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THE DISPUTES OVER THE SOUTH CHINA SEA ISLANDS

By

LE QUY QUYNH

Vietnam

A dissertation submitted to the World Maritime University in partial fulfilment of the requirements for the award of the degree of

Master of Science

in

GENERAL MARTIME ADMINISTRATION

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

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

Signature: 
Date: 25 October 1994

Supervised by:

Professor H.R Williamson
World Maritime University

Assessed by:

Professor T. J. Sampson
Course Professor of GMA
World Maritime University

Co-assessed by:

Professor Edgar Gold
President of Canadian Maritime Law Association
Visiting Professor
World Maritime University
To my Wife Hong Lien
and my Daughters Hong Nhung and Hong Van
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ABSTRACT

The Dissertation is a research into South China Sea Islands disputes and a relevant case of the dispute over the continental shelf between Vietnam and China in South China Sea.

So far the dispute over Paracel Islands in South China Sea involving only two countries: Vietnam and China is less paid of international attention compared to the dispute over Spratly Islands involving five States in the region: Vietnam, China, Taiwan, the Philippines and Malaysia which is a very popular topic researched by many scholars from many different countries of the World.

In this Dissertation the location and strategic importance of the both Islands in South China Sea and the geopolitical factors leading the states in the region to the disputes are described. The history and the current situation of the disputes as well as the claims of the parties are summarized and analyzed carefully on the ground of international law and practices.

Although the disputed area between Vietnam and China on Vietnam's Continental Shelf is geographically and legally located outside of the Spratly Islands dispute area and irrelevant to the other parties in the Spratly dispute, but at least it has some relevant legal aspects from which the validity of the parties' claims is analyzed. The analysis of the legal validity of the claims is leading to a conclusion that the disputed area is located within the Continental Shelf of Vietnam and the Contract between China and a private American Oil Company - Crestone on oil and gas exploration in this area is illegal. The activities of oil and gas exploration
carried out by the Crestone Company and China should be stopped and the Contact must be abandoned.

In its conclusion some suggestions for the dispute resolution is proposed on the ground of prevailing international law and practices. However, these proposals are far realistic in practice. In order to reach a common understanding and promote wider cooperation between the parties in the dispute, the informal Workshops sponsored by Canada and Indonesia have been held regularly with participation of many scholars, government officials, scientists from many countries in the region and of the world. The process of these workshops is summarized in this chapter.

Due to a high risk of military conflicts in the area some Confidence Building Measures suggested in this chapter are needed to reduce the tension in the area and to get the mutual commitments of the parties in the dispute not to use military forces in resolving the dispute. All disputes must be resolved by peaceful negotiations and different mechanisms under prevailing international law and practices.
CHAPTER I

INTRODUCTION

I.1 Vietnam's Attitude to the Maritime Boundary Disputes in South China Sea.

Vietnam is a coastal state in Southeast Asia with a long coastline of 2,828 nautical miles. Vietnam has claimed an Exclusive Economic Zone of 210,600 square nautical miles and numerous Islands in South China Sea. The Vietnamese have a long tradition of marine use in their economic development, transportation and defense of their country. Especially with the present new "open door" economic policy, the development of Vietnam's economy is more than ever dependent on marine resources development such as fishing, oil and gas development, transportation,...

Vietnam has issued the proclamation on the Territorial Sea, Contiguous Zone, Exclusive Economic Zone and Continental Shelf on May 12, 1977 and the proclamation on the baseline on November 12, 1982. Vietnam ratified the 1982 United Nations Convention on the Law of the Sea in June 1994. It will take some times for Vietnam to make modifications and elaboration's to Vietnam's laws to conform with the Law of the Sea and regional practice. Vietnam believes that the implementation of the Convention could have very important contributions to
reducing regional tensions\textsuperscript{1} and resolving maritime disputes in the South China Sea and therefore the development of marine resources could be promoted rapidly by the coastal states\textsuperscript{2}.

Vietnam has maritime boundaries with many countries in the region and all of them are still in dispute. Vietnam has overlapping claims or unsettled maritime boundaries with China in the Gulf of Tonkin, with Indonesia north of Natuna Islands, with Cambodia, Thailand and Malaysia in the Gulf of Thailand. The most complicated disputes are the dispute over the Paracel Islands with China and the dispute over Spratly Islands with China, Taiwan, the Philippines and Malaysia (Figure 1).

With the improvement of the relationship between Vietnam and ASEAN states and the normalization of relationships with China, Vietnam is eager to resolve its maritime disputes with every state in South China Sea. The settlement of the maritime disputes and other disputes through peaceful negotiations would promote a good environment for Vietnam to rejoin the community of Southeast Asian Nations. On other hand, implementing the "open door" economic policy and the State's Strategy of economy development Vietnam needs to speed up the exploration and exploitation of marine resources, especially offshore oil and gas, which has had a decisive role for the development of the country's economy. But to develop offshore oil and gas Vietnam needs to resolve its maritime boundaries and other disputes and so guarantee the safety of foreign investments in these areas.

It is impossible to resolve all maritime boundary disputes and other disputes in a short time even between states with very close relations. Vietnam is very

\textsuperscript{1}...
interested in the joint development of disputed areas. In practice Vietnam has had a joint development project of offshore oil and gas in a disputed area with Malaysia in the Gulf of Thailand.  

Vietnam believes that the joint development in disputed areas could improve the negotiating process for resolving disputes and the determination of maritime boundaries. To avoid causing unnecessary tensions and instability in the region and spoiling the relations between the nations all states in the disputes are urged not to carry out any unilateral exploration and exploitation in disputed areas.

I.2 The Disputes over South China Sea Islands.

The disputes over the South China Sea Islands and their waters have been escalating more than ever in the last three decades of the 20th century. There are many reasons for the disputes but the most important reasons are the strategic location of the islands, natural marine resources, both living and non-living, of the waters around these Islands as well as a strategic waterway between Pacific and Indian Oceans.

The conflicting claims were initially driven by predominantly economic considerations involving the development of potential hydrocarbon resources. However, the changes of military balance in South China Sea, particularly the withdrawal of former Soviet Union Navy forces from Cam Ranh Bay of Vietnam and United States Navy from the Subic Base of the Philippines, the expansion of Chinese military forces to South China Sea, have compelled the states in the South
China Sea to re-examine the impact of concerns regarding national security and political stability on claims to territorial sovereignty and extended maritime jurisdiction in South China Sea. The conflicting claimants have tried to systematically organize, and continuously refine their legal positions in support of the validity of their claims.

The South China Sea Islands are too small to support permanent human settlements and are not distinguished by any significant on-shore natural resources. However they are deemed strategic to the economic and political interests of the states on the South China Sea primarily because, under prevailing principles of customary and conventional international law, these islands are possible base points from which states may extend their claims to exclusive jurisdictional competence over the waters and resources of the South China Sea. The importance of this other dimension may be more fully appreciated by considering that if each of the claimants to the Islands declares an Exclusive Economic or Continental Shelf Zone, measured from baselines drawn from points fixed by the Islands they currently occupy, all the waters of the South China Sea, and its underlying seabed would be made subject to various degrees of national jurisdiction, converting what were once high seas and an international seabed into a "semi-enclosed" sea.

In practice the coastal states of South China Sea have already taken concrete legal steps towards extending their maritime competencies. In 1977 Vietnam declared that the Paracels and Spratlys were Vietnamese territory with their own set of maritime zones. The Philippines, in turn, announced the formal annexation of the western Spratlys in 1978 and has been considering legislation since 1987 to extend its 1968 archipelagic baselines to incorporate the claimed territory as part of the
Philippines Archipelago. At the same time as this annexation of the Spratlys, the Philippines likewise declared a 200 nautical mile exclusive economic zone measured from the baselines used to determine its territorial sea. Malaysia, on other hand, justifies its present occupation of three islands in the Spratlys with the novel claim that they constitute part of the Malaysian Continental Margin.

On 25 February 1992 China's National People's Congress approved a new Law on territorial water, claiming sovereignty over the water column, seabed and airspace stretching 12 nautical miles from its coast. The Law was made applicable to the Spratlys, the Paracels as well as other island groups subject to dispute with other states. In response to this action, Taiwan is reportedly preparing its own territorial waters law to reiterate its claims, not only to the Paracels and Spratlys, but to Pratas Islands and Macclesfield Bank as well.

This dissertation is to be focuses on the dispute between Vietnam and China over the sovereignty of Paracel Islands and the dispute of Vietnam, China, Taiwan, the Philippines and Malaysia over the Spratly Islands. It describes the Islands and their importance due to their strategic location and the natural resources of the waters around them. Then it examines the claims of the parties in the disputes, their legal, historical, geographical and political aspects in the light of current international law and practices. In this dissertation the conflicting claims of Vietnam and China over the continental shelf outside the Spratly Islands are analyzed, their legal aspects are also examined carefully under prevailing international law and practices. A conclusion is then made with regard to entitlement of this area.
In this paper's conclusion some proposals for the disputes resolution and Confidence Building Measures are suggested on the basis of peaceful negotiations and mutual understanding between the states under the 1982 UNCLOS which is coming into force in November 1994. There is also a summary of the informal workshops' process and its contribution to the reduction of unnecessary tensions in the region and the promotion of wider cooperation of the concerning parties in the areas.

2. Vu Phi Hoang, pp. 291-295.
4. Statement of 12 May 1977 declaring a territorial sea, contiguous zone, a continental shelf and an exclusive economic zone.
5. Presidential Decree N.1596, issued on 11 June 1978. Legislation for the absorption of the Spratlys in existing the Philippines baselines, known as Senate Bill N.206, has been pending in the Philippine Senate since its introduction in 1987 by the chair of the Foreign Relation committee.
6. Presidential Decree N. 1599, also issued 12 June 1978. Note that Presidential Decree N.1596, announcing the annexation of the western Spratlys, did not specify whether the archipelago was being absorbed into existing Philippines baselines, a defined by Republic Act N. 3046(1961) and 5446(1968), or was considered a separate Archipelago made subject to Philippines jurisdiction. Since Presidential Decree N.1599 did not specify how the exclusive economic zone was to be delineated, it is also not clear how the maritime zones will be drawn around the Spratlys.
7. Malaysia made its first claim to Amboyna Cay reef in the Western Spratlys and to Swallow and Louisa reefs in the Southern Spratlys in December 1979 as part of the delineation of its continental shelf (Samuels, p. 153). A map of Malaysia’s territorial waters, reflecting this incorporation was published on 14 April 1980 (British Broadcasting Report, 14 April 1980).
8. Reuters Library Report, 26 February 1992. The Chinese Law was made applicable also to the Senkaku or Diaoyutai Islands, located on the East China Sea 90 nautical miles northeast of Taiwan, which are also claimed by Taiwan and Japan.
CHAPTER II

DISPUTE BETWEEN VIETNAM AND CHINA OVER PARACEL ISLANDS

II.1 Location and Geography of Paracel Islands

The Paracel Islands, known to the Vietnamese as Hoang Sa (Yellow sands) and to the Chinese as the Xisha (Western sands) Islands, consist of about 130 barrens and waterless islands, none larger than a square mile (1.6 sq Km) in area, situated between 111 and 113 degrees longitude East of Greenwich, and between 15 14' and 17 15' North latitude. The largest Island of Pattle (Hoang Sa) lies about 200 nautical miles to Vietnam's Harbor of Danang, about 150 nautical miles to the closest shore of Hainan (China), about 450 nautical miles to the closest shore of the Philippines. (see figures 2 and 3).

The Paracel Islands are divided into two main groups: the Crescent to the west and the Amphitrite group to the East. The main Islands of the Paracels are North Island (Dao Bac), Middle Island (Dao Trung), South Island (Dao Nam), Wooded Island (Dao Phu Lam), Rocky Island (Hon Da), Lincoln Island (Dao Linh Con), Tree Island (Dao Cu moc), South Bank (Con Nam) of the Amphitrite Group, and Pattle Island (Hoang Sa), Robert Island (Dao Cam Tuyen), Money Island (Dao
Vinh Lac), Duncan Island (Dao Quang Hoa), Drummond Island (Dao Duy Mong), Passy Keah Island (Dao Bach Quy), Triton Island (Dao Triton) of the Crescent Group (Nguyet Thiem Group).

Apart from Pattle, the only other large island is Wooded island in the Amphitrite Group. The total surface area of the islets in both groups barely exceeds 10 square kilometers or about 5 square miles.

Most islets were originally coral reefs and have the appearance of bare sandbanks, except for Wooded Island and Pattle Island, which are known for their coconut trees. The islands are surrounded by rings of reefs which make the approach by vessels very dangerous.¹

An abundance of tortoises, sea slugs and other marine creatures are found there. Rich beds of phosphate have been produced by the interaction of the sea birds guano with tropical rains and coral limestone.

The climate on the Archipelago is marked by constant humidity and little variation in mean temperatures.

Geomorphologically speaking, most of the Paracel islands are sitting literally mid-ocean where the floor depth drops immediately to almost 1 000 meters around the Paracel Islands.
II.2 Strategic Importance of the South China Sea Islands

The South China Sea Islands play a very important role not only because of their natural resources but also of their strategic position in South China Sea, which involves one of the world's most strategic inter-ocean basins, the geographical pivot linking the Pacific and Indian Ocean, East Asia with the Middle East and Africa. For these reasons the disputes over the islands and the sea zones of the South China Sea are very intensive. The dispute readily illustrates the fact that now, no less than in the heyday of western empire building, politics rules the seas.

The dispute clearly demonstrates the impact of the changing balance of power in Asia, growing competition for oceanic resources in the developing countries in the region, superpower competition in Asia and around the globe, and a host of other geopolitical factors which will be discussed below.

China's concern over Soviet Naval activities in the South China Sea may have began as early as the late 1960s. Secure sealanes in the South China Sea were of considerable strategic importance to the former Soviet Union to link elements of the former Soviet Pacific fleet in the Indian Ocean with those in Northeast Asia, concentrated at the Port of Vladivostok.

That importance was highlighted by a controversy over the Straits of Malacca and Singapore in the early 1970s. The major coastal States in the Straits, Indonesia and Malaysia, wanted to assert rights of jurisdiction over them. The former Soviet Union reacted strongly to the Indonesian and Malaysian positions. China was fully aware of the controversy over the Straits of Malacca and Singapore and it quickly expressed its support for the position of Malaysia and Indonesia on the
legal regime of the straits of Malacca and Singapore. It is indeed not surprising that, in the wake of the United States' military withdrawal from Indochina, China immediately took note of the strategic role that might be played by the South China Sea Islands. The Paracel and Spratly Islands had been used by both the Japanese and U.S. Navies during the Second World War and the Vietnamese War respectively. If previous experiences is guide, the islands could play an important role in their surveillance or control of the main sealanes in the South China Sea. The exercise of sovereign control of the South China Sea Islands presents a potentially central and commanding position in the region. The regional strategic balance has undergone recent and dramatic change with the collapse of the Soviet Union and its withdrawal from Cam Ranh Bay, the United States' withdrawal from the Philippines, the emergence of the People Republic of China (PRC) as a maritime power, and the strong economic growth of the smaller regional powers, principally South Korea, Taiwan and Singapore.

From the economic point of view, the South China Sea Islands do not have any significant on-shore natural resources. However the waters around them are very rich in oil and gas reserves and fishing grounds. The Islands could be used by the claimants to extend their claims to these areas which are now claimed as the continental shelves or Exclusive Economic Zones by the coastal nations.

There is no doubt that the strategic advantage of acquiring control over the islands could have been a strong incentive for China to launch the Paracels operation in 1974 and the military occupation of some Spratly reefs in 1988. In both of these operations the victims were the Vietnamese.
II.3 The Positions of the Parties in the Dispute over Paracel Islands.

The dispute over the Paracels between Vietnam and China has a long history in which each party claims their sovereignty over the entire Islands.


The Vietnamese claim to Paracel Islands is based on historical evidence, longtime use and exploitation of the Islands by the Vietnamese. Effective control and administration by the Vietnamese authorities, and the French authorities on behalf of the Vietnamese, of the Islands is accepted according to the principles of international law and practice.

