ARBITRATION UNDER ANNEX VII OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

REPUBLIC OF THE PHILIPPINES

v.

PEOPLE'S REPUBLIC OF CHINA

SUPPLEMENTAL WRITTEN SUBMISSION OF THE PHILIPPINES

VOLUME V
ANNEXES

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VOLUME V

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MISCELLANEOUS

Annex 246(bis)

Marwyn S. Samuels, *Contest for the South China Sea* (1982)

Contest for the South China Sea

Marwyn S. Samuels

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The open sea

The decline of China's merchant and naval fleets during the late fifteenth and early sixteenth centuries was dramatic. In 1420, at the peak of maritime development, the Ming navy consisted of some 3800 vessels, including 1350 patrol ships, 1350 combat vessels attached to particular forts, a main distant-water warship fleet of 400 vessels, 400 grain and equipment transport freighters, and 250 'Treasure Ships' or galleons for the Southern Sea trade. By 1474 the main warship fleet had been reduced by 65 per cent to 140 vessels and the number of ships in all categories sharply declined.[1] In 1500 regulations were promulgated to make it a capital offence to build any new two-masted vessels, a measure calculated to destroy the shipyards near Nanking and elsewhere. In 1525 coastal officials were instructed to destroy all remaining ships of that size and to arrest any sailors working such vessels. Another regulation of 1551 declared that whosoever ventured out to sea in multiple-masted ships (i.e. intending long-distance contact and trade) were thereby guilty of treason.[2] China's 'experiment' with maritime expansion had, indeed, come to an end.

This is not to say that such regulations were strictly enforced, or that the anti-maritime sentiment prevailed without exception. In 1553 a large history of the Nanking shipyards was written and printed, an indication that the maritime spirit was not utterly abandoned.[3] Similarly, by the mid-eighteenth century a revived interest in nautical technology witnessed the compilation of much technical data in new encyclopedias, travel books and shipbuilding manuals. And, as we shall see, Chinese vessels continued to sail the waters of the South China Sea. Yet, for all of this, there can be no doubt that the great period of Chinese maritime exploit came to an end by the late fifteenth century.

Many factors contributed to the rapid decline of China's maritime position. Even as the profits from the tribute-trade system were great, currency devaluation and the export of precious metals threatened the entire domestic economy. The cost of building and maintaining a large navy, especially under inflationary conditions, became increasingly prohibitive. Furthermore, by 1411 the technical problem of water supply for the

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Shantung section of the Grand Canal had been overcome, making inland water transport economically more competitive with coastal shipping.[4] Hence, the need for a large coastal freighter fleet together with a coastal defense apparatus was greatly reduced. In addition, the biases of the gentry-based Confucian bureaucracy, already aimed against mercantilism, were given added impetus by the greatly enhanced ambience of consumerism sustained by the growth of foreign trade.

While each of these factors weighed heavily on the decision-making process at Court, other elements were also influential. The fact that the pro-maritime faction in the Ming Court was led by powerful eunuchs, and that many of China's most influential admirals and naval commanders were foreigners or of non-Han origin, contributed in no small measure to the strength of the anti-maritime faction. Similarly, by the mid-fifteenth century security on the continental frontiers in the northwest and northeast had seriously eroded. In 1449–50 Emperor Cheng T'ung led a disastrous campaign against the Mongols and was himself captured.[5] Thereafter attentions were directed toward northern, continental defense at the expense of maritime expansion.

The shift toward a more northern focus of interest had, in fact, begun when the Yung Lo Emperor removed the capital of the Ming from Nanking to Peking. Much as with the Southern Sung shift to Hang-chou, the re-siting of the capital entailed a geographical reorientation accompanied by the development of regional and local interests weighted to influence the Court's empire-wide concerns. Place-bred, tutored by eunuchs from the north, and fearful of revived Mongol power on the northern frontiers, the later Ming emperors were perhaps groomed with a bias against further maritime exploits to the south.[6] Continentalism was reinforced by virtue of the northern location of the capital and by the periodic threats to that capital from the continental frontiers.

Early Ch'ing maritime interests

If the later Ming emperors were given to a continentalist bias, their successors, the early Ch'ing emperors, were even more so. Having themselves emerged from the steppe of Southern Manchuria to the conquest of the Ming Empire, the Manchu founders of the Ch'ing state were not much inclined toward maritime expansion. Their goal was more the consolidation of power in China and in the traditional land frontiers than the extension of oceanic rule. Perhaps for that reason, and as part of a larger campaign to confirm their legitimacy as a Chinese dynasty, the Ch'ing emperors from the time of Ch'ien Lung (1736–95) cast their economic philosophy in a fairly austere, neo-Confucian anti-mercantile mold.[7] They were especially noted for their insular views on foreign trade, views that easily paralleled Confucian notions about the corruptive influence of foreign luxuries, merchants and consumerism. Ironically, being themselves

defenses. It was, for example, this factor more than any other that led to China's devastating defeat in 1894–5 by the less numerous, under-gunned, but better commanded Japanese fleet.[28]

The history of China's humiliation at the hands of western and Japanese navies cannot detain us here. Nevertheless, one additional point may be usefully raised in conjunction with the concern for China's position in the South China Sea. The Chinese navy during the Ch'ing period (and, for that matter, by quantity even during the Ming Dynasty) was primarily a coastal defense force. Tied to specific land fortresses and aimed essentially against pirates and smugglers, there was virtually no distant-water combat fleet save for that which occasionally saw duty in the Taiwan Straits or the Gulf of Tonkin. Intended only to support heavily armed coastal fortresses and to protect the entrances to China's vast system of inland waterways, the navy was in this regard only a first line of defense. And, like most first lines of defense, it was expendable. For this reason as late as 1844 no less eclectic a scholar than Wei Yüan could argue that 'To defend the open sea is not so good as to defend the ports, and this is not so important as to defend the inland waterways.'[29] The 'open sea' held no intrinsic strategic value except as a distant, first-line and expendable zone of defense. This, in turn, meant that even such important regional waters as the South China Sea could be regarded as little more than an outer defense perimeter.

During the 1870s and 1880s that view found further reflection in a series of famous Court debates over the efficacy of maritime versus continental defense.[30] Waged on the one hand by advocates for naval expansion led primarily by Li Hung-chang, and on the other, by those who favored a strategic focus on Sinkiang, Mongolia, and the northern frontier defense system led by Tso Tsung-t'ang, the debate continued for more than ten years. While Li Hung-chang, Chang Chih-tung and others managed to promote fleet expansion and modernization, and the regional flotillas were greatly strengthened, the strategic debate was won – in the main – by those who advocated the more traditional interior defense posture. Once again this was partly a function of the great cost of fleet construction, acquisition and maintenance. So too was it a reflection of Ch'ing continentalist biases. But it was also and perhaps primarily a consequence of the growing penetration of the China coast by foreign navies and armed merchantmen whose superior organization and seamanship invariably forced the Chinese into a defensive maritime posture.

Competition for the South China Sea: Annam and the French

Foreign competition for control over the South China Sea began at least as early as the arrival of the Portuguese and Spanish in the sixteenth century. The Dutch occupation of Malacca, Java and Taiwan brought an even more powerful western maritime force into the region. By the late nineteenth century the British in India, Malaya, Borneo, Hong Kong and elsewhere,

the French in Indo-China, the Dutch in Indonesia, the Japanese in Taiwan and the Americans in the Philippines virtually 'contained' China from the south. The South China Sea was effectively sealed off from significant Chinese naval penetration.

Even before the western naval powers arrived in force off the China coast, one regional power had asserted its own hegemony over part of the South China Sea and, in particular, over the Paracel Islands. Shortly before Yang Ping-nan began his *Hai-lu*, the first king of the Nguyen Dynasty of An-nan, King Gia Long, reportedly took formal possession of the Paracels in 1816. Though confirmed by one roughly contemporary French account, the event went unnoticed in the official records of China's Chia Ch'ing Emperor, and was ignored by contemporary Chinese writers.[31]

Annamite interest in the Paracel Islands had been developing during much of the previous century. The lucrative business of ship salvage provided the Annamite kings with a significant economic and military incentive toward the acquisition of these islands. As the earliest of the Annamite sources on the region, the seventeenth-century *Hung Duc (Hung Te) Atlas* reported:[32]

Various kinds of wrecked cargoes are amassed on these [Hoang Sa or Paracel] islands. Each year during the last month of winter the Nguyen rulers send to the islands an eighteen-junk flotilla in order to salvage them. They obtain large quantities of gold, silver, coins, rifles, and ammunition.

Organized into a so-called 'Hoang Sa Company' comprised of seventy men from An Vihn village in Quang-nai Prefecture, these salvage operations involved up to seven months of labor in the stripping of wrecked vessels, fishing, gathering turtles, striped conches and sea urchins, and some mining for guano.[33] They had begun sometime by the end of the seventeenth century, for official voyages are already recorded for the year 1702.

Annamite fishermen and salvage crews were not alone in these endeavors. Hainan fishermen were also engaged in these activities, and as one late eighteenth-century Annamite source noted: 'The shores of the Hoang Sa Islands [lit.: Yellow Sands Islands] are not far from Lien-chou Prefecture on Hainan, and [for this reason] our ships sometimes meet with fishing boats from our northern neighbor on the high seas.'[34]

Though the Vietnamese were not alone in the attempt to exploit the resources of the Paracel Islands, Annamite endeavors to reconnoiter the islands during the early nineteenth century were apparently deliberate and officially sanctioned. Under orders from King Minh Mang, an initial reconnaissance mission was sent out in 1834 to map the islands and calculate their resources.[35] Though a map of one island was produced, the larger goal apparently failed, and a second mission was sent in 1838 with much greater success. Details on the flora and fauna were collected, and part of this information was employed in a 'Detailed Map of Dai Nam' printed *c*. 1838.

The report recommending the second Annamite reconnaissance mission included a comment to the effect that the Paracel Islands were 'of great strategic importance to our maritime borders'.[36] That assessment obviously recalls the similar statement made almost at the same time by Yang Ping-nan.[37] In short, by both Annamite and Chinese accounts the Paracels were regarded in the early nineteenth century as a frontier defense perimeter of Vietnam.

That view was also confirmed during the mid-eighteenth century by the French admiral, M. d'Estaing. In preparing for an attack on the Viet-namese coast, d'Estaing is reported to have noted that the Paracels were important not only as an Annamite source of abandoned western cannon and ammunition, but also because Annamite naval patrols in the waters of the Paracels 'would have reported about his approaches'.[38] Perhaps for that reason, most contemporary French sources subscribed to the view that the Paracel Islands were part of the Empire of Annam.

Such western notice of the Paracel Islands apparently began in the early seventeenth century. In what was perhaps the first western reference to the islands, in 1634 the *Journal of Batavia* reported that a Dutch vessel *en route* to Taiwan capsized off 'the Paracels'.[39] Presumably aware of local salvage and pirate activities, the captain of the vessel left what remained of his cargo under the guard of fifty sailors, while he and twelve crew members somehow managed to reach the Vietnamese coast. They were promptly arrested, but upon release succeeded in establishing the first Dutch trading company in An-nan.

French interests in the South China Sea apparently began sometime toward the end of the seventeenth century, for the first recorded appearance of a French vessel in these waters, the *Amphitrite*, occurred in 1701.[40] Over the succeeding century and a half the French penetration of North and South Vietnam, as well as Southwest China, slowly but surely escalated. During the 1850s, while China was engulfed by the Taiping Rebellion and the onslaught of other western maritime powers, the process of French colonization began in earnest. Having already seized parts of Cochin China, Saigon, Hanoi, and the Red River Basin, in 1874 the French extracted a treaty from the King of An-nan making his realm a French protectorate, though still owing penultimate allegiance to the Ch'ing empire.[41]

At first, the Ch'ing Court simply protested the French incursions into the southern frontier. Several years later, after a number of skirmishes between French and Chinese forces, the Li-Fournier Agreement was signed in May 1884. China recognized the earlier French-Annamite treaty, but retained suzerainty over Vietnam and its possessions.[42] However, shortly thereafter the Sino-French War of 1884–5 broke out, and China witnessed its first major naval defeat, as well as the end of even figurative Chinese suzerainty over Vietnam. In effect, competition for control over the South China Sea spelled the eventual loss of China's southernmost domain.

Empire lost: the Sino–French War 1884–5

During the forty years before the Sino-French War a serious, if unsystematic, effort was under way to expand and modernize the Chinese navy.[43] The purchase of western ships and armaments, as well as the domestic production of modern implements of naval warfare began in the 1840s and continued throughout the nineteenth century. By the 1860s the Fu-chou shipyard was producing iron steamers under western contract and patent. By the 1870s the Fu-chou shipyard and the Kiangnan arsenal turned to the production of heavy cannon. In 1878, for example, the Kiangnan arsenal produced Armstrong-type 800-pound pieces and, slightly later, 380-pound quick-firing cannon. Other Kiangnan factories produced Krupp-type leaden-cased explosives and projectiles, Lee magazine rifles, and breech-loading Remingtons. In 1875 the Fu-chou shipyard produced the first composite ship (i.e. iron-framed with wooden skin), the 1350-ton, 250-foot *Wei Yuan*, whose English-built engine developed 750 horsepower. By 1881 underwater mines were being produced, and in 1883–4 the Fu-chou shipyard was producing composite ships up to 2000 tons with mounted Krupp pieces.[44]

On the eve of the Sino-French War China had over fifty modern naval warships divided unequally among four major fleets: a Peiyang fleet based in the Gulf of Chihli, a Nanyang fleet based in Shanghai, a Fu-chou fleet and a Canton fleet. With fifteen of the most modern vessels, the Fu-chou fleet was probably the single most important combat unit, though Li Hung-chang's Peiyang fleet was almost equally powerful. In short, at the outset of the war China did not suffer from a technological disadvantage. However, there was little or no co-ordination of these regionally based naval units, and despite their locations, the Nanyang and Canton fleets only barely participated in the Sino-French War, and the Peiyang fleet under Li Hung-chang's direction kept itself in distant reserve. The Fu-chou fleet took the brunt of the French attack, and on 23 August 1884, in little more than a quarter of an hour, much of the modern Fu-chou fleet was destroyed while still at anchor.[45]

The destruction of the Fu-chou fleet sparked a formal Chinese declaration of war. Though there were yet to be land victories against the French, the naval war was little more than a series of disasters for China. As the French moved to blockade Taiwan, the Nanyang fleet, including two German-built vessels with 8-inch guns, prepared to relieve the island. Five vessels moved from Shanghai to Ningpo in December 1884. By late January 1885 they left Ningpo intending to sail first to Fu-chou and then directly to Taiwan, but they never reached Fu-chou. Having delayed *en route*, they were surprised by the French flotilla off the Chekiang coast, and two of the vessels were either lost or intentionally scuttled, while the remaining three ships allowed themselves to be trapped in Chen-hai harbor.[46]

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In short, China lost her first modern naval war less by reason of technological underdevelopment than by virtue of command confusion, poor seamanship and the failure to create a unified maritime defense system. It was a loss that would be repeated, and for much the same reason, when Chinese and Japanese navies clashed in the north a decade later.[47] With the French absorption of Vietnam and much of Indo-China in 1885, and with the loss of Taiwan to the Japanese in 1895, China's southern oceanic front was virtually sealed. As if to make that loss complete, in 1898 the French also acquired a sizeable piece of Kuangtung Province and the Lei-chou Peninsula known as Kuang-chou Wan.[48] The South China Sea became, as it were, a French and Japanese, not to mention a British and American lake.

The defeat at the hands of the French came as another violent shock to an already weakened Confucian nervous system. The Opium Wars of 1839–41 proved a tremendous loss of face, revealed the serious weaknesses of the Ch'ing military machine, and brought the 'opening' of China to the so-called western impact. The loss of the Liu-chiu (Ryu Kyu) Islands to Japan in 1874 was also a terrible psychological blow to the Confucian imperial order, especially as it came at the hands of the once subordinate Japanese. But the war with France was especially significant. Coming after naval modernization, and bringing the loss of a vassal state with ties to China going back to the first century CE, the Sino-French War confirmed the weakness of traditional norms of naval defense, but it also helped induce a thoroughly revised concept of oceanic sovereignty. The naval catastrophe and the loss of Vietnam, as it were, wrought one of the earliest attempts by China to assert legal title to oceanic space. Thereafter, the issue of control over the South China Sea became a question of 'sovereignty'.

Conclusion: the open sea

China's defeat by the French in 1885 was certainly not the last nor even the most serious challenge to the integrity of the Confucian imperial-bureaucratic order. The destruction of the Peiyang fleet by the Japanese in 1895 was probably a more decisive catastrophe for China, not only because it brought the loss of Korea and Taiwan, but also because it confirmed what the loss of the Liu-chiu Islands had hinted in 1874; namely, the ascendance of the once subordinate Japanese. Similarly, traditional Confucian doctrines of inter-state, tribute relations had already been severely eroded by confrontations with imperial Russia on the continental frontier, and by the series of military and political confrontations with Britain and other western powers on the China coast.[49] Nevertheless, the Sino-French War served as a dramatic divide in China's long history of maritime contact with and power over the South China Sea. It served to illustrate China's slide into naval incompetence. Along the way it also initiated the modern struggle for the islands of the South China Sea.

As we have seen, between the attempted re-assertion of China's maritime

presence in the South China Sea during the mid-eighteenth century and the collapse of that presence in 1884–5, the Ch'ing reconnaissance of the island-atolls of the sea represented only a small improvement upon earlier efforts. There is, indeed, little in the literati records to confirm anything more than a geographic recognition of the existence of the islands as important traffic divides, navigational hazards, and part of an outer, essentially expendable defense perimeter. For that matter, the strategic importance of the islands was itself deemed relevant primarily to the defense of the extended empire in Vietnam, rather than to the defense of southern China. Save for some greater detail, the historical evidence of the mid-to-late Ch'ing period thus argues little in favor of Chinese control over and interest in the islands of the South China Sea. Though China's interests in the region were not abandoned and a concerted effort was made to re-establish naval defenses on the coast, attention to the seas and to the Pratas, Paracel, and Spratly Islands was not substantially enhanced.

The loss of Vietnam and the loss of control over the South China Sea meant that the sea, now open to foreign domination, presented a strategic threat to China itself. As such the now open sea required the development of new strategies in defense of China. One of those strategies was the further expansion of modern naval weaponry. But another, and perhaps the most important long-term strategy, was the emergence of a new instrument of defense, namely, the legal notion of territorial or spatial sovereignty. That is to say, the outcome of China's maritime decline was not further contraction, but rather a movement toward the assertion of China's historic and legitimate claims to power in and ownership over the waters and the islands of the South China Sea. Ironically, naval decline and defeat provided the seeds for a new-found concern about China's position in the South China Sea. Those seeds would develop into a newly structured sense of Chinese administrative and political sovereignty over the land and the water.

Notes

1 Joseph Needham, *Science and Civilization in China* (Cambridge, England: Cambridge University Press, 1971) vol. 4, pt 3, 484. On ship construction during the height of the Ming maritime expansion see Pao Tsun-p'eng, *Chung-kuo hai-chün shih*, vol. 1, 287–454. For additional background, see Lo Jung-pang, 'The emergence of China as a sea-power during the late Sung and early Yüan periods', *Far Eastern Quarterly*, 14 (1955), 489.

2 Needham, *Science and Civilization in China*, vol. 4, pt 3, 526–7.

3 ibid., 482. Li Chao-hsiang, *Lung-chiang ch'uan-ch'ang chih* (A Record of the Shipyard on the Dragon River), written in 1553.

4 ibid., 526. Additional details on the completion of the Grand Canal under the direction of the Ming engineer Sung Li may be found in Wang Hui, *Chung-kuo li-shih ti-li* (The Historical Geography of China),

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Fearful of further Japanese encroachments, Shen urged the settlement of the islands by 'legitimate' Chinese companies, workers and farmers. However, that recommendation was fraught with at least two problems. As Shen himself warned, anyone who might 'wish to undertake development of the area must first come to an agreement with those whose permit was cancelled for the [use of] the latter's equipment'. No record of a legal dispute over this equipment has survived, and as Sino-Japanese relations rapidly deteriorated toward war, the issue of an estate settlement was, in any case, soon rendered moot.

Assuming the availability of this equipment, moreover, a settlement with the Japanese would have its own peculiar repercussions. Shortly after the expedition returned to Canton, a group of forty workers were brought from Kuangtung to work the guano/phosphate deposits of Woody Island. Upon arriving, however, they soon discovered that 'because of the anti-Japanese boycott, we are not permitted to make use of the resources of the islands'.[24] Japanese equipment and the Japanese control of the Paracel Archipelago Industries Company property meant 'Japanese phosphate'. As a result, the Kuangtung workers were recalled home. The point of China's sovereignty had been made, but ironically at the expense of the Chinese occupation and development of the islands. In the meantime, throughout the 1920s and 1930s, foreign pressures on the Paracels and on China's claim to the islands escalated.

The Délégation des Paracels

If the Japanese were first to exploit the guano/phosphate reserves of the Paracels on a commercial scale, they were not the only foreign power interested in the islands. The French were also actively engaged in promoting their own control of the Paracels. As we have seen, that interest had been developing since the late nineteenth century, but it was not until the early twentieth century that concerted efforts were made to absorb the islands into French Indo-China.

The earliest official French inspection of the islands came in 1925 when a group of scientists from the Oceanographic Institute at Nha Trang visited the area and reported on the large guano/phosphate deposits of the islands.[25] As we have seen, in July of that year a French naval vessel was reported to have landed at Woody Island, and we may surmise that the visit was at least partly in conjunction with the survey efforts of the Nha Trang group. The follow-up visit reported for July 1926 may also have been related to French endeavors to survey the islands and waters of the Paracels.

It was not until 1928, as we have seen, that the Chinese government became aware of these French survey efforts. Equally important, contemporary French accounts of the area (and later Republic of Vietnam accounts of French activities during the 1920s are strangely silent about the presence of Ho Jui-nien, the Japanese-financed phosphate company, and

Chinese reactions to the Ho Jui-nien affair. That they knew of those activities is made likely by the 1925 and 1926 visits to Woody Island. That they also knew about the Japanese involvement in the Paracels is further confirmed by virtue of the fact that the *Mitsui Bussan Kaisha* approached the French for permission to fish the waters and mine the guano deposits of Robert Island at the same time that the Southern Prosperity Industries Company began operations on Woody Island.[26]

French reticence about the Ho Jui-nien affair may have been due to their reluctance to offer even tacit recognition of a Chinese claim on the Paracels. Indeed, despite the petition of the *Mitsui Bussan Kaisha* to develop Robert Island, the French were likely already aware that the Japanese had at least tacitly recognized Chinese sovereignty over the Paracels. By way of confirmation, in 1927 the Japanese consul at Hanoi began discussions with the French over the status of the Spratly Islands, but 'according to instructions from the Japanese government, the Paracels were expressly left outside of [these] discussions, [as] the ownership of these islands [were] not a matter of dispute with France'.[27] That the status of the Paracels was not considered a matter of dispute with France did not mean Japanese recognition of French claims over the islands (as later claimed by France and the Republic of Vietnam).[28] On the contrary, the statement merely intended what it said, i.e. Japan did not regard the status of the Paracels to be subject to negotiations with France. As Japan would make clear on 4 July 1938, the status of the Paracels was a question of concern to China and Japan, and no 'third party' (i.e. France) had any 'right to occupy or claim any islands under Chinese sovereignty'.[29]

There was, in fact, no formal French claim to the Paracels until 4 December 1931 when, in response to Chinese efforts to open the islands for guano mining, the Quai d'Orsay filed an official protest and note with the Chinese legation in Paris.[30] Based on the incorporation of the islands by King Gia Long in 1816 and the construction of a pagoda and stone tablet on one of the islands by King Ming Mang in 1835, France claimed the Paracels for its Indo-Chinese empire. Accordingly, seven months later, on 15 June 1932, the Governor-General of Indo-China decreed that the Paracels would be incorporated into Thua Thien Province (i.e. a transfer from their historical association with Quang Nai Province) and would henceforth be known as the 'Délégation des Paracels'.[31]

China's response to the December 1931 note was slow in coming, but one month after the French decree of incorporation, on 27 July 1932, Nanking instructed the Paris legation to reject the French claim. Moreover, in another note of 29 September 1932 China argued that the 1887 Sino-French Convention clearly indicated that the Paracels belonged to China, and that the approval of guano mining licenses by the Kuangtung Provincial government had re-confirmed Chinese authority. As regards the Vietnamese actions during the early nineteenth century, Nanking requested the French to identify the particular island on which King Ming Mang's pagoda

and tablet were constructed, and went on to note that the actions of a vassal state in no sense abrogated China's ultimate authority.[32]

The French, of course, remained unconvinced. On 27 September 1933 the Quai d'Orsay filed another note with the Chinese legation in Paris to the effect that the 1887 Sino-French Convention was not applicable to the Paracels but only to the Mancay area of North Vietnam, for otherwise the delimitation line would, in fact, cut across the central part of Vietnam. In addition, they argued that Vietnam had claimed the islands as of 1816, while the earliest Chinese purported incorporation of the Paracels was not until 1909 (i.e. actually 1908) when Admiral Li Chun was sent to inspect the islands.[33] Though ignoring China's claim of suzerainty over the vassal kings of Vietnam, France inadvertently recognized the 1908 expedition as the beginning of China's formal claim to the islands.

Nanking, for its part, responded with another note on 20 March 1934. China here reiterated its claim based on the 1887 delimitation line and argued that the treaty obviously had nothing to do with the central part of Vietnam, for it had specifically mentioned 'islands east of the line'. Similarly, Nanking pointed out that the treaty made no mention of any exceptions. Furthermore, Nanking again noted that Vietnam was a tributary state in 1816, and that references to the islands went back many centuries in Chinese sources. Finally, the ROC note added the point that China had exercised effective authority for the past three decades.[34]

France never answered China's arguments regarding the 1887 delineation line. After years of silence, and apparently in response to several Chinese protests over French encroachments in the islands, on 28 February 1937 France offered to settle the dispute through international arbitration.[35] However, China refused to recognize the legitimacy of the issue and simply reiterated its own sovereignty over the Paracels. Finally, on 3 July 1938 the French home government formally declared its ownership and occupation of the entire archipelago.[36] While China's Ambassador to Paris protested the event, the ROC was already fully engulfed in the Sino-Japanese War and was unable to offer any resistance to French occupation of the Paracels.[37] For that matter, the French occupation of the islands in July 1938 was itself a by-product of the Sino-Japanese War. France, apparently with British agreement, took the Paracels in order to outflank Japanese units operating in the vicinity of Hainan Island and the French protectorate of Kuang-chou Wan. It was, no doubt, for this reason that Japan issued its own protest to France.[38]

From approximately 1931 to the early 1940s the French slowly but steadily expanded their presence in the Paracels. The primary center of their activities was Pattle Island. There they established the main administrative offices for the archipelago as a whole. There too, in 1938, they built a weather station that would thereafter serve as the internationally recognized weather-data center for the archipelago.[39] Finally, on 5 May 1939 the Governor-General of Indo-China declared that the archipelago

was to be divided into two compartments, the Amphitrite Group and the Crescent Group.

The administrative division of the Paracels into two compartments reflected a basic geopolitical and economic divide within the archipelago. On the one hand, as noted earlier, Chinese interests in the islands focused on the Amphitrite Group and especially Woody Island (Lin-tao). The French, on the other hand, concentrated primarily on the Crescent Group. The 1925 French survey, for example, while touching upon Woody Island, focused attention on Robert Island (Kan-ch'uan tao) and Pattle Island (Shan-hu tao). Though both were smaller than Woody Island, they shared much the same ecological base, were also richly endowed with guano deposits, and were approximately 100 km closer to the Vietnamese coast. Pattle Island was chosen as the center for French interests and administration. With the incorporation of the archipelago in 1932, and even after the division of the islands into two administrative compartments, Pattle Island continued to serve as the center for French activities.[40]

In short, there were two centers of gravity in the Paracel Islands during the 1920s and 1930s. In the northeast, Woody Island acted as the core of Chinese interests. In the southwest, Pattle Island served a similar function for the French. Though little more than 100 km apart, the two centers acted as nodes directing traffic and phosphate in two different directions: the one toward China and Taiwan, the other toward Vietnam and the whole of French Indo-China. If there was an active link between the two, it was provided first and foremost by the Japanese phosphate companies. Indeed, the unification of the Paracel Archipelago came not as a consequence of Chinese or French actions, but rather as a by-product of Japan's drive to the south.

Japan's 'New South Archipelago' (Shinnan Gunto)

The Japanese expansion to the south had been under way since their 1874 incorporation of the Liu-chiu (Ryu Kyu) Islands. With the absorption of Taiwan in 1895, Japan acquired a major foothold from which to expand commercial, political and military interests into the South China Sea. As noted earlier, that expansion temporarily included Pratas Island in 1907–8, and involved the infiltration of the Paracels through Japanese phosphate companies operating in the open and with the covert assistance of Ho Jui-nien. In addition, during the late 1920s and early 1930s Taiwan-based Japanese phosphate companies were also operating in the Spratly Islands. By 1927, as we have seen, Japanese interests in the Spratlys were such as to require a series of discussions over the status of these islands between the French and the Japanese consul at Hanoi. Indeed, by the mid-1930s Japan and France were in direct confrontation over the Spratlys, and later in the decade over the Paracels as well.

The French-Japanese discussions of 1927 were induced by the growing

presence of French interests in the Spratly Islands, and in particular by the appearance of the first French survey vessel in the islands during that year. Despite Japanese concerns, the French presence in the Spratlys continued to escalate. In April 1930 France declared formal possession of Spratly Island (Nan-wei tao). Three years later the French also declared ownership of Itu Aba Island (T'ai-p'ing tao), Thi Tu Island (Chung-yeh tao), and a group of three small islets and sand-banks. On 26 July 1933 the *Journal Officiel de la République Française* formally notified the world that France had taken possession of these islands, and that they would henceforth come under the protection of the French navy.[41]

The event of French occupation went virtually unnoticed by most of the world's governments. China appears to have remained silent, and the only formal protest against French occupation of the Spratlys came from Japan. The French home government was served notice that the occupation of the Spratlys was considered an infringement upon the rights of Japanese commercial interests in the islands, as the Spratlys had been occupied and mined for years by various Japanese phosphate companies. For the time being, however, Japan merely protested the French actions. Later, in July 1938, they would also protest the French absorption of the Paracels. Nevertheless, in both cases, it was not until 1939 that Japan chose to act.

By the late 1930s, the Sino-Japanese War and the beginnings of World War II in the Pacific were well under way. By early 1939 almost the entire coast of China had been seized by Japanese forces. In the south British Hong Kong and the French leasehold of Kuang-chou Wan avoided Japanese invasion, but on 28 February 1939 Hainan Island came under the control of Japanese army and navy units. Japan thereby sealed off the northeastern edges of the Gulf of Tonkin.[42] On 1 March 1939 Japanese naval and infantry units moved into the Paracel Islands, and on 30 March 1939 they occupied the Spratly Islands as well.[43] On 9 April 1939 Japan declared complete occupation of Pratas Island, the Paracels and the Spratlys.[44] A few days later Japan announced that these three island groups, now under the jurisdiction of the Governor-General of Taiwan and administered through Kao-hsiung District, would henceforth be known as the 'New South Archipelago'.[45]

At the time, the chief rationale for the Japanese occupation of the islands was said to be strategic defense in the light of French naval and air power operating in the South China Sea. As summarized in one proclamation:[46]

Since a French naval squadron already protects Saigon and Kuang-chou Wan, and this further has been augmented by air and submarine bases, in the view of our naval authorities a new situation in the deployment of naval power in the South China Sea has been created. Hence, this area [i.e. the 'New South Archipelago'] is regarded essential to the national defense.

As the Spratly and Paracel islands were ostensibly under the control of France, it would appear that war between French Indo-China and Japan

had begun as of March 1939. Indeed, the Paris government filed a strong protest against the Japanese occupation of the Spratlys, though curiously ignoring the Paracels. Equally curious, no record of fighting between French and Japanese units in either the Paracels or the Spratlys is available. Moreover, as we have seen, in May 1939, two months after the Japanese occupation of the Paracels, the Governor-General of French Indo-China declared the division of the Paracels into two separate administrative compartments, and French personnel took up posts on Pattle and Woody Island. For that matter, later accounts note that French personnel operated in these posts at least until March 1942.[47]

In the spring of 1940, France had fallen under Nazi domination. By this time too Japan controlled the approaches to northern Vietnam, and on 22 September 1940 an agreement was reached allowing Japanese use of Vietnamese ports. Yet, even allowing for the fact that the French Indo-China regime was under Vichy control, a curious discrepancy arises in the chronology of French-Japanese conflict in the Paracels and the Spratlys. If the Japanese were, in fact, so concerned about French air and naval power in the South China Sea during the spring of 1939, how was it that the French Indo-China regime not only moved to further the administrative absorption of the Paracels, but also succeeded in placing administrative personnel in the islands two months *after* the Japanese occupation?

Unfortunately, the extant records offer faint assistance in addressing this discrepancy. By the summer of 1940, French activities in the Paracels and Spratlys were, in any case, Vichy operations presumably undertaken with the tacit or overt approval of Japan. As Japan's control over the entire South China Sea basin expanded during 1940–1 with attacks on Hong Kong, Malaya, Singapore, and finally the Philippines, the issue of French/Vichy interests in the Paracels and Spratlys was rendered largely moot. Indeed, by February 1943 the circle was drawn tight when, with the agreement of the Vichy government, Japanese forces occupied the French leasehold of Kuang-chou Wan and thereby effectively cut off all but the most clandestine ocean-front access to Chinese nationalist forces holding out in Szechuan Province.[48]

Japan's occupation of the island-atolls of the South China Sea had at least two important consequences. In order to consolidate their hold over the islands and the shipping lanes of the South China Sea, the Japanese constructed air and naval bases, a repair base, weather and radio stations, and various other installations on the islands, and especially in the Spratlys. Itu Aba Island (T'aip'ing tao) became particularly important as a submarine base for the interdiction of shipping throughout the area. In effect, much of the modern infrastructural base in the Spratly Islands owes its origins to the Japanese occupation.

However, the principal legacy of Japanese rule was political. On the one hand, Japanese rule meant the overall administrative unification of all four

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island-atolls into one unit, the 'New South Archipelago'. On the other hand, the defeat of Japan left a political vacuum into which all the old and at least one new claimant could enter. That vacuum was itself reinforced by several legal ambiguities intentionally built into the 1951 and 1952 peace treaties with Japan. Thereafter, furthermore, the status of the islands of the South China Sea was inextricably tied to the post-war realignment of power in the Western Pacific and, in particular, to the machinations of the so-called 'cold war' era.

Conclusion: a question of sovereignty

Whatever the merits of their respective historical positions, the legal grounds for both Chinese and Vietnamese claims to the islands begin in the late nineteenth-century era of 'unequal treaties' and arise, in particular, from the 1887 Sino-French Convention on Boundary Delimitation. However, as we have seen, the appropriate article of that Convention is open to several different interpretations. According to the pertinent line:

The islands which are east of the Paris meridian of 105° 43' east longitude [i.e. 108° 3' east of Greenwich], which is to say that north-south line that passes through the eastern part of Tch'a-Kou or Quan-chan [i.e. Tra-co] and which forms the boundary, are also allocated to China. The island of Go-tho [i.e. Kao Tao] and other islands that are west of this meridian belong to Annam.

Taken at face value, the Convention boundary (i.e. the meridian 108° 3' East longitude) neither confirms nor denies allocation of the Paracel and Spratly islands. Drawn to the south, the meridian intersects the Vietnamese mainland between Hue and Da Nang, crosses the highlands near Kontum, Pleiku and Ban Me Thuot, and eventually exits into the South China Sea just west of Phan Thiet.

If applied according to the Chinese view, the delimitation line crossed the Gulf of Tonkin and South China Sea in such a way as to leave the Paracels far to the east, hence well within the area allocated to China. However, despite the failure of the Convention to mention a northern or southern latitudinal terminus, the boundary described here appears to pertain only to the islands in the immediate vicinity of Tra-co. Viewed in this manner, the meridian identified the boundary in the Tra-co/Mon-cai area and, as per the later French argument, did not apply in any general fashion to the Gulf of Tonkin or South China Sea.

Whichever of these views is correct, there is nothing in the Convention or in subsequent agreements between China and Vietnam to provide for agreement over survey techniques, the terminal points of the boundary, or points from which to measure equidistant lines in the Gulf of Tonkin. The legacy of the 1887 Convention was simply to confuse and exacerbate the legal grounds for both Chinese and Vietnamese claims. Indeed, the boundary at Mon-cai and through the Gulf of Tonkin has remained hotly

one or another inheriting authority, as we shall see, left the legal status of the islands almost totally unresolved. Moreover, that failure created a legal and political vacuum which, together with the post-war realignment of power in the region, acted to condition the status of all claims to the islands thereafter. Indeed, the modern contest for the islands is a function of that vacuum and, in turn, reflects the larger contest for power in post-war Asia.

Notes

1 One fundamental distinction between traditional imperial systems and the modern nation-state resides in the latter's emphasis on spatial loyalty, group values aimed to defend a national territory, and the emergence of the rule of law *vis-à-vis* that of particular individuals. On the general point see especially S. N. Eisenstadt, *The Political Systems of Empires* (New York, The Free Press, 1963), and Hans Kohn, *The Idea of Nationalism* (New York, The Macmillan Company, 1944), 3–26, 187–259.

   As applied to China, and the transition from the Confucian imperial bureacratic system to the nation-state, see especially Joseph R. Levenson, *Confucian China and Its Modern Fate: A Trilogy* (Berkeley, University of California Press, 1965), parts II and III. Also see J. R. Levenson, 'The province, the nation and the world: the problem of Chinese identity', in A. Feuerwerker, R. Murphey and M. Wright, eds., *Approaches to Modern Chinese History* (Berkeley, University of California Press, 1967), 268–88.

2 Though Confucian institutions of governance have long been subject to exhaustive analysis, traditional Chinese concepts of political-administrative space and boundary delineation have not been well studied in the west. Hence, for example, the origins, the rationale behind and the spatial dynamics of internal administrative areas (the *chou-hsien* system), though treated at great length in *fang-chih* (local gazetteers), the geographical sections of dynastic histories and many encyclopedias, have yet to be much examined by western scholars. Notable exceptions to that statement can be found, but these are largely limited to the Ch'ing Dynasty. See, for example, the following: J. R. Watt, *The District Magistrate in Late Imperial China* (New York, Columbia University Press, 1972); Ch'u T'ung-tsu, *Local Government in China under the Ch'ing* (Cambridge, Mass., Harvard University Press, 1962); Sybille van der Sprenkel, *Legal Institutions in Manchu China* (London, The Athlone Press, 1962); Derk Bodde and Clarence Morris, *Law in Imperial China* (Cambridge, Mass., Harvard University Press, 1967); Hsiao Kung-ch'uan, *Rural China: Imperial Control in the Nineteenth Century* (Seattle, University of Washington Press, 1960); and Shuzo Shiga, 'Criminal procedure in the Ch'ing dynasty: with emphasis on its administrative character and some allusions to its historical antecedents', *Memoirs of the Research Department of the Toyo Bunko* (Tokyo, Toyo Bunko, 1974), No 32, cf. In addition, for a broad geographical analysis of administrative areas in modern China see

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Joseph Whitney, *China: Area, Administration and Nation Building* (Chicago, University of Chicago, Department of Geography, Research Paper No. 123, 1970).

3   For the most part, traditional Chinese concepts of frontier space and boundary delineation have been viewed as a function of classical Sinocentrism, the tributary system, the problem of 'barbarian management', and more specifically in terms of the history of particular frontier zones, the Great Wall, the Manchu's 'willow palisade' and other cultural, quasi-political boundaries. Here too, however, the role of frontier zones and boundaries as jurisdictional limits, and the systems of boundary delineation by natural divide, stone marker, cartographic device, official démarche or pass and other means remain little studied. Furthermore, the process whereby frontier zones were incorporated into the regular *chou-hsien* administrative apparatus of the state, and the evolution of modern boundary concepts since the Treaty of Nerchinsk in 1689, have not been studied in detail.

On the various ramifications of traditional frontier concepts and foreign relations see the collection of essays in J. K. Fairbank, ed., *The Chinese World Order* (Cambridge, Mass., Harvard University Press, 1968), especially Lien-sheng Yan, 'Historical notes on the Chinese world order', 20–33; Mark Mancall, 'The Ch'ing tributary system, an interpretive essay', 63–89; and Benjamin I. Schwartz, 'The Chinese perception of world order, past and present', 276–88. On traditional problems of 'barbarian' and frontier management see especially Yü Ying-shih, *Trade and Expansion in Han China: A Study in The Structure of Sino-Barbarian Economic Relations* (Berkeley, University of California Press, 1967), and for the Ch'ing period see Robert H. G. Lee, *The Manchurian Frontier in Ch'ing History* (Cambridge, Mass., Harvard University Press, 1970).

On the history of frontier fortifications and boundaries see, for example, the following: Owen Lattimore, 'Origins of the Great Wall of China: a frontier concept in theory and practice', *The Geographical Review*, xxvii, 4 (1937), 529–49. Richard L. Edmonds 'The willow palisade of Tungpei: The changing role of the last major frontier fortification built in traditional China', *Annals of the Association of America Geographers*, 69, 4 (December 1979), 599–621. Also see Marwyn S. Samuels, 'Kung Tzu-chen's new Sinkiang', *Annals of the Association of American Geographers*, 66, 3 (September 1976), 416–27.

4   The definition of maritime boundaries was not codified as such, but rather measured in terms of such functional criteria as the level of pirate activity, vessel size, ship destination and the like. The maritime regulations frequently distinguished between those who sailed within the 'inner sea' (*hai-nei*) or remained subject to imperial authority, and those who ventured into the 'outer sea' (*hai-wai*) or went beyond imperial authority (i.e. merchants, pirates and foreigners). As the Ch'ing regulations offered no fixed spatial definition of these zones, they cannot be considered the legal or even functional equivalents of the European notions of 'territorial waters' and 'high seas'. Indeed, given the vagaries of imperial authority on the coast and especially in such

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The post-war contest

In 1945, by order of the Supreme Allied Commander, all Japanese forces north of the 16° North latitude line were required to surrender to the Republic of China. Extended across Vietnam and the South China Sea this meant that all Japanese-held territories and troops north of Da Nang and in the Paracel Islands came under ROC jurisdiction. Furthermore, although MacArthur's directive clearly excluded the Spratly Islands, the ROC also ordered all Japanese troops in the Spratlys, along with those in the Paracels, to report to the Hainan Island port of Yü-lin.[1] Hence, by MacArthur's decree and by ROC action, the end of World War II in the Pacific witnessed the return of Chinese authority to the Paracel Islands and an indirect assertion of Chinese authority over the Spratly Islands as well. In both cases, however, ROC jurisdiction was soon subject to challenge.

The ROC in the Paracels and Spratlys

Despite the surrender decrees, there is no evidence to confirm a Chinese or, for that matter, any other formal occupation of the Paracel and Spratly Islands from August 1945 to July 1946. When China returned control of North Vietnam to France in March 1946, the status of the islands went unmentioned.[2] However, by the summer of 1946 Chinese concerns about French movements into the Spratlys resulted in the first post-war Chinese naval expedition to the islands. Having had reports of various unidentified vessels operating in the region, on 27 July 1946 a Central News Agency dispatch (datelined Taipei) noted that China's naval command had 'decided to send a battleship on patrol of the South China Sea to take possession of the area for a second time'.[3]

Though several of these unidentified vessels turned out to be American ships on patrol off the Philippines, a small French task force was also discovered to have entered the Spratlys and there deposited a number of Vietnamese on various islands. A few months later, in October 1946, a French battleship named the *Chevreud* was also reported to have landed crews on Spratly Island (Nan-wei tao) and Itu Aba Island (T'ai-p'ing tao).

Indeed, the crew of the *Chevreud* placed a stone marker on Itu Aba Island to record their arrival as follows:[4]

France
Française
Ile Itu Aba

Astrolobe (10–4–33)
Chevreud (5–10–46)

The marker thus recorded the 1933 French occupation of the Spratly Islands and asserted the renewal of French authority as of 5 October 1946. Though the French neither occupied Itu Aba Island nor declared formal sovereignty over the Spratly group, the placement of the stone marker obviously inferred French ownership. Furthermore, the event occurred at a time when the island was presumably not occupied by Chinese forces.

Mindful of earlier French interests in the Paracels and Spratlys, the ROC responded by sending a naval task force to take formal possession of both island groups. On 9 December 1946 a four-ship flotilla composed of the vessels *T'ai-p'ing*, *Chung-yeh*, *Yung-hsing* and *Chun-chien* left Canton for the South China Sea.[5] While the *Yung-hsing* and *Chun-chien* proceeded to the Paracels and there took possession of Woody Island (Lin-tao), the *T'ai-p'ing* and *Chung-yeh* moved on to the Spratlys to take Itu Aba Island (T'ai-p'ing tao). After the return of the *Yung-hsing* and *Chun-chien* to Canton in January 1947, the ROC declared the formal occupation and incorporation of the Paracel Islands. Though no mention was made of the Spratlys at that time, this was apparently due to the fact that the *T'ai-p'ing* and *Chung-yeh* had then yet to return to Canton with their report.

France officially objected to the Chinese occupation of the Paracel Islands almost immediately.[6] Indeed, a French battleship, the *Tonkinois*, was sent to the Paracels only a few days after the ROC announcement of incorporation. However, finding Woody Island fully occupied by Chinese troops, the French simply withdrew to Pattle Island (Shan-hu tao) and there re-established their old administrative center. The old functional division of the archipelago was thus re-created and it remained in force for the next twenty-seven years.

While China did not specifically announce incorporation of the Spratly Islands, on 1 December 1947, one year after the ROC occupation of the Paracels and Spratlys, all four island groups in the South China Sea were formally incorporated into Kuangtung Province. At the same time, it was announced that the actual administration of Pratas Island, the Paracels, Macclesfield Bank and the Spratly Islands would be assumed by a special 'Tung-Hsi Nan-sha Archipelagos Administration District', temporarily under the command of the Chinese navy.[7] And, to implement that decision, on 12 December 1947 the first Chinese naval administrator for the Spratly Islands arrived to take up his post on Itu Aba Island.[8]

France issued no formal protest over the events of December 1947, but this is at least partly explained by the level of turmoil in Indo-China after the summer of 1946. Faced with the ruin of their empire at the hands of the Vietminh, the French may well have overlooked the Chinese occupation of the Spratlys. In any case, the direct French interest in the island-atolls came to an end with the emergence of the new state of Vietnam. Though some French troops were 'intermittently stationed' in the Paracels until 1956, France officially ceded its control in the archipelago to Vietnam on 15 October 1950.[9] Though no similar act of devolution occurred with the Spratly Islands, Vietnam inferentially acquired the French claim to the Spratlys as well

At the same time, of course, the ROC was faced with the loss of mainland China to the new People's Republic of China. By May 1950 ROC forces on Hainan Island and in the Paracels were withdrawn to Taiwan, and their positions were immediately assumed by units of the People's Liberation Army.[10] ROC forces were also apparently withdrawn from the Spratlys as well, and from May 1950 to July 1956 the Chinese (ROC) base on Itu Aba Island was abandoned.[11] In the meantime, the strategic and political contexts of the claims to the islands changed dramatically. The status of the islands was soon to be caught in the complex web of the 'cold war', the earliest evidence of which came with the San Francisco Peace Conference in September 1951.

The San Francisco Peace Treaty (1951)

Two different, if related, peace treaties with Japan came to impinge on the immediate post-war status of the islands of the South China Sea. The first of these was the San Francisco Treaty signed on 8 September 1951 and the second was the Sino-Japanese Peace Treaty signed on 28 April 1952. In both cases the most relevant text arises from Article 2 and specifies that 'Japan renounces all rights, title and claim to the Spratly Islands and to the Paracel Islands.'[12]

An obvious ambiguity arises here by the fact that the renunciation did not entail devolution or the reversion of territory to one or another previous owner or claimant. Article 2 of the San Francisco Treaty is consistent in that regard, for all territories mentioned are simply renounced with no specified recipients, though Korea was proclaimed independent by the first item of that Article. Item (b) of Article 2, for example, notes that 'Japan renounces all right, title and claim to Formosa and the Pescadores.' Similarly, item (c) declares that 'Japan renounces all right, title and claim to the Kurile Islands, and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of 5 September 1905.'[13]

That China was the intended recipient of Formosa and the Pescadores was clear, if only by the lack of other obvious candidates. It was also made

Communist, Taipei (Nanking) or Peking could legally assume such sovereignty? Which could legally or 'justly' implement the Chinese claim? Which could or would choose to implement its claim regardless of the legalities involved? While most world governments recognized one or the other, for the next quarter of a century the issue of technical sovereignty remained only partially resolved. In the meantime, events outdistanced the ambiguities of the treaties and filled the vacuum with 'facts' conducive to conflict.

The Cloma incident

At the time of the San Francisco Peace Conference and during the succeeding four years the deployment of forces in the islands of the South China Sea was relatively simple. In the Paracels, Vietnamese and some French troops occupied Pattle Island, while Chinese People's Liberation Army forces maintained a garrison on Woody Island. In effect, the Republic of Vietnam held control of the Crescent Group, while the PRC controlled the Amphitrite Group. Pratas Island continued to be held by ROC army and navy units. The withdrawal of ROC forces from Itu Aba Island meant that the Spratly Islands were effectively deserted, though the islands continued to be used by Hainan, Vietnamese and other fishermen.

The abandonment of the Spratly Islands during the period 1950–6 was to prove the source of much confusion and an international incident in the spring of 1956 when they were suddenly 'discovered' and claimed by an enterprising Filipino businessman, Tomas Cloma. What followed was an incident that not only signaled the first appearance of a nascent Philippine claim to the islands, but also served as a catalyst directing the attentions of China, Vietnam, and others to the unresolved status of the Spratlys and the Paracels as well.

There were, in fact, two different groups actively engaged in private efforts to develop and claim the Spratly Islands during the early 1950s. The earliest of these was led by an American named Morton F. Meads who, together with several compatriots, established a number of settlements in the islands. They also established their own nation-state called the 'Kingdom of Humanity/Republic of Morac-Songhreti-Meads'.[20] The Meads colony would later prove a source of both amusement and consternation, but in the early 1950s it went almost unnoticed. Under the orders of President Magsaysay an official Philippine mission to make contact with the government of the Kingdom/Republic was sent out in 1951, but the mission failed because the government could not be found.[21]

By far the most serious group of private interests operating in the Spratlys was that led by Tomas Cloma. Owner of a prosperous fishing fleet and private maritime training institute, Cloma was anxious to open a cannery and to develop the guano deposits in the Spratlys. Claiming that he had 'discovered' the islands in 1947 and that he had established several colonies

in the islands by 1950, Cloma made his first public moves in the spring of 1956. On 11 May 1956 Cloma, his brother and a crew of forty men set out on one of the institute's training vessels to take 'formal possession' of the islands. They raised the Philippine flag on various islands, including Itu Aba, and a few days later proclaimed their new possession as the 'Archipelago of Freedomland (Kalayaan)'.[22]

On 15 May 1956, after having informed the Philippine and world press, Cloma sent a note to the then Vice-President and Foreign Secretary, Carlos Garcia, informing the government that he and other citizens of the Philippines had claimed the area in their own behalf, and were then in the process of surveying and occupying the islands. He noted that the area in question amounted to some 64,976 square miles located 300 miles west of Palawan, and that it was 'outside Philippine waters and not within the jurisdiction of any country'.[23] He also emphasized the point that the claim was based on 'rights of discovery and/or occupation' and attached a map of the area claimed. Despite the wholesale renaming of the islands, the map itself clearly indicated that Kalayaan included most of the Spratly Archipelago. The claim as shown on Cloma's 'Map of Freedomland' included all the major islands of the Spratlys, i.e. Spratly Island (Nan-wei tao), Itu Aba Island (T'ai-p'ing tao), Nam Yit Island (Hung-hsiu tao) and Thi Tu Island (Chung-yeh tao), as well as such important reefs and shoals as North Danger Reef in the northwest, and Mariveles Reef (Nan-hai chiao) and Investigation Shoal (Hai-k'ou sha or Yu-ya-an t'an) in the south.

Another note from Cloma followed on 21 May 1956 and further clarified his own views on the issue of the sovereignty. He noted that:[24]

The claim was made by citizens of the Philippines, and not 'in behalf of the Government of the Philippines', because we were not authorized to do so. This will, however, have the consequent effect of the territory becoming part of the Philippines. For this reason it is hoped and requested that the Philippine government support, back, and protect our claim and not present another claim in the United Nations because this might have the effect of encouraging and inviting opposition from other countries.

Cloma had obviously spent some time studying the possibility of claims 'from other countries'. He was also apparently concerned that the government of the Philippines might take some independent action that would jeopardize his own initiative. Partly for this reason, on 6 July 1956 Cloma declared the establishment of a separate government for the 'Free Territory of Freedomland', with a capital at Pag-asa Island (i.e. Flat Island), and with himself as 'Chairman, Supreme Council of State'.

The official response of the Philippine government was purposefully equivocal. In December 1956, after another series of notes from Cloma and much press coverage, Vice-President Garcia finally responded with a formal note. According to the latter:[25]

Insofar as the Department of Foreign Affairs is concerned, it regards the islands, islets, coral reefs, shoals, and sand cays comprised within what you call 'Freedomland',

with the exclusion of those belonging to the seven-island group known internationally as the Spratlys, as *res nullius*, some of them being newly-risen, others marked in international maps as uncharted and their existence doubtful, and all of them being unoccupied and uninhabited; which means, in other words, that they are open to economic exploitation and settlement by Filipino nationals, who have as much right under international law as nationals of any other country to carry on such activities, so long as the exclusive sovereignty of any country over them has not been established in accordance with the generally accepted principles of international law, or recognized by the international community of nations.

As regards the seven-island group known internationally as the Spratlys, the Philippine government considers these islands under the *de facto* trusteeship of the victorious Allied Powers of the Second World War, as a result of the Japanese Peace Treaty, signed and concluded in San Francisco on September 8, 1951, whereby Japan renounced all its right, title and claim of the Spratly Islands and to the Paracel Islands, and there being no territorial settlement made by the Allied Powers, up to the present with respect to their disposition. It follows, therefore, that as long as this group of islands remain in that status, it is equally open to economic exploitation and settlement by nationals or any members of the Allied Powers on the basis of equality of opportunity and treatment in social, economic, and commercial matters relating thereto.

After further comment noting that the Philippines 'is one of the Allied Powers', Vice-President Garcia went on to conclude that:

In view of the geographical location of these groups of islands and islets embraced within 'Freedomland', their proximity to the western territorial boundaries of the Philippines, their historical and geological relations to the Philippine archipelago, their immense strategic value to our national defense and security, aside from their economic potential which is admittedly considerable in fishing, coral and sea products, and in rock phosphate, assuredly the Philippine government does not regard with indifference the economic exploitation and settlement of these uninhabited and unoccupied groups of islands and islets by Philippine nationals so long as they are engaged in furtherance of their legitimate pursuits.

Despite the appearance of some concessions to the Cloma group, Vice-President Garcia's note was an almost perfect example of equivocation. Among the more important caveats made explicit was the artificial distinction between 'the seven-island group known internationally as the Spratlys', and the group of islands, islets, reefs, shoals, and banks known to the Cloma group as 'Freedomland'. Assuming that this distinction might hold, the Philippines would recognize the legitimacy of the Cloma claim only 'so long as the exclusive sovereignty of any country . . . has not been established'. Similarly, in so far as the claim overlapped the area of the Spratlys, the Philippines would recognize the legitimacy of Cloma's actions only so long as the imagined '*de facto* trusteeship of the victorious Allied Powers' remained in force. That none of the Allied Powers had previously mentioned such trusteeship seemed not to matter. And finally, only 'so long as they are engaged in furtherance of their legitimate pursuits' would the Philippines 'not regard with indifference' any actions of the Cloma group. All of these conditions were, of course, left entirely undefined.

The official caution was motivated primarily by the storm of formal and

informal protests over Cloma's highly publicized claim. The summer of 1956 witnessed a barrage of protests to Manila. In late May and early June, Saigon and Taipei issued several stern formal protests.[26] Peking issued its own protest through the *New China News Agency* (*NCNA*) and declared Cloma's claim of discovery so much 'nonsense'.[27] On 9 June the French Chargé d'Affaires in Manila informed Vice-President Garcia that France regarded the Spratlys as French territory, for these islands, unlike the Paracels, had never been ceded to the Republic of Vietnam (see page 68 of this study).[28] The Republic of Vietnam, of course, quickly objected to this French claim. Great Britain, in the meantime, made several formal inquiries through the Manila Embassy. Even the Dutch entered the contest with an indirect claim by asking Britain to leak a 'confidential report' that the Netherlands 'would momentarily stake its own claim over the disputed islands, with the backing of the United Kingdom'.[29] Cloma's so-called 'discovery' had indeed opened a Pandora's box.

Manila quickly dispatched messages to Saigon and Taipei to the effect that the Philippines had made no official claim on the area. Learning that Taipei intended to send a naval task-force to the area, the Philippine Ambassador was immediately instructed to inform the Republic of China that Taipei need 'not be alarmed by the situation'.[30] Nevertheless, the ROC was alarmed, and by 1 June a task-force was on its way to reclaim the Spratlys for China.

In fact, from 1 June to 24 September 1956 three different ROC naval task-force units were sent to patrol and reclaim the Spratlys for China.[31] The earliest of these arrived off the Shuang-tzu Shoals (known on English charts as North Danger) on 5 June. After a complete circuit through the archipelago and a detailed inspection of Itu Aba Island, the group departed on 14 June for Taiwan. They reported finding no residents, though much evidence that Cloma's group, as well as several others, had been busy writing signs, notices, and no little graffiti. They recorded some twenty signs left by Japanese fishermen, four notices by the Cloma group, another ten signs written in English but of unclear origin, and some eleven signs written in Chinese and uniformly pro-PRC.[32] Neglecting their own argument that Chinese fishermen from Hainan and elsewhere frequented these waters, the pro-PRC signs led to the curious suspicion on their part that the Cloma group might have acted in collusion with the PRC.[33]

Except for repeated visits of an American float plane, the official report of this ROC inspection tour mentioned no other visitors. After staying at Itu Aba for three days, the task-force departed for Nan-wei or Spratly Island on the afternoon of 8 June. They apparently just missed some of Cloma's group, for on the same day Cloma sent a crew to Itu Aba and Thi Tu islands to replenish supplies for some twenty-nine men left in the Spratlys during the month of May.[34] Arriving at Itu Aba Island, Cloma's group discovered that their markers had been removed or destroyed, and had been replaced by those of the Republic of China. On 9 June, one day after the ROC naval

task-force had departed for Taiwan, Cloma sent a note to the Chinese Ambassador in Manila. Perhaps thinking that the Chinese had remained on Spratly Island, he stated the following:[35]

Please be advised that our second expedition has inspected practically all the major islands in Freedomland except Spratly Island. A radio station has been erected on Itu Aba. Settlers are stationed there who are presently clearing the island and planting bananas and other Philippine plants.

On 20 June he sent a copy of this note to the Department of Foreign Affairs and appended another note stating that, in deference to the Republic of China, no inspection of Spratly Island had taken place. Taipei was sufficiently impressed to send out a second reconnaissance task-force.

The second ROC task-force departed Taiwan on 29 June 1956 with the intention not only to survey the islands further but also to re-occupy Itu Aba Island.[36] The ROC flag was raised over the island on 11 July and a thorough search was initiated in the hopes of finding any local residents, including members of Cloma's group. None was discovered, but they did find much evidence that Cloma's men had returned to the island and begun to farm the land. Chinese crews were then dispatched to set up prefabricated housing units, stow supplies, open additional water wells and establish a base of operations. Part of the crew was left to guard these installations and the naval task-force proceeded to survey other islands in the archipelago. No date is given for their return to Taiwan, but the last official entry date in the ship logs suggest that the task-force remained in the islands until 25 July.

Two months later, on 24 September 1956, a resupply mission left Taiwan for Itu Aba.[37] Reaching the island on 28 September, they found the installations built during July in proper order and, after a two-day stay, departed on patrol of the rest of the Spratlys. On 1 October they intercepted one of Cloma's ships, the *PMI-IV*, off North Danger Shoals. The captain of the vessel, Cloma's brother, was invited aboard the ROC destroyer for a 'conference'. After confiscating several rifles and some ammunition, the ROC navy released the captain and crew of the *PMI-IV* with a warning not to infringe further on Chinese territory. As 2 October is the last date recorded in the official log, the Chinese vessel was apparently on the homeward journey when it happened across Cloma's ship.

Learning of his brother's encounter with the Chinese destroyer, Cloma himself went to New York with the hope of persuading the Philippine mission to the United Nations to put the matter before the General Assembly.[38] The maneuver failed, though Cloma managed to gain some personal support from the members of the Philippine delegation. It was not his last gesture, nor the last that would be heard about a Philippine claim to the Spratlys, but for the time being and until 1971 little more was heard from the Cloma group. In the meantime, the ROC consolidated its hold over Itu Aba Island (T'ai-p'ing tao).

The Republic of Vietnam also sent a destroyer to patrol the Spratlys in

the summer of 1956 in response to the Cloma incident. The vessel apparently reached Spratly Island (Nan-wei tao) in August 1956, which is to say after the second but before the third Chinese naval patrols.[39] There is no evidence that the vessel proceeded anywhere else in the Spratlys, but one can date an active Vietnamese presence on the southwestern edges of the archipelago to this period.

Since the summer of 1956 and until the present time, an ROC garrison has been maintained on Itu Aba Island, a fact that owes its most immediate origins to the Cloma incident. Tomas Cloma was, in short, a catalyst who drew the interests of China (both the ROC and the PRC) and Vietnam back to the issue of the status of the island-atolls of the South China Sea, and who sparked what was to become the beginnings of a Philippine claim to the Spratlys. It was not the first time that the actions of a private entrepreneur incited the ire and concern of the regional powers. There are some interesting similarities between the Cloma incident and the Ho Jui-nien affair some thirty years earlier. For this reason alone the Cloma incident was not, as often portrayed by critics, a bit of comic opera. It did, however, contain its own measure of irony. What Cloma actually achieved was a reminder that the issue of sovereignty remained open, and that its resolution would come only by the assertion of effective authority. What he evoked, as he himself feared, was the increasing awareness that the issue of the Spratlys and the Paracels had yet to be resolved.

The islands and China's territorial sea

The storm that broke over the Cloma incident was followed almost immediately by a series of claims and actions in the Paracels. In 1956, 1957, 1958 and again in 1959 the PRC reiterated the firm stand taken by Chou En-lai over the US/UK Draft Treaty with Japan. In 1957 the Republic of Vietnam was singled out by the *NCNA* as a prime antagonist against which the PRC intended to wage at least verbal warfare over the islands. The *NCNA* sharply denounced what it called the 'illegal occupation of Kan-ch'uan (Robert), Shan-hu (Pattle), and Chin-yin (Money) islands by Ngo Dinh Diem's troops'.[40] As the last French troops had departed Vietnam and the Paracels in late 1956, the Chinese denunciation was probably a response to Vietnamese units filling in those positions. It was at this time too, moreover, that a Saigon businessman, Le Van Cang, was licensed to exploit the guano/phosphate deposits on these islands.[41] Significantly, all three islands are in the Crescent Group, and there is no evidence to suggest that Vietnam attempted to infiltrate the Chinese-held Amphitrite Group. Neither, for that matter, is there any evidence that Peking attempted to move against what it considered an illegal action.

Partly as an additional warning to all parties concerned, Peking noticeably included the Paracels and the Spratlys in its official 1958 *Declaration on the Territorial Sea*.[42] Issued on 4 September 1958 that

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Jorge R. Coquia, "Maritime Boundary Problems in the South China Sea", *University of British Columbia Law Review*, Vol. 24 (1990)

MARITIME BOUNDARY PROBLEMS
IN THE SOUTH CHINA SEA

JORGE R. COQUIA†

The two most significant new concepts approved by the Third United Nations Conference on the Law of the Sea (UNCLOS III) are the substantial expansion of maritime areas of coastal states and the internationalization of deep seabed resources lying beyond state jurisdiction. To most states, particularly the island states of the Pacific, the most important result of the new regime is the extension of their coastal jurisdiction. The traditional three mile territorial sea which prevailed for centuries was no longer practical. It had worked to the disadvantage of island states because developed countries with more sophisticated fishing fleets were able to fish within their coastal vicinity.[1]

I. EXPANSION OF MARITIME AREAS IN THE PACIFIC

The Philippines is among a number of Pacific island states to benefit from the expansion of their maritime areas. It expects an estimated increase of about 360,850 square miles from the introduction of a two hundred mile EEZ as measured from its archipelagic baselines.[2] Similarly Indonesia, the largest archipelagic state, is likely to assert that its exclusive economic zone includes approximately 660,100 square miles.[3] On 12 May 1977 the Socialist Republic of

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[1] See also M. J. Valencia, St. Munadjat Danusaputro, "Indonesia: Law of the Sea and Foreign Policy Issues" (1984) 12.4 The Indonesian Quarterly.

[2] "Presidential Proclamation 1599 (1978)" in *Law of the Sea, National Legislation on the Exclusive Economic Zone, the Economic Zone and the Exclusive Fishery Zone* (New York: United Nations, 1986) 245.

[3] "Act No. 5, 18 Oct. 1983" in *ibid.* 150.

Vietnam declared a two hundred mile EEZ adjacent to its territorial sea.[4] In 1981 Thailand did likewise[5] followed by Malaysia in 1984.[6]

In the Pacific most states with small land areas can administer substantial marine regions as a result of the acceptance of the two hundred mile EEZ. In the South Pacific alone, it is estimated that island states can claim about twenty million square miles for their economic zones. For example, on 3 May 1973 Fiji asserted an archipelagic regime and claimed jurisdiction over an exclusive economic offshore seas correspond to the two hundred mile exclusive economic zone extending two hundred nautical miles from its archipelagic baselines.[7] Although Fiji also asserted its sovereignty over air space and all internal archipelagic and territorial waters, it did not do so over its EEZ.

Papua New Guinea, another archipelagic state, enacted its *National Seas Act* of 1977,[8] which establishes three maritime regimes: a "territorial sea", "archipelagic waters", and "offshore seas". The offshore seas correspond to the two hundred mile exclusive economic zone. The Act specifies the baselines for its three archipelagos. The Proclamation indicates the limit line of the offshore areas as measured from the archipelagic baselines or along baselines negotiated under the *Papua New Guinea-Indonesia Agreement*. It likewise asserts jurisdiction over the offshore area and over all living and non-living resources of the state's coastal seas, seabed and subsoil. Like Fiji, Papua New Guinea assumes freedom over all navigation through its archipelagic waters.

II. OVERLAPPING CLAIMS IN THE SOUTH CHINA SEA

In Southeast Asia, most states are clustered within shallow seas. There will inevitably be problems of overlapping exclusive economic zones and continental shelves if measurements are drawn from archipelagic baselines. For example, Indonesia's economic zone will possibly overlap those of Malaysia, the Philippines, Vietnam and even Papua New Guinea. These EEZs may, in turn, overlap those of Thailand, Singapore, Brunei, and China.

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[4] *Ibid.* 336.

[5] "Royal Proclamation of 23 February 1981" in *Law of the Sea, National Legislation, Regulations and Supplementary Documents,* (United Nations: Office for Ocean Affairs) 249.

[6] "Exclusive Economic Zone, Act 311, 1984" in *ibid.* 158.

[7] See also Fiji's *Marine Spaces Act* (1977) in *supra* note 2 at 85.

[8] "Act No. 7 of 7 February 1977" in force in 1978, in *ibid.* 238.

A more complicated problem exists in the Spratlys group ("Tru-
ong Sa" to Vietnam, "Nansha" to China and Taiwan). Ownership
of the islands is disputed by Vietnam, China, Taiwan, the Philip-
pines and Malaysia. Vietnam, China and Taiwan dispute ownership
of the whole of the Spratlys. The Philippine claim is limited to the
area it calls "Kalayaan".[9] Malaysia, on the other hand, claims a
number of geographic features in the southern region of the Spratlys.

Ownership of the Spratlys has been assumed by different dynasties
and governments of both China and Vietnam, often without aware-
ness of other claims. The present dispute over this island group
started in July 1933 when France, on behalf of its protectorate
Vietnam, occupied nine islets of the Spratlys and placed them under
French sovereignty. China and Japan both protested the French
action. Since then Vietnam and China have consistently claimed
ownership of the islands.

Taiwan's active claim to the Spratlys started in December 1945
when a naval task force visited the group. The islands were subse-
quently placed under the administration of the navy in March 1947.
In April 1952 Taiwan and Japan signed a bilateral peace agreement
in which Japan repeated its 1951 renunciation of title, rights and
claims to Taiwan and the Spratly Islands.[10] Japan had occupied the
islands in February 1939, but withdrew in August 1945 after sur-
rendering to the Allied powers.

The Philippines was the first to assert title to the territory after
Japanese renunciation. In 1956 a Filipino, Tomas Cloma, issued a
"Proclamation to the Whole World" asserting ownership of thirty-
three islands, keys, bars, coral reefs and fishing grounds covering
64,976 square nautical miles. On 11 June 1978 the Philippine
government officially declared sovereignty over part of the disputed
territory roughly duplicating Cloma's claim. As early as 1947, the
Philippine Secretary of Foreign Affairs had demanded that the
territory occupied by Japan during World War II be awarded to
the Philippines. The latest active claimant to the disputed territory
is Malaysia. In 1980, it issued an official continental shelf map which
showed boundary limits enclosing some portion of the Spratlys and
even some Philippine islands in the area of Palawan.

[9] Delineated in *Presidential Decree 1596* (11 June 1978). By virtue of this
decree, the Philippines claimed some islands in the South China Sea approxi-
mately four hundred kilometers west of the Philippines. These islands, known
as the Kalayaan island group, comprise about fifty-three islands, and are to
be distinguished from the Spratlys and Paracels being claimed by other states.

[10] *Treaty of Peace with Japan*, San Francisco (8 Sept. 1951) No. 1832 136
U.N.T.S. 46.

The disputed Spratly Islands are mostly coral reefs which allow only sparse growth of mangroves, shrubs and stunted trees. This area can hardly support human habitation. In light of developments in international law, however, ownership of the island will enable a claimant state to declare jurisdiction and/or sovereignty over wide areas of the ocean. The waters off the islands teem with marine life, especially demersal fish and tuna. Fisheries statistics are not accurate, but the Philippines reports to have harvested 31,184 metric tons from the area in 1979. A Philippine fisheries agency estimated that one metric ton per day is harvested during the summer in a portion of the Spratlys called the Kalayaan Islands. Taiwanese longline and trawl vessels also fish in the area.

A considerable amount of petroleum and gas is believed to be trapped in the Kalayaan seabed. East Asia, of which the South China Sea basin is a part, resulted from a rich diversity of tectonic processes and relatively high sedimentation rates. These have resulted in a combination of geological conditions which, in some places, are conducive to petroleum formation and accumulation. Most of the petroleum bearing formations thus far identified are in sedimentary basins of tertiary origin and deposition. The Kalayaan island group lies in a geological belt which has the same characteristics. Petroleum speculation has therefore been intense.

Some United Nations and private surveys have revealed structures in the vicinity of the Kalayaan Islands that potentially indicate petroleum accumulation. Recently published analyses of data from the Reed Bank drilling operations support the notion that it is a geologically continuous area with the Nido reef complex which has produced petroleum and gas in commercial quantities. Potential oil reserves for the Reed Bank were subsequently set at ten million barrels. However, exploration has shown hydrocarbon finds of negligible quantity. Moreover, other Kalayaan Islands seabed areas fall abruptly to between one and three thousand feet so development is considered technically unfeasible or commercially unprofitable at present. This does not preclude the possibility that technological development will make petroleum production commercially profitable in the future.

In addition to its rich fishing grounds and future possibilities as a petroleum source, sea routes through the Spratlys link East Asia with Africa and Europe making it one of the world's busiest sea lanes. They also lie within the air routes of Borneo, Indonesia, Vietnam, China and the Philippines. The strategic importance of the area for defence and security and for maritime navigation and overflight has

generated interest, not only from the claimants to the area, but also from major powers such as the USA, Japan and the USSR.[11]

Problems have now begun to arise regarding the delimitation of overlapping maritime claims between adjacent or opposite states. For example, in 1978 the Philippines claimed the Kalayaan island part of the Spratlys.[12] In 1979, Malaysia issued a continental shelf map which overlaps some of the Philippine territorial claims. This map, which was strongly protested by the Philippines, shows the extent of Malaysia's continental shelf in the South China Sea and includes some of the Spratlys Islands at Amboyna Cay (Pulau Kecil Amboyna), Mariveles Reef (Terumba Mantani), Commodore Reef (Terumba Laksamana), the rocks of Layang-Layang, Royal Charlotte Reef (Terumba Samarang Berat Besar) and Barque Canada Reef (Terumba Perahu). On the continental shelf claimed off Brunei south of Sabah, Malaysia appears to enclose areas that lie closer to the Philippines and Indonesia than to any Malaysian island. The economic, political, military and strategic value of the areas under contention aggravate the conflict over boundaries.

Another example of a dispute caused by overlapping claims occurs in the Tonkin Gulf ("Gulf of Bac Bo" to Vietnam, "Beibu Gulf" to China). In a statement dated 12 May 1977, Vietnam proclaimed its two hundred mile exclusive economic zone. The islands and archipelagos forming an integral part of Vietnam's territorial sea have their own territorial seas, contiguous zones, EEZs and continental shelves. The government of the Socialist Republic of Vietnam has manifested its willingness to use proper negotiations to settle matters relating to maritime zones.

It issued a statement on 12 November 1987 claiming, among other things, territorial waters in accordance with the 26 June 1887 Convention on frontier boundaries between France and the Qing (Ching) Dynasty of China. Vietnam further asserted that part of the Tonkin Gulf pertaining to Vietnam constitutes historic waters and is subject to the judicial regimes of its internal waters.[13]

The People's Republic of China immediately protested the Vietnamese statement. In a statement dated 28 November 1982,[14] China

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[11] See H. Yorac, "The Philippine Claim to the Spratly Islands Group," (1983) 58 Philippine L.J. 42.

[12] See *supra* note 9.

[13] *Supra* note 5 at 285; *The Law of the Sea, Current Developments and Practice*, 145.

[14] Previously circulated as Document A/37/682-S/15500, 30 Nov. 1982, *Law of the Sea, Current Developments and Practice*, 145.

denied that a boundary delimitation was set in the 1887 Convention between China and France, and hence claimed that no boundary line was ever executed in the Tonkin Gulf. China added that the Xisha and Nansea Islands are inalienable parts of China's territory. France likewise denounced Vietnam's claim that part of the Gulf of Tonkin is under Vietnam's jurisdiction as historic waters.[15] In addition, Thailand objected in a statement dated 22 November 1985[16] to Vietnam's claim that some of the Gulf of Thailand and the Tonkin Gulf were historic Vietnamese waters. The agreement of 7 August 1982 between the Socialist Republic of Vietnam and the People's Republic of Kampuchea purporting to appropriate approximately four thousand square nautical miles of the Gulf of Thailand as internal waters is even more disturbing.

III. SETTLEMENT OF DISPUTES

The delegates of UNCLOS III were fully aware of the disputes inevitably caused by overlapping claims, hence the determination of maritime zones was the subject of prolonged debate. A comprehensive solution which is not quite satisfactory to most states was finally agreed upon. As now provided in Article 74 on the EEZ and Article 83 on the continental shelf, the delimitation of the economic zones or continental shelves of opposite or adjacent states shall be effected by agreement on the basis of international law as referred to in Article 88 of the *Statute of the International Court of Justice*. If no agreement can be reached within a reasonable period of time, the states shall settle disputes using conciliation, arbitration or judicial procedures as provided by Part XV of the Convention on the Law of the Sea (CLOS).

The inevitable disputes over maritime boundaries in certain areas is evidenced by the number of cases that have been filed in the International Court of Justice and arbitral tribunals concerning the delimitation of continental shelves.[17] Although the procedures pro-

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[15] *Ibid.* 146.

[16] Document A/40/1033, 12 Dec. 1985, *ibid.* 147.

[17] *North Sea Continental Shelf Cases* between the Federal Republic of Germany, Denmark and the Netherlands, 1969 I.C.J. Rep. 3; the *Anglo-French Continental Shelf Case* between the United Kingdom and France; the *Tunisia/ Libya Continental Shelf Case*, 1985 I.C.J. Rep. 192; the *Aegean Sea Continental Shelf Case* between Greece and Turkey, 1978 I.C.J. Rep. 3; and the case concerning delimitation of the maritime boundary in the Gulf of Maine, a dispute between Canada and the United States on the Georges Bank, 1984 I.C.J. Rep. 246.

vided for in the UN Convention are not very satisfactory to most states, they at least invite states with overlapping boundaries to enter into negotiations for an amicable settlement of their disputes. It is hoped that all the states in Southeast Asia with adjacent maritime boundaries will be able to conclude agreements, thus avoiding expensive and unfriendly judicial or arbitral methods.

Already, some states have taken steps to settle their maritime boundary questions. Pursuant to the provisions of UNCLOS III, the Philippines initiated diplomatic talks to promote and preserve friendly relations with Malaysia as a member of the Association of Southeast Asian Nations (ASEAN). The *Treaty of Amity and Co-operation* and the provisions of CLOS were used as bases to resolve any conflicting territorial claims. In the case of disagreement, the two states were, at the least, to share joint exploration, exploitation and development of overlapping maritime areas. Articles 74 and 83 of CLOS provide that, pending agreement and in the spirit of understanding and co-operation, the states concerned shall enter into provisional arrangements of a practical nature.

A number of states in Southeast Asia have entered into fisheries agreements not only to avoid unnecessary disputes on probable overlapping claims, but also to promote protection, preservation and joint development of living marine resources. Indonesia, for example, has led countries in Southeast Asia in concluding several agreements with its neighbours. On 13 December 1980 Indonesia agreed on maritime boundaries, co-operation and other related matters with Papua New Guinea. It entered similar agreements with Australia in 1981 and Malaysia in 1982. Similarly, Malaysia made agreements with Indonesia and Thailand concerning the continental shelf. In its *Fisheries Act* of 1985,[18] it proclaimed its fishery area to be that of the Malaysian EEZ. The delimitation of this area will still have to be undertaken and its limits published.

Thailand, which has one of the most developed deep sea fishing industries in the region, was quite reluctant to accept the two hundred mile exclusive economic zone concept. It claimed to be a geographically disadvantaged state as its gains from the establishment of the two hundred mile EEZ were quite small compared with those of its neighbouring states. Thailand's EEZ actually overlaps those of adjacent states. Having the largest distant water fishing fleet in the region, Thailand has been advocating the right to traditional fishing in neighbouring waters.

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[18] Act 317, *Law of Malaysia*, published 10 May 1988.

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Singapore has a peculiar fishing rights problem. As a geographic-ally disadvantaged state, Singapore's concern is the determination of the allowable catch of living resources within the EEZ. Under Articles 62, 29 and 70 of CLOS, other states have an interest in the allowable catch. The coastal state must reasonably determine its capacity to harvest the living resources within the EEZ. If it does not have the capacity to secure the entire allowable catch, other states should be allowed access to the surplus. Under Article 70 of the Convention, Singapore has the right to participate on an equit-able basis in the exploitation of an appropriate part of the surplus of the living resources of coastal states of the same region or sub-region. Singapore is interested in entering bilateral regional or sub-regional agreements in due course, bearing in mind the good faith and co-operation of other states in interpreting and applying the pertinent provisions of the Convention.

IV. THE EXCLUSIVE ECONOMIC ZONE AS AN ENDOWMENT TO SOUTHEAST ASIAN STATES

The two hundred mile exclusive economic zone, which had been considered part of the high seas before the adoption of the CLOS, is now within the exclusive jurisdiction of the coastal state, which can explore and exploit its natural resources. It is no longer subject to plunder or abuse by any state. In addition, although the EEZ is within the exclusive jurisdiction of the coastal state, that state is obliged to preserve and conserve its resources, as well as promote scientific research within the region. The EEZ is a strategic endow-ment, especially for developing states in Asia. Its natural resources and potential, as well as its capacity for multiple usage, have barely been tapped or developed. This is true not only of living resources, but also of maritime space and the marine ecosystem. Full know-ledge of the potential of these areas is necessary for a more complete appreciation of states' national maritime wealth. The appropriate approach for planning, investment and management schemes for the economic zone is imperative if states are to reap maximum benefits.

V. THE NEED FOR REGIONAL CO-OPERATION

Instead of engaging in disputes, the countries of Southeast Asia should pool their resources to take advantage of the vast, newly endowed marine resources. At UNCLOS III, there was a universal consensus that states must co-operate in the preservation, develop-ment and utilization of marine resources. The countries in Southeast

Asia which have wide EEZs may not be in a position to individually explore, exploit and develop their respective areas. To derive the most benefits from their newly acquired maritime areas the South-east Asian states must co-operate and assist each other in terms of technology, capital and personnel. Marine resources should be explored, exploited and managed by all nations jointly for the benefit of all peoples.[19]

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[19] A resolution has been filed with the Philippine Congress proposing a condominium system in the whole of the South China Sea. The proposal can be realized if all the claimant states agree to have a regional conference. See House of Representatives Resolution No. 1010 introduced by Congressman Jose de Venecia.

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Steven Kuan-tsyh Yu, "Who Owns the Paracels and Spratlys? - An Evaluation of the Nature and Legal Basis of the Conflicting Territorial Claims", *Chinese (Taiwan) Yearbook of International Law & Affairs*, Vol. 9 (1989-1990)

ARTICLES

WHO OWNS THE PARACELS AND SPRATLYS? — AN EVALUATION OF THE NATURE AND LEGAL BASIS OF THE CONFLICTING TERRITORIAL CLAIMS*

STEVEN KUAN-TSYH YU**

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I. INTRODUCTION

As a semi-enclosed sea located at approximately 3°S-25°N latitude

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and 100°-122°E longitude,[1] the South China Sea (Nan-hai or Southern Sea in Chinese) embraces an area of more than one million square nautical miles, with 90% of its circumference occupied by land.[2] Its littoral States are, clockwise, the People's Republic of China (PRC), the Republic of China on Taiwan (ROC), the Philippines, Indonesia, Brunei, Malaysia, Singapore, Thailand, Kampuchea and Vietnam.[3] Its significance lies not only in providing the world community with strategically important routes for commercial and military uses, but also in supplying living and mineral resources to the littoral States.

Scattered in the sea are the hundreds of islands, shoals, rocks, clays and banks[4] which constitute four main archipelagos, namely the Pratas (Tung-Sha Chun-tao in Chinese), Macclesfield Bank (Chung-sha Chun-tao), Paracels (Hsi-sha Chun-tao) and Spratlys (Nan-sha Chun-tao). Whereas China claims them all, other States assert sovereignty over some islands of the two last-mentioned groups.[5] The territorial disputes so

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1. *Cf. Underwater Handbook*, No. 1 (London 1968), Map 9 produced from portions of BA Plate No. 14 with the sanction of the Controller, H.M. Stationary Office and of the hydrographer of the Navy and M.J. Valencia, "The South China Sea: Prospects for Marine Regionalism," *Marine Policy*, Vol. 2 (1978), pp. 87, 88 (figure 1).

2. Dimension of the South China Sea:

Water Body	Area (square nautical miles)
South China Sea Proper	959,160
Gulf of Tonkin	46,961
Gulf of Thailand	85,521
Total	1,091,642

Sources: J.R. Morgan and M.J. Valencia, eds. *Atlas for Marine Policy in Southeast Asian Seas*, Berkeley, California: University of California Press, 1983, p. 4 and Valencia, "The South China Sea . . .," *supra* note 1, p. 87.

3. Hong Kong will be restored to China in 1997, pursuant to Sino-British Joint Declaration on the Question of Hong Kong, December 19, 1984, *International Legal Materials*, Vol. 23 (1984), pp. 1366-87. Macao will be restored to China in 1999, pursuant to Sino-Portuguese Joint Declaration on the Question of Macao, April 13, 1987, *Beijing Review*, Vol. 30, No. 14 (April 6, 1987), special insertion. Please note that Burma and Laos are not counted here; whereas the former faces the Andaman Sea, the latter is land-locked and has access to the sea through Thailand.

4. N. Ely and J.M. Marcoux, "National Seabeds Jurisdiction in the Marginal Sea: the South China Sea", in G.T. Yales III and J. Young, eds., *Limits To National Jurisdiction Over The Sea*, Charlottesville, Virginia: University Press of Virginia, 1974, p. 125. D.J. Dzureck states that there are more than 200 islands and islets in this area. *See* his "Boundary and Resources Disputes in the South China Sea," *Ocean Yearbook*, Vol. 5 (1985), p. 257. The exact number of the islands and shoals may not be known yet.

5. At present, while the long-established ROC sovereignty over the Pratas meets no challenge, the PRC's control of the Paracels as a whole is effective. More noteworthy is the case of the Spratly Island-group. As of June 1991, whereas the Tai-p'ing Island remains under the ROC's occupation, six other reefs and banks are held by the PRC, 24 by Vietnam, 8 by the Philippines and 12 by Malaysia. Island-groups other than the four are beyond the scope of this Study.

arising have, during the past decades, become increasingly worse, thus causing continuing tension in the region.

In exploring a possible answer to such questions as "Who owns the Paracels and Spratlys," this paper will start by comprehensively examining the contentions advanced by the claimants in support of their respective claims to the island-groups in question. Secondly, it will tackle the questions revealed by such examination, including whether the claims are legally well-established, what are the rules applicable to these claims, and whether the notion of *inter-temporal law* is applicable in this connection, etc. Finally, in its conclusion, it will try to ascertain the owner of the Paracel and Spratly island-groups from among the various claimant States. In so doing, it will refer as necessary to the relevant literature.[6]

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6. *Cf.* following literature in Chinese:
   (1) Kuomintang Central Committee, editor and publisher, *Nan-hai chu-tao wen-t'i* (Problems concerning the various islands in the South China Sea), Taipei: February 1974 (hereinafter cited as "KMT (1974)".
   (2) *Hsi-sha ch'un-tao and nan-sha ch'un tao tzu-Ku i'lai chu-shih Ch'ung Kuo de lin-tu* (The Paracel and Spratly Archipelagos Are Chinese Territories Ever Since Ancient Time), Peking: People's Press, 1981 (hereafter cited as "HSNS-CT (1981)".
   (3) The PRC Ministry of Foreign Affairs Document of January 30, 1980, in HSNS-CT (1981), pp. 2-3.
   (4) Chang Hsieh, *Tung-hsi yang k'ao* (Examination of the East-West Oceans), 1618.
   (5) Chau Ju-kua, *Chu fan chih* (Records of Foreign Peoples), written and compiled sometime between 1225-1242, recently reviewed and noted by Chang Cheng Ch'uan, Taipei: The Commercial Press, Ltd., 1970.
   (6) Chou Ch'u-fei, *Ling-wai tai-ta* (Information on What Lies Beyond the Passes), 1178.
   (7) *Nan chou yi wu chih* (Describing the Han Dynasty navigation routes from the Malay Peninsula to the Chinese Mainland).
   (8) *Tai-p'ing yu-lan* (Royal Observation During the Peace Time).
   (9) Teng Tsu Yu, "The Issue of Sovereignty of the Various Islands in the South China Sea," *Ming Pao Yueh-ke'an* (Ming Pao Monthly), vol. 101 (May 1974).
   (10) Wu Tzu-mu, *Ming liang lu* (Dreaming about the Capital), 1275.

   Cf. the following literature in English:
   (1) D.W. Bowett, *The Legal Regime of Islands in International Law*, Dobbs Ferry, New York: Oceana, 1979, Chapters 4 & 9 (pp. 73-113, 283-311).
   (2) P.A. Castro, ed., *The Philippines and the Law of the Sea*, Manila: Foreign Service Institute, 1983.
   (3) Tao Cheng, "The Dispute Over the South China Sea Islands," *Texas International Law Journal*, Vol. 10 (1975), pp. 265-277.
   (4) H. Chiu and C.H. Park, "Legal Status of the Paracel and Spratly Islands," *Ocean Development and Int'l Law Journal*, Vol. 3, (1975), pp. 1-28 (hereafter cited as "Chiu and Park, Legal Status (1975)).
   (5) D. Heinzig, *Disputed Islands in the South China Sea: Paracels-Spratlys-Pratas-Macclesfield Bank*, Wiesbaden: O. Harrasowitz, 1976 (hereafter cited as Heinzig (1976)).
   (6) R.D. Hill (ed.), *Southeast Asia: A Systematic Geography*, Oxford, England: Oxford University Press, 1979.

4   Who Owns the Paracels and Spratlys?

II. THE PRE-WAR EVOLUTION OF THE PARACEL DISPUTE

A. The Chinese Claim to the Paracels

The development of the Paracel and Spratly disputes may be divided into two phases, with World War II as the dividing line. While the pre-War evolution of the two disputes may be analyzed separately, their post-War development must be examined together.

In the case of the pre-war Paracels which involved only China and Vietnam, the early Chinese claim to this island-group, like that to all other islands in the South China Sea, was based on historical grounds. As the ROC and PRC[7] contend and as the western historians agree, the beginning of the Chinese presence in the South China Sea in general and in the Paracels in particular may be traced back to the Western Han Dynasty (206 B.C.-25 A.D.). During the subsequent dynasties, while Chinese people continued sailing and fishing in the sea and staying on the scattered islands, official navigation and expeditions were repeatedly launched by the government.[8] As a result, Chinese maritime ties with the South China Sea as a whole were greatly enhanced; and, no later than the mid-19th century, China's indisputable sovereignty over the Paracels had already been well-established. To support this, the Chinese governments both in Taipei and Beijing have advanced such specific evidence as:

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(7) *Keesing's Contemporary Archives: Weekly Diary of World Events*, London: Keesing's Publication Ltd. (hereafter cited as "Keesing's"), pp. 26388-26389 (1974), 28913 (1978), 298-29870 (1979), 31149 (1981), 32785 (1984).

(8) Lee Yong Leng, ed., *Southeast Asia: Essays in Political Geography*, Singapore: Singapore University Press, 1982.

(9) Lee Yong Leng, *Southeast Asia and the Law of the Sea*, Singapore: Singapore University Press, 1979.

(10) G. Marston, "Abandonment of Territorial Claims: the Case of Bouvet and Spratly Islands," *British Yearbook of International Law*, Vol. 57 (1987), pp. 337-356.

(11) Ministry of Foreign Affairs, Republic of Vietnam: *White Paper on the Hoang-Sa (Paracel) and Truong Sa (Spratly) Islands*, Saigon, 1975 (hereafter cited as "White Paper (1975)").

(12) S.W. Rifferbush, "*Maritime Resources and the Potential for Conflict in the South China Sea*," The Fletcher Forum, Vol. 2 (No. 1) (1978), pp. 64-85.

(13) Marwyn S. Samuels, *Contest for the South China Sea*, London: Methuen, 1982 (hereafter cited as Samuels (1982)).

(14) Shih Ti-tsu, "South China Sea Islands: Chinese Territory Since Ancient Times", *Peking Review*, No. 50 (December 12, 1975), pp. 10-15.

7. Although they are in rivalry in internal politics of China in the sense that each claims to represent China as a whole, the two governments assert Chinese sovereignty identically over the island-groups in the South China Sea in general and over the Paracels in particular. There is thus nothing like "territorial disputes" between them as understood internationally.

8. *E.g.*, those launched by General Shih Pih in 1293 under Orders of Emperor Shih-tsu (Khublai Khan) of Yuan Dynasty and those by Eunuch Cheng Ho (seven times between 1405-1433). *See* Heinzig (1976), *supra* note 6, pp. 22-23; Samuels (1982), *supra* note 6, pp. 17-22.

