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**CONFLICTING TERRITORIAL CLAIMS
IN THE SOUTH CHINA SEA**

By

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DECLARATION

I certify that all the materials in this dissertation that is not my own work has been identified, and that no material is included for which a degree has been previously been conferred on me.

The contents of this Dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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– A. Schweitzer

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ABSTRACT

Title of Dissertation: **Conflicting Territorial Claims in the South China Sea**

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The dissertation is a study of the conflicting territorial claims in the South China Sea.

A brief look was taken at the geopolitics in the South China Sea to pave the way to a discussion of the significance of interest of the claimant states in the South China Sea in terms of natural resources, strategic passageway for commercial and military vessels, and as a baseline for EEZ and continental shelf.

The justification for the territorial claims of the claimant states were investigated with a view of ascertaining which of them has the best claim to the islands, islets, rocks, cays, shoals scattered throughout the South China Sea. It was found that justifications were quite thin in view of pronouncement in line of cases on the importance of effective occupation for recognition of their claim.

Prior to the analysis of the claims of each claimant state, a background of the claims are made as well as the legal aspects with applicable provisions of the 1982 United Nations Convention on the Laws of the Sea were discussed. The question of asserting the sovereignty was thereby found to be an obstacle to the resolution of the dispute because of its seeming non-negotiability and the sensitivity shown by the states to this subject matter.

Approaches to resolving the dispute and negotiating an agreement are explored. The joint cooperation and development approach which is seen as the most feasible and appealing to the claimants was thereby proposed. Confidence building measures (CBMs) like the Indonesian-initiated workshop are discussed as a background while three (3) models for resource development agreements were evaluated to see the possibility of drafting a similar instrument.

The concluding chapters summarize the study and briefly discuss the inadequacy of the mechanism and framework in the 1982 LOS Convention to be made a basis of the solution of the disputes due mainly to the multilateral character and complexity of this dispute.

KEYWORDS : Confidence Building Measures, Continental Shelf, Delimitation of Claims, Dispute Resolution, Effective Occupation, Exclusive Economic Zone, Joint Resource Development, Sovereignty, Territorial Claims

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LIST OF ABBREVIATIONS

AFP	Armed Forces of the Philippines
ASEAN	Association of Southeast Asian Nations
ATCP	Antarctic Treaty Consultative Parties
CBMs	Confidence Building Measures
CIA	Central Intelligence Agency
EEZ	Exclusive Economic Zone
FAS	Federation of American Scientists
GNP	Gross National Product
ICE	Inventory of Conflict and Management Case Studies
ICJ	International Court of Justice
IHO	International Hydrographic Organization
ITLOS	International Tribunal on the Law of the Sea
kg	Kilograms
km	Kilometers
LNG	Liquefied natural gas
LOS	Law of the Sea
nm	Nautical Miles
PRC	People's Republic of China
ROC	Republic of China
ROK	Republic of Korea
SCS	South China Sea
SLOC	Sea lanes of communication
Sq km	Square kilometre/s
Sq m	Square mile/s
UN	United Nations
US/USA	United States of America
UNCLOS	United Nations Convention on the Law of the Sea
VLCCs	Very large crude carriers

CHAPTER 1

INTRODUCTION

“These quirks of geology, flyspecks on the map, barely protruding above water do more than break the calm of the sea and create numerous hazards for sailors.”

- Monique Chemillier-Gendreau¹

The littoral states of the South China Sea are beset with regional issues and concerns ranging from the delineation of archipelagic baselines, to the ascertainment of the parameters for the exercise of the right of passage through straits, to the delimitation of boundaries between or among states with overlapping claims to jurisdiction over maritime space and to competence over marine resources.²

Of these regional concerns, the issue of maritime boundary delimitation is the most problematic as it covers the configuration of overlapping claims to sovereignty over an assortment of islands, islets, cays and rocks scattered throughout the length and breadth of the South China Sea. The focus of attention became more intense when it was suggested that substantial reserves of petroleum

¹ Monique Chemillier-Gendreau, *“Sovereignty over the Paracel and Spratly Islands”*, The Netherlands: Kluwer Law International, 2000.

² 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. Maryland, USA: School of Law University of Maryland, 2002, No. 1-2002(168) at p. 25.

and natural gas exist beneath its seabed. This is in addition to the fact that it is already recognized as a rich fishing ground as well as a strategic waterway.

This study proceeds in six parts. After the introductory Chapter, the geopolitics of the South China Sea will be discussed in Chapter 2 providing therein a geographical, economic and political description of the area for a further understanding of the disputed territory. The importance of control in the South China Sea will be discussed not only in terms of economic and political considerations involving development of potential hydrocarbon resources but also on the potential for these islands to be used as base points from which states could extend their claims to exclusive jurisdictional competence over the waters and resources of the South China Sea. More importantly, these claims on territorial sovereignty and extended maritime jurisdiction in the South China Sea region have an impact on the national security and political stability of states.

These developments led claimant states to organize and refine their legal positions to support the validity of their claims in order to provide justification and ultimately international recognition for their respective territorial and jurisdictional claims. Literature³ reviewed for this research examined historical bases asserted by each of the claimants to justify their conflicting claims to territorial sovereignty. These historical bases propounded by each of the claimants will be summarized in Chapter 4 as a background. This will clarify why on the basis of the concepts of international law, there has been an insistence on determining which of the disputing states has the best claim to title over the islands. An analysis on the tenability of the legal arguments propounded by each of the claimants will thereafter be conducted in Chapter 5.

It will be shown that reliance on international law concepts to buttress their claims to sovereignty did not help to bring peace to the region but had in fact served to support unilateralism as a preferred mode of State action. The claimants have considered unilateral state actions as the more decisive and effective method to

³ Marwyn S. Samuels, *"Contest for the South China Sea"*. New York and London: Methuen, 1982; Gerardo Martin C. Valero, *"Spratly Archipelago: Is the question of sovereignty still relevant? A roundtable discussion"*, Quezon City, Philippines: Institute of International Legal Studies University of the Philippines Law Center, 1993; and, Christopher C. Joyner, *"The Spratly Islands dispute in the South China Sea: problems, policies, and prospects for diplomatic accommodations"*, 1999, Online at <http://www.stimson.org/japan/pdf/cbmapspratly.pdf> July 09, 2003).

assert sovereignty. For instance, there has been a mad scramble by these states to extend their maritime competences by grabbing a piece of territory, specifying their maritime limits and granting concessions or licensing projects within the area claims, since much premium had been placed on the concept of effective occupation of the claimed territory. This is best exemplified by each claimant maintaining a military presence in at least one of the islands to the archipelago. This militarization of the area causes grave concern as this can lead to a volatile atmosphere that can trigger a conflict made apparent by repeated incidents of arrests and counter-arrests of vessels by agents of competing governments. Appendix A, which refers to the military clashes in the South China Sea over the past two decades, provides a summary.

Notwithstanding this alarming scenario and the frequent reference to the South China Sea as a regional “powder keg”, the possibility of a full-scale war is remote for the time being. Multilateral attempts have been made to reach a resolution of all the competing claims to islands in the South China Sea by exploring alternative approaches for the settlement of their conflicting claims in fora such as the workshops Indonesia initiated as a confidence-building measure, which hopefully will lead to a joint cooperation agreement. This is an indication that the states are receptive to the possibility of settlement of their conflicting claims through a regional response. Other approaches to resolving or minimizing the conflict, as well as generation of new and effective arrangements that shall address each of the concerns of the claimant states, and at the same time share in the allocation and utilization of a common ocean resource if such a goal is achievable will be explored in Chapter 6.

The need for sensible solutions to ease the tensions between several countries that claim all or portions of the South China Sea cannot be overemphasized. This study aims to contribute to this end. Assessment of geopolitical and legal nuances of disputes in the South China Sea was conducted with a view to proposing measures that might contribute to the resolution of the competing claims in the region. This is in reference to the provision of the 1982 United Nations Convention on the Law of the Sea (1982 LOS Convention) for State parties “to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea”.

Three model agreements for resource development will then be evaluated in Chapter 6 to see if a similar instrument can be negotiated for the South China Sea. This will be in compliance with another 1982 LOS Convention provision, recognizing the “desirability of establishing, with due regard for the sovereignty of all states...the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment”.

Chapter 7 contains the summary and conclusions for this study.

CHAPTER 2

GEOPOLITICS IN THE SOUTH CHINA SEA

“It is understandable that seafarers should take interest in them in order to give them a wide berth. It is conceivable that meteorologists should scrutinize their role in massive disturbances to the sky and sea. Yet for jurists to take an interest in these islands, home to rats, turtles and cyclones and cloaked in torrid heat for part of the year, can only be understood once we unveil the prodigious strategic and economic interests they represent in the latest game of geopolitics.”

- Monique Chemillier-Gendreau

Geography, demography, resource potential and distribution, and technological development are some of the factors which are important to the study of ocean law and policy. Studies involving territorial and maritime jurisdictional disputes in the South China Sea cannot help but provide a geographical description of the territories on the strategic, political and economic interests represented by these territories. For one, it is knowledge of these facts and it is within this milieu which influences the policies of decision makers of countries concerned. Geographical and other environmental factors, such as the strategic importance of the existing chokepoints, the dependence upon the sea for major marine transportation routes, the existence of islands along the coast, the potential abundance of living and non-living resources, and the demographic, cultural, economic and historical conditions have been considered by decision makers in important national policies concerning the South China Sea.⁴

⁴ *Supra*, Footnote 2 at p. 15.

South China Sea Islands

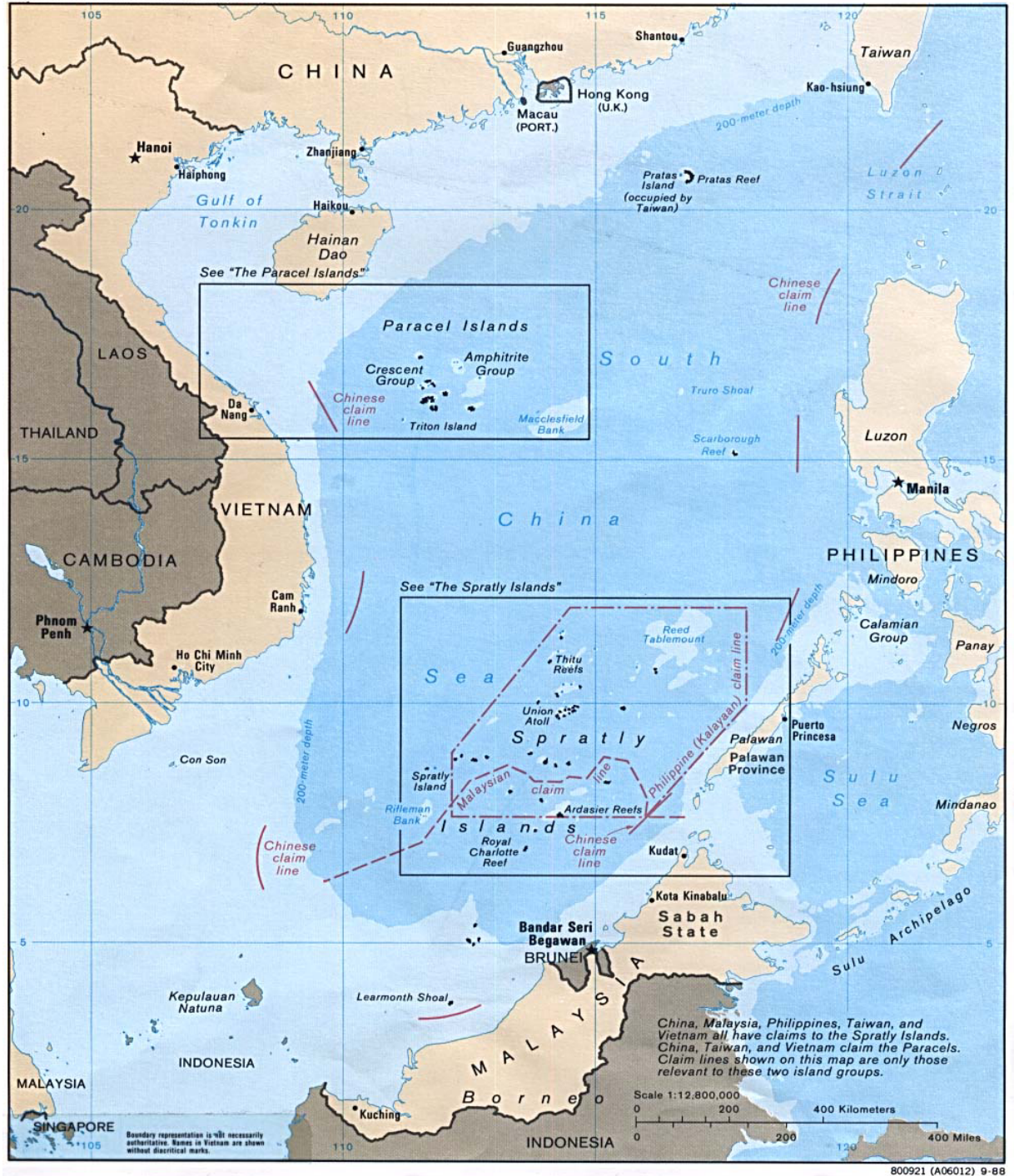


Figure 2.1 Map of the South China Sea Islands with its littoral states.⁵

⁵ online: http://www.lib.utexas.edu/maps/middle_east_and_asia/schina_sea_88.jpg (August 05, 2003).

Second, the existence of transnational resources has created opportunities for cooperation and community betterment. Marine resources, including fish, seabed minerals, and petroleum within the 200-nautical miles exclusive economic zone (EEZs) of the Asian and Pacific countries are a resource frontier with possibilities for improving the life of the masses. However, these resources likewise create possibilities of international competition and conflict, especially international conflict as will be expounded in the next Chapter.⁶

The South China Sea stretches in the southwest to the northeast direction. Its southern border is 3° south latitude between south Sumatra and Kalimantan (Karimata Straits) or 1° north latitude, making it an area of about 648,000 square nautical miles (about 1,200,000 square kilometres).⁷ Its northern border is the Strait of Taiwan from the northern tip of Taiwan to the Fukien coast of China.⁸ The South China Sea encompasses a portion of the Pacific Ocean stretching roughly from Singapore and the Strait of Malacca in the southwest to the Strait of Taiwan (between Taiwan and China) in the northeast.

The South China Sea is semi-enclosed, as defined under Article 122 of the 1982 LOS Convention, with ninety percent of its circumference rimmed by land.⁹ It encompasses a portion of the Pacific Ocean stretching roughly from Singapore and the Strait of Taiwan (between Taiwan and China) in the northeast.¹⁰ As shown in Figure 2.1, the following are the littoral countries in the South China Sea: the Philippines, Malaysia, Brunei, Indonesia, Singapore, and Thailand; the Indochinese

⁶ Mark J. Valencia and Lim Tek Ghee, *Natural resources of South-East Asia: Conflict over natural resources in South-East Asia and the Pacific*, Singapore: Oxford University Press Pte. Ltd., 1990, pp. 5-6.

⁷ Hal Olson, "Marine Traffic in the SCS", *Ocean Yearbook*, vol. 12, 1996, p. 17 gives the area for the South China Sea, including the Gulf of Thailand and the Gulf of Tonkin as 1,000,000 square miles; *Heineman World Atlas* (1995) gives the area as 800,000 square kilometres (310,000 square miles); and the International Hydrographic Bureau gives the SCS, without the area of the Gulf of Thailand and Tonkin as 959,160 square nautical miles. For HWA's figure, 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. 195; for IHB's figure, see Joseph Morgan and Mark J. Valencia, ed., *Atlas for Marine Policy in Southeast Asia*, Berkeley: University of California, 1984, p. 4.

⁸ International Hydrographic Bureau, *International Hydrographic Organization [IHO] Code 6.1*, 4th ed., 1986, online: <http://www.iho.shom.fr/> (August 21, 2003).

⁹ *Supra*, Footnote 3 C. C. Joyner at p. 55.

¹⁰ Federation of American Scientists [FAS], Military Analysis Network, online: <http://www.fas.org/man/dod-101/ops/war/spratly.htm> (February 12, 2003), p. 1.

countries of Cambodia and Vietnam; and the People's Republic of China (PRC) and Taiwan (ROC).¹¹

Adjacent to the South China Sea lie various seas of Indonesia and the Philippines which are now part of their respective archipelagic waters: Natuna, the Karimata, the Java and the Sulu Seas.¹²

The seabed area of the South China Sea consists of about one million square kilometres of continental shelf of less than 200 meters isobath and about two million square kilometres of seabed area deeper than 200 meters isobath. The continental shelf area is mainly located in the western and southern parts (Sunda Shelf), while the deeper part is located much more to the northeast. The deeper part in some areas reaching more than 5,000 meters (South China Sea Basin) is dotted by various shallow banks and coral reef islands.¹³

The area includes hundreds of natural formations of small islands, islets, cays, atolls, rocks, coral reefs, shoals and sandbanks, comprising four main archipelagos in the South China Sea, namely: the Pratas, Macclesfield Bank, Paracels, and Spratlys. Most of these islets, rocks and reefs numbering several hundred are not suitable for human habitation but they are important for economic, strategic, political and legal reasons. See Appendix B for the alphabetical listing of these island reefs, its location, description and its occupier.

The Pratas Islands lie to the east and slightly to the north of China's Hainan Province, approximately 140 nautical miles (260 km) from mainland China, 170 nautical miles (315 km) from Hong Kong and 240 nautical miles (440 km) from Taiwan.¹⁴ Pratas Islands are comprised of Dongsha Island, Dongsha Reef, Nanwei Shoal and Beiwei Shoal. The largest island (Dongshadao) in the Pratas Group has a size of 6 km long and 2 km wide.¹⁵

The Paracels lie between latitude 16° and 17° north and longitude 111° and 113° east and about 300 nm (556 km) southeast of Hainan province and 240 nm

¹¹ *Supra*, Footnote 8 *Heineman World Atlas* at pp. 78-81.

¹² Hasjim Djalal, "South China Sea Island disputes". *The Raffles Bulletin of Zoology, Supplement No. 8 (The Biodiversity of the South China Sea)*, online: <http://rmbr.nus.edu.sg/latest/RBZs8-SCS/djalal.html> (July 09, 2003), 2000 at p. 1.

¹³ *Ibid.*

¹⁴ *Supra*, Footnote 3 Marwyn S. Samuels at p. 183.

¹⁵ *Ibid.*

(445 km) from Da Nang, Vietnam.¹⁶ The Paracel Islands consists of more than 30 islands, islets, reefs, sandbanks and shoals which are clustered into two main groups which lie some 70 km from one another: the Amphitrites Group, consisting of seven islands and the Crescent group composed of five main islands.¹⁷

The Macclesfield Bank, consisting of more than 20 reefs and hidden shoals lies 13 or 15 to 70 meters under water in the middle of the South China Sea, and is located approximately 54 nm (100 km) east of the Paracel Islands.¹⁸ Scarborough Shoal, located southeast of the Macclesfield Bank is the only water shoal nearby this group of submerged reefs, atolls and shoals.

The Spratlys, the most contested group of islands, is geographically located between 4° and 11°3' north latitude and 109°30' and 117°50' east longitude, contains some 100-230 scattered islands, islets, shoals, banks atolls, cays, and reefs.¹⁹ This group of islands lies about 650 km east of the Vietnamese coast, about 750 km south of the Paracel Islands. It is about 1,000 km from Hainan Province to the northernmost edge of the Spratlys. It lies 1,300 km south of Taiwan and about 100 km west of the Palawan Islands of the Philippines.²⁰ The Spratly Islands consists of 33 islands, cays, and rocks that are permanently above water.²¹ It stretches approximately 1,000 km from north to south.²² With elevations ranging from two to six meters, the mapped islands of the Spratly archipelago, including shallow territorial waters, cover an area of approximately 180,000 sq km (69,500 sq m).²³ Many of these islands are partially submerged islets, rocks, and reefs that are not suitable for habitation. The total land area of the Spratly Islands is less than 3 square miles.²⁴

¹⁶ *Ibid.*, at p. 184.

¹⁷ *Ibid.*, at pp. 184-185.

¹⁸ *Ibid.*, at p. 187.

¹⁹ Inventory of Conflict and Management Case Studies [ICE], online: <http://www.american.edu/projects/mandala/TED/ice/spratly.htm>, 1997, p. 2

²⁰ *Supra*, Footnote 15 at p. 188.

²¹ John Robert Victor Prescott, *"The maritime political boundaries of the world"*, London: Methuen and Co. Ltd., 1985, p. 30

²² *Supra*, Footnote 15 at p. 188.

²³ Differently described in *Supra* Footnote 1 as having 160,000 square kilometres, northern limit is latitude 12° north and its eastern limit longitude 111° east.

²⁴ Central Intelligence Agency [CIA], *"Spratly Islands"*. *The World Factbook 2002*, online: <http://www.cia.gov/cia/publications/factbook/print/pg.html> (February 12, 2003), 2002, p. 1.

Table 2.I. National Occupation of the Spratly Islands, 1999²⁸

Claimant	Features		Facilities	Number of Troops
	Claimed	Occupied		
China	All	7	helicopter pads	260
Philippines	60	8	1,300 m runway	595
Vietnam	All	27	600 m runway	600
Malaysia	12	3	600 m runway	70
Taiwan	All	1	helicopter pad	112
Brunei	0	0	None	0
TOTAL	46 Islands garrisoned			1,637

Table 2.I also shows the claimants to the Spratly Islands, the number of islands claimed or occupied (46 total islands garrisoned), as well as the facilities and number of troops as of 1999. All others have established military presence in the Spratlys except for Brunei. Facilities in the area range from helicopter pads, runways and number of troops total 1,637.

