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The China's "nine-dashed line" and regional dispute on South China Sea

Introduction

In the last several decades, territory dispute in the region of the South China Sea causes escalating tension noticeable. Six countries claim all or partial of the South China Sea including China, Taiwan, Vietnam, Philippines, Malaysia, and Brunei. By far, China claims the biggest portion of territory by the so called "nine-dashed line" (or U-shaped line, nine-dotted line) that depicts a line encircling most of the South China Sea. This is one of the main sources of the conflict between China and other claimants over ocean area. This paper will try to interpret so-called "nine-dashed line" that China has been using to implement not only their diplomacy, but also, and more seriously, their real economic and military activities. After that, the paper will also provide an over view on the impact of the "nine-dashed line" on the security in the area. The final part comes with policy implication to claimant countries regarding the issue in order to keep peace and sustain region.

Back ground on South China Sea

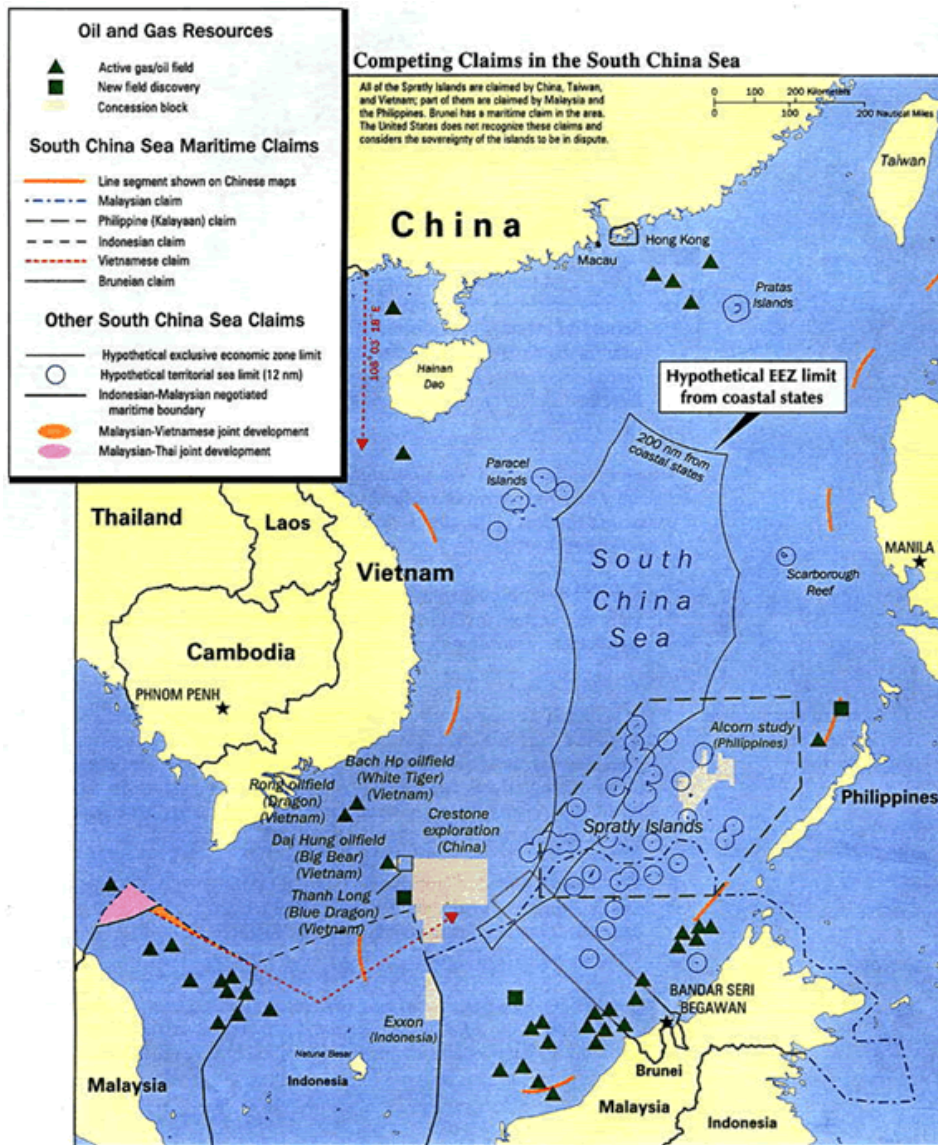
Not only six claimants, but so many other countries keen on the South China Sea due to three main reasons. First, the region is predicted as natural-rich resources including oil and gas. Most the predicted number is released by China because the dispute status does not allow others countries to test. However, by now, most of the claimants are trying to expand their oil and gas exploration activities in their exclusive economic zones. Second, South China Sea has been very busy shipping lanes for long time. Third, the sea plays a crucial role in military strategy in the whole South East Asia region, including United State, Australia, India, China, Philippines, Indonesia, Malaysia, Taiwan, Vietnam, etc.

