

The Meaning of the U- Shaped Line in the South China Sea

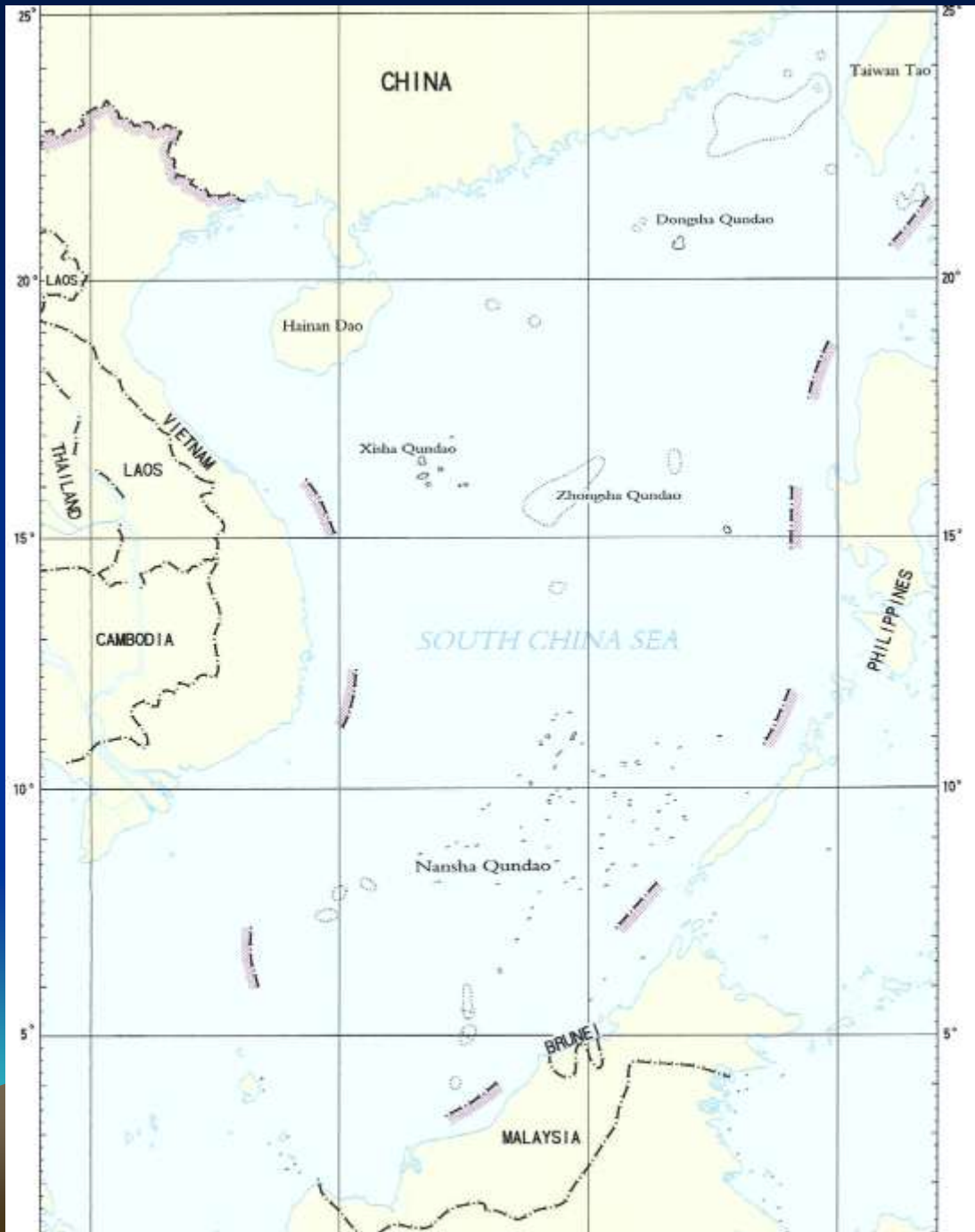
Zou Keyuan



U-shaped line

- The U-shaped line in the South China Sea is the line with nine segments off the Chinese coast on the South China Sea, as displayed in the Chinese map and its official Chinese name is “traditional maritime boundary line” (*chuantong haijiang xian*)





Origin of the Line

- The line first appeared on the map in December 1914.
- In 1935, the Committee of Examining the Water and Land Maps of the ROC published the names of 132 islets and reefs of the four South China Sea archipelagos. The publication had an annexed map which marked the James Shoal at the location of about 4° north latitude, 112° east longitude.