Countries that are mostly independent but are vastly different from one another surround the South China Sea. Hong Kong and Macau²⁹ only recently reverted to Chinese rule, although they are now treated as special administrative regions. The land sizes of the countries surrounding the sea vary markedly, the smallest being Singapore (633 sq. km.) and the largest China (9.5 million sq. km.) Their population sizes also vary greatly, the smallest being that of Brunei Darussalam (about 0.3 million) and the largest China (around 1,200 million). Their gross national product (GNP) per capita also varies, with the lowest being that of Cambodia (US\$215) and the highest that of Singapore (US\$26,400). Brunei has the lowest employment in fisheries while China and Indonesia have the highest (there are more than two million fishermen in Indonesia). Brunei has the lowest fish catch while the highest are those of China (17.5 million tons in 1993) and Thailand (3.4 million tons in 1993). The consumption of fish per capita among the nations around the South China Sea also differs markedly, Indonesia having the lowest per capita

²⁸ *Supra*, Footnote 3 citing Baker, et al, "Cooperative Monitoring for South China Sea Disputes"; Lin, "Taiwan's South China Sea Policy", Asian Survey 37:4:1997:324; "1996 National Defense Report", Republic of China, Taipei: Li Ming Cultural Enterprise Company, 1996, p. 26

²⁹ <http://www.cia.gov/cia/publications/factbook/geos/mc.html#Intro>

consumption of fish of about 17 kg per year and Hong Kong the highest, at about 50 kg per year³⁰

The political systems of the states surrounding the South China Sea are also markedly variegated: from the communist/socialist countries of the northern coastlines, the People's Republic of China (PRC) and Vietnam to the non-communist southern and eastern insular countries of Malaysia, Singapore, Indonesia, Philippines. Taiwan is a special case in itself. An important geographical fact is that the insular countries control maritime approaches to and from the coastlines of the mainland South China Sea countries.³¹

Aside from these marked differences, the ten countries bordering the South China Sea also have their similarities: they all depend upon the use of maritime space and the sea's living and non-living resources; foreign trade plays a very important role in the countries' economic development plans with the US as one of the key trade partners of the ten countries as well as other developed economies outside the region; and finally, all of the countries are involved to a varying degree in disputes over the ownership of islands, maritime boundary delimitation, or conflicting maritime jurisdiction.³² These include the Natuna Islands dispute between Indonesia and Vietnam, and between Indonesia and China; the dispute among the three bordering states of the Eastern Gulf of Thailand (namely, Cambodia, Vietnam, and Thailand); the dispute between China and Vietnam in the Gulf of Tonkin; the Celebes Sea dispute and the Singapore Straits (Pulau Batu Puteh) dispute between Singapore and Malaysia; the Paracel Islands dispute among China, Taiwan, and Vietnam; and the Spratly Islands dispute among China, the Philippines, Vietnam, Brunei, Malaysia, and Taiwan.³³

³⁰ *Supra*, Footnote 13 at, p. 1; *Supra*, Footnote 2, p. 25.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

CHAPTER 3

SIGNIFICANCE OF INTERESTS IN THE SOUTH CHINA SEA

3.1 Special Geostrategic Importance of the South China Sea

The South China Sea is one of the world's busiest international sea-lanes. More than half of the world's supertanker traffic passes through the region's waters. In addition, the South China Sea region contains oil and gas resources strategically located near large energy-consuming countries.³⁴ It is also significant and important because of its commercial and military sea-lanes notwithstanding the fact that the islands are too small and barren to support human settlement independently or provide any significant land-based resources.

The islands are usually considered as shipping hazards, but they are important for commercial and political reasons. It links the region's northeast seaborne trade with the rest of the world. The islands in the South China Sea hold strategic importance because they straddle the sea lanes through which commercial vessels must sail en route to and from South Asian ports. It furnishes living and mineral resources to the littoral states³⁵ and serves as a strategic military sea-lane. Ownership claims to the islands are used to bolster claims to the surrounding sea and its resources³⁶ as it can serve as these islands can be used by the states as a base point to assert claims of exclusive jurisdiction over the waters and resources of

³⁴ *Supra*, Footnote 10 at p. 1.

³⁵ *Supra*, Footnote 9 at p. 55.

the South China Sea. Each of the claimants can declare exclusive economic zones or continental shelf zones measured from the baselines drawn from points fixed by the islands they currently occupy.

The geostrategic importance of the South China Sea to the claimant states comes in diverse forms and broad categories. An understanding thereto would help to reduce the prospects of hostility, which has far-reaching consequences and security implications. Once competing states unilaterally assert territorial and maritime competence in the South China Sea in pursuit of these geostrategic interests, with the states articulating enforceable limits of jurisdiction, and then proceeding to grant to multinational companies concessions or licensing projects within the areas claimed, conditions become ripe for conflict over boundaries for allocating development opportunities in resource zones. Patterns of national anxiety become aggravated and regional tensions escalate to the point that a military response becomes acceptable to some governments. The result is disastrous. Thus, special geostrategic importance of the South China Sea should be clearly defined and understood.³⁷

3.2 Natural Resources

a. Significant source of fish

Fish is traditionally a valuable natural resource in the South China Sea and the Spratly Islands. The South China Sea is rich in fishing resources. Its fisheries are based upon large numbers of short-lived species. Unlike in the Banda Sea area in Indonesia (which is characterised by rich grounds for tuna), the species in the South China Sea are numerous and this makes large-scale fishing industry of one type of species somewhat difficult. There are more than 2,500 fish species in the Indo-Malayan region alone that it is not uncommon that in a single trawl haul, 200

³⁶ *Supra*, Footnote 10 at p. 1.

³⁷ Ralph A. Cossa, “*Security Implications of conflict in the South China Sea: exploring potential triggers of conflict*”, Center for Strategic and International Studies Pacific Forum PACNET Newsletter, 17 April 1998, online: <http://www.csis.org/pacfor/pac1698.html> (February 25, 2003) at p. 1.

species would be caught, around 80% of which would be of no or little commercial value.³⁸

Fishing remains an important economic activity for the littoral states. The bordering countries in the South China Sea, namely, China, Indonesia, Thailand, the Philippines, Malaysia, and Vietnam are among the world's top 25 major fishing nations in terms of fish catch.³⁹ The waters of the South China Sea hold abundant supplies of numerous fish species. The Spratlys area is one of the world's richest fishing grounds, yielding up to 7.5 tons of fish per square kilometre, according to a study conducted by the Philippine Office of Strategic and Special Studies of the Armed Forces of the Philippines (AFP).⁴⁰ The study further reveals that there are 314 fish species in the Spratlys region, of which 66 are commercially significant stocks with at least 8% of the world's fish catch coming from the region, since it straddles the path of yellowfin tuna migration. China estimates fish stocks of 140,000 tons in the Spratly Islands area of which 800,000 tons are allowable fish catch.⁴¹

The modernization and expansion of the fishing fleet has resulted in over-fishing in the bordering countries near shore and off shore waters, which forced their fleets to develop high sea fisheries in the South China Sea. After the proclamation of the 200 nm exclusive economic zone by coastal states in the area, fisheries in the South China Sea has become a complex issue and has created fisheries disputes among countries such as China, Vietnam, the Philippines, Taiwan, Thailand, Indonesia and Malaysia.⁴²

b. Significant source of energy

The competing and conflicting national claims are mostly driven by geopolitical considerations over the development of potential hydrocarbon resources. All claimants want to exploit hydrocarbon resources if and when it proves to be commercially viable in the South China Sea. A geophysical survey of portions

³⁸ *Supra*, Footnote 2 at pp. 22-23.

³⁹ *Ibid.*, at p. 23 citing World Fishing, "World Catch Statistics," September 1998, at p. 3

⁴⁰ *Supra* Footnote 3 at p. 66 citing Asia Pulse, "Disputed Spratlys' Rich Oil, Gas, Mineral Fish Potential," 13 November 1998.

⁴¹ *Ibid.*

⁴² *Supra*, Footnote 2 at pp. 23-24.

of the Spratlys conducted by the South China Sea (SCS) Institute of Oceanology of China confirmed strong evidence of commercial oilfields.⁴³ Another seismic survey in the South China Sea area was conducted by the People's Republic of China and estimated that the Spratly Islands hold deposits of 25 billion cubic metres of natural gas and 105 billion barrels of oil in the Spratlys. Another study conducted by Russia's Research Institute of Geology of Foreign Countries in 1995 estimated that the equivalent of 6 billion barrels of oil might be held in the same area of which 70 percent would be natural gas.⁴⁴

Table 3.1 - Oil and Gas in the South China Sea Region ⁴⁵

	Proven Oil Reserves (Billion Barrels)	Proven Gas Reserves (Trillion cubic feet)	Oil Production (Barrels/Day)	Gas Production (Billion Cubic Feet)
Brunei	1.35	14.1	145,000	340
Cambodia	0	0	0	0
China*	1 (est.)	3.5	290,000	141
Indonesia*	0.2	29.7	46,000	0
Malaysia	3.9	79.8	645,000	1,300
Philippines	0.2	2.7	<1,000	0
Singapore	0	0	0	0
Taiwan	<0.01	2.7	<1,000	30
Thailand	0.3	7.0	59,000	482
Vietnam	0.6	6.0	180,000	30
Total	7.5 (est.)	145.5	1,367,000	2323

**Only the regions near the South China Sea are included
Proved reserves are as of January 1, 1998; 1997 production (except Indonesia, where data is as of 1996) Note: There are no proved reserves for the Spratly and Paracel Islands*

The seabed of the South China Sea is expected to yield extensive deposits of hydrocarbon and fossil oil, including natural gas, especially in the shelf area on the western side and in the shallow patches of the South China Sea Basin. The exploitation conducted by the Philippines in the Reed Banks gives weight to such speculations.⁴⁶

⁴³ "Energy Asia", vol. 9, No. 3, August 1987, at p.12.

⁴⁴ United States Institute of Peace. "The South China Sea". (October 1996). United States Institute of Peace (USIP) Peace Watch, October 1996, online: <http://www.usip.org/pubs/PW/1096/scsmap.html> (February 13, 200).

⁴⁵ *Ibid.*

⁴⁶ *Supra*, Footnote 12 at p. 2.

As shown in Table 3.1, the South China Sea region has proven oil reserves estimated at about 7.5 billion barrels and oil production in the region is currently over 1.3 million barrels per day. Malaysian production accounts for about one-half of the region's total. Total South China Sea production has increased gradually over the past few years, primarily as additional production from China, Malaysia and Vietnam came online.⁴⁷

It is also interesting to look at the oil and gas reserves in the South China Sea region in comparison with the other oil producing regions. Table 3.2 below reveals that the Persian Gulf region still produces most of the world's oil to the tune of about 19.2 million barrels per day, compared to that produced by the South China Sea region, which is a mere 1.3 million barrels/day. Most optimistic estimates suggest that potential oil resources (not proven reserves) of the Spratly Islands could be as high as 1-2 billion barrels of oil and the total for the South China Sea could be as high as 28 billion barrels. If recoverable, this could yield 180,000-370,00 barrels per day from the Spratlys group.⁴⁸

Table 3.2 - Oil and Gas in the South China Sea, Comparison with other Regions⁴⁹

	Proven Oil Reserves (Billion Barrels)	Proven Gas Reserves (Trillion Cubic Feet)	Oil Production (Barrels/Day)	Gas Production (Billion Cubic Feet)
Caspian Sea Region	15.4-29.0	236- 337	1,000,000	2846
Gulf of Mexico (U.S.)	2.7	29.4	1,014,000	5100
North Sea Region	16.8	156.6	6,200,000	7981
Persian Gulf	674.5	1718	19,226,000	5887
South China Sea	7.5	145.5	1,367,000	2323
West Africa/Gulf of Guinea*	21.5	126.3	3,137,000	200 (est.)

*Region stretching from Côte d'Ivoire (Ivory Coast) to Angola
 Proved reserves as of January 1, 1998; 1997 production (Gulf of Mexico reserves are as of January 1, 1997; production 1996)

⁴⁷ *Supra*, Footnote 10.

⁴⁸ *Ibid.*

⁴⁹ *Ibid*

Technological advances in marine use and resource exploitation capabilities has enhanced the marine awareness of nations and have increased expectations of benefits from potential ocean resources. The extension of national jurisdiction over ocean resources out to 200 nm from shore has opened the interest of the world in the new resources gained – particularly oil and sealanes.

For instance, Vietnam is developing the three known oilfields located in the western portion of the Spratly Islands area, namely: Bach Ho (White Tiger, with 88.4 million tons of oil reserves); Dai Hung (Big Bear with 102 million tons of oil reserves); and Zong (Dragon, with 21 million tons).⁵⁰ China also signed a contract with the U.S.- based Crestone Energy Corporation for oil exploration in Wanantan (Vanguard Bank), which contract area is located in the western part of the Spratly Islands group and lies next to Vietnam's Thanh Long oilfield. The Philippines has been exploring for oil and gas in the Reed Bank area of the Spratly Islands group since 1976.⁵¹ Appendix C provides some examples of disputes over drilling and exploration in the South China Sea.

Oil exploration and active exploration may exacerbate and act as catalyst for intraregional conflicts.⁵² It is to be noted that the mere act of exploration could trigger conflict since it will be seen by one state as a direct challenge to its sovereignty. This is specially so if the exploration will yield major finds. The discovery of major deposits would increase the incentive for claimants to more zealously guard and enforce their claims and increase the forthrightness of parties to unilaterally extract oil in the disputed territories and result in conflict.⁵³

3.3 Strategic Passageway

The Spratly Islands and the South China Sea are strategically important. Commercial sealanes through which products such as oil and other commercial resources are transported straddle this region: more than 99% of the world's products move by sea and a vast portion transits the South China Sea; 25% of the

⁵⁰ *Supra*, Footnote 2 at p. 19, citing estimates by Johnston, C.J. of the East-West Centre

⁵¹ *Ibid.*, at pp. 19-21.

⁵² *Supra*, Footnote 6 at p. 94.

⁵³ *Supra*, Footnote 37.

world's cargo shipping passes from the Middle East and Southeast Asia en route to Japan, Korea, China, Taiwan, Australia, New Zealand; 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.⁵⁴ The area likewise contains two of the busiest ports in the world, Singapore and Hong Kong.⁵⁵

More than half of the world's annual merchant fleet tonnage pass through these so called "chokepoints" which include the Straits of Malacca, Sunda Strait, and the Straits of Lombok and Makasar, with the majority of ships continuing on into the South China Sea. Figure 3.1 shows the shipping routes of very large crude carriers (VLCCs). Tanker traffic passes through the Strait of Malacca leading into the South China Sea and is more than three times greater than Suez Canal traffic, and well over five times more than the Panama Canal. Virtually all shipping that passes through Malacca and Sunda Straits must pass near the Spratly Islands.⁵⁶

Shipping (by tonnage) in the South China Sea is dominated by raw materials en route to East Asian countries. Tonnage via Malacca and the Spratly Islands is dominated by liquid bulk such as crude oil and liquefied natural gas (LNG), with dry bulk (mostly coal and iron ore) in second place. Nearly two-thirds of the tonnage passing through the Strait of Malacca, and half of the volume passing the Spratly Islands, is crude oil from the Persian Gulf. Oil flows through the Strait of Malacca rose to 8.2 million barrel/day in 1996, and rising Asian oil demand could result in a doubling of these flows over the next decades.⁵⁷

LNG shipments through the South China Sea constitute two-thirds of the world's overall LNG trade. Japan is the recipient of the bulk of these shipments; in 1996 Japan was dependent on LNG for over 11% of its total energy supplies. South Korea (over 7% of energy consumption) and Taiwan (over 4% of energy consumption) also import large volumes of LNG via the South China Sea.

The other major shipping lane in the region uses the Lombok and Makassar Straits and continues into the Philippine Sea. Except for the north-south traffic from Australia, it is not used as extensively as the Strait of Malacca and the South China Sea since for most voyages it represents a detour of several hundred miles.

⁵⁴ *Supra*, Footnote 7 at p. 137.

⁵⁵ *Supra*, Footnote 2 at pp. 21-22.

⁵⁶ *Ibid.*, at p. 21

⁵⁷ *Supra*, Footnote 3 at pp. 66-69.

Governments would naturally want to maintain open commercial sealanes to sustain international trade because if freedom of navigation cannot be maintained, the economic health of the countries in the Asia-Pacific will be seriously affected.

3.4 Strategic Waterway for Military Vessels

These sea-lanes are also critical to the movement of maritime powers' military forces, especially the U.S. from the Western Pacific to the Indian Ocean and the Persian Gulf. The approaches to the South China Sea, especially in the Malacca-Singapore, Sunda-Karimata, Balabac, Mindoro, Bashi and Taiwan Straits are located in the non-communist countries.⁵⁸

These approaches are important for the passage of military vessels. In the past, the Soviet Union placed great importance to the right of "transit passage" through the Malacca and Singapore Straits as well as through the surrounding waters in the South China Sea area, primarily because these passages were important for the communication between western and eastern Russia through the warm waters of the South Sea. The Russian Federation may revive this interest in the future once it is in a position to do so.⁵⁹

The United States has always been interested in the area because it offers the shortest route from the Pacific to the Indian Ocean and because it is essential for the movement of U.S. fleets either for its own global strategy or for the purpose of having to defend its allies in the region.⁶⁰

The islands scattered in the South China Sea provide potential staging areas for surveillance, sea-lane interdiction and other naval operations that could disrupt maritime traffic from Singapore to southern China and Taiwan.⁶¹ The state that controls the Spratlys could also control major sea lanes of communication throughout the South China Sea. The reduction of Russia's naval expenditure due to internal economic disruption in the 1990s has pushed China to assert its

⁵⁸ *Supra*, Footnote 12 at p. 1.

⁵⁹ *Ibid.*

⁶⁰ *Supra*, Footnote 12 at p. 1.

⁶¹ *Supra*, Footnote 2 at p. 21.

expansionist strategy in the South China Sea. This threatens the Philippines, as its Mutual Defense Treaty Pact with the United States is no longer effective.⁶² The United States also has an important national security interests in maintaining unimpeded transit rights, on the surface, in the air, and under the sea, throughout the South China Sea, especially to protect Japan in the event of hostilities.

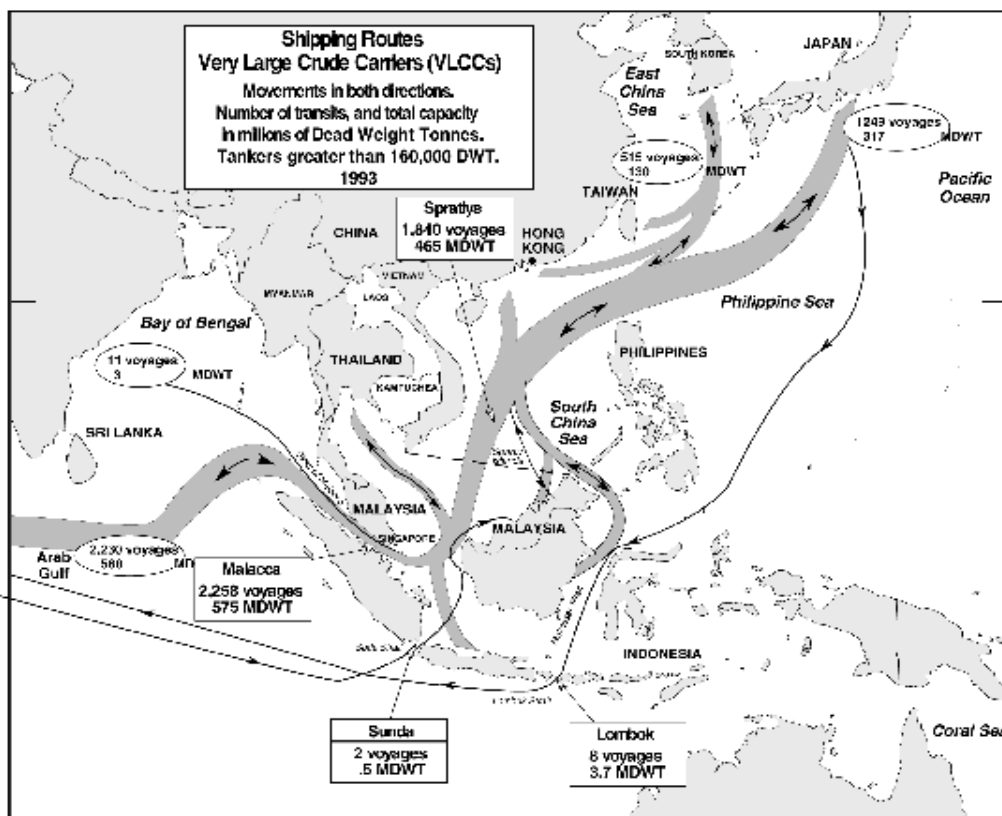


Figure 3.1 - Supertanker Movements⁶³

The region's economic growth and security depend upon continued freedom of navigation for both merchant and military traffic. The Spratly Islands are located along the South China Sea shipping lanes. All claimants, including China have taken great pains in assuring others that their claims and actions in the Spratlys will

⁶² "The Philippine-US Mutual Defense Treaty" commits American military to defend governments within the treaty area, which includes the South China Sea.

⁶³ Center for Naval Analyses and the Institute for National Strategic Studies and Federation of American Scientists, Military Analysis Network (2000), "Spratly Islands", 2000, online: <http://www.fas.org/man/dod-101/ops/war/spratly.htm> (February 12, 2003)

remain consistent with international freedom of navigation protocols such as the Law of the Sea Convention. If any claimant threatens to inhibit the freedom of navigation along adjacent international sea lanes of communications (SLOCs), other nations in or near the region would become involved, including the United States.⁶⁴

External events such as broader regional conflicts or escalating tensions could also spill over into the South China Sea and thus trigger conflict in the region. Examples of such regional tensions are the conflict between mainland China and Taiwan, and the border tensions between Vietnam and China.⁶⁵

3.5 Economics – Post-Asian Financial Crisis

According to Anthony Bergin, in the 1990s the countries of East Asia experienced high rates of growth. This came to a halt in 1997-1999. During these years, several Asia Pacific economies experienced in the worst economic crisis to hit the region in decades. In 1998, Japan, Republic of Korea (ROK), Indonesia, Malaysia, Philippines and Thailand experienced negative economic growth with the rate of decline diving down to 13.7% in Indonesia, 8% in Thailand, 7% in ROK and 6.4 % in Malaysia. Between 1997 and 1998, real defence expenditures declined in Thailand (39%), Indonesia (31%), Burma (18%), Malaysia (17%), and the Philippines (7%). Defence spending likewise declined in Japan, South Korea and Pakistan.⁶⁶

The Asian financial crisis definitely forced a reassessment of regional energy requirements on the quest for energy resources in the South China Sea. It has to be considered that the price of oil has more than doubled since oil is bartered in dollars and local currencies have depreciated considerably. The value of a barrel of oil in local currency to both consumer and potential producer continue to rise. Even with cuts in consumption, the overall energy costs are rising.⁶⁷

⁶⁴ *Supra*, Footnote 37 at p. 4.

⁶⁵ *Ibid.*, at p.3.

⁶⁶ Anthony Bergin, (2002). “*East Asian naval developments-sailing into rough seas*”, Pergamon Marine Policy (pp.121-131). Canberra: Australia Defence Force Academy, Australia Defence Studies Centre, 2002, at p. 1.

