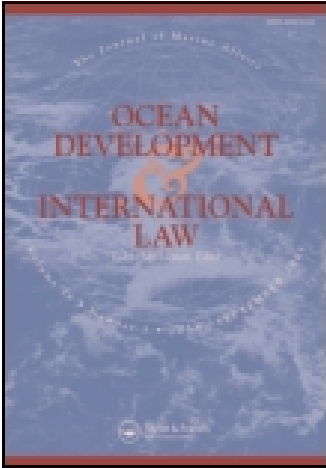


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## The Dotted Line on the Chinese Map of the South China Sea: A Note

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*In 1947, the then-Chinese government produced The Location Map of the South China Sea Islands (Nanhai zhudao weizhi tu, in Chinese). A discontinuous dotted line was on this map. This contribution looks at both the history of the creation of the dotted line and the opinions that have been expressed concerning the juridical status of the dotted line. Special attention is given to the historic title assertion.*

**Keywords** historic rights, People's Republic of China, South China Sea

### Introduction

One of the continuing uncertainties impacting upon the island and ocean area sovereignty disputes in the South China Sea is the “dotted line” found on Chinese maps dating back to 1947. The dotted line is usually referred to as the “nine-dotted line” (since it is composed of nine dashes) or the “U-shaped line” in the South China Sea since this reflects the shape of the dotted line (see Figure 1). The dotted line encloses the main island features of the South China Sea: the Pratas Islands, the Paracel Islands, the Macclesfield Bank, and the Spratly Islands. The dotted line also captures James Shoal which is as far south as 4 degrees north latitude.

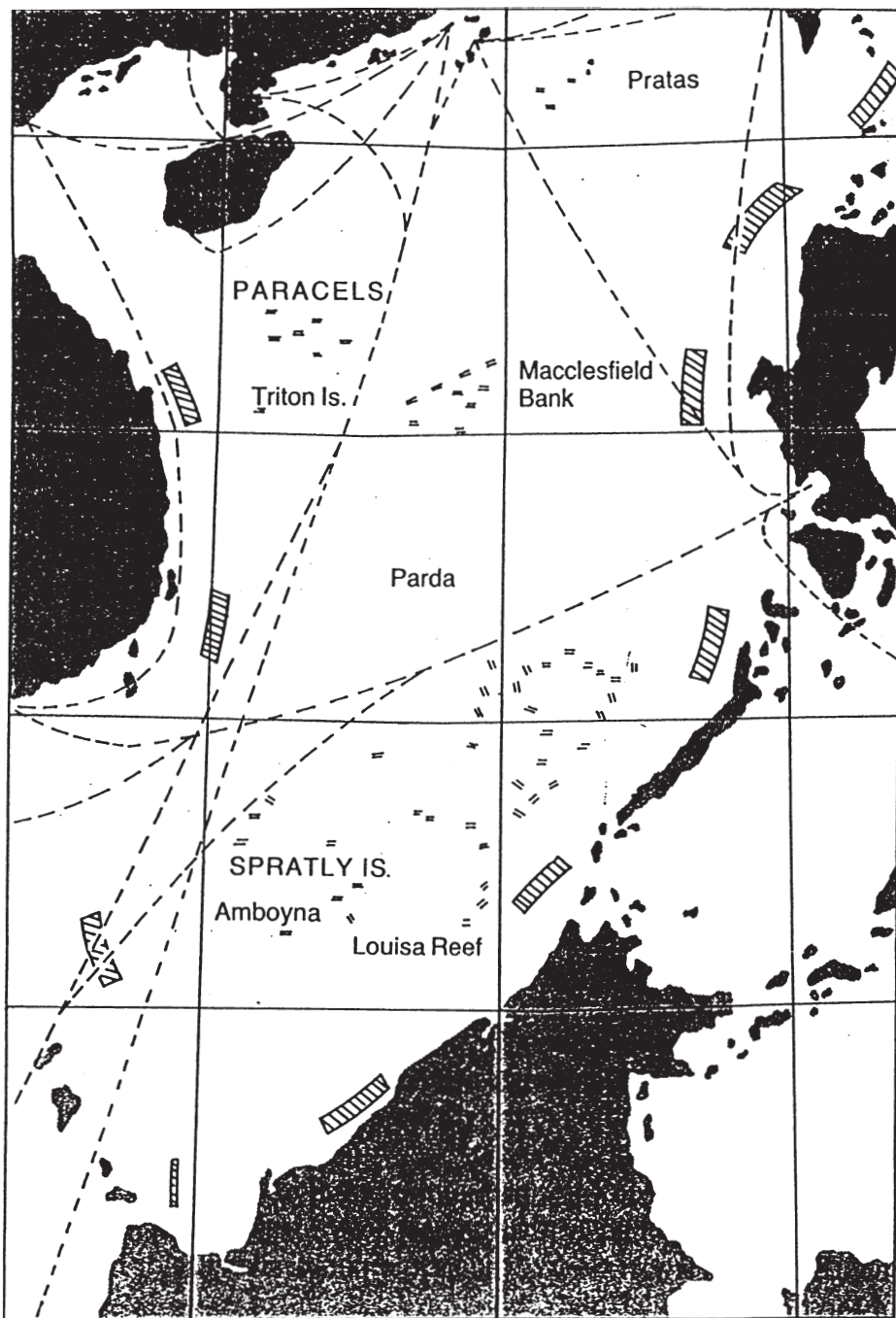
The purpose of this brief note is twofold: (i) to provide some detail on the history of the Chinese dotted line; and (ii) to provide a canvass of the opinion of scholars and others regarding the dotted line.