(1) The attachment to the Paracels' two sub-groups of islands (Amphitrite and Crescent) of the names of *Yung-lo* and *Hsuan-teh* respectively which refer to the titles of the reigns of the Ming Emperors Cheng-tsu (1403-1424 A.D.) and Hsuan-tsung (1426-1435 A.D.) (see Map 1).[9]

(2) The Chinese Temple discovered in 1947 on the Lin-tao (Wood Island) and estimated by experts to be more than one hundred years old.[10]

(3) An official statement made in 1877 by China's first Minister to the U.K., Kuo Sung-tao, to the effect that the Paracels belongs to China.[11]

(4) The 1887 Sino-French Convention Respecting the Delimitation of the Frontier Between China and Tonkin in which France recognizes that the Paracel (and Spratly) Islands are part of China.[12]

(5) The Ch'ing government's first official patrol (inspection tour) of the Paracels was made in 1902 by three warships led by Admiral Li Ch'un and Vice-Admiral Wu Ch'ing-yung. During their stay on the islands, they "succeeded in planting imperial flags and a stone tablet commemorating the arrival of formal Chinese authority." This tablet was discovered in 1979 by the PRC's People's Liberation Army stationed on the Paracels' Pei-tao (North Island in English).[13]

(6) After the Pratas incident of 1907,[14] the second official patrol was made in the next year by a "Special Provincial Commission for the Management of the Area."[15] Upon their return after a one-month stay on the

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9. Heinzig (1976), *supra* note 6, at p. 23. This map was published by ROC's Ministry of Foreign Affairs on December 1, 1947; the names of the islands were thereby re-affirmed officially. *Cf.* another Chinese Chart published in the mid-16th century, depicting the region known in the 1430s and naming the Paracels and Maccesfield Bank as Shih-t'ang and Shih-hsing Shih-t'ang respectively. For the Chart, *see* Mao Yuan-i and Chih Wu-pei as cited by Heinzig, *ibid.*

10. Yeh Han-ming and Wu Jui-ching, "Issue of Restoration of Chinese Sovereignty over the Islands in the South China Sea As Reflected by Historical Documents and Map," *Min-pao Monthly*, No. 101 (May 1974), p. 19 (hereafter cited as "Yeh and Wu (1974)").

11. HSNS-CT (1981), *supra* note 6, p. 4; Samuels (1982), *supra* note 6, p. 52.

12. For the text of the Convention, *see Treaties, Conventions, etc. Between China and the Foreign States*, 2nd ed., Shanghai: 1917, p. 934; Samuels (1982), *supra* note 6, pp. 52-53. For further discussion of this Convention, *see* Chiu and Park, Legal Status (1975), *supra* note 6, pp. 11, 12-13.

13. In the picture and report concerning this discovery, *see* "Tablet Proves Ancient Rights," *Hong Kong Standard*, March 6, 1979, p. 5.

14. In 1907-1908, a Japanese merchant named N. Yoshiji, accompanied by more than 100 followers, once settled on the Pratas Island-Group, and thus caused negotiations between Governors of Kuangsi and Juang-tung and the then Japanese Consul in Canton. As a result, China paid an indemnity of 130,000 silver dollars. Japan, in return, recognized the Pratas Archipelago as Chinese territory. *See* D. Heinzig (1976), *supra* note 6, p. 26; Samuels (1982), *supra* note 6, at 53.

15. The Commission was organized under Orders from the Governor-General of Juang-tung, Chang Jen-Po. Composed of Li-Ch'un, Wu Ching-Yung and a number of surveyors,

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Paracels, the Commission submitted an Eight-Point-Program Report recommending, *inter alia*, the administrative absorption and economic development of the Paracel Islands. This Report was later accepted and approved first by Governor-General Chang of Kuangtung, then by Kuang-Hsu Emperor,[16] and finally, carried out by Chinese government in 1911 by incorporating the Paracels into Kuangtung Province, to be administered through the Prefectural authority of Hainan Island.[17]

(7) The issuance and withdrawal of licenses for exploitation of the Paracel Archipelago: From 1921 to 1932, five such licenses were issued by the ROC's Provincial Government of Kuangtung.[18] The one issued to Ho Jui-nien in 1921 was, however, after two renewals in about six years (upon revelation of Ho's connection with a Japanese firm based on Taiwan), cancelled by the ROC government in 1928.[19]

(8) The ROC's dispatch of the Commission to reassert sovereignty over the Paracels in 1928. This Commission was headed by Shen P'eng-fei and, upon their return after staying 17 days in the Paracels, submitted a formal report[20] reiterating Chinese sovereign rights, urging appropriate development of the resources of the islands, and emphasizing the necessity of defense in view of the Paracel's strategic position.

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engineers and scientists, the Commission was sent specifically to undertake formal reconnoitre of the islands; to establish sites for construction of houses, roads, radio station and phosphate processing plants; to prepare detailed maps of the islands and to estimate potential guano/phosphate reserves for the Archipelago. *See* Yeh and Wu (1974), *supra* note 10, p. 19; Shen P'eng-fei in *Wen-hsien Hui-pien* (Collection of Documents), Vol. 8 (*Taipei*, 1975); *see also* Samuels (1982), *supra* note 6, p. 54.

16. Shen P'eng-fei, *supra* note 15, pp. 23-24; Li Ch'un, Hsun-hai Chi (Account of an Ocean Patrol), Canton: 1909, in Wen-hsien Hui-pien, *supra* note 15, pp. 1-5; Heinzig (1976), *supra* note 6, p. 27.

17. HSNS-CT (1981), *supra* note 6, p. 5.

18. Lu Hsi-sha, "A Brief Note on the Paracel Islands," *Hsin-ya-hsi-ya Yueh-k'an* (New Asia Monthly), Vol. 9, No. 6 (June 1935), p. 65; Cheng Tzu-yueh, *Nan-hai ch'un-tao ti-li chih-lueh* (Geographical Description of the South China Sea Islands), Shanghai: The Commercial Press, 1947, p. 76. This classic book was reprinted in *Chung-kuo nan-hai chu ch'un tao wen-hsien hui-pien* (Collected Works on the Archipelagos of the South China Sea), Taipei: Hsueh-sheng Book Co., 1975, vol. 10, pp. 111-214). *See also* Tao Cheng, "The Dispute over South China Sea Islands," *supra* note 6, p. 274.

19. The permit was issued by Kuangtung Bureau of Mines with approval of the ROC's Ministry of the Interior. The idea of "monopoly" is used here in view of the fact that the ROC Government refused two other applications on the ground of Ho's "priority rights". *See* Tao Cheng, "The Dispute over South China Sea Islands," *supra* note 6, p. 274. Heinzig (1976), *supra* note 6, p. 27; HSNS-CT (1981), *supra* note 6, p. 6. For further discussions of the Ho Case, *see* Samuels (1982), *supra* note 6, pp. 54-57.

20. Members of the Commission included representatives of various provincial and national ministries, a number of the Ruling Party's officials, a group of scientists from the Departments of Agriculture and Geology at Ch'ung-Shan University, and a large contingent of army and navy officers, etc. *See* Samuels (1982), *supra* note 6, p. 57. For details, *see* Shen P'eng-fei's Report (Canton, 1928) in *Wen-hsien Hui-pien, supra* note 15, vol. 8 (1975), p. 34.

B.   The Vietnamese Pre-War Claim to the Paracels

The asserted basis of Vietnam's claim to the Paracels is primarily two-fold: one is State succession relying on the post-war dissolution of the French colony in Indo-China; the other is historical grounds. The latter includes:

(1) taking formal possession of the Paracels in 1816 by King Gia Long of Annam (a former State but now a part of Vietnam);[21]

(2) subsequent organization of the "Hoang Sa Company" by coastal people to engage in ship-salvage, fishing, gathering turtles and mining for guano;

(3) that, to sanction these activities, official reconnaissance missions were sent out in 1834 and 1838 under Orders from the King; and

(4) that, as contended by France, the same King constructed a pagoda and a stone tablet on one of the islands.[22]

The legal validity of these contentions are, however, disputed by China. In its view, Vietnamese people were not the only ones to undertake such activities in the Paracels. The Chinese — especially those from the Hainan Island — did the same. More noteworthy is that, whereas present Vietnam comprises not only the former State of Annam, but also those of Tonking and Cochin-China, all the above stated contentions of Vietnam and France are nonetheless based specifically on the Annamese measures. Doesn't this argue in China's favor and thus help to strengthen the Chinese position in denying any validity of the said contentions? The answer seems to be affirmative in view of the fact that Annam was a vassal state of China, its people were only naturally tolerated when competing with the Chinese in undertaking those activities, and that its King was welcomed to visit the islands in question.

As for the French colonization of Indo-China first by imposing the 1874 Treaty with Annam, and then by forcing China to sign the 1885 Treaty at the end of the Sino-French War which resulted in China's loss of suzerainty over Annam and thus paving the way for French incursions, in the 1930's, into the Paracels. Due to both the Tai-p'ing Rebellion (1850-65) and the onslaught of other western Powers on China during that period, China was prevented from effectively challenging French colonization. Nonetheless, the Paracels, together with the Sprat-

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21. This event went unnoticed in the official records of China's Chia-Ch'ing Emperor (1796-1821) and was thus ignored by contemporary Chinese writers; but first appeared in a work by Father Jean-Louis Taberd (then Bishop of Issauropolis); *see* "Note on the Geography of Cochin-China", *Journal of the Royal Asiatic Society of Bengal*, April 1937, pp. 735-745. For a related quotation of the Article, *see* Samuels, *supra* note 6, p. 49, note 31.

22. Samuels (1982), *supra* note 6, pp. 43, 44, 61. The tasks of these Missions were reportedly to map the islands and Calculate their resources.

lys, remained Chinese territories as so recognized both by France itself in the Sino-French Frontier Delimitation Convention of 1887[23] and by Japan in the Ho Jui-nien Case in the 1920's.[24] In effect, the Chinese preoccupation with the war with Japan in the 1930's constituted the very reason why France was able to claim the Paracels in 1931, to incorporate them into Thua Thien Province of Vietnam in 1932, and to occupy them in 1938.

III.   THE PRE-WAR EVOLUTION OF THE SPRATLY DISPUTE

A.   The Chinese Claim to the Spratlys

In the case of the Spratlys,[25] it was at least until after World War I that China remained the only claimant State. While its people have continued economic activities in the area since ancient times, its government has asserted and exercised Chinese sovereignty over the island since at least the 13th century. Despite the confusion of the name of this island-group and the relatively sparse reference to it in Chinese classical records and books,[26] most of the historical grounds advanced by China with respect to its claim to the Paracels, as discussed above, are, in principle, the same as those contended by both the ROC and PRC to justify China's claim to the Spratlys. These include, *e.g.*, the expeditions sent by the Yuan government in 1293,[27] the seven sails of Ming Dynasty's Cheng Ho between 1403-1433,[28] Chinese fishermen's continued activities on the Spratlys as once proved in 1867 by the crew of a British survey-ship who met them on the Spratlys' Itu Aba, *i.e.*, Tai-p'ing Island in Chinese, and the display of such State functions as the Ch'ing government's successful prevention, *e.g.*, in 1883, against a German State-sponsored expedition to

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23. *See supra* note 12.

24. *See supra* notes 18 and 19 and accompanying text. Japan made clear in 1927 that the ownership of the Paracels was not "a matter of dispute with France". *See Vietnamese White Paper of 1975, supra* note 6.

25. The total number of the Spratlys' islands, reefs, shoals and clays is variously reported. According to Prof. Lee Yong Leng, it has 90, see his *Southeast Asia: Essays in Political Geography, supra* note 6, p. 14. S.W. Ritterbush expressed the view that there are more than 200, see his "Maritime Resources and Potential for Conflict . . .," *supra* note 6, p. 80. Professor J.R.V. Prescott identified only 26 whose location and names in Chinese, Vietnamese, Malaysian and Filipino languages are listed, see his *The Maritime Political Boundaries of the World*, London: Methuen, 1985, pp. 218-219.

26. It was named in Chinese variously until after the inauguration of the ROC which, starting from 1934 and finally in 1947, decided to name it as "Nan-sha Ch'un-Tao" (Southern Sands Archipelago). *See also* Chau Ju-kuo, *Records of Foreign Peoples, supra* note 6, and *Hsiu-chen Kuangtung fen-hsien min-hsi-tu* (Pocket Detailed County map of Kuangtung Province), Shanghai: 1941, etc.

27. *See supra* note 8.

28. *Ibid.*

the Spratlys,[29] etc.

B. Other States' Pre-War Claims to the Spratlys

Such a dominant position of China remained unchanged until early twentieth Century when it was engulfed first in the Nationalist Party (KMT) Revolution and then in the Sino-Japanese War (1937-1945) and, as such, failed to consolidate and strengthen its control over the Spratlys. Consequently, conflicting claims to the same island-group were made by Japan, France and even the United Kingdom.[30] One of the most noteworthy events in this regard was the Anglo-French negotiations concerning the ownership of the island named "Spratly" and the 75 mile distant "Amboyna Cay," etc., to which Britain might have had claims, but which France wished to annex.[31]

The alleged basis of such British claims was mainly the visits made to the islands in question first in 1864 by H.M.S. Rifleman's Captain Ward; secondly, in 1867, by a ship's crew; and thirdly, in 1889, by Captain Kerr.[32] However, neither of these visitors performed any act which could be regarded in international law as claiming sovereignty, nor any alleged evidence provided proof of effective occupation by Britain as demanded by the standards of international law then current.

With respect to French proclaimed annexation, the Paris government purported to extend its sovereignty not only over the Spratly and Amboyna Cay, but also over "all islands, islets and reefs in the area lying between latitude 7° and 12° North and west of the triangular zone reserved to United States sovereignty by Article 3 of the Treaty . . . . of 10 December 1900 (i.e., between 111° and 117° East)."[33]

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29. The intended German survey was stopped successfully by diplomatic pressure and negotiations with Germany. *See* Heinzig (1976), *supra* note 6, p. 25-26; Teng Tsu Yu, *supra* note 6, p. 3; Yeh and Wu (1974), *supra* note 10, p. 18; *also* Samuels (1982), *supra* note 6, p. 52.

30. It is worthy to note that, while engaging in such competition and ignoring China's protests, those States might have made use of the personal note of Shen P'eng-fei on the mission of the 1928 Paracels Commission. He noted that the Paracel Archipelago was China's "southernmost territory". For the text of his note, *see supra* note 15. This has been interpreted by those countries as Chinese official confirmation of the absence of a formal claim to the Spratlys which is located south of the Paracels. *See also infra* note 32 and accompanying text.

31. In this regard, *see* Geoffrey Marston, "Abandonment of Territorial Claims: The Cases of Bouvet and Spratly Islands", *supra* note 6.

32. Marston (1987), *supra* note 6, pp. 344, 348, 349; but the U.K. made no claim whatsoever thereto.

33. *See* the telegram and dispatch of April 23, 1930 from the British Consul-General in Saigon and the Memorandum sent by the French Foreign Ministry to the British Embassy in Paris on March 28, 1931. For the text of the Telegram, *see Foreign Office Paper-371-14916*, f.407; for the text of the dispatch, *see ibid.* ff.427-428; for that of the French Memorandum, *see ibid.*/15650, f.341; *also* Marston (1987), *supra* note 6, pp. 345-46.

In the absence of British objection and ignoring the Chinese and Japanese protests,[34] France simply proclaimed the annexation and then notified Britain of it.[35]

In the ensuing Anglo-French negotiations on how to obstruct the then increasing incursion of Japan in the region, France refused categorically to accept British sovereignty over, or to cede or lease the Thi-tu or Itu Aba to Great Britain.[36] While this deadlock was continuing, Japan occupied the Spratly-group in 1938, and, early in the next year, all the other archipelagos north of it in the South China Sea. In its announcement of March 30, 1939, Japan declared to rename all the island-groups so occupied as *Sin Nan Islands* and to incorporate them into the territory under the jurisdiction of the Governor-General of Taiwan.[37] To this, whereas the ROC strengthened its efforts in waging the then on-going war against Japan which was to last until 1945, Great Britain protested strongly, saying: "If it comes to a conflict of claims, it should be recalled that His Majesty's Government had never formally abandoned the claim which they had at one time put forward to these islands. . . ."[38]

IV. THE POST-WAR DEVELOPMENT OF THE PARACEL-SPRATLY DISPUTES

A. Restoration of Chinese Sovereignty over the Paracels and Spratlys.

In 1945, in pursuance of both the directive of the Supreme Allied Commander and the ROC's Order, all Japanese-held territories and troops in the South China Sea, together with Vietnam, surrendered to the Chinese government.[39] Thus, both the Paracel and Spratly Island-Groups, along with Vietnam, came under the ROC's jurisdiction. When China transferred control of Vietnam to France in March 1946, the sta-

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34. For the text of Japanese protest, *see Keesing's, supra* note 6, August 22, 1933, p. 993H. For the Chinese protest, *see* Heinzig 1976, *supra* note 6, p. 28. Saigon denied this protest. *See* Statement of the Vietnamese Ministry of Foreign Affairs, January 12, 1974.

35. For the text of this Diplomatic Note of July 24, 1933, *see Foreign Office Paper-371/17300*, f. 382. *Also* Keesing's, *supra* note 6, 1937-40, p. 3521A.

36. For details of this discussion, *see Foreign Office Paper-371-21021*, ff.40, 438, 500-6, 510, 512, etc.

37. For the text of the Japanese statement, *see Foreign Relations of the United States: Japan (1931-1941)*, vol. 2, Washington, D.C.: U.S. Government Printing Office, pp. 278-280. *Cf. Keesing's supra* note 6, 1939, p. 3521A; Heinzig, *supra* note 6, p. 29; Marston, *supra* note 6, p. 353. *Also Keesing's, supra* note 6, 1937-40, p. 3568A.

38. *See* text in a telegram dated April 1, 1939 sent from the Foreign Office to the British Embassy in Tokyo. *See Foreign Office Paper-371/23543*, f. 218; Marston (1987), *supra* note 6, p. 353.

39. By indicating "north of 16° N latitude", McArthur's Directive clearly excluded the Spratly Island-Group from the territories to be surrendered to China. The ROC nevertheless ordered all the Japanese troops in this Group to do the same. Samuels, *supra* note 6, p. 75.

tus of the two islands-groups in question went unmentioned.[40]

While the surrender of troops is not the same thing as surrendering territory, the case would, nonetheless, be different if the territory was originally owned by the receiving State. In China's view, therefore, it was only natural that (as Chinese territories since ancient time) the island-groups in question should be returned to China after being illegally occupied by the Japanese invaders. Other contentions on which the current ROC claims to the same territories are legally based include, *inter alia*:

(1) *The tacit recognition of France*: The fact that, as stated above, France did not question the status of the island-groups when China transferred control of Vietnam to it was tantamount to acquiescence in the restoration of the Chinese sovereignty.

(2) *The ROC's post-war expedition and re-occupation*: To re-affirm its sovereignty over these islands, the ROC made expeditions in 1946 and 1947 by sending a task force of four warships: while the "Chung-yeh" and "Tai-p'ing" set course for the Spratlys, the "Chung-chien" and "Yung-hsing" headed for the Paracels.[41] In January 1947, when the latter had achieved its mission, the ROC declared its formal re-occupation of the Paracels[42] and started to have garrison units stationed there until 1950 when they were taken over by the PRC's People's Liberation Army.[43]

(3) *Legal possession and administration*: Roughly one year later, *i.e.*, on December 1, 1947, the ROC further proclaimed both the incorporation of all the four island-groups into Kuangtung Province and the actual administration of them to be assumed by a special "Tung-Hsi-Nan Sha Archipelagos Administration District," temporarily under the Commander of the Chinese Navy.[44] To implement this proclamation, the first

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40. *See* Ministry of Foreign Affairs, ed., *Treaties Between the Republic of China and Foreign States: 1927-1961*, Taipei: The Commercial Press, Ltd., 1963, p. 150.

41. According to Taipei, all four warships sailed from Yu-lin port of Hainan Island and not from Canton, *see* Heinzig, *supra* note 6, p. 31, note 85. For an emphasis of the significance of this mission, *see* Chang Hung-yuan, *T'sung juo-chi-fa k'an Chung-juo tuei Hsisha Chun-lao ho Nansha Chuntao ti chu-ch'uan* (Chinese Sovereignty Over the Hsisha and Nansha Archipelagos: A Study from the Point of View of International Law), Peking: People's Press, 1981, p. 24. *Cf.* also Samuel, *supra* note 6, p. 76.

42. This Declaration was announced by the ROC Embassy in Paris and France lodged objection to it. Keesing's, *supra* note 6, January 20, 1947, p. 983J and January 28, 1947, p. 980E.

43. In May 1950, the ROC's armed forces on the Hainan Island, Paracels, and Spratlys were all withdrawn to Taiwan. The PRC took over the first two, but not Spratlys. *See* Samuels, *supra* note 6, p. 77.

44. Republic of China, *Hai-chun hsun-yi Nansha hai-chiang ching-kuo* (Results of Navel patrols in the Spratly Islands frontier), in *Collected Works on the Archipelagos of the South China Sea*, *supra* note 18, Vol. 9.

Chinese Naval Administrator for the Spratlys arrived on December 12 of the same year to take up his post in the Itu Aba Island.[45] For the purpose of this incorporation and administration, all the islands, islets, reefs, shoals and cays in the Sea were re-named at the same time (see Map 2).

(4) *Japanese renunciation in favor of the ROC*: Despite the Chinese failure to take part in the Japanese Peace Conference of 1951,[46] Taipei managed to conclude a Sino-Japanese Peace Treaty in the next year. As shown by the minutes of the negotiations with respect to the contents of Article 2 of the Treaty, Japan insisted that the Article must deal solely with the territories related to the ROC,[47] and the Chinese responded by indicating that the Spratly and Paracel Archipelagos were Chinese territories. This was not challenged by Japan. Finally, the Article stipulates that Japan renounces the island-groups, together with Taiwan and the Pescadores.[48] In so agreeing, Japan rendered tacit, if not explicit, recognition of the Chinese claim to the two archipelagos in question.[49]

(5) *The ROC's reclaiming and re-occupation of the Spratlys*: Ever since the Japanese surrendered, the ROC garrison units had been stationed on the Spratlys as they were on the Paracels. Their absence between 1950 and 1956 was entirely due to the PRC's take-over of the Chinese mainland. In June 1956, *i.e.*, after the dramatic "Cloma event",[50] nevertheless, the ROC reclaimed and re-occupied this island-group by stationing its naval forces on the Itu Aba (Tai-p'ing Tao in Chinese) permanently.[51] The subsequent measures taken in this connection include the proclaimed integration of the Spratlys with Taiwan and the opening of a regular mail delivery system, linking the two together.[52]

B.   The PRC's Claim to the Paracels and Spratlys

The legal basis of the PRC's claim to the same archipelagos (and others as well) is identical with that of the ROC, and therefore, all proclamations of Beijing (Peking) are essentially supplementary to those of Taipei. But, since both governments claim to represent China, both sets of conduct combine to reinforce the claims of China. Examples of the PRC's claims and proclamations are, *inter alia*, as follows:

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45. *Ibid.*

46. *See infra* notes 75 and 76 and accompanying text.

47. *Chung-hua Min-kuo tui-jih ho-yueh* (Peace Treaty Between the Republic of China and Japan), Taipei: Chung-hua Min-kuo wai-chiao wen-t'i yen-chiu hui, 1966, pp. 52, 53, 190; Samuels, *supra* note 6, p. 80 and Chiu and Park, Legal Status (1975), *supra* note 6, pp. 14-26.

48. Article 2 of the Sino-Japanese Peace Treaty.

49. For same conclusion, *see* Samuels, *supra* note 6, p. 80.

50. For discussion of the event, *see infra* notes 77-82 and accompanying text.

51. *See supra* note 44; Samuels (1982), *supra* note 6, pp. 84-85.

52. *Foreign Broadcasting Information Service* [hereafter FBIS], *Daily Report, China*, August 12, 1974, p. B2.

(1) The above-mentioned take-over and occupation of the Paracels after the ROC forces were withdrawn to Taiwan in May 1950.

(2) The Statement of Chou En-lai in August 1951, denouncing the U.S./U.K. draft of the Peace Treaty with Japan and stressing the Chinese sovereignty over the four island-groups by declaring that this sovereignty "will by no means be impaired, irrespective of whether . . . a peace treaty with Japan should make any stipulations and of the nature of any such stipulations."[53] This was later echoed by the then Soviet Deputy Foreign Minister, Andrei Gromyko, who offered an amendment to the draft article to the effect that the PRC's sovereignty over the archipelagos be recognized.[54]

(3) Beijing's Declaration on Territorial Waters of September 4, 1958 proclaimed that its straight baseline system and the 12 nautical mile width of territorial sea were applicable to all the archipelagos in the South China Sea.[55] The North Vietnamese official support for this declaration was offered immediately by its Prime Minister Phan Van Dong.[56]

(4) Beijing strongly supported the ROC in protesting against the Philippine claim of 1971 to the so-called "Kalayaan" and in refuting the Philippine request that the ROC's troops on the Itu Aba be withdrawn.[57]

(5) To uphold Chinese sovereignty over the archipelagos in question, the PRC had brief military encounters first with South Vietnam in 1974 and second, with Communist Vietnam in March 1988.[58]

C.   The Post-War French/Vietnamese Claims to the Paracels and Spratlys

France is quite self-contradictory in advancing its claim to the territories in question. As said above, when China was transferring Vietnam to Paris without mentioning the status of the Paracels and Spratlys, and

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53. *Chung-hua Jen-Min Kung-ho-kuo tui-wai kuan-hsi wen-chien-chi* (Collected documents on the foreign relations of the People's Republic of China), Vol. 2, Peking: World Knowledge Press, 1961, p. 32.

54. Keesing's, *supra* note 6, October 23, 1981, p. 31149.

55. Article 2 of the Declaration. For the text of the Declaration, *see Peking Review*, Vol. 1. No. 28 (September 9, 1958), p. 21.

56. *See* Ministry of Foreign Affairs of the People Republic of China, "China's Indisputable Sovereignty Over the Xisha and Nansha Islands," *Beijing Review*, Vol. 23, No. 7 (February 18, 1980), pp. 21, 22. The Vietnamese note is photo-reproduced in *ibid.*, p. 22.

57. *Collected Works on the Archipelagos of the South China Sea, supra* note 18, Vol. 9, p. 15; *Vietnamese White Paper 1975, supra* note 6, pp. 70-74 and Samuels (1982), *supra* note 6, pp. 75-76.

58. For discussions of the 1974 armed conflict, *see* Lee Lai-to, "The PRC and the South China Sea," *Current Scene: Development in the People's Republic of China*, vol. xv, No. 2 (February 1977), pp. 1-12; Shih Ti-tsu, *supra* note 6; *Keesing's, supra* note 6, March 4-16, 1974, p. 26388; Samuels, *supra* note 6, pp. 98-117; KMT, 1974, *supra* note 6, pp. 1-58. For brief discussion on the 1975 & 1988 armed conflict, *see infra* notes 70-73 and accompanying text.

when China was taking all the ensuing measures to restore its sovereignty over those island-groups,[59] France remained silent. To be consistent, it asserted no sovereignty when some crew members of its warship named Chevreud landed, on October 5, 1946, on Nan-wei tao (*i.e.*, Spratly Island) and Tai-p'ing tao (*i.e.*, Itu Aba) and placed a stone marker on the latter.[60]

Upon the dissolution of its Indo-China Empire in 1954, nonetheless, France officially alleged to cede "its control of the Paracels" to South Vietnam but to retain its claim to the Spratlys.[61] Subsequently, in 1956, when the ROC, the PRC, South Vietnam, etc. protested against the "Cloma claim," France formally asserted its own sovereignty over the Spratlys and stressed that these islands, unlike the Paracels, had never been ceded to South Vietnam.[62] This French claim might have British support in view of what happened during the San Francisco Peace Conference of 1951.[63]

While opposing this French position, South Vietnam argued that it had succeeded to the French sovereignty over both the Paracels and Spratlys and thus that, as a participant and represented by its Prime Minister Tran Van Huu, it had come to "affirm our right" to these islands "which have always belonged to Vietnam."[64] In the summer of 1956, it joined other claimants, including Taipei, Beijing and Paris, in issuing formal protests severally against the Philippines' Cloma claim and, like the ROC, sent a destroyer to patrol the Spratlys.[65]

From 1959 onward, the South Vietnamese penetration in the Paracels continued, including seizing the PRC's fishing vessels and fishermen and burning the latter's houses on the islands. In the meantime,

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59. *See supra* notes 12-20 and accompanying text.

60. *See supra* note 57.

61. *Vietnamese White Paper of 1975, supra* note 6, p. 47.

62. As informed by then French Charge D'affaires in Manila to the Philippines Vice-President Garcia. *See* "Freedomland: Government States Position on Imbroglio Over Islands", *New Philippines*, Manila: National Media Production Center, Republic of the Philippines, February 1974, p. 9; Samuels (1982), *supra* note 6, pp. 77, 84.

63. The UK policy-position toward the proposed Peace Treaty with Japan—especially Article 2—was, reportedly, based on a document approved by UK Foreign Office. In that document, while maintaining that the British claim to the Spratlys "has never been formally abandoned", the UK Delegation was directed not to contest the French claim to sovereignty over the islands, which, in UK's view, was "good in law". FO-371/63778; *also* Marston (1987), *supra* note 6, p. 355. For the position of maintaining the British claim to the Spratly Island, *see* telegram issued by the UK Foreign Office on June 12, 1956, and Marston, *supra* note 6, p. 356.

64. *See* the Prime Minister's Statement of September 7, 1951 before the 7th plenary session of the Peace Conference. For its text, *see* the *Vietnamese White Paper of 1975, supra* note 6, p. 86. That statement can only be regarded as a protest to the PRC's claim made by Chou En-lai one month earlier. *Cf.* Samuels (1982), *supra* note 6, p. 79.

65. *Vietnamese White Paper of 1975, supra* note 6, pp. 84, 86.

South Vietnam decreed the incorporation of the Paracels and Spratlys into Quang Nan Province on July 13, 1961 and September 6, 1973, respectively.[66] In addition, it awarded oil exploration contracts to eight foreign companies, straddling the disputed sea areas around the two island-groups.

These moves were severely denounced by Beijing in January 1974. When the PRC's military units were ordered to cross from the Amphitrite Group into the Crescent of the Paracels, a brief battle arose between the two regimes from the 19th to 20th of the same month.[67] As a result, whereas the PRC acquired complete control of the Paracel Archipelago, South Vietnam transferred most of its defeated troops to the Spratlys to reinforce those which had already been stationed there since September 1973, and thus caused formal protests from Taipei, Beijing and Manila.[68]

It is most noteworthy that, during the development of these hostile relations, Communist North Vietnam continued, as it had done since its founding, to recognize China's sovereignty over both the Paracels and Spratlys in its notes, statements, confidential documents, publications, official maps and textbooks.[69]

After the fall of South Vietnam in April 1974, and apparently with support from the USSR which, in turn, had acquired Vietnamese permission to use the U.S. abandoned navy bases at Cahm Rahn Bay, North Vietnam drastically changed its policy and took a series of measures to claim the disputed archipelagos. These measures include, *inter alia*, (1) taking control of the six islands of the Nan-sha Chun-tao which were previously held by South Vietnam;[70] (2) publication of a huge map in June 1976, showing distinctively the disputed island-groups as belonging to Vietnam,[71] and (3) trying to enhance its further penetration into the South China Sea by publishing another White Book on September 28,

66. Decree No. 147-NV, *Vietnamese White Paper of 1975*, *supra* note 6, p. 52; Heinzig (1976), *supra* note 6, p. 43 and Samuels (1982), *supra* note 6, p. 99.

67. For details, *see supra* note 58. Whereas the French position was unknown, other states indicated abstention from the conflict. The United States and the Soviet Union adopted a strictly neutral attitude; South Vietnam, through its Ambassador in Paris, stated on January 24, 1974, that Saigon would refer the case to the International Court of Justice. *See* Keesing's *supra* note 6, March 4, 1974, pp. 26388-26389.

68. *Keesing's, ibid.*, p. 26389. These troops occupied a total of five (or seven) islands, cays and reefs, including the island named Spratly. *See Vietnamese Press* of February 22, 1974; Heinzig (1976), *supra* note 6, pp. 36-37.

69. For details, *see* HSNS-CT (1981), *supra* note 6, pp. 9-14 and Han Nian-long's speech: "The Truth About the Sino-Vietnamese Boundary Question", *Peking Review*, Vol. 22, No. 21 (March 25, 1979), pp. 24-26.

70. BBC/FE, No. 4827, p. A3/3; Lee Lai-to, *supra* note 58, p. 9. These islands include the Spratly Island, Pugas, Namyit, Sin Cowe. *See* Keesing's, *supra* note 6, April 7, 1978, p. 28913.

71. "Islands of Multiple Claims," *South China Morning Post*, June 16, 1976, p. 4. *Cf.* Samuels (1982), *supra* note 6, p. 108 and *Keesing's, supra* note 6, April 7, 1978), p. 28913.

1979.[72]

To this book, the PRC's Foreign Ministry issued a lengthy reply on January 30, 1980,[73] each side justifying its own claim. As the subsequent events reveal, the publication of the two documents served not as a means to solve the territorial disputes, but, instead, as a start of escalating the propaganda and rhetoric surrounding their respective claims, and, finally, culminated in another PRC-Vietnamese armed conflict in March 1988 in the sea around the Spratlys.

D.   The Philippine Claim to the So-called Kalayaan

The Philippines' claim to the Spratlys was first expressed in 1946 in the U.N. General Assembly and was repeated in 1950 when the ROC withdrew its forces, in 1956 when the Chinese navy resumed occupation of the island-group, in 1971 when the Cloma incident came to an end, and finally in mid-1976 when a Swedish-Filipino oil-exploration firm started oil drilling in the vicinity of the Reed Bank (or Liletan in Chinese) which is located roughly 250 miles northeast of the Spratlys and 200 miles off the Palawan Island of the Philippines.[74] Its contentions include:

(1) *Occupation of Terra nullius*: In its view, the Spratlys are subject to occupation by a state because they have become *terra nullius* since the conclusion of the 1951 Peace Treaty in which Japan expressly renounced "all right, title, and claim" to the island-group without specifying recipients of the abandoned title.[75] It is clear that, in so contending, the Philippines failed to take account of the *travaux préparatoires* of the Treaty and the insurmountable problem of the legal and political status of the two governments of China.[76]

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72. *White Book on Vietnam's Sovereignty Over the Hoang Sa and Truong sa Archipelagos,* Hanoi: Ministry of Foreign Affairs, 1979 [hereafter *Hanoi White Book*]. *The White Paper (1975), supra* note 6, consists of 19 articles and the *Hanoi White Book* is basically a replica of this. For a brief summary of this, *see Keesing's, supra* note 6, October 23, 1981, p. 41149. For a critical analysis of the two documents, *see* T'ai kuo-lai's article in *HSNS-CT, supra* note 6, pp. 63-73 and *Kuang-min jih-pao* (Enlightenment Daily), June 8, 1980.

73. For response, *see* Ministry of Foreign Affairs, "China's Indisputable Sovereignty Over the Xisha and Nansha Islands," *supra* note 56, pp. 15-24.

74. *See Philippine Geographical Journal,* Vol. 20 (December 1976), pp. 172-173. *Cf. also* D.C. Drigot, "Oil Interests and the Law of the Sea: The Case of the Philippines," *Ocean Development and International Law,* Vol. 12 (1987), p. 42.

75. Article 2(f) of the Peace Treaty. For the text of the Treaty, *see* United Nations, *Treaty Series,* Vol. 136, p. 48 and M. Whiteman, *Digest of International Law,* Vol. 3, Washington, D.C.: U.S. Government Printing Office, 1964, p. 594. Noteworthy is that Taiwan and Pescadores were all treated in the same way.

76. While drafting the provisions, UK-US agreed not to specify the names of the islands, nor the recipients thereof; *see* FO-371-63778; Marston, *supra* note 6, pp. 354-355. USSR and its Allies refused to sign the treaty in protest, partly at least, against the Conference's failure to

(2) *The "occupation" by Cloma as Basis*: Its theme of occupation is, as it contends, even further enhanced by the ROC's withdrawal in 1950 and by the subsequent occupation of the Spratlys in the Spring of 1956 by a Filipino businessman, Tomas Cloma, who proclaimed the island-group as "Archipelago of Freedomland (Kalayaan in Filipino language)."[77]

Having notified the Philippine Government twice in May 1956, Cloma declared on July 6 of the same year the establishment of a separate government for the Kalayaan which, as he noted, had an area of some 64,976 square nautical miles, located 300 miles west of Palawan, outside Philippine waters and not within the jurisdiction of any country[78] (see Map 3).

When the dramatic "Cloma event" was strongly protested by various countries, the Philippines denied any official claim to the area in question. About five years later and onwards, however, the Philippine government officially proclaimed its own sovereignty over the Spratly Islands, first in July 1971 when the ROC reenforced their integration with Taiwan Province, secondly in August 1976 when the oil drilling operation in the Reed Bank area looked hopeful, and on many other occasions, *e.g.*, in March 1972, before the U.N. Sea-bed Committee where it declared its effective occupation and control of the "freedomland."[79]

In April 1972, it made the "Kalayaan" part of Palawan Province, to be administered as a single township, with T. Cloma as Chairman of a special advisory council.[80] The area so incorporated was, in effect, much similar to that claimed by Cloma (see Map 3). By now, a small airfield has been constructed on Nan-shan Island and a garrison force of 1,000

adopt the Soviet amendment that the treaty should recognize full Chinese sovereignty over the Archipelagos (together with others); *see The Conference Records of Proceedings*, U.S. State Department Publication 4392 (December 1951), p. 292.

77. Cloma, owner of a fishing fleet and private maritime training institute, and anxious to exploit the Guano deposits in the Spratlys, claimed possession of these islands in 1947 and took "formal possession of them by raising the Philippine flag on various islands and proclaimed them as such." *See* Samuels, (1982) *supra* note 6, pp. 81-82.

78. For the description, *see* Cloma's Note of May 15 and 21, 1956, to the Philippine Vice-President and Foreign Minister, Carlos Garcia, as cited in Samuels (1982), *supra* at p. 82. The sea area to be enclosed in the archipelagic baselines, if drawn, would be 70,150 square n.m., and to be doubled to about 124,000 sq. n.m. if 200-n.m. Exclusive Economic Zone is claimed on the basis of this baseline system.

79. *New Philippines, supra* note 62, p. 11; *Manila Chronicle*, March 14, 1972, p. 1. In its view, the Freedomland is a compact group of 53 islands. In his note, Garcia seems to think that, as one of the Allied Powers of World War II, the Philippines is qualified to dispose of the 7-island-group which is distinctive from the Freedomland. *See* Samuels (1982) *supra* 6, pp. 82-83.

80. The 11 Commission members were chosen primarily from Palawan. This territorial sovereignty was later endorsed by Presidential Decree No. 1596 (August 1978). For a detailed discussion of this event, *see* Drigot, "Oil Interests . . . the Case of the Philippines," *supra* note 74, pp. 34-40.

marines is supplied by both ship and airlift.[81] Upon its signature and ratification of the 1982 United Nations Convention on the Law of the Sea, the Philippines declared that such adherence "shall not in any manner impair or prejudice its sovereignty over the Kalayaan Islands and waters appurtenant thereto."[82]

(3) *Geographic proximity argument*: The Philippine's claim seems also to be based on geographic proximity, *i.e.*, as it contends, the "Kalayaan" portion of the Spratly Archipelago is geographically closer to the Philippines than to the coasts of the ROC, PRC and Vietnam.[83] However, the validity of this contention is very questionable given the inadmissibility of arguments of proximity or contiguity in maritime boundary delimitation, as reflected in international jurisprudence. For example, in the *Island of Palmas (or Miangas) Arbitration Case*, proximity was rejected as "wholly lacking in precision and would in its application lead to arbitrary results."[84] The same view was adopted by the International Court of Justice (ICJ) in the *North Sea Shelf* cases,[85] although in relation to a shelf boundary rather than a claim to territorial sovereignty.

(4) *Essential to its security and economic development*: Another alleged basis on which the Kalayaan is claimed is the island's importance to the Philippine national security and economic survival. In its view, the success of the future economic development of the entire Palawan Province lies in the success of the national claims both to the Kalayaan islands and to the continental margin west of Palawan.[86] This was the

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81. *See* Lee Yong-Leng, "Strategic Forum: Potential Conflict in the South China Sea and Environs," *Marine Policy*, Vol, 8, No. 4 (October 1984), p. 361.

82. *Law of the Sea Bulletin* (herein LOS Bull.), Special Issue I (March 1987), p. 6. In protest, the PRC notified the U.N. that the so-called Kalayaan "constitutes part of the Nansha Islands which are Chinese territory"; *see* Depository Notification of U.N. Secretary-General, C.N. 171 1985 Treaties-12 (June 12, 1985). Whereas Vietnam contended that the "Kalayaan" or Nansha Islands are in fact the Vietnamese Truong Sa Archipelago; *see LOS Bull.*, No. 9 (Spring 1987), p. 57.

83. This argument was first made by its Foreign Minister Carlos Garcia in the Spring of 1956; *see* Heinzig, *supra* note 6, pp. 42-43; Drigot, "Oil Interests . . . the Case of the Philippines," *supra* note 74, p. 41; later, by its President in 1978; *see* Presidential Decree No. 1596, Part 1, *supra* note 80.

84. Palmas Case (The Netherlands v. U.S.A., Permanent Court of Arbitration, 1928), *Reports of International Arbitral Awards*, Vol. 2, p. 829.

85. The Philippine claim to the continental shelf based on the same argument was also made, for example, by E.M. Mendoza in *Proceedings of Sea Power Symposium* in 1977 (*see* Drigot, "Oil Interests . . . the Case of the Philippines," *supra* note 74, p. 65) and R.Z. Reyes in his "The Continental Shelf," *Philippine Law Journal*, Vol. 49, No. 4 (September 1974), p. 501. The International Court of Justice in the North Sea Continental Shelf Cases does not accept this view, *I.C.J. Reports, 1969*, pp. 30-31 (paras. 41-42).

86. *See* Decree No. 1596, *supra* note 83. *See also* Drigot, "Oil Interests . . . the Case of the Philippines," *supra* note 74, pp. 45-46.

very argument on which the Kalayaan was designated by Presidential Decree as a distinct and separate municipality of the Province of Palawan.[87] Nonetheless, this is even more unconvincing in view of the location of the islands in question, which are 300-miles away from the Palawan and thus cannot have any vital link to its security and economic development.

E. The Malaysian Claim to the Spratlys

Malaysia did not claim any section of the Spratly Archipelago until 1978 when Vietnam occupied the Amboyna Cay. What it claims are the reefs and islands located at the extremely southern part of the South China Sea: including Amboyna Cay, Commodore Reef, Swallow Reef, Louisa Reef, etc.[88] which, located northwest of its State of Sarawak on North Borneo, constitute parts of the loosely defined Nan-sha Ch'un-tao and, as said above, are already claimed by various countries (see Map 3). The alleged legal basis for such claims is the geographical fact that, as Malaysia sees it, these insular features stand on its continental shelf and within its Exclusive Economic Zone (EEZ).[89] To reinforce such claims, Malaysia has erected obelisks on the Louisa and Commodore reefs,[90] and more noteworthily, stationed a naval unit on the Swallow Reef since September 4, 1983.[91]

This move of Malaysia "heralded the implementation of a program to develop the gas and oil fields in its economic zone."[92] In its reply to the Chinese and Vietnamese official protests, its Foreign Ministry asserted on the same day that both the Swallow Reef and Amboyna Cay "lay within Malaysia's 200-mile EEZ and had always been marked as Malaysian territory on maps of the area."[93] This argument is unconvinc-

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87. *The Philippine Official Gazette*, February 19, 1979, p. 1557.

88. For the names in Malaysian, *see* Prescott, *The Maritime Political Boundaries of the World*, *supra* note 24, pp. 219, 227; D.J. Dzurek, "Boundary and Resource Disputes in the South China Sea", *Ocean Year Book*, Vol. 5 (1985), p. 260.

89. Prescott, *ibid*. p. 222; P. Lewis Young, "The Royal Malaysian Air Force and Potential Conflict in the South China Sea and Environs", *Marine Policy*, Vol. 8, No. 4 (October 1984), p. 362. For official statements made on May 19, 1983 by its Deputy Minister in Charge of Legal Matters and, a few days later, by its Parliamentary Secretary to the Minister of Foreign Affairs, *see The New Strait Times* on these days.

90. Prescott, *ibid*. p. 222. The monument on the Commodore Reef was reportedly destroyed by the Philippine Authorities.

91. This is a naval commando unit of 20 strong Malaysian personnel. *See* Prescott, *ibid*.; P.L. Young, "The Royal Malaysian Air Force. . . .", *supra* note 89, p. 146; *Keesing's*, April 1984, p. 32785. The Amboyna Cay, situated 64 kilometers further southeast, has been occupied by Vietnam.

92. K. Das, "Perched on a Claim," *The Far East Economic Review*, Vol. 121, No. 39 (September 29, 1983), pp. 40-41.

93. *Keesing's*, *supra* note 6, April 1984, p. 32785.

ing because it is not the waters which give title to islands, but islands which confer rights to the waters.[94]

V. EVOLUTION OF THE LAW OF TERRITORIAL ACQUISITION

Such a comprehensive examination of the disputes reveals serious questions about the nature and legal basis of the conflicting territorial claims, including whether they are or which of them is legally well-based; what are the legal rules applicable to these claims; and, noting Huber's notion of "inter-temporal law,"[95] whether the acts taken in the pre-modern times by some of the disputants in proclaiming sovereignty over the islands should be governed exactly by the modern legal rules. To answer such questions, a brief inquiry into the modes of territorial acquisition is necessary.

Among these modes are the conceptions of occupation and prescription. They are distinct in the sense that, as originally employed in Roman law,[96] the legal status of the territories to be acquired is different: occupation is the acquisition of *terra nullius, i.e.*, territory belonging to no state; whereas prescription is the acquisition of territory belonging to another state. Nonetheless, they are similar in the sense that they commonly require the acquiring states to show intention or will to act as sovereign and to display sovereignty effectively over the land.[97]

While the "intention" may be either a matter of inference from all the facts or a matter of formal notification, the "effective control" requires, as the ICJ held in the *Minquiers and Ecrehos Case*, an actual exercise of "state functions" — including, *e.g.*, local administration and jurisdiction and acts of legislative authority.[98] In the case of prescription, this effective control must last for a longer period of time than that

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94. *LOS Bull.*, Special Issue, I (1987), p. 6; Prescott, *The Maritime Political Boundaries of the World, supra* note 24, p. 222.

95. In the Island of Palmas (or Miangas) Case (The Netherlands v. U.S.), Permanent Court of Arbitration, with Swiss Jurist Max Huber as the arbitrator, answered the question of which different legal systems prevailing at successive periods is to be applied in a particular case by making a distinction between the creation of rights and the existence of rights. The principle subjects the act creative of a right to the law in force at the time the right arises. *Reports of International Arbitration Awards*, Vol. 2, p. 829.

96. The concept of *occupatio* was used to explain the reduction to ownership of something that is unowned; whereas that of *praescriptio*, as one mode of acquiring someone else's property. *See* D.P. O'Connell, *International Law for Students*, London: Stevens, 1971, p. 182; D.J. Harris, *Cases and Materials on International Law*, 3rd ed., London: Sweet & Maxwell, 1983, p. 165.

97. The two elements were laid down by Permanent Court of International Justice in the 1933 Eastern Greenland Case, *see* P.C.I.J. Publication Series A/B, No. 58.

98. Minquiers and Ecrehos Case (United Kingdom/France), *I.C.J. Reports, 1953*, pp. 68-70.

in the case of occupation.[99] Furthermore, to establish title by prescription, acquiescence on the part of the previous sovereign state is necessary. Any act demonstrating a lack of such acquiescence, *e.g.*, protests or other acts or statements, "can probably prevent the acquisition of title by prescription."[100]

On the other hand, occupation of *terra nullius* requires "discovery" to be followed by "both some form of annexation and some act of physical appropriation."[101] In other words, "discovery" alone is insufficient to confer a title by occupation. In the view of some writers, discovery accompanied by a proclamation of sovereignty *in situ*, or by the hoisting of a national flag, etc. confers only an inchoate right.[102] In order to acquire sovereignty by occupation of *terra nullius*, the annexation and appropriation must, in the British view, be supplemented by either "attaching the land for administrative purposes to some other territory" or by "setting up a special administration for the new territory."[103]

These rules of effective occupation are stricter in modern times than they were earlier. Up to the 18th century, discovery alone sufficed to establish a legal title.[104] This was asserted as late as 1823 by U.S. Chief Justice John Marshall in *Johnson and Graham's Lessee v. M'Intosh*.[105] Referring to the years 1400-1800, Keller and Lissitzyn and Mann stated that "discovery" accompanied by some symbolic act sufficed to establish a good title to sovereignty over the land in question. In their words: . . . the formal ceremony of taking of possession, the symbolic act, was generally regarded as being wholly sufficient per se to establish immediately a right of sovereignty over, or a valid title to, areas so claimed and did not require to be supplemented by the performance of other acts, such as, for example, effective occupation. A right or title so acquired and established was deemed good against all subsequent claims set up in opposi-

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99. There is no rule of law applicable to this length of time. In English Law, a "squatter" acquires title to land after 12 years. The time needed for prescription is certainly much longer than this. *See* M. Akehurst, *A Modern Introduction To International Law*, London: George Allen and Urwin, 6th ed., 1987, pp. 146-147.

100. *Ibid.*, p. 147; I. Brownlie, *Principles of Public International Law*, 4th ed. London: Oxford University Press, 1990, pp. 160-163. This explains why, in the 1928 Island of Palmas Case, the Arbitrator emphasized the absence of Spanish protests against Dutch acts on the Island. *See Reports of International Arbitral Awards*, Vol. 2, pp. 829-868.

101. This was pointed out by the British Legal Adviser to the Foreign Office discussing the alleged British claim to the Spratly Island and Amboyna Cay in early 1930s. *See* FO-371/16364, ff. 150-151; *also* Marston (1987), *supra* note 6, p. 346.

102. J.G. Starke, *Introduction to International Law*, 10th ed. London: Butterworths, 1989, p. 161.

103. As viewed by the British Foreign Office. *See* FO-371/15650, f. 374; Marston (1987), *supra* note 6, p. 346.

104. G. von Glahn, *Law Among Nations*, 5th ed. New York: McMillan, 1986, p. 311.

105. U.S. Supreme Court, 1823, as cited in Glahn, *ibid.*, pp. 311-312.

Annex 444

22   WHO OWNS THE PARACELS AND SPRATLYS?

tion thereto . . . ."[106]

Similarly, in the *Clipperton Island Arbitration Case*, the arbitrator held that the Clipperton Island (which lies off the Mexican coast) was legitimately acquired by France ever since November 17, 1856 when, after a naval landing, it proclaimed its sovereignty over the island, which had been in the legal status of *territorium nullius*.[107]

Another mode of territorial acquisition which also has drastically changed in the development of its legal status is "conquest," with or without a peace treaty. In the 19th century, it was lawful for a state to acquire territory by conquest, because, under the customary international law of that time, the right to go to war was not restricted. After the turn of the present century, especially after World War I, however, there has been a growing movement culminating in the establishment of the current rule that only the use of force in self-defense is legally allowed.[108] As a corollary, any treaty — including a treaty of Peace or Cession — concluded under the unlawful threat or use of force is invalid.[109] This has been confirmed by the ICJ as an accurate statement of the modern law.[110] In other words, "conquest" is presently no longer recognized by law as a mode of territorial acquisition.

VI. CONCLUSION

In pursuance of the law so evaluated, the above-mentioned questions may be answered as follows:

(1) *Assessment of pre-modern act in the light of law contemporary with it*: The question whether the modern law should be applicable to acts taken in the pre-modern times, as already examined in case law,[111] must be answered negatively. That is to say, a judicial fact must be appreciated in the light of the law contemporary with it rather than of the law in force at the time when the dispute concerning it arises. This is

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106. Keller, Lissitzyn and Mann, *Creation of Rights of Sovereignty Through Symbolic Acts: 1400-1800*, 1938, pp. 148-149; *cited in* Harris, *Cases and Materials on International Law, supra* note 96, p. 158.

107. That proclamation was made by an officer of a French Navy and was officially endorsed and published. Beyond granting a concession for the exploitation of Guano, France failed to do anything more until 1897 when Mexico sent an expedition to the island, thus causing the dispute. Italian King Victor Emmanuel III was the Arbitrator. *See* Harris, *Cases and Materials on International Law, supra* note 96, p. 161.

108. *E.g.*, Article 2, paragraph 4 and Article 51 of the United Nations Charter.

109. *See* Article 52 of the 1969 Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF. 39/27 (1969).

110. Fisheries Jurisdiction Case (Jurisdiction), *I.C.J. Reports, 1973*, pp. 3, 14.

111. The Island of Palmas Arbitration Case (The Netherlands v. U.S.A., 1928, Permanent Court of Arbitration), *Reports of International Arbitral Awards*, Vol. 2, p. 829; the Minquiers and Ecrehos Case (France v. U.K.), *I.C.J. Reports, 1953*, p. 47 and the Western Sahara Advisory Opinion, *I.C.J. Reports, 1975*, p. 12.

important in assessing the acts taken by China, France and Japan in relation to the island-groups in the South China Sea.

(2) *The Chinese claims may be sustained*: As explained above, the Chinese acts supporting its claims to the Paracels and Spratlys, *inter alia*, were taken in pre-modern times: *e.g.*, first, the settlement of its nationals on the islands even in ancient times; second, its official expeditions to these islands in the thirteenth, fifteenth, and nineteenth centuries; and third, incorporation of these islands into its Kuangtung Province for administrative purposes in the early twentieth century and finally, by maintaining effective control over the islands until the 1930's.[112] In the light of the law of territorial acquisition contemporary with these acts (or even of the modern law), and taking account of the legal status of the island-groups in question which, before the Chinese presence, were *territorium nullius*, the Chinese sovereignty over them was therefore effectively established by occupation.

(3) *Neither occupation nor prescription nor conquest is applicable to the French acts*: As already stated, Annam (now part of Vietnam) remained a vassal state of China until 1874 when it was forced to conclude a treaty with France. Ten years later, as a result of the signing of the 1887 Sino-French Convention under duress, Annam ceased to be a Chinese vassal state and, instead, became a French Protectorate. This paved the way for French incursions into the South China Sea in the 1930's. The measures of such incursions were to proclaim the incorporation of the Paracels into Vietnamese Thua Thien Province in 1932 and to annex the Spratlys in the next year.[113] It is certain, however, that judged by either the pre-modern or modern law of territorial acquisition, French sovereignty over these islands has never been established. It could not be established pursuant to the principle of occupation because the island-groups in question were not *territorium nullius*; nor was it established pursuant to the rule of prescription because the French acts were strongly protested not only by China, but also by Japan which argued that, as of 1917, it had already occupied the Spratlys. In this connection, China could not do more than lodge ineffective protests because of its pre-occupation, after 1931, with struggle against the Japanese invasion of China's mainland. The only alternative left for France to justify its claim would be the concept of "conquest," but this was legally prohibited both by the League of Nations Covenant and the 1928 Pact of Paris.

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112. *Cf.* contentions advanced by Vietnam in the 1930s when it started to claim the island-groups. *See supra* notes 21 and 22 and accompanying text.

113. In this connection, France argued that the legal requirement of annexation and appropriation might be achieved simply by raising its flag on the Spratly Island and attaching it administratively to the province of Co-chin China. *See supra* note 102 and accompanying text.

In this connection, commentators might ask if the same legal principle could be applicable to the case of Tibet and thus if the PRC "occupation" of that country in 1950 was legal. The answer to such questions must be based on Tibet's legal status vis-a-vis China. If it is admitted, as both the ROC and the PRC certainly do, that Tibet has been and is an integral part of Chinese territory, Beijing would regard its action of 1950 as suppression of the secessionary movement in Tibet, rather than conquest of foreign territory. Whereas the former is perfectly legitimate, the latter is prohibited by contemporary law.[114] This is the very legal basis for the United Nations to condemn the secessionary Katanga in Congo (now Zaire) and Biafra in Nigeria in the 1960's and 1970's respectively, but to authorize military sanctions in 1991 against Iraq for its conquest of Kuwait.

(4) *Japanese conquest and Chinese restoration*: The French control over the islands in question was maintained until 1938 when Japan, while strengthening its military invasion of China, occupied the whole South China Sea and, thus, drove the French out of the archipelagos. The ensuing Japanese "sovereignty" over the same, also established by "conquest," was (like the French one) ill-founded and short-lived.

At the end of the Sino-Japanese War, the island-groups were restored to the ROC in 1945 and, once again, incorporated into Kuangtung Province. Chinese sovereignty over them was, as China believed, thus reestablished, irrespective of the nature of the 1951 and 1952 peace treaties. In fact, as the PRC claims, this reestablishment of Chinese sovereignty over these archipelagos is recognized by encyclopedias and atlases published in the U.S., USSR, Japan, Germany and other countries, and even by official documents and notes, newspapers, maps and textbooks published by North Vietnam up to 1974.[115]

(5) *Invalidity of the Philippine "occupation"*: As already stated, in 1950 the Philippines started to claim most parts of the Spratlys on the basis of a theory of occupation. This is untenable because, as discussed above, the island-group has been under the Chinese jurisdiction ever since 1945, and, as such, was not *territorium nullius*. The reason why both the 1951 and 1952 Peace Treaties specified no recipient of the titles renounced by Japan was simply to avoid identifying China with either the ROC or the PRC.

(6) *The questionable "State-succession" of Vietnam*: Needless to say,

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114. *See* United Nations General Assembly Resolution 1514 (XV), December 14, 1960, adopted by 80-0, with 9 abstentions. *Yearbook of the United Nations*, Vol. 15 (1960), New York: Columbia University Press, 1963, p. 49.

115. The PRC Reply, dated June 30, 1980, to the *Vietnamese White Book of 1979*, *supra* note 72; *Keesing's*, *supra* note 6, October 23, 1981, p. 31149.

the "State succession" argument of Vietnam is equally baseless. As already shown, the French claim of sovereignty over the archipelagos was in any event invalid, and French control came to an end when Japan conquered these islands in 1938. How could Vietnam succeed the French authorities in a claim which was invalid *ab initio*, and which France itself had abandoned in practice, if not formally?[116]

From a purely legal analysis, the conclusion is inevitably that, as persistently maintained by the ROC and the PRC, the Paracels and Spratlys, like the Tung-sha and Ch'ung-sha island-groups, are Chinese territories. It may be true that, in actual politics, China cannot be sure if the other claimant States will recognize its title. Equally uncertain, nevertheless, is the question whether any concession will be made by the ROC or the PRC in relation to their claims to these island-groups.

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116. Note that, as discussed above, France maintained its claim to the Spratlys and, for that purpose, emphasized that, upon the dissolution of the French Empire, it never turned this island group over to Vietnam. *See supra* notes 61 and 62 and accompanying text.

Map 1: Showing the two sub-groups of the Hsi-sha Ch'un Tao: named after the reign titles of Ming Emperors: Hsuan-teh and Yung-lo

Source: ROC Ministry of Foreign Affairs (Dec. 1, 1947)

**Map 2: ROC's Special Tung-Hsi-Nan Sha Arichipelagos
Administration District proclaimed in 1947.**

Source: KMT, *Nan-Hai Chu-Tao Wen-Ti*, 1974.

28   WHO OWNS THE PARACELS AND SPRATLYS?

Map 3: "Kalayaan" Area of the Spratly Archipelago

Annex 445

D. J. Dzurek, "The Spratly Islands Dispute: Who's on First?", *IBRU Maritime Briefing*, Vol. 2, No. 1 (1996)

International Boundaries Research Unit

MARITIME BRIEFING

Volume 2 Number 1

**The Spratly Islands Dispute:
Who's On First?**

Daniel J. Dzurek

Maritime Briefing

The Spratly Islands Dispute: Who's On First?

by

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The Spratly Islands Dispute: Who's On First?

Daniel J. Dzurek

1.   Introduction

The area of the Spratly islands[1] in the South China Sea is the most contested place on the planet. It includes both sovereignty and jurisdictional (boundary) disputes.   The reference of this monograph's title to the Laurel and Hardy comic routine hints at the chronic miscommunication among the claimants.   It also alludes to the allegation of 'discovery' that underlies several sovereignty assertions and to the sequential occupation of military outposts by the claimants. Brunei, China, Malaysia, the Philippines, Taiwan,[2] and Vietnam claim part or all of the area. All of the countries except Brunei claim some of the islands and reefs.[3] Matters are complicated because there is no agreed definition of the 'Spratly islands', and international law is ambiguous about the definition of islands and the resolution of conflicting sovereignty and jurisdictional claims. The Spratly islands dispute is aggravated by historical animosity, other land and maritime boundary disputes among the claimants, and the possibility of oil and gas deposits near the islands.

2.   Physical Geography

The southern portion of the South China Sea is studded with low islands, cays, and reefs extending in a rough oval southwest to northeast for approximately 900 kilometres (km). The average east-west extension is roughly 360km. The 240,000 sq. km area is roughly the size of the United Kingdom (see Figure 1).   However, estimates of the jurisdictional area under dispute vary dramatically.[4]

There are more than 170 features with English names in the Spratly islands.[5] Most are submerged banks and shoals; approximately 36 tiny islands rise above the water. Within the Spratly islands, features tend to cluster on submerged structures, variously termed table mounts, atolls, reefs, or banks, of relatively shallow depths (less than 200 metres). Some

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[1]   To refer to the entire Spratly group, the term Spratly islands, with a lowercase generic, will be used to remind the reader that the group is ill-defined and to distinguish from Spratly Island.

[2]   Because troops from both Chinese authorities are present in the Spratly islands, they must be distinguished for purposes of this study. The Nationalist authorities in Taipei, Taiwan will be identified as Taiwan where a distinction is necessary, and the authorities in Beijing will be denoted as China or People's Republic of China (PRC). However, both authorities view Taiwan as a province of China and maintain similar claims to the Spratly islands.

[3]   Brunei claims the seas surrounding Louisa Reef.

[4]   Prescott (1993) calculates an area nearly twice as large, 154,000 square nautical miles (nm) (528,000 sq. km). Vietnamese sources give an area of 160,000-180,000 sq. km. Chinese authorities estimate an area of 800,000 sq. km.

[5]   Dzurek, 1994: 167. The *Spratly Islands: Placenames Guide* (Australia, 1988) lists 98 Chinese place names and 62 Vietnamese place names in the Spratly islands.

Figure 1: South China Sea: Selected Claims/Oil and Gas Resources
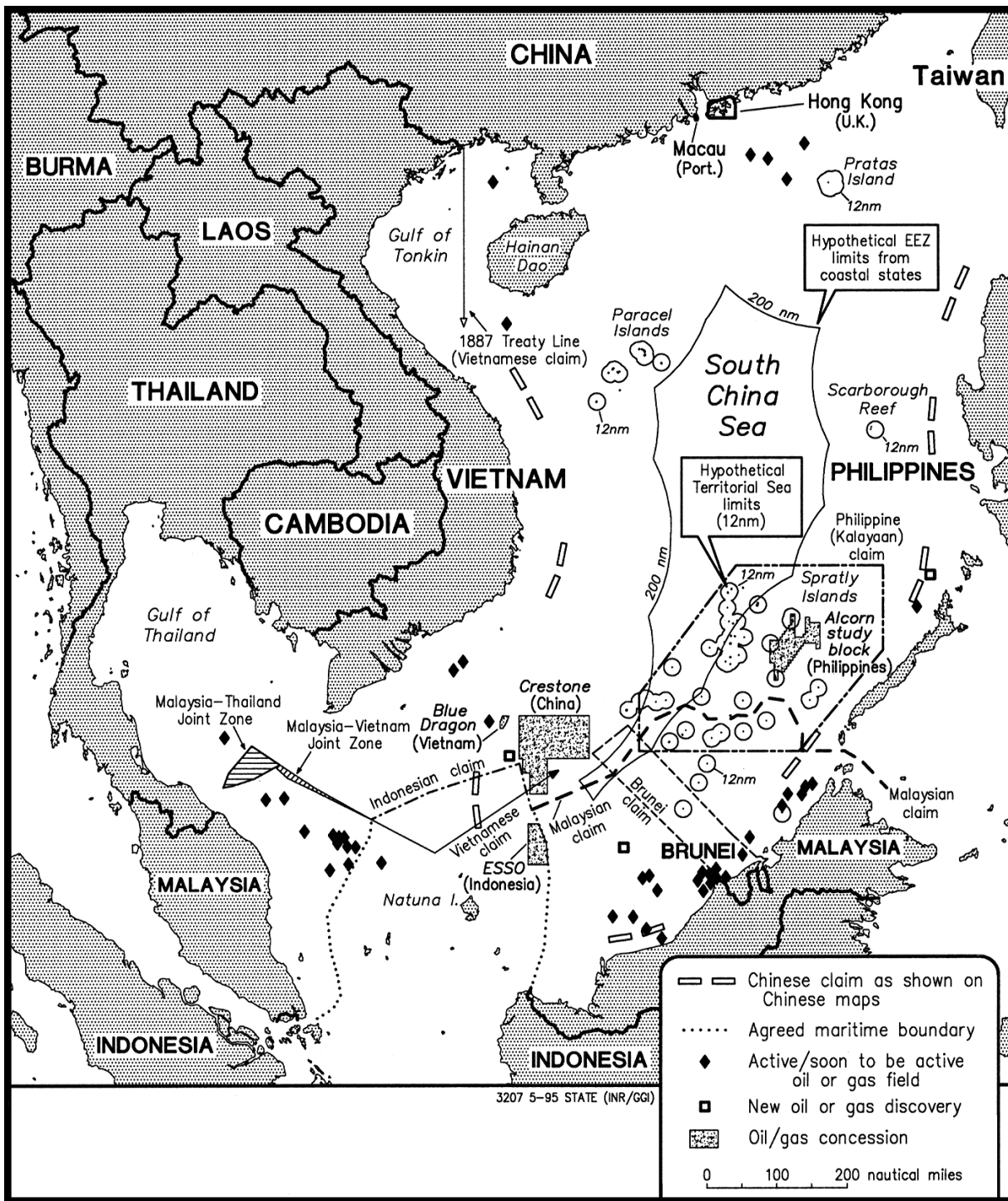
Source: US Department of State, Office of the Geographer and Global Issues.

countries have constructed fortified platforms above reefs and cays. Such shallows also hold promise for siting drilling platforms. Waters elsewhere in the Spratlys are generally less than 2,500 meters deep.

Spratly Island (8°38.5'N, 111°55'E), which lends its name to the island group in English and Vietnamese but not in Chinese, lies near the southwest edge of the chain. The island is only 2.4 meters high and 13 hectares in area. Spratly Island, like most of the other islands and cays in the group, sits on a larger coral bank or atoll. Nearly 610km northwest of Spratly Island lies the largest island of the group, Itu Aba (10°23'N, 114°21.5'E). It is only 1.4km long and 400 metres wide, with an area of 50 hectares. Itu Aba rises a mere two and one-half meters above sea level.[6] The combined surface area of all of the Spratly features above water at high tide is probably less that a few square kilometres.

3. Definitional Problems

3.1 Where are the Spratly islands?

There is no generally accepted definition of the Spratly islands. The claimant countries differ. Malaysia and the Philippines have contended that they do not claim the Spratly islands because they do not claim Spratly Island, itself (see below). In 1991 China's Xinhua News Agency (Beijing) published reference material with a partial definition.

> *"The Nansha Archipelago [Spratly islands] (in ancient times called Wanli Shitang) is located from 3°37' to 11°55' north latitude and 109°43' to 117°47' east longitude, stretching south to north approximately 550 nautical miles, and spreading east to west more than 650 nautical miles; its water-territory area exceeds 800,000 square kilometers."[7]*

The description does not indicate how near the Spratly islands extend toward the coasts of Brunei, Malaysia, and the Philippines. However, on 18 May 1983 China claimed its naval squadron had *"reached China's southernmost part – in the Nansha Islands."[8]* This is James Shoal (4°N, 112°15'E), which lies 107km north of Sarawak, Malaysia. The feature had been depicted and labelled on maps of Chinese provinces since the 1940s. Therefore, China views parts of the Spratly islands as extending up to 100km from the shores of neighbouring countries.[9]

Vietnam is inconsistent in its depiction and definition of the Spratly islands. In April 1988 the Vietnamese Foreign Ministry published a white paper with a map depicting the Truong Sa [Spratly] Archipelago (see Figure 2). The labelled features stretch as far west as Bai Phuc Tan (Prince of Wales Bank at 8°07'N, 110°32'E) and as far south as Da Sac Lot (Royal Charlotte Reef at 6°57'N,

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6   Hancox and Prescott, 1995: 9, 14.

7   Jiang Zhijun and Liu Maojian, 'Nanhai Zhudao Zhuquan jiqi Zhenyi Yuolai he Xianzhuang,' *Cankao Ziliao* [reference materials] (Beijing: New China [Xinhua] News Agency), 26 June 1991, p. 8 (author's translation).

8   US Foreign Broadcast Information Service, *Daily Report: China* (hereafter FBIS, *China*) (14 June 1983).

9   See also a discussion of China's traditional sea boundary line, below.

113°35'E). On 19 May 1992 in response to China's contract with Crestone Energy (US) for the area around Vanguard Bank (7°32'N, 109°44'E) and Prince of Wales Bank, Vietnam claimed that the contract area was on its continental shelf and *outside* the Spratly islands (see below).[10] An unofficial Vietnamese definition was reportedly published in October 1992, which described the Truong Sa [Spratly] archipelago as situated from 6°50'N to 12°N and 111°30'E to 117°20'E.[11] However a 1992 Vietnamese map of Indochina continues to suggest that Vietnam regards the Spratly islands as encompassing Vanguard and Prince of Wales banks. The map includes a first-order administrative district label for the Truong Sa archipelago that stretches south of Vanguard Bank, which is among the features labelled on the map.[12]

Various authors have proposed definitions for the Spratly islands. Prescott has written that *"There is no single authoritative definition of the extent of the Spratly Islands, but they are found in the southeastern part of the South China Sea."*[13] Hancox and Prescott (1995) examined the spatial extent of the Spratly islands in an earlier *Maritime Briefing*. Heinzig's definition includes the area between 4°N and 11°30'N and from 109°30'E to 117°50'E.[14]

For purposes of this study, a definition encompassing the largest delimitation of the Spratly islands is desirable. Therefore the Chinese limits, up to 185 kilometres (100nm) from the Malaysian and Philippine main islands, are used. This excludes the Paracel Islands, Macclesfield Bank, and Scarborough Reef, which, though disputed, are not part of the Spratly islands under most countries' definitions.

3.2   When is Chigua Reef not Chigua Jiao?

Even the identification of particular features can be problematic in the Spratly islands. One is confronted with place names in Chinese, English, French, Malay, Filipino, and Vietnamese. There are variants within each language for some features. For example, Fiery Cross Reef (9°33'N, 112°53'E), which was the scene of a battle between the People's Republic of China (PRC) and Vietnam in 1988, also bears the English names: Fierry Cross and Investigator Northwest Reef. The same feature is identified by one set of characters in Chinese, but they are variously rendered in roman characters as *Yongshu Jiao*, *Yungshu Jiao*, and *Yung-shu Chiao*.[15] It is named *Chu Thap* in Vietnamese and *Kalingan* in Filipino. The feature's French name is *Récif Croix de Feu*.[16]

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[10]   'Statement of the Ministry of Foreign Affairs of the Socialist Republic of Vietnam on the Agreement between Chinese and US Oil Companies for the Exploration and Exploitation of Oil and Gas on the Continental Shelf of Vietnam', Press Release No. 08/BC, Vietnamese Mission to the United Nations, New York, 19 May 1992.

[11]   Luu Van Loi, 'Bien Dong', *Vietnam Courier* No. 36, October 1992, as cited in Ning Lu, 1993: 59.

[12]   The label 'HUYEN TRUONG SA (TINH KHANH HOA)' curves southward beneath the island group on an inset of the map (Vietnam, 1992).
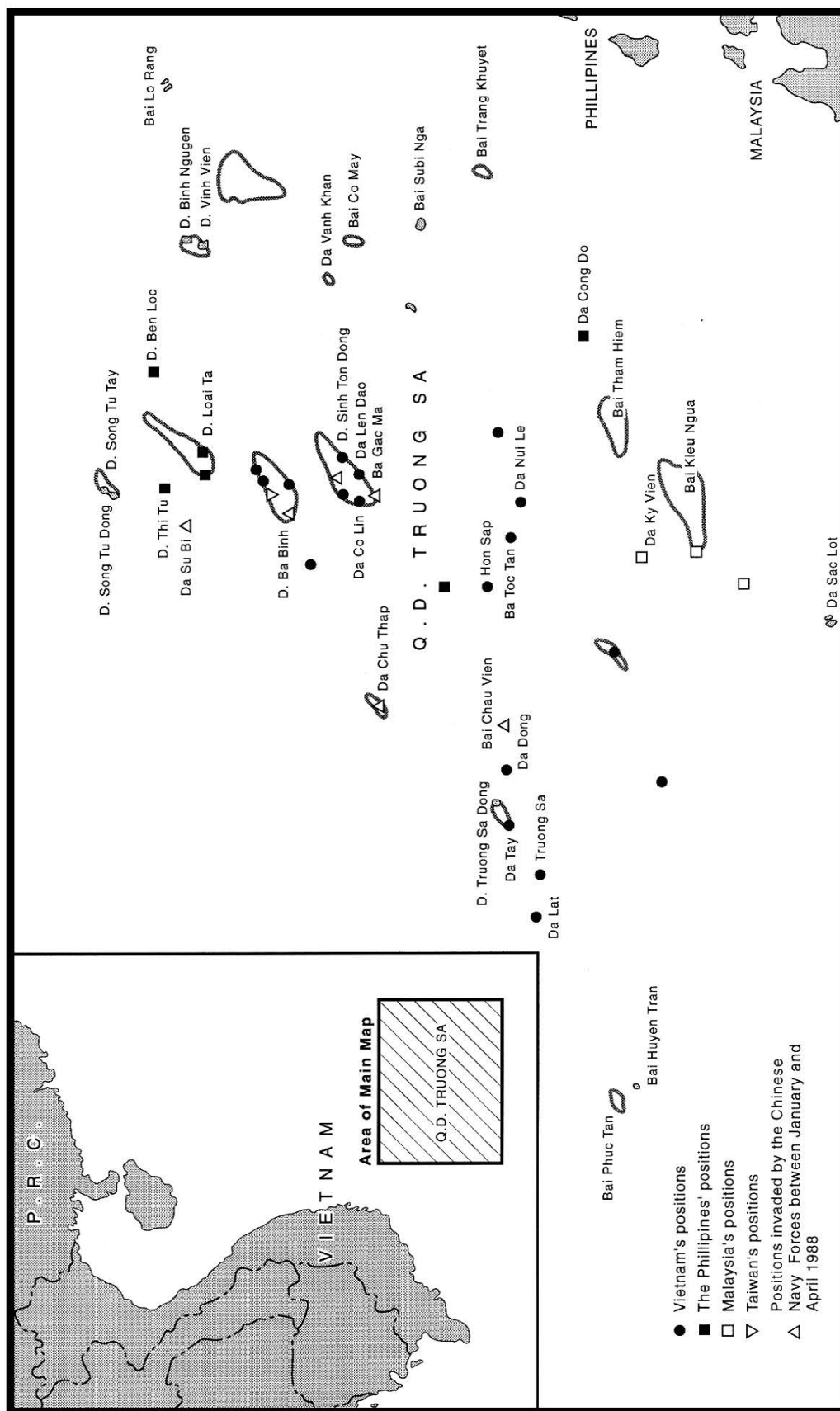
[13]   Prescott, 1985: 218.

[14]   Heinzig, 1976: 17.

[15]   The Chinese characters correspond to Chinese telegraphic codes 3057, 2540, 4339 and can be translated as *"eternal summer shoal."*

[16]   Gazetteer on reverse of 'The Spratly Islands and Paracel Islands' (map) (United States, 1992).

Figure 2: The Present Situation in the Troung Sa Archipelago (Vietnam)

Source: Vietnam, 1988: 33.

The location of Fiery Cross Reef also differs among sources (see Table 1). The average difference in location among the five published sources is 10km. Many features in the Spratly islands, especially reefs, extend for several kilometres, therefore precise locations can be uncertain. Also, some variation is due to differing map projections and diverse national geodetic systems. However, the largest nominal divergence among these various locations in Table 1 is some 18km.

On occasion, uncertainty is compounded because a place name in one language does not appear to correspond with that in another language. Such is the case with *Dongmen Jiao*, which was occupied by the PRC in 1988 (see Figure 3).[17] A recent US government map with gazetteer identifies this Chinese name with Chigua Reef, also called Kennan Reef, located at 9°55'N, 114°29'E.[18] However, both *Chigua Jiao*[19] [reef] and *Dongmen Jiao* appear in Chinese documents, showing that they are separate entities. One Chinese gazetteer locates *Dongmen Jiao* at 9°54'N, 114°30'E and *Chigua Jiao* at 9°42'N, 114°18'E. This source explicitly identifies *Chigua Jiao* as 'Johnson Reef.'[20] The listed geographic coordinates suggest that *Chigua Jiao* in the Chinese context is Johnson Reef South, and *Dongmen Jiao* is what the United States identifies as Chigua Reef or Kennan Reef. Both 'islands' are outcroppings on the Union Reefs platform, which includes four other occupied features. Such confusing place names reflect even more bewildering historical claims.

Table 1: Geographic Coordinates of Fiery Cross Reef

Source	Latitude (N)	Longitude (E)
A	9º 33' 00"	112º 53' 00"
B	9º 38'	112º 57'
C	9º 32' 30"	112º 54' 00"
D	9º 42'	112º 54'
E	9º 33' 02"	112º 53' 34"

Sources:

A   United States, National Technical Information Service (1992) 'The Spratly Islands and Paracel Islands [map]', US Department of Commerce, National Technical Information Service (Purchase No. PB92928343);

B   United States Board on Geographic Names (1987) *Gazetteer of the Paracel Islands and Spratly Islands*, Washington, DC: Defense Mapping Agency: 11;

C   Pan Shiying (1993) 'The Nansha Islands: A Chinese Point of View', *Window* (Hong Kong), 3 September: 29;

D   *Zhongguo Diminglu*: *Zhonghua Renmin Gongheguo Dituji Diming Suoyin* [Gazetteer of China: Index to the Atlas of the People's Republic of China] (1983) Beijing: Ditu Chubanshe: 273;

E   Australia, Department of Defence (1988) *Spratly Islands*: *Placenames Guide*, Joint Intelligence Organization Working Paper, No. 8/88 (October), Canberra: 8.

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17   Chinese telegraphic codes 2639, 7024, 4339 meaning *"eastern gate shoal."*
18   "The Spratly Islands and Paracel Islands" (map) (United States, 1992).
19   Chinese telegraphic codes 6375, 3900, 4339 meaning *"red gourd shoal."*
20   *Shijie Diminglu* [world gazetteer], 1994: 2,745 and 2,750.

Figure 3: Chinese Installation on Kennan Reef

PRC installation on Dongmen Jiao (probably Kennen Reef, see text), similar in design to that shown in Figure 4. Reprinted, by permission, New China Pictures Company (Beijing).

4.   History of the Claims

Some claimants use centuries-old evidence of discovery as their basis for title to the Spratly islands, claiming that they were on first. However, sovereignty over the Spratlys has been hotly contested only since the end of the Second World War, with the withdrawal of Japanese and French forces that had occupied some islands. Besides the varying temporal aspect, the claims differ spatially. Only China, including Taiwan, and Vietnam claim all of the Spratly islands. The interplay of the claimants in time and space resembles a complex tapestry, the threads of which stretch into antiquity.

4.1   Before the Twentieth Century

4.1.1   China

Although the authorities in Taipei (Taiwan) and Beijing dispute which is the rightful government of China, both put forward essentially the same basis for their Spratly claim, which is similar to that for the Paracel Islands. They claim discovery of the Spratly islands and intermittent presence from the Han dynasty (2nd century BC). All Chinese authorities cite

ancient texts and maps relating to Chinese naval and fishing activity throughout the South China Sea. Given extensive naval activity by China in the South China Sea, especially during the Ming Dynasty, Chinese navigators undoubtedly were among the first to reach the islands.[21] The Chinese activity in the Paracel Islands is better documented than that in the more distant Spratly islands.[22] Moreover, place name usage and ancient maps may relate to other features in the South China Sea.[23] Modern authors' assertions of subsequent discovery of Chinese artefacts and graves[24] are not persuasive proof of Chinese title to the islands. Chinese goods would have been available to other peoples through trade. Graves may prove the presence of Chinese on or near the islands, but do not demonstrate continuing presence or administration.

Samuels suggests that the first distinct Chinese reference to the Spratly islands is found in a 1730 text by Ch'en Lun-chiung.[25] Independent witness of Chinese activity in the Spratly islands dates to 1867, when a British survey ship allegedly encountered Chinese fishermen on Itu Aba.[26] In 1883, according to Chinese sources, the German government suspended survey work in the Spratly islands due to a protest from the Chinese government. Haller-Trost suggests that the survey only covered the Paracel Islands.[27]

4.1.2   Vietnam

Vietnam asserts that:

> *"it has maintained effective occupation of the two archipelagoes [Paracel and Spratly islands] at least since the 17th century when they were not under the sovereignty of any country and the Vietnamese State has exercised effectively, continuously and peacefully its sovereignty over the two archipelagoes until the time when they were invaded by the Chinese armed forces."[28]*

However, most of Vietnam's 18th and 19th century historical evidence relates to the *Bai Cat Vang* islands, which Vietnam maintains included both the Hoang Sa [Paracel] islands and the Truong Sa [Spratly] islands.[29] Heinzig states that *"Vietnamese argumentation, covering the period until the end of the 19th century, refers exclusively to the Paracels."[30]* Given the 400km distance between them, it would be unusual to treat both island groups as a single entity or use one place name for both. Vietnam claims that it conducted surveys and mapping expeditions to both island groups.[31] However, its activities clearly focused on the Paracel Islands.[32] Use of the term *Truong Sa* appears to date to a 1867 decree of Emperor Tu Duc of Annam.[33]

21	Heinzig, 1976: 22-24; Chang, 1991: 404-406.
22	Samuels, 1982: 9-25.
23	Heinzig, 1976: 21-23; with Chang, 1991: 403-405.
24	Pan, 1993: 24; Chang, 1991: 404.
25	Hai-kuo wen-chien lu (sights and sounds of the maritime countries), see Samuels, 1982: 36.
26	Heinzig, 1976: 23; Pan, 1993: 24.
27	Heinzig, 1976: 25-26; Document issued by the Ministry of Foreign Affairs of the People's Republic of China: China's indisputable sovereignty over the Xisha and Nansha Islands, 30 January 1980 (China: 1982: 455); S.K.T. Yu, 1990: 10-11; Haller-Trost, 1994b.
28	Vietnam, 1988: 4.
29	Vietnam, 1988: 4.
30	Heinzig, 1976: 24.
31	Heinzig, 1976: 25; Vietnam, 1988: 4-6.
32	Samuels, 1982: 43-44.
33	Vietnam, 1988: 6, 36.

Vietnam claims that France administered the islands as part of its protectorate, established under a 1884 treaty. After France consolidated its hold on Vietnam in a war with China, the two parties concluded a peace treaty delimiting the boundary of French Indochina on 27 June 1887, which allocated islands east of the 105°43' meridian from Paris (108°03'E of Greenwich) to China. The 1887 treaty has been cited as evidence against French and Vietnamese claims to the Paracel and Spratly islands.[34] It is unlikely that this allocation can reasonably be interpreted to reach into the South China Sea, proper, because when extended beyond the Gulf of Tonkin the line intersects the mainland of Vietnam. This would also place islands immediately off the Vietnamese coast, such as Con Co, Cu Lao Re, and Cu Lao Con, under Chinese sovereignty, but China has never claimed these coastal islands. There is little evidence of French activity in the Spratly islands until 1930.[35]

4.2   Early Twentieth Century

The early twentieth century was a period of turbulence and warfare throughout much of East and Southeast Asia, which also suffered during World War II. In 1902 the Chinese imperial government sent a naval task force to inspect islands in the South China Sea. The troops reportedly erected sovereignty markers and hoisted Chinese flags on some islands, but it is not clear that the task force penetrated beyond the Paracel Islands to the Spratly islands. The Chinese Republic placed the Paracel Islands under the administration of a county on Hainan Island in 1911,[36] but apparently did not include the Spratly islands.

A Japanese exploration team visited the Spratly islands in 1918 and met with Chinese fishermen who lived on Southwest Cay.[37] During the late 1920s and early 1930s Japanese phosphate companies were active in the Spratly islands. France was also active there, sending reconnaissance vessels and, apparently, occupying one island.[38] In 1927 France and Japan held inconclusive discussions about their activities in the South China Sea.[39]

The Chinese claim to the Spratly islands is weakened by a 1928 Chinese government commission report that said the Paracel Islands were the southernmost territory of China. As Samuels has observed, this suggests that the Spratly islands were not viewed as Chinese territory at that time.[40]

On 13 April 1930 France claimed to have taken possession of Spratly Island. It proceeded to claim all the islands between 7° and 12° North latitude and between 111° and 117° East longitude, but formal notice was not published until 1933. Marston ably recounts the resulting diplomatic exchanges between Britain and France because of an inchoate claim that Britain had to Spratly Island and Amboyna Cay.[41]

Although the strategic position of the islands and concerns about Japanese intentions influenced the British, they appeared to have viewed the Spratly islands as *terra nullius*. Chinese claims were not

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34   Park, 1978: 33-34; Thomas, 1990: 415; Dzurek, 1994.
35   Samuels, 1982: 63-64.
36   Chang, 1991: 405-06.
37   Ogura Unosuke (1940) *Bofu No Shima* (Storm island), 5th ed. (Tokyo: 1940), cited in Lu, 1993: 28-29.
38   Heinzig, 1976: 28.
39   Samuels, 1982: 63-64.
40   Samuels, 1982: 68.
41   Marston, 1986: 344-56.

considered by the British, although the French described the islands as settled by Chinese.[42] On 26 July 1933 the Chinese foreign ministry publicly affirmed Chinese sovereignty of the islands:

> *"The coral islands between the Philippines and Annam are inhabited only by Chinese fishermen, and are internationally recognized as Chinese territories."[43]*

On 29 September 1933 the Chinese government protested French activities in the islands by referring to the 1887 Sino-French treaty.[44] Additional protests to the French government followed.[45] Upheavals and warfare in mainland China probably precluded anything stronger than Chinese diplomatic protests. On 21 December 1933 the French governor of Cochin-China incorporated the Spratly islands into Ba Ria province.[46]

Following conquest of Hainan Island, just off the Chinese mainland, Japanese forces occupied the Spratly islands by the end of March 1939. Some authors have argued that the Japanese did not attack Vietnam until late 1941; therefore their earlier occupation of the Spratly and Paracel islands must be viewed as movements against what they recognised as Chinese territory.[47] There was no report of fighting between Japanese forces and French personnel, who would be assumed to have been in the Paracel and Spratly islands.[48] Japan stationed troops on Spratly Island and put a submarine base on Itu Aba.[49] The islands were then used as a staging post for the invasion of the Philippines.

4.3   Aftermath of World War II

4.3.1   Republican China

Chinese forces accepted the surrender of Japanese troops in northern Vietnam and were instructed to do so in the South China Sea islands. It is not clear that any Japanese surrendered to them in the islands.[50]

Two Chinese naval patrols were ordered to the Spratly islands in 1945-46. The French naval battleship, *Chevreud,* landed crews on Spratly Island and Itu Aba, where they placed a stone marker in October 1946.[51] China protested the French action, and the two countries conducted inconclusive talks on the dispute. Another Chinese naval patrol sailed to the islands and arrived at Itu Aba on 12 December 1947. It reportedly erected markers on Itu Aba, Spratly Island, and West York Island. A garrison was established on Itu Aba, the largest of the islands. In 1946-47 China published official names for the islands and incorporated them into Guangdong province.[52]

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[42]   J. Vivielle, 'Les Ilots des mers de Chine', *Le Monde Coloniale Illurts Vinielle,* No. 121 (September 1933), as cited in Lu, 1993: 31, and in Chang, 1991: 406.

[43]   Shen Shungen (1992) *Keai de Nansha*, Shanghai: Yuandong: 106 as translated in Lu, 1993: 32.

[44]   France (1933) *Journal Officiel de la Republique francaise,* Vol. 65, No. 1752 (25 January 1933): 7,794, as cited in Chang, 1991: 411; see also Heinzig, 1976: 28.

[45]   Van Dyke and Bennett, 1993: 63-64; Chang, 1991: 406; China, 1982: 456.

[46]   Decree No. 4762-CP, reproduced in Vietnam, 1988: 38-39.

[47]   Chang, 1991: 412.

[48]   Samuels, 1982: 65.

[49]   Heinzig, 1976: 29.

[50]   Lu, 1993: 34; Heinzig, 1976: 31-32; Samuels, 1982: 75.

[51]   Samuels, 1982: 75.

[52]   Chang, 1991: 406-407; Bennett, 1992: 437-38; Chao, 1990: 25-26; Lu, 1993: 34-35.

Nationalist forces apparently occupied Itu Aba until 1950, when they withdrew to Taiwan in the aftermath of the Chinese civil war. They were not to return until 1956.[53]

4.3.2   China's traditional sea boundary line

At this time, Chinese maps began to depict a tongue-shaped, interrupted boundary line that suggests Chinese jurisdiction over most of the South China Sea. A survey of Chinese maps and atlases in the Library of Congress, spanning the years 1933-50, yielded two 1947 atlases as the earliest depictions of this line.[54] Heinzig reported that he was in possession of a 1949 chart depicting the historic claim line.[55] One 1948 atlas, in the Library of Congress, depicts a continuous line, but the symbol of that line differed from that used for international boundaries.[56] Song cites a depiction of the tongue-shaped line on a map published by the Republic of China Ministry of Interior in January 1948.[57] The interrupted line is found in a 1950 PRC provincial atlas[58] and continues to appear on most maps of Chinese origin. Although often characterised in English as China's *"historic claim line"*, as several Chinese speakers have observed the Chinese term might best be translated as *"traditional sea boundary line."*[59] Chinese references to the line vary,[60] but most do not include the Chinese character for *"historic"* that is found in Chinese international legal terms, such as those for historic waters or historic bay that have special usage in the law of the sea.

In the 1979 national atlas of China the line is depicted with the same symbols as an international boundary, but it is not continuous. The atlas uses the identical interrupted symbol to distinguish the sovereignty of island groups belonging to other countries. For instance, it uses such line segments to differentiate the Natuna Islands of Indonesia from nearby Malaysia and to separate the southern Philippine islands from Malaysia.[61] It is notable that the segments between the Natuna Islands and Malaysia do *not* follow the agreed Indonesia-Malaysia continental shelf boundary. Therefore, China's cartographic usage suggests that this traditional sea boundary line distinguishes the sovereignty of islands, not the limits of maritime jurisdiction.

China has never precisely delimited the course of this irregular boundary. The dashed lines generally follow the 200 meter isobath. The endpoints of the interrupted segments differed by 1 to 5 nautical miles in relative position among recent PRC maps.[62] In 1979 Hasjim Djalal, then Director of Legal and Treaty Affairs of the Indonesian Department of Foreign Affairs, wrote:

> *"The nature of the claim of the PRC to the South China Sea is enigmatic...It is not clear whether the lines indicated in the Chinese maps are intended as the limits of the Chinese **territorial** claim towards the whole area, thus including the islands, the*

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[53]   Samuels, 1982: 77.

[54]   'Chung-kuo shih ti t'u piao pien tsuan she', 1947, plate 27 (Library of Congress (LC) Call Number: G2305 .C95); Chin Ch'ing-yu, 1947, plate 11 (LC Call Number: G2305 .C53).

[55]   Heinzig, 1976: n. 119.

[56]   Ting Wen-chiang, 1948: 28 (LC Call Number: G2305 .T502 1948a).

[57]   Song, 1994: 8.

[58]   Chung hua jen min kung ho kuo fen sheng ching t'u, 1950: plate 1 (LC Call Number: G2305 .Y3 1950).

[59]   The term used is *chuantong haijiang xian* (traditional sea frontier line) in Jiang Zhijun and Liu Maojian, 'Nanhai Zhudao Zhuquan jiqi Zhenyi Yuolai he Zianzhuang', *Cankao Ziliao*: 9 (Ning Lu to the author, personal correspondence, 15 July 1993). Sea also Gao, 1994: 346.

[60]   Song, 1994: 11.

[61]   'Zhonghua Renmin Gongheguo Dituji' [Atlas of the People's Republic of China], 1979: plates 2, 56.