*Historic evidences of Vietnam sovereignty over the Paracels.*

According to Vietnam, the Vietnamese presence on the Archipelago has been scientifically proven as early as 15th century. From that time the Paracels have been frequented by Vietnamese fishermen, who went there for tortoises, sea-slugs and other marine creatures.

To prove their sovereignty over the Islands, Vietnam has historical documentary proof. The oldest document is the work done sometime between 1630 and 1653 by a scholar named Do Ba, also known under the penname of Dao Phu. It is a series of maps of Vietnam which constitutes the third part of the "Hong Duc
"Atlas" started under the reign of Emperor Le Thanh Tong alias Hong Duc (1460 - 1497). The notes accompanying the maps clearly indicate that as far back as the early 17th century, the Vietnamese Authorities had been sending, on a regular basis, ships and men to these islands, which at that time were named "Cat Vang" (both "Cat Vang" and "Hoang Sa" mean "Yellow Sand"). These are the Islands now known internationally by the name of "Paracels".

Vietnam also has evidence of its sovereignty over the Islands from some foreign sources. According to the Journal of Batavia published in 1634 by the Dutch East Indies Company, on July 20, 1634, three Dutch ships named Veenhuizen, Schagen and Groote-brock left Touron (present day Da Nang) on their way to Formosa, after having come from Batavia (present day Djakarta). On the 21th, the three ships were caught in a tempest and lost contact with one another. The Veenhuizen arrived in Formosa on August 2 and the Schagen on August 10. The Grootebrock capsized near the Paracel Islands, north of the 17th parallel. Of the cargo estimated at 153,690 Florins, only 82,995 Florin worth of goods were recovered by the surviving crew, the rest went down to the bottom of the sea. Nine crew members were also missing. After leaving the cargo under the guard of 50 sailors, the captain of the Grootebrock took to sea with another 12 sailors and headed toward the Vietnamese Coast to seek help in the realm of the Nguyen Lords. However, when the group reached the mainland they were taken prisoners by fishermen and their money was confiscated. This event led to a dispute with the Vietnamese Authorities. The dispute resulted in further visits by Dutch ships to the Vietnamese Coast. It is a significant fact that when the Grootebrock sank, the captain chose to go to Vietnam not to China, although China was nearer. This is undoubtedly because they assumed the country exercising jurisdiction over the site of the wreckage would naturally provide rescue and be more responsive to their
claims. So the Vietnamese jurisdiction over the Paracels was recognized by citizens of other countries.³

Other references to the early historical rights of Vietnam over the HoangSa (Paracels) are made by an Vietnamese encyclopedist Le Quy Don (1726 - 1784) in his history work "Phu Bien Tap Luc" (Miscellaneous Records on the Pacification of the Frontiers). Le Quy Don was a mandarin sent to the South by the court in order to serve as an administrator in the realm recently taken over by the court from the Nguyen Lords. In his work, Le Quy Don recorded many things he saw or heard while on the duty in the Southern realm. There is considerable evidence in his work that the Islands belonged to the Nguyen realm.

Regarding to the usage of the islands and their exploitation by the vietnamese Le Quy Don said that in the past, the Nguyen had created a special company called Hoang Sa company consisting of 70 experienced seamen chosen from the village of Vinh-an to carry out the exploitation of the Paracels. The team would leave for the islands in the third month of each year of the lunar calendar and stay there for about six months. There they collected the sea products and some time they found the wreckage of ships which yielded such things as bronze swords and copper horses, silver decorations and money....The company returned to Phu Xuan (Present day Hue) in the eighth month of the year to turn in the goods they had collected in order to have them weighed and verified then they could get an assessment before selling their products and going home. In his work, Le Quy Don also recorded some counts of the products collected by the company each year. Le Quy Don also recorded an incident dating from 1753, which provided some evidence of the question of the Vietnamese-Chinese relationships regarding the Paracels. The story was that two Vietnamese men of the Hoangsa company
sent to the islands to collect sea products were washed into the port of Ch'inglan of China by a typhoon. These men were suspected of spying on China's land. After investigation, the Chinese officer found the story to be correct and consequently had the two Vietnamese escorted to their native village. It is clear from the story that the Chinese officer was not concerned about Vietnam's exploitation of the islands. This only concern was to find out whether these Vietnamese sailors were being sent to Hainan to spy under the pretense of a storm encountered at sea. Therefore when this was disproved the Vietnamese sailors were treated well and sent back to Vietnam.

The whole incident clearly proves that Vietnamese exploitation of the economic resources on the Paracels in the eighteenth century was a very open activity, carried out peacefully with the acknowledgment by the Chinese that Vietnam has exercised its legitimate rights over the Islands.

A famous geography book written by Phan Huy Chu and printed in 1834 by the name of "Dai Viet Dia Du Chi" contains a text on the Paracels with almost the same information as Le Quy Don' work.

**Confirmation by other foreign sources**

According to Vietnam, its own sovereignty over the Paracels was confirmed by various foreign authors as early as the 18th century. For instance, testimony in 1701 by a missionary traveling on the Amphitrite (reportedly the first French ship to enter the South China Sea in the late of the 17th century), describing frightening dangers experienced by ships in the vicinity of the Paracels, mentioned specially
that this archipelago belonged to the Empire of Annam (a former name for Vietnam).\textsuperscript{4}

Another document dated April 10, 1768 and called "Note sur l'Asie demandee par M. de la Borde a M. d'Estaing" (now held in French Archives)\textsuperscript{5} provides evidence of intensive patrol operation between the Paracels and the coast of Vietnam by Vietnamese naval units. When French Admiral d'Estaing was planning a raid against the Vietnamese city of Hue in order to establish a French Colony in Indochina, he reported that Vietnamese vessels frequently cruised between the Paracels and the coast of thus "would have reported about his approach". This fact apparently caused him to cancel the raid planned against Vietnam. This demonstrates that as long as two centuries ago, the Paracel Islands were already included into the Vietnamese system of defense and that the clearest acts in the exercise of state jurisdiction were regularly performed by Vietnamese Authorities.

Another foreign source is the book "A voyage to Cochinchina" published in London in 1806 in which John Barrow told the story of a British journey to Vietnam and indicated that the Paracels were part of the Vietnamese economic world. He also provided in his book a detailed description of different types of boats used by the "cochinchine" (the people of the South of Vietnam) in order to reach, among other places, the Paracel Islands where they collected trepan and swallow nets.

Vietnamese and foreign sources, therefore, prove that the Paracel Islands have for centuries been included within the scope of Vietnamese interest and aims. These sources recognize the perfection of the sovereign title upheld by the Vietnamese in the course of time in relation to a growing number of states. The progressive
intensification of the Vietnamese control over the Paracels reached a decisive and irreversible point at the beginning of the 19th century, when the reigning Nguyen Dynasty developed a systematic policy towards the complete integration of the Archipelago into national the community.

The exercise of Vietnamese sovereignty over the Paracels

The historical consolidation of the Vietnamese title to the Paracel Islands was continued under the Nguyen Dynasty, i.e, after 1802. From that date the successive Emperors of Vietnam followed a stable Paracels Policy through systematic measures taken in the field of administration, defense, transports and economic exploitation of the islands.

Formal taking of possession by the Emperor Gialong.

According to various historic sources, the first Emperor of the Nguyen Dynasty, Gialong, confirmed the Vietnamese sovereignty over the Paracel Islands by formally taking possession of the Islands in 1816.

Consolidation of sovereignty under subsequent Emperors.

Numerous documents in Vietnam's archive give the most convincing facts about the display of the Nguyen Dynasty's authority over the Paracels. One of the striking facts was the order given in 1833 by Emperor Minh Mang to his Minister
of public works to plant trees on some of these islands to develop them. This order also guaranteed safe navigation for foreign ships coming around the islands as some foreign ships had sunk in the area. By this action Vietnam further asserted its title to the Paracels as the part of their territory.

With the purpose of developing the Islands the authorities sent different groups of people to the Islands to survey and make a map of the area. These people planted ten markers on some islands. In 1835, a temple was build on one of the Paracel Islands.

*Preservation of Vietnam's sovereignty over the Paracels under French colonial rule.*

The French established colonial rule over the whole Vietnam in 1883 and since then the French took over the responsibility of exercising Vietnam's sovereignty over the Paracels. Actually, the French on behalf of the Vietnamese took a lot of measures to ensure an orderly administration and an adequate defense of the islands and to develop these islands also:

On June 15, 1932, the French Governor-General of Vietnam attached the Paracels to Thua Thien province by Degree N.156/SC, which was subsequently confirmed in Emperor Bao Đai's Ordinance N.10 of March, 1938. On May 5, 1939, the French Governor General signed a degree to divide Paracel Islands into two "Delegations": Crescent and Dependencies, and Amphitrite and Dependencies.
On 30 March 1939, the Japanese made a decision to place the Spratlys and Paracels under its jurisdiction (this was later renounced at the San Francisco Peace Conference in 1951). On April 1939 the French strongly protested this decision.

_Return of the sovereign rights to Vietnam_

After getting independence from the French, Vietnam resumed their sovereignty over the Paracels although some French troops were intermittently stationed on some islands until 1956. On October, 1950 the official ceremony of turning over the defense of the Paracels to the Vietnamese was organized and the Vietnamese resumed responsibilities for exercising their sovereignty and jurisdictions over the Islands.

On September 7, 1951, at the San Francisco Peace Conference, the Vietnamese delegation made the following statement to reaffirming Vietnam's ownership of the Paracels as well as of the Spratlys:

"... as we must frankly profit from all the opportunities offered to us to stifle the germs of the discord, we affirm our right to the Spratly and Paracel Islands, which have always belonged to Vietnam".

The statement aroused with no objections from any of the 51 countries attending the conference and this must be considered as the universal recognition of Vietnamese sovereignty over these Islands.

Since 1951, some administrative measures have been taken by the Vietnamese authorities. By the Memorandum N. 1220 VP/CT/M dated September 17, 1951 and the Degree N.174 NV dated July 13, 1961 signed by President Ngo Dinh
Diem the Paracels were transferred from the jurisdiction of Thua Thien province to Quang Nam province and it was given a status of a "Xa" (village on the mainland). The administrative organization was again perfected 8 years later by the Degree N.709 BNV/HCDP/26 dated October 21, 1969 signed by Prime Minister Tran Thien Khiem: the Islands were incorporated into the Village of Hoa Long, Hoa Vang District, Quang Nam province.

Until the Chinese invasion of January 19-21, 1974 the RVN had exercised its sovereignty over the Islands and had permanent troops stationed there to defend the Islands. But on the 20th of January 1974 the Red Chinese authorities invaded three islands of Vietnam by military forces: Camtuyen (Robert), Vinh Lac (Money) and Hoang Sa (Pattle) where the RVN armed forces were stationed. The Chinese invaders killed 18, wounded 43 and illegally detained 48 Vietnamese people. Then the RVN strongly protested the Chinese invasion and appealed to world opinion to seek the intervention of all bodies that could contribute to a peaceful settlement. January 16, 1974 the RVN Foreign Affairs Minister sent a note to the President of the Security Council of the United Nations to bring to his attention the grave tensions created by the PRC's false claims and to request the Council "to take all appropriate measures that the Council deems necessary to correct that situation". In a press conference on January, 1974 the President of the Security Council stated that the Vietnamese request did not have all legal grounds to deserve consideration, therefore he regretted that a Council meeting could not be convened for that purpose.

After the unification of the whole country, Vietnam continued to protest about the illegal Chinese invasion of the islands and to assert the sovereignty of Vietnam over the Paracels as well as the Spratlys.
II.3.2 Chinese Claim.

China claim is the most comprehensive, including the entire South China Sea, and also, by its assertions, the most historic. The PRC and Taiwan begin with the same historical claim that the Paracels and Spratlys in the South China Sea have been Chinese territory "since ancient time" but since 1947 after the separation of the PRC and POC (Taiwan) they have pursued separate claims and attempts at occupation and administration of the Islands.

China argues that the Paracels and Spratlys had been used by the Chinese for fishing activities in the western Han Dynasty (206 B.C. to A.D. 24) as well as during the 10th - 16th the entire South China Sea was used as the Principal Chinese transit route for the World trade.\textsuperscript{11}

According to China, in 1292, an expedition was sent to "Ch'i-chou yang" (the ocean of the seven islands) and the "Wan-li shih-t'ang" (myriad on ten thousand mile rocks). And China tries to prove that the "Ch'i chou" were the seven islands of the Paracels and "Wan-li shih-t'ang" were Spratlys.\textsuperscript{12}

China also argues that between 1403 and 1433, the famous Chinese navigator Cheng Ho of the Ming Dynasty (A.D. 1368-1644) sailed seven times through the South China Sea and passed several times through the Paracels and Spratlys. During those voyages his staff recorded the location of these Islands on a detailed map between 1425 and 1430.\textsuperscript{13}

China has made a lot of references to the Chinese historic records and literature in which the name used for the Islands was frequently changed and was very vague
and confusing for the research. China has attempted to use all of the "historical evidences" to claim that the Islands were "terra nullius" prior to their discovery and that the Islands have been "effectively occupied" by Chinese fishermen "since time immemorial". But these ancient records are unconvincing and incomplete, and do not provide compelling evidence of routine occupation, effective administration, or assertion of sovereign control. The claim that the Spratlys were exclusively Chinese is further weakened by an official Chinese government report published in 1928 that shows the southernmost delineation of Chinese territory as the Xisha Islands (Paracels) and makes no mention of the Nansha Islands "Spratlys"14.

The most recent historic evidence used by China in its claim is a Treaty signed on June 26, 1887 between China and France which determines the delimitation of the Frontier between China and Tonkin (North of Vietnam). Article 3 of the Convention is following:

"Au Kouang Tong...Les îles qui sont à l'est de méridien de Paris 105 43', de longitude est, c'est-à-dire de la ligne nord-sud passant par la pointe orientale de l'île de Tch'a Kou ou Quan-chan (Tra-co) et formant la frontière sont également attribuée à la Chine. Les îles Gotho et les autreîles qui sont à l'ouest de ce méridien appartiennent à l'Annam."15

The article is translated into English as following:

"The Islands which are east of the Paris Meridian of 105 43' east longitude (i.e. 108 03'13" east of Greenwich), which is to say that north-south line that passes through the eastern part of Tch'a-Kou or Quan-chan (i.e. Tra-co) and which forms
the boundary, are also allocated to China. The Islands that are west of this meridian belong to Annam.

Various officials and other spokesmen for China have long since argued that the delimitation line provided by this convention clearly inferred that the Paracels and Spratlys were part of China and were recognized as such by France\textsuperscript{16}. The Chinese insisted that the Convention constitutes further evidence of Chinese ownership, even though the Islands are not named, no north/south or eastern limits are specified, and respective interpretations of the convention in Chinese and French are controversial.

On response to the Chinese note in 1932, the Quai d'Orsay delivered a note to Chinese delegation in Paris on September 27, 1933, saying, among other things, that the 1887 Sino-French Convention was not applicable to the Paracels and Spratlys, because the islets are 200 miles east of the delimitation line, which should be considered as a local one applicable only to the Mong Cay Area in Northern Vietnam. Otherwise, the line would cut across the central part of Vietnam, making that region and many Vietnamese islands part of Chinese territory\textsuperscript{17}.

Actually the question of delimitation of the Tonkin Gulf was still under dispute. The central issue was the meaning of the line stipulated by the convention, which was meant to divide the ownership of the islands around Tra Co area in the Tonkin Gulf only between China and Tonkin. According to the map attached to the Convention, the line was drawn only about 10 km from the last point of the land frontier between two countries in Tra Co area. In two rounds of talks in 1974 and 1977-1978, Hanoi proposed that this line should also be used for delimiting the
waters of Tonkin Gulf between China and Vietnam. This proposal was not
accepted by the PRC. PRC argues that the meaning of the line in the 1887
Convention should be restricted to the division of ownership of only the islands in
the area of Tra Co. So it is impossible for China to say that this convention gives
China the ownership of all the islands east of the median of 108 03' 13"E.

