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# China's Claim of Sovereignty Over Spratly and Paracel Islands: A Historical and Legal Perspective

*Teh-Kuang Chang\**

## I. INTRODUCTION

On August 13, 1990, in Singapore, Premier Li Peng of the People's Republic of China (the PRC) reaffirmed China's sovereignty over Xisha and Nansha Islands.<sup>1</sup> On December 29, 1990, in Taipei, Foreign Minister Frederick Chien stated that the Nansha Islands are territory of the Republic of China.<sup>2</sup> Both statements indicated that China's claim to sovereignty over the Paracel and Spratly Islands was contrary to the claims of other nations.

Since China's claim of Spratly and Paracel Islands is challenged by its neighboring countries, the ownership of the islands in the South China Sea is an unsettled international dispute.<sup>3</sup> An understanding of both

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<sup>1</sup> Premier Li Peng told reporters in Singapore that "China is willing to cooperate with the South East Asian countries for the development of the Nansha Islands, and to shelve the problems of sovereignty aside temporarily." *World Journal*, Sept. 8, 1990, at 1. However, a Chinese military officer who was present explained that Li Peng's proposal would not apply to the Xisha Islands, which are under the jurisdiction of the PRC. *Id.* In any event, the PRC will not abandon its claim of sovereignty over the Nansha Islands. *Id.* Li's statement is similar to the 1978 agreement with Japan concerning the territorial dispute over Tiaoyutai (Senkaku in Japanese) *id.*, which shelved the issue of sovereignty while Japan and China agreed to cooperate for the development of the islands. *Id.*

<sup>2</sup> Chien said that the Foreign Minister of Indonesia should not make any suggestions or comments about setting up a cooperative zone in the Nansha Islands. *Central Daily News*, Dec. 31, 1990.

Foreign Minister Chien's remark was a reaction to an announcement made by the Indonesian Foreign Minister on December 28, 1990. The Indonesian Foreign Minister, Ali Alatas, planned to invite the countries involved to discuss the South China Sea islands in an effort to prevent conflict in the region. *Jakarta Post*, Dec. 28, 1990.

<sup>3</sup> Shao Hsun-Cheng, *Chinese Islands in the South China Sea*, *People's China*, July 1, 1956, at 25-27; *Chinese Warning on South Vietnam Intrusions*, *Peking Review*, Mar. 3, 1959, at 9; *Tiny Isles in Pacific Make Big Waves*, *New York Times*, July 12, 1971, at 2, col. 3; *China's Territory Nansha Islands Brooks No Violation*, *Peking Review*, July 23, 1971, at 19; J. Cushing, *The Dragon's Long Reach*, *Far Eastern Economic Rev.*, May 5, 1988, at 23; M. Hiebert, *No, Not Another War!* *Far Eastern Economic Review*, May 5, 1988, at 24; R. Tacker, *China and Vietnam Dispute over Spratly Islands Association of Southeast Asian Nations*, *Far Eastern Economic Review*, May 5, 1988, at 24; Shim Jae Hoon, *In Dispute with Vietnam over Spratly Islands*, *Far Eastern Economic Review*, May

China's claim, and the international reaction to it, is a necessary precursor to the formulation of a peaceful solution in the region.

China discovered, and has exploited the islands in the South China sea for over two thousand years.<sup>4</sup> Since the Chinese settled in these islands prior to any other people, China's claim of sovereignty over the islands in the South China Sea islands predates that of other nations.<sup>5</sup> The Chinese government set up administration<sup>6</sup> over, and divided islands in the South China sea into four groups: Dongsha (East Sand) Archipelago, Zhongsha (Central Sand) Archipelago, Nansha (South Sand) Archipelago, and Xisha (West Sand) Archipelago.<sup>7</sup> China's sovereignty over the Dongsha Islands and the Zhongsha Islands has never been questioned.

China's sovereignty over the Xisha Islands and the Nansha Islands, which were called "Spratly"<sup>8</sup> Islands and "Paracel Islands" respectively, was challenged by France before World War II and by the Philippines and Vietnam after World War II.

France claimed sovereignty over the Spratly and Paracel Islands in

5, 1988, at 25. *China and Vietnam, Your Bit of Coral, or Mine*, *The Economist*, Mar. 19, 1988, at 38. Cushing, *Beached Again on Shoals*, *Far Eastern Economic Review*, Mar. 17, 1988, at 23.

On December 23, 1990, the Central Daily News reported that Communist China expanded to the Southern China Sea islands in an effort to strengthen its claim of sovereignty. The PRC is currently completing an air base on Yung-hsing Island (Woody Island). Vietnam has occupied twenty-four islands. Malaysia has occupied three islands. The Republic of China claimed ownership of all islands in the South China Sea, even though it only occupies two larger islands. *Central Daily News*, Dec. 23, 1990, at 1.

<sup>4</sup> Starting in 111 B.C. under Emperor Wu Di of the Han Dynasty. S. Yeh, *Nansha Feng Yun Yo Kuo-Chi Kung-Fa* (Nansha Situation and International Law), 19 *ECON. & L.* 27 (1988).

<sup>5</sup> Starting in 1405, Emperor Cheng Zu of the Ming Dynasty sent the special envoy, Cheng Ho, to exploit the islands in the South China Sea and to include them on the map as Chinese territory. *Id.*

<sup>6</sup> On December 1, 1947, the Ministry of the Interior of the Republic of China announced the new names of the four Archipelagos in the South China Sea, and they were listed under the administrative jurisdiction of the Hainan Special Administrative District of the Kwantung (Guangdong) Province of China. *United Daily News*, Feb. 25, 1974.

<sup>7</sup> The Republic of China and the PRC use the same Chinese characters to name the islands in the South China Sea. However, when Chinese names are translated into English, the PRC uses the Ping-Ying system, but the Republic of China uses the Wade system. The respective names of the groups of islands are as follows:

| <i>By Meaning</i> | <i>Ping-Ying</i> | <i>Wade System</i> |
|-------------------|------------------|--------------------|
| East Sand         | Dongsha          | Tungsha            |
| Central Sand      | Zhongsha         | Chungsha           |
| South Sand        | Nansha           | Nansha             |
| West Sand         | Xisha            | Hsisha             |

The Chinese names in this article will use the respective source's citation.

<sup>8</sup> The islands are named "Spratly" after the British Captain Spratly who mapped them in the 1880s.

the 1930s. The Japanese occupied all four groups of islands during World War II, and returned them, along with other territories, to China after World War II. In both the San Francisco Peace Treaty of 1951 and the Sino-Japanese Peace Treaty of 1952, Japan renounced its claim over the Spratly and Paracel Islands.<sup>9</sup> The representatives of the Republic of Vietnam declared its sovereignty over the Spratly Islands and the Paracel Islands in the San Francisco Peace Conference of 1951; China was not invited to participate.<sup>10</sup> Both Taiwan and the PRC, however, repeatedly refuted the claims by all other countries for these islands.