### The Origin of the Dotted Line Marked on the Chinese Maps of the South China Sea

At the beginning of the 1930s, most Chinese maps were reproductions or based upon older maps. New fieldwork had not been undertaken for many years. These maps contained errors and some, without analysis, were copies of foreign-produced maps. As a result, Chinese ocean and land boundaries were not consistently shown on the various

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**Figure 1.** The nine-dotted line on the Chinese map of the South China Sea. (Source: Hasjim Djalal, "Conflicting Territorial and Jurisdictional Claims in South China Sea," *The Indonesian Quarterly*, vol. 7, no. 1 (1979), 36 at 52.)

maps. This was obviously problematic for China as regards its sovereignty in the South China Sea.

To respond to this, in January 1930 the Chinese government promulgated *The Inspection Regulations of Land and Water Maps* (*Shuilu ditu shencha tiaoli*). Consultation between the Ministry of Internal Affairs, the Foreign Ministry, the Marine Ministry, the Ministry of Education, and the Committee of Mongolia and Tibet led to an extension and revision of the above regulations in September 1931 with *The Revised Inspection Regulations of Land and Water Maps* (*Xiuzheng shuilu ditu shencha tiaoli*). Following further consultations, a Land and Water Maps Inspection Committee, whose members were representatives sent by the relevant institutions and departments, was formed and started work on June 7, 1933.

The Land and Water Maps Inspection Committee made significant contributions to the defense of China's sovereignty in the South China Sea. At the 25th meeting held on December 21, 1934, the Committee examined and approved both Chinese and English names for all of the Chinese islands and reefs in the South China Sea. In the first issue of the Committee's journal published in January 1935, they listed the names of 132 islands, reefs, and low tide elevations in the South China Sea, of which 28 were in the Paracel Islands archipelago and 96 in the Spratly Islands archipelago.<sup>1</sup> At the 29th meeting held on March 12, 1935, based on the various questions raised by the Ya Xin Di Xueshe, the Committee stipulated that "except on the large-scale national administrative maps of China that should delineate the Pratas Islands, the Paracel Islands, the Macclesfield Bank and the Spratly Islands, other maps need not mark or note these islands if the locations of the islands were beyond the extent of the maps."<sup>2</sup>

*The Map of Chinese Islands in the South China Sea* (*Zhongguo nanhai daoyu tu*) published by the Committee in April 1935 declared that China's southernmost boundary should reach the 4° northern latitude. Thus the James Shoal was marked as being within the Chinese boundary. On the second map, *The Map of Chinese Domain in the South China Sea* (*Haijiang nan zhan hou zhi zhongguo quantu*) in the book *The New Map of Chinese Construction* (*Zhongguo jianshe xin ditu*), edited by Bai Meichu in 1936, the Pratas Islands, the Paracel Islands, the Macclesfield Bank, and the Spratly Islands were drawn as being within Chinese territory in the South China Sea. The boundaries of the islands were marked by national boundary lines showing that these islands belong to China. The southernmost national boundary line of the South China Sea Islands area was indicated as being the 4° northern latitude. The James Shoal was indicated as being within the national boundary. In the annotation of the map, the mapmaker states:

