

南中國海：中美合作還是對抗？

傅崐成楊翠柏教授與美國教授群的對話

近年來中美兩國圍繞南海問題爭議加劇，逐漸緊張的南海局勢嚴重威脅著中美關係，這不僅將危害世界的和平與繁榮，更將威脅在美華人的切身利益。為了促進美國人民對爭議的焦點有更客觀的認識，增進中美之間的相互理解，共同尋求降低緊張的措施，南加州紀念二戰勝利結束70周年委員會與中美論壇社邀請國際知名的兩位海洋法專家：來自臺灣的廈門大學南海研究院院長傅崐成教授和四川大學楊翠柏教授在南加州舉辦一場英文及一場中文研討會。

英文研討會是由南加州大學美中學院和中美論壇社於3月4日，在南加州大學共同主辦的。為了充分交流中美雙方的不同觀點，除了兩位中國教授外還邀請了UCLA國際關係中心主任Kal Raustiala教授及南加大國際關係教授Daniel Lynch為講員。聽眾踴躍，涵蓋不同族群學者包括南加大亞洲研究中心主任Stanley Rosen及現主任Brett Shehan等。主要華文媒體記者也參加了會議。

首先我代表中美論壇歡迎各位演講學者及聽眾，感謝南加大美中學院負責人Dube教授，並強調中美論壇的任務是提供一個獨立於政府和不受利益團體控制的平臺讓中美兩國公民表達對中美關係的看法和建議。南海問題是由於二戰後各國對盟國原先所同意的戰後秩序沒有充分尊重而造成的產物。二戰中，美國曾大力協助中國抗擊日本侵略者，兩國都為此付出巨大的犧牲，我們希望人類不會再經歷另一個世界大戰。我們真誠的希望這類研討會有助於美中間的相互理解，從而導致雙方加強合作，發展一個友好的而非敵對的關係，則不僅兩國人民有福，全世界也能享受和平和繁榮。

Dube教授主持會議，陳立家兄協助中英文口譯。美中學院將現場演講部分全程錄影：[HTTP://china.usc.edu/videos-panelists-discuss-key-issues-involving-south-china-sea](http://china.usc.edu/videos-panelists-discuss-key-issues-involving-south-china-sea)。由於技術原因，回答聽眾問題的熱烈時段沒有錄影，午餐時

的精彩對話也沒有紀錄，作者有幸全程參與因此著文作一個綜合報導。

全場會議圍繞著以下議題各抒己見：1. 「U形線」的意義和合法性？2. 中國南海填海擴建後的島礁擁有領海權嗎？3. 為什麼中國拒絕南海問題國際仲裁？4. 美國的立場和利益？傅教授以流利的英語，嚴謹的邏輯，美國人可以接受的方式對相關問題做了明確的表訴，詳細內容請看崐成教授的文章：南海關鍵問題釋疑。

Kal首先認同傅教授對海洋法的論述，但是強調美國百年來在太平洋的存在，美國與區域國家的條約義務和美國強大的海軍擁有維護世界秩序的獨特使命。他重申美國的標準論調：對南海主權不持立場，維護海上航行自由權，希望不用武力威脅解決紛爭。他特別強調美國海軍在南海沒有開炮，沒有從事間諜活動，沒有演習，屬於無害通過，不違反國際慣例。他同意在處理南海問題上美國也應理解中國的感受，畢竟美國也會惱火如果中國海軍在接近美國本土海域經常性的抵近巡航。沒有人希望發生類似二戰的大規模衝突。

楊教授著重論述「U形線」劃定行為的合法性。他指出，中國在南海斷續線法律地位，在聯合國海洋法公約之前早已確立。由於韓戰原因，臺灣大陸都沒有參與簽訂舊金山和約，和約雖規定日本放棄南海各群島，但是故意沒有說明歸還給誰，造成以後的糾紛。然而，二戰期間日本將西沙，南沙劃歸臺灣高雄管轄，因此西沙，南沙自然隨著臺灣歸還中華民國。

