

# **The Legality of China’s Claim of Maritime Rights and Interests in the South China Sea: A Critique of the Award Given by the South China Sea Arbitral Tribunal**

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## **Abstract**

A critical analysis of the award issued by the South China Sea Arbitral Tribunal (“the Tribunal”) provides a clearer understanding of China’s claims in the South China Sea (“the SCS”) and their legitimacy. From China’s point of view, its claims in the SCS are consistent and well-defined, asserting sovereignty over the Spratly Islands as a whole. This article argues that following World War II, the SCS “dashed-line”, as depicted on China’s administrative maps, was marked as a national boundary line. This interpretation of the line was uncontested by the relevant countries for a significant period of time. The prolonged acquiescence of these countries to China’s claims in the SCS can be attributed to the dashed-line’s consideration of their interests. By disregarding Chinese administrative maps and contravening fundamental legal principles, the Tribunal relied on dubious arguments to infer the nature of the waters within the dashed-line. It henceforth concluded that China’s claims in the SCS lacked legal basis under the law of the sea. The Tribunal also forcibly divided the Spratly Islands, unilaterally determined the scope of China’s interests in the area, and rejected China’s sovereignty over certain islands within the Spratly group. It deliberately interpreted China’s 2009 reiteration of rights as the first instance of such claims, thereby negating the acquiescence of the relevant countries, and undermining the legitimacy of China’s historic rights. The bias and fallacies evident in the Tribunal’s judgment paradoxically highlight the path

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and methods required to substantiate and defend the legitimacy of China's maritime rights and interests in the SCS.

**Keywords:** *The Philippines' South China Sea Arbitration; the South China Sea Dashed-line; Map; Acquiescence; Historic rights*

## 1. Introduction

In view of the Tribunal's award and its arguments, this paper attempts to demonstrate the legality of China's maritime rights and interests in the SCS. After the Philippines unilaterally initiated the SCS arbitration by invoking Annex VII of the United Nations Convention on the Law of the Sea ("UNCLOS") in 2013, scholars in China and abroad have carried out a lot of research on the related issues. For example, Zhu Feng, an international relations professor at Nanjing University, edited and published a collection of relevant essays by Chinese and foreign scholars; these essays mainly focus on the justiciability of the SCS disputes (i.e., procedural legality) (Zhu, 2018). Nonetheless, discussions about the substantive legal issues addressed by the Tribunal were not sufficiently covered in the volume. On the other hand, *The South China Sea Arbitration: Toward an International Legal Order in the Oceans*, a book written by Japanese scholar Youshimi Tanaka, examines the implications that may be brought about by the award of the Tribunal, focusing on three aspects: the interpretation and applicability of international law, the protection of the value of human community and the consideration of time in international law. Tanaka deems that, the international law as interpreted and applied in the award of The Tribunal "seems to be in line with the development of this novel paradigm in the law of the sea." The novel paradigm here means the objectivist paradigm which emphasizes the value of community and cherishes the effects of international institutions based on the law of the sea. Opposite to the objectivist paradigm is the traditional voluntarist paradigm, which upholds sovereign states and their maritime interests (Tanaka, 2019). Contrary to the conclusion of Tanaka, this paper puts forward the argument that the Tribunal violates the basic legal principles in its adjudication, ignores the Chinese administrative maps and the fact that China has been consistent in claiming the sovereignty on the Spratlys as a whole, and mistakenly treats China's reaffirmation of sovereignty over the Spratlys as the time of China's first declaration of such rights, and hence, the Tribunal simply undermines the common value sought

by the international community.

This paper is divided into the following parts. The first part introduces the Chinese government's claims in the SCS. To better illustrate, the claims of the Chinese government in different periods are categorized in Table 1. The second part analyzes why China's claims of maritime rights and interests in the SCS were acquiesced to the relevant countries for a long time. This part draws significantly from the works of Chinese scholars. The third part analyzes the reasoning and logic of the Tribunal, and reveals how it ignores the historical backgrounds, contravenes the basic legal principles and reaches a wrong conclusion. Finally, the fourth part offers a conclusion.