⁶⁷ *Supra*, Footnote 37 at p. 4

The financial crisis had its biggest impact on the modernization plans of the various claimants, which scaled back their modernizations efforts and slowed down its military spending as well. The inability to patrol, monitor activities in disputed areas, detect violations and enforce national claims in the disputed territories were natural results.⁶⁸ This has brought about a situation where the more capable states have taken advantage of the situation.

On the other hand, in the years following the worst of the Asian financial crisis, however, naval programs have managed to get back on the agenda, with countries of East Asia finding the resources to replenish the funding for naval expansion.⁶⁹ The evidence now suggests that defence programs are alive and well in East Asia with naval programs retaining a high priority. Military spending across the region is recovering along with most Asian economies but is still dependent on continued economic growth and the state of the US economy. This has wide implications since the region will now be facing increased tensions at sea. East Asia remains the second-largest regional arms market after the Middle East and North Africa.⁷⁰

3.5 Baselines for EEZ and Continental Shelf

For South China Sea littoral states, the islands currently occupied and under dispute by the claimant states may become possible base points from which states may extend their claims to exclusive jurisdictional territory under principles of customary and conventional international maritime law.

The national effort to stake out the South China Sea territory stem largely from jurisdictional rights for coastal states over offshore seabed resources as set out in the 1982 LOS Convention. Articles 46 to 54 and 121 of this instrument codify new rights that accrue to a state having territorial sovereignty over an island or group of islands. Paramount among these is the exclusive right to exploit living and non-living resources of the water column and seabed surrounding an island or archipelago. The state holding valid legal title to sovereignty over an island is permitted to

⁶⁸ *Ibid.*, at p. 4.

⁶⁹ *Supra*, Footnote 66 at p.1.

⁷⁰ *Ibid.*

establish a 12-mile territorial sea and a 200-mile exclusive economic zone (EEZ) around that island under Article 121.

If it obtains recognized sovereign independence as an archipelagic state, it has the right to draw a straight baseline between the outermost islands and to acquire exclusive rights to explore and exploit living and non-living resources within the area enclosed by that baseline, subject to baseline length restrictions set out in Article 47. Otherwise, or as a non-archipelagic state, the legal rights to explore resource offshore will flow from the rights to exploit the continental shelves of offshore group of islands under Article 77 and 81 of the 1982 LOSC.

If the claimants will declare an EEZ or continental shelf delimitations seaward from points fixed by islands in accordance with Article 121, over which they now assert sovereignty, nearly the entire ocean and seabed in the SCS would be subjected to various degrees of national jurisdiction. An ocean region comprised of high seas and international seabed would be rendered a semi-enclosed sea,⁷¹ defined under Article 122 of the LOS Convention.

This situation has already occurred in large part in the region when littoral states have made overlapping sovereignty claims to South China Sea islands, which leads to a de facto military partition of the Spratlys archipelago.

⁷¹ *Supra*, Footnote 3 G.M.C. Valero at p. 6.

CHAPTER 4

TERRITORIAL CLAIMS IN THE SOUTH CHINA SEA

“The disputes are not primarily about oil but rather about the strategic significance of the islands and the sovereignty claims thereto...it should be remembered that the claimants are countries, not oil companies. Countries must and do think long-term and multi-dimensional, particularly when territory is involved. Thus, it is doubtful that the claimants would dampen their disputes simply because the oil potential may be modest.”

- Mark J. Valencia

4.1 Justification for Claims

In this Chapter, an examination of the basis for the conflicting claims to territorial sovereignty asserted by the claimant states will be made. The tenability of the legal arguments propounded by them will be analyzed subsequently in the next Chapter. It will be observed that much focus had been placed by the states in legalistic arguments to support their assertions of sovereignty over the island territories. The reason may be that decision-makers in the region believed that the determination of sovereignty over the contested island groups and the delimitation of jurisdiction over maritime space, two totally distinct principles are intrinsically linked. This is reflected in the joint statement at the end of the Bandung Conference, which states that “any territorial and jurisdictional dispute in the South China Sea area should be resolved by peaceful means through dialogue and negotiation.”⁷² Under this mindset grounded primarily on prevailing norms for the delimitation of maritime boundaries, the establishment of title to islands is a precondition for their use as base points

⁷² The Chairman of the Bandung Conference, Indonesian Foreign Minister Ali Alatas, pointed out that “if participants started with the sovereignty claims, the conference would immediately end in deadlock.”

from which littoral states may determine the extent of their respective maritime competences. It had become a policy for the states competing for the islands to insist that the question of who has valid title to the disputed islands should be first resolved before the issue of maritime delimitation can even be addressed. It will be proven later that resolution through the use of evidentiary contest where each of the claimant states try to comply with legal standards for proving territorial sovereignty will not only be futile as it did not lead to the definitive resolution of the territorial aspect of the Spratlys dispute but had just perpetuated the dispute as a constant source of friction among the claimants.

The islands claimed and occupied by the states are summarized in Appendix D to guide in the consideration of the following assertions of the claimant states:

4.1.1 China

China had propounded claims on sovereignty based on historic title maintaining that their agents were the first to discover, develop and administer the archipelago as part of their territories.⁷³

In a declaration issued by its Foreign Minister Zhou En-Lai on 15 August 1951, China made its first modern public statement claiming the islands in the South China Sea three weeks before the conclusion of the San Francisco Treaty with Japan.⁷⁴ Zhou En-Lai said that the “Central People’s Government of the People’s Republic of China declares the inviolable sovereignty of the People’s Republic of China over Spratly Islands and the Paracel Archipelago which will by no means be impaired by any British-American draft for a peace treaty and its stipulations”. The statement of Zhou En-Lai was elaborated in an article in *People’s China* which cited as evidence of Chinese claims to the South China Sea, references in documents such as the “*Wujing Zongyao*” dating back to the 11th century Sung dynasty, the discovery on the islands of coins and other artefacts from the 14th century Ming

⁷³ *Supra*, Footnote 3 G.M.C. Valero at p. 15.

⁷⁴ *Ibid.*, at pp.15-16. Under this Treaty, Japan renounced all of its claims to sovereignty over the Spratlys, Taiwan, Pratas Island, Macclesfield Bank, the Pescadores and the Paracels. China had been excluded from the Conference as a compromise between the US and UK, on the one hand, and the Soviet Union on the other, when they could not agree on which Chinese credentials (Beijing or Taipei) to admit to the Conference.

dynasty and the records of naval patrols of the area conducted by Chinese navigators during the Qing dynasty.⁷⁵

In a latter Foreign Ministry document entitled: “China’s Indisputable Sovereignty Over the Xisha and Nasha islands”, issued on 30 January 1980, China sought to anchor its claims on more ancient evidence by presenting excerpts from two books, entitled: “*Nanzhou Yiwuzhi*” and “*Funanzhuan*” from the 3rd century three kingdom period to prove that the Chinese were the first to discover the Spratlys and the Paracels and to exploit its resources.⁷⁶ Historical events include naval expeditions to the Spratly Islands by the Han Dynasty in 110 AD and the Ming Dynasty from 1403-1433 AD. They also claim that Chinese fishermen and merchants have worked and traded in the region for centuries. China is using archaeological evidence to bolster its claims of sovereignty. In 1947, China produced a map with nine (9) undefined dotted lines, and claimed all of the islands within those lines.⁷⁷ In 1976, China also enforced its claim upon the Paracel Islands (which it refers to as Xisha Islands) by seizing them from Vietnam and included Xisha as part of its Hainan Island province.⁷⁸

China has been the most belligerent among the claimant states in pursuing their claim and has occupied some islands in the process. A classic example of China’s aggressive posture was the dispute between China and Vietnam in 1988. Chinese naval vessels sailed into the Spratlys in January 1988 and Chinese marines started building defences on one of the largest islands, the first time China has settled soldiers on the islands. In March, fighting broke out between Vietnam and China and China sunk two Vietnamese ships. While they have moved to more political means of dealing with the dispute, tensions remain high in the area. Confrontation surfaced again when China contracted with a US firm to begin testing for oil deposits, even though the territorial issue remains unresolved. Occasional harassment of fishermen from both sides continues as well.

⁷⁵ *Ibid.*, at p. 17 citing Shao Hsun-Cheng, “Chinese Islands in the South China Sea”, *People’s China*, vol. 13, p. 27 (1956)

⁷⁶ *Ibid.*, at p. 17. citing Shao Hsun-Cheng, “Chinese islands in the South China Sea,” *People’s China*, vol. 13, p. 27; also in *Supra*, Footnote 3 Samuels.

⁷⁷ *Supra*, Footnote 60 at p. 8.

⁷⁸ *Ibid.*

In 1992, China passed a special territorial sea and contiguous zone act⁷⁹ to legalize its claims to the Spratlys.⁸⁰ Article 2 of this legislation specifically identifies both the Paracels and Spratly archipelagos as Chinese territory. To uphold this claim to title, China has since 1988 deployed some 260 marines on seven of the Spratly islands.⁸¹

China resumed its expansionist policies in February 1995 when troops from the PRC occupied Mischief Reef, a shoal in the Spratlys located inside the 200-mile EEZ claimed by the Philippines. They constructed three fisherman's structures on the half-submerged atoll. Construction was resumed on Mischief Reef in October 1998 as three octagonal structures were expanded and solidified, which act was an open breach of the 1995 Code of Conduct signed by China with the Philippines.⁸²

4.1.2 Taiwan

Reference to "Chinese" claims to historic title should be deemed to encompass those of both the People's Republic as well as Taiwan, Republic of China. The scope of the historic claims to be the successor to all rights pertaining to the Chinese state prior to its *de facto* division in 1949. It is to be noted that China has not protested the Taiwanese occupation of Itu Aba in the Spratlys largely because up until 1998, the Taiwanese garrison on the island was the only "Chinese" presence in the archipelago.⁸³ If in the future, Taiwan should declare its legal separation from China, it appears that Taiwan would likewise have to renounce its claims to the Spratlys as one based on historic title and would, as a new state have to rely on other bases for the acquisition of such title. Since Taiwan was the first

⁷⁹ *The Law of the People's Republic of China on the Territorial Sea and Contiguous Zone* became effective on 25 February 1992

⁸⁰ *UN Law of the Sea Bulletin*, 1992

⁸¹ John C. Baker, et al., "Cooperative Monitoring Using Commercial Observation Satellites: Case Study of Transparency Regime for the South China Sea Disputes," Washington D.C.: George Washington University Space Policy Institute, February 1999.

⁸² *Supra*, Footnote 3 Joyner at p. 73 citing Reuters, "Manila, Beijing agree on Spratlys", 10 August 1995. This Code of Conduct was a result of the protest made by the ASEAN on China's occupation of territory within the Philippines' EEZ. In 1995 a Code of Conduct was agreed between China and the Philippines to avoid new provocations and destabilizing actions. The Code aimed to reduce chances of military conflict over the Spratlys by fostering the reduction of forces in the region and lessening of chances of accidental military confrontations. It also called for mutual restraint in South China Sea activities.

state to garrison Itu Aba after the Second World War, its strongest claim to title over the Spratlys would be based on occupation of the largest islands in the archipelago.

Taiwan claims it was the first government to establish a physical presence on one of Spratlys islands following the Japanese departure after World War II. Taiwan announced its claim to the atoll in 1947 and has occupied and maintained a garrison on the largest island of the Spratlys, Itu Aba constantly since 1956. From this time until the late 1980s, Taiwan maintained a force of some 500 soldiers on Itu Aba, although by 1999 the number of troops had been reduced to about 110.⁸⁴

Taiwan's claims are similar to those of China, and are based upon the same principle of its longstanding ties to the islands. As with China, Taiwan's claims are also not clearly defined but evidence suggests that both governments made efforts to coordinate positions on Chinese claims in international discussions of the Spratly issues in Indonesia.⁸⁵

Its claims to the island are based on its assertion that Taiwan and its Kuomintang government are the true China. Both Taiwan and the People's Republic of China say that the islands were discovered by Chinese navigators, used by Chinese fishermen for centuries, and under the administration of China since the 15th century. Further, the Kuomintang sent a naval expedition to the islands and took formal possession in 1946. It left a garrison on the largest island of Itu Aba. However, since Taiwan claims to be the true China, it believes the islands belong to it and not to the PRC. Its main concern is that China alone or China or Vietnam will gain control and thus, have a monopoly on the South China Sea.⁸⁶

4.1.3 Vietnam

Vietnam had also propounded claims on sovereignty based on historic title. It followed the Chinese example of using archaeological evidence to bolster sovereignty claims. Vietnam announced and expanded on its historic claims to the

⁸³ *Supra*, Footnote 3 Valero at pp. 15-16.

⁸⁴ *Supra*, Footnote 3 Joyner at p. 60.

⁸⁵ *Supra*, Footnote 10 at p 8.

⁸⁶ TED, Spratly Islands Dispute (SPRATLY CASE), online:
<http://www.american.edu/projects/mandala/TED/SPRATLY:HTM> (February 12, 2003), 1996 at p. 1.

Paracels and the Spratlys in two “White Papers” issued in 1979 and 1982, respectively, by the Foreign Ministry of the Democratic Republic of Vietnam, entitled: “Vietnam’s sovereignty over the Hoang Sa and Truong Sa archipelagos”. Both documents cited five evidentiary items to establish Vietnam’s historic claims, all of which pertain to activities sponsored by the Nguyen dynasty, first as a local potentate who ruled the area of Southern Vietnam, later called Cochinchina during the 17th century and subsequently as emperors of the Kingdom of Annam, formed by the unification of Cochinchina and Tonkin in the north, during the 19th century.⁸⁷ The oldest item is a map of the Quang Ngai region of southern Vietnam, which identifies a sandbank called “Bat Cai Vang” on the “Eastern Sea”, where salvage operations were undertaken on behalf of the Nguyen princes. The map is contained in the “Hung Duc” Atlas, a collection of maps of the Vietnam region, purportedly prepared between 1460 and 1467, but compiled only in the 17th century.⁸⁸ Other items in the “White Papers” cited as evidence of Vietnam’s connection to the islands in the South China Sea recorded the development of Annamite interest in the lucrative salvage business conducted on the islands for the purpose of evaluating their resource. Vietnam claims the entire Spratly Islands as an offshore district of the province of Khanh Hoa and the islands they call Truong Sa islands, which they claim, are part of the empire of Annam, Vietnam’s ancestors in the 19th century.⁸⁹ In 1815, an expedition sent by king Gia Lon to chart sea lanes occupied and settled in the islands. The French, who were Vietnam’s colonial rulers, annexed the Spratlys in 1933, so Vietnam says the islands are theirs as the inheritors of the French possessions by right of cession from this French claim. In September 1973, Vietnam declared that the Spratlys were part of the Phuoc Tuy province.⁹⁰

Vietnam has occupied thirteen of the Spratly Islands in 1975 and in September 1989 occupied three more islets and has since taken at least nine atolls. In 1999, Vietnam had stationed 600 troops on at least twenty-seven Spratly land formations. In addition to the Spratlys, Vietnam claims the Paracel Islands, although the Chinese seized them in 1974.⁹¹ Vietnamese claims cover an extensive area of

⁸⁷ *Supra*, Footnote 3 at pp. 17-18.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Supra*, Footnote 85 at p. 1.

the South China Sea, although they are not clearly defined and failed also to identify and distinguish between the Spratly and Paracel archipelagos.

Along with China, Vietnam is considered as one of the main protagonists in the dispute.

4.1.4 Philippines

The Philippines had also attempted to structure its claim to the Spratlys as one based on historic title. The earliest manifestation of the Philippines' interest in the Spratlys was recorded in 1947 when the Philippine Secretary of Foreign Affairs Carlos P. Garcia advocated that the New Southern Archipelago, the entity established by Japan to administer both the Spratly and the Paracel archipelago in 1939 and throughout the war, be turned over to the Philippines as a security guarantee. The demand was based on the fact that Itu Aba was used as a base for the Japanese invasion of the Philippines during the war. Several months after this declaration, the Philippines accepted a proposal among the eleven members of the Far Eastern Commission to draft a peace treaty with Japan.⁹²

While these equivocal actions would hardly provide the basis for a Philippine claim to historic title at par with those of either China or Vietnam, the Philippines had incorporated a claim of historic title to the Spratlys in the drafting of its domestic law. The Philippine Constitution of 1973 and 1987 both contain definitions of "Philippine territory" that includes references to "territory over which the Philippines has historic title".⁹³ The 1973 provision originally referred to the still unresolved claim to Sabah, which the Philippines had maintained against Malaysia since the latter's independence in 1957. However, with the purported discovery in 1956 of the Kalayaan Islands by Tomas Cloma in the area of the Spratly archipelago, the Philippines has expanded the interpretation of this clause to encompass its claim to the Spratlys. Accordingly, Presidential Decree No. 1596, issued in 1978 justifies the annexation of the Kalayaan Islands as part of the Philippines on "historic grounds", among others.⁹⁴

⁹² *Supra*, Footnote 3 Valero at pp. 15-16.

⁹³ Article I of the 1973 and 1987 Philippine Constitution.

⁹⁴ *Supra*, Footnote 3 Valero at pp. 15-16.

Tomas Cloma is a Filipino businessman who owned fishing fleet and operated a private maritime training institute. In 1956, Cloma proclaimed the creation of a new island state “Kalayaan” (Freedomland). Cloma continued to assert his claim until 1974 when ownership was officially transferred under a “Deed of Assignment and Waiver of Rights” to the Philippine government. In 1971, the Philippines officially claimed eight (8) islands that it refers to as the Kalayaan Group of Islands, partly on the basis of this exploration, arguing that the islands is *terra nullius* and had not belonged to anybody and were open to claim by any state.⁹⁵ The claim made in 1971 was mainly in response to a Philippine fishing vessel being fired upon by Taiwanese forces stationed on Itu Aba Island. The Philippine government reacted by protesting the incident and asserting legal title by annexing islands in the Spratly group based on Cloma’s claim. In 1978, the Marcos government formally annexed the archipelago to the Philippines and placed it under the administration of the province of Palawan.⁹⁶

Another basis for its claim to sovereignty over the islands is the proximity principle. The official position of the Philippines is that the Kalayaan Islands group are separate and distinct from the Spratlys and Paracels and that the continental shelf of the Kalayaan Islands group is juxtaposed to the Palawan province and extends some 300 miles westward into the Philippines’ EEZ.⁹⁷ President Ferdinand E. Marcos reinforced the 1978 claim. He made formal claims by declaring that fifty-seven (57) of the islands were part of Palawan Province by virtue of their presence on the continental margin of the archipelago. The Kalayaan Islands 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.

To beef up its defense Philippines troops were sent to the Kalayaans in 1968. Manila regularly tried to extract from the United States a declaration that it would defend the Philippines’ claim to the Kalayaan Islands as part of the Mutual Defense Treaty between the Republic of the Philippines and the United States of America, but the United States refused to give the treaty that interpretation. The Philippine military, which first occupied three of the islands in 1968, continued to

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

garrison marines on several islands.⁹⁸ In 1976, it set up a garrison on Palawan and in 1978 it established more soldiers on seven of the islands. In 1979, the Philippines stated that it wanted control of the seven islands under its control and administration and not the rest of the archipelago.⁹⁹ To defend its claim, the Philippines currently have 595 marines stationed on eight islands. These bases are fortified with heavy artillery and are equipped with radar facilities, a weather station and ammunition depots.

4.1.5 Malaysia

Malaysia's claims are based upon the continental shelf principle in Articles 76 and 77 of the 1982 LOS Convention basing its claims to certain islands on ocean law principles associated with prolongation of a continental shelf seaward. Malaysia claims that a state possessing a continental shelf also possesses sovereign rights over land formations arising seaward from that shelf.¹⁰⁰

Malaysia claims sovereignty over twelve islands in the Spratly group within an area of clearly defined coordinates. Malaysia has occupied three of the twelve islands but claims the whole chain, which it considers to be part of its continental shelf.¹⁰¹ Malaysia has tried to build up one atoll by bringing soil from the mainland and has even built a hotel.¹⁰²

Malaysia has been involved in the dispute since 1979 and is the most recent claimant to occupy part of the Spratlys with military troops. In late 1977, Malaysian troops landed on Swallow Reef. Since then, it has stationed about seventy soldiers on three of the twelve islets under its claim.¹⁰³

⁹⁸ *Supra*, Footnote 10 at p. 3.

⁹⁹ *Supra*, Footnote 85 at p. 1.

¹⁰⁰ *Supra*, Footnote 3 Joyner at pp. 62-63.

¹⁰¹ *Supra*, Footnote 85 at p. 1.

¹⁰² *Supra*, Footnote 10 at p. 8.

¹⁰³ *Ibid.*

4.1.6 Brunei

Brunei has only one claim to the Spratly Group, which is the Louisa Reef, a naturally submerged formation or a submarine feature and part of the seabed.¹⁰⁴ Similar to the Malaysian justification, the legal premise for substantiating Brunei's claim flows from the continental shelf principle under the 1982 LOS Convention stating that the southern part of the Spratly chain is actually a part of its continental shelf and therefore part of its territory and resources.¹⁰⁵

Louisa Reef is also claimed by Malaysia, taking possession of the atoll in 1984.

4.1.7 Indonesia

Indonesia is not a claimant to any of the Spratly Islands but Chinese and Taiwanese claims in the South China Sea extend into Indonesia's EEZ and continental shelf, which includes Indonesia's Natuna gas field.¹⁰⁶

It is worth mentioning that Indonesia tried to start negotiating through a number of conferences among the disputants. Jakarta believed that as a disinterested littoral state, it could be an impartial mediator. These conferences will be discussed later in Chapter 6.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

CHAPTER 5

ANALYSIS OF THE CONFLICTING CLAIMS

5.1 Background of the South China Sea Claims

After an instructive discussion of the arguments propounded by the claimant states to buttress their claims to sovereignty, an analysis will be made in this Chapter on the tenability of such justifications. It will be seen that insistence on determining which of the disputing states has the best claim to title over the islands on the basis of norms of general international law for the purpose of adjudicating claims to territorial sovereignty will only prompt the use of military means by the states to improve their positions in the area.¹⁰⁷ It will subsequently be proposed that instead of making such justifications to their claims, the states should shift the focus of their priorities to the utilization of the maritime resources itself and to determine a useful framework that will enable the concerned entities to generate a new and effective arrangement that shall address the concerns peculiar to their situation as members of a geographic region with shared political and economic interests in the utilization of a common resource.¹⁰⁸

The maritime boundary delimitation in the South China Sea is best described as problematic. First, there is no universally accepted sea-chart showing precisely the islands, atolls, shoals and cays and its boundaries and features. Neither are the different systems for naming the islands by Chinese, Filipino, Vietnamese, French and English names of any help as they are superimposed on each other without any clear relation.¹⁰⁹ This adds to the confusion as to how to properly refer to the islands and as to the definite number of the islands. It is likewise not helpful that each

¹⁰⁷ *Supra*, Footnote 3 Valero at p. 12.

