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CHINA, TECHNOLOGY AND THE SPRATLY ISLANDS:  
THE GEOPOLITICAL IMPACT OF NEW TECHNOLOGY

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THE FACULTY OF THE HUMANITIES DEPARTMENT  
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IN CANDIDACY FOR THE DEGREE OF  
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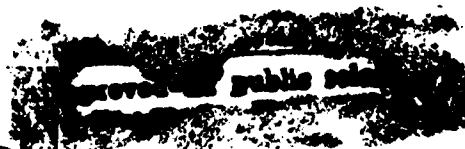
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| <p>The thesis of this study is that technology has become a key influence on national policies. By defining what is possible and creating new capabilities, technology creates an imperative for its use - a technological imperative - and thereby influences human choices and policy decisions.</p> <p>This concept is illustrated in an examination of Chinese policies towards the Spratly Islands, a broad area of tiny islands, atolls and reefs in the South China Sea which are claimed by five nations: China, Vietnam, Malaysia, the Philippines and Taiwan. Each of these countries has occupied military outposts on the islands. This expanding militarization of the archipelago could result in a military conflict and is an issue of growing regional concern.</p> <p style="text-align: right;">(Continued on reverse)</p> |       |  |   |   |                           |
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Control of the Spratly Islands would confer the right to exploit the large oil and gas deposits assessed to be under the surrounding sea floor as well as provide a base for expanded naval operations in region. Such control would also threaten the political and economic autonomy of the regional states. Technological, strategic and ethical issues are thus involved in the Spratly Islands dispute.

Developments in offshore drilling technology have made it practical to exploit the hydrocarbons believed to be located deep under the sea floor in this region. Recently developed international legal doctrines, embodied in the United Nations Law of the Sea, provide a legitimate means for coastal states to control broad economic zones within 200 miles of their territory. Modern technology has also provided the Chinese with an increasing capability to project their military power into the area.

The strategic factor in this dispute is a result of the geographic location of the Spratly Islands alongside the principle sea routes between Europe, the Middle East and Asia. Control of the Spratly Islands would give China the potential ability to interdict these sea lines of communication and buttress China's efforts to become a political hegemon in Southeast Asia.

Ethical issues stem from concern for the potential economic, political and environmental impact of expanded Chinese military activity in the Spratlys on other states in the region.

Using historical research and interviews with regional military experts, this study describes the history and legal claims of the various claimants in the Spratlys, addresses several technological trends and developments that provide new capabilities and motives for China in this dispute, and discusses the strategic and ethical implications of a Chinese takeover of the Spratlys for both China and the United States. It concludes with an assessment of likely future scenarios.

This dissertation was reviewed and approved  
in partial fulfillment of the requirements for  
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## **ABSTRACT**

The premise of this study is that technology has become a key influence on national policies. By defining what is possible and creating new capabilities, technology creates an imperative for its use - a technological imperative - and thereby influences human choices and policy decisions.

This concept is illustrated in an examination of Chinese policies towards the Spratly Islands, a broad area of tiny islands, atolls and reefs in the South China Sea which are claimed by five nations: China, Vietnam, Malaysia, the Philippines and Taiwan. Each of these countries has occupied military outposts on the islands. This expanding militarization of the archipelago could result in a military conflict and is an issue of growing regional concern.

Control of the Spratly Islands would confer the right to exploit the large oil and gas deposits assessed to be under the surrounding sea floor as well as provide a base for expanded naval operations in region. Such control would also threaten the political and economic autonomy of the regional states. Technological, strategic and ethical issues are thus involved in the Spratly Islands dispute.

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## PREFACE

The focus of the Salve Regina University doctoral program in the humanities is the continuously evolving relationship between human beings and technology. The intent of this program is to develop a more value-oriented and holistic appreciation of the complex realities confronting humankind today and to seek ethical norms, more comprehensive than the cost-benefit analysis of popular utilitarianism, for guiding human choices in a world of rapid and far-reaching change. Explicit in the objectives of this program is an examination of the problematic nature of technology itself and its effect on the modern human condition.

The strength of this program lies in its overview of the impact of technology from the perspective of a variety of specialized academic fields of study in the humanities. These include such diverse disciplines as philosophy, art, literature, theology, ethics, human resource management, social anthropology and international relations. Insights gained from this unique program provided the basis for my study, which examines technology as it relates to a specific case study of international relations; China and the Spratly Islands dispute.

I am grateful to the U.S. Naval War College for designating me an Advanced Research Fellow while working on this project. This allowed me access to the excellent library and other re-

search facilities at the War College, as well as the advice and assistance of their highly professional library staff.

I am also indebted to many people for their assistance during the course of this study. These include those who created and nurtured the development of this very special program, especially Sister Lucille McKillop, Dr. William Burrell, Brother Gene Lappin and Father Pat Bascio. I am deeply obliged to my dissertation committee - Professors Paul Holman, John Hattendorf and Eugene Hillman - for their scholarly critique and suggestions, and to Brother Anthony O'Conner for his prodigious efforts to make this study "reader-friendly." I must also acknowledge the contributions of my classmates - Kevin Healy, Maureen Hynes, Dave Smith, John Kirby, Ron Atkins, John Rok and Bernie O'Reilly - for their valuable insights. I am particularly grateful to the many Asian alumni of the Naval War College who shared their perspectives with me. Their candid professional insights were of immense value to this analysis. Last, but by no means least, I owe special thanks to my wife, Nanci Martin Smith, for her editorial assistance, patience and encouragement.

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## INTRODUCTION

### THE QUESTION OF TECHNOLOGY

#### China, Technology and the Spratly Islands

The thesis of this study is that developments in technology are influencing Chinese policies regarding the disputed Spratly Islands. This thesis proceeds from the premise that, while man retains some choices regarding the uses to which new technology is put, the very fact that a certain technology exists creates an influence or an imperative for its use - a technological imperative - and thereby constrains man's options. Technology limits human choice by defining what actions are possible.