## **2. The Expressions of China's Claims in the SCS since the 20th century: Archipelagic-based Claims of Sovereignty**

The Chinese government maintains that China is the first country to discover, name, record and manage the SCS, and such practice can be dated back to the Qin Dynasty, almost 2000 years ago. Table 1 provides a brief list of China's expressions and claims of the rights and interests over the SCS (in particular focusing on the Spratly Islands) since the 20<sup>th</sup> century.

**Table 1**

<b>Year</b>	<b>Backgrounds</b>	<b>Forms</b>	<b>Expressions and Claims</b>
1935	China protested the illegal occupation by France of some islands in the SCS, in a bid to show China's sovereignty over islands in the SCS	China's Committee for the Examination for the Land and Sea Maps passed the regulation "Instructions for the Compilation of Maps" (《指示地图编制注意事项》), and published an official map clearly indicating the Chinese names of the islands and reefs in the SCS	The regulation provides: Paracel Islands and Spratly Islands are China's territories, Paracel and Spratlys are included in China's territory
1948	As the victor of the WWII, China took over the islands once occupied by Japan in the SCS, and prevented France and the Philippines' attempt to infringe upon China's rights in the SCS	The Administrative Map of the Republic of China, which marked the "dashed-line" in the South China Sea as national boundary lines, was officially published. This map included an affiliated "Location Map of the South China Sea Islands," which was compiled in 1946 and published in 1947.	Reiteration of China's sovereignty over the islands in the SCS, the SCS "dashed-line" indicated by the legend of the official map as the national boundary lines (Wang, 2014)

Year	Backgrounds	Forms	Expressions and Claims
1951	The San Francisco Conference was held to discuss the peace treaty with Japan	Declaration by the Chinese government	Reiteration of China's sovereignty over Paracel Islands and Spratly Islands, China's sovereignty over Paracel Islands and Spratly Islands not subject to the San Francisco treaty
1958	China protested against the view of Britain, The U.S. and other countries that the so-called 3 nautical miles of territorial sea was the norm of international law, and protested against the infringement of China's maritime rights and interests by the U.S. and Japan	Declaration by the Chinese government	Reiteration of China's sovereignty over the island groups in the SCS, and territorial sea of 12 nautical miles proclaimed
1992	In accordance with UNCLOS put in place in 1994	Law of the People's Republic of China on Territorial Sea and Contiguous Zone	Reiteration of China's sovereignty over the island groups in the SCS, the sovereignty of China over its territorial sea extends to the airspace over the territorial sea and to the bed and subsoil of the territorial sea
1996	China's accession to UNCLOS	Declaration by the Chinese government	Reiteration of China's sovereignty over the island groups in the SCS
1998	China passed Law on the Exclusive Economic Zone and the Continental Shelf	Act: Law on the Exclusive Economic Zone and the Continental Shelf	The Act stipulates that China applies 200nm exclusive economic zone and continental shelf, without prejudice to the historic rights enjoyed by China

Year	Backgrounds	Forms	Expressions and Claims
2009	China protested against the Philippine Baselines Law in 2009, and protested against the joint submission by Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf in 2009	Note Verbale submitted by the Chinese government to the United Nation, attached to the said Note Verbale is a map with the SCS “dashed-line” thereon	Reiteration of China's sovereignty over the islands in the SCS and the adjacent waters, and sovereign rights and jurisdiction enjoyed by China over the relevant waters as well as the seabed and subsoil thereof
2016	China protested against the award of The Tribunal	1. White paper by the Chinese government (China adheres to the position of settling through negotiation the relevant disputes between China and the Philippines in the South China Sea); 2. Declaration by the Chinese government	RRiteration of the following rights and interests: i. China has sovereignty over Nanhai Zhudao, consisting of Dongsha Qundao, Xisha Qundao, Zhongsha Qundao and Nansha Qundao; ii. China has internal waters, territorial sea and contiguous zone, based on Nanhai Zhudao; iii. China has exclusive economic zone and continental shelf, based on Nanhai Zhudao; and iv. China has historic rights in the SCS

*Source: Based on official documents by the Chinese government*

Based on the changes in the expressions of China's maritime rights and interests in the SCS, one can see that China initially claims sovereignty over the island groups in the SCS, and such claim later extend to cover relevant rights of the territorial sea, exclusive economic zone, contiguous zone and continental shelf of the island groups. Related to this extension of claims is the development of the international law of the sea and China's integration into it. China's claims of maritime rights and interests in the SCS are in accordance with UNCLOS. Also, China claimed the sovereignty of the island groups from 1930s in response to France's illegal occupation of some islands in the Spratlys. Since then, China's position has been consistent. Moreover, the meaning of the SCS “dashed-line” as shown on the Chinese

administrative maps has been clear, it is marked as the national boundary line, China has been steadfast in maintaining this position.