¹⁰⁸ *Ibid.*

country presents its case in a biased account and often omits relevant sources, statements or incidents of contesting claimants in order to justify its claim. Verification of the claims is likewise difficult because access to these records is restricted and confidential for reasons of national security. As a starting point, it is suggested the name of South China Sea should be converted to South East Asian Sea (SEA Sea),¹¹⁰ as the name of South “China” Sea connotes that it is a “Chinese” lake so that there would be denying their historical influence to the detriment of other claimant states.

Second, the overlapping claims to sovereignty are laid over an assortment of various semi-submerged natural formation scattered throughout the region. Are these territories land, which are capable of appropriation? If so, are they the kind of territories, which entail the attribution of extensive maritime zones to the state which has sovereignty over them?

These questions are relevant and should be established and clarified at the outset. For all we know, we can be talking here of territories not capable of appropriation. It is also well to thresh this out since archipelagos are naturally composed of a sprinkling of banks, islets and rocks, and a few islands. An island territory to be capable of appropriation must have a piece of land apparently present at high tide which is large enough to be habitable. Article 121 of the 1982 LOS Convention states that it should be a “naturally formed area of land”, a geological criterion. This will exclude artificial islands. That it should protrude above the high water line is a hydrographic criterion.¹¹¹

From the foregoing, it can be concluded that the land subject of the dispute are capable of appropriation as the main islands are clearly identified on nautical charts and the fringes (islets, sandbanks, coral reefs and rocks) can be seen as accessories to the main islands.¹¹²

As for the generation of maritime zones by the State which has sovereignty over them, paragraph 2 and 3, of Article 121 of the 1982 LOS Convention states:

¹⁰⁹ *Supra*, Footnote 1 at p. 15.

¹¹⁰ Maximo Q. Mejia, In an interview conducted last 21 August 2003, at the World Maritime University, Malmö, Sweden

¹¹¹ *Ibid.*

¹¹² *Ibid.*

Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.

Rocks that cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

The question is whether these territories come within the purview of par. 3, Article 121. It is submitted that they do and they might as well have a territorial sea but they do not provide entitlement to an exclusive economic zone. Some states try to meet the requirements of par. 3 by stationing troops, incorporating occupied islands within larger political subdivisions – even holding elections. However, they are in reality still no more than military garrisons with no economic life of its own and, within the exception of Itu Aba which has an airstrip, survives solely on supply airdrops and the occasional replenishment by naval vessels. A question might also be added whether these islands are indeed *terra nullius* or whether it involves a territorial dispute between two states which both claim title to sovereignty. This is in fact a dispute between several states which occupy or have occupied the same lands over different periods of time and on the basis of different titles so it cannot be considered *terra nullius*.

The third reason is that the competing claims in the South China Sea are bilateral, trilateral, or multilateral claims. The most serious of these disputes are those over the Paracels because they involve non-Southeast Asian states and in the case of the Spratlys because it involve many parties.

A fourth problem is that the complicated competing claims may give rise to armed conflict. Taiwan remains in control of the biggest island, Itu Aba; the PRC has occupied seven reefs and rocks since January 1988; Vietnam now occupies at least twenty-seven islands, reefs and cays; the Philippines controls at least eight principal islands and claims some fifty other islets, reefs and shoals; Malaysia has troops on three atolls and asserts claims to nine other geological formations in the area; and, Brunei claims Louisa Reef.¹¹³ The maritime-resource dimension drives these

¹¹³ *Supra*, Footnote 3 Joyner at p. 64.

conflicting claims - geopolitical considerations over the development of potential hydrocarbon resources which gives rise to another problem discussed earlier in Chapter 3.

The legal foundation of the claims of the various states have been discussed in Chapter 4 where it was mentioned that the claims to sovereignty by different states over territory in the South China Sea are based on principles of acts of sovereignty, discovery, historic title, occupation, continental shelf principle as well as other associated principles under the Law of the Sea Convention. This Chapter will be an analysis of the bases or justification for the claims of the states to examine whether they can stand scrutiny under international law and the relevant Conventions.

An attempt will likewise be made in explaining why the legal arguments propounded by these claimants have not resulted in a definite resolution of the territorial sovereignty issue. Instead, it has even added friction among the disputants making such efforts at resolution futile.

5.2 Analysis of the Claims

5.2.1 China

China and Vietnam propounded claims of sovereignty based on historic title asserting that their agents were the first to discover, develop and administer the archipelago.

Generally recognized due to its density and vintage, the historic record relied upon by China provides the most plausible support for primacy in the discovery of the South China Sea archipelagos. This however will not support China's claims as it is beset with evidentiary problems.¹¹⁴ They are at best proof of general knowledge of the area but are not useful to bolster their legal argument that they were the first to discover, exploit, develop and administer the archipelagos.

Documents will show that Chinese fishermen have visited the islands since time immemorial but they were private, non-proprietary acts which did not

¹¹⁴ *Supra*, Footnote 3 at p. 18.

correspond to taking of possession, nor an intention to assert sovereignty. Occupation by individuals who are pursuing their own interest and are not acting in the name of the government does not constitute possession.¹¹⁵

First, China must accurately identify the islands it claims to have discovered and exploited. While they cite as reference *Chou Ch'u-fei's Ling-Wai-tai-ta* (Information on what lies beyond the passes), there are notable problems of authenticity and accuracy specially in describing points named as "*Ch'ien-li changsa*" and the "*Wan-li shih T'ang*" in the Southern Seas around the area of the Paracels and is very far the Spratly Islands which is further asea. Names, supposedly used to denominate Spratly Islands are inadequate to refer to a number of islands and would not correspond to the maritime space it is claimed to designate. This shows the unfamiliarity of the scholars and navigators with the dimensions of the Spratly archipelago as most of the historic records point to coastal points and not oceanic routes.¹¹⁶

This problem is compounded by the fundamental question of whether proof of historical title carries sufficient legal weight to validate acquisition of territory. In international law, mere discovery of a territory is insufficient to vest in the discoverer valid title of ownership to territory.¹¹⁷ In a long line of cases, it was held that discovery of new territory does not of itself vest in the discoverer unchallengeable title of ownership, but merely vests inchoate title, which must be perfected by subsequent continuous and effective acts of occupation or permanent settlement.¹¹⁸

Since actual occupation is now the basis for ascertaining sovereignty over disputed territory, independent of historic claims, the line of decisions since the *Palmas Islands* case defined the parameters of what shall be deemed the required level of occupation. Essentially, it is required that the display of actual occupation be continuous and peaceful in relation to other states, exclusive and effective in order to guarantee the minimum protection to the rights accorded other states and their nationals by international law in the disputed territory.¹¹⁹

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *The Island of Palmas Case*, 22 AJIL 867 (1928); *The Sovereignty Over Clipperton Islands*, 26 AJIL 390 (1931); *The Legal Status of Eastern Greenland*, Hudson, World Court Reports, vol. III, p. 148; *The Minquiers and Ecrehos Islands*, 1953 ICJ Reports 47, all cited in *Supra*, Footnote 1.

¹¹⁹ *Supra*, Footnote 1 at p. 16.

Evidence of permanent settlement is not persuasive in China's claim to the Spratlys. At most, it will perhaps confer on them traditional fishing rights.

5.2.2 Taiwan

Since the justifications for the claim of Taiwan merely mirror China's claim, it suffers the same deficiencies as those of China. Discovery of and intermittent contact with scattered island formations are insufficient cause to establish legal title to sovereignty.¹²⁰

However, its claim to and its unchallenged exercise of control to Itu Aba for more than four decades may qualify as a display of continuous and peaceful sovereignty, which is a condition necessary for supporting a legal claim to the island.

5.2.3 Vietnam

Vietnam's claims to the South China Sea flows from its historic activities but is diluted by the failure to specifically identify and distinguish between the Spratly Islands and Paracel archipelagos when its geographic dimensions clearly show that they are distinct from each other. Vietnam treat the two island groups jointly and assert that the recorded references to salvaging and fishing activities in and around the Paracels likewise refer to the Spratlys because the name of Paracels also encompass the Spratlys. The "White Papers" lump the Paracels and the Spratlys with general common names like "Hoang Sa", "Dai Truong Sa" and "Van Ly Truong Sa", with "Hoang Sa" as the most frequently used. This resembles a feeble attempt to obscure a historic record.¹²¹

This has compounded the difficulty of assessing the lawfulness and propriety of the claims. As to the historical record, there is also doubt as to its authenticity and accuracy. In international law, mere historical claims without evident occupation and permanent settlement is susceptible to legal challenge when involving claim to title over territory in the oceans. This also makes it possible for claimants to continually compile evidence of their long-standing claim; the ease and facility over which it can be done through newly discovered "vintage" evidence could be astounding.

¹²⁰ *Supra*, Footnote 3 Joyner at p. 60.

As to its claim by right of cession from a French claim to the islands first made in 1933, it should be noted that the French did not made any subsequent effort to perfect title to the Spratlys by occupation, neither did they act by returning to the islands after Japan departed following the World War II, and when Japan relinquished all title and future claims to the islands at the San Francisco Conference on 1951. Therefore, France possessed no lawful title to the Spratly group to which Vietnam could succeed.¹²²

As to its reliance on the proximity principle to assert its claim, this argument has not been recognized in international law to rule in favour of the state whose territory lie closest to the disputed lands. This has been the ruling in the Island of Palmas case. Hence, the fact that where Paracels are concerned, the closest point from these islands to Vietnam lies some 170 nm from Da Nang and 156 nm from the coast of Hainan, or that the distance separating the Spratlys from the coast of Vietnam is 250 nm, while the archipelago lies some 522 nm from Hainan, have no bearing or legal substance.

5.2.4 Philippines

The Philippine claim clearly defines the coordinates and is readily identifiable. However, the coordinates are not measured from base points on land, but from fixed position at sea which seem to have been chosen rather arbitrarily. It is therefore also not so clear whether the Philippine claim is limited to islands or rocks within those lines, or whether it also includes the whole sea within those lines.¹²³

As to the propinquity argument as basis of the Philippine position in 1947, the security factor was added in mixture to this claim. On this basis, the Philippines laid claim to sovereignty over the New Sovereign Archipelago. Geological linkages of the Kalayaan claim to the Palawan Islands, as seen in maritime maps as well as hydrographic surveys also present a more solid basis.

¹²¹ *Supra*, Footnote 3 Valero at p. 20.

¹²² *Supra*, Footnote 3 at pp. 60-61.

¹²³ *Supra*, Footnote 12 at p. 3.

5.2.5 Malaysia

Malaysia claims certain islands in the Spratlys group (Layang Layang, Swallow Reef and Louisa Reef) based on ocean law principles associated with the seaward prolongation of a continental shelf. They claim that a state possessing a continental shelf also possesses sovereign rights over land formations arising from that shelf. That inference is misguided and flawed under contemporary international law as the 1982 LOS Convention neither stipulates nor invites such an interpretation.¹²⁴ Article 121 of the Convention does set out a regime for an island, which is defined as a “naturally formed area of land, surrounded by water, which is above water at high tide.” The Convention also gives to a state with established sovereignty over an island the right to exploit living and non-living resources in the water column and on the seabed within that island’s territorial sea, contiguous zone, and exclusive economic zone. The critical legal consideration for acquisition of sovereign title over an island formation is not the geological affinity of a coastal state to island formation arising from continental shelves offshore. Rather, ownership is derived from occupation, demonstrated by a continuous and effective display of sovereignty through permanent settlement.¹²⁵ In other words, the continental shelf principle is not a basis for claiming title to islands, but may be a basis for a claim to the resources to the shelf. When the 1982 LOS Convention state that a state can measure its exclusive economic zone from baselines drawn over islands, the assumption is that the state can show that these islands belong to it particularly if such islands are contested. The state cannot work backwards and say that it has an EEZ and therefore, certain islands belong to it.¹²⁶

Generally, establishment of military outposts may be considered vestiges of occupation. But such military presence must meet the test of “effective occupation” through permanent settlement, which will depend on the longevity of the presence, and whether settlers can be “permanently” attracted to inhabit the region. Such occupation has yet to be effected by Malaysia. Also, while Malaysia may use the continental shelf provisions in the 1982 LOS Convention to support its claims to

¹²⁴ *Supra*, Footnote 3 Joyner at p. 63.

¹²⁵ *Ibid.*

¹²⁶ *Supra*, Footnote 3 Valero at p. 75.

seabed resources, these provisions do not legally uphold assertions to sovereignty over land formations that are permanently above sea level.

5.2.6 Brunei

Like Malaysia, Brunei's claim flows from the continental shelf provision in the 1982 LOS Convention. While Malaysia claims island formation, Brunei, on the other hand, claims Louisa Reef, which is a submarine feature and is part of the seabed. Brunei has the burden to prove that Louisa Reef is part of the extension of its continental shelf. Brunei doesn't even have to prove settlement because the rest is a submarine formation and the key criterion is to be able to prove that the continental shelf is a natural prolongation seaward from the coastal territory of Brunei. If this should be proven, Brunei would enjoy the exclusive right to exploit resources of the reef.¹²⁷

5.3 Legal Aspects - Applicable Provisions of the UNCLOS for Proper Delimitation of the Claims/International Laws Related to the Dispute

To summarise, the justification for the territorial claims by different states in the South China Sea are quite thin. The authenticity of the documentary background is of questionable authenticity and the historical records are contradictory. None of the claimants seem to offer an unassailable historic or legal claim. The advent of the 1982 LOS Convention made it important for states to strengthen the legal facets of their claims as the 1982 LOS Convention became the standard for the demarcation of offshore jurisdictional limits for resource exploitation.

The International Court of Justice has used "effective occupation"¹²⁸ and discovery as primary considerations in evaluating territorial claims, although a

¹²⁷ *Supra*, Footnote 3 Joyner at p. 64.

¹²⁸ From *the Palmas Island Arbitration*, it stems that discovery only constitutes an incomplete title and later acts that constitute an effective occupation complete the title of sovereignty. This effective occupation occurs when a state is capable of offering a minimum protection to the rights of other States and their nationals. As such, it is more important to find state acts, displaying sovereignty. The *Clipperton Island Arbitration* stipulates that effective occupation takes place when: "the state establishes in the territory itself an organization capable of making its laws respected."

certain geographical feature's location, its history, and whether other claimants have a record of protesting illegal occupation may be considered in determining the legitimacy of sovereignty claims.¹²⁹

Legal substance needs to be weighed up in relation to a process of acquisition of title and maintenance of title which consists of a lot more than mere geographical data. By disconnecting occupation as a means to acquire title from historic claims, the *Palmas* rule has opened the field of competition for disputed territory to states whose interests therein may have been fuelled by expansionist goals. This will induce or have in fact already induced competing states to act unilaterally in order to compile as dense a record of activity so as to outweigh that of all the other claimants, thus potentially resulting in the escalation of competitive tension among the interested states.¹³⁰

Also, the fact that an island is situated within the exclusive economic zone of a claimant state has no bearing on whether an island belongs to one state or another as it is the title of sovereignty to an island which when determined leads to the attribution to this island of a territorial sea or an EEZ, as the case may be.

Separate from the issue of who owns the islands and rocks and whether the submerged reefs of the Spratly Islands can themselves generate maritime zones is the question of whether the islands can sustain human habitation or economic life, the minimum criterion for an island to generate its own continental shelf or EEZ. Even if human life can be sustained, islands carry less weight than continental borders in generating EEZs under the prevailing interpretations of the Law of the Sea. Artificial islands on which structures have been built are entitled to a 500-meter safety zone, but they cannot generate a territorial sea, much less a continental shelf or EEZ. Features that appear only at low tide can generate a partial twelve-mile territorial sea only if they are within twelve nautical miles of any feature that

The *Clipperton Arbitration* adds that if a state makes its appearance in uninhabited land and the occupation is undisputed, effective occupation has been established as well. Although France could not claim an incomplete title from initial discovery, it follows from the *Island of Palmas arbitration* that a title derived from effective occupation prevails over initial discovery. This is also in line with the British 'Hinterland-doctrine' which stipulates that if a nation has made a settlement it has a title of sovereignty to all vacant adjacent land.
<http://www.onlinelearning.net/instructors/smurr/LatAm/sam/fkldisl.html#History>.

¹²⁹ Scott Snyder, (1996). "*The South China Sea Dispute: Prospects for preventive diplomacy*". United States Institute of Peace Special Report, 1996, online: http://usip.org/oc/sr/snyder/South_China_Sea1.html (February 13, 2003), at p. 5.

¹³⁰ *Ibid.*

generates a territorial sea. Features submerged at low tide are not subject to sovereignty and generate no maritime zones at all.

The acceptance by the disputing parties of the prevailing interpretation of these provisions to islands in the South China Sea has the potential to greatly reduce the area of overlapping claims, since some disputants have based their claims on an interpretation that the features themselves can generate an EEZ of up to 200 nautical miles. A strict interpretation of the 1982 LOS Convention provision regarding a feature's ability to sustain human habitation or economic life of their own may well leave few if any of the features in the Spratly Islands able to generate an EEZ, greatly reducing the potential area of overlapping claims. Even if these islands were capable of generating an EEZ, it is unlikely that they would be considered able to generate one of 200 nautical miles. After sovereignty of the islands is decided, the question of how the EEZs might be defined is critical to determining the size and scope of the areas where negotiations might be necessary to resolve territorial disputes.¹³¹

The 1982 LOS Convention stipulates that in areas where EEZs overlap, the dispute should be settled through peaceful negotiation among the parties concerned, or the parties might voluntarily agree to third-party mediation or to judicial consideration by the ICJ. There is a slowly evolving body of international legal precedents for evaluating the validity of various claims based on the LOS Convention, and many disputants have found creative ways to avoid sensitive sovereignty issues through limited bilateral joint resource development schemes.¹³² More of these approaches to resolving the dispute will be discussed in the next Chapter.

5.4 Question of Sovereignty As Obstacle to Dispute Resolution

As this subtitle suggests, sovereignty has been seen as an obstacle to the successful resolution of the dispute in the South China Sea.¹³³ Insistence on which of the disputing States has the best claim to title over islands will only deepen the conflict in the region which will prompt claimants to use military means to improve

¹³¹ *Ibid.*

¹³² For instance, the 1989 Timor Gap Treaty between Australia and Indonesia or arrangement to share jurisdiction over contested fisheries between Malaysia and Thailand.

their position in the area in terms of controlling over navigation and trade routes in the South China Sea.

This unfortunately has been the mindset of the parties who treat the establishment of title to the islands as a precondition to the delimitation of maritime boundaries. Thus, there is an insistence to answer or resolve the question of who has valid title or better claim to the disputed islands. It was observed that regional efforts to resolve sovereignty disputes in the South China Sea have not been successful. In fact, it was observed that studies that explore the question of sovereignty over the islands are unable to propose more than general parameters for handling issues concerning maritime jurisdiction delimitation. This legal concept has not helped to find a definite resolution of the territorial aspect of this dispute.

This can be attributed, in part, to China's constant opposition to multilateral talks. China is of the position that its sovereignty over the islands is non-negotiable although it said that joint ventures for exploring natural resources in the area could be negotiated on a bilateral basis. China's opposition to multilateral negotiations can also be explained by its negotiation strategy driven by strategic bargaining preferences. China sees it easier to isolate the disputants and deal with them one-on-one, thus, their preference to hold bilateral talks.¹³⁴ See for example Appendix E, which is the "Joint Statement between China and the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century".

This position of China gives it the freedom to negotiate individually with governments in the region and erodes the ability of ASEAN to organize around the issue. For example, in the Mischief Reef incident,¹³⁵ ASEAN did put pressure on China and advocated the adoption of "codes of conduct". In the end, China was able to negotiate bilaterally with the Philippines to secure its objectives and paid only lip service to the "rules of conduct".

¹³³ *Supra*, Footnote 3 Joyner at p. 76.

¹³⁴ *Ibid.*

¹³⁵ In 1999, the most recent flare-up over the Spratlys occurred between China and the Philippines over structures built on Mischief Reef. This Sino-Filipino conflict dates back to February 1995, when China built and manned three octagonal structures perched on stilts atop the atoll. Following a three-year hiatus, China resumed construction at Mischief Reef in late October 1998 and was completed early 1999. The five-story fortified cement building alongside the three octagonal structures is permanent and viewed by the Philippines as evidence of China's intentions to establish military facilities in the region. The structure could be used for communications, anti-

From the Chinese point of view, the non-negotiation strategy can be appreciated, since they have an abundance of historic records and artifacts to support Chinese claims to the Spratlys. The status quo is to the Chinese interest since it allows their historical claims to persist without fear of having to give up part or all of what the government perceives as historically and rightfully theirs.

A further reason for not negotiating on the Spratlys is that they fear that once a multilateral conference is held in the future and each government were allocated one vote at the negotiating table, China will be outvoted on important issues if other claimants have a coalition.¹³⁶

From the above discussion it can be seen that political sovereignty are very sensitive concerns especially for China. Any challenge to their claim is considered as a challenge to their domestic sovereignty. If, on the contrary, they concede, they see it as having adverse implications both for domestic politics and foreign relations as the notions of “nationalism” and “sovereignty” are what will ensure the survival of the Chinese Communist Party together in the post-Cold War era. If in the past the Chinese government had been able to invoke foreign intervention or the Soviet threat to bolster its legitimacy, these concepts are now seen as passé. China can now only rely on appeals to nationalism to combat challenges to its claims in the South China Sea, which by themselves hold little effect. By necessity, the justification stresses less on ideology and more on access to resources for food and development.

As to the prospects for regional negotiations on the Spratlys, it is usually presumed that a multilateral conference could produce a meaningful and enforceable agreement given the multi-party character of the dispute. But obstacles can beset this. Convening a forum to launch formal negotiations can be difficult. The parties must first accept the status quo as basis for the negotiations. This might lack its appeal to the claimants. For instance, the Philippines and Malaysia might entertain such discussions quite readily, but China, Taiwan and Vietnam cannot do so. It must be remembered that Taiwan controls only one island and cannot be expected to gain much from the multilateral negotiation. China, on the other hand, prefers to engage in bilateral discussion with the Philippines or Malaysia but will not

aircraft guns and radar systems for monitoring aircraft and ships in the area and for guiding cruise missile systems throughout the China Sea.