[62]   'Nanhai zhu dao' 1:2,000,000 (Beijing: Ditu Chubanshe, 1983); 'Nanhai dixing tu' 1:3,000,000 (Beijing: Ditu Chubanshe, 1984); and 'Nanhai jilinjin dayang dishitu', (Zhongguo Kexueyuan, 1990), sheets 2 and 5.

sea, the airspace, the seabed and all the resources contained therein; or whether the lines simply indicate that only the **islands** *contained within the lines which are claimed by the PRC. Careful reading of the Chinese statements on this matter, especially those at the ICAO meetings [1979], indicates that the Chinese territorial claims are limited towards the islands and all rights related thereto, and not territorial claims over the South China Sea as a whole."[63]*

Chinese scholars disagree about the legal status of the waters enclosed by the tongue-shaped line. Some claim historic waters status,[64] while others agree with Djalal.[65] Official statements distinguish the PRC from Taiwan. In discussing jurisdictional claims in the South China Sea, PRC government documents generally refer to more orthodox sovereignty claims to specific island groups, based on discovery and administration, and to maritime jurisdiction derived from that sovereignty:

> *"The PRC has not formalized its historical claim with precise coordinates, and has kept silent on the nature of this tongue-shaped line and the legal status of the waters enclosed by the line."[66]*

Thus, it would appear that for the PRC the Chinese traditional sea boundary line relates to the sovereignty of the enclosed islands.[67] If it were to include continental shelf jurisdiction, it would have little standing in modern international law.

Continental shelf jurisdiction is predicated upon natural prolongation of the geologic shelf or proximity to a landmass, if there is no natural shelf. In the South China Sea, the traditional sea boundary line does not depict the limit of a geologic shelf extending from the Chinese mainland. Nor does it follow a median line equidistant from the islands claimed by China and the territories of other coastal states. In point of fact, the tongue-shaped line seems to follow the 200-meter isobath. If the line were a continental shelf claim, China would be claiming everything beyond the minimum available to the other coastal states under a narrow interpretation of continental shelf jurisdiction current in the 1940s. However, the 1945 Truman Proclamation and the 1958 Geneva Convention on the Continental Shelf recognised coastal state jurisdiction to a depth of 200 meters (approximately 100 fathoms) *or* to the limit of exploitability. Even at the time the line first appeared on Chinese maps, the 200 meter depth limit was not an absolute. The 1982 UN Convention abandoned the 200-meter isobath criterion completely. Therefore, the Chinese traditional sea boundary line has no foundation for continental shelf jurisdiction in the law of the sea.

In response to the PRC occupation of Mischief Reef (see Section 5.5), Indonesia raised the function of the tongue-shaped line with Beijing. Jakarta apparently feared that the line represented a claim to the natural gas fields off the Natuna Islands. On 26 June 1995 Foreign Minister Ali Alatas implied that the traditional sea boundary line had recently appeared on Chinese maps.[68] Such an

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[63]   Djalal, 1979: 41-42. Djalal is also quoted in David Jenkins, 'Trouble over Oil and Waters', *Far   Eastern Economic Review*, 7 August 1981: 26.

[64]   Pan, 1994.

[65]   For example, Gao, 1994: 346; S.K.T. Yu, 1990; and Hungdah Chiu, summarised in Song, 1994: 34-35.

[66]   Song, 1994: 6.

[67]   Gao, 1994: 346.

[68]   'Alatas: No Boundary Dispute with PRC', Radio Republik Indonesia (Jakarta) broadcast in Indonesian, 0600 GMT, 26 June 1995, translated in FBIS, *East Asia* (27 June 1995): 55; 'Indonesia Delays Spratlys Talks until October', Reuter (Jakarta), 20 June 1995.

implication is inconsistent with work previously published by his Ambassador-at-large for the Law of the Sea, Hasjim Djalal. Following bilateral meetings in Beijing on 21 July the Indonesian Foreign Minister said that the PRC had never claimed the Natuna Islands, but implied that the maritime boundary between the Spratly and Natuna islands remained to be settled. The PRC Foreign Ministry confirmed the distinction.[69] Obviously, Indonesia could not negotiate a boundary between the Natuna Islands and the Spratlys without first deciding who was sovereign of the Spratlys. As a neutral party to the dispute, such a determination is unlikely. Indonesian satisfaction with the PRC position suggests that China does not interpret the tongue-shaped line as a maritime boundary. Were it to do so, the Natuna gas field would be in dispute with the PRC.

In distinction to the apparent PRC position, officials of the Republic of China (Taiwan) have recently claimed that the waters enclosed by the traditional claim line are *historic waters* of China. In June 1994 Chang King-yu, Minister without Portfolio of the Executive Yuan, said that *"the waters enclosed by the 'U'-shaped line in the South China Sea are our historic waters and the ROC is entitled to all the rights therein."*[70] On 18 July 1991 at the Second Workshop on Managing Potential Conflicts in the South China Sea (Bandung, Indonesia), Tzen Wen-hua, Representative of the Taipei Economic and Trade Office in Jakarta, stated:

> *"The South China Sea is a body of water under the jurisdiction of the Republic of China. The Republic of China has rights and privileges in the South China Sea. Any activities in the South China Sea must acquire the approval of the Government of the Republic of China."*[71]

Neither Beijing nor Taipei have exercised the kind of control within the traditional claim line that would characterise historic waters jurisdiction. Under international law, historic waters

should have the status of internal waters or territorial sea. However, the vessels of other countries have exercised freedom of navigation through most of the area bounded by the tongue-shaped line. Foreign aircraft, which are prohibited from the airspace above internal waters and territorial seas without the explicit permission of the coastal state, have overflown the South China Sea for decades. Neither the PRC nor ROC have prevented or protested these activities by foreign vessels. In addition, a claim of historic waters requires recognition by the international community. No such recognition has been given to the Nationalist claim.[72]

Both Beijing and Taipei have decrees or legislation relating to the territorial sea that specifies its measurement from straight baselines around islands in the South China Sea (see Appendix Proclamations and Legislation). Such decrees would be superfluous if the tongue-shaped line delimited historic waters. In particular, Article 1 of the 1958 PRC Declaration on China's Territorial Sea states that:

> *"The breadth of the territorial sea of the People's Republic of China shall be twelve nautical miles. This provision applies to all territories of the People's Republic of*

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[69]   'Indonesia Satisfied by China's Natuna Explanation', Reuter (Jakarta), 21 July 1995; 'On Natuna Archipelago Ownership', Xinhua (Beijing) broadcast in English, 22 June 1995, transcribed in FBIS, *Daily Report: China* (22 June 1995).

[70]   Statement at a conference sponsored by the Chinese Society of International Law (Taipei), as reported in *United Daily News* (29 June 1994: 4), and quoted in Song, 1994: 7.

[71]   Excerpt of Tzen's statement distributed by the Coordination Council for North American Affairs at the South China Sea Conference, 7-9 September 1994, American Enterprise Institute, Washington, DC.

[72]   Song, 1994: 28-36.

> *china, including the Chinese mainland and its coastal islands, as well as Taiwan and its surrounding islands, the Penghu Islands and all other islands belonging to China* **which are separated from the mainland and its coastal islands by the high seas"** *[emphasis added].[73]*

Article 2 lists the islands inside the Chinese baseline, whereas Article 4 lists Taiwan, the Spratly islands, and others. The PRC 1958 Declaration clearly groups the Spratly islands among those which are separated from the mainland by the high seas. Therefore proclamations and laws by the Chinese authorities relating to the Spratly islands, especially the PRC 1958 Declaration, are inconsistent with a historic waters claim delimited by the tongue-shaped line.

4.3.3   Defining the Philippines

A series of treaties between Spain and the United States (1898 and 1900) and the United Kingdom and the United States (1930) established the national area of the Philippines by lines of allocation, connecting points of specified geographic latitude and longitude. All the islands within these so-called treaty limits were administered by the US and, in 1946, became the Republic of the Philippines. Although the geographic polygon was only intended to designate the sovereignty of islands, the Philippines subsequently claimed that the treaty limits established territorial sea jurisdiction.[74] It also used that same methodology in its later claim to part of the Spratly islands (see Section 4.6.4).

4.4   The San Francisco Peace Treaty, 1951

4.4.1   Philippines

In 1947, a year after gaining independence, the Philippine Secretary of Foreign Affairs called for the territory occupied by Japan during the Second World War to be awarded to the Philippines.[75] Chinese communist success in China's civil war heightened Philippine security concerns. On 7 April 1949 the Chinese Republican Legation in Manila informed the Philippines government that the Chinese were garrisoning Itu Aba in an effort to block the traffic of arms through Hainan to Communist forces. However the Philippine government continued to express concern and discussed inducing Filipinos to settle in the Spratly islands. On 17 May 1950 Philippine President Quirino told a press conference that the Spratly islands belonged to the Philippines, but the statement was disavowed by a government spokesman.[76] The Philippines did not make a claim to the islands during the 1951 San Francisco peace conference. However the Philippines has interpreted the Japanese renunciation of the Spratly islands in the resulting treaty as making the area *res nullius* and open to acquisition.[77]

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[73]   People's Republic of China, Declaration on China's Territorial Sea, 9 September 1958, reprinted in US Department of State, Office of the Geographer, 1972: 1.

[74]   Prescott, J.R.V. and Morgan, J.R. (1983) 'Marine Jurisdictions and Boundaries', in Morgan and Valencia: 50.

[75]   Coquia, 1990: 119.

[76]   Chao, 1990: 28-29.

[77]   Drigot, 1982: 44.

4.4.2   Vietnam

Under French sponsorship, a Vietnamese delegation participated in the 1951 San Francisco peace conference, where the delegation head issued a statement reaffirming Vietnamese sovereignty over the Paracel and Spratly islands.[78] Vietnam points out that no delegation objected to the statement, but fails to mention that China was not represented at the conference. The resulting treaty included a Japanese renunciation of the Spratly and Paracel islands, without designating which country was sovereign.

> *"Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands."*[79]

However, this failure to designate a successor was not unique to the South China Sea islands. Japan did not formally designate a successor for any of the other territories mentioned in the same treaty article, such as Formosa (Taiwan), the Kuril Islands, and part of Sakhalin.[80]

4.4.3   Taiwan

Because the Allies, in particular the United Kingdom and the United States, could not agree on which government represented China, no Chinese delegation participated in the 1951 San Francisco Peace Conference. Therefore, the Republic of China (Taiwan) negotiated a separate peace treaty with Japan, signed on 28 April 1952. Article 2 of the text included a reference to the San Francisco treaty:

> *"It is recognized that under Article 2 of the Treaty of Peace with Japan signed at the city of San Francisco in the United States of America on September 8, 1951, Japan has renounced all right, title and claim to Taiwan (Formosa) and Penghu (the Pescadores) as well as the Spratly Islands and the Paracel Islands."*[81]

Taiwan has argued that the explicit reference to the Spratly and Paracel islands in the text of this *bilateral* treaty implies Japanese recognition of Chinese sovereignty.[82] Samuels and Lu have observed that, unlike the 1951 treaty, the Sino-Japanese text mentions the Spratly and Paracel islands in the same sentence with Taiwan and the Pescadores islands. The latter are generally recognised as Chinese territories. Moreover, according to the negotiating record Japan insisted that the renunciation article deal only with Chinese territory. This shows that the ROC and Japan viewed the islands of Taiwan, the Pescadores, the Spratlys, and the Paracels as having similar status – that is, belonging to China.[83]

4.4.4   People's Republic of China

The People's Republic of China was proclaimed on 1 October 1949. On 6 June 1950 with the success of Communist forces in the Chinese civil war, the Nationalist garrison in the Spratly islands

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78   Vietnam, 1988: 7.
79   Treaty of Peace with Japan, 1952: 3,172.
80   Samuels, 1982: 77.
81   Treaty of Peace Between the Republic of China and Japan: 38.
82   Republic of China, Foreign Ministry statement, 10 June 1956, as cited in Chao, 1990: 31.
83   Samuels, 1982: 79-80; Lu, 1993: 38; Chao, 1990: 30, n. 74.

temporarily withdrew to Taiwan.[84]   The People's Republic of China (PRC) did not station its own troops in the islands until 1988. However, on 26 May 1950 the *People's Daily* (Beijing), reacting to the statement by Philippine President Quirino, reiterated China's claim to the Spratly islands.[85]

In August 1951 PRC Foreign Minister Zhou Enlai responded to a draft of the San Francisco peace treaty by stating that the islands had always been Chinese territory.[86] Andre Gromyko, the Soviet delegate, proposed an amendment to the treaty that would have recognised the People's Republic of China as sovereign, but the amendment was ruled out of order.[87]

4.5   Claims by Meads and Cloma, 1950s

Following the withdrawal of Japan and the unsettled situation throughout Asia after the war, two individuals claimed the area of the Spratlys where the Philippines subsequently asserted rights. In the mid-1950s Morton F. Meads made a claim to islands in the vicinity of Itu Aba, based on their 'discovery' by James G. Meads in the 1870s and subsequent establishment there of the 'Kingdom of Humanity' in 1914.[88]

In 1956 Thomas Cloma, a Filipino, asserted ownership of thirty-three islands and reefs and fishing grounds within a geographic polygon covering 65,000 sq. nm.[89] Cloma coined the term *Kalayaan* (Freedomland) for the area and sent a letter to the Philippine Vice-President, requesting official endorsement. After several months, the Philippine government gave qualified support to Cloma. The Philippine government observed that the Kalayaan Islands were *res nullius* and open to exploitation by Filipinos since no country had established sovereignty.   Manila further distinguished the Kalayaan Islands from the *"seven"* Spratly islands, which the Philippines claimed were a *de facto* trusteeship of the Allies and therefore also open to economic use and settlement by Philippine nationals.[90] Beijing, Taipei, and Saigon lodged protests with Manila.

At this time Taiwanese troops reportedly reestablished their presence on Itu Aba, but Heinzig presents contradictory reports. His evidence suggests continuing Taiwanese occupation of Itu Aba only since 1971, when Taiwan's forces repulsed an attempted Philippine landing.[91] Lu, citing Taiwanese sources, describes a series of Taiwanese patrols, beginning in March 1956, which covered the area from 9°30'N to 12°N and from 113°30'E to 114°50'E. The first patrol reportedly apprehended Felmon Cloma, the brother of Thomas, who provided a note acknowledging Chinese sovereignty.[92] Other authors hold that Taiwan reestablished a presence in the late 1950s.[93]

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[84]   Lu, 1993: 35; Chao, 1990: 29.
[85]   Lu, 1993: 36.
[86]   Heinzig, 1976: 39; Buchholz, 1984: 66; Lu, 1993: 36.
[87]   Heinzig, 1976: 40; Whiteman, 1965: 545, 552-53.
[88]   Samuels, 1982: 168-72; Pinther, M. (1988) 'Islands In the News', *The Carto-Philatelist* 33 (June): 52; Dzurek, 1985: 273.
[89]   Coquia, 1990: 119; Heinzig, 1976: 36; Drigot, 1982: 44.
[90]   Lu, 1993: 63-65; Samuels, 1982: 81-86.
[91]   Chao, 1990: 34-38; Coquia, 1990: 119; Heinzig, 1976: 35-36, 42.
[92]   'Haijun Xunyi Nansha Haijiang Jingguo' (Account of a naval patrol in the Spratly sea frontiers), in *Zhongguo Nanhai Zhu Qundao Wenxian Huibian* (Collected works on the archipelagos in the South China Sea] (Taipei: Taiwan Xuesheng Shuju) (1975), as cited in Lu, 1993: 39-41.
[93]   Hamzah, 1990: 5; Samuels, 1982: 84-85.

4.5.1   Vietnam

Vietnam maintains that the Paracel and Spratly islands, which lie south of the 17th parallel that formerly separated North and South Vietnam, were transferred by the French to South Vietnamese administration in 1956.[94] Evidently France ceded control of the Paracel Islands to Vietnam on 15 October 1950, but there is no record of a similar devolution of French rights in the Spratly islands when they withdrew from Indochina in 1956. Indeed, in that year the French reportedly notified the Philippine government that they regarded the Spratly islands as French territory and had not ceded them to Vietnam.[95] On 1 June 1956 the government of South Vietnam issued a communiqué reaffirming its sovereignty over the Paracel and Spratly islands.[96] During August 1956 the government of South Vietnam sent a naval patrol to Spratly Island, but it did not at that time establish a base there.[97]

4.6   The Oil Rush: 1958 to 1987

Southeast Asia's first offshore well was drilled in 1957,[98] but active offshore hydrocarbon exploration in the South China Sea, indeed in most of East and Southeast Asia, can probably be traced to a 1969 publication by the ECAFE[99] Committee for the Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas (CCOP), which suggested that there were petroleum resources under the Yellow and East China seas.[100] In the same year, the World Court enunciated the natural prolongation principle in deciding the North Sea Continental Shelf cases. In 1972 Kenya proposed a 200-nm EEZ. This was followed by a steep rise in oil prices beginning in 1973.[101] A 1974 agreement between Japan and South Korea jointly to develop an area in the East China Sea prompted a protest from the PRC and sensitised coastal states in the region to potential marine resources.

Throughout Asia, the rush was on. It was during the late 1960s and early 1970s when most South China Sea littoral countries claimed continental shelves and the sovereignty disputes over the Spratly and Paracel islands grew in prominence.

The early 1970s saw a shift in the Southeast Asian regional political balance, especially as the United States began disengaging from Vietnam. In 1971 Taiwan was expelled from the United Nations and the PRC took its seat. US President Nixon visited China in 1972, and the following year the US signed the Paris agreements ending the Vietnam War. The United States recognised the People's Republic of China in 1978. The US withdrawal uncorked regional tensions that had been bottled-up during the Vietnam War. Taiwan became marginalised, and Vietnam resurgent. There was a resultant shift among the South China Sea powers, and, in an ironic consequence, a falling-out between a reunited Vietnam and its former ally, China.

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[94]   Vietnam, 1988: 8.

[95]   Philippines Ministry of Defense, *The Kalayaan Islands,* Series One Monograph No. 4 (Makati: Development Academy of the Philippines Press, 1982), as cited in Gunn, 1990. See also, Samuels, 1982: 77 and 84; Yu, S.K.T., 1990.

[96]   Hamzah, 1990: 5.

[97]   Samuels, 1982: 85-86.

[98]   Valencia, 1985: 158; Samuels, 1982: 154.

[99]   Economic Commission for Asia and the Far East (ECAFE), an organ of the United Nations Economic and Social Council.

[100]   Emery, 1969.

[101]   Dzurek, 1985: 261.

4.6.1   People's Republic of China

On 4 September 1958 during the rising tensions in the Taiwan Straits, the government of the People's Republic of China issued a declaration on China's territorial sea, which extended the territorial sea to 12nm, claimed straight baselines along parts of its coast, and listed several island groups belonging to China, including the Spratly and Paracel islands.[102] Ten days later, Pham Van Dong, the premier of North Vietnam, sent a diplomatic note to the PRC recognising and supporting the territorial sea declaration (see Section 4.6.3).[103] South Vietnam did not protest the Chinese declaration at the time, but in February 1959 South Vietnamese forces harassed PRC fishermen in the Paracel Islands.

During the 1960s China fought along its land frontiers and suffered the Cultural Revolution. In 1962 it battled India. The USSR and China clashed in 1968. The PRC was also supporting North Vietnam against the US. At sea, China focused on building defences on the Paracel Islands and repeatedly denounced American violations of claimed territorial seas and airspace of the islands.[104]

In January 1974 the PRC condemned South Vietnam's actions in the Spratly islands and seized control of the remaining Paracel Islands after an air and sea battle with South Vietnamese forces. During the 1970s, China began offshore oil exploration. By 1977 a Chinese oil rig was reported operating in the Paracel Islands.[105]

Beijing did not occupy any of the Spratly islands until 1988, but it frequently protested actions by other Spratly claimants.[106] On 21 July 1980 the PRC Ministry of Foreign Affairs protested an agreement between the Soviet Union and Vietnam to conduct hydrocarbon exploration activities off southern Vietnam. Foreshadowing the 1992 exchange over the Crestone contract (see Section 5.2), the PRC claimed that the area was under Chinese jurisdiction because China was sovereign over the Spratly islands.[107]

In the mid-1980s China sent several naval patrols into the Spratly islands and conducted scientific surveys there. In July 1987 the Spratly islands were included as part of the new province of Hainan. During November of that year, the PRC navy conducted manoeuvres as far south as James Shoal.[108]

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[102]   New China News Agency (Beijing) broadcast in Chinese, 4 September 1958, reproduced in US   Department of State, Office of The Geographer (1972) 'Straight Baselines: People's Republic of China', *Limits in the Seas* No. 43 (Washington, DC: US Department of State, 1 July); Hamzah, 1990: 6; Samuels, 1982: 86-87.
           Note from Pham Van Dong to Zhou Enlai, 14 September 1958, *Nhan Dan* (Hanoi), 22 September 1958. Facsimiles of the official diplomatic note in Vietnamese, translations into English and French, and copies of the *Nhan Dan* page can be found in 'Some Documentary Evidence Showing That the Vietnamese Government Recognized the Xisha and Nansha Islands as Chinese Territory', available from the PRC Ministry of Foreign Affairs. There is also some evidence that North Vietnam recognised PRC sovereignty over the Spratly islands in June 1956 (see Haller-Trost, 1994b: 22).
[104]   Samuels, 1982: 87-88.
[105]   Samuels, 1982: 161.
[106]   Chang 1990: 22; Samuels, 1982; 98-113.
[107]   PRC Ministry of Foreign Affairs (1982) 'Zhonghua Renmin Gongheguo waijiaobu fayanren jiu Sulian he Yüenan qianding suowei zai 'Yüenan nanfang dalujia' hezuo kantan, kaifa shiyou he tianranqi de xieding shifabiao de shengming', in *Chinese Yearbook of International Law, 1982* (Beijing: Zhongguo Duiqaifanyi Chubangongsi Chuban): 463-64.
[108]   Chang, 1990: 24.

4.6.2   Taiwan

Throughout this period, Taiwan continued to support and enhance its base on Itu Aba (T'ai P'ing) Island. In 1963 it sent a large task force to the island. Taiwan also sent reconnaissance patrols into the Spratly islands and erected boundary markers on Thitu, Namyit, and other islands. On 10 July 1971 the Philippines alleged that Taiwanese vessels fired on a Philippine vessel attempting to land on Itu Aba, but Taiwan denied the allegation.[109]   In response to the PRC's 1974 attack in the Paracels, Taiwan reinforced Itu Aba and began routine air and sea convoys there.[110]   On several occasions Taiwan issued statements and lodged protests reaffirming sovereignty over the Paracel and Spratly islands.[111]

4.6.3   A United Vietnam

As the Vietnam War neared an end, especially after the 1973 Paris agreements and subsequent withdrawal of the United States, claims in the South China Sea were reinvigorated. In 1971 North Vietnam began exploring for oil in the Gulf of Tonkin, where it came into conflict with China over their maritime frontier.[112]   Hanoi apparently had second thoughts about its acquiescence to China's Spratly islands claim and, in 1971 and 1973, proclaimed the Spratly islands to be Vietnamese territory.   On 20 July 1973 the government in Saigon awarded eight offshore tracts, including several near the western edge of the Spratly islands. South Vietnam incorporated ten Spratly islands into Phuc Tuy province on 6 September 1973, and sent troops to Spratly Island and Namyit Island. Eventually, Saigon forces occupied five or six islands.[113]

In April 1975 troops from Hanoi seized six of the Spratly islands that South Vietnamese troops had occupied earlier that year.[114]   The next year Hanoi published a map of the new united Vietnam that included both the Paracel and Spratly island.[115]   Relations between the former allies deteriorated and, in 1979, China and Vietnam fought a brief land border war.

4.6.4   The Philippine Presidential Decree of 1978

In the 1960s the Philippines' strategic concerns ebbed, but offshore oil beckoned when a 1969 United Nations-sponsored study suggested offshore petroleum in the Yellow and East China seas.[116]   During 1970-71 when exploration began off Palawan island, Philippine forces reportedly occupied three Spratly islands in the Kalayaan area that Manila subsequently claimed. In 1971 the Philippines alleged that one of its vessels attempted to land on Itu Aba, but was repulsed by Chinese troops from Taiwan.[117]   Philippine concerns heightened following Chinese actions in the Paracel Islands. During February 1974 Manila reinforced its deployment in Kalayaan and listed the

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109   Samuels, 1982: 89; Chang, 1991: 407; Hindley, M. and Bridge, J. (1994) 'South China Sea Disputed Islands', *Free China Review* (August): 45.
110   Samuels, 1982: 102-103.
111   Reportedly, on 25 January, 9 August, 27 August, and 26 December 1973, and on 18 January 1984, as cited in Chang, 1991: 407.
112   Samuels, 1982: 158-60; Dzurek, 1994: 164-66.
113   Samuels, 1982: 99, 106-107.
114   Chang, 1990: 22.
115   Samuels, 1982: 108.
116   Dzurek, 1985: 261.
117   Hamzah, 1990: 6; Heinzig, 1976: 36.

islands that it occupied. It also protested South Vietnamese and Taiwanese activities in the Spratly islands, but suggested a negotiated settlement. The Philippines reportedly occupied two more islands in 1975.[118] In June 1976 oil was discovered in the Nido Complex off Palawan.[119] In July the Philippine national oil company proposed that the Paracel Islands be divided between China and Vietnam, while the Philippines gain undisputed possession of the Spratly islands.[120] About the same time, the Philippines signed an exploration contract for the Reed Bank in the eastern Kalayaan area.[121]

On 11 June 1978 when he also signed the Philippine EEZ decree, President Marcos formally decreed sovereignty over a geographic polygon[122] roughly corresponding to Cloma's limits. This presidential decree was not published until February 1979.[123] The Philippines holds that Kalayaan is distinct from the Spratly islands, to which it has no claim.[124] The Philippine claim to Kalayaan is based on geographic proximity, effective occupation and control, vital interest, and the interpretation that the islands became *res nullius* when Japan renounced sovereignty in the 1951 San Francisco Peace Treaty.[125] Use of a geometric polygon to claim the area is probably patterned after the Philippines' archipelagic definition.

4.6.5 Malaysia's Continental Shelf Claim, 1979

In 1978 Malaysian troops visited the southern Spratly islands.[126] They landed on Amboyna Cay and reportedly erected a monument, which was subsequently removed by Vietnamese forces, who remained on the cay.[127] The following year, Malaysia published a map delimiting its continental shelf claim,[128] which enclosed several Spratly features including some occupied by the Philippines and Vietnam.

Malaysia uses an aberrant interpretation of the law of the sea. It claims islands by reason of its title to the surrounding continental shelf, instead of acknowledging that island sovereignty confers jurisdiction in the surrounding seas.[129]

During April 1980 Malaysia proclaimed an EEZ, but has not delimited it. The continental shelf map and EEZ proclamation led to protests by other Spratly claimants. In May 1983 troops from Malaysia landed on Swallow Reef, where they have maintained a base since. In November 1986

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[118]   Kota, Lawak, Likas, Pagasa, and Parola islands (in Filipino; Loaita, Nanshan, West York, Thitu, and Northeast Cay, in English). See, Samuels, 1982: 103-105.

[119]   Samuels, 1982: 157.

[120]   Park, 1978: 49.

[121]   Samuels, 1982: 92, 157; Drigot, 1982: 54-55, n. 11 and 12.

[122]   The Philippine claim abuts its treaty limits and links the following coordinates: (12°N, 118°E), (12°N, 114°30'E), (8°N, 112°10'E), (7°40'N, 112°10'E), (7°40'N, 116°E), and (10°N, 118°E).

[123]   Presidential Decree No. 1596, 1979: 1,556-57; see also Coquia, 1990: 119.

[124]   Philippines Ministry of Defense (1982) *The Kalayaan Islands* (Makati: Development Academy of the Philippines Press): 13, as given in Villacorta, 1990.

[125]   Drigot, 1992: 40-52.

[126]   Bahrin and Khadijah, 1990: 2.

[127]   Hamzah, 1990: 3.

[128]   Malaysia, 1979.

[129]   Hamzah, 1990: 7; Cordner, 1994: 67; Haller-Trost, 1990: 9-10.

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two more atolls were occupied.[130] Malaysia has dredged materials to expand Swallow Reef into a cay of 6 hectares, including a 500 metre air strip.[131]

4.6.6 Brunei

At Brunei's independence in 1984, it inherited a continental shelf partially delimited by the United Kingdom.[132] That shelf area lay between parallel lines drawn to the 100 fathom isobath. On behalf of Brunei, the United Kingdom also protested Malaysia's claim to Louisa Reef on its 1979 map.[133] If extended farther, the lines would enclose Louisa Reef. Brunei is reported to claim the marine area around the reef, but does not appear to view the reef as an island subject to a claim of sovereignty.[134]

Bruneian authorities claim to have declared fisheries limits in 1983.[135] In 1987-88 the Surveyor General of Brunei reportedly printed maps depicting fishery and continental shelf claims extending the lateral boundaries to an area beyond Rifleman Bank.[136] This bank lies beyond the Malaysian continental shelf claim. It is 242nm from the nearest coastal point of Brunei, but only 201nm from the turning point of Vietnam's straight baseline at Hon Hai islet. Rifleman Bank is 278nm from Mui Ke Ga, a cape on the Vietnamese mainland.[137] Therefore, Brunei's continental shelf claim discounts the Vietnamese baseline and the effect of offshore islands. Cordner contends that *the East Palawan Trough terminates the natural prolongation of the continental shelf 60 to 100 miles off Brunei.*[138] Under this interpretation, Brunei could not claim the Rifleman Bank area. However, ICJ rulings in the Libya-Malta, Libya-Tunisia and Canada-US cases have diminished natural prolongation as an argument in continental shelf boundary disputes between states with opposite coastlines.

4.7 The Battle for Fiery Cross Reef, 1988

Apparently by February 1988, the Chinese navy was searching for bases in the Spratly Islands. The PRC also claims to have been preparing sites for scientific observation stations under a UNESCO plan. Vietnam complained about Chinese naval vessels; the PRC responded that the Spratly islands were part of China. Construction of a Chinese base at Fiery Cross Reef had begun by 14 March 1988, when Vietnamese forces may have sought to disrupt construction work. On that date there was an armed battle in which about 75 Vietnamese personnel were killed or reported missing and three Vietnamese ships were set ablaze. Chinese casualties were apparently minor. The battle lasted for about 28 minutes.

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[130] Chang, 1990: 23, 25; Hamzah, 1990: 3, 7.
[131] Mellor, W. (1993) 'Tug of War', *Asia, Inc.* (September): 54.
[132] Haller-Trost, 1990: 3; Prescott, 1987: 227-28.
[133] Hamzah, 1990: 7; Cordner, 1994: 68.
[134] Statement of the Foreign Minister of Brunei, January 1993, as reported in Thomas, 1993: 4.
[135] Brunei, 'Brunei Declares EEZ', government press release, published in *Borneo Bulletin*, 26 July 1993.
[136] Hamzah, 1990, 26, n. 24; Haller-Trost, 1994a: 2-5, 43-44, and map 3 (p. 55).
[137] Great circle distances calculated from published coordinates and US Defense Mapping Agency chart 71028 (scale 1:1,091,700, 7th ed., 21 May 1983) and chart 93030 (scale 1:1,071,000, 4th ed, 15 March 1980).
[138] Cordner, 1994: 68.

The Chinese version of the events was that a Chinese survey team landed on Fiery Cross Reef to set-up an observation post. Three Vietnamese ships arrived and landed troops on the reef. When the Chinese asked them to leave, the Vietnamese opened fire. Chinese ships returned fire. According to Vietnam, three Chinese warships landed troops on Fiery Cross Reef, removed Vietnam's flag, and planted China's flag. When the Vietnamese asked the Chinese to leave, the Chinese troops and ships opened fire.[139]

On 23 March 1988 Vietnam offered to open talks on the Spratly dispute. The following day China rejected the offer. Vietnam repeated the offer to negotiate and was again rejected.[140] However, the PRC took a softer line toward Malaysia and the Philippines. By 12 May 1988 perhaps in response to a public relations disaster, the PRC proposed negotiations with Vietnam while repeating a demand for the withdrawal of Vietnamese forces.[141]

Following the clash, the PRC sent more ships to the islands, and warned of another battle. China occupied additional reefs, bringing the total to seven by early May 1989. As of July the Chinese base at Fiery Cross Reef was complete.[142] The PRC continued to fortify some islands (see Figure 4).

Vietnam increased its occupation to 21 islets and reefs. Shortly after the armed clash with China, the Vietnamese Minister of Defence reportedly visited the Spratly islands. In November 1988 Vietnam reported that a PRC destroyer had fired on one of its ships, but China denied the incident.[143] In August 1989 Vietnam built facilities on Bombay Castle (on Rifleman Bank), Vanguard Bank, and Prince of Wales Bank, bringing to 24 the number of islets and reefs under its control.[144]

Though not directly involved in the clash near Fiery Cross Reef, the other claimants reacted vigorously. In February, Malaysia's Deputy Foreign Minister stated:

> *"The islands and atolls are under Malaysian sovereignty, and Malaysia has in the past reaffirmed its jurisdiction....They are within Malaysia's continental shelf area and Malaysia's sovereignty over them has been officially declared through the new Map of Malaysia, published on December 21st, 1979....The claim is in line with the Geneva Convention of 1958 pertaining to territorial waters and continental shelf boundaries, and the UN Convention on the Law of the Sea, as well as other international practices."[145]*

Taiwan reacted, in March, by reasserting its sovereignty and resupplying its garrison on Itu Aba.[146] On 20 August 1988 Malaysia apprehended four Taiwanese fishing vessels within the Spratly area overlapped by the Malaysian EEZ claim. Taiwanese authorities did little to protest the Malaysian actions, and the Malaysian court fined the four ship masters.[147]

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[139]   Chang, 1990: 25-26; Chang, 1991: 408; Davidson, 1988: 345-47.
[140]   Davidson, 1988: 346.
[141]   Thomas, 1990: 422.
[142]   Chang, 1990: 27; Thomas, 1990: 419.
[143]   Chang, 1990: 27; Thomas, 1990: 419.
[144]   Thomas, 1990: 419-20.
[145]   *New Straits Times,* 25 February 1988, as quoted in Haller-Trost,1990: 9-10.
[146]   Thomas, 1990: 416; Chang, 1990: 29.
[147]   Yu, P.K.H., 1990: 78-81.

Figure 4: Chinese Installation on Gaven Reef

PRC installation on Gaven Reef [Nanxun jiao in Chinese]. Presumably, the initial structures are in the foreground, raised on stilts and made of bamboo. The white, brick and concrete block structure in the background may have been erected later. Note the gun replacements on the roof, satellite dish and communications antennae. Reprinted, by permission, New China Pictures Company (Beijing).

On 17 March 1988 the Philippines reacted to the recent China-Vietnam clash by warning both not to interfere in Kalayaan. Manila also urged peaceful settlement of the issue. In April a Philippine delegation visited Hanoi and reached an agreement not to use force in settling disputes. Philippine President Aquino visited China in the same month and agreed with China to shelve the dispute. Also in April Philippine fishermen were detained by the Malaysian navy near Commodore Reef. Manila protested, and the fishermen were eventually released by Malaysia as a good will gesture without prejudice to Kuala Lumpur's claim. Both Malaysia and the Philippines increased defence preparations and tensions rose. A Philippine scientific survey was mounted in May. In August the Philippine navy apprehended four Taiwanese fishing vessels for intruding in Kalayaan.[148]

5.   Recent Developments

The 1990s have seen different tactics used by the claimants to the Spratly islands. Before 1988 the PRC was on the margins of the Spratly dispute. With its occupation of some Spratly islands the PRC has become the principal player in the game. Gao observes that the PRC was concerned with

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[148]   Chang, 1990: 28-30; Yu, P.K.H., 1990: 79-80; Thomas, 1990: 422-23.

security in the South China Sea before the 1980s, but the Fiery Cross Reef incident was a turning point in PRC policy, which shifted toward economic interests.[149]

When the Cambodian problem was resolved in 1991, the disputes in the South China Sea, especially that over the Spratly islands, became the principal source of tension in Southeast Asia.[150] Most of the other claimants found themselves reacting to Chinese tactics. During the first half of the decade, the contending countries made contracts with foreign oil companies and undertook offshore exploration activities in the disputed areas. The disputants also used fishing activities to press claims. This has also been the period of non-governmental conferences sponsored by Indonesia and Canada, ASEAN involvement, and formal bilateral talks.

5.1   1990-91 – Indonesian Workshops Begin

The first of the Indonesia-sponsored, non-governmental workshops on the South China Sea was held in Bali during January 1990. The initial meeting was generally limited to academics or officials from ASEAN countries and Canada, which provided some funding.[151] On 29 December 1990 the ROC Foreign Minister reaffirmed its claim to the Spratly islands.[152]

During 1991 Malaysia announced its decision to construct a resort and airstrip on Swallow Reef. In July Taiwan restated its sovereignty claim to the Spratly islands.[153] During that month the second Indonesian workshop met in Bandung and was expanded to include non-ASEAN participants. Subsequent workshops included participants from the PRC, Taiwan, Vietnam, and other Southeast Asian countries.[154]

5.2   1992 – PRC Territorial Sea Law and Manila Declaration

1992 saw new laws, workshops, and declarations about the Spratly islands. The PRC passed a law defining its territorial sea that reiterated previously claimed island groups, including the Spratlys, and Vietnam modified the definition of its continental shelf. Both the PRC and Vietnam used oil exploration licensing to reinforce their overlapping claims. At its meeting in Manila, ASEAN approved a declaration to resolve the South China Sea disputes peacefully and explore cooperation in various fields, such as navigation, protection of the marine environment, and combating piracy. Indonesia hosted a third non-governmental workshop.

During February 1992 the PRC passed its Law on the Territorial Sea, which reiterated its claim to various island groups in the South China Sea. The new law essentially codified and elaborated the 1958 Declaration on the Territorial Sea. The law listed the same groups of islands (including the Spratly islands) claimed in the earlier declaration, but added the Diaoyu Islands that China disputes

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[149]   Gao, 1994: 352-53.
[150]   Gao, 1994: 350.
[151]   McDorman, 1993: 274.
[152]   Chang, 1991: 399.
[153]   McDorman, 1993: 276.
[154]   Vatikiotis, M. (1991) 'Eye on the Islands', *Far Eastern Economic Review,* 4 July: 19; McDorman, 1993: 274, 283.

with Japan in the East China Sea.[155] Although there were no new claims in the law via-à-vis the South China Sea, various Southeast Asian countries reacted strongly.

In its 1992 Law the PRC also claimed a contiguous zone, as permitted in international law. The new law provides the right of innocent passage for foreign non-military ships, but requires PRC approval before foreign military vessels can enter China's territorial sea, as had the 1958 Declaration. The requirement for prior approval of military ship passage is inconsistent with the 1982 UN Convention.[156] However, twenty-eight countries, including Burma, Cambodia, the Philippines, Vietnam, and even Denmark, require prior permission for the transit of foreign warships through their territorial seas.[157] The restriction on innocent passage may be inconsistent with international law, but its is not unusual.

In March the Philippines arrested Chinese fishermen in the disputed area. The fishermen were later released.[158] A major development occurred in May, when Crestone Energy Corporation (Denver) and the PRC's China National Offshore Oil Corporation (CNOOC) signed an oil exploration contract for a large area encompassing Vanguard, Prince Consort, Prince of Wales, Alexandra, and Grainger banks, which the Chinese termed Wan-an Bei 21 (WAB-21). Vietnam promptly protested and the PRC rejected the protest.[159] There was a strong response throughout Southeast Asia, where commentators viewed the Crestone contract and the new PRC Law on the Territorial Sea as evidence of *"China's new hegemonic interest in the region."[160]*

The third Indonesian workshop met in Yogjakarta from 29 June through 2 July 1992. The participants agreed to set up two expert working groups: on resource assessment and ways of development and on marine scientific research. On the last day of the conference, the PRC Foreign Ministry spokesperson reaffirmed Chinese sovereignty over the Spratly islands.[161]

During the July ASEAN ministerial meeting in Manila, the ministers issued the *"ASEAN Declaration on the South China Sea"*, patterned after the principles enunciated at the Bandung workshop. In the Declaration the ASEAN Foreign Ministers:

> *"Emphasize the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force;*

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[155]   'Law on Territorial Waters, Adjacent Areas', Xinhua (Beijing) in Chinese, 25 February 1992, translated in FBIS, *China* (28 February 1992): 2; People's Republic of China, National People's Congress, Legislative Affairs Commission, 'Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone', adopted 25 February 1992 (booklet in English); Law of the People's Republic of China concerning Territorial Waters and Adjacent Regions (1992) *Gazette of the State Council of the People's Republic of China* (13 March 1992) no. 3, serial no. 688:69-71 (in Chinese).

[156]   Wang and Pearse, 1994: 438-39.

[157]   Roach and Smith, 1994: 158-59.

[158]   McDorman, 1993: 276.

[159]   'China's Decision on Spratlys Causes Ripples in Vietnam,' *New Straits Times*, 27 June 1992: 20; Kristof, N.D. (1992) 'China Signs U.S. Oil Deal for Disputed Waters,' *New York Times*, 18 June 1992; 'China Rejects Vietnam Claims on Crestone Deal,' *Platt's Oilgram News,* 29 June 1992.

[160]   Hamzah, B.A. (1992) 'China's Strategy', *Far Eastern Economic Review,* 13 August 1992: 22.

[161]   'Cooling off a Flashpoint,' *Asiaweek* (17 July 1992): 21-23; Michael Richardson, 'Oil Hunt in South China Sea: Some See Flash Point,' *International Herald Tribune* (30 June 1992); McDorman, 1993: 283-84; PRC Ministry of Foreign Affairs spokesman, 'China Has Indisputable Sovereignty over the Spratly Islands,' *Peoples Daily* (3 July 1992).

Urge all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes;

Resolve, without prejudicing the sovereignty and jurisdiction of countries having direct interests in the area, to explore the possibility of cooperation in the South China Sea relating to the safety of maritime navigation and communication, protection against pollution of the marine environment, coordination of search and rescue operations, efforts towards combating piracy and armed robbery as well as collaboration in the campaign against illicit trafficking in drugs;

Commend all parties concerned to apply the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea;

Invite all parties concerned to subscribe to this Declaration of principles."[162]

PRC Foreign Minister Qian assured the ASEAN foreign ministers that China would not use force in the Spratly dispute and said that the PRC favours shelving the territorial issues.[163]

During August 1992, probably in response to the Crestone contract, Vietnam modified its definition of the continental shelf to extend to the 1,500 meter isobath, thereby encompassing Vanguard Bank but excluding Rifleman Bank and Spratly Island. Vietnam sought to make its claim to the contract area distinct from its sovereignty claim to the Spratly islands.[164]

During September the link between the Chinese-Vietnamese dispute in the Spratlys and their other boundary and maritime disputes became more apparent. On 4 September Vietnam demanded the withdrawal of Chinese drilling ships from the Gulf of Tonkin. The PRC foreign minister rejected Vietnam's complaint.[165] During his visit to Hanoi, PRC Deputy Foreign Minister Xu said that China was willing to discuss the land boundary dispute and the Gulf of Tonkin maritime boundary when their experts were to meet, but not the Spratly dispute.[166]

The end of 1992 found other claimants entering the fray and the Vietnamese using the foreign oil company gambit. In November Taiwanese officials said that Taiwan would set up a task force to deal with the Spratly dispute.[167] On 2 December Philippine Foreign Secretary Romulo said that Washington should clarify the application of the Mutual Defense Treaty to the Spratly Islands.[168] PRC Prime Minister Li Peng visited Vietnam (30 November-4 December) and discussed the various disputes between China and Vietnam. The PRC and Vietnam agreed to use 1887 and 1895

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[162]   McDorman, 1993: 285.

[163]   Thomas, 1993: 2; McDorman, 1993: 281; William Branigin, 'China Assures Asian Bloc on Islands,' *Washington Post* (22 July 1992): A23.

[164]   Huynh Minh Chinh, 'Thu Chinh Bank Is on Vietnam's Continental Shelf,' *Vietnam Courier*, No. 34, August 1992.

[165]   Kathleen Callo, 'China Puts Oil Platform in Vietnam Waters,' Reuter (Hanoi), 5 September 1992; 'Note dated 8 September 1992 from the Ministry of Foreign Affairs of China to the Ministry of Foreign Affairs of Viet Nam,' in United Nations General Assembly, 47th sess. (25 September 1992), doc. A/47/472, annex; Murry Hiebert, 'Ruffled Waters,' *Far Eastern Economic Review* (24 September 1992).

[166]   'Vietnam: Border dispute Overtures,' *Far Eastern Economic Review* (1 October 1992); 'PRC Border Talks to Resume 14 Feb,' AFP (Hong Kong) in English, 4 February 1993, transcribed in FBIS, *East Asia* (4 February 1993): 51.

[167]   'Taiwan to Set up Task Force on Spratly Islands,' *Straits Times* (30 November 1992): 5.

[168]   'US Urged to Back Talks on Disputed Spratlys,' *Straits Times* (3 December 1992): 17.

French maps to resolve their land boundary dispute, but China refused to compromise on the Wan-an Bei area. At the farewell to Li Peng, Vietnam Foreign Minister Cam said that Hanoi had unnegotiable sovereignty of the Vanguard area and all claimants of the nearby Spratly islands should hold talks.[169] About this time, British Petroleum (BP) spudded Lan Do 1 well in Vietnam Block 06, near by the Crestone concession at WAB-21.[170]

5.3 1993 – Oil Exploration and an EEZ for Brunei

In 1993 the PRC and Vietnam made some progress on their other disputes, but tensions heightened in the Spratly islands. Each claimant used survey ships to pressure the other. Later in the year, Vietnam offered exploration tracts overlaying the area that the PRC contracted to Crestone. Malaysia and Vietnam reached agreement for joint development of their overlapping claims west of the Spratlys. Brunei claimed an EEZ, which included the area around Louisa Reef.

During the January ASEAN summit Brunei's Foreign Minister reportedly stated at a press conference that Brunei claims only seas surrounding Louisa Reef.[171] On 6 January Vietnam's UN representative reaffirmed sovereignty over Vanguard Bank and the Spratly and Paracel islands. He called for negotiations and restraint in the Spratly dispute. BP spudded a second well, Lan Tay 1, in Vietnam's block 06.[172]

During 14-17 February in Hanoi, the PRC and Vietnam held their second round of expert-level talks. The parties discussed the principles for resolving the land and maritime disputes.[173] In April an additional bilateral irritant was revealed. Vietnam reported that during the preceding two months the PRC had seized 18 Vietnamese ships allegedly engaged in smuggling between Hong Kong and China. Vietnam said that 20 vessels had been apprehended in the third quarter of 1992.[174]

During April and May the PRC and Vietnam conducted survey activities to reinforce their overlapping claims. From 19 April to 18 May 1993 the Vietnam Centre for National Sciences and Technology conducted a general survey in the Spratly islands. About the same time, the PRC seismic vessel *Fendou-4* surveyed Vietnamese blocks, disturbing seismic surveys being conducted by the BP consortium in the area. Vietnam protested. The PRC vessel left on 11 May.[175]

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[169] 'Comrades Apart,' *Far Eastern Economic Review* (17 December 1992): 23; Mary Kay Magistad, 'Vietnamese and Chinese Open Talks,' *Washington Post* (1 December 1992): A31; 'Visit to Vietnam a Success, Says Li Peng,' *Straits Times* (4 December 1992): 4.

[170] Dev George, 'Vietnamese Waters Churn As Major Operators Vie for Best Prospects,' *Offshore* (April 1993): 30.

[171] Thomas, 1993: 4, n. 3

[172] United Nations General Assembly, *Provisional Verbatim Record*, 83rd Meeting (10 December 1992), doc. A/47/PV.83 (6 January 1993), part 5; George, 1993: 30.

[173]. 'PRC Border Talks to Resume 14 Feb;' 'Hanoi Radio Reports Border Talks with PRC,' Voice of Vietnam (Hanoi) in Vietnamese 19 February 1993, translated in FBIS, *East Asia* (22 February 1993): 59.

[174] 'Spokesman: China Holding 13 SRV Cargo Ships,' AFP (Hong Kong) in English, 22 April 1993, transcribed in FBIS, *East Asia* (23 April 1993): 54.

[175] 'Researchers Carry Out 'General Survey' of Spratlys,' VNA (Hanoi) in English, transcribed in FBIS, *East Asia* (9 June 1993): 56; 'Ministry Accuses PRC Ship of Violating Territory,' AFP (Hong Kong) in English, 11 May 1993, and 'VNA Reports Violation,' VNA (Hanoi) in English, 11 May 1993, transcribed in FBIS, *East Asia* (12 May 1993): 50-51; 'Chinese Shooting Seismic in Vietnam Block 06,' *Offshore* (July 1993): 17; Gao, 1994: 350.

During May and June Malaysia came to bat. On 12 May 1993 the Malaysian Prime Minister told Vietnam's First Deputy Prime Minister that the parties should stick to principles and not introduce historical arguments or other conditions to disputes in the South China Sea.[176] From 30 May to 3 June the working group on marine science research formed at the Yogjakarta workshop held its first meeting, in Manila.[177] On 4 June Malaysia and Vietnam exchanged diplomatic notes establishing a joint development zone (1,358 sq. km) in their overlapping claims at the entrance to the Gulf of Thailand.[178] On 10 June the PRC protested the visit of Vietnam Deputy Prime Minister Tran Duc Luong to the Spratly islands.[179]

During July 1993 Brunei became the most recent of South China Sea littoral countries to claim an EEZ, leaving only the PRC as odd man out. The claim extends the lines decreed by Britain in 1958 to the median line between Borneo and the Asian mainland or to 200 nautical miles. An extension to 200 nm would fall short of reaching the seaward limit of Malaysia's continental shelf claim, but it would enclose Louisa Reef (6°20'N, 113°14'E). However, Brunei's continental shelf claim extends beyond that of Malaysia.[180] Also in July the Working Group on Resources Assessment and Ways of Development, set up in the Indonesian workshop talks, held its second meeting in Jakarta.[181]

On 7 August Vietnam provided an export tax exemption for fishing in the Spratly islands.[182] At the end of that month, PRC and Vietnam held talks in Beijing on principles to solve border issues and the Gulf of Tonkin. The parties agreed to continue discussions and pledged that neither side would carry out activities to complicate the conflict, use force or threaten to use force.[183]

The autumn of 1993 saw move and counter-move by the PRC and Vietnam on the oil exploration and leasing front. On 16 September a Vietnam foreign ministry source said that the PRC had resumed oil exploration in the Gulf of Tonkin. A month later Vietnam invited oil companies to bid on nine offshore blocks, including contract areas around Vanguard Bank and Prince of Wales Bank in the PRC's Crestone area. PetroVietnam Chairman Ho Si Thoang said that this was not in a disputed area and that the Spratly islands were not entitled to an EEZ.[184] On 19 October the PRC

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[176]   'Mahathir, SRV Minister on Resolving Disputes,' BERNAMA (Kuala Lumpur) in English, 12 May 1993, transcribed in FBIS, *East Asia* (12 May 1993): 34.

[177]   *Far Eastern Economic Review* (27 May 1993): 30; Statement of Working Group Meeting on Marine Scientific Research in the South China Sea, Manila, 2 June 1993 (mimeograph).

[178]   'Oil Exploration Agreement Signed with SRV,' BERNAMA (Kuala Lumpur) in English, 4 June 1993, transcribed in FBIS, *East Asia* (8 June 1993): 31; 'Hanoi, KL Seal 40-year Oil, Gas-exploration Pact,' *Straits Times* (5 June 1993).

[179]   'Knotty Reefs,' *Far Eastern Economic Review* (10 June 1993): 9.

[180]   Brunei, 'Brunei Declares EEZ'; Haller-Trost,1994a: 4-5, 43-44, and map 3 (p. 55).

[181]   Statement of the Working Group Meeting on Resources Assessment and Ways of Development in the South China Sea, Jakarta, 6 July 1993 (memeograph).

[182]   'Incentives Granted to Promote Spratlys Fishing,' VNA (Hanoi) in English, 30 August 1993, transcribed in FBIS, *East Asia* (1 September 1993): 38.

[183]   'Deputy Foreign Minister Heads PRC Border Talks,' Voice of Vietnam (Hanoi) in English, 30 August 1993, and 'More on Border Talks with PRC,' Voice of Vietnam (Hanoi) in Vietnamese, 30 August 1993, in FBIS, *East Asia* (2 September 1993): 39; 'Diplomacy: Border Talks,' *Far Eastern Economic Review* (9 September 1993): 14.

[184]   'PRC Resumes Oil Exploration,' KYODO (Hanoi) in English, 16 September 1993, transcribed in FBIS *East Asia* (16 September 1993): 52; 'Vietnam Protests against Chinese Oil Rig in Tonkin Gulf,' *Straits Times* (18 September 1993): 9; 'PetroVietnam Official on Spratlys Exploration,' *Bangkok Post (Inside Indochina* supplement) (2 November 1993): 2; reprinted in FBIS, *East Asia* (3 November 1993): 54-44.

and Vietnam signed an agreement on principles to resolve territorial and border issues.[185] In November PetroVietnam opened bidding on Blue Dragon (Block 5-1), west of the Crestone area.[186] On 8 November Vietnam announced that it had built a lighthouse on Song Tu Tay (Southwest Cay, 11°25'45"N, 114°19'40"E).[187] The presidents of Vietnam and the PRC ended their summit in Beijing on 15 November without any further agreement on territorial disputes.[188] On 20 December Mobil Corporation announced that it was part of a consortium awarded drilling rights by Vietnam to Blue Dragon.[189]

5.4   1994 – Oil Company Surrogates

During 1994 the PRC and Vietnam continued to use foreign oil companies as designated hitters in the Spratlys and the Gulf of Tonkin. The Philippines also tried that play by contracting with another American company in the Kalayaan area. Vietnam ratified the 1982 UN Convention on the Law of the Sea. Indonesia's proposals to formalise its workshops as governmental fora and allocate the South China Sea into zones of control were rejected. The PRC and Vietnam discussed their island disputes in the South China Sea for the first time at the ministerial level and agreed to form an expert group on the matter.

On 22 January 1994 a Vietnam Foreign Ministry spokesman responded to a 14 January PRC statement by reasserting Vietnamese sovereignty over the Spratly and Paracel islands. A few days later, Defence Secretary De Villa said that the Philippines may invoke the US defence treaty if its forces were attacked by other claimants in the Spratly islands.[190]

On 3 February a Vietnam Foreign Ministry spokeswoman accused Taiwan of violating Vietnamese sovereignty by considering building an airport, port, and lighthouse on Itu Aba. During that month PRC authorities reportedly warned Conoco to stop negotiating with PetroVietnam on acreage overlaying Crestone's contract area.[191] In late February Chinese experts visited Hanoi to discuss starting talks on the land boundary dispute. Vietnam also indicated that it was talking with Thailand and Indonesia on their maritime boundary disputes.[192]

On 29 March Vietnam responded positively to Philippine President Ramos' proposal to demilitarise the Spratly islands. The Philippines and Vietnam agreed to joint marine research in the area.[193]

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[185]   'China, Vietnam Agree Not to Use Force in Border Disputes,' *Straits Times* (20 October 1993); 'Hanoi Reviews Relations with China in 1993,' Voice of Vietnam (Hanoi) in English, 3 January 1994, transcribed in FBIS, *East Asia* (5 January 1994): 39.

[186]   'Bidding Begins on Big Blue Dragon,' *Offshore* (November 1993): 14.

[187]   'Lighthouse Built on Island in Spratlys,' VNA (Hanoi) in English, 8 November 1993, transcribed in FBIS, *East Asia* (10 November 1993): 73.

[188]   'Foreign Minister Briefs Press on PRC Visit,' Voice of Vietnam (Hanoi) broadcast in Vietnamese, 16 November 1993, translated in FBIS, *East Asia* (17 November 1993): 66; 'Government, PRC Said to Disagree over Spratlys,' KYODO (Tokyo) in English, 19 November 1993, transcribed in FBIS, *East Asia* (22 November 1993): 53.

[189]   'Mobil Group Wins Vietnam Oil Rights,' *Washington Post* (21 December 1993): D3.

[190]   'Ministry Reasserts Sovereignty over Spratlys,' Voce of Vietnam (Hanoi) in English, 22 January 1994, transcribed in FBIS, *East Asia* (24 January 1994): 65; 'US Pact May Be Invoked If Attack in Spratlys,' AFP (Hong Kong) in English, 25 January 1994, transcribed in FBIS, *East Asia* (25 January 1994): 63-64.

[191]   'Vietnam Criticises Taiwan for Spratly Actions,' Reuter (Hanoi) 3 February 1994; 'China Vietnam Head to Head at WAB-21,' *Offshore* (April 1994): 15.

[192]   'Vietnam, China to Discuss Border Dispute, Spratlys,' Reuter (Hanoi) 25 February 1994.

[193]   'Vietnam Backs Ramos on Spratlys Demilitarisation,' Reuter (Hanoi) 29 March 1994; Reuter (Manila) 30 March 1994.

In April the PRC and Vietnam continued to joust, using foreign oil companies as surrogates. On 19 April Mobil signed a production-sharing contract with PetroVietnam for Block 5-1b (Blue Dragon). The PRC Ministry of Geology was reported to be planning to drill a well in the same area, in the vicinity of Blue Dragon. Within the PRC claimed area, but north of the Crestone area, PetroVietnam and Nopec offered offshore licenses in Vietnamese blocks 122-130.[194] Crestone planned a seismic survey of WAB-21 with drilling later in the year. On 20 April Vietnam protested the Crestone plans. A PRC Foreign Ministry spokesman reiterated China's sovereignty over the Spratly Islands, but expressed hopes that negotiations on territorial disputes would progress based on already agreed principles.[195]

In May Vietnam accused the PRC and Taiwan of coordinating surveys in the Spratly islands.[196] Also in May the Philippines contracted with Alcorn Petroleum (subsidiary of VAALCO, a US company) to gather information on petroleum resources in 1.5 million hectares of the disputed Spratly islands region. On 5 May the Philippines renewed its call to demilitarise the Spratly area, set aside sovereignty issues, and develop the area through cooperation.[197] On the same day the Vietnam Foreign Ministry warned against Crestone's survey and reaffirmed Vietnamese sovereignty over the Spratly islands. In several statements during 8-12 May 1994 the PRC Foreign Ministry called Vietnam's contract with Mobil for the Blue Dragon prospect illegal because the area was part of the Spratly islands. Vietnam responded to the PRC's 10 May statement by affirming that Vanguard Bank and Thanh Long (Blue Dragon) were Vietnam's under the 1982 UN Convention.[198] All of Blue Dragon lies on Vietnam's side of a median line between Vietnam's Hon Hai island and Spratly Island, but most of the Crestone block lies on the Spratly Island side of the median line.[199]

During May or June 1994 PetroVietnam began to drill in Vietnam's block 135, which is within Crestone's concession from the PRC.[200] On 28 June 1994 during a visit to Moscow, PRC Foreign Minister Qian suggested that discussions should be halted and a start be made on joint exploitation of the Spratly islands (the PetroVietnam drilling rig was Russian). Despite tensions on other fronts,

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[194]   'Mobil Signs Vietnam Deal,' *Oil Daily* (20 April 1994): 5; 'Vietnam: Mobil Back to Work,' *Far   Eastern Economic Review* (5 May 1994): 79; 'China Vietnam Head to Head at WAB-21,' *Offshore* (April 1994): 15; 'Vietnam Frontier Licenses,' *Offshore* (April 1994): 11.

[195]   'Crestone Begins Project in South China Sea Despite Dispute over Sovereignty of Area,' *Oil Daily* (20 April 1994): 3; 'Vietnam: Protest over Surveys,' *Far Eastern Economic Review* (5 May 1994): 13; China Radio International (Beijing) in English, 22 April 1994, transcribed in British Broadcasting Company, *Summary of World Broadcasts* (hereafter, BBC, *SWB*).

[196]   'Foreign Ministry on Spratlys, South Africa,' Voice of Vietnam (Hanoi) in Vietnamese, 5 May 1994, translated in FBIS, *East Asia* (5 May 1994): 45.

[197]   'Ramos Defends Oil Search in Dispute Waters,' Kyodo (Tokyo) in English, 6 July 1994, transcribed in FBIS, *East Asia* (6 July 1994): 54; Joubert Burgos, 'Spratlys Dispute Hinders Oil Exploration Work,' *Manila Standard* (3 July 1995): 13, transcribed in FBIS, *East Asia* (6 July 1995): 72; 'Renewed   Tension in Spratlys Worries Manila,' *Manila Standard* (5 May 1994): 4, reprinted in FBIS, *East Asia* (10 May 1994): 38.

[198]   'Vietnam Warns China over Crestone Work Near Spratly Islands,' *Oil Daily* (6 May 1994): 7; 'Spratly Islands Dispute Heats Up,' UPI (Beijing), 8 May 1994; *Far Eastern Economic Review*, 5 May 1994: 79; 'Chinese Claim for Oil Field: Sovereignty Battle with Hanoi,' AFP (Beijing) 10 May 1994; AP (Beijing), 12 May 1994; 'Ministry Refutes PRC Claims on Thanhlong Sea,' VNA (Hanoi) in English, 11 May 1994, transcribed in FBIS, *East Asia* (13 May 1994): 70.

[199]   Distances were great circle distances calculated, using published coordinates for Hon Hai and Spratly islands.

[200]   'Vietnam Unaware of Oil Block,' AP (Hanoi), 21 July 1994; Barry Wain, 'Tension Mounts As Vietnam Vies with Beijing over Oil Exploration,' *Wall Street Journal* (25 July 1994); John Rogers, 'Vietnam: PetroVietnam to Consider Joint Spratlys Oil Search,' Reuter (Hanoi) 24 August 1994.

the PRC and Vietnam conducted the second meeting of their land-border joint working group. The week-long meeting in Beijing concluded on 1 July 1994.[201]

On 2 July Vietnam seized three Chinese fishing boats in the Gulf of Tonkin. The next day two Chinese fishing boats fired on a Vietnamese patrol vessel in the Spratly islands, injuring two officials according to the Vietnamese Foreign Ministry.[202] On 6 July 1994 Philippine President Ramos defended the May agreement with Alcorn Petroleum for 'desktop' exploration in the disputed Spratly islands.[203] Responding to Vietnam's restatement of its sovereignty claims and ratification of the 1982 UN Convention, the PRC Foreign Ministry said that China was ready to shelve the Spratly sovereignty dispute and enter into joint development. During the same period (4-8 July) the PRC and Vietnam were holding the second round of their Gulf of Tonkin talks in Beijing. They agreed to hold a third round in Hanoi in November 1994.[204]

On 15 July 1994 the Vietnamese embassy in Manila brushed off an earlier Philippine protest of Vietnam's construction of a lighthouse on Song Tu Tay (Southwest Cay, 11°25'45"N, 114°19'40"E). Philippine Chief of Staff Enrile said that the armed forces were ready to protect Kalayaan.[205] While the Philippines and Vietnam sparred in the northwestern Spratly islands, the PRC and Vietnam threatened counter-moves 680km to the southwest. On 19 July the PRC warned Vietnam to stop drilling on Wan An reef. Chinese ships reportedly blockaded the Vietnamese rig, but the PRC later said the Foreign Ministry source was misquoted. The Vietnamese Foreign Ministry denied any knowledge of a PRC blockade. On 20 July 1994 a CNOOC spokesman said that CNOOC and Crestone intended soon to proceed with seismic surveys in the Vanguard Bank area, even though the Vietnamese were planning to drill nearby.[206]

With this backdrop, the ministers of ASEAN met in Bangkok (22-23 July), followed by the ASEAN Regional Forum (ARF) meeting (25 July). On 21 July 1994 the PRC Foreign Ministry spokesman said that the South China Sea disputes should be discussed bilaterally under the ARF. He reiterated the proposal to shelve claims and discuss joint development. Following talks with Vietnam and the Philippines at the ASEAN ministerial meeting, PRC Foreign Minister Qian unequivocally reaffirmed its sovereignty over the Spratlys but agreed to seek a peaceful resolution. The same day a PRC Foreign Ministry spokesman said that China and Vietnam agreed to resolve their South China Sea claims and that the Chinese Vice Foreign Minister would visit Hanoi in

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[201]   'Russia: China - Report on Qian Qichen's Press Conference,' ITAR-TASS (Moscow) broadcast in Russian, 28 June 1994, translated in BBC, *SWB* (30 June 1994); 'Minutes Signed on Border Talks with PRC,' Voice of Vietnam (Hanoi) broadcast in Vietnamese, 4 July 1994, translated in FBIS, *East Asia* (6 July 1994): 66.

[202]   AP (Beijing), 7 July 1994; 'Spokesman on Seizure of PRC Fishing Boats,' VNA (Hanoi) in English, 5 July 1994, transcribed in FBIS, *East Asia* (6 July 1994): 66; and 'China Wants to Shelve Spratly Dispute,' UPI (Beijing), 7 July 1994.

[203]   'Ramos Defends Oil Search.'

[204]   'China Wants to Shelve Spratly Dispute'; AP (Beijing), 7 July 1994; 'Sino-Vietnamese Group on Tonkin Gulf Meets,' Voice of Vietnam (Hanoi) in Vietnamese, 11 July 1994, translated in FBIS, *East Asia* (12 July 1994): 68.

[205]   'Protest over Spratly Lighthouse Dismissed,' Radio Filipinas (Quezon City)in English, 15 July 1994, transcribed in FBIS, *East Asia* (15 July 1994): 44; 'Military Said Ready to Protect Spratly Claims,' *Business World* (Manila) (15 July 1994): 8, reprinted in FBIS, *East Asia* (19 July 1994): 65.

[206]   'PRC Attempts to Stop Spratly Drilling Denied,' AFP (Hong Kong) broadcast in English, 21 July 1994, transcribed in FBIS, *East Asia* (21 July 1994): 55; 'Vietnam Unaware of Oil Block'; John Rogers, 'Spratlys Row Hangs over Vietnam-China Talks,' Reuter (Hanoi), 13 August 1994; Philip Shenon, 'China Sends Warships to Vietnam Oil Site,' *New York Times* (21 July 1994).

August to discuss joint development.[207] On 23 July Indonesian Foreign Minister Alatas backed away from a proposal to formalise the Spratly workshops after a cool reception from the PRC, Vietnam, and Malaysia. The Indonesian 'doughnut' formula was cold-shouldered by ASEAN, and a senior ASEAN official said that Malaysia now agreed with the PRC that the Spratly dispute would have to be resolved bilaterally.[208] The final ASEAN communiqué included a bland call for a peaceful settlement of South China Sea disputes and appeared to endorse bilateral talks:

> *"On conflicting territorial claims, the ministers expressed appreciation at Indonesia's initiative in promoting confidence-building measures and at the bilateral consultations which some countries had begun. They were convinced that, given the political will and spirit of cooperation of all states concerned, peace and stability in the region could be significantly enhanced."[209]*

The meeting also prepared to accept Vietnam as a member of ASEAN.[210] The ARF held its first meeting, which included the United States, Russia, Japan and the European Union, but not Taiwan, among the 18 nations represented. South China Sea disputes were among the topics covered.[211]

On 25 July Philippine Defence Secretary De Villa cited the 1992 Manila Declaration and said that there was general agreement for a peaceful Spratly settlement; he proposed demilitarisation.[212] At the end of the month it was reported that the Mobil consortium would soon start drilling in the Blue Dragon prospect.[213]

During 15-16 August 1994 in Hanoi, the PRC and Vietnam held their second round of ministerial talks. Progress was reported on the land boundary dispute and with the Gulf of Tonkin maritime boundary. The Spratly and Paracel islands were discussed for the first time at that level. The PRC invited the Vietnamese to Beijing for the 1995 round.[214] On 24 August 1994 PetroVietnam Chairman Thoang said that PetroVietnam was ready to consider joint exploration in the Spratlys if

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[207]   'PRC: ARF Should Discuss South China Sea,' *The Nation* (Bangkok) (22 July 1994): A2, excerpted in FBIS, *East Asia* (22 July 1994): 1-2; Sonya Hepinstall, 'China Seeks Dialogue in Row over Spratlys,' Reuter (Bangkok), 21 July 1994; Tony Allison, 'PRC Minister Reaffirms Spratly Sovereignty,' *South China Morning Post* (Hong Kong) (23 July 1994): 9, transcribed in FBIS, *East Asia* (25 July 1994): 18-19; 'PRC, Vietnam Agree to Meet on Spratlys Dispute,' *The Nation* (23 July 1994): A1, A4, transcribed in FBIS, *East Asia* (2 August 1994): 1; Reg Gratton, 'China and Vietnam Agree on Spratlys Self-restraint,' Reuter (Bangkok), 22 July 1994.

[208]   'Nations Differ on Spratlys Talks Proposal,' *The Sunday Nation* (Bangkok) (24 July 1994): A2, transcribed in FBIS, *East Asia* (25 July 1994): 19; Nayan Chanda, 'Divide and Rule: Beijing Scores Points on South China Sea,' *Far Eastern Economic Review* (11 August 1994): 18.

[209]   ''Excerpts' of Joint Communique,' *The Sunday Nation* (Bangkok) (24 July 1994): A6, transcribed in FBIS, *East Asia* (25 July 1994): 10.

[210]   Tim Johnson, 'Summit Concludes 23 Jul,' Kyodo (Tokyo) in English, 23 July 1994, transcribed in FBIS, *East Asia* (25 July 1994): 8-9; Sonya Hepinstall, 'ASEAN to Strengthen Security Role, Admit Vietnam,' Reuter (Bangkok), 23 July 1994.

[211]   Robert Birsel, 'East Asian Talks Hailed As Force for Peace,' Reuter (Bangkok), 25 July 1994;   Tim Johnson, 'Regional Forum Addresses South China Sea Issue,' Kyodo (Tokyo) broadcast in English, 25 July 1994, transcribed in FBIS, *East Asia* (25 July 1994): 19-20.

[212]   'Solutions to Spratly dispute to Be Pursued,' PNA (Manila) broadcast in English, 25 July 1994, transcribed in FBIS, *East Asia* (25 July 1994): 82.

[213]   John Rogers, 'Hopes Are High in Vietnam's Oil Industry,' Reuter (Ho Chi Minh City), 31 July 1994.

[214]   John Rogers, 'Vietnam, China Agree to Keep Talking on Spratlys,' Reuter (Hanoi), 18 August 1994; 'SRV Officials Exchange Views with Tang on Border Issues,' China Radio International (Beijing) in Vietnamese, 18 August 1994; 'Vietnam: Talks with China over Disputed Territorial Claims End without Agreement,' Kyodo (Tokyo) in English, 16 August 1994, transcribed in BBC, *SWB* (18 August 1994).

his government agreed and other claimants recognised Vietnam's sovereignty. He reiterated that Vanguard Bank was on Vietnam's continental shelf.[215]

On 10 September 1994 a Foreign Ministry spokesman rejected the PRC criticism of Vietnam for constructing a fishing harbour in the Spratlys. On 23 September Vietnamese Foreign Minister Cam implied support for a multilateral settlement. He said a Spratly settlement or joint development depended on agreement of *all* parties.[216]

In October Vietnamese oil exploration in both the Gulf of Tonkin and the Spratly islands returned to centre stage. On 14 October a PRC Foreign Ministry spokesman criticised Vietnam's offer of oil exploration contracts in the Gulf of Tonkin *"including an area belonging to China."*[217] Vietnam rejected the PRC protest and China's claim of high seas fishing rights in the central Gulf (beyond 12nm from the coast). The spokesman reiterated Vietnamese economic zone and continental shelf rights there. Surprisingly, the Vietnamese spokesman made no reference to historic waters for the Gulf of Tonkin. On 20 October a Vietnamese Foreign Ministry spokeswoman said there had been 10 Chinese fishing violations since May and detailed two incidents in August and September in the Gulf of Tonkin.[218] About the same time, the PRC and Vietnam traded charges about Vietnam's prospecting in the Vanguard Bank area. While the PRC and Vietnam exchanged accusations, Taiwan's Ministry of Transportation and Communication announced that it would equip a weather station on Itu Aba. It said that Taiwan would never renounce its claim of sovereignty, but was willing to shelve the dispute to cooperate on economic development.[219]

The end of October also saw the fifth Indonesia-sponsored workshop and a third meeting of the PRC-Vietnam land boundary experts.[220] The Indonesian workshop (26-28 October 1994, Bukittinggi) ended without consensus. Although most participants called for a halt to military build-up, some had reservations. A proposal to institutionalise the workshops was rejected. There was agreement on technical cooperation in such matters as environmental issues and shipping. Taiwan reportedly objected to discussing only the Spratly and Paracel conflicts, citing other disputes. The PRC and Vietnam also objected. Beijing rejected Indonesia's proposal to involve the US, Japan, or European countries in technical projects.[221]

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[215]   John Rogers, 'Vietnam: PetroVietnam to Consider Joint Spratlys Oil Search,' Reuter (Hanoi), 24 August 1994.

[216]   'Vietnam Rejects Chinese Charge on Spratlys,' Reuter (Hanoi), 9 September 1994; 'Vietnam Set to Join ASEAN Next Year - Minister,' Reuter (Hanoi), 23 September 1994.

[217]   'Beijing Protests SRV 'Exploitation' of Tonkin Gulf,' China Radio International (Beijing) broadcast in Vietnamese, 15 October 1994, translated in FBIS, *China* (17 October 1994): 21.

[218]   'PRC 'Violations' 'Unacceptable',' Voice of Vietnam (Hanoi) broadcast in Vietnamese, 17 October 1994, translated in FBIS, *East Asia* (18 October 1994): 88; 'Ministry Rebuts PRC Territorial Water Claim,' Voice of Vietnam (Hanoi) broadcast in Mandarin, 19 October 1994, translated in FBIS, *East Asia* (20 October 1994); 'Spokeswoman Details PRC Shipping Violations,' AFP (Hong Kong) broadcast in English, 20 October 1994.

[219]   'China Criticises Viet Oil Exploration in Spratlys,' Reuter (Beijing), 17 October 1994; ''Concerned' over Oil Prospecting,' Xinhua (Beijing) in English, 17 October 1994, transcribed in FBIS, *China* (17 October 1994): 21; 'Spokesman Rebuts PRC Claims,' Voice of Vietnam (Hanoi) in Vietnamese, 18 October 1994, translated in FBIS, *East Asia* (18 October 1994): 88; 'Taiwan to Build Up Weather Station in Spratlys,' Reuter (Taipei), 17 October 1994.

[220]   AFP (Hong Kong) in English, 20 October 1994.

[221]   'South China Sea Talks Ends without Consensus,' UPI (Bukittinggi) 28 October 1994; 'Little Headway Made at Indonesia Spratly Talks,' Reuter (Jakarta) 28 October 1994; 'Taiwan Objects to Talks on Dispute Spratlys,' Reuter (Jakarta) 27 October 1994.

At the end a three-day visit by PRC President Jiang Zemin to Vietnam on 22 November, the two countries announced that they would form a third expert group, which would consider South China Sea issues.[222]   The communiqué said that, *"the two countries will continue talks on their sea territorial problems to seek basic and long-term solutions acceptable to both sides....They will not use force, or threaten to use force against each other...and both sides should remain cool headed"*, if a new dispute occurs.[223]   However, both countries restated their respective claims, without apparent modification. The PRC Foreign Minister Qian said that *"Pending a peaceful settlement, the two countries could start joint development of the potentially oil-rich archipelago in the South China Sea."*[224]

On December 4 the Vietnamese Defence Minister visited the Philippines to discuss the Spratly dispute. Six days later, in response to a renewed PRC assertion of sovereignty, Philippine Foreign Affairs Minister Romulo reiterated his country's claim to the Kalayaan Island Group.[225]

5.5   1995 – PRC Occupies Mischief Reef

1995 was dominated by the PRC's occupation of Mischief Reef in the eastern Spratlys (see Figure 5) and the Philippines' efforts to regionalise and internationalise the issue. Vietnam became a full member of ASEAN, which became more deeply embroiled in the dispute. The resultant escalation of tensions prompted statements of concern by Japan and the United States. About mid-year diplomatic activity reduced the dispute to a simmer. Although much of the reported 'progress' on the diplomatic front was semantic and not substantive, the PRC, the Philippines, and Vietnam reached bilateral agreements-in-principle on adopting codes of conduct to prevent clashes in the Spratlys. The PRC and Vietnam held their first expert-level meeting on the Spratly and Paracel islands disputes.

In January 1995 the PRC warned Vietnam to stop conducting geological surveys in their disputed area. About the same time, Filipino fishermen reported PRC activity at Mischief Reef (9°55'N, 115°32'E),[226] which lies in the centre of the Philippines' Kalayaan claim and the Alcorn contract area. Mischief Reef is 715km from Cam Ranh Point (Vietnam), 1,110km from Hainan Island (PRC), and 239km from Palawan Island (Philippines). The reef is the eastern-most of PRC outposts in the Spratlys, roughly 100km equidistant from the nearest features occupied by the Philippines (Nanshan Island), Vietnam (Sin Cowe East Island), and Taiwan (Itu Aba). It lies outside the claims of Brunei and Malaysia, but within those of the Philippines, PRC, Taiwan, and Vietnam.[227]

The PRC had erected four clusters of buildings on steel pylons over the reef. The Chinese claimed that the structures were shelters for fishermen. On 8 January Philippine President Ramos said that

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[222]   'New Talks, Old Split over Spratly Islands,' *Washington Post* (23 November 1994): A16; 'China, Vietnam ye Border Pact,' AP (Hanoi) 22 November 1994; 'China, Vietnam to Set Up Committee on Spratlys,'   Reuter (Hanoi) 21 November 1994.

[223]   Lorien Holland, 'China, Vietnam Sign Economic Accords,' UPI (Beijing) 22 November 1994.

[224]   'Vietnam, China to Discuss Spratlys Dispute,' Reuter (Hanoi) 22 November 1994; 'China, Vietnam Agree to Talks,' AP (Hanoi), 21 November 1994.

[225]   'Vietnamese Minister in Manila for Spratlys Talks,' Reuter (Manila) 4 December 1994; 'Philippines Restates Claim to Spratlys,' Reuter (Manila), 10 December 1994.

[226]   Mischief Reef is known as Panganiban Reef in Filipino, Meiji Jiao in Chinese, and Vanh Khan in Vietnamese.

[227]   Dzurek, 1995: 65.

the Chinese actions were inconsistent with international law and with the 1992 ASEAN Manila Declaration on the Spratlys, which had been endorsed by the PRC.[228]

Besides flanking a Vietnamese base at Sin Cowe East Island, 105km west of Mischief Reef, the PRC may have put an installation on a reef closer to the Philippine home islands to warn against colluding with Vietnam, which was about to become a member of ASEAN. On February 3 Vietnamese Foreign Minister Cam visited Manila to discuss the Spratly dispute with Foreign Secretary Romulo.

Faced with a *fait accompli* and insufficient military strength to dislodge the Chinese, Manila ruled out an armed response. It resorted to diplomatic protest and sought to regionalism the issue as a problem for ASEAN and rally international opinion. Philippine President Ramos claimed violation of its unilaterally claimed EEZ, conveniently disregarding any economic zone that might radiate from the Spratly islands, themselves.[229] Philippine legislators attempted to invoke the Philippine-US Mutual Defense Treaty, but Foreign Secretary Romulo acknowledged that the treaty did not apply to the Spratly area. Previous efforts by the Philippine government to use the treaty for the Kalayaan area had been rebuffed by the US.[230]

The occupation of Mischief Reef also resurrected the issue of freedom of navigation in the South China Sea. Many news reports on the Spratly islands include the observation that the islands 'straddle' major shipping lanes. This is correct in a technical sense, but the navigation routes stay roughly 140km from the nearest Spratly islands and shoals. Activities in the Spratlys pose no direct threat to navigation.[231] Nonetheless, the occupation of Mischief Reef revived the wider question of a threat to navigation, which became current in 1992. In discussing the occupation of Mischief Reef, Philippine President Ramos repeatedly called attention to the strategic sea lanes of the South China Sea.[232] The Philippines managed to induce Japan and the US to reiterate their interest in freedom of navigation.[233]

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[228]   'Vietnam Dismisses China Protest on Spratly Islands,' Reuter (Hanoi), 24 January 1995; 'Manila Probes Report of Chinese Ship in Spratlys,' Reuter (Manila), 30 January 1995; 'Philippine Navy Sends Ship to Disputed Shoal,' Reuter (Manila), 2 February 1995; William Branigin, 'China Takes over Philippine-claimed Area of Disputed Island Group,' *Washington Post* (11 February 1994): A18.

[229]   Malcolm Davidson, 'Manila Rules Out Armed Response in Spratlys,' Reuter (Manila), 10 February 1995; Amando Doronila, 'Analysis,' *Philippine Daily Inquirer* (Manila) (19 February 1995): 1, 4, transcribed in FBIS, *East Asia* (24 February 1995): 62-63; Pepper Rodriguez, 'Manila to Beef Up Forces in Spratlys,' UPI (Manila), 15 February 1995; 'With Eyes Wide Open,' *Malaya* (Quezon City, Philippines) (14 February 1995): 4, transcribed in FBIS, *East Asia* (16 February 1995): 61.

[230]   'FVR Gets Suckered on Spratlys,' *Malaya* (Quezon City) (16 February 1995): 4, transcribed in FBIS, *East Asia* (21 February 1995): 88-89; 'Review of Defense Treaty with US Urged,' Quezon City GMA-7 Radio-Television Arts Network broadcast in Tagalog, 14 February 1995, translated in FBIS, *East Asia* (15 Feburary 1995): 50; 'De Villa Says 'No Risk of War' on Spratlys,' *Business World* (Manila) (14 February 1995: 1, 6, transcribed in FBIS, *East Asia* (16 February 1995): 60-61; Branigin, 'China Takes over Philippine-claimed Area;' 'China Tests the Water: Diplomatic Options,' *Philippine Daily Inquirer* (Manila) (15 February 1994): 8, transcribed in FBIS, *East Asia* (17 February 1995): 64-65; 'US Pact May be Invoked If Attack in Spratlys,' AFP (Hong Kong) in English, 25 January 1994, transcribed in FBIS, *East Asia* (25 January 1994) 63; Keith B. Richburg and Steven Mufson, 'Dispute over Islands and China's Gunboats Roiling Asian Waters, *Washington Post* (5 June 1995) A14.

[231]   Dzurek, 1995: 66.

[232]   Doronila, 'Analysis;' Holland, L. 'China Downplays Spratly Dispute,' UPI (Beijing), 16 February 1995; 'Philippines Lowers Spratlys Alert,' UPI (Manila), 11 February 1995; Maragay, F.V. 'Ramos, Romula View Status of Spratlys Dispute,' *Manila Standard* (18 February 1995): 3, in FBIS, *East Asia* (23 February 1995): 70-71; 'Manila on Spratlys: Force Not an Option,' UPI (Manila), 17 February 1995.

[233]   'China, Philippines to Talk on Spratlys,' Reuter (Manila), 23 February 1995; 'US Concerned over Spratlys,' AP, 3 April 1995; US Department of State Daily Press Briefing, no. 67, 10 May 1995.

Figure 5: South China Sea: Claims and Outposts in the Spratly Island Region
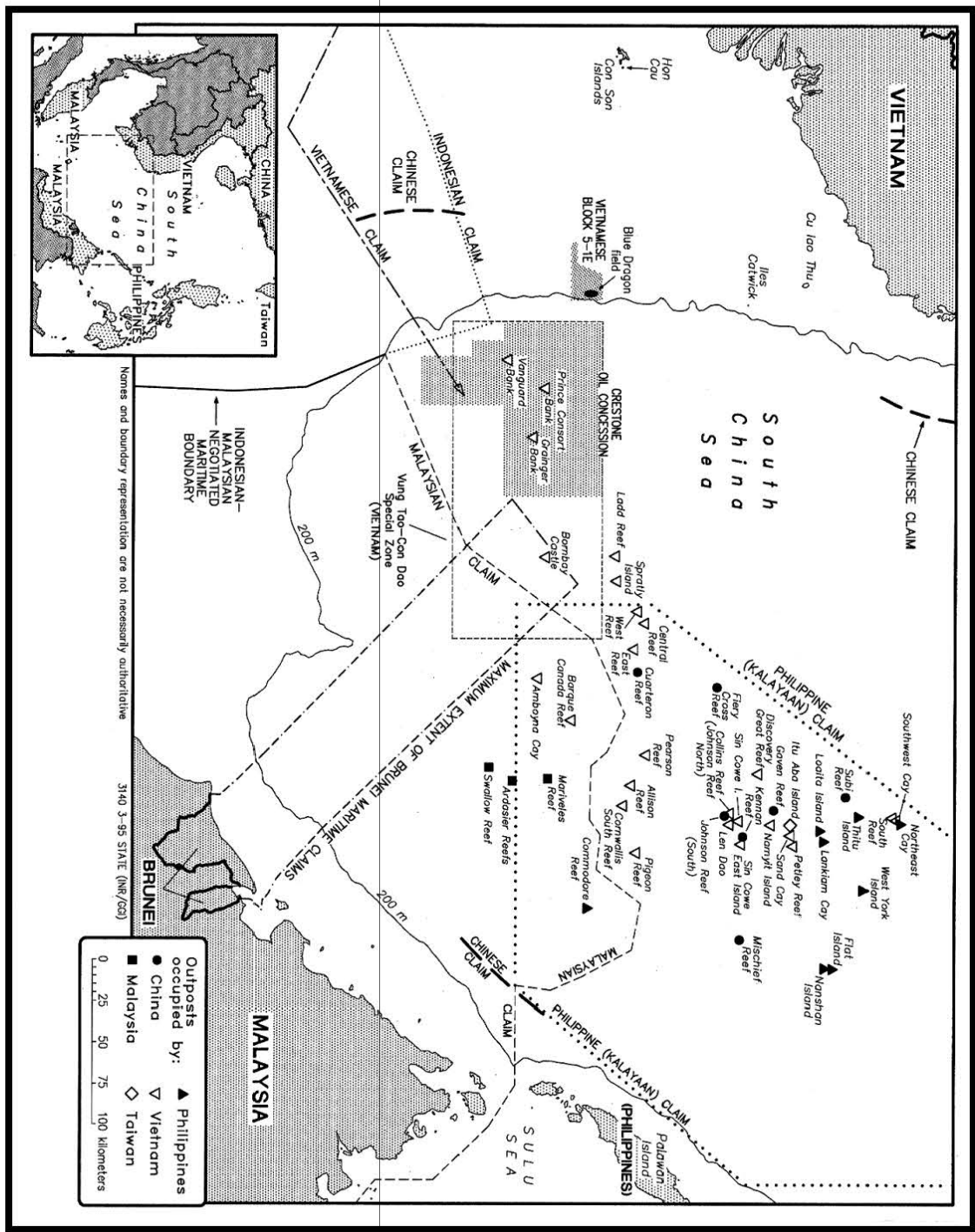
Source: US Department of State, Office of the Geographer and Global Issues.

On 28 February Vietnam announced that it had reinforced its Spratly outposts. In March the ASEAN foreign ministers expressed concern.[234] The Philippine military destroyed Chinese markers that had been erected on Jackson Atoll (10°30'N, 115°44.5'E), Half Moon Shoal (8°52'N, 116°16'E) and Sabina Shoal (9°45'N, 116°29'E). Beijing and Manila began talks on 19 March that ended without agreement, except to continue discussions. On 25 March the Philippine navy detained four PRC boats and 62 fishermen near Alicia Annie Reef (9°23'N, 115°27'E).[235] Five days later the Nationalists on Taiwan said that they would send patrol boats to the Spratlys. The Philippines and Vietnam objected. Taiwan recalled the patrol.[236] On 24 March the PRC warned oil companies working in Vietnam not to become involved in Sino-Vietnamese territorial disputes. Vietnam responded by reiterating its sovereignty over the Vanguard Bank area. On 25 March Vietnam reported that Taiwanese forces on Itu Aba (Dao Ba Binh in Vietnamese) shelled one of its cargo ships, which was sailing from Discovery Great Reef to Sand Cay. No damage was reported. On 31 March Singapore Senior Minister Lee Kuan Yew indicated that ASEAN would back Vietnam in its South China Sea dispute with the PRC.[237] Despite increased tension over Mischief Reef, the Sino-Vietnamese joint working group on the Tonkin Gulf held its scheduled fourth meeting, which concluded on 31 March with agreement to meet again in June.[238]

As the rhetoric threatened to reel out of control,[239] an ASEAN delegation visited Hangzhou to discuss the issue with PRC officials on 3-4 April.[240] The ROC Defense Minister announced that Taiwan would not send more forces to the Spratlys.[241] At about the same time, Indonesia sought clarification of China's traditional sea boundary line, fearing a claim to the Natuna gas fields, and intensified its patrols of the area (see Section 4.3.2).[242] On 25 April President Le Duc Anh reasserted Vietnam's sovereignty over the Spratly islands.[243]

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[234] 'Hanoi Reinforces Troops on Spratlys,' Kyodo (Tokyo) broadcast in English, 28 February 1995, transcribed in FBIS, *East Asia* (28 February 1995): 85; 'ASEAN Ministers Express Concern over Spratlys,' Reuter (Singapore), 18 March 1995.

[235] 'China Lashes Out at Philippines,' Reuter (Beijing), 25 March 1995; Lorien Holland, 'Philippines Downplays China Dispute,' UPI (Beijing), 24 March 1995; Benjamin Kang Lim, 'China, Philippines to Hold More Talks on Spratlys,' Reuter (Beijing), 22 March 1995; 'China: No Tension over Spratlys,' UPI (Beijing), 10 March 1995; 'China Calls for Talks on Spratlys,' UPI (Beijing), 16 March 1995; 'Philippine Navy Seizes Vessels,' AP (Manila), 25 March 1995; 'Philippine Navy Holds Chinese Fishermen,' Reuter (Manila), 26 March 1995.

[236] 'Patrol Mission to Spratly Islands Begins 31 Mar,' Taipei China Broadcasting Corporation News Network broadcast in Mandarin, 30 March 1995, translated in FBIS, *Daily Report: China* (31 March 1995): 88; Alice Hung, 'Taiwan to Start Spratly Patrol, Denies Aggression,' Reuter (Taipei), 30 March 1995; 'Vietnam Urges Talks on Spratlys,' Reuter (Hanoi), 29 March 1995; 'Taiwan Move on Spratlys Seen Raising Tensions,' Reuter (Manila), 30 March 1995; 'Taiwan Not to Send More Forces to Spratlys,' Reuter (Taipei), 10 April 1995.

[237] 'Vietnam Restates Sovereignty Claim in Sea Area,' Reuter (Hanoi), 30 March 1995; 'Ministry Spokesman on Taiwan Action in Spratlys,' Voice of Vietnam Network (Hanoi) broadcast in Vietnamese, 4 April 1995, in FBIS, *East Asia* (5 April 1995): 41; 'US Concerned over Spratlys'; John Rogers, 'ASEAN Will Back Vietnam in Row with China - Lee,' Reuter (Hanoi), 31 March 1995.

[238] 'China: Sino-Vietnamese Tonkin Gulf Delineating Group Meets,' Voice of Vietnam (Hanoi) broadcast in English, 6 April 1995, transcribed in BBC, *SWB* (8 April 1995).

[239] Jane Macartney, 'Spratly Dispute Rattles Asian Equilibrium,' Reuter (Beijing), 30 March 1995; Ruben Alabastro, 'Manila Alleges Chinese Duplicity in Spratlys,' Reuter (Manila), 10 April 1995; 'Report: China May Wage War,' AP (Hong Kong), 18 April 1995..

[240] 'Philippines Says ASEAN Has One Voice on Spratlys,' Reuter (Manila), 5 April 1995; 'China Lauds Spratly Talks,' UPI (Beijing), 6 April 1995.

[241] 'Taiwan Not to Send More Forces to Spratlys,' Reuter (Taipei), 10 April 1995.

[242] 'Clarification of PRC Maritime Maps Sought,' AFT (Hong Kong) in English, 7 April 1995, transcribed in FBIS, *East Asia* (7 April 1995): 59-60; 'Indonesia to Intensify Patrols in South China Sea,' Reuter (Jakarta), 10 April 1995.

[243] 'Vietnam Reasserts Claim over Spratly Islands,' Reuter (Hanoi), 26 April 1995.