### 3. The Nature of the SCS “Dashed-line” and Its Legality

The SCS “dashed-line” first appeared in 1948, contained in *The Administrative Map of the Republic of China* (hereafter referred to as “Chinese administrative map”). After its appearance, for a long time there were no objections by the relevant countries to this practice. As recalled by Chen Degong, who was the Chinese representative to the UN Third Conference on the Law of the Sea: “regarding the ‘nine dash line’ question, many think that it conflicted with UNCLOS, but no countries raised such concerns back then and there was no objection; some Southeast Asian countries even showed support” (Xinhua News Agency, 2012). Some suggest that the absence of objections is due to the ambiguities of the nature and scope of the SCS “dashed-line” (Li, 2019). This view is not consistent with the fact. Based on the Chinese administrative map and the specific drawing method of the “dashed-line”, this article seeks to provide several clarifications.

First, we shall look at the shape and the drawing of the SCS “dashed-line”. The SCS “dashed-line”, according to the research conducted by Han Zhenhua, an expert in the study of the SCS, could be traced back to the early 20<sup>th</sup> century. From the *Location Map of the South China Sea Islands*, produced by the Department of Territorial Administration under the Ministry of the Interior of the Republic of China in 1948, one can see the “eleven dashed-lines” on the said map, and that was the first time the SCS “eleven dashed lines” was officially and publicly published.

According to the legend of the said map, the “dashed-line” means the national boundary line. Professor Wang Ying from Nanjing University found the original copy of the said map and confirmed that the “dashed-line” was meant to represent the national boundary line. What is the basis for the drawing of the “dashed-line”? Why were some segments of the line drawn in a way that were closer to the neighboring countries while others were not? Wang Xiguang and Ju Jiwu were the makers of the said map at the time. According to them, each segment was drawn to indicate the midway between China’s corresponding islands and reefs in the SCS and the neighboring countries’ coastlines and reefs (Yaguang Geography Society, 1948).

Contemporary Chinese scholars Tang Meng, Ma Jinsong, Wang Ying, Xia Fei, and others, by using ArcGIS 10.1 software for map registration and data processing, analyze the geographical location of each segment of the “dashed-line” seen on the Chinese administrative map of 1947, and confirm the view expressed by Wang Xiguang and Ju Jiwu. They concluded that “lying in the middle of the sea is a deep water basin of more than 4000m in depth, the basin is surrounded by island arcs, continental slopes and continental shelves, the unique shape/ curvature of the ‘dash line’ highly fits the structural patterns and directions of the surrounding island arcs, continental slopes and continental shelves”, “the following principles are followed at that time in the making of the eleven dashed lines: 1) in respect of shallow water basins (Beibu Gulf) and straits, partitions are made halfway between China’s coastline and the neighboring country’s coastline, and halfway between the straits, an approach in line with the equidistance principle widely applied in demarcation works nowadays; 2) in the areas with significant topographic shifts such as Nansha Trough and Northwest Luzon Trough etc., which actually represent the boundary zones of different topographic units, middle lines are drawn to separate the upper and lower halves of the continental slopes, or middle lines are drawn along the troughs; 3) regarding the slope to the east of and the Sunda Continental shelf to the south of the Mainland Southeast Asia, the “dashed-line” is delineated in the light of the coastlines of the neighboring countries and the underlying topographic features (Tang and Ma, 2016).