In summary, disputing parties are the Republic of Vietnam (before 1975),<sup>11</sup> the Democratic Republic of Vietnam (after 1975),<sup>12</sup> the Philippines, Malaysia, the PRC, and the Republic of China. From 1973 to 1988, armed conflicts occurred between Vietnam (as invader) and China (as defender). Both Chinas (either Republic of China or PRC) maintained claims that the four groups of islands in South China are solely Chinese territory. They base such claims on traditional concepts of sovereignty, independence and territorial integrity. The Vietnamese invaded the Paracel and Spratly Islands, and the Philippines and Malaysia occupied some of the Spratly Islands.<sup>13</sup>

This article will analyze the development of China's claim of sovereignty over these islands. These claims will be contrasted with the claims of other nations in search of a peaceful settlement, which would prevent international political conflicts. Prior to the historical and legal analysis,

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<sup>9</sup> After the September 8, 1951, signing of the San Francisco Peace Treaty, a bilateral treaty was signed between the Republic of China and Japan on April 28, 1952, which provided in Article 2:

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.

San Francisco Peace Treaty, April 28, 1952, Republic of China-Japan, 138 U.N.T.S. 38. The treaty came into force on August 5, 1952. During the negotiation of the territorial Article, the Japanese delegates insisted that the Article should include only those areas relating to the Republic of China. The Chinese delegates then explained that the Paracel and Spratly Islands were Chinese territory and should therefore be included in Article 2. See *Peace Treaty Between the Republic of China and Japan*, April 28, 1952, *Treaties Between the Republic of China and Foreign States (1927-58)*. Ministry of Foreign Affairs 248, 249 (1958). See *Record of Proceedings*, Conference for the Conclusion and Signature of the Treaty of Peace with Japan, San Francisco, California, September 4-8, 1951 (Washington, D.C.: Government Printing Office 1951) at 263.

<sup>10</sup> *The Sovereignty of the Republic of Vietnam Over the Spratly Islands* Feb. 5, 1974 [hereinafter FACT SHEET].

<sup>11</sup> South Vietnam became the Republic of Vietnam in 1954 when it separated from French colonial rule, until its collapse after U.S. withdrawal in 1975.

<sup>12</sup> After the unification of North Vietnam and South Vietnam in 1975, the name of Vietnam became the Democratic Republic of Vietnam.

<sup>13</sup> H. Chen, *An-Chao Hsiung Yung Ti Nansha Hsing-Shih* (The Rise of Storm over the Nansha Solution), *Central Daily News*, Nov. 16, 1988, at 1.

there will be a geographical discussion of the islands in the South China Sea.

## II. GEOGRAPHIC DESCRIPTION

The Islands in the South China Sea are surrounded by the coastal states: China, both the PRC on the mainland and the Republic of China on Taiwan, Vietnam, Philippines, Malaysia, Brunei and Indonesia. There are over one hundred fifty islets in the South China Sea, which are divided by the Chinese government into four groups for administrative purposes. The Nansha (Spratly) Islands, lie 115° E. and 10° N. Taiping is the largest. The Xisha Islands (Paracels, 112° E., 16° N.); the Zhongsha Islands (115 E. and between 15° and 16° N.); and the Dongsha Islands (117° E., 21° N.).<sup>14</sup> The Dongsha archipelago is in the North, near Guangdong Province of China. The Xisha archipelago is near Hainan of China and Vietnam. The Nansha archipelago is near the Philippines and Borneo, but far from Vietnam. The Zhongsha archipelago is between the three groups at the middle location. All of the islands in these archipelagos are of different sizes, ranging from regular ellipses of islands, reefs, rocks, banks, and shoals. The largest of the Spratly Islands is Itu Aba Island on which the troops of the Republic of China have been stationed since 1946. The Chinese renamed Itu Aba Islands as Taiping Islands to memorialize the warship which landed there in November, 1946. Also, on this island, China set up a Meteorological Station, at the request of the U.N. International Civil Aviation Organization, to supply weather information.<sup>15</sup> The disputed Paracel Islands are in the Xisha Archipelago; the Spratly Islands are in the Nansha Archipelago.

The products of these Islands are mainly turtles, crab meat, bird nests and guano. Recently, the U.N. Economic Commission in Asia reported on the possibility of potential petroleum deposits around the Spratly and Paracel Islands. These potential deposits have raised international interest and have attracted other countries to claim their sovereignty.<sup>16</sup>

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<sup>14</sup> Shao Hsun-Cheng, *supra* note 3, at 25-27.

<sup>15</sup> On October 27, 1955, the International Civil Aviation Organization held a conference in Manila, with representatives of sixteen countries, including: the Republic of China, the Philippines, the Republic of Vietnam, Japan, the United States of America, the United Kingdom, France, Canada, Australia, New Zealand, and Thailand. The Conference adopted Resolution #24, asking "the Republic of China to supply four times daily, the weather report and forecast for the Nansha Islands." The conference was chaired by the Philippine representative, J.P. Bareron. See *The Memo on the Four Archipelagos of the Republic of China in the South China Sea*, United Daily News, Feb. 25, 1974.

<sup>16</sup> S. Yeh, *supra* note 4, at 27-28.

### III. HISTORICAL ANALYSIS OF THE DEVELOPMENT OF CHINA'S CLAIM OF SOVEREIGNTY ON XISHA AND NANSHA ISLANDS

Disputes over sovereignty in the archipelagos are settled according to the *Palmas* case under international law. *Palmas* held: "[I]t is quite natural that the establishment of sovereignty may be the outcome of a slow evolution, of a progressive intensification of State control."<sup>17</sup> China tried to establish the legal claim of sovereignty over the Xisha and Nansha Islands based on the historical record.

According to the Chinese history books, China discovered the islands in the South China Sea as early as the second century B.C.; exploitation and development followed and finally the islands were put under the administrative jurisdiction of the Chinese Government as Chinese Territory. China began to send naval ships to the South China Sea during the sixth year of Yuan-Den, (111 B.C.) under the reign of Emperor Wu Di of the Han Dynasty. Admiral Yang Pu led 100,000 sailors to the islands of the South China Sea.<sup>18</sup>

In the Three Kingdoms Period (220-265), the books *Nansho Yi Wu Zhi* (Strange Things of the Southern Provinces) by Zhen and *Fu Nan Zhuan* (An Account of Fu Nan) by Kang Tai described the geographical features of these Islands after they visited in the South China Sea.<sup>19</sup> Chinese voyages to the Xisha and Nansha Islands, and the activities during more than a thousand years, are recorded as follows:

The location and distribution of these islands are recorded in *Meng Liang Lu* (Record of a Day-Dreamer) of the Song dynasty, *Dao Yi Zhi Lu* (Brief Account of the Islands) of the Yuan dynasty, *Dong Xi Yang Kao* (Studies on the Oceans East and West) and *Shun Feng Xiang Song* (Fair Winds for Escort) of the Ming dynasty, *Zhi Nan Zheng Fa* (Compass Directions) and *Hai Guo Wen Jian Lu* (Records of Things Seen and Heard About the Coastal Regions) of the Qing dynasty and *Geng Lu Bu* (Manuals of Sea Routes) of fishermen of various generations.<sup>20</sup>

In these books, the Xisha and Nansha islands were variously named Juirulouzhou (Nine Isles of Cowry), Shitang (rocky reefs), Qianlishitang (thousand li rocky reefs), Wanlichangtang (ten-thousand li rocky reefs), Qianlichangsha (thousand li sand cays) and Wanlichangsha (ten thousand li sand cays).