Daniel重複強調南海周邊人民從古以來對海洋貿易有重大參與，因此不僅只有中國有歷史性權利，然而他未能提出可靠的文獻證據，僅是個人感情的陳訴。

Kal坦陳他從傅教授的演講學到一些以前不知的對中國有利的歷史證據，為了地區和平，中國應該有信心陳訴中國的證據接受國際仲裁和平解決糾紛。

～張文基～

傅崐成表示，中國希望爭議由相關雙方透過協商解決，事實上1947年公佈的U形線（或稱為九段線），就是海上的斷續未定國界線，意味著邀請談判之起始立場，可邀約相關爭議方就邊界進行談判，如中國與越南就在北部灣談成了邊界。他說，所謂中國主張幾乎所有南海都是其領海的說法是一種有意的歪曲，中國也沒有把邊界線劃到別人家門口。

傅崐成指出，中國的南海政策一直非常克制，2002年「南海各方行為宣言」（DOC）簽署後，中國一直在遵守，別的爭端方不視之為有約束力的國際條約，在南海大肆開發。他說，現在中國與東盟國家談南海「行為準則」（COC），既然COC才被視為是有約束力的，那中國忍了十幾年後，也開始做別國早就開始做的事情。唯一的差別是，別國用了3年、13年才做成的事情，中國幾個月就建完了更大更好的設施。

與會多數學者會後都認為這類坦誠交流有助於增進彼此瞭解，促進合作，避免衝突。會後許多來自大陸的學生和年青的記者都表示以往長期受美國主流媒體和學者的權威誤導總覺得中國的南海立場理虧似乎難以辯護，透過這次會議更加自信。促進中美間的相互理解，教育海外華人認識問題的真相就是這次會議的目的。

海洋疆界劃界與領土主權糾紛的談判，更多的是外交和政治問題，而非法律問題。近年來美國華人人數成長很快，經過多年努力也積累了經濟實力，然而即使在華人聚集的地區如南加州都還沒有發揮相當的政治影響力來左右事關我們切身利益的重要政策走向，這一方面是對政治，特別是外交政策的恐懼和冷漠，另一方面是知識的不足。友好的中美關係事關我們切身利益，豈可置身事外，對南海問題我們必須表達我們的看法，這是我們做為美國公民對美國的最大貢獻！

～陳立家～

克裡說中方對南海問題提供了六項確保航行安全及自由（包括海運及航空）以及非軍事化的原則和條件。美國願就此和中國進一步接觸並探討如何將之形成路線圖。這六項原則內容未見公佈。我猜測肯定包括要求美國軍方不再在中國門口作耀武揚威的挑釁或駁回日菲越澳等盟國在該地區頻頻軍事演習。並同意南海爭端由中國和地區的申索國為此進行雙邊談判。在取得這樣的美方承諾下，中國可考慮停止在該地區的進一步軍事化。並保障南海整個海域的航行航空的自由和安全。

關於朝鮮半島的問題主要是無核

化問題。我注意到克裡對此表示得相當克制。他明顯沒有提到要求金正恩下臺，或者要消滅北朝鮮。這和美國過去對待伊拉克，利比亞，敘利亞和ISIS有很明顯的不同。美國表現得很清楚，祇要北朝鮮同意去核，一切都好，包括不在半島設置薩德基地。

中國在朝核問題問題上，和美國的差距不大。關鍵在於作為六方會談的龍頭，中國有多少能力左右北朝鮮。以達到其他五方的共同願望。金正恩一再無視國際壓力，一意孤行，不見棺材不流淚。恐怕要到大禍即將來臨時，金的懸崖勒馬，回頭是岸，才能化解朝鮮半島的危機。

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推進中美相互瞭解合作 促成海峽兩岸和平統一 倡導和諧平等多元世界

南海關鍵問題釋疑

～傅崐成～

所作所為。除了中國早在2006年就已經聲明排除之外，包括法國、泰國、韓國、俄羅斯等許多其他締約國根據聯合國海洋法公約第298條的規定，同樣做過排除適用第三方強制裁判程序的書面聲明。