Official Publication of the Line-1

- On 1 December 1947, the Ministry of Interior renamed the islands in the South China Sea and formally allocated them into the administration of the Hainan Special Region. Meanwhile, the same ministry prepared a location map of the islands in the South China Sea, which was then first released for internal use.



Official Publication of the Line-2

- In February 1948, the Atlas of Administrative Areas of the Republic of China was officially published, in which the above map was included. This is the first official map with the line for the South China Sea and it has a substantial influence over the subsequent maps published by China.



Official Publication of the Line-3

- According to the then official explanation, the basis for drawing the line was: “[t]he southernmost limit of the South China Sea territory should be at the James Shoal. This limit was followed by our governmental departments, schools and publishers before the anti-Japanese war, and it was also recorded on file in the Ministry of Interior. Accordingly it should remain unchanged”.

Declaration on China's Territorial Sea

- In 1958, China promulgated the Declaration on China's Territorial Sea, in which China declared that the Dongsha Islands, the Xisha Islands, the Zhongsha Islands, and the Nansha Islands all belonged to China.



Implications of the 1958 Declaration

- It says that between the mainland and its coastal islands and the archipelagos in the South China Sea, there existed certain areas of the high seas.
- It provides that the method measuring the Chinese territorial sea of 12 nautical miles by straight baselines for the mainland and its coastal islands is also applicable to the archipelagos in the South China Sea.

Oil Exploration Lease in Vanguard Bank

- In May 1992, Beijing let a concession to the Crestone Energy Corporation to explore oil in a 7,347 square-nautical-mile area between the Vanguard Bank (*Wan'an Tan*) and the Prince of Wales Bank (*Guangya Tan*), 160 nautical miles to Vietnam's coast