The scholars’ research result verifies Wang Xiguang and Ju Jiwu’s account of the use of the equidistance principle in the making of the “dashed-line”. It should be pointed out that the adoption of the equidistance principle is conditional upon China’s sovereignty over Xisha Islands (Paracel) and Nansha Islands (Spratlys). At that time, Southeast Asian countries did not raise any objections to China’s claim of sovereignty over Xisha Islands and Nansha Islands.<sup>1</sup> According to the principle of equity in international law, “dashed-line” is drawn halfway between the islands of China and the neighboring countries for legality. Back then, there was no widely recognized international law of the sea, nor any provision on the exclusive economic zone regime. The commonly practiced territorial sea was three nautical miles in breadth, the concept of continental shelf was just put forward by the United States, the closest distance between one certain segment of the “dashed-line” and the neighboring country is beyond six

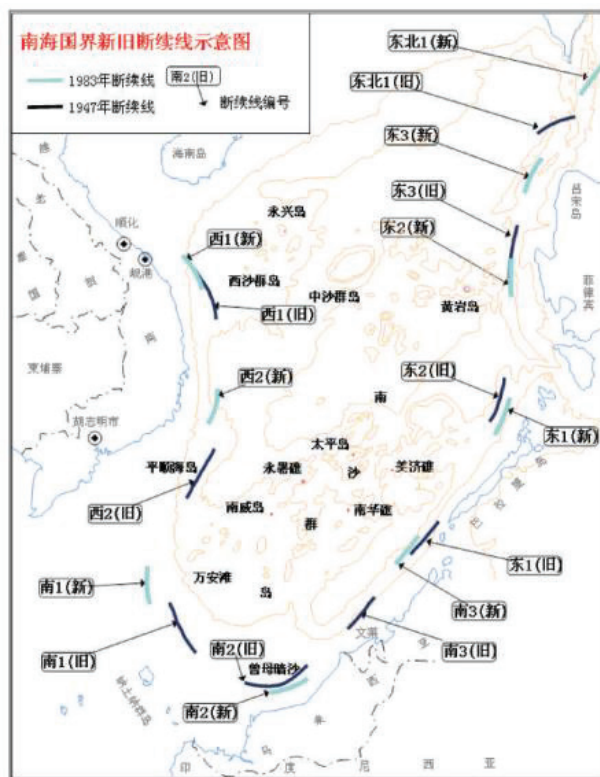
nautical miles.<sup>2</sup> Therefore, the rights of other countries were fully considered when the “dashed-line” was delineated. China considered that Southeast Asian countries did not oppose this line.

It should be noted that, the “dashed-line” seen on the Chinese administrative maps nowadays is different from that of the said map of 1947. After the founding of the People’s Republic of China, two segments of the “dashed-line” within Beibu Gulf were deleted. In addition, nuances could be found regarding the locations and lengths of the “dashed-line”. In comparison with the said map of 1947 and the map known as South China Sea Islands published by the Chinese government in 1983, researchers Ma Jinsong and Wang Ying from Nanjing University, “measure the longitude and latitude coordinates of the current and past ‘dash line’ with the aid of digital affine transformation and geographic information system”, and draw a comparative diagram of the current and past “dashed-line” in the SCS. They hold that, “although there shows spatial difference for each current and past segment of the “dashed-line”, the territorial range as accommodated by the current and past “dashed-line” is basically the same, ...showing the historical continuity of China’s territorial sovereignty in the SCS” (Ma and Wang, 2003).

To sum up, the “dashed-line” as appeared on the Chinese official administrative maps shows some variations in positions and lengths, the drawing of the current “dashed-line” is basically based on the mapping method used in 1947. This is an important foundation for the legality of the current “dashed-line”. After 1953, two segments of the “dashed-line” inside the Beibu Gulf were removed from the Chinese official maps, a suggestion that although the “dashed-line” is a national boundary and a line of sovereignty over a portion of the SCS, China may be willing to give up some rights for the sake of international peace and order, a manifestation of China’s exercise of sovereignty.



**Figure 1: Comparison between the Current and Past Segments of the “Dashed-Line” in the SCS (Zhang and Liu, 2012)**



#### **4. A Critique of the Award by the Tribunal: Infringement on Basic Legal Principles, Ignorance of Historical Backgrounds and Facts, Reiteration of Historic Rights Mistakenly Regarded as the First Time for such Proposal, and a Wrong Conclusion**

In July 2016, the Tribunal gave its award. The following rulings by the Tribunal are related to China's maritime rights and interests in the SCS. First, China lacks the legal basis to substantiate the “nine-dash line”<sup>3</sup> on Chinese administrative maps. Second, the maritime features in the Spratlys are determined by the Tribunal not as islands, so that they are not entitled to exclusive economic zones and continental shelves. This second ruling is the most important as it paves for the way for the first ruling.