The six isles occupied by France in July 1933 together with the Macclesfield Bank and the Spratly Islands measured afterwards by the Nautical Bureau of the Marine were the living places of Chinese fishermen. The sovereignty, of course, belonged to China. In April 1935, the Chinese Central Inspection Committee of Land and Water Maps issued *The Map of Chinese Islands in the South China Sea* (*Zhongguo nanhai daoyu tu*) in its journal. The southern coastal areas extended to the James Shoal in the Spratly Islands, which was just at the 4° northern latitude. This was China's southernmost coastal boundary in the South China Sea.<sup>3</sup>

After the Second World War, the Chinese government regained possession of the Paracel and the Spratly Islands. In order to define and declare the extent of Chinese sovereignty around the Paracel and the Spratly Islands, at the beginning of 1947 the

Chinese Ministry of Internal Affairs adjusted the names of all the South China Sea Islands. The Spratly and the Paracel Islands were renamed on the basis of their geographic location in the South China Sea, and the names of the islands and reefs in other areas of the South China Sea were checked and announced by the Geography Department in the Ministry of Internal Affairs. The Ministry of Internal Affairs held discussions with other concerned departments on April 14, 1947.

There were three results of these discussions. First, the southernmost point of Chinese territory in the South China Sea was reaffirmed as being the James Shoal. This had become the standard adopted in the publications of Chinese government organizations, schools, and the press. Second, it was decided that the Ministry of Internal Affairs should demonstrate authority over the Paracel and the Spratly Islands by providing a detailed description of the islands, promulgate Chinese sovereignty over the islands, and ensure public notice of China's authority over the islands. In addition, the Navy should try its best to station personnel on the islands. Third, when the fishing season around the Paracel and the Spratly Islands came, the Navy and the government of Guangdong Province should protect the fishermen who went out to the island areas and provide them with transportation and communication facilities.<sup>4</sup> All of these actions manifest that the Chinese government of the time had defined the Chinese territorial sphere in the South China Sea.

For the purpose of specifying China's territorial sphere in the South China Sea, the Geography Department of the Ministry of Internal Affairs printed *The Location Map of the South China Sea Islands (Nanhai zhudao weizhi tu)* in 1947. On this map, the Pratas Islands, the Paracel Islands, the Macclesfield Bank, and the Spratly Islands were shown as being part of China with the use of an 11-dotted line. The southernmost boundary was marked at 4° northern latitude. According to Wang Xiguang, who participated in the compilation of maps at the Geography Department of the Ministry of Internal Affairs, "the dotted national boundary line was drawn as the median line between China and the adjacent states."<sup>5</sup>

In February 1948, the Geography Department in the Ministry of Internal Affairs published *The Administrative Division Map of the Republic of China (Zhonghua minguo xingzheng quyü tu)* edited by Fu Jiaojin and compiled by Wang Xiguang and others. On the Map of China and its attached map—*The Location Map of the South China Sea Islands (Nanhai zhudao weizhi tu)*—the Pratas Islands, the Paracel Islands, the Macclesfield Bank, and the Spratly Islands were indicated as being part of the Republic of China's territory. An eleven-dotted line was drawn around the above four features in the South China Sea and the southernmost line was about the 4° northern latitude. It was the first time that a map marked with the dotted line in the South China Sea was officially issued during the Kuomintang (KMT) period.

On the Map of China produced after the creation of the People's Republic of China in 1949, the eleven-dotted line in the South China Sea appears to follow the old maps. It was not until 1953, after Premier Zhou Enlai's approval, that the two-dotted line portion in the Gulf of Tonkin was deleted. Chinese maps published since 1953 have shown the nine-dotted line in the South China Sea.

Upon the declaration of the nine-dotted line, the international community at no time expressed dissent. None of the adjacent states presented a diplomatic protest. This silence in the face of a public declaration may be said to amount to acquiescence, and it can be asserted that the dotted line has been recognized for half a century. In recent years, however, several Southeast Asian countries, which have been involved in sovereignty disputes of the South China Sea, have questioned the juridical status of the nine-dotted line.