Further, this study assumes that this imperative for action is operative as a factor influencing national policies. The relationship between technology and political activity will be illustrated by examining the impact of technology on China's policies regarding the Spratly Islands.

Earlier studies of the Spratly Islands dispute have focused on the traditional strategic, geopolitical, legal and resource factors having an impact on the policy decisions of the claimants. This assessment will provide a different perspective, one that considers technology not only as a tool for man's use but also as a major influence on man's decisions. As our technology grows ever more powerful and its holistic implications increas-

ingly uncertain, we need to better understand the evolving relationship between technology and human actions. This requirement is especially critical in analyzing the actions of nation-states in today's technological age, when the policies of one state can have serious regional or even global implications. Such is the case of China and the Spratly Islands.

China is one of five nations claiming sovereignty over the widespread group of tiny islets, reefs and atolls in the South China Sea known collectively as the Spratly Islands. This territorial dispute has become a major concern to the nations of Southeast Asia and a potential threat to regional security. As such, it also poses serious strategic and ethical questions for the United States.

The influence of technology is particularly striking in the case of the Spratly Islands. Technology, in the form of offshore oil drilling techniques, newly codified concepts of international law and recent advances in military weaponry, is increasingly influencing Chinese policies regarding this dispute. By defining what is possible, technology has set the agenda in the Spratlys and created an imperative for further Chinese action.

This attribute of technology is unsettling to critics from many academic disciplines and has broad ethical implications. The idea that a tool created by man for a specific purpose can have an impact in areas of human enterprise well beyond that for which it was originally intended is troubling. Moreover, such a



concept calls into question the very nature of man's relationship with his creation: are we still in control of our technology?

### Human Technology or Technological Man?

Technology can be broadly defined as "the organization and institutionalization of science, knowledge and management for practical purposes."<sup>1</sup> Thus defined, technology includes both physical devices (instruments, machines, apparatus, etc.) and rationally-derived processes or techniques (procedures, methods, systems, etc.).

The distinguishing characteristics of technology, setting it apart from other human endeavors, are that it is rationally derived and purposeful, science-based and capital-driven, in response to perceived needs.<sup>2</sup> While none of these characteristics seem threatening in themselves, modern critics of technology are increasingly skeptical of the belief that the resultant technology is intrinsically good and necessary to human progress.

This concern about man's relationship to technology is not

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<sup>1</sup> This definition was developed by Dr. Lubomir Gleiman of Salve Regina University. John Kenneth Galbraith posed a similar definition: "Technology means the systematic application of scientific or other organized knowledge to practical tasks." John Kenneth Galbraith, The New Industrial State, 4th ed., (New York: New American Library, 1985), 11. Jacques Ellul uses the term "technique" to describe the idea of technology. He defines it as "...the sum totality of the methods rationally arrived at and having absolute efficiency...in every field of human activity." Jacques Ellul, The Technological Society, trans. John Wilkinson (New York: Vintage Books, 1964), xxv.

<sup>2</sup> The root of both technology and technique is the Greek techne, meaning "art", "craft", or "skill". For a discussion of the evolution of these terms, see Langdon Winner, Autonomous Technology: Technics-out-of-Control as a Theme in Political Thought (Cambridge: MIT Press, 1977), 8-12.

something new. From Plato's critique of developing social technology in The Republic<sup>3</sup>, to Sir Francis Bacon's vision of a utopian technocratic society in The New Atlantis<sup>4</sup>, and Mark Twain's allegory of the fate of "technological man" in A Connecticut Yankee in King Arthur's Court<sup>5</sup>, the impact of technology on human values has been the subject of varied interpretation since ancient times. Contemporary writers on this subject have also drawn varied conclusions. Scholars such as Werner Heisenberg, Martin Heidegger, Arnold Toynbee, Hans Jonas, Rene Dubos, John Kenneth Galbraith, Langdon Winner and Erich Fromm have each addressed this question from the perspectives of their various disciplines. Some emphasize the achievements of technology while others point out that the human costs of these achievements may have been too great. The issue for modern man was well formulated by Ian Barbour in his 1990-1991 Gifford Lectures at the University of Aberdeen:

Since the Industrial Revolution in the eighteenth century, it has been widely assumed that science-based technology would automatically lead to progress and improvement of human life. Modern technology has indeed brought increased food production, improved health, higher living standards, and better communica-

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<sup>3</sup> Plato, Great Dialogues of Plato, trans. by W. H. D. Rouse, Eric H. Warmington and Philip G. Royse, eds., (New York: New American Library, 1984), 419.

<sup>4</sup> Francis Bacon, The New Atlantis, in Selected Writings of Francis Bacon, ed. Hugh G. Dick (New York: The Modern Library, 1955), p. 574.

<sup>5</sup> Mark Twain, A Connecticut Yankee in King Arthur's Court (New York: Penguin Books, [1988]), 318.

tions. But its environmental and human costs have been increasingly evident.<sup>6</sup>

A common thread that runs throughout the works of these scholars is a sense of the inherent power of technology and the need to control this power. "As a beneficiary of the use of science and technology," wrote British historian Arnold Toynbee, "I am a first-hand witness for the magnitude of the enhancement of their potency, within my lifetime, both for life and good and for death and evil."<sup>7</sup>

A growing body of literature dealing with the influences of technology on the human condition suggests that technology is no longer under human control. In the view of physicist Werner Heisenberg,

The process [of an expanding technological civilization] has fundamentally changed the conditions of life on earth; and whether one approves of it or not, whether one calls it progress or danger, one must realize that it has gone far beyond any control through human forces.<sup>8</sup>

In today's "post-modern" era, technology has been seen by a number of distinguished scholars from a wide variety of academic disciplines as having evolved an autonomous and determinative

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<sup>6</sup> Ian G. Barbour, Ethics in an Age of Technology (San Francisco: Harper, 1993), xv.