Regarding to the natural recourses, according to EIA estimates, oil consumption in developing Asian countries is expected to rise by 2.7 percent annually from about 14.8 million barrels per day (MMbbl/d) in 2004 to nearly 29.8 MMbbl/d by 2030. China is expected to account for almost half the growth¹.

“Chinese estimate suggests potential oil resources as high as 213 billion barrels of oil (bbl). A 1993/1994 estimate by the U.S. Geological Survey estimated the sum total of discovered reserves and undiscovered resources in the offshore basins of

¹ US Energy Information Administration, South China Sea. Online: <<http://www.eia.gov/countries/regions-topics.cfm?fips=SCS>>

the South China Sea at 28 billion bbl. One of the more moderate Chinese estimates suggested that potential oil resources (not proved reserves) of the Spratly and Paracel Islands could be as high as 105 billion bbl. Due to the lack of exploratory drilling, there are no proven oil reserve.



Source: CIA Maps and Publications for the Public

What is the “nine-dashed line”?

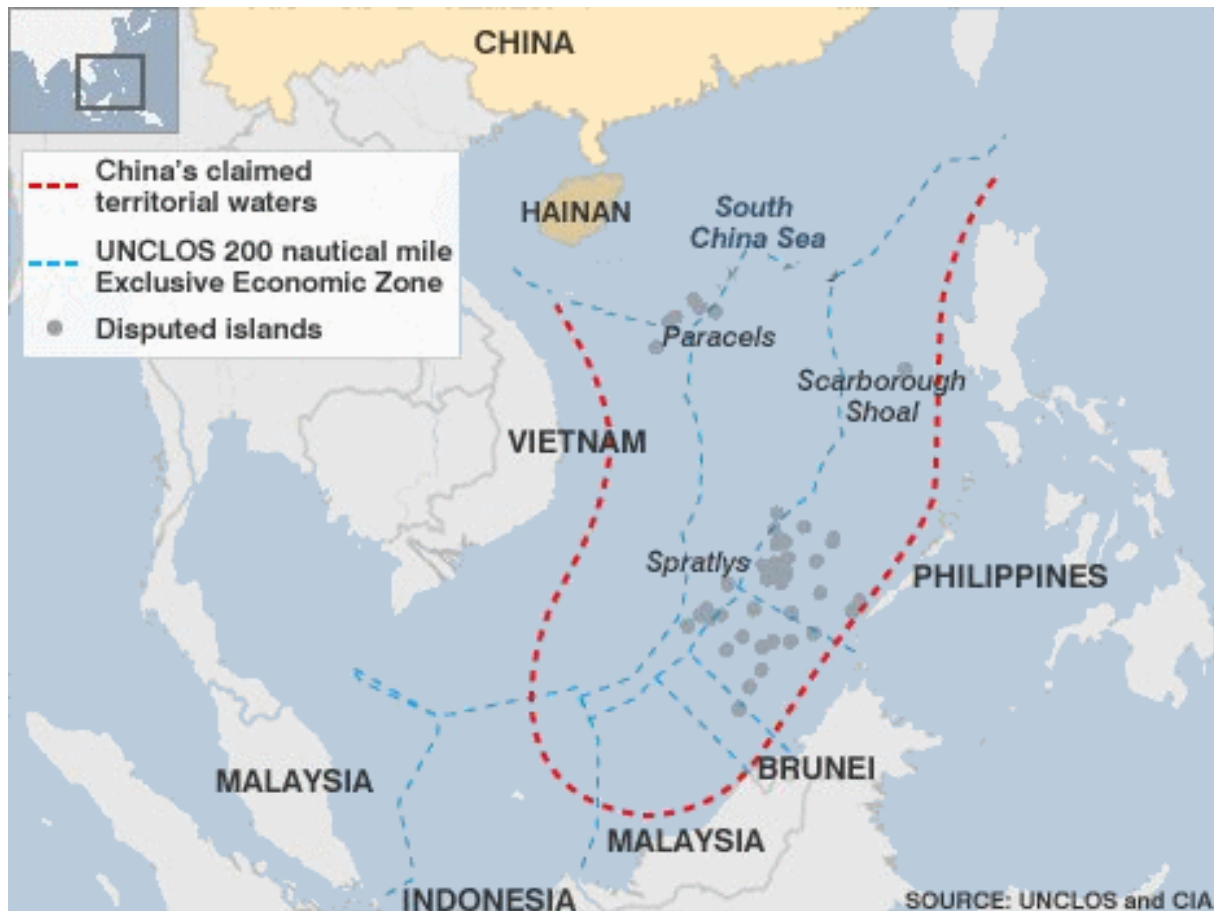
The first officially U-shaped line appeared on December 1946, included eleven discontinuous dashed-line, issued by the Republic of China’s Department of the Territories and Boundaries of the Ministry of the Interior. On the map, the eleven dashed U-shaped line covers almost all the feature of South China Sea. In 1953, two out of eleven dashed were removed, remaining nine-dashed line. Both of these maps have never been explained to the international world. According to Robert C. Beckman & Tara Davenport , “prior to 2009, the official position of the Government of the People Republic of China on the significance of the nine dashed lines was not clear. Some commentators opined that the nine dashed lines was intended to represent the limits of the Chinese territorial claim towards the whole area, thus including the islands, the sea, the airspace, the seabed and all the resources contained therein, otherwise known as “the historic waters claim.” Others maintained that the nine dashed lines are simply a short hand way to indicate that China claims all of the islands inside nine dashed lines.” China then was “adding further confusion was Article 14 of the 1998 Exclusive Economic Zone and Continental Shelf Act which stated that “the enjoyment of the historic rights of the PRC shall not be in any way affected by the regulations provided in this law.” The PRC Government has not clarified what is meant by “historic rights”