## Opinions Concerning the “Dotted Line”

There is a wide variety of legal and political opinion concerning the legal effect of China’s dotted line in the South China Sea. The following canvass indicates that some take the view that the dotted line relates only to the enclosed islands, others believe that it asserts Chinese sovereignty over the waters, and still others link the dotted line to a claim of historic title over the waters.

Professor Gao Zhiguo, the director of the Institute for Marine Development Strategy, State Oceanic Administration, considers the nine-dotted line on the Chinese map as delineating ownership of islands rather than being a maritime boundary. He has concluded that, “[a] careful study of Chinese documents reveals that China never has claimed the entire water column of the South China Sea, but only the islands and their surrounding waters within the lines.”<sup>6</sup> Professor Zhao Lihai of the Law Department of Beijing University has concluded that

the nine-dotted line indicates clearly Chinese territory and sovereignty of the four islands in the South China Sea and confirm China’s maritime boundary of the South China Sea Islands that have been included in Chinese domain at least since the 15th century. All the islands and their adjacent waters within the boundary line should be under the jurisdiction and control of China.<sup>7</sup>

Professor Zhao Guocai of Taiwan Politics University has written that, “The U-shaped line declared by the government of China is China’s maritime boundary line in the South China Sea.”<sup>8</sup>

Zou Keyuan, a Research Fellow at the East Asian Institute of the National University of Singapore, has written:

On the one hand, it seems that China does not claim everything within the line as can be seen from its diplomatic notes, relevant laws and public statements. What China claims are the islands and their adjacent waters within the line (. . .) On the other hand, a number of factors may give people the impression that China regards the line as its maritime boundary line.<sup>9</sup>

Another statement of note is from a senior diplomat from Indonesia, Hasjim Djalal, who has questioned the dotted line and stated that, “There was no definition of those dotted lines, nor were their co-ordinates stated. Therefore, the legality and the precise locations of those lines were not clear.”<sup>10</sup> He went on to comment that, “It was presumed, however, that what China was claiming, at least originally, was limited to the islands and the rocks, but not the whole sea enclosed by those undefined dotted lines.”

Pan Shiyong, the late marine strategy expert, wrote, “It is beyond question that the ‘9-discontinued-and-dotted line’ marked on the Chinese map of the South China Sea is the sign/designation of China’s ‘historic title.’”<sup>11</sup> Much of the debate over China’s “dotted line” has focused on the historic title issue; as a result, this issue will be explored in more detail.

Although there is no exact definition in international law for the concept of historic title, its existence as a concept and legitimate basis for claiming sovereignty over land and water is well recognized. For example, Article 15 of the 1982 United Nations Convention on the Law of the Sea stipulates that the delineation rule for overlapping territorial sea claims “does not apply . . . where it is necessary by reason of historic title or

other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.”

According to Yehuda Z. Blum, “the term ‘historic rights’ denotes the possession by a State, over certain land or maritime areas, of rights that would not have been acquired by that State through a process of historical consolidation.”<sup>12</sup> He further explains that “historic rights are a product of a lengthy process comprising a long series of acts, omissions and patterns of behavior which, in their entirety, and through their cumulative effect, bring such rights into being and consolidate them into rights valid in international law.”<sup>13</sup> Another scholar has noted that the concept of historic waters

rests upon customary law. It was not dealt with in either the 1958 Territorial Sea Convention or the 1982 CLOS and discussion of the issue was quite limited at both UNCLOS I and III. Although disagreement remains on the scope and interpretation of the doctrine, the three elements generally considered to be involved in establishment of historic title are effective exercise of sovereignty, prolonged usage and the toleration of other states.<sup>14</sup>

These three elements are the factors required for a state to successfully assert a claim to historic waters: (1) states which claim historic title should exercise sovereignty in the waters; (2) the exercise of sovereignty should have been continuous for a long time and should have become the usage; and (3) it should be tolerated by other states. These three factors were mentioned in the document *Juridical Regime of Historic Waters, Including Historic Bays*, provided to the International Law Committee by the United Nations Secretariat on March 9, 1962.<sup>15</sup>