<sup>7</sup> Arnold Toynbee, Experiences (New York: Oxford University Press, 1969), 273.

<sup>8</sup> Werner Heisenberg, Physics and Philosophy (New York: Harper & Row, 1958), 189.

momentum and even a morality of its own.<sup>9</sup> As French sociologist Jacques Ellul, perhaps the most radical proponent of this view, indicates,

Technique pursues its own course more and more independently of man. This means that man participates less and less actively in technical creation, which, by the automatic combination of prior elements, becomes a kind of fate. Man is reduced to the level of a catalyst.<sup>10</sup>

This concept of technology as an autonomous force involves raising the most serious implications for mankind. Economist John Kenneth Galbraith, for example, warned that "we are becoming the servants in thought, as in action, of the machine we have created to serve us."<sup>11</sup> This dire assessment echoed similar thoughts by philosopher Martin Heidegger:

No one can foresee the radical changes to come. But technological advance will move faster and faster and can never be stopped. In all areas of his existence, man will be encircled ever more tightly by the forces of technology. These forces, which everywhere and every minute claim, enchain, drag along, press and impose upon man under the form of some technical con-

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<sup>9</sup> Winner goes so far as to state that "In one definition or another, autonomous technology is now a significant transdisciplinary hypothesis in the natural and social sciences, the arts, journalism, and even the technical specialties themselves." Winner, 19-21.

<sup>10</sup> Ellul, 134. Ellul's analysis suggests that the goal of modern technology is, above all, efficiency, and that the original purpose of the scientific research that leads to technological change usually becomes subordinated to the efficiency of the method itself.

<sup>11</sup> Galbraith, 7.

trivance or other ... have moved long since beyond his will and have outgrown his capacity for decision.<sup>12</sup>

While others are more sanguine about the human ability to control technology<sup>13</sup>, the need to better understand what we are doing to ourselves is seen as a critical task for modern man by biologist Rene Dubos: "Planning for better-defined and worthwhile human goals has become urgent if we are to avoid the technological take-over and make technology once more the servant of man instead of its master."<sup>14</sup>

After a detailed analysis of the various views on man's relationship to technology, political scientist Langdon Winner has concluded,

Technology is itself a political phenomenon. A crucial turning point comes when one is able to acknowledge that modern technics, much more than politics as conventionally understood, now legislates the condition of human existence. New technologies are institutional structures within an evolving constitution that gives shape to a new polity, the technopolis in we do increasingly live.<sup>15</sup>

While the concept of technology as a political force that determines how we live is in itself disturbing, perhaps more significant for modern humankind is the sense that somehow technology is also creating a new morality for us to live by. As

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<sup>12</sup> Martin Heidegger, Discourse on Thinking, trans. John M Anderson and E. Hans Freund (New York: Harper & Row, 1966), 51.

<sup>13</sup> See for example, Barbour, 20-23.

<sup>14</sup> Rene Dubos, So Human an Animal (New York: Columbia University Press, 1970), 231-232.

<sup>15</sup> Winner, 323-324.

Ellul, Galbraith and other analysts have pointed out, efficiency and cost-effectiveness, the imperatives of scientific planning and management, have replaced traditional ethical concepts of right and wrong. Things are "good" if they are efficient and "bad" if they are not.<sup>16</sup> Philosopher Lubomir Gleiman cautions,

If nothing else, the mass application of the technological guiding principle of efficiency leads the world into an ecological suicide. Time is no longer on our side.<sup>17</sup>

The result, according to critics such as Erich Fromm, has been an erosion of human values and an increasingly amoral technological society in which a "technological imperative" - what can be done, must and will be done (with no reference to what should be done) - has replaced the golden rule.<sup>18</sup>

These qualitative changes in society have led philosopher Hans Jonas to call for the development of a new "ethic of responsibility":

With certain developments of our [technological] powers the nature of human action has changed, and, since ethics is concerned with action, it should follow that

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<sup>16</sup> Ellul, 305, and Galbraith, 15. See also Winner, 303-304.

<sup>17</sup> Lubomir Gleiman, "The Problem of Medieval Roots in the Contemporary Totalitarian Syndrome," Slovak Studies, 25 (1985): 38.

<sup>18</sup> This expression was originally used by Erich Fromm to describe what he considered to be the first principle in a technological society: that "something ought to be done because it is technically possible to do it." Erich Fromm, The Revolution of Hope (New York: Bantam Books, 1968), 33. It was also implied in the works of Jacques Ellul who stated a "technical axiom" that "what can be produced must be produced." Ellul, 81. However, the term "technological imperative" is used differently by Langdon Winner to refer to the demands made by technologies on their operating environment. See Winner, 100.

the changed nature of human action calls for a change in ethics as well ... the qualitatively novel nature of certain of our actions has opened up a whole new dimension of ethical relevance for which there is no precedent in the standards and canons of traditional ethics.<sup>19</sup>

Jonas does not consider himself to be "anti-technology," but sides with Winner and others on the seemingly autonomous nature of technological development:

As things are with us, the technological drive takes care of itself - no less through the pressure of its self-created necessities than through the lure of its promises, the short-term rewards of each step, and not least through its feedback-coupling with the progress of science. There are times when the drive needs moral encouragement, when hope and daring rather than fear and caution should lead. Ours is not one of them.<sup>20</sup>

In the past, developments in science and technology were driven by human needs. In the present age, human needs can be manipulated by technology through the "scientific techniques" of marketing, perception management and public relations.<sup>21</sup> Technocrats can rationalize almost any kind of "scientific" endeavor, from building nuclear power plants to exporting chemical weaponry, without concern for known (or unknown but conceivable)

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<sup>19</sup> Hans Jonas, The Imperative of Responsibility: In Search of an Ethics for the Technological Age, (Chicago: University of Chicago Press, 1984), 1.