#### ***4.1. Breaking Away the Spratly Islands by the Tribunal***

The reasoning of the Tribunal is as follows. Since all the maritime features of the Spratly Islands do not meet the test for island as set out under Article 121 of UNCLOS, some are at best seen as “rocks” which could only enjoy entitlement to territorial sea of twelve nautical miles; even if all the maritime features in the Spratlys belong to China, the Chinese government cannot make a maritime claim that is beyond the territorial sea of the maritime features. Therefore, there is no legal basis for China’s espoused historic rights in the vast water partitioned by the “dashed-line”. Given that Mischief Reef is situated within the exclusive economic zone of the Philippines, the Philippines thus enjoys sovereign rights and jurisdictions over it, China’s activities of construction on Mischief Reef are a violation of the Philippines’ rights.

The key argument for the Tribunal to reach such a conclusion is that it does not consider the Spratly Islands as a whole; it divides the Spratly Islands into individual maritime features. Such an approach is in stark contrast to China’s consistent claim of rights towards the entirety of the Spratlys. Starting from the French occupation of some islands in the Spratlys in the 1930s, China has been claiming sovereignty over the Spratly Islands (Nansha Qundao), and there has been no change on this. The breaking down of the SCS island groups (Nanhai Qundao) by the Tribunal is, in China’s view, without factual basis, and is a violation of the relevant stipulation of the international treaty. Article 2(f) of the Treaty of Peace with Japan clearly treats the Spratlys as a whole. The said Article 2(f) provides, “Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands” (The Allied Powers, 1951).

In addition, Annex VII of UNCLOS stipulates that the Tribunal could only adjudicate on disputes in relation to the interpretation and application of UNCLOS, and cannot address questions about territory and sovereignty. A dissection approach to the Spratly Islands claimed by China would definitely involve presentation of evidence relevant to China’s claim of sovereignty over the Spratlys, and this is something beyond the jurisdiction of the Tribunal. Hence, this author is of the view that the dissection approach of China’s Spratly Islands is intended to interfere in China’s South China Sea affairs, and a camouflage for other countries’ encroachment on China’s territorial sovereignty, rights and interests in the SCS. All the features in the Spratlys are not seen as “islands” by the Tribunal, but as “rocks” which cannot generate

its exclusive economic zone and continental shelf. A “rock” is only entitled to a territorial sea of twelve nautical miles, and in this connection, a vast swathe of the water inside the “nine dashed-line” becomes the exclusive economic zones of neighboring countries. The legal basis for China’s historic rights in the South China Sea will hence be considered invalid.

Hence, in this author’s view, the Tribunal conducted a forcible division of the Spratly Islands, which has the impact of legitimizing relevant countries’ infringements on China’s sovereignty in the SCS. The Chinese government is clear and unequivocally opposed to this judgement. On 12 May 2016, the Director-General of the Department of Treaty and Law at the Chinese Ministry of Foreign Affairs, when asked about the “nine dashed-line” in the context of the arbitration, responded that “in recent years, some States started to criticize China’s dotted line. The real motive is to intentionally confuse territorial disputes with disputes over maritime delimitation, deny China’s sovereignty over the South China Sea Islands and their adjacent waters, and cover up their illegal invasion and occupation of part of the maritime features of China’s Nansha Islands” (The South China Sea Arbitral Tribunal, 2016, para. 200).

Hence, in view of the Tribunal’s disregard of historical facts and provision of international treaty, and its approach to dissect the Spratly Islands, the Tribunal has created its own forcible intervention in the SCS disputes and provided legal support to the relevant countries for their infringements upon China’s rights and interests in the SCS.

#### ***4.2. China’s Reiteration of Historic Rights in the SCS Mistakenly Treated by the Tribunal as the First Time Such Rights Were Proposed***

In judging the nature of the “nine dashed-line”, common sense dictates that the legends on the Chinese administrative maps should be checked in advance. Nonetheless, the Tribunal’s judges failed to consider this. The judges, based on some specious evidence and by putting aside some evidence that shows the contrary, deduced that the SCS “dashed-line” seen on the Chinese administrative maps is not a line of historic rights.