Where an historic waters claim is successful, the jurisdiction within the area is exclusive. Claiming states can treat them as internal waters or territorial seas. Since the 1947 announcement of the dotted line in the South China Sea, the government of China has seldom practiced this kind of exclusive rights over the waters within the line. The occasional exercise of exclusivity is only focused on the islands within the line, but not the waters. Foreign vessels still sail or fish without control in waters within the line. So it has been doubted whether the waters within the line can be called historic waters. A Vietnamese scholar once questioned thus:

The historic waters, according to the International Law of the Sea, mean waters that follow the system of internal waters. States which own the historic waters exercise the highest and full sovereignty in the waters, just as in their land territories. . . . From the reality of the South China Sea, China has never exercised national sovereignty here at any time, especially in waters within the “9-discontinued-and-dotted line.” The obvious fact is that States within and without this region have navigated freely in the region’s waters for a long time.<sup>16</sup>

Taiwan has reportedly deemed “the entire area within the U-shaped line to be China’s historical waters.”<sup>17</sup> A Taiwan scholar has explained:

Since the declaration of the 9-discontinued-and-dotted line, the international society at that time had not put forward any dissents. Neither had the adjacent States raised any diplomatic protests on the 9-dotted line. These amounted to acquiescence. After that, quite a lot of maps produced abroad were all

delineated in this way and indicated as pertaining to China. China owns the historic right of islands, reefs, shoals, banks, and waters within the 9-dotted line. The South China Sea is regarded as the historic waters of China, which was universally acknowledged at that time. So far it has lasted for half a century.<sup>18</sup>

More than half a century has passed since the production of the discontinuous and dotted line in the South China Sea. For over half a century, the Chinese government has continuously reasserted through domestic legislation that the islands within the line are part of Chinese territory. On the basis of Blum's quote, after such a long time China can be said to have historic rights as regards the islands in this region. The 1998 PRC EEZ/Continental Shelf Law stipulates: "The provision of the Law will not affect the People's Republic of China's claim of historic rights." The Law does not further interpret the precise meaning of the phrase "historic rights," but we can imagine that it is related to the historic rights of the region within the dotted line of the South China Sea. The containing of historic rights in the EEZ/Continental Shelf Law manifests that the rights do not derive from historic waters. It also shows that China no longer regards the waters within the dotted line as historic waters, because historic waters can only be treated as internal waters or territorial seas, but cannot be included in exclusive economic zones and continental shelves.

Zou Keyuan, in a recent article, noted that historic rights are divided into two types: one exclusive with complete sovereignty, e.g., historic waters and historic bays; the other nonexclusive without complete sovereignty, e.g., historic fishing rights in high seas.<sup>19</sup> This scholar deems that the historic rights claimed by China are unique and different from the above-mentioned two types, with the result that China's claim should not be considered as "a claim of historic waters in the traditional sense," for it is connected with the exclusive economic zone (EEZ)/continental shelf regimes.<sup>20</sup> He calls China's claim of historic rights as "historic rights with tempered sovereignty," and thinks this kind of claim contains sovereign rights and jurisdiction, but not complete sovereignty. He writes:

Such sovereign rights are exclusive for the purpose of development of natural resources in the sea areas and jurisdiction in respect of marine scientific research, installation of artificial islands, and protection of the marine environment. It is obvious that such a claim to historic rights is not only a right to fisheries, but to other resources and activities as well.<sup>21</sup>

Though some states object to China's claim of historic rights and criticize it as not being in conformity with international regulations, the above scholar has stated: "China has set a precedent in the state practice relating to historic rights. It is not clear whether China's practice establishes a rule in international law, but it may already be influencing the development of the concept of historic rights."<sup>22</sup>

## Conclusion

The views herein, as supported by the evidence, is that the dotted line has a dual nature. In April 1947, the Chinese Ministry of Internal Affairs of the Republic of China, in a transmission of the results of their discussions with the representatives of other departments to the government of Guangdong Province noted that "the southernmost Chinese territory sphere in the South China Sea should reach the James Shoal." The transmission



continued: "Please note and act according to the official document on the definition and declaration of the sphere and sovereignty of the Paracel and the Spratly Islands."<sup>23</sup> It was evident from this that the dotted line then defined the sphere and the sovereignty, or the ownership, of the Paracel and the Spratly Islands. Nevertheless, the dotted line shown on the Chinese map is also China's maritime boundary in the South China Sea because of two characteristics of the dotted line. First, the location of the dotted line followed the international principles regarding maritime boundaries then in existence in that it was drawn as an equidistance/median line between the isles and reefs at the outer edge of China's South China Sea islands and the coastline of neighboring adjacent states. Second, the dotted line was the manner of designating a claimed national boundary line. Thus, "the nine-dotted line" had a dual nature. Not only did it define China's sovereignty over the South China Sea Islands, but it also played the role of China's claimed ocean boundary in the South China Sea. The lines therefore can be called the Chinese traditional maritime boundary line in the South China Sea.