<sup>17</sup> The Island of Palmas (or Míangas), *reprinted in* 22 AM. J. INT'L L. 867, 908 (1928) [hereinafter Island of Palmas].

<sup>18</sup> S. Yeh, *supra* note 4, at 27.

<sup>19</sup> *China's Indisputable Sovereignty over the Xisha and Nansha Islands*. DOCUMENT OF THE MINISTRY OF FOREIGN AFFAIRS OF THE PEOPLE'S REPUBLIC OF CHINA 3 (1980) [hereinafter DOCUMENT OF THE MINISTRY].

<sup>20</sup> *Id.* at 7.

The Chinese have lived on the Xisha and Nansha islands since the Tang and Song dynasties, as evidenced by recent discoveries at the Xisha Islands of "ruins of living quarters, pottery and porcelain utensils, iron knives, iron cooking pots and other articles of daily use belonging to the Tang and Song dynasties."<sup>21</sup> The Chinese Government has exercised jurisdiction over Xisha and Nansha since the ninth century, along with the exploitation and development of the islands. During the Song Dynasty (900-1127 A.D.), Chinese Naval Patrols reached the Xisha Islands. The *Wu Jing Zong Yao* (Outline of Military Affairs) recorded that the Northern Song Court "ordered patrols by imperial forces and the building of barracks for naval patrols" in Guangnan (which is now Guangdong), "commissioning the building of keeled sea-faring warships" which "sailing in the southwestern directions from Tunmenshan, with a fair east wind, can reach Jiuruluozhou in seven days."<sup>22</sup> Jiuruluozhou was the name for today's Xisha Islands and the dispatch of naval warships to patrol its territories indicated that the Northern Song Court had already put the Xisha Islands under its jurisdiction.

In 1279, during the Yuan Dynasty, the Kublai Khan, Emperor Shi Zu assigned Guo Shoujing, famous astronomer and Deputy Director of the Astronomical Bureau, to do the observations in the South China Sea. According to the official *History of the Yuan Dynasty*, Nanhai, Guo's observation point, was today's Xisha Islands. Thus, the Xisha Islands were within the bounds of China at the time of the Yuan Dynasty.<sup>23</sup> In 1405, during the Ming Dynasty, Emperor Cheng Zu sent Eunuch Cheng Ho, as special envoy, to command 27,800 naval officers and men, with sixty-two warships for a voyage of exploration of the South China Sea, and extended the voyages to Java, Sumatra, Ceylon and Africa. He returned to China in 1407.

Afterwards, Chen Ho was again sent to the South Seas for a total of seven trips during the twenty-eight years, and visited thirty countries.<sup>24</sup> In every trip, the Chinese Navy passed through the Nansha islands. His three interpreters each wrote a book about the Nansha Islands. Thus, some islands in Nansha were named in memory of these exploratory missions, such as Tizard Bank and Reefs, Flat Island, Nanshan Island, Loaita Bank and Reefs, Lankiam Cay, London Reefs, and Sin Cowo Island.<sup>25</sup>

During the Ming and Qing dynasties, the Xisha and Nansha Islands were under the Administration of Wanzhou of Qiongzhou Prefecture

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<sup>21</sup> *Id.* at 4.

<sup>22</sup> *Id.* at 5.

<sup>23</sup> *Id.*

<sup>24</sup> S. Yeh, *supra* note 4, at 27.

<sup>25</sup> *The Names of the Islands of Nansha of the Four Groups of Archipelago*. United Daily News, Feb. 25, 1974.

(now Wanning and Lingshu counties, Hainan Island) then Guangdong Province.<sup>26</sup> During the reign of Kangxi, (1719-21), of the Qing dynasty, Wu Sheng, Vice-Admiral of the Guangdong Fleet, led a naval patrol and personally went on an inspection tour setting out for Qiongya, rounding Tonggu and passing through Qizhouyang and Sigengsha, covering 3,000 Li.<sup>27</sup> The Qizhouyang (Sea of Seven Islands) refers to the sea around the Xisha Islands.<sup>28</sup>

Guo Songtao, the Chinese Minister of the Qing Dynasty to Britain, in his book *Shi Xi Ji Cheng* (Travel Notes of an Envoy to the West), recorded his voyage to his post in 1876 by noting that, on his voyage through the South China Sea, "nearby to the left were the Paracel Islands (the Xisha Islands) which yielded sea slugs, and also coral, which was not of very good quality. These islands belong to China."<sup>29</sup>

In the nineteenth century, China's sovereignty over the Xisha and Nansha Islands was recognized by Europe. In 1883, during the reign of Guang Xu, Germany conducted surveys on the Xisha and Nansha Islands but stopped after protest by the Qing Government.<sup>30</sup>

Besides the books of history, many official maps also provided evidence that the Xisha and Nansha Islands have been China's territories: *Huang Qing Zhi Sheng Fen Tu* (Map of the Provinces Directly under the Imperial Qing Authority) made in the fifteenth year of Emperor Qianlong (1775), *Da Qing Wan Nian Yi Tong Di Li Quan Tu* (Map of the Eternally United Great Qing Empire) made in the twentieth year of Emperor Jiaqing (1810), and *Da Qing Yi Tong Tian Xia Quan Tu* (Map of the Unified Territory of the Great Qing Empire) made in the twenty-second year of Emperor Jiaqing (1817).<sup>31</sup>

In 1909, during the reign of the last Emperor Xuantong, Zhang Renjun, Governor of Guangdong and Guanxi, Li Zhun, Admiral of the Guangdong Fleet, accompanied more than 170 naval officers and men on an inspection tour of the Xisha Islands in three warships, the *Fubo*, the *Guangjin* and *Shenhang*. They inspected fifteen islands and set up stone tablets engraved with the names of the islands,<sup>32</sup> hoisted the flag and fired a salute on Yung-Hsing Island as reassertion of Chinese sovereignty.

In 1911, the Chinese Guangdong Province Government announced that the Xisha Islands would be put under the administration of Yaxian county, Hainan Island. In 1921, the Ministry of Interior of the Republic

<sup>26</sup> DOCUMENT OF THE MINISTRY, *supra* note 19, at 6.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Guo Songtao, *Shi Xi Ji Cheng*. *Id.*

<sup>30</sup> *Id.* at 7.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*



of China approved a license for He Ruinian, a merchant of Guangdong Province, for fishing, plantation operation, and mining on the Xisha Islands. In 1927, when he was found to have transferred the license to Japanese merchants, the license was revoked by the Chinese government.

