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China's "Nine-dash Line" Claim: US Misunderstands

By Ye Qiang and Jiang Zongqiang

Synopsis

The US Department of State's Paper on China's Maritime Claims in the South China Sea was published on 5 December 2014. It has confused China's "dash-line" claim.

Commentary

CHINA'S CONTROVERSIAL "nine-dash line" claim in the South China Sea has triggered long-running misunderstanding in the United States government due to its perennial anxiety and repeated cross-examinations. This misunderstanding basically originates from the different thoughts over territorial and maritime legal matters between China and the West.

This has been reflected in the recent *US DoS Paper on China's Maritime Claims in the South China Sea*, put out by the Department of State, which focuses on the coordinates of the dashes, and on the terminologies regarding the maritime laws and *Notes Verbales* of China, and comes to confusing conclusions.

The localised dimension

However, the US government ignored the inconvenient truth that the "dash-line" should not be seen as *stricto sensu* – that is, in the strict sense – a frontier in the Chinese context of the 1940s. That means it would be pointless to interpret the implications of the line from the perspective of modern international law. Therefore, any research, in the first place, should be confined to the localisation context of China; and the direction of end-point should go down the path of globalisation. These are two inseparable dimensions to understand China's "dash-line" claim.

The localisation context refers to the Chinese traditional territorial and maritime legal thought in and before the 1930s and 1940s. In traditional Chinese thought, oceans cannot be monopolised by anyone and are open to all countries and peoples. Before the 20th century, China had never claimed any maritime sovereignty. This was unlike what the West did.

From the 13th century onwards, European countries have been embroiled in an increasingly fierce race for influence at sea. These countries imposed taxes and levies, and prohibited foreigners from

fishing and sailing in the maritime zones they controlled, which broke the established maritime order. This situation was obviously not conducive to the interests of the Dutch, which was a maritime trading power at that time.

As a result, the Dutch jurist Grotius published *The Mare Liberum* in 1609, proposing the famous notion of the freedom of the seas. But Grotius was refuted and attacked by many British scholars headed by John Selden, who published *The Mare Clausum* in a bid to defend maritime sovereignty. Selden's ideas prevailed in the 17th century, and European countries actively embarked on the policy of maritime sovereignty.

In the centuries-long debate about oceans, China has always maintained an open maritime policy. For the last thousands of years, China has been conducting economic activities, such as fishing, in the South China Sea, and has been living in peace with neighbouring countries in the process of developing and utilising oceans.

More than two thousand years ago, China opened up a maritime silk road and shared the prosperity of maritime trade with West Asian and European countries. Even in the Ming Dynasty, when Zheng He's fleet pushed China's navigation achievement to the peak, China never controlled sea lanes or impaired the freedom of navigation in the South China Sea.

What did the “dash-line” of the 1940s enclose?

In the second half of the 17th century, the principle of freedom of the seas was generally espoused, which was actually inseparable from the need of European countries to expand global trade and open up overseas market. When the vessels of all countries enjoyed the freedom of navigation across the world's high seas, China still viewed land as the pillar of its economy and coastal defence remained lacking. Since the late Qing Dynasty, China has always been a victim in terms of the idea of territorial sovereignty, including the insular features.

After the middle of the 20th century, China gradually achieved national liberation and independence, and was able to take part in the international affairs as an equal actor. After the Second World War, China gradually recovered the lost sovereign rights and maintained its jurisdiction over major insular features in the South China Sea.

Therefore, it is easy to understand that, in February 1948, the Chinese government released a Map of the Location of South China Sea Islands, with the main purpose of clarifying China's inherent territorial sovereignty under the post-war international order. Therefore, when publicising the map with the “dash-line”, China claimed the sovereignty over all the insular features rather than the maritime jurisdiction.

The globalisation dimension

The path of globalisation indicates that, according to modern law of the sea, China is entitled to maritime jurisdiction in certain maritime zones in light of Chinese sovereignty. That is the reason why China claims “sovereignty over the islands in the South China Sea and the adjacent waters” and “sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof” in the 2009 *Notes Verbales*.

Ironically, these maritime rights and jurisdictions are not created by China. These new concepts originate from Western-dominated law of the sea. China has claimed and exercised maritime jurisdiction in light of the four conventions established in 1958 during the first United Nations Conference on the Law of the Sea and the 1982 UNCLOS. The maritime jurisdiction currently claimed by China follows the claims and practice of the international community, especially Western countries, and has never gone beyond the mainstream of the international community.

In addition, it refers to the development and evolution of the principles and rules of modern law of the sea. For example, the free sea is a relative idea. Along with the progress of the times, acts at sea are bound to meet with more and more regulations. This helps to promote maritime safety and sustainable development, conforms to the principle of balance between generations, and serves the common interests of mankind. This is especially true in the enclosed and semi-enclosed seas.

Therefore, China believes, on the one hand, that it enjoys all kinds of rights provided for in the Law of the Sea Convention as well as the customary international law within the “dash-line” other than the territorial sovereignty over insular features. On the other hand, it has been carefully evaluating whether or not to exercise each specific right, and the scope of the rights as well as the manner to exercise.

These are the reasons why China has not yet clarified the title of rights within the “dash-line”, and has not yet claimed specific maritime rights through an accurate frontier composed of coordinate points.

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