¹³⁶ Christopher Hill, “*Maritime Law*”, 4th edition, Lloyds of London Press Ltd., at pp. 139-149.

negotiate with Vietnam. China will likewise not negotiate with Taiwan in any multilateral discussion. They both lay claim on the Spratlys in the name of “China” on the same historical bases. If they enter into negotiations, it would be like recognizing two “Chinas” and their claim will tend to cancel out each other’s claims.

Vietnam, on the other hand, tends to target negotiations mainly with China and also prefers the bilateral approach. Vietnam originally claimed sovereignty over all archipelagos in the South China Sea and holds the largest number of islets with military presence, but lost the Paracels to China in 1974. Vietnam appears ready to hold on to the Spratlys and believe that China must concede to its claim to maintain regional stability. Participation by both Vietnam and China in negotiations is therefore essential to obtain diplomatic solutions. They both have the longest historical claims and they have exercised the strongest resolve to use military force upholding their claims. It would be reasonable then for Vietnam and China to first negotiate between themselves as a precondition before proceeding to negotiations with other claimants. While both may insist for the other to leave the archipelago completely or to agree to partition the South China Sea as between them, this will just produce a deadlock and the claims of the other states will likewise be encroached upon. To illustrate, if both claims sovereignty one claim will be upheld and the other will be denied. Or if they compromise, it will depreciate the legitimacy of their historical claims and enhance the claims, say of the Philippines and Malaysia.¹³⁷

In the future, China will remain predominant in the Spratlys archipelago and throughout South China Sea as technology, a growing economy, and an increasingly blue water naval capability have given China motives for its policies in the region, namely, potential oil exploitation and expanded maritime rights. It likewise has the means to execute policies such as on-site naval installations and enhanced military capabilities. The pressure for China to increase its industrial base comes from the increasing resource demands of its growing population of 1.4 billion plus people, which demands for more goods and services. A fuel for this is new energy sources such that efforts will be made to explore and exploit offshore

¹³⁷ Nguyen Hong Thao, “*Vietnam and the Code of Conduct for the South China Sea*”. Ocean Development and International Law (vol. 32, no. 2). London: Taylor and Francis Ltd, 2001, at pp. 105-130.

petroleum services with the use of military force if necessary to protect and support their operations.

Even if all parties agree to negotiate base on the status quo, the fundamental problem remains as to how to apportion the contested islands and adjacent sea areas among the claimant states to the satisfaction of all. It is not only the sovereignty issue and the conflicting claims, which are uncertain and complicates the issue but also the number of islands, cays, reefs, and atolls actually present since many smaller formations remain submerged at high tide. While it is easy for governments to make claims, it is complicated and difficult to substantiate the presence and exact location of these various land formations in the South China Sea.

Knowing the complicated considerations for these territorial conflicts, governments will have to accept trade-offs and compromises that lead to mutual benefit and cooperation. This leads us to a discussion in the next Chapter of the approaches to resolving the dispute.

CHAPTER 6

APPROACHES TO RESOLVING THE DISPUTE AND NEGOTIATING AN AGREEMENT

“The efforts to manage the potential conflicts were motivated by the conviction that cooperation was better than confrontation and that talking about cooperation was better than preparing for a fight.”

- Hasjim H. Djalal¹³⁸

Articles 2(3) and (4) of the United Nations Charter states that member States have two parallel obligations: first, “to settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered”; and second, to “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State.

It is the customary duty of States to cooperate with other States on transboundary matters in good faith, and to use these resources in a reasonable and equitable manner.¹³⁹ Treaty law also mandates states to enter into cooperation arrangements whenever there is a dispute or conflict, under Article 73(3) and 84(3) of the 1982 LOS Convention. Provisional agreements could be established pending final determination issues in the exclusive economic zone and the continental shelf.

¹³⁸ *Supra*, Footnote 10 at p. 98

¹³⁹ A. Suzette V. Suarez, “*Survey of Joint Cooperation Arrangements*”. Ocean law and policy series (vol. 4, nos. 1-2), January-December 2000. Philippines: University of the Philippines Institute of International Legal studies, at p. 2-3 citing *Trail Smelter Arbitration*. Decision of 16 April 1938, 33 A.J.I.L. 182; Decision of 11 March 1941, 35 A.J.I.L. 684.

What prospects does contemporary international law offer for settling a dispute as complex as this case?

Article 33 of the UN Charter of which the parties involved in this dispute are signatories states that:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

The Security Council should be excluded as it may be seen as lacking the necessary objectivity required on a decision-making organ, given the fact that China is a permanent member with the right to veto. Although there is a call for abstention of a party who is involved in the dispute in Article 27, paragraph 3 of the Charter, it cannot be denied that members involved in a dispute have considerable power and influence.

International law requires states to negotiate. The development and reinforcement of regional organizations such as the Association of Southeast Asian Nations (ASEAN) favour such negotiations, but it cannot depend on the ASEAN or third parties. Negotiations depend on the will of the parties themselves to negotiate.

The position of China in the case of the Paracel Islands that there is nothing to negotiate makes the prospect of negotiation highly unlikely. China is of the position that there is nothing to negotiate and holds the archipelago by military force on the basis of sovereignty. In the case of the Spratly islands, the bilateral and multilateral meetings have prompted China to reserve the issue of sovereignty and to negotiate a formula, which would allow the States concerned jointly to develop the natural resources in the area.

As to recourse to the International Court of Justice (ICJ), matters can only be referred to it when the parties agree especially for multilateral disputes. Access to the ICJ is voluntary and it is up to the states to accept the compulsory jurisdiction of

the ICJ, which is equivalent to recognizing the jurisdiction of the judicial organ of the United Nations. At present, only the Philippines recognizes the Court's jurisdiction but not for dispute involving the Kalayaan area. The Philippines expressed intention to bring the dispute before the United Nations but China rejected the Philippines proposal to submit the dispute to any agency or tribunal. China declared that the dispute should be settled through bilateral negotiations. China is not likely to accept the jurisdiction of the ICJ because this process will internationalize the dispute and run counter to its preferred strategy of dealing with each of the other claimants on an individual basis.¹⁴⁰ Another point is that the ICJ has jurisdiction to resolve legal disputes only. The present case involves not just legal issues but also political, economic, social and legal concerns.¹⁴¹

Disputes over maritime delimitation could be brought to the International Tribunal for the Law of the Sea but without the mutual consent of all parties, obstacles exist to using the Tribunal.

A special agreement that defines the terms of the dispute between the parties may bring the dispute before the Court (or any international tribunal which the states may wish to approach), which could result in a binding decision. Under this scheme, two or more states among themselves may agree to bring the matter before the Court. For the Spratlys, a special agreement between any two of the six contenders will be a powerful tool to trigger general proceedings in the ICJ for a settlement.

It may not be possible to invoke the jurisdiction of the Court unilaterally and for one state to benefit from its decision while it will be disadvantageous for the other claimants. It may be the case that jurisdiction over the islands will be settled without them and to their disadvantage, or by intervening would become party to the proceedings so that they can set out their rights and protect them. The whole case of the Spratlys would be brought before the Court. The Court's task will not be easy and will require a lot of effort demanding utmost cooperation of the parties. It is likewise difficult to predict how the ICJ might rule in a complex case like this.

¹⁴⁰ *Supra*, Footnote 137 at p. 109.

6.1 Joint Resource Development and Cooperative Arrangements

Attempts to delimit EEZs and continental shelves need not necessarily involve, or only involve, the drawing of a boundary line.¹⁴² Since recourse to the ICJ or a tribunal seems farfetched at this time, the creation of a joint authority to common development of resources within the Spratlys area may be more appealing to the claimants as a reasonable solution to the sovereignty disputes. Pending settlement of territorial and/or jurisdictional disputes, claimant States must be able to benefit from the resource of the disputed area as well as manage disputed area without having to give up their basic claims.¹⁴³ Through a range of different arrangements, power will be shared to achieve a compromise solution, an international collaboration restricted to the management of a single space. One such collaboration will be the establishment of a “Spratlys Resource Development Authority” (SRDA).¹⁴⁴

It is essential that the parties agree to set aside, without prejudice, their claims to the Spratlys when they jointly form this SRDA to manage exploitation of resources, which includes fisheries, environment, and safety of navigation. This will correspond with the “Authority” for mining the deep seabed in the 1982 LOS Convention.

Another form of solution is the establishment of a condominium, a legal regime established by treaty, under which several States could jointly exercise over a single territory the powers normally exercised by a single state.¹⁴⁵ A condominium over the Spratlys in the form of an international joint development agency will have a two-fold objective: first, to secure the safety of navigation in the region by maintaining buoys and lighthouses; and second, to manage the resources of the sea or seabed which, belongs to the holder of title to sovereignty over land above sea level under the 1982 LOS Convention.

¹⁴¹ *Ibid.*

¹⁴² Robin R. Churchill & Vaughan A. Lowe, “*The Law of the Sea* (3rd ed.)”, United Kingdom: Manchester University Press, 1999, at p. 198.

¹⁴³ *Supra*, Footnote 139 at p. 1.

¹⁴⁴ *Supra*, Footnote 137 at p. 108-111.

¹⁴⁵ *Supra*, Footnote 1 at p. 141.

This will be consistent with the position of China that while their claim to sovereignty over the Spratly Islands is non-negotiable, joint ventures to exploit natural resources of the South China Sea may be allowed.¹⁴⁶ It was proposed by Prime Minister Li Peng that the disputes be set aside so that joint development may be applied. The problem with this proposal is that it is based on the premise that the South China Sea belongs to China which is the premise for all Chinese solutions. This proposal serves to legitimize the “nine dotted national boundary line”¹⁴⁷ which encloses over 80% of the surface of the South China Sea.

Another approach which can be adopted is that suggested by Prof. G.M.C. Valero which he called the maritime approach.¹⁴⁸ This is a diplomatic process where people can negotiate over what can be done in the situation. He said that it would be helpful if each country defines first what exactly is its position, not only for the purpose of staking out the legal basis for such claims. A shift in perspective would be key. He said that states should stop seeing it as a problem of drawing a line in the middle of the sea. Instead, each state should say the reason for its interest in a part or an area – resources, security, administrative concerns, etc. For instance, it will affect its fishing industry or so that an energy program may be developed or may involve the policy of piracy, drug trade or trafficking and controlling customs. In this way, the administrative lines will be drawn which will be the core of the maritime approach and the political will be developed coming from within.

With these suggested approaches, the complicated sovereignty question will not necessarily be resolved but at least the dispute will become somewhat diffused. Multinational companies may then be attracted to invest in hydrocarbon development in the disputed areas. A different situation will not attract the investors, as the security of their investments will be threatened with an unstable geopolitical situation.

It is hoped that the establishment of the SRDA, a condominium, or the maritime approach will serve the interest of all the claimants. If agreed to by the

¹⁴⁶ In September 1992, Chinese Foreign Minister Qian Qichen in an interview with Japan Economic Newswire article entitled: “Chinese Drilling Ship Leaves Disputed Waters”, indicated that China is prepared to negotiate joint development of the South China Sea resources.

¹⁴⁷ This is a U-shaped line drawn on the Chinese map in 1947 by the then Chinese Nationalist Government. The U-shaped line refers to the line with nine segments off the Chinese coast on the South China Sea. The line has been called a “traditional maritime boundary line” from which China claims all the islands, atolls, and even submerged banks within this line.

¹⁴⁸ *Supra*, Footnote 3 Valero at p. 84.

parties, this will be an ideal solution and compromise. The authority will be able to manage the claims of the parties and provide an acceptable mechanism for dispute resolution, ensure that the zone or area is demilitarized as military presence will impede the extraction of the resources in the area, and facilitate resource exploitation which can be every expensive if done so unilaterally.

The genuine willingness of the claimant governments to cooperate is important for this mechanism to work.¹⁴⁹ It is fundamental therefore that the basic relations of the parties are good as this opens the door for cooperation. Patience and genuine commitment are also required to integrate legal, financial, economic and customs arrangements between governments and to successfully implement any agreement. For instance, Malaysia, the Philippines and Vietnam have cordial if sometimes shaky relations with each other. This, together with the fact that they are “fraternal” members of ASEAN virtually guarantees at least readiness to discuss the Spratly issue. China is cultivating better relations with ASEAN governments. However, its relations with Vietnam, an ASEAN member is not all that good. This could complicate the designed cooperation especially in disputes involving the Paracels and Spratly Islands, as well as China’s overall relations with ASEAN.

Another factor to reduce tension will be the “political pragmatism” of the states.¹⁵⁰ For instance, when hydrocarbon is in fact discovered in the South China Sea, China’s domestic needs for hydrocarbon energy could override antagonistic political considerations and therefore open the door for a joint development arrangement. The strongest reason to motivate a government to undertake a joint management arrangement is the perceived sense of urgency or obligation to protect its interests in potential oil or gas deposits, combined with a desire to maintain or solidify good relations with other state(s).

Another factor for the success of the cooperation would be the degree of knowledge on the resource deposits in the area. If little is known about the hydrocarbon potential, the disputed area will be easier to apportion than if substantial proven deposits had already been discovered. If it were the latter case, each side will realize that it must give something away and that could dissuade them from serious negotiations. It is custom that governments are more likely to opt for a joint resource development when each is unwilling to give up a larger share, the

¹⁴⁹ *Supra*, Footnote 3 Joyner at p. 82.

extent of the resource deposits are unknown and neither side knows how much it could lose.

Joint development is neither permanent nor optimal for resolving boundaries and international jurisdictional disputes over rights to resources. It might even be provisionally established. But in some cases, it may be the only alternative to no action at all – and thus no resource development – or, worse, to confrontation and conflict. Joint development will look increasingly attractive as more oil is needed, or new deposits discovered by disputant government and successful precedents for cooperative arrangements occur.

6.2 Confidence Building Measures (CBMs) as Preventive Diplomacy

To launch negotiations aimed at establishing a joint resource development authority for the South China Sea, it is of utmost necessity that there is confidence and transparency between the governments of the involved states who are members of Southeast Asia and China. Confidence and trust among fellow governments are critical for progress in negotiations.

The disputants must become involved in constructive negotiation aimed at solutions for satisfying their different interest through peaceful means. It cannot be denied that the overlapping jurisdictional claims, persistent military occupation of islands, aggressive military spending and the leasing of the disputed areas to international petroleum companies have all combined to aggravate the tension among the states. From this awareness of the regional tensions must come the necessity of maintaining an order in the South China Sea, one that is predicated on accepted rules of international law, which rules at the same time will accommodate the disparate national interests at stake. The disputants must therefore involve themselves in constructive negotiations aimed at solutions for satisfying their different interests through peaceful means.

An important first step according to Joyner and Morada is the pursuit of confidence building measures (CBMs).¹⁵¹ Through CBMs, functional cooperation

¹⁵⁰ *Ibid.*

and direct communication could be fostered among the claimants as a means to preclude territorial disagreements from escalating into military confrontation. Measures for building confidence can lead to a better climate for negotiations and more positive results. Since international negotiations between governments involve people with emotions, deeply held values and perceptions, which are highly unpredictable, CBMs will make the political climate more conducive to certainty where it engenders working relationships with trust, understanding and respect to make the negotiations easier, more efficient and more constructive. It can also contribute to raising sensitivities about other negotiators' national interests and constraints on their negotiating positions affecting particular issues.

For genuine confidence to be promoted, governments must understand the motives and rationales behind the policies of other states in the region, and this can only come from increased transparency of national policies and capabilities. Transparency thus becomes key to confidence-building.

6.3 The Indonesian Initiative

The process of CBM among governments involved in the South China Sea begun more than a decade ago. A regional dialogue on disputes, hosted informally through a series of Workshops on Managing Potential Conflicts in the South China Sea by Indonesia has been convened annually since 1990 through its Department of Foreign Affairs.¹⁵² The Indonesia Initiative¹⁵³ aims to foster confidence among

¹⁵¹ *Supra*, Footnote 3 Joyner at p. 90 and Noel Morada, "Multilateralism and the South China Sea conflict: options for the Philippines", *National Security Review* (vol. XIX, no. 1, 2nd sem.), 1999, online: <http://www.ndcp.edu.ph/pub/nsr.pdf> (April 26, 2003) at p. 61-74.

¹⁵² Indonesia is viewed as a neutral party even though it is a South China Sea littoral state; it makes no claims to the Spratlys. However, within the past few years, the PRC has made insinuations about claiming sea areas in Indonesia's EEZ around Natuna, which has pulled Indonesia directly into the controversy with the PRC. Some observers, especially Malaysia saw this development as having compromised Indonesia's alleged neutrality in the region. Indonesia has a straightforward motive for undertaking this initiative. If regional tensions can be reduced and peace and order brought to the South China Sea, then Indonesia will share in the resultant growth in economic and commercial opportunities.

¹⁵³ Also called the South China Sea Informal Working Group, the University of British Columbia administers the project with its counterpart in Indonesia being the Centre for Southeast Asian Studies. Workshop participants attend in their own private capacity and are drawn from governments (foreign affairs ministries), diplomatic corps and military services, academia and research organizations. Technical working groups are convened to discuss issues affecting

South China Sea states through “Track Two Diplomacy”¹⁵⁴ in order to ease tensions arising from sovereignty and jurisdictional disputes over the Spratly and Paracel Islands.

The Initiative calls for representatives from different states involved in an international dispute to meet informally and discuss aspects and issues related to the matter. In so doing, the activity creates an atmosphere of open and free discussion, without the restrictions imposed by having to maintain official government positions.

Up to the present time, the South China Sea littoral states have been able to identify issue-areas for potential cooperation. These include marine scientific research, marine environmental protection, safety and sea communications, fisheries assessment and development, defense and security issues, territorial and jurisdictional issues (other than claims to islands and ocean space), and creation of institutions for cooperation.¹⁵⁵

The Indonesian workshops represent the most serious regional effort thus far for promoting peace and cooperation in the South China Sea. The process is geared towards informal diplomacy, with the expectation that complete agreements on an issue can be returned to normal inter-governmental diplomatic channels for eventual negotiation. The process is informal and offers participants the advantage of greater freedom to discuss ideas. The tendency is to promote opportunities for consensus by avoiding adversarial situation. For instance, there is no discussion of sovereignty over the Spratlys, or conflicting claims to jurisdiction over ocean space, or continental shelf drilling rights since they also know that agreement will not be forthcoming anyway and to do so could seriously risk disrupting the entire cooperative process.

It was at the first meeting of the Technical Working Group on Legal Matters, which met in Phuket, Thailand in early July 1995 where the participants agreed that the 1982 LOS Convention offered a suitable means for fostering cooperation among South China Sea littoral states, particularly in terms of the framework regime for semi-enclosed seas.

cooperation and issues raised at these meetings are then re-circulated back to the annual workshop plenary meeting and adoption.

¹⁵⁴ *Supra*, Footnote 12 at p. 6.

¹⁵⁵ *Ibid.*

This has been further bolstered in the Ninth Workshop wherein it was decided that cooperation on South China Sea issues would be continued through the workshop's projects. New developments from the 1998 Workshop included agreements to convene special meetings by the Committee for the Coordination of Offshore Prospecting to compile data on non-hydrocarbon mineral resources in the South China Sea and by the Study Group on Zones of Cooperation to examine the prospects for joint cooperation and development. In addition, the Legal Matters Group would be charged with discussing the possible content of various codes of conduct that might be applied to activities in the region.¹⁵⁶

As a result of the regional cooperative activities generated by the Indonesian workshops, a strategy of confidence-building is in progress and is producing tangible results. It is however, admittedly slow, ponderous and piecemeal. Nevertheless, the committee discussion has provided participants the opportunity to air their views and thus compel claimant governments to recognize differences of opinion. It is important that workshops involve a process aimed toward regional cooperation, not a quick fix for demilitarization of and joint resource development in the South China Sea.

While the results of the Indonesian Initiative remain limited, this fact has not diminished the political significance of these meetings.

6.4 Models for Resource Development Agreements

A number of resource development arrangements have been successfully negotiated in the 20th century which could serve as models for managing resource development in the South China Sea and can ultimately serve as a key to negotiating an agreement. Examples of these model agreements are the Australia-Indonesia Timor Gap Agreement, the Spitzbergen (Svalbard Treaty) Arrangement and the Antarctic Treaty. Each of these arrangements was chosen because they deal with issues of like nature as the South China Sea issues, namely: issues of disputed sovereignty, maritime jurisdiction, geostrategic considerations and access to natural resources. Each case involved the following salient points: contentious

¹⁵⁶ *Ibid.*

claims of sovereignty to the same territory; access to and exploitation rights of potential mineral resources; a package deal approach wherein no crippling reservations were permitted that might undercut or dilute the legitimacy of the agreement or the participation of any party to it; non-resolution of the sovereignty dispute which was instead put aside so that cooperation through the agreement might be allowed to work; creation of a special mechanism to make policies for the arrangement and to deal with disputes that might arise between parties; inclusion of efforts to enhance transparency of the governments' policies affecting activities in the region; and, successful negotiation by the political willingness of all claimants and inclusion of non-claimants to compromise on what had been highly unchangeable, nationalistic positions.¹⁵⁷

Much can be learned from these arrangements on how it treated the sovereignty issue and how it apportioned the rights, duties and obligations between the parties. It is particularly helpful in giving lessons on how to resolve or at least mitigate disputes that involve sovereignty as with the South China Sea.

6.4.1 The Australia-Indonesia Timor Gap Agreement¹⁵⁸

The Timor Gap Treaty is remarkable for its “zone of cooperation” approach,¹⁵⁹ which should appeal to the Spratly Islands claimants. In this

¹⁵⁷ *Supra*, Footnote 3, Joyner at p. 84-88.

¹⁵⁸ Treaty Between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area Between the Indonesian Province of East Timor and Northern Australia entered into force in February 1991.

¹⁵⁹ Articles 2 (2b) and 4 (1b) of the Timor Gap Agreement stipulates for the Zone of Cooperation in the disputed seabed area between East Timor and Australia. The area covers 60,000 square kilometres (23,000 square miles). In Zone B, the area closest to Australia, Australia pays to Indonesia ten percent of the Gross Resource Rent Tax collected from petroleum production. Similarly, Indonesia makes analogous payments to Australia from the Contractor's Tax collected in Area C, the portion nearest to Indonesia. Zone Area A, the central and largest portion of the Zone possessing the greatest potential for hydrocarbons, is made subject to a joint development regime.