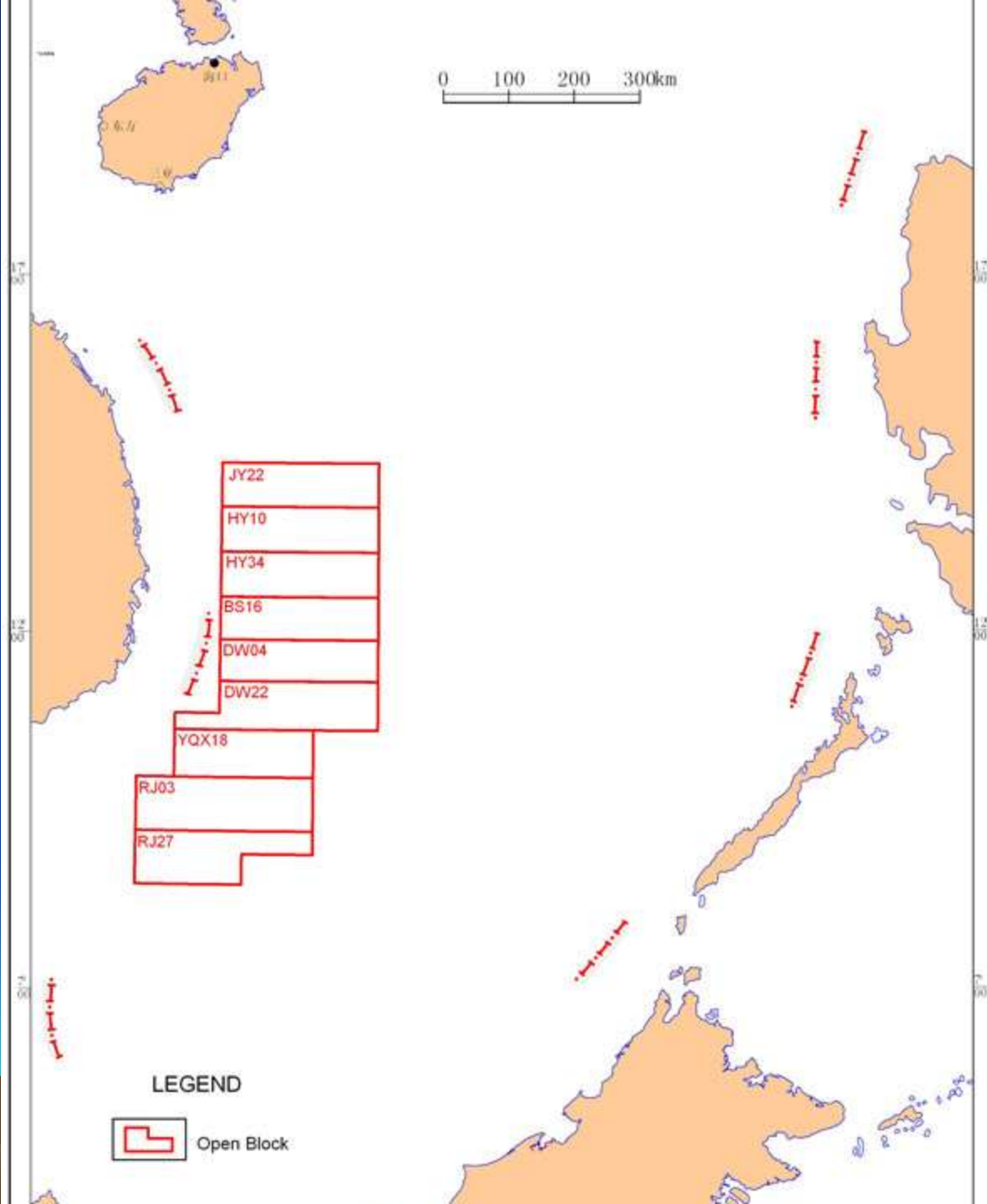


Oil Exploration Lease in Vanguard Bank-2

- In 1996, the contract for the Wan'an Tan Bei-21 block was transferred to another American oil company ---Harvest Natural Resources, which continues to hold its interest and the license was extended to 31 May 2013.



2012 Notification of Part of Open Blocks in Waters under Jurisdiction of China Available for Foreign Cooperation



Maritime Policing

- In February 2007, the State Council approved the scheme of regular rights-safeguarding law enforcement patrols carried out by China Ocean Surveillance in the Yellow Sea and the South China Sea.
- In 2008, China Ocean Surveillance began its regular law enforcement patrols, covering all sea areas within China's jurisdiction from the Mouth of Yalu River to *James Shoal*.

China Marine Surveillance

- China Marine Surveillance sent *Haijian* 81 and *Haijian* 83 to the South China Sea and put a sovereignty tablet on James Shoal in April 2010
- two China Marine Surveillance branches were created in 2010 for the South China Sea: the 10th Branch stationed in Haikou and the Law Enforcement Branch for Paracel, Spratly, and Macclesfield Islands

Bureau of Fisheries Management and Fishing Port Superintendence

- In March 2009, China's largest fishing surveillance vessel *Yuzheng 311* was dispatched to the South China Sea
- Mischief Reef is used as a base for fishery administration.
- On 23 June 2010, the *Yuzheng 311* forced the Indonesia warships to release a detained Chinese fishing vessel in the sea area 57 nautical miles to the Natuna Islands (where Indonesia claims as its EEZ, but China refuses to recognize)

Chinese practice within the line

- From the above practice of China, it can be seen that within the U-shaped line:
- China has claimed all the geographic features to be Chinese territory;
- Its rights to resources adjacent to these features; and
- Exercises its maritime jurisdiction



Relevant Legal Terms

- In relevant Chinese legislation the wording “*other sea areas within China’s jurisdiction*” have been used
- The amended Law on Marine Environmental Protection in 1999 provides that “the Law shall apply to internal waters, territorial sea, contiguous zone, exclusive economic zone, continental shelf of the People's Republic of China and *other sea areas under the jurisdiction of the People's Republic of China*”



Historic Entitlement

- China has never claimed that the waters within the U-shaped line are Chinese historic waters.
- But China has claimed historic rights within the line in addition to the maritime entitlement under UNCLOS



Article 14 of the EEZ Law

- On 26 June 1998, China promulgated the Law on the EEZ and the Continental Shelf
- Article 14 provides that "the provisions of this Law shall not affect the historic rights enjoyed by the People's Republic of China



Article 14 of the EEZ Law-2

- This provision can be understood in the following interpretations:
- (1) it may mean that the sea areas which could not become China's EEZ and/or continental shelf should have the same legal status as EEZ and/or continental shelf;
- (2) it may mean that the sea areas which embody China's historical rights are beyond the 200 nm limit; or
- (3) it may mean that the sea areas which embody China's historical rights but within the 200 nm limit can have an alternative management regime different from the EEZ regime.