Tensions peaked in mid-May, when the Philippines military used an amphibious assault craft to ferry 36 journalists near Mischief Reef and then overflew the PRC outpost with helicopters. President Ramos denied attempting to provoke the PRC.[244] Thereafter, both Manila and Beijing began to tone down their rhetoric. On 18 May the PRC Foreign Ministry stated that its actions in the Spratlys would not interfere with normal navigation. President Ramos sent an emissary to Beijing to explore ways to reduce tensions and the PRC proposed a joint venture with the Philippines in the Spratlys.[245] However, Malaysia ended the month by reiterating its sovereignty claim to Swallow Reef.[246]

Throughout June and July 1995, in preparation for the August ARF meeting in Brunei, the claimants generally moderated the level of invective. Manila released some of the Chinese fishermen it had detained and announced that it was negotiating with Beijing. Malaysian officials downplayed the dispute and called for formal talks. UNESCO agreed to cosponsor a regional workshop on protecting the South China Sea, to be held in the Philippines in October.[247] Indonesia postponed its sixth informal workshop on the South China Sea disputes from July until October.[248] The Philippines was reported to be studying the PRC's proposal jointly to explore for oil in the Reed Bank. A suggestion to make the Spratly Islands a protected marine area was also floated in Manila.[249] When the Philippines destroyed more PRC markers on other Spratly features, Beijing warned that its restraint would not persist if the Philippines continued such provocations. However, the PRC offered a cooperative agreement to prevent fisheries disputes.[250] In late June Vietnam inaugurated a lighthouse on Amboyna Cay.[251]

At the beginning of July the Philippines reported major progress when the PRC agreed to negotiate over the Spratlys based on international law, including the 1982 UN Convention. Philippine

[244] 'Philippine Leader Defends Spratlys Tour to China,' Reuter (Manila), 15 May 1995; 'Chinese Boats Block Philippine Vessel,' UPI (Off Mischief Reef), 16 May 1995; Rene Pastor, 'Philippine Leader Rejects China's Spratly Protest,' Reuter (Manila), 17 May 1995; Ed Marso, 'Manila Denies Provoking China,' UPI (Manila), 17 May 1995; 'China, Philippines Feud over Spratlys,' *Washington Post* (17 May 1995): A31.

[245] 'China Says Spratly Waters Are Safe,' UPI (Beijing), 18 May 1995; 'PRC Seeks Joint Venture Project in Spratlys,' Kyodo (Tokyo) in English, 31 May 1995, transcribed in FBIS, *East Asia* (2 June 1995): 8-9; J. V. Cruz, 'PROC Assures Free Navigation across Spratlys,' *Manila Chronicle* (30 May 1995): 4, transcribed in FBIS, *East Asia* (2 June 1995): 76-77.

[246] 'Minister: Claim to Island Indisputable,' *Berita Harian* (Kuala Lumpur) (1 June 1995): 1, translated in FBIS, *East Asia* (1 June 1995): 59-60; 'Layang-Layang: China Is Aggravating the Situation,' *Berita Harian* (Kuala Lumpur) (2 June 1995): 10; translated in FBIS, *East Asia* (2 June 1995): 65-66.

[247] Abe de Ramos, 'Manila Releases Eight Chinese Fishermen,' UPI (Manila), 7 June 1995; 'Siazon Announces Dialogue with PRC,' DZBB Radyo Bisig Bayan (Quezon City) broadcast in Tagalog, 9 June 1995, translated in FBIS, *East Asia* (9 June 1995): 45; 'Foreign Minister Comments on Spratlys Incidents,' *Utusan Malaysia* (15 July 1995): 33, and 'Military Intelligenc Chief on Spratly Dispute,' *Utusan Malaysia* (Kuala Lumpur) (16 July 1995): 9, both translated in FBIS, *East Asia* (18 July 1995): 43-44; 'Malaysia Calls for Formal Talks over Spratlys,' Reuter (Kuala Lumpur), 16 Jun 1995; 'Workshop to Be Held on Disputed Spratlys,' UPI (Manila), 16 June 1995.

[248] 'Indonesia Delays Spratlys Talks until October,' Reuter (Jakarta), 20 June 1995.

[249] Merlinda Manalo, ''Joint Oil Exploration in Reed Bank Studied,' *Manila Standard* (20 June 1995): 6, transcribed in FBIS, *East Asia* (22 June 1995): 42; 'Officials Propose Protected Area in Spratlys,' *Business World* (Manila) (21 June 1995): 10, transcribed in FBIS, *East Asia* (23 June 1995): 75.

[250] Merlinda Manalo, 'Warns against Provocative Acts,' *Manila Standard* (23 June 1995): 4, and 'Proposes Fishing Cooperation,' *Manila Standard* (22 June 1995): 4, both transcribed in FBIS, *East Asia* (27 June 1995): 59-60.

[251] 'New Lighthouse in Spratly Islands Inaugurated,' *Thoi Bao Kinh Te Saigon* (Ho Chi Minh City) (22-28 June 1995): 29, translated in FBIS, *East Asia* (24 July 1995): 88.

Foreign Ministry officials mentioned the convention's dispute settlement mechanisms. Later that month the Indonesian Foreign Minister made much the same claim.[252] The assertion of progress was hollow. The 1982 UN Convention gives no guidance on island sovereignty disputes, which are explicit grounds for exception to compulsory dispute settlement mechanisms under Article 298. Chinese claims to sovereignty in the Spratlys are usually couched in terms of international law, so the PRC appears to have promised nothing new.

Manila restated its proposal for a 'stewardship' plan for the Spratlys, which would place areas nearest each coastal state under that country's control. Such a plan would be disadvantageous to the PRC and Taiwan and is unlikely to satisfy Chinese interests. The PRC and the Philippines agreed to hold a second round of talks in late August, at the undersecretary level.[253]

Oil, gas, and fish continued to figure in the dispute. The uproar over Mischief Reef reportedly inhibited Philippine offshore exploration. The Philippine government apparently restricted the area of Alcorn's 'desk top' survey, and the company filed a request for reconsideration. On 18 July Philippine Energy Secretary Viray said that there were not commercial quantities of oil in the Spratlys.[254] On 21 July Indonesia announced that the PRC had reassured it regarding the Natuna Islands and nearby gas field. Foreign Minister Ali Alatas confirmed that China did not claim the islands, but admitted that, *the sea border line is not clear between the Spratly Islands and the surrounding areas. However, China said it has no dispute with Indonesia.*[255] On 12 and 17 July PRC patrols intercepted and boarded Taiwanese fishing boats in the Spratly islands. The boats were allowed to continue without further incident, but this was the first time that mainland Chinese had interfered with the Taiwanese in the Spratlys.[256] This followed ROC President Lee's unofficial visit to the US and Beijing's military exercises near Taiwan.

The 28th ASEAN ministerial gathering and subsequent ARF meeting in Brunei at the end of July and beginning of August displayed strong differences in approaches to the dispute. The PRC reiterated its agreement to use international law and support for freedom of navigation. It offered to shelve the dispute, suggested bilateral negotiations among claimants, and strongly opposed consideration of the Spratlys in the Regional Forum among non-claimants, especially the US. Earlier, Singapore had stressed that the Spratly islands dispute should be handled by the claimants or by international mediators, but not by ASEAN. Indonesia, apparently placated about the Natuna Islands, chaired an ASEAN meeting with the PRC, called for peaceful settlement, and made much of the PRC's pledge to observe international law. Manila chose not to raise the Spratlys in the Regional Forum, but held bilateral side-talks with Beijing. The US Secretary of State called for peaceful settlement, said that the Spratlys were one reason for continued American presence in the area, and stated that freedom of navigation was of fundamental interest. The Malaysian Foreign Minister summarised the ARF talks as concluding that only claimants could play a role in settling

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[252] 'Manila: China Agrees to Spratlys Talks,' UPI (Manila), 7 July 1995; 'Spratlys Not Oil Rich, Manila Says,' UPI (Manila), 18 July 1995; Ruben Alabastro, 'Manila Says China May Declare New Spratlys Stance,' Reuter (Manila), 18 July 1995; 'Indonesia Says China to UseSea Law in Disputes,' Reuter (Bandar Seri Begawan), 27 July 1995.

[253] Merlinda Manalo, 'Manila, Beijing Discuss Spratlys Stewardship,' *Manila Standard* (20 July 1995): 2, transcribed in FBIS, *East Asia* (25 July 1995): 60-61; 'Philippines, China Hold Spratlys Talks in   August, Reuter (Manila), 25 July 1995.

[254] Burgos, 'Spratlys Dispute Hinders Oil Exploration Work'; 'Spratlys Not Oil Rich, Manila Says,' UPI (Manila), 18 July 1995.

[255] 'Indonesia Satisfied by China's Natuna Explanation,' Reuter (Jakarta), 21 July 1995.

[256] 'Chinese Police Board Taiwan Boats in Spratlys,' Reuter (Taipei), 12 July 1995; 'China Police Board Taiwan Boat in South China Sea,' Reuter (Taipei), 17 July 1995.

the dispute. The Forum encouraged all contestants to reaffirm ASEAN's 1992 Declaration on the South China Sea, which called for restraint.[257]

Philippine President Ramos claimed improved relations with the PRC following discussions at the ASEAN meeting. The PRC and the Philippines held vice-ministerial talks on their dispute from 8 to 12 August 1995 in Manila. The two agreed to abide by a code of conduct in the Spratlys to avoid military confrontation, but the particulars were not settled. They set up panels to discuss confidence-building measures, such as cooperation in conservation, meteorology, disaster relief, search and rescue, navigation, and environmental protection. However, no meeting date was set for the panels. The talks deadlocked when the Philippines asked the PRC to evacuate Mischief Reef. The sides pledged to have legal experts discuss their respective claims. Manila said it would study Beijing's proposal for bilateral cooperation in oil and gas exploration in the Spratlys.[258] Except for progress toward a military code of conduct, the Manila talks were long on promise and short on product.

Following the bilateral talks, the Philippines announced plans for similar discussions with other claimants, but emphasised that there would be no talks with Taiwan because of Manila's one-China policy. A Philippine court convicted 62 PRC fishermen of malicious mischief, and President Ramos pardoned them.[259] In late August Hanoi reiterated its claim in response to PRC statements and Crestone's announcement of an agreement with China's Exploration Development Research Centre to evaluate the oil potential of the Wan-an Bei contract area.[260]

In September Indonesia and the Philippines discussed including extra-regional countries, such as Japan, in cooperative Spratly ventures. Taiwan lauded the code of conduct agreement-in-principle between the Philippines and PRC.[261]

On 5 October the PRC, Taiwan, and ASEAN members concluded a two-day governmental conference in Jakarta by agreeing to cooperate on navigation, shipping and communications in the South China Sea.[262] Five days later the sixth Indonesia-sponsored non-governmental workshop on the South China Sea began in Balikpapan. Many issues were raised at the workshop, but little progress was reported, except agreement to study biodiversity in the South China Sea. There was

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[257]   'PRC to Discuss Spratlys,' *Bangkok Post* (31 July 1995): 1, 3, transcribed in FBIS, *East Asia* (31 July 1995): 5-6; Dean Visser, 'Hope Dims for Quick Spratlys Solution,' UPI (Bandar Seri Begawan), 30 July 1995; K. T. Arasu, 'China Says Ready to Solve Spratlys Dispute by Law,' Reuter (Bandar Seri Begawan), 30 July 1995; Linda Chong, 'Singapore Backs Vietnam in ASEAN,' UPI (Hong Kong), 28 July 1995; Bill Tarrant, 'ASEAN Optimistic over Easing Tensions over Disputed Islands,' Reuter (Bandar Seri Begawan), 30 July 1995; P. V. Cruz, 'U.S. Wants End to Spratlys Dispute,' UPI (Bandar Seri Begawan), 1 August 1995; 'Malaysia's Badawi Views Spratlys,' *The Star* (Kuala Lumpur) (2 August 1995), transcribed in FBIS, *East Asia* (2 August 1995): 5.

[258]   'Manila Hails Improved Ties with Beijing,' UPI (Manila), 5 August 1995; Rene Pastor, 'Manila,   Beijing Agree on Spratlys Code of Conduct,' Reuter (Manila), 10 August 1995; 'Manila, Beijing End Spratlys Talks,' UPI (Manila), 10 August 1995; 'Manila, Beijing Set Spratlys Code,' UPI (Manila), 11 August 1995; Paul N. Villegas, 'PRC Agrees to Joint Projects in Spratlys,' *Business World* (Manila)   (11   August   1995):   8, transcribed in FBIS, *East Asia* (15 August 1995): 76-77.

[259]   'Manila to Meet Other Claimants,' *Business World* (Manila) (14 August 1995): 12, transcribed in FBIS,   *East Asia* (16 August 1995): 46; 'Manila Convicts 62 Chinese Fishermen,' UPI (Manila), 15   August   1995; 'Manila Pardons 62 Chinese Fishermen,' UPI (Manila), 25 August 1995.

[260]   'Vietnam Condemns Chinese Drilling Contract,' Reuter (Hanoi), 31 August 1995.

[261]   'Manila Welcomes Outside Powers in Spratly Venture,' Reuter (Manila), 10 September 1995; 'Taipei Hails Spratly Islands Agreement,' UPI (Manila), 12 September 1995.

[262]   'Southeast Asian Pact to Boost Sea Cooperation,' Reuter (Jakarta), 5 October 1995; Lewa Pardomuan, 'Fresh Talks on Spratlys Aimed at Easing Tension,' Reuter (Jakarta), 8 October 1995.

reticence to undertake additional confidence-building measures, but general agreement to consolidate past proposals.[263]

Despite the spate of discussions, the military dimension became active in late October. Jakarta announced plans to station a squadron of new jet fighters near the Natuna gas field. The PRC held naval exercises in the Yellow Sea, which troubled Taiwan and others in the region.[264] On 28 October Philippine President Ramos emphasised that:

> *"The Philippines cannot be put completely at east in our bilateral relations with China until the situation at Panganiban Reef [Mischief Reef] in our Kalayaan group of islands is completely normalised."*[265]

November saw further bilateral discussions between the Philippines and Vietnam and between China and Vietnam. On 7 November the Philippines and Vietnam concluded three days of talks in Hanoi by agreeing to a nine-point code of conduct for the Spratly area. The code reportedly included targets and benchmarks concerning protection of marine resources and respect for freedom of navigation and overflight. A joint commission will work out the details of the code. During his visit to Manila on 29 November, Vietnamese President Le Duc Anh and Philippine President Ramos called for an common code of conduct to be adopted by all Spratly claimants and for a multilateral meeting to deal with the issue.[266]

In mid-November the PRC and Vietnam held the first expert-level meeting on their Spratly and Paracel islands disputes. The expert group had been agreed during President Jiang's visit to Hanoi in November 1994. The two sides pledged to negotiate based on international law, including the 1982 UN Convention and scheduled another meeting in Beijing during the second quarter of 1996.[267] Other expert groups were already dealing with their land boundary dispute and maritime frontier dispute in the Gulf of Tonkin. On 26 November Vietnam Communist Party Chief Do Muoi arrived in China for a six-day visit. The various boundary and sovereignty disputes were likely to be discussed.[268]

At the end of November Australia and the Philippines reiterated concerns about the Spratly islands dispute. Australian Defence Minister Ray said that the Spratly dispute posed a major threat to

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[263]   Lewa Pardomuan, 'Spratlys Talks Start with Indonesian Appeal,' Reuter (Balikpapan), 10 October 1995; Lewa Pardomuan, 'Spratlys Talks Slow Down in Confidence Building,' Reuter (Balikpapan), 11 October 1995; 'No Progress Made in S. China Sea Talks,' UPI (Jakarta), 12 October 1995.

[264]   'Indonesian Jet Fighters to Be Based Near Natuna,' Reuter (Jakarta), 17 October 1995; Jeffrey Parker, 'China's Jiang Presides over Fiery Navy Exercises,' Reuter (Beijing), 18 October 1995; 'China Defends Holding of Naval Exercises,' Reuter (Beijing), 19 October 1995.

[265]   'Manila Sees China As Threat Despite Assurances,' Reuter (Manila), 28 October 1995; 'Ramos Wary of Chinese Peace Promises,' UPI (Manila), 28 October 1995.

[266]   Girlie Linao, 'Manila Encouraged by Hanoi Talks,' UPI (Manila), 8 November 1995; 'Vietnam, Philippines Sign Spratly Code of Conduct,' Reuter (Manila), 8 November 1995; 'Manila and Hanoi Agree to Hold Workshop on Spratlys,' *Straits Times* (1 December 1995): 33; 'Manila, Hanoi Urge Wider Spratlys Code of Conduct,' Reuter (Manila), 29 November 1995.

[267]   'China and Vietnam Reach Sea Accord,' UPI (Hanoi) 17 November 1995.

[268]   'Vietnam Communist Party Chief Do Muoi Visits China,' Reuter (Hanoi), 26 November 1995; Marat Abdulkhatin, 'Beijing and Hanoi to Discuss Trust-building Measures,' ITAR-TASS (Beijing), 22 October 1995.

regional security and seemed to side with ASEAN against the PRC. President Ramos repeated the Philippines' unease over the continued presence of Chinese on Mischief Reef.[269]

At about the same time, Vietnam's Communist Party leader, Do Muoi, visited Beijing, and its President, Le Duc Anh, went to Manila. The Spratly islands were discussed in both venues, but no progress was reported with the Chinese. At the meeting in the Philippines, Anh and Ramos proposed that a common code of conduct be adopted by all claimants. In late December, Philippine President Ramos awarded a posthumous Legion of Honor to Thomas Cloma, *"in recognition of the claim he made on part of the Spratly Islands for the Philippines in 1956."*[270]

5.6   1996 – PRC Delimits Straight Baselines and Ratifies the UN Convention

China stimulated most of the Spratly-related developments during the first half of 1996. Its March military exercises near Taiwan increased anxiety among its neighbours. In April Vietnam and Conoco, an US oil company, signed contracts for blocks 133 and 134, which overlay China's Wan-an Bei concession to Crestone. In May the PRC ratified the 1982 UN Convention, claimed an EEZ, and delimited most of its straight baselines. Even though no baselines were drawn about the Spratly islands, the Chinese declarations and display of military force renewed tensions in Southeast Asia. A June meeting between the PRC and ASEAN made little progress in resolving the Spratly dispute, though it suggested a change in Chinese policy to permit multilateral discussion of the topic.

During January Taiwan postponed a plan to build an airstrip on Itu Aba island, due to the *"sensitive issues"* involved and lack of funds.[271] PRC Vice Foreign Minister Tang's mid-March visit to Manila for talks on the Spratly islands was overshadowed by China's military exercised near Taiwan. The discussions resulted in little progress.[272]

On 11 April the American oil company Conoco signed an exploration and production agreement with PetroVietnam for Blocks 133 and 134, which overlay the western portion of Crestone's WAB-21 block. The PRC reiterated its sovereignty over the Spratly islands and threatened, *"confrontation, losses and liabilities"* if the deal was consummated. Conoco said that it would wait until China and Vietnam resolved their dispute before beginning to search for oil. Later in the month, a joint Philippine-Vietnam team undertook a marine research cruise from Manila Bay through the Spratly islands to Ho Chi Minh City. A Philippine official said that other countries could join the research and that similar projects had been discussed with the PRC.[273]

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[269]   'Australia Sees Spratlys As Major Security Threat,' Reuter (Canberra), 22 November 1995; 'Manila Uneasy with China over Mischief Reef,' Reuter (Manila), 22 November 1995.

[270]   Jeffery Parker, 'China, Vietnam Report No Easing of Turf Disputes,' Reuter (Beijing), 27 November 1995; 'Manila, Hanoi Urge Wider Spratlys Code of Conduct,' Reuter (Manila), 29 November 1995; *Tiempo* (Manila, 21 December 1995): 1; *Manila Times* (22 December 1995).

[271]   'Taiwan Delays Planned Airstrip in Spratlys,' CNA (Taipei), 16 January 1996.

[272]   'Chinese Minister in Manila, Defends Exercises,' Reuter (Manila), 13 March 1996; 'Manila, Beijing Hold Frank Talks on Spratlys,' Reuter (Manila), 15 March 1996; Ferthe Aboda, 'Accord to Solve Spratlys Dispute "Gradually" with PRC,' *Manila Standard* (15 March 1996): 7, transcribed in FBIS, *East Asia* (25 March 1996).

[273]   'Vietnam Defends Right to Oil Area near Spratlys,' Reuter (Hanoi), 12 April 1996; 'Vietnam Defends Conoco Deal,' AP (Hanoi), 12 April 1996; 'China Raps Vietnam over Oil Contract,' UPI (Beijing), 17 April 1996; 'Manila, Hanoi to Start Marine Research,' UPI (Manila), 23 April 1996; 'Manila, Hanoi Launch South China Sea Research,' Reuter (Manila), 23 April 1996.

Annex 446

Hal Olson, "Marine Traffic in the South China Sea", *Ocean Yearbook*, Vol. 12 (1996)

Transportation and Communication

Marine Traffic in the South China Sea

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INTRODUCTION

The South China Sea lies across the most direct route between the Pacific and Indian Oceans. Through it passes almost all of the marine traffic between the Far East and Europe, Africa, the Middle East, and South Asia. It also carries traffic between South Asia and Pacific ports of North and Central America.

Much of the South China Sea is poorly represented on nautical charts, the result of cursory, inaccurate, or nonexistent surveys. Much of what is charted may be shown or described as being in different locations in different references, creating confusion and uncertainty on the part of the mariner. Numerous reefs, shoals, banks, and other hazards abound throughout the area.

More than 10,000 vessels of greater than 10,000 dwt move southward through the South China Sea annually, with well over 8,000 proceeding in the opposite direction. The routes followed by this and other traffic are shown on maps below, as are the locations of major marine casualties in the South China Sea, east of 110° east and south of 20° north, for the years 1974 to 1994.

This article examines the marine traffic patterns in the South China Sea, the hazardous areas known to exist, and recent marine casualties that have occurred in the region. Based on the numbers and tonnages of vessels transiting the South China Sea, increases in regional traffic and in the sizes of regional fleets, and the presence of many natural physical hazards to shipping, there is a clear need for up-to-date charts based on accurate hydrographic information.

THE REGION

Extending approximately from 3° south to 23° north and from 100° east to 120° east, the South China Sea occupies an area of over 2,600,000 km^2 (1,000,000 square miles), including its two major extensions, the Gulf of

Thailand and the Gulf of Tonkin (fig. 1). It is bounded by 11 littoral polities: Singapore, Malaysia, Thailand, Cambodia, Vietnam, China, Hong Kong, Taiwan, Philippines, Brunei, and Indonesia. The northern portion of the sea is generally deeper than the southern part, most of the latter being less than 200 m deep. A multitude of islands, atolls, banks, reefs, and shoals, some rising only slightly above the sea surface and others remaining submerged, are hazards to navigation. Also potential hazards are the offshore platforms and terminals of the oil industry. An area west of Palawan, extending as far as 111°30′ east, aptly named Dangerous Ground, contains many hazards bearing names of ships that came to grief upon them. Charts of the South China Sea carry such warnings as "No systematic surveys have been carried out and the existence of uncharted patches of coral and shoals is likely; the positions of the charted banks and shoals cannot be relied upon. Vessels are warned not to pass through this area."[1]

Principal currents follow the general direction of the prevailing monsoon winds, reversing from southerly and southwesterly in February to northeasterly in August. Velocities reach as much as 1.5 knots along the coast of Vietnam in February, and strengths of 1 knot can be expected along the coasts of Vietnam and peninsular Malaysia through Karimata Strait, and with less frequency along the south coast of China.[2]

Besides shallows and uncertain hydrography, severe weather conditions may be encountered in any month of the year. Typhoons, intense tropical cyclones with wind velocities in excess of 118 km/hour (64 nm/hour), average one or more per month from June through November, being most frequent in July and September.[3]

Access to the South China Sea from the west is via the Straits of Malacca and Singapore; from the south by Karimata Strait; from the east by Balabac and Mindoro Straits; from the northeast by way of Babuyan, Balintang, and Bashi Channels in Luzon Strait; and from the north through Formosa (Taiwan) Strait.

The Straits of Malacca and Singapore together form the main seaway connecting the Indian Ocean with the South China Sea, and offer the shortest route for tankers plying between the Persian Gulf and the Far East, as well as for other vessels sailing from Europe, the Mediterranean, Africa, and South Asia to Japan, Korea, China, Taiwan, and Hong Kong. Those straits are relatively shallow, are greatly constricted in the vicinity of Singapore, and therefore limit the size of vessels that can safely navigate their waters. Because of this, vessels exceeding 225,000 dwt or drawing more than 19.8 m (65 feet) are admonished in sailing directions not to use the straits, and both Indonesian and Malaysian governments have requested that tankers larger than

1. British Admiralty Chart 4508/INT 508.
2. Joseph R. Morgan and Mark J. Valencia, eds., *Atlas for Marine Policy in Southeast Asian Seas* (Berkeley: University of California Press, 1983), pp. 12–13.
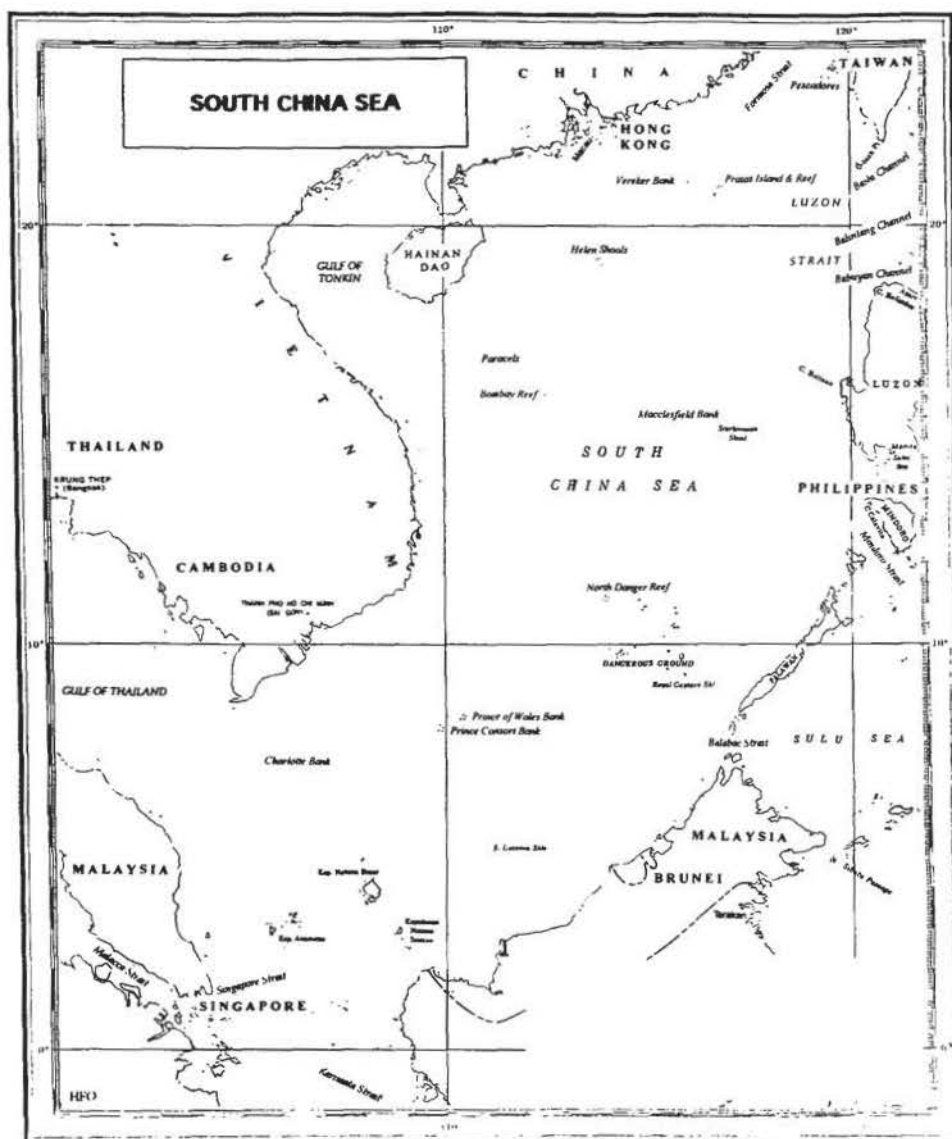3. Ibid., p. 15.

FIG. 1.—Access straits and navigation hazards in the South China Sea.

200,000 dwt not use the straits.[4] These ultralarge crude carriers (ULCCs) must use an alternate route through Lombok Strait,[5] which adds approximately 3 days to the duration of a voyage from the Middle East to the Far

4. *Sailing Directions (Enroute), Strait of Malacca and Sumatera*, 4th ed., pub. 174 (Bethesda, Maryland: Defense Mapping Agency Hydrographic/Topographic Center, 1993), p. 431.

5. *Sailing Directions (Enroute), Borneo, Java, Sulawesi, and Nusa Tenggara*, 6th ed., pub. 163 (Bethesda, Maryland: Defense Mapping Agency Hydrographic/Topographic Center, 1993), p. 153.

East, and will not be part of northbound traffic through the South China Sea. (On their return voyages, in ballast, they will use the shorter Strait of Malacca route.)

Karimata Strait is the customary route taken by vessels northbound from Indonesian waters to ports on the South China Sea and northward. It is wide but, like the Java Sea to the south, is relatively shallow.[6]

Balabac and Mindoro Straits provide access to the South China Sea from the east. Balabac Strait is deep and clear in its western part, but encumbered with numerous islets, reefs, and dangers in its eastern part. Its Nasubata Channel, 4.5 miles wide and 48 m deep, is recommended for movements between the Sulu Sea and the South China Sea. While mentioning that there are dangers east of Balabac Strait, sailing directions also warn that, "In fact, the area west of the strait [in the South China Sea] has not been closely examined, so there could be uncharted dangers existing both east and west of the strait."[7] Mindoro Strait, the northern exit from the Sulu Sea into the South China Sea, has two channels. Apo West Pass is 20 miles wide, while Apo East Pass has a width of 15 miles. Both are deep except for a 15.9-m depth over Discovery Bank in the latter.[8]

Three main channels are available for passage through Luzon Strait. From south to north they are the 15–20-mile-wide Babuyan Channel, the wide and deep Balintang Channel, and the 53-mile-wide Bashi Channel. All are considered to be main shipping routes and are frequently used.[9]

Formosa (Taiwan) Strait provides the main route for shipping to and from ports in northern China, Korea, western Japan, and the Russian Far East. With a least width of 70 miles, it is deep and clear except for Formosa (Taiwan) Banks, an extensive shoal area in the southern part of the strait. Mariners are cautioned, however, that new shoals are reported to emerge continually off the west coast of Taiwan.[10]

SHIPPING ROUTES

Within the South China Sea the recommended shipping routes are laid out so as to avoid the outer limits of Dangerous Ground and several specific isolated hazards. The most heavily traveled of these routes are described

6. Ibid., p. 69.

7. *Sailing Directions (Enroute), Philippine Islands*, 3d ed., pub. 162 (Bethesda, Maryland: Defense Mapping Agency Hydrographic/Topographic Center, 1993), pp. 380–83.

8. Ibid., pp. 140–41.

9. Ibid., pp. 5–7.

10. *Sailing Directions (Enroute), China*, 6th ed., pub. 157 (Bethesda, Maryland: Defense Mapping Agency Hydrographic/Topographic Center, 1993), pp. 186–87.

below (route-limiting hazards are in boldface type) and illustrated in figure 2.

Singapore-Shanghai (and northeast). During the southwest monsoon, from west of Anambas to a position northwest of **Macclesfield Bank,** thence between **Pratas Reef** and **Vereker Bank** through Formosa Strait west of Formosa Banks.[11] A slight modification to this route is through an intermediate point 10°00′ north, 110°05′ east (25 miles southeast of **Charlotte Bank**), then midway between **Macclesfield Bank** and **Bombay Reef** in the Paracels, and later on either side of **Pratas Island.**[12] An alternate route during the northeast monsoon passes east of **Macclesfield Bank** and east of the Pescadores Islands along the west coast of Taiwan.[13]

Singapore-Hong Kong. Follow the Singapore-Shanghai route to a point between **Macclesfield Bank** and the Paracels (**Bombay Reef**) thence to a point 14 miles west of **Helen Shoals** and direct to Hong Kong.[14] An intermediate point specified in this route, likewise, is 10°00′ north, 110°05′ east. An alternate to this is to hug the coast of Vietnam and pass west of the Paracels.[15]

Singapore-Japan (also Panama and Pacific coast ports in North America). From west of Pulau-pulau Anambas to west of **Prince of Wales Bank** and **North Danger Reef,** east of **Macclesfield Bank** to Balintang Channel in Luzon Strait.[16] Another recommendation is to pass northwest of **Prince Consort Bank,** a slightly more conservative waypoint, thence through Bashi (versus Balintang) Channel in Luzon Strait.[17]

MARINE TRAFFIC

There is a tremendous amount of marine traffic in the South China Sea. The questions of how much, what type, where it originates, and where it is bound are difficult to answer precisely, and to attempt to do so would require greater financial resources than were available for this study. Conservative answers can be deduced, however, from the ship-movement data base maintained by Lloyd's Maritime Information Services (LMIS), and data from this source were used to develop the traffic patterns presented here.

Traffic estimates made from the LMIS data were developed through

11. *Sailing Directions (Planning Guide), Southeast Asia,* 4th ed., pub. 160 (Bethesda, Maryland: Defense Mapping Agency Hydrographic/Topographic Center, 1993), p. 244.

12. *Ocean Passages of the World,* 4th ed. (Taunton, Somerset, England: Hydrographic Department, Ministry of Defense, 1987), pp. 115–17.

13. *Sailing Directions, Southeast Asia* (n. 11 above), p. 245.

14. Ibid., p. 244.

15. *Ocean Passages* (n. 12 above), p. 117.

16. *Sailing Directions, Southeast Asia* (n. 11 above), p. 244.
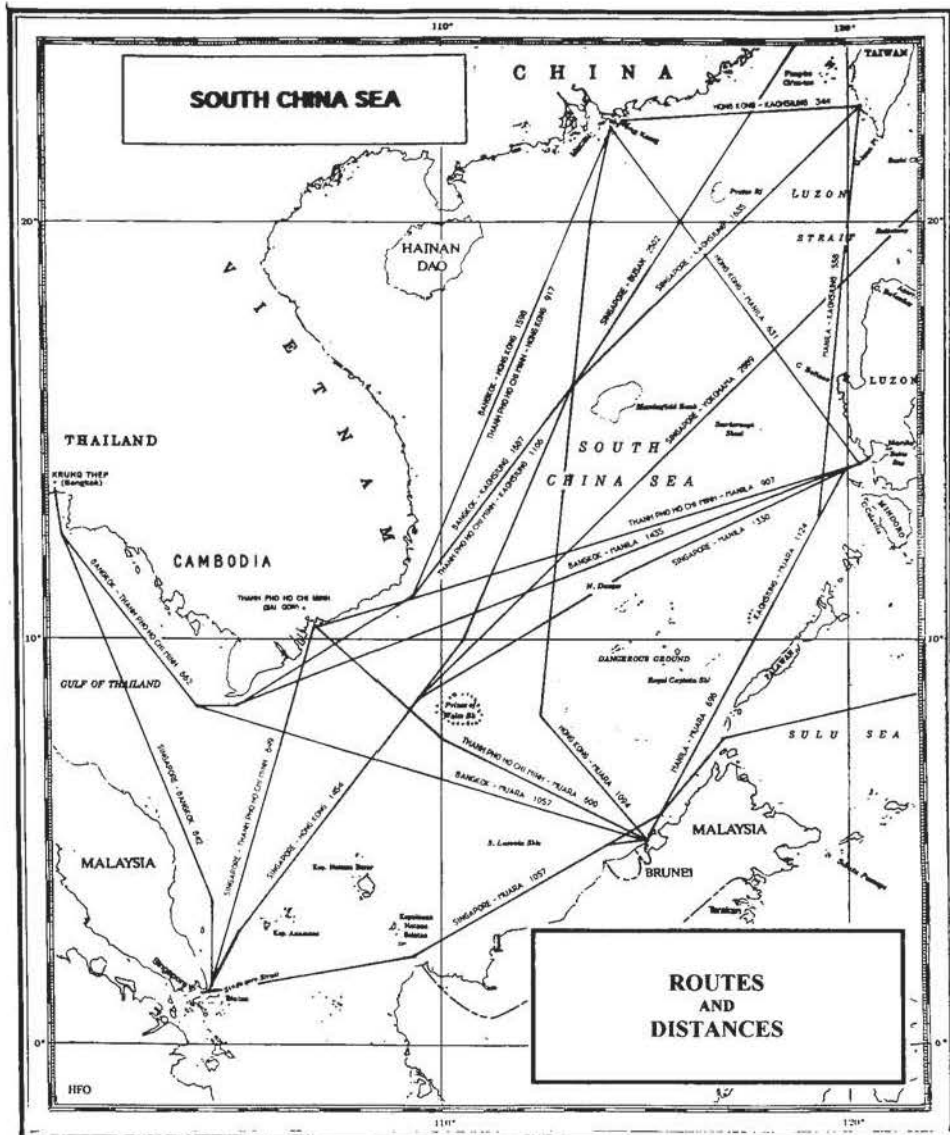
17. *Ocean Passages* (n. 12 above), p. 118.

FIG. 2.—Routes and distances (nm) in the South China Sea.

the following procedures, in which a number of assumptions (marked by an asterisk) were made.

- The greatest portion of marine traffic in the South China Sea is bound to or from Singapore, or proceeds nonstop between ports in the Persian Gulf region and ports in Japan, Korea, Taiwan, and Hong Kong (J-K-T-HK).*

- Data for the period July–September 1994 were obtained for those movements.
- These 3 months were a representative period of time, and the annual traffic volume would be four times the amount for these months.*
- Only vessels of 10,000 dwt or larger were included. (To have included smaller vessels would have made the study larger than could be handled.)
- The larger (over 10,000 dwt) vessels are of greater concern with respect to their navigational and safety requirements, that is, water depths, location of hazards, environmental impact from accidents, and so forth.*
- All vessels sailing directly from the Persian Gulf to J-K-T-HK, except tankers of more than 200,000 dwt, entered the South China Sea from the eastern end of the Strait of Singapore.* (Tankers of over 200,000 dwt followed the route through Lombok Strait.*)
- All vessels sailing directly from J-K-T-HK to the Persian Gulf, including tankers of over 200,000 dwt, followed a southbound track through the South China Sea.*
- All other vessels from ports west of Singapore (South Asia, Africa, the Mediterranean, northern and western Europe) stopped in Singapore, before entering the South China Sea.*
- All vessels bound for ports west of Singapore, except those on direct voyages to the Persian Gulf area, stopped in Singapore upon departing the South China Sea.*
- Vessels bound for ports in northern China, Korea, the Russian Far East or Japanese ports on the Sea of Japan followed a route through Formosa Strait.* Return voyages followed the same route in reverse.*
- Vessels bound for all other Japanese ports, North American ports, and Panama followed one of the three routes through Luzon Strait.* Return voyages followed the same route in reverse.*
- Vessels bound for southern Philippine or central Pacific island ports followed a route along the coast of Borneo and through Balabac Strait.* Return voyages followed the same route in reverse.*
- Intraregional traffic is relatively small, and would not significantly alter the general patterns of traffic in the South China Sea.*

While geographically a part of the South China Sea, the waters between Sumatra and Borneo carry traffic primarily between Indonesia and Singapore. They have been omitted due to the dispersion of traffic among many routes and ports, and because they are far removed from the area of greatest hydrographic concern.

Based upon these assumptions and the LMIS data, more than 8,000 vessels exceeding 10,000 dwt each, totalling over 300,000,000 dwt, move northward through the central part of the South China Sea annually. South-

bound traffic would total more than 10,000 vessels and 570,000,000 dwt annually. (Singapore itself had at least 11,000 movements of ships over 10,000 dwt in the 3-month period for which data were obtained!)

Again, these figures, and the subtotals for the several assumed routes through the South China Sea, are conservative. Not included are the following:

- northbound traffic from Indonesian ports to J-K-T-HK destinations,
- southbound traffic returning to Indonesian ports,
- eastbound/northbound through traffic bound for J-K-T-HK from ports west of Singapore, other than those on the Persian Gulf,
- southbound/westbound through traffic from J-K-T-HK to ports west of Singapore, other than Persian Gulf ports,
- tanker traffic to and from oil and gas terminals in the South China Sea, and
- intraregional traffic within the South China Sea.

Data on these movements could be obtained with additional effort, but they are not necessary to show that there is a massive volume of marine traffic through the South China Sea.

All of the figures on ship movements through the South China Sea are conservative, as previously noted. Additional traffic clearly moves along routes other than just to and from Singapore, as is borne out by international trade statistics (table 1).

The annual flow of traffic through the South China Sea, subject to the previously stated estimates and assumptions, is shown on two maps. Figure 3 shows northbound and eastbound traffic; southbound and westbound traffic is shown in figure 4. Again, it is emphasized that this includes only the

TABLE 1.—INTERNATIONAL TRADE THROUGH SOUTH CHINA SEA

	Exports	Imports
Thailand	21.6% to U.S.A.	29.3% from Japan
	18% to Japan	11.4% from U.S.A.
Brunei	53% to Japan	9% from U.S.A.
	9% to Rep Korea	5% from Japan
Malaysia	18.6% to U.S.A.	26% from Japan
	13.2% to Japan	15.8% from U.S.A.
		5.6% from Taiwan
Indonesia[a]	37% to Japan	25% from Japan
	12% to U.S.A.	13% from U.S.A.
Taiwan	18.7% to Hong Kong	
Philippines[a]	39% to U.S.A.	

Source.—*The World Factbook* (Washington, D.C.: Central Intelligence Agency, 1993).
[a]Only a portion of this trade would pass through the South China Sea, other routes being available into the Pacific Ocean.
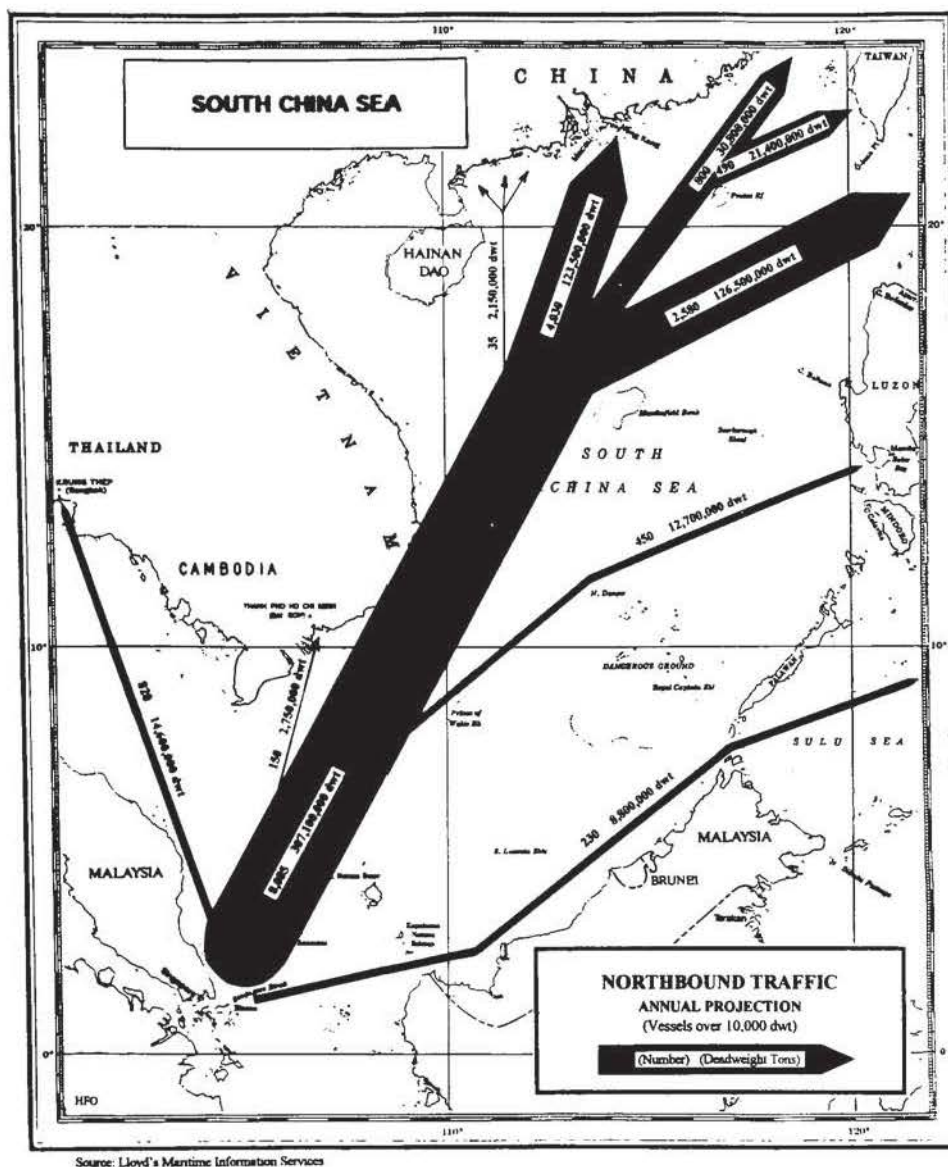
Fig. 3.—Annual projection of northbound traffic in the South China Sea (data from Lloyd's Maritime Information Services).

movements of vessels of over 10,000 dwt to and from the ports and areas previously identified. The apparent imbalance between northbound and southbound traffic should not be accepted as being true, and can be explained within the stated assumptions and limitations of this study.

On their loaded voyages from the Middle East to East Asia, tankers of over 200,000 dwt follow the route through Lombok Strait instead of the
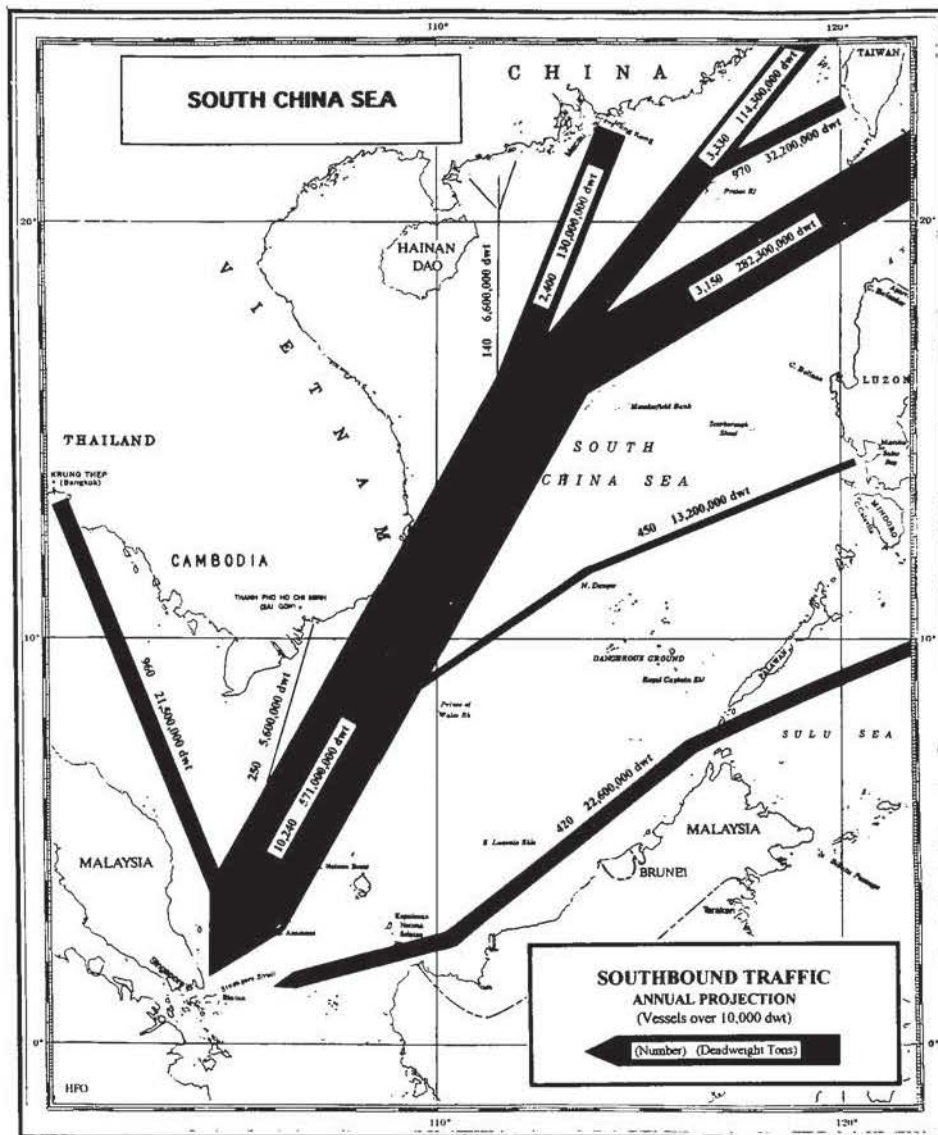
Source: Lloyd's Maritime Information Services

Fig. 4.—Annual projection of southbound traffic in the South China Sea (data from Lloyd's Maritime Information Services).

Straits of Malacca and Singapore. One hundred sixty-eight of these were counted in July, August, and September 1994, totalling over 43,000,000 dwt. Projected over a full year these would total more than 650 tankers and 170,000,000 dwt. Returning in ballast, these are part of the southbound traffic stream in the South China Sea. This is one reason for the apparently greater volume of southbound traffic.

All but a very small portion of traffic in the South China Sea is concentrated in five main routes.

- To and from *Hong Kong*—including Guangzhou, Huangpu, Xiamen, and smaller Chinese ports in between.
- Through *Formosa Strait*—including all ports in Taiwan, northern China, Korea, Russia, and Japanese ports on the Sea of Japan.
- Through *Luzon Strait*—all other Japanese ports and ports in the northern or eastern Pacific.
- To and from the *northern Philippines*—including Manila.
- Along the the *north coast of Borneo*—including ports in insular Malaysia, Brunei, the southern Philippines, and the central Pacific.

The shipping routes to Thai ports and others on the Gulf of Thailand are well removed from the area of greatest hydrographic concern and are omitted from the list of major routes for that reason. The volume of traffic serving Vietnam and Chinese ports south of Hong Kong is relatively small, and is not included in this traffic analysis.

Many vessels of less than 10,000 dwt are present in the marine traffic stream, and their numbers should be added to those of the larger vessels to paint a much more complete and complex picture of shipping in the South China Sea. Other routes in the area, not involving Singapore, are undoubtedly followed by other vessels over 10,000 dwt, to further complicate the picture. All would benefit from having more accurate charts of these waters, enhancing both their own safety and protection of the environment.

CASUALTY ANALYSIS

Several distinct categories of hazards are present in the South China Sea, including high traffic densities, numerous reefs and shoals in largely unsurveyed or poorly surveyed waters, and adverse weather conditions. These are in addition to the internal problems that arise in ships due to machinery breakdowns, shifting cargoes, poorly trained crews, and so forth.

Statistics on all severe casualties in the area from the equator to latitude 20° north, and from longitude 110° east to 120° east for the past 20 years were obtained from LMIS.[18] A "severe" casualty, or incident, is defined by Lloyd's as "a marine casualty to a ship which results in: (a) Structural damage, rendering the ship unseaworthy, such as penetration of hull underwater, immobilization of main engines, extensive damage, etc. (b) Breakdown.

18. *Lloyd's Maritime Information Services Database of Marine Casualties,* 1974 to October 1994.

(c) Actual total loss. (d) Any other undefined situation resulting in damage or financial loss which is considered to be serious."

Time limitations precluded examination of the entire South China Sea. That portion selected includes the area in which lack of hydrographic information is especially acute, and contains both the greatest portion of these hazards and the principal navigation routes.

A total of 139 "serious" casualties to vessels were reported, involving some 929,300 dwt of shipping, a loss of 254 lives, and 8 cases in which pollution of the sea was reported. (Lloyd's emphasized that "The absence of reported pollution does not imply no pollution occurred.") These casualties were grouped into three categories, *sank, stranded,* and *adrift,* with locations of those incidents displayed in figure 5. *Sank* included incidents resulting from collision, heavy weather, shifting of cargoes, fire or explosion, and stranding or grounding with subsequent total loss of a vessel. *Stranded* included cases where a vessel was stranded or went aground, but was subsequently refloated and restored to service. *Adrift* included all instances where, from any cause (machinery breakdown, flooding, fire, etc.), a vessel was unable to maintain way or control its movements. In the latter category vessels themselves became subject to additional hazards, such as grounding, or produced conditions in which rescue or towing vessels could be placed at risk.

Seventy-seven vessels were reported to have sunk in this area since 1974, with an aggregate of 338,900 dwt, including those whose initial problem was stranding on North Danger Reef, Royal Captain Shoal, or Scarborough Shoal. Another sank after reporting striking a "submerged object" at 3°47' north, 110°50' east. Two hundred forty-seven people died as a result of 15 of the sinkings, and in six cases pollution was confirmed. Five tankers sank, among which cases two resulted in pollution.

By far the most tragic of the sinkings was that of the passenger ferry *Harapan Lima* off Sabah in August 1984, where 122 of the 400 persons on board perished. Sixteen lives were lost in the recent sinking of the 19,981-dwt tanker *Thanassis A,* on 21 October 1994, in position 17°50' north, 117°44' east. Earlier in 1994, the 15,742-dwt tanker *Cosmos A* sank at 19°00' north, 118°18' east, with a loss of 10 crew members and the release into the sea of 23,000 tons of crude oil.

Multiple fatalities also occurred in the following sinkings:

- *Petchomphoo,* a 9,730-dwt bulk carrier, with 24 dead (11°25' north, 111°57', 19 August 1991);
- *Jhansi Ki Rani,* a 42,141-dwt bulk carrier, with 4 dead (16°55', 119°03', 5 February 1987);
- *Central Leyte,* a 3,065-dwt general cargo vessel, with 12 dead (4°25', 112°37', 3 December 1985); and
- *Eastern Minicon,* a 1,616-dwt general cargo and container ship, with 30 dead (19°35', 116°40', 16 February 1980).
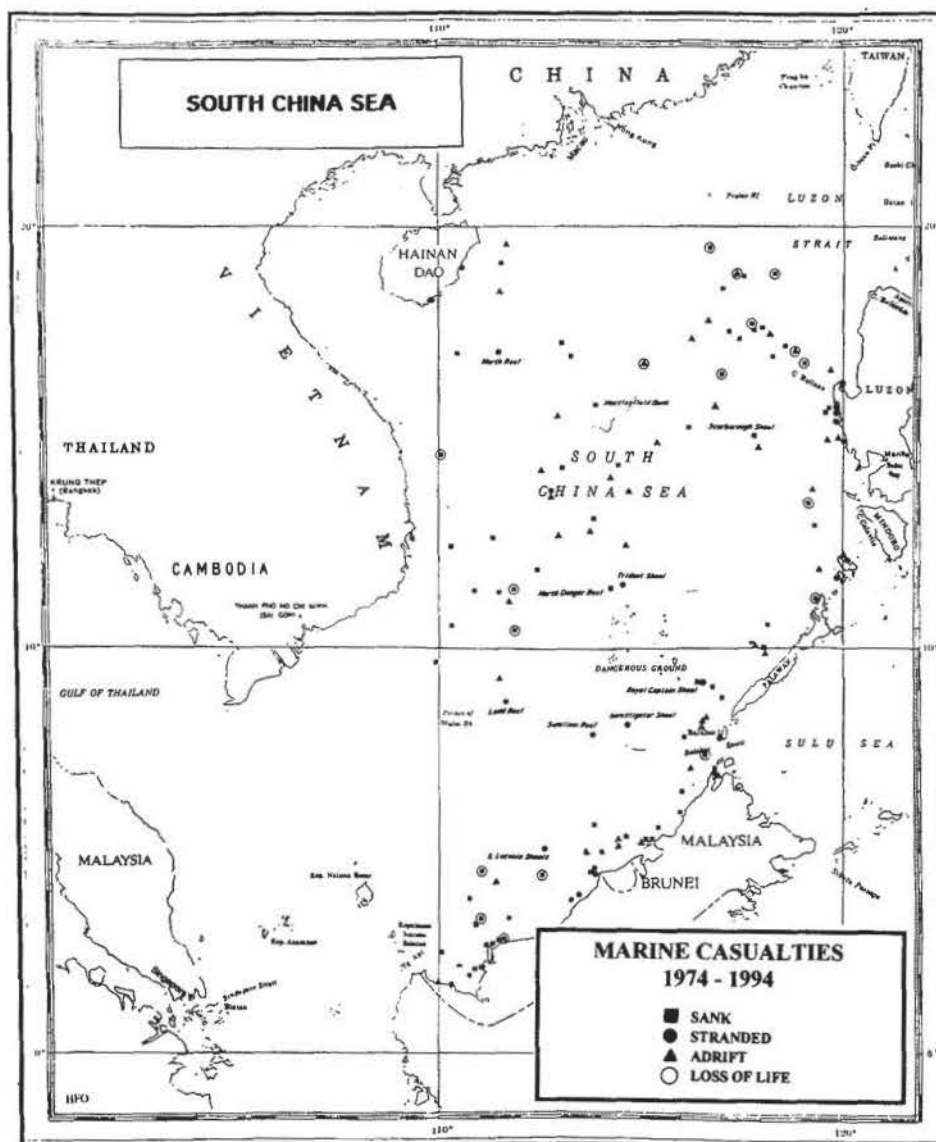
FIG. 5.—Marine casualties in the South China Sea, 1974–94 (data from Lloyd's Maritime Information Services).

The largest vessel lost in this area in the last 20 years was the 63,573-dwt crude oil tanker *Sea Spray*, which stranded on Swallow Reef before sinking in February 1974. No lives were lost, but substantial pollution resulted. The 23,199-dwt tanker *Winson*, carrying a cargo of wheat, stranded on North Reef (11°28', 114°23') in January 1975 and sank after being refloated.

At least 19 ships totalling 156,000 dwt stranded on reefs in this portion of the South China Sea since 1974, with two confirmed cases of pollution.

(*Sea Spray* is not included among these casualties.) Among the stranding sites were Swallow Reef, Trident Shoal, South Luconia Shoal, Investigator Shoal, North Reef, Royal Captain Shoal, and Ladd Reef. While only these 19 were listed in the Lloyd's casualty data, there were undoubtedly others that were not included or reported. That many other vessels stranded on reefs or shoals in this area is evidenced by notations in *Sailing Directions*.[19]

> Several wrecks lie stranded on Pratas Reef.
> North Reef is reported to be a good radar target, possibly due to the breakers and wreckage on the reef.
> Bombay Reef [has] many old wrecks. The stranded wreck on the NE extremity of the reef was reported to be radar conspicuous up to 15 miles.
> A stranded wreck lies on [Triton Island's] S side.
> A stranded wreck (radar conspicuous) lies on the SE side of [Scarborough Reef (Scarborough Shoal)].
> Two stranded wrecks lie on the E side of Bombay Shoal.
> Conspicuous stranded wrecks are found on the [Royal Captain Shoal] reef's SW and NW corners.
> In 1977 it was reported that 3 stranded wrecks lie on [Ladd Reef] and were radar conspicuous at 23 miles.

The very names of many of the reefs and shoals are those of vessels that came to grief upon them.

Forty-three vessels of 434,000 dwt aggregate were reported to be drifting, unable to continue their voyages for a time. Whether they suffered machinery breakdown, fire, explosion, or weather damage, they were in peril from foundering or stranding. They were also hazards to other vessels until repairs were completed and they proceeded on their way, or they were taken in tow by another vessel. These included 13 vessels of over 10,000 dwt and, among all 43, 13 tankers. Seven deaths were associated with these casualties.

Whenever another vessel is called upon to provide assistance in an emergency situation, that vessel will be exposed to some increased danger or delay. Prompt rendering of assistance is one of the surest ways to limit the extent of whatever casualty has occurred. Accurate navigation facilitates a prompt response, whether by another commercial vessel in the vicinity, a navy ship, or a dedicated search-and-rescue vessel. For such navigation to be most effective, the precise location of any and all hazards to navigation and the depths of water must be known.

19. *Sailing Directions (Enroute), South China Sea and Gulf of Thailand*, 6th ed., pub. 161 (Bethesda, Maryland: Defense Mapping Agency Hydrographic/Topographic Center, 1993), pp. 6–23.

SHIPPING TRENDS

The volume of shipping in the South China Sea has been increasing steadily. This is shown not only by the general increase in world trade, but by statistics that include the volume of traffic in regional ports, the number of ships in regional fleets, and the tonnage in regional fleets. There has also been a consistent increase in the size and importance of regional fleets as a percentage of the world total.[20]

The number of ships flying the flags of South China Sea littoral states has been growing steadily, increasing by at least 400% in the period from 1968 to 1992. Ships of most of these states probably remained within the region and adjacent waters most of the time; others, especially those of Singapore, Philippines, and Hong Kong, may well have also been employed in distant seas.

Traffic handled by ports in the South China Sea region has increased dramatically in the past 25 years, and especially in the last 15. It is difficult to make direct comparisons between ports because of the different statistical categories used to measure their traffic, that is, gross tons, deadweight tons, cargo tonnage, "foreign trade," or 20-foot equivalent units (TEUs). The smallest vessels included in the data may also differ, or may change from one year to another within the same port.[21] While not directly comparable or of special significance individually, they show a consistent overall increase in marine traffic on all sides of the South China Sea.

The size of vessels, particularly in the most highly specialized classes, that is, very large crude carriers (VLCCs), container ships, and liquefied gas carriers, has stabilized in recent years, and the historical development of these classes is beyond the scope of this article. It is of importance, however, that there be an awareness of the depths of water necessary for their safe navigation. In restricted channels and at higher speeds there is a difference of at least a couple of meters between a vessel's draft and a safe depth of water. In the open sea this is of little note, except that there must be an assurance that charts are complete and accurate as far as their depiction of depths is concerned.

As illustrations, several classes of vessels are listed herein with their full load drafts.[22] A large segment of the crude oil tankers of the VLCC class fall in the 250,000-to-275,000-dwt range. These have drafts between 19.5 and 21.5 m while carrying over 300,000 m^3 of petroleum. *Hellas Fos*, the world's

20. *Lloyd's Register of Shipping Statistical Tables* (London: Lloyd's Register of Shipping, 1968–92).

21. *Ports of the World* (London: Ben Brothers, 1970–81), and successor publication *Lloyd's Ports of the World* (Colchester, Essex, United Kingdom: Lloyd's of London Press, 1982–94).

22. Averages based upon data for vessels of these types and sizes in *Lloyd's Register of Shipping* (London: Lloyd's Register of Shipping, 1993).
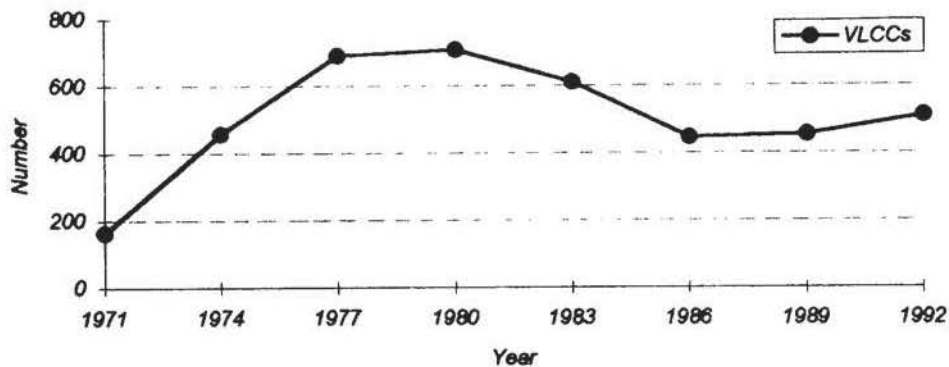
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FIG. 6.—Vessels over 100,000 dwt, 1971–92 (data from *Lloyd's Register of Shipping Statistical Tables* [London: Lloyd's Register of Shipping, 1971–92]).

biggest ship at 555,051 dwt, draws 28.6 m when fully loaded. *Nissei Maru,* at 484,276 dwt, draws 28.2 m. The number of tankers exceeding 100,000 dwt has stabilized in the last few years. Figure 6 shows that, after reaching a peak of more than 700 vessels in 1980, the number has declined to around 500.[23]

Liquefied gas carriers in the 65,000-to-75,000-dwt range carrying 125,000 to 130,000 m³ of cargo have a fully loaded draft of 11.5 to 12 m. Smaller vessels of this specialized type of about 50,000 dwt, carrying 75,000 to 85,000 m³ of liquefied gas, have a fully loaded draft of between 10.8 and 12.5 m.

Container ships have more recently reached their present sizes. The largest of these, 60,000 to 70,000 dwt and carrying about 4,400 TEUs of containers, have a fully loaded draft of 12 to 13.5 m. Somewhat smaller vessels of 45,000 to 50,000 dwt and carrying between 2,600 and 3,000 TEUs have a loaded draft of 12 to 13 m.

CONCLUSIONS

There is an immense, and growing, volume of marine traffic in the South China Sea and its approaches. Annual through traffic alone totals thousands of vessels larger than 10,000 dwt, and hundreds of thousands in aggregate tonnage. Intraregional traffic is expanding, as indicated by port traffic data and economic growth.

Marine casualties can be expected to increase in number and severity simply because of increased density of traffic. A greater impact on the resources of the marine environment may be anticipated.

23. *Lloyd's Register of Shipping Statistical Tables* (n. 20 above), 1971–92.

Traffic growth and the consequences of marine casualties, human and otherwise, indicate a need for the most accurate information possible to insure safe navigation in this "hydrographically neglected" region. Whether or not vessels themselves are equipped with the most sophisticated navigation equipment, accurate charts can provide the greater margin of safety that will be needed for their safe passage through the South China Sea.

Annex 447

Hal Olson, "Marine Traffic in the South China Sea", *Ocean Yearbook*, Vol. 12 (1996)

Intentionally Omitted

Annex 448

M. Valencia, et al., *Sharing the Resources of the South China Sea* (1997)

Sharing the Resources of the South China Sea

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lated territories,[25] in cases of ambiguity and dispute a tribunal will look closely at evidence of occupation, exercise of authority, and acquiescence by other nations. Recognition by other countries is certainly relevant. Although abandonment cannot always be presumed by nonuse, especially if it is not voluntary,[26] tribunals will require effective exercise of authority in cases where evidence of discovery is disputed or ambiguous.

The Spratlys are small and remote. Prior to the present rush for resources, no one had ever lived on them permanently or successfully exploited them economically.[27] They have been notable primarily because they are a danger to navigation. Nonetheless, the claimant nations now contend that their long historical links to these barren outcroppings give them title to the islets.

China's Claim to the Spratly Islands

China claims both the Paracel Islands in the north and the Spratly Islands in the southern sector of the South China Sea. Its claim to the islands is based on historical usage, its ship captains having sailed across the South China Sea 2,000 years ago and having used the Sea as a regular navigational route during the Han dynasty (206-220 A.D.).[28] As Chinese voyages increased in frequency and range during the T'ang Dynasty (618-906 A.D.), so did Chinese awareness of the Spratlys.[29] From the 12th through the 17th centuries, Chinese records made occasional reference to the islands and their "sandy banks," including maps displaying elevations.[30] During this period, China viewed "itself as the centre of a universal state" which "oversaw a hierarchy of tributary states."[31] From this perspective, it had no reason to make any formal claim of sovereignty.

This uniquely-Chinese view of social organization presents problems for modern analysis of a "sovereignty" claim. As one commentator has observed:

> Chinese legal and political thought, reflecting the influence of the Confucian ethic, conceives of the area over which a State, or "kuo," had sovereignty, not as a function of legal limits, but as one of social organization, history and the loyalty of subjects. The Emperor ruled men and not space; the area of rule was defined as points of human residence and use. Thus, the delineation of the scope of territorial sovereignty was expressed in terms of zones of influence rather than by definite linear boundaries.[32]

Sorting out the merits of China's historic links to the Spratlys in relation to Vietnam's historic links to the islets is particularly challenging because China asserted dominance over Vietnam during this period as well.

China's presence in the Spratly area is more consistently documented from the 19th century onward. Tombstones and household utensils from Emperor Tongzhi's reign of 1862-75 have been found on the islands.[33] Traders from Hainan exchanged rice and other necessities for trepang and tortoise shells with fishers visiting the islands.[34] In 1876, the first formal act of a sovereignty claim was made, when China's ambassador to England claimed the Paracel Islands as Chinese territory, and, in 1883, a German survey team on the Spratly Islands was expelled by the Chinese.[35] An 1887 boundary treaty between France and China allocated all the islands east of 108 degrees, 43 minutes east of Greenwich (or 105 degrees 43 minutes east of Paris) to China (which would cover all the Spratlys if the line were extended indefinitely to the south), but this basis for China's claim is weak because the treaty does not name any islands and France later argued that this line covered only the northern part of the South China Sea.[36] China itself, in fact, rejects the view that the line can be taken literally, because it would give Vietnam more area in the Gulf of Tonkin than China is prepared to concede.[37] In 1907, China sent a senior military team to survey the South China Sea Islands.[38]

In 1917, a Japanese company began exploiting some of the guano deposits on the Spratly islets.[39] Then, in the early 1930s, France made a formal claim to seven of the "larger" Spratly features, and to some extent exercised actual physical control of the Spratlys.[40] By the late 1930s, Japan had established a strong presence there, using Itu Aba as a submarine basing area to intercept shipping through the region.[41] In 1945, at the end of World War II, Japan left the area and in Article 2 of the Treaty of Peace signed in 1951, Japan renounced all "right, title and claim to ... the Spratly Islands."[42] China cites this statement as proof of the legitimacy of its historic claim to the islets, even though the treaty does not assign the islands to any specific country.[43]

China was militarily weak during this period and preoccupied with its own domestic turmoil, and thus did not have the capacity to patrol and protect the Spratlys vigilantly. It has, however, been relatively consistent in protesting the claims made by other nations, including in recent years the claims of the Philippines, South Vietnam, reunited Vietnam, and Malaysia.[44] In recent years, China has asserted its claim to the islands with military force, engaging in skirmishes with Vietnam on several occasions.[45]

The most dramatic battle took place in March 1988, when China sank three Vietnamese vessels, killing 72 Vietnamese, and took control of Fiery Cross

Reef (Yung Shu Jiao).[46] Fiery Cross Reef is about 14 nmi long. U.S. Defense Mapping Agency charts indicate that it is submerged at high tide in its natural state,[47] but other sources claim it has one rock at its southwest end that is about the size of a table and is 0.6 meter above water at high tide.[48] This reef has been converted into an artificial island and now contains a supply base, a helipad, a 300-meter pier capable of handling 4,000-ton ships, and an ultra-modern oceanographic observation station that can receive and transmit messages through satellites and provide vital meteorological data to passing aircraft and ships.[49] The other features occupied by China are Cuarteron Reef (Huayang Jiao) (coral rocks, said by some to reach a height of 1.5 meters), Gaven Reef (Nanxun Jiao (northern part) and Duolu Jiao (southern part)) (reported to contain a 2-meter-high sand dune), Johnson Reef (Chigua Jiao), Subi Reef (Zhubi Jiao) (above water only at low tide), Kennan Reef (Dongmen Jiao), Loaita Cay, and North Danger Reefs (Shuangzi Jiao or Gongshi Jiao),[50] and – as of July 4, 1992 – Whitson Reef (Niue Jiao). Although some reports indicate that some of these features have small portions sticking up above water at high tide, other reports indicate that none of them are high-tide elevations in their natural state.[51] On Johnson South Reef, the Chinese have built an elevated fort-like structure, with a long matshed to house the troops and sailors stationed there.[52] One commentator estimated in 1993 that the PRC had about 260 troops stationed on nine separate reefs.[53] China has asserted that it has no soldiers stationed in the Spratlys, only civilian personnel operating weather and communications stations.[54] Indeed China claims its weather station was established under the auspices of the World Meteorological Association, which denied sanctioning the installation.[55] The culmination of these claims and activities was China's promulgation of its "Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone" issued on February 25, 1992, which in Article 2 specifically identifies the Nansha (Spratly) Islands as Chinese territory.[56]

Weaknesses in China's Claim to the Spratly Islands

Chinese authors claim that China has met the requirements found in the *Isle of Palmas* arbitration by effectively exercising sovereignty over the Spratly islets without challenge for centuries until the French intrusion in 1933.[57] Most non-Chinese commentators have concluded, however, that China's claim that the South China Sea islands have "always been part of Chinese territory"[58] is weak.[59] China's exercise of authority over the islands was only occasional

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Malaysia's Claim

Malaysia claims twelve islands and features of the South China Sea, six of which it "occupies," at least in some sense: Ardasier Reef (Terumbu Ubi) (occupied since 1986 by about 20 soldiers), Dallas Reef (Terumbu Laya) (occupied since 1987 with nine soldiers reported there in 1988), Louisa Reef (Terumbu Semarang) (this reef, which is far south of the main Spratly islets, contains a navigation light and an accommodation module, even though it is not above water at high tide), Mariveles Reef (Terumbu Mantanani) (occupied since 1986 by about 20 soldiers), Royal Charlotte Reef (Terumbu Samarang Barat Besar) (containing a beacon on its highest boulder), and Swallow Reef (Terumbu Layang-Layang) (occupied since 1983 by about 70 soldiers; it has 0.062 square kilometers (sq km) of land in its natural state, but Malaysia has built an airstrip on it and in 1993 opened a "chalet" for visiting scuba divers).[168] Of the other islands Malaysia claims, three are unoccupied (Erica Reef, Investigator Reef, and Luconia Reef (which is south of the Spratlys proper)), one is occupied by the Philippines (Commodore Reef), and two are occupied by Vietnam (Amboyna Cay and Barque Canada Reef).[169]

Malaysia asserts two legal bases for its claims: continental shelf extension and discovery/occupation. Malaysia's continental shelf claim arises out of the Geneva Conventions of 1958 pertaining to territorial waters and continental shelf boundaries,[170] which Malaysia signed in 1960.[171] Malaysia passed its own Continental Shelf Act in 1966 and 1969, defining its continental shelf as "the seabed and subsoil of submarine areas adjacent to the coast of Malaysia," up to 200 meters deep or the limit of exploitability.[172] A related legislative act, the Petroleum Mining Act of 1966, governs the exploration and development of natural resources "both on- and offshore."[173] The most explicit depiction of Malaysia's continental shelf claim is a map it published in 1979 entitled "Map Showing the Territorial Waters and Continental Shelf Boundaries."[174] In this map, Malaysia defined its continental shelf area and claimed all islands arising from it.[175]

Malaysia has publicly defended its claims on several occasions. In 1983, the Deputy Minister asserted that Malaysia's claim to Amboyna Cay "was simply a question of geography."[176] After the China-Vietnam conflict in 1988, Malaysia's Deputy Foreign Minister reiterated that the islets were within Malaysia's continental shelf area and had been so since the publication of the 1979 map.[177] Malaysia then proceeded to detain 49 crew members of three Philippine fishing boats found in those waters.[178] In the spring of 1995, Malay-

sia's Prime Minister Mahathir visited Terembu Layang-Layang to reaffirm Malaysia's claim to this feature.[179]

Weaknesses in Malaysia's Claim

Malaysia's claims are difficult to justify under a continental shelf theory. Although Malaysia may have asserted this claim only in order to protect its other maritime zones, neither the Law of the Sea Convention nor Malaysia's own Continental Shelf Act of 1966 indicate that the continental shelf pertains to land or rocks that rise above sea level. The wording of both acts addresses only submerged land and rocks, and Article 76(1) of the Law of the Sea Convention refers to "the seabed and subsoil of the submarine areas that extend ... [from a] natural prolongation of its land to the outer edge of the continental margin."[180]

Malaysian officials appear to have recognized the weakness in their claim of sovereignty over islands based on the natural prolongation of the continental shelf, and now tend to emphasize Malaysia's second basis for its claims, discovery and occupation of the islands, which is a traditional method for exerting sovereign control over new territory. This claim is based on the 1979 map. In addition, Malaysia established a garrison on one of the Spratly islets in 1983, and, in 1986, it occupied two more.[181] Five years later, Malaysia announced it would build an airfield and promote tourism on Swallow Reef, and has since done so.[182] It also apparently claims a "military warning zone" around this feature.[183]

Like the continental-shelf claim, Malaysia's "occupation" claim is on uncertain footing because its occupation and exploitation are relatively recent and have been vigorously contested by other nations. Malaysia controls only some of the islet-features that it claims. Amboyna Cay, for instance, is controlled with a fortified garrison by Vietnam. In order to claim land as *"res nullius"* a nation must not just discover it but must exercise effective control over it.[184] In addition, Malaysia has undercut its own potential claim to some extent because its nearby continental-shelf boundary treaty with Indonesia[185] gave Indonesia considerable shelf area beyond an equidistant line (see Plates 6, 8, 9, 11, 12, 16, 17, and 18 and Figure 3) and because Malaysia's claim into the Spratlys also stops short of the equidistant line at certain locations.[186]

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Appendix I: Descriptions of Spratly Features (continued)

Name	Location	Description	Occupier
Itu Aba Island (Part of Tizard Banks) Dao Thai Binh, Dao Ba Binh (V) Taiping Dao (C) Ligaw (P)	10°23'N 114°21'E	Covered w/ shrubs, coconut and mangroves in 1938. 960 x 400 m, 0.46 sq. km or 46 ha--the largest Spratly Is. [8, 12, 16]. ([17] gives 450 x 275 m, [9] lists 1400 x 370 m, and Columbia Gazetteer says 1200 x 800 m.) 5 m high. 600 soldiers, lighthouse, radio and weather stations, concrete landing jetty and two wells at SW end. Guano deposits, fringing reef. Hainan fishermen used to visit annually. In 8/93, plans were announced for a 2 km-long airstrip and fishing port. [1, 7, 8, 12, 16, 17]; also [Indochina Digest, 8/20/ 93, p. 2] and [IBRU, 10/93]. [12] says pineapple is cultivated here.	Taiwan 1956 or '63 [1, 3, 7, 8, 12, 17, 20]
Jackson Reef Wufan(g) Jiao (C)	10°30'N 115°45'E	Four or five portions are above water at low tide. Encloses a lagoon [18].	None [7]
Johnson North Reef		See Collins Reef	
Johnson South Reef (Part of Union Banks) Da Gac Ma (V) Chigua Jiao (?) (C)	9°43'N 114°18'E	Contiguous with Collins Reef. [18] says naturally above water only at low tide, but [9] says many rocks above water at high tide. [1, 4, 13] give Chigua as Chinese name. [19] does too, but also gives this name to Kennan. [3] says "Mabini" is English for Chigua. Site of 1988 PRC/Vietnam clash.	PRC 1988 [1, 7]
Kennan Reef (Part of Union Banks) Da Ken Nan (V) Dongmen or Ximen Jiao (C) [19] calls this McKennan Reef.	9°53'N 114°27'E	Naturally above water at least at low tide. Not listed in [18]. [20] calls this Kennan Island, but no other source agrees. [19] gives both Chigua & Dongmen as Chinese names; [7] gives only Chigua. [3] and [4] say Dongmen is different from both Johnson South and Kennan Reefs. [FBIS-CHI-94-189, 9/29/94] also separates Chigua & Dongmen, but doesn't give English synonyms.	PRC 1988 [3, 7, 20]
Ladd Reef (Hon) Da Lat (V) Riji Jiao, Shizi Jiao (C)	8°38'N 11°40'E	Naturally above water only at low tide. Was occupied by Vietnam in 1988 [7]. [14] says a marker was placed on "Da La" by the PRC in 7/92, but not occupied. [14] claims that "Da La" is Nanxun in Chinese, but that is Gaven Reef.	PRC July '92 [1]
Lansdowne Reef (Part of Union Banks) Da Len Dao (V) Qiong Jiao (C)	9°46'N 114°22'E	Sand dune, with fringing reef [9, 16]. [20] claims that PRC occupies, while [7] says it's unoccupied. Only [1, 9] claim that Lansdowne and Da Len Dao are the same, but this is the most logical arrangement. Also spelled Landsdowne.	Vietnam no date [1, 3, 7, 20]
Lankiam Cay Bo Loai Ta (V) Yanxin Shazhou (C) Panata (P)	10°44'N 114°31'E	Sand, surrounded by three reefs which are above water at high tide [18]. Area of "a few hectares" [9].	Philippines no date [1, 3, 7, 20]
Livock Reef Sanjiao Jiao (C)	10°11'N 115°18'E	[18] says above water only at low tide, but [9] says some rocks still visible at high tide. Part of Southampton Reefs.	None [7]
"Loaita Cay" Bai Loai Ta Nam (V) Nanyue Shazhou, Nanyao Shazhou (C)	10°44'N 114°21'E	A sand cay, with fringing reef naturally above water at high tide [9, 16, 18]. The only speculation regarding Chinese occupation is in [7], but neither [7] nor [19] list this feature in their tables. Most maps which show it mark it as unoccupied.	PRC? 1988?
Loaita Island Dao Loai Ta (V) Nanyue Dao, Nanyao Dao (C) Kota (P)	10°41'N 114°25'E	2 m high, 6 ha; covered with mangrove bushes in 1933, above which rose coconut palms and other small trees. At this time a beacon was operating here, but no indication who built it. Fringing reef [12, 16, 18].	Philippines 1968 [1, 3, 7, 8, 12, 16, 20]

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Appendix 1: Descriptions of Spratly Features (continued)

Name	Location	Description	Occupier
Northwest Investigator Reef		See Fiery Cross Reef.	
Owen Shoal Aoyuan Ansha (C)	8°10'N 111°59'E	Shallowest natural depth is 6 m [18]. Although one source claims that this shoal is occupied by Vietnam, no other sources can verify; [7] and others list it as unoccupied.	None [7]
Pearson Reefs Hon Sap, Phan Vinh or Dao Vanh Vinh (V) Bisheng Dao (C) Hizon (P)	8°58'N 113'41'E	Two sand "cays", 2 m and 1 m high, lie on the edges of a lagoon. Parts of the surrounding reef are above water at high tide [9, 16, 18].	Vietnam 1988 [1, 3, 7, 20]
Petley Reef (Part of Tizard Banks) Da Nui Thi, Do Thi (V) Bolan Jiao (C)	10°24'N 114°34'E	[18] states that this reef is naturally above water only at low tide, but [9] claims that "some small rocks might stand above high water."	Vietnam 1988 [1, 3, 7, 20]
Pigeon Reef Da T(h)ien (Yen) Nu (V) Wumie Jiao (C)	8°52'N 114°39'E	Numerous rocks are naturally above the high tide line. Encloses a lagoon [9, 18]. Called Tennent Reef on British charts.	Vietnam 1988 [1, 7, 20]
Prince Consort Bank Bai Phuc Nguyen (V) Xiwei Tan (C)	7°56'N 109°58'E	[18] claims that shallowest natural depth is 9 m, while [9] lists 18.3 m. [7] lists it as unoccupied. Coral.	Vietnam 1989 [6]
Prince of Wales Bank Bai Huyen Tran or Bai Phuc Tan (V) Guangya Tan (C)	8°04'N 110°30'E	Shallowest natural depth is 7 m. Coral [18]. [20] lists PRC as occupying.	Vietnam? 1989 [1, 7]
Reed Bank Bai Co Rong (V) Liyue Tan, Lile Tan (C)	11°20'N 116°50'E	Shallowest natural depth is 9 m [18] or 16 m [9]. [3, 7 and 10] claim this feature has been occupied by the Philippines since 1971 or 1976, but no other reference verifies this.	None?
Rifleman Bank Bai Vung May (V) Nanwei Tan (C)	7°50'N 111°40'E	Shallowest natural depth is 3 m, called Bombay Castle. Sand and coral [18]. [10] claims that Rifleman Bank was occupied by 1983, and Bombay Castle in 1989.	Vietnam 1983 or '89 [1, 3, 10]
Royal Captain Shoal Jiangzhang Ansha (C)	9°01'N 116°40'E	A few rocks are above water at low tide [18]. Surrounds a lagoon.	None
Royal Charlotte Reef Da Sac Lot (V) Huang Lu Jiao (C) Terumbu Samarang Barat Besar (M)	7°00'N 113°35'E	A sand dune with no vegetation, plus rocks up to 1.2 m high [7, 9, 16, 18]. A beacon has been erected on the reef, but no information whether Malaysia maintains it. Most of the reef is "slightly submerged" at high tide [7].	None [7, 20]
Sand Cay (Part of Tizard Banks) Da (or Dao) Son Ca (V) Dunqian Shazhou (C)	10°23'N 114°28'E	3 m high, 7 ha [9]. Covered with trees and bushes in 1951. Fringing reef partly above water at low tide [16, 18]. [3] claims that Vietnam occupies Sandy Cay instead, but since no other authors corroborate this, it is probably erroneous.	Vietnam 1974 or '75 [1, 7, 13, 20]
Sandy Cay Tiexian Jiao (C)	11°03'N 114°13'E	A low sand cay; fringing reef above water at high tide [18]. May be the only unoccupied island or cay in the Spratlys.	None [7]
Scarborough Reef Huang Yen Tao (C)	15°08'N 117°45'E	Several rocks up to 3 m high. Much of the reef is just below water at high tide. Encloses a lagoon. Near the mouth of the lagoon are the ruins of an iron tower, 8.3 m high. No information on who constructed it [16, 18].	None [7]

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Appendix I: Descriptions of Spratly Features (continued)

Name	Location	Description	Occupier
Shira Islet		See Northeast Cay.	
Sin Cowe Island (Part of Union Banks) Dao Sinh Tonh (V) Jinghong Dao (C) Rurok (P)	9°52'N 114°19'E	May consist of two sand cays, 4 m and 2.5 m high [16, 18]. If so, it may be that one of these is actually the elusive Sin Cowe East Island; sources are unclear on this. Has fringing reef which is above water at low tide [18]. [8] claims that this feature is occupied by China, but more recent sources (e.g., [FEER, 8/13/92], [1]) state that Vietnam still occupies it.	Vietnam 1974 [1, 3, 7, 12]; [8] says PRC since '78.
Sin Cowe East Island Sinh Ton Dong (C)	9°55'N 114°32'E	This mysterious feature is shown on four maps and in [19], but does not appear in [1, 7, 8, 16, 20] or on detailed maps. Probably same as Grierson Reef, but may be one half of Sin Cowe Island.	None? Vietnam, 1988?
South Reef (Part of North Danger Reef) Da Nam (V) Nailuo or Xinan Jiao (C)	11°23'N 114°18'E	A tiny cay appears atop this reef on the most detailed map available. On the southwest end of North Danger Reef. Fringing reef is above water at low tide.	Vietnam 1988 [1, 3, 7, 13, 20]
Southampton Reefs		See Hopps and Livock Reefs.	
Southwest Cay (Part of North Danger Reef) Dao Song Tu Tay (V) Nanzi Dao (C) Pugad (P)	11°26'N 114°20'E	Only 1.75 miles from Northeast Cay. Was a breeding place for birds in 1963, when it was covered with trees and guano. Export of guano was once carried out "on a considerable scale." Fringing reef partly above water at high tide. Two wells and a 12 m-high "mast" on SE side in 1963 [7, 16, 18]. Vietnam erected its first lighthouse in the Spratlys here in October 1993, and may have built an airstrip as well [20], [Indochina Digest, 5/27/94, p. 2]. Cay is 4-6 m high [FBIS-EAS-94-123, 6/27/94, p. 67].	Vietnam 1974 [1, 3, 7, 8, 12, 20]
Spratly Island Dao Truong Sa (V) Nanwei Dao (C) Lagos (P)	8°38'N 114°25'E	2.5 m high, flat. Covered with bushes, grass, birds and guano in 1963. [12, 16] and [18] claim that area is 13-15 ha; [8] says 750 x 400 m, Columbia Gazetteer 500 x 350 yards, Encyclopedia Britannica 450 x 275 m, and [6] ≈1 km long. 5.5 m-high obelisk at southern tip. Has landing strip, and perhaps a fishing port [17]. Fringing reef is above water at low tide.	Vietnam 1974 or '75 [1, 3, 7, 9, 20]
Subi Reef Da Su Bi (V) Zhubi Dao (C)	10°54'N 114°06'E	Naturally above water only at low tide. Surrounds a lagoon. PRC has constructed 3-story buildings, wharfs and a helipad here [20].	PRC 1988 [1, 3, 7, 20]
Swallow Reef Da Hua (or Hoa) Lau (V) Danwan Jiao (C) Terumbu Layang Layang (M)	7°23'N 113°48'E	Treeless cay and rocks up to 3 m high surround a lagoon. 6.2 ha [9, 16, 18]. Malaysia has drawn territorial seas around this and Amboyna Cay. 70 soldiers stationed here maintain a beacon [7]. Has a fishing port and a 15-room resort, including a 1.5 km airstrip [3, 14]. Soil and trees have been planted on what was "four miles of treeless beaches and coral reefs" [FEER, 6/20/91, p. 20] and [Christian Science Monitor, 12/1/93, p. 14].	Malaysia 1983/4 [1, 7, 8, 20]
Tennent Reef		See Pigeon Reef.	
Thitu Island Dao Thi Tu (V) Zhongye Dao (C) Pagasa (P)	11°03'N 114°17'E	3.4 m high, covered with grass, bushes and palms in 1963. In the past, occasionally inhabited by Chinese fishermen [16, 18]. 22 ha, with a 5500-ft. landing strip and a marina. Two commercial flights weekly [2, 12]. 100 fishermen and weathermen. Reef dries. Variety of flora and fauna. Second largest island in the Spratlys.	Philippines 1968 [16], 1971 [8], or 1978 [7] [1, 3, 12]

Annex 449

Amitav Acharya, "Containment, Engagement or Counter-Dominance?: Malaysia's response to the rise of China", in *Engaging China: The Management of an Emerging Power* (A. I. Johnston & R. S. Ross, eds., 1999)

ENGAGING CHINA

The Management of an Emerging Power

*Edited by Alastair Iain Johnston
and Robert S. Ross*

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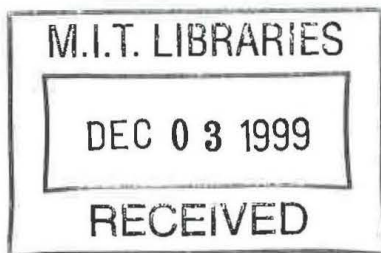
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CONTAINMENT, ENGAGEMENT, OR COUNTER-DOMINANCE?

Malaysia's response to the rise of China[1]

Amitav Acharya

Introduction

Coping with a rising China is a key concern for Malaysia's security policy in the post-Cold War era. Malaysian leaders view China's ascendancy with mixed feelings: as both a major economic opportunity and a potential threat to national security and regional stability. Historic suspicions of China, derived from its past support for communist insurgency in Malaysia and the perceived potential of Malaysia's substantial Chinese population to act as a fifth column, are perhaps less important today in colouring Malaysia's perception of China. But China's growing military power and its claim on the Spratly Islands, contested by Malaysia, Taiwan, the Philippines, Vietnam and Brunei, have created new fears of Chinese hegemony. Malaysian leaders want to avoid an openly adversarial relationship with China, generally preferring a policy of engagement to a posture of containment. China's actions in the Asian economic crisis have served to increase Beijing's positive political image in Malaysia. But Malaysia remains sufficiently worried about the potential of China becoming a threat to regional security so as to prepare for confronting Beijing militarily and politically.

Malaysia is a relatively small state with internal and external vulnerabilities characteristic of most developing countries. Post-colonial Malaysia has been chiefly preoccupied with internal threats, notwithstanding Indonesian President Sukarno's war against Malaysia in the mid-1960s (called *Konfrontasi*) and the Philippine claim to the Malaysian state of Sabah (which peaked in the late 1960s). Malaysian armed forces have until recently maintained a counter-insurgency orientation and were slow to develop self-reliance in meeting external threats. Its multi-ethnic population, especially the fragile balance between the Malays and Chinese, has been a key factor not just in domestic politics, but also in shaping its foreign policy and regional security posture. But Malaysia is also a relatively prosperous state with abundant natural resources, and it has been one of the most

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dynamic industrializing economies in the Asia Pacific region. Prosperity has helped to reduce ethnic strife and allowed Malaysia to devote attention and resources to external threats. Under Prime Minister Mahathir Mohammed, it has pursued an activist foreign policy both at regional and global levels. Mahathir has been an outspoken critic of Western political and cultural dominance, an ardent champion of Third World solidarity and an active participant in efforts to build regional multilateral institutions, such as the ASEAN Regional Forum and his very own brainchild, the East Asian Economic Caucus (EAEC).

In dealing with China, Malaysia clearly favours a strategy of engagement. As Abdullah Badawi, then Malaysia's Foreign Minister, put it in 1997, "The most important thing is engagement, not containment."[2] The usage of the term "engagement" by Malaysian officials to describe its policy towards China is a recent practice. It seems to have been adapted from the debates in the West and Asia Pacific security meetings on the implications of the rise of China, debates which Malaysian officials and security specialists have followed and actively participated in. But the meaning of the term is somewhat more narrow and specific in Malaysia than in the US, especially in terms of its objectives. As with Indonesia (see Michael Leifer, Chapter 4, this volume), Malaysia does not seek to influence the domestic politics of China, keeping the focus instead on China's external behaviour. A strategy of engagement, in the sense used by the editors of this volume (see their Preface), is a deliberate policy of socialization of a rising power using non-coercive methods. Its aim is not to prevent or block the growth of the latter's influence or status, but to ensure that any change in the regional and global order caused by its ascendancy is peaceful. An engagement policy is pursued through essentially non-coercive methods. It may involve the creation of institutional constraints on the rising power's geopolitical behaviour, accommodation of its legitimate interests, and the devising of other means to transform its policies that are deemed to be destabilizing. In contrast, containment is a strategy pursued through coercive means in order to constrain a rising power, including engendering its military defeat or internal collapse.

