



Presentation Abstract

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The South China Sea Disputes and China's Approach to UNCLOS

The disputes in the South China Sea have attracted serious concerns in the world community including our academic world. As a key player in curbing and finally solving such disputes, China's role is indispensable. This paper attempts to discuss the recent developments in the South China Sea and the responses of China to them. Significant issues concerning the law of the sea will be analytically discussed and include particularly China's U-shaped claim and historic rights in international law, China's practice in and position on islands and baselines, and foreign military activities in the EEZ.

Despite its existence in the Chinese map for more than six decades, the U-shaped line has never received a wide recognition in the world community, much less the other claimants to the South China Sea. Though related issues have been discussed in the past, the U-shaped line still remains as a legal conundrum not only for China but also for the world community, particularly after the map with the U-shaped line, together with China's *Note verbale* against the claims to the outer continental shelves made by Malaysia and Vietnam, was submitted to the UN Commission on the Limits of Continental Shelf in May 2009. What is the legal nature of that line? What has China claimed within the line? Do historic rights exist within the line?

Recently China expressed its position on the status of Japan's Okinotorishima by stating that it is a rock rather than an island, thus without entitling EEZ and continental shelf. China even proposed to discuss this issue at the UNCLOS meetings. There are hundreds of natural features in the South China Sea including islands/islets, atolls, reefs, banks. One source tells us that among about 170 features in the South China Sea only about 36 tiny islands are above water at high tide. What about the legal status of the islands and reefs in the South China Sea? Will China claim EEZ and continental shelf from these islands and reefs?

China publicised in 1996 part of its baselines to measure its maritime zones along its mainland coast, circling Hainan Island and the Paracel Islands. The straight baselines for the Paracel Islands comprise 28 base points encircling these islands. As China is not a mid-ocean archipelagic State, is China's such practice consistent with UNCLOS? More interestingly, China publicised baselines for the disputed Diaoyu Islands (Senkaku in Japanese) this year. Baselines are critical for the measurement of maritime zones under national jurisdiction as well as for maritime boundary delimitation between neighbouring coastal States. Thus problematic baselines will definitely cause problems in the above two areas. When a maritime zone is designated by a coastal State with problematic baselines, then it will become controversial under international law and challengeable by other countries. Potential maritime disputes or conflicts would then arise.

The *Impeccable* Incident in the South China Sea in 2009 triggered a new round of discussion on foreign military activities in the EEZs of coastal states. China opposes such activities and this opposition has been concurred in by other developing countries. As we know, there is a controversy on whether the conduct of military activities in the EEZ of another country is legitimate. Some States may invoke Article 58(1) of UNCLOS to justify their military activities in other countries' EEZ. But in regard to the legal nature of the EEZ as under national jurisdiction, there may be a requirement of due regard. Since the UNCLOS is not clear in this respect, will this left-over grey area be clarified with the developments of the international law of the sea?

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