or whether it was referring to historic rights in the ocean space inside the nine dashed lines”.²

“China's own territorial sea declaration in 1958 only claimed 12 nautical miles and declared that international waters separated its mainland and the islands which it claimed. In other words, China's own declaration then affirmed that most of the maritime space within the U-shaped line map was international waters. With newfound wealth after successful economic reforms launched in the 1980s and more recent rising naval strength, China's territorial ambitions have grown to encompass not just the disputed Paracels and Spratlys but also most of the South China Sea. Consequently, China resurrected the U-shaped line map as if it were a claim to maritime space dating back to 1948, whereas in fact it was a map about the position of islands and by law it could never have been a legitimate claim to maritime space.”³

² Robert C. Beckman & Tara Davenport, CLCS submission and claims in South China Sea, South China Sea Studies. 18. Agu.2011. Online: <<http://southchinaseastudies.org/en/conferences-and-seminars-/second-international-workshop/608-clcs-submissions-and-claims-in-the-south-china-sea-by-robert-c-beckman-a-tara-davenport>>

³ Huy Duong, The South China Sea is not China 's Sea, Asia Times, 5 Oct.2011, http://www.atimes.com/atimes/Southeast_Asia/MJ05Ae03.html



In 2009, when Vietnam submitted one individual submission and another joint submission together with Malaysia to the Commission on the Limits of the Continental Shelf, China immediately sent to UN a letter with an attached map in which 9-dashed line printed. This was the first time ever, China sent the map to an intergovernmental body (in an attached file of a document regarding to the related issue, not submitting the map directly).

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 [sic] by the Chinese Government, and is widely known by the international community.