From a Malaysian perspective, a policy of engaging China means a conscious effort by its neighbours and the international community at large to develop a normative framework and a range of bilateral and multilateral linkages which will constrain Chinese unilateralism and encourage its role as a peaceful and responsible member of the regional and international system. Engagement is both a process and a goal. The goal is to ensure that Malaysia benefits from the economic opportunities offered by China's economic growth while discouraging a Chinese security posture that would pose a threat to Malaysia's security interests. Malaysia's policy toward China is designed to create a mutual accommodation of legitimate interests. A related objective is to maximize positive economic and functional interdependence, which China will find costly to break. Beyond this, Malaysia sees multilateral institutions such as the ASEAN's external dialogue mechanism and the ASEAN Regional Forum as an important instrument in socializing and eventually integrating China into a system of regional norms and order.

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Yet Malaysian elites are not fully convinced that engagement, as defined above, will work. They recognize the difficulties in creating a workable regional mechanism for conflict prevention and resolution. As a result, Malaysian policy exemplifies the kind of ambivalence that marks the attitude of many other Asia Pacific nations toward Chinese power. While publicly speaking the language of engagement, Malaysia is also quietly but firmly reorienting its security posture that will enhance its ability to respond to Chinese provocation.

Malaysia's perception of China as a threat

At a declaratory level, Malaysian political elites downplay the potential of China as a threat to Malaysia's national security. In this respect, they share the approach of their counterparts in other ASEAN countries who are generally reluctant to speak publicly of a "China threat," notwithstanding their private misgivings about the rise of Chinese power. Malaysian Prime Minister, Mahathir Mohammed, argues that identifying China as a threat could become a self-fulfilling prophecy. As he put it: "Why should we fear China? If you identify a country as your future enemy, it becomes your present enemy – because then they will identify you as an enemy and there will be tension."[3]

Mahathir has even argued that the rise of China should not become a justification for an American containment posture. He once derided US naval presence in the East Asia region as "a waste of money as there was nothing to fear from either Japan or China."[4] Some Malaysian commentators have dissociated themselves from the so-called "China threat," blaming it on Western governments and analysts.

However, Malaysian defence and security planners and analysts are much more forthcoming than its political leaders in voicing concerns about the rising power of China. These concerns encompass three aspects. The first is the general uncertainty in the region's strategic climate. The chief of the Malaysian Navy points out that one of the most serious security concerns of Malaysia is the "uncertainties in the region's evolving security situation and military modernization programme by some Asian countries, and the issue of how the balance of power is going to evolve especially where there exist competition and rivalries between China, Japan, Russia and the US." The rise of China is a key and worrying factor in this climate of strategic uncertainty:

> China, Japan and the US are important players that would determine regional security developments in the Pacific Asia. The state of their inter-relationships obviously affects the stability of the region. Thus, it is important that the existing triangular relationship is maintained in a state of equilibrium. . . . However, as the years progress, there exist . . . uncertainty in the form of China's behaviour once she attained her great power status. Will she conform to international or regional rules or will she be a new military power which acts in whatever ways she sees fit?[5]

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A related source of Malaysian concerns regarding China is the latter's military buildup, which for Malaysia assumes a greater significance in view of the post-Cold War decline of American and Russian military presence in the region. Comparing the three regional powers, India, Japan and China, the former Chief of Malaysia's Defence Forces, General Hashim Mohammed Ali argued that while India is constrained by domestic problems and Japan by constitutional constraints, China continued to increase its defence spending and military modernization and threatened the use of force to support its territorial claims in the South China Sea.[6] Malaysian defence planners have noted the shift in China's defence posture from a people's defence to an offensive power projection capability. Reviewing China's military buildup, two Malaysian officials concluded that the new Chinese military strategy "treats the ocean as strategic space and the navy an instrument for control of the ocean. . . . This strategy envisages the encounter and defeat of enemies in the ocean rather than at its doorstep." They pointed specifically to the PLA's emphasis on rapid reaction forces, creation of naval and air assets to "meet regional contingencies," extension of the "operational range" and the "sustained operational capability" of the Navy, provision of air cover for the fleet, training of highly mobile airborne troops and the acquisition of an "amphibious offensive capability" as indicated in the creation of a marine corps.[7]

The Chief of the Malaysian Army gave an even clearer hint of Malaysia's fears about China's military buildup:

> The country to watch today would be the People's Republic of China. Lately China has engaged in a large defence build-up. Besides the purchase of 26 × SU-27 [sic] Flanker, a proposed acquisition of an aircraft carrier and a planned procurement of the Russian made strategic backfire bomber, if materialize, China's military capabilities, especially in its power projection will be significantly higher. Despite recent friendly utterances, suggesting that China wants to see peace in the world and particularly in East Asia, it seems likely that the long-term aim is dominance, though not necessarily aggression. That surely must be the meaning of the proposed large fleet and this factor immediately focuses attention on the most sensitive territory in Southeast Asia – the group of Spratly Islands.[8]

Of particular concern to Malaysia is the growth of Chinese naval power. This may be especially unsettling since Malaysia historically has been a naval power itself (in contrast to its neighbour, Thailand) and therefore feels a greater sense of threat from a competing naval prowess. Moreover, to a larger extent than its ASEAN neighbours, Malaysia's security concerns have increasingly shifted from counter-insurgency to conventional warfare, with the sea assuming a major place in its strategic planning. As the chief of the Malaysian Navy put it, "the main challenge . . . to the Pacific Asia region will be maritime in nature."[9] In his view,

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regional countries are "becoming more aware and competitive over natural resources which lie on or under the sea-beds." Issues such as the law of the sea, maritime boundaries, conflicting claims to offshore territories, offshore resources, sea-borne (trade), transit rights and piracy "are growing in importance and have now become sources of conflicts."[10] Malaysia itself is involved in a number of maritime disputes; indeed, it is the only ASEAN member to have a maritime territorial dispute with all other members.

A third and more direct source of Malaysia's strategic perceptions regarding China relates to the Spratly Islands dispute. Four Southeast Asian countries are involved in the Spratlys dispute with China and Taiwan. While China, Taiwan and Vietnam claim the entire chain of islands on a historical basis, Malaysia (as well as the Philippines and Brunei) claims portions of the Spratlys on the basis of maritime rights under the Law of the Sea Convention. Between September and November 1983, Malaysia troops occupied three South China Sea atolls: Layang-Layang (Swallow Reef), Manatanani (Mariveles Reef) and Permatang Ubi (Ardasier Bank). Malaysia is developing the Layang-Layang island into a holiday resort and is building an airstrip on the island.

In the words of Malaysian Chief of Defence Force: "In the immediate term . . . the biggest problem to regional stability will be the settling of the claims to the Spratly and Paracel Islands and whether China will want to pursue its claims militarily."[11] In the wake of the Sino–Vietnamese naval clashes in the South China Sea in March 1988, the Spratly issue was raised from "secondary to very much top priority" in Malaysian defence planning.[12] The Director of Military Intelligence admitted that military planners pay "serious attention" to the protection of the Malaysian garrison on three atolls in the Spratly Islands, which had become Malaysia's "front line in the area."[13] The China factor, and the more general concern with maritime security undoubtedly plays a role, aside from increased buying power and prestige considerations, in Malaysia's ambitious military modernization drive. This includes the acquisition of the British *Hawk*, the Russian MiG-29 *Fulcrum*, and the US F-18 combat fighter aircraft, large surface platforms such as 2200-ton guided missile frigates, and a long-term programme to acquire a submarine capability (this was cancelled due to the economic crisis).[14]

China and Malaysia have explored the idea of joint development as a possible way of resolving the Spratlys dispute;[15] but Malaysian officials are sceptical of Chinese assurances in this regard, pointing to a mismatch between Chinese declaratory policy and its actual behaviour. In the words of the Chief of the Malaysian Navy:

> Everybody would like to believe in the wisdom, statesmanship and restraint of the PRC. In recent years, there have been no lack of instances of such admirable behaviour. But we are bound to ponder with alarm the Chinese pronouncements in 1992 on the subject of the Spratly Islands that it would not "budge an inch" over questions of sovereignty.[16]

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Annex 450

Yann-huei Song, "United States and Territorial Disputes in the South China Sea: A Study of Ocean Law and Politics", *Maryland Series in Contemporary Asian Studies*, No. 1 (2002)
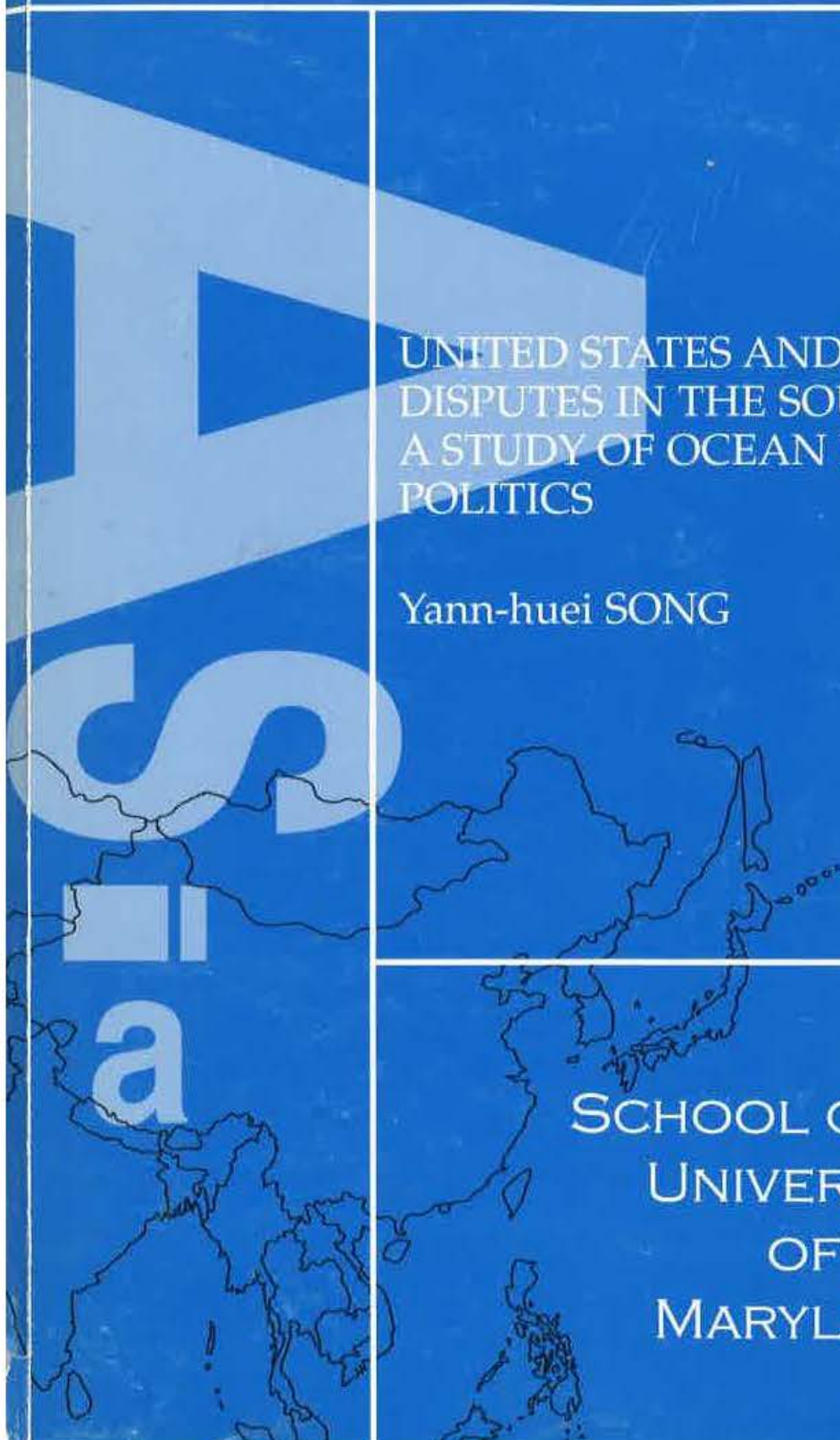
Maryland Series in Contemporary Asian Studies

Number 1 – 2002 (168)

UNITED STATES AND TERRITORIAL DISPUTES IN THE SOUTH CHINA SEA: A STUDY OF OCEAN LAW AND POLITICS

Yann-huei SONG

CHAPTER II

INTERNAL AND EXTERNAL POLICY INPUT VARIABLES IN THE U.S. SOUTH CHINA SEA POLICY MAKING

INTRODUCTION

The Asia-Pacific is the region which covers the Spratlys Islands and the SCS area, where four of the world's major powers, namely, the United States, China, the Russian Federation, and Japan, intersect, and where "the United States has large, abiding, and continuing interests in preserving stability."[1] In addition, since 1999, India has also taken actions to support its intentions to extend strategic reach into the SCS area. The existing territorial and maritime jurisdictional disputes in this particular geographic area are likely to disturb the peace and stability of the broader Asia-Pacific region, and naturally are a grave concern of the United States. The U.S. also has critical economic and security/strategic interests in the Spratlys/SCS area.

The making of U.S. policy concerning the Spratly Islands and the SCS has been influenced profoundly by both internal and external policy input variables. Internal policy input variables in this policy-making process include U.S. economic, security/strategic, navigation, and public order at sea interests within the region. The development of an international legal regime concerning the use of the ocean and changes within the international political system are considered external policy input variables. These two sets of input variables have had a profound impact on the maritime and security policy-making of the ten countries bordering the SCS, in particular, the claimant countries such as China, the Philippines, Vietnam, and Malaysia. The SCS policies of the major claimant countries in the area have, in turn, affected U.S. policy toward the SCS territorial and maritime jurisdictional disputes.

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1. "U.S. Policy in the Asia-Pacific," John S. Wolf, Coordinator for APEC, address to the Pacific Leaders Forum, Bell Harbor International Conference Center, Seattle, Washington, October 1, 1996, *U.S. Department of State Dispatch,* October 7, 1996, Vol. 7, No. 41, p. 499.

I. INTERNAL POLICY INPUT VARIABLES

In general, major U.S. national interests include:

- to preserve the survival of the United States as a free and independent nation, with its fundamental values intact and its institutions and people secure (security interest);
- to advance a healthy and growing United States economy to ensure opportunity for individual prosperity and a resource base for national endeavors at home and abroad (economic interest);
- to promote a stable and secure world, where political and economic freedom, human rights, and democratic institutions flourish (world order and ideological interests); and
- to enhance a system of healthy cooperative and politically vigorous relations with allies and friendly nations (political interest). [emphasis added].[2]

In September 2001, the U.S. Department of Defense issued its *Quadrennial Defense Review Report*, in which the purpose of the U.S. Armed Forces is stated as protecting and advancing U.S. national interests. The key U.S. national interests listed in the Report include:

- Ensuring U.S. security and freedom of action, including:
  —U.S. sovereignty, territorial integrity, and freedom;
  —Safety of U.S. citizens at home and abroad;
  —Protection of critical U.S. infrastructure;
- Honoring international commitments, including:
  —Security and well-being of all allies and friends;
  —Precluding hostile domination of critical areas, particularly Europe, Northeast Asia, the East Asian littoral, and the Middle East and Southwest Asia;
  —Peace and stability in the Western Hemisphere;
- Contributing to economic well-being, including:
  —Vitality and productivity of the global economy;
  —Security of international sea, air, and space, and information lines of communications;
- Access to key markets and strategic resources.[3]

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2. Quoted in Department of Defense, Office of International Security Affairs, *United States Security Strategy for the East Asia-Pacific Region*, February 1995, p. 5.

3. U.S. Department of Defense, *Quadrennial Defense Review Report*, September 30, 2001, p. 2.

In the Asia-Pacific region and the SCS area, important U.S. national interests are in tune with America's vital national interests as listed above, which include: trade, oil business, security and strategy, and freedom of navigation. Before addressing each of these interests in order, it is worth noting U.S. security interests and the six principles underlining U.S. security policy in Asia. U.S. security interests in East Asia and the Pacific include:

- protecting the United States and its allies from attack;
- maintaining regional peace and stability;
- preserving [U.S.] political and economic stability;
- contributing to nuclear deterrence;
- fostering the growth of democracy and human rights;
- stopping the proliferation of nuclear, chemical and biological weapons, and ballistic missile systems;
- ensuring freedom of navigation; and
- reducing illicit drug trafficking.[4]

In order to advance the aforementioned security interests, U.S. military forces in East Asia and the Pacific are asked to accomplish the following fundamental security missions:

- defending Alaska, Hawaii, and the connecting lines of communications (LOCs) to the continental United States;
- protecting U.S. territories and Freely Associated States for which the U.S. has defense responsibilities;
- assisting [U.S.] allies in defense;
- maintaining the security of the LOCs through the Pacific as well as the Persian Gulf, Indian Ocean, and the East and South China Seas.[5]

There are six basic principles which guide U.S. security policy in Asia, namely:

- assurance of American engagement in Asia and the Pacific;
- a strong system of bilateral security arrangements;
- maintenance of modest but capable forward-deployed U.S. forces;
- sufficient overseas base structure to support those forces;
- [U.S.] Asian allies assuming greater responsibility for their own defense; and

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4. See A Strategic Framework for the Asian Pacific Rim, Report to the Congress 1992, available at <http://russia.shaps.hawaii.edu/security/report-92.html>.

5. *Ibid.*

- complementary defense cooperation.[6]

The U.S. security strategy toward the Asia-Pacific region was outlined by Walter Slocombe, former Under Secretary of Defense for Policy under the Clinton Administration, and includes the following four points: (1) maintaining the vitality of bilateral treaty alliances and friendships; (2) maintaining the U.S. military forward presence in the region to promote stability; (3) promoting a stable, sound, and lasting relationship with China; and (4) taking advantage of the opportunities offered by multilateral fora such as the ARF and the NEACD[7] "which advance transparency, resolve tensions, and improve confidence between regional powers."[8] U.S. "direct security interests and challenges" in the Asia-Pacific were also highlighted by Slocombe, and include:

- Asia remains a concentration of powerful economically competitive states with the world's largest militaries, some of which are nuclear armed;
- American alliances, built on undeniable mutual interests during the Cold War, are facing new challenges and priorities for responsibility-sharing;
- Ancient rivalries, set aside in times of prosperity, may re-emerge in times of distress;
- Relations between nations with competing territorial claims are already showing strains; unresolved claims to disputed small insular areas and boundaries may prove especially dangerous;
- Deep-seated ethnic tensions could increase perceptions of unfair economic burdens; political turmoil and social unrest could result;
- Key nations in the region are going through periods of fundamental political, social, and economic transition; and
- Several nations in the region have active programs for nuclear, chemical or biological weapons and the means to deliver them, which are of concern both in themselves, and for their proliferation potential.[9]

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6. *Ibid.*

7. The Northeast Asia Cooperation Dialogue was established in California in late 1993.

8. Under Secretary Walter B. Slocombe's remarks made before the House International Relations Subcommittee on Asia and the Pacific on May 7, 1998. For the text, visit the U.S. Department of State's home page at <http://pdq.state.gov>.

9. *Ibid.*

In June 2001, James A. Kelly, Assistant Secretary for East Asian and Pacific Affairs under the George W. Bush Administration, outlined the U.S. policy in East Asia and the Pacific.[10] He said that Japan is "the linchpin of U.S. security strategy in Asia." The United States hopes to build "an enhanced strategic dialogue encompassing both economic and security issues" with Japan. The United States seeks a constructive relationship with China that contributes to the promotion of [U.S.] shared interests in peace, stability, and prosperity in the region." The United States does not view China as an enemy, but "a partner on some issues and a competitor for influence in the region." The United States intends either to continue or to expand policies of cooperation with China on issues such as the Korean Peninsula, non-proliferation, open markets, narcotics trafficking, HIV/AIDS, environmental protection and sustainable development. Kelly also added that, the U.S. has been, and will continue to be, "clear and straightforward with China about [U.S.] interests, including [U.S.] commitment to peaceful resolution of differences with Taiwan, to the Taiwan Relations Act [TRA], and to freedom of navigation in international waters and airspace." By referring implicitly to the EP-3 incident, Kelly emphasized that it is important not to allow the U.S.-China relations to be "damaged by miscommunication, mistrust, and misunderstanding about [the two countries'] respective intentions and objectives."[11] It is clear from reading Kelly's testimony that the U.S. will not tolerate any attempt to disrupt the vital sea lanes in the SCS area, and that the U.S. will continue to show the flag in the SCS in support of exercising the freedom of navigation and overflight in the area.

In November 2001, the U.S. Department of State reaffirmed the country's commitment to security in Asia and the Pacific region, which is based on "the principles of shared strength, shared prosperity, and shared commitment to democratic values".[12] To ensure shared strength, the United States will maintain a robust military presence of 100,000 troops in East Asia and the Pacific region, and will expand its security cooperation and military access in Southeast

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10. "U.S. Policy in East Asia and the Pacific: Challenges and Priorities," James A. Kelly, Assistant for East Asian and Pacific Affairs, Testimony before the Subcommittee on East Asia and the Pacific, House Committee on International Relations, June 12, 2001, available at <http://www.usinfo.state.gov/regional/ea/easec/kelly612.htm>.

11. *Ibid.*

12. "U.S. Commitment to Security in Asia and the Pacific Region," International Information Programs, U.S. Department of State, November 30, 2001, available at <http://www.usinfo.state.gov/regional/ea/easec/>.

Asia. The United States will also strengthen ties to its allies in the region, in particular Japan, South Korea and Australia. In an effort to establish new mechanisms for transparency and confidence building, the United States will engage actively in regional security dialogues such as ARF. In addition, the United States will provide strong support for democracy and human rights in the region and promote their expansion even in the most repressive societies. Finally, the United States will work through its bilateral relations with the countries in the region and through the existing regional economic institutions, such as the Asia Pacific Economic Cooperation (APEC) forum, to accelerate the pace of trade and investment liberalization and to promote market opening.[13]

In the SCS area, the United States has abiding trade, oil, security, strategic, and navigation interests, as addressed in detail below.

A.   Trade Interests

The United States has enormous trade and economic interests in the East Asia and Pacific region. During the 1970s and 1980s, U.S. exports to the Asia-Pacific region grew twice as fast as exports to the European Community.[14] In 1995, U.S. two-way trade with Asia accounted for more than 36 percent of total American world trade.[15] By 2001, U.S. two-way trade with East Asia and the Pacific region reached nearly US$500 billion.[16] The East Asia and Pacific region has surpassed Western Europe to become the largest regional trading partner of the United States, both as a supplier of U.S. imports and as a market for its exports.[17] Today, the East Asia and Pacific region is the largest consumer market in the world, accounting already for more than half of all U.S. trade and supporting millions of American jobs.[18] As far as Southeast Asia is concerned, the ASEAN stands as America's fourth-largest trading partner, both in terms of imports and exports. Since 1990, total U.S. trade

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13. *Ibid.*

14. *Supra* note 8, p. 6.

15. *Ibid.*

16. "U.S. Policy in East Asia and the Pacific: Challenges and Priorities," *supra* note 10.

17. U.S. Economic Relations With East Asia and the Pacific, Fact Sheet released by the Bureau of East Asian and Pacific Affairs, U.S. Department of State, October 26, 1998, available at <http://www.state.gov/www/regions/eap/fs-us-eap_econ_rels_981026.html>.

18. "U.S.-East Asia Strength and Prosperity in the 21st Century," President Clinton's remarks to the Pacific Basin Economic Council, Washington, D.C., May 20, 1996, see *U.S. Department of State Dispatch*, Vol. 7, No. 22, May 27, 1996, p. 261.

with member countries of the ASEAN has grown at an average annual rate of 15 percent.[19] The United States is the leading export market for the Philippines, Singapore, and Thailand and is the second-largest export market for Malaysia and Indonesia.[20] U.S. two-way trade with ASEAN reached U.S. $84 billion in 1994 — a 15 percent increase over 1993.[21] In 1995, the two-way trade reached U.S.$101 billion, having expanded nearly 50percent over the past two years. By 1999, the two-way trade had reached to U.S. $117.5 billion.[22] In 1995, U.S. investment in ASEAN was about U.S. $20 billion. In July 1996, the investment exceeded U.S. $25 billion.[23] By 1997, U.S. direct investment in ASEAN has grown to approximately U.S. $38 billion.[24]

Based upon the aforementioned trade figures and the important trade relations developed between the United States and the countries in the region over the past several years, there can be no doubt that once the stability and peace of the Asia-Pacific region were disrupted by the territorial and jurisdictional disputes in the Spratlys/SCS area, U.S. critical economic interests would also be seriously affected. Take oil imports as an example. In 1992, the Asia-Pacific region's (excluding the United States) demand for oil was 14.5 million barrels per day, which was larger than that of Europe, and which made the Asia-Pacific the second largest oil consuming region after North America. Seventy per cent of the Asia-Pacific region's oil imports came from the Persian Gulf. By the turn of the century, it was expected that the percentage of oil imports from the Persian Gulf would increase to ninety percent.[25] If the SLOCs were cut by armed conflict erupting in the Spratlys/SCS area as a result of territorial and/or jurisdictional disputes, the economic interests of the countries in the Asia-Pacific region, including the United States, would be adversely affected. Accordingly, maintaining peace and stability in the Spratlys/SCS area is very impor-

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19. U.S. Economic Relations with East Asia and the Pacific, *supra* note 17.

20. *Ibid.*

21. Secretary of State Christopher's remarks made at the Seven-Plus-One Session of the ASEAN Post-Ministerial Conference, Bandar Seri Begawan, Brunei, August 2, 1995, see *U.S. Department of State Dispatch*, Vol. 6, No. 32, August 7, 1995, p. 612.

22. See "U.S. Trade by Commodity with ASEAN (10)," U.S. Commodity Trade by Geographic Area (1995-99), U.S. Foreign Trade Highlights, U.S. Department of Commerce, available at <http://www.ita/doc.gov/td/industry/otea/usfth/tabcom.html>.

23. *Supra* note 22.

24. U.S. Economic Relations with East Asia and the Pacific, *supra* note 17.

25. Supra note 2, p. 7.

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tant to help preserve U.S. economic interests in the Asia-Pacific region.

B. Oil Interests

Begining in the early 1990s, U.S. oil companies, eyeing the oil reserves in the Spratly/SCS area, have invested money and technologies through signing bilateral oil exploration/exploitation contracts with countries such as China, the Philippines, and Vietnam to bring oil ashore from near or in the disputed waters of the Spratly Islands in the SCS area. In spite of the U.S. government's warnings, through which the U.S. oil companies were told that they were on their own in assuming the risk of exploration/exploitation in disputed waters, the investment and participation of U.S. oil companies in the area have steadily increased since the early 1990s.

On May 8, 1992, the U.S. Crestone Energy Corporation signed a contract with the Chinese National Offshore Oil Company to explore oil and gas resources in an area of the Spratly Islands in the southwestern part of the SCS. The contract area, Wan'an Bei Block WAB21, is located to the southwest on Nanwei (Spratly Island).[26] In February 1993, it was reported that U.S. oil companies, including Mobil, Unocal, Amoco, Exxon, Conoco and Marathon, sent teams to Hanoi, Vietnam to talk about the possibilities of obtaining exploration rights in Vietnam's official fields, which could possibly put them into the middle of a territorial dispute between Vietnam and China in the Spratly Islands area.[27] In May 1994, Vietnam leased a block containing the promising Blue Dragon structure to a consortium that included the U.S. oil company Mobil. The structure was located just west of the Crestone contract area and within the Chinese claimed waters. Vietnam was also negotiating with Conoco Inc., a subsidiary of Du Pont Co. of the U.S. for two blocks in the Spratly Islands area, which overlapped China's Crestone concession.[28] In June 1994, the Philippines awarded contracts to the U.S. oil company Vaalco Energy and the Philippines' Alcorn Petroleum for drilling in the Recto Bank (Nansan in Chinese) of the disputed

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26. "Beijing and Hanoi Play with Fire in the SCS," *The Asian Wall Street Journal*, July 20, 1994, p. 5. For details of the contract, see the letter and the attached map included in Proceeding of the Third Workshop on Managing Potential Conflicts in the SCS, Yogakarta, Indonesia, 29 June - 2 July 1992, pp. 183-185.

27. "Stampede for Oil: U.S. Firms Rush to Explore Vietnamese Waters," *Far Eastern Economic Review*, February 25, 1993, p. 48.

28. "Beijing and Hanoi Play with Fire in the SCS," op. cit., p. 5.

Spratly Islands area.[29] In July 1994, it was reported that the U.S. oil companies Mobil, Atlantic Richfield, and Occidental Petroleum had started exploration activities in Vietnam's offshore waters near the Spratly Islands, which were also claimed by China.[30] In April 1996, Vietnam leased two oil exploration blocks in the disputed waters in the Spratly Islands to the U.S. oil company Conoco, which covered half the zone leased by China to Crestone in May 1992.[31] Since 1999, a Vietnamese-Russian venture has operated the *Dai Hung* oilfield, located near the disputed Wan'an Bei Block WAB 21 in the Spratly archipelago and was leased by China to the U.S. oil company Crestone in 1992.

It is not clear with regard to the degree to which the U.S. oil companies' involvement in the oil exploration/exploitation activities in the disputed waters in the SCS had affected decision-making regarding the official U.S. position on the Spratly Islands disputes and the SCS issues. What is clear is that an eruption of armed conflict between the disputed countries in the area would not be in tune with the interests of U.S oil businesses and that the U.S. government is expected to protect American commercial interests overseas.

C. Security and Strategic Interests

As far as U.S. security and strategic interests are concerned, it has been America's policy to preserve peace and stability in the Asia-Pacific region and the Spratlys/SCS area. The United States is committed to maintain approximately 100,000 troops in the Asia-Pacific to help keep peace and stability in the region.[32] In addition, the United States has six security commitments in the Asia-Pacific region, including security treaties with Japan, the Republic of Korea, the Republic of the Philippines, Thailand, and the Compact of Free Association with the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.[33] If dis-

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29. See "Flash Points: Spratly Islands," *Jane's Defense Weekly*, July 9, 1994, p. 18; and "Troubled Waters: Philippine Offshore Oil Search Roils China," *Far Eastern Economic Review*, June 30, 1994, p. 20.

30. *The China Post*, July 6, 1994, p. 1.

31. "Vietnam-China: Oil Search Fuels Rising Tension in SCS," *Inter Press Service*, March 21, 1997.

32. "The Enduring Importance of American Engagement in the Asia-Pacific Region," Anthony Lake, Assistant to President for National Security Affairs, remarks to the Japan-American Society, Washington, D.C., October 23, 1996, in *U.S. Department of State Dispatch*, Vol. 7, No. 45, November 4, 1996, p. 545.

33. For more information, see *supra* note 2, p. 6 and pp. 10-12.

putes over ownership of the islands or the right to explore and exploit marine resources were to escalate into armed conflicts in the Spratlys/SCS area, the United States would be forced to take actions to maintain peace and stability in the region. The United States would also be asked to increase its military presence in the SCS area, including emergency deployment of U.S. naval vessels and combat aircraft, as a demonstration of America's commitment to security in Southeast Asia, under the following scenarios:

- A Chinese attempt to interfere with maritime traffic on the South China Sea SLOCs, perhaps in an effort to coerce the United States, Japan, or ASEAN into accepting Chinese political demands;
- A Chinese effort to forcibly establish and maintain control over all or most of the Spratly Islands. Such an operation could feature the threat or use of force against an ASEAN state, either to compel acceptance of Chinese demands or to defeat opposing military forces;
- Continuation or expansion of China's "salami tactics" to gradually assert control of more territory in the disputed areas – for instance, the occupation of other reefs or the construction of new structures in already claimed reefs;
- Conflict triggered by energy exploration or exploitation activity, fishery disputes, accidents or miscalculations, regional tensions, or provocative actions by one or more parties to the dispute;
- More ambiguous uses of force by China, including selective harassment and intimidation of regional states in the guise of enforcement of Chinese maritime claims, protection of fishermen, anti-piracy or anti-smuggling operations, or peacekeeping or order-keeping operations in the event of a breakdown of domestic or international order in the region.[34]

The U.S. strategic and security interests in the SCS would also be affected by the increase of China's capability to project its military power to the SCS area. China has made a substantial investment in modernization of its surface and subsurface naval forces. In 1996, China ordered two *Sovremenny*-class destroyers from Russia,

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34. Richard Sokolsky, Angel Rabasa, and C.R. Neu, *The Role of Southeast Asia in U.S. Strategy Toward China* (Santa Monica, Rand, 2000), pp. 15-17. Cited in Zalmay Khalilzad, et al., *The United States and Asia: Toward a New U.S. Strategy and Force Posture* (Santa Monica, Rand, 2001), pp. 36-37.

which were delivered to China in February 2000 and January 2001 respectively. The destroyer carries *Sunburn* supersonic missiles that pose a major threat to the U.S. Pacific fleet.[35] It was also reported that China is now building its own nuclear-powered strategic submarines after obtaining the needed technology from Russia.[36] The short-to-medium-range cruise missile system, such as *Silkworm* antiship cruise missiles installations on the Chinese occupied Woody Island of the Paracels in the SCS, could pose a threat to American civilian and military shipping in the nearby area. It is believed that the Chinese navy's areas of operations in the SCS will be further extended once the construction of its first light aircraft carrier is completed and begins to serve in the year 2006.[37] The U.S. military operations and strategic planning in Southeast Asia will surely be affected by China's naval expansion in the SCS area.

D. Navigation Interests

It is very likely that U.S. navigation interests would also be affected by any conflict arising from the territorial and jurisdiction disputes in the Spratly/SCS area. Under the 1982 LOSC,[38] the disputed countries in the area are entitled the rights to claim certain part of the waters in the SCS as their respective internal waters, territorial seas, contiguous zones, exclusive economic zones (EEZs), continental shelves, and archipelagic waters. In addition, certain parts of the waters in the area have been claimed as internal waters based upon historic grounds. The U.S. right to exercise freedom of navigation would be restricted if armed conflict were to erupt in the Spratlys/SCS area or if excessive unilateral claims of maritime zones were made by the countries concerned, based upon their territorial claims. For instance, U.S. navigation rights in the Gulf of Tonkin and the Gulf of Thailand were affected by Vietnam's declarations that certain parts of the gulfs are its historic waters, and therefore, are considered as Hanoi's internal waters where

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35. *China Times* (Taipei), January 19, 2001, p. 11.

36. *United Daily* (Taipei), January 7, 2001, p. 11; see also *Jane's Defence Weekly*, February 18, 1998, p. 37.

37. *United Daily* (Taipei), March 14, 2001, p. 13.

38. The United Nations Convention on the Law of the Sea, opened for signature Dec. 10, 1982, 21 I.L.M. 1261 (1982), reprinted in The Law of the Sea: United Nations Convention on the Law of the Sea with Index and Final Act of the Third United Nations Conference on the Law of the Sea, UN Sales No. E.83.V.5 (1983). As of September 10, 2001, 137 countries had ratified this Convention. A list of ratifications is available at <http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/xxi_6.html>.

the United States enjoys no navigation rights at all.[39] U.S. navigation interests were restricted because of the Philippines' declaration that "the concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters within the economic zone or high sea from the rights of foreign vessels to transit passage for international navigations."[40] In February 1996, the Clinton Administration decided not to support the Southeast Asia Nuclear Weapon Free Zone treaty, mainly because of its concern over "the inclusion of Exclusive Economic Zones, . . . and continental shelves in the zone, which raises questions about the consistency of the treaty with high seas freedoms (in particular freedom of navigation) and other principles embodied in the UN Convention on the Law of the Sea."[41] In addition, the United States is concerned about the uncertain situation in the SCS, where continental shelves and EEZs have never been delimited because of territorial disputes.[42]

One commentator argued in 1995 that tensions in the Spratly Islands posed no threat to navigation in the SCS area, mainly because "[m]ost important SCS shipping routes pass well west of the Spratly Islands. . . The only significant shipping route east of the Spratly Islands is the Jakarta-Manila route that hugs the coasts of Borneo and Palawan."[43] However, John H. Noer presents a different view, by pointing out that blockage of shipping lanes in the SCS area "could immediately and directly disrupt the U.S. economy."[44] He suggested that denial of the SLOCs passing the Spratly Islands to merchant shipping in the SCS would disrupt world shipping markets. Freight rates around the world would be affected. American

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39. See Statement of 12 November 1982 by the Government of the Socialist Republic of Vietnam on the Territorial Sea Baselines of Vietnam, in United Nations, *The Law of the Sea: Current Developments in State Practice*, New York, 1987, p. 143.

40. See The Philippines: Declarations made upon Signature and Confirmed upon Ratification of the UN Convention on the Law of the Sea, 1982, 10 December 1982 and 8 May 1984, in E.D. Brown, *The International Law of the Sea (Vol. II): Documents, Cases and Tables* (Singapore: Dartmouth, 1994), pp. 100-101.

41. "Southeast Asia Regional Security Issues: Opportunities for Peace, Stability, and Prosperity," Winston Lord, Assistant Secretary for East Asian and Pacific Affairs, Statement before the Asia and Pacific Subcommittee of the House International Relations Committee, Washington, D.C., May 30, 1996, p. 271.

42. *Ibid.*

43. Daniel J. Dzurek, "China Occupies Mischief Reef in Latest Spratly Gambit," in IBRU Boundary and Security Bulletin, April 1995, p. 66.

44. John H. Noer, Southeast Asian Chokepoints: Keeping Sea Lines of Communication Open, *Strategic Forum* paper No. 98, December 1996, Institute for National Strategic Studies, National Defense University.

imports and exports would be affected by the added costs in merchant shipping.[45] Alternate routes are available in the SCS area: ships denied access to the Malacca Straits might use the Sunda Straits, the Lombok Straits, and the Straits of Makassar. However, John H. Noer warns that in practice,

> blockage of these SLOCs would matter a great deal. Nearly half the world fleet would be required to sail farther, generating a substantial increase in the requirement for vessel capacity. All excess capacity of the world fleet might be absorbed, depending on the number of straits closed and how long they remained closed. The effect would be strongest for crude oil shipment and dry bulk such as iron ore and coal.[46]

Noer cites the experience of the closure of the Suez Canal as an example, suggesting that a disruption of shipping in the SCS might increase freight rates by as much as five times. In addition, war-related uncertainty over the Spratly Islands might cause maritime insurers to either increase rates or deny coverage in the region. As a result, shippers might be forced to reroute shipping via safer sea lanes, which in turn would increase shipping distance, sailing time, and shipping costs. Regional and international trade would thus be affected.[47]

II. EXTERNAL POLICY INPUT VARIABLES

In addition to the internal policy input variables identified above, the U.S. SCS policy decision-making process has also been influenced by external policy input variables, such as the development of the claimants' SCS policies, the development of the new ocean regime and its impact on sovereignty and maritime jurisdictional claims, and the end of the Cold War and its impact on geopolitical and strategic situations in the SCS area. These variables have been and continue to be the main reasons for tensions in the Spratly Islands and elsewhere in the SCS. The national interests of the United States, in particular promoting trade, ensuring the exercise of the freedom of navigation, and maintaining peace and stability in the SCS area, could possibly be affected if territorial or maritime jurisdictional disputes between or among the claimants were esca-

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45. *Ibid.*
46. *Ibid.*
47. *Ibid.*

lated into serious armed conflicts. Once that occurs, the U.S. government would be forced to respond.

A. Scramble for Offshore Petroleum Resources

Except for the brief periods when France and Japan took action to occupy the Spratly and Paracel Islands during the 1930s,[48] and until the mid-1960s, there has been relative peace and stability in the Spratly Islands and the SCS area. But since the publication of the CCOP report in 1969, which suggested that there were hydrocarbon resources under the Yellow Sea, the East China Sea, and implicitly the SCS,[49] the Spratly Islands began to attract interest and attention from governments of littoral countries in the area, in particular, the Philippines, Vietnam, and Malaysia. The oil crisis of 1973 hastened most of the littoral countries' efforts to secure the area's resource potentials.

Military troops were sent by the Philippines, Vietnam, and Malaysia to occupy the insular features of the Spratly Islands group in vigorous pursuance of their claims. The Philippines occupied Nanshan Island and Flat Island in 1970, Thitu Island, Loaita Island, Northeast Cay, and West York Island in 1971, Panata in 1978, and Commodore Reef in 1980. Vietnam occupied Nam Yit Island, Southwest Cay, Dunqian Shazhou, Spratly Island, Sin Cowe Island, and Amboyna Cay in 1973, and Ranqing Shazhou, Central Reef, and Pearson Reef in 1978. Malaysia occupied Swallow Reef and Ardasier Reef in 1977, and Mariveles Reef in 1979.[50] All of these occupied islands belong to the Spratly Islands group located in the southern part of the SCS. In 1974, the Chinese military expelled Vietnamese forces from the Paracel Islands they occupied.[51]

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48. For discussion, see Lu Ning, *Flashpoint Spratlys* (Singapore: Dolphin Trade Press Pte. Ltd., 1995), pp. 22-25.

49. The Committee for the Coordination of Joint Prospecting for Mineral Resources in Asian Offshore (CCOP) is one of the committees under the UN Economic Commission for Asia and the Far East (ECAFE). For the 1969 report, see K.O. Emery, et al., "Geographical Structures and Some Water Characteristics of the East China Sea and the Yellow Sea," Technical Advisory Report, *Technical Bulletin*, No. 2, 1969, pp. 3-43.

50. See Pan Shiying, "The Nansha Islands: A Chinese Point of View," *Window*, September 3, 1993, table on p. 29.

51. For detail account, see Marwyn S. Samuels, *Contest for the SCS* (New York and London: Methuen, 1982), ch. 6, pp. 98 - 117; David Muller, *China's Emergence as a Maritime Power* (Boulder: Westview, 1983), pp. 152-154; Gerald Segal, *Defending China* (New York & London: Oxford University Press, 1985), pp. 197-210; Chi-kin Lo, *China's Policy Towards Territorial Disputes: The Case of the SCS Islands* (New York &

Domestic legislative measures were also taken by the Philippines, Vietnam, and Malaysia to consolidate their respective sovereignty and maritime jurisdictional claims. In December 1979, for instance, Malaysia published a map showing its territorial waters and continental shelf boundaries.[52] In May 1980, the country also proclaimed a 200-nautical-mile EEZ.[53] In June 1978, the Philippines proclaimed Presidential Decree No. 1596, in which Manila declared 33 islands, cays, shoals and reefs contained in a delimited area (known as Kalayaan) of the Spratly Islands to be Philippine territory.[54] Also in June 1978, under Presidential Decree No. 1599, the Philippines proclaimed a 200-nautical mile EEZ, claiming sovereign rights over this economic zone for exploration, exploitation, conservation and management of all natural resources, including the seabed and its subsoil.[55] In May 1977, after approval by its Standing Committee of the National Assembly, Vietnam declared the limits of the country's territorial sea, contiguous zone, exclusive economic zone, and the continental shelf.[56] Although no maritime legislative measures had ever been taken by China to bolster its sovereignty and jurisdictional claims in the SCS area during the 1970s, military actions were taken to route Vietnamese troops from the Paracel Islands they occupied. In addition, the Chinese Ministry of Foreign Affairs reacted strongly to a white paper entitled "Vietnam's Sovereignty over Hoang Sa (Paracel Islands) and Truong Sa (Spratly Islands) Archipelagoes," issued in September 1979 by the

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London: Routledge, 1989), pp. 53-60; Lu Ning, *Flashpoint Spratlys* (Singapore: Dolphin Trade Press Pte Ltd., 1995), pp. 74-86; Greg Austin, *China's Ocean Frontier: International Law, Military Force and National Development* (St. Lenoards, Australia: Allen & Unwin Australia Pty Ltd., 1998), pp. 73-77.

52. See R. Haller-Trost, "Some Comments on the Territorial Sea and Continental Shelf Map of Malaysia," in *Ocean Yearbook 12,* edited by Elisabeth Mann Borgese (Chicago and London: The University of Chicago Press, 1996), pp. 316-333; Daniel J. Dzurek, "Boundary and Resource Disputes in the SCS," in *Ocean Yearbook 5,* edited by Elisabeth Mann Borgese and Norton Ginsburg (Chicago and London: The University of Chicago Press, 1985), pp. 282; and Maritime Claims of Coastal States, in *Maritime Claims Manual,* U.S. Department of Defense, document number DoD 2005 1-M, dated January 1997, pp. 2-294, available at <http://web7.whs.osd.mi/html/20051m.htm>.

53. Daniel J. Dzurek, "Boundary and Resource Disputes in the SCS" and *Maritime Claims Manual, ibid.*

54. The decree can be found in Pacifico A. Castro, ed., *The Philippines and the Law of the Sea* (Manila, Philippines, Foreign Service Institute, 1983), pp. 38-39.

55. For the decree, see *ibid.*, pp. 41-44.

56. See Myron H. Nordquist and Choon Ho Park, eds., *North America and Asia-Pacific and the Development of the Law of the Sea: Treaties and National Legislation* (Dobbs Ferry., New York: Oceana Publications, 1981), pp. 4-5.

Vietnamese Ministry of Foreign Affairs. The Ministry published a document in January 1980 to prove China's "indisputable sovereignty over Xisha (Paracel Islands) and Nansha (Spratly Islands)" and to explode "the fallaciousness of the Vietnamese authorities' claims".[57]

Seeking and competing for offshore petroleum resources under the waters adjacent to the disputed islands in the SCS remains one of the potential triggers for maritime conflicts in the SCS. Recent developments concerning exploration and exploitation activities in the area and conflicts resulted from conducting the activities by the claimant countries will be addressed later.

B. The Establishment of A New Ocean Regime

The convening of the Third United Nations Conference on the Law of the Sea (UNCLOS III) in December 1973 and the adoption of the LOSC in April 1982[58] also had a great impact on maritime politics in the SCS area. Originally, the 1982 LOSC was drafted for the purpose of establishing a new ocean regime. It was generally expected that this "Charter for the Oceans" would help regulate coastal states' behaviors in matters dealing with different uses of the oceans, and then help minimize maritime conflicts, and maintain and improve public order at sea. Ironically, however, the adopted Convention has become one of the major reasons for coastal states' taking actions and counter-actions[59] in the SCS area to bolster their sovereignty and maritime jurisdictional claims. As a result, the preexisting maritime tensions in the SCS escalated.

The LOSC was adopted on April 30, 1982, and opened for signature at Montego Bay, Jamaica on December 10 of the same year.

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57. "China's Indisputable Sovereignty Over the Xisha and Nansha Islands," *Beijing Review*, February 18, 1980, pp. 15-24.

58. The first (organizational) session of the UNCLOS III was held in New York between December 3 and 14, 1973. The twelfth (signing) session was held in Montego Bay, Jamaica, December 6-10, 1982.

59. A variety of these actions and/or counter-actions are enumerated by Mark J. Valencia in a paper studying the relationship between China and the SCS disputes, which included: "using military force; 'showing the flag'; occupying and fortifying islets; building up submerged features; establishing structures and markers on islands; establishing scientific research stations supposedly mandated by international organizations; enacting laws; incorporating the area into near provinces; publicizing maps showing claims; allowing tourists and journalists to visit 'their' islands; and granting concessions to oil companies in claimed areas." See Mark J. Valencia, China and the SCS Disputes, *Adelphi Paper 298*, the International Institute for Strategic Studies, Oxford University, 1995, p. 8.

Numerous new concepts relating to the use and utilization of the oceans were developed in the Convention such as "transit passage," "archipelagic waters," "Exclusive Economic Zone," and "International Sea-Bed Authority," to name a few. Despite the refusal of a few states (such as the United States, Great Britain, and West Germany)[60] to sign the Convention because of disagreements over the deep sea-bed mining provisions, the substantive rules of the Convention were largely endorsed by most states in their respective national legislation before it finally entered into force on November 16, 1994.[61]

The 1982 LOSC permits coastal states to establish EEZs that comprise the seas and natural resources, living and non-living, within 200 nautical miles of their coastlines.[62] Under Article 121, except rocks which "cannot sustain human habitation or economic life of their own,"[63] and therefore "shall have no exclusive economic zones or continental shelf,"[64], an island, defined as "a naturally formed area of land, surrounded by water, which is above water at high tide,"[65], can have its own territorial sea, contiguous zone, EEZ, and continental shelf.[66] Mainly because of these rulings, a large portion of the waters in the SCS is now included in the new EEZ and continental shelf boundaries of a number of SCS littoral states. The problems of maritime boundary demarcation and overlapping EEZ claims also arose, given the fact that the SCS is a semi-

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60. Mainly because Part XI of the 1982 LOSC was substantively revised in accordance with the deep sea-bed policy demands from the industrialized countries, in particular, the United States, and because the Agreement relating to the Implementation of Part XI of the 1982 LOSC was adopted by the UN General Assembly on July 28, 1994, the U.S. government transmitted the 1982 LOSC and the 1994 Agreement to its Senate in October 1994 for consent to accede to the Convention and to ratify the 1994 Agreement. While the U.S. accession to the 1982 LOSC is still pending, major industrialized countries such as Germany, France, the United Kingdom, and Belgium ratified or acceded to the 1982 LOSC on October 14, 1994, April 11, 1996, July 25, 1997, and November 13, 1998, respectively. See Table showing the current status of the United Nations Convention on the Law of the Sea and of the Agreement relating to the implementation of Part XI of the Convention, available at <http://www.un.org/Depts/los/los94st.htm>.

61. Under Article 308, "the Convention shall enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession." The sixtieth country (Guyana) ratified the Convention was on November 16, 1993. Accordingly, the 1982 LOSC entered into force on November 16, 1994.

62. See Article 56 of the Convention.

63. Article 121(3) of the Convention.

64. *Ibid.*

65. Article 121(1).

66. Article 121(2).

enclosed sea.[67] Moreover, based upon the ruling provided in the Convention that a total of 1,500 square kilometres of territorial sea (based on the calculation of 12 nautical miles of territorial waters) and some 430,000 square kilometres of maritime economic zone (calculated on the basis of 200 nautical miles of EEZ) can legally be claimed by a country that owns an island,[68] actions such as landing troops or setting up sovereignty markers on unoccupied features were taken by the claimant countries in the area to consolidate their territorial and maritime jurisdictional claims.

It should be noted here that most SCS littoral states, namely China, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam, signed the document on December 10, 1982, the date the Convention was opened for signature.[69] However, right before singing the 1982 LOSC, the Vietnamese government issued a statement on territorial sea baselines on November 12, 1982, in which Hanoi announced the coordinates of the points which were connected as straight baselines from which the territorial sea of its continental territory was to be measured. Vietnam also declared, *inter alia*, that the maritime boundary line in the Gulf of Tonkin[70] between China and Vietnam should be delineated in accordance with the June 26, 1887 Convention of frontier boundaries signed between France and the Qing Dynasty of China. The Convention states that the part of the Tonkin Gulf appertaining to Vietnam constituted its historic waters and is subject to the juridical regime of internal waters of the country, and that the Paracel and Spratly Islands belong to Vietnam, whose baselines for measuring the breadth of the territorial sea would be drawn at another time.[71] On November 28, 1982, China protested the Vietnamese claims, stating that "the so-called boundary line in the Beibu Gulf as asserted by the Vietnamese Government is illegal and null and void," and reit-

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67. Article 122 of the Convention defines the term "enclosed or semi-enclosed sea" as "a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States."

68. Provided that the island passes the test stated in paragraph 3 of Article 121.

69. Brunei signed the Convention on December 5, 1984. Taiwan is not a member of the United Nations and therefore was unable to sign the document.

70. The Gulf of Bac Bo in Vietnamese and the Beibu Gulf in Chinese.

71. See Statement of 12 November 1982 by the Government of the Socialist Republic of Vietnam on the territorial sea baselines of Viet Nam, which can be found in *The Law of the Sea: Current Developments in State Practice*, published by the Office of the Special Representative of the Secretary-General for the Law of the Sea, United Nations (New York: United Nations, 1987), pp. 143-144.

erating that "Xisha Islands and Nansha Islands are an inalienable part of China's sacred territory."[72] The dispute between China and Vietnam over the maritime boundary in the Gulf of Tonkin was settled after the two countries concluded the agreements on the demarcation of territorial waters, the exclusive economic zone and continental shelf, and fishery cooperation in the Gulf of Tonkin on December 25, 2000.[73]

France, a non-SCS country, also submitted a note to the Secretary-General of the United Nations to present its view concerning the drawing of the baselines of Vietnam's territorial sea and its historical waters claim in the Gulf of Tonkin.[74] The French government stated that "the drawing of the baseline of Viet Nam's territorial sea between points A1 and A7 is at variance with the well-established rules of international law applicable to the matter,"[75] and therefore, "that segment of the baseline cannot be invoked *vis-à-vis* the French Government."[76] The French government also questioned Vietnam's historical waters claim in the Gulf of Tonkin.[77] Other countries in the SCS area, in particular Thailand and Singapore, also issued statements to challenge the aformentioned Vietnamese claims on November 22, 1985[78] and December 5, 1986,[79] respectively.

During the 1980s, no SCS littoral states ratified the 1982 LOSC, except the two archipelagic states, the Philippines and Indonesia. The declaration, made by the government of the Philippines upon signature and confirmed upon ratification of the 1982 LOSC on December 10, 1982 and May 8, 1984, however, was protested by several countries, including China, Vietnam, the former USSR, By-

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72. For the statement by China, see *The Law of the Sea: Current Developments in State Practice, ibid.*, p. 145.

73. "China, Viet Nam Sign Agreements," *Beijing Review*, Vol. 44, No. 2, January 11, 2001, pp. 9-10.

74. For Note of France, see *The Law of the Sea: Current Developments in State Practice, ibid.*, p. 146.

75. *Ibid.*

76. *Ibid.*

77. *Ibid.*

78. For the Statement by the Ministry of Foreign Affairs of Thailand on the Vietnamese claims concerning the so-called historical waters and the drawing of baselines, see *The Law of the Sea: Current Developments in State Practice, ibid.*, pp. 147-148.

79. For the Note dated 5 December 1986 setting out the position of the Government of the Republic of Singapore on the Vietnamese claims concerning the so-called historical waters and the drawing of baselines, see *The Law of the Sea: Current Developments in State Practice No. II*, published by Office for Ocean Affairs and the Law of the Sea, United Nations (New York: United Nations, 1989), pp. 84-85.

elorussia, the former Czechoslovakia, the Ukraine, Bulgaria, Australia, and the United States.[80] China and Vietnam protested the declaration mainly because the Philippines claimed that it exercised sovereign authority over the Kalayaan Islands, which are part of the Spratly Islands also claimed by China and Vietnam. The former Soviet Union, Byelorussia, the Ukraine, the former Czechoslovakia, Bulgaria, Australia, and the United States objected to the declaration because it stated that the concept of archipelagic waters in the 1982 LOSC was similar to the concept of internal waters under the Constitution of the Philippines.[81]

In addition to the aforementioned national legislative actions, policy statements, or protests, there were other actions taken by the claimant countries in the SCS area to uphold sovereignty and maritime jurisdictional claims, including landing troops and setting up sovereignty markers on unoccupied features in the Spratly Islands group and arresting foreign fishermen operating in the waters claimed. In 1988, Chinese troops, for the first time moved into the Spratly Islands group, occupying Fiery Cross/NW Investigator Reef, Johnson Reef, Dongmen Island, Graven Reef, Subi Reef and Guarteron Reef. Vietnamese troops landed on Barque Canada Reef in 1987, West Reef, Tennent Reef, Ladd Reef, Discovery Great Reef, East Reef, Alison Reef, Cornwallis Reef, Petley Reef, South Reef, and Collins Reef in 1988, Qiong Reef and Bombay Castle in 1989, Price of Wales Bank and Vanguard Bank in 1990, and Prince Consort Bank in 1991.[82] The active physical occupation of the features of the Spratly Islands group resulted in a naval skirmish between China and Vietnam in March 1988. Although Malaysia did not take action to occupy more new features in the Spratly

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80. For the declaration, see E.D. Brown, *The International Law of the Sea Volume II: Documents, Cases and Tables* (England: Dartmouth Publishing Company Limited, 1994), pp. 100-101. For objections to the declaration, see United Nations, Multilateral Treaties Deposited 866-868, cited in J. Ashley Roach and Robert W. Smith, *United States Responses to Excessive Maritime Claims*, second edition (The Hague/Boston/London: Martinus Nijhoff Publishers, 1996), p. 403; Diplomatic Note delivered January 29, 1986, from American Embassy Manila, pursuant to instructions in State Department telegram 115912, April 17, 1985. American Embassy Manila telegram 03261, January 29, 1986, cited in *United States Responses to Excessive Maritime Claims*, p. 403; *The International Law of the Sea Volume II: Documents, Cases and Table*, 101-103; and *The Law of the Sea: Declarations with respect to the United Nations Convention on the Law of the Sea and to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea* (United Nations Publication, Sales No. E.97.V.3).

81. *Ibid.*

82. Pan Shiying, *supra* note 50, p. 29.

Islands group, its government announced in 1991 that Swallow Reef (Terumbu Layang Layang), garrisioned by Malaysian troops, was to be made into a tourist resort with the completion of a hotel and an airstrip capable of handling small civilian and military aircraft.[83]

The establishment of a new ocean regime and the adoption of the 1982 LOSC indeed had a profound impact on national ocean policies and regional maritime politics in the SCS. National ratifications of the 1982 LOSC and the follow-up policy measures taken by the countries in the SCS area to implement the convention have complicated the sovereignty and maritime jurisdictional disputes and made the settlement of the disputes more difficult. As argued by Allan Shephard, "the EEZ concept has given a spurious legitimacy to the phenomenon of 'creeping annexation' carried out via diplomatic proclamations and occasionally followed up by physical occupation. In this way the LOSC has exacerbated preexisting maritime tension in the SCS."[84] Bob Catley and Makmur Keliat also point out that the LOSC "almost certainly intensified competition for the islands by recognizing clearly the rights to EEZ without setting out just as clearly how disputes over such zones might be as certainly resolved".[85] It is clear that the making of U.S. policy toward the territorial and jurisdictional disputes in the SCS has been and will continue to be influenced by these external policy input variables.

C. Geopolitical and Strategic Changes in Southeast Asia

The collapse of the Soviet Empire in late 1980s signified the end of the Cold War. The international system was thus transformed from bipolar to multipolar, and the United States became the only superpower in the world. In response to the end of the Cold War, the United States planned to reduce its forward deployed military forces in the East Asia-Pacific region throughout the 1990s. Starting in 1991, the United States withdrew its forces from Subic Bay Naval Base and Clark Air Base in the Philippines. The withdrawal of U.S. forces from the Philippines was completed

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83. "Malaysia Plans Airstrip on Disputed Atoll," *Far Eastern Economic Review*, September 12, 1991, p. 14.

84. Allen Shephard, "Maritime Tensions in the SCS and the Neighborhood: Some Solutions," *Studies in Conflict and Terrorism*, Vol. 17, 1993, p. 185.

85. Bob Catley and Makmur Keliat, *Spratlys: The Dispute in the SCS* (Aldershor/ Brookfield USA/Singapore/Sydney: Ashgate Publishing Limited, 1997), p. 68.

on November 24, 1992.[86] The former Soviet Union also withdrew its forces from Cam Ranh Bay in Vietnam during the very early 1990s.

As a result of the end of the Cold War and the follow-up reduction of the U.S. and Soviet military presence in the SCS area, it was speculated that a new "power vacuum" situation had emerged and that China was considered the only country having both the capability and the intention to become a dominant power in the SCS area. China's actions taken in the Spratly Islands during the late 1980s and early 1990s seemed to reinforce the perception of a "China threat".

In addition, there was a growing uncertainty and sense of insecurity among Southeast Asian nations. Before the end of the Cold War, the U.S. forces at Subic Bay and Clark Field in the Philippines and the Soviet forces at Cam Ranh Bay in Vietnam provided a deterrent effect against a number of potential threats in the SCS area. But in the 1990s, Southeast Asian nations could not but rely more on their own defense efforts to confront potential conflicts in the area. As a consequence, there was an increase in national defense budgets and arms procurements in countries such as the Philippines, Malaysia, and Indonesia. Moreover, several regional attempts were made, aiming at establishing a regional security dialogue to help diminish or manage the potential conflicts in the SCS area.

The first of the three following sections summarizes the Chinese actions taken during the late 1980s and early 1990s. The second analyzes the counter-actions taken by other SCS littoral states in response to the Chinese behavior in the area. The third section examines those regional attempts, aimed at alleviating tensions and preventing disputes from escalating into serious armed conflict in the SCS area.

D. "China Threat" in the South China Sea Area?

In 1987, it was reported that the Chinese geophysical survey in the waters surrounding the Spratly Islands was completed. The result of the survey suggested that the Spratly Islands contained large quantities of oil and gas deposits.[87] Also in 1987, China decided to

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86. See Background Notes: Philippines, August 1999, released by the Bureau of East Asian and Pacific Affairs, U.S. Department of State, available at <http://www.state.gov/www/background_notes/philippines_0899_bgn.html>.

87. *Zhong-yang-zhi-bao* (Central Daily News), Taipei, Taiwan, February 26, 1988, p. 1.

separate Hainan Island from Guangdong Province, making it a province in its own right.[88] China declared the Spratly Islands to be the "strategic border" of Hainan province.[89] In January 1988, a conference was held in Beijing to examine all kinds of issues in relation to the Spratly Islands.[90] In February 1988, China began to construct a permanently-occupied observation station on Fiery Cross.[91] One month later, Chinese and Vietnamese ships exchanged fire in the waters near Johnson Reef in the Spratly area.[92] Since the 1988 naval skirmish, there have been indications that China is considering military means to settle the Spratly Islands dispute.[93]

In April 1988, China accused Vietnam of landing war preparations around the disputed Spratly Islands.[94] In May 1988, it was reported that there were twenty Chinese and thirty Vietnamese warships in the Spratly area.[95] In March 1989, a Spratly Front Line Headquarters was established to command a patrolling mission in the Spratly area.[96] In August 1989, China placed "sovereignty markers" on six features of the Spratly Islands group.[97] In September 1989, the Chinese Ministry of Foreign Affairs issued a statement, demanding the withdrawal of all Vietnamese forces from the Spratly Islands.[98] It was reported that the Chinese navy was preparing for actions against Vietnam in the Spratly Islands in late 1989. However, the planned military actions were cancelled, mainly because of a shortage of funds and the foreign policy consideration of not being further isolated from the international community after the Tiananmen Square massacre in June 1989.[99]

In August 1990, in an effort to allay ASEAN's fear over Beijing's actions in the SCS area, Li Peng, the Chinese Premier, proposed during a press conference held in Singapore that "China is

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88. *Central Daily News*, September 4, 1997, p. 7.

89. Michael Bennett, "The People's Republic of China and the Use of International Law in the Spratly Islands," *Stanford Journal of International Law*, vol. 28, 1992, p. 428.

90. *People's Daily* (oversea edition), January 13, 1988, p. 4.

91. John W. Garver, "China's Push through the SCS: The Interaction of Bureaucratic and National Interests," *The China Quarterly*, 1992, p. 1008.

92. For a detailed Chinese report on the incident, see *People's Daily* (oversea edition), April 1, 1988, p. 1.

93. Michael Bennett, *supra* note 89.

94. See *Washington Post*, April 6, 1988, p. 32.

95. "Conflict in Spratlys Spur Rift between Hanoi and Moscow," *The Christian Science Monitor*, June 14, 1988, p. 8.

96. *Shi-je-zhi-bao* (World Journal), March 16, 1989, p. 31.

97. *World Journal*, August 7, 1989; *Central Daily News*, August 8, 1989, p. 1.

98. *Central Daily News*, October 10, 1989, p. 4.

99. John W. Garver, *supra* note 91, p. 1015.

ready to join efforts with Southeast Asian countries to develop the Spratly Islands, while putting aside for the time being the question of sovereignty."[100] The same proposal was restated by the Chinese delegation during the Second Workshop on Managing Potential Conflicts in the SCS held in Bandung, Indonesia in July 1991.[101] However, the idea was not much different from the one given in 1978 when China proposed to shelve the issue of sovereignty over the Diaoyu (Senkaku) Islands in the East China Sea and jointly develop the islands with Japan, which also claims sovereignty over the Diaoyu Islands.[102] In addition, the proposal did not mean that China had decided to suspend its efforts to consolidate control in the SCS. In fact, actions had continuously been taken by China in support of its sovereignty claims since 1991.

In October 1991, it was reported that the Chinese Standing Committee of the National People's Congress was in the process of deliberating a draft law on territorial seas and contiguous zones.[103] In January 1992, the vice-governor of Hainan Province, accompanied by three generals and 132 officials, conducted high-ranking Chinese inspection of the Spratlys to date. Seven "sovereignty markers" were placed on James Shoal, and one "inspection memorial marker" on Yongshu Jiao (Fiery Cross).[104] On February 25, 1992, the Law on the Territorial Sea and the Contiguous Zone of the People's Republic of China was adopted.[105] In May 1992, a contract was signed between China's National Offshore Oil Company and Crestone Energy Corporation of the United States in the area near Wan'an Tan (Vanguard Bank) in the Spratly Islands group.[106] The Vietnamese Foreign Ministry issued a statement, protesting

100. "Reef Knots: China Seeks ASEAN Support for Spratly Plan," *Far Eastern Economic Review*, August 30, 1990, p. 11.

101. See Proceedings of the Workshop on Managing Potential Conflicts in the SCS, Bandung, July 15-18, 1991, Annex O: Speech on Political and Security Issues by Wang Ying-fan, pp. 191-194.

102. *World Journal*, September 8, 1990, p. 1. For recent developments of the dispute, see Hungdah Chiu, "An Analysis of the Sino-Japanese Dispute over T'aoyutai Islets (Senkaku Gunto)," *Chinese Yearbook of International Law and Affairs*, Vol. 15 (1996-1997), pp. 9-31.

103. *World Journal*, October 28, 1991, p. 2.

104. *World Journal*, January 23, 1992, p. A10.

105. The official English version of the law is reprinted in Bureau of Oceans and International Environmental and Scientific Affairs (BOIESA), United States Department of State, *Limits in the Seas: Straight Baselines Claim: China*, No. 117, July 9, 1996, pp. 11-14.

106. Barry Wain, "Beijing and Hanoi Play with Fire in SCS," *The Asian Wall Street Journal*, July 20, 1994, p. 5.

that the contract "seriously violated Vietnam's sovereign rights over its continental shelf and exclusive economic zone."[107] Despite the Vietnamese protest, China warned that it would use its navy, if necessary, to enforce the contract.[108] About two months later, China placed a "sovereignty marker" on Nanxun Jiao (Gaven Reef) of the Spratly Islands group.[109]

In July 1994, it was reported that China had deployed two warships in the Spratly area to prevent the Vietnamese from re-supplying a rig which was drilling in a corner of the Crestone contract area.[110] In late January 1995, a group of local officials from Hainan Province, led by the governor, visited the Spratly Islands. During the visit, fifteen "sovereignty markers" in total were placed on Zengmu Ansha (James Shoal). In early February 1995, the Philippines detected that structures had been built by China on Meiji Jiao (Mischeif Reef). The reef was also claimed by Manila and was located just 200 or so kilometres from Palawan Island of the Philippines. Videl Ramos, president of the Philippines, accused China of deploying armed vessels in the waters adjacent to the disputed reef.[111]

To back up its actions in the contested Spratly area, China had been strengthening its military power since the late 1980s, upgrading its naval and air capabilities. As a result of this strategic consideration, China's navy and air force have received a disproportionate share of the Chinese military budget in recent years.[112] A large amount of China's military budget was spent on acquiring advanced foreign-made weapon systems and technology, including bombers, long-range transports, airborne warning and control planes, high altitude interceptors, submarines, ballistic missiles and aerial refueling technology. In addition, airstrips, airbases, airplane hangars, ports and other military facilities were built on the islands controlled by Chinese troops in the SCS to help increase China's striking capability.

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107. "China Stirs the Pot," *Far Eastern Economic Review*, July 9, 1992, p. 14.

108. Barry Wain, *op. cit.*

109. *Lein-he-bao* (United Daily News), Taipei, Taiwan, December 1, 1992, p. 10.

110. *United Daily News*, Taipei, Taiwan, July 22, 1994, p. 1.

111. See "Territorial Imperative," *Far Eastern Economic Review*, February 23, 1995, pp. 14-16; also "Making Mischief," *The Economist*, February 18, 1995, p. 28.

112. See Yihong Zhang, "China Heads toward Blue Waters," *International Defense Review*, November 1993, p. 879; also David Shambaugh, "Time for China to Address Worries about Its Military Intentions," *International Herald Tribune*, November 8, 1993, p. 8.

In July 1990, China completed the construction of a major airstrip on Woody Island (Yunghsing Island), the largest of the Paracel archipelago. The runway was reported to be 2,600 meters long and could accommodate any aircraft of the People's Liberation Army (PLA). Accordingly, the airfield extended aircover for Chinese naval and merchant vessels sailing to and from the nearby Spratly Islands.[113] In October the same year, it was reported that China had acquired aerial-refueling kits from Iran, and that the China's South Sea fleet's naval aviation arms was expected to be the first unit to be equipped with the technology. This refueling capability is important to China's military actions in the Spratly Islands, mainly because it could help overcome the problem of the inability of Chinese aircraft to provide air cover for its warships against Vietnamese fighters.[114] In 1992, China acquired the French-made Naval Crotale surface-to-air missile system, which was placed on the refitted *Luda*-class destroyers. Also in 1992, China began building 27 *Jianghu*-class frigates.[115] During the period between 1992 and 1993, China purchased 26 *Sukhois* 27 fighter aircraft, 10 *IL76* heavy transport aircraft, and 100 *S300* surface-to-air missiles from Russia.[116] In April 1993, it was reported that China transferred three *Romeo*-class convention submarines from its North Sea Fleet to the South Sea Fleet to help patrol the contested areas of the SCS.[117] In August 1993, China was constructing a naval port near the airstrip on Woody Island.[118] In March 1994, China deployed additional warplanes at the airbase on Woody Island.[119] In May 1994, China launched its first new indigenous diesel submarine, *Wuhan*-class.[120]

In October 1994, a Chinese *Han*-class submarine was involved in a three-day encounter with the U.S. carrier *USS Kitty Hawk* in

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113. "China Boosts Presence in SCS," *International Defense Review*, May 1994, p. 10; also *China Post* (Taipei, Taiwan), March 7, 1994, p. 1; and *United Daily News*, March 6, 1994, p. 4.

114. "Fuel for Thought," *Far Eastern Economic Review*, October 4, 1990, p. 8.

115. Allen Shephard, *supra* note 84, p. 186.

116. "Power Game," *Asia 1994 Yearbook*, p. 22; Tai Ming Cheng, "Sukhois, Sams, Subs: China's Steps Up Arms Purchases from Russia," *Far Eastern Economic Review*, April 8, 1993, p. 23; and Yihong Zhang, *supra* note 102, p. 880.

117. "Quiet Menace," *Far Eastern Economic Review*, April 8, 1993, p. 9.

118. *The China Post*, August 22, 1993, p. 11.

119. *China Post*, March 7, 1994, p. 1.

120. Barbara Starr, "'Designed in China': A New SSK Is Launched," *Jane's Defense Weekly*, August 13, 1994, p. 3.

the Yellow Sea.[121] The incident was viewed by U.S. officials as "one of the clearest indications of China's intentions to deploy its navy as a blue water force."[122] In November 1994, China signed an agreement to purchase four *Kilo*-class submarines from Russia.[123] The first of the four purchased submarines was transported to the Chinese North Sea Fleet in February 1995.[124] In September 1996, China signed a contract to purchase two *Sovremenny*-class destroyers from Russia. The first destroyer was delivered to China in February 2000 and the second in January 2001. The purchased destroyers carry *Sunburn* supersonic missiles that can threaten the defense of U.S. warships. China tested firing the *Sunburn* supersonic missiles at sea in November 2000.[125] It was also observed that China's navy had received increased investments from its government to deploy advanced ballistic missile submarines, as well as new nuclear-powered attack and diesel-electric submarines.[126] After obtaining the needed technology from Russia, China began to build its own nuclear-powered strategic submarines, expected to be completed in 2001.[127] In addition, China is now building one 10,000 metric ton aircraft carrier, which is expected to join the PLA Navy in 2006.[128] Moreover, in 1999, China purchased 40 *Su-30MKK* fighters from Russia. The first ten of the deal were delivered to China in December 2000. The Chinese purchased 28 *Su-27* fighters from Russia, also delivered to China by the end of 2000.[129]

Since an increase in defense budget is often viewed as one of the important indicators of a country's strategic intentions or priorities, it is also important to take a look at the continuing increases in China's defense budget since the late 1980s. In 1988, China's defense budget was Y21.5 billion.[130] The budget was increased to

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121. The incident was confirmed and reported in December 1994. See *United Daily News*, December 16, 1994, p. 3.

122. "'Han Incident' Proof of China's Naval Ambition," *Jane's Defense Weekly*, January 7, 1995, p. 5.

123. Kathy Chen, "China's Purchase of Subs May Fuel Regional Worries," *The Asian Wall Street Journal*, February 9, 1995, p. 1.

124. *United Daily News*, February 20, 1995, p. 4.

125. *China Times* (Taipei), January 19, 2001, p. 11.

126. "USA Fears Growth in Nuclear Chinese Navy," *Jane's Defence Weekly*, January 7, 1995, p. 6.

127. See *Jane's Defence Weekly*, February 18, 1998, p. 37; and *United Daily News* (Taipei), January 7, 2001, p. 11.

128. *United Daily News*, January 16, 1995, p. 2.

129. *China Times* (Taipei), December 24, 200, p. 13.

130. *New York Times*, March 17, 1995.

Y24.55 billion in 1989[131]; Y29.03 billion in 1990[132]; Y32.5 billion (US$6.11 billion) in 1991; Y37 billion in 1992 (US$6.76 billion); Y41.8 billion (US$7.31 billion) in 1993; Y58 billion (US$6.7 billion) in 1994; Y63.3 billion (US$7.6 billion) in 1995; Y70.2 billion (US$8.4 billion) in 1996; Y98.5 billion in 1998; and Y107.6 billion in 1999.[133] In October 2000, it was reported that the Chinese defense budget for 2000 was set at Y 121.2 billion.[134] In March 2001, it was further reported that the budget was to be set at Y141 billion (US$17 billion), marking the 13th straight year of double-digit increases in the Chinese military budget.[135]

China's external behavior in the SCS area and its growing military buildup since the late 1980s indeed made the countries in Southeast Asia and other countries in the Asia-Pacific region feel uneasy. Most of the countries in the region worried about China's intentions of: (1) using military force to consolidate its sovereignty claim to the Spratly Islands; (2) turning the entire SCS into a "Chinese lake"; (3) filling the power vacuum in yhe Southeast Asia created by the reduced military presence of the U.S. and the former Soviet Union; and (4) seeking a sphere of influence in Southeast Asia. However, in an attempt to allay the fears of the countries in the Asia-Pacific, Beijing repeatedly assured that its military modernization was for purpose of self-defense only,[136] that China had no expansionist and hegemonistic intentions in the region,[137] that China never sought a sphere of influence,[138] that China had no intention of filling the "power vacuum" in Southeast Asia,[139] that the

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131. *The Military Balance 1989-1990* (London: The International Institute for Strategic Studies, 1989), p. 146.

132. *China Times* (Taipei), February 12, 1995, p. 9.

133. *The Military Balance 1992-1993*, p. 145; *The Military Balance 1993-1994*, p. 152; *The Military Balance 1994-1995*, p. 170; *The Military Balance 1996-1997*, p. 179; and *China Times*, October 17, 2000, p. 14.

134. *China Times,* October 17, 2000, p. 14.

135. *Central Daily*, March 12, 2001, p. 9.

136. Ge Yang, "China's Rise: Threat or Not?" *Beijing Review*, January 30 - February 5, 1995, pp. 24-25.

137. The Chinese premier Li Peng's statement, see Chrlyle A. Thayer, "Sino-Vietnamese Relations," *Asian Survey*, Vol. 34, No. 6, June 1994, p. 526.

138. Statement of Li Lanqing, Vice-Premier of China's State Council, see "The Pacific Century," *Far Eastern Economic Review*, June 2, 1994, pp. 21-22; and Qian Qichen's statement, "China's Position on Asia-Pacific Security," *Beijing Review*, August 8-14, 1994, p. 22.

139. Chinese Foreign Minister Qian Qichen's statement, see Raphael Pura, "China Seeks Closer Security Ties to ASEAN," *The Asian Wall Street Journal*, July 22, 1992, p. 1, 7.

Spratly issue would be settled by peaceful means,[140] and that China would "always be a positive force for peace, stability and development in the Asia-Pacific region."[141]

China's repeated assurance of peaceful intentions had not totally been rejected by the countries in the region. Malaysia and the United States seemed to accept the Chinese statements at face value. In March 1994, for instance, Malaysian Prime Minister Mahathir Mohamad asserted that China was no longer a threat in the region.[142] In January 1995, when visiting New Delhi, U.S. Defense Secretary William Perry pointed out that China would not be a global or regional threat, even though Beijing's defense budget had been increased.[143] During a press conference held in Singapore in early March 1995, Admiral Richard Macke, the commander-in-chief of the U.S. Pacific Command, stated that the buildup of China's naval power and the increase in its actions in the Spratly Islands would not create an immediate threat to the Asia-Pacific region.[144] In March 1995, Dick Cheney, former U.S. Defense Secretary, mentioned in a news conference in Singapore that, "I do not have the feeling that the Chinese are embarked on some kind of massive military arms buildup that threatens the security and stability of the (Asia-Pacific) region."[145] Clive H. Schofield and William G. Stormont also suggested that

> [a]lthough China's rapid naval expansion, its entrenched position on the Spratly Islands, and its demonstrated willingness to use force provide compelling reasons for concern among the states of Southeast Asia, . . . fears of an aggressive, expansionist China are exaggerated, as both international and domestic constraints severely limit China's options.[146]

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140. China's Defense Minister Chi Haotian's statement, see "Power Game," *supra* note 116, p. 19; see also in "Fear of Expansionism Groundless," *China Post*, February 23, 1995, p. 2.

141. Qian Qichen's statement, see Michael Vatikiotis, "Uncharted Waters," *Far Eastern Economic Review*, August 5, 1993, p. 11.

142. See J.N. Mak, "ASEAN Maritime Insecurity: Contigency Planning in an Uncertain World," *International Defense Review*, Defense' 95, p. 60; see also "Trouble on the Horizon," *Far Eastern Economic Review*, September 23, 1993, p. 26.

143. *United Daily News*, January 15, 1995, p. 9.

144. *United Daily News*, March 8, 1995, p. 10.

145. "Beijing Says no Tension Exists over Spratlys," *China Post*, March 11, 1995, p. 1.

146. Clive H. Schofield and William Stormont, "An Arms Race in the SCS?" *Ocean Yearbook*, No. 12, 1996, p. 304.

Most SCS littoral states, however, did not accept the Chinese assurance of peaceful intentions. They pointed out that Beijing's assurances had not been supported with actions. In fact, their apprehension over China's intentions in the entire SCS area had been reinforced by the discovery of four structures built by the Chinese on Mischief Reef of the disputed Spratly Islands in February 1995. A regional perception of China as a potentially destabilizing factor, threatening peace and security in the Asia-Pacific region, had also been fortified. On March 18, 1995, in response to the disputes between China and the Philippines over the ownership of Mischief Reef, ASEAN foreign ministers issued a statement in Singapore, expressing their "serious concern over recent developments which affect peace and stability in the SCS."[147] Also in March 1995, Australia, New Zealand, Thailand, Singapore, Indonesia, Malaysia, and Hong Kong started an 18-day-long joint naval exercise in the waters near the northern part of Australia. The purpose of the exercises was to strengthen military cooperation among the participant countries to maintain the long-term security of the Southeast Asia region.[148]

E.   Unilateral Reactions to China's External Behavior in the South China Sea

As shown above, China's actions in the Spratly Islands and its growing military buildup since the late 1980s have made the countries involved in or concerned with the Spratly disputes uneasy. In response, unilateral actions have been taken by both the claimant and non-claimant countries in the region, aiming at strengthening their respective naval and air capabilities. In addition, unilateral actions have also been taken by the claimant countries to help consolidate their sovereignty and maritime jurisdictional claims in the SCS area. The following reviews the unilateral actions taken by the claimant and non-claimant states before the issue of the official statement on the Spratlys and the SCS by the U.S. Department of State in May 1995.

In 1991, Taiwan agreed on a US$4.8 billion deal to buy 16 *La Fayette*-class frigates from France. In July 1992, the U.S. Congress approved to lease three *Knox*-class frigates to Taiwan.[149] In late

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147. "ASEAN Ministers Worry over Spratly Islands," *China News*, March 19, 1995, p. 2.

148. *United Daily News*, March 14, 1995, p. 9.

149. *China Post*, January 28, 1994, p. 16.

1992, Washington agreed to sell Taiwan 150 *F-16* fighters. In September 1993, the U.S. government announced the decision to sell four *E-2 Hawkeye* early warning aircraft and lease three *Knox*-class frigates to Taiwan.[150] In June 1993, Malaysia decided to purchase 18 *Mig29s* and eight US *F/A18Ds*.[151]

It was reported that the Philippines also planned to acquire foreign-made missile-armed patrol boats, light combat helicopters, fighter/trainer jets, and corvette ships.[152] In April 1994, the Philippines and Vietnam planned to strengthen their military cooperation. The plan was believed to be a response to China's increasing military pressures in the Spratly Islands group. In February 1995, in response to China's action on Mischief Reef, the Philippine Senate passed a bill to modernize the country's armed forces, with particular emphasis on the largely obsolete equipment of its navy and air force.[153]Brunei also spent an increasing amount of money on weaponry to guard its maritime interests. It purchased three 1,000-ton offshore patrol vessels, 16 *Hawk 100* fighter/trainer aircraft, and three or four *CN-235* aircraft fitted for maritime functions. In addition, Brunei was also considering buying two or three corvettes and up to six intermediate-lift helicopters for troop movements.[154]

Non-claimant countries in the area, such as Indonesia and Singapore, also purchased ships and aircraft to help increase their naval and air capability. In late 1992, for instance, Indonesia signed a deal to purchase 39 second-hand former East German warships.[155] Singapore acquired a new support ship and upgraded six *Sea Wolf* missile craft and numerous aircraft. It also planned to purchase another eleven *F-16* aircraft, four additional *Fokker-50 Maritime Enforcer Mk2* aircraft, airborne early warning and control (AEW&C) aircraft, six missile corvettes with surface warfare and anti-submarine capabilities, and six mine counter-measure vessels.[156] Thailand, for its part, purchased a helicopter carrier from Spain.[157]

There has been considerable concern expressed by security analysts that these new arms acquisitions will fuel an arms race in

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150. *Ibid.*, p. 22.

151. "Power Game," *supra* note 116, p. 24.

152. Allen Shephard, *supra* note 84, pp. 186-187.

153. "Spratlys Tension Helps Push Forces Upgrade," *Jane's Defense Weekly*, February 25, 1995, p. 6.

154. Allen Shephard, *supra* note 84, p. 187.

155. "Power Game," *supra* note 116, p. 23.

156. Allen Shepherd, *supra* note 84, p. 187.

157. See Charles A. Meconis, "Naval Arms Control in the Asia-Pacific Region after the Cold War," *Ocean Yearbook 10*, 1994, p. 358.

the Asia-Pacific region.[158] However, while Clive H. Schofield and Willaim G. Stormont agree that the fact that "force modernization [in the SCS area] is proceeding apace is undeniable," they argue that, "[w]hether this [defense acquisitions] constitutes an arms race is more debatable."[159] Perry Wood is of the opinion that such fears are misplaced. Instead, he suggests that the increasing arms purchases in Southeast Asian countries "actually represent very modest efforts to obtain some capability to patrol adequately and protect their air and sea territory."[160] Andrew Mack in his paper assessing the implications of the arms build-up in East Asia does not conclude that a genuine arms race was in progress in the Asia-Pacific region. Nevertheless, he does point to some threatening long-term implications: (1) the region is moving into a period of uncertainty reflected in the current military build-up; (2) if the build-up continues at the present rate it is likely soon to generate a growing regional concern; (3) the strike power of regional states is increasing and as power projection capabilities increase, the ability of regional states to threaten other states also increases; and (4) military build-ups are not, in themselves, a cause of instability when political relationships are good, but the very nature of offensive weapons acquisitions will tend to cause concern when the strategic future appears uncertain, and instability when political relationships deteriorate.[161]

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158. See Amitav Acharya, "An Arms Race in Southeast Asia?" reprinted in *The Evolving Pacific Power Structure*, edited by Derek da Cunha (Singapore: Institute of Southeast Asian Studies, 1996), pp. 83-88; Amitav Acharya, *"An Arms Race in Post-Cold War Southeast Asia? Prospects for Control,"* Pacific Strategic Paper, No. 8, Singapore: Institute for Southeast Asian Studies, 1994;Clive H. Schofield and William G. Stormont, "An Arms Race in the SCS," *Ocean Yearbook* 12, 1996, pp. 286-305; Michael G. Gallagher, "China's Illusory Threat to the SCS," *International Studies*, vol. 19, No. 1 (Summer 1994), pp. 169-194; and Andrew Mack and Desmond Ball, *"The Military Build-Up in the Asia-Pacific Region: Scope, Causes and Implications for Security,"* Australian National University Strategic and Defense Studies Centre Working Paper, No. 264, Canberra, Australia: Australia National University, October 1992; Panitan Wattanayagorn and Desmond Ball, "A Regional arms Race?" *Journal of Strategic Studies*, September 1995, pp. 147-174; "Head Off East Asia Arms Race," *Aviation Week and Space Technology*, April 17, 1995, p. 68.

159. Clive H. Schofield and William G. Stormont, *ibid.*, p. 305.

160. Perry Wood, "The United States and Southeast Asia: Toward A New Era," in *Asian Security to the Year 2000*, edited by Dianne L. Smith, the Strategic Studies Institute, U.S. Army War College, December 15, 1995, p. 130.

161. Andrew Mack, "Reassurance Versus Deterrence Strategies for the Asia-Pacific," February 1991, cited in Edward L. Miles, "U.S. Security Interests in a Post-Cold War and the Law of the Sea," *Columbia Journal of Transnational Law*, Vol. 36, 1997, p. 382.

In addition to building up their naval and air capabilities, the countries involved in the disputes over the ownership of the Spratly Islands have also taken a variety of actions in support of their sovereignty claims since 1990. In September 1991, Malaysia built an airstrip on Swallow Reef of the Spratly Islands group, which has been under its control since 1977.[162] The airstrip was built not only for military but also tourist purposes. In late 1991, Malaysia declared that the atoll was ready to receive tourists.[163] In July 1993, it was reported that Taiwan was considering building an airfield on its occupied island of Itu Aba (Taiping Dao), the largest in the Spratly Islands group.[164] In April 1994, Taiwan dispatched two maritime police patrol vessels to Itu Aba in support of Taiwan's sovereignty claims.[165] Again, in March 1995, Taiwan announced that its maritime police would send patrol vessles to the Spratly Islands to carry out regular patrol missions.[166] In May 1994, Vietnam leased a block containing the promising Blue Dragon structure, located just west of Crestone contract area, to a consortium that included the U.S. oil company Mobil.[167] In August 1994, it was reported that the Vietnamese warship had circled around the Chinese exploratory vessel *Shiyann 21* in the disputed waters near the Spratly Islands and finally forced the vessel to sail into international waters.[168] In September 1994, China accused Vietnam of building a fishing harbor on nanwei Dao (Spratly Island) of the Spratly Archipelago which was occupied by Vietnamese troops.[169]

F. Regional Attempt to Help Manage Potential Conflicts in the South China Sea

Since 1990, several regional attempts, both official and unofficial, have been made, aimed at establishing a regional security dialogue to help diminish or manage the existing potential conflicts in the SCS area. In July, for instance, during the twenty-fifth AMM, the foreign ministers expressed their concerns that the SCS territo-

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162. *World Journal*, September 11, 1991, p. 4.

163. See Lee Lai To, "Security Issues of the SCS in the Post-Cambodian Era," in Proceeding of the Third Workshop on Managing Potential Conflicts in the SCS, Yogyakarta, Indonesia, June 29 - July 2, 1992, p. 147.

164. *United Daily News*, July 14, 1993, p. 4.

165. *United Daily News*, April 25, 1994, p. 1.

166. *China Post*, March 29, 1995, p. 1.

167. Barry Wain, "Beijing and Hanoi Play with Fire in S. China Sea," *the Asian Wall Street Journal*, July 20, 1994, p. 5.

168. *China Post*, August 23, 1994, p. 9.

169. *China News*, September 9, 1994, p. 1.

rial disputes could escalate, affecting peace and security in Southeast Asia. In response, the ASEAN Declaration on the SCS was issued at the conclusion of the meeting, in which the foreign ministers stressed "the necessity to resolve all sovereignty and jurisdictional issues pertaining to the SCS by peaceful means, without resorting to force" and urged "all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes."[170] The Declaration was endorsed wholeheartedly by Vietnam. However, perceiving it as an ASEAN attempt to "internationalize" the Spratly issue, China only concurred with some of the Declaration's basic principles.[171] In September 1992, ASEAN's position on the Spratly disputes and the SCS issues was endorsed by a paragraph written in the final document of the Non-Aligned Movement's political committee. China, however, opposed its inclusion in the document.[172]

In July 1993, at the twenty-sixth AMM, a decision was taken to set up a formal ARF to discuss political and security issues in the Asia-Pacific region, including the disputes over ownership of the Spratly Islands in the SCS area.[173] China had previously been lukewarm toward the proposal, mainly because it traditionally has preferred a bilateral, sub-regional approach in dealing with international affairs. However, aware of changing sentiments in the region, and believing that it was better to be a participant than to sit out, Beijing eventually gave its support to the regional security dialogue.[174]

In July 1994, the first ARF was held in Bangkok, Thailand. Eighteen countries participated the first ARF meeting, including the six members of ASEAN (Brunei, Indonesia, Malaysia, the Philippines, Singapore, and Thailand), its seven dialogue partners (Australia, the European Community, Canada, Japan, South Korea, New Zealand and the United States), its three observers (Vietnam, Laos, and Papua New Guinea), plus Russia and China. The first ARF meeting was brief and had no formal agenda. In the chair-

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170. For the Declaration, see Joint Communique, Twenty-Fifth Ministerial Meeting, Manila, July 21-22, 1992, in *ASEAN Economic Bulletin*, Vol. 9, No. 2 (November 1992), pp. 235-236.

171. See Trevor Findlay, "South-East Asia and New Asia-Pacific Security Dialogue," *SIPRI Yearbook* (Oxford: Oxford University Press, 1994), p. 133.

172. "Reason and Rhetoric," *Far Eastern Economic Review*, September 17, 1992, p. 10.

173. "Joint Communique, Twenty-sixth ASEAN Ministerial Meeting, July 23-24, 1993," *ASEAN Economic Bulletin*, November 1993, pp. 191-192.

174. Trevor Findlay, *supra* note 171, p. 141; "Power Game," *supra* note 116, p. 18.

man's statement the dispute over the Spratly Islands was not mentioned.[175] However, it was expected that a number of specific proposals relating to the future management of Asia-Pacific security, such as confidence and security building measures (CSBMs), maritime security and preventive diplomacy, would be discussed in the second ARF meeting to be held in Brunei in 1995.[176] During the first ARF meeting, Qian Qichen, the Chinese Foreign Minister, stated:

> There are some territorial and boundary issues left over from history which need to be resolved. . . . We unanimously agreed to set up the Association of Southeast Asian Nations (ASEAN) Regional Forum so as to jointly explore effective channels for dialogue, eliminate unstable factors, consolidate and strengthen peace and stability in this region, because all members value the healthy environment and this opportunity for historical development. . . . With regard to security in the Asia-Pacific region, China pursues three basic objectives: (1) its stability and prosperity; (2) a lasting peaceful and tranquil situation in the surrounding region; (3) and dialogue and cooperation on the basis of mutual respect and equality.[177]

Another important attempt to seek regional cooperation over the Spratly Islands dispute in the SCS was the idea of organizing an informal workshop on managing potential conflicts in the SCS, initiated in 1989 by Indonesian diplomat Dr. Hasjim Djalal and Professor Ian Townsend-Gault of the Centre for Asian Legal Studies at the University of British Columbia.[178] It was hoped that the workshop process, attended by government officials, researchers, academics, and naval personnel in their private capacities, would allow for a full and frank discussion of the SCS issues without the restrictions imposed by formal negotiations. The first workshop was held in Bali in January 1990. It was limited because it was attended by

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175. Frank Ching, "ARF Off to a Good Start," *Far Eastern Economic Review*, August 11, 1994, p. 34.