THE CONCEPT OF HISTORIC RIGHTS

- The term "historic rights" is a general framework which is directly linked to the term "historic waters", and the term "historic bays". However, the term "historic rights" is not equivalent to "historic waters" or "historic bays", though "historic rights" may carry a broader meaning and may include historic waters and bays.
- The term "historic rights" also covers certain special rights without involving a claim of full sovereignty, such as historic fishing rights which a State might have acquired in particular areas of the high seas



LOS Convention and Historic Rights

- The UNCLOS III did not discuss the issue of “historic rights” or “historic waters”.
- However, a variant term of historic bay and/or historic title is mentioned in the LOS Convention relating to bays, delimitation of the territorial sea between States with opposite or adjacent coasts, and limitations and exceptions in the settlement of disputes.

LOS Convention and Historic Rights-2

- Article 10 (6) provides that “[t]he foregoing provisions [on bays] do not apply to so-called ‘historic’ bays”.
- Article 15 does not allow the median line to apply to special circumstances such as “by reason of historic title” for the delimitation of the territorial seas of the two States.
- The last provision in the LOS Convention which mentions the historic bays or titles is Article 298 which permits the contracting States to exclude the compulsory procedure provided for in the LOS Convention from applying to the disputes “involving historic bays or titles”.

Historic rights in general international law

- The matter continues to be governed by general international law which does not provide for a single regime for “historic waters” or “historic bays”, but only for a particular regime for each of the concrete, recognized cases of “historic waters” or “historic bays” (ICJ, Continental Shelf (Tunisia v. Libya), 1982, para 100).
- It means that UNCLOS is not applicable to the matters concerning historic entitlements or historic rights



State Practice

- State claims
(Kingdom of Tonga)
- Bilateral agreements
(India-Sri Lanka, Cambodia-Vietnam)
- Case laws
(Anglo-Norwegian Fisheries case, Fisheries Jurisdiction cases, Tunisia v. Libya, Fonseca Bay etc)



STATE PRACTICE-Tunisia

- Tunisia stressed the importance of its "historic rights" with a view to the future delimitation of the exclusive economic zone (EEZ) by arguing that its claim was supported either by the new law of the sea or the historic rights acquired through its immemorial exercise of jurisdiction.



STATE PRACTICE-Tunisia-2

- The Court avoided the question whether Tunisia's historic rights were relevant for the purpose of delimiting its continental shelf, but the Court did make some important remarks that "historic rights" must enjoy respect and be preserved as they had always been by long usage.



Eritrea-Yemen Arbitration

- Another international judicial case relating to historic rights is the Case of Eritrea-Yemen Arbitration in 1998
- The two contesting parties -- Eritrea and Yemen -- requested the specially established Arbitral Tribunal to decide on questions of territorial sovereignty over disputed islands in the Red Sea "in accordance with principles, rules and practices of international law applicable to the matter, and on the basis, in particular, of *historic titles*"



Eritrea-Yemen Arbitration-2

- The Tribunal held that "the conditions that prevailed during many centuries with regard to the traditional openness of southern Red Sea marine resources for fishing, its role as means for unrestricted traffic from one side to the other, together with the common use of the islands by the populations of both coasts, are all important elements capable of creating certain 'historic rights' which accrued in favor of both parties through a process of historical consideration as a sort of '*servitude internationale*' falling short of territorial sovereignty.
- Such historic rights provide a sufficient legal basis for maintaining certain aspects of a *res communis* that has existed for centuries for the benefit of populations on both sides of the Red Sea".



Historic rights and the Philippines

- The existence of historic rights is widely recognized by the members of the international community including the Philippines.
- The Philippines only denies the existence of China's historic rights in its EEZ.
- However, without the delimitation of a maritime boundary between China and the Philippines, the limit line of the latter's EEZ is not clear.

Historic rights and the Philippines-2

- The Philippines attempts to seek the limit line of its EEZ and continental shelf from the Tribunal by awarding to it the so-called maritime entitlement and disregarding the maritime entitlement of China in the South China Sea under UNCLOS, much less China's historic rights under general international law.