In 1930, France on behalf of its protectorate Vietnam reaffirmed its rights over
Paracel Islands based on the official possession taken by Emperor Gia Long in 1816
and sent Indochinese troops to guard the Islands.

On July 27, 1932 the ROC foreign ministry rejected the French claim over the
Paracels. The Chinese protest note also referred to the 1887 Convention and
rejected the French on the ground that at the time Emperor Gia Long took
possession of the islands, Vietnam was under the suzerainty of China. But
Vietnam argued that by this protest China implicitly recognized that Vietnam has
asserted its claim to the Paracels. It also demonstrated that China was confused
about the legal distinction between suzerainty and sovereignty because even if
Vietnam was a vassal state of China in 1816, the formal relationship of suzerainty
could not preclude such Vietnamese acts of sovereignty as the incorporation of
new territories.

China argues that on July 25, 1933, when France announced its occupation and
sovereign control over the Spratlys China had made diplomatic protest to France
on the ground that there were Chinese residing on the Islands occupied by the
French at that time.
In 1939, the Japanese invaded Hainan, the Paracels and Spratlys. On March 30, 1939, the Japanese appointed Taiwan governor-general announced in the Japanese official gazette that the "Shinman Gunto" (New South Islands - the name given by the Japanese to the Paracels and Spratlys) was placed under the jurisdiction of Kaoshiung Chou (county) of Taiwan (then a territory of the Japanese Empire). On August 26, 1945, soon after Japan surrendered to the Allied Powers, Japan withdrew from the Paracels and Spratlys. In November 1946, the ROC sent a naval contingent, followed by a small garrison, to the island of Itu Aba in the Spratlys and Woody Island in the Paracels. In 1947 the Kuomintang Government asserted China's claim to all South China Sea Islands and placed them under the administration of Kuangtung Province, to be followed by the temporary "administration of the Navy".20

In May 1950 the communist China forces landed on Hainan Island and the ROC withdrew its forces on Hainan, Paracels and Itu Aba in the Spratlys to Taiwan.21

In September 1951, the Allied-Japanese Peace Conference was held at San Francisco in which neither the ROC nor the PRC was invited to participate. The Article (2) (f) of the Peace Treaty provides as following:

"Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands". The Treaty did not specify, therefore, which country would succeed to the sovereignty of these Islands.22

China argues that before the Conference was held, the then Foreign Minister of PRC, Chou En-lai, protested the Treaty and stated on August 15, 1951 as following:
"Whether or not the U.S.-British Draft Treaty contains provisions on this subject and no matter how these provisions are worded, the inviolable sovereignty of the People Republic of China over Nanwei Island (the Spratly Islands) and Sisha Island (the Paracel Islands) will not be in any way affected."

After the signing of the San Francisco Peace Treaty the Taipei Authorities undertook to negotiate a bilateral Peace Treaty with Japan which was signed on April 28, 1952. This Treaty contains the same renunciation by Japan of rights to the Paracels and the Spratlys as does the 1951 Treaty. The Taiwan Government considers the appearance of this renunciation in the bilateral Treaty to be clear indication of its sovereignty over the Islands.

The Taiwanese physical occupation and control of the islands in the South China Sea was suspended in 1950 as mentioned above. The Taiwan's Government claims that Taiwan reestablished its garrison on the island of Itu Aba in the Spratlys in 1956 and has maintained and supported it with naval patrols since then.

On September 4, 1958 the PRC issued a Declaration of Territorial Sea, extending its territorial sea boundary to 12 nautical miles, stipulating the use of straight baseline, and claiming "...the Hsisha (Sisha) Islands, the Chungsa Islands, the Nansha Islands and all other islands belonging to China". And then Chinese maps routinely show a dashed international boundary symbol encompassing the entire South China Sea, just offshore from the littoral States (figure 2).

The first presence of the PRC forces in the Spratly Islands was recorded in March 1988 when it encountered Vietnamese supply forces in a brief naval engagement,
sinking three Vietnamese transport vessels and killing some Vietnamese troops. Since then the PRC has occupied 7 reefs in the Spratlys. The PRC claim to all the South China Sea Islands was reiterated on February 25, 1992, in its Declaration of "the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone".

II.4 History of the Paracel Islands' Occupation. Question of Sovereignty.

Both Vietnam and China have asserted their sovereignty over the Paracels. Their claims are both based on the historical evidences, record, long-time use by their people, treaties and international law principles.

China claims that the Islands have been part of Chinese territory "since ancient time" because their fishermen discovered these Islands and used them as bases from which to fish in South-China Sea.\(^{27}\) Given that it was true whether isolated contacts by individual Chinese fishermen are sufficient to establish sovereignty over the Paracels under international Law. The Chinese claim based on this concept is clearly invalid.

To analyze the legal aspects of the claims and to identify the question of sovereignty we should make some references to a international law standard and practices. A similar case is the Island of Palma case of 1928, in which the Permanent Court of Arbitration issued a definitive statement of the factors necessary to establish sovereignty over an Island under international Law.\(^{28}\) The
Island of Palmas case involved conflicting claims by the Netherlands and United States to an isolated Island off the Philippines Coast. The United States claimed that Spain had discovered the Island and that the title had passed to the United States pursuant to the Treaty of Paris of 1898. The Dutch, on other hand, based their claim on an alleged peaceful and continuous display of their authority over the Island. The Arbitrator awarded Palmas to the Netherlands, holding that discovery of an island does not suffice to establish sovereignty, discovery must be followed by an effective and continuous display of authority over the island. Despite considerable gaps in the history of Dutch exercise of sovereignty over the Island, several specific displays of the Dutch authority existed, including convention between the state chartered East India Company and local chieftains.

In order to determine the question of sovereignty over the Paracels, therefore, we need to summarize the history of occupation and exercising of jurisdictions of each party in the Archipelago.

According to many reliable sources, the Paracels were first officially possessed by King Gia Long of Vietnam in 1816 and the consolidation of the sovereignty over the Islands was performed under subsequent emperors as mentioned in the previous paragraphs. At the same time China had neither official possession and nor official claim to the Islands. The earliest official Chinese claim on the Islands of the South China Sea was appeared only after the Sino-French Convention on Boundary Delimitation in 1887. However, as discussed in the previous paragraph, the appropriate article of that convention is open to several different interpretations and the Chinese claim based on their own understanding and interpretation of the Convention is invalid and illegal. Drawn to the South, the Meridian intersects the Vietnamese mainland between Hue and Da Nang, crosses
the highlands near Kontum, Pleiku and Ban Me Thuot, and eventually exits into the South China Sea just west of Phan Thiet Province of Vietnam. According to the Chinese point of view, the delimitation line crossed the Gulf of Tonkin and South China Sea in such a way as to leave the Paracels far to the east, hence well within the area located to China. However, despite the failure of the Convention to mention a northern or southern latitudinal terminus, the Convention described here appears to pertain only to the islands in the immediate vicinity of Tra Co. It is also proved by the map attached to the Convention, in which the boundary line is drawn only about 10 km from the last point of the inland boundary between Vietnam and China. It became clearer in the 1970s negotiating rounds between Vietnam and China on the Maritime Boundary in the Gulf of Tonkin, in which China refused to accept the line mentioned in 1887 convention and drawn further as the maritime boundary in the Gulf of Tonkin. Indeed, the boundary at MonCai and through the Gulf has remained hotly contested between the countries. So the Meridian mentioned in the 1887 Convention did not apply in any general fashion to the Gulf of Tonkin or South China Sea Islands.

After 1867, the South of Vietnam named Cochinchina became a French possession and since then the French took over the responsibilities on behalf of the Vietnamese in exercising sovereignty and jurisdictions over the Islands. The French had made regular naval patrols in the islands and proposed to construct a lighthouse on one of the Paracels in 1899. Only at that time and the activities of the French prompt officials of Kuangtung Province of China to seek approval for the administrative absorption of the Paracels. Then the first official inspection tour of the Islands was launched in 1902 which was the first Chinese attempt to assert effective authority over the Paracels.
The second inspection of China was organized in 1908 and a special commission for "the management of the area" was established. But this action of the Chinese was too late compared to the same activities of King Gia Long. This took place in 1816 and the exercise of sovereignty and jurisdiction over the islands was continued effectively by the next generations and the French.

Beginning in 1920, the Indochinese customs authorities started making regular inspections to the Islands to prevent illegal traffic in the area.

On March 20, 1921 the Governor of Kuang Tung signed a peculiar Degree annexing the Paracels to the Chinese Island of Hainan. However, this action went unnoticed because it was recorded only in the provincial gazette, therefore, nobody were aware of it in order to make comments or protest.34

Vietnam has some evidences to prove that at the end of World War I Japanese nationals asked the French permission for the exploitation of phosphate in the Islands. At the same time the Chinese tried to prove that a Canton Merchant, Ho Jui-nien, also reported to be a Portuguese citizen, submitted the first of a series of application to the Kuangtung provincial Bureau of Mines for a permit to develop the phosphate deposits and the fishery throughout the Paracels.

According to the analyses of Samuels, the mining activities of the Ho Jui-nien's Company were limited only to Lincoln and Tree Islands, there was no evidence collected to suggest that the company was able to expand its interests throughout the Paracels. The area of Ho Jui-nien's activities and those of the commission, was in the Amphitrite Group of the Paracels, and none of the materials collected
from the Woody island investigation suggested that the company was engaged in the Crescent Group.\textsuperscript{35}

Ho Jui-nien's company was not the only foreign company interested in the Islands' resources exploitation. The company of Mitsui Bussan Kaisha of Japan approached the French for permission to fish the waters and mine the guano deposits of Robert Island at the same time that the Ho Jui-nien company began operation on Woody Island.\textsuperscript{36}

Based on the incorporation of the Islands by King Gia Long in 1816 and the consolidation of sovereignty of Vietnam over the Paracels by the next Emperors of Vietnam, France claimed the Paracels for its Indo-Chinese Empire. Accordingly, on 15 June 1932 the Governor-General of Indo-China decreed that the Paracels would be transferred from their historical association with Quang Ngai Province into Thua Thien Province.

From approximately 1931 to the early 1940s the French steadily expanded their presence in the Paracels. The primary center of their activities was Pattle Island. There they established the main administrative offices for the Archipelago as the whole. In 1938, they built a weather Station that would thereafter serve as the internationally recognized weather-data center for the Archipelago. On 5 May 1939, the Governor-General of Indo-China declared that the Archipelago was to be divided into two Compartments: the Amphitrite Group and the Crescent Group.

By early 1939, almost the entire coast of China had been seized by Japanese forces. On 28 February 1939, Hainan Island came under the control of Japanese
Army and navy units. Japan thereby sealed off the northeastern edges of the Gulf of Tonkin. On 1 March 1939, Japanese naval and infantry units moved into Paracels. In May 1939, French personnel took up posts on Pattle and Woody Islands and operated in these posts at least until March 1942.\footnote{37}

In January 1947, the ROC declared the formal occupation and incorporation of the Paracel Islands by the occupation of Woody Island. The French officially objected to the Chinese occupation of the Paracels almost immediately. Indeed, a French battleship, the Tonkinois, was sent to the Paracels only a few days after the ROC announcement of incorporation. However, finding Woody Island fully occupied by the Chinese troops, the French had to withdraw to Pattle Island and re-establish their old administrative center. The old functional division of the Paracels was thus recreated and remained in force for the next twenty seven years.

On 15 October 1950, France officially ceded its control of the Paracels to Vietnam.\footnote{38}

At the same time ROC forces on Hainan Island and in the Paracels were withdrawn to Taiwan and since then their positions were occupied by the PRC troops.

After that the Vietnamese troops took over the control and the administration of the Crescent Group of the Islands. At the same time the Chinese troops occupied only the Amphitrite Group.

Both parties based their claims on the San Francisco Peace Treaty of 1951 to the Paracels and Spratlys as mentioned and analyzed in the previous paragraphs but
the situation in the Paracels remained almost unchanged until the Chinese invasion in 1974.


During the early 1970s, China's concern with the Soviet presence in the region, especially its naval activities in the South China Sea, was growing. With the deterioration of Sino-Vietnamese relations and the possibility of North Vietnam moving closer politically to the Soviet Union, China was worried that some of the Paracel islands, which commanded sea-lanes vital to any naval activities, might eventually become subject to the influence or control of the Soviet Union. Forecasting the weakening of the US Navy presence in the area the communist Chinese decided to invade the Islands stationed by the Vietnamese in the Paracels. According to Saigon, during the period 16 through 20 January 1974, the PRC naval and marine units escalated their attacks on Vietnamese garrisons throughout the Crescent Group. On 20 January 1974 Saigon reported that the Chinese authorities had sent their warplanes to bomb three islands, Camtuyen (Robert), Vinh Lac (Money), and Hoang Sa (Pattle) where Units of the armed forces of the Republic of Vietnam were stationed, and also landed their troops with the aim of capturing these islands from Vietnam. So the PRC troops has occupied all the Islands by forces since then but Vietnam has still continued to protest about the illegal Chinese occupation of the Paracels and has asserted its sovereignty over the Paracels and Spratlys.
The question of sovereignty of the Islands.

As mentioned and analyzed above, it is clear that the official possession by Vietnam of the Archipelago in 1816 was much earlier than the Chinese official claims to the Islands and the administrative absorption of the Islands into Kuangtung province of China sometime between 1908 and 1921. The Vietnamese and the French had been continuing to exercise peacefully and effectively their sovereignty and jurisdictions in the Islands. From the international Law and practice point of view, Vietnam has stronger support in the right to claim their sovereignty over the Paracel Islands.

The history of the exploitation and practice of control over the Islands together with the geography of the Archipelago allow us to provide a further analysis concerning the effectiveness of exercising sovereignty and jurisdiction of the Parties in the Islands.

The Vietnamese and French have always asserted their sovereignty over the entire Archipelago and tried to maintain control over it but the administrative division of the Paracels into two compartments, however, reflected a basic geopolitical and economic divide within the Archipelago. On one hand, as earlier noted, Chinese interests in the Islands focused only on the Amphitrite Group and especially Woody Island. The Vietnamese and French, on other hand, concentrated mainly on the Crescent Group. As Samuels notes, based on the available evidence, an argument can be made to the effect that the Chinese claim applies best to the Amphitrite group centered on Woody Island. The Chinese had no effective authority over the Crescent group or the Islands as a whole.\textsuperscript{39} The Crescent
Group, centered on Pattle Island, apparently came under French domination and after 1950 came under Vietnam's control and administration.

The best solution for the Paracel Islands dispute is that both parties should agree to return to the situation before 1974. The Chinese must return all the islands of the Crescent group occupied by their forces in 1974 to Vietnam. After that both parties could go further to divide the waters and continental shelf inside the Islands. Of cause this suggestion is far from being realised so the parties should resume their negotiations to resolve the dispute under the prevailing international law and practices.

1. White Paper on the Hoang Sa (Paracel) and Truong Sa (Spratly) Islands, 1975, p.15.
2. Leifer, international Straits, pp. 107-108.
4. Lettres e'difiantes et curieuses des Missionnaires de chine, quoted in the review of Indochine, N 46, p.7.
5. The document was reprinted in Bulletin des etudes Indochinoises, Tome xvii, N.1, Hanoi, 1942.
6. History annals called "Dai Nam Thuc Luc Chinh Bien", 1833, 104th volume.
12. Park, p.185.
13. Park, p.185.
17. Park, p.189.
19. Park, p.188.
20. Samuel, p.76.
22. UN treaty series (UNTS) vol.136, p.48.
23. Park, pp.190-191.
5. Park, p. 191.
6. Park, p. 192.
8. The Palmas Island Arbitration (US v. Netherlands) 22 AM. J. Int'l
Law. 735 (1928).
11. Samuels, p. 52.
15. Samuels, p. 58.
CHAPTER III

DISPUTES OVER SPRATLY ISLANDS

III.1 Location and Geography of the Islands in the South China Sea.