Responsibility for managing Zone Area A is delegated to Ministerial Council comprised of an equal number of representatives from both States. A joint Authority, accountable to the Council, manages petroleum exploration and exploitation activities and is responsible for environmental management as delegated by the Treaty's provisions and the regulations issued by the Ministerial Council. Articles 14-17 of the Agreement also provides for cooperation in Area A in matters of search and rescue, air traffic services, and protection of the marine environment. Article 20 of the Agreement requires the parties to negotiate agreement on the exploitation of petroleum accumulations that overlap boundaries of Area A. This Zone of Cooperation will be in

arrangement, various zones could be set out according to various jurisdictional claims, but with an outlook taken by the parties that special sovereign prerogatives could not be attached to any zones. The Timor Gap Treaty has a two-tier management structure that requires close cooperation between the parties, especially for reaching consensus on decision at each level. It likewise demands high level integration and interdependent procedures. Disagreements could jeopardize the entire treaty relationship. Even if consensus making will not be easy as there are six parties participating in the arrangement, any decision reached will be taken as binding and unequivocal.

The clean slate approach (not to recognize previously claimed rights) adopted by the Timor Gap Treaty can be appealing to the Spratly claimants. In this way, no claimant state would be put at a diplomatic or political disadvantage, and all governments would gain economic access or tax revenues by participating in the agreement. This should however be carried out in an exclusively peaceful manner.

6.4.2 The Spitzbergen (Svalbard Treaty) Agreement ¹⁶⁰

The Svalbard Treaty creates a regime of equity treatment in the exploitation of resources of Svalbard for all parties, which currently number forty. ¹⁶¹

force for forty years, and may be renewed for successive terms of twenty years if no permanent agreement is reached on continental shelf delimitation. The incentive thus is depreciated from producing a permanent settlement, particularly if it could lead to collapse of the interim agreement that now works satisfactorily for both parties.

¹⁶⁰ Treaty Relating to Spitzbergen (Svalbard). Svalbard is a cluster of glaciated islands in the Arctic Ocean lying 645 kilometers (400 miles) north of Norway, consisting of the Spitzbergen group and several smaller islands. The discovery of extensive mineral and coal deposits in the late 9th century prompted several states to stake claims in the Svalbard. Among these states are Sweden, Denmark, the Soviet Union and the United States. As a remedy to this conflicting and numerous claims, the Treaty Relating to Spitzbergen (Svalbard Treaty) was negotiated in 1920.

¹⁶¹ Three special purposes are specially articulated in the Treaty. First, it places the Svalbard archipelago under the sovereignty of a single state, Norway, so that the island would be subject to proper legal regulation. The package-deal nature of this arrangement works like this: Norway did not grant rights to other states and Norway was given sovereignty over Svalbard on condition that other states retained their previous extensive *terra nullius* economic rights. Neither did the Treaty give any indication that Norwegian sovereignty is of an inferior quality compared to the sovereignty of other states over their territory. The second purpose of the Svalbard Treaty is to ensure preservation of rights that other states had for an exploitation of the archipelago's economic resources under the prior legal status of *terra nullius*. This is accomplished by ensuring equal access to economic activities and by requirements that all taxes collected be used on Svalbard,

A major innovation of the Svalbard Treaty that might be useful in the Spratlys is its approach towards conflicting sovereignty claims. In this treaty, the participating parties were granted permanent *terra nullius* economic rights. While the Spratly claimants might have problems granting to any other single Spratly claimant sovereignty over the entire archipelago, it is more likely that a management authority might be established that grants each party equal access rights to the area.

Provisions of this Treaty leave unanswered questions pertaining to jurisdiction offshore, geographical application of exploitation principles to the EEZ and continental shelf jurisdictions generated by archipelago or does it extend to marine areas beyond the territorial sea. These questions have direct bearing on the resolution of the Spratly Islands dispute if a joint resource development authority is to be devised for the South China Sea area.

6.4.3 The Antarctic Treaty ¹⁶²

The Antarctic Treaty was principally designed to promote scientific cooperation in the region. The Treaty expressly stipulates legal obligations banning military activities and nuclear weapons in the area, as well as guarantees for freedom of scientific research and cooperation and the obligation to settle disputes peacefully.

Important principles flow from the Antarctic Treaty with respect to the Spratly situation. Article I provides for a system of unannounced, on-site inspection by any party of another party's Antarctic vessels or research stations to verify that Treaty obligations are being met. A similar type of inspection system might be especially

provided under Article 8 (2). Lastly, the Treaty aims to secure peaceful development on the islands. This can be easily secured if the first and second purposes are achieved.

¹⁶² The Antarctic Treaty, signed December 1959, entered into force June 1961. Portions of Antarctica have been claimed by seven states - the United Kingdom, Australia, France, New Zealand, Norway, Chile and Argentina. The Antarctic Treaty had to address delicate political considerations created by the ambiguous sovereignty claims held by states with mutually antagonistic interests in the region. The claims of Argentina, Chile and the United Kingdom entirely overlapped on the continent and the question of sovereignty has constantly threatened to disrupt international cooperation in the south polar area. The Treaty was produced after the International Geophysical Year wherein participating Governments were convinced of the desirability of preserving the international cooperation in Antarctic affairs.

useful for building confidence among regional states in negotiation for a Spratly development regime.

Article IX provided for the Antarctic Treaty Consultative Parties (ATCPs), a special decision-making body that includes signatory states that have acquired policy-making authority under the Treaty. This group and its legal activities are self-creating, self-implementing and self-administering.

Of particular interest to the Spratly Islands claimants is the manner in which Article IV¹⁶³ of the Antarctic Treaty set aside the status of sovereignty on the continent throughout the duration of the Treaty relationship. It was seen then that sovereignty issues are factors that might complicate or undermine successful operation of the agreement. Thus, such questions were shelved. It likewise provides that no new claim, or enlargement of an existent claim, can be asserted while the treaty remains in force.

6.5 An Evaluation of the Model Agreements

These agreements demonstrate that international agreements can be forged, and resource development arrangement can be produced if the parties are willing to make them happen. But should any state, particularly a key player assume the bargaining position that it will give away nothing and only take away everything, then no agreement will be possible. The geopolitical status quo will persist, or possibly deteriorate. Thus, in each of these successfully-negotiated resource arrangements, all governments were treated as co-equals, and all compromised to some extent, so that an agreement could be obtained that better served their national interest,

¹⁶³ In full, Article IV provides:

1. Nothing contained in the present Treaty shall be interpreted as: (a) a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica; (b) a renunciation or diminution by any Contracting Party of any basis of claims to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise; (c) prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State's right of or claim or basis of claim to territorial sovereignty in Antarctica.
2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial in Antarctica shall be asserted while the present Treaty is in force.

specially by creating a climate of cooperative coexistence and shared expectations with the other parties. The key to the negotiating process was mutual trust and confidence with a workable outcome for all parties. No lasting agreement will be possible absent the political will to compromise positions so that the sovereignty, resource and sharing concerns of all parties can be accommodated.

Admittedly, it would not resolve the sovereignty problem in the South China Sea nor would it shed light on how to arrive at a solution for the sovereignty question as it dodges the issue of sovereignty. It will even delay the time when the sovereignty question has to be addressed.

Nonetheless, the issue of sovereignty would not encroach upon cooperation in developing resources in the South China Sea. In fact, it will provide a framework for cooperation among the parties and permit the participating governments equal access with equal rights in managing resources in the region. Through an arrangement such as this, habits of cooperation and trust, which will lead to collaborative relationships among states, will be formed among the claimant States in the South China Sea.

Moreover, as it avoids the issue of sovereignty, the position of every party is preserved and they can participate in the treaty with other parties who espouse adverse legal positions. The Treaty permitted states to disagree on the issue of sovereignty without jeopardizing the treaty's ability to function.

CHAPTER 7

SUMMARY AND CONCLUSION

“The water in itself is a very dynamic resource. You cannot really subdivide it and say one boundary excludes the others. It is a fluid resource. It is a means of connecting people and not dividing them.”

- Gerardo Martin C. Valero

7.1 Summary

As elucidated in the introductory Chapter, the issue of maritime boundary delimitation is said to be the most problematic of the regional issues and concerns of the states in the South China Sea which is made more intense and complicated with the discovery of oil and gas reserves and the presence of other natural resources.

The geopolitics in the South China Sea was therefore discussed in Chapter 2 providing therein not only a description of the geography and other environmental factors (such as the demographic, cultural, and historical conditions), but also an economic and political description of the area as well. From the geographic description, it was revealed that 90% of the South China Sea is rimmed by land and is surrounded by ten (10) Asian states which are markedly variegated politically, and economically, namely: the Philippines, Malaysia, Brunei, Indonesia, Singapore, and Thailand, Cambodia, Vietnam, the People's Republic of China (PRC) and Taiwan (ROC). The area includes hundreds of natural formations of small islands, islets, cays, atolls, rocks, coral reefs, shoals and sandbanks, comprising four main archipelagos in the South China Sea, namely: the Pratas, Macclesfield Bank, Paracels, and Spratlys. Eight states claim title to these South China Sea islands: Singapore and Malaysia has claims over Pisang Island and Pulau Batu Puteh, located in the waters of Malacca and Singapore Straits. China, Taiwan and Vietnam

contest each other's claims to sovereignty over the Paracel Islands, a group of fifteen islets and several reefs and shoals scattered over a 200-kilometer area in the middle of the Gulf of Tonkin. Taiwan also contests China's claims to Pratas Islands and the Macclesfield Bank. As for the Spratlys, six states assert claims: China, Taiwan and Vietnam claim the entire archipelago, while the Philippines, Malaysia and Brunei claim sovereignty over portions of the Spratlys. Except for Brunei, all the others have established a military presence in the Spratlys.

From the economic and political viewpoint, the significance of the interest in the South China Sea was discussed in Chapter 3. The South China Sea has its special geostrategic importance in terms of the existence of natural resources, both as a source of fisheries resource and energy resource (oil, gas and hydrocarbon), as a strategic passageway for merchant vessels and strategic passageway for military vessels, and as possible baselines from which the exclusive economic zone and continental shelf may be measured against which extends their exclusive jurisdictional competence over the waters and resources in the South China Sea region. A discussion of the economics especially on the post-Asian financial crisis was also included as an important factor for the interest of these states as an economic crisis or recovery will dictate the military spending of the states. These factors, which contribute to the interest of the claimants, were considered as a potential cause or trigger for the competing and conflicting claims in the region.

In Chapter 4, the justifications and basis for the territorial claims of the states were discussed. It can be observed that interested governments organized and refined their legal positions to support the validity of their claims in order to provide justification and ultimately international recognition for their respective territorial and jurisdictional claims. Claims to sovereignty over territory in the South China Sea are based on principles of acts of sovereignty, discovery and occupation and on the continental shelf principle.

An analysis on the tenability of the legal arguments propounded by each of the claimants was conducted in Chapter 5. These legal arguments propounded by the claimants were found not to have helped in ending or giving a definite resolution of the territorial sovereignty issue and even added to the perpetuation of friction among the disputants.

On the whole, the justification for the territorial claims in the South China Sea is quite thin. The authenticity of the documentary background has questionable

authenticity and the historical records are contradictory. None of the claimants offer an unassailable historical or legal claim. Old historical documents mentioning the reefs and islands in the South China Sea are unlikely to be helpful in resolving the disputes in the Paracels and the Spratlys have been at best described as a source of danger to shipping. The intent therefore was to notify the seafarers about the dangers in the area and not to claim sovereignty.

Measures that might contribute to the resolution of setting aside of competing claims in the region were made in Chapter 6. It is submitted that a joint resource development and cooperative agreement, while not a new approach, is feasible in this case. It will be the most appealing to the claimants as it does not require the resolution of the complicated sovereignty and territorial question but the dispute will be somewhat diffused. While there is reluctance with the states to discuss territorial, jurisdictional, political and security issues, there is strong willingness to develop cooperation. This should be harnessed and developed as the states can get national benefit from the pursuit of common regional interest.

Three (3) model agreements for resource development were evaluated to see if an agreement patterned after these three model agreements can be negotiated. It was surmised that the zone of cooperation approach, the clean slate approach and scientific cooperation could be adopted in negotiating an agreement in the South China Sea. With a trend of dodging the issue of sovereignty, it would nonetheless not encroach upon cooperation in developing resources in the South China Sea in the meantime that this issue is pending. In fact, it will provide a framework for cooperation among the parties and permit the participating governments equal access with equal rights in managing resources in the region, developing habits of cooperation and trust, which will lead to collaborative relationships among the claimant states in the South China Sea.

7.2 Conclusion

A claim to sovereignty has been seen as an obstacle to the successful resolution of the dispute in the South China Sea. Insistence on who has the best claim to title over islands only deepened the conflict in the region because it prompted claimants to use military means to improve their position in the area in

terms of having control over navigation and trade routes in the South China Sea and it served to support unilateralism as a preferred mode as a more decisive and effective method to sovereignty. The mad scramble to extend their maritime competences by getting a piece of a territory by these states, specifying their maritime limits and granting concessions or licensing projects within the area claims, is an example of how much premium had been placed on the concept of actual occupation of the claimed territory with each claimant maintaining a military presence in at least one of the islands to the archipelago. This militarization of the area causes grave concern as it can lead to a volatile atmosphere that can trigger a conflict made apparent by repeated incidents of arrests and counter-arrests of vessels by agents of competing governments.

Any attempt therefore to resolve the dispute militarily is likely to fail. Military activities connote a show of force and not a genuine sincerity to resolve contentious legal issues peacefully and diplomatically. Any attempt to take already occupied islands by force is most likely to be resisted and has been shown in past military skirmishes in the region. Claimant governments must therefore restrain the use of military force in the area.

They should not settle boundary problems through unilateral enactment of national legislation, as this tends to harden their position, which makes it difficult for parties to seek a solution.

While it was intimated in one of the Chapters that the 1982 Convention on the Law of the Sea could serve as a basis for the solution of the disputes to maritime delimitation as it provides the “main language for conflict resolution”,¹⁶³ this has not been the case. This may be attributed to the lack of clarity of some of the UNCLOS provisions. For instance, under Article 221 the provisions are unclear if in terms of defining islands, the Spratlys and Paracel areas fulfil the requirements for generating more than 12 nm territorial sea or if the islets can be rightly considered as islands or rocks from which the right of the states to generate territorial waters or an exclusive economic zone or continental shelf. If this is answered with clarity, this will pave the way for giving a solution to the South China Sea dispute. This is not to say that the 1982 LOS Convention is impracticable in this case. While the law of the

¹⁶³ Tonnesson, S., “*South China Sea – Islands and the Code of Conduct*”, Ocean law and policy series (vol. 4, nos. 1-2), January-December 2000), University of the Philippines, Institute of International Legal studies, at p. 94.

sea has its “limitations to be the basis of providing mechanism and framework for resolving the dispute, it can serve as a point of departure”.¹⁶⁴

Notwithstanding the alarming scenarios, and given the fact that regional efforts to resolve sovereignty disputes in the South China Sea have not been successful, multilateral attempts had been made to reach a resolution of all the competing claims to the South China Sea by exploring alternative approaches for the settlement of their conflicting claims. The states themselves realized the dangers that such conflict would create a potential for disrupting international cooperation and prevent the utilization of maritime resources. This realization is reflected in agreement among the littoral states known as the “ASEAN Declaration in Manila in July 1992” (Appendix F) committing states to explore areas of cooperation in the South China Sea, cooperation for mutual benefit, resolution of the dispute through peaceful means through dialogue and negotiation, non-use of force to settle territorial and jurisdictional disputes and the exercise of self-restraint. It is well to add that the starting point to the negotiation is for the claimants to accept the status quo.

Workshops initiated by Indonesia as a confidence-building measure and preventive diplomacy will lead to a joint cooperation agreement as talks in these Workshops made the policies and positions of the States transparent as they were able to identify issue areas under which the different States will be able to cooperate. This is an indication that the States are receptive to possibility of settlement of their conflicting claims by a regional response.

States should be less sensitive to the discussion of the concept of national sovereignty as “more and more issues of national interests are becoming regional in implication, like environmental issues, domestic political issues and even monetary and financial issues”.¹⁶⁵ The littoral states should be open to discussions of these issues in the future and they should do everything possible to settle their land and maritime jurisdictional boundaries as soon as possible and to respect agreed-upon boundaries when such had been made in the future.

The situation remains to be one of pessimism for the states to undergo the process of conflict resolution. Considerable worries are also justified as to matters of regional security, although an outbreak of war is not to be expected. Pessimism is

¹⁶⁴ *Supra*, Footnote 137 at p. 109.

¹⁶⁵ *Supra*, Footnote 12 at p. 102.

likewise to be expected especially for the pollution of the marine environment and over-exploitation of the natural resources in the area. Even in undisputed waters, it is difficult to patrol fishing grounds and prevent illegal fishing. In disputed waters such as the South China Sea, this is rendered almost impossible. But realization of the dangers to the environment might cause the states to bond together. This might be the basis for regional cooperation and will be the first steps to conflict management and resolution, which is then a cause for optimism.

Several measures can contribute to transparency and thus build confidence among the concerned governments in the South China Sea case. For one, claimant states might consider giving official and informal assurances to restrain the use of military force in the region. If these official pronouncements are made by governments in the press or international gatherings, it will provide the public with a record of the policy declarations and it is more difficult for the government to renege of those commitments.

Government officials should recognize and respect the national sensitivities arising from military deployments in the region. While some claimants might not recognize the legitimacy of other governments' claims in the region, they must respect the sensitivities arising from those claims. This they should bear in mind specially when dealing with the two most intransigent antagonists among the disputants.

There is need for governments to cease further occupation and annexation of territory in the Spratlys. Seizing and occupying more islets does little to promote a government's strategic position in the region. These features are insignificant as strategic outposts and hold little value for their natural resources. Moreover, new occupations reinforce suspicion and distrust over that government's disingenuousness toward future diplomatic negotiations. It seems prudent that claimant government should accept the status quo as the starting ground for negotiation.

Military activities connote show of force and not a genuine sincerity to resolve contentious legal issues peacefully and diplomatically, government having claims might reign in efforts to expand military activities in the region. Maritime military manoeuvres should only be conducted with prior notification of other governments or to take friendly measures when military exercises are being

conducted in the region by direct communication and consultation with other concerned governments.

A common set of operating procedures for navies and air forces of concerned governments in the disputed region should be devised and coordinated. This “standardized manual of operations” would lessen tensions by reducing the likelihood for accidents and minimizing situations that could spark military conflict in the region. The intergovernmental collaboration among national military representatives can likewise foster appreciation for the national interest, sensitivities, and priorities of their armed forces counterpart in the region.

Finally, means and mechanisms to improve contacts and communications (e.g. clearer state-to-state hotlines of communications, and hotlines between naval chiefs) between mainland governments and their local military commanders on islands occupying islands in the South China Sea might be made to reduce possibilities of misunderstandings and misperceptions of other governments’ policy and intentions.

7.3 The Way Forward

The ASEAN-China meeting underscored an achievement that is significant for both China and the ASEAN member countries, specially the Philippines, with the signing of the “ASEAN-China Declaration on the Conduct of Parties in the South China Sea” (Appendix F). It is significant, as it will give both governments peace of mind, which is important for the stability and progress of Asia. Instead of being a major flashpoint, it has become an avenue for shared prosperity. While before the South China Sea has always been the nexus of the external defense concerns of both China and the Philippines, now, it can be eased.

Under the declaration, all claimants are committed to resolve their territorial and jurisdictional disputes through peaceful means without resorting to threat or use of force in accordance with the recognized principles of international law, including the 1982 LOS Convention.

In this code of conduct, the claimants have agreed to hold dialogues and exchange of views among their defense and military officials. They will also step up coordinative activities to combat transnational crime and terrorism.

It was the promulgation of the 1998 Hanoi Plan of Action which called for a regional code of conduct in the South China Sea. The Philippines made a first draft of the code and shepherded it through various amendments and proposals. By 1999, ASEAN had submitted an initial draft to China. In January 2000, ASEAN adopted the Philippine proposal to establish a task tem to work further on the code. By October of the same year, China and ASEAN had come up with three consolidated texts, each time narrowing the differences between them. The defining moment came at last at the last Ministerial Meeting in Brunei when ASEAN agreed in principle to adopt the declaration

The heart and soul of the declaration - the principle of no new occupation has gained acceptance from all parties.

The Philippines should be recognized in the role it played in moving the declaration to the point of signing of the parties. Now that there is a more comprehensive security framework in place, ASEAN and China can now shift their energies and resources towards broader cooperation in economic and social development.

But the role of China is likewise crucial. This can be explained by the more favourable strategic situation which is important in its policy in the South China Sea. Its policy is to ensure that there in no security threat to its southern border coming from the United States, Russia or Japan. This concern has been diminished considerably with the withdrawal of the United States from Vietnam in 1975 and from the Philippines in 1992, coupled with the collapse of the Soviet Union in 1990.

While China also stands as a military power to be reckoned with in the region, its government had forsaken its intentions of using force to resolve territorial disputes since this will enhance its political, economic and commercial interests. Thus, a cooperative engagement with ASEAN states will allay persistent suspicion and mistrust of its intentions which came about since the Mischief reef incident and its announcement on 15 May 1996 of its partial baselines for measuring its territorial sea offshore the mainland and the Paracel Islands. This is just prior to and on the eve of the scheduled ASEAN-China Dialogue in Bukittinggi in June 1996. This itself

is problematic since China arrogated for itself the South China Sea as its internal waters in violation of Article 89 of the 1982 LOS Convention which states that “no state may validly purport to subject any part of the high seas to its sovereignty.” If China opts to draw straight baselines around the Spratlys, it will violate the 1982 LOS Convention provision once again which pertains to islands offshore and specific geographical situations for which straight baselines along a coast are permitted. The 1982 LOS Convention does not permit coastal states to draw straight baselines around small, scattered islands that they claim in the ocean. This right is reserved only for archipelagic states, to which neither China nor the Spratly Islands may qualify.

Notwithstanding these concerns, the relations between and among Spratly claimants are relatively good specially with the signing of the ASEAN-China Declaration on the Conduct of Parties in the South China Sea.

But there is still need for more non-military mechanisms to keep the peace. A multilateral fora such as an APEC conference can be used to promote transparency and mutual exchange of information on regional activities. Through such agreed upon rules, tensions and conflict can further be contained, minimized or prevented.