The continental shelf beyond 200 nautical miles as contained in the Joint Submission by Malaysia and the Socialist Republic of Viet Nam has seriously infringed China's sovereignty, sovereign rights and jurisdiction in the South China Sea. In accordance with Article 5 (a) of Annex 1 to the Rules of Procedure of the Commission on the Limits of the Continental Shelf, the Chinese government seriously requests the Commission not to consider the Joint Submission by Malaysia and the Socialist Republic of Vietnam. The Chinese Government has informed Malaysia and the Socialist Republic of Viet Nam of the above position.⁴

Common mistake often made by Chinese scholar is that they gave the first reason to consider South China Sea as China's as it called "South China Sea". One might see this idea is null and odd. Similarly if we start to think in that way to the Gulf of Thailand, Gulf of Mexico, the Sea of Japan, etc. As Franckx and Benatar pointed out, "the prolific usage of the nomenclature "South China Sea" does not confer

⁴ People's Republic of China, "Letter to the Secretary-General of the United Nations—CML/17/2009" (7 May 2009), online: UN <http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf>

historic Chinese sovereignty. Under international law, the mere naming of an area does not establish sovereignty over it. The name has been vigorously protested by interested states, including Vietnam. Foreign cartography uses the name South China Sea simply in accordance with the maritime nomenclature published in the International Hydrographic Organization's Limits of Oceans and Seas (1953), which has "no political significance whatsoever". Thus, this choice of terminology does not imply recognition of Chinese sovereignty on the part of Western states. Also, the Chinese have historically employed different names for this maritime area such as "Giao Chi Sea" (Song and Ming dynasties) and "South Sea" (Qing dynasty (1905), Republic of China (1913), and People's Republic of China (1952 and 1975))."⁵

China – Vietnam tension

Since the second half of 20th century, the dispute has caused a lot of troubles to between the parties involved. In 1974, China seized the Paracels from Vietnam, with 18 of its troops killed in clashes on one of the islands. In 1988, Chinese and Vietnamese navies clashed at Johnson Reef in the Spratlys. Several Vietnamese

⁵ Erik Franckx, Marco Benatar, Dots and Lines in the South China Sea: Insights from the Law of Map Evidence, *Asian Journal of International Law*, 2 (2012), pp. 89–118, online: <<http://journals.cambridge.org/action/displayFulltext?type=1&fid=8467150&jid=AJL&volumeId=2&issueId=01&aid=8467148&fromPage=cupadmin&pdftype=6316268&repository=authInst>>

boats were sunk and over 70 sailors killed.⁶ Since then, many incidents occurred that Chinese boats harass, capture, and even kill Vietnamese fishermen.

On 26 May 2011, three Chinese patrol vessels came deep into Vietnam's continental shelf. One of the vessels on the scene intentionally cut a submerged cable towed by the ship Binh Minh 02, Vietnam. "The incident happened about 120 km (80 miles) off the south-central coast of Vietnam and some 600 km (370 miles) south of China's Hainan island", reported Reuters. It was not the first time Chinese ships had cut cables of Vietnamese survey boats. The Chinese boats then threatened the Vietnamese ship with violence. Meanwhile, China still kept claiming that the Vietnamese ship was conducting a seismic survey in "Chinese waters". Reuters cites the Chinese Foreign Ministry spokeswoman Jiang Yu said the behavior of "the relevant Chinese departments" in the incident was normal.⁷

Not so long after that, on June 9 2011, Chinese fishing and fishery administration ships came to harass and cut Petro Vietnam's Viking II ship's cables in the exclusive economic zone, only 150 nautical miles from Vietnam's coastal.

⁶ US Energy Information Administration, South China Sea. Online: <<http://www.eia.gov/countries/regions-topics.cfm?fips=SCS>>

⁷ Reuters, Vietnam accuses China after patrol boat fracas, 29 May 2011, <http://af.reuters.com/article/energyOilNews/idAFL3E7GT02620110529>