176. See Gareth Evans, "Security in the Asia-Pacific Region," *International Defense Review — Defense'95*, pp. 56-57; "Balancing Act for the Far East Nations," *Jane's World of Defense, 1995*, p. 60; Trevor Findlay, *supra* note 171, pp. 143-146.

177. For an excerpt of the speech, see "China's Position on Asia-Pacific Security," *Beijing Review*, August 8-14, 1994, pp. 21-22.

178. For a brief review of the four workshops held between 1990 and 1993, see William G. Stormont, "Report: Managing Potential Conflicts in the SCS," *Marine Policy*, Vol. 18, No. 4, 1994, pp. 353-356.

the ASEAN states only, and the three key players in the Spratly disputes, China, Vietnam, and Taiwan, were not invited. Nevertheless, an agreement was reached during the first workshop that all interested SCS parties should be invited to the second meeting.[179] China accepted the invitation, but insisted that the sovereignty issue not be put on the agenda.[180] The second workshop, attended by the six members of ASEAN, China, Taiwan, Vietnam, and Laos, was held in Bandung, Indonesia in July 1991.

A number of principles were agreed upon by the participants attending the second SCS workshop meeting, including:

> the renunciation of the use of force to settle territorial and jurisdictional disputes, the settlement of disputes by peaceful means through dialogue and negotiation, the exercise of self-restraint in order not to complicate an already difficulty situation, and cooperation in the disputed areas without prejudices to territorial claims and the common interests of the countries concerned.[181]

It is worth citing the statement presented by the Chinese participant at the second SCS workshop meeting, since it represents Beijing's official position regarding how it deals with the security issues in the Asia-Pacific region and the SCS area. Wang Ying-fan, one of the Chinese participants, stated in the fourth session (political and security issues) that:

> The Chinese Government has on many occasions expressed its stand on the issue of peace and security in Asia, emphasizing, among other things, the strict observation of the Five Principles of mutual respect for sovereignty and territorial integrity, mutual-non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence in state-to-state relations, striving for early fair and reasonable political solutions to the existing regional hot spot issues, settling international disputes through negotiations and peaceful means, and treating each other with goodwill and taking initiatives for greater exchanges between countries with

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179. Ted L. McDorman, "The SCS Islands Dispute in the 1990s — A New Multilateral Process and Continuing Friction," *The International Journal of Marine and Coastal Law*, Vol. 8, No. 2, 1993, p. 276.

180. "Maritime Hegemony: Indonesia Proposes Talks on SCS," *Far Eastern Economic Review*, January 10, 1991, p. 11.

181. William G. Stormont, *supra* note 178, p. 354.

strained relations, with a view to easing tension. . . . The Chinese Government has solemnly declared that neither now nor in future will China seek hegemony, nor will it try to establish spheres of influence for itself at any time or in any place. . . . China is ready to maintain, together with other countries, peace and stability in Asia through joint efforts.[182]

The third workshop was held in Yogjakarta in July 1992. Since the meeting took place in the aftermath of China's passage of the law on the territorial sea and the contiguous zone in February 1992, and its granting of an oil concession in the Spratly area to U.S. Crestone Energy Corporation in May 1992, tensions were elevated in the proceedings. Participants from Malaysia, Vietnam, and Indonesia challenged China's intentions regarding the enactment of the law and granting the oil concession. They also demanded an examination of the impact of China's actions on potential conflicts in the SCS.[183] Nevertheless, the participants reaffirmed the principles agreed to at the 1991 workshop. In addition, they agreed to establish two technical working groups consisting of experts, to prepare and, after approval by governments, organize joint activities on the following topics: (1) resource assessment and ways of development; and (2) marine scientific research.[184] The fourth SCS workshop took place in Surabaya in August 1993. The idea of "formalizing" the workshop process or "elevating" the workshop to a government-to-government level, was proposed by participants from Indonesia during the meeting, but was strongly opposed by participants from China and other countries. The head of the Chinese delegation commented, "No way! No way! We definitely disagree. The matter is very complicated. If the proceeding were formalized, the issue (the Spratly Islands dispute) would become very difficult (to handle)."[185] Moreover, the idea of inviting participants from non-regional states to the meeting was proposed and debated during the

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182. Wang Ying-fan, *supra* note 101, pp. 191-192.

183. *United Daily News*, July 2, 1992, p. 2.

184. See the Third Workshop on Managing Potential Conflicts in the SCS, Yogyakarta, Indonesia, June 29 - July 2, 1992, Annex F. Workshop Statement, p. 72. The first Technical Working Group Meeting on Marine Scientific Research, hosted by the government of the Philippines, was held in Manila between May 30 and June 3, 1993. The Technical Working Group Meeting on Resource Assessment and Ways of Development was held in Jakarta between July 6-7, 1993. See also William G. Stormont, *supra* note 178, p. 354.

185. *United Daily News*, August 25, 1993, p. 9.

meeting. Fearing that the SCS issues might be internationalized, participants from China and other countries also rejected the idea.[186]

The fifth workshop was held in Bukittinggi, Indonesia on October 26-28, 1994. During the meeting, Ali Alatas, foreign minister of Indonesia, proposed to broaden efforts at cooperation to countries beyond the SCS area. He raised the possibility of seeking the involvement of the United States, Japan, and Europe in technical projects to boost understanding in the Spratly area. The proposal, however, was rejected by China. Hsu Guang Jian, head of the Chinese delegation, stated that "it is not the time for us to involve them as we are just at the stage of discussing cooperation amongst ourselves."[187] In addition, China also opposed the proposal to freeze the armed forces in the SCS area.[188] Nevertheless, the meeting authorized Hasjim Djalal, co-chairman of the workshop, to seek support from non-SCS governments and agencies. Moreover, a US$3.6 million budget for a three-year study on biological diversity in the SCS was approved during the meeting.[189]

The sixth SCS workshop was held at Balikpapan, Indonesia on October 9-13, 1995; the seventh at Batam, Indoensia on December 14-16, 1996; the eighth at Puncak, Indonesia on December 2-5, 1997; the ninth at Ancol, Jakarta, Indonesia, on December 1-3, 1998; the tenth at Bogor, West Java, Indonesia on December 5-8, 1999; and the eleventh at Banten, Indonesia, on March 26-29, 2001. Since 1990, in total, 42 workshops, technical working group meetings, meetings of groups of experts, and study group meetings were held under the SCS workshop process (see Table 2 in Chapter I).

Besides the ARF and the SCS workshop process, there is another important unofficial dialogue process dealing with security issues in the Asia-Pacific region: the Council for Security Cooperation in the Asia Pacific (CSCAP), which was officially inaugurated in Kuala Lumpur in June 1993.[190] Membership in CSCAP is on an institutional basis. The ten founding members are leading research institutes (think tanks) in Australia, Canada, Indonesia, Japan, South Korea, Malaysia, the Philippines, Singapore, Thailand, and the United States. The purpose of CSCAP is to pro-

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186. *United Daily News*, September 20, 1993, p. 4.
187. *China Post*, October 27, 1994, p. 2.
188. *United Daily News*, October 29, 1994, p. 1.
189. *China Post*, October 29, 1994, p. 1.
190. See Frank Ching, "NGOs and Regional Security," *Far Eastern Economic Review*, June 30, 1993, p. 29.

vide "a structured process for regional confidence building and security cooperation among countries and territories in the Asia-Pacific region."[191] One of the major functions of CSCAP is "to provide an informal mechanism by which political and security issues can be discussed by scholars, officials, and others in their private capacities."[192] At present, think tanks of the following countries or organizations, serving as CSCAP national committee, are members of the CSCAP: Australia, Canada, China, the European Union, Indonesia, Japan, North Korea, South Korea, Malaysia, Mongolia, New Zealand, the Philippines, the Russian Federation, Singapore, Thailand, the United States, Vietnam, and India.[193] The directors of the UN Regional Centre for Peace and Disarmament in Asia and the Pacific and the UN Department of Political Affairs-East Asia and the Pacific Division also participate in the CSCAP activities with the status of affiliate/observer. Under the CSCAP, there exist five issue-oriented international working groups, namely the working groups on Confidence and Security Building Measures (CSBMs), Comprehensive and Cooperative Security, Maritime Cooperation, the Security of the North Pacific, and Transnational Crime.[194] The five working groups discuss specific topics outlined in the 1995 ARF final communique.

G.   Summary of Claims and Policies of the Claimant Countries

The SCS policies of the claimants (China, Vietnam, the Philippines, Malaysia, Taiwan, and Brunei) and non-claimants (Singapore, Thailand, and Indonesia) have been and will continue to be influenced, to various degrees, by the variables identified and discussed in last section. Likewise, the making of U.S. policy on the Spratlys and the SCS was and will remain influenced by the external policy input variables, in particular, the SCS policies of the claimant and non-claimant countries in the area.

Because the evaluation of the legal merits of the sovereignty and maritime jurisdictional claims of the countries in the SCS area is not the main focus of this study, and because there already exists a vast literature examining the vexed question of who owns what in

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191. Article II(1) of the Charter of the Council for Security Cooperation in the Asia Pacific.

192. Article II(2)(a) of the Charter of the CSCAP.

193. India is the only associate member of the CSCAP. Scholars from Taiwan also participate in the CSCAP's five international working group meetings.

194. For more information about the five working groups, visit CSCAP home page at <http://www/cscap.org>.

the SCS and why, only a very brief account of the claims, legal bases for the claims, and the SCS policies of the claimant countries is given below. The SCS policies of the three non-claimant countries (Indonesia, Singapore, and Thailand) are also summarized.

1. Brunei

Brunei does not claim territorial sovereignty over any of the islands in the area, but claims the part of the SCS nearest to it as part of its continental shelf and EEZ. In 1984, Brunei declared an EEZ that includes Louisa Reef located in the southeastern part of the Spratly Islands group. The legal basis for substantiating Brunei's claim flows from continental shelf provisions in the 1982 LOSC.[195] As commented by Daniel J. Dzurek, Brunei has the smallest jurisdictional claim in the Spratly area and has been relatively silent on recent developments in the disputed area.[196] Brunei remains the only claimant country without a military presence in the Spratly Islands.

2. China

China claims all of the islands and most of the SCS for historical reasons. The Chinese claims are based on a number of historical events, including the naval expeditions to the Spratly Islands by the Han Dynasty in 110 AD and the Ming Dynasty from 1403-1433 AD. Chinese fishermen and merchants have worked the region over time. China has also used archaeological evidence to bolster its claims to the ownership of the islands in the SCS.[197] Although the

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195. See Christopher C. Joyner, "The Spratly Islands Dispute: Rethinking the Interplay of Law, Diplomacy, and Geopolitics in the SCS," *The International Journal of Marine and Coastal Law*, Vol. 13, No. 2, 1998, p. 203. Jianming Shen, "Territorial Aspects of the SCS Island Disputes," in *Security Flashpoints: Oil, Islands, Sea Access and Military Confrontation*, edited by Myron H. Nordquist and John Norton Moore (The Hague/Boston/London: Martinus Nijhoff Publishers, 1998), p. 148; Melissa Castan, "Adrift in the SCS: International Dispute Resolution and the Spratly Islands Conflict," *Asia Pacific Law Review*, Vol. 6, No. 1, 1998, p. 97; Daniel J. Dzurek, "The Spratly Islands Dispute: Who's On First?" *Maritime Briefing*, Vol. 2, No. 1, 1996, p. 48; Brian K. Murphy, "Dangerous Ground: The Spratly Islands and International Law," *Ocean and Coastal Law Journal*, Vol. 1, 1995, p. 208; Barry Hart Dubner, "The Spratly 'Rocks' dispute — A 'Rockapelago' Defies Norms of International law," *Temple International and Comparative Law Journal*, Vol. 9, No. 2, Fall 1995, p. 314; Lee G. Gordner, "The Spratly Islands Dispute and the Law of the Sea," *Ocean Development and International Law*, Vol. 25, 1994, p. 68; and Allan Shephard, *supra* note 73, p. 195.

196. Daniel J. Dzurek, *ibid.*, p. 48.

197. See "China's Indisputable Sovereignty over the Xisha (Paracels) and Nansha (Spratlys) Islands," published on January 30, 1980 by the Chinese Foreign Ministry (in

Chinese government does not assert publicly that the entire waters enclosed by the so-called "tongue-shaped lines," "U-shaped lines," or "nine dotted lines" on the Chinese map of the SCS are the historic waters of China, some commentators maintain that the lines stand for the Chinese historic waters claim[198] (See Map 1 in Introduction) .

At present, the Paracel Islands group is under full Chinese control. In addition, China occupies eight islands of the Spratly group (see Table 3). China seized Johnson Reef of the Spratly Islands

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Chinese); Chi-Kin Lo, *China's Policy Towards Territorial Disputes: The Case of the SCS Islands* (London and New York: Routledge, 1989); Mark J. Valencia, Jon M. Vandyke, and Noel A. Ludwig, *Sharing the Resources of the SCS* (The Hague/Boston/London: Martinus Nijhoff Publishers, 1997), pp. 20-24; Marwyn S. Samuels, *Contest for the SCS* (New York and London: Methuen, 1982); Jeanette Greenfield, *China's Practice in the Law of the Sea* (Oxford: Clarendon Press, 1992), pp. 150-167; The-Kuang Chang, "China's Claims of Sovereignty Over Spratly and Paracel Islands: A Historical and Legal Perspective," *Case Western Reserve Journal of International Law*, Vol. 23, 1991, pp. 399-420. Also, see Allan Shephard, *supra* note 84, pp. 189-192; Christopher C. Joyner, *supra* note 195, pp. 199-200; Lee G. Cordner, *supra* note 195, pp. 62-65; Barry Hart Dubner, *supra* note 195, p. 309; R. Haller-Trost, *supra* note 52, pp. 329-332; Melissa Castan, *supra* note 195, pp. 95-96; Brian K. Murphy, *supra* note 195, pp. 200-202; Ji Guoxing, "Maritime Jurisdiction in the Three China Seas," Policy Paper #19, published by the Institute on Global Conflict and Cooperation, University of California, October 1995, pp. 14-15; Jon M. Van Dyke and Dale L. Bennett, "Islands and the Delimitation of Ocean Space in the SCS," in *Ocean Yearbook 10*, edited by Elisabeth Mann Borgese, et al. (Chicago and London: The University of Chicago Press, 1993), pp. 61-64; and H Harry L. Roque, Jr., "China's Claim to the Spratly Islands under International Law ," *Journal of Energy & Natural Resources Law*, Vol. 15, No. 3, August 1997, pp. 189-211.

198. For instance, see Daniel Dzurek, *ibid.*, pp. 11-15. For more discussion on the nature of the nine dotted lines, see Barry Wain, "What Does China Want?" *The Asian Wall Street Journal*, July 7-8, 1995, p. 6; Philip Bowing, "The Spratlys: China's Neighbors Are Losing Patience," *The International Herald Tribune*, April 7, 1995, p. 8; Rigoberto Tiglao and John McBeth, "Territorial Imperative," *Far Eastern Economic Review*, February 23, 1995, p. 16; Pan Shiying, *The Petropolitics of the Nasha Islands — China's Indisputable Legal Case* (Hong Kong: Economic Information Agency, July 1996); Pan Shiying, "SCS and the International Practice of the Historic Title," paper presented at the SCS Conference, held in Washington in September 1994 by American Enterprise Institute (AEI); Yann-huei Song and Peter Kien-hong Yu, "China's 'Historic Waters' in the SCS: An Analysis from Taiwan, R.O.C.," *American Asian Review*, Vol. 12, No. 4, Winter 1994, pp. 83-101; R. Haller-Trost, *The Contested Maritime and Territorial Boundaries of Malaysia: An International Law Perspective* (London/The Hague/Boston: Kluwer Law International, 1998), pp. 329-332; Mark J. Valencia, Jon M. Vandyke, and Noel A. Ludwig, *ibid.*, pp. 24-28; and Zou Keyuan, "The Chinese Traditional Maritime Boundary Line in the SCS and Its Legal Consequences for the Resolution of the Dispute over the Spratly Islands," *The International Journal of Marine and Coastal Law,* Vol. 14, No. 1, 1999, pp. 27-55.

group from Vietnam after a naval skirmish that occurred in March 1988 in the waters near the disputed island.

3. Malaysia

Malaysia claims 12 islands located in the southern part of the Spratly Islands group, Amboyna Cay, Ardasier Reef, Barque Canada Reef, Commodore Reef, Dallas Reef, Erica Reef, Investigator Reef, Louisa Reef, Luconia Shoals, Mariveles Reef, Royal Charlotte Reef, and Swallow Reef.[199] The Malaysian claims are based on the continental shelf principle. Based upon the argument that the islands are within its continental shelf area, Malaysia declared its sovereignty over the claimed islands by publishing a map in 1979.[200] At present, it is said that Malaysia occupies eight islands of the Spratly group (see Table 3).

4. The Philippines

The Philippine claims are based on the "discovery" of a Philippine explorer, Tomas Cloma, in 1956, and on the proximity principle. In 1971, the Philippines officially claimed the 53 islands in the Spratly group, referred to as the Kalayaan (Freedomland), by arguing that the claimed islands: (1) were not part of the Spratly Islands; and (2) had not belonged to anybody and were open to being claimed. In April 1972, the Philippine government incorporated the Kalayaan group into its Palawan province.[201] It is said that eleven of the islets or reefs in the Spratly Islands group are stationed by Philippine troops (see Table 3).

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199. R. Haller-Trost, *supra* note 52, pp. 326-327.

200. *Ibid.*, pp. 323-325. For more information, see also Lu Ning, *supra* note 48, pp. 54-57; R. Haller-Trost, "Some Comments on the Territorial Sea and Continental Shelf Map of Malaysia," in *Ocean Yearbook 12*, 1996, pp. 316-333; B.A. Hamzah, "The Spratlies: What Can Be Done to Enhance Confidence," ISIS Research Note, Malaysia, 1990.

201. See Lu Ning, *supra* note 48, pp. 50-54; L.G.Cordner, *supra* note 195, pp. 66-67; Christopher C. Joyner, *supra* note 195, pp. 201-202; Brian K. Murphy, *supra* note 195, pp. 206-207; Barry Hart Dubner, *supra* note 181, pp. 312-313; Daniel J. Dzurek, *supra* note 195, pp. 49-50; Gil S. Fernandez, "The Philippines' SCS Claims," in Aileen San Pablo-Baviera, ed., *The SCS Disputes: Philippine Perspectives,* published by the Philippine-China Development Resource Center and the Philippine Association for Chinese Studies, 1992, pp. 19-24; Wilfrido V. Villacorta, "The Philippine Territorial Claim in the SCS," paper presented at the International Adademic Conference on the Territorial Claims in the SCS, held at University of Hong Kong, December 4-6, 1990; Diane C. Drigot, "Oil Interests and the Law of the Sea: The Case of the Philippines," *Ocean Development and International Law*, Vol. 12, Number 1/2, 1982, pp. 23-70; and Pacifico A. Castro, editor, *The Philippines and the Law of the Sea* (Manila, Philippines: Foreign Service Institute, 1993).

Table 3.   Status of Islands, Reefs, Shoals, Cays, Islets, or Banks in the Spratly Area Occupied by the Claimant Countries

Claimants	Occupied Islands
China	Subi Reef, Gaven Reef, Johnson Reef, Cuarteron Reef, Fiery Cross, Mischief Reef, Hugh Reef, and McKennan Reef
Taiwan	Itu Aba Island
Veitnam	Southwest Cay, South Reef, Petley Reef, Sandy Cay, Eldad Reef, Namyit Islet, Discovery Great Reef, Discovery Small Reef, Ross Reef, Sin Cowe Islet, Colin Reef, Landstown Reef, Pearson Reef, West Reef, Tennent or Pigeon Reef, Alison Reef, Central Reef, East Reef, Cornwallis S. Reef, Spratly Island, Bombay Castle Reef, Jones Reef, Rifleman Bank, Owen Shoal, Ladd Reef, Barque Canada Reef, Amboyna Cay, Prince of Wales Bank, and Vanguard Bank
The Philippines	Thitu Island, Northeast Cay, West York Island, Flat Island, Nanshan Island, Lankiam Cay, Loaita Reef, Commodore Reef, Irving Reef, Reed Bank, Halfmoon shoal
Malysia	Mariveles Reef, Ardasier Bank, Ardasier Reef, Dallas Reef, Swallow Reef, Erica Reef, Royal Charlotte Reef, Investigator Shoal

Sources: Chen Ke Chin, *The SCS Islands of China* (Haikou, Hainan: International News Publishing Centre, 1996), pp. 540-549; Lung Chuan Ni, *A Study of Policy Strategy and Plans for Managing and Developing the SCS Islands* (Taipei: Taiwan Research Institute, 1998), p. 3-3 to p. 3-6; and *1996 National Defense Report, Republic of China* (Taipei: Li Ming Cultural Enterprise Co., Ltd, 1996), p. 26. (in Chinese)

5.   *Taiwan*

Taiwan claims sovereignty over the Spratly Islands, the Paracel Islands, MacClesfiled Bank, and the Pratas Islands.[202] Taiwan's claims are based upon history, geography, international law and the facts, which are believed to be similar to China's assertion. However, Taiwan's claims to the Spratly Islands are also based on its persistent occupation of the largest island, Itu Aba, of the Spratly

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202. See the Policy Guidelines for the SCS, see Kuan-Ming Sun, "Policy of the Republic of China Towards the SCS," *Marine Policy*, Vol. 19, No. 5, 1995, Appendix 1, p. 408.

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group since 1956.[203] As commented by L.G. Cordner, "the Taiwan case appears stronger in the contemporary period in its having effectively occupied Itu Aba Island between 1946 and 1950 and from 1956 onward."[204] Taiwan also claims historic waters jurisdiction within the so-called "U-shaped lines" found on Chinese and Taiwanese maps.[205] At present, Taiwan occupies, in addition to Itu Aba Island, the Pratas Islands.

6. Vietnam

Vietnam claims the entire Paracel and Spratly Islands. Its claims are based on history and continental shelf principles. It is said that Vietnam now occupies 29 of the Spratly Islands (See Table 3). Prior to 1974, the Paracel Islands were under Vietnam's control, but China ousted Vietnamese troops from the Paracel Islands after a naval skirmish in the waters near the disputed island. The Vietnamese claims also cover a vast area of the SCS, which is not clearly defined. Vietnam follows China's example of using archaeological evidence to bolster its sovereignty claims in the SCS.[206]

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203. See Christopher C. Joyner, *supra* note 181, pp. 200-201; L.G. Cordner, *supra* note 195, pp. 62-65; Barry Hart Dubner, *supra* note 181, pp. 310-311; Brian K. Murphy, *supra* note 195, pp. 205-206. See also Hungdah Chiu and Choon-ho Park, "Legal Status of the Paracel and spratly Islands," *Ocean Development and International Law Journal*, Vol. 3, No. 1, 1975, pp. 1-28; Steven Kuan-tsyh Yu, "Who Owns the Paracels and Spratlys? An Evaluation of the Nature and Legal Basis of the Conflicting Territorial Claims," *The Chinese Yearbook of International Law and Affairs*, Vol. 9 (1989-90), pp. 1-28; Statement by Tzen Wen-hua, Representative of Taipei Economic and Trade Office in Jakarta, in the Proceedings of the Second Workshop on Managing Potential Conflicts in the SCS, Bandung, Indonesia, July 15-18, 1991, pp. 289-290; "The Republic of China's Sovereignty over the Spratly Islands," a document published by the Government of the Republic of China on Taiwan, April 30, 1993; Kuan-Ming Sun, "Policy of the Republic of China towards the SCS," *Marine Policy*, Vol. 19, No. 2, 1995, pp. 401-409; Cheng-yi Lin, "Taiwan's SCS Policy," *Asian Survey*, Vol. 37, No. 4, April 1997, pp. 323-339.

204. L.G. Cordner, *supra* note 195, p. 65.

205. See Yann-huei Song and Peter Kien-hong Yu, "China's 'Historic Waters' in the SCS: An Analysis from Taiwan, R.O.C.," *American Asian Review*, Vol. 12, No. 4, Winter 1994, pp. 83-101.

206. See Brian K. Murphy, *supra* note 195, pp. 202-205; Melissa Castan, *supra* note 195, pp. 96-97; Barry Hart Dubner, *supra* note 195, pp. 311-312; Christopher C. Joyner, *supra* note 195, p. 201; L.G. Cordner, *supra* note 195, pp. 65-66; Jon M. Van Dyke and Dale L. Bennett, *supra* note 197, pp. 68-72; Mark J. Valencia, Jon M. Van Dyke, and Noel A. Ludwig, *supra* note 183, pp. 30-33; Daniel J. Dzurek, *supra* note 195, p. 50; Lu Ning, *supra* note 48, pp. 35-49. See also *White Paper on the Hoang Sa (Paracel) and Truong Sa (Spratly) Islands* (Saigon: Ministry of Foreign Affairs, Republic of Vietnam, 1975); Van Trong, "Ho Ang Sa Quan Dao Viet Nam" (Ha Noi: Nha Xuat Ban Khoa Hoc Xa Hoi, 1979) (in Vietnamese); Vu Phi Hoang, *Hai quan Dao Hoang Sa Va Truong Sa bo Phan Lanh tho Viet Nam*, (Hanoi: Nha Xuat Ban Quan Doi Nhan Dan, 1988) (in

Before concluding this chapter, it should be added that while Indonesia is not a claimant to any of the Spratly Islands, its exercise of sovereign rights and maritime jurisdiction in Indonesia's EEZs and continental shelf, including Natuna gas field, are believed to be affected by the Chinese and Taiwanese historic waters claims.[207] It should also be noted that China, and presumably, Malaysia are the two claimant countries that strongly opposed the involvement or interference of the United States in the process of managing or settling territorial and maritime jurisdictional disputes in the SCS area. However, it seems that most, if not all, of the member countries of ASEAN welcome a continuing U.S. military presence in the region, mainly because they view the United States as the principle military deterrent to the possible use of force by the claimant countries in settling the sovereignty and maritime jurisdictional disputes in the SCS area. It is reported that the Philippines, Thailand, Indonesia, Brunei, Malaysia, and Singapore have publicly supported the U.S. role in maintaining peace and security in the Asia-pacific region.[208] Vietnam has adopted a similar position in recent years. As far as the SCS issues are concerned, the Philippines has been the most active country in the region, trying to get the United States to intervene in the settlement of the Spratly Islands dispute.

Vietnamese); Luu Van Loi, "Cuoc Tranh Chap Viet-Trung Ve Hai Quan Bao Hoang Sa Va Truong Sa" (Ha Noi: Nha Xuat Ban cong an Nhan Dan, 1995) (in Vietnamese); *The Hoang Sa and Truong Sa Archipelagoes (Paracel and Spratly)* (Hanoi: Vietnam Courier, 1981); Statement by the Ministry of foreign Affairs of the Socialist Republic of Viet Nam on the Hoang Sa and Truong Sa Archipelagoes, August 7, 1979, the document is available at Paracels Forum's home page <http://members.tripod.com>; Proclamation by the government of the Republic of Vietnam, available at Paracels Forum's home page; and Epsey Cooke Farrell, *The Socialist Republic of Vietnam and the Law of the Sea* (The Hague/Boston/London: Martinus Nijhoff Publishers, 1998), Chapter 4.

207. For more information, see Douglas Johnson, "Drawing into the Fray: Indonesia's Islands Meet China's Long Gaze South," *Asian Affairs,* Vol. 24, No.3, Fall 1997, pp. 153-161; Kenneth Whiting, "Jakarta Wants Beijing to Clarify Intensions," *China Post,* May 4, 1995, p. 5; and "No Sea Border Snags with Mainland: Indonesia," *China Post,* June 27, 1995, pp. 1-2.

208. See the United States Security Strategy for the East Asia-Pacific Region, updated November 23, 1998, available at <http://www.defenselink.mil/pubs/easr98/>.

Annex 451

D.G. Wiencek & J.C. Baker, "Security Risks of a South China Sea Conflict", in *Cooperative Monitoring in the South China Sea: Satellite Imagery, Confidence-building Measures, and the Spratly Island Disputes* (J. C. Baker & D. G. Wiencek, eds., 2002)

COOPERATIVE MONITORING IN THE SOUTH CHINA SEA

SATELLITE IMAGERY, CONFIDENCE-BUILDING MEASURES, AND THE SPRATLY ISLANDS DISPUTES

EDITED BY

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Foreword by Richard H. Solomon

PRAEGER

**Westport, Connecticut
London**

4

Security Risks of a South China Sea Conflict

David G. Wiencek and John C. Baker

INTRODUCTION

The South China Sea is home to several flashpoints that present major security risks to regional stability. The nations that are contesting this disputed maritime territory continue to jockey for position and influence. Small military outposts, sometimes put in place under the guise of fishing shelters or scientific research stations with a purported civilian orientation, are being constructed with increasing frequency. The number of island occupations sharply increased in the 1980s and continued in the 1990s, and this trend shows no sign of abating in the early part of the twenty-first century.

The drive to occupy territory has given rise to incidents of violence. In 1974, China displaced Vietnam from the Paracels, in the northern reaches of the South China Sea.[1] In 1988, Vietnam and China fought the bloodiest battle to date in the South China Sea in a dispute over the Fiery Cross Reef in the Spratlys, which resulted in the loss of three Vietnamese ships and over 70 Vietnamese sailors killed or missing; others were captured. In recent years, we have seen a range of provocations take place among the different claimants, from overflying a contested island, to ship collisions, to the arrest and harassment of fishing vessels and fishermen. The close proximity of the disputants—Vietnamese-claimed Southwest Cay, for example, lies within eyeshot of Philippine-claimed Northeast Cay in the Spratlys—also heightens the risk of future incidents and military clashes.

Against this background and looming large in the near future is China's military buildup with its emphasis on power projection and blue water naval capabilities. China is clearly pursuing a strategy of expanding its military

naval guns, and landing pads that can accommodate military helicopters. Reports also indicate the presence of Silkworm anti-ship cruise missile installations on Woody Island in the Paracels in the northern region of the South China Sea.[10] The Silkworm missile has a range of 95 km/59 miles.

Furthermore, China has linked its island occupations with an expanding military strategy and force buildup that is designed to project power to the far reaches of the South China Sea and beyond. China is thus positioning itself to exert control—in time—of the region's vital sea lanes and airspace. It views the other claimants as challenging this predominant position. It also perceives attempts by outside nations, including the United States, as threatening and unwanted interference.[11]

Malaysia

Malaysia holds four of six reefs (Ardasier, Mariveles, Swallow, and a portion of Investigator Shoal) in its claimed area in the Spratlys. In 1991, Malaysia began constructing a resort and airstrip on Swallow Reef. But after years of adopting a relatively low-key posture in the Spratlys, Malaysia secured an outpost on Investigator Shoal in mid-1999 and may have occupied two additional nearby reefs. (Kuala Lumpur reportedly fabricated a two-story concrete building in Penang, in peninsular Malaysia, and had it towed to Investigator Shoal, some 700—800 nautical miles away.[12]) Prime Minister Mahathir described the new construction as follows: "We have built on our own zone and not outside the zone for climate research and marine life studies and also to prevent ship collisions."[13]

However, these moves prompted complaints from the Philippines, which also claims Investigator Shoal as Pawikan Shoal (its Filipino name). In October 1999, Malaysian and Philippine aircraft reportedly came into contact without incident near Investigator/Pawikan Shoal (discussed later).

It is unclear why Malaysia moved to raise its profile in the Spratlys. It could have been in response to events in the Philippines, where Washington and Manila upgraded defense ties in 1999, although Manila still lacks the military capability to enforce its claims. There also has been some speculation that Malaysian authorities may have been upset with Filipino counterparts over the latter's support for Deputy Prime Minister Anwar Ibrahim, who was ousted from power in late 1998. Thus, Malaysia's moves in the Spratlys could have been a way of demonstrating Malaysia's unhappiness with Manila.

Another explanation could be that Malaysia reached a tacit understanding with China to try and move the dispute away from the multilateral realm, into bilateral negotiations between Beijing and Kuala Lumpur. In 1999, Malaysia appeared to upgrade its relations with China. In January 1999, the People's Liberation Army (PLA) Chief of Staff visited Kuala Lumpur. Then,

in May, Malaysia's Foreign Minister visited Beijing and endorsed a bilateral "Joint Statement on Framework for Future Bilateral Cooperation." Among other things, the Framework noted that the two sides would work to improve defense cooperation, including the exchange of information and intelligence, reciprocal personnel and ship visits, and training. Regarding the South China Sea disputes, the Framework indicates that the matter should be solved through "bilateral friendly consultations."[14] Malaysia's apparent willingness to resolve this issue through bilateral diplomacy is an important departure from previous ASEAN positions. In the past, the Spratly dispute had mainly been one of China versus ASEAN, and the smaller Southeast Asian nations were able to unite in an effective diplomatic posture against their larger neighbor's maneuverings. It now appears, however, those calculations may have changed and Malaysia may have reached some form of agreement with China about the future of this important issue—an understanding that effectively undercuts ASEAN solidarity. Meanwhile, Malaysia is continuing to procure the advanced air and naval assets that will enable it to protect its territorial claims and offshore resources, including oil and gas reserves.

The Philippines

In recent years, the Philippines has been an active participant in the diplomatic and military maneuverings in the Spratly area, viewing the actions of China, in particular, as threatening to its national security. In what we have called the Mischief Reef I and II incidents of 1995 and 1998, Manila perceived Chinese actions as threatening to dominate by force Philippine-claimed areas. Furthermore, there also have been a number of low-level security-related incidents between the two sides over the past several years, and this pattern looks likely to continue. However, there is little that the Philippines can do militarily at present to thwart Chinese probing and island occupations in the Spratlys or the contested fishing waters around Scarborough Shoal. The Armed Forces of the Philippines (AFP) sorely lacks air and naval capabilities, and is in the process of a multi-year defense modernization and equipment upgrade effort. However, the Asian financial crisis of 1997–1998 severely setback AFP military acquisition plans. As one Philippine national security official described the situation: "At the moment China is like a dog peeing everywhere to mark out its territory ... we are on the edge of their claim and we are the weak link, so we suffer."[15] This situation has been exacerbated by internal political turmoil and security problems, including the continuing Muslim insurgency in Mindanao, and a persistent national political crisis that resulted in the President Joseph Estrada's removal from office in January 2001 on charges of corruption. Estrada's Vice President, Gloria Macapagal-Arroyo, assumed the presidency in the peaceful change of power.

Annex 452

Vivian L. Forbes,"Geographical Change: Direction and Continuing Issues", in *Southeast Asia Transformed: A Geography of Change* (Chia Lin Sien, ed. 2003)

Southeast Asia Transformed
A Geography of Change

Edited by
Chia Lin Sien

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# 2

GEOPOLITICAL CHANGE
Direction and Continuing Issues

Vivian Louis Forbes

Introduction

International terrestrial and maritime political boundaries continue to evolve in terms of their definition, functionality, and location (Prescott 1965, 1978). With over 200 independent states and about 35 dependencies in the world at the beginning of the twenty-first century, the study of political geography in general, and boundary delimitation in particular, has become increasingly complex. Modern terrestrial and maritime boundaries reflect the geography, history, politics, and economic stability of each state and its international relations with its neighbours. Practitioners and researchers from various disciplines — geography, international law, and political science — have all made important contributions in the determination, demarcation, and delineation of boundaries.

The world political map has seen many changes in terrestrial boundaries of Africa, Asia, and Europe during the latter half of the twentieth century. Former colonial powers in countries of these continents endeavoured to define boundaries so as to ensure the extent of their sovereignty, often with disregard to the local indigenous population that may have been adversely affected by such impositions (Lintner 1984). The wave of nationalism that swept through Africa and, to a less extent, Asia since the 1950s has seen new boundaries imposed, negotiated, and established; and ceasefire lines delineated — some with effect. The depiction of symbolized lines on maps have also resulted in prolonged, bitter boundary disputes that have soured

FIGURE 2.4
Southeast Asia: Shipping Lanes and Indonesia's
Archipelagic Sea Lanes
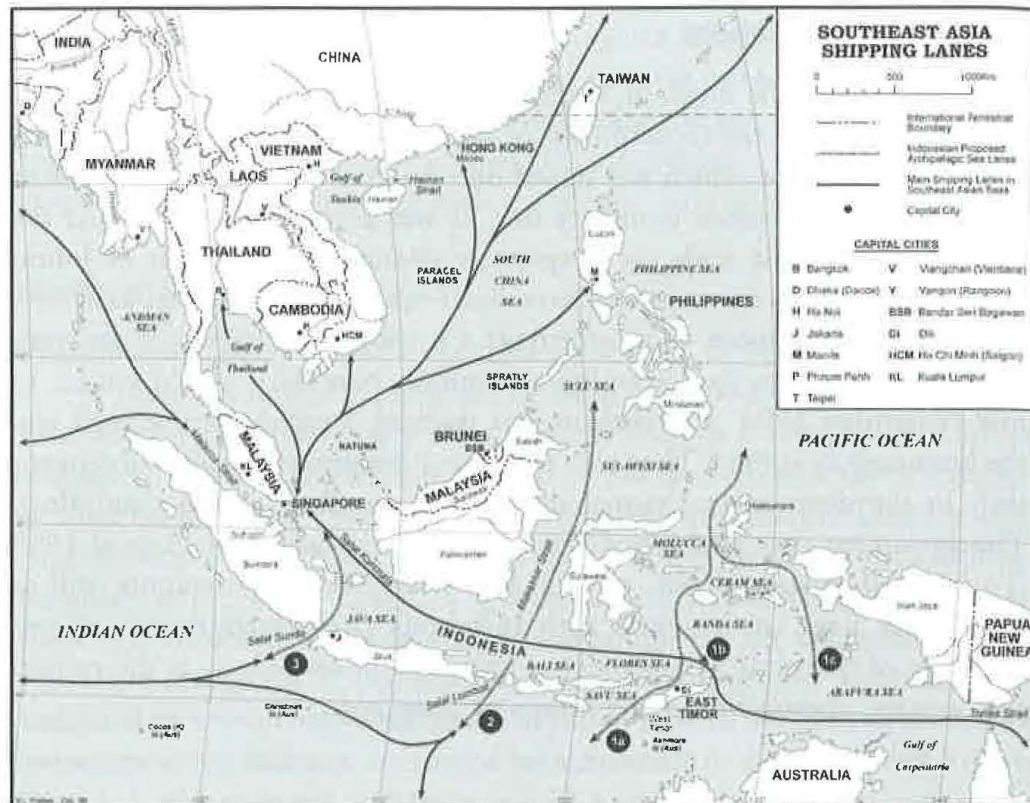
South China Sea: The Paracel and Spratly Islands

In 1946, Taiwan claimed sovereignty over the Spratly archipelago basing its claim on first discovery and continuous patronage. Since that time, four more littoral states of the South China Sea have claims over all or a few of the islands, islets, sand cays, and reefs of the archipelago. Mainland China began the scramble in 1949 when it claimed all the islands — Spratly, Paracel, and Pratas — and the adjacent sea space (Ba 1993; Hamzah 1993; Coomber 1995; Zeng 1995; Hancox and Prescott 1995; Prescott 1996b; Catley and Keliat 1997; Furtado 1999). Vietnam entered the scene in 1975, when China occupied by force the Paracel Islands (Chang 1990, p. 23). The Philippines, concerned with the actions of China and Vietnam, claimed a number of the Spratly islands and islets in 1971 to confirm historic rights to the islands. Malaysia claims those features in the archipelago that are part of its continental shelf and encompassed within the limits of

its EEZ defined in 1979. Brunei's claim extends to the limits of its EEZ. The EEZ limits of these two states have not been determined through negotiation.

Between 1974 and 1999 all claimants with the exception of Brunei had ensured their presence on the occupied islands by establishing lighthouses, navigational marks, meteorological and oceanographic observation centres, resort hotel, and fortifications with troops on land and ships stationed in the adjacent waters (Storey 1999). At the same time, efforts to resolve the issue of sovereignty over the archipelago has been discussed at numerous international fora and opinions relating to sovereignty over the islands expressed in academic literature and in print and electronic news media.

The former Philippine President, Joseph Estrada, reaffirmed the Philippine's commitment to seek a peaceful solution to the Spratly Islands dispute on 21 May 1999. He said that the government would "exhaust all diplomatic means to resolve this dispute". However, on 20 May 1999, a Chinese foreign ministry spokesman said that China had "indisputable sovereignty" over the Spratly Islands and their territorial waters. He claimed that the Philippines had illegally invaded and occupied some islands and reefs, violating China's territorial sovereignty. The report also noted that "President Joseph Estrada and Chinese Ambassador Fu Ying had agreed that the Spratlys dispute can be resolved through peaceful dialogues. According to the President, the Philippines and China should form a panel to study and discuss the resolution of the problem."

China condemned the sinking of a Chinese fishing boat in the disputed waters on 25 May 1999, calling it an "attack on its sovereignty" and demanding an investigation and compensation. The sinking took place near Scarborough Shoal, when a Philippine naval vessel collided with the Chinese fishing boat. President Estrada insisted that the responsibility for the incident lay with the Chinese, as they were "fishing inside Philippine territory" (*Manila Bulletin*, Internet Version, 21 May 1999; Xinhua, 20 May 1999; GMA-7 Radio Television Art Network, Quezon City, 21 May 1999; BBC Online, 25 May 1999).

The Philippines called for talks with Malaysia on 23 June 1999 following controversial new structures built by Malaysia on the disputed Spratly Islands. The Philippine Government said that Malaysia had built the structures in the Pawikan Shoal at the southern end of the Kalayaan Island group (Shephard 1994). They consisted of a concrete platform with a helipad and a two-storey building with radar, as well as several barges

with cranes, construction materials, and naval vessels without flags. The Philippine Government also stated that Malaysia had occupied two other areas of the island group — Antonia Luna Bank and the Mariveles Reef (Mantanani in Malay).

The Malaysian Prime Minister Mahathir Mohamad dismissed the Philippines' claims on 27 June 1999, stating that the Peninjau and Siput reefs were within Malaysia's EEZ. He said that Pawikan Shoal was being used for civilian research into climate and marine studies, and that the sandbar was "part of our territory". Mahathir also stated that Malaysia should "long ago" have claimed another reef, Terumbu Laksamana' but did not do so. The Philippines has not relinquished their claim to Sabah (on Borneo island) (*Financial Times*, 23 June 1999; AFP, Hong Kong, 27 June 1999).

ASEAN and China have taken a positive step towards a Code of Conduct in the South China Sea. A Working Group was set up by the ASEAN-China Senior Officials Consultations at the seventh annual meeting in Kuching, Malaysia, in April 1999. An ASEAN-China Working Group on the Code of Conduct met in Kuala Lumpur on 26 May 2000 and agreed on a consolidated working draft. The draft, which was built on the outcome of the first consultation of the ASEAN-China officials in Hua Hin, Thailand on 15 March 2000, served as a common basis for further consultation of the Working Group (Rosenberg 1999).

A Declaration on the Conduct of Parties in the South China Sea was signed at Phnom Penh, Cambodia on 4 November 2002. It reaffirmed the members' commitments to the purposes and principles on international law and ASEAN's Treaty of Amity and Co-operation in Southeast Asia. On the same day, members also signed a Joint Declaration of ASEAN and China on Co-operation in the Field of Non-traditional Security Issues.

Issues and Future Direction

Southeast Asia has been a region of repression, terror, and war since WWII. There have been three overlapping phases of armed conflict in Southeast Asia since 1945. First, came decolonization and its immediate aftermath. In Vietnam alone, over 600,000 people were killed between 1945 and 1954 during its war of independence from France. When Portuguese administrators walked out of East Timor in about August 1975, the eastern half of Timor Island and the enclave at Oeccusi were claimed and occupied by Indonesia, whose armed forces killed over 15 per cent of the Timorese population (Dunn 1983, p. 310).

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Bruce Elleman, "Maritime territorial disputes and their impact on maritime strategy: A historical perspective", in *Security and International Politics in the South China Sea: Towards a cooperative management regime* (S. Bateman and R. Emmers, eds., 2009)

Security and International Politics in the South China Sea

Towards a cooperative management regime

Edited by Sam Bateman and Ralf Emmers

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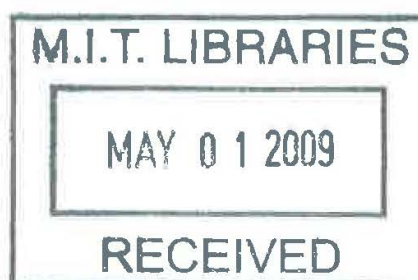
3 Maritime territorial disputes and their impact on maritime strategy

A historical perspective

Bruce A. Elleman

China has claimed many of the islands in the South China Sea as its sovereign territory for well over 100 years. Admiral Sa Zhenbing, the Commander-in-Chief of Qing China's post-1900 navy, even led a naval expedition to these waters in 1907 to enforce China's claim. During the 1930s, Japan invaded and took possession of many islands, only to lose them later to the Nationalists; to this day, Taiwan has retained control – over PRC protests – of several strategic islands, including Pratas Island and Itu Aba (Taiping Island).

To compensate for its former lack of a modern navy, including as yet no seaworthy aircraft carriers, Chinese PLA forces have been stationed on many of the disputed islands and atolls in the South China Sea. To bring unity to these diverse groups, the PRC has gradually networked these bases and has established elaborate signal stations. These facilities, which range from communications relays to radar units, not only demonstrate China's increasing regional power, but may support further maritime expansion into the disputed waters of the South China Sea.

By examining the historical conflicts in the South China Sea, this chapter will argue that these sovereignty disputes may have had a significant impact on both the recent growth of the People's Liberation Army Navy (PLAN) and on the probable adoption by the PRC of a more aggressive maritime strategy to enclose its territory and prevent outsiders from entering its sovereign waters. In fact, the PLAN's gradual build-up of these southern island bases may even allow Beijing to one day assert greater sovereignty over the South China Sea. Ominously, on December 4, 2007, China unilaterally announced it had created a new "city" in Hainan Province during November 2007 to administer the Paracels, Macclesfield Bank, and the Spratlys, even though China's sovereignty over these islands remains in dispute.

Historical claims over the South China Sea to World War II

On China's southern maritime frontier, there are a large number of actual and potential maritime tensions between Beijing and its Southeast Asian neighbors, including disputed sovereignty claims to the Pratas (Dongsha), Paracel (Xisha), Macclesfield Bank (Zhongsha), and Spratly (Nansha) Islands. Open conflict erupted over these islands in 1974, when Chinese forces drove South Vietnamese

nations have at one time or another supported military actions, and there were almost a dozen reported conflicts during the 1990s alone. However, of all the countries that have claims to these waters, only the PRC has attempted to build a comprehensive support infrastructure in the South China Sea that might allow it to one day obtain its strategic goals by force.

China's South China Sea bases

Chinese bases in the South China Sea are gradually becoming stronger and more capable. For example, Hainan Island features an embedded, albeit nearly invisible, military electronic infrastructure, and China has been actively expanding south from Hainan Island since 1974, when it seized the Paracel Islands from the Vietnamese. Its activities continued in the 1990s with base construction on several Spratly islands. Extrapolating from the types of electronics and facilities observed, Woody Island and Johnson South Island seem to be the main bases for PLAN activities from the South China Sea through to the Malacca Straits. Other armed Chinese islands or reefs are linked via satellite communications, radio, and even internet to the local and fleet commanders. Meanwhile, the electronics and combat systems of Chinese aircraft, warships, and submarines greatly augment the island-based electronics.[8]

Hainan Island bases

Many major installations on the south China coast are linked electronically to offshore naval operations. The focus of these communications networks appear to be centered mainly on the island of Hainan. Although one of China's smallest provinces in terms of territory, at just over 35,000 square kilometers, Hainan province includes the Office of West, South, and Central Sands Archipelagos, which oversees the Paracel Islands (Xisha), Macclesfield Bank (Zhongsha), and the Spratly Islands (Nansha). As a result, Hainan's sea area is approximately two million square kilometers, or over 50 times the size of its land territory, making Chinese administration of these waters especially difficult and time-consuming.[9]

To protect this enormous region, a large over-the-horizon backscatter (OTH-B) radar faces south near the southern coast of China. In the 1970s, the experimental OTH radar had a 2,300-meter antenna and could pick up surface ships at 250 kilometers.[10] To patrol this area, the PLAN ships utilize satellite navigation from their own nation's satellites as well as foreign networks. Another key set of naval navigation aids are 21 Digital Ground Positioning System (DGPS) radio beacons. DGPS, manufactured by Communication Systems International, can be accurate to within 5–10 meters with a 300-kilometer range. Work started in the late 1970s on three high-power radio navigation aids in south China, while modern marine radio beacon (RBN-DGPS) navigation aids are located at Sanya, Haikou, and Haifou. A more powerful DGPS beacon station of 295 kilohertz was activated in the south during 1999 at Sanya, and two more followed at Yangpu and Baohujiao.

Beginning in 2000, China launched three satellites to form its own Beidou, or "Big Dipper," navigation system. Beidou is a regional geostationary satnav, unlike the global American GPS or Russian GLONASS. After this system began operation in 2008, it started to pose a "challenge to US and European satellite navigation efforts"[11] It will also give China an alternate navigation system to the US-dominated GPS system during its eight-year operational life. Although limited mainly to the Chinese coastline, it may also cover waters in the South China Sea.

Meanwhile, a Vessel Traffic Service (VTS) is located at Zhanjiang. Supporting radar and computer tracking/control stations have been constructed on the west coast at Dong Fang and in Haikou, which "has one local and three remote dual X-band radars, a local and remote very high frequency (VHF) communication system, and a remote VHF direction finder."[12] Since Lockheed Martin is the main supplier, Western imported technology is at the heart of the system. Among other tasks, this vessel traffic management system helps control ships in the constricted waters in the Qiongzhou Channel between Hainan and the mainland.

Hainan also has one or more major electronics intelligence (ELINT) stations. Because of the continuing threat of conflict with Vietnam, a major ELINT site was probably built in southwest Hainan. There is also a large ELINT facility at Lingshui air base on the southeast coast. This complex reportedly was established in 1968 and was greatly expanded in 1995, with about 1,000 signal analysts located there. A large satellite downlink facility with an associated computer complex and links to Beijing is probably located at Changcheng, Hainan, although this is purportedly a State Oceanographic Agency site for weather data from a Chinese weather outpost in Antarctica.

To support submarine operations in the region, the first high-power low frequency (LF) station was built on Hainan in 1965. The large submarine base at Yulin has extensive communication links for the 32nd Submarine Flotilla headquarters. These include very low frequency (VLF) communications to submarines and surface ships in the South China Sea area. By 1985, five VLF communication sites were located at Fuzhou, Lushun, Ningbo, Zhanjiang, and Yulin, making submerged submarine communications possible.

The Paracel bases

The Paracel Islands are second in importance only to Hainan for their electronic support systems. A photograph of the Paracel Islands dating to the 1980s shows a huge array of 16 antennas, with each antenna consisted of eight yagi cross arms. This is probably a VHF station, but is described variously either as a satellite communication antenna,[13] or as a cross slot early warning radar.[14] Woody Island appears to be equipped with the Chinese type 791 X-band precision approach radar (PAR). In June 2001, HY-2 anti-ship cruise missiles were reportedly also brought to the island, which, if true, would require a long-range surface-search radar to detect surface ship targets.[15]

Initially China constructed a 1,200-foot runway on Woody Island.[16] Later, the runway was extended to 7,300 feet, and finally to 7,874 feet.[17] This concrete

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runway can probably handle fairly large aircraft, including bombers and large transport planes. Meanwhile, a longer pier has been built to augment the island's single jetty. Close to the runway is "an aircraft storage facility consisting of four concrete-block hangars, each capable of holding two fighter aircraft, and a hard-stand that can accommodate 30 more." There is also an anti-aircraft site located at Woody Island's northern end and "since 1991, 67 fighters, spanning 14 deployments, have been deployed to the island."[18]

The largest island in the Paracels is Pattle Island, which had for a long time supported a weather station. Meanwhile, the port facilities on Duncan Island, the second largest island, are reportedly being enlarged, which could indicate increased military construction and electronic equipment. Drummond Island, the site of a major Sino-Vietnamese naval battle in 1974, is not known to have any buildings or electronic equipment. But in mid-1995, a new signals intelligence (SIGINT) station reportedly entered service on Rocky Island, which is near Woody Island.[19]

Although the PRC has repeatedly stated that it will not interfere with freedom of navigation in the South China Sea, it refuses to clarify exactly what areas it claims. By drawing enclosing baselines around the Paracel Islands, Beijing has effectively removed these waters from their previous freedom-of-navigation and overflight regimes. According to Mark Valencia

> Beijing could be intent on transferring large areas of the South China Sea from a regime in which warships have immunity from its jurisdiction, to one in which permission is required for entry. Of course, China cannot now enforce such a regime. But when it is strong enough, it may try to do so.[20]

The gradual development of Chinese bases in the Spratly Islands might one day make this more restrictive South China Sea regime possible.

Spratly Island bases

Although dispersed over an enormous area, several islands in the Spratly group have been turned into Chinese bases. The Spratly Islands were largely uninhabited before World War II, when Japan built facilities on Danger Reef, Tizard Bank, and Namyit Island; many of these areas are occupied by Vietnam and the Philippines today. Itu Aba is one of the most northerly of the Spratly Islands, and one of the few that is large enough to allow for an airfield and submarine base.[21] Taiwan continues to control Itu Aba, and has recently lengthened its runway to handle larger cargo planes.

The PRC is rapidly changing the delicate balance of power in the region by constructing bases on a number of these small islands. In the 1980s, cruises to the Spratlys by ocean research ships were soon followed by Chinese warships. After civilian and scientific vessels reconnoitered the area in October 1987, China seized Fiery Cross Island (Chigua Atoll) in March 1988. Photographs of a long cement building on Fiery Cross Island reveal what appears to be a standard naval HF yagi radar antenna:

The Chinese copy, designated Bean Sticks, operates in the 70- to 73-megahertz frequencies with a range of about 180 kilometers. Two other small electronic countermeasures (ECM) radomes on the building appear similar to the RWS-1 mounted on navy destroyers. Several whip communication antennas and taller mast antennas also are on the roof.[22]

In 1988–1989, several dozen Chinese warships conducted large naval exercises coinciding with the occupation of strategically located reefs in the Spratlys. Later, in November 1990, China completed a lengthy hydrological survey with "research" ships.[23] By the 1990s, construction began on a half-dozen reefs of crude huts and octagonal wooden structures on wooden pilings. These were called "typhoon shelters" by the Beijing government.[24]

Another small base is located at Johnson South Reef. According to photographs, four octagonal huts initially were built on wooden pilings. By 1989, two round cement towers appeared on the ends of a two-story cement building, which are supporting a 2.5-meter satellite communications antenna adjacent to a 2.4-meter mast antenna. Meanwhile, at Subi Reef, the Chinese built a wooden barracks and a two-story building with one satellite communications antenna. This station also houses a "huge round helicopter landing pad and a sturdy cement bridge with cement arches connecting it to the headquarters building."[25]

In 1995, China began to build on the circular Mischief Reef, expanding its station there during October 1998 to include 2.5-meter satellite dishes. According to one source, the two-story cement buildings resembled forts, and were outfitted with satellite communication and high frequency (HF) whip antennas.[26] Two years later, major electronic and weapon emplacements were added to the smaller northern building. Additional piers, a helicopter pad, and several anti-aircraft guns were built, along with an unidentified missile weapon system. Some reports have even suggested that these are Silkworm anti-ship cruise missiles.[27]

While Hainan Island houses all of the major naval and air bases, the much smaller island facilities on the Paracel and Spratly Islands can still provide substantial communications and intelligence support for future naval Chinese expeditions or submarines transiting the South China Sea. To support its surface fleet, the PRC has gradually increased the number of airplanes, submarines, and marines based in this region. In recent years, the PLAN has conducted naval operations as far away as the Bay of Bengal and Andaman Sea, where China began construction on a SIGINT station in 1993, and "is in control of Myanmar's Coco Island with a powerful Russian-made radar and electronic surveillance system and has subsidiary electronic listening posts in Man-aung, Hainggyi and Zadetkyi Island."[28]

China's naval air, submarines, and marine forces

The PRC's South Sea Fleet is based in Zhanjiang, in Guangdong Province. Directly to the south, Hainan is the base for many of China's Su-27K long-range

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Isagani de Castro, Jr., "Bilateralism and Multilaterlism in Malaysia-Philippines Relations", in *International Relations in Southeast Asia: Between Bilateralism and Multilateralism* , in *International Relations in Southeast Asia: Between Bilateralism and Multilateralism* (N. Ganesan & R. Amer, eds., 2010)

International Relations in Southeast Asia

Between Bilateralism and Multilateralism

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Bilateralism and Multilateralism in Malaysia-Philippines Relations

Isagani de Castro, Jr.

The Philippines and Malaysia have had an "abnormal"[1] bilateral relationship over the past four decades. The two countries have had to close down their embassies several times since full diplomatic relations were established in May 1964. The main reason for this development is the territorial dispute over Sabah. As the current Philippine Ambassador to Malaysia Victoriano Lecaros said, "there is nothing in our relations with other countries that comes to the nature of Sabah."[2] The dispute over this large, 76,115 square kilometre property has been the thorn in the history of Philippines-Malaysia bilateral relations. The Sabah claim initiated or complicated two major contentious issues in the bilateral relationship which have persisted to this day: the Muslim separatist rebellion in the southern Philippines and Filipino labour migration to Sabah. The other contentious bilateral issue tackled in this chapter is the conflicting claims of the two countries over territories in the South China Sea.

Through the years, the two countries have been using bilateralism to manage the contentious issues in their relationship. In the case of Malaysia,

The establishment of a Consulate-General's office in Sabah would make it easier for the Philippine Government to better serve Filipino migrants there.

Few Gains in the Philippines' Multilateral Approach

On the part of the Philippines, diplomats have been using ASEAN as a forum to advance its agenda on Filipino migrants. Indonesia and other sending states have supported the Philippines in this endeavour.

At the twelfth ASEAN Summit in 2006/2007 in Cebu City, for instance, the Philippines initiated the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The agreement defines the obligations of receiving states, sending states, and the commitments of ASEAN as a regional community. It is a "rights-based approach to protection of rights of migrant workers and promotion of their welfare".[65]

Spratlys Dispute: The Philippines Maximizes Multilateral Options

The territorial dispute in the Spratlys in the South China Sea is essentially a multilateral dispute involving the six claimant countries — Brunei, Malaysia, the Philippines, Vietnam, Taiwan, and China.

This section focuses on one incident, basically a bilateral dispute between Malaysia and the Philippines in mid-1999, when Malaysia occupied Investigator Shoal and Erica Reef. Philippine diplomats I interviewed could no longer recall this dispute and how it was resolved. Thus, for the facts about this incident, this chapter is relying heavily on the 2004 doctoral thesis, "The Spratly Islands Dispute: Decision Units and Domestic Politics" by Christopher Chung.[66]

Investigator Shoal is around 460 kilometres from the Philippines province of Palawan, and around 250 kilometres from Kota Kinabalu, Sabah, Malaysia. It is in an area claimed by Malaysia, the Philippines, Taiwan, and China. The shoal has an area of 205 square kilometres.

In June 1999, it was discovered that Malaysia had built a two-storey concrete building, helipad, pier, and radar antenna on Investigator Shoal. Malaysia also occupied and built a two-storey building and helipad on Erica Reef, which lies around 525 kilometres from Palawan. After these were discovered, the Philippines, China, and Vietnam protested

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Malaysia's actions. The Philippines filed a diplomatic protest saying that Investigator Shoal was "part of Philippine territory and within the country's exclusive economic zone."[67] It also complained that Malaysia violated the 1992 Manila Declaration on the South China Sea, which prescribed a status quo, meaning no new occupation and construction, in the disputed areas.

After the occupation and construction on Erica Reef, the Department of Foreign Affairs filed a diplomatic protest on 20 August 1999.

In response to Malaysia's actions, President Joseph Estrada said the Philippines would also build structures on islands that it claims. But this was opposed by Foreign Affairs Secretary Domingo Siazon who did not want the conflict to escalate. Siazon's position eventually prevailed in the Cabinet.

After its unilateral occupation, Malaysia "kept a low profile" and eventually, the dispute died down. Henceforth, Malaysia "did not occupy any further features, contrary to media reports".[68]

Neither Malaysia nor the Philippines used ASEAN's dispute settlement mechanisms to resolve this dispute. Severino said it is best to use the Law of the Sea Tribunal to settle such legal disputes.[69] Since the dispute actually involves four of the ten ASEAN members and two non-ASEAN countries — China and Taiwan — ASEAN's dispute settlement mechanism would not be appropriate for it. However, the Philippines used ASEAN as a forum to ventilate its sentiments and to urge compliance with ASEAN declarations on the South China Sea that commit signatories not to use force and to exercise restraint. It reminded other countries about such commitments as provided in the 1992 Manila Declaration on the South China Sea.

The Philippines has also pushed for a regional code and bilateral codes of conduct. It concluded bilateral codes of conduct with China and Vietnam in August 1995 and in November 1995 respectively. As Severino said, the Philippines objective is to "obtain a Chinese commitment not to pull another Mischief Reef".[70] These codes of conduct commit the countries to "strive for peaceful settlement of disputes by diplomatic means, to take cooperative measures to prevent conflict, to build trust, and to promote the joint exploration, development and exploitation of the resources therein."[71]

In July 1996, ASEAN Foreign Ministers endorsed the need for a regional code of conduct, that is, between ASEAN and China. According to Severino, ASEAN and China started to negotiate the code in March

2000. However, disagreements among ASEAN countries "held up the conclusion of the code".[72]

At the 1999 meeting of ASEAN Foreign Ministers, Malaysia "opposed any discussion of its occupation of Investigator Shoal and Erica Reef".[73] Malaysia's position was that bilateral issues should be "discussed bilaterally".[74] In that meeting, Malaysia "successfully opposed the Philippines' call to include in the foreign ministers' communiqué a statement urging all claimants to halt occupation and construction in disputed areas of the South China Sea".[75] It merely "recognized that several issues remained a source of concern".[76]

Indonesia, a non-claimant country, has hosted three sessions of Workshops on Managing Potential Conflicts in the South China Sea. These have been conducted outside of ASEAN. Indonesia's attempts at dispute settlement in the Spratlys were made as a goodwill gesture and delivered as a non-claimant state. Indonesia, as *primus inter pares* in ASEAN, was uniquely placed to offer such good offices. Were it not for these two important considerations, its role as a broker would have been difficult.

Kuala Lumpur's Unilateralism Works to its Advantage

Based on how the 1999 incident played out, Malaysia's unilateral action has helped strengthen its position in the South China Sea. The country's move to occupy Investigator Shoal and Erica Reef was apparently a pre-emptive move for the code of conduct agreement that was to be agreed upon with China. In line with what China did on Mischief Reef in 1995 and 1998, Chung said Malaysia's occupation "demonstrated the benefits of pro-activity".[77] He said: "In seizing a contested feature and building permanent structures, the reality of possession makes dislodgement by diplomatic, legal, military or moral pressure a difficult task."[78]

Chung's thesis is that "while Malaysia's approach emphasized occupation of contested features, the Philippines concentrated on diplomacy to internationalize its position."[79] He added:

> A weak economy and low military capability to handle external threats severely constrained Manila's options to defend its claim. Diplomacy at bilateral and multilateral levels was the only realistic instrument of statecraft available to shore up its claim.[80]

However, when dealing with China, Malaysia took a common position with the Philippines and the rest of the ASEAN countries.

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Zhang Liangfu, *Let the History Tell the Future: The Chronicle of a Century of China's Jurisdiction over South China Sea Islands* (2011)

Book Three of the Records of China Maritime Boundary Events

Let the History Tell the Future

- The Chronicle of a Century of China's Jurisdiction over the South China Sea Islands

Compiled and written by   Zhang Liangfu

[…]

Note from the editor

On October 1, 1949, the People's Republic of China declared its founding in Beijing. In June 1950, the Chinese People's Liberation Army liberated Hainan Island, and soon after Kuomintang retreated from Hainan Island, and its resident military forces were also withdrawn from Taiping Island on June 8, 1950. From this point, all of the Nansha Islands including Taiping Island returned to a situation where there were no stationed troops or permanent residents. Only fishermen from mainland China, Hainan Island, and Taiwan seasonally fish in the seas near Nansha Islands, including Taiping Island, or temporarily reside on Taiping Island.

Being without resident soldiers from mainland China or Taiwan, Taiping Island as well as all of the Nansha Islands presented opportunities for nearby countries in the South China Sea, in particular the Philippines and South Vietnam, to occupy our Nansha Islands.

Starting in the mid-1950s, South Vietnam and the Philippines were awaiting their chances and threatened to occupy our Nansha Islands. In particular, between March and May 1956, Philippine Maritime Institute President Tomas Cloma and others "adventured" in our Nansha Islands. At this time, they landed on many islands including Taiping Island, and claimed to have founded the so-called "Free Territory of Freedomland" on these islands. This was the infamous incident of "Free Territories of Mad Man Cloma."

Between March 1 and May 27, 1956, Philippine Maritime Institute President Tomas Cloma led 40 people on the school's "Training Vessel No. 4," bringing light equipment and seeds for an "expedition" in our Nansha Islands. They landed on nine islands, including Beizi Island, Nanzi Island, Zhongye Island, Nanyao Island, Xiyue Island, Taiping Island, Dunqian Shazhou, Hongxiu Island, and Nanwei Island. On some islands, they also erected "occupied" plaques, claiming them as the "Free Territory of Freedomland." (Note: the English on the plaques stated: Notice This Island is claimed by Atty. Tomas Cloma and Party Manila, Philippines and Forms Part of Freedom Land). The names of the islands were also unilaterally changed.

On May 15, 1956, Tomas Cloma wrote to the Philippine Ministry of Foreign Affairs, stating that "these islands are beyond the jurisdiction of the Philippines, but they are also the territories of no other country." Based on the "doctrine of discovery," "they intended to occupy" these islands," as they demanded of the Philippine Ministry of Foreign Affairs. Subsequently, Philippine Vice President and Secretary of Foreign Affairs Garcia publically announced, "These islands are near the Philippines, without claim and without residents, thus after they were discovered by the Philippines, the Philippines has the right to occupy them. In the future, other countries will also acknowledge the Philippine sovereignty based on occupation."[1]

The Philippine ambition to occupy our Nansha Islands is completely evident. At the same

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[1] Taiwan "Central News Agency," May 19, 1956, telegram from Manila.

time, the Saigon regime in South Vietnam has also claimed to have "sovereignty." In response, on May 29, 1956, the government of the People's Republic of China issued a declaration stating: "Taiping Island and Nanwei Island on the South China Sea, as well as nearby islands, are collectively known as Nansha Islands. These islands have always been a part of Chinese territory. The People's Republic of China has indisputable legal sovereignty over these islands," and "China's legal sovereignty over Nansha Islands will not permit violation by any country using any pretext and in any way."

At the same time, the Kuomintang regime in Taiwan has engaged in diplomatic negotiations with the Philippines and the Saigon regime in South Vietnam, deciding to again send troops to be stationed at the largest island in Nansha Islands – Taiping Island.

[…]

Zhang, Liangfu

中国海疆风云录之三

让历史告诉未来

——中国管辖南海诸岛百年纪实

张良福 编著

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2011年·北京

编者按

1949 年 10 月 1 日中华人民共和国在北京宣告成立。1950 年 6 月中国人民解放军解放海南岛，国民党在从海南岛撤退不久也于 1950 年 6 月 8 日从太平岛撤走了守岛部队。从此，太平岛乃至整个南沙群岛再次回到了没有军队驻守、没有常住人口的状态，只有中国大陆、海南岛和台湾岛的渔民季节性地到太平岛等南沙岛礁附近海域捕鱼和暂时性居住在太平岛上。

太平岛乃至整个南沙群岛，这种没有中国大陆或台湾士兵驻守的局面给南海周边国家，特别是菲律宾、南越侵占我南沙岛礁提供了可乘之机。

20 世纪 50 年代中期开始，南越、菲律宾蠢蠢欲动，叫嚣要侵占我南沙群岛。特别是 1956 年 3 月至 5 月菲律宾海事学校校长托马斯·克洛马等人前往我南沙群岛"探险"，登临包括太平岛在内多个岛屿，并声称在这些岛屿建立所谓"自由邦"，从而造成轰动一时的"狂人克洛马自由邦"事件。

1956 年 3 月 1 日~5 月 27 日菲律宾航海学校校长托马斯·克洛马率领 40 人乘该学校"练习轮 4 号"，携带轻便器材及种子，前往我南沙群岛"探险"，登临岛屿数处，如北子礁、南子礁、中业岛、南钥岛、西月岛、太平岛、敦谦沙洲、鸿庥岛、南威岛九个主要岛屿。并在一些岛竖起"占领"牌为"自由邦"（按：牌上英文为 Notice This Island is claimed by Atty. Tomas Cloma and Party Manila, Philippines and Forms Part of Freedom Land）并擅改岛屿名称。

1956 年 5 月 15 日托马斯·克洛马致信菲律宾外交部，称"这些岛屿处菲律宾辖境之外，不过也不是其他任何国家的领土"。基于"发现占领原则"，向菲律宾外交部要求"他们有意占领这批群岛"。随后菲律宾副总统兼外交部长加西亚公开宣称："这些岛屿接近菲律宾，既无所属又无居民，因而菲律宾继发现之后，有权予以占领，而日后其他国家亦会承认菲律宾因占领而获有主权。"[1]

菲律宾企图侵占我南沙群岛的野心暴露无遗。与此同时，南越西贡政权也叫

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① 台湾"中央社"1956 年 5 月 19 日马尼拉专电。

器对南沙群岛拥有"主权"。对此，1956年5月29日中华人民共和国政府发表声明："南中国海上的上述太平岛和南威岛，以及它们附近的一些小岛，统称南沙群岛。这些岛屿向来是中国领土的一部分。中华人民共和国对这些岛屿具有无可争辩的合法主权"，"中国对于南沙群岛的合法主权，绝不容许任何国家以任何借口和采取任何方式加以侵犯"。

与此同时，台湾国民党当局与菲律宾、南越西贡政权进行外交交涉，并决定再次派兵进驻南沙群岛的最大岛屿——太平岛。

"立威部队"侦巡南沙

1956年6月1日，62特遣部队抽调"太和"、"太仓"两舰组成"立威部队"，海军代将姚汝钰任指挥官，中校彭运生任参谋长。6月2日编队离开左营，于5日下午抵达太平岛。因时至黄昏，西南季风强烈，风浪又大，未敢登岛侦察。6日气象更坏，风雨交加，陆战排乘橡皮舟登岛侦察，未发现异常。7日晨，姚指挥官亲自出马，登岛查看，重整碑志，刷新标语，并于正午举行立碑升旗典礼。14日返航抵台湾左营。此次侦巡历时两周，往返航程2266海里，登陆3个岛，巡察5个岛、1个沙洲，经过3个暗沙、3个群礁、12个礁。此外，台湾当局还于6月21日派飞机赴南沙群岛侦察。

"威远部队"护送部队进驻南沙太平岛

经过1956年6月2日至14日派立威部队侦巡南沙群岛和6月21日空中侦察，结果证明该群岛中之太平、南威、西月岛等并无人迹，但在各该岛上确有菲人遗留字迹，显示菲人克洛马有侵占之野心。

于是，国民党于6月29日抽调护卫舰"太康"、"太昭"和坦克登陆舰"中肇"组成"威远"特遣支队，护送南沙守备部队及物资登陆进驻南沙群岛。海军上校谢祝年任指挥官负责运输南沙守备区部队（1个加强陆战排及1个通信分队）进驻太平岛。7月6日，编队自左营启航，10日抵达双子群礁，11日在太平岛西南抛锚，侦察班登岛搜索后，驻岛部队全部登岛，并举行了升旗典礼，共有200余名官兵参加。

这样，从1956年7月11日起，台湾恢复驻军太平岛。从此以后，太平岛就一直由台湾当局海军驻守。

在"中肇"舰于太平岛卸下登陆进驻物资期间，"太康"、"太昭"两舰载侦

Annex 456

Gregory B. Poling, "Arguing Over Blocks: Do China and the Philippines both Have a Claim?", *Center for Strategic and International Studies* (16 Apr. 2012)

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Arguing Over Blocks: Do China and the Philippines Both Have a Claim?

The South China Sea Frame-by-Frame, No. 1

Basic Info

Report
Apr 16, 2012

Experts & Authors

Experts:
Gregory B. Poling [1]

This post is the first in a new blog series, The South China Sea Frame-by-Frame. It incorporates data and imagery from the CSIS Southeast Asia Program's innovative policy tool, The South China Sea in High Resolution [2]. It originally appeared on CSIS' Asia Policy blog, cogitASIA [3].

The Philippines opened yet another chapter in the ongoing South China Sea dispute with its neighbors on February 29, 2012 by inviting foreign companies to take part in its long awaited fourth Energy Contracting Round. This round opens bidding on 15 oil and gas blocks. Two blocks, Areas 3 and 4 near the Reed Bank, fall within China's so-called "9 dash line" claim, which is mirrored by Taiwan. Beijing quickly responded to Manila's announcement by lodging a formal protest, reiterating its "indisputable sovereignty" over the islands and waters of the South China Sea, and calling any oil exploration "unlawful." Taiwan's foreign ministry followed suit with a March 13 statement saying, "The Reed Bank is part of the Spratly islands . . . and we reject any claim or occupation by any means of the islands and the surrounding waters."
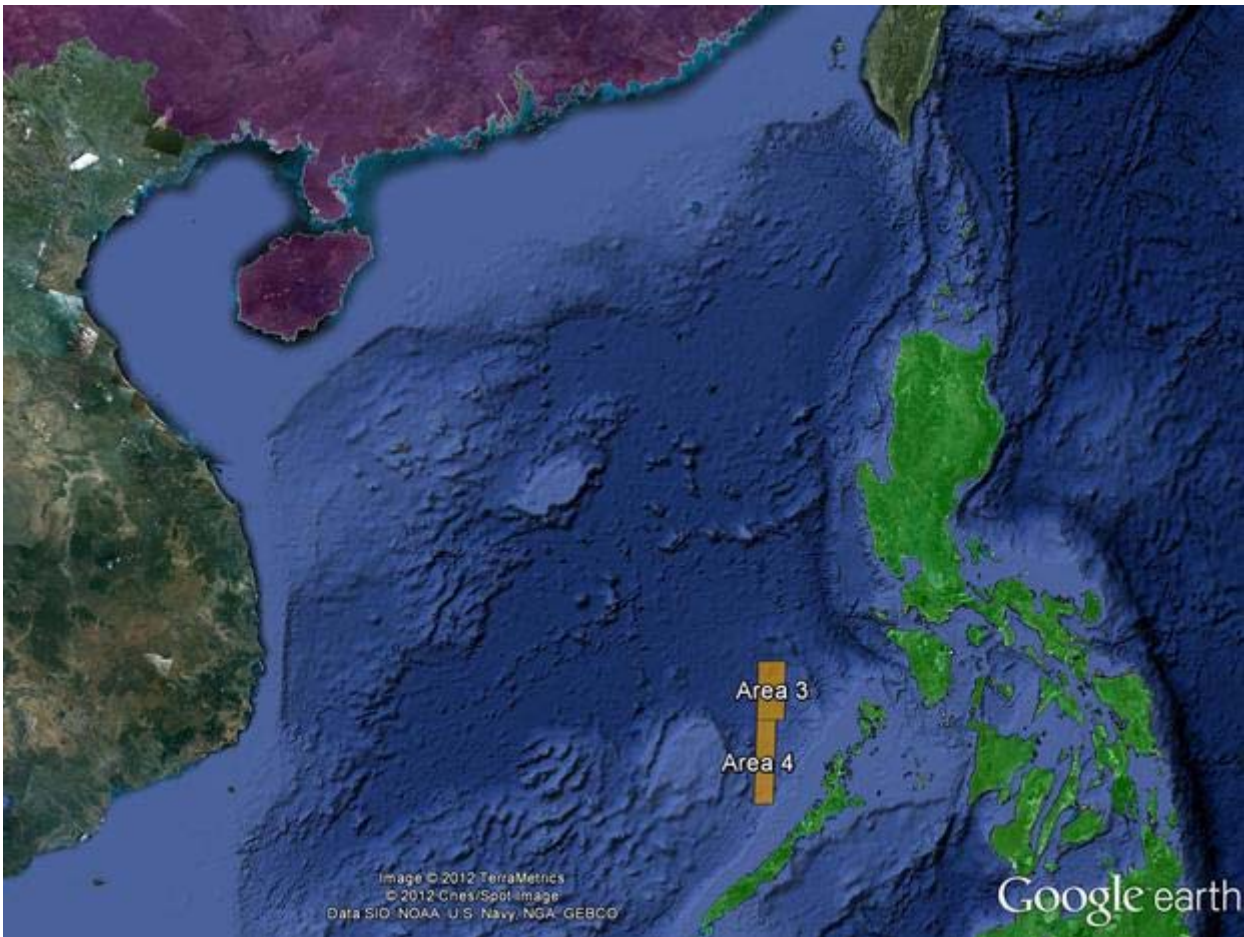
What is clear in this instance is that China and Taiwan's claim cannot rest on the "9 dash line" alone and be taken as legitimate. There is simply no basis in international law supporting that grandiose claim – a fact even Beijing seems to increasingly recognize, as evidenced by the much-analyzed Chinese Foreign Ministry statement earlier this year that the South China Sea dispute is about the "islands and adjacent waters," not the sea in its entirety. The "islands" in this case are the Spratlys.

The question then is not whether Areas 3 and 4 lie within the "9 dash line," but whether they fall within the adjacent waters of nearby islands claimed by China. This is the point made last month by Robert Beckman [4]. Under the UN Convention on the Law of the Seas (UNCLOS), to which both China and the Philippines are signatories, a country's islands generate an Exclusive Economic Zone (EEZ) out to 200 nautical miles in it has exclusive rights to all natural resources, including oil and gas.

The key word here is "islands," as distinguished from rocks, shoals, banks, or other features. Under UNCLOS, an island must meet two criteria [5]: it must remain above water at high tide, and it must be capable of sustaining human life and economic activity of its own. The latter requirement, habitability, is ambiguous; the former is not. Any feature that does not meet these requirements is eligible only for territorial waters out to 12 nautical miles [6], and there are no features within 12 nautical miles of the blocks in question. Nanshan Island and Flat Island are the closest Spratlys above water at high tide, though they are still twice as far as the Philippine coast is from the blocks.
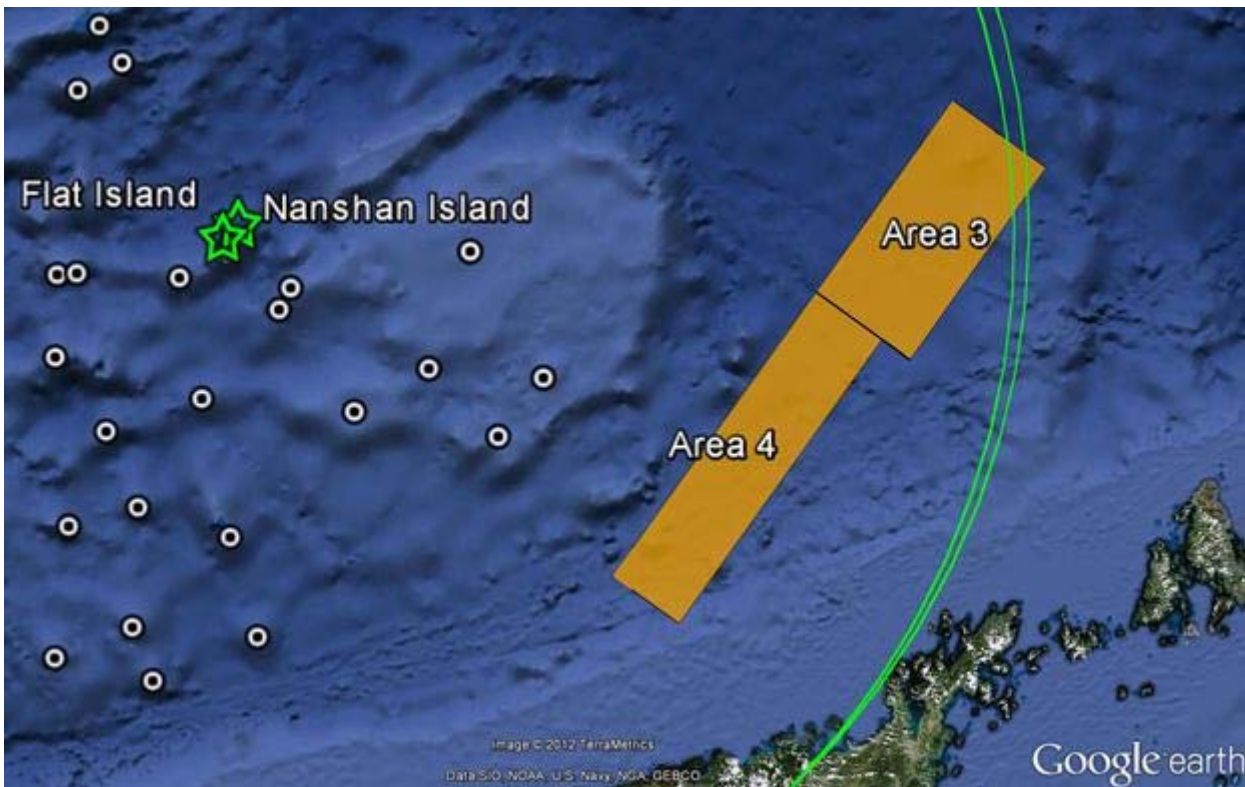
As China and Taiwan would eagerly point out, much, though not all, of Areas 3 and 4 would fall within their hypothetical 200 nautical mile EEZs. While accepting both islands as habitable for the sake of argument, it is worth noting that neither has fresh water or significant vegetation, both are currently occupied by the Philippines, and the larger of the two, Nanshan, is only about 1000 feet across at its widest point.
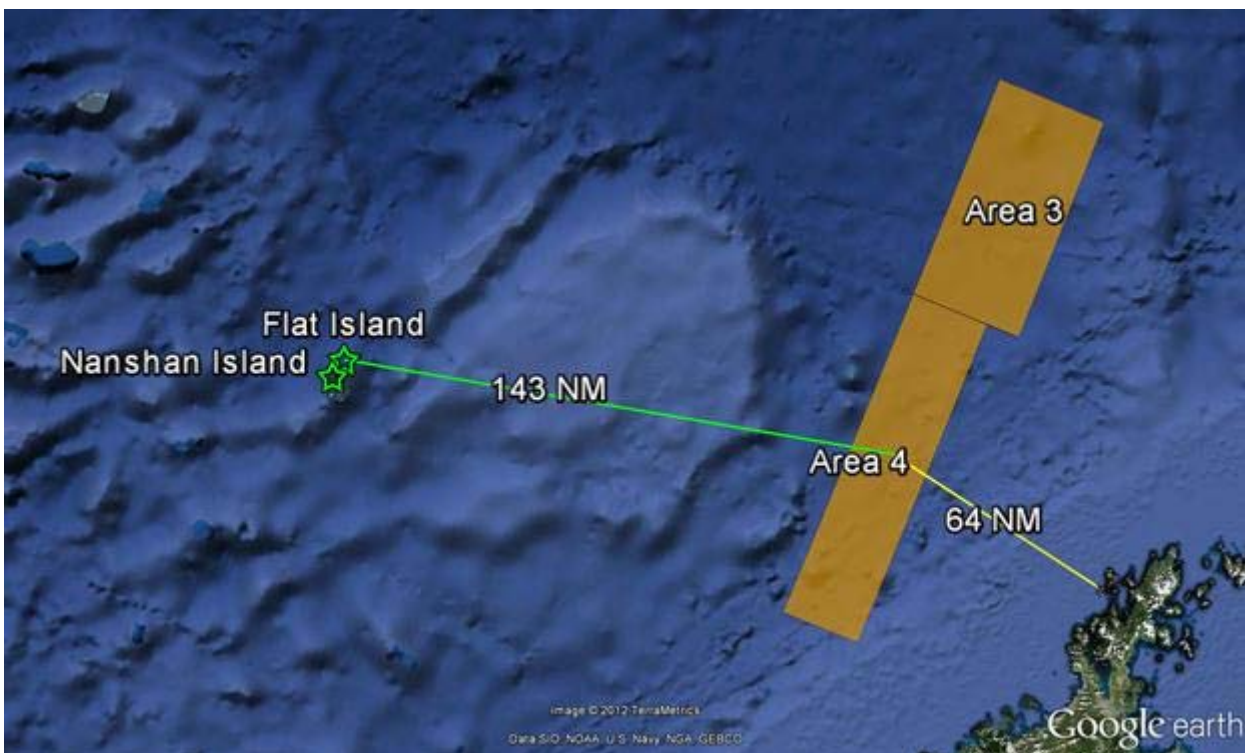
Since the EEZs of Nanshan and Flat Islands overlap with that of the Philippines, being less than 200 nautical miles away, a compromise would need to be reached on their respective boundaries. Under UNCLOS, such a settlement can be reached bilaterally or through arbitration at one of several international forums, most importantly the International Tribunal on the Law of the Seas (ITLOS). Not only do these forums exist, but they have decades of precedent to rely upon. The starting point for any settlement on maritime boundaries under international law is almost always equidistance (there are other methods of arbitration such as the angle-bisector method that can apply in the case of adjacent coastlines, but would not make sense in the case of an island).

By delimiting the halfway point between Flat and Nanshan Islands, and the Philippine coast, it is possible to estimate with some accuracy where China's best-case EEZ limits would fall. They are best-case because such a settlement would go against all prior precedent. As the recent ITLOS decision concerning Bangladesh and Myanmar [7] reiterated, the most important consideration in delimiting maritime boundaries has traditionally been the principle of avoiding inequity – including by considering the relative length of relevant coastlines, and by taking into account any bays or other concavities that unduly influence the EEZ boundaries. This case would involve two islands with combined coasts of less than half a mile versus a Philippine coast of hundreds of miles – a clear inequity. In addition, the entire disputed portion of the blocks is a result of the concavity in the gap between the Philippine islands of Palawan and Mindoro – another inequity. Both of these facts would almost certainly result in shifting the equidistance line significantly toward the islands.
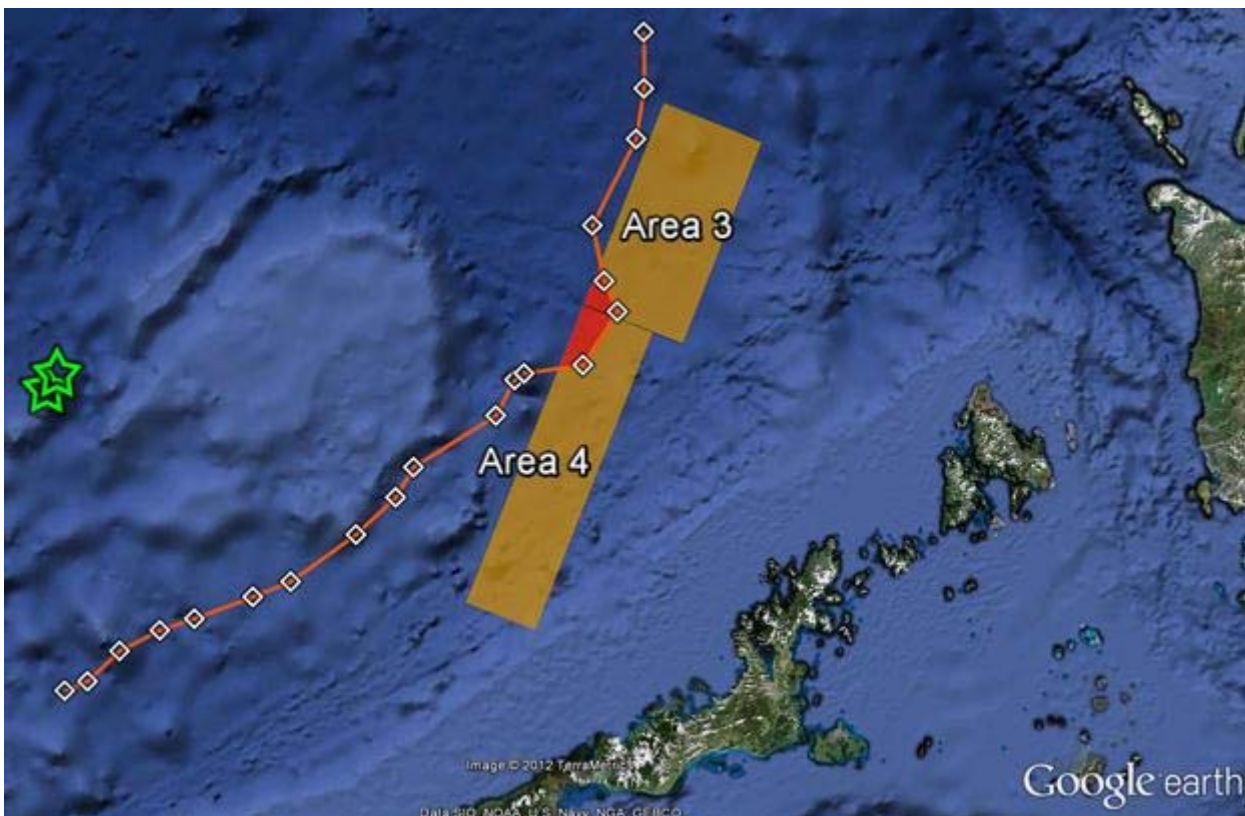
What this exercise reveals is that a sliver of two oil and gas blocks, roughly 250 square miles out of more than 4,700 square miles, or just over 5 percent, could conceivably be considered disputed under international law. And even that would require a remarkable deviation from prior legal precedent. For the time being, Manila might be better off taking the high road and removing the sliver in question from Areas 3 and 4 until an eventual settlement of EEZs is reached. That would let the Philippines appear magnanimous and greatly strengthen its claim to be the party following the law while ceding almost nothing.

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Annex 457

Dallen J. Timothy, "Tourism, war, and political instability: territorial and religious perspectives", in *Tourism and War* (R. Butler & W. Suntikul, eds., 2013)

Tourism and War

Edited by Richard Butler and Wantanee Suntikul

2 Tourism, war, and political instability

Territorial and religious perspectives

Dallen J. Timothy

Introduction

Since the modern-day ascent of mass tourism in the nineteenth century, and the late twentieth-century advent of more specialized forms of tourism, the world has undergone many significant geopolitical changes. Countries have come and gone, states have united in supranational alliances, free trade agreements pervade the global trade scene, and international relations have been liberalized in most cases. Many positive socio-economic and political outcomes have resulted from these geopolitical transformations, but one thing remains constant and unchanged by contemporary trends: conflict and warfare between states and peoples. Tourism, one of the most pervasive socio-economic and political phenomena common the world over, has been influenced positively and negatively by political changes (Butler and Suntikul 2010); yet territorial, religious, and other types of conflicts and wars continue to impact tourism in a variety of ways.

This chapter provides an overview of many of the salient issues surrounding the relationships between tourism and war. It first examines the roots of war and political malcontent throughout the world, especially as it pertains to territorial and religious conflicts, and highlights some of the most pertinent relationships between tourism and political conflict from the perspective of territoriality- and religion-based warfare.

Territorial conflict, religious discord, and the roots of war

Conflicts abound the world over: political and religious tensions, corruption, *coups d'etat*, military occupations, crime, terrorism, and warfare. War is only one extreme form of malevolence between countries, peoples, or ideologies, but it has some of the longest-lasting implications for society in general, and tourism in particular. Several observers, this author included, have suggested that the root of conflict throughout the world is greed (Collier and Hoeffler 2000; Fearon and Laitin 2003; Timothy 2008). While some commentators suggest grievance is the main cause of war, lying at the core of grievance also is greed – on the part of people in power who perpetuate conditions of oppression, poverty, famine,

conflicts is not just the land under question, but the natural resources (i.e. fishing and oil) that exist beneath and around them. (The recent resumption of oil exploration in waters around the Falkland Islands has coincided with a renewal of Argentinian claims to the islands. The 1982 conflict over the Falklands resulted in both improved communications and increased numbers of tourists, mainly from the United Kingdom: editors' note).

Another type of territory-based conflict is that associated with keeping secessionist entities from declaring their independence from the state. While some secessionist movements have bred malcontent among some groups of people, other separations have resulted in outright warfare. The secession of Slovenia, Croatia, and Bosnia-Herzegovina from Yugoslavia during the early 1990s, for example, was the cause of the Yugoslavian Wars, wherein thousands of people were killed by the Yugoslav military and by inter-ethnic violence. Many towns and cities were destroyed, and culturally important symbols were targeted (see Corak *et al.*, this volume). A similar situation occurred in the Soviet Union in the early 1990s with the declarations of independence by Lithuania, Latvia, and Estonia, which eventually led to the collapse of the Soviet Union.