According to the Chinese administrative map of 1948 where the SCS “dashed-line” is presented for the first time, “dashed-line” represents a line of national boundary. Thereafter, “dashed-line” of the SCS is also marked as national boundary by succeeding Chinese administrative maps. The legends and descriptions of the Chinese administrative maps are legally binding.

From the perspective of evidence, descriptions of legend are more effective than official expressions in terms of legal effect, as this is because legends are universally applied, whereas textual expressions are often subject to contexts. According to the legends of the said map of 1948, “nine dashed-line” is a line of national boundary in the SCS.

The Tribunal invalidated the nature of the “dashed-line” without resorting to the legends of the Chinese official maps. In this author’s view, the Tribunal’s judges made a major error in failing to consider this factor in their judgement, and if the “dashed-line” is confirmed as a line of national boundary as it is revealed by the legends of the Chinese official maps, the Tribunal would lose jurisdiction over this issue. Perhaps it is because the said Chinese official maps are not provided, then the Tribunal could have requested production of the said maps by relevant parties to this arbitration (as it is not difficult for the Tribunal to get recently published Chinese administrative maps with “dashed-line” thereon). Nonetheless, the fact is that the Tribunal did not conduct an examination of the legends of the Chinese official maps. It was a serious error.

Because the legends of the said Chinese maps are omitted, the Tribunal could only determine the possible nature of the “dashed-line” by deduction. The Tribunal puts forward three arguments:

1. Declaration on the Baselines of the Territorial Sea by the Chinese government in 1958. The Declaration proclaims that “the breadth of the territorial sea of the People’s Republic of China shall be twelve nautical miles. This provision applies to all territories of the PRC, including Mainland China and her coastal islands, as well as Taiwan and her surrounding islands separated by the high seas from Mainland China and her coastal islands, the Penghu Islands, the Dongsha Islands, the Xisha Islands, the Zhongsha Islands, the Nansha Islands and all other islands belonging to China”. The English translation adopted by the Tribunal is different though.<sup>4</sup> The Tribunal holds that, the attributive adjunct “separated by the high seas” applies not only to Taiwan and her surrounding islands, but also to the Islands in the SCS, meaning that Mainland China is separated by the high seas from the Islands in the SCS, the water contained by the “dashed-line” is thus not China’s internal water, so that the “dashed-line” cannot be a line of maritime national boundary.

2. The Chinese side assures the freedom of navigation and over-flight in the SCS, and this is not in line with practices seen in internal water under the international law. Hence, the water within the “dashed-line” therefore is not China’s internal water, and the line cannot be China’s maritime national boundary (The South China Sea Arbitral Tribunal, 2016, para. 212).
3. The publication of the coordinates for the territorial baseline of the Paracel Islands (Xisha Qundao) by China in 1996. The practice of drawing territorial baselines within internal water goes contrary to the international law, the “dashed-line” therefore cannot be China’s maritime national boundary (The South China Sea Arbitral Tribunal, 2016, para. 213).

Regarding these three points aforementioned, it should be noted that, the implementation of UNCLOS is silent on offshore archipelagic waters. According to the general rules of civil law, it is legal if it is not banned by the law. Therefore, generally speaking, the management by China of the relevant water of offshore archipelagos does not amount to the contravention of UNCLOS.

Regarding the first argument or evidence put forth by the Tribunal, whether the attributive adjunct, be the 1958 Declaration in Chinese or English translation, could be applied to the Spratlys, the Zhongsha Islands and the Paracel Islands remains uncertain, more research and examinations are needed on this point.

Regarding the second evidence, it is the view of the authors that one cannot dogmatically infer that China does not possess sovereignty over the waters within the “dashed-line” simply because China guarantees the freedom of navigation and overflight for international ships and aircraft. Under international law, archipelagic states have the right to manage the passage of routes historically regarded as such, and archipelagic states are obliged to guarantee the freedom of passage over such routes. China’s guarantee of freedom of passage over the routes historically regarded as such could be understood as China’s making reference to relevant provisions of UNCLOS on archipelagic sea-lanes passage. It could also be understood as a normal exercise of sovereignty by China, and it cannot be assertively inferred that China does not claim sovereignty over the waters within the “nine dash line”.