Giap views these incidents as important landmarks because five reasons: (1) it happened deep in Vietnam's continental shelf, not in disputed waters as previous cases; (2) they aimed to oil and gas exploration activities, one of the most important economic activities in the sea of Vietnam; (3) they occurred intentionally and systematically, not accidents; (4) they were a clear escalation since they happened immediately after Chinese Defense Minister Liang Guanglie's visits to Singapore, Indonesia and the Philippines (from May 15) and before the Asia Security Summit in Singapore (June 3-5) and (5) these events are dangerous because the entire media engine of China has slandered Vietnam as the provoker and China played the role of a victim while Vietnam did not prepare anything in terms of communications.⁸

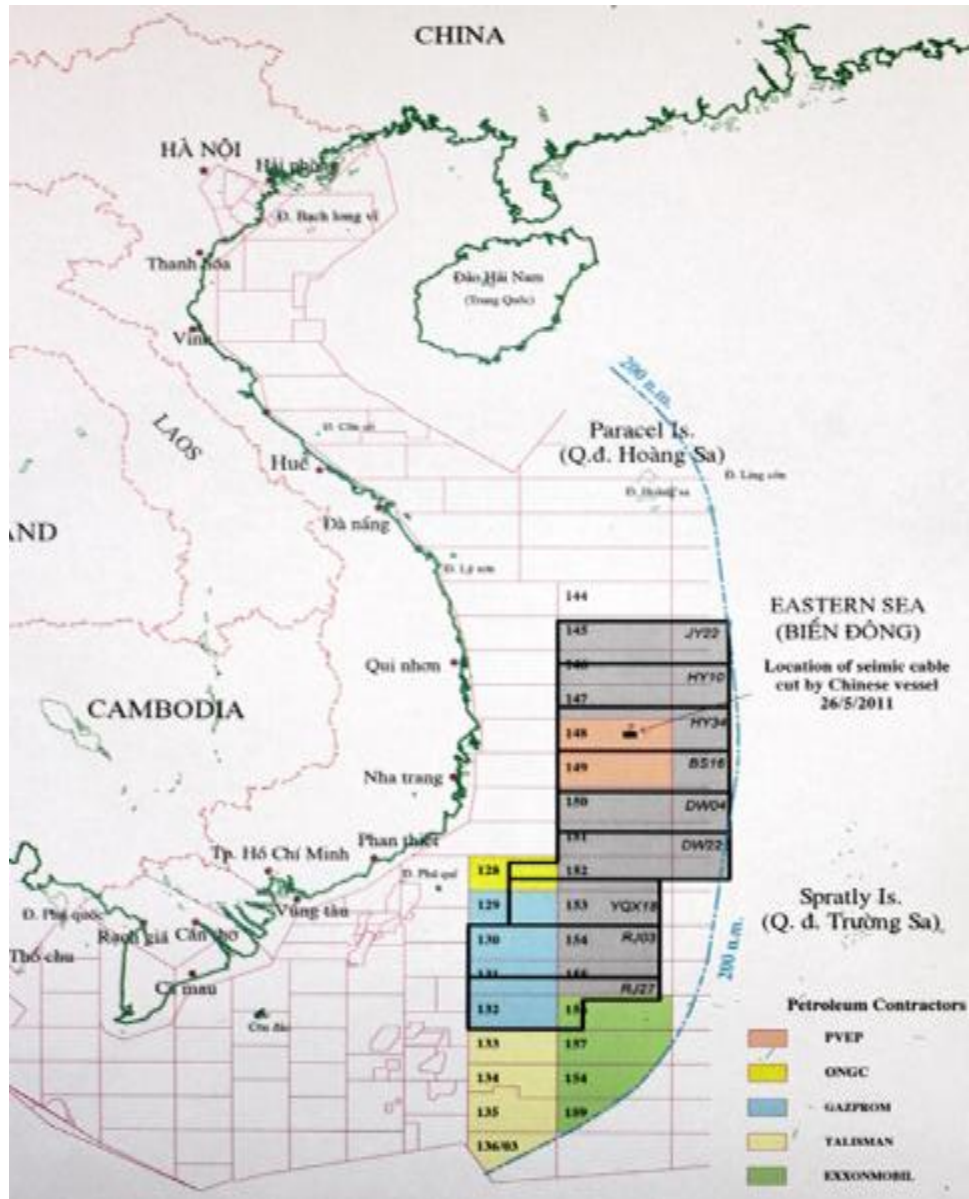
In late June 2012, China calls for oil exploration auction at nine offshore blocks to foreign companies. This action is called 'illegal' by Vietnam since the blocks area "lie entirely within Vietnam's 200-mile exclusive economic zone."⁹ In addition, "this is absolutely not a disputed area. (CNOOC's move) is illegal and of no value,