Various solutions given may appear Utopian but it is imperative that states have a sort of solution, which takes into account the interdependence among States. It is envisaged that states bordering this maritime realm might begin to engage in collaborative research to complement studies already done individually by countries or governments. One such topic of common interest and is non-contentious in nature is marine environmental protection and safety in navigation to foster scientific and technical cooperation among bordering states while skirting the issue of territorial claims. As succinctly stated by one author, “a busy international highway of vital importance to countries far removed geographically from the South China Sea cannot but be a common heritage of the bordering states that will insure freedom of navigation and safety at sea to all innocent travellers.”¹⁶⁶

¹⁶⁶ Edgardo D. Gomez, “*Marine scientific research in the South China Sea and environmental security*,” *Ocean development and International Law* (vol. 32, no. 2), London: Taylor and Francis Ltd., 2001 at p. 205-206.

BIBLIOGRAPHY

BOOKS

Blake, G., Pratt, M., Schofield, C. and Brown, J.A., "Boundaries and Energy: Problems and Prospects". (1998), Kluwer Law International.

Chemillier-Gendreau, M., "Sovereignty over the Paracel and Spratly Islands", 2000, Kluwer Law International.

Churchill, R.R. & Lowe, A.V., "The Law of the Sea (3rd ed.)", 1999, Manchester University Press.

Elias, T.O., "The International Court of Justice and Some Contemporary Problems: Essays on International Law", 1983, The Hague: Martinus Nijhoff Publishers.

Encyclopedia of Public International Law, "Settlement of Disputes", 1981, (Instalment no. 1), North-Holland Publishing Company.

Encyclopedia of Public International Law, "Decisions of International Court of Justice", 1981, (Instalment no. 2), North-Holland Publishing Company.

Encyclopedia of Public International Law, "Geographic issues", 1981, (Instalment no. 12), North-Holland Publishing Company.

Ghee L.T. and Valencia, M.J., "Natural resources of South-East Asia: Conflict Over Natural Resources in South-East Asia and the Pacific, Singapore: Oxford University Press Pte. Ltd.

Hill, Christopher, "Maritime Law", 4th ed., Lloyds of London Press Ltd.

Kittichaisaree, K., "The Law of the Sea and Maritime Boundary Delimitation in South-East Asia", 1987, Singapore: Oxford University Press.

Novicio, Noel M., "The South China Sea Dispute in Philippine Foreign Policy: Problems, Challenges and Prospects", 2003, IDSS Monograph No. 5. Singapore: Institute of Defence and Strategic Studies.

Olson, Hal, "Marine Traffic in the SCS", Ocean Yearbook, vol. 12, 1996.

Prescott, J.R.V., "The Maritime Political Boundaries of the World", 1985, London: Methuen and Co. Ltd.

Samuels, Marwyn S., "Contest for the South China Sea", 1982, New York and London: Methuen

Song, Y., "United States and Territorial Disputes in the South China Sea: A Study of Ocean Law and Politics", 2002, (No. 1 – 2002 [168]). Maryland Series in Contemporary Asian Studies, School of Law University of Maryland.

United Nations, "Handbook on the Delimitation of Maritime Boundaries", 2000, New York: Author.

Valencia, Mark J., "International Conflict Over Marine Resources in South-East Asia: Trends in Politicization and Militarization", 1990, In L. T. Ghee & M. J. Valencia (Eds.), *Natural Resources of South-east Asia: Conflict Over Natural Resources in South-east Asia and the Pacific*, Singapore: Oxford University Press Pte. Ltd.

Valencia, M. J., "South-East Asian Seas: Oil Under Troubled Waters: Hydrocarbon Potential, Jurisdictional Issues and International Relations", 1985, Singapore: Oxford University Press Pte. Ltd.

Valencia, M.J. and Van Dyke, J.M., "Comprehensive Solutions to the South China sea disputes. Boundaries and Energy: Problems and Prospects", 1998, London: Kluwer Law International Ltd.

Valero, Gerardo Martin C., "Spratly Archipelago: Is the Question of Sovereignty Still Relevant? A Roundtable Discussion", 1993, Institute of International Legal Studies University of the Philippines Law Center.

ARTICLES

Aguilos, Maribel B., "Issue Focus: Designation of Sea Lanes in the Philippines", (January-June 1997), Vol. 1, No.1, *Ocean Law and Policy Series*, University of the Philippines Law Center, Institute of International Legal Studies.

Baker, J.C., et al., "Cooperative Monitoring Using Commercial Observation Satellites: Case Study of Transparency Regime for the South China Sea Disputes", (February 1999), George Washington University Space Policy Institute.

Bergin, A., "East Asian Naval Developments - Sailing Into Rough Seas", (2002) Pergamon Marine Policy, Australia Defence Force Academy, Australia Defence Studies Centre.

Djalal, Hasjim, "Indonesia and the South China Sea Initiative", 2001, *Ocean Development and International Law* (vol. 32, no. 2), London: Taylor and Francis Ltd.

Gjetnes, M., "The Spratlys: Are They Rocks or Islands?", 2000, *Ocean development and International Law* (vol. 32, no. 2), London: Taylor and Francis Ltd.

Gomez, Eduardo D., "Marine scientific research in the South China Sea and environmental security", 2001, *Ocean development and International Law* (vol. 32, no. 2), London: Taylor and Francis Ltd.

Guan, A.C., "The South China Sea dispute revisited", August 1999, Institute of Defence and Strategic Studies Singapore Working Paper Series no. 4, Singapore: Institute of Defence and Strategic Studies.

Haller-Trost, R., "International Law and the History of the Claims to the Spratly Islands"; September 1994, American Institute for Public Policy Research.

Hong Thao N., "Vietnam and the Code of Conduct for the South China Sea", 2001, Ocean Development and International Law (vol. 32, no. 2), London: Taylor and Francis Ltd.

Keyuan, Z., "Historic Rights in International Law and in China's Practice", 2001, Ocean Development and International Law (vol. 32, no. 2), London: Taylor and Francis Ltd.

Oude Elferink, A.G., "The islands in the South China Sea: How does their Presence Limit the Extent of the High Seas and the Area and the Maritime Zones of the Mainland Coasts", 2001, Ocean development and International Law (vol. 32, no. 2). London: Taylor and Francis Ltd.

Suarez, A. Suzette V., "Survey of Joint Cooperation Arrangements", January-December 2000, Ocean law and policy series (vol. 4, nos. 1-2), University of the Philippines, Institute of International Legal studies.

Tønnesson, S., "Introduction: South China Sea – Islands and the Code of Conduct", Ocean law and policy series (vol. 4, nos. 1-2, January-December 2000), University of the Philippines, Institute of International Legal studies.

UN CONVENTIONS AND INSTRUMENTS

United Nations Convention on the Law of the Sea 1982, (1982).

INTERNATIONAL CONTRACTUAL INSTRUMENTS

"ASEAN Declaration on the South China Sea", (22 July 1992). Manila, Philippines.

"Declaration on the Code of Conduct of Parties in the South China Sea between People's Republic of China and the Governments of the Members States of ASEAN", (14 November 2002), Phnom Penh, Kingdom of Cambodia.

"Joint statement between China and the Philippines on the framework of bilateral cooperation in the twenty-first century," (May 16, 2000).

"A code of conduct for human and regional security around the South China Sea".

"Joint statement, Republic of the Philippines-PRC Consultations of the South China Sea and on other areas of cooperation", (August 9-10, 1995).

"Joint statement on the fourth annual bilateral consultations between the Socialist Republic of Vietnam and the Republic of the Philippines", (7 November 1995), Hanoi, Vietnam.

INTERNET SOURCES:

Central Intelligence Agency, "Spratly Islands", *The World Factbook 2002*. Retrieved February 12, 2003 from the World Wide Web: <http://www.cia.gov/cia/publications/factbook/print/pg.html>

Cossa, Ralph A., "Security Implications of Conflict in the South China Sea: Exploring Potential Triggers of Conflict", *Center for Strategic and International Studies Pacific Forum PACNET Newsletter*. Retrieved 25 February 2003 from the World Wide Web: <http://www.csis.org/pacfor/pac1698.html>

CNN, "Row Grows Over Disputed Spratly Island", (21 March 2001). Retrieved February 12, 2003 from the World Wide Web: <http://www.cnn.com/2001/WORLD/asispac/east/03/21/China.Philippines.row>

Djalal, Hasjim, "South China Sea Island Disputes", *The Raffles Bulletin of Zoology*, Supplement No. 8 (The Biodiversity of the South China Sea), 2000, Retrieved July 09, 2003 from the World Wide Web: <http://rmbr.nus.edu.sg/latest/RBZs8-SCS/djalal.html>

Djalal, H. and Townsend-Gault, I., "Preventive Diplomacy: Managing Potential Conflicts in the South China Sea", 1999, Retrieved July 09, 2003 from the World Wide Web: <http://faculty.law.ubc.ca/scs/cats.htm>

Emmers, R., "ASEAN, China and the South China Sea: An Opportunity Missed", *Institute of Defence and Strategic Studies Commentaries*, November 2002, Nanyang Technological University, Singapore. Retrieved July 09, 2003 from the World Wide Web: http://www.ntu.edu.sg/idss/Perspective/Research_050228.htm

Gupta, V. and Bernstein, A., "Keeping an Eye on the Islands: Remote Monitoring in the South China Sea", May 1999, Retrieved July 09, 2003 from the World Wide Web: <http://www.gwu.edu/~spi/title.htm>

Ingram, S., "World: Asia Pacific Tension Rises Over Spratly Islands", 13 February 1999, BBC Online Network, Retrieved February 12, 2003 from the World Wide Web: <http://news.bbc.co.uk/1/hi/world/asia-pacific/278359.stm>

Joyner, Christopher C., "The Spratly Islands Dispute in the South China Sea: Problems, Policies, and Prospects for Diplomatic Accommodations", 1999, Retrieved July 09, 2003 from the World Wide Web: <http://www.stimson.org/japan/pdf/cbmapspratly.pdf>

Morada, N., "Multilateralism and the South China Sea Conflict: Options for the Philippines", 1999, *National Security Review* (vol. XIX, no. 1, 2nd sem.). Retrieved April 26, 2003 from the World Wide Web: <http://www.ndcp.edu.ph/pub/nsr.pdf>

Snyder, S., "The South China Sea Dispute: Prospects for Preventive Diplomacy", 1996, *United States Institute of Peace Special Report*. Retrieved February 13, 2003 from the World Wide Web: http://usip.org/oc/sr/snyder/South_China_Sea1.html

Snyder, S. and Cossa, R.A., "Measures to Manage Potential Disputes in the South China Sea", June 1, 2001, Center for Strategic and International Studies Pacific Forum PACNET Newsletter. Retrieved July 09, 2003 from the World Wide Web: <http://www.csis.org/pacfor/pac0122.htm>

United States Institute of Peace (USIP) Peace Watch, "The South China Sea", (October 1996).. Retrieved February 13, 2003 from the World Wide Web: <http://www.usip.org/pubs/PW/1096/scsmap.html>

United States Institute of Peace (USIP), "Special Report, The South China Sea Dispute: Prospects for Preventive Diplomacy", (October 1996), Retrieved February 13, 2003 from the World Wide Web: http://www.usip.org/oc/sr/snyder/South_China_Sea2.html

Valencia, M.J., Van Dyke, J.M. and Ludwig, N. A., "Interactive Map of the Spratly Islands, Sharing the resources of the South China Sea". Hawaii: University of Hawaii Press. Retrieved July 09, 2003 from the World Wide Web: <http://www.middlebury.edu/SouthChinaSea/macand/>

Valencia, M.J., Van Dyke, J.M. and Ludwig, N. A. (1999). "Alphabetical Listing of Spratly Island Reefs", 1999, Sharing the resources of the South China Sea. Hawaii: University of Hawaii Press. Retrieved July 09, 2003 from the World Wide Web: <http://www.middlebury.edu/SouthChinaSea/macand/alfabetical.htm>

Wiencek, D.G., "South China Sea flashpoint", The Jamestown Foundation China Brief", July 24, 2001, Retrieved July 09, 2003 from the World Wide Web: http://china.jamestown.org/pubs/view/cwe_001_002_004.htm

DISSERTATION

Quynh, L.Q., "The Disputes Over the South China Sea Islands", 1994, Unpublished master's thesis, World Maritime University, Malmö, Sweden.

DOCUMENTS

Macapagal-Arroyo, G., "Opening Statement During a Press Conference", November 05, 2002, Imperial II, Hotel Intercontinental, Phnom Penh, Kingdom of Cambodia

APPENDIX A

Table A.1 - Military Clashes in the South China Sea over the Past Two Decades

Date	Countries	Military Action
1976	China, Vietnam	China seized Paracel Islands from Vietnam
1988	China, Vietnam	Chinese and Vietnamese navies clash at Johnson Reef in the Spratly Islands. Several Vietnamese boats are sunk and over 70 sailors killed.
1992	China, Vietnam	Vietnam accuses China of drilling for oil in Vietnamese waters in the Gulf of Tonkin, and accuses China of landing troops on Da Luc Reef. China seizes almost 20 Vietnamese cargo ships transporting goods from Hong Kong from June - September.
1994	China, Vietnam	China and Vietnam have naval confrontations within Vietnam's internationally recognized territorial waters over oil exploration blocks 133, 134, and 135. Chinese claim area as part of their Wan' Bei-21 (WAB-21) block.
1995	China, Philippines	China occupies Philippine-claimed Mischief Reef. Philippine military evicts the Chinese in March and destroys Chinese markers.
1995	Taiwan, Vietnam	Taiwanese artillery fire on Vietnamese supply ship.
1996	China, Philippines	In January, three Chinese vessels engage in a 90-minute gun battle with a Philippine navy gunboat near Campones Island.
1997	China, Philippines	The Philippine navy orders a Chinese speedboat and two fishing boats to leave Scarborough Shoal in April; Philippine fishermen remove Chinese markers and raise their flag. China sends three warships to survey Philippine-occupied Panata and Kota Islands
1998	China, Philippines	In January, the Philippine navy arrests Chinese fishermen off Scarborough Shoal.
1998	Philippines, Vietnam	In January, Vietnamese soldiers fire on a Philippine fishing boat near Tennent (Pigeon) Reef.

Source: Federation of American Scientists, Military Analysis Network (2000), *Spratly Islands*, Retrieved February 12, 2003 from the World Wide Web: <http://www.fas.org/man/dod-101/ops/war/spratly.htm>

APPENDIX B

Alphabetical Listing of South China Sea Island Reefs

Name	Location	Description	Occupier
Alicia Annie Reef Da Suoi Ngoc (V) Xian'e Jiao (C) Arcellano (P)	9°25'N 115°26'E	A sand "cay", 1.2 m high. Many rocks above high tide line [9, 16, 18]. Reef encloses a lagoon.	None [7]
Alison Reef Da (or Bai) Toc Tan (V) Liumen Jiao (C)	8°51'N 114°00'E	Naturally above water only at low tide [18]. Encloses a lagoon.	Vietnam no date [1, 3, 7, 20]
Amboyna Cay Dao An Bang (V) Anbo Shazhou (C) Kalantiyaw (P) Pulau Amboyna Kecil (M)	7°51'N 112°55'E	1.6 ha, 2 m high. Two parts: East part consists of sand and coral, west part is covered with guano. Has fringing reef. An obelisk, about 2.7 m high, stands on the SW corner. Little vegetation. Lighthouse operational since May 1995. Heavily fortified [8, 16, 18; Japan Times, 5/29/95, p. 3].	Vietnam 1975 or '78 [1, 3, 7, 15, 20]; 1979 [8]
Ardasier Reef Bai Kieu Ngua (V) Andu Tan (C), Xibo Jiao (T) Terumbu Ubi (M)	7°38'N 113°56'E	Naturally above water only at low tide. Encloses a lagoon. Has a few sandy patches [18]. Malaysia presently has 20 soldiers stationed here [7].	Malaysia 1986 [1, 3, 7, 8]
Baker Reef Gongzhen Jiao (C)	10°43.5'N 116°10'E	Awash at low tide [18].	None
Ban Than Jiao (C) (Part of Tizard Banks)	10°24'N 114°24'E	Small drying reef halfway between Taiwan-occupied Itu Aba and Vietnam-occupied Sand Cay. "Construction project" underway in spring 1995 [FBIS-EAS-95-065, 4/5/95, p. 41].	Taiwan March '95 [FBIS]
Barque Canada Reef Bai Thuyen Chai (V) Bai Jiao, Liwei Dao (C) Terumbu Perahu (M) Mascado (P)	8°10'N 113°18'E	Coral. Highest rocks are 4.5 m high, at SW end. Much of reef is above water at high tide. Some sandy patches. 18 miles long. Its military structures were recently upgraded [9], [16] (which gives height as 4.5 m), [18]; [20] and [Asiaweek, 7/17/92, p. 22] say Malaysia occupies.	Vietnam 1987 [1, 7, 14] (Malaysia, 1988 [20])
Bombay Castle		See Rifleman Bank.	
Bombay Shoal Pengbo Bao (Ansha) (C)	9°26'N 116°55'E	Several rocks are exposed at low tide. Surrounds a lagoon [18].	None
Boxall Reef Niuchelun Jiao (C)	9°36'N 116°11'E	Above water only at low tide. No lagoon [18].	None
Central Reef (Part of London Reefs) Dao Truong Sa Dong (V) Zhong Jiao (C)	8°55'N 112°24'E	SW part is a sandbank which barely submerges at high tide. The rest is coral reef, awash, surrounding a lagoon [9, 18].	Vietnam 1978 [3, 7, 11, 20]
Collins Reef (Part of Union Banks) Da Co Lin, Bai Vung May (V) Guihan Jiao (C)	9°45'N 114°14'E	Also known as Johnson North Reef, as it is connected to Johnson South Reef. A "coral dune" is located at the southeast corner, above the high tide line [9].	Vietnam no date [1, 3, 7, 20]

Name	Location	Description	Occupier
Commodore Reef Da Cong Do (V) Siling Jiao (C) Terumbu Laksamana (M) Rizal (P)	8°21'N 115°17'E	A sand "cay", 0.5 m high, surrounded by two lagoons. Parts of reef above water at high tide [9, 18]. Some structures [7, 16].	Philippines 1978 [1, 3, 20]; [7] says deserted since 1986.
Cornwallis South Reef Da Nui Le (V) Nanhua Jiao (C)	8°44'N 114°11'E	Naturally above water only at low tide. Encloses a lagoon [18]. [3] claims that Malaysia has one officer and eight soldiers stationed here.	Vietnam 1988 [1, 18, 20]
Quarteron Reef (Part of London Reefs) Bai Chau Vien (V) Huayang Jiao (C)	8°53'N 112°51'E	Coral rocks only. Highest are 1.5 m high, on the north. No lagoon [9, 18]. [13] calls this Quarteron Reef.	PRC 1988 [1, 3, 7, 8]
Da Ba Dao (V)		See Whitson Reef.	
Dallas Reef Da Da Lat (V) (?) Guangxing Jiao (C) Terumbu Laya (M)	7°38'N 113°48'E	Naturally above water only at low tide. Encloses a lagoon [18]. One officer and eight soldiers stationed here in 1988 [3]; Asiaweek, 5/20/88]. Malaysia is also using this reef for tourism [FEER, 9/12/92, p. 14].	Malaysia 1987 [7, 20]
Discovery Great Reef Da Lon (V) Daxian Dao (C); Paredes (P)	9°59'N 113°51'E	Several rocks are above water at high tide. Most of reef is above water at low tide. Has lagoon [9, 18].	Vietnam 1988 [1, 3, 7, 20]
Discovery Small Reef Da Nho (V) Xiaoxian Jiao (C)	10°01'N 114°02'E	Above water only at low tide [18]. [3] states that Vietnam occupies this reef, but no other author supports his claim.	None? [7]
East Reef (Part of London Reefs) Da Dong. Con Dong (V) Dong Jiao (C) Silangan (P)	8°52'N 112°46'E	Rocks up to 1 m high. Encloses a lagoon [9, 16, 18].	Vietnam 1988 [3, 7, 20]
Eldad Reef (Part of Tizard Banks) Anda Jiao (C) Beting Burgai (P)	10°21'N 114°42'E	Only a few large rocks are naturally above water at high tide [9, 18]. [FEER, 8/13/92] claims that this reef is occupied by PRC. [7] gives Guihan Jiao as the Chinese name, but [19] and [13] grant this name to Collins Reef.	Vietnam? Between 1978 & '83 [3, 7, 13]
Erica Reef Boji Jiao (C) Terumbu Siput (M)	8°07'N 114°10'E	[18] says reef is above water only at low tide, but [9] claims that "some isolated rocks on the eastern edge might stand above high water." Encloses a lagoon [18].	None [7]
Fiery Cross Reef(s) (Also called Northwest Investigator Reef) Da Chu Thap (V) Yungshu Jiao (C) Ka(gi)lingan (P)	9°37'N 112°58'E	Rocks up to 1 m high [18]; [5] says all below high tide, but guano deposits disagree. PRC built a navy harbor by blasting, piling up and cementing coral, but says no soldiers stationed here. 8,080 square meters, 14 miles long, with airstrip. "Marine observation station" built in 1988; coconut, fir and banyan trees planted as well [1, 5, 9]. Actually 3 reefs.	PRC 1988 [1, 3, 4, 7, 8]
First Thomas Shoal Bai Suoi Nga (V) Xinyi Ansha, Xinyi Jiao (C)	9°20'N 115°57'E	A few rocks are permanently above sea level. Much of the reef is above water at low tide. Encloses a lagoon [18].	None [7]