British and French books recorded the Chinese living on Nansha Island. The 1923 British publication *China Sea Pilot*, in Volume III, reported that Chinese fishermen from Hainan were making a living on the Nansha Islands and added further that the communication between Hainan and the Nansha Islands had been maintained by boats for the exchange of goods, such as rice, from Hainan, traded for fishermen's catches on these islands. Volume I also reported: "Tizard Bank . . . Fishermen from Hainan usually visit the islands annually in December and January, and leave again at the commencement of the southwest monsoon."<sup>33</sup>

In 1927, National Sun Yat-Sen University sent a study group to visit Xisha Islands by warship and investigate the island's geography. A 1933 French publication, *Le Monde Coloniale Illurts Vinielle: Les Ilots desmers de Chine*, recorded that:

in the islands, only Chinese (Hainan natives) lived there. At that time, there were residents on Southwest Island. There were residents living on Thi-Tu Island, two of whom were children. There were residents living on Spratly Island. On the Lowan Island there remains a Chinese shrine, huts, and a well. On the Itu Aba Island, although nobody is visible, a Chinese tablet is discovered with the inscription that a shipment of food was made to this island: Since nobody is here, the food is left underneath the metal sheet. On other islands, the remains of the fisherman's living quarters were everywhere.<sup>34</sup>

The above recorded South-West Island is S.W. Cay. Thi-Tu Island is the Chung-Yeh Island. Spratly is Nanwei Island. The French record, provides that the Chinese have lived in Nansha Islands for a long time.<sup>35</sup>

The French occupation of the nine islands of Nansha in 1930 and 1932, was protested by the Chinese Government. Among these nine islands, three were in the Xisha Islands and six were in the Nansha Islands. The Japanese took over all these Islands from France in 1939, and maintained control until the Japanese surrender in 1945. In 1946, the Republic of China took back the Nansha Islands and Xisha Islands held during the Japanese occupation.<sup>36</sup>

On December 12, 1946, the Chinese government sent thirteen offi-

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<sup>33</sup> CHINA SEA PILOTS 124 (1923) (reprinted in, MINISTRY OF FOREIGN AFFAIRS, REPUBLIC OF CHINA, THE NOTES ON INTERNATIONAL CONFLICTS RELATED TO NANSHA ISLANDS 20 (1990)).

<sup>34</sup> Le Monde, *Colonial Illurts Vinielle: Les Ilots desmers de chine* (1933).

<sup>35</sup> United Daily News, Feb. 25, 1974.

<sup>36</sup> *Id.*

cials, representing the Ministry of Interior, Ministry of National Defense, Chinese Navy Headquarters, and the Provincial Government of Kwangtung (Guangdong) with four warships, namely Taiping, Yung-Hsing, Chun-Jian, Chung-Yeh to take over the islands of Nansha.<sup>37</sup> In 1946, the Administration of Nansha Islands was set under the Kwangtung (Guangdong) Province. When the Hainan Special Administration District was established on April 1, 1946, the Administration of Nansha Islands was placed under its jurisdiction.

In April 1947, the Chinese government sent Professor Wang Kuang, as the representative of Kwangtung (Guangdong) Government Compilation Committee on the Book on Xisha and Nansha, via warships to inspect Xisha, Nansha, and Zhongsha Islands. Professor Wang discovered underneath the coral reefs of Rockey Island, coins from the Kai-Yuan Reign of Emperor Suan Zhong of the Tang Dynasty (713-742 A.D.), the Hung-Wu Reign of Emperor Cheng Zu of the Ming Dynasty (1368-1390 A.D.), and the Yong-Lo Reign of Emperor Cheng Zu of the Ming Dynasty (1403-1425 A.D.). Professor Wang's collection from the Xisha Islands was publicly exhibited on June 11, 1947, in Canton.<sup>38</sup>

On December 11, 1947, the Ministry of Interior of the Republic of China announced to the world, the formal names of the islands, reefs, and banks of the four archipelagos of Dongsha, Xisha, Zhongsha and Nansha. At that time, no country presented any objection.<sup>39</sup> On June 2, 1956, the Nationalist Chinese sent warships to inspect the Nansha Islands, and on June 5, arriving at the Taiping Island, (Spratly or Storm Islands), set up a stone tablet and hoisted a flag as symbols of the recovery of the Islands. On June 10, they went to inspect the West York Island.<sup>40</sup>

Again from October 6, to October 27, 1963, the Ministry of National Defense, the Ministry of Interior, and the Headquarters of Chinese Navy jointly sent delegates to inspect the Nansha Islands, including the Itu Aba Island, Thi-Tu Island, and Spratly Island to comfort the Chinese soldiers and Meteorological personnel who were stationed there. Workers were sent by the Veterans Commission to set up the stone tablets on Thi-Tu and other islands, and pictures were taken as evidence. Afterwards, the Chinese Navy frequently sent warships to inspect the Nansha Islands. The Chinese troops were permanently stationed as garrison on Taiping Island (Itu Aba Island). From there they could dispatch patrols to the neighboring islands as defense against foreign invasion.

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *The Historical Record of China's Exploration and Administration of the Islands in South China Sea*, United Daily News, Feb. 25, 1974.

<sup>40</sup> *Id.*

On the other hand, the PRC, which was established on October 1, 1949, also claimed jurisdiction over these islands.<sup>41</sup> This indicates that China's sovereignty over Xisha and Nansha has never been interrupted by any Chinese government. After 1950, the PRC's Hainan Administrative Area of Guangdong Province set up a meteorological station and exercised control over fisherman on the Xisha Islands.

In March 1959, the Hainan Administration Area established on Yongxing Island of the Xisha Islands an "Office of Xisha, Nansha and Zhongsha Islands," which in March 1969, was renamed the "Revolutionary Committee of the Xisha, Zhongsha and Nansha Islands of Guangdong Province," keeping with the changes of the political system during the Cultural Revolution of the PRC.<sup>42</sup> Based on the traditional concept of national defense of its territory, the PRC took military action in 1974 to oust the invaders of the Republic of Vietnam from the islands of Xisha. In January 1988, the PRC for the first time sent troops to the islands of Nansha. In February 1988, it built a ferry and a helicopter airport on Yung-Shu Island (Fiery Cross or N.W. Investigator Reef). Based on the UNESCO plan and support, the PRC built a Maritime Observation Station on the Island.<sup>43</sup> On March 14, 1988, the PRC fought against an invasion of the Xisha and Nansha Islands by the Democratic Republic of Vietnam.<sup>44</sup>

The above historical facts provide recorded evidence of the Chinese discovery, development and administration on the Xisha and Nansha Islands. Chinese jurisdiction over the islands has been consistent. Thus, China's claim of sovereignty over the Xisha and Nansha Islands is therefore based on the historical record of occupation. However, the historical record of China's claim of sovereignty over the islands was challenged by neighboring states. To determine whether the Chinese claim of sovereignty based on its historical occupation is valid, it is necessary to review whether the Chinese claim meets the criteria of the international law of State sovereignty.

#### IV. THE LEGAL OBSERVATION OF CHINA'S CLAIM OF SOVEREIGNTY OVER THE XISHA AND NANSHA ISLANDS

The legal basis of China's claim of sovereignty over the Xisha and Nansha archipelagos is illustrated from Chinese record of words and deeds as would be consistent with international legal principles. China's claim of sovereignty over the South China Sea Islands began in the seven-

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<sup>41</sup> DOCUMENT OF THE MINISTRY, *supra* note 19.

<sup>42</sup> *Memorandum of the Ministry of Foreign Affairs of the People's Republic of China on the Question of Xisha and Nansha Islands*, May 12, 1988 [hereinafter *Memorandum*].