<sup>20</sup> Ibid., 203.

<sup>21</sup> Gleiman adds "the mass-application of science for the control of men," to his description of technology. See Gleiman, 43.

negative effects and unintended consequences.<sup>22</sup> Moreover, technology is not static, and as Winner, Gleiman, Ellul and others have pointed out, the dynamics of technology can assert pressures and influence decisions well beyond the specific field involved.

While technology has brought us miracle drugs, drought-resistant plants, nuclear energy and a vast, global electronic information explosion, it has also had negative side-effects, many of which seem baffling and insoluble. The problems of nuclear waste disposal, toxic chemical storage and transportation, and modern military "weapons of mass destruction" are examples of this "down side" to technological development. Technology thus appears to some serious critics to operate beyond our control. Rather than only benefiting humankind, as many previously believed, it is now often recognized to be a crucial factor in many of our most pressing and recalcitrant problems.

Solutions to the ills of modern society must evolve over time, but the speed with which technological changes are occurring in the current era appears to have outpaced man's capability to control them. Technology can be likened to a commodity that creates its own demand, with applications of new technology driving the need for more (better, faster, more efficient, etc.) technology.<sup>23</sup> The need to rethink the relationship between humankind and technology, and to seek a better understanding of

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<sup>22</sup> As an example of "technology justifying itself," see Ellul, 405-408, for a discussion of the use of advertising to manipulate human needs.

<sup>23</sup> See Ellul's concept of automatism, 80.



the potential human costs of technological development, has become a critical issue as we prepare to enter the 21st century.<sup>24</sup>

### Technology, Humanity and International Relations

Technological developments have had an impact on many academic disciplines, each of which brings a unique perspective to the current problems besetting our world. The social sciences, for example, can propose solutions to the social problems of rapid urbanization in nations that are undergoing industrialization. Likewise, the physical sciences can examine the likely physical impact of industrialization on the local environment. In an increasingly complex age, where specialization is dominant, there is a distinct need for key specialists who can bring a humanistic perspective to technological developments in their field. Through a greater understanding of technological progress, they would be in a position to influence the direction in which these changes take us.<sup>25</sup>

Nowhere is this need more acute than in the "new" humanities fields of study called the "social" or "human" sciences. As

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<sup>24</sup> Even popular "futurologist" John Naisbitt, generally an optimist on the subject of technological change, considers it necessary for humans to "compensate for technology by being out in nature more." John Naisbitt, Megatrends (New York: Warner Books, 1982), 52.

<sup>25</sup> Physicist and popular author Fritjof Capra uses the term "technological determinism" to describe his concept of technology as the ultimate problem solver and principal determinant of our life styles. He feels that this term is descriptive of the high value placed on science and technology in our modern society as compared to philosophy, art and religion. Fritjof Capra, The Turning Point (New York: Bantam Books, 1982), 218: the point (New York: Bantam Books, 1982), 218.

historian Arnold Toynbee asks, "are not the currents in the new sciences [sociology, anthropology, economics] at least as strong a force for action as science or technology ... to save [man] from himself?"<sup>26</sup> These academic disciplines examine the broad scope of human organization and interactions in order to understand how and why humans acted in the past and to influence the way events may unfold in the future. By extension, such concerns are also applicable to disciplines not usually considered to be a part of the humanities, such as political science and international relations. Students of international relations, for example, have studied past wars and class or partisan conflicts to provide useful insights into the complex causes and patterns of all human strife. The degree to which these insights have been heeded by policy makers may be debatable, but the attempt has undeniably increased our overall understanding of society and the world.

Modern technological developments have made this task of understanding the human dimension of conflict even more urgent. Developments in military technologies offer countries that can afford them the power to expand their political influence well beyond their borders. Advances in mining and other resource recovery technologies can open new geographical areas up to profitable exploitation. Newly developed concepts of international law tend to give legitimacy to expanding national territorial claims. An examination of these and other aspects of

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<sup>26</sup> Toynbee, 320-321.

technological development may help to provide answers to some of today's geopolitical questions and help us understand where today's crises may be leading us and why.

It should be noted, however, that in addition to acting as a causative factor in many international disputes, technology has also provided us with new tools for resolving them. New "techniques" for negotiations or adjudication together with modern multinational organizations (the United Nations, the World Court, etc.) provide venues for discussion and reconciliation. A broad choice of bilateral and multinational economic, cultural and security mechanisms is also available to assist in resolving international issues. A vigilant and highly aggressive international press brings local events to a worldwide audience within hours of their occurrence. Television exposes significant issues of human rights or ecological concerns to graphic public view.

The growth of an international legal regime that establishes and codifies broadly agreed-upon legal norms of international behavior can itself be considered a technological development.<sup>27</sup> This process is exemplified by the development of international

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<sup>27</sup> This international legal regime has also created problems. The concept of national rights to underwater resources in an "Exclusive Economic Zone" (EEZ) out to 200 nautical miles from land is a relatively new one. In the absence of any universally acknowledged jurisdictional authority, the codification of this concept has created the basis for numerous conflicting national claims, as will be addressed in more detail below.

maritime law through a series of United Nations Conferences on the Law of the Sea.<sup>28</sup>

Two maritime law experts, Douglas Johnston and Mark Valencia, point out that recent developments in international law regarding maritime boundary disputes have been influenced by technology.<sup>29</sup> Their description of maritime legal developments since the 1958 United Nations Conference on the Law of the Sea (UNCLOS I) clearly shows the influence of "technology" on the ideals and methods of international law:

UNCLOS I as a whole contributed to the future of ocean boundary-making by taking the codificatory approach to legal development to its logical conclusion. The classical or neo-classical ideals of international law are clearly reflected in the work of UNCLOS I: uniformity of treatment of states presumed to be equal; consistency and clarity of language, based on the "scientifically" developed draft articles prepared by the International Law Commission; universal commitment through "hard law" obligations; rational arrangements and procedures presumed to be workable, despite their dependency on scientific evidence in the form of reliable data; faith in the objectivity of third party adjudication for the settlement of all kinds of legal disputes; and, of course, trust in the virtue of continuity with the legal norms of the past.<sup>30</sup>

While the final 1982 United Nations Convention on the Law of the Sea has not been formally ratified by all nations (notably

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<sup>28</sup> A note on terminology: The three United Nations Conferences on Law of the Sea are commonly abbreviated as UNCLOS I, II, and III. The 1982 United Nations Convention resulting from these conferences is referred to in this study simply as The Law of the Sea. United Nations, The Law of the Sea (New York, 1983).