Submission of the U-shaped Line Map to the United Nations

- In response to the Philippines' diplomatic note dated 5 April 2011, China stated in its *Note verbale* that “China’s sovereignty, related rights and jurisdiction in the South China Sea are supported by abundant historical and legal evidence”.
- “Since 1930s, the Chinese Government has given publicity several times the geographical scope of China’s Nansha Islands and the names of its components. China’s Nansha Islands is therefore clearly defined”

Submission of the U-shaped Line Map to the United Nations-2

- In addition, under the relevant provisions of the UNCLOS, as well as the Law of on the Territorial Sea and the Contiguous Zone (1992) and the Law of the Exclusive Economic Zone and the Continental Shelf (1998), China's Nansha Islands is fully entitled to Territorial Sea, Exclusive Economic Zone (EEZ) and Continental Shelf



Historic rights: a special regime

- The rules governing historic rights are a special regime in international law, exceptional to general rules of the UNCLOS. It is illogical, and completely incorrect, to assume that the Chinese territorial and maritime claims in the South China Sea are only historic rights.
- In fact, the Chinese claim to historic rights is complement to China's general claims under UNCLOS.



Historic rights and EEZ rights

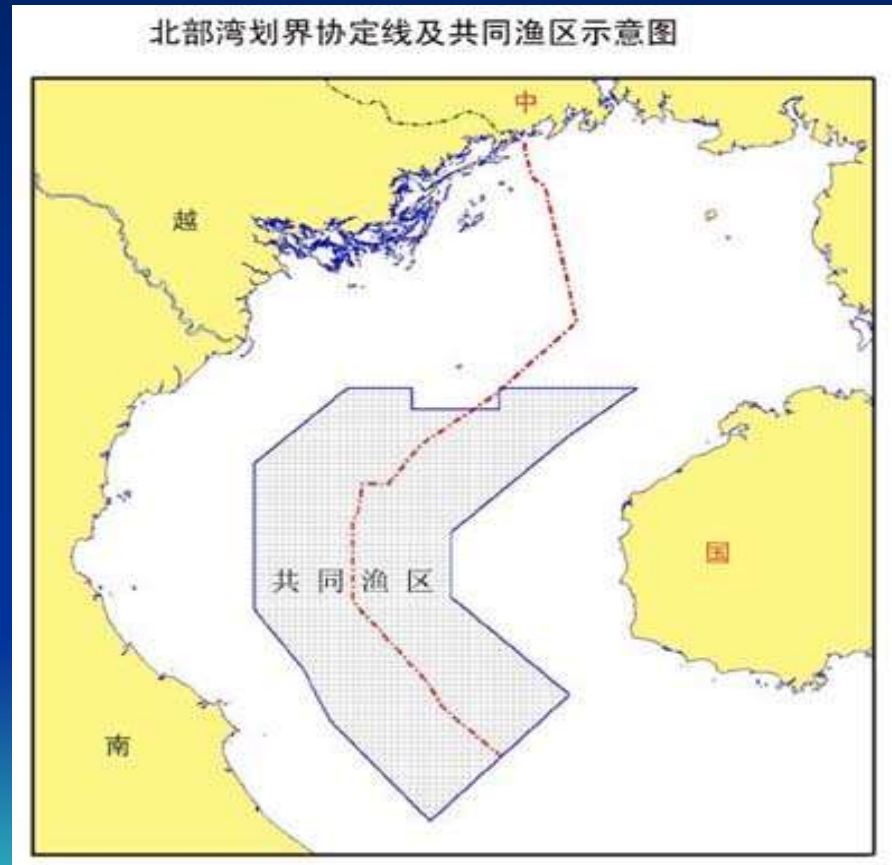
- Both are recognized by general international law;
- Both are qualified rights under international law;
- Both are more related to the use of marine resources and exercise maritime jurisdiction