Regarding the third evidence, it cannot be categorically inferred that China does not claim sovereignty over the waters within the “nine dashed-line” only based on China’s rollout of territorial basepoints and delineation of territorial baselines for Paracel Islands (Xisha Qundao). Chronology should be considered. China in 1948 published the administrative map with the “dashed-line” thereon for the first time. In 1996, China announced the territorial baselines for the Paracel Islands. The proclamation by China in 1996 of the territorial basepoints and baselines for Paracel Islands does not negate the SCS “dashed-line” as China’s maritime line of national boundary. Even if time factor is not considered, it cannot be categorically inferred that China does not claim sovereignty over the waters within the “dashed-line”. Such a move could be seen as China’s initiative to transition part of sovereign rights for regional peace in the SCS, also as China’s sovereign and amicable act to deal with disputes in accordance with the international law of the sea, just like the “shelving disputes, joint development” energy policy in the SCS proposed by the Chinese government. In judging the probative value of evidence, the exclusion of reasonable doubt is the most basic principle.

In addition, the Tribunal also contravenes some general principles of evidence and mistreats the evidence that shows the contrary. The Tribunal takes note of some measures implemented within the “dashed-line” by the Chinese government.

The first measure: In June 2012, China National Offshore Oil Company (“CNOOC”) released a notice of open blocks for petroleum exploration adjacent to the western edge of the “dashed-line”. The western portions of at least one of these blocks (BS 16) lie beyond 200nm from any feature in the SCS claimed by China, and beyond any possible extended continental shelf (The South China Sea Arbitral Tribunal, 2016, para. 208).

The second measure: in 2011, China objected to the Philippines’ Geophysical Survey and Exploration Contract 101 petroleum block (“GSEC 101”), the Philippines’ Service Contract 58 (“SC 58”) block, and the Philippines’ Area 3 and Area 4 petroleum blocks. The Tribunal opined that the petroleum blocks objected to by China were not on the continental shelves of the islands in the Spratlys (The South China Sea Arbitral Tribunal, 2016, para. 209).

The third measure: In May 2012, China declared a “Summer Ban on Marine Fishing in the South China Sea Maritime Space”. This announcement applied to Huangyan Island (Scarborough Shoal) (The South China Sea

Arbitral Tribunal, 2016, para. 210-211.).

The Tribunal suggested that it was difficult to understand these three measures from the perspective of the law of the sea as these measures were enforced beyond the zone of entitlements enjoyed by China pursuant to international law. The Tribunal just pointed out that the three measures taken by China were based on “historic rights existing independently of UNCLOS”. However, the Tribunal did not realize that these moves were made by the Chinese government to indicate the “nine dashed-line” as a maritime national boundary and the waters within the “dashed-line” as internal water. These three measures were strong evidence for supporting China’s claim of “dashed-line” as national boundary and of historic rights in the SCS. Instead, the Tribunal regarded the three measures as a violation of the international law of the sea and denied their legality. The reason for this is that the Tribunal was confused about China’s reaffirmation of rights that had been well established since 1948, arguing that the Chinese government did not assert its historic rights in the South China Sea until 2009.

According to the aforementioned legends of the Chinese administrative maps after 1948, the “dashed-line” is the national boundary. In this author’s view, since 1948, the Chinese government has claimed sovereignty over the waters within the “dashed-line” of the SCS. The expression on the line is very clear and does not generate ambiguities. The “dashed-line” drawn by the Chinese government on the said administrative maps and their publications is a declaration of sovereign rights in the SCS. According to some legal principles expounded by the International Court of Justice (“ICJ”), the long-term silence of the relevant countries implies a recognition of China’s sovereignty over the SCS. The Tribunal held that, “it was only by a note verbale dated May 2009 that China began to clarify the scope of the rights claimed within the “dashed-line”. This is an incorrect interpretation of Chinese actions. In 2009, China stated in the said note verbale that China has historic rights in the SCS, which is not only a direct response to the actions of the Philippines, but also a reaffirmation of China’s existing historic rights. It was a key mistake for the Tribunal to confuse the reaffirmation of rights with the first proposal of such rights. It was precisely because of such a mistake that the Tribunal was wrong in saying that “China’s claim is clearly opposed by other countries” and that “there is no acquiescence (by other countries to China’s rights)”.