<sup>29</sup> Douglas M. Johnston and Mark J. Valencia, Pacific Ocean Boundary Problems: Status and Solutions (Dordrecht: Martin Nijhoff Publishers, 1991), 6-7.

<sup>30</sup> Ibid., 7.

the United States and Russia, who, as maritime superpowers, are concerned about the restrictive aspects of the convention), the provisions have been generally adhered to in practice, indicating a near universal de facto acceptance of the underlying concepts by the international community.<sup>31</sup>

It appears, then, that technology in the broadest sense can have both positive and negative implications for the actions of nation-states in the modern world. On the one hand, technology may increase chances for conflict by providing motive and capabilities. On the other, it provides many options for resolving conflicts peacefully. In a world of sovereign states, it is still left to the individual country to decide how these technological developments and possibilities can best serve their own interests. As political scientist Joseph Szyliowicz indicates:

In recent years, technology has emerged as a topic of major concern throughout the world. Debates about whether it is a positive force that will lead to the betterment of the human condition, or whether it is responsible for such contemporary evils as resource depletion, environmental degradation, and the threat of nuclear annihilation, are commonplace. Decision makers, however, regard technology from a very pragmatic perspective. For them, technology is a major factor of national power, a tool that can be used to further a state's domestic and foreign policy objectives whether these be military strength, economic growth, or the

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<sup>31</sup> As of 16 November 1993, the UN Convention on Law of the Sea had been ratified by 60 nations - the number required for it to enter into force. The Convention will therefore become binding to all United Nations member-states one year from that date, on 16 November 1994. United Nations, "UN Convention on the Law of the Sea Receives Sixtieth Ratification, To Enter Into Force in One Year", Press Release (New York: United Nations Office of Legal Affairs), 19 November 1993.

elimination of poverty, and to enhance its prestige in the world community.<sup>32</sup>

Technology is admittedly only one of several factors that must be examined to explain the policies of a state. Geopolitical concerns, political ideologies, security issues, economic needs, leadership characteristics and cultural dynamics all play a part in determining the interests and policies of any nation. Despite our increasing global inter-dependence, as anthropologist Eugene Hillman indicates,

We can hardly expect to see the gradual disappearance of most of the world's distinctively diverse ethnic-culture units of men simply because of their increasing participation in common politico-economic-technocratic structures and social organizations.<sup>33</sup>

While ethnicity and many other non-technological factors continue to have an impact on national policies, technology is increasingly compelling national policy options by defining what actions are possible. As possibilities expand, it would seem logical that these increased technical powers have a decided influence on the actions being taken by a state.

This proposition does not imply agreement with the Ellulian concept that technology or "technique" determines or causes what nations will do, any more than owning a gun will cause one individual to kill another. The deterministic perspectives of Jacques Ellul, which views mankind as increasingly and inevitably

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<sup>32</sup> Joseph S. Szyliowicz, ed., Technology and International Affairs (New York: Praeger, 1981), 1.

<sup>33</sup> Eugene Hillman, The Wider Ecumenism (New York: Herder and Herder, 1968), 134.

being manipulated by an out-of-control technology, has serious limitations.<sup>34</sup> Harvard political scientist John Montgomery probably reflects the majority view when he states, "historians may not agree on many things, but few of them accept the notion of Technological Determinism."<sup>35</sup> Rather, technology and technological developments are commonly recognized as exerting an influence on policy makers by providing an expanded array of favorable options and at the same time creating serious policy dilemmas. As Victor Basiuk puts it,

Technology thus creates something of a paradox. On the one hand it immensely broadens horizons for societies to change their environment and to mold their own future by making available the necessary technological instruments for that purpose. On the other hand \*^T (^U(tly handicaps decision making and mobilization of human will to steer societies effectively into better futures.... Technological advance complicates societies and their problems so much that a rational understanding of the problem and the finding of an intellectual solution become difficult or nearly impossible.<sup>36</sup>

Basiuk believes that while "technology does not have a will of its own, ... the impact it - or its particular forms - produces may create imperatives of its own."<sup>37</sup> While more optimistic

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<sup>34</sup> As Ellul put it, "Today, technique has taken over the whole of civilization." (Emphasis in original). Ellul, 128. See also Langdon Winner's critique of Ellul's conclusions. Winner, 63-65.

<sup>35</sup> John D. Montgomery, Technology and Civic Life: Making and Implementing Development Decisions (Cambridge: MIT Press, 1974), 18.

<sup>36</sup> Victor Basiuk, Technology, World Politics & American Policy (New York: Columbia University Press, 1977), 2-3.

<sup>37</sup> Ibid., 8.

than Ellul regarding man's ability to control technology, Basiuk thus recognizes that certain kinds of technologies may exert influences on human decisions.

Another response to the argument that technology is an autonomous force imposing its values on humanity has been put forward by political scientist Joseph Szyliowicz. He contends that the impact of technology is determined by man and the nature of his society.