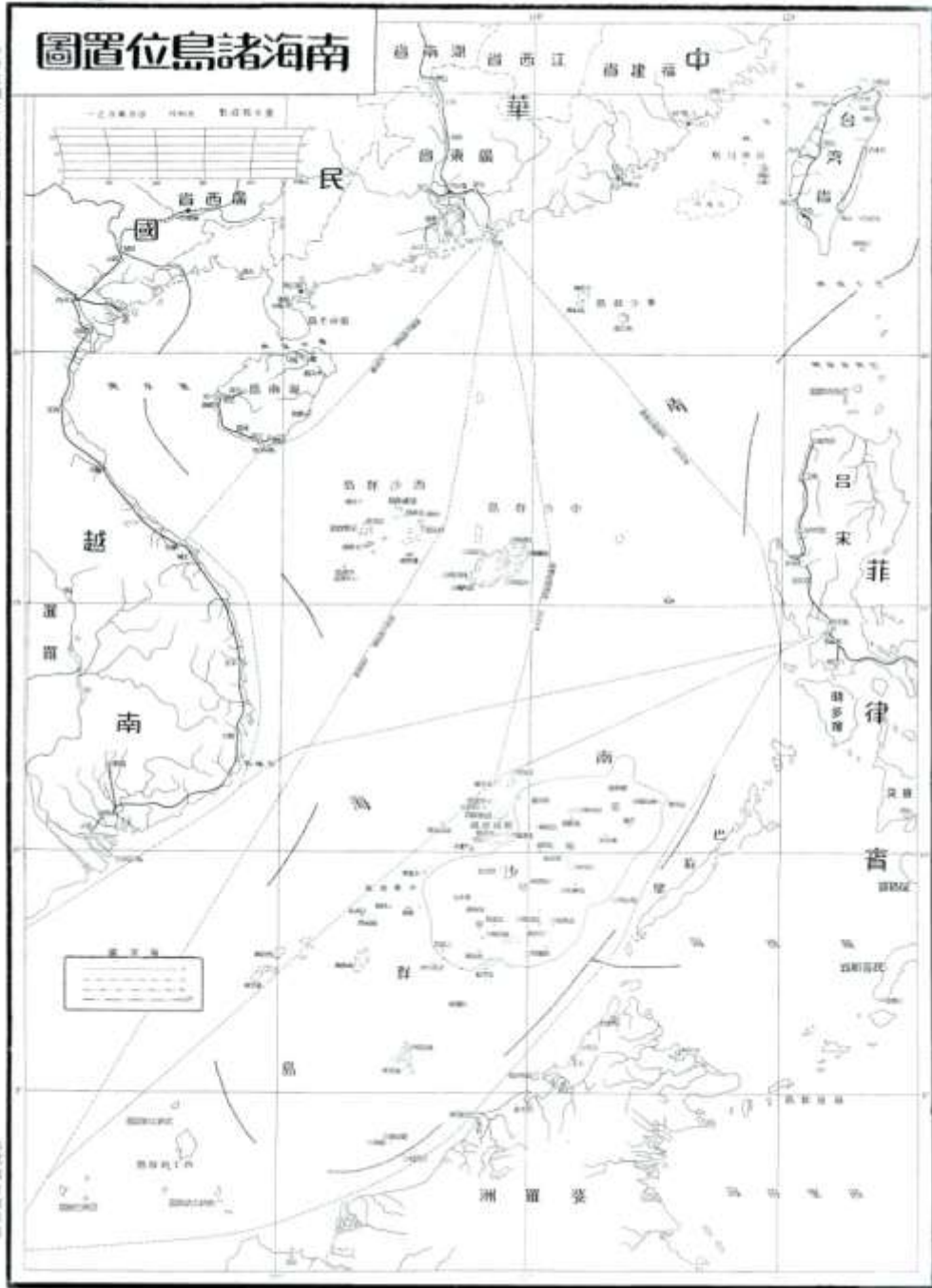
U-shaped line and maritime boundary delimitation

- The official name of the line is “Chinese traditional maritime boundary line”
- It is directly related to the maritime boundary delimitation, particularly for EEZ and continental shelf
- After the boundary delimitation in the Gulf of Tonkin, the original two segments of the line become unnecessary and should be removed if they would have still existed.

Sino-Vietnamese Maritime Boundary and Joint Fishery Zone in the Gulf of Tonkin



圖置位島諸海南



CONCLUSION

- China never gives up the U-shaped line and recent practices have showed that China has endeavored to further consolidate the claims based on the line, in particular by undertaking regular and intensified law enforcement patrols in the South China Sea within the line.



CONCLUSION-2

- The U-shaped line has existed for more than 68 years, before the adoption of the LOS Convention and even before the adoption of the 1958 Geneva Conventions on the law of the sea. The historic rights deriving from this line cannot be ignored.



CONCLUSION-3

- Usually the regime of historic rights is favorable for states with a long history but relatively unfavorable for the newly independent states founded after World War II.
- In comparison with claims by other countries bordering the South China Sea, China's claim has the longest history. This fact can at least partially explain why other claimants to the islands in the South China Sea are opposed to China's historic claims based on the U-shaped line.