Name	Location	Description	Occupier
Flat Island Dao Binh Nguyen (V) Feixin Dao, Antang Dao (C) Patag (P)	10°50'N 115°49'E	A low, flat, sandy cay, 240 by 90 m, subject to erosion. Has a nearby reef which is above water at high tide [16, 18]. [12] claims that area is only 0.75 acres and elevation is less than 5 m, with large guano deposits. No vegetation [9].	Philippines no date [1, 3, 7, 12, 20]
Gaven Reefs (Part of Tizard Banks) Da Ga Ven (V) Nanxun Jiao (C) (Northern reef) Xinan or Duolu Jiao (C) (S. reef)	10°13'N 114°12'E	A sand dune, 2 m high. Has fringing reef plus a reef 2 miles to the south, both covered at high tide [16, 18]. [20] calls this Gaven Island. Now all cement and a raised metal frame, with two-story buildings placed on top [FBIS-CHI-94-189, 9/29/94]. Southern reef was occupied by PRC on 7/4/92 [13].	PRC 1988 [1, 3, 7, 12, 20, FBIS]
Grainger Bank Bai Que Duong (V) Lizhun Tan (C)	7°52'N 110°29'E	Shallowest natural depth is either 9 m [18] or 11 m [9].	Vietnam 1989 [6, 13]
Grierson Reef (Part of Union Atoll) Ca Nham, Sinh Ton Gong (V) Ranqing Shazhou (C)	9°54'N 114°35'E (both vary by ±2')	[18] lists a sand cay w/ fringing reef at about this spot, but doesn't give its name. Reported coordinates vary. Probably synonymous with Sin Cowe East Island, but some sources list Sin Cowe East Island as being occupied by Vietnam since 1988 and Grierson as being unoccupied.	None? Vietnam 1988?
Half Moon Shoal Bai Trang Khuyet (V) Banyue Jiao (C)	8°52'N 116°16'E	Several rocks on the eastern side rise one to two feet above high tide. Encloses a lagoon [9, 18]. PRC has placed a stone marker here.	None
Hardy Reef Banlu Jiao (C)	10°07'N 116°08'E	Naturally above water only at low tide. Surrounds a narrow strip of sand [18].	None [7]
Higgins Reef (Part of Union Banks) Quyuen Jiao (C)	9°48'N 114°24'E	Only listed in [9], which clearly distinguishes it from Lansdowne Reef. Only above water at low tide.	None
Holiday Reef (Part of Union Banks) Changxian Jiao (C)	9°49'N 114°23'E	Above water only at low tide [18].	None [7]
Hopps Reef Da Hop (V) Lusha Jiao (C)	10°15'N 115°23'E	Above water only at low tide [18]. Part of Southampton Reefs.	None [7]
Hughes Reef (Part of Union Banks)	9°55'N 114°30'E	Above water only at low tide [9, 18].	None
Investigator Reef Bai Tham Hiem (V) Langkuo, Yuya Jiao (C) Terumbu Peninjau (M)	8°07'N 114°40'E	[18] says reef is above water only at low tide, but [9] claims that "some large rocks at the western end might be visible at high water." Encloses a lagoon.	None [7]
Iroquois Reef Houteng Jiao (C)	10°37'N 116°10'E	Above water only at low tide.	None [7]
Irving Reef Dao Ca Nham (V) Huo'ai Jiao (C) Balagtas (P)	10°53'N 114°56'E	Most sources say naturally above water only at low tide, and Jiao is Chinese for reef. Yet [20] calls this Irving Cay, and [9] states that a very small cay lies at the reef's northern end.	Philippines no date [7, 8, 20]

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)	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. Coral lagoon [18]. 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]

Name	Location	Description	Occupier
Loaita Nan Bai Loai Ta (V) Zhuangyuan Jiao, Shuanghuang Shazhou (C)	10°42.5'N 114°19.5'E	Also called Loaita Southwest Reef. Never above water [18]. PRC may have occupied either this or Loaita Cay in 1988 [7, 13, 19]. [9] claims that this and Loaita Cay may be one and the same.	PRC? 1988? [7]
Louisa Reef Nan Tong Jiao (C) Terumbu Semarang Barat Kecil (M)	6°20'N 113°14'E	Rocks 1 m high [7, 9, 16, 18]. [7] says it's deserted, and [20] claims that it is occupied by the PRC. China did plant a stone marker here in 1988, which Malaysia promptly removed [7]. Malaysia operates a lighthouse (beacon/"accommodation module") here.	Malaysia no date
Loveless Reef (Part of Union Banks) Hua Jiao (C)	9°49'N 114°16'E	Above water only at low tide [18]. [3] claims that Vietnam occupies this reef.	None [7]
Mariveles Reef Bai (or Da) Ky Van (V) Nanhai Jiao (C) Terumbu Mantanani (M)	7°59'N 113°50'E	A sand cay, 1.5-2 m high, surrounded by two lagoons, parts of which are above water at high tide [9, 16, 18]. Malaysia has 20 soldiers stationed here [7].	Malaysia 1986 or '87 [1, 3, 7, 8, 20]
Menzies Reef (Part of Loaita Bank) Da Men Di (V) Mengzi Jiao (C)	11°09'N 114°49'E	Awash at low tide [18].	None [7]
Mischief Reef Da Vanh Khan (V) Meiji Jiao (C)	9°55'N 115°32'E	Some rocks above water at low tide. Has a lagoon [18]. In Feb. 1995, the Philippines found that the PRC had built a wooden complex on stilts here for fishermen [Many news sources]. Some reports confuse this with Northeast Investigator Shoal.	PRC 1995
Namyit Island (Part of Tizard Banks) Dao Nam Yit (V) Hungma Dao, Hongxiu Dao (C) Binago (P)	10°11'N 114°22'E	Most sources say about 6 m high, but [9, 12 and 16] say about 19 m. Covered with small trees, bushes and grass in 1963. Fringing reef [18].	Vietnam 1974 or '75 [1, 3, 7, 12, 20]
Nanshan Island Dao Vinh Vien (V) Mahuan Dao (C) Lawak (P)	10°45'N 115°49'E	2.5 m high, covered with coconut trees, bushes and grass in 1963. 580 m long, on the edge of a submerged reef. Has a small airstrip [16].	Philippines no date [1, 7, 8, 12, 20]
North Reef (Part of North Danger Reef) Shuangzi, Gongshi or Dongbei Jiao (C)	11°28'N 114°22'E	At NE end of North Danger Reef. Naturally above water only at low tide [18]. [7] states that PRC troops may be stationed on North Danger Reef, and this is the only feature on the atoll not definitely occupied by someone else. [13] claims that Vietnam has occupied this reef since 1987.	PRC? 1989? [7]
Northeast Cay (Part of North Danger Reef) Dao Song Tu Dong (V) Beizi Dao (C) Parola (P)	11°28'N 114°21'E	3 m high, covered with grass and thick trees in 1963. 685 x 90 m, or 20 acres [16, 20]. Much of ringing reef is above water at high tide. Supported a beacon in 1984. Guano deposits [12]. [9] claims that Shira Islet, a "pronounced hummock," lies 320 m to the south.	Philippines 1968 [16] 1971 [7] [3, 12]
Northeast Investigator Shoal Haikou Jiao (C)	9°10'N 116°27'E	Part of this reef is above water at low tide [18], and [9] claims that some rocks might be visible at high tide. Some reports confuse this with Mischief Reef.	None

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]

Name	Location	Description	Occupier
<i>Shira Islet</i>		See Northeast Cay.	
<i>Sin Cowe Island</i> (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.
<i>Sin Cowe East Island</i> 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?
<i>South Reef</i> (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]
<i>Southampton Reefs</i>		See Hopps and Livock Reefs.	
<i>Southwest Cay</i> (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]
<i>Sprattly Island</i> 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]
<i>Subi Reef</i> 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]
<i>Swallow Reef</i> 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]
<i>Tennent Reef</i>		See Pigeon Reef.	
<i>Thitu Island</i> 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]

Name	Location	Description	Occupier
<i>Tieshi Jiao (C)</i> (NE of Thitu Island)	11°05'N 114°22'E	Above water only at low tide [18]. Not in [7] or [16], but listed in [19] and found on detailed maps, often at slightly different coordinates.	None
<i>Vanguard Bank</i> Bai Tu Chinh (V) Wan-an Tan (C)	7°30'N 109°35'E	Shallowest natural depth is 16 m [18]. Vietnam has run two "economic-technological service stations" in this area since July 1994 [FBIS-EAS-94-146, 7/29/94, p. 87].	Vietnam 1989 [6, 7, 13]
<i>West Reef</i> (Part of London Reefs) Da Tay, Con Tay (V) Xi Jiao (C)	8°52'N 112°15'E	East part is a sand "cay", 0.6 m high. West part is coral reef which is above water only at low tide. Between them is a lagoon [16, 18]. Vietnam erected a lighthouse here in May or June of 1994 [Indochina Digest, 5/27/94, p. 2].	Vietnam no date [7]
<i>West York Island</i> Dao Ben Lac or Loc (V) Xi Yue Dao (C) Likas (P)	11°05'N 115°01'E	Covered with bushes, mangroves and coconut palms in 1963. 500 x 320 m [16, 18]; [12] claims it covers less than 20 acres. Fringing reef is partly above water at low tide [18].	Philippines no date [1, 3, 7, 8, 12, 20]
<i>Whitson Reef</i> (Part of Union Banks) Da Ba Dao (V) Niue Jiao (C)	10°00'N 114°43'E	Some rocks naturally above water at high tide [9]. Also spelled Whitsun. [9, 19] and others call this Niue Jiao in Chinese, but [7] gives this name to nearby Grierson Reef. There may have been a small cay here in 1957, but none remains today.	PRC March 1992 [1]
<i>Zhangxi Jiao (C)</i> (Part of Union Banks)	9°46'N 114°24'E	Small reef, partly above water only at low tide [18]. Not in [7], [9] or [19], but present on detailed maps.	None
<i>Nameless reef</i> between Hughes and Holiday Reefs	9°56'N 114°31'E	Above water only at low tide. Not in [7] or [19], but it appears on detailed maps.	None
<i>Two nameless reefs</i> east of Lankiam Cay	9°45-46.5' N 114°36'E	One reef is above water only at low tide; according to [18], there is a sand cay atop the other. No other source lists them, but they both appear on detailed maps as drying reefs.	None
<i>Two nameless reefs</i> west of Sandy Cay and Thitu Island	11°2-4'N 114°11.5- 16'E	Above water only at low tide. Not in [7] or [19], but they appear on detailed maps.	None

Notes:

In Mandarin Chinese, Dao = Island; Shazhou = Cay; Jiao = Reef; Ansha = Shoal; and Tan = Bank.

FBIS = Foreign Broadcast Information Service Daily; FEER = Far Eastern Economic Review; IBRU = International Boundaries Research Unit, Boundary Security Bulletin; m = meters. All miles are nautical miles.

Source: Valencia, Mark J., Van Dyke, Jon M. & Ludwig, Noel A. Sharing the Resources of the South China Sea. Hawaii : University of Hawaii Press, c1999. Appendix 1. Retrieved July 09, 2003 from the World Wide Web: <http://www.middlebury.edu/SouthChinaSea/macand/alphabetical>.

Individual national claims are listed below English reef names in each respective country's language and the current occupier may be found in the far right column. Some reefs are linked to further pertinent information such as photographs of physical installations, other web-sites, and pictures of the various reefs.

APPENDIX C

Table C.1 - Disputes over Drilling and Exploration in the South China Sea

Date	Countries	Disputes
1992	China, Vietnam	China signs a contract with U.S. firm Crestone in May to explore for oil near the Spratly Islands in an area that Vietnam says is located on its continental shelf, over 600 miles south of China's Hainan Island. In September, Vietnam accuses China of drilling for oil in Vietnamese waters in the Gulf of Tonkin.
1994	China, Vietnam	Crestone joins with a Chinese partner to explore China's Wan' Bei-21 (WAB-21 block. Vietnam protests that the exploration is in Vietnamese waters in their blocks 133, 134, and 135.
1996	China, Vietnam	Vietnam leases exploration blocks to U.S. firm Conoco in April. Vietnamese blocks 133 and 134 cover half the zone leased to Crestone by China. In May, China reaffirms a national law claiming the South China Sea as its own.
1997	China, Vietnam	Vietnamese protest after Chinese Kantan-3 oil rig drills near Spratly Islands in March. The drilling occurs offshore Da Nang, in an area Vietnam calls Block 113. The block is located 64 nautical miles off Chan May cape in Vietnam, and 71 nautical miles off China's Hainan Island.

Source: Center for Naval Analyses and the Institute for National Strategic Studies and Federation of American Scientists, Military Analysis Network (2000), *Spratly Islands*, Retrieved February 12, 2003 from the World Wide Web: <http://www.fas.org/man/dod-101/ops/war/spratly.htm>

APPENDIX D

Table D.1 – Islands claimed and Occupied by the States

Occupant State	Name of island
China	Cualteron Reef Da Ba Dao or Whitson Reef Fiery Cross Reef or Northwest Investigator Reef First Thomas Shoal Gaven Reef Half Moon Shoal Jackson Reef Johnson South Reef Kennan Reef Ladd Reef Len Dao Reef Loaita Cay Loaita Nan Mischief Reef North Reef
Taiwan	Ban Than Jiao Itu Aba Island
Vietnam	Alison Reef Amboyne Cay Barque Canada Reef Bombay Castle or Rifleman Bank Cantral Reef Collins Reef or Johnson North Reef Cornwalis Discovery Great Reef East Reef (Eldad Reef Grainger Reef Lansdowne Reef Nan Yit Island Pearson Reef Petley Reef Pigeon Reef or Tennent Reef Prince Consort Bank Prince of Wales Bank Sand Cay Sin Cowe Island South Reef Southwest Cay Spratly Islands Vanguard Reef West Reef
Philippines	Commodore Reef Flat Island Irving Reef Lankian Island Northwest Cay or Shira Islet Thi Tu Island West York Island

Malaysia	Ardasier Reef Dallas Reef Louisa Reef Swallow Reef
Brunei	Louisa Reef
No occupants	Alicia Annie Reef Baker Reef Bombay Shoal Boxall Reef Discovery Small Reef Erica Reef First Thomas Shoal Grierson Reef Half Moon Shoal Hardy Reef Higgins Reef Hopps Reef or Southampton Reef Hughes Reef Investigator Reef Iroquis Reef Jackson Reef Livock Reef or Southampton Reefs Loveless Reef Menzies Reef Owen Shoal Reed Bank Royal Captain Shoal Royal Charlotte Reef Sandy Cay Scarborough Reef Tie Shi Jiao Zhangxi Jiao Nameless reef between Hughes and Holiday Refs Two nameless reefs east of Lankian Cay Two nameless reefs west of Sandy Cay and Thitu Island

Source: Valencia, Mark J., Van Dyke, Jon M. & Ludwig, Noel A. Sharing the Resources of the South China Sea. Hawaii : University of Hawaii Press, c1999. Appendix 1. Retrieved July 09, 2003 from the World Wide Web: <http://www.middlebury.edu/SouthChinaSea/macand/alphabetical>.

APPENDIX E

Joint Statement Between China and the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century (16/05/2000)

Joint Statement Between the Government of the People's Republic of China and the Government of the Republic of the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century

The People's Republic of China and the Republic of the Philippines have made great progress in their cooperation in the political, economic, cultural, educational, scientific and technological and other fields on the basis of equality and mutual benefit since the establishment of diplomatic relations on 9 June 1975, bringing concrete benefits to the two peoples.

The Government of the People's Republic of China and the Government of the Republic of the Philippines (hereinafter referred to as "the two sides") believe that it is now opportune to establish a framework for further bilateral cooperation.

This new framework will draw on the strength of their long, historical friendship and geographical proximity in order to advance the fundamental interests of their two peoples and thereby contribute to peace, security, stability, sustained growth, and development in Asia and the rest of the world.

The two sides will establish a long-term and stable relationship on the basis of good neighbourliness, cooperation, and mutual trust and benefit.

They will undertake to elevate China-Philippines relations to greater heights in the 21st century and to this end, state the following:

1. The two sides reaffirm that the purposes and principles of the United Nations Charter, the Five Principles of Peaceful Coexistence, the principles established in the Treaty of Amity and Cooperation in Southeast Asia and other universally recognized principles of international law are the basic norms governing the relations between the two countries.

2. The two sides agree to maintain close and frequent high-level contacts and exchange of visits at all levels, including government officials, the private sector, non-government organizations, the academic community, press and media, and their peoples to contribute to a comprehensive, stable and sustained development of bilateral relations.
3. The two sides agree to maintain and strengthen the mechanism of annual meetings between senior officials and their respective foreign ministries for consultations on bilateral, regional, and international issues of mutual concern.
4. The two sides agree to make further exchanges and cooperation in the defence and military fields, strengthen consultations between their military and defence personnel and diplomatic officials on security issues, to include exchanges between their military establishments on matters relating to humanitarian rescue and assistance, disaster relief and mitigation, and enhance cooperation between their respective strategic and security research institutes.
5. The two sides acknowledge the similarities in their respective national development goals, and agree to optimize the use of existing frameworks for cooperation in the fields of trade, investment, science and technology, agriculture, education and culture, tourism, civil aviation, and taxation. They will undertake the following:
 - a) Promote better bilateral trade and investment flows, and improve industrial cooperation by:
 - i. Exploring all possible measures to effect increases in trade volumes and product choices;
 - ii. Agreeing to provide a conducive market environment through identification and removal of trade and investment impediments;
 - iii. Improving transparency of trade-related regulations;
 - iv. Undertaking investment promotion, and joint investment in third countries; and
 - v. Encouraging a pro-active role for the business sectors of both sides.

- b) Intensify exchanges and cooperation in the financial field on the basis of reciprocity. They will work together for the reform of the international financial system.
 - c) Expand scientific and technological cooperation in accordance with the Agreement on Science and Technology Cooperation signed on 14 March 1978, and enter into new areas of cooperation through joint research, technology transfer and other means.
 - d) Implement the Agreement on the Cooperation in the Field of Agriculture signed on 13 September 1999, by promoting economic and technological cooperation in the agricultural field, increasing data exchange, conducting joint research, and encouraging their enterprises, scientific research institutes, and business groups concerned to take an active part in agricultural cooperation, so as to bring about common growth of the two economies.
 - e) Continue to implement the biennial executive programs in accordance with the Cultural Agreement signed on 8 July 1979. They will further enhance their exchanges and cooperation in the fields of culture, arts, education, film, sports, health care, religion, social science and book publication through, among others, the exchange of delegations and art troupes, visits by experts, and exhibitions held in each other's country.
 - f) Further develop bilateral tourism cooperation and expand the tourism market in an effort to achieve common development of their tourism industries.
6. Either side shall accord to the other due facilitation in accordance with international norms so that the nationals of either country who reside, work or travel in the territory of the other country may receive consular protection by the appropriate officials of their own country when they are in distress or involved in legal, labor or other disputes.
7. The two sides will continue to explore new areas for cooperation among their law enforcement, judicial, security, and defense agencies in order to address the serious threats posed by organized transnational crimes.

8. The two sides will continue to provide policy guidance to their respective national agencies in order to strengthen the role of the various joint committees in identified areas of cooperation.
9. The two sides commit themselves to the maintenance of peace and stability in the South China Sea. They agree to promote a peaceful settlement of disputes through bilateral friendly consultations and negotiations in accordance with universally-recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea. They reaffirm their adherence to the 1995 joint statement between the two countries on the South China Sea and agree not to take actions that might complicate or escalate the situation. The two sides expressed their determination to follow through the work of the China-Philippines Working Group on Confidence Building Measures to enhance peace and stability in the region. They reiterate that they will contribute positively toward the formulation and adoption of the regional Code of Conduct in the South China Sea.
10. The two sides recognize and respect the universality of human rights taking into account their distinct culture, tradition, and practices. They shall encourage exchanges and cooperation on human rights on the basis of equality, mutual respect, with a view to enhancing mutual understanding. They will work together for the progress and protection of the cause of human rights.
11. The two sides affirm their commitment to respect the independence, sovereignty, and territorial integrity of each other. The Philippine Government reaffirms its one China policy and recognizes that Taiwan is an integral part of Chinese territory.
12. The two sides agree to deepen cooperation between the People's Republic of China (PRC) and the Association of Southeast Asian Nations (ASEAN), recognizing that close China-Philippines relations contribute to the promotion of PRC-ASEAN and ASEAN+3 (PRC, Republic of Korea, and Japan) relations. They will jointly promote dialogue and cooperation in East Asia in accordance with the Joint Statement on East Asia Cooperation issued in Manila on 28 November 1999 to make a significant contribution to the peace, stability and prosperity of the region and the world.

13. The two sides agree to continue their coordination and cooperation at the Association of Southeast Asian Nations, ASEAN Regional Forum, Asia-Pacific Economic Cooperation, ASEM, World Trade Organization, United Nations, and other multilateral fora. They will actively promote and protect the common interests of developing countries in regional and international fora, particularly in the areas of trade and finance, human resources development, and the promotion of the interests of labor, farmers, and women and children, among others.
14. The two sides agree to promote the establishment of an equitable and rational world order.

The above statement will be jointly reviewed by the ministers of foreign affairs of the two sides, if requested by either side.

Done in Beijing, China, on this 16th day of May 2000.

For the Government of the
People's Republic of China:

Tang Jiaxuan
(signed)

For the Government of the
Republic of the Philippines:

Domingo L. Siazon, Jr.
(signed)

APPENDIX F
ASEAN DECLARATION ON THE SOUTH CHINA SEA
Manila, Philippines, 22 July 1992

WE, the Foreign Ministers of the member countries of the Association of Southeast Asian Nations;

RECALLING the historic, cultural and social ties that bind our peoples as states adjacent to the South China Sea;

WISHING to promote the spirit of kinship, friendship and harmony among our peoples who share similar Asian traditions and heritage;

DESIROUS of further promoting conditions essential to greater economic cooperation and growth;

RECOGNIZING that we are bound by similar ideals of mutual respect, freedom, sovereignty and jurisdiction of the parties directly concerned;

RECOGNIZING that South China Sea issues involve sensitive questions of sovereignty and jurisdiction of the parties directly concerned;

CONSCIOUS that any adverse developments in the South China Sea directly affect peace and stability in the region. -

HEREBY

1. EMPHASIZE the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force;
2. URGE all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes;
3. 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 combatting piracy and armed robbery as well as collaboration in the campaign against illicit trafficking in drugs;

4. 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;

5. INVITE all parties concerned to subscribe to this Declaration of principles.

Signed in Manila, Philippines, this 22nd day of July, nineteen hundred and ninety-two.

HRH Prince Mohamed Bolkiah
MINISTER OF FOREIGN AFFAIRS
BRUNEI DARUSSALAM

Ali Alatas
MINISTER FOR FOREIGN AFFAIRS
REPUBLIC OF INDONESIA

Datuk Abdullah Bin Haji Ahmad Badawi
MINISTER OF FOREIGN AFFAIRS
MALAYSIA

Raul S. Manglapus
SECRETARY OF FOREIGN AFFAIRS
REPUBLIC OF THE PHILIPPINES

Wong Kan Seng
MINISTER FOR FOREIGN AFFAIRS
REPUBLIC OF SINGAPORE

Arsa Sarasin
MINISTER OF FOREIGN AFFAIRS
KINGDOM OF THAILAND