Most scholars and practitioners ... would not agree that technology is an exogenous force over which man has little or no control. Rather ... the consequences of technological innovations are determined by particular social, political, and cultural variables within any particular society. One has only to compare ancient Egypt with ancient China or with Assyria, societies with essentially the same technological base, but with quite dissimilar institutions and values, to recognize the role of societal and cultural values.<sup>38</sup>

For Szyliowicz then, societal values play a key role in determining how technology will be used. This argument is similar to Ian Barbour's case for the "social construction of technology," in which he considers that cultural and other "values are built into particular technological designs."<sup>39</sup>

On balance, and possibly because humans resist the idea that we might somehow be controlled by our own devices or inventions, the concept of a technological imperative that influences rather than determines the actions of men and nation-states seems more

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<sup>38</sup> Joseph S. Szyliowicz, ed., Technology and International Affairs (New York: Praeger, 1981), 3.

<sup>39</sup> Barbour, 21-22.



logical and relevant than Ellul and Winner's vision of an autonomous technology that is independent of human control. The individual state will thus, in the end, determine what use they will make of technology. Noting that this dissent might be considered a matter of degree rather than substance - at what point does influence become the determining factor in an issue? - this qualified concept appears to be most useful in examining and assessing the likely actions of nation-states and will be so used in the remainder of this study.

#### Statement of the Thesis

Simply stated, the thesis of this study is that a "technological imperative" is influencing the actions of China in the territorial dispute among five nations over sovereignty of the Spratly Islands archipelago in the South China Sea. This study examines the background of this dispute and discusses the technological developments that appear to be affecting the policies of China and the other claimants to the Spratlys. It then assesses future prospects for resolving the dispute, either through peaceful means, or through military force. The impact of technological developments on the policy decisions of China, the most powerful of the claimants to these islands, will be the central theme in this analysis.

Rather than supplanting the factors traditionally considered to motivate state policies, such as ethnic, religious or ideological causes, the concept of technology as exerting a dynamic influence on national policies may provide new insights into the

nature and causes of international political activity. The study of technology as a cause rather than merely an instrument of political action is particularly important today, as we try to manage global problems in an increasingly technological era.

### The Case of the Spratly Islands

The Spratly Islands dispute is one that seems to lend itself particularly well to an analysis of this thesis. Much of the contention grew out of the unique geography, history and resources of the Spratly archipelago. (See Map, Figure 1.)

Among the factors that make this area unique are its lack of population and its geographic isolation. Until recent times, the hundreds of islands, reefs and atolls that comprise the archipelago were uninhabited. Even today, the only people that could be said to live on these islands are military personnel manning the small outposts of the various claimants.

Geographically, the land territory of this archipelago does not lie within any country's territorial waters, and the islands themselves were long thought to contain few resources of economic value. Despite their tiny size (the largest island is only 0.43 square kilometers in size<sup>40</sup>) and apparently limited economic worth, this group of islands is today at the center of a territorial dispute that could have major implications for regional security in Southeast Asia.

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<sup>40</sup> Pao-Min Chang, "A New Scramble for the South China Sea Islands," Contemporary Southeast Asia 12 (June 1990): 22.

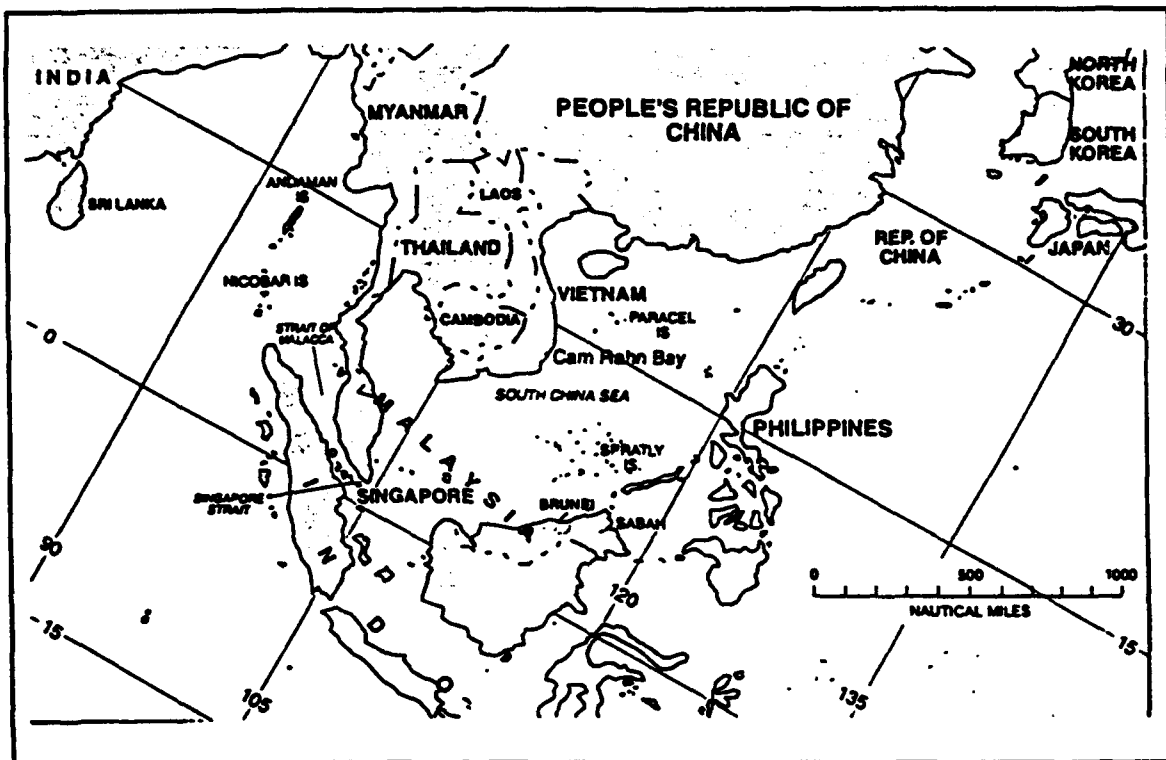


Figure 1. The South China Sea.