⁸ The International Institute for Strategic Studies, 22 Jun.2011. <http://www.iiss.org/whats-new/iiss-in-the-press/press-coverage-2011/june-2011/east-sea-and-the-awakening/>

⁹ AFP, Vietnam says China offshore oil auction, 26 June 2011

'illegal'http://www.google.com/hostednews/afp/article/ALeqM5gTD6ODf033uvtNn_fVs0zhOwJeZA?docId=CNG.226b44fa27f6d9cf3803072907320c2f.631

seriously violating Vietnam's sovereignty", said a statement by Vietnam's foreign Ministry.



China calls for oil exploration auction at nine offshore blocks. Source: CNOOC

China - Philippines tension

The ambiguity in interpreting the China's U-shaped line causes dispute between China and the Philippines over Scarborough Shoal or Scarborough Reef (known as Huangyan Island by the Chinese and Panatag Shoal by the Philippines) which is located between the Macclesfield Bank and Luzon Island of the Philippines in the South China Sea. Scarborough Shoal lies inside Philippines' exclusive economic zone, according to UNCLOS. Once again, China's argument is "historical water" since somewhere in 13th century, there were Chinese fishermen came to this area for fishing, they said. The China's Map Verification Committee in 1935, China declared sovereignty over 132 islands, reef and shoals in the South China Sea, including Zhongsha Islands. Yet, it did not show that Scarborough Shoal belongs to Zhongsha Islands.

From the view of economy and strategy, Scarborough Shoal itself has no major value. But it has been a central dispute of two the countries because it is a "test" for both over sovereignty issue. Once a country successfully claims this little island, they can step forward to get exploit potentially large expected natural gas and oil in other areas of the South China Sea.

The dispute has caused to countries numbers of problems. In May 2012, the Philippines claimed that China has “deployed almost 100 vessels in a disputed area of the South China Sea, raising fresh concerns about tensions in the region”. Manila's foreign affairs spokesman, Raul Hernandez emphasized: "It is regrettable that these actions occurred at a time when China has been articulating for a de-escalation of tensions and while the two sides have been discussing how to defuse the situation in the area".¹⁰

Moreover, Philippines – American allies is considered a threat to China. Although US does not involve deeply in the South China Sea, they repeatedly claim for freedom of navigation. Two countries have many times practices military activities in the region.

New York Times publishes the news saying “dispute between China and Philippines over island becomes more heated”. “In early April when the Philippines said one of its warships had found eight Chinese fishing vessels near the disputed island. Philippine Navy personnel boarded the Chinese vessels, where the Filipinos claimed they found large quantities of illegal coral and fish.

¹⁰ The Guardian, Philippines accuses China of deploying ships in Scarborough shoal, 23 May 2012.
<http://www.guardian.co.uk/world/2012/may/23/philippines-china-ships-scarborough-shoal>

Chinese surveillance ships arrived, preventing the arrest of the Chinese fishermen, the Philippines said at the time.

Soon afterward, the United States held annual maritime exercises with the Philippines, exacerbating China's arguments that Manila was acting with the support of its American ally."¹¹

The tension results in economic consequences. According to Manila-paper, China has impounded millions of pesos worth of banana imports". The tactic used is quite simple: The Chinese authorities said they had to stop all the Philippines banana vans for checking amid alleged of pests in the products. "China is the second-biggest market for Philippine bananas next to Japan. Annually, billions of pesos worth of bananas are imported. But after tons of the products were impounded, and are now rotting in the ports, it seems China has found another way to deal a big blow to the Philippines." Pilipino Bureau of Plant Industry director Clarito Barron had to admit: "This has a huge effect on the industry."¹²

Where does 9-dashed line fit in?

