof. Michael Sheng-ti Gau found the ROC’s “U-Shaped Line” is facing three challenges⁴⁵ by other states.

First, the asserted ownership or sovereignty of insular features or groups of islands within the “U-Shaped Line” is being challenged. For example, Vietnam disputes the sovereignty of Shisha and Nansha. Second, the legal capability of the insular features (islands or rocks) within the “U-Shaped Line” to generate maritime zones under the LOS Convention has been challenged. The status of Taiping Island as an Island or Rock is one case. This issue relates to interpretation of Article 121 of the LOS Convention. A feature cannot generate even a territorial sea if it fails to meet the conditions of Article 121 (1) because it is permanently submerged. If an island meets the conditions in Article 121(3) of the LOS Convention, it can generate only a territorial sea, but without EEZ or continental shelf. The third kind of challenge is against the establishment or existence of the so-called historic waters enclosed by the “U-Shaped Line.” We may add that the fourth type of challenge, as indicated by professor Franckx, *i.e.*, arguing factors that demonstrate the probative force of the Location Map of the South China Sea Islands, is weak.⁴⁶

44. Keyuan Zou, “China’s U-Shaped Line in the South China Sea Revisited,” p. 25.

45. Michael Sheng-ti Gau, “The U-Shaped Line and a Categorization of the Ocean Disputes in the South China Sea,” p. 62.

46. Erik Franckx, “Dots and Lines in the South China Sea: Insights from the Law

The status of the “U-Shaped Line” claimed by Taiwan also will affect the so-called Cross-Strait relations, which make sovereignty and maritime disputes in the South China Sea much more complicated and difficult to resolve than the disputes in the East China Sea.⁴⁷ It is generally agreed the PRC inherited this claim from the ROC, so, how the ROC interprets its claims is relevant to the PRC's position. Once, Taiwan claimed that the waters encircled by the “U-Shaped Line” were its historic waters and that it owned all of the land features within the line. While Taiwan has not claimed the entirety of the waters encircled by the “U-Shaped Line” as its historic waters since December 2005, it continues to claim that, whether from the perspectives of history, geography, or international law, the Nansha Islands, Shisha Islands, Chungsha Islands, and Tungsha Islands, as well as their surrounding waters, are an inherent part of ROC territory and waters.⁴⁸ To support its claims, Taiwan continues to emphasize that the *San Francisco Peace Treaty* of 1952, as well as the *Treaty of Peace* between the ROC and Japan, together with other international legal instruments, confirm that the islands and reefs in the South China Sea occupied by Japan should be returned to the ROC. In a recent speech on January 28, 2016, President Ma cited the Qing Empire's naval presence in the 18th century and the “U-Shaped Line” as evidence of the legitimacy of ROC sovereign claim over the South China Sea.⁴⁹

of Map Evidence,” pp. 103-111.

47. Yann-huei Song, “East Asian Seas - Conflicts, Strategies for Peaceful Resolutions and Accomplishments (Panel 1): Conflicting Outer Continental Shelf Claims in the East and South China Seas: Proposals for Cooperation and Peaceful Resolution,” *University of Hawaii Law Review*, Vol. 35, Spring 2013, p. 498; Masahiro Miyoshi, “China's ‘U-Shaped Line’ Claim in the South China Sea: Any Validity under International Law?” *Ocean Development and International Law*, Vol. 43, Issue. 1, February 2012, pp. 1-2.

48. ROC Ministry of Foreign Affairs, “Statement on the South China Sea.”

Understanding the ROC's Constitution, domestic legislations, Constitutional Court interpretations, and its policies on mutual non-denial and 1992 consensus⁵⁰ will be helpful in appreciating why the legal basis and arguments for Taiwan's claim relating to the "U-Shaped Line" are on discovery, uses, and history. This also shows why the claim Taiwan makes to the ownership of the disputed islands and the accompanying maritime rights and interests in the South China Seas is more or less identical to mainland China's claim. When considering the issue of protection of territory integrity, the ROC cannot deviate from its aforementioned constitution and domestic laws. The reality is the ROC government effectively governs Taiwan, the Pescadores, and the islands of Kinmen and Matsu.⁵¹ The ROC insists the islands within the "U-Shaped Line," as well as their surrounding waters, are parts of ROC territory and waters. The ROC's Constitution asserts a claim to sovereignty over all of China, and the ROC government maintains that it has never unequivocally asserted that Taiwan is an independent state.⁵²

49. Office of the President, ROC (Taiwan), "Remarks by President Ma on Taiping Island."

50. Chun-i Chen, "Legal Aspects of Mutual Non-Denial and the Relations Across the Taiwan Straits," *Maryland Journal of International Law*, Vol. 27, Issue 1, January 2012, p. 111-127, *University of Maryland*, <<http://digitalcommons.law.umaryland.edu/mjil/vol27/iss1/10>>.

51. For general geographical information on Taiwan, see Government Information Office, *The Republic of China Yearbook 2011* (Taipei: Taiwan Panorama, 2011), p. 17-18, *Government Information Office of Taiwan*, <<http://www.gio.gov.tw/taiwan-website/5-gp/yearbook/docs/ch01.pdf>>.

52. "The territory of the Republic of China within its existing national boundaries shall not be altered except by a resolution of the National Assembly." See, ROC (Taiwan), *The Constitution of the Republic of China*, Chapter I, Article. 4, January 1, 1947, *Taiwan Documents Project*, <<http://www.taiwandocuments.org/constitution01.htm>>; Ying-jeou Ma, "President Ma's address at the 2011 International Law Association Asia-Pacific Regional Conference," May 30,

Of course, the ROC government fully understands it faces a policy dilemma over taking a position that is preferred by the United States, Japan, and the ASEAN member states. This can explain why Taiwan always emphasizes it will not cooperate with mainland China, and reiterates it wants to be a responsible stakeholder and a regional peacemaker.