Finally, disagreements are common over territories claimed by more than one claimant state, with each party typically armed with legally justifiable proof that the disputed territory belongs to them. This is very much the case in the contemporary conflict over the Spratly Islands in the South China Sea and at Preah Vihear near the border of Thailand and Cambodia. Each of these examples will be highlighted in more detail below.

All of the relationships between war and tourism noted earlier are apparent in territory-based conflicts. This section, however, focuses on the unique territorial aspects associated with tourism as a political propaganda tool, tourism as a catalyst for conflict, and territorial wars as heritage attractions.

Tourism as a political tool in territorial conflict

Tourism is used in several ways by governments in power to legitimize their control, downplay sentiments of autocratic rule, to build patriotism, and to illustrate their benevolence to the outside world (Cohen-Hattab 2004; Timothy 2007). A unique twist on this is the use of tourism as a mechanism to assert legal jurisdiction over disputed areas (Hall 1994; Timothy 2010). States in conflict sometimes argue that a functioning tourism industry fulfills the three legal requisites for international recognition and acceptance of sovereignty: the place can support human habitation, there exists a history of claimant-state occupation, and that state functions/responsibilities are being exercised (Glassner and Fahrer 2004). The establishment of national parks in the extreme north of Canada at the end of the last century was not unrelated to Canada's desire to confirm its sovereignty over the Arctic Islands and the Northwest Passage.

One of the best documented examples today is the Spratly Islands, an archipelago of some 230 small islets, minute atolls, and rocky outcrops in the South China Sea. Together they total only five square kilometers of exposed land,

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and only twenty-five or so of the islands are even somewhat substantial. Only a couple of the islets can be seriously considered inhabitable.

In spite of their small land area, the Spratly Islands are one of the most challenged territories in the world today. Six countries – Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam – lay claim to all or part of the Spratlys and their potential territorial seas and resources. Vietnamese and Chinese relations have recently deteriorated to the extent that there has even been talk of armed conflict between the two neighbors, largely over conflicting claims to the same islets (Dutta 2005). Oil potential, fishing, and control of shipping corridors lie at the heart of this Southeast Asian conflict, but according to the International Law of the Sea, protruding rocks that are unable to sustain human habitation or economic life cannot possess exclusive economic zones or continental shelves (Gjetnes 2001). By possessing any or all of the Spratlys, and demonstrating inhabitability and economic functions, a state can potentially expand its exclusive economic zone by 370 kilometers with important resource and transshipment control implications. Several of the islets have been occupied by military personnel from claimant states, and even a few small civilian communities have been established on the larger islands to demonstrate "continued occupation" and to substantiate fishing and agricultural economies.

To help legitimize their claims to sovereignty over the Spratlys, some of the claimant states have established tourism on the islands they occupy. Malaysia is particularly active in this regard. On 6.2-ha Pulau Layang, Malaysia has established a diving resort and air strip with scheduled flights (Chen 1994; Chung 2000; Musa *et al.* 2006). Malaysian tour operators also utilize Terumbu Laya (Dallas Reef) for diving and fishing tourism. Thitu Island, or Pagasa, is the second largest in the Spratlys and is occupied by the Philippines. It has a population of more than 300 people and a 1.4 km airstrip. The government of the Philippines is considering ways to develop tourism on the island, which abounds in white sand beaches, unique bird species, and diving opportunities (Agence France-Presse 2008). Likewise, Vietnam has developed cruises to several of its claimed islets to visit research centers and oil industry operations, and to enjoy beaches and the natural maritime environment (Asian Economic News 2004; Spratlys News 2004). There have also been recent negotiations about Vietnam refurbishing a former military landing strip on Large Spratly Island to fly in more tourists, possibly paving the way for commercial flights by Vietnam Airlines sometime in the future (BBC News 2004; Economist 2004; Reuters 2004).

All of these developments are manifestations of the contested countries' utilization of tourism to lay legitimate claims to territorial sovereignty. Armed conflict has broken out on occasion. China sunk a Vietnamese ship in 1988 over its Spratlys claim, which soured relations between the two socialist states. In 2011, tensions began to escalate in the region as claimant states accelerated their fishing and oil exploration efforts. In retaliation, China began to exhibit more aggressive behavior against the Philippines and Vietnam by forcefully taking over some of islands claimed by those countries and firing warning shots at fishing boats from other claimant states (Jamandre 2011).

Annex 458

A. Erickson & A. Strange, "Pandora's Sandbox", *Foreign Affairs* (13 July 2014)

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SNAPSHOT

Pandora's Sandbox

China's Island-Building Strategy in the South China Sea

Andrew S. Erickson and Austin Strange

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Ongoing international disputes over territory in the South China Sea have led many to invoke an old adage: "When the facts are on your side, pound the facts. When the law is on your side, pound the law. When neither is on your side, pound the table." Beijing is using all these approaches simultaneously, but with an ambitious twist -- as it tells other claimants to pound sand, China is pouring it.

A prominent case in point is a major reclamation project [2] on the disputed 7.2-square kilometer (4.5-square mile) Johnson South Reef [3] in the Spratly Islands archipelago. Photos taken since March 2012 document China's creation of a 30-hectare (74-acre) island [4] atop the previously submerged reef by dredging seabed material [4] and then dumping it using pipelines and barges. In addition to a communications platform built after China wrestled the atoll from Vietnam in 1988 (killing 64 Vietnamese sailors in the process [5]), over the last two years China appears to have set up additional radars, satellite communication equipment, anti-aircraft and naval guns, a helipad, a dock, and even a wind turbine. IHS *Jane's* and other observers [6] have pegged the reef as the potential home of China's first airstrip in the Spratlys.

China's beach building is not limited to Johnson South Reef, which may, in fact, just be a warm-up act. Satellite images have confirmed similar dredging activities [7], albeit at a smaller scale, at three other structures in the Spratly archipelago: Cuateron Reef (the southernmost of China's reclamation projects), Gaven Reef, and Johnson North Reef. But Chinese efforts center on Fiery Cross Reef. Beijing's 1987 announcement that it would establish an "ocean observation station [8]" there on behalf of UNESCO helped trigger the 1988 skirmish on nearby Johnson South Reef. It reportedly serves as a base for China's reclamation efforts and already boasts an eight-square kilometer (five-square mile) artificial

structure with a wharf, helipad, coastal artillery, and garrisoned marines [6]. China, currently rumored to be in the process of adding an airstrip and enlarging the harbor [9], may eventually transform Fiery Cross into a military base twice the size of Diego Garcia, a key U.S. military base in the Indian Ocean. It could become a command-and-control center for the Chinese navy and might anchor a Chinese air defense identification zone (ADIZ) [10] similar to the one it announced over the East China Sea in 2013. Prominent Chinese strategist Jin Canrong suggests that Fiery Cross Reef construction is a complex "oceanic engineering project [10]," the ultimate scale of which depends on how Johnson South turns out. Such an initiative would clearly require central government resources, and he notes that the plan has been forwarded to the Chinese state council for approval.

Yet, despite media claims, including statements by Chinese experts, Beijing's precise plan for fortifying the Spratly Islands remains speculative. Beijing has declined to provide authoritative, detailed information that might dispel myths and clarify the intent and scope of China's operations. When questioned by a reporter about island reclamation, Hua Chunying, a spokesperson for China's foreign ministry replied, "China has indisputable sovereignty over [the Spratly] Islands including [Johnson South] Reef and the contiguous waters. Whatever construction China carries out in [Johnson South] Reef is completely within China's sovereignty [11]." In reality, however, by creating new facts of ground, Beijing is expanding the territory it controls and literally changing the security landscape in the South China Sea.

FACTS OF GROUND

China lays claim to the entire Spratly Islands [12] and their 820,000 square kilometer (510 square mile) area. The archipelago contains more than 550 islands, sandbanks, reefs, and shoals, many of which are also partially or fully claimed by Brunei, Malaysia, Philippines, Taiwan, and Vietnam. With the exception of Taiwan, even the northernmost atolls are far closer to the shores of rival claimants than to mainland China.

(Library of Congress)

Although it has exercised caution in making official statements about land reclamation in the Spratlys, it is no secret that Beijing has long worked to enhance and occupy the bits of rock it claims in the South China Sea. It has already established manned garrisons on seven of the hundreds of Spratly features. And existing garrisons on Fiery Cross and Subi Reef, each with various radar surveillance capabilities, already house about 100–200 troops [13]. Several years ago, there was even a photo exhibit at the Shanghai Navy Museum [14] showing small-scale earthmoving and compaction equipment on one of the Spratly Islands.

Of course, it is unfair to single out recent Chinese reclamation activities without considering the actions of other claimants. A brief historical refresher suggests that even though China's current behavior is troubling, China did not necessarily open Pandora's sandbox. For example, Vietnam captured Southwest Cay from the Philippines in 1975, and it has since built a harbor and other land features there. In total, it has occupied 29 islands and reefs in the Spratlys. Meanwhile, Malaysia's Naval Station Lima on Swallow Reef is the result of substantial reclamation efforts after Kuala Lumpur's occupation of the atoll in 1983. In 2008, Taiwan completed an airstrip on Taiping Island [15], the largest in the Spratly group, which

Taipei occupied in 1955 and on which it already had an extensive navy garrison and radar station. In addition, the Philippines occupies ten Spratly structures and is planning to build an airport and pier on Thitu Island [7]. China is apparently the only major claimant to territory in the Spratlys without an airstrip [4] there, although not for long.

Still, whether Beijing is a leader or follower in land reclamation in the Spratlys, it is undoubtedly the only claimant whose economic prowess can support projects that, without violence, significantly alter the status quo there. Admittedly, it is difficult to find credible data on whether other contenders have dredged or pursued similar island-building tactics. Nonetheless, given their considerably lower capabilities for such work, it is unlikely that any other county has, or will engage in, sand pouring on par with China's current construction efforts. For example, China may invest over $5 billion over ten years on reclamation in Johnson South Reef; the Philippines' 2014 military budget is less than $2 billion. China's German-built *Tianjing Hao* dredger [16], the largest of its type in Asia and China's primary weapon in island-building, cost approximately $130 million to build -- nearly three-fourths of the per-unit cost that Vietnam paid for some of its Russian-built *Gepard*-class frigates [17], its most advanced warship.

SO WHAT?

So what are the implications of China's large-scale island building? Some international observers believe that, beyond asserting de facto sovereignty, China's efforts to amass sand on the reef and rock formations are aimed at strengthening its claim to the 322-kilometer (200-mile) exclusive economic zone (EEZ) abutting its coastline and all of its islands under the aegis of the United Nations Convention on the Law of the Sea (UNCLOS). This seems unlikely. Article 60 of UNCLOS explicitly states that artificial structures are not equal to islands and that their existence has no bearing on the demarcation of territorial seas, EEZs, or continental shelves. Although China could theoretically argue that it is building on pre-existing natural island structures, other countries would surely dispute that claim -- and they could furnish pictures to prove it. China itself has lambasted similar behavior by Japan on the Okinotorishima atoll [18] in the Philippine Sea.

That doesn't mean that pouring sand is pointless. Unlike Beijing's recent temporary deployment of the *Haiyang Shiyou* (HYSY)-981 oil rig to regions disputed by China and Vietnam, as well as the placement of four additional rigs [19] in the South China Sea in late June, "island building" will eventually support permanent civilian and military infrastructure. This will enable China to diversify its strategy for asserting territorial claims in the Spratlys. Some of the structures in question lie within the EEZ claimed by the Philippines, and are situated just 300–400 kilometers (186–249 miles) from the Philippines and Vietnam.

Arguably more discomfiting for other states, a mature network of military facilities in the Spratlys, including an expanded Fiery Cross presence, would effectively extend China's ability to project power by over 800 kilometers (500 miles), particularly through Chinese Coast Guard patrols in contested areas and potentially even air operations. Similar to its relative economic supremacy, China's relative advantages in military size, modernization, and professionalism suggest that it is the only South China Sea claimant that is potentially capable of establishing de facto air and sea denial over tiny islet networks in a maritime setting as vast as the Spratly archipelago

Another concern is that the creation of facts of ground might spur China's announcement of one or more

ADIZ [20] in the South China Sea. However, if that is China's goal, there are plenty of reasons for it to exercise restraint. First, antagonizing multiple neighbors and members of the Association of Southeast Asian Nations (ASEAN) simultaneously is a far greater price to pay than further inflaming already-poor relations with China's bête noire, Japan, as it did when it declared its first ADIZ over the East China Sea last November. Second, declaring an ADIZ over the full extent of its claims in the South China Sea would presumably require Beijing to define, for the first time, the precise geographical coordinates of the "9-dash line" it draws on maps to claim the vast majority of the South China Sea, or at least provide more clarification than it has to date.

Such transparency, together with China's declaring a second ADIZ in general, would increase pressure on Beijing to specify the basis for its claims in the area -- something it has declined to do, presumably because there is no consistent legal basis for all of them. In addition, declaring an ADIZ over the full extent of China's claims in the South China Sea might expose Beijing's still-limited ability to monitor and patrol the southernmost part of its claim, which is far from Chinese land-based radars and major airfields. Although bulking up islands could help Beijing enhance its surveillance capacity, it will take time to develop the ability to patrol the entire South China Sea, a prerequisite for being able to establish an enforceable ADIZ [21] in the future.

Finally, and arguably most disconcerting, although China might not have initially opened Pandora's sandbox, its large-scale digging could lead to an arms race of augmentation in an already-sensitive sea. Other regional states probably cannot come close to matching the raw scale of Beijing's ambitious construction, yet they -- particularly the Philippines or Vietnam -- will surely find ways to protect their claims more creatively. None of this suggests a forecast of calm seas [22] around the Spratly archipelago.

ISLAND DISPUTE

With the future looking turbulent, the international community should undertake a technologically-informed study of island feature augmentation to better understand which parties, particularly in the East China Sea and South China Sea, are capable of such construction; which have done so, or are doing so; how difficult and expensive such buildup is; and how durable the artificial islands are likely to be in this typhoon-prone region. Addressing these questions will help concerned countries in the region and abroad gain a better understanding of the short- and medium-term implications of China's sandbox in the Spratlys, as well as how the neighborhood is likely to react.

The international community will also have to consider the implications of China's island building on international maritime law. If Beijing's strategy even partially enhances its presence and the momentum of its claims, it could trigger an arms race as rival claimants fortify features under their respective control with sand, structures, and ships. That could undermine the otherwise potentially moderating influence [22] of existing norms and international agreements such as UNCLOS.

To be sure, China, like other states in the region, still faces inevitable constraints on its ability to contest maritime territorial claims [23] despite its ability to easily out-dredge and out-drill smaller neighbors. Beijing's entrepreneurial sand pouring, which comes on the back of an upsurge of oil extraction [24] near the disputed Paracel Islands [25], still faces legal and political barriers that prevent more decisive actions.

As such, it is too early to list artificial island augmentation in the same category as the Great Wall and the Grand Canal, which are regarded as Chinese engineering triumphs over inconvenient geographic conditions. Even so, ongoing island building is a demonstration of Beijing's use of creative thinking to address its security concerns. For now, expect new facts on the ground -- and of ground -- to emerge from the roiled South China Sea.

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Bill Hayton, *The South China Sea: The Struggle for Power in Asia* (2014)

THE
SOUTH CHINA SEA
THE STRUGGLE FOR POWER IN ASIA

BILL HAYTON

CHAPTER 2

Maps and Lines
1500 to 1948

In January 2008, in the light- and humidity-controlled basement of the Bodleian Library in Oxford, about 5,500 nautical miles from the Spratly Islands, Robert Batchelor unrolled a document that has radically changed our understanding of the history of the South China Sea. It was a map, a metre and a half long by a metre wide, covering what we now call East and Southeast Asia: from Japan in the northeast to Sumatra and Timor in the south. It was also a work of art. During the 350 years it had been in the library, many people had admired its delicately painted 'mountain water' scenes: the pale green sea fringed with bamboo, pine and sandalwood trees; hills, rivers and plants drawn as they might be seen in life. But what Batchelor spotted – which no-one else had noticed for centuries – was a network of pale lines radiating from the southern Chinese port of Quanzhou. The lines linked Quanzhou with almost every port in the region: from Nagasaki to Manila, Malacca and beyond. More surprisingly, each route was marked with navigational instructions: Chinese compass bearings and indications of distance.

What Batchelor, an American historian, had rediscovered was a guide to the trading highways of Asia. It demolished the traditional image of seventeenth-century China as an inward-facing, isolationist power. Instead it showed a China that was engaged with the sea and, through the sea, to the wider world. It was also a picture of a region untroubled

a shoal is an underwater feature – a raised area of seabed (the word is derived from an Old English word for 'shallow'). James Shoal is in fact 22 metres below the surface. But because of the committee's unfamiliarity with the area they declared it to be a land feature. Thus it would seem that China's claim in the South China Sea is, to some extent, based on a translation error. What's now described as the 'southernmost point of Chinese territory' doesn't exist – any more than the Wan-li Shi-tang did eight centuries before.

The committee continued with its territorial mission. Three months later, in April 1935, it published *The Map of Chinese Islands in the South China Sea*, taking the country's sea border right down to 4° N – the location of James Shoal, only 107 kilometres from the coast of Borneo and over 1,500 kilometres from the Chinese mainland.[47] Then one of China's most eminent geographers, Bai Meichu, added his own innovation. Bai had been one of the founders of the China Geographical Society. He was also an ardent nationalist and in 1930 had drawn his own version of the 'Chinese National Humiliation Map' to educate his countrymen about just how much territory they had lost.[48] In the year Bai became director of the society's editorial board, he declared: 'Loving the nation is the top priority in learning geography, while building the nation is what learning geography is for.'[49] In 1936, at the age of 60, he created his most enduring legacy: a map in his *New China Construction Atlas* including a U-shaped line snaking around the South China Sea as far south as James Shoal. This was then copied by others. Between 1936 and 1945 versions of the line were published on 26 other maps. Some stretched down to the James Shoal, though most only included the Spratlys.[50] A decade later, it was Bai's line that would be taken up by the Chinese government, copied and asserted to define China's historic island territories.

All this list-making and map-drawing came to an abrupt end with the Japanese invasion of China in 1937. The job of protecting the country's sovereignty was passed to the military and the previous objects of Chinese nationalistic anger – Britain, Russia and the United States in particular – became allies against the greater enemy. But the Second World War would reset the territorial battle in the South China Sea. Japan had occupied Taiwan in 1895, so when American forces in the Philippines surrendered in May 1942 almost the entire coast of the Sea, from Taiwan to Singapore and back again, fell under the control of a single power for the first time

in its millennia-long history. The South China Sea became a 'Japanese lake' and would remain so until January 1945. The Japanese occupied Woody Island in the Paracels and Itu Aba in the Spratlys. The base on Itu Aba was virtually destroyed when American planes napalmed and strafed it on 1 May 1945 and the island was abandoned sometime before the arrival of a US reconnaissance mission on 18 November 1945.[51] Two Australian commandos were landed on Woody Island in the Paracels by the American submarine, USS *Pargo*, on 3 February 1945 and observed two Japanese and a European living there under a French tricolour. After the commandos withdrew, the *Pargo* shelled all the buildings.[52] On 8 March American aircraft bombed radio stations on both Woody Island and Pattle Island[53] and when another submarine, the USS *Cabrilla*, visited Woody Island on 2 July, the tricolour was still flying, but this time with a white flag above it.[54]

As the course of the war turned, the allies began to debate where lines would be drawn on maps once it had ended. As early as May 1943, a few weeks after the battle of Guadalcanal, the US State Department drew up document T–324 to help decide what should be done about the islands of the South China Sea. Allowing Japan to hold on to them was a non-starter, but since they were 'of no vital interest to any single country or territory', the American position remained vague.[55] Later documents continued the theme, arguing that no single country had a clear-cut claim on the islands. Document CAC–301, 'Spratly and other islands (Shinnan Gunto)', prepared on 19 December 1944 ahead of the Yalta Conference, recommended that the Spratlys be placed under 'the projected international organization' – the future United Nations – although noting that this would require the approval of France. Another document, CAC–308, recommended three options for the Paracels: international trusteeship, a deal between China and France, or thirdly – 'unless France should provide evidence of the alleged transfer of the Paracels to Annam by China in 1816' – support for China's claim.[56] After the war, however, the State Department recognised the improbability that any of the islands would be placed under UN control because it would require an unlikely degree of flexibility from France. As a result, the US left its position vague.

On 4 July 1946, the Philippines became independent of the United States and less than three weeks later Vice-President Elpidio Quirino

declared the Spratly Islands part of its sphere of influence. The French authorities, trying to reassert their control over Indochina, sent a mine-sweeper, the FR *Chevreuil*, out to the Spratlys. It found them uninhab-ited and, on 5 October 1946, placed a stone marker on Itu Aba asserting French sovereignty. On 9 December 1946 the Chinese Navy – having just received several ships, trained crews and charts of the waters from the United States – despatched two vessels to the Paracels and two to the Spratlys.[57] The *Taiping* (formerly the USS *Decker*) and the *Zhongye* (probably the former USS LST–1056) arrived at Itu Aba on 12 December where their crews erected a rival stone marker, claiming the island for China. Then, in January 1947, Chinese and French forces landed on different islands in the Paracels – again making rival claims (for more on this see Chapter 3).

In May 1947 the Chinese parliament approved a motion calling on the government to recover all the Paracels from France, by force if neces-sary, and to clearly 'delimit our territory'. Force was out of the question but delimiting territory was easier. The Geography Department of the Ministry of Internal Affairs drafted a list of new names for all the islands in the South China Sea. Itu Aba was renamed Taiping Island and Thitu Island was renamed Zhongye (after the ships on the 1946 expedition) and other features were awarded similarly patriotic titles: Spratly Island became Nanwei – 'noble south' – for example. Perhaps realising their mistake, the committee changed James Shoal from a sandbank (*tan*) into a reef (*ansha*). The names of the four sets of features were also adjusted: the Paracels remained Xisha – West Sand – but Pratas became East Sand – Dongsha. The name Nansha – South Sand – which had previously referred to the Macclesfield Bank was moved south to describe the Spratlys and the Macclesfield Bank (previously the Nansha) was re-designated the Zhongsha – Central Sand.

By the end of 1947, the department had finalised a cross-reference table for all the old and new names of the islands and islets – whose number had crept up to 159.[58] The list was officially announced on 1 December, the same day the islands were all formally placed under the administration of the Hainan Special District.[59] Around the same time, the department printed a new 'Location Map of the South China Sea Islands', which was formally published by the Ministry in February 1948 as an adjunct to its new 'Administrative Division Map of the Republic of China'. All the

new names were included – along with the line originally drawn on Bai Meichu's map a decade earlier. Eleven dashes raced down the eastern side of the South China Sea from Taiwan to the coast of Borneo and then northward to the Gulf of Tonkin in a great U-shape. No official explanation of the meaning of the line was provided although one of its cartographers, Wang Xiguang, is reported to have said that the dashes simply indicated the median line between China's territory – in other words, each claimed island – and that of its neighbours.[60]

On 12 June 1947 a meeting between officials of the Republic of China's Navy, Defence and Interior ministries agreed that the government claimed everything within the line but would negotiate precise maritime boundaries with other countries at a later date and according to the international laws in operation. No border had been delimited – it was the beginning of what would later be called 'strategic ambiguity' in the South China Sea.[61] But by then the days of the Republic of China were numbered. Within months its leadership had fled to Taiwan and the Communist Party had proclaimed the People's Republic. The Communists adopted the maps and lines of its predecessors although, in 1953, in what is assumed to have been a special favour to brother Communists struggling for independence, their cartographers reduced the number of dashes to nine by removing two from the Tonkin Gulf between China and Vietnam.[62] The border in that piece of sea was only finally defined by the two countries in 1999. In June 2013, the Chinese State Bureau of Surveying and Mapping issued a new official map of the country and added a tenth dash, to the east of Taiwan, making clear that it too was firmly part of the national territory.[63]

In May 2009, the Chinese authorities attached a map of the 'U-shaped line' to its submission to the United Nations Commission on the Limits of the Continental Shelf, the first time it had ever used the line in an official international context. The response around the region was angry and vociferous. It showed how far ideas about boundaries and borders had shifted since an unknown Chinese cartographer drew the 'Selden Map' nearly 400 years before. The idea of drawing fixed lines on maps to demarcate political allegiance would have been nonsensical then and the idea that the sea could be 'owned' just ridiculous. These are all concepts that emerged in seventeenth-century Europe and were brought to Southeast

Asia by trading companies and empires. The Europeans drew new maps and then new lines and in the process spread new ways of thinking about both. It was the transition from one set of ideas to the other, from the *mandala* system to the Westphalian system, that left a legacy of historical confusion and, in the years since the 'U-shaped line' was published, spawned a rush for territory in the South China Sea.

CHAPTER 3

Danger and Mischief
1946 to 1995

IMMEDIATELY AFTER THE end of the Second World War, for just over a year, none of the Paracel or Spratly islands was occupied or controlled by anyone. But 50 years later, almost all of them were. There was not one single battle for control nor was the transition slow and steady; there were intense episodes in 1946–7, 1956, the early 1970s, 1988 and 1995 when actions by one side usually triggered reactions from others. Each time the original occupation was driven by a particular vision – of nationalistic legitimacy, strategic advantage or economic reward – but none delivered the expected results.

Chiang Kai-shek's vision was to use the islands to bolster his leadership in the face of the advances by Communist forces. He saw an opportunity to demonstrate his fitness to rule China by standing up to the Westerners who had once ravaged the country. In the closing months of 1946 his government despatched its newly acquired decommissioned US warships to stake a Chinese claim. His adversary would be a former monk turned naval admiral, Georges Thierry d'Argenlieu. Admiral d'Argenlieu had served France with distinction during the First World War but then adopted the cassock and sandals of a Catholic monastic order. He served the order with distinction too, becoming its head in France. However in September 1939, with the country facing the threat of German invasion, Father d'Argenlieu hung up his cassock, re-rendered his services to Caesar and rejoined the navy.

on a national newspaper for eight years, and as an international freight broker before that, would have not known about the reefs and islands lying off the country's coast.

Cloma may have claimed to be ignorant of the Spratly Islands but his government had been well aware of their existence for some time. Remembering that they had been used as a jumping-off point for the Japanese invasion, local newspapers had been pressing for government action to secure them. In July 1946, immediately after the Philippines became independent of the United States, the then Vice-President and Foreign Secretary, Elpido Quirino, told a press conference that the Philippines would claim the islands as essential to its security.[7] On 17 May 1950, by which time he was president, Quirino declared that the islands belonged to the Philippines but added that the country would not press its claim so long as nationalist (Taiwanese) Chinese forces remained in control. He can't have been aware that they'd actually left 12 days earlier. Things would be different – he warned – if the Communists moved in. Strangely, however, the Philippines did not press its claim at the San Francisco peace conference in 1951.[8] It's hard to believe that Cloma was unaware of all these developments.

Cloma had a key ally, Carlos P. Garcia, another Boholano, with whom he had been at high school. Garcia was elected to the Senate in 1946 and became Vice-President and Foreign Minister in 1953. Cloma and his brother organised fund-raising for Garcia's election campaigns and – says Filemon's son – Garcia provided government contracts and other favours in return.[9] This connection would become crucial as Cloma manoeuvred himself ever deeper into the murky waters of international politics.

There's evidence to suggest the Clomas were engaged in smuggling and, in 1955, Filemon was jailed for six months for stockpiling small arms and explosives. He was freed in that year's Christmas amnesty, however, and the plotting to claim the islands continued.[10] On 1 March 1956 Vice-President Garcia was the guest of honour at a send-off dinner for Filemon's occupation party.[11] Garcia failed to persuade the rest of President Magsaysay's government to support the Clomas but the mission set off anyway. On 15 March, Filemon and his merry band landed on the islands.[12] Two months later, on 15 May, Tomas sent letters to Garcia and several embassies in Manila claiming for himself a hexagonal area of

sea off the coast of Palawan totalling 64,976 square miles and all the islands, reefs and cays within it (Spratly Island itself was deliberately left out of the claim). He based the claim 'on the rights of discovery and/ or occupation'. Then, six days later, he issued a second notice declaring he had named the territory, tautologically, as 'The Free Territory of Freedomland'.

Garcia made a public statement of support on 17 May but, according to press reports at the time, President Magsaysay ordered him to 'cut short Cloma's comic opera before it got really serious'. Magsaysay wasn't the only one with this opinion. The French chargé d'affaires in Manila, Jacques Boizet, initially referred to the incident as a 'ridiculous quarrel' among 'pygmies' but warned that it had the potential to cause deep problems if Communist China decided to intervene. Exactly what was happening behind the scenes is still unclear. Many of the Philippine government records were subsequently destroyed in fires. The French geographer François-Xavier Bonnet, who has studied the period extensively, believes Garcia and Magsaysay – despite their public differences – were acting in consort: Garcia backing Cloma and Magsaysay holding high-level talks with the Taiwanese government to try to keep the situation under control.[13] The presidency issued an official communiqué stating that Cloma was acting as an individual and that the Philippines had not officially claimed the islands. But while Cloma's actions appeared ridiculous to some, they were indeed deeply provocative to others and set in chain a series of events that still mark the region today.

On 31 May 1956, the Beijing government declared it would not tolerate any infringements of its claims in the islands. By now the French had left Vietnam and the country had been 'temporarily' divided between Communist north and capitalist south. On 1 June the Republic of Vietnam (RVN or 'South Vietnam') condemned Cloma's actions and the following day even France joined in, reiterating its own unabandoned claim dating back to 1933. But Tomas Cloma was not deterred. On 6 July he issued the 'Freedomland Charter' describing his new country as an independent entity seeking official recognition from the Philippines 'under protectorate status'. He had in mind something like the position Brunei then had as a British colony. Tomas declared himself head of state with sole executive powers. His sons and friends were named as cabinet ministers. He also

unveiled the flag of 'Freedomland', which, rather ominously given what was to happen next, bore a large white albatross.

The following day, 7 July, just to make sure the message had been received, Cloma, his son Jaime and several of his PMI cadets marched to the (Taiwanese) Chinese embassy in Manila and presented its diplomats with a flag that Jaime said he'd removed from Itu Aba (or as he renamed it, MacArthur Island). This provoked both a protest from Taipei and criticism from the Philippine government. It was all becoming too much. The RVN Navy sent a ship to one of the Spratlys where the crew erected a monument and hoisted the national flag on 22 August.[14] The nationalist government on Taiwan resolved to sort out the Clomas once and for all and despatched part of its navy under a Commodore Yao.[15] They would meet at a place called Danger.

In the early morning of 1 October 1956, Vessel IV of the PMI fleet was anchored off North Danger Reef (which Cloma had renamed 'Ciriaco Island' in the northernmost tip of 'Freedomland') when it was challenged by two ships of the Taiwanese Navy. Captain Filemon Cloma was 'invited' aboard one of them to discuss his claim. A four-hour argument about the niceties of international law ensued – during which the Taiwanese boarded the PMI IV and confiscated all the weapons, maps and relevant documents they could find.[16] The next day Filemon was invited on board again and presented with a statement in which he acknowledged he'd been trespassing in Chinese territory and pledged not to do so again. According to Filemon's son, he signed it under duress. The navy ships then departed and Filemon's crew checked the nearby islands – all the structures they'd previously built there had been destroyed.[17]

Tomas Cloma wasn't a man to take this lying down. So, later that month, he took himself to New York with the intention of making a formal complaint to the United Nations. But by now the Philippine government was also fed up with him. After a press conference in the coffee shop of the Waldorf Astoria Hotel, Cloma was taken aside by the Philippine ambassador to the UN, Felixberto Serrano, who explained that only recognised governments could present matters to the UN and the Philippines was not going to waste any more time on the matter. Garcia and his allies in the Foreign Affairs Association back in Manila made a last-ditch lobbying effort to persuade President Magsaysay to change his mind but failed.

On 8 February 1957 Garcia wrote a carefully worded letter to Cloma in which he made a somewhat arbitrary distinction between the seven islands known as the 'Spratlys' and the rest of the land features, which he called 'Freedomland'. Speaking on behalf of the Foreign Ministry (not the government), he said Cloma was welcome to claim any unoccupied islands in Freedomland, just as long as no other country's sovereignty over them had been recognised. It meant nothing.[18]

That should have been the end of Tomas Cloma's involvement with international politics, but there was a curious coda to the whole Freedomland project. After 1956, Cloma directed his energies into his business activities but he never abandoned his dream. He enjoyed being referred to as 'Admiral' Cloma and wore a gleaming white uniform on special occasions at the PMI. Gradually, though, his expedition faded from public memory. In the early 1970s, however, it earned unwelcome attention from President Ferdinand Marcos. Oil exploration had begun off the coast of Palawan in 1970 and, by July 1971, Philippine forces had landed on three of the Spratly Islands: Thitu, Nanshan and Flat (respectively Pagasa, Lawak and Patag in Filipino). They also seem to have tried to land on Itu Aba but were repelled by Taiwanese forces.[19] Later that month, Marcos ordered the military to create a Western Command to protect its interests in the area.

It was during this period that the Philippine government made its first attempts to formalise a coherent territorial claim over the islands, but it was one that relied on rather shaky geographical and legal foundations. Firstly, following Garcia, it tried to argue that the area included in Freedomland was different from the island group known internationally as the Spratlys and secondly it claimed that the Philippines had title over Freedomland because of the activities of Tomas and Filemon Cloma 25 years before. Cloma saw an opportunity and wrote to the *Daily Express* newspaper in January 1974 calling on the government to sponsor his original claim at the International Court of Justice. It caught Marcos' attention and the following month Cloma was invited to a meeting at the presidential palace during which he pledged to cede the islands. All that needed to be worked out was the small matter of a contract and a purchase price. Cloma appointed three politicians to act as his legal team and the negotiations dragged on.

On 3 October 1974, Cloma, by then aged 70, was invited to the national police headquarters at Camp Crame. After a long conversation with a police colonel he was shown to his new home in Stockade No. 3. At around the same time, the government confiscated one of his vessels, the MS *Philippine Admiral*, crippling Cloma's shipping company. After a few days Cloma was told he would be charged with 'illegally wearing uniform and insignia'. Marcos' martial law regime had taken the 'admiral' joke a little too seriously. Cloma understood what was really going on. He held out for 57 days but in the end the old man was broken. He signed over Freedomland to the Philippine government for a single peso.

Marcos renamed Freedomland the Kalayaan Islands – *kalayaan* being the Tagalog word for freedom – and in June 1978 issued Decree 1596 incorporating Kalayaan as a municipality of Palawan province. The municipality still exists, although for most of the year it's based in an office in the suburbs of Puerto Princesa on Palawan. At the time of writing, the Philippine military occupies nine islands and reefs and tries to keep watch on the rest. The largest Philippine-occupied island – formerly called Thitu but renamed Pagasa (from the word for hope in Filipino) – is now home to a small statue of Tomas Cloma. It stands next to the runway, looking mournfully out to sea: at what for a few years was Cloma's domain. In July 1987, after the overthrow of the Marcos regime, Cloma and his associates requested compensation from the democratically elected government of President Corazon Aquino. They asked for 50 million pesos. Tomas Cloma died on 18 September 1996 without receiving a reply. His dream of a guano and canned fish conglomerate remained unfulfilled.

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Comic as they were to some, Cloma's activities reignited regional anxiety over the Spratlys. Taiwan returned to Itu Aba in 1956, after six years away, motivated by the same nationalism that had inspired its first expedition in 1946. By the time of the next island-grabbing episode, when Ferdinand Marcos ordered Philippine forces to seize three islands in 1971, the motivation was oil. A couple of years later, oil was also the reason for the Republic of Vietnam to join the race. President Nguyen Van Thieu was trying to win a war against Communism while simultaneously rescuing a smashed

So, at 10.29 a.m., two hours after the SEALS had been killed, the four Vietnamese ships opened fire on the six Chinese vessels. They were just a mile away from each other. Unfortunately for the Vietnamese, the forward gun on HQ–4 wasn't working and the ship was quickly hit by one of the Chinese corvettes. HQ–5 seriously damaged the other corvette but was then hit itself. Then, 15 minutes later, HQ–5 managed to accidentally hit HQ–16. The shell smashed into the engine room below the waterline. HQ–16 quickly lost electrical power and started listing 20 degrees. Then HQ–5 was hit again, losing its gun turret and radio. Finally, HQ–10, the smallest vessel of the four, was hit by a Chinese rocket-propelled grenade, which destroyed its bridge and killed the captain. Within half an hour, although they'd seriously damaged two of the Chinese ships, the Vietnamese flotilla was totally out of action. HQ–10 sank and the other three limped back to Danang. By any independent assessment the encounter was disastrous but the sailors returned to a heroes' welcome. Vietnamese media had been told that they'd sunk two Chinese ships and seen off a much larger Chinese fleet. It was spun as a good news story, just in time for the Tet celebrations.

Meanwhile Gerald Kosh, and the others on the three remaining Vietnamese-controlled islands, could only await their fate. The two groups of SEALS on Money and Robert were battle-hardened veterans. On Pattle, the meteorologists and their guards were not. Only Kosh knew what combat felt like. They didn't have long to wait. Kosh watched the professionalism of the Chinese invasion with admiration, particularly in comparison with the incompetence of the Vietnamese defence. He watched as they prepared to land on Robert Island, two miles away. At 9 a.m., three Chinese gunboats took up positions offshore and an hour later started to systematically shell the island. Half an hour after that, two fishing trawlers arrived. Their numbers revealed them to be the same boats that had been observed training out of Beihai a month before.

At least 100 soldiers then appeared on the deck of each trawler and offloaded dark grey rubber rafts. As Kosh sat in his vantage point, viewing the activity through his binoculars, six to eight soldiers climbed down rope ladders into each raft. By the time they were done, 30 rafts had assumed an attack formation and paddled off. As they passed over the coral reef, one of the rafts fired a red flare and the ships stopped their

shelling and moved off towards Pattle Island. The landing force carried on towards the beach, remaining in close formation. The SEALS opened fire but didn't cause any casualties. Outnumbered more than ten to one, it wasn't long before they surrendered. Unknown to Kosh, the 15 SEALS on Money Island had worked out what was coming. They took to the water before they could be captured. After nine days drifting for 200 miles on a rubber raft, fishermen eventually rescued them 35 miles off the Vietnamese coast.

Kosh's respect for the Chinese assault became even stronger when they turned their attention to Pattle. Again, the island was swept with artillery. Kosh and the Vietnamese had to take shelter around the weather station for nearly an hour as the shells came down. Fortunately, none of them was hit. Then two more trawlers arrived and another set of rafts landed another 200 or so Chinese troops. Kosh remained hidden while observing how they systematically swept across the island with each unit focused on particular objectives. Within an hour the operation was complete. Communist China's first foreign seaborne invasion had been successful.

For Kosh, though, the situation looked dark. He was going to have a hard time explaining why he was in the Paracels. The Chinese were bound to assume he was a spy and treat him accordingly. Two CIA officers, John T. Downey and Richard G. Fecteau, shot down while trying to re-supply anti-Communist rebels in China in 1952, had only just been released after spending 20 years in jail. He told the Chinese he was a civilian, an observer, and he'd only come to the islands to assess what the engineers were planning to do. They transferred him to Hainan and then to the Chinese mainland.

Meanwhile, in both Vietnam and the US, officials scrambled to find out what had happened to him. Aware of the urgency of the situation, Henry Kissinger invited the acting Chinese 'deputy ambassador' in Washington for a chat on 23 January. According to the declassified minutes of the meeting, Kosh was the first item on the agenda. Kissinger made plain that the US took no position at all on the rights and wrongs of the Paracels dispute but urged that Kosh be released very soon, 'and that would certainly defuse the situation as far as the United States is concerned', he told the quasi-ambassador.[27]

Kosh spent almost a week in jail before Kissinger's urging had the desired effect. On 29 January he walked across the border into Hong Kong (then a British colony) with four of the Vietnamese prisoners. US officials went to great lengths to keep questions at bay. Journalists were told he had hepatitis and needed to be quarantined. He was helicoptered to the airport, flown immediately to Clark airbase in the Philippines and then back to Philadelphia Naval Hospital in the US. He gave no interviews. Instead he seems to have put his energies into drafting an assessment of the Chinese assault for the army's Special Research Detachment, a report that was declassified 20 years later.

Kosh was far from beaten. Just a month after arriving at the Naval Hospital, he was back at his post in Vietnam. Then, after his assignment ended there, he worked as a civilian contractor with the UN peacekeeping force in the Sinai and then in other overseas jobs where, presumably, he maintained his reporting activities. But tragically for him and his family, Gerald Kosh was not to enjoy a long and happy retirement full of the world's best war stories. The man who had dedicated his life to the service of his country and who had, in a way, fought the war in Vietnam almost to its very end would eventually become a casualty of it. During those long-range patrols as a Green Beret he had been soaked in Agent Orange – the herbicide sprayed by American planes in order to destroy the jungle vegetation and expose the enemy hiding within it. Contaminated with dioxin, Agent Orange was highly toxic. In 2002, at the age of 56, Gerald Kosh was killed by chemicals sprayed from an American plane 30 years before.

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Mao Zedong's vision for the islands came to nothing. No oil has yet been found around the Paracels and their strategic value remains unproven. The occupation of the Crescent group certainly didn't prevent the Soviet Navy using the harbour at Cam Ranh Bay on the Vietnamese coast after Hanoi had won the war, just as Beijing had feared. Tiny bases such as those on Woody and Pattle islands are almost impossible to defend anyway. That was the Royal Navy's view as far back as the 1940s and it's been the US Navy's view since. But such doubts haven't stopped further occupations. In the wake of the Paracels invasion, the RVN government rushed to reinforce

its garrisons in the Spratlys. At least 120 troops were despatched and five islands occupied. But China made no moves in that direction. In fact it did the opposite and de-escalated the conflict, releasing all the prisoners from the Paracels within a few weeks and silencing the nationalist rhetoric. But the Communist North Vietnamese leadership (which had been publicly silent about the battle) was convinced that Beijing intended to take over more islands. In April 1975, three weeks before the fall of Saigon, Hanoi seized six of the Spratly Islands from the RVN to ensure they didn't fall into Chinese hands. The lieutenant in charge of the South Vietnamese garrison on Southwest Cay (known to Vietnamese as Dao Song Tu Tay) chose to swim the 3 kilometres to the Philippine-occupied Northeast Cay (known to Filipinos as Parola Island) rather than be captured.

In November 1975, for the first time, the dispute between Beijing and Hanoi over the islands appeared in public when the Chinese paper *Guangming Ribao* criticised the Vietnamese territorial claims. At the time China simply didn't have the capacity to conduct a sustained military operation as far south as the Spratlys. Nonetheless, it was quietly making preparations. During the rest of the decade it consolidated its positions in the Paracels, enlarging the harbour and opening a runway on Woody Island in 1978. A decade later it would be able to make its presence felt in a decisive way.

For the first 30 years of its existence, the People's Liberation Army (PLA) Navy had been a junior service, dedicated to coastal defence. The Beijing leadership assumed that any war would be won on the land and the navy's role would be like guerrilla warfare at sea: hundreds of small boats harrying attackers from all angles and cutting off their supply lines. (The 1974 Paracels operation had been highly unusual and required months of special training.) But by 1982, the combination of Deng Xiaoping at the apex of the Communist Party and Admiral Liu Huaqing in charge of the navy would bring about major change. Liu had been a loyal Communist since childhood and made a name for himself in the most sensitive political and counter-infiltration sections of the military and in battles against nationalist forces during China's civil war.[28] The war also brought him into contact with Deng and their partnership became mutually beneficial. The story of the next decade was, to quote Professor John Garver, the 'interaction of bureaucratic and national interests'[29] or perhaps, to paraphrase the

Catch–22 character Milo Minderbinder, 'what's good for Liu is good for the Navy and what's good for the Navy is good for China'. Deng wanted China to regain its economic strength – for which it needed resources and reliable trade routes. He was also worried about the risk of the country being encircled by the Soviet Union and its allies, including Vietnam. Liu was ambitious and, along with the rest of the naval leadership, seeking prestige. Expanding China's position in the South China Sea was an objective that pleased them all.

In contrast to Mao, who had favoured self-reliance and built up industries in China's heartland, far from external threats, Deng's economic reforms favoured trade and, therefore, the coast. The first special economic zone was created in Shenzhen, close to Hong Kong, in 1980 and was followed by 14 more in other coastal cities in 1984. The first industry opened to foreign investment was offshore oil and the first two rounds of bidding, in 1982 and 1984, focused on blocks off the coast of Hong Kong and Hainan. Deng's policy depended upon access to international trade routes and as early as 4 March 1979, possibly after lobbying from Liu, he had issued the first instructions for the navy to organise long-distance missions.

As soon as Liu took charge of the navy, he began to formulate the strategy he called 'active green-water defence'. This meant controlling the sea between the inshore 'brown water' and the 'blue water' far offshore in order to allow for defence in depth and shield the rapidly growing coastal cities from attack.[30] Liu defined 'green water' as the area between the Chinese coast and what he called the 'first island chain' – stretching from Japan to Taiwan and on to the Philippines, Borneo and Singapore. New ships were commissioned, bases along the southern coast and in the Paracels were expanded and intelligence was gathered. According to the Chinese Navy's own published history, in April 1983 the Oceanographic Bureau was ordered to begin surveys of conditions just north of the Spratly Islands. Then, in May, two ships were sent as far south as James Shoal, the submerged coral reef over 1,500 kilometres from Hainan Island and just 100 kilometres from the Malaysian coast but declared the 'southernmost point of Chinese territory'. On board were dozens of navigators and naval college instructors.[31] In 1984, research vessels surveyed most of the area of the Spratlys, almost up to the coast of the Philippines. In February 1985

a flotilla made a long-distance cruise to Antarctica. By 1987, the navy was ready for expeditionary warfare.

The Chinese leadership was concerned that, even as it was becoming more dependent upon the South China Sea, it was losing ground in the Spratlys. In June 1983, Malaysia had joined Taiwan, Vietnam and the Philippines by occupying reefs. The list of options for a navy seeking forward bases in the South China Sea was getting shorter. It was time for action and the moment was opportune. The economy was growing and providing extra resources for the navy. Mikhail Gorbachev's reforms had ended the threat from the Soviet Union and relations with the United States were better than they'd ever been. China had nothing to lose in provoking a conflict with Vietnam. Ever since Vietnam's invasion of Cambodia in December 1978 and China's punitive invasion of northern Vietnam two months later, relations between the two had been little better than hostile.[32] Vietnam was internationally isolated because of its ongoing occupation of Cambodia and was unlikely to get more than verbal support from its main ally, Moscow. According to the China watcher Taylor Fravel, in early 1987 a decision was taken in Beijing to occupy territory.[33] Now all the leadership needed was a pretext.

In March 1987, a meeting of UNESCO mandated countries to establish monitoring stations as part of a survey of the world's oceans. No-one, not even the Vietnamese, seems to have noticed that one of the sites proposed by China was in the Spratlys. On 4 April the Chinese Academy of Sciences sent off another mission to survey the islands. In May the navy sent a flotilla to join them, practising resupply and war-fighting along the way and depositing a concrete block on Fiery Cross Reef (Yongshu in Chinese), declaring it Chinese territory. More surveys took place over the following months until, on 6 November 1987, the Beijing leadership gave the green light for an observation post to be built on Fiery Cross Reef. Unusually for a civilian research centre, the construction plans included a two-storey barracks, a wharf, a helicopter hangar and a landing pad.

Fiery Cross Reef would not have been anyone's first choice for a research station. At high water it was almost entirely submerged, except for a single metre-high rock at its southwestern end. The rest was composed of a ring of sharp coral, 25 kilometres long and 7 kilometres wide. The main reason it

wasn't already occupied was that there was almost nothing there to occupy. But this did not deter Liu's navy. On 21 January 1988 four Chinese ships arrived with engineers and construction materials and set about creating something that could resemble dry land. The following day a Vietnamese ship arrived to see what was going on but left without incident.[34]

Up until that day the Vietnamese had probably felt quite secure in that part of the Spratlys: they occupied everything worth occupying. On London Reefs, 72 kilometres south of Fiery Cross, and on Union Bank, about 93 kilometres to its east, they controlled almost everything sticking out of the water. Fiery Cross was little more than a shipping hazard on the route back home. But they'd underestimated Chinese naval engineering. For nine days the new arrivals proved their commitment to the marine environment by blasting channels through the coral reef and then dredging up enough coral debris to form 8,000 square metres of dry land.[35]

The Vietnamese woke up to what was happening and on 31 January sent two ships to deposit a landing party on Fiery Cross Reef. But the mission failed in the face of severe weather and superior Chinese numbers. On 18 February the Chinese went one step further, landing sailors on the only feature on London Reefs that the Vietnamese didn't occupy: Cuarteron Reef (Huayang in Chinese), a bean-shaped rocky outcrop about a metre and a half above sea level. The Vietnamese were incensed and Hanoi made a public protest: Cuarteron was just 19 kilometres from their nearest outpost. The Vietnamese media warned that China would face 'all the consequences' if it didn't leave the two reefs. The sea was rough and the politics was about to get rougher.

Almost a month later, the Vietnamese, fearing a repeat of the Cuarteron incident, moved to secure the features on Union Bank that they didn't occupy. Union Bank is a large underwater mound, around 470 square kilometres in area, covered in coral reefs that stick out of the water in 31 places. The only feature on Union Bank that comes close to most people's definition of an 'island' is Sin Cowe Island which, in 1988, hosted a Vietnamese garrison. Seventeen kilometres southeast of Sin Cowe Island lies Johnson Reef (Chigua in Chinese, Da Gac Ma in Vietnamese) which is mostly underwater although a few rocks break the surface, the highest being just over a metre above the waves. Less than 2 kilometres to the

north of Johnson Reef is Collins Reef (sometimes called Johnson Reef North) and 15 kilometres to its northeast is Lansdowne Reef, both equally inhospitable and mostly submerged at high tide.[36]

On the night of 13 March, the Vietnamese Navy despatched three ships: one each to Johnson, Collins and Lansdowne reefs. Unfortunately for those on board, the ancient rust-buckets[37] were detected by the Chinese side, which moved to intercept them with a larger and more heavily armed force. At first light on 14 March 1988, the Vietnamese successfully grabbed Collins and Lansdowne (and remain in control there to this day). The Johnson Reef operation turned into a disaster. The exact sequence of events is still disputed but it seems the Vietnamese landed first, in a small boat full of construction equipment, and planted their flags on the coral. Chinese troops then arrived and tried to remove the flags. The two sides shouted at each other and then scuffled. The Chinese accounts say a Vietnamese soldier shot and wounded one of the Chinese force that then retreated as the Vietnamese ships opened fire with machine guns. The Vietnamese say it was the other way around: the Chinese killed the deputy commander of the Vietnamese landing force and withdrew before their ships opened fire. Strangely, a propaganda film released by the Chinese Navy in 2009 to celebrate the navy's 60th anniversary gives more credence to the Vietnamese version. The video, now available on YouTube, was shot from one of the Chinese ships and shows the Vietnamese force standing knee deep in water as the tide rises over the reef. Huge spouts of water then erupt around the Vietnamese troops as the Chinese ships open fire. Within seconds the thin line of men has completely disappeared and 64 lie dead in the water: the machine guns are Chinese and the victims Vietnamese. The Chinese won the battle of Johnson Reef with a turkey shoot.

With the three ships that supported the Vietnamese operation also destroyed, the Chinese had a freer hand over the next few weeks. They already occupied three reefs: Fiery Cross, Cuarteron and Johnson. By 8 April 1988 they had occupied three more: Kennan or McKennan Reef – a part of Union Bank 19 kilometres east of Vietnamese-occupied Sin Cowe Island; Subi Reef – 15 kilometres from the Philippine-occupied Thitu Island; and Gaven Reef – part of Tizard Bank on which sit both Itu Aba Island, the largest of the Spratlys and the only one occupied by Taiwan, and Namyit Island, occupied by Vietnam.

THE SOUTH CHINA SEA

The list demonstrates the degree of planning and resources that the Chinese state had devoted to the operation. In the face of armed resistance and bad weather it had occupied six mostly submerged coral reefs and constructed living platforms, resupply facilities and defensive emplacements in just over two months. Moreover, each of the six was strategically located within a few kilometres of the main islands held by China's rivals and yet each had been entirely unoccupied before 1988. The survey missions had done their jobs excellently. China now had much more than a toehold in the Spratlys.

Liu was triumphant. His 'green water' strategy was now a reality. Deng rewarded him with the rank of full admiral, a place on both the Party and state Central Military Commissions and a seat in the National People's Congress. Four years later, after Deng's retirement, he became a member of the innermost circle of the Chinese Communist Party: the Standing Committee of the Politburo. In all these roles he continued to push for more and more resources to be devoted to the navy. He demanded, and got, bigger ships, better technology and support for his dream of a fully capable 'blue water' navy. But what had China as a whole gained? It now had new bases in the South China Sea, but what else? The best that can be said is that the occupations have prevented other countries advancing their positions. No-one else has been able to drill for oil or monopolise fishing activity in the region but despite all the effort that has gone into seizing and building bases, neither has China.

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From the day he was elected, the Philippine president, Fidel ('Eddie') Ramos, had to contend with a powerful wave of anti-American feeling. Resentment at Washington's earlier support for the Marcos dictatorship had combined with a deeper current of nationalism, resulting in the Philippine Senate voting, in September 1991, to evict the United States from its two vast military sites. Clark Air Force Base had actually already closed on 15 June 1991 when Mount Pinutabo erupted, showering it with thousands of tons of volcanic debris. The vote meant it would not be repaired. On 24 November 1992, the Stars and Stripes was pulled down at Subic Bay Naval Base for the last time. The next day the Philippines was, in

effect, defenceless. Worse, the annual subsidy that the US had provided to the Armed Forces of the Philippines (AFP) disappeared too. Underfunded for years, the navy and air force were in no position to fill the gap left by the Americans' departure. The navy of a country of innumerable islands comprised around 50 vintage Second World War American surplus patrol and transport ships and the air force possessed five functional F-5 jets, built in 1966.

After years of economic stagnation interspersed with political chaos, Ramos' vision was to try to use the country's untapped oil potential to lift its people out of grinding poverty. Ever since the first explorations of the early 1970s there had been hopes that further riches lay offshore. So, in May 1994, the Ramos government secretly approved an application from a Philippine company, Alcorn Petroleum (a subsidiary of an American company, Vaalco Energy), to conduct a paper assessment of the oil and gas potential in an area off the coast of Palawan. Although it didn't involve any survey or drilling work at sea, this was, arguably, a violation of the Manila Declaration, a 1992 agreement between the then six members of ASEAN (the Association of Southeast Asian Nations) to 'exercise restraint' in their actions in the South China Sea. In 1992 China had awarded drilling rights to an American company, Crestone, in an area further to the west and Vietnam had awarded another American company, Conoco, blocks that overlapped the Crestone concession (see Chapter 5 for more on this). Nonetheless, after news of the survey leaked out, China protested against what it saw as an infringement of its own sovereignty. The fuse was lit for a regional crisis.

Captain Joefel Alipustain was the first person to suffer the consequences. He and the rest of his crew aboard the fishing boat *Analita* were going about their usual business on 10 January 1995 when they made an unusual discovery. Sticking several metres out of the sea, raised above the waves on giant stilts, were four large platforms, each supporting three or four octagonal bunkers. During the typhoon season, in the crew's traditional fishing ground, a horseshoe-shaped rock formation submerged at high tide had been occupied. And the occupiers were far from pleased to have been discovered; the *Analita*'s crew quickly found themselves surrounded by hostile boats. To their astonishment, they discovered the interlopers were Chinese, 114 kilometres closer to the Philippines than they had been only a few months before. The crew were held for a week before being freed

on condition they didn't tell anyone what they'd found. But that commitment lasted only as long as it took the *Analita* to reach home, and the world quickly learnt the apt name of the place where they'd been detained: Mischief Reef (Meiji Jiao in Chinese, Panganiban in Filipino).[38] And the location of Mischief Reef? Almost exactly in the middle of the area being surveyed by Alcorn Petroleum.[39]

The Philippine authorities went into denial. 'It couldn't be true', they maintained. The government had other things on its mind. Manila was hosting the largest Christian gathering in history: 4 million people watched Pope John Paul II celebrate Mass. (The region was also somewhat distracted by the Kobe earthquake in the same week.) It was only after the pontiff had left town that the Ramos administration could turn its attention to the sea. A navy plane was sent out but apparently failed to find any evidence of bunkers on stilts. The Chinese went into a different form of denial: there'd been no incident at all with a fishing boat, they said, and there was no base on Mischief Reef. But by 9 February the Ramos government had photographic proof to show the world's press and the Chinese story changed too. Yes, there were structures, they admitted, but they'd been built by the fisheries administration, not the navy. However, that didn't seem to explain the presence of satellite dishes on the huts or the eight armed navy transport vessels around the reef. Then they told the Philippine authorities that the base had been built by 'low-ranking' naval personnel without proper authorisation.[40] But the idea that hundreds of tons of wood and steel, prefabricated housing units, communications equipment and all the men and materials required to set up the four bases could be transported hundreds of kilometres without official permission was ludicrous.[41]

The reaction in Manila was furious, made worse by a sense of impotence. Following the fall of President Marcos and the end of the Cold War, the public and politicians had assumed the country did not face any external threats and voted accordingly. In 1989 Ramos, as Secretary of National Defence, had proposed a 15-year $12.6 billion military modernisation plan. He tried to prioritise it again after becoming president but it remained firmly on the shelf. It wasn't until a fortnight after Ramos demonstrated that Chinese naval forces had managed to build a base 209 kilometres offshore without anyone noticing that Congress finally found

the time to debate the plan.[42] The Modernization Act was approved within days but the resolution to actually implement it wasn't passed for almost two further years.[43] (In 1997, as a result of the Asian financial crisis, most of the funding would disappear anyway.) In February 1995, because of the delays, Ramos had no military option. He was being lied to by Beijing. The United States, still upset about the termination of the bases agreement and more worried by events in Bosnia, wasn't rushing to help. He turned instead to his neighbours.

It was a turning point. Up until January 1995, Chinese expansion in the South China Sea had only really affected Vietnam – and at times when Hanoi was internationally isolated. The features China had seized were all either in the Paracels or along the western side of the Spratlys, far from the other claimants. But by taking Mischief Reef on the eastern side, China had, for the first time, encroached into waters claimed by a member of ASEAN. After the Chinese move, not just the Philippines but Malaysia, Brunei and Indonesia all felt directly threatened. Vietnam, due to join ASEAN that July, was also lobbying for a firm stand. Even Singapore, usually keen to keep on the right side of Beijing, was concerned. In a memorable interview with the BBC, its former prime minister, Lee Kuan Yew, later compared China's actions to 'a big dog going up to a tree and raising its leg and marking its presence, so that smaller dogs in the region will know that a big dog has been past and will come back'.[44]

But ASEAN didn't have a military option either: none of its members were prepared to risk hostilities with China. Sanctions were out too, so instead, on 18 March, it issued a strongly worded statement expressing its 'serious concern', calling upon all parties to 'refrain from taking actions that destabilize the region and threaten the peace and security of the South China Sea' and specifically calling for an 'early resolution of the problems caused by the recent developments in Mischief Reef'. This was pretty tough talk by ASEAN standards but it had no effect out at sea: the bunkers remained on their stilts. China kept stonewalling. In April, at the first ever ASEAN–China Forum, which might have been the obvious place to discuss the matter, Beijing simply refused to have it on the agenda. Instead it was raised, and by all accounts quite forcefully, at an informal meeting beforehand. The Philippine government said it was pleased with the support, but still the structures remained on the reef.

Beijing refused to discuss the issue at the official regional meetings that Ramos would have preferred. The refusal obliged Ramos to agree to China's preferred channel – bilateral discussions – instead, and in August the two sides agreed a 'code of conduct' to avoid future incidents: more statements, more paper, but still no practical change. From the outset, China offered the Philippines joint development of the oil prospects in the areas it claimed – asking the Philippines, in effect, to recognise its territorial rights in the Spratlys. This policy – which has been termed 'occupy and negotiate' or, more pithily, 'take and talk' – is something that none of the other claimants have been prepared to accept.

So why did China occupy Mischief Reef in late 1994? The initial trigger may well have been the Philippine announcement of plans for oil and gas development. But there were internal reasons too. The Singapore-based regional analyst Ian Storey argued that it was the result of jockeying for power within the upper echelons of the Chinese Communist Party as Deng Xiaoping's faculties diminished.[45] Deng's chosen successor, Jiang Zemin, was not a military man and needed support from the PLA leadership and more nationalist factions if he was to reach the top spot. In 1994, Deng's other protégé, Admiral Liu, was a key member of the Politburo Standing Committee and Vice-Chair of the Central Military Commission – the two key bodies in Chinese politics. It seems highly likely that he would have seen the occupation of Mischief Reef as a key part of his 'green water' strategy and that an astute politician like Jiang would have fully supported it. The move was clearly a success. Chinese forces occupy Mischief Reef to this day and the repercussions have been minimal.

The Philippines' neighbours learnt lessons from the crisis. In April 1995, the Indonesian government revealed that China had made a claim on waters near the Natuna Islands, within Indonesia's claimed Exclusive Economic Zone. Alarmed by the events at Mischief Reef, Jakarta decided its best option was deterrence. In August 1996, Indonesia, Malaysia and Brunei held joint military exercises in Borneo, on the southern fringe of the South China Sea. The following month, Indonesia held its largest-ever naval manoeuvres – around the Natunas: 27 ships, 54 aircraft and almost 20,000 personnel took part in war games, climaxing with an amphibious assault on the island where Exxon's multi-billion dollar natural gas project was due to be based. The Chinese Navy sent five ships

to observe the exercises but just to make sure that the message was received in Beijing, the chief of China's General Staff, Fu Quanyou, was invited to Jakarta for meetings with President Suharto and his defence chiefs.[46] China still maintains a claim to the northern part of the gas field but, until very recently, took little action to assert it. (A few incidents since 2012 have given Indonesia renewed cause for concern, of which more later.)

After months of Indonesia talking softly but waving a big stick and the Philippines doing the opposite, the situation in the South China Sea stabilised in time for the annual meeting of the Asia-Pacific Economic Cooperation (APEC) group. By coincidence the November 1996 meeting, involving 21 heads of government, was being held in Manila. It gave Jiang Zemin the opportunity to make the first ever visit to the Philippines by a Chinese head of state. Once APEC was over, he spent three days meeting and greeting the country's business and political leaders. At the start of the second day, President Ramos treated Jiang and his delegation to an early morning boat trip around Manila Bay. As they breakfasted, a Philippine Navy band struck up a series of numbers from a specially produced songbook entitled *Sailing Together to the 21st Century*. The two leaders took to the floor and performed a duet of Elvis Presley's 'Love Me Tender'. As the 60 or so guests applauded, the enmity of Mischief Reef seemed far away. But out at sea, nothing changed. Almost exactly two years after the karaoke cruise, the Chinese Navy turned their stilt platforms on Mischief Reef into concrete blockhouses with wharfs and helipads. China had talked and taken.

The desire to grab islands in the South China Sea began with nationalist flag-waving and ended with a rush to claim potential oilfields and fishing rights. None of the occupations has yet delivered the hoped-for rewards. Instead they have created chronic insecurity, blocked development of the sea's resources and forced politicians into rhetorical battles and jingoistic gestures at times when they might have preferred to seek regional cooperation. China was a latecomer to the Spratlys party but each time it has occupied a feature, Beijing's negotiating position has become stronger. What practical benefits has it gained though? Only the negative effect of preventing others from making gains. Beijing clearly sees this as a long-term strategy that will eventually oblige other states to share sovereign rights. But will they? Is there an alternative to 'might is right'? Could the rule of international law provide an alternative?

CHAPTER 4

Rocks and Other Hard Places
The South China Sea and International Law

On 29 March 1843 the crew of the sailing barque *Cyrus* was hunting for oil in the South China Sea. Sadly for them, the oil was getting away. Five days before, the *Cyrus* had lowered its harpoon boats and come close, but the whales had escaped, heading off fast between the reefs. It was tough and perilous work. The ship was navigating an area known only as the 'dangerous ground' – from the warning printed on the first maritime charts. Despite the new charts the sea off the northern coast of Borneo remained a risky prospect for whalers – and whales – alike. But on this day the weather was fine and a steady breeze allowed the *Cyrus* to make good progress in pursuit of its prey.

Extracting oil from the blubber of a dead whale was a noxious process. As Ishmael complained, aboard the *Pequod* in *Moby Dick*, 'It has an unspeakable, wild Hindoo odor about it, such as may lurk in the vicinity of funeral pyres. It smells like the left wing of the day of judgment; it is an argument for the pit.' But once safely barrelled up, whale oil was prized cargo and the 281-ton *Cyrus* could carry tens of thousands of gallons of it. This was the prize its captain, Richard Spratly, was seeking. He'd left London 16 months before and wouldn't return for a further 17. It took nearly three years of hunting to fill the hold with enough oil to satisfy the ship's owners. Add in whalebone, whale ivory and ambergris and the trade was lucrative. In all, Spratly would make four long voyages as master of

the *Cyrus*. Each one was marked by the birth of another child – though he never saw any of them before their second birthday. By the time each arrived, he had already departed on the next expedition.

The sea had been Richard Spratly's destiny from an early age. Born in the shadow of London's docks to a boat-builder father he was apprenticed to a whaling ship at 16. He transferred to the corrections industry, transporting British and Irish prisoners to Australia, and by the age of 30 had command of the convict ship *York*. Two years later, in 1834, he returned to his first vocation: chasing cetaceans through the South Seas.

As one of the most experienced captains in the fleet, Richard Spratly could weather the difficult conditions better than most. After years on deck he knew the treacherous waters well and would occasionally write to the authorities with discoveries of dangerous rocks and shoals he had encountered. He'd often learnt the hard way: in the spring of 1842 he told a fellow captain that in the many voyages he had made in the seas around what is now Indonesia, Malaysia and the Philippines he 'had been aground on nearly all these reefs and shoals' at some point. Even a decade later he would write to the *Nautical Magazine* complaining that he 'never yet could find one chart of this intricate Archipelago to be in the least depended upon'.

So it is somewhat ironic that this entire intricate archipelago now bears his name. At 9 a.m. that Wednesday, 29 March 1843, there came a shout from the masthead of the *Cyrus*. The lookout had spotted a low, sandy island: 12 miles to the southeast. Captain Spratly believed that it was uncharted. Others disagreed, saying the island had already been recorded by the East India Company's surveyor, James Horsburgh, but perhaps in deference to his long experience, the Royal Navy's Hydrographic Office chose to honour Spratly and since 1881 its charts have marked 'Spratly Island'. It was a fitting honour for an old sea dog, but perhaps in view of later developments, Horsburgh's original name of 'Storm Island' might have been more appropriate.

Spratly must have been only one of dozens of European ships' captains to have spotted his 'sandy isle' but he is the one credited with its discovery. It might have been an accident that it was he; but it was much less of an accident that he was British. Britain was the global hegemon, British cartographers were drawing the best maps and British committees were drawing up the rules for naming territory. Thousands of others probably

saw Spratly Island during the preceding millennia, perhaps even landed on it, but they left no traces in any written records. The idea that this patch of land, just 750 metres long and 350 metres wide, could actually 'belong' to anyone didn't arise until 1877.

It was, unsurprisingly, Great Britain that first claimed it, initiating a process that led ultimately to the disputes of today. Over the century and a half since, claim has been laid upon claim with governments reaching far into the past and the furthest recesses of legal theory in search of evidence and arguments that might make their actions compatible with international law. Unfortunately, in the South China Sea the law is far from clear. There are two sets of laws to contend with: an older form governs 'historical claims' to territory and a newer form, defined by the United Nations Convention on the Law of the Sea (UNCLOS), governs the maritime claims that can be measured from territorial claims. The South China Sea is where the two forms intersect – and perhaps collide.

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The international rules about claiming territory were laid down by those most active in acquiring it. European rulers wanted their actions to be legitimate in the eyes of God and, more importantly, protected from the predations of rivals. In the fifteenth century, Portugal and Spain needed the authority of a man who purported to speak on behalf of God. The 1455 'Papal Bull' of Pope Nicholas V authorised King Alfonso of Portugal to conquer non-Christian lands and peoples and prohibited other Christians from 'meddling' with Portuguese possessions. Its sequels, the Treaty of Tordesillas in 1493 and the Treaty of Zaragoza in 1529, divided the world into Portuguese and Spanish realms. When the Dutch broke up this global duopoly in the seventeenth century they wrote new rules to legitimise their actions. The rules evolved further through the wars and conquests of the following two centuries until, by the time of the Conference of Berlin in 1884, European powers had developed a coherent set of principles justifying the grabbing of land around the world and arbitrating disputes between them.

In these bad old days, before the foundation of the League of Nations, they recognised five ways that territory could be acquired: conquest

(the forcible acquisition of rights over territory), cession (another ruler giving up their rights through a formal treaty), occupation (establishing an administration over territory not belonging to any other ruler: what was called 'empty land' or *terra nullius* regardless of the presence of 'natives'), prescription (the gradual recognition of one ruler's rights by others) and accretion (where land is added to existing territory by, for example, reclaiming the sea). In the twentieth century, having acquired as much territory as they were likely to and, in the wake of two savagely destructive world wars, realising that the costs of conflict now firmly outweighed the benefits, the victorious states decided to strike conquest from the list. Further acquisitions of territory by force were outlawed by the United Nations Charter.

But the legacy of that imperial past is a system of international law that, when it comes to territorial disputes, prioritises discovery over proximity. The sound of that original Papal Bull still echoes, sometimes in the language of the playground: 'finders keepers, losers weepers'. Since there is no overarching global constitution, countries have agreed – to varying degrees – to be bound by a set of customs and practices that have grown up haphazardly in response to specific circumstances. Over the centuries, international law has fused the requirements of dominant states for a system that legitimises their territorial gains with the legalistic practices of a European civil court. It therefore demands demonstrable forms of evidence – papers, treaties and charts – rather than inchoate senses of national entitlement – such as 'the islands have been ours since ancient times'. The result in the South China Sea dispute is the apparently ridiculous situation whereby Britain or France might have as strong a legal claim to the islands as any of the states that border the Sea.

In September 1877, the authorities in the British colony of Labuan (an island off the coast of Borneo) licensed an American named Graham and two Britons named Simpson and James to claim Spratly Island and Amboyna Cay on behalf of the British Crown and then extract from it as many tons of guano as they could carry away on their ships. An announcement was duly posted in the *Government Gazette*.[1] Other countries may have been closer, other fishermen may have visited the island, other navies may even have sailed past it but Britain was the first to announce it in a newspaper – and that is the kind of evidence that tribunals value. From

such humble beginnings, claims of empire grow. It was the first act of sovereignty by any state in what we now know as the Spratly Islands. Another British licence was issued to the Central Borneo Company in 1889. However, the imperial interest in guano never reached the levels of tea, opium or rubber and its interest in the islands remained mainly one of navigation. Nonetheless Britain has never formally renounced its claim to Spratly Island and Amboyna Cay.

Indeed, Britain discreetly revived its claim in the weeks after April 1930 when the French authorities announced that they'd despatched a warship, the *Malicieuse*, taken possession of Spratly Island and laid claim to all the other features within a large rectangular area of the South China Sea. The two governments exchanged diplomatic notes and legal arguments for the following two years. At the front of their minds was the apparent danger posed to their colonies by the expansion of the Japanese empire into the region. Faced with a common enemy, neither wished to relinquish its own claim but the British didn't want to undermine France's either. It wasn't until July 1933 that the French government formally annexed six named islands: Spratly or Storm, Amboyna Cay, Itu Aba, North Danger (known to the French as Les Deux Iles), Loaita and Thitu. Another newspaper announcement was placed – in the French government's *Journal Officiel*. The announcement prompted national hysteria in China but (as we saw in Chapter 2) once the Chinese government had realised that it related to the Spratlys and not to the Paracels, the fuss died down. Contrary to what Chinese officials claim today, newspapers remained bare of official protests or rival annexation notices. The French maintained their claim on paper but did little to enforce it on land until 1938 when they erected a weather station on Itu Aba,[2] which was occupied by Japanese forces during the Second World War. As we've seen, the Japanese abandoned it some time between a US bombing raid on 1 May 1945 and a US naval landing on 18 November 1945. The next sailors to arrive were French, aboard the minesweeper FR *Chevreuil*, on 5 October 1946. They erected a stele reclaiming the island for France and renewing the annexation of 1933. The Philippine government asserted a claim to the Spratlys in July 1946 but did nothing to enforce it for decades.

Until the end of the Second World War, the Chinese Navy had been incapable of even reaching the Spratly Islands. It was only with the supply

of ships, maps and training by the United States that the Republic of China (ROC) government was able to mount an expedition and make the kind of claim that would be recognised by an international court. On 12 December 1946, two ROC Navy ships, the *Taiping* and *Zhongye* (the former USS *Decker* and USS *LST 1056* respectively), arrived at Itu Aba. According to Chinese accounts, the ships' crews removed a Japanese stele from the island and erected a Chinese one in its place. They appear not to have noticed the French one – or not thought it worth mentioning. This was the first act of sovereignty, in a form that an international tribunal would recognise, ever made by any Chinese government in the Spratlys. ROC forces then occupied the island, on and off, until they pulled out on 5 May 1950. By then the French had other priorities: Indochina was being prised from their grasp by Ho Chi Minh and his nationalist friends.

Threading a coherent case through the tapestry of what happened next will earn international lawyers some fine fees. To summarise two bloody decades: Vietnam was divided between Communist north and capitalist south in 1954, the French pulled out in 1956 and then the country was reunited under Communism in 1975–6. While it might seem logical that – since France was the colonial power in Vietnam – French territorial claims in the South China Sea would naturally fall to Vietnam after independence, that argument is unlikely to satisfy an international court. Just like Britain, France has never formally abandoned its claim to the Spratly Islands. It claimed them on its own account, not on behalf of Vietnam. (This situation contrasts strongly with its earlier claim on the Paracel Islands, which was ostensibly made on behalf of the protectorate of Annam, and later fell to Vietnam.) It was not until 1956 that the newly independent Republic of Vietnam ('South Vietnam') asserted a claim to the Spratly Islands, in response to the pretensions of the Filipino entrepreneur Tomas Cloma. That was also the cue for the Republic of China to reoccupy Itu Aba.

The situation becomes even more complex when one investigates the legal situation of the Republic of Vietnam (RVN) itself. One could take the view that the republic was an illegal puppet state created by the imperial powers (French and American). This was certainly the view of the leadership of the Communist Democratic Republic of Vietnam ('North Vietnam' or DRV) at the time. The DRV regarded itself as the legitimate government of the entire country, temporarily constrained to a part of

the national territory by the 1954 partition. Alternatively one could see the DRV (North Vietnam) and the RVN (South Vietnam) as two legitimate states in separate areas of the national territory. To some extent the DRV leadership played along with this too – it sponsored a separate 'Provisional Revolutionary Government' that was officially in charge of the war in the south. When the Communists defeated the Republic in 1975 they officially created a southern Communist state with its own legal 'personality' for just over a year before uniting the two countries under a single 'Socialist Republic of Vietnam' in 1976.

Why does all this matter? Because the legalistic nature of international tribunals will require a claimant country to show it has established a formal claim to a territory, that it has maintained that claim and then asserted it in the face of actions by other claimants. Up until 1975 the DRV did very little to assert its claims in the South China Sea while the Republic of Vietnam did considerably more. If the DRV was the legitimate government of the whole country, then its earlier lack of action could harm its case. If the Republic's actions are taken into account – as a legitimate state within the national territory of Vietnam – then Vietnam's case would be much stronger.

There is one particular action taken by the leadership of DRV that has been used to undermine the Vietnamese claim to the islands. In 1958 the Prime Minister of the DRV, Pham Van Dong, sent a brief letter to his (Communist) Chinese counterpart in which he wrote that 'the Government of the Democratic Republic of Vietnam recognises and approves the declaration made on 4 September 1958 by the Government of the People's Republic of China regarding the decision taken with respect to China's territorial sea'. Again, this might seem a somewhat obscure reason to deny the Vietnamese claim to the islands but under the customs of international law it might amount to what's known as an 'estoppel'.

Estoppel is a key concept in European civil law. Its purpose is to stop claimants saying one thing and doing another. If, for example, one party agrees that a dispute is settled, they can't subsequently go back on their word. It's intended to promote transparency and honest behaviour and is supposed to do the same thing in international law too. If one state recognises the validity of another's territorial claim then, in theory, it should be 'estopped' from contesting the claim in future. In 1958, however, neither the Democratic Republic of Vietnam nor the People's Republic of China

had acceded to the International Court of Justice and, as communist states, neither had much regard for the 'bourgeois, imperialist' rules of the international community. Rather, they were in the midst of an international anti-imperialist war against them.

On 23 August 1958 forces of the People's Republic of China began shelling their Nationalist rivals on the islands of Jinmen and Mazu, both within a few kilometres of the Chinese mainland. Eleven days later the Communist Chinese issued a 'Declaration on the Territorial Sea' claiming ownership of all waters up to 12 nautical miles offshore – encompassing both Jinmen and Mazu. The purpose was primarily to prevent American ships from resupplying or defending the islands. But the declaration also asserted a territorial claim to Taiwan and its surrounding islands, and to the Paracels, Macclesfield Bank and the Spratlys. In a gesture of solidarity against the American imperialists North Vietnam printed the declaration in the Communist Party newspaper *Nhan Dan* on 6 September and then, on the 14th, Pham Van Dong sent his letter. The letter didn't explicitly consent to Communist China's claim to the islands but neither did it explicitly reject it. That failure to protest might be sufficient grounds for a tribunal to regard the Vietnamese claim to the islands as estopped. However, the Vietnamese leadership would feel more than a little aggrieved if its gesture of brotherly solidarity with another Communist state during a period when neither was familiar with the minutiae of international law was used more than half a century later to undermine its country's territorial position.

In short, when subjected to the arcane rules and customs of international justice what might appear to be a 'natural' Vietnamese claim to the Spratly Islands off their country's coast is less strong than it might appear. Unless the French government formally cedes its claims to the Spratlys, Vietnam cannot rely on the actions of the French Empire in the 1930s and 1940s. There may also be legal argument over whether the current Socialist Republic of Vietnam is legitimately the successor to the Republic of Vietnam and its actions and whether Pham Van Dong's letter undermined the Democratic Republic of Vietnam's claim.

China's historic claim to the Spratlys relies on references to islands in ancient documents. However, a closer reading of those texts provides no information about exactly which islands are being referred to and nothing

that amounts to proof of conquest, cession, occupation, prescription or accretion. An international court will have to grapple instead with China's complex modern history. The Republic of China was proclaimed in January 1912 and formally recognised by the 'great powers' in October 1913. But even before this had happened, seven southern provinces had rebelled against Beijing's control, beginning a revolt that would result in the establishment of a separate, rival government in Guangzhou in 1917 by Sun Yat-sen and his allies. It would be 11 years before this administration could fight its way to power over the whole country and become China's internationally recognised government. During this turbulent period, the authorities in southern China are said to have carried out a number of actions that form the basis of Chinese sovereignty claims over the Paracel Islands.

In particular, the southern administration placed the islands under the nominal administration of Hainan Island in 1921 and then granted permits for the extraction of guano. In 1923 and 1927 they sent patrols to inspect the activities of the guano collectors. (The historian Ulises Granados has found evidence in contemporary reports by British intelligence that these permits were actually agreed with a front company for Japanese interests which reportedly promised to provide weapons and funding in exchange for development rights over Hainan Island and the Paracels.[3]) The French authorities (on behalf of the protectorate of Annam) failed to protest against all this and this inaction is now used as evidence of French acquiescence to Chinese sovereignty. But how should a modern tribunal regard actions taken by a government that had no recognition from the 'great powers' before 1928?

The situation becomes more complex after the establishment of the (Communist) People's Republic of China on 1 October 1949 and the expulsion of the Republic of China to Taiwan. Beijing clearly doesn't recognise the legitimacy of the Republic of China in Taiwan but the Communist state's rights in the Spratly Islands rest entirely on the claim to Itu Aba, first made by forces of the Republic of China in 1946. The Communist authorities in Beijing now champion the voyage of the *Taiping* as a claim of sovereignty made on behalf of all China. They took a different view of the ship 60 years ago, during the first Taiwan Strait crisis, seeing it as a symbol of American imperialism. Communist forces sank the *Taiping* off

the Tachen Islands on 14 November 1954. The incident highlights the problems the Beijing leadership might have constructing a legal case for its sovereignty over the Spratlys. If it is the successor state to the Republic of China, can it claim that actions taken by the Republic of China after the declaration of the Communist state on 1 October 1949 reinforce its own claim? For example, in 1956 it was the navy of the Republic of China that evicted the Cloma brothers' expedition from Itu Aba and North Danger Reef. That would appear to be a concrete assertion of sovereignty by the Republic of China – but is it one that can be appropriated by the People's Republic of China? If the Taiwan government ever chose to merge with the People's Republic of China on the mainland this is one point over which it would have considerable leverage.

None of these issues has been tested in an international court and, given the complexity and uncertainty of the intersecting legal difficulties, it seems unlikely that they ever will. All we can say is that, from historical perspective, none of the claims to the islands – whether by Britain, France, the Republic of China, the People's Republic of China, Vietnam or, as we shall see later, the Philippines – appears to be entirely convincing. If Britain had kept its flag flying on Spratly Island and France had done the same on Itu Aba or if either had formally ceded its rights to another claimant, the situation might be clearer. But they haven't, so the countries around the shores of the sea have, instead, created their own facts in the 'dangerous ground'.

* * * * * *

These days Richard Spratly's 'sandy isle' is known to its inhabitants as Truong Sa Lon – big Truong Sa. 'Big' is relative. It is the largest piece of dry land in the Spratlys under Vietnamese control – but that's not saying much. Its highest natural point is two and a half metres above sea level although there's very little that's natural about Spratly Island now. The beach has been enclosed behind a high concrete wall intended to keep out both waves and unwanted visitors. Over the wall protrude dozens of posts and pylons: solar-powered floodlights, electricity-generating windmills, radar towers and a huge mobile phone mast. Urban roofs mingle surreally with the trees: standard-issue Vietnamese state-sector buildings (red tiles,

ochre walls, neo-classical balconies) transplanted from the mainland by the forces of socialist construction.

Viewed from above, the island forms a neatly isosceles triangle, like a way-marker pointing back towards the motherland, 470 kilometres away. Stretching right across its base, and occupying about a quarter of the entire area, lies a concrete runway – originally built by South Vietnamese forces and rebuilt in 2004. A mesh of pathways runs parallel and perpendicular among the imported trees, creating a garden suburb in the sea. Protruding from the base of the triangle into the sea, a cedilla of a jetty stretches 75 metres over the first bank of coral into water deep enough to welcome fishing boats and the occasional supply vessel. Less welcoming structures fill the water around the rest of the perimeter: hull-smashing spikes intended to wreck an invading force before it can reach the shore.

It's crucial for the Vietnamese cause that the island appears to be a settled, economically vibrant community, so great efforts are made to construct the appearance of 'normality'. Like almost every Vietnamese village, the island hosts a Buddhist pagoda, a temple devoted to a patron figure (in this case socialist Vietnam's 'founding uncle', Ho Chi Minh) and an overbearing grey monument to heroes who fell in the fight for national liberation ('the nation remembers your sacrifice'). There's also a large school building to cater for the tiny number of children living on the island. Visitors can enjoy the hospitality afforded by the 'Capital Guest House', paid for by donations from the people of Hanoi.

Such 'voluntary' collections and other state subsidies make the local government, or People's Committee, one of the best funded per capita in the country. In the past few years, its deputy chairman Nguyen Duc Thien told the official Vietnam News Agency in 2011, investments in solar and wind power mean the island has a regular supply of electricity, the construction of reservoirs allows it to store enough water to meet demand and communications links have given it access to the internet.[4] Chickens and ducks roam the island. Small vegetable plots have been established behind high screens that attempt to keep out wind, sand and salt. Bananas and other fruit trees line the pathways. A $170,000 project run by the Southern Vietnam Institute for Agricultural Science is trying to increase productivity but Truong Sa Lon is hardly self-sufficient.[5] The population

has grown so large that food, water and even the soil in which the plants grow still have to be shipped in.

It's not just material needs that need to be catered for. The island population's moral welfare must also be protected. In April 2012 five monks from the official Vietnam Buddhist Sangha (motto: Dharma, Nation, Socialism) set sail for a six-month sojourn on Truong Sa Lon with a mission to improve the spiritual lives of the community. The Communist Party of Vietnam is also concerned about morale. Apart from the usual round of military inspections and national days, two anniversaries are carefully marked: the 1975 'liberation' of the islands from South Vietnamese control and the 1988 Battle of Johnson Reef. At these ceremonies young soldiers are urged to be eternally vigilant against the 'insidious schemes' of the unnamed 'enemy'.[6] Spratly Island is not a 'normal' island: it's an unsinkable bulwark. Hidden among the trees – between the school and the guesthouse and the pagoda – are bunkers, barracks, at least five battle tanks, 20 gun emplacements and a garrison to defend them.[7] But living there – or on one of the 21 other Vietnamese-controlled smaller islands and reefs – is tough. Keeping the troops and sailors motivated is crucial and the Party is ever keen to nurture emotional links between the units out at sea and the folks back home.

The Party excels at organising 'grassroots' solidarity activities and, as nationalist sentiments have swelled in recent years, participation in fund-raising campaigns for the soldiers and sailors out at sea has become ever greater. The sums involved are relatively small, easily within the gift of central government, but the mobilisational power of the campaigns cannot be measured in monetary value alone. They are powerful tools with which the leadership wins popular support. Newspapers have publicly committed themselves to 'propagandise' information about the islands and provinces organise gift-giving events at which coral branches and beach pebbles are exchanged for donations of karaoke DVDs, table tennis tables, electrical generators and cartons of cigarettes. TV programmes feature reporters in patriotic T-shirts extolling the courageous men and women who defend the faraway national territory. A decade ago these would have been dull rituals but now they are enthusiastically followed by an appreciative audience.

THE SOUTH CHINA SEA

Vietnam did not enjoy 'first mover advantage' in its choice of positions in the Spratlys. The Republic of China reoccupied Itu Aba, the largest island, in 1956. The Philippines occupied Thitu (Pagasa in Filipino), Nanshan (Lawak) and Flat (Patag) Islands, and North Danger Reef, sometime before July 1971. (They considered landing on Itu Aba too but were deterred by Taiwanese ships.) By the time the South Vietnamese sent in the marines in September 1973, choices were becoming more limited. Spratly Island – Truong Sa Lon – was an obvious candidate as it was the closest proper island to the Vietnamese mainland and also outside the area claimed by the Philippines. They learnt from the Filipinos' mistake and didn't try to occupy Itu Aba: it had been heavily reinforced by this time. Instead they surreptitiously moved onto Namyit Island, another part of the same atoll – the Tizard Bank – about 20 kilometres across the lagoon.[8] Around the same time they also took over Sin Cowe Island (Dao Sinh Ton) on Union Bank (the seventh largest island) and, much further to the south, Amboyna Cay (Dao An Bang).

Another prize fell to the Vietnamese through a combination of alcohol and bad weather. The two northernmost islands of the Spratlys lie on what the British had named North Danger Reef. This was where, in October 1956, Filemon Cloma had been forced by the Taiwanese Navy to abandon his island-grabbing antics. As its French name – Les Deux Iles – suggests, the reef has two main features: the 2-kilometre-long Northeast Cay (Parola in Filipino) and the 650-metre-long Southwest Cay (Pugad in Filipino). In early 1975 Filipino garrisons occupied both and the two units would often socialise together. One night the officers and men from Pugad were invited to Parola for a party. According to General Juancho Sabban, former head of the Philippine Western Command, they were unable to return to Pugad because of severe weather. Unfortunately for the Filipinos, the weather wasn't severe enough to prevent South Vietnamese troops sneaking onto the island in their absence.[9] Pugad has been occupied by the Vietnamese ever since and is now known to its inhabitants as Dao Song Tu Tay.

That wasn't the end of the story, as we saw in Chapter 3. Only a few months later, in the closing weeks of the Vietnam War, Hanoi launched its 'East Sea Campaign' to grab all the islands that were under South Vietnamese control. Southwest Cay was their first target. Special forces landed on 13 April. After a short firefight some of the defenders realised

their position was hopeless and surrendered. But one lieutenant, facing the prospect of a Communist prison camp, put his faith in capitalist camaraderie. He threw himself upon the good offices of the same Filipino soldiers his unit had so recently humiliated and swam the 3 kilometres across the lagoon to the safety of Parola. Luckily for him, the Filipinos were forgiving and gave him sanctuary. Meanwhile, the Communists pressed on – taking the remaining South Vietnamese-held islands even before the fall of Saigon.

Today, the garrisons of the twin islands are on speaking terms. Better still, they are now on sporting terms. In March 2012 the admirals in charge of the Vietnamese and Philippine navies agreed that, as a confidence-building measure, the two militaries would schedule a series of football and basketball games. The first matches were played in June 2014. For the visiting Filipinos, the contrast between their spartan accommodation on Parola and the increasingly comfortable facilities on Dao Song Tu Tay was stark. Just as they've done on Spratly Island, the Vietnamese have installed wind and solar power generators, radar towers and an artificial harbour. An elegant 40-metre-high lighthouse towers over the trees and the island's sporting facilities.

Back home on Parola, members of the Philippines' garrison live like smallholders on their desert island: tending vegetables, harvesting coconuts and fishing. Keeping busy is the best way to fight the boredom and loneliness in the months between the supply boat's visits. A broken-down bulldozer by the beach is a rusting testament to unfulfilled ambitions. For General Sabban, the situation on Parola is particularly depressing. He was its commander for six months in 1981 and remembers the days when his marines enjoyed a much better standard of living than their neighbours who, back then, were enduring the privations of state socialism. Since then Vietnam has liberalised its economy and generated the resources to develop its islands. In the Philippines, priorities have been different. Military budgets have been cut and the marines have had to cope with the consequences.

The consequences of the cuts can be seen on all the islands controlled by the Philippines. On Ayungin (known internationally as the Second Thomas Shoal) the marines live aboard the rusting hulk of the BRP *Sierra Madre*, a tank landing ship that was deliberately run aground on the reef

in 1998. Even walking across the ship's main deck is dangerous. Years of sea salt and high winds have flayed the metal bare. In several large patches the deck is completely worn away and visitors have to literally 'walk the plank' to get across. The five marines and two sailors who guard the shoal have even less to amuse themselves than their counterparts on Parola. 'Life's quite hard here because there are no trees, no ground,' Petty Officer Third Class Benedicto de Castro told a visiting journalist in 2012. Their diet consists almost exclusively of the fish they catch. During 2013 their lives became even tougher as China Coast Guard ships laid siege to their outpost, turning away supply vessels.

Every three months or so the BRP *Laguna*, or another of the Philippine Navy's Second World War tank landing ships, sets off on the 'Log Run' – the logistical supply run around all nine features occupied by Filipino forces. It should be a seven-day trip but bad weather or mechanical problems frequently make it longer. None of the Philippine islands have harbours, or even jetties to receive larger ships, so supplies have to be loaded onto small boats and ferried to shore. At high tide on Rizal Reef (Commodore Reef on Western charts), the four-man garrison retreats to its stilt houses and plays cards until the water goes down again. How they envy their colleagues, just an hour's sail away, on Kota (Loaita Island) with their dry land and green trees.

One of the crew's duties on the Log Run is to inspect reefs and shoals that the Philippines claims but doesn't occupy. Increasingly, they discover evidence of foreign activity. It can start with something as apparently innocent as an orange buoy. The buoy might be just a mooring point for a fishing boat but General Sabban says that more often it is the first step in a surreptitious land grab. If the buoy isn't removed, he says, then within a few months it can evolve into a steel post. In mid-2011 his forces discovered one at Sabina Shoal that had evolved into a large commercial shipping container anchored to the reef. 'It's China, of course,' he says. Remembering the events of Mischief Reef in 1995, when the Philippines was caught napping, the sailors and marines have orders to remove everything they find. It's a game of cat and mouse, with the Chinese constantly testing the vigilance of the boys in blue and green.

The trip usually begins or ends on the main Philippine-held island: Thitu, or Pagasa as its inhabitants call it. Pagasa's name – 'hope' in

Tagalog – is appropriate, since hope is what sustains its small community. Thitu was one of the first islands to be occupied by Philippine forces and it's by far the largest at 37 hectares. It's big enough for a small settlement but not for the 1,260 metre-long runway that sticks out either side of it. The runway was built in the mid-1970s but is now only usable with the utmost care. In the words of Western Command's in-house magazine *Kanluran*, the 'runway is about to be completely detached due to erosion' by the sea. In early 2011 a Philippine Navy ship delivering materials to repair it ran aground on the surrounding reef. The armed forces declared they didn't have the resources or the skills to complete the job and appealed to the government to fund repairs by a civilian contractor. Pledges have been made but the waves are still eating away at the runway.