<sup>43</sup> Chen, *supra* note 13.

<sup>44</sup> *Id.*

teenth century, prior to Hugo Grotius' formulation of international law.<sup>45</sup> Afterwards, with the development of international law, certain standards were established for claiming state sovereignty over territories. In determining whether China's claim of sovereignty over the islands of Nansha and Xisha based on historical facts is legally valid, it is necessary to consider international rules.

According to international law, methods of acquiring state territory include discovery, occupation, prescription and conquest.<sup>46</sup> China's claim of sovereignty over the Islands in the South China Sea is based upon discovery and occupation.

### 1. Acquisition by Discovery

China discovered the Nansha and Xisha Islands over 2,100 years ago, during the Han Dynasty.<sup>47</sup> The discoverers, Admiral Yang Pu and his subordinates, were sent by the Emperor of the Han Dynasty. According to international law and custom at the time, "[he] who discovers the territory, holds its sovereignty."<sup>48</sup> Since China discovered the Nansha and Xisha Islands, China holds the sovereignty over these islands.

Before the eighteenth century, discovery and symbolic occupation were enough for a claim of sovereignty, and China's claim of sovereignty over Nansha and Xisha Islands would have been sufficient to be recognized as valid. However, since the eighteenth century, claims of sovereignty by discovery need to be followed by effective occupation and acts of authority.

### 2. Acquisition Based on Occupation

China's discovery of Nansha and Xisha Islands not only gives it an *in choate* title as discoverer, but also it has continuous effective occupation by the Chinese government's exercise of jurisdiction after discovery. The well-known *Eastern Greenland Case* before the Permanent Court of International Justice and the arbitration of *Palmas Island* by Max Huber,<sup>49</sup> stressed the *animus occupandi*, effectiveness, and the existence, of

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<sup>45</sup> See generally, Jones, *The International Law of Maritime Blockade: A Measure of Naval Economic Interdiction*, 26 How. L. J. 759, 759 (1983) (Hugo Grotius is considered to be one of the founders of international law and is the author of the well known book, *De Jure Belli Ac Pacis*, (*Law of Peace and War*), published in 1625).

<sup>46</sup> L. OPPENHEIM, INTERNATIONAL LAW §§ 209-12 (H. Lanterpacht ed. 1937).

<sup>47</sup> Shu-Liang yeh, *supra* note 4.

<sup>48</sup> C.f. INTERNATIONAL LAW IN AUSTRALIA 344-45 (D.P. O'Connell ed. 1965).

<sup>49</sup> MANUAL OF PUBLIC INTERNATIONAL LAW, 321-23 (M. Sorensen ed. 1968) (citing *Eastern Greenland Case* (1933) (PCIJ ser. A/B No. 53) and *Palmas Island Case*) [hereinafter Sorensen]. In the *Palmas Island* case, Judge Huber clearly stated the rationale of this rule. The new land accrues to a "portion of territory where there exists an actual sovereignty capable of extending to a spot which fall within its sphere of activity." *Id.* at 928. 2 INT. ARB. AWARDS 289, 839, 846.

claims to sovereignty over the territory. These cases provide that the acquisition of territory not only should be according the international law in existence at that time, but also that continuing sovereignty should be consistent with the international law which is developed later.

According to international law, the acquisition of territory by means of peaceful occupation must meet two conditions: (1) the occupied territory belongs to no one and is therefore *terra nullius*; (2) the territory is occupied in a visible and effective manner, although this does not necessarily mean that the whole territory need be occupied.<sup>50</sup> The effectiveness of the occupation is determined by taking possession of and establishing an administration over territory in the name of, and for, the occupying State.<sup>51</sup>

Since Admiral Cheng Ho's first trip to the South China Sea in 1405, China has maintained continuous sovereignty over the Nansha Islands. Cheng Ho was sent as a special envoy of Emperor Cheng Zu of Ming Dynasty. He represented that China included the Nansha Islands in his *Cheng Ho Maritime Map* and he formally named the Nansha Islands "Wanlishitang" (Ten Thousand Li Rocky Reefs). Cheng Ho's conduct constitutes official behavior on the part of the State of China. Nansha has been included on the Chinese claim of sovereignty over the Nansha and Xisha Islands since then, and China has perfectly met the theory and practice of traditional and contemporary international law.

The international legal issue remains whether China's acquisition may meet the standard set forth by Max Huber at that time, namely, whether China's claim will remain valid at current international law. In other words, has China exercised "continuous and peaceful occupation of state authority" after discovery?

The following evidence demonstrates that China's claim of sovereignty over Nansha and Xisha Islands is based upon effective sovereignty.

1. For several hundred years, Chinese from Hainan regularly went to make a living on Nansha and Xisha Islands and settled there to build houses, temples and tombs for those who died there. The recent discoveries of coins, door frames, and Chinaware have established the evidence of Chinese settlers in those islands.
2. During the eighteenth and the nineteenth centuries, the Qing Dynasty continuously published six maps, all of which include the

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<sup>50</sup> See, *Minquiers and Ecrehos Case, (Fr. v. U.K.)*, 1953 I.C.J. 47, in I.C.J. OPINION BRIEFS 8-1 (1971). Judge Basdevant emphasized in his separate opinion that the exercise of effective military control did not necessarily mean garrisoning practically uninhabited or uninhabitable places, but that, for this purpose, meant the power to hold such areas at will and to prevent other states from occupying them was sufficient. (1953) I.C.J. Rep. 78. See also L. GROSS, INTERNATIONAL LAW IN THE TWENTIETH CENTURY 293-95 (1969).

<sup>51</sup> GROSS, *supra* note 50, at 293-95.

name of the Nansha Islands, such as the *Da Qing Wa Xih Jian Quan Tu* (China and Foreign World Map of the Great Qing Empire), *Qing-zhih Xen Feng Tu* (Qing Dynasty Provincial Map) (1724), *Huang Qing Zhih Xen Feng Tu* (Royal Qing Dynasty Province Map) (1755), *Da Qing Yi Tong Tian Xia Quan Tu* (Map of the Unified Territory of the Great Qing Empire) (1767), *Qing Kuei Fu, Zhou Hsian, Dian General map* (1800), and a new edition of the *Da Qing United Territory of the Great Qing Empire* (1817). All included Nansha Island by the name "Wanlishitang."<sup>52</sup>

3. In 1883, when Germany tried to make a survey of Nansha Island, the Qing government dynasty protested. Germany respected Chinese sovereignty and agreed to stop the surveys.

4. In 1909, the Qing Dynasty sent Admiral Li Zhun to lead the Chinese navy to inspect the islands of Xisha and Nansha, and to rename of the islands and reefs.<sup>53</sup>

5. While China faced Japanese aggression in 1930, the French, as the colonial power in Vietnam, occupied some islands of the Parcel and the Spratly, in reliance upon the argument that those islands were Vietnamese historical territories.