11 New York Times, Dispute Between China and Philippines Over Island Becomes More Heated, 10 May 2012
<http://www.nytimes.com/2012/05/11/world/asia/china-philippines-dispute-over-island-gets-more-heated.html>

12 Manila-paper, China Stops Banana Imports From The Philippines, 13 May 2012
<http://manila-paper.net/china-stops-banana-imports-from-the-philippines/34753/>

What China requests from 9-dashed line is similar to what UNCLOS refer to an exclusive economic zone which is “an area beyond and adjacent to the territorial sea [...], under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.”¹³ However, UNCLOS determined the exclusive economic zone “shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured” which the China’s nine-dashed line does not fit in.

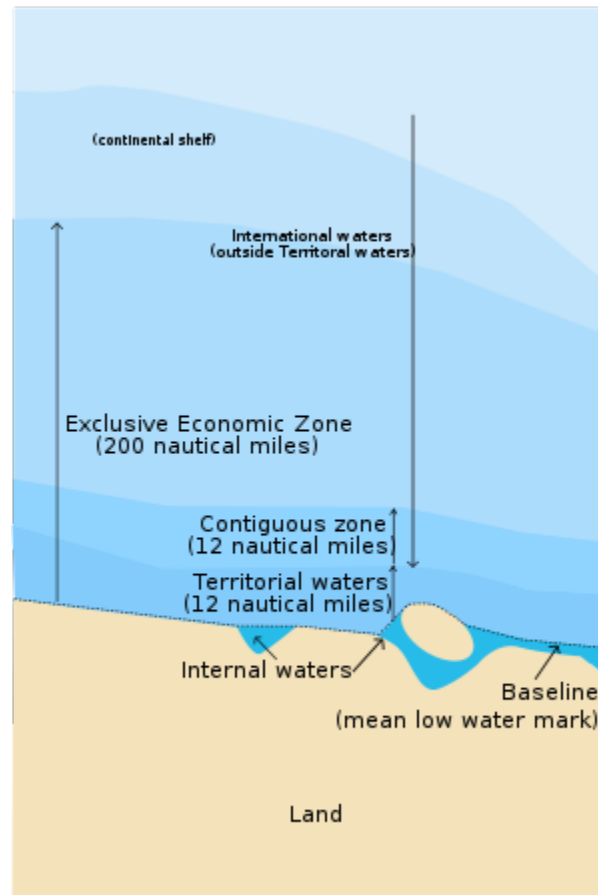
Article 5 in UNCLOS states normal baseline as follow:

Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.¹⁴

From this convention, obviously 9-dashed line that China has claimed is not a normal baseline, nor neither is a straight baseline that described in the Article 7.

¹³ United Nations Convention of the law of the sea, part IV, Exclusive Economic Zone, http://www.un.org/Depts/los/convention_agreements/texts/unclos/part5.htm

¹⁴ United Nations Convention of the law of the sea, part II, Territorial Sea and Contiguous Zone, http://www.un.org/depts/los/convention_agreements/texts/unclos/part2.htm



Maritimes zone UNCLOS. Source: historicaire / Wiki commons

Smith notes that the mid-ocean features falling within these “lines of allocation” are those for which the Chinese claim sovereignty. He emphasizes that the dashes do not suggest any maritime boundary claims and would have no impact on the resolution of maritime boundary disputes¹⁵.

In their paper, Franckx and Benatar pointed out: “PRC’s recent instances of interference with, inter alia, Vietnamese and Philippine vessels, despite its current

¹⁵ Erik Franckx, Marco Benatar

policy of assuaging concerns regarding the freedom of navigation in the South China Sea, seemingly imply that its extensive claims as visualized on the map remain intact.”

From the Chinese map of the U-line [the 9-dashed line] which produced aftermath of the Second World War to the attached file sent to United Nation in 2009, Franckx and Benatar conclude the paper saying “The Chinese map per se cannot constitute a valid territorial title to the islands.”¹⁶

Chinese government and their scholars – often considered as official working in academy - repeatedly saying the whole feature is their historical water since long time ago, Chinese fishermen had passed by these area for fishing. Yet, historical water is a concept to use to bays only, not for the sea or ocean.