In 2001, the Philippines became the first country deliberately to settle civilians in the Spratlys but it requires a particularly tough constitution to stick out the conditions on Thitu/Pagasa. Officially, according to the 2010 census, the island has a population of 222. In reality, only around 60 live there at any one time. That's partly because the central government subsidy of $14,000 per year can only feed that many. Almost everything – except fish, salt and coconuts – comes by boat. Unlike the Vietnamese, the Filipinos haven't yet shipped in soil to make vegetable gardens. There's supposed to be a mobile phone station on the island but the signal is described as 'intermittent'.

The mayor of the island, in fact of the whole 'Kalayaan Island Group', is Eugenio Bito-onon. He was one of the pioneers, moving to Thitu/ Pagasa in 1997 to work as a town planner for the hoped-for town. He's still planning, still hoping. Mayor Bito-onon dreams of a safe runway and a functioning harbour, of tourists flying in for infinity pools and pristine coral reefs, of yachts in a marina, of fishing boats stopping for supplies and a thriving community catering for all their needs. But nothing can move without an injection of central government funding and the government always has other priorities. In June 2012 Bito-onon opened the island's first school building with one teacher, three nursery children and five kindergarten pupils. It was just a single room with borrowed furniture but he hopes it will persuade more families to stay. Until then, children had been travelling 500 kilometres to Palawan, the nearest large island, for their education. He's pressing for the government to build a proper school

with toilets and separate classrooms but is still waiting for the necessary $100,000 to get started.

China made diplomatic protests about the school opening, arguing it was a violation of its 'indisputable sovereignty' in the South China Sea. That seems to be the main reason why the Manila government's cheque-book remains closed. Its approach – policy might be too strong a word – has been to avoid giving China any reason to protest against activities on the Philippine-held islands and to hope thereby to maintain the status quo. The garrisons are clearly token forces and could be overrun within minutes by a determined enemy. Even on Thitu the defences consist of little more than a pair of 40-mm anti-air guns and the marines' personal weapons. In contrast to all the other occupied islands in the Spratlys, there are no anti-invasion obstacles in the water and almost no fortifications on land. An attempt to construct any would incur a protest from Beijing and, perhaps, repercussions. The Vietnamese just ignore such protests but the Filipinos take them more seriously.

One piece of construction that has been completed is a small statue of Tomas Cloma, the pioneer of Kalayaan. In a way, Mayor Bito-onon is Cloma's heir. He's responsible, in theory at least, for seven islands (Kota, Lawak, Likas, Pagasa, Panata, Parola and Patag) plus Rizal Reef, Ayungin Shoal, and dozens more unoccupied features and vast areas of sea in between. Thitu/Pagasa has a town hall but without a decent mobile phone signal it's hard to work from there. For most of the year, Kalayaan's local government operates from a small office in a dusty shopping development on the outskirts of Puerto Princesa, the capital of Palawan.

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By the time the People's Republic of China moved into the Spratly Islands in 1987–8, all the dry real estate had been occupied. Only barren reefs remained, clearly unable to sustain human life without the addition of hundreds of tons of concrete and steel and the provision of regular supply boats. Life has been particularly tough in these outposts. Although Chinese media reports always portray the occupants of the 'sea bastions' as ruddy-faced heroes brimming with patriotic zeal and socialist morals,

sometimes they inadvertently reveal more of the truth. A March 2005 report in the *PLA Daily* newspaper, for example, hailed the inventiveness of one group of veteran soldiers stationed on Yongshu Jiao (Fiery Cross Reef) when trying to cheer up a newly arrived soldier, Chen Hao. Chen's birthday was approaching but 'there is neither butter nor eggs on the reef' so they made him a cake using bean curd. Chen's reaction to this confectionary delight was not recorded. In June 1994, Chinese radio reported that soldiers in the outposts 'once had sores in their mouths because of long periods without green vegetables' – an early symptom of scurvy – and described men stationed in 'lone pillboxes' for more than a year at a time.

More recent articles, while praising new developments, also tell us something of the continuing unpleasantness of life. A June 2012 report in the *PLA Daily* championed the delivery of kitchen equipment that is 'moisture and erosion-proof', 'sound-proof shields for generators' and glasses to protect against ultra-violet radiation. This seems to imply that metal fixtures are rusting away, that soldiers are living in close proximity to loud industrial machinery and suffering from sun-blindness. Almost every official picture of the reef forts is taken on a calm clear day when the sky is bright blue and the sea clear and calm. But for most of the year it's either 30°C and unbearably humid, or monsoon winds are blowing in one direction or another. From October to January there are periodic typhoons – with 200-kilometre-an-hour winds and waves occasionally large enough to break over the occupants' heads.

At the time of writing there are PRC-built blockhouses on eight reefs in the Spratlys: Cuarteron (Huayang Jiao), Fiery Cross (Yongshu Jiao), Gaven North (Nanxun Jiao) and Gaven South (Xinan Jiao), Johnson South (Chigua Jiao), Kennan (Dangmen Jiao), Mischief (Meiji Jiao) and Subi (Zhubi Jiao). Construction is also under way at a ninth, Eldad Reef (Anda Jiao). None were designed with aesthetics in mind: they're survival structures built to withstand waves, wind and military attack. Some have enough space for a basketball hoop or a table-tennis table and there's always the helipad for some *tai chi* but there's no chance of a game of football on any of them. Unlike the Philippine-controlled islands, which could be nature reserves, the clear purpose of the Chinese structures is to control the sea around them. They bristle with radar domes, satellite dishes and gun emplacements.

With no space to relax outside, the Chinese have turned inwards. Karaoke machines and video games have been available for some time but satellite connections now give soldiers access to the internet – officially for online learning but presumably for less high-minded purposes as well. For the past few years, all of the contending countries have been waging a logistical war – with each other and with the elements – to provide the best mobile phone coverage in the islands. Vietnam was the first to move, installing a base station in July 2006. Since then China has worked hard to catch up. Its first system in the Spratlys became operational in 2011 and in January 2013, China Telecom proudly announced that the largest outpost, Fiery Cross Reef, now has a working 3G mobile phone connection and it was busy rolling out coverage to the other garrisons. Across the archipelago soldiers and fishermen now have a choice of competing national phone companies. The Philippines is well behind the others, but at least the Filipino marines on Parola (Northeast Cay) can borrow the signal from their Vietnamese rivals on Dao Song Tu Tay (Southwest Cay) to call home.

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If it were ever asked to adjudicate the rightful ownership of the Spratly Islands, the International Court of Justice (ICJ) would have to unravel a very complex web of claims. Six states might try to pitch in: France – based on its discovery and occupation in 1933 and re-occupation in October 1946; the Philippines – based upon the proclamation of Vice-President Quirino in July 1946 (and possibly the activities of the United States as the colonial power during the 1930s); the (Taiwanese) Republic of China – based on its occupation in December 1946 and actions since (although since it's not a recognised member of the UN it wouldn't be able to present a case directly); the People's Republic of China – also based on the actions of the Republic of China and its claimed right to be the legitimate 'successor state'; and Vietnam – based upon its claim to be the successor state to French Indochina and its actions since.

The first thing the court would need to decide would be the 'critical date' – the moment at which the crucial events have all taken place and the dispute has 'crystallised'. The choice of date is usually critical to the

outcome. For example, if the court had been asked to rule on Itu Aba's sovereignty in 1947, it would presumably have ruled in favour of France on the grounds that Paris had clearly asserted its claim and 'occupied' (in the legal sense) the island well before anyone else. But if asked the question now, the judges might decide to include more recent events – in particular the apparent failure of France to maintain its claim over the past 60 years – which would probably give an advantage to the Republic of China.

The 'critical date' has another related meaning: it's also the point after which actions taken by the parties in a dispute have no effect in the eyes of international law. Since the dispute has 'crystallised' – all sides have made their positions known – building a runway or incorporating islands into new provinces or drawing them on a new map will carry no weight at all with the judges at the ICJ. In the case of the South China Sea, the 'critical date' is certain to be a few decades ago. This basic piece of jurisprudence doesn't seem to be understood by the various claimants for the islands who persist in making irrelevant gestures and protesting about the irrelevant gestures made by others even though they are unlikely to have any bearing on the international legal situation. They are simply another bluffing strategy in their giant poker game.

If the parties chose to ask the question, the ICJ might be asked to rule on whether a claim to Itu Aba amounts to a valid claim on just one island, on the island's immediate surroundings or on the entire Spratly archipelago. There are precedents. For example, in a ruling on the status of eastern Greenland in 1933, the ICJ decided, in effect, that it was not necessary for a state to physically occupy every part of a remote and difficult island to claim sovereignty over its entirety. If this precedent were followed, it's possible that a verdict on the sovereignty of Itu Aba would also apply to the other features of the coral atoll that it sits on – known as the Tizard Bank. They include the Vietnamese-occupied Namyit Island (Dao Nam Yet), Sand Cay (Da Son Ca) and Petley Reef (Da Nui Thi) and the Communist Chinese-occupied Gaven Reefs (Nanxun Jiao and Xinan Jiao) and Eldad Reef (Anda Jiao) which all lie within 40 kilometres of each other. However the court might also rule that these are separate islands carrying separate claims.

The more explosive question is whether a ruling on Itu Aba would apply to all the other islands in the Spratlys. Vietnam and both Chinas

talk of their claims in this maximalist frame, declaring their sovereignty over the entire 'Truong Sa' and 'Nansha' archipelagos respectively. The Philippines speaks similarly, albeit for the subset of the Spratlys it calls the 'Kalayaan Island Group' (which includes Itu Aba). If all these states were to maintain their positions and ask a tribunal for a ruling on the islands as a whole, then the ownership of Spratly Island, Thitu and all the others would probably fall to whichever had the best claim to Itu Aba. Given that it has been in control of the island for most of the past 70 years, the winner is highly likely to be the Republic of China (Taiwan). The People's Republic of China (Beijing) would then need to argue that it has the legitimate right to succeed to the Republic of China's claim – opening a fresh can of worms.

Itu Aba would be the centrepiece of any South China Sea claimant's property portfolio and is clearly coveted by both Communist China and Vietnam. The occupants harbour a constant fear of invasion and an acute sense of vulnerability. Itu Aba is a dot in the ocean surrounded by hostile neighbours. The 1,400-kilometre sea journey from the nearest Taiwanese port, Kaohsiung, takes three days in good weather and much longer in a typhoon. Taiwanese governments have struggled to create an identity for the island that is both peaceful in intent but also resolute in defence. Unlike Spratly, Thitu or Woody islands there is little pretence about civilian life on Itu Aba: there are no children's schools or tourist hotels, for example.

In 1999, to try to de-escalate growing tension in the Sea, the government in Taipei announced that it was removing its marines from the island and replacing them with coastguards. But they are not ordinary coastguards: they are armed with 120mm mortars and 40mm cannon and trained by the military. In September 2012 they held live fire exercises to demonstrate how they would shoot up an invasion force. Like the two other largest islands in the Spratlys, Itu Aba's main feature is a runway, filling 1,200 metres of its 1,400 metre length. It was built in just 273 days and formally inaugurated with a flying visit from President Chen Shui-bian a month before the March 2008 presidential election. Chen declared the facility to be for 'humanitarian purposes' – to help in the rescue of stranded fishermen – but few believed him. The runway had been argued over for 15 years and stopped and started as relations with Beijing warmed

and cooled. The opening was a gesture to demonstrate Chen's support for a more independent Taiwan. It failed to win Chen the election though.

The island is just 370 metres wide but it has its own supply of fresh water and a covering of natural vegetation. It's clearly able to support at least minimal human habitation, although the 120-strong garrison depend entirely upon supplies shipped from Taiwan. The strips of land either side of the runway host accommodation blocks, defensive emplacements, a solar power installation (to reduce the amount of diesel required to run the island's generators) and a conservation area for the island's population of endangered green sea turtles.

In short, Taiwan's position on Itu Aba is secure. It might therefore be better, in a legal sense, for Vietnam and the Philippines to modify their positions and no longer seek sovereignty over large groups of islands but over specific named features. Vietnam might then be able to demonstrate the strongest claim to Spratly Island (Truong Sa Lon) and potentially others, and the Philippines to Thitu Island (Pagasa) and potentially others, through long histories of occupation and use. The same might be possible between Vietnam and China for the Paracel Islands – with Vietnam's claim stronger to the Crescent group and China's claim stronger to the Amphitrite group. However, rolling back from their all-encompassing claims in the face of nationalist hypertension would require considerable political bravery.

* * * * * *

National pride is one reason why countries around the South China Sea expended blood and treasure to occupy the reefs and islands but right from the first claims on behalf of British guano-diggers in the 1870s, there have been economic motivations too. These days, with the bird droppings extracted and turned into fertiliser, the islands themselves contain almost nothing of value. Malaysia has turned Swallow Reef, which it calls Layang-Layang, into a diving resort with a hotel and swimming pool (next to the barracks, runway and naval harbour) but this is the only spot in the Sea that comes close to turning a profit. Apart from their somewhat overrated strategic importance (see Chapter 8), the rocks and islands are now only valuable because of the waters that surround them. That's the result of

Annex 460

Johan Saravanamuttu, "Malaysia's Approach to Cooperation in the South China Sea", in *Non-Traditional Security Issues and the South China Sea: Shaping a New Framework for Cooperation* (S. Wu & K. Zou, eds., 2014)

Non-Traditional Security Issues
and the South China Sea
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Chapter 5

Malaysia's Approach to Cooperation in the South China Sea

Johan Saravanamuttu

Introduction

This chapter first looks at Malaysia's foreign policy with respect to law of the sea issues, providing a brief history of various efforts at settlement of disputes in recent times. Two prominent cases are the ICJ adjudication of the Ligitan and Sipadan dispute with Indonesia and the Pulau Batu Puteh-Pedra Branca dispute with Singapore. With respect to the South China Sea (SCS), Malaysia has staked its claims on and occupied a number of reefs and atolls based on the publication of its 1979 map, which extends its continental shelf along the Sabah and Sarawak coast into the Spratlys and Kalayaan area.

The chapter explores the overall approach of Malaysia towards conflict management of the disputed areas in terms of its approach to joint cooperation. The ostensible examples of cooperation in the SCS would be Malaysia's agreements with Vietnam in 1992 and with Brunei in 2009 on joint development areas. In 2009, Malaysia and Vietnam had also jointly submitted to the United Nations extended continental shelf claims. Joint development efforts in the SCS seem to emulate the joint development cooperation begun in 1979 between Malaysia and Thailand with respect to disputed territories in the Gulf of Thailand. However, each set of cooperative ventures has its unique characteristics. Malaysia's cooperation with Thailand has gone a great distance with the setting up of a Malaysia-Thailand Joint Authority (MTJA), based in Kuala Lumpur, which is now fully operative.[1]

Malaysia's arguably most innovative cooperation scheme is with Brunei while the most acrimonious relations in the past have been with the Philippines. The signing in 2006 of an agreement between PETRONAS, Malaysia's national oil and gas corporation, with China's Shanghai LNG company may have implications for Malaysia-China SCS relations and suggests that cooperation rather than confrontation could be the order of the day for the two claimants.

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1   Under the MTJA, oil and gas have been regularly extracted from the platforms constructed in the JDA. In April 2012, the first block B17-Muda lifted 296,880 barrels; in May 2010, Block A-18 Cakerawala condensate sales achieved 10 million barrels and in April 2011, Block A-18 achieved 1 trillion cubic feet (TCF) of gas sales. See http://www. mtja.org/chronicle3.php (accessed 12/10/12).

The chapter will explore, in a constructivist vein, Malaysia's pursuance of norms and objectives directed to the emergence of a cooperative regime for claimants to resources and assets found in the South China Sea. It is suggested that such a cooperative regime itself should build upon the confidence building measures instituted by ASEAN through an obeisance to UNCLOS and the Declaration on the Conduct of Parties in the South China Sea of 2002.

Background to Malaysia's Various Territorial Disputes

Malaysia's bilateral irritations with its neighbours mostly involve territorial claims made as the result of the publication of its 1979 map, which among other things extends its continental shelf along the Sabah and Sarawak coast into the Spratlys and includes part of the Kalayaan area claimed by the Philippines.[2] Till date, Malaysia has occupied eight features. In June 1983, Malaysia occupied Swallow Reef (Terumbu Layang Layang), which was subsequently turned into a tourist resort for bird watching and diving, complete with an airstrip. The Royal Malaysian Navy protects the islands with its vessels, anti-aircraft guns and other military facilities (Balakrishnan, 2002: 77). The Malaysian posture has drawn protest not just from the Philippines but also from Beijing and Hanoi. Undaunted, Malaysia went on to occupy Ardrasier Reef (Terumbu Ubi) and Mariveles Reef (Terumbu Mantani) in 1986, Louisa Reef (Terumbu Semarang Barat Kecil) and Dallas Reef (Terumbu Laya) in 1987, Erica Reef (Terumbu Siput) in 1998, and Investigator Shoal (Terumbu Peninjau) in 1999.[3]

On occupying Swallow Reef, Malaysia deployed three F-5 fighters to Labuan to provide military backing to its claims. There is now, furthermore, the completion of the Teluk Sepanggar naval base, which houses its two Scorpene-class submarines. In March 1998, Malaysia's deputy Foreign Minister asserted Malaysia's claims to South China Sea territories in the following terms:

> The islands and atolls are under Malaysian sovereignty and Malaysia has in the past reaffirmed its jurisdiction ... They are within Malaysia's continental shelf and Malaysian's sovereignty over them has been officially declared through the new Map of Malaysia, published on December 21st, 1979 ... The claim is in line with the Geneva Convention of 1958 pertaining to territorial waters and continental shelf boundaries, and the UN Convention on the Law of the Sea, as well as other international practices (David, 2004: 60–61).

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2   As explained by Balakrishnan (2002: 75), Malaysia does not claim the entire Spratly group but islands located to the extreme south of the Spratlys thought to be within the waters of its continental shelf. Balakrishnan suggests that this may be unconvincing because, as noted by others, waters do not give titles to islands but rather islands confer rights to waters.

3   See Asri Salleh *et al.* (2009: 118).

These claims set the stage for the most serious clash with the Philippines till date in April 1988 in an incident which occurred around Commodore Reef (Rizal Reef for the Philippines and Terumbu Laksamana for Malaysia). The Malaysian navy seized three Filipino fishing boats and arrested 49 crew on the charge of illegal fishing. This was followed by the Philippine accusation in July of the same year that the Malaysian Navy had also chased its fishermen away from Commodore Reef. Protests from the Philippines implied that that Malaysia was using this incident as bargaining chip for the Sabah claim. In August 1988, the 49 fishermen were released without any suggestion that its territorial claim on Commodore Reef was rescinded. Indeed, Kuala Lumpur announced the construction of a new naval base at Sandakan to control foreign naval activities. Manila on its part gave naval escorts to its fishermen and accused Malaysia of border violations in August and September 1988 when the Malaysian Navy was alleged to have fired on Philippine fishing boats.[4] It wasn't until the Ramos-Mahathir overtures and exchanges that relations settled to a more even keel. However, the unresolved Sabah claim remains as an unpleasant political overhang in the bilateral relations. It does not appear that the issue of territorial claims with respect to the Philippines or other littoral states will fade away. Malaysia in 2007 contracted with the Trans Resources Corporation to build a submarine base in Teluk Sepanggar, near Kota Kinabalu, Sabah's capital city. Its two French-made Scorpene-class submarines were housed at the base in September 2009 and July 2010 along with an Agosta-70 used for training.[5]

With respect to Indonesia, the dispute over Ligitan and Sipadan became the central aspect of deteriorating relations in the 1980s up until its resolution via the International Court of Justice (ICJ) in December 2002 when Malaysia won its claim. In July 1982, Malaysia occupied the two islands to the chagrin of its neighbour.[6] As was the case with Swallow Reef, Malaysia began to develop the islands for tourism. By early 1991 Indonesia started to protest the change in the status quo of the islands. Malaysian fishermen came eyeball to eyeball with the Indonesian Navy in July 1991 after which a joint commission was established. Even so, Malaysia claimed that Indonesian armed forces actually landed on Sipadan several times in 1993 and in 1994 the Indonesian Navy staged large-scale exercise involving 40 vessels and 7,000 troops in the vicinity. By late 1994, Malaysia had proposed arbitration and by 1996 it appeared that Indonesia had reluctantly acceded to Malaysia's suggestion to have the dispute referred to the ICJ instead of the ASEAN High Council.

Malaysia won its case in the ICJ on the ground of *effectivités*, that is, effective sovereign control of the islands.[7] It is interesting to note that both countries'

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4   See David, 1996: 61.

5   See Sakhuja (2007) for details and the account of a submarine acquisition race in Southeast Asia to apparently meet the new security challenges of the region.

6   See Haller-Trost (1995) for details of the incident in which Malaysia and Indonesia tried to play down the event.

7   See Press Release 2002/39 ICJ, from which the facts of my account are taken.

claims based on historical entitlement and that the islands were *terrae nullius* were dismissed by the Court. Instead the Court argued, six judges to one, that Malaysia established *effectivités* through regulation and control of the collection of turtle eggs under its Turtle Preservation Ordinance which was applied since the 1950s. Moreover, British North Borneo constructed and operated lighthouses on both the islands, which revealed the intention to exercise state functions.[8] Observers have noted the psychological impact of the loss of the two small islands to Archipelagic Indonesia with its 3,000 inhabited islands and thousands more which are uninhabited. The 1999 loss of Timor Leste perhaps adds to this psychology.[9]

Further to this settlement, a brewing territorial problem is the Ambalat area, in the Celebes Sea, which is also claimed by both states.[10] According to Schofield and Storey (2005), the dispute resulted from the issuing of exploration licenses for two deep-water oil concessions blocks, ND6 and ND7, by Malaysia's national oil company, Petronas Carigali, in partnership with the Royal Dutch Shell Group on February 16, 2005. The dispute escalated into several minor skirmishes between the two navies. In March 2005, Indonesia accused a Malaysian navy vessel, KD Renchong, of ramming into its military ship, KRI Tedung Naga. Indonesian Defense Minister Juwono Sudarsono said that the Malaysian government had apologised for the incident while then Deputy Prime Minister of Malaysia, Najib Razak denied this. The Malaysian Navy had reportedly chased Indonesian fishermen out of Ambalat as well while Indonesia further accused Malaysia of some 35 violations of Indonesian territory. Complicating matters was the fact that both Malaysia and Indonesia have awarded oil concessions to competing oil companies, Shell, Unocal, and ENI, in the area. Several demonstrations against Malaysia erupted on the Indonesia side over the Ambalat issue.[11]

It would appear that, on the whole, Malaysia's relations with Thailand have been characterised more by cooperation than irritations. Such irritations no doubt have been partially pacified by the 1979 agreement to jointly develop hydrocarbon resources in the disputed territorial area in the Gulf of Thailand via the Malaysia-Thailand Joint Authority (MTJA). Ironically, the MTJA grew out of a territorial

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8   It is of interest to note that in March 2001, the Philippines sought to intervene in the case in order to preserve and safeguard their historical and legal rights with respect to the territory of North Borneo. In its judgment of October 23, 2001, the Court held that the Philippines failed to establish an interest of a legal nature that would justify the intervention. See *The American Society of International Law*, January 29, 2003, http://www.asil.org/ilib/ilib0602.htm accessed 15/1/08.

9   See Schofield and Storey (2005: 39–40) for a treatment of the emotive elements of the claim especially from the Indonesian perspective.

10   See Schofield and Storey (2005) for an extended exposition of the dispute and its security and economic ramifications.

11   Based on reports by new agencies, Bernama (29 March, 2007) and Antara (7 March 2007 and 29 March 2007). The crisis may have led to the hacking of the Universiti Sains Malaysia's webpage, where the Sukarno slogan "Ganyang Malaysia" (Crush Malaysia) was inserted.

dispute over an offshore feature known as "Ko Losin" which Malaysia claimed was on its continental shelf. The 1979 MOU for the MTJA allows for the arrangement to last for 50 years.[12] The project remained fallow for years but by the mid-2000s, plans were underway for a gas pipeline and the building of a gas separation plant. The pipeline is now completed and many gas fields are now operative as will be detailed further below.[13]

Malaysia's most recent settlement of a territorial dispute was with Singapore over Pulau Batu Puteh or Pedra Branca. Both countries agreed to adjudication by the ICJ, as was the case for Sipidan and Ligitan, alluded above. The legal dispute was over a 500 square meters islet, which houses the 1851 Horsburgh Lighthouse, and dates to Malaysia's publishing of its 1979 map, the issue only surfaced prominently towards the end of the 1980s.[14] In mid-1989, Singapore established a radar installation on PBP and as all traffic was banned from the surrounding waters, this gave rise to Malaysian leaders in Johor charging that Malaysian fishermen were being chased away from their traditional fishing grounds. Similar protests were lodged in 1991 when Singapore built a helicopter pad on PBP. The matter lay fallow until 2003 when both countries signed a special agreement referring the dispute to the ICJ for settlement. In May 2007, after the meeting between prime ministers Abdullah Badawi and Lee Hsien Loong, it was announced that the ICJ would arbitrate the case in November 2007. Both countries agreed to abide by the ICJ verdict whichever way it went. The ICJ then sat for 12 days, in the period 6–23 November, to hear presentations from legal teams of both countries.[15]

On 23 May 2008, the ICJ ruled by 12–4 votes to award sovereignty of PBP or Pedra Branca to Singapore and by 15–1 votes to award ownership of the Middle Rocks to Malaysia. The main contention of the court on Pedra Branca was that "from June 1850 for the whole of the following century or more" the Johor authorities took no action to establish sovereignty over PBP and that Malaysia's maps of 1960s and 1970s also indicated an appreciation that Singapore had sovereignty. The Court noted: "It is the clearly stated position of the Acting Secretary of the State of Johor in 1953 that Johor did not claim ownership of PedraBranca/PBP".[16] As for South Ledge, sovereignty was to be decided once the demarcation of the adjoining territorial seas was determined by both parties. The

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12   For a fuller account of the MOU, see Schofield (2007: 291–292). See also my discussion below.

13   In April 1994, US Troton Oil, the Petroleum Authority of Thailand and Petronas Carigali signed a series of contracts to develop three production zones in the Malaysia-Thailand Joint Development Area. Progress appears to be slow. As at 2007, reports suggest that the 225-km long pipeline to be situated in Songkhla is about 80 % complete. (See David, 1996: 35, Schofield, 2007: 293, and various newspaper reports).

14   We draw on Haller-Trost (1993), David (1996), Tan (1997) and numerous newspaper and other reports for the recounting of this issue.

15   The complete proceedings are available at the ICJ webpage, www.icj-cij.org.

16   See ICJ Judgment, 23 May 2008, General List, No. 130, p.75.

Court said it had not been mandated by the parties to draw the line of delimitation with respect to the territorial waters of Malaysia and Singapore with respect to South Ledge. Spokespersons of Malaysia and Singapore hailed the decision of the ICJ as a win-win situation.[17]

As a confidence building measure, the ICJ adjudication no doubt reinforced the disposition of ASEAN countries to resolve territorial disputes by pacific means. However, as in the Ligitan-Sipadan settlement, there is no guarantee that the settlement of one territorial issue forecloses the emergence of other bilateral problems.

Malaysian Approach to Cooperation and Joint Development

Despite its oftentimes rather strong posture with respect to territorial claims, we have also shown above that Malaysia has been open to both broader conflict management approaches and narrower dispute settlement procedures on overlapping territorial claims with other littoral states. As noted above, Malaysia did show a predisposition towards formal legal solutions as the cases of Ligitan, Sipadan and Pedra Branca were handed for adjudication by the ICJ. As matter of fact, none of the disputed areas of the South China Sea has seen any such adjudication. In its broad approach to conflict resolution in the South China Sea, Malaysia has gone along with its fellow ASEAN states in engaging China in instituting the important Declaration on the Conduct of Parties to the South China Sea (DOC) of 2002. Apart from that, Malaysia accepts that the 1982 UNCLOS prevails as the basic point of departure for resolution of territorial issues in the South China Sea. In a real sense, Malaysia could be said to be among the most active littoral states in development cooperation and also has broadly contributed to norm-setting with respect to LOS issues in the Southeast Asian and South China Sea regions.

The following section of the paper delves into the character of cooperative ventures and, in particular, the joint development that Malaysia has carried out with other claimants. I will first draw on Malaysia's approach and activities in the Gulf of Thailand, which is adjoining the South China Sea.[18] Its track record cooperation here with Thailand and with Vietnam will have significant implications and lessons for Malaysia's overall polices in the South China Sea.

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17   My impression in attending a closed-door meeting on foreign policy of senior past and present MFA officials at about the time of the ICJ decision was that it was not taken as well on the Malaysian side. There was angst that Singapore would take advantage of this decision and that the Malaysian government should do its level best to establish its territorial water and negotiate for ownership of South Ledge. Needless to say, the Malaysian Opposition in parliament played up the government's "failure".

18   For a study of joint development in the Gulf of Thailand, see Nguyen Hong Thao (1999). For an overview of joint development in the South China Sea, see Zou Keyuan (2009).

Annex 461

Robert Beckman, "The Philippines v. China Case and the South China Sea Disputes", Asia Society / LKY SPP Conference on the South China Sea (13-15 Mar. 2013)

Part 1

Background to the Case

Territorial Sovereingty Disputes

- **Paracel Islands** are claimed by China/Taiwan and Vietnam & and occupied by China
- **Scarborough Shoal** is claimed by China/Taiwan and the Philippines and effectively occupied by China
- **Spratly Islands** are claimed in whole or in part by:
  1. China / Taiwan
  2. Vietnam
  3. Philippines
  4. Malaysia
  5. Brunei Darussalam

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3

Sovereignty & Maritime Claims in the South China Sea

- **Vietnam, Philippines, Malaysia & Brunei claim a 200 nm EEZ from their mainland coasts or main archipelago**

- **They have also claimed or indicated they will claim an extended continental shelf beyond the limit of the 200 nm EEZ**

- **They have not claimed an EEZ from any of the disputed off-shore islands**

- **To obtain access to the resources, China must base its claim to maritime space either from the disputed offshore islands or from its nine-dash line map**

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Sovereignty & Maritime Claims in the South China Sea

Legend
- Archipelagic waters
- Baseline & internal waters claims
- 12-nm territorial sea
- CLCS submissions
- Agreed maritime boundaries

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Nautical miles (nm)
0   100   200   300

China
Taiwan Strait
Taiwan
Gulf of Tonkin
Hainan
Pratas Islands
Luzon Strait
Paracel Islands
Nine-dash line
Luzon
Thailand
Laos
Macclesfield Bank
Philippines
Vietnam
Scarborough Shoal
Cambodia
Vietnam
Nine-dash line
200 nm from mainland and archipelagic baselines
Reed Bank
Spratly Islands
KIG claim of Philippines
Malaysia and Vietnam
Malaysia's claim
Brunel-Malaysia boundary delimitation (1958)
Vietnam Indonesia
Brunei claim
Malaysia's claim
Malaysia Indonesia
Malaysia Indonesia
Brunei
Malaysia
Malacca Strait
Singapore Strait
Nine-dash line
Malaysia   Indonesia
Singapore
Arsana and Schofield, 2012

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5

Overview of the Spratly Islands

- **More than 130 "geographic features" in Spratly Islands**

- **Less than 40 meet the definition of an island in Article 121**

- **Only 10-13 are large enough to be entitled in principle to an EEZ and CS of their own**

- **Total dry land area of the 13 largest is less than 2 km^2**

- **Itu Aba - the largest and only island with fresh water – is 400 x 1400 metres**

- **Many of the occupied features are low-tide elevations or submerged reefs which have been turned into artificial island**

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6

10 largest islands in the Spratlys

Itu Aba / Taiping (Taiwan)
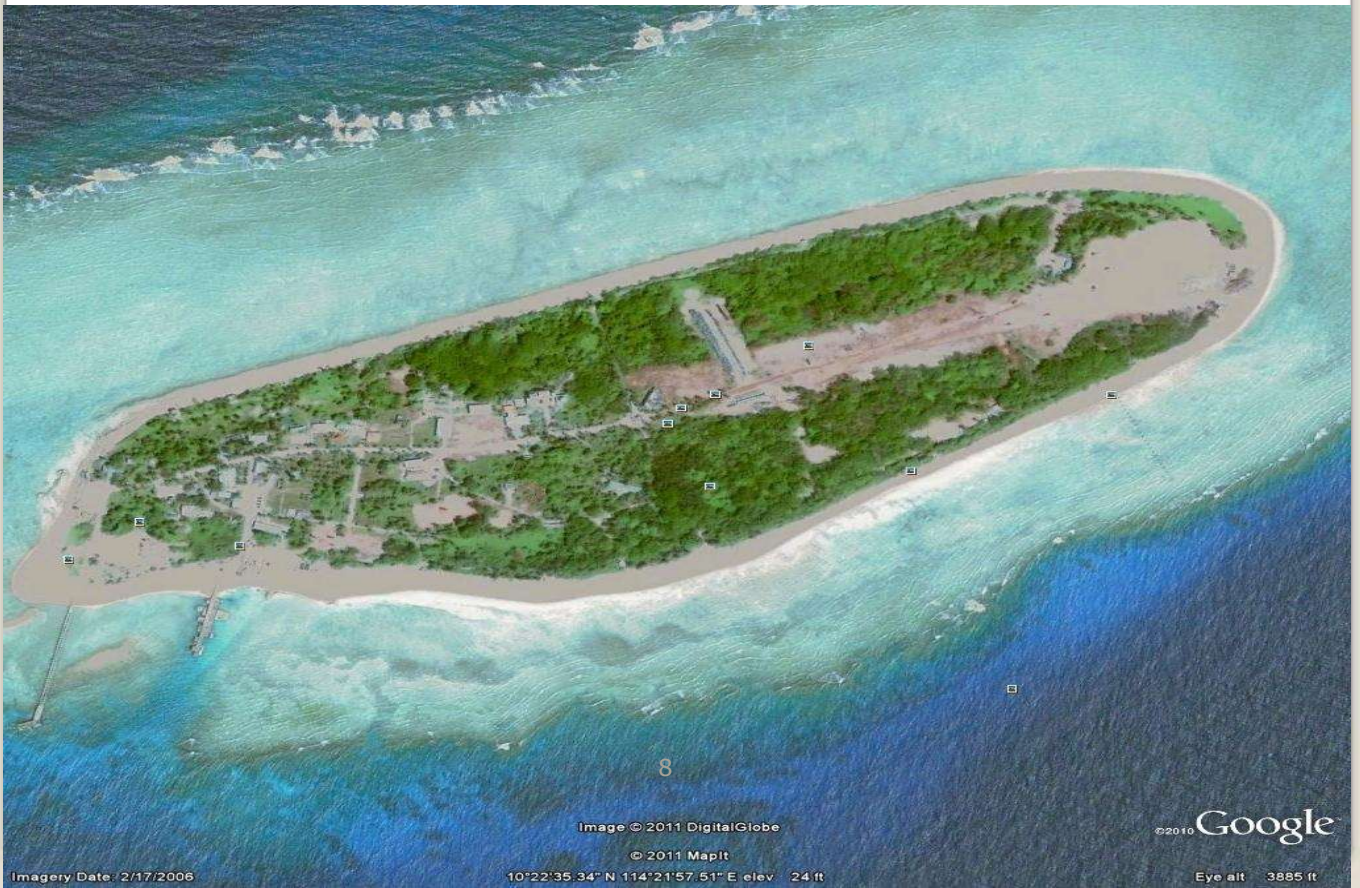
Nanshan Island

- **Size 390 m x 290 m**

- **Vegetation, buildings, small lake of brakish water**

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Occupied Features in Spratlys

- **At least 44 are occupied with installations and structures:**
    - **Vietnam**   25 (5 of largest)
    - **Philippines**   8   (5 of largest)
    - **China**   7
    - **Malaysia**   3
    - **Taiwan**   1 (Itu Aba, the largest)

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10

China / Philippines / Vietnam / Taiwan / Malaysia

Scale 1:2,500,000

0   20   40 Kilometers

0   20   40 Nautical Miles

803427AI (G02457) 1-10

Herald Bank

Philippine (Kalayaan) claim

China

Western Reef

Discovery Great Reef

DANGER REEF

Northeast Cay
Southwest Cay — North Reef

South Reef

Trident Shoal

Lys Shoal

Menzies Reef

THITU REEFS — Tizhi Jiao

Sandy Cay

Thitu Island

Subi Reef

Loaita Cay

LOAITA BANK

Irving Reef

West York Island

Third Thomas Shoal

Flat Island

Nanshan Island

Loaita Nan

Lankiam Cay

Loaita Island

Itu Aba Island

Sand Cay

Petley Reef

Eldad Reef

Gaven Reefs

TIZARD BANK

Namyit Island

Livock Reef

Hopps Reef

SOUTHAMPTON REEFS

Hoare Reef   Dickinson Reef
Deane Reef   Hampson Reef   Petch Reef

JACKSON ATOLL

Shinko Shoal

Hardy Reef

REED TABLEMOUNT

NARES BANK

Hopkins Reef

AMY DOUGLAS BANK

Bakers Reef   Iroquois Reef

Bao Tan   Pennsylvania North Reef

SOUTHERN REEFS

Pennsylvania South Reef

Lord Auckland Shoal

Templer Bank

Leslie Bank

Sandy Shoal

Seahorse Shoal

Brown Reef

Wood Bank

Fairie Queen

Carnatic Shoal

Discovery Small Reef

Cornwallis Reef

Holiday Reef

Whitsun Reef

UNION REEFS

Kennan Reef
Graeton Reef

Sin Cowe Island

Union Atoll / Sin Cowe East Island

Loreless Reef

Lansdowne Reef

Collins Reef

Johnson Reef

Len Dao

Fancy Wreck Shoal

Mischief Reef

Second Thomas Shoal

SABINA SHOAL

Livin Jiao

Boxall Reef

Plan Jiao

Bombay Shoal

Fiery Cross Reef

SPRATLY

ISLANDS

Alicia Annie Reef

First Thomas Shoal

Investigator Northeast Shoal

Maralie Reef

Central Reef

LONDON REEFS

West Reef

East Reef

Cuarteron Reef

Pearson Reef

Alison Reef

Pigeon Reef

Cornwallis South Reef

Half Moon Shoal

Royal Captain Shoal

Palawan

Philippi

1979 Malaysian-claimed continental shelf limit

Director

Pandanan Island

Bancalan Island

Ramos Island

Bugsuk Island

Mantangule Island

Barque Canada Reef

Lizzie Webber

Erica Reef

INVESTIGATOR SHOAL

Langkou Jiao

Yuxian Jiao

Commodore Reef

Glasgow Bank

Balabac Island

Amboyna Cay

Mariveles Reef

Ardasier Breakers

Gloucester Breakers

Balabac Strait

Sul

Se

Dallas Reef

Ardasier

ARDASIER REEFS

this claim has not been delimited.

nese claim

Part 2

The Legal Disputes

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Legal Disputes in South China Sea

- **Territorial Sovereignty Disputes**

- **UNCLOS Disputes: disputes on the interpretation or application of the 1982 LOS Convention**

    1. **Maritime Boundary Delimitation (excluded by 298 Declaration)**

    2. **Nine-Dash Line – claim to historical rights & jurisdiction permissible under UNCLOS**

    3. **Islands v Rocks under Article 121**

    4. **Low-tide elevations and submerged features**

    5. **Interference with sovereign rights in EEZ**

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Main Issue : China's martime claims within the Nine-Dash Line
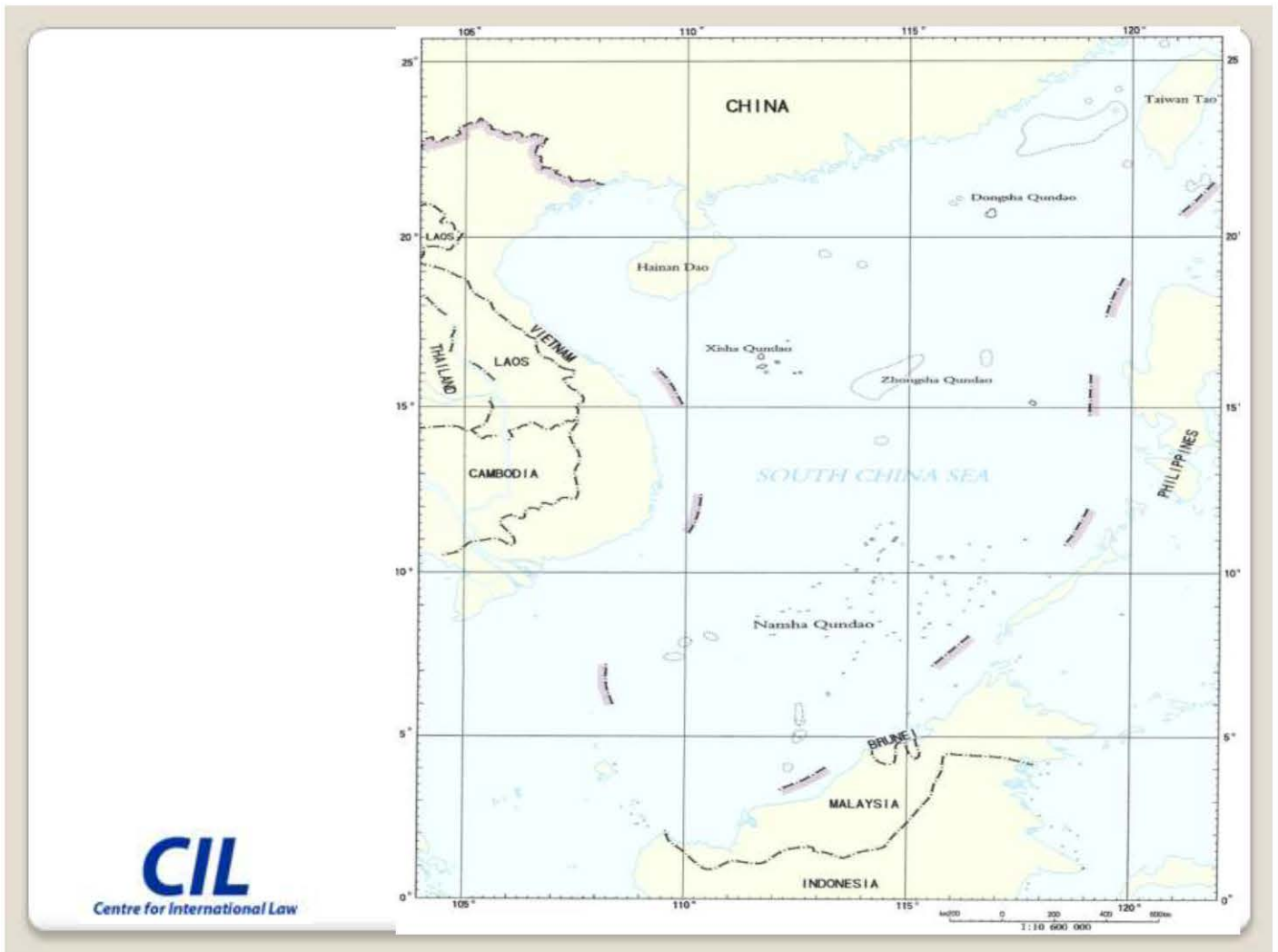
CHINA'S POSITION:

1. **Sovereignty** over islands and their adjacent waters

2. **Sovereign Rights and Jurisdiction** in the EEZ and Continental Shelf measured from the islands

3. **Historical Rights and Jurisdiction** (and **control**) over the natural resources in and under the waters within the nine-dash line ?

PHILIPPINES POSITION:

1. **"Land dominates the sea"**

2. Any claim to maritime space must be from **land territory**, including islands, not from a historical map

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China's Statement of 7 May 2009

- **China filed formal objection to the Joint Submission of Malaysia and Vietnam stating that:**

  – **China has indisputable <u>sovereignty</u> over the <u>islands</u> in the South China Sea and the <u>adjacent waters</u>, and enjoys <u>sovereign rights and jurisdiction over the relevant waters</u> as well as the seabed and subsoil thereof (see attached map).**

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China's Note Verbale of 11 April 2011

- **China has indisputable <u>sovereignty</u> over the <u>islands</u> in the South China Sea and the <u>adjacent waters</u>, and enjoys <u>sovereign rights and jurisdiction</u> over the <u>relevant waters</u> as well as the seabed and subsoil thereof.**

- **Islands in SCS are entitled to a territorial sea, EEZ & continental shelf**

- **China's <u>sovereignty</u> and <u>related rights and jurisdiction</u> in the South China Sea are supported by abundant <u>historical and legal evidence</u>.**

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Claim to Historic Rights – 15 Sep 2011 Statement of MOFA Spokesperson

- **China's sovereignty, rights and relevant claims over the South China Sea have been formed in the long course of history and upheld by the Chinese government.**

- **Our sovereignty over the islands in the South China Sea is based on discovery, preoccupation as well as long-term, sustained and effective management.**

- **The UN Convention on the Law of the Sea does not entitle any country to extend its exclusive economic zone or continental shelf to the territory of another country, and it does not restrain or deny a country's right which is formed in history and abidingly upheld.**

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Dispute on Islands v Rocks

- Philippines challenges status of Scarborough Shoal and the 3 reefs (Johnson, Cuarteron and Fiery Cross) occupied by China in the Spratlys

- Admits that the six tiny protrusions on Scarborough Shoal and the 3 reefs are islands because some protrusions are above water at high tide

- Argues they are "rocks" entitled to only a 12 nm territorial Sea because they cannot sustain human habitation or economic life of their own

- Argues that China has no right to the resources outside the 12 nm territorial sea of these "rocks"

- Argues that China is unlawfully exploiting resources outside 12 nm of these "rocks" and is interfering in the Philippines' right to exploit the resources in its EEZ

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Article 121 Regime of Islands

- 1. An <u>island</u> is a <u>naturally formed area of land</u>, surrounded by water, which is <u>above water at high tide</u>.

- 2. Except as provided for in paragraph 3, *islands have same maritime zones as other land territory, including territorial sea, EEZ and continental shelf*

- 3. <u>Rocks</u> which cannot sustain human habitation or economic life of their own shall have <u>no exclusive economic zone or continental shelf</u>.

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Chinese Occupied Islands and Low Tide Elevations

Scarborough Shoal
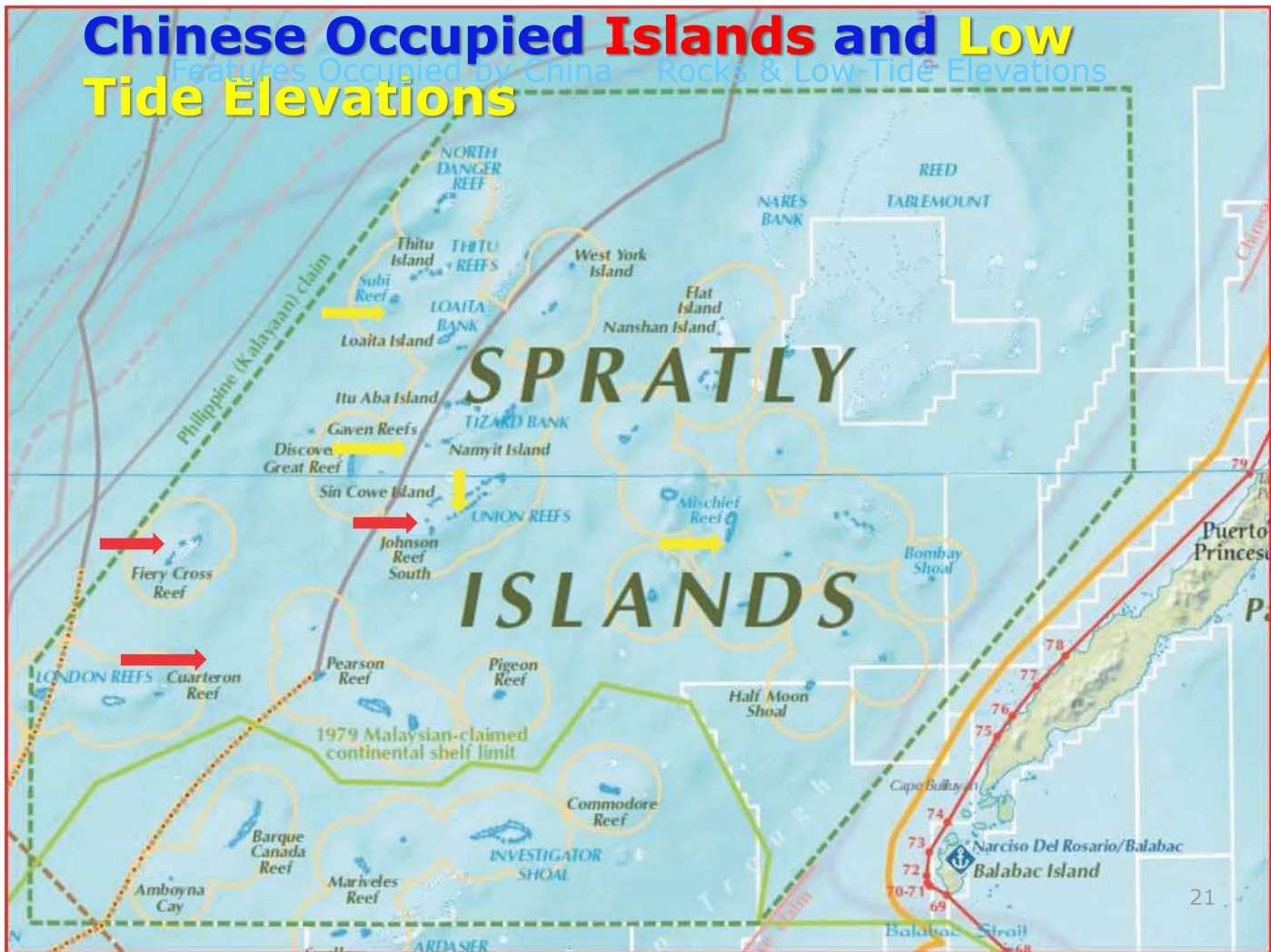
Cuarteron Reef

9°55'N, 115°32'E (reef above water at high tide in US map) Isolated atoll, Closest potential island is Spratly Island, over 50nm away

Disputes on submerged features

1. **Philippines argues that 4 of the reefs occupied by China (Mischief, McKennan, Gaven and Subi) are not islands because they are not naturally formed areas of land above water at high tide**

2. **Argues that these features are not entitled to any maritime zones of their own under UNCLOS**

3. **Argues that Mischief and McKennan reefs are part of the continental shelf of the Philippines and that the Philippines has jurisdiction over them**

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Low-tide elevations

- *Article 13 Low-Tide Elevations*

- 1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide.

- 2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

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Artificial Islands, Installations and Structures

Article 60. Artificial Islands, Installations and Structures in the Exclusive Economic Zone

- 1. The coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of artificial islands, installations and structures in its EEZ

- 2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures

- 8. Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

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Mischief Reef

9°55'N, 115°32'E (Reef in US map) Isolated atoll,
Closest potential islands are Sin Cowe East Island and
Nanshan Island, 40-60nm away

Part 3

Procedural Issues

Compulsory Procedures entailing Binding Decisions

- **General rule under UNCLOS – any dispute on the interpretation or application of any provision is subject to compulsory procedures entailing binding decisions**

- **If dispute on any provision arises and cannot be settled by negotiation, either party may unilaterally bring the other to a court or tribunal**

- **The "default procedure" – Arbitration under Annex VII**

Article 298. Optional Exceptions

- **China has formally declared under Article 298 that it does not accept the compulsory procedures entailing binding decisions for certain categories of disputes, including:**

  1. **the interpretation or application of articles 15, 74 and 83 relating to <u>sea boundary delimitations</u>,**

  2. **<u>or those involving historic bays or titles</u>**

  3. **<u>or those involving military activities</u>**

- **Not possible for ASEAN claimants to bring China to a Court or Tribunal on the delimitation of maritime boundaries**

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Initiation of Arbitral Proceedings

- **On 22 January 2013 Philippines initiated arbitral proceedings against China under Annex VII of UNCLOS by giving China its Notification and the Statement of Claim**

- **Philippines alleged that there are disputes between the parties on the interpretation and application of provisions of UNCLOS and these disputes could not be resolved by consultation and negotiation**

- **Philippines expressly states that the disputes fall outside the excluded categories in China's Declaration under Art 298**

- **Philippines also gave notice that it was appointing ITLOS Judge Rudiger Wolfrum as its arbitrator**

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Timeline for Arbitral Process

- **21 Feb 2013 (30 days) – Deadline for China to appoint arbitrator who can be its national**

- **22 Feb - 8 March (2 weeks) –Philippines can request ITLOS President to appoint one arbitrator on behalf of China; He must appoint within 30 days of the request from UN List of Arbitrators**

- **23 March 2013 (60 days) – Deadline for appointment of remaining 3 arbitrators by parties (from UN List of Arbitrators)**

- **24 March - 6 April 2013 (2 weeks) – If fail to reach agreement, Philippines can request ITLOS President to appoint remaining 3 arbitrators; ITLOS President must appoint within 30 days of the request (these appointments must be from UN List of Arbitrators)**

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Default of Appearance

Annex VII, Article 9

- **If one party fails to appear to defend the case, other party may request tribunal to continue and make an award**

- **Absence of a party or failure to defend case is not a bar to the proceedings**

- **Before making an Award, the arbitral tribunal must satisfy itself that :**

    (1) it has jurisdiction; and

    (2) the claim is well founded in fact and law

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Finality of the Award

- **The Award is final and without appeal**

- **It shall be complied with by the parties to the dispute**

- **There is no mechanism by which the Tribunal or the Philippines can enforce the Award**

- **If China fails to implement the Award, the Philippines can go back to the Arbitral Tribunal and for further orders**

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Settlement of the Case / Provisional Measures

- **The case can be settled by agreement of the parties at any time up to the issuance of the Award**

- **If China takes action prior to the establishment of the Arbitral Tribunal which the Philippines believes prejudices its rights, it can request the International Tribunal for the Law of the Sea to prescribe Provisional Measures**

- **Once the Arbitral Tribunal has been established, it can request Provisional Measures from the Tribunal**

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Conclusions

1. **The case presents a challenge to the dispute settlement regime under UNCLOS**

2. **The case will not resolve the underlying disputes on which State has the better claim to sovereignty over the islands**

3. **Even if the case resolves issues concerning rocks or islands, it will not resolve how to draw the boundaries between the maritime zones from the disputed islands and the maritime zones from the main territories of the bordering States**

4. **The case may pressure China to bring its nine-dash line claim into conformity with UNCLOS**

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Thanks for your Attention

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"China Expands Woody Island", *Open Source Imagery & Geospatial Intelligence* (29 Aug. 2014)

 Open Source IMINT Open Source Imagery & Geospatial Intelligence

Home > China Expands Woody Island

29 August 2014 | 0 Comments

China Expands Woody Island

James Hardy

James Hardy writing for IHS Jane's takes a quick look at the recent expansion of Woody Island in the Paracel island chain using our favorite medium, satellite imagery. Airbus captured this recent multispectral image on 16APR14 showing substantial land reclamation, harbor redevelopment, and additional construction activity since October 2013.

While we'll be watching to see what finally develops, the reclamation activity continues to reinforce China's relentless desire to control the disputed Spratley islands as well as more largely, the South China Sea.

However, as Jane's notes in a previous brief in June,

> China is not alone in conducting land reclamation of the South China Sea islands. Since capturing Southwest Cay from the Philippines in 1975, Vietnam has substantially altered the island, adding a harbour and other land features in the past 10 years. Taiwan, which controls Itu Aba (Taiping) island, has built an airstrip and is currently upgrading its naval facilities. The Philippines has also announced plans to upgrade an airport and pier on Thitu (Pagasa) island, although resources remain a major issue for Manila.

While these states continue to bolster their presence in a much contested space, China's ability to press its claims further have rapidly evolved in recent years.

Wang Yilin

In 2012, China designated Woody Island the capital of Sansha prefecture — governing the islands of Xisha, Zhong Sha and Nan Sha — as well as built substantive deep sea oil drilling and pipe laying equipment. The latter, when combined with China's naval modernization efforts, recently provided the opportunity in May to deploy such equipment as a "strategic weapon," to use CNOOC's Wang Yilin's words.

Though moving beyond the attraction of oil, other natural resources like the South China Sea's fish population may also be drawing China to the region. With the over-fishing of the East China Sea and the subsequent rise of fish prices — especially the catches from Zhoushan, the countries largest fishing grounds — China may eventually move to secure future fish prices by controlling the waters within the nine-dash-line. Certainly that was made clear in China's March announcement which imposed a fishing ban on waters in the region.

Bottom Line

As China continues to build infrastructure to support its presence among the island chains, we should see more not less tension in the region. The recent dispute in May is certainly a telling sign, a "testing of the waters" if you will, and may only be a taste of what's to come.

Tags: China, News, South China Sea

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Russ Rowlett, "Lighthouses of the Spratly Islands" *available at* https://www.unc.edu/~rowlett/lighthouse/spr.
htm (accessed 11 Feb. 2015)

Lighthouses of the Spratly Islands

The Spratly Islands (as they are known in the West) are a group of more than 100 islands and reefs spread across an elliptical area 1000 km (625 mi) long and 400 km (250 mi) wide in the South China Sea northwest of Borneo, southwest of the Philippines, and east of Vietnam. The history of the islands is long and complex. France claimed the islands as part of French Indochina and occupied several of them, but this claim was not recognized internationally. Presently Vietnam, China, and Taiwan claim all of the islands, the Philippines claims most of them, Malaysia claims some of them, and Indonesia and Brunei have economic interests in the area although they make no formal claims.

Following the reunification of the country in 1975, Vietnam moved quickly to establish a presence in the Spratlys. The Vietnamese now occupy more than 20 islands, and they have built substantial lighthouses on at least nine of them. Taiwan, Malaysia, and the Philippines also operate one or more lights in the islands. These lights do have navigational value, but they are also intended as assertions of sovereignty, even though international tribunals have ruled several times that building a lighthouse does not establish ownership of an island.

The Lighthouse Directory does not support any side in the disputes over this area. The only purpose of this page is to describe the lighthouses of the islands; they are grouped by the countries that operate them. To provide some geographical organization to the page, the islands are divided arbitarily into four groups by latitude: northern islands (north of 10.5°N), north central islands (9.5° to 10.5°), south central islands (8.5° to 9.5°) and southern islands (south of 8.5°N).

ARLHS numbers are from the *ARLHS World List of Lights*. Admiralty numbers are from volume F of the *Admiralty List of Lights & Fog Signals*. U.S. NGA List numbers are from Publication 112.

An Bang (Amboyna Cay) Light
Southern Vietnam Maritime Safety photo

General Sources
Southern Vietnam Maritime Safety - Lighthouses
>   An interactive map of lighthouse locations, linking to pages on the individual light stations.

Spratly Islands Map
>   A useful map posted by the University of Texas Library.

Quần đảo Trường Sa (Spratly Islands)
>   This article in the Vietnamese language edition of Wikipedia has greater detail than any other known Internet source on the history and status of the individual islands; it is told from the Vietnamese point of view, of course.

Vietnam Spratly Islands

This Flickr.com group has photos of several of the Vietnamese lighthouses.

Lighthouses Operated by Vietnam

Note: The Spratlys are called Trường Sa in Vietnam, and the Vietnamese islands are attached administratively to Khanh Hoa Province.

Northern Islands Lighthouse

Song Tử Tây (Southwest Cay of North Danger Reef)

1993. Active; focal plane 38 m (125 ft); white flash every 15 s. 36 m (118 ft) round concrete tower with lantern and gallery, rising from the center of a multistory station building. Lighthouse painted white. A photo is at right, a 2013 photo is available, Wikipedia has a distant view, and Google has a satellite view. North Danger Reef is at the extreme northern end of the Spratlys. This 12 ha (30 acre) island is one of the largest in the northern Spratlys. It was occupied by the Philippines in 1968, but a Vietnamese naval operation took the island in 1974. Vietnam began development of a major base on the cay soon thereafter and built its first Spratly Islands lighthouse here in 1993. Northeast Cay, on the other side of the reef, is still occupied by the Philippines. Site and tower closed. ARLHS SPR-007; Admiralty F2824.5; NGA 20289.2.

North Central Islands Lighthouses

Sơn Ca (Sand Cay)

2009. Active; focal plane 28 m (92 ft); two flashes every 10 s, alternately yellow and red. 25.5 m (84 ft) round cylindrical concrete tower with lantern and gallery, rising from a 2-story station building. Lighthouse painted with yellow and red horizontal bands. A view from the sea (third photo on the page) and a second view (second photo on the page) are available, and Google has a satellite view. Sand Cay is a 7 ha (17 acre) island at the northeastern end of the Tizard Bank, about 12 km (7.5 mi) northeast of the Taiwanese base of Taiping Dao (Itu Aba), in the north central Spratlys. The history of the island is unclear; Vietnam has occupied it at least intermittantly since the 1970s but its base there is relatively new. Site and tower closed.

Nam Yết (Namyit Island)

2010 (?). Active; focal plane 25 m (82 ft); three white flashes every 15 s. 23 m (75 ft) round cylindrical concrete tower with lantern and gallery, rising from a 2-story station building. Lighthouse painted with yellow and red horizontal bands. A 2013 closeup, another photo (third photo on the page), and a distant view (last photo on the page) are available, and Google has a satellite view of the

Song Tử Tây Light
Southern Vietnam Maritime Safety photo

station. A sibling of the Sơn Ca lighthouse. Namyit is a 6 ha (15 acre) island at the south end of the Tizard Bank, about 25 km (15 mi) south of Taiping Dao. The island has been occupied by Vietnam since the late 1970s. Site and tower closed. Admiralty F2823.4.

Sinh Tồn (Sin Cowe Island, Union Banks)
2010 (?). Active; focal plane about 25 m (82 ft); three red flashes, in a 2+1 pattern, every 15 s. 23 m (75 ft) square cylindrical concrete tower with lantern and gallery, rising from a 2-story station building. Lighthouse painted yellow with white trim. A closeup photo (second photo on the page), two photos and additional photos are available, but the lighthouse is too new to appear in Google's satellite view of the island. Sin Cowe is a 3 ha (8 acre) island on the north side of the Union Banks in the central Spratlys. Vietnam occupied the island in 1975 and has maintained a small base there ever since. There is a photo of another Vietnamese outpost on Đảo Cô Lin (Collins Reef, also called Johnson North Reef), a reef near the southwestern end of the Union Banks, and also a photo of a Vietnamese outpost on Đảo Len Đao (Lansdowne Reef) on the south side of the atoll. These fortresses do not appear to have navigational lights. Site and tower closed. Admiralty F2823.2.

South Central Islands Lighthouses
Đá Lát (Ladd Reef)
1994. Active; focal plane 40 m (131 ft); white flash every 5 s. 42 m (138 ft) square pyramidal steel skeletal tower with lantern and gallery mounted on a 2-story octagonal station building, all standing on concrete and steel piles. Lighthouse painted with red and white horizontal bands. A photo is at right, and a fuzzy 2013 photo is available. Ladd Reef, which is dry only at low tide, is near the western end of the Spratlys and is the closest land (or near-land) to Vietnam. China is said to have placed a marker here in 1992, which probably encouraged action by Vietnam to occupy the area. Site and tower closed. ARLHS SPR-004; Admiralty F2825.1; NGA 20290.

Trường Sa Lớn (Spratly Island)
2009 (?). Active; focal plane 25 m (82 ft); white flash every 10 s. Approx. 20 m (66 ft) octagonal cylindrical concrete tower with lantern and gallery, rising from a 1-story station building. Building and lighthouse painted yellow with white trim. A 2013 closeup photo is available, and Google has a satellite view. Spratly Island is a 17 hectare (37 acre) island that has some of the highest land in the

islands, reaching an altitude of 5 m (17 ft) above high tide. The South Vietnamese government established a small base on the island in 1974, and Vietnam has occupied it ever since, establishing one of its most important bases in the archipelago. It is surprising that it took so long to build a lighthouse. Site and tower closed. Admiralty F2825.08.

Đá Tây (West London Reef)

1994. Active; focal plane 22 m (72 ft); three white flashes every 10 s. 20 m (66 ft) cylindrical tower with lantern and gallery rising from the center of a multistory station building. Tower painted gray; station building painted yellow. A photo is below right, a 2013 photo is available, and a page for the station has several photos, but the reef is only a blur in Google's satellite view. West Reef is one of the London Reefs, about 65 km (40 mi) northeast of Ladd Reef. Google has a satellite view of a Vietnamese base on Trường Sa Đông (Central London Reef) about 16 km (10 mi) northeast of West London Reef. There are also photos of the Vietnamese base at Đá Đông (East London Reef). Site and tower closed. ARLHS SPR-008; Admiralty F2825.15; NGA 20290.1.

Phan Vinh (Pearson Reef) (?)

Date unknown. Active (?); focal plane about 15 m (49 ft); light characteristic unknown. Light mounted on a short skeletal tower atop a 2-story building. A closeup photo and a 2008 photo is available, but the reef is only a blur in Google's satellite view. There's no confirmation of a light here, but it certainly seems likely that there is one. Vietnam occupied this location in 1988. The reef is about 175 km (110 mi) north of Amboyna Cay. Site and tower closed.

Tốc Tan (Alison Reef)

Date unknown. Active; focal plane about 15 m (49 ft); light characteristic unknown. Light on a post mounted atop a 3-story building. A 2008 photo is available. There's no confirmation of a light here, but it certainly seems likely that there is one. Vietnam occupied this location in 1988. The reef is about halfway between the Pearson and Cornwallis South Reefs. Site and tower closed.

Núi Le (Cornwallis South Reef) (?)

Date unknown. Active (?); focal plane about 15 m (49 ft); light characteristic unknown. Light mounted atop a 2-story structure on pilings. A 2008 photo is available, but the reef is only a blur in Google's satellite view. There's no confirmation of a light here, but it certainly seems likely that there is one. Vietnam

Đá Lát Light
Southern Vietnam Maritime Safety photo

Đá Tây Light
Southern Vietnam Maritime Safety photo

occupied this location in 1988. The reef is about 175 km (110 mi) northeast of Amboyna Cay. Site and tower closed.

Tiên Nữ (Pigeon Reef, Tennent Reef)

2000. Active; focal plane 22 m (72 ft); three white flashes, in a 2+1 pattern, every 10 s. 20.5 m (67 ft) round concrete tower with lantern and gallery centered on a 3-story octagonal crew quarters building. Lighthouse painted beige with blue trim. A 2009 photo, a 2008 closeup, and a 2005 photo are available. A Communist Party article (formerly online) says, "This island has the most beautiful lighthouse in [the] Trường Sa archipelago." The mostly-submerged Pigeon Reef is 265 km (165 mi) due east of West Reef in the central Spratlys, and its occupation by Vietnam represented a significant geographical extension of Vietnamese activity in the islands. Site and tower closed. ARLHS SPR-014; Admiralty F2825.05.

Southern Islands Lighthouses

Bãi Tư Chính (Vanguard Bank) West (Tu Chin A)

Date unknown. Active; focal plane 22 m (72 ft); two white flashes every 13 s. 23 m (75 ft) tower; the light is displayed from the top of a square crew building standing on tall pilings. Wikimapia has photos of one of the two Bãi Tư Chính platforms. Located at the southwestern corner of the Spratly Islands, about 21 km (13 mi) southwest of Bãi Phúc Nguyên. Site and tower closed. NGA 20291.4.

Bãi Tư Chính (Vanguard Bank) East (Tu Chin B)

Date unknown. Active; focal plane 22 m (72 ft); three white flashes every 8 s. 23 m (75 ft) tower; the light is displayed from the top of a square crew building standing on tall pilings. Wikimapia has photos of one of the two Bãi Tư Chính platforms. Located about 6 km (3.5 mi) east of the West Light. Site and tower closed. NGA 20291.6.

Bãi Phúc Nguyên (Prince Consort Bank)

Date unknown. Active; focal plane about 23 m (75 ft); two white flashes every 8 s. Approx. 23 m (75 ft) tower; the light is displayed from the top of a square crew building standing on tall pilings. A closeup photo is available, and Wikimapia has several photos. Bãi Phúc Nguyên is a submerged reef with a depth of about 9 m (30 ft). Located about 32 km (20 mi) west of Quế Đường at the extreme southwestern corner of the Spratlys. Site and tower closed. Admiralty F9534.9; NGA 20291.

Quế Đường (Grainger Bank)

1994. Active; focal plane 23 m (75 ft); three white flashes every 10 s. 23 m (75 ft) tower; the light is displayed from the top of a hexagonal or octagonal keeper's house standing on tall pilings. A page for the lighthouse has several photos. Quế Đường is a submerged reef of the Grainger Bank, about 25 km (15 mi) southwest of the Alexandra Bank at the extreme southwestern corner of the Spratlys. Site and

tower closed. ARLHS SPR-003; Admiralty F2825.194; NGA 20291.2.

Phúc Tân (Prince of Wales Bank) Southwest

Date unknown. Active; focal plane 23 m (75 ft); white flash every 5 s. 23 m (75 ft) tower; the light is displayed from the top of a square crew building standing on tall pilings. Wikimapia has several photos, and this tower is probably either the second or third. Site and tower closed. Admiralty F2825.199.

Phúc Tân (Prince of Wales Bank) Northeast (2)

1997 (station established 1989). Active; focal plane 23 m (75 ft); white flash every 5 s. 23 m (75 ft) tower; the light is displayed from the top of a square crew building standing on tall pilings. Wikimapia has a photo. Phúc Tân is a submerged reef of the Prince of Wales Bank at the extreme southwestern corner of the Spratlys. Site and tower closed. ARLHS SPR-005; Admiralty F2825.197; NGA 20290.2.

Phúc Tân (Prince of Wales Bank) Southeast

Date unknown. Active; focal plane 23 m (75 ft); white flash every 5 s. 23 m (75 ft) tower; the light is displayed from the top of a square crew building standing on tall pilings. Wikimapia has several photos, and this tower is probably either the second or third. Site and tower closed. Admiralty F2825.198.

Huyền Trân (Alexandra Bank)

1994. Active; focal plane 23 m (75 ft); three white flashes, in a 2+1 pattern, every 10 s. 23 m (75 ft) tower; the light is displayed from the top of a hexagonal or octagonal keeper's house standing on tall pilings. A photo is at right, a 2007 photo shows this tower, and a second photo (last photo on the page) and a small photo (halfway down the page) are available. Huyền Trân is a submerged reef of the Alexandra Bank, about 15 km (9 mi) southeast of the Prince of Wales Bank at the extreme southwestern corner of the Spratlys. Site and tower closed. ARLHS SPR-001; Admiralty F2825.196; NGA 20290.4.

Ba Kè (Rifleman Bank, Bombay Castle)

1995. Active; focal plane 22.5 m (74 ft); three white flashes, in a 2+1 pattern, every 12 s. 22.5 m (74 ft) tower; the light is displayed from the top of a hexagonal or octagonal keeper's house standing on tall pilings. Wikimapia has photos,

Huyền Trân Light, August 2013
Vietnam Academy of Agricultural Sciences photo

and a closeup photo is available. Ba Kè, also called Bombay Castle, is a submerged reef at the northern end of the extensive Rifleman Bank, about 125 km (80 mi) east of Huyền Trân (Alexandra Bank) and the same distance west of An Bang (Amboyna Cay). Site and tower closed. ARLHS SPR-006; Admiralty F2825.19; NGA 20290.6.

An Bang (Amboyna Cay) (2)

1938. Reactivated (inactive 1941(?)-1995); focal plane 25 m (82 ft); two white flashes every 10 s. 22 m (72 ft) octagonal concrete tower with lantern and gallery, rising from a 2-story concrete keeper's house. Tower painted gray; keeper's house and gallery rail painted yellow. The SVMS photo at the top of this page and the photo shows the earlier all-white pattern. A 2008 photo shows the current color pattern, a wider view is also available, and Do Kien Trung has an aerial photo, and Bing has a satellite view. With an area of about 1.6 ha (4 acres), Amboyna is one of the few southern Spratly Islands that actually has some dry land. France occupied the island in 1933. During the 1970s the island was derelict and the subject of competing operations; Malaysian forces occupied it briefly in 1978. Vietnam had assumed full control of the island at least by 1984. The historic lighthouse was restored and reactivated in 1995. Located in the southern part of the Spratlys, about 120 km (75 mi) southeast of Đá Tây Light. Site and tower closed. ARLHS SPR-002; Admiralty F2825.18; NGA 20290.8.

Lighthouses Operated by the Philippines

Note: The Spratlys are called the Kalayaan Islands in the Philippines, and they are attached administratively to Palawan province.

Northern Islands Lighthouses

Parola Island (Northeast Cay of North Danger Reef) (?)

Date unknown. Active; focal plane 7 m (23 ft); two red flashes every 10 s. No description or photo available. Google has a fuzzy satellite view of the station. Philippine forces occupied both Northeast and Southwest Cays around 1970, but they were ejected from Southwest Cay by South Vietnamese troops in 1974. A few months later, when Saigon fell to North Vietnamese forces, the South Vietnamese garrison on Southwest Cay swam to Northeast Cay to escape capture. The Philippines maintains a small garrison on Northeast Cay. Its Philippine name *Parola* means Lighthouse. Site and tower closed. Admiralty F2825; NGA 20289.

Pagasa (Thi Tu, Thitu) Island (Kalayaan)

1976(?). Active; focal plane unknown; white flash every 5 s. Approx. 25 m (82 ft) square cylindrical white concrete skeletal tower with a roofed gallery; the light appears to be mounted atop the roof. This tower serves as an observation tower at the military airstrip built on the island in 1976 by the Phillipines Air Force. A dawn photo is available, and Google has a satellite view. Pagasa (Thitu) is the second largest of the Spratlys with an area of 37 ha (91 acres). It is the principal base for the Philippines in the archipelago. A permanent population of about 200 has settled on the island, forming a community called Kalayaan. In 2007 the air force announced plans to rehabilitate the airstrip with an eye to encouraging development of the island as a beach resort. Located about 45 km (27 mi) south of North Danger Reef. Site and tower closed. ARLHS SPR-010; Admiralty F2824; NGA 20289.6.

Lighthouses Operated by Taiwan (Republic of China)

North Central Islands Lighthouse

Note: The Spratlys are called the Nansha Islands in China, including Taiwan. The Taiwanese territories

Taiping Dao Light
Republic of China photo

are administered as part of Kaohsiung City.

Taiping Dao (Itu Aba Island)

Date unknown (1942?). Inactive. Approx. 7 m (23 ft) square cylindrical masonry tower rising from the front of a 1-story masonry keeper's house. The building appears in the photo at right, a mainland Chinese web site has this photo and also has a closeup (third photo on the page), and Google has a satellite view. Taiping (Itu Aba) is the largest of the Spratly Islands, almost 1 km (0.6 mi) long and with an area of 46 ha (114 acres). There are various references to a lighthouse on the island, but there is no light listed there at the present time. Japan, which ruled Taiwan from 1895 to 1945, quickly seized the Spratlys in 1941 and established a naval base on Itu Aba. The surviving masonry building does appear to be a Japanese lighthouse from which the lantern has been removed; however, it may never have been in service. At the end of World War II in 1945, the (Nationalist) Chinese warship *Taiping* arrived to take the surrender of the Japanese garrison. The Nationalist government took over the Japanese base and has occupied it continuously since 1956. Presently the island has a coast guard station, a weather station, and an army garrison of about 600 troops. In December 2014, it was announced that a new lighthouse will be built on the island. Taiwan also administers the Zhongzhou Reef southeast of Taiping Island, and there are plans to place a navigational light on that reef. The island is on the north side of the Tizard Bank about 75 km (47 mi)

almost due south of Pagasa Island. Site and tower closed. ARLHS SPR-013.

Lighthouses Operated by the People's Republic of China

Note: In the People's Republic, the Nansha (Spratly) Islands are attached administratively to Hainan Province. In 2012 China announced the creation of the prefectural-level city of Sansha, including the Paracel Islands and (to the extent that China controls them) the Spratly Islands.

Northern Islands Lighthouse

Zhubi Jiao (Subi Reef)

2002(?). Active; focal plane about 20 m (66 ft); light characteristic unknown. Approx. 20 m (66 ft) octagonal cylindrical concrete tower with lantern and gallery. Lighthouse painted white, lantern red. A photo is at right, another photo is available, and Google has a satellite view. Sources in the Philippines announced in December 2010 that China had built a lighthouse on Zhubi Jiao (known as Zamora in the Philippines), a reef 26 km (16 mi) southwest of the Philippine base at Pagasa (Thitu). The Defense Ministry confirmed later that the lighthouse had been in existence at least since 2002, although the light is not listed by international authorities. China occupied the reef in 1988 and maintains a military outpost on the island. Site and tower closed.

Zhubi Jiao Light with Chinese fishing boats
photo by PRC Xinhua News Agency

North Central Islands Lighthouses

Nunxun Jiao (North Gaven Reef)

Date unknown (1988?). Active; white light; characteristic unknown. Light mounted on a short mast atop a 3-story military outpost. Structure painted white with red trim. A photo is available, but the reef is only a blur in Google's satellite view. The reef is at the west end of the Tizard Bank, about 10 km (6 mi) west of Namyit Island. Site and tower closed.

Meiji Jiao (Mischief Reef)

Date unknown. Active; white
light; characteristic unknown.
Approx. 12 m (39 ft) octagonal
cylindrical white concrete
tower. A photo and several
additional photos are available,
but the tower was built more
recently than Google's satellite
view of the Chinese base.
Mischief Reef is an isolated
atoll about 100 km (60 mi)
east of the Union Banks. Site
and tower closed.

Yongshu Jiao (Yungshu Jiao, Fiery Cross Reef)
Date unknown. Active; focal plane 29 m (95 ft); white flash every 4 s. 32 m (105 ft) octagonal white
concrete tower with lantern and gallery. No photo available, but Google has a satellite view. The reef
is near the western edge of the Spratlys, west of the Union Banks. Site open, tower closed. Admiralty
F2825.17; 20289.8.

Yongshu Jiao (Yungshu Jiao, Fiery Cross Reef) Base
Date unknown. Active; focal plane about 11 m (36 ft); white flash every 4 s. 11 m (36 ft) octagonal
white concrete tower. A photo and a second photo are available, and there are several photos in a
large portfolio of photos of the island. In 1988, Vietnam sent ships to Fiery Cross Reef to begin
construction of a base, but their ships were chased away by Chinese naval vessels. China occupied
the reef in 1988 and built the station seen in a 2010 photo (the lighthouse is not seen in the photo; it
is off the lower left corner). The base is northeast of the Yongshu Jiao lighthouse, but it does not
appear in Google satellite views of the area. Site and tower closed.

Chigua Jiao (Johnson South Reef)
Date unknown (1988?). Active; white light; characteristic unknown. Light mounted on a short mast
atop a 3-story military outpost. Structure painted white with red trim. A photo is available (1/3 the
way down the page), and Google has a satellite view. Johnson South Reef is at the southwestern end
of the Union Banks. China's base dates from 1988. In 2013-14 China has undertaken a large land
reclamation project that appears to be providing the foundation for a military base and airfield. Site
and tower closed.

Dongmen Jiao (Hughes Reef)
Date unknown (1988?). Active; white light; characteristic unknown. Light mounted on a short mast
atop a 3-story military outpost. Structure painted white with red trim. A 2009 photo is available, and
Google has a satellite view. Hughes Reef is on the north side of the Union Banks. China's base dates
from 1988. Site and tower closed.

South Central Islands Lighthouse
Huayang Jiao (Cuarteron Reef)
Date unknown (1988?). Active; white light; characteristic unknown. Light mounted on a short mast
atop a 3-story military outpost. Structure painted white with red trim. A photo is available, but the
reef is not seen in Google's satellite view. This is China's southernmost outpost in the Spratlys, located
at the eastern end of the London Banks. China's base dates from 1988. Site and tower closed.

Lighthouses Operated by Malaysia

Note: Malaysia claims only the southernmost islands of the Spratly archipelago; they are attached
administratively to the Malaysian state of Sabah.
Southern Islands Lighthouses
* [Layang Layang (Swallow Reef)]
Date unknown. Active; focal plane 8 m (26 ft); white flash every 5 s. Triangular gray concrete pylon.
A photo and a more distant view are available, and Google has a satellite view of the settlement. In
1983, after an unsuccessful effort to occupy Amboyna Cay, Malaysia chose Swallow Reef (Pulau
Layang Layang) as its main outpost in the Spratlys, building an airstrip, a small naval base, and more

recently a 15-room scuba diving resort. The resort is the destination of regular flights from Kota Kinabalu, Sabah, making this the only island in the Spratlys accessible to tourists. The island is in the southernmost Spratlys about 110 km (70 mi) southeast of Amboyna Cay. Site open, tower closed. ARLHS SPR-009; Admiralty F2825.2; NGA 24376.

[Semarang Barat Besar (Royal Charlotte Reef)]
Date unknown. Active; focal plane 8 m (26 ft); two white flashes every 10 s. Triangular gray concrete tower. A photo is available. Barely breaking the surface, this reef is about 50 km (30 mi) southwest of Layang Layang. Site open, tower closed. ARLHS SPR-011; Admiralty F2825.3; NGA 24380.

[Semarang Barat Kecil (Louisa Reef)]
Date unknown. Active; focal plane 8 m (26 ft); white flash every 10 s. Triangular gray concrete tower. Rebiye Qadir has a photo showing an unlit gray obelisk as of 2002; we don't know if the light is mounted on this structure, but that seems likely. Another photo is available, but the reef is only a faint blur in Google's satellite view. Southernmost of all the Spratly islands, Louisa Reef also lies within the fishing zone claimed by Brunei. Located about 125 km (80 mi) southwest of Layang Layang. Site open, tower closed. ARLHS SPR-012; Admiralty F2825.4; NGA 24384.

Information available on lost lighthouses:

-

Notable faux lighthouses:

-

Adjoining pages: North: Xisha (Paracel Islands) | East: Southwestern Philippines | South: East Malaysia | West: Southern Vietnam

Return to the Lighthouse Directory index | Ratings key

Posted April 24, 2006. Checked and revised November 25, 2014. Lighthouses: 32. Site copyright 2014 Russ Rowlett and the University of North Carolina at Chapel Hill.

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"Layang - Layang Island", *Sabah Tourist & Travel Guide*, *available at* http://sabah.attractionsinmalaysia.com/ Layang-layang-Island.php (accessed 19 Feb. 2015)

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Layang - Layang Island

Location: Sabah

District » Labuan

Location Info

Address:Pulau Layang-layang, Labuan, Sabah, Malaysia

Location

The Layang - Layang Island is located about 300 kilometers north of Labuan near the Spratly group of islands. It is also known as the Swallow Reefs and is a world renowned diving and fishing destination. There are also people who call the Layang - Layang Island the 'Big fish and wall diving Mecca of Southeast Asia'.

Overview

The Layang - Layang Island is actually a man-made island which was resulted from the construction for the Malaysian Navy. It was only later that the island was developed into a dive resort, called the Layang - Layang Island Resort. The Layang - Layang Island is where you should go if you want absolute isolation and privacy. Fortunately there is an airstrip with regular flights from the city center of Kota Kinabalu which only provides transport for visitors who wish to go to the island. The island deserves it reputation of being one of the ten best dive locations in the world as it has pristine reefs, crystal clear water, extreme location and steep walls down to 2000 kilometers.

The diverse marine life here is also another highlight of the island. The residents of the waters of the Layang - Layang Island are the barracuda, trevally and the often sighted green and hawkbill turtles as well as myriads of sea fans stretching to more than three meters across. At the Layang - Layang Island is also a 20 meters deep lagoon which has plenty of macro creatures to be seen. These creatures include the seahorses, cuttlefish and pipefish but the reason the keeps visitors coming is the pelagic visiting the outer walls. If you are lucky, you may also be able to see schools of hammerhead sharks, grey reef sharks, leopard sharks and also the rarer silvertip sharks.

Stingrays are also frequently seen in the waters of Layang - Layang Island. The usual stingrays seen are the manta rays, pygmy devil rays, marbled rays and eagle rays. This island is where you should head to for a real experience of swimming with the various fishes here. There are accommodations at the Layang - Layang Island Resort. If you would like to extend your stay in Sabah to see more of the beauty of this Land below the Wind, there is no worry about not having a place to stay. Accommodations in Sabah are plentiful and there are many to choose from.

Transport

Annex 464

The best starting point to head to the island is at Kota Kinabalu. There is a private charter company which flies clients to the island. Arrangements are usually made by the Layang - Layang Island Resort.

Avillion Layang Layang

Google

Annex 465

"Spratly Islands Conflicting Claims", *Global Security*, *available at* http://www.globalsecurity.org/military/ world/war/spratly-conflict.htm (accessed 3 Mar. 2015)

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MILITARY

Spratly Islands Conflicting Claims

Claims by Country				
Country	South China Sea	Spratly Islands	Paracel Islands	Gulf of Thailand
Brunei	UNCLOS	no formal claim	no	n/a
Cambodia	(n/a)	n/a	n/a	UNCLOS
China	all*	all	all	n/a
Indonesia	UNCLOS	no	no	n/a
Malaysia	UNCLOS	3 islands	no	UNCLOS
Philippines	significant portions	8 islands	no	n/a
Taiwan	all*	all	all	n/a
Thailand	n/a	n/a	n/a	UNCLOS
Vietnam	all*	all	all	UNCLOS
UNCLOS = UN Convention on the Law Of the Sea				
n/a = not applicable				
*excluding buffer zone along littoral states (calculations for buffer unknown)				

Competing territorial claims over the South China Sea and its resources are numerous, with the most contentious revolving around the Spratly Islands and Paracel Islands (the Xisha and the Nansha in Chinese; the Hoang Sa and Truong Sa in Vietnamese). The Spratlys are claimed in total by China, Vietnam, and Taiwan, whereas Malaysia laid claim to parts of the continental shelf underlying the southernmost islands in the chain.

Further Reading

Indeed, ownership of virtually all of the South China Sea is contested. The disputed islands in the South China Sea assumed importance only after it was disclosed that they were near the potential sites of substantial offshore oil deposits.

In 1939 the Japanese military government announced its decision to take possession of the Spratlys. France protested on 04 April 1939 when Japan announced it had placed the Spratlys "under its jurisdiction." In 1941 Japan forcibly took over the islands as part of its World War II strategy. During the War, France defended the Spratlys from Japanese military forces. In 1949 Vietnam "inherited" from France all former French rights over the Paracel Islands and the Spratlys Islands. Vietnam emphasizes "actual exercise of sovereignty over mere geographic contiguity" as a basic ground for its claim. In the 1951 "San Francisco Peace Treaty" Japan relinquished all titles and claims to the Paracel Islands and the Spratlys Islands. From 1956 to 1963, Vietnamese naval troops built "sovereignty steles" in the Spratlys.

The most proactive claimant in the region is China. In 1909 it seized some islands in Xisha (the Paracels). In 1946 it seized Itu Aba (in the Spratlys) and Phu Lan Island (in the Paracels). In 1950's China seized additional Hoang Sa (Paracels) islands, which it forcibly repeated in 1974. Vietnam claims that these acts were unlawful and that the United States in 1974 conspired with China for the take-over of the Paracels.

In January 1974, Chinese military units seized islands in the Paracels occupied by South Vietnamese armed forces, and Beijing claimed sovereignty over the Spratlys. Following their conquest of South Vietnam in the spring of 1975, units of the People's Army of Vietnam (PAVN) nevertheless moved to occupy the Spratly Islands previously held by the Saigon regime. In 1978 Vietnam and the Philippines agreed to negotiate but failed to settle their conflicting claims to the Spratly Islands. Foreign Minister Thach, during a late-1982 visit to Indonesia, took a conciliatory position in discussing Vietnam's and Indonesia's competing claims to the Natuna Islands, and in 1984 Hanoi made a similar gesture to Malaysia in order to help resolve their conflicting claims over Amboyna Cay.

In a 1988 incident, possibly related to Cambodia because it potentially strengthened China's position at a future bargaining table, the ongoing dispute between China and Vietnam over sovereignty to the Spratly Islands erupted into an unprecedented exchange of hostilities. The situation was reduced to an exchange of accusations following the armed encounter. Vietnam's repeated calls for China to settle the dispute diplomatically won rare support for Vietnam from the international community, but elicited little response from Beijing. A conciliatory mood developed on both sides of the Sino- Vietnamese border in 1989, partly because Vietnam's proposal to withdraw completely from Cambodia responded to a basic Chinese condition for improved relations.

Mischief Reef is part of the Spratly Islands. Mischief Reef was discovered by Henry Spratly in 1791 and named by the German Sailor Heribert Mischief, one of his crew. China has sent naval vessels into the area and has constructed crude buildings on some of the islands. Beijing maintains that the shacks are there solely to serve Chinese fishing boats. Manila describes the buildings as "military-type" structures. According to reconnaissance photos by the Philippine Air Force, these structures do not look like fishermen's sanctuaries. They seem to have radar systems which are not normally associated with the protection of fishermen.

Itu Aba Island is used by Taiwan, ROC fishermen as a rest stop. Itu Aba Island is located at the northwest end of the northern part of the Spratly Archipelago near the Cheng Ho Reefs (Tizard

Bank). In 1938 the Indochina Meteorological Service set up a weather station on Itu-Aba island which remained under French control from 1938 to 1941. When World War II erupted in 1941 Japan took control of said weather station.

On 08 June 1956 Taiwan sent troops to occupy Thai Binh Island (Itu Aba - Peace Island), the largest island in the Spratlys. Vietnam claims that "as late as December 1973, the Far Eastern Economic Review of Hongkong reported that a marker still stood there with the inscription: 'France - Ile Itu Aba et Dependences - 10 Aout 1933." The northwestern part of the Tizard Bank consists of Itu Aba in the west, Center Cay in the center, and on the east side Sand Cay, all claimed by Taiwan since 1955.

Since the end of World War Two, the ROC navy has guarded the island for over fifty years; they have a major responsibility to ensure the security of the South China Sea. A Taiwan, ROC garrison is stationed on Itu Aba on a permanent basis, making the building of roads and military installations an important task. As a result, the island now has well-built roads, and the soldiers keep it as clean as a well-kept park.

The Kalayaan Islands, as Filipinos call some of the Spratlys, lie in a shallow section of the South China Sea west of the Philippine archipelago. Kalayaan is a rich fishing area that had been identified as a potential source of petroleum deposits. Tomas Cloma, a Manila lawyer, visited the islands in 1956, claimed them for himself, named them Kalayaan (Freedomland), then asked the Philippine government to make them a protectorate.

Vietnam brands as erroneous the Philippine theory that the Spratly Islands were "res nullius" when Tomas Cloma "pretended to 'discover' the Vietnamese Truong Sa islands in 1956". Manila regularly tried to extract from the United States a declaration that it would defend the Philippines' claim to the Kalayaans as part of the Mutual Defense Treaty between the Republic of the Philippines and the United States of America, but the United States just as regularly refused so to interpret that treaty.

The Philippine government first put forth informal claims to Kalayaan in the mid-1950s. Philippine troops were sent to three of the islands in the Kalayaans in 1968, taking advantage of the war situation in the Republic of Vietnam. In 1974, the Philippine government declared that it had garrisoned five of the islands. In 1978 Marcos made formal claims by declaring that fifty-seven of the islands were part of Palawan Province by virtue of their presence on the continental margin of the archipelago. The Philippine military continued to garrison marines on several islands.

Layang Layang (Swallow's Reef, although there are no swallows present) is a small reef in the Spratly Islands, and is currently operated and managed by the government of Malaysia. Swallow Reef is the only reef in Swallow Atoll, which is exposed to the sea. The island is long and narrow, stretching from the northeast to the southwest. It is small in area, around 0.1 square kilometers.

The amazing fact about Swallow Reef is that this tiny, exposed islet was practically man-made! It was built by the Malaysian government, which collected sand and connected two isolated reefs by filling the channel between them. The Malaysian government opted to build an airstrip, dive resort and military installation on this reef since in 1983. Seventy soldiers live on this island and the dive resort is open to any visiting scuba divers. Swallow Reef is fast becoming another of Malaysia's premier dive destination.

The Spratly Islands dispute eased since the 1990s. This was due, in part, to China's rising economic stature and the interdependency it, in turn, fostered amongst Asian nations. China knows that any crisis in the South China Sea could severely restrict the commercial shipping traffic that is vital to their continued prosperity. Another contributor to the relative calm is fact that proven oil reserves in the area are disappointingly low.

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