The Chinese government made a strong protest on September 29, 1932, alleging the falsity of the French claim. In support of this protest, China cited the 1887 Sino-French convention on the boundary line between China and Vietnam. Article 3 of this Convention specified that:

as for the islands in the sea, those to the east of the southward red the hill at the east tip of Tra-co (Wanzhu in Chinese, which is to the south of Mong Cai and southwest of Zhushan), belong to China, and those to its west, Jiutoushan Islands (Co To Illsand in Vietnamese) and the other islands belong to Annam.<sup>54</sup>

The Xisha Islands are far to the east, and the Nansha Islands are farther east. Thus, the French were unable to rebut the Chinese legal position.

On July 25, 1933, France, in its Government Bulletin, announced the occupation of nine of the Nansha Islands, but the French recognized the following facts:

<sup>52</sup> *Memorandum, supra* note 42.

<sup>53</sup> THE MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF CHINA, *The Basis of China's Claim of Sovereignty Over Hsisha and Nansha Islands*, in THE NOTES ON THE INTERNATIONAL CONFLICTS RELATED TO THE NANSHU ISLANDS 10 (1990). See also Wang Tsai-Hung, *The Features of Islands in the South China Sea*, People's Daily, Sept. 6, 1990, in which described his visit to the islands. He mentioned that Yung-Hsing is the main island of the Xisha Islands and Taiping is the main island of Nansha Islands. He also reported that a stone monument was found, carved with an inscription dated November 24, 1946, and built by the Republic of China. This provided an evidence to conform China's sovereignty over these two groups of islands.

<sup>54</sup> *Journal Officiel de la Republique francaise*, vol. 65, no. 1752, Jan. 25, 1933, at 7794.

- (a) There are Chinese people from Hainan living on the Nansha Islands who fish for their living.
- (b) At that time, there were Chinese living on the Islands.
- (c) On the Islands, there were houses made of leaves, and there were statues of God and photos of the deceased for worship.
- (d) Every year, the Chinese on Hainan carried food by sailboat to the Chinese living on the Nansha Islands.<sup>55</sup>

Using this account of France's description of the Nansha Islands as evidence, the Chinese Ministry of Foreign Affairs, on August 4, 1933, protested the French occupation.

Based on international law and international custom, the Chinese Ministry of Foreign Affairs concluded that upon the new discovery of islands, sovereignty will belong to that country whose people reside there. All people currently living on the Nansha Islands are Chinese; thus, the Nansha Islands clearly belong to China.

Since France was unable to present any argument at the time, it did not debate the issue with China. After World War II, the French government never again contested the matter.

6. In 1939, Japan occupied Hainan, as well as the Xisha and Nansha Islands, as an extension of aggression against China rather than considering these islands as belong to Vietnam, which was invaded by Japan in late 1941.

7. In November of 1946, the Chinese Government sent representatives with warships to take over the Islands of Nansha and Xisha after the Japanese surrender. Also, the Chinese Government set up an Administration to exercise jurisdiction over the archipelagos of Xisha and Nansha under the Kwantung (Guangdong) Province, and later the Hainan Administrative District.

8. In the 1951 San Francisco Peace Treaty as well as the 1952 Sino-Japanese Peace Treaty, Japan renounced all rights, titles, as well as claims in Taiwan (Formosa), Penghu (The Pescadores), and the Spratly and Paracel islands. China took back the Spratly Islands, the Paracel Islands, along with Taiwan and the Penghu Islands as a recovery of the original territory for the original owner rather than as a new owner taking the territories as *terra nullius*.<sup>56</sup>

In reaction to the occupation of some of the Paracels and Spratly Islands by Vietnam and the Philippines, the Ministry of Foreign Affairs of the Republic of China made a series of protests on January 25, August 9, August 27 and December 26, 1973, and on January 18, 1984, and reaffirmed its sovereignty over the Nansha and Xisha Islands.

The above mentioned reasons provide evidence that China has exer-

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<sup>55</sup> *Id.*

<sup>56</sup> Statement by Ministry of Foreign Affairs, Jan. 18, 1974 (Press Release of the Republic of China).

cised continuous and peaceful occupation of State authority over these islands, as defined by international law. The Chinese Government, either the Republic of China or the PRC, declared its indisputable sovereignty over the islands of Xisha and Nansha as based on the continuity of China's claim of sovereignty from the ancient to the present.

#### V. THE INTERNATIONAL REACTION TO CHINA'S CLAIM OF SOVEREIGNTY OVER XISHA AND NANSHA ISLANDS

The attitudes of other countries towards China's claim of sovereignty over the four groups of islands in the South China Sea vary quite a bit. The reactions to China's claim of sovereignty over the Xisha and the Nansha Islands can be divided into two categories: First, to respect China's claim by not reacting to or accepting the claim; and second, to challenge China's claim with a legal dispute or to take action by occupying the Islands.

##### A. *Britain*

On January 21, 1974, a Senior British diplomat said that, in 1957, Britain sent a note to the PRC in which Britain impliedly recognized China's claim of sovereignty over the islands of Tongsha and Xisha.<sup>57</sup> Recent cases also showed Britain's positive reaction to China's claim of sovereignty in the South China Sea Islands. In the British parliament's 1985 Sub-Committee Report, Sir Peter Blachen, Chairman of the Sub-Committee on Hong Kong Affairs, mentioned that China included the islands in the South China Sea as Chinese territory; no country raised any objection. Since research showed that there is high petroleum and mineral potential in the South China Sea, the neighboring states have tried to become involved.<sup>58</sup>

##### B. *Germany*

In 1883, Germany surveyed the Nansha Islands; however, Germany abandoned this survey due to the protest by the Chinese government. In so doing, Germany recognized China's sovereignty over the Nansha Islands. In international law, this constitutes "implicit recognition" or "acquiescence."<sup>59</sup>

##### C. *The United States*

The U.S. government has taken a position of non-involvement as to the claim of sovereignty in the South China Sea. In Article 3 of the U.S.-

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<sup>57</sup> *Id.*

<sup>58</sup> AP News, London, Jan. 21, 1974; Hong Kong Dong-Fang Daily News, Sept. 23, 1985.

<sup>59</sup> Yeh, *supra* note 4, at 28.



Spanish Peace Treaty, the Philippine territory ceded to the United States, did not include the Nansha Islands. *The World Geographical Names Encyclopedia*, published in New York by the Columbia University Press and the American National Geographical Society, listed Paracel Islands and Spratly Islands as Chinese territories with the following statement:

Paracel Islands and Xisha Islands of China belong to the part of the Guangdong Province. Prior to World War II, they were controlled by the French. From 1939 to 1945, they were under Japanese occupation. After World War II, they were returned to China.<sup>60</sup>

On January 19, 1974, John King, spokesman of the U.S. Department of State, said that the United States has no desire to involve itself in the sovereignty dispute surrounding the South China Sea islands.<sup>61</sup> Secretary of State, Henry Kissinger, met the press on January 22, 1974, to emphasize that the United States would not be involved in the dispute between the PRC and the Republic of Vietnam.<sup>62</sup> United States non-involvement in the conflict over the Paracel Islands also was clarified by Admiral Noel Gayler, U.S. Pacific Commander in Chief, in an interview with *U.S. News & World Report* on March 25, 1974. He said, "we certainly kept hands-off in the Paracel battles and that's been noticed."<sup>63</sup>

#### D. *The Soviet Union*

The Soviet Union has always recognized Chinese sovereignty over the Xisha and the Nansha Islands. The 1967, Soviet *World Map*, a world map published by the Council of Ministers' Publication, as well as the 1973 *Soviet Encyclopedia*, and the *Ocean Map* published by the Ministry of National Defense, all indicated that the Nansha Islands and the Xisha Islands are Chinese territories.<sup>64</sup>

The Soviet Union, in the 1951 San Francisco Conference on the Japanese Peace Treaty, opposed the Saigon Regime's intention to take the Nansha and the Xisha Islands and indicated that these islands belonged to China.<sup>65</sup> This is contrary to Vietnam's position, namely that the Republic of Vietnam claimed sovereignty after the 1951 San Francisco Peace Treaty.