The Spratly Islands known as Truong Sa in Vietnamese, the Nansha in Chinese, and Kalayaan Islands in the Philippines, are spread over hundreds of miles in the South China Sea between 6° 50' - 12° north latitude and 111° 30' - 117° 20' East (Greenwich) Longitude. The Islands are located 250 nautical miles from the Vietnamese Cam Ranh Bay and more than 500 miles from the southern edge of the Chinese mainland (figures 2 and 4).

The Islands comprises more than 500 separate land masses, islands, islets, reefs and sands banks in an area of about 160,000 square Km, only 100 of which have been named. Many of the features are almost entirely under water.¹ The largest of the twenty islands that protrude above sea level at high tide, the Itu-Aba, is only 0.43 square kilometers in area. The islands are too small and difficult to sustain permanent, independent settlements.² Most of the islands are covered by bushes and guano, as well as by a few coconut and plantain trees.
The Spratlys play an important strategic role in the South China Sea. For this reason many countries including China are interested in the Islands because of their important role in determining national maritime boundaries and in the resources available in the South China Sea. China attempted to use these islands to implement their most criticized international hegemony claim to the entire South China Sea.

Under generally accepted principles of international law, a country that controls an island also has jurisdiction rights over the water and seabed adjacent to the island. Every island above water at high tide is entitled to its own territorial sea, as a widely established and codified norm of international law. Article 121 of the UNCLOS 1982, which was ratified by 60 countries last year and come into force this year, states that an island is entitled to a twelve mile territorial sea and a 200 mile EEZ but the Article excludes from its definition of an island "rocks which can not sustain human habitation or economic life of their own". So the land masses that make up the Spratly Chain might fail to qualify as "Island" under this definition.

The location of the Spratly Islands makes the surrounding area an important link in many major international shipping routes. The area connects with the Indian Ocean in the South through the Malacca-Singapore Straits, and it connects the East China Sea and the Sea of Japan in the north. It forms part of the route for ships traveling between the Indian Ocean and the Russian port at Vladivostok. The area surrounding the Spratlys also includes the path of oil tankers going to and from Japan and the Middle East and the countries in the region. Moreover, all of the trading economies in East Asia depend on the South China Sea because it forms part of the shortest route to Southeast Asia, Africa, The Middle East, and
Europe. By taking control of the Spratlys, the countries in the dispute could legally place many vital sea lanes under their territorial control.

The potential oil wealth of the area is one of the most important factors in the dispute over the Spratlys. After geological studies conducted in the late 1960s indicated the possibility of enormous petroleum deposits in the South China Sea seabed, the nations of the regions intensified their efforts to establish ownership of at least part of the area.3

Among the parties in the dispute China attempted to take control of some islands in order to claim the surrounding area believed to have richest in oil, since these areas mostly lie hundreds of miles outside the Chinese mainland’s 200 mile EEZ. Sovereignty over the Spratlys has become very important also for other nations in the disputes as a way of protecting their continental shelf of rich oil from the attempts of China.

III.2 History of the Dispute and Current Situation in the Spratlys.

The Spratlys became a source of international controversy for the first time on July 25, 1933. On that date, the French Foreign Ministry declared that France had sovereignty over nine of the islands in the chain.4 At the time of this declaration, France was exercising the de facto control over six of those islands including Spratly island, which it had occupied since 1930.5 There are some arguments about the protest of China against the French. According to Park, China immediately notified France that it was reserving its rights to the islands pending
an investigation, and later it sent a note protesting the French occupation on the grounds that the Spratlys were Chinese territory. But according to Samuels and many other researchers, at that time China was silent, and there was only a formal protest against the French occupation from Japan on the grounds that the Spratlys had been occupied and mined for many years by various Japanese phosphate companies. The French ignored these protests, apparently believing the Islands to be terra nullius (land belonging to no one) at the time of their declaration.

France retained control over the nine islands until 1939 when the Japanese army swept into the South China Sea and occupied the Spratlys along with most of the other Islands in that area. At that time France filed a strong protest against the Japanese occupation of the Spratlys. Japan renamed the Chain Shinnan Guunto (the New South Archipelago), placed it under the jurisdiction of the Japanese Governor General on the Island of Taiwan, and stationed a scattering throughout the Islands. The Japanese troops remained there until the Japanese surrender in 1945.

By the summer of 1946 the Chinese Guomidang Government sent a naval contingent to take possession of the area for a second time (as they stated).

In October 1946, a French battleship named the Chevreud was also reported to have landed crews on Spratly Islands and Itu Aba Island. The crews placed a stone marker on Itu Aba to record their arrival.

In December 1947, the first Chinese naval forces were stationed on Itu Aba Island. But in May 1950, after communist forces landed on Hainnan Island the PRC forces were withdrawn to Taiwan, and from that time to July 1956 the
Chinese (ROC) base on Itu Aba Island was abandoned.\textsuperscript{12} After the ROC withdrawal, the Chinese communist government did not station its own troops on the Spratlys. It was occupied with its mainland borders, and the uninhabited chain had little strategic importance at the time. The Islands, therefore, were left unoccupied.

In 1956, the Philippines entered into the controversy when a private expedition led by a Filipino named Tomas Clomas landed on the Spratlys. Clomas claimed discovery of the chain, named it "Freedomland", and sought, unsuccessfully, protectorate status from the Philippines government. But within a few months Clomas and his party abandoned the Islands.\textsuperscript{13}

The short lived Clomas expedition prompted Taiwan to send their troops to occupy the Itu-Aba Island (Taiping). Taiwan has maintained a garrison on the Island ever since.

On 22 August 1956, the Saigon Administration sent their troops to the Islands and stationed them on Spratly Island. Between 1961-1962 the South Vietnam troops landed on the Islands of Song Tu Tay (south west Cay), Thitu, Loai Ta, Anbang and Nam yit.\textsuperscript{14} The South Vietnam declared complete sovereignty over the entire chain and officially assigning the islands to Vietnam's coastal Phuoc Tuy Province.\textsuperscript{15}

Despite these conflicting claims, the situation in the Spratlys remained relatively calm for the remainder of the 1950's and throughout most of the following decade. The value of the Islands' known resources, primarily fish and guano, did not justify the expense of exercising control over the Spratlys. Taiwan, South
Vietnam, and, less occasionally, the PRC all periodically issued statements asserting sovereignty over the chain, but occupation of the Islands remained limited to Taiwan's forces on Itu Aba (Taiping) Island and Vietnamese control over Spratly Island and few small islets. Although the PRC maintained a claim to the Islands, it did not establish an out post any where in the chain until 1988.

The period of calm came to an end at the late of 1970's when the emerging oil potential of the area around the Islands ignited a rush of new island occupations. The Philippines officially entered the Spratlys controversy in 1971 by claiming a few of the atolls and reefs lying closest to the Philippines Island of Palawan. The Philippines began oil exploration in 1976 and claimed part of the Spratly Islands.

After the war ended in Vietnam, the Government of the United Vietnam took over the South Vietnamese Government's claim to the Spratlys and quickly began increasing the number of the islands under its control.

Malaysia entered the dispute in 1983 by occupying Swallow Reef and after that, the Mariveles and Ardasier reefs.

In 1987, the United States forces withdrew from the Subic base of the Philippines, the former Soviet Union had to deal with their domestic difficulties; the cooperation in military operations between Vietnam and former Soviet Union was no longer as close as before, and the main forces of Soviet Union navy withdrew from Cam Ranh base of Vietnam. There was a gap in military balance in South China Sea. Although the Chinese navy is not as modern and strong as the US and SU Navies it has some advantages over the fleets of other countries in the region.
China began to send oceanographic expeditions to the Spratly Islands and conducted naval maneuvers there with the clear aim of preparing for the next invasion and occupation of the islands by military forces.

In early 1988, Chinese forces landed on Fiery Cross and Cuerteron Reefs. On 14 March 1988, Chinese and Vietnamese forces clashed near Johnson reef (Gac Ma in Vietnamese, Chigua in Chinese), with the result of that three Vietnamese transport vessels were damaged and sunk. According to some reports, several Vietnamese sailors were killed and 74 were missing in action.\(^{18}\)

By 1988, the PRC occupied six reefs by forces and Vietnam added fifteen more to make a total of 21 islands and reefs in the Islands.\(^{19}\)

Initially, the reefs occupied by the PRC were interspersed with those occupied by Vietnam, but later, in occupying Subi reef, China introduced its forces for the first time among those of the Philippines. The rapid fire round of the island taking ceased in Mid-1988. In August 1988, China announced the inauguration of its so-called new oceanographic station on Fiery Cross reef, lending a little more credence to the claim, voiced from the beginning, that it is there for scientific research. In December 1988, China announced the publication of nautical charts based on its surveys and the erection of navigation aids on four of the reefs\(^{20}\). In May 1989, China was reported to have taken over a seventh reef (according to some sources it is the El Dad reef).

So up to now Vietnam has occupied 21 islands and reefs, the Philippines has occupied 8 islands and reefs, Malaysia occupied three, Taiwan controls Taiping Island and China occupies 7 reefs (see figure 4)
III.3 Claims of the Parties in the Dispute.


According to the Vietnamese the Spratly Islands were frequented some centuries ago by Vietnamese fishermen who made regular expeditions to the Islands and some times stayed there for prolonged period of time. Vietnam historic books often make reference to the "Dai Truong Sa Dao" (a term used to designate both the Paracel and Spratly Islands) and indicated that the Islands are possessions of the Vietnamese. The map published in 1836 by Phan Huy Chu and called "Dai Nam Nhat Thong Toan Do" mentioned the Spratlys under the name of Vanly Truong Sa as a part of Vietnam's territory. The Islands were neglected by the Vietnamese authorities of the time because of their far distance from the coast and there was not regular occupation of these Islands as was the case with the Paracel Islands. The French began their occupation of Vietnam in 1852. It took some time for them to consolidate their rights to the Spratlys.

The first recorded expedition of the French to the Spratlys was organized in 1927 by the vessel De Lanessan. This was followed by an official expedition by the vessel Lamilicieuse in 1930, on which occasion the French flag was planted on the Island called Dela Tempete. The French Government finally decided to take official possession of the Spratlys and sent three ships, the Alerte, the Astrobale and the De Lanessan on an expedition of the Islands. Upon the completion of this expedition, the French Government placed six groups of the islets under its control by Decree N.4762 of July 21, 1933, attaching them to Baria Province of Vietnam. The French and the Vietnamese not only claimed their sovereignty over the
Islands but they also exercised continuing normal state authority over the Islands from then on.\textsuperscript{21}

At that time only the Japanese protested about the French occupation on the ground that, in the past, the Japanese had carried out exploitation of phosphate on some of these islands. The Vietnamese argue that the Japanese companies had operated on the Islands without the permission and knowledge of French authorities and that Japan had never made any attempt to take possession of these Islands.\textsuperscript{22}

In 1938, a weather station was built on one of the major islets by the Indochina Meteorological Service.

From March 1939 Japan decided to place the Paracels and Spratlys under its control and this decision was strongly opposed by the French Government. After World War II, by the San Francisco Peace Treaty of 1951, Japan relinquished all titles and claims to the Paracels and Spratlys.\textsuperscript{23}

Vietnam protested strongly against the Philippines\textsuperscript{24}When, on May 15, 1956, Tomas Cloma of Philippines issued a so-called "Proclamation to the Whole World" claiming "ownership by discovery and occupation of all territory, 33 islands, sand cays, sand bars, coral reefs and fishing grounds of 64,976 square nautical miles" naming them "Freedomland".

At the San Francisco Conference in 1951, Vietnam also announced its formal claim to the Paracels and Spratlys. The Republic of Vietnam (RVN) (South
Vietnam) reasserted this claim by issuing a communiqué on June 1, 1956, reaffirming its ownership of the Paracels and Spratlys.  

On October 22, 1956, the RVN Government assigned the Spratlys to Phuoc Tuy Province by decree N.143/NV and from that time RVN issued various decrees covering the administration of the Islands as part of Vietnamese territory.  

After the unification of the whole country Vietnam has repeatedly reaffirmed its claim and has continuously exercise its sovereignty rights over the occupied Islands.

III.3.2. Claims of the PRC and Taiwan.

The claims of PRC and Taiwan are based on the same grounds and includes the entire South China Sea as mentioned in the chapter 2.

III.3.3 Claims of the Philippines

The Philippines, a later comer to the Spratly contest, bases its claims more on the ground of discovery, occupation and effective administration.

Despite Vietnam's and China's claims to the Islands, in the Spring of 1956, Tomas Cloma, a Filipino businessman, claimed that he had discovered the Islands in 1947 and established several Colonies on the Islands by 1950, which were called Kalayaan or Freedomland. Cloma noted that the Freedomland area is about
64,976 square miles and located 300 miles west of Palawan and that it was "outside Philippines water and not within the jurisdiction of any country"28
According to the so-called "Map of Freedomland" of Cloma all the major Islands of the Spratlys were included. He noted that:

"The claim was made by citizens of the Philippines, and not on behalf of the Government of the Philippines, because we were not authorized to do so. This will, however, have the consequent effect of the territory becoming part of the Philippines. For this reason, it is hoped and requested that the Philippines government support, back, and protect our claim and not present another claim in the United Nations because this might have the effect of encouraging and inviting opposition from other countries"29

It is clear that Cloma spent some times studying the possibility of claims from other countries and tried to avoid their protests.

After that incident, the official response of the Philippines government was equivocal. It was expressed in a letter of Vice-President Garcia, in which Garcia concluded:

"In view of the Geographical location of these groups of Islands and islets embraced within "Freedomland", their proximity to the Western territorial boundaries of the Philippines, their historical and geological relations to the Philippines Archipelago, their immense strategic value to our national defense and security, aside from their economic potential which is admittedly considerable in fishing, coral and sea products, and in rock phosphate, assuredly the Philippine Government does not regard with indifference the economic exploitation and

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settlement of these uninhabited and unoccupied groups of Islands and islets by Philippines nationals so long as they are engaged in furtherance of their legitimate pursuits.\textsuperscript{30}

The reason for the official caution was the storm of formal and informal protests over Cloma's claim from Saigon, Taipei, Peking and France. In that situation Manila quickly dispatched messages to Saigon and Taiwan to say that the Philippines had made no official claim on that area.\textsuperscript{31}

At the same time Cloma tried to persuade the Philippines mission to the United Nations to put the matter before the General Assembly. His attempt was failed. But on 10 July 1971 when an unarmed Philippine vessel was fired upon by ROC naval Patrol Units, President Marcos of the Philippines called an so-called "emergency session" of the Philippine National Security Council to address the status of the Spratly Islands. The result was that an official Philippine claim was announced for "the 53 island group, exclusive of the Spratlys, which Filipino explorer Tomas Cloma explored and occupied from 1947 to 1959". Marcos noted that these Islands were regarded as "res nullius" and may be acquired according to the modes of acquisition recognized under international Law, among which are occupation and effective administration.\textsuperscript{32}

From that time the Philippines began occupying 8 islands and reefs in the Spratlys. In April 1972 Kalayaan was officially made part of Palawan Province, to be administered as a single township. In 1978, the Spratlys were formally annexed by Presidential decree to the Philippine province of Palawan. The same decree specified the corner coordinates of the Kalayaan claim, a polygonal area which does not include Spratly island and Lad reef (see figure 4).
The Philippine claim is also based on the grounds of the importance of the Spratlys to the Philippine "security and economic survival" by virtue of their proximity and the assertion that they sit on part of the country's continental shelf. In fact there is very clear deep ocean trench that separates the Islands from the Palawan coast.\(^{33}\)

The Philippine claim and occupation of the Islands and reefs were strongly opposed by Vietnam and China. Actually the claim of the Philippines was weakened by Taiwan's occupation of Itu Aba and the Vietnamese occupation of 19 other islands and reefs within the so-called Kalayaan. The validity of the Philippine claim will be discussed in the next chapter.

\[\text{III.3.4 Claim of Malaysia.}\]

Malaysia is the latest comer to the dispute. Malaysia's claim was made out by publishing a map of its claim to the continental shelf. By this map Malaysia claims the southern part of the Spratlys including the islands and reefs sitting upon the continental shelf of the area. The Malaysian claim is based on geography and the provisions of the 1982 UNCLOS on the continental shelf with some justification. Before this claim, Malaysia had promulgated a continental act in 1966 said to be in accordance with the 1959 Geneva Convention on the continental shelf. Malaysia has declared sovereign jurisdiction over all islands and atolls on the theory that the 1958 Geneva Convention on territorial waters and continental shelf boundaries and 1982 UNCLOS support such an assertion. Malaysia also proclaimed an Act on EEZ in 1984 but the official map showing the coordinates of the EEZ limits and baseline has not been published yet.\(^{34}\)
Malaysia has used an inverse application of Article 76 of the 1982 UNCLOS concerning the legal status of the continental shelf as "the submerged prolongation of the land mass of the coastal State, which consists of the sea bed and subsoil of the shelf, the slope and the rise". Of course there is no provision of the UNCLOS defining the legal effects or status of the ownership of the claiming State over the islands or reefs sitting on the continental shelf. But Malaysia still asserted that the ownership of the continental shelf could lead to the ownership of the islands and reefs sitting on the continental shelf. Malaysia also claimed 12 mile territorial sea for the reefs occupied by them on the grounds that these reefs are entitled to the legal status as an island under the Article 121 of the Convention.