The term dispute as used here defines an unresolved issue between states that is aggravated by further discord with the potential to escalate into a conflict. This dangerous escalation sequence is described by marine law specialists Douglas Johnston and Mark Valencia as follows:

In most circumstances, neighboring states confronting an ocean boundary delimitation problem follow a process which is fairly simple.... The first stage is normally the promulgation of a claim to jurisdictional authority of some sort .... Whatever the form of a claim, it is almost certain to provoke a response from the neighbor, which may be only a protest or may constitute what amounts to a counterclaim. Normally there is at least a 'difference' between claim and response, and that difference may be characterized as an 'issue.... If the issue is aggravated by later events, such as an act of occupation in the disputed area ... it may acquire the status of a 'dispute', which confirms the need for a

negotiated settlement or arrangement. At worst, the problem may escalate into a 'conflict'.<sup>41</sup>

The dispute over the Spratly Islands stems from the problem that sovereignty over all or parts of this widespread archipelago is claimed by five nations: China, Taiwan, Vietnam, the Philippines and Malaysia.<sup>42</sup> These divergent claims have all been supported by the separate occupation of one or more of the islands by small military garrisons from each country. These garrisons have militarized the archipelago, making the area highly volatile and a major security concern for other nations in the region. The significant strategic location of this region, adjacent to the principal international shipping lanes from the Indian Ocean to the Pacific, also makes the Spratlys dispute a legitimate concern of countries outside the region, such as the United States and Japan.

A reexamination of this dispute is particularly important at the present time in light of the momentous technological, economic, political and strategic developments that have occurred in that region over the past decade. The potential for military conflict in the Spratlys has been significantly increased since

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<sup>41</sup> Johnston and Valencia, 16.

<sup>42</sup> For clarity in this study, unless otherwise stated, the People's Republic of China will be referred to as "China" and the Republic of China will be referred to as "Taiwan." For political analysis, each is an independent entity and must be considered a separate state. Both governments claim, however, to be the legitimate government of China and both claim the Spratlys to be Chinese territory. Their claims are essentially the same and will be referred to singularly as the "Chinese claim."

1988, when Chinese military forces occupied several of the islands. Subsequent interactions between Chinese and Vietnamese naval forces in the archipelago eventually culminated in a short, but decisive, naval clash and resulted in an easy Chinese victory. Since that time, there has been a "scramble" by all of the claimants to consolidate and, in some cases, expand their outposts in the Spratlys.<sup>43</sup>

The case will be made here that developments in the technologies of resource exploitation, international maritime law and military weaponry are creating pressures on China to gain control of the Spratly Islands so that the much-needed oil and other mineral resources believed to exist in the region can be exploited. These pressures lend an urgency to the situation in the Spratlys that could prompt an attempt by China, the major power in this dispute, to resolve it by force. Realistic options to resolve the dispute peacefully appear to be limited because of the complex and varied nature of the claims as well as the intransigence of China, the most powerful claimant.

Modern technology has made these previously insignificant islands valuable, and a source of territorial dispute and potential conflict. There is a potential for large offshore oil, gas and mineral deposits on and under the surrounding deep water seabeds. All of the nations that claim sovereignty to some or all of the Spratly Islands are desperate for new energy resources

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<sup>43</sup> See Chang, 20.

to fuel their own industrial development, and this is particularly true of China.

Since a brief period of retrenchment following the Tienanmen Square massacre in 1989, China's economy has grown at an impressive rate, with Gross National Product increasing an average of more than 12% per year.<sup>44</sup> China's rapid economic and industrial development has severely strained its domestic petroleum capacity. While current Chinese onshore oil production continues to increase, China's oil exports, a major source of foreign exchange earnings, have declined in recent years. At the same time, domestic needs to fuel China's industrial growth have outpaced oil production increases.<sup>45</sup> Recent reports indicate that China expects to become a net importer of oil by 1995 to fuel its expanding economy. Oil industry analysts feel that these factors probably underlie China's recent efforts to accelerate foreign investment and participation in China's oil exploration and development as well as China's position on territorial disputes in the potentially oil-rich South China Sea.<sup>46</sup>

At the same time, advances in resource exploitation technology have made it technically and economically feasible to explore and then exploit the deep undersea resources in the

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<sup>44</sup> See "China's Runaway Economy," The Economist, 16 October 1993, 16.

<sup>45</sup> Wang Ganfa, "Energy Shortage Hinders Economy," Beijing Review 36 (4-10 January 1993): 5.

<sup>46</sup> See "Foreign Firms to Figure more in Rebounding China E&D Scene," Oil & Gas Journal, 28 Sept 1992, 23-29.

Spratlys region, giving this area a value not recognized earlier.<sup>47</sup>

In addition, developments in military technology, including the recent availability of modern, high technology aircraft and missiles from the former Soviet Union, are giving the Chinese Navy new capabilities for sea, air and shore combat that make it feasible for the Chinese to attack and overwhelm the key Vietnamese garrisons in the Spratlys and neutralize any response from the Vietnamese mainland.<sup>48</sup>

Since China is a major player in this conflict, this study will concentrate on how these advances in technology may influence Chinese policy decisions regarding the Spratlys, and it will address likely future Chinese moves in the region. Technology is obviously not the sole determinant of Chinese policy towards the Spratlys, but technological developments and other related factors, such as an increasing need for energy resources, may influence the time frame in which the Chinese decide to act.

The dispute over sovereignty in the Spratly Islands area has received intermittent scholarly interest since 1974, when China used military force to defeat South Vietnamese troops and "resolve" their claim to the Paracel Islands, another disputed

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<sup>47</sup> In a telephone interview on 6 January 1993, Randall K. Thompson, President of Crestone Energy Corporation, indicated to the author that offshore wells are currently being routinely drilled at water depths of up to 2500 feet, making drilling feasible in much of the South China Sea basin.