The region within U-line is also far from Chinese continental shelf area which defined by UNCLOS as follow:

The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the

¹⁶ Erik Franckx, Marco Benatar

continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.¹⁷

Although China cannot provide any appropriate explanation or clear evidence in which they could draw such the 9-dashed line, they still enact military and civil activities in the region.

Under pressure of the conflict growing, Vietnam has passed the Sea Law that determines the nation's water territories and its sovereignty over them including basic water boundaries, territory, border areas, exclusive economic zones, as well as Vietnam's ownership of the Hoang Sa (Paracel) and Truong Sa (Spratly) islands.

The law highlights "defense policies for Vietnam's waters and islands, its environment and resources, Vietnamese activities in the water, typically fishing, in compliance with international charters and treaties that the country is signatory to."¹⁸

¹⁷ United Nations Convention of the law of the sea, part VI, Continental Shelf, http://www.un.org/Depts/los/convention_agreements/texts/unclos/part6.htm

¹⁸ Thanh Nien News, Vietnam passes law to protect sea and islands, 22 June 2012 <http://www.thanhniennews.com/2010/pages/20120622-vietnam-passes-laws-to-protect-sea-islands-keep-ads-under-control.aspx>

China immediately oppose by a letter sent from The Foreign Affairs Committee of the NPC to the Committee on Foreign Affairs of the Vietnamese National Assembly. The main point opposed is the law includes Hoang Sa and Truong Sa in Vietnam's sovereignty and jurisdiction. The NPC urged the Vietnamese National Assembly "to correct the erroneous practice immediately."

"The move by the Vietnamese National Assembly is a serious violation of China's territorial sovereignty and is illegal and invalid. It violates the consensus reached by both leaders, as well as the principles of the Declaration on the Conduct of Parties in the South China Sea," the NPC Foreign Affairs Committee said in the letter.

"The NPC Foreign Affairs Committee hopes the Vietnamese National Assembly to honestly respect China's territorial sovereignty and correct the wrongful practice so as to safeguard the China-Vietnam comprehensive strategic cooperative partnership as well as the friendly relations between China's NPC and the Vietnamese National Assembly," the letter said.¹⁹

Huy Duong suggest that "while the approach for China has three components, namely, (a) maximizing the contested area, (b) temporarily maintaining the

¹⁹ Xinhua, China urges Vietnam to correct erroneous maritime law, 22 June 2012
http://news.xinhuanet.com/english/china/2012-06/22/c_131670243.htm

condition of sovereignty dispute while consolidating effective control, and (c) divide and conquer, the South East Asian claimants, being the weaker parties to the disputes, should adopt the opposite approach: minimizing the contested area, which minimizes scope of the sovereignty dispute, and strength in numbers."²⁰

However, what just happened in ASEAN was for the first time in its forty five years history long, ASEAN failed to issue a communiqué after the annual meeting of all members' foreign minister. Cambodia chaired ASEAN this year says that "due to bilateral conflict between some ASEAN member states and a neighboring country."²¹ According to the Mainichi, the main bone of contention was a proposed paragraph in the draft joint communiqué that said, "We discussed in depth the recent developments in the South China Sea, including the situation in the Scarborough Shoal, and expressed serious concern over such developments in the area, particularly those contrary to the provisions of the 1982 UNCLOS related to the exclusive economic zones and continental shelves of coastal states."

Despite other foreign ministers and ASEAN Secretary General Surin Pitsuwan's effort to issue the joint communiqué including the South China Sea issue, saying:

20 Huy Duong, China's U-shape dash line maximizes contested areas, The Manila Times
<<http://www.manilatimes.net/index.php/news/headlines-mt/26946-china-s-u-shape-dash-line-maximizes-contested-areas>>

21 Mainichi, Cambodia rejects ASEAN ministers' plea to issue joint communique, 14 Jul.2012,
<http://mainichi.jp/english/english/newsselect/news/20120714p2g00m0in038000c.html>

government nor Chinese ever can give evidence or prove for such line. They have never been clear in the longitudes or latitudes of the line, and it was not based on any laws or regulations known by international community. It is merely a unilateral announcement by China and they never show their willing to make it clear to the public. However, what China has been practicing in reality shows that they are pursuing the line. These activities result in a military race and escalating tension alarmingly in the region.