4. 為什麼美國和日本在中菲爭端中都願意助菲律賓一臂之力？

考慮到現實情況與國際法的規定，美日深知，他們自己無法就南海問題對抗中國。且美日兩國希望在與中國抗衡的過程中，能獲得相對「廉價」的勝利。美日不是南海社區的成員。根據《聯合國海洋法公約》第123條的規定，類似南海這樣的「半閉海」的沿海國家，有權利和義務就生物資源、海洋環境和海洋科學研究等問題，相互協同合作。因此，非南海沿海國家基本都被排除在這一社區的合作框架之外。

5. 什麼是島嶼？

島嶼是四面環水並在高潮時高於水面的自然形成的陸地區域。除第三款另有規定外，島嶼的領海、鄰接區、專屬經濟區和大陸架應按照海洋法公約適用於其他陸地領土的規定加以確定。不能維持人類居住或其本身的經濟生活的島嶼，被稱為岩礁，不應有專屬經濟區或大陸架。

6. 中國在南海的島礁填海工程是建人工島嗎？有領海權嗎？

由於島嶼的定義很清楚，而且很傳統，因此，已經是突出水面的（廣義）島嶼（包括 rocks），不可能成為「人工島」。在已經露出於水面之上的陸地（島礁）上的改善工程是「land claim」填海造地。美方批評中國的似乎也都只是說是 reclamation。在南沙，「暗沙」、「暗礁」（如曾母暗沙）上面才「有可能」蓋成人工島。永暑礁、美濟礁應該都不會是人工島建設，而是填海造地工程，因此擁有領海權。

王毅見克裡討論南海及朝鮮半島的緊張局勢

中美兩國外長三十天內在不同的場合見面會談三次。實屬罕見。此無它，形勢緊張，一觸即發致之。導致火線有二。南海和朝鮮半島是也。

南海方面美國的不斷以軍艦戰機在有爭議地區迫近中國宣稱有主權的十二海裡的領域。而中國則在最近宣佈在西沙群島佈置紅星九號地對空導彈防禦。局勢一步步地緊張。可謂是你拔劍，我弩張。

朝鮮半島則是金正恩不理會國際輿論，早然爆氣彈放導彈，驟使美韓急議在韓設置薩德導彈，還考慮採取斬首行動，刺殺金正恩。

王毅和克裡急晤談於華盛頓。之後，二外長主持記者會，透露了一些會議的內幕。

Interpretation On the South China Sea Dispute by History and Law

Recently, the saga in the South China Sea (SCS) is gaining heat due to the following three continued developments:

1. The Philippines' challenge on China's sovereignty claim, a U shaped ocean boundary in the SCS, including Spratly islands (On Oct. 29, 2015, the Permanent Court of Arbitration in The Hague claimed jurisdiction over the case). Vietnam, Malaysia, Brunei and Indonesia all have disputes on islands near them.
2. China's construction efforts on her islands in the SCS making some of them to be serviceable air and sea ports.
3. The U.S. gestures sending naval ships including a carrier to demand freedom of navigation as if the above two activities have restricted the maritime freedom in the SCS

Tracing the origin of the SCS issue really leads to a legal interpretation of the U shaped boundary line China has claimed and published in 1947 after WW II. The officially published U shaped boundary line is based on historical Chinese presence and territorial claims in the SCS. In Sino-French war (1884-85), France recognized China's claim of the S.C.S. in exchange for China's recognition of Vietnam as a French occupied colony. In 1933, France seized the Spratly and Paracel islands despite China's protest. In 1938, Japan took the islands from France and kept them until the end of WW II. After Japan surrendered in 1945, according to the San Francisco Treaty and Potsdam Declaration, Japan had to renounce all the captured territories and returned them to their rightful owners. This includes Taiwan, Penghu, Spratly, Paracels, etc., acknowledged by both the ROC and PRC governments. At present, ROC is in control of Taiping Island - one of the largest island in Spratly, where a garrison, school, hospital and bank all exist; whereas PRC has total control of the Paracels where China has built airport and seaport on some of the islands.