Since 1983 Malaysia has occupied three reefs, stationing its troops there with the aim of reinforcing its claim. One of these reefs is reported to be used as the tourist center in the region.

The legal aspects of the Malaysian claim will be discussed in the next chapter.

III.3.5 Brunei Darussalam's claim to Louisa Reef.

Brunei is not a party in the dispute over the Spratlys, its claim is concerned only to Louisa reef which is also claimed by Malaysia. The Louisa reef is located separately from the Spratly.

Brunei is a small, oil-rich State which benefits greatly from hydrocarbon deposits discovered close to its narrow coast. For this reason the continental shelf of Brunei is vitally important to this country. The main claim of Brunei on the continental shelf is based on the delimitation of its continental shelf established by
Britain in 1954 which terminates only at the 100-fathom line. Therefore, in 1980 Britain made a proposal to Malaysia to negotiate their seaward maritime boundaries. After the independence of Brunei in 1984, this negotiation was continued but the ownership of the Louisa Reef remained unsolved.

In 1988, Brunei claimed its continental shelf (which extends beyond Rifleman Bank) by issuing a map. The claimed continental shelf seemed to be based on the 350-nautical mile continental shelf interpretation of Article 76 of the UNCLOS of 1982. In fact this interpretation is wrongly applied in this area because there is very clear East Palawan Trough which is about 60 to 100 miles from the coast of Brunei. So the grounds of this claim based on natural prolongation of the continental shelf is invalid.  

Although Brunei is not a party in the dispute over the Spratlys it has some interests relevant in solving the dispute.

III.3.6 The Kingdom of Humanity and Republic of Morac-Songrati-Meads.

During the history of the dispute over the Spratly Islands the name of so called "the Kingdom of Humanity and Republic of Morac-Songharati-Meads" appeared in some private claims to the Spratlys. Such claims have never been seriously internationally taken. At the certain time the Spratlys appeared on American and British maps under the designation "Humanity sea and Meads Islands".
According to Samuels\textsuperscript{36} from 1914 to 1972 there was a group of individuals who tried to lay claim to the Islands in the name of the "Kingdom of Humanity", the "Republic of Morac-Songhrati-Meads" or both.

The authors of the claims, acting on behalf of Morton F. Meads, attempted to gain recognition via the public media, as well as through such official forums as the US securities and Exchange Commission (1955-1956), the US Board of Geographic Names (1968) and the US Embassy in Manila (1971). Of course they failed to get formal recognition. At that time the position of the USA in the South China Sea was neutral and it was clearly described in a letter dated 10 September 1968 to Mr. Walter Hutchinson, the acting as "Ambassador Extraordinary" for the Kingdom/Republic, the assistant Geographer of the US State Department, Office of strategic Research which read partly as follows:\textsuperscript{37}

"The United States Government considers the sovereignty to be undetermined over the islands and reefs which constitute the Paracel and Spratly Islands, as well as those of the more general term, Dangerous Ground. Claims have been advanced or interest has been shown in these islands by South Vietnam, North Vietnam, France, The United Kingdom, The Republic of China and the so-called Chinese People's Republic as well as the Republic of the Philippines and Morton F. Meads. Japan renounced all rights over the Islands by terms of the 1951 Treaty of Peace. Temporary occupation to certain of the islands has been established at various periods by South Vietnam, the Republic of China and the Chinese Communists. As stated above, however, no one has ever been able to maintain permanent and exclusive jurisdiction over the islands."

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But the authors of the claim on behalf of the Kingdom of Humanity/Republic of Morac-Songhrati-Meads still interpreted and used the letter in attempting to get the status of the Meads claim as one among several sovereign claims over the Spratly Islands.

Three years later, on 18 October 1971, Charles G. Anderson, the so called "Assistant Secretary of State Security" for the Kingdom/Republic sent a formal affidavit to the US Embassy Manila. The reason of sending the affidavit, according to Samuels, was the then one-month old official Philippine claim to Kalayaan or "Freedomland". The submitted document included a twenty three item declaration and an appended "Brief History of Meads Islands", the central point of which was summarized by Samuels as following.38

1. The claim itself was based first on the reported "discovery" of the Archipelago by Captain James George Meads, Master of the ship Modeste, in the late 1870s. The later was apparently a well-known seaman in the area, as he is also cited by Malaysian authorities in the dispute with the Philippines over the status of Sabah. In 1879, Captain Meads is said to have vigorously protested an attempt by the Manila government to hoist the Spanish Flag over North Borneo.

2. Captain Meads apparently named the general area of the Spratlys "Humanity Sea" and gave his own name to Meads Island, otherwise known today as Itu Aba. Further more, he claimed the Island for himself, established a colony on several of the islands and later conferred title to his son, Franklin N. Meads. The title is said to have passed down to a later generation which had immigrated to the United States, and finally conferred upon "the present exclusive owner and sole sovereign", Morton Frederick Meads, Captain Mead's Great-grandson.
3. According to the affidavit: At the time of the discovery of these islands, now called Humanity Islands, Meads Islands or Spratly Islands...the islands were under no apparent modern or traditional type of sovereignty, and were under international Law "free territory", res nullius until the ownership and sovereignty of Captain James George Meads by right of discovery, occupation, claim and control thereover in the 1800's.

4. In 1914 various members of the colony formed the independent "Kingdom of Humanity" with Franklin Meads as sovereign and with a capital on Meads Island (Ilu Afa). Among the group of founders were Willis Alva Ryant, Walter Hutcheson, Paul Willard, William Chaplin and the Anderson brothers, Victor and Charles. These and other settlers are said to have continuously occupied and developed the islands until World War II, at which time they were forced out of the Islands by invading Japanese troops who proceeded to occupy Itu Afa Island in 1939 and to build the Itu Afa submarine base in 1940.

5. Franklin Meads, having died in 1945, conferred title to the Islands on his son, Josiah. However, Josiah died only one year later. As his son and sole heir, Morton F. Meads, was "too young to rule", the title of Chief of State was conferred on Willis Ryant. In order to further conform title to the area, in 1946 Charles Anderson and Morton Meads are said to have buried sovereignty markers on most of the islands in the Archipelago.

6. The concern over title to the islands became necessary in 1946 when the Sultan Songhrati apparently sold his own "right of possession" to some of the islands to Mercedes Magsaysay, sister of the Philippine President, Ramon Magsaysay.
However, in order to clear title to the area, Mortan Meads is said to have subsequently purchased all such "rights of possession" from Mercedes Magsaysay.

7. The Colony is said to have remained intact until 1959, at which time a dispute developed among the settlers, causing a splinter group, led by Christopher Schneider, to establish a rival "Republic of Morac-Songrati-Meads" over part of the Archipelago. However, the dispute was apparently resolved in 1963 when the two "States" were merged, with Schneider assuming the title of Chief of State for newly amalgamated "Kingdom/Republic". Willis Alva Ryant became Secretary of State Security. Charles Anderson assumed the title of Assistant Secretary of State Security. His brother, Victor Anderson, became Foreign Minister, and William Chaplin became the Minister of Natural Resources. Finally, Water Hutcheson was appointed Ambassador Extraordinary.

The story poorly invented by Charles Anderson is apparently not serious. There are many important gaps and a remarkable lack of details about the way in which the founders actually came to the islands. Anderson and his brother claimed to be British subjects, and the other founders are said to have been Americans, but what this meant in terms of their origins is left to the imagination. Similarly, except to note that he was too young to rule in 1946, there is almost nothing in the affidavit or history filed by Anderson about the scion of the dynasty himself, Morton F. Meads. Furthermore, even assuming the veracity of the story, one can not help but be a little skeptical about some of the dates noted in the affidavit. By 1971 all of the founders of the Kingdom of Humanity comprised quite a gerontological set. Assuming that they were in their twenties in 1914, these adventurers at sea would all have been in their seventies or early eighties by the time Anderson filed his affidavit.
According to other reports, the so-called "Kingdom of Humanity" was itself discovered by Morton F. Meads either just before or just after his discharge from the US Army in Manila in 1946. He is said to have found Willis Alva Ryant, Victor Anderson and others already resident on one of the Islands. The former having already formed a Kingdom with himself a monarch. Meads apparently agreed to act as the commercial agent for the group, and subsequently established two companies charted in Manila for the purposes of exploiting the mineral resources and Pearl-beds of the area. Together with the others, furthermore, he is said to have concocted the story of the founding of the Kingdom of Humanity not only in order to lay claim to the Islands, but also engage in such nefarious activities as a fake postage stamp enterprise aimed to swindle philatelists around the world. For this and other reasons, Meads was arrested in Manila in 1955, but all charges were apparently dropped.

From the two stories mentioned above, Meads himself apparently dropped from sight until 1972 when he is said to have written to President Marcos, President Chiang-K'ai-Shek and the Secretary of the United Nations on behalf of his claim. But this last effort also came to nought. According to Philippine Press reports the whole group of the founders of the so-called "Kingdom of Humanity" including Morton Meads was killed when their 50 ton motor ketch, the E Fluribus Unum, was hit by the typhoon "Konsing" and sank somewhere west of Midoro Island and the Meads claim apparently went dawn with the ship.

2. Bennet, p.430.
5. W.P., p.73.
6. Park, p.188.
7. Samuels, p.64.
8. Samuels, p.64.
9. Samuels, p.75.
10. Samuels, p.76.
11. Samuels, p.76.
12. Samuels, p.77.
13. Samuels, pp.81-83.
15. Park, p.184.
16. Samuels, p.89.
17. Samuels, p.92.
22. W.P., pp.73-74.
27. Samuels p.89.
28. Samuels, p.82.
29. Samuels, p.82.
30. Samuels, p.83.
31. Samuels, p.83.
32. Samuels, 89.
34. Cordner, p.67.
35. Cordner, p.68.
37. Samuels, p.168.
38. Samuels, p.169.
39. Samuels, p.171.
CHAPTER IV

INTERNATIONAL LAW AND THE LEGAL ASPECTS OF CONFLICTING CLAIMS

IV.1 The International Law Perspective and International Practices Applicable to the Spratly Dispute.

The dispute over the Spratly Islands is one of the most complicated territorial disputes of the world. The parties base their claims on the different grounds based on their own historical accounts of the Islands' discovery by their nationals, and their official possession, occupation, and exercise of sovereignty over the Islands. So it is very useful to examine the conflicting claims to the Spratlys from the international law perspective and international practices. The linkages between Law and conflicting claims can be shown and the legality of the claims can be established. The extent to which international law can be used to explain the problems relating to conflicting territorial claims is also examined.

With the development of international law the international rules and practices dealing with territorial acquisitions have been well established. In practice the problems of conflicting claims do not result from the lack of understanding of international law but rather from the politics surrounding the claims.
Conceptually, in international law there are three types of territory which are: 1. Territory which rightly belongs to some state; 2. Territory which belongs to no State (*terra nullius*); 3. The territory belongs to all states (*terra communis*).

International law has been used to delimit respective territorial boundaries and sometimes to regulate the transfer of territory from one state to another as well as to determine the status of a particular piece of territory. In this context, International Law can also be used to determine boundaries and as a doctrine it is most applicable in resolving conflicting claims. Many of the conflicting territorial claims in the World have their origins in creeping annexation or the acquisition of additional territories through unilateral means. New territories are acquired for at least two reasons: resources and strategic considerations. But such unilateral attempts at creeping annexation can also lead to territorial conflicts between states as they compete for new territories. The problems in the South China Sea are due partly to the creeping annexation and partly to the uncertainty surrounding the title of the Islands: Whose islands are these? What was the status of the Islands at the time the claims were made? These questions are not easy to be answered.

International Law recognizes five principal modes of territorial acquisition: occupation, prescription, accretion, cession and conquest. These modes are still useful to explain the validity of conflicting territorial claims since many of today's territorial disputes center around the validity of the acquisition in the past. These modes of territorial acquisition could be summarized as follow:

1. **Occupation:** It is a mean of acquiring unappropriated territory. To constitute a valid claim, occupation must satisfy at least two minimum conditions. The territory to be occupied must not belong to anybody and has in essence to be *terra nullius* at the time of acquisition. Otherwise, the occupation is not valid.
Secondly the occupation must be effective to the extent that there exists an actual, continuous and peaceful display of state authority over the occupied territory. Mere discovery not immediately followed by effective occupation gives the discoverer only temporary title (i.e. inchoate title). Unless the occupation is followed by effective jurisdiction within a reasonable time it is subject to appropriation by another state.

2. *Prescription:* To be valid the prescription must be based on effective occupation but only difference from occupation is the status of the occupied territory at the moment of occupation. It applies to territory that is lawfully claimed by another state. Title through prescription is effective only through a sufficient period of uninterrupted occupation (i.e. through the operation of time) and by the acquiescence of the other claiming party. Acquiescence is implied when one party fails to manifest its opposition of a title in a sufficiently effective and positive manner, for example, by reference to an international tribunal or taking action to announce publicly its protests or opposition to the title.

3. *Accretion:* A state acquires territory by accretion when a new territory is formed through the changes of nature within its existing territorial limits. For example, when the sea recedes or a river changes its course or dries up leaving a new piece of territory within the territorial limit of a state. The emergence of an island in the territorial sea of a state is another example of accretion.

4. *Cession:* Cession refers to the transfer of territory from one state to another often by treaty or agreement. Cession can be both voluntary or forced. The cession of Singapore in 1819 was voluntary. The cession of Alaska from Russia
to the United States in 1867 was through a sale agreement. The cession of Alsace-
Lorraine to Germany in 1871 by France was forced.

5. Conquest: Conquest is similar to forced cession in that it involves the forcible
seizure of another State's territory. It should be recognized that the current
principles of international law pertaining to the permissible use of force,
particularly those adopted by the United Nations Charter, have made some writers
and jurists conclude the invalidity of such title.

Many states have erroneously maintained that islands close to their shores belong
to them by virtue of their geographical proximity. It is impossible to show the
existence of a rule of positive international law that islands situated outside the
territorial waters should belong to a state because of the mere fact of proximity or
contiguity. Other evidence must exist to support title to a territory in such a
situation. Proximity, like discovery, on its own merit can not create title in
international law.

Under international law and practice, the discovery of new territory does not vest
in the discoverer unchangeable title of ownership, but only an inchoate title which
has to be perfected by subsequent, continuous and effective acts of occupation.
This principle is a good international standard to examine the validity of the claims
based on the historic records of "ancient times".

The case of Palmas Island is the international practice of the operation of the
international law principle in which the effective control and administration is the
main factor for a decision of the arbitration made on 4 April 1928. The Island of
Palmas is an isolated island off the Philippines coast claimed by both the
Netherlands and the United States. The United States claimed that Spain had discovered the island and that title had passed to the United States pursuant to the Treaty of Paris of 1898. On other hand, the Dutch based their claim on an alleged peaceful and continuous display of authority over the island\(^1\). The arbitrator awarded Palmas to the Netherlands. According to the arbitrator Max Huber, the act of discovery was not sufficient to establish sovereignty over the island, the discovery must be followed by an effective and continuous administration over the island\(^2\).