## Notes

1. See *Shuilu ditu shencha weiyuanhui huikan* [Journal of Land and Water Maps Inspection Committee], Vol.1 (January 1935): 61–69.
2. See *Shuilu ditu shencha weiyuanhui huikan* [Journal of Land and Water Maps Inspection Committee], Vol. 3 (September 1935): 79–80.
3. Han Zhenhua (ed.), *Woguo nanhai zhudao shiliao huibian* [The Compilation of Historic Materials on the South China Sea Islands], (the Oriental Publishing House, 1988), 360.
4. See *Celiang xisha nansha qundao shatoujiao zhongying jieshi* [The Sino-British Terminus in Shatoujiao of the Measurement of The Paracel and the Spratly Islands], the Governmental Archives of Guangdong Province.
5. Xu Sen'an, "Nanhai duanxu guojiexian de neihan" [The Connotation of the 9-Dotted Line on the Chinese Map of the South China Sea], in "21 shiji de nanhai: wenti yu qianzhan" *yantaohui lunwen xuan* [Paper Selections of the Seminar on "The South China Sea in the 21<sup>st</sup> Century: Problems and Perspective"], ed. Zhong Tianxiang (Hainan Research Center of the South China Sea, 2000), 80.
6. Gao Zhiguo, "The South China Sea: From Conflict to Cooperation," *Ocean Development and International Law*, Vol. 25 (1994): 346.
7. Zhao Lihai, *Haiyang fa wenti yanjiu* [Studies on the Law of Sea] (Beijing University Press, 1996), 37.
8. Zhao Guocai, "Cong xianxing haiyangfa fenxi nanshaqundao de zhuquan zhengduan" [Analysis of the Sovereign Dispute over the Spratlys under the Present Law of Sea], *Asian Review*, Vol. 9, (Hong Kong, 1999): 22.
9. Zou Keyuan, "The Chinese Traditional Maritime Boundary Line in the South China Sea and Its Legal Consequences for the Resolution of the Dispute over the Spratly Islands," *International Journal of Marine and Coastal Law*, Vol. 14 (1997): 52.
10. Hasjim Djalal, "Spratly Dispute Needs Democratic Settlement," *The Jakarta Post* (January 2, 1995): 5.
11. Pan Shiyang, *Nanshaqundao-shiyou zhengzhi-guojifa* [Islands of the South China Sea-Petropolitics-International Law] (Hong Kong Economic Herald Press, 1996): 61.
12. Yehuda Z. Blum, "Historic Rights," in Rudolf Bernhardt (ed.), *Encyclopaedia of Public International Law*, Installment 7 (Amsterdam: North-Holland Publishing Co., 1984), 120.
13. *Ibid.*, at 121.
14. Epsy Cooke Farrell, *The Socialist Republic of Vietnam and the Law of the Sea* (The Hague: Martinus Nijhoff Publishers, 1998), 68–69.
15. See *International Law Commission Yearbook*, Vol. II, 1962, at 6.

16. (Vietnam) Zhi Mei (translated by Dai Kelai), “Yige wuli de ‘lishi zhuquan’ yaoqiu” [*An Unreasonable Claim of the “Historic Sovereignty”*], *Zhongguo dongnanya yanjiuhui tongxun* [*Journal of China’s Southeast Asian Studies*], Vol. 4 (1995).

17. Cheng-yi Lin, “Taiwan’s South China Sea Policy,” *Asian Survey*, Vol. 37 (1997): 323–324.

18. See Zhao Guocai, *supra* note 8, at 22.

19. Zou Keyuan, “Historic Rights in International Law and in China’s Practice” *Ocean Development and International Law*, Vol. 32 (2001): 160.

20. *Ibid.*

21. *Ibid.*

22. *Ibid.*

23. See Han Zenhua, *supra* note 3, at 181.