#### E. *France*

France occupied the Nansha Islands in 1933, while China was experiencing a national crisis based on Japanese aggression. The Chinese

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<sup>60</sup> *Id.*

<sup>61</sup> N.Y. Times, Jan. 20, 1974, at 10, col. 2.

<sup>62</sup> *Id.*

<sup>63</sup> U.S. NEWS & WORLD REP., Mar. 25, 1974, at 46.

<sup>64</sup> People's Daily News, Jan. 22, 1974.

<sup>65</sup> Yeh, *supra* note 4, at 28.

government protested strongly to France and cited the 1887 Sino-French Convention regarding the boundary line between China and Vietnam. This Convention indicated that the islands of Nansha and Xisha are located outside of the boundary line of Vietnam. The Chinese government used the contents of the French Government Bulletin issued on July 25, 1933, which indicated that only Chinese lived on the islands, contrary to the French position that there were no Chinese on the islands; thus the Nansha Islands should belong to China. The French were unable to present any reasonable argument, and after World War II never again contested the matter.<sup>66</sup>

#### F. Japan

The Japanese accepted the terms of surrender set by the Potsdam Declaration, including the terms of the 1943 Cairo Declaration, which provided that Japan would return all Chinese territories that it had seized from China. Since Nansha and Xisha were occupied by Japan during World War II, they were returned to China. Thus, both the 1951 San Francisco Japan Peace Treaty and the 1952 Sino-Japan Treaty stipulated that Japan renounce all title and claim to Taiwan (Formosa), Penghu (Pescadores), the Parcel Islands and the Spratly Islands. Since then, Japan has not expressed any new position on China's claim of sovereignty over the islands in the South China Sea.

#### G. Indonesia

On January 22, 1974, the spokesman of Indonesia's Foreign Ministry said that the Xisha Islands occupied by the Communist China troops were Chinese territory. According to the policy of Indonesia, and from the legal point of view of the 1951 San Francisco Peace Treaty, the Xisha Islands were recognized as Chinese territory.<sup>67</sup>

#### H. Vietnam

Vietnam was divided into North and South Vietnam before 1975. South Vietnam was called the Republic of Vietnam, which existed from 1954 to 1975. North Vietnam defeated South Vietnam in 1975. The unified Vietnam is called the Democratic Republic of Vietnam. The Vietnamese attitude toward China's claim of sole sovereignty over Parcel and Spratly Islands is different.<sup>68</sup>

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<sup>66</sup> *Id.*

<sup>67</sup> Pand, *JaKauta*, AP News, Jan. 22, 1974.

<sup>68</sup> FACT SHEET, *supra* note 10.

## 1. The Republic of Vietnam's Attitude

The Republic of Vietnam started with a legal argument, and followed with military action, to challenge China's claim of sovereignty in the South China Sea by landing troops on some of the Paracel and Spratly Islands.

On July 30, 1971, the Republic of Vietnam issued a "Declaration on the Sovereignty of the Republic of Vietnam over the Archipelagos of Paracels and Spratly" indicating five points in favor of its claim of sovereignty:

1. In 1802, Emperor Gia Long created a "Dio Hoang Sa" (Company of the Paracels) to supervise the exploitation of these islands.
2. In 1830, under Emperor Minh Mang, the "Thruong Sa" (Spratly) Islands were included as part of the Vietnamese territory on the first maps published by the kingdom.
3. In 1930 and 1933, acting on behalf of the Vietnamese empire, the French government officially took possession of the Spratly Islands and notified foreign powers of its possession by a letter dated September 29, 1933.
4. During the 1951 San Francisco Peace Conference, Japan had to renounce all of the territories it had taken by force during the Second World War, including the Spratly and Paracels Islands. The Vietnamese delegate to the conference made a public statement of Vietnamese sovereignty over the Paracels and Spratly Islands. The statement aroused no objections from any of the 51 powers represented at the peace conference.
5. On October 22, 1956, the president of the Republic of Vietnam placed the Spratly Islands under the administration of the Province of Ba Ria. The declaration concluded that: "the Republic of Vietnam remains the only power to possess the most legitimate rights of sovereignty over the Archipelagos of Spratly and Paracels because it has fulfilled the conditions required by the convention of 1885 concerning the establishment of territorial competency."<sup>69</sup>

On January 19 and 20, 1974, the Republic of Vietnam landed troops on six of the fifteen major Paracel Islands. The PRC sent warships to defend the Xisha Islands and force the South Vietnamese to retreat. Despite the military conflict, no settlement was made before the collapse of the Republic of Vietnam in 1975.

## 2. The Democratic Republic of Vietnam

The position of the socialist Vietnam is inconsistent. Prior to the unification of North and South Vietnam, the Democratic Republic of Vietnam recognized Chinese sovereignty over Xisha and Nansha, avoid-

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<sup>69</sup> *Id.*

ing conflict and dispute over the sovereignty claim. On June 15, 1956, Vice-Foreign Minister Un Van Khiem of the Democratic Republic of Vietnam received Li Zhimin, Chare d'Affaires *ad interim* of the Chinese Embassy in Vietnam, and told him that, "according to Vietnamese data, the Xisha and Nansha Islands are historically part of Chinese territory." Le Loc, Acting Director of the Asian Department of the Vietnamese Foreign Ministry was present and specifically cited Vietnamese data and pointed out that "judging from history, these islands were already part of China at the time of the Song dynasty."<sup>70</sup>

In its declaration of September 4, 1958, the government of the PRC proclaimed the breadth of the territorial sea of the PRC to be twelve nautical miles and stated explicitly that "this provision applies to all territories of the People's Republic of China, including the Dongsha Islands, the Xisha Islands, the Zhongsha Islands, the Nansha Islands and all other islands belonging to China." On September 6, 1958, Nhan Dan, central organ of the Vietnamese Workers Party, prominently featured on its front page details of the Chinese government's declaration. It wrote,

On September 4, 1958, the government of the People's Republic of China issued a declaration on China's territorial sea. The declaration provides that the breadth of China's territorial sea is twelve nautical miles (over 22 kilometers). This provision applies to all territories of the People's Republic of China, including the Chinese mainland and its coastal islands, as well as Taiwan, and its surrounding islands, the Penghu Islands, the Dongsha Islands, the Xisha Islands, the Zhongsha Islands, the Nansha Islands and all other islands belonging to China which are separated from the mainland and its coastal islands by the high seas.<sup>71</sup>

On September 14, 1958, Premier Pham Van Dong of the Vietnamese government solemnly stated, in his note to Premier Zhou Enlai of the Chinese State Council, that "the Nam recognizes and supports the declaration of the government of the People's Republic of China on China's territorial sea made on September 4, 1958," and that "the government of the Democratic Republic of Vietnam respects this decision."<sup>72</sup> Pham Van Dong's note clearly shows that the Vietnamese government acknowledged Xisha and Nansha Islands as China's territory.