**IV.2 Legal Status of the Conflicting claims**

**IV.2.1 Legal Aspects of Chinese Claims**

Among the claimants to the Spratly Islands the Chinese claim is the most aggressive and complex. It is based on incomplete and sometimes inconsistent historical data, ancient oriental concepts of ownership, and imaginative interpretations of contemporary international law. To analyze the legal aspects of the Chinese claim we should examine the PRC attitude toward international law and how the Chinese use international law to claim almost the entire South China Sea as an "internal lake".
IV.2.1.1 The Attitude of the PRC toward International Law.

In the Post-Mao era Chinese scholars and government officials (writing on the subject of international law) argued that international law is a tool of western capitalist states to subjugate developing nations.³ They argued that western governments formulated international legal norms to serve their own imperialist purposes. The criticisms can be explained partly by China's historical experience with international law. During the late nineteenth and early twentieth centuries, China's primary contact with international law was through unequal treaties. These treaties deprived the Chinese state of many basic attributes of sovereignty, and the humiliation caused by these treaties may partially explain the PRC's lingering distrust of international law. More recently, the representation of China at the United Nations by the government of Taiwan during the first decades of that organization's existence intensified the PRC's dissatisfaction with the international order.

Since the beginning of the 1980's, Chinese writing on the subject of international law has taken a less antagonistic position. Chinese writers have begun to emphasize the beneficial role of international law in facilitating cooperation among states and in regulating their mutual intercourse. Few influential scholars or officials still adhere to the strict ideological view that international law is solely an instrument of western oppression.⁴

However the PRC's new approach to international Law is flexible and pragmatic, with international rules and customs evaluated on the basis of national interests rather than on Marxist ideological grounds. The PRC has found that it can use international law as an foreign policy tool when the relevant law assist its policies.
Thus, while the PRC has acknowledged the importance of certain binding rules on the world community, it has retained a strongly instrumental view of the role of law.

The PRC's pragmatic approach to international Law can be found in its attitude toward treaties. Most international law scholars in the PRC assert that treaties are the most authoritative source of international Law. However, the Chinese government does not recognize all treaties as equally binding. When deciding whether a treaty is binding, the Chinese government argues that the implied intention of the parties is more important than the name given to an agreement. In the case of multilateral treaties, for example, the PRC reserves the right to reject any treaty in which developing countries did not play a significant role in formulating.

The current government also takes a selective approach toward recognizing treaties concluded by previous Chinese governments. As early as 1949, the PRC established a policy on such treaties when a conference of the Chinese Communist Party declared that the PRC "must study the treaties and agreements made by the Goumingdang Government with foreign governments and, depending on their content, recognize, annul, revise or reconclude them". ²

The PRC maintains that it bases its decision to honor a treaty strictly on the class character of the agreement. The Government's policy toward treaties concluded before 1949 allows it to recognize only those treaties serving its current interests.

Although the PRC's attitude toward international law has changed significantly during the Post-Mao period, its approach toward international law continues to be
driven by foreign policy goals and the PRC see international law as useful instrument for implementing its foreign policy.

IV.2.1.2 The PRC's Use of International Law in the Spratly Islands Dispute and Legal Aspects of its Claim.

The PRC's approach to international law is evident in the legal arguments it has put forth supporting its claim to the entire South China Sea generally and to Spratly Islands particularly. Its position on the disputes is entirely pragmatic, based neither on firm ideological principle nor on internal consistency. As one scholar has noted the claim is as frivolous and ludicrous as the papal bull of 4 May 1493 dividing the World Oceans between Spain and Portugal. The whole South China Sea under the Chinese claim is regarded as the internal lake of China⁶.

The PRC bases its historical claim on the grounds that Chinese fishermen first discovered and used the islands in South China Sea. Assuming that the Chinese fishermen first discovered the islands there is no evidence to prove that the Chinese had the effective authority and control over the Islands required to confer sovereignty. This is needed under the prevailing international law perspective and practices mentioned in the previous paragraph.

By using Chinese discovery of the Islands as one of the main grounds for its claim, the Chinese advocate one of the traditional rules of international Law formulated by western states during the age of colonialism. The rule that allowed the colonizing states to gain easy title to territory they discovered and occupied has not been generally recognized since the early twentieth century. Professor
Jennings of China has also noted that effective control is of paramount importance in acquiring title to territory and that "merely discovery is a sixteenth century basis of sovereignty that is no longer accepted as sufficient".

Taiwan appears to have controlled and administered only Itu Aba island between 1946 and 1950 and from 1956 onward. This control did not extend to other features of the Spratlys and occupation by other states proceeded unchallenged by Taiwan. Itu Aba has the status of an island according to the UNCLOS article 121 (Regime of Islands) in that it is "naturally formed" and above water at high tide. But the islet could not "sustain human habitation or economic life of its own", therefore it would have only a territorial sea and a contiguous zone. It is impossible to apply an EEZ or a continental shelf for the islet under the Article 121.

The PRC has spent many years of asserting an ancient and unalienable right to the Spratlys. This has included territorial claims of legal sovereignty in the Declarations issued in 1958 and 1992 and many decades of diplomatic protests against the activities of other states in the region. Despite this the PRC did not have effective control of any part of the Spratlys until 1988 when the PRC occupied several reefs by force.

China attempted to use sovereign claims over the South China Sea Islands to claim the entire South China Sea. One of these attempts involved the illegal contract on oil and gas exploitation signed in 1992 between China and an American Private Oil Company, Crestone, on the continental shelf of Vietnam. According to Article 13 on low-tide elevations and Article 121 on the islands these features could not qualify as islands nor as "low tide elevations" within the meaning of the
Convention. These features must be "at a distance not exceeding the breath of the territorial sea from the mainland or an island" to qualify as "low tide elevation". The features occupied by the PRC in the Spratly are about 900 miles away from Hainan Island of China. So China could not extend its claim to the territorial sea surrounding the features occupied in the Spratlys.

According to the above analysis the essential element of the PRC's claim to the South China Sea Islands is a modern formulation of a traditional rule of western-centered international law that even the former imperialist powers have long since rejected. The PRC's reliance on this colonialist rule of law is a testament to its flexibility in using international Law to further its foreign policy goals.

The PRC's frequent reference to the Franco-Chinese Treaty of boundary of 1887 in its claim to the South China Sea Islands is further evidence of its pragmatic use of international Law for its own expansionist policy. The legal aspects of this Treaty was discussed in the chapter 2. This Treaty was considered as one of the unequal treaties that the PRC denounced as having no validity under international Law. The Treaty was signed between the weak Qing Imperial Government and the much stronger French Government shortly after the French defeated the Chinese in a two year war. In the case of the Spratly Islands some western scholars also argue that the Chinese reference to the Sino-French Treaty of 1887 is vague and non-specific and is weakened by an official Chinese government report, published in 1928, that shows the Southernmost delineation of Chinese territory as the Xisha Islands (Paracels) and makes no mention of the Nansha (Spratly) Islands. 8
The PRC also refers to the San Francisco Peace Treaty to support its claim to the Islands. The Treaty was concluded between Japan and the Allied Powers, with the exception of the Soviet Union. The Treaty explicitly excluded the PRC. The agreement, therefore, does not possess the dual class character the PRC often demands of a multilateral agreement. Moreover, shortly before the Conference, the PRC announced that it would not recognize any agreement concluded in San Francisco as affecting the legal status of the Spratly Islands. The PRC's then Foreign Minister Zhou En-lai stated "whether or not the US-British Draft Treaty contains provisions on this subject, and no matter how these provisions are worded, the inviolable sovereignty of the PRC over the Spratly Islands...will not be in any way affected." 

Although the formation of the San Francisco Peace Treaty suggests that the PRC would not recognize the agreement's validity, the PRC has found a way to blend the Treaty into its claim. The Treaty annuls Japan's right to the South China Sea Islands without specifying who will succeed the Japanese as titleholders to the Islands. The PRC interprets this gap as a formal return of the islands to the PRC. According to the PRC, because the South China Sea Islands were "unquestionably" Chinese before the French and Japanese "illegally" occupied the Islands, the Peace Treaty's failure to grant the Islands to another state is an implicit recognition of China's title to the territory.

Furthermore, the PRC has incorporated Taiwan's contact with the Spratly into its own claim. Because the PRC does not recognize Taiwan as a separate State, it generally does not recognize legally the actions of the Government of Taiwan. In this controversy, however, Taiwan has maintained a more continuous presence in the area, and the PRC freely uses action taken by Taiwan to support its own claim.
These examples mentioned above illustrate the PRC’s instrumental approach toward international Law in the South China Sea Islands dispute. The PRC has combined a history of acts committed by the Guomindang, earlier Imperial Chinese Governments, and in the case of the San Francisco Treaty, Western States, to support it claim to the Islands. The common thread running through the elements of the PRC’s position is the concept that international Law is a flexible instrument of a nation’s foreign policy.

However, despite its efforts to project itself as the rightful legal title holder to the Spratly Islands, the PRC does not appear to have a meritorious claim to the Islands under international law. This seems to be the reason why the PRC does not want to submit to the binding decision of an International Arbitration Board or Judicial Body on the question of sovereignty over the South China Sea Islands.

IV.2.2 Legal Aspects of Vietnam’s Claim

Unlike the claim to the Paracels Vietnam’s claim to the Spratly Islands based on historic sovereignty since ancient times is not convincing because it does not support the concept of “effective control, administration and governance” of sovereignty territory.

However, Vietnam’s claim to the Spratlys, based on the grounds of effective occupation and control over the Islands by the French on behalf of the Vietnamese in 1933, is convincing. The French were the first in the area who on behalf of the Vietnamese took official possession of the Spratly Islands and made official legal
incorporation of the Islands to the Vietnamese province of Baria in December 1933.

There are some arguments that France stated that the annexation of the Spratlys in 1933 was never ceded to Vietnam. This statement has no legal basis because in 1933, as mentioned above, the French took official possession of the Islands and exercised normal sovereignty and administration over the Islands on behalf of the Vietnamese. Furthermore, by Decree No. 4762-CP dated December 21, 1933, the Islands were officially incorporated into the Baria province of Vietnam as have been part of Vietnam's territory since then.

In their claim, the Chinese argue that the Vietnam's claim is weakened by North Vietnamese support to the Chinese claims against South Vietnam in 1956 and 1958. In fact, in 1958 the North Vietnamese government had supported the Chinese Declaration concerning the Chinese sovereignty in their 12 mile territorial sea only. This support did not concern the status of the South China Sea Islands at all. Moreover, at that time the Islands were under the control and jurisdiction of the South Vietnamese Government. So the North Vietnamese support to China in 1958 in no way means the recognition of Chinese sovereignty over the Islands.

Under the concept of "effective control, administration and governance" Vietnam's claim is the strongest among the claimants to the Spratlys. Vietnam has occupied and effectively controlled the majority of the islands and reefs in the Islands. However, Vietnam's claim is not valid for all the islands it has claimed. The claim is valid only to the six groups of the islands officially possessed by the French in 1933 and the islands and reefs effectively occupied and controlled by the Vietnamese since then.
IV.2.3 Legal Aspects of the Philippines Claim.

The Philippine claim has little credence in international Law where the independent activities of individuals is given little value. The Philippine official claim to the so-called "Kalayaan" based on the ground of proximity and security and economic development is arguable and of weak validity.

According to the Philippines the "Kalayaan" portion of the Spratlys is geographically closer to the Philippines than to the coast of the ROC, PRC and Vietnam. However, the validity of this contention is questionable given the inadmissibility or contiguity in maritime boundary delimitations reflected in international Jurisprudence and practice. For example, in the Island of Palmas Arbitration Case, proximity was rejected as "Wholly lacking in precision and would in its application lead to arbitrary result".

Another alleged basis on which the Kalayaan is claimed is the Islands' importance to the Philippine national security and economic survival. In its view, the success of the future economic development of the entire Palawan province lies in the success of the national claims both to the "Kalayaan" Islands and the continental margin west of Palawan. Nonetheless, this is even more unconvincing in view of the location of the Islands in question, which are 300 miles away from Palawan and thus can not have any vital link to its security and economic development. Moreover, there is a distinct and deep trough between the Philippine Archipelago and Spratlys. So the Philippine continental shelf claim of 200 nautical miles could not be sustained under Article 76 of the 1982 UNCLOS.
The Philippines does not assert a historic connection and the assertion that the Islands had been abandoned is subject to dispute by Vietnam, the PRC and Taiwan. Some scholars have described the Philippine action as "creeping annexation".

IV.2.4 Legal Aspects of Malaysian Claim.

The Malaysian claims are based on the reference to contemporary Law of the Sea concepts, in which the Malaysian try to make compliance with some key provisions of the convention concerning the continental shelf and EEZ. The main purpose of the Malaysian claim is to protect their claim on continental shelf and EEZ from other claimants to the Spratlys. Therefore the Malaysians also claim their sovereignty over the islands and reefs on their claimed continental shelf.

Malaysian's reverse sovereignty claim over features rising sea level from the continental shelf is not sustainable on the basis of the Law of the Sea.

The claim of Malaysia has no historical basis except recent "effective control" of three insular features, and must therefore be viewed on their merits in competition with other similar claims.

Malaysian's effective control of one feature commenced in 1983, followed by two others in 1986. Among them, only one, Swallow reef, is also claimed as an island which may satisfy the requirements of the Article 121 concerning the Regime of Island. Therefore it could have a territorial water but no EEZ or the Continental shelf because it could not sustain independent economic life by itself. The other
two features are defined as low tide elevation, but are beyond the territorial sea of the mainland and therefore could not form the basis for extension of the territorial sea under Article 13. Because all these features do not have the ability to "sustain human habitation or economic life of its own", Malaysia does not claim an extension of the continental shelf or EEZ based on these features.

Malaysia also claims a 12-nautical mile territorial sea for Amboyna Cay, which was occupied and effectively controlled by Vietnam several years before the announcement of the Malaysian claim. At present, Amboyna Cay is still under the effective control of Vietnamese troops so this claim is also invalid.

2. Philip C. Jessup.
4. Hungdah Chin.
5. Michael Bennet cited from the common program of the chinese People's Political and Consultative Conference.
7. Prof. Jennings was a Judge of International Court of Justice.
0. Foreign Ministry's Memorandum of China.
CHAPTER V

CONFLICTING CLAIMS ON
CONTINENTAL SHELF IN SOUTH CHINA
SEA - CRESTONE INCIDENT

V.1 Introduction

As mentioned in the previous chapters, China's claim to the South China Sea is the most aggressive and the most ambiguous in the South China Sea island wrangle. Despite its continuing preoccupation with domestic problems, the complexity of international relations and the need to deal with the sovereign States of Southeast Asia as equals, the PRC continues to implement its hegemonic external policy in South China Sea. The most recent evidence of this policy is China's proclamation of the new law on its territorial waters and continuous zones on 25 February 1992. This includes all the South China Sea and the Senkaku north of Taiwan. The declaration of the new law was followed by the most aggressive and hegemonistic action of China in granting a seven year concession contract in an area of Vietnam's continental shelf to a US private oil company - the Denver-based Crestone Energy Corporation.
The agreement between China and the Crestone Company was signed on May 8, 1992 which is so-called Wan-an Bei - WAB-21. The area of the contract covers 25,125 sq. km. with an additional adjacent Contingent Contract Area, covering 5,076 sq. km. The coordinates of the contract area are following:

<table>
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<tr>
<th>Points</th>
<th>Latitude</th>
<th>Longitude</th>
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<tr>
<td>1.</td>
<td>8 30' N</td>
<td>109 20' E</td>
</tr>
<tr>
<td>2.</td>
<td>8 30' N</td>
<td>111 00' E</td>
</tr>
<tr>
<td>3.</td>
<td>7 30' N</td>
<td>111 00' E</td>
</tr>
<tr>
<td>4.</td>
<td>7 30' N</td>
<td>110 00' E</td>
</tr>
<tr>
<td>5.</td>
<td>6 40' N</td>
<td>110 00' E</td>
</tr>
<tr>
<td>6.</td>
<td>6 40' N</td>
<td>109 35' E</td>
</tr>
<tr>
<td>7.</td>
<td>7 08' N</td>
<td>109 35' E</td>
</tr>
<tr>
<td>8.</td>
<td>7 08' N</td>
<td>109 25' E</td>
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<tr>
<td>9.</td>
<td>7 30' N</td>
<td>109 25' E</td>
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<td>10.</td>
<td>7 30' N</td>
<td>109 20' E</td>
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</table>

The contract area lies about 84 nautical miles from Vietnam's baseline, 630 nautical miles from Hainan Island of China and 55 nautical miles southwest of Vietnamese-occupied Spratly Island (see figures 5 and 6). This area is not far from Vietnam's Dai Hung (Big Bear) field, discovered before 1975 by a big American oil company, Mobil, and now being developed by a British Oil company, BHP with TOTAL, SUMITOMO, PETROVIETNAM and PETRONAS of Malaysia. The contract block is next to the Thanh Long (Blue Dragon) field over which MOBIL and others recently signed an exploration contract and another field already being exploited by BP on behalf of a Consortium including Norway's Statoil and India's Oil and Gas Commission.
The area is considered potentially rich in oil and gas with the recoverable oil reserves estimated to be 800 million barrels. The depth of the area allow for easy offshore drilling operation².