To Taiwan, the imminent challenge is coming from the Philippines-mainland China arbitration, which brought the issue of status of Taiping Island (Itu Aba) as an island or a rock to the arbitral tribunal. The ROC has made it clear it will not accept related awards or findings; thus, the arbitration will not have any effect on Taiwan, since the Philippines has not invited Taiwan to participate in its arbitration with mainland China and since the arbitral tribunal has not solicited Taiwan's views.⁵³ Further, Taiwan also insists that Taiping is an island, rather than a rock or a reef as the Philippines has argued in the international tribunal. It asserts that strong evidence shows Taiping Island to be an "island" capable of sustaining human habitation or economic life under UNCLOS Article 121.

Taiping Island (Itu Aba), the largest (0.5 square km) of the naturally formed Nansha (Spratly) Islands, has been garrisoned by ROC

2011, *Office of the President*, <<http://english.president.gov.tw/Default.aspx?tabid=491&itemid=24496&rmid=2355>>. Distinguishing between the ROC's "constitutional sovereignty" over mainland China and its authority to govern there; James R. Crawford, *The Creation of States in International Law* (UK: Oxford, 2007), p. 217, distinguishing between "the validity of the grant of independence to a State, and the validity of its constitution".

⁵³. ROC Ministry of Foreign Affairs, "ROC government reiterates its position on South China Sea issues," February 15, 2016, Accessed, *ROC Ministry of Foreign Affairs*, <<http://www.mofa.gov.tw/Newsnodept.aspx?n=604CBAA3DB3DDA11&sms=69594088D2AB9C50>>.

troops since 1956. In February 1990, by executive decree, the Executive Yuan of the ROC put Taiping Island under the administrative jurisdiction of Kaohsiung City. Taiping Island has groundwater wells, natural vegetation, phosphate ore, and fishery resources.⁵⁴ Moreover, personnel stationed on the island cultivate vegetables and fruit and rear livestock. Taiwan argues, from legal, economic, and geographic perspectives, that Taiping Island indisputably qualifies as an “island,” according to Article 121 of the United Nations Convention on the Law of the Sea, and can sustain human habitation and economic life of its own, which makes it categorically not a “rock.”⁵⁵

V. Conclusion

Based upon aforementioned observations, we may conclude the exact meaning of the “U-Shaped Line” has never been made very clear.⁵⁶ The ROC may want to keep this “ambiguity” so it does not

⁵⁴. ROC Ministry of Foreign Affairs, “Taiping Island is an island, not a rock, and the ROC possesses full rights associated with an exclusive economic zone and continental shelf in accordance with UNCLOS,” January 23, 2016, *ROC Ministry of Foreign Affairs*, <http://www.mofa.gov.tw/en/News_Content.aspx?n=1EADDCFD4C6EC567&s=542A8C89D51D8739>.

⁵⁵. ROC Ministry of Interior, “ROC Minister of the Interior Chen Wei-zen presides over a ceremony marking the opening of a wharf and lighthouse on Taiping Island, demonstrating the ROC’s commitment to making Taiping Island a peaceful and low-carbon island, as well as an ecological reserve, in accordance with the spirit of the South China Sea Peace Initiative,” December 12, 2015, *MOI*, <http://www.mofa.gov.tw/en/News_Content.aspx?n=8157691CA2AA32F8&sms=4F8ED5441E33EA7B&s=53076F54FAB51AAC>. In a recently published new book on the South China Sea, Bill Hayton states Taiping Island “has its own supply of fresh water and a covering of natural vegetation. It’s clearly able to support at least minimal human habitation.” See Bill Hayton, *The South China Sea: The Struggle for Power in Asia* (New Haven: Yale University Press, 2014), p. 111.

need to address its formal position and clarification of this map. Recent statements by the ROC government, like the purpose of the Location Map of the South China Sea Islands issued in 1947 is to delineate “the scope of ROC territory and waters in the region” are not very helpful for defining the legal status of the “U-Shaped Line.” One fact, however, is certain. The ROC’s assertions regarding the South China Sea do not exceed this demarcation.⁵⁷

Among several interpretations on the “U-Shaped Line,” observers generally agree the Location Map of the South China Sea Islands of 1947 provides evidence to support the ROC as the first country in the South China Sea region to claim sovereignty over the islands enclosed by the “U-Shaped Line.” The truth is that the ROC has never used the “U-Shaped Line” as a national boundary line, never adopted any interpretation completely at odds with the United Nations Convention on the Law of the Sea (UNCLOS), never threatened freedom of navigation, and never represented a challenge to the current international maritime order.

Under provisions of the UNCLOS, there are no definitive rules in international law that govern the status of the “U-Shaped Line.” Since there are no such rules, it is not an easy job for Taiwan and other claimants in the South China Sea to agree legal status of the “U-Shaped Line.”

⁵⁶ Some authors say Taiwan should conduct an open and thorough examination of the process through which the line came to be drawn, because Taiwan is where the U-shaped line archives of the Republic of China are stored, see Bill Hayton, *The South China Sea: The Struggle for Power in Asia*, p. 265.

⁵⁷ Erik Franckx, “Dots and Lines in the South China Sea: Insights from the Law of Map Evidence,” p. 94, note 27.

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