However, since 1974, the Democratic Republic of Vietnam has reverted to its previous position and has issued a Vietnamese White Book<sup>73</sup> which asserts that the Dai Nam Thuo Ching Bien (Official Chronicles of Dai Nam) "records the occupation by King Gia Ling of the Hoang Sa

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<sup>70</sup> Chen, *supra* note 13.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Embassy of the Republic of Vietnam, *Fact Sheet: Declaration of the Republic of Vietnam Over the Sovereignty of the Spratly Islands* (1974).

Islands in 1816."<sup>74</sup> Vietnam called the Hoang Sa Islands the Xisha Islands. The White Book states that the Truong Sa Archipelago, which used to be called Sai Truong Sa, is the Nansha Island.

However, Sai Truong Sa, described in many Chinese and Vietnamese historical records, is not situated where China's Nansha's Islands are; the reference is to some islands and shoals along the Vietnamese coast.

The Vietnamese map, *Dai Nam Nhat Thong Toan Do* (Complete Map of United Dai Nam), shows that the Hoang Sa and Van Ly Truong Sa are close and parallel to the coast of Central Vietnam and are not where China's Xisha and Nansha Islands are located. The PRC took action to oust them. Thus, the legal debate became a military conflict.<sup>75</sup>

#### H. *The Philippines*

The Philippines also claim the Spratly Islands, based on theory of the Archipelagos of the Philippines. In 1956, a Philippino, named Tomas Clomas launched a private expedition to the Islands and claimed them, naming them "Freedomland." The Republic of China protested to the Philippine government and sent garrison forces to Taiping Island, in the Itu Aba group, to defend the Nansha Islands.

In 1968, the Philippine government presented the so called Kalayaan (Freedom) Islands in the Spratly Islands, and in 1978 the Philippine government formally claimed the Kalayaans by a presidential decree. The islands have since been administrated as part of the Palawan Province.<sup>76</sup> Thus, the Philippines occupied the Islands and claimed sovereignty over them.

#### I. *Malaysia*

In July 1983, and in November 1986, Malaysia sent troops to occupy six islands in the Swallow Reef and other nearby islands. In 1988, there were twenty-five soldiers stationed on the Swallow Reef. Since there are Philippine forces on the Islands, the military conflict over the territory is actually between the Philippines and Malaysia.<sup>77</sup>

### VI. OPTIONS FOR A PEACEFUL SETTLEMENT OF THE DISPUTE ON THE CLAIM OF SOVEREIGNTY OVER THE PARACELS AND SPRATLY ISLANDS

Since the Republic of China, the Democratic Republic of Vietnam,

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<sup>74</sup> *Id.*

<sup>75</sup> *The Economist*, Oct. 27, 1973, at 13.

<sup>76</sup> *Fil-AM Bulletin* (Manila), Mar. 5, 1974.

<sup>77</sup> *Chen, supra* note 13.

the Philippines, and Malaysia all claim sovereignty over the Islands, these overlapping claims will not only escalate the legal debate, but will inevitably lead to international conflict. In order to settle the dispute and to prevent a possible international crisis, the options for a peaceful settlement should be considered. According to Article 33 of the United Nations Charter, the methods for peaceful settlements of international disputes include "a solution by negotiation, enquiry, mediation, conciliation, arbitration. During settlement, resort to regional agencies or arrangements or other peaceful means of their own choice."<sup>78</sup>

The current disputes among the parties claiming sovereignty over the Paracels and Spratly Islands arose because of military confrontation rather than the selection of a peaceful solution. In light of the situations that have developed, the options for peaceful settlement can be selected from the following:

1. *A negotiation between the disputing parties:* The negotiation for the settlement of the dispute can be held between two or three parties, while keeping the status quo of the Islands occupied by each nation.
2. *An inquiry by an international organization:* This is to submit the disputed area to investigation by an objective international organization of technical experts. Such an investigation can be through the United Nations or other international agencies. The international investigation committee may make a report based on the facts found in reference to settling the dispute.
3. *A settlement by arbitration:* This arbitration procedure has been used widely to settle disputes over the claim of territory by sovereignty, such as the Beagle Islands claim dispute between Chile and Argentina,<sup>79</sup> as well as the famous Palams Island Case between the United States and the Netherlands.
4. *A solution by judicial settlement:* This solution can be achieved through an international tribunal, such as the submission of the dispute to the International Court of Justice. The Green Eastern Island case of the Permanent Court of International Justice is a good example of such a settlement.<sup>80</sup>
5. *A regional conference on the Law of the Sea:* Different from the International Conference on the Law of the Sea, this would be a regional conference between the disputing parties in the South China Sea to discuss the issues economic zone, the continental shelf, and the innocent passage of the sea land in the South China Sea.<sup>81</sup>
6. *An agreement for economic cooperation:* This solution is to make an agreement for economic development and cooperation between parties involved in the exploitation of seabed products, such as miner-

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<sup>78</sup> U.N. CHARTER art. 33.

<sup>79</sup> *Beagle Channel Arbitration*, Disposition of the Decision, 17 I.L.M. 634, 674 (1977).

<sup>80</sup> Sorensen, *supra* note 49.

<sup>81</sup> Katchen, *The Spratly Islands and the Law of the Sea: "Dangerous Ground" for Asian Peace*, 17 ASIAN SURV. 1167, 1173 (1977).

als, petroleum, etc. This will enable all parties involved to benefit without hindering economic exploitation caused by the disputes over the claim to sovereignty by each nation.

If these settlements can be pursued, based on procedures for the peaceful settlement of international disputes, international conflict can be avoided, international cooperation can be provided, economic exploitation can be developed, and regional security and world peace can be maintained.

## VII. CONCLUSION

From both historical and legal perspectives, the Chinese claim to sovereignty over the islands in the South China Sea, in contrast to the claims by other countries, can be summarized by the following three points:

1. Both the Chinese and Vietnamese claim sovereignty over the Parcels and Spratly Islands based on their historical records. However, historical records indicate that China's claim is older and more substantial than that of Vietnam.
2. The Chinese, Vietnamese, Philipinos, and Malaysians claim sovereignty based on the international law of acquisition of territory by occupation of "no man's land," which is open to discovery. The Chinese made the discovery earlier and acquired the land before its competitors. However, the Vietnamese and Philipinos, as well as the Malaysians, invaded and occupied some the islands and claimed sovereignty over them. Thus, the conflict among these countries arises.
3. The sovereignty claim to the islands in the South China Sea not only involves a conflict of territory, but also affects economic interests and usage of waterways' thereby reached. The conflict will not only be a matter of international law, but will also have political and economic consequences.