The Tribunal's conclusion that China's historic rights in the SCS have no legal effects, thus in this author's view, is an incorrect inference made in violation of some basic legal principles (i.e., fact-based and exclusion of reasonable doubts about evidence). The legends of China's administrative maps clearly indicate that the "dashed-line" is China's national boundary, and China's position on this is consistent. There had been no objection from the relevant countries for a long time after the publication of the said map, implying pursuant to the legal principles expounded by the ICJ about other countries' acquiescence to China's claim. The Chinese government's three measures as mentioned by the Tribunal also precisely show that, in the development and management of resources in the SCS, the Chinese government indeed regards the "dashed-line" as a maritime line of national boundary and exercises historic rights within the "dashed-line". Although China's such claim is not directly mentioned in UNCLOS, its validity is not impaired.

## **5. Conclusion**

China's historic rights in the SCS are clear and consistent, and the "dashed-line" in the SCS is a concrete expression of the scope and nature of such rights. At its inception, the drawing of the "dashed-line" fully took into account the legitimate interests of other countries. From China's point of view, the "dashed-line" had the acquiescence of the relevant countries for a long time. The "dashed-line" is not invalidated by the implementation of UNCLOS. Because the Tribunal's ruling in its award that China's historic rights were invalid was primarily based on the Tribunal ignored the meaning of the "dashed-line" as marked in the legends of China's administrative maps, hence it contravened some basic legal principles and disregarded China's claim of sovereignty over the island groups.

The Tribunal also mistakenly treated the time for China's reiteration of historic rights as the first time for China to put forward historic rights, and thus made a wrong conclusion. Because of this series of mistakes, the Tribunal's award not only failed to promote values of the international community but also created more disputes because of its fallacies. The award will undermine the prospects of peace and cooperation in the region for a long time in the future and the expectation of peace and justice in the community.



## Notes

- <sup>1</sup> The government of the Republic of Viet Nam once claimed sovereignty over the Paracels and the Spratlys, but this position was opposite to that of the government of Democratic Republic of Viet Nam at that time. The government of the Republic of Viet Nam was eliminated by the government of the Democratic Republic of Viet Nam. The Socialist Republic of Viet Nam, evolving from the Democratic Republic of Viet Nam, therefore cannot inherit the relevant position of the Republic of Viet Nam (Wang, 2022).
- <sup>2</sup> On this point, the Executive Yuan of the Republic of China at that time pointed out: “The Spratlys and Palawan Island in the Philippines are more than 12 miles apart (according to a report by a representative of the Ministry of Defense). Subtracting both countries’ territorial sea of 3nm, both countries are still separated by the high seas of considerable breadth” (Guo, 2011).
- <sup>3</sup> The “dashed-line” first appeared on the Chinese administrative map in 1948, there were 11 dashes. In 1953, two segments in Beibu Gulf were removed, making it commonly known as “nine dash line”. “Nine dash line” or “dashed-line” is used herein.
- <sup>4</sup> Original text in Chinese: “中华人民共和国的领海宽度为12海里。这项规定适用于中华人民共和国的一切领土，包括中国大陆及其沿海岛屿，和同大陆及其沿海岛屿隔有公海的台湾及其周围各岛、澎湖列岛、东沙群岛、西沙群岛、中沙群岛、南沙群岛及其他属于中国的岛屿”。The English translation adopted by the Tribunal reads: “The breadth of the territorial sea of the People’s Republic of China shall be twelve nautical miles. This provision applies to all territories of the People’s Republic of China, including the Chinese mainland and its coastal islands, as well as Taiwan and its surrounding islands, the Penghu Islands, the Dongsha Islands, the Xisha Islands, the Zhongsha Islands, the Nansha Islands and all other islands belonging to China which are separated from the mainland and its coastal islands by the high seas.” Please see *The South China Sea Arbitration* (The South China Sea Arbitral Tribunal, 2016, para. 200)

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