Although there were squatting activities in the SCS mainly by fishermen, there was no impact to freedom of maritime. China has taken a very low key in dealing with any disputes in the SCS islands. However, in the recent 2-3 years, more disputes in SCS arose resulting in a confrontational situation as described by the three developments listed above. Many Chinese American organizations especially those familiar with the Chinese history felt necessary to diffuse the confrontation and mystery by revealing the facts. Hence, On March 4-7, 2016, a number of

Dr. Wordman

organizations sponsored a series of seminars on the hot topic, disputes in the SCS by inviting two experts on international law, Professor Fu Kuen Chen of Xiamen University and Prof. Yang Cui Bo of Sichuan University to offer a number of presentations on their research in Los Angeles, Flushing and Manhattan, NY and Wash. DC. On behalf of the organizers, I had the privilege to chair the seminar session on March 7th at NYU Kimmel Center. The room was fully packed and the presentations were very stimulating. The audience, including a number of well known professors such as Professor Jerome Cohen, Director of US-Asia Law Institute and his students, Professors James Chieh Hsiung, Huang Chi Chao and Hua Jun Xiong and many legal professionals including Douglas Burnett of Square, Patton Boggs, Issac B. Kardon, U.S. - Asia Institute, and Shen Jianmin, a practicing attorney with international law background, engaged in a very lively discussion.

Professor Fu first presented historical evidences to establish the de-facto presence of Chinese and their utilization of the SCS over two thousand years. Then he gave a detailed description on how the U shape line was drawn, published and recognized by the international community including Vietnam's official acknowledgment of China's definition of ocean boundary in the S.C.S., the U.S. navy's request of permission to survey Spratly island in 1960, and the Filipino government's return of the stolen ROC flag from Taiping Island by Filipino citizens and her apology. He then traced the proceedings of the UN arbitration court, from the Philippines' initiation of a false claim denying Spratly islands as real islands, to the problematic creation of the arbitration court when a judge is lacking real impartiality and to the interpretation of UN Convention on the Law of the Seas (UNCLOS) regarding island definition, jurisdiction, compulsory ruling and member's right to refuse acceptance of the ruling when sovereignty is in dispute. Professor Yang added more of his research in historical evidence of China's ocean boundary in the S.C.S. In summary, they concluded that from legal and historical inheritance point of view, China has ample proof for her claim in the S.C.S.

Professor Cohen made a comment during Q&A, "if the tribunal court ruled in favor of the Philippines, it would make China look very bad in the international community" and he asked "what will happen to China then?" This is a hypothetical question. The Q&A session did not arrive at an answer. As the chair monitoring the session, I could not engage freely in the discussion but Professor Cohen's question stayed with me. Here, I would like to offer my comment. Given the fact that the arbitration court's track record on impartiality and success rate in enforcing its decision are not good, I think in the case of SCS, the impact of the court ruling on China would be determined by the ability of the disputing parties to make a successful interpretation to the International community, a PR case I may say.

Since China is armed with more historical facts, research work and archived documents, she should be able to present arguments against the ruling, if necessary, discrediting the impartiality and due diligence of the court. The United States has the richest communication media/industry in the world; hence generally she has a hold on the communication media and platform. However, in recent years since the opening of the Internet, China has established a sizable media and communication network of her own. Therefore, China would not be shy in publicizing her research and due diligence in defending her position regarding S.C.S. In this process, not only the litigants but even the bystanders will be dragged in. If China is able to present a fool-proof counter argument to support her case, every party including sideline cheer leaders will have to face the consequences. To avoid embarrassment, not only China needs to do a thorough research job to defend her position, all litigants must do the same. If the U.S. was to take side, she should do due diligence as well.

Based on what has been known so far, it appears that China has done more research than anyone else in defining the SCS case. The U. S. most likely has access to the same information. It is my opinion that the academicians and scholars in the U.S. should begin a due diligence to do research on the S.C.S. issue rather than accept blindly the media spin coming with any SCS news. The American citizens and policy makers should be well informed and educated on the SCS issue so that the U.S. will not take the wrong side of the justice. After all, there is no real advantage for the U.S. to take sides in the first place. The SCS presents no real security threats to the U.S. If the U.S. would casually or deliberately take the wrong side on the SCS issue, it would no doubt hurt the US-China relations, with both ROC and PRC governments. Therefore, it is wise for the U.S. to stay neutral and impartial to digest all the PR work presented by the disputing parties rather than choreograph any act to compound the SCS issue.