The aggressive action of China worries the companies with drilling operation in areas which have been awarded by Vietnam³. Even though, the Crestone officials have stated that the PRC promised to protect the Crestone activities in the area by military forces, although so far China has not threatened directly. The US Government warned that it does not want any US company having contract of drilling for oil in the disputed area. The Crestone Company, therefore, cannot expect any support from the US Government if they have problems⁴.

Randall Thompson, the President of the Crestone Company, stated in April of 1994 that the company had begun a search for oil and gas in the area with the close cooperation of the Chinese State Oil Company to undertake seismic surveys. After that the Company planned to start exploratory drilling later this year with “full support and protection from China”⁵.

The Crestone Company can be regarded as an opportunist explorer which ignores international relations, and the legal questions relating to the Contract Area⁶.

Vietnam protested strongly about the Contract and accused China of violating Vietnam’s sovereign rights over its continental shelf and Exclusive Economic Zones. It requested that the PRC and the Crestone Company stop immediately the illegal exploration and exploitation Contract in the area of Vietnam’s continental shelf⁷.
In June 1994 Vietnam has sent its drilling rig into the Crestone Contact area to drill for oil and gas in order to implement its sovereignty right over the continental shelf and explore oil and gas resources on its continental shelf\(^8\). According to the oil company executives in Vietnam, a rig belonging to Vietsovpetro, a unit of the Vietnamese State Oil Company, Petrovietnam, was working on the Vanguard Bank (Tu Chinh in Vietnamese), a relatively shallow part in the Southwest corner of the Crestone Block. This rig was either drilling for oil or for rock samples as a prelude to future oil drilling. Before that event Vietnam awarded several Vietnamese exploration blocks including one called "Blue Dragon" to a consortium led by American Oil Company Mobil. These blocks lie just west of the Crestone contract area and prevent Chinese aggressive actions from further encroachment on Vietnam's continental shelf\(^9\).

Malaysia and the Philippines consider the disputed contract area to be located outside of the Spratly Islands disputed areas and so the dispute is not relevant to them. However the aggressive actions of China in South China Sea have led the other States to take action in order to protect their continental shelf from the Chinese hegemonism. On May 8 the Philippines granted an oil exploration permit to the Vaalco Energy Company of the United States and its Philippines subsidiary, Alcorn Petroleum and Minerals, covering a portion of the disputed Spratly Islands.

The permit area Manila called the Recto Bank by the Philippines includes the Patag (Flat), Lawak (Nanshan) and Parola Islands. These islands have been controlled by the Philippines. The granted area is located about 400 Km west of the Philippine Island of Palawan. The PRC issued protest to the Philippines based on the sovereign claim to the entire Spratly Islands\(^10\).
V.2 Legal Aspects of the Conflicting Claims under International Law.

V.2.1 Legal Aspects of China’s Claim.

China’s claim to the area is based on its historic claim to all the South China Sea Islands as well as to the entire South China Sea as has been analyzed in the previous chapters. This claim lacks basis and used by the PRC to implement its hegemonistic external policies. On July 3, 1992, the PRC reaffirmed that its claim to the area based on its claim to the Spratly Islands. According to the PRC, because China has sovereignty over the Islands, it is entitled to the so-called Wan-an Bei as the continental shelf of the Spratly Islands. This claim is without basis, illegal and invalid under international Law.

Firstly, sovereignty over the Spratly Islands is still disputed by many parties. The majority of the Islands are occupied by Vietnam, some by the Philippines, Malaysia and one by Taiwan. The PRC occupies only some elevations which could not constitute any maritime zone under international law and practices. The Chinese claim to sovereignty over the Spratly Islands is invalid under international Law and practices as analyzed in the previous chapters. China, therefore, has no right to the Spratly Islands.

Secondly, the PRC has no islands in the Islands. It has only some features which could not be identified as a island under Article 121 of the 1982 UNCLOS (Regime of Island) which reads as follows:
"1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. 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.

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

The features occupied by China are defined as low tide elevations but they are too far from China's mainland, therefore, they can not form the basis for an extension of the territorial sea. So having these features the PRC has neither territorial sea, nor EEZ, nor continental shelf in this area under international law.

Thirdly, in between the contract area and the features occupied by the PRC there are some islands and reefs controlled by Vietnam such as Spratly island, Ladd reef, West reef, Central reef, East reef. Given that the Islands generate some extension of the area from these features it would belong to Vietnam, not to China.

Fourthly, none of the islands in the Spratlys have an ability to "sustain human habitation or economic of its own" as required by the Article 121 of the UNCLOS, therefore, the Spratlys does not have an EEZ or continental shelf. Even rightful possession of all of the islands would not give China the right to the sea bed of the Crestone Contract Area. China can not claim the continental shelf rightfully.¹¹

Finally, the contract area is clearly separated from the Spratly Islands by waters of 1,800 meter deep. The contract area is in shallow water on a shelf joining
Vietnam's continental shelf connected to the mainland. Some scientific researches have established that the geological structures of the area and the structures of White Tiger (Bach Ho) field, Big Bear (Dai Hung) field of Vietnam are unique. Dr. Mark J. Valencia from the East West Center of USA has noted: "...the area is bathymetrically continuous with the Vietnamese continental shelf and geographically and bathymetrically separated from the Spratly Islands proper". It cannot be argued that the contract area is not a part of the Continental shelf of Vietnam.

There are some arguments that under the concept of proximity the contract area is nearer to the Spratly Islands than Vietnam's Catwick (Phu Quy) island, therefore, China has title to this area. These arguments generally have little basis and are not accepted by international law and practice. But here we will discuss only the proximity concept of these arguments which is not accepted by either the UNCLOS or the decisions of the International Court of Justice. For example, in the case of the North Sea Continental Shelf, the ICJ noted:

"More fundamental than the notion of proximity appears to be the principle-constantly relied upon by all parties of the natural prolongation... It is this idea of extension which is, in the Court's opinion. Determinant submarine areas do not really appertain to the coastal State because - or not only because - they are near it... What confers ipso jure title which international law attributes to the coastal State in respect of its continental shelf, is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already has dominion."
So the application of the proximity concept to defend invasion actions into the area is nonsense, illegal and is not accepted.

**V.2.2 Vietnam's Position**

Vietnam has protested strongly about the illegal contract of China with the Crestone on the grounds that the so called Wan-an Bei mentioned in the agreement between China and Crestone is in fact the Tu Chinh Bank of the province of Baria and Vung Tau of Vietnam. This is located on continental shelf of Vietnam, outside the periphery of the Spratly Islands.\(^{15}\)

The nearest point of the area (point 1) is about 90 nautical miles from the baseline and about 165 nautical miles from the coast line of Vietnam. The central point of the area (Prince Consort Bank) is about 145 nautical miles from the baseline and about 205 nautical miles from the coast of Vietnam (figure 5). If measured from the baseline of Vietnam declared on 12 November 1982, the whole area is located within 200 nautical mile EEZ of Vietnam drawn under the 1982 UNCLOS provisions. If measured from the coast line of Vietnam more than half of the area is located within the 200 mile limit. The farthest point of the area (point 3) is about 260 nautical miles from the coast line of Vietnam. However, a coastal State under Article 76 of the 1982 UNCLOS can draw its continental shelf to 350 nautical miles. Therefore, the whole area in question is located within the limit of the continental shelf of Vietnam regardless of whether it is measured from the baseline or from the coast of Vietnam. On the other hand, Catwik Island (Phu Quy) of Vietnam is a big island and an administrative unit of a district of Vietnam with a big population. The island has had an independent economic life for many
generations. Under Article 121 of the 1982 UNCLOS the island is entitled to a territorial sea, EEZ and continental shelf. The furthest point of the contract area is about 200 nautical miles from the island, therefore, the whole area is within the 200 mile EEZ and the continental shelf of the island. Moreover, from the geomorphological point of view, the contract area is joined continuously to the continental shelf of the mainland of Vietnam and clearly separated from the Spratly Islands which are located in much deeper water. Vietnam's position is supported by both the convention and the decisions of International Court of Justice concerning the North Continental Shelf Cases which are mentioned above.

V.3 Conclusion: Who is Entitle to the Area.

As analyzed in the previous paragraphs, the China's claim to the so-called Wan-an Bei (WAB-21) based on the continental shelf of the disputed Spratly Islands, over which the PRC has claimed its sovereignty, has no basis and generally is not accepted by international law and practice. The PRC has failed to rely on any standard or rule of any international convention and practices in making its claim to the area as a part of its continental shelf.

The area in question is indisputably a part of Vietnam's continental shelf. Vietnam’s position is supported by international law and practices. The contract area is also considered by the other parties in the Spratly dispute such as Malaysia and the Philippines to be outside of the Spratly Islands areas.
The Contract between China and Crestone on exploration of that area is illegal and violates Vietnam's sovereign rights over its continental shelf and exclusive economic zone.


2. Reports of some oil Companies in the Area.


10. FEER, p.20.


CHAPTER VI

CONCLUSION: POTENTIAL DANGERS ARE STILL AHEAD
POSSIBLE SOLUTIONS FOR THE DISPUTES

VI.1 Potential Dangers are Still Ahead

The disputes over the South China Sea Islands are complex and have the potential to degenerate into armed conflict. The stakes are high due to the strategic location of the Islands in the South China Sea and the potentially rich hydrocarbon deposits of the area surrounding the Islands.

The dispute over the Paracel Islands involves only two countries: Vietnam and China. Both parties in the dispute have based their claims on historic evidence of discovery, occupation and administration of the Islands. Among them Vietnam has stronger support of sovereignty to the Islands based on official possession, effective occupation and administration of the Islands by the Vietnamese and the French on behalf of the Vietnamese during the years Vietnam was under the French Protectorate. However, as mentioned in Chapter 2, the effective control
and exercise of sovereignty over the Islands by the French and the Vietnamese were mainly focused on the Crescent Group of the Islands. The Chinese activities in exploiting natural resources were mainly concentrated only on the Amphitrite Group of the Islands, especially Woody Island. The situation of occupation and control of the Islands remained unchanged until the Chinese illegal invasion in 1974 of the West Group (Crescent) of the Islands which were effectively controlled by South Vietnam for a long time. Since then the Chinese has occupied the whole of the Paracel Islands. Vietnam has strongly and continuously protested about the Chinese illegal occupation of the Islands and has requested that Chinese withdraw their forces. The official statements of Vietnam relating to the sovereignty of Paracels and Spratlys have been reiterated in the White Books published in 1974, 1979 and 1982 and in the Statement of the Vietnam's Government of May 20, 1977 on the Territorial Water, EEZ and Continental Shelf of Vietnam and Statement of Vietnam's Government in 1982 on Baselines of Vietnam. The claim of Vietnam to the Islands was also reaffirmed in a series of protests by the Vietnam Government to the invasion actions of China in the Islands.

Since 1974 Vietnam and China have had some talk rounds relating to the boundary disputes between two the countries in general and to the Paracel Islands dispute in particular. So far no resolution has been reached.

The dispute over the Spratly Islands is more complex because it involves five official claimants to the Islands. The positions of the parties in the dispute are very different and it is very difficult to reach a mutually acceptable basis for compromise.
The claims of the PRC and Taiwan based on the historic evidences of sovereignty can generally be summarized as incomplete and unconvincing because they could not meet the requirements of the concept of "effective control, administration and governance" of sovereign territory. Permanent occupation by citizens of any State was notably lacking. Administration consisted primarily of lodging occasional diplomatic protests if another nation's dalliance in the Spratlys was deemed to be too long. The passage of mariners or the short time stay of fishermen could not be considered a "historic occupation" of the Spratlys.

The first official occupation and administration of the Spratlys was carried out by the French on behalf of the Vietnamese in 1933. However the official possession and administration of the French in that time was effective for only six groups of the Islands but not for the entire Spratly Islands.

The effective control of these islands by the French and Vietnamese was interrupted by the invasion of the Japanese in 1939. The 1951 San Francisco Peace Treaty could not officially identify the ownership of the Islands. The reason for this was that there were only few Asian Powers represented at the conference therefore Asia had little influence on the drafting of San Francisco Treaty. Also Western Powers had no interest in deciding Spratlys ownership and they were occupied by more important problems which had to be solved in this conference. There may be another reason of too complex problems in solving this ownership.

Taiwan has had effective control of Itu Aba islet from 1956 but this control has not extended to other features of the Spratlys. The occupation by other States of other islands has proceeded unchallenged by Taiwan.
Despite many years of asserting an ancient and unalienable right to the Spratlys, including territorial claims of legal sovereignty in Declarations issued in 1958 and 1992 together with many decades of diplomatic protests of the activities of other States in the area, the PRC appears not to have had effective control of any part of the Spratlys until 1988. Since 1988 the PRC has occupied some features but these features could not be identified as islands nor "low-tide elevations" under international law. The PRC has tried to project itself as the rightful legal titleholder to Spratly Islands but it has had no meritorious claim to these islands under international law. For this reason the PRC does not want to submit the question of sovereignty over the Spratlys to the binding decision of an international arbitration board or judicial body. The PRC may believe that its claim can not be ignored because of its Great Power Status, combined with its recent, persistent physical presence in the Spratlys. Especially at present the reduction of the military presence of the USA and the former Soviet Union in Pacific Ocean will affect the thinking of Chinese leaders regarding the dispute.

The withdrawal of military forces of United States and former Soviet Union from South China Sea could make the PRC decide that its military strength vis-à-vis rival claimants to the chain exceeds the strength of its legal claim. Such a determination, which might be encouraged by new evidence of oil resources in the South China Sea or by increased tensions with Vietnam on continental shelf dispute, could lead the PRC to pursue a military solution to the Spratly Islands dispute and the controversy over the continental shelf with Vietnam.

Taking up the effective control over some groups of islands from the French, Vietnam has effectively controlled the majority of features in the Spratlys. The claim of Vietnam has the strongest support according to the concept of "effective
control, administration and governance". Vietnam is willing to negotiate with other claimants to solve the dispute over the Spratlys.

As mentioned in chapter 5, Vietnam has a strong legitimate continental shelf claim to the area just west of Spratly Islands. The continental shelf extending south and east from the Mekong delta area is relatively shallow and appears to be a "natural prolongation" of the land territory, as prescribed in LOSC Article 76(1).

Indeed, the sedimentary deposits that formed this area stemmed from the Mekong River outflow and another great river that was submerged about 10,000 years ago. The continental shelf area claimed by Vietnam appears to be located outside of the Spratly Islands area, therefore, the concession of an area on the Vietnam's continental shelf awarded by China to the American Oil Company Crestone is illegal.

The Philippines has effectively controlled seven Spratly features since 1978, when the Kalayaan State was declared sovereign territory and troops were positioned. The Philippines is permitted as an archipelagic state by Article 48 of UNCLOS to extend an EEZ and a continental shelf from its archipelagic baselines but the continental shelf claim could not be extended beyond 200 nautical miles as the East Palawan trough breaks the natural continental shelf 60 to 100 miles of Palawan Island. The Philippines has not yet advanced such a claim, which could help legitimize access to the seabed and subsoil in the eastern Spratly Area. On May 8, 1994 the Philippines granted an oil exploration permit to Vaalco Energy of United States and its Philippines subsidiary, Alcorn Petroleum and Minerals, covering a portion of the disputed Spratly Islands. The permit area covers Reed bank (Recto Bank) including Flat (the Patad), Nanshan (Lawak), and Parola Islands which are controlled by the Philippines troops. The area is located about
400 km west of the Philippines Island of Palawan. Some official Philippines sources admitted that exploration was "sensitive" due to conflicting territorial claims by five other countries. The PRC is the first who immediately issued a statement protesting the exploration permit and reaffirming China's sovereignty over entire Spratlys generally and over that area particularly. The Philippines has tried to remove the most recent China's objections by a proposal of joint development of the Spratly, while shelving the sovereign issue. The idea of joint development of the Spratlys is sound but it should be a joint development with all the relevant parties in the dispute not only with the PRC.

Malaysia's effective control of one insular feature commenced in 1983, followed by two others in 1986. One of these features, Swallow reef, is also claimed as an island. Malaysia does not claim an extension of the continental shelf or EEZ based on this feature. Malaysia's reverse sovereignty claim over features rising above sea level from the continental shelf is not sustainable under international law.

Brunei may not be identified as a claimant to the Spratly Islands. It only disputes the Louisa Reef with Malaysia. The dispute could be resolved between the two countries.
VI.2 Possible Solutions for the Dispute

VI.2.1 Legal Principles for the Spratly Resolution.

It is rather difficult to find out a single solution to the Spratly Islands dispute because of its complicated history and the uncertainty surrounding the right of states to exercise sovereignty over territories claimed by other states. The search for the peaceful resolution of the dispute should be built on existing international law and practices. The 1982 UNCLOS which is signed by all the parties in the dispute, comes into force in November this year should be an useful international law source for the Spratly's resolution. There is a vital need for all parties in the dispute to find a resolution and the earlier the dispute is resolved, the better it will be for all. Therefore, the parties in the dispute should take every opportunity to discuss all possible solutions and all possible measures to reduce the conflicting claims. In order to reach a common fair resolution for the Spratly's the parties should aim for a common agreement on some basic principles for making the resolutions which are accepted under international law and practices:

1. Principle of territorial acquisition:
   At present the modes of territorial acquisition in international law are no longer subject of intense debate. It was an accepted practice in public international law for a state to acquire territory through a multilateral act of its own by occupation, by session or by accretion through the operation of nature. Discovery by it self only creates inchoate title under international law unless it is followed by effective occupation and effective administration.
   However the occupation through force could not now be accepted by international law.
Parties in the dispute, therefore, should have a common understanding upon which effective control and administration should be the most important standard in determining the title of the state to the islands or features occupied and effectively controlled by that state.

2. The claim to the entire South China Sea as their own lake on the basis of antiquity should not be treated as a serious claim and should not be given any notice. This kind of claim can not be negotiated and it is the major obstruction to negotiating and solving the dispute. All parties should have a common position in rejecting all claims to the entire South China Sea. Parties who have this kind of claims should drop it and adopt a claim to specific islands and features in South China Sea before coming to the negotiation.

3. Non-state parties claims must be excluded from the dispute. Such parties cannot be accepted in the dispute.

4. The dispute between Brunei and Malaysia over the Louisa reef, south of the Spratly Islands, is not considered to be a dispute to do with the Spratly Islands. It should be negotiated and solved between Malaysia and Brunei. Brunei is not a party in the dispute over Spratly Islands.

5. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) coming into force in November 1994 must be the starting point in negotiating and resolving the dispute. The regime of the islands and reefs must be examined under the 1982 UNCLOS definition.
6. The parties should have a common position in determining the area of Spratly Island taken into the negotiation. As analyzed in the previous chapters all the islands in the Spratlys could not generate an EEZ or Continental shelf under UNCLOS but these islands are entitle to a 12 mile territorial water. So the dispute area should be drawn around the 12 mile territorial water of the outmost islands or through the 500 meter circle of the outmost reefs. The area in the dispute should not be expanded on the EEZ or Continental shelf of other states.

7. The parties in the dispute must give up the attempt to transgress into the EEZ and continental shelf of other countries by their unilateral claim to the Spratlys. If the parties in the dispute mutually understand the above principles then they could go further in negotiating a resolution for the dispute.

VI.2.2 Proposals for the Spratly Resolution.

VI.2.2.1 The Proposal for General Resolution (figure 7)

Before coming to this resolution the parties in the dispute must have a commitment to keep the present status quo of the Islands and not to expand their occupation to any rocks or reefs and do not introduce forces into the disputed area. Each island is given a 12 mile territorial water and each reef is given a 500 meter security zone under the 1982 UNCLOS provisions. Because the islands and reefs in the Spratlys cannot sustain human habitation and economic life of their own, they can not generate any EEZ or continental shelf under the Articles of the 1982 UNCLOS.
From this point of view the limit of the disputed area could be drawn by the line connecting the outmost points of territorial or security zones of the outmost islands or reefs of the Spratlys.

The parties in the dispute are entitled to the sovereignty over the islands or reefs they occupy and their territorial or security zones.

The waters between the islands and reefs in the disputed area could be negotiated and shared by the relevant parties in each small area under prevailing international law and practices. If the boundaries between the parties in each small area could not be negotiated, then joint development could be promoted between involving parties.

The above proposal grounded in the provisions of the 1982 UNCLOS and prevailing international law and practices, could be supported by Vietnam, Philippines and Malaysia but it is certain to be rejected by China which claims the entire South China Sea including the entire Spratlys and attempts to use its advantages in military power to resolve the dispute in South China Sea.

VI.2.2.2 The Doughnut Formula Proposed by Indonesia (figure 8)

Indonesia has made a proposal that the littoral states would project 320 kilometer Exclusive Economic Zones from their Shores. The remained area (the hole in the doughnut) in the middle of South China Sea including the main islands and reefs of the disputed Spratlys would be discussed by competing claimants as an area for potential joint economic development³.
The Indonesian proposal could be supported partly by all states in the region but it is sure to be rejected by China who has offered to discuss joint economic development of the area only in one to one talks with competing claimants. The grounds for such discussion should be recognition of Chinese sovereignty over the entire Spratlys. It is obvious that China wants to take advantages of smaller countries with weaker military powers in the region.

VI.2.2.3 The Spratly Solution Proposed by Mark Valencia.

In March 1994 Mark Valencia, a senior fellow with the program on International Economics and Politics at the East West Center in Honolulu, made a proposal that China and Taiwan would set aside their historic claim to the entire South China Sea in exchange for a combined share of 51% in a multilateral Spratly Development Authority, which would administer the core area and manage the exploration and exploitation of resources there. In that proposal Vietnam would have some favorable settlement in the Gulf of Tonkin and Vanguard areas in exchange for a lesser share in the Spratly area. The remaining 49% of shares would be allocated among of Vietnam, the Philippines and Malaysia. In the disputed area Brunei would have a very small share because it claims only the area around Louisa reef.

According to the author, China and Taiwan might agree to have 51% of shares in the Spratlys Development Authority if it means that other parties in the dispute have recognized tacitly the validity of China's sovereignty claims. Meanwhile the other countries could agree to shelve all claims to sovereignty but not to abandon them.
Under the Spratly Development Authority the parties in the dispute would shelve all their claims to sovereignty and the area would be demilitarized. The Authority would be responsible to resolve all conflicts in the area, to facilitate exploration and development of natural resources and to promote international cooperation in scientific research and in protecting environment.

The advantage of the proposal is that the area of the cooperative regime would be determined, and China and Taiwan would shelve their "historic claims" to the entire South China Sea. The other countries would be able to focus their efforts on those areas outside the cooperative area claimed by two or three countries. It would be easier for those countries to solve the disputes and negotiate bilateral maritime boundaries and promote joint development of resources in disputed areas.

As the Author admitted, the resolution is not perfect and it could not be accepted by all parties in the dispute. However, the proposal could have some useful suggestions for promoting the progress of bilateral and multilateral negotiations and discussions with the purpose to find out an equitable and acceptable solution for the Spratly dispute.

A resolution of the Spratly dispute would play a very important role in guaranteeing the peace and development of the Southeast Asia. But it is not difficult to see that all the proposals mentioned above are not realistic. There is still a lot of problems and obstructs and one of the most complicated of them is the "historic claim" to the entire South China Sea and the diplomatic policy of some parties in the dispute relying on military power advantage.
Nonetheless, the parties in the dispute should not wait for a right moment for the full resolution. They should move more quickly to find out some possible temporary measures to prevent conflicts and to promote the good environment for the joint development of the resources in the disputed area.

VI.3 The Process of Informal Workshops on Spratly Islands Dispute.

Since 1990 a series of informal meetings on the South China Sea has been sponsored by Canada and Indonesia and have been attended by governments' officials, researchers, academics, scientists from all states of the region and from some other countries in their private capacities. These workshops have been a good forum for the exchange of viewpoints and have made good contributions to the formal talks and the development of cooperation of the parties in the area. The workshops have provided a full and frank discussion of issues without the restrictions imposed by formal negotiations. In the process of the workshops an innovative format for exploration of the sensitive issues has been provided and some useful recommendations by participants to their respective governments have been made.

The first workshop on Managing Potential Conflicts in the South China Sea was held in Bali in January 1990. At the workshop the participants from the ASEAN countries examined South China Sea issues from this subregional viewpoint and determined the prevailing feeling towards cooperation in South China Sea. The conclusion was that discussions undertaken in an informal setting might be
fruitful, and the foundation for inviting the participants from Vietnam, China, Laos, and Taiwan to subsequent meetings was laid.

The second workshop held in Bandung in July 1991 had produced a statement that the participants were to recommend to their respective governments that:

1. Without prejudice to territorial and jurisdictional claims to explore areas of cooperation in the South China Sea.

2. The Areas of cooperation may include cooperation to promote safety of navigation and communications, to coordinate search and rescue, to combat piracy and armed robbery, to promote the rational utilization of living resources, to protect and preserve the marine environment, to conduct marine scientific research and to eliminate illicit traffic in drugs in South China Sea.

3. In areas where conflicting territorial claims exist, the relevant states may consider the possibility of undertaking cooperation for mutual benefit, including exchanges of information and joint development.

4. Any territorial and jurisdictional dispute in the South China Sea area should be resolved by peaceful means through dialogue and negotiation.

5. Force should not be used to settle territorial and jurisdictional disputes.

6. The parties involved in such dispute are urged to exercise self-restraint in order not to complicate the situation.
In the statement of the 1992 workshop, the participants reaffirmed that they would recommend the above points to their respective governments. At the 1992 workshop the participants agreed to establish two working groups to prepare and (after approval by governments) organize joint activities on the following topics:

1. Resource assessment of ways of development. It would be a technical meeting to examine cooperation in resource assessment and to look at "options for development of ground rules, including the possibility of joint development, in an area to be defined.

2. Marine scientific research.

The working groups are to report back to the next workshop which is to discuss the results and continue the exchange of views on the Spratlys Islands issues.

The first Technical Working Group meeting on Marine Scientific Research (MSR), hosted by the government of the Philippines, was held in Manila in May - June 1993. Topics included fishery research, biodiversity, non-conventional energy, meteorology, environmental phenomena, circulation, training, networking and information and mechanisms for cooperation / joint research.

The content of cooperation considered at the technical working group on resource assessment held in Jakarta in July 6 - 7, 1993 included living resources, hydrocarbons, other non-living resources. These topics are of obvious sensitivity, and this initial exploration of the issues was understanding cautions. The matter of conservation was raised at this meeting, including the idea of establishing a marine park, jointly administered by the claimant states, which would allow all
claimants to continue to benefit from the living resources of the area and would eliminate the need for islands garrisons. The end result of a neutral, cooperatively administered zone in the Spratlys would bring about reduction of tension in the region.

The fourth workshop took place in Surabaya in August 1993 and examined proposals for cooperation already advanced at previous meetings. The workshop adopted the reports of two technical working group meetings, and it was thought that other such gathering should be convened to allow experts to discuss topics such as environmental cooperation, navigation safety and legal issues arising in connection with proposals for collaboration.

VI.4 Confidence Building Measures (CBM)

The process of informal workshops could have some important contributions to cooperation in some fields between the parties in the dispute and it could help to reduce the tension of the conflicts in the disputed areas. However to prevent military conflicts and the escalation of the dispute the parties should have further official multilateral negotiation for the Confidence Building Measures in the disputed area.

The content of the measures could be:

1. Unilateral restraint and refrain from using force as a policy instrument in the disputed area.
2. The military deployment in the disputed area should not be used as a basic to any territorial claim.

3. To stop further annexation of territories in the disputed area.

4. The parties should not introduce any new military activities within the disputed area.

5. Measures such as notification of military exercises close to the disputed area which could result in unnecessary suspicions should be introduced to ensure greater openness and predictability of military activities. Such arrangements should include exchanging information on military activities in conflicting area.

6. Coordination and harmonization of a common set of operating procedures for the Navies and Air Forces within the zone of dispute could minimize the potential for a military conflict arising, for instance, from accidents at sea. A common set of operating procedures could also ensure greater predictability and stability at sea.

7. Measures designed to improve contracts and communications between the conflicting states especially in the military fields.

8. Non-introduction of nuclear elements, nuclear ships in the area except sanctioned by international law.
The suggested Confidence Building Measures could be realistic if the conflicting states in South China Sea could accept the obligation to resolve their differences by peaceful means and by refraining from resorting to force as a policy option. In practice it is difficult to get the full set of Confidence Building Measures suggested because there is still some states which believe that power grows from the barrel of a gun.\(^7\)

The 1982 UNCLOS comes into force in November 1994 which was signed by all conflicting States in the region and ratified by the Philippines, Indonesia and Vietnam. The Provisions of the Convention for conflict resolution are a very good legal basic for the settlement of the Spratlys dispute. The Convention sets out the full procedures for settling disputes concerning the interpretation or the application of the Convention. Article 283 of the Convention emphasizes the need to settle disputes by peaceful means. It has built a system for Confidence Building Measures including an obligation for disputing states to exchange views concerning the interpretation and the application of the convention.

Article 284 of the Convention places a special premium on conciliation as a procedure for resolving differences. The procedures for binding decisions are listed in section 2 of the Part XV of the Convention. This obligates all states when signing, ratifying, acceding to the Convention or at any time to chose any or a combination of following forums whose decision will be binding:

1. The International Tribunal for the Law of the Sea
2. The International Court of Justice
3. An Arbitral Tribunal and a Special Tribunal.
There is no lack of forums for settlement of the Spratlys dispute. The real problem is whether the conflicting states have the political goodwill to pursue the settlement of the dispute by such binding decisions or not. It is impossible to follow these procedures if there is still some conflicting states which pursue the foreign policy based on the power advantage in the region.


3. FEER, August 11, 1994, p.18.


Figure 1: Vietnam and Maritime Boundary Disputes in South China Sea
South China Sea: Selected Claims

Figure 2: South China Sea: Selected Claims
Figure 3: The Paracel Islands
Figure 5: The Contract Area and Spratly Islands Dispute
Figure 6: The Contract Area
Figure 7. General Solution

Spratly Islands Dispute

ISLANDS OCCUPIED BY:
- China
- Vietnam
- Philippines
- Taiwan
- Malaysia

Principe of Wales Bank

Vanguard Bank

Names and boundary representations are not necessarily authoritative.

[Coordinates and distances indicated]
**Figure 8: Indonesian Proposal**
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5. FEER, August 11, 1994, p.18.