<sup>48</sup> Some of the implications of these military developments are assessed in Esmond D. Smith, Jr., "The Dragon Goes to Sea," Naval War College Review 44, no. 3 (Summer 1991): 38-45.

island group located northwest of the Spratlys. Shortly after their defeat in the Paracels, Vietnamese troops moved south and occupied several of the Spratly islands.<sup>49</sup> This relatively minor military clash was overshadowed at the time by a renewed North Vietnamese offensive in South Vietnam followed by the prolonged American disengagement from Vietnam. The larger issues involved in the island claims of China and Vietnam appear to have gone generally unnoticed.<sup>50</sup>

Since the 1970s, several studies have examined the legal or historical aspects of the various claims to the Spratlys and assessed the intentions of the principal protagonists in the dispute, China and Vietnam.<sup>51</sup> Their conclusions vary depending on their different academic approaches. Some have focused on China's historical geopolitical concerns while others have analyzed the respective policies of China and Vietnam towards the Spratly dispute from a more limited legal or economic perspective. These studies, relevant earlier works, and other official documents will be analyzed to provide a foundation for the latter part of this study which looks to the future.

Such studies provide valuable viewpoints for examining contemporary Chinese actions in the region, but they were written

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<sup>49</sup> Marwyn S. Samuels, Contest for the South China Sea (New York: Methuen, 1982), 1.

<sup>50</sup> See King C. Chen, China's War with Vietnam, 1979: Issues, Decisions and Implications (Stanford, Hoover Institution Press, 1987), 46-47.

<sup>51</sup> These studies are discussed further in Chapter 2.



before recent developments had taken place. Most articles were published prior to 1988, for example, when the People's Republic of China had not yet occupied any of the Spratly islands. The clash between Chinese and Vietnamese naval vessels in the area in 1988 and the subsequent establishment of several communist Chinese outposts in the Spratlys changed the situation significantly. A communist Chinese military presence in the islands had serious regional, as well as international, implications.

In addition to these Chinese advances, dynamic political and economic changes occurred in Southeast Asia in the late 1980s and early 1990s. These included the withdrawal of Soviet (now Russian) naval forces from Vietnam and the departure of American military forces from the Philippines. The impact of these and subsequent events in the region on the Spratly Islands dispute have yet to be fully assessed. This study will attempt to remedy this need for contemporary analysis by bringing an account of the area's political, military and economic developments up to date. The crucial events that have occurred since 1988 require that earlier assessments be reexamined.

#### Research Methodology

The research methodologies used in this study include historical research in primary and secondary source materials as well as personal interviews and correspondence with several Asian scholars and senior military professionals. In addition, an opinion-based research questionnaire regarding the Spratly Islands was sent to over 60 senior Asian military officers in

December 1992. Its purpose was to solicit Asian regional perspectives on the past and future activities of the two major claimants, Vietnam and China. The results obtained from this questionnaire are discussed in Appendix 1. Quantitative and qualitative data from this survey were used to augment the data obtained through personal discussions in order to develop a sense of contemporary Asian concerns and expectations.

A key concern of the countries of Southeast Asia is whether this dispute and incipient conflict can be resolved by peaceful means. This study will examine the proposals made for peaceful resolution of the dispute on the one hand and technological developments that seem to foreshadow China's use of its growing military capabilities to assert territorial rights on the other. These diverging trends and insights gained through discussions with regional military and academic specialists lead to several possible scenarios for the future. The implications for United States policy interests will then be examined.

### Outline

In Chapter One, the Spratly Islands dispute will be discussed in some detail in order to provide a framework for subsequent assessments. Chapter Two reviews earlier literature on the Spratly Islands, summarizing, and in some cases critiquing, the analysis and conclusions of previous commentators. Chapter Three considers the legal claims made by each of the claimants to the Spratly Islands and provides an assessment of the validity and utility of these claims. Chapter Four examines the role of

recent technological developments in the Spratly Islands dispute, principally in three areas: oil exploitation technology, the "technology" of contemporary international and particularly ocean law, and recent developments in military technology. Chapter Five discusses possible future actions by the Spratly claimants, incorporating the results of the survey of Asian military professionals and personal analysis, and examines the strategic implications of the likely scenarios for the United States. Chapter Six describes some of the ethical implications of Chinese actions in the Spratlys, both for China and the United States. Chapter Seven provides the overall conclusions that demonstrate the utility of an understanding of the technological imperative for political analysis. Responses to the research questionnaire are summarized in Appendix 1 and a chronology of significant events in Spratly Islands history is contained in Appendix 2.

Armed with the expert opinions of regional correspondents and the results of personal analysis, this study's conclusion would ideally provide an assessment of the Spratlys dispute that accurately predicts the future actions of the claimants. It must be acknowledged, however, that the "track record" of political analysts in predicting consequential Chinese conduct in the past has been almost uniformly poor. This assessment is not original but is shared by other scholars, including sinologist Chung-Lih (Frederich) Wu:

The question does arise how China specialists could have misread the political situation so miserably. In analyzing the Chinese political scene, must we always depend on hindsight to make sense of Chinese

politics? If this were the case, then the profession of China studies has not made much progress since the 1950s despite the proliferation of so-called new concepts, theories, approaches, and methodology in political science.<sup>52</sup>

The validity of the assessments made in this study will ultimately be determined by future Chinese decisions, but it is hoped that the inevitable western bias of the author will be leavened somewhat by the wisdom and experience of regional correspondents.

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<sup>52</sup> Quoted in David M. Lampert and Catherine H. Keyser, eds., China's Global Presence: Economics, Politics and Security (Washington: American Enterprise Institute, 1988), 29.

CHAPTER ONE

THE SPRATLY ISLANDS DISPUTE

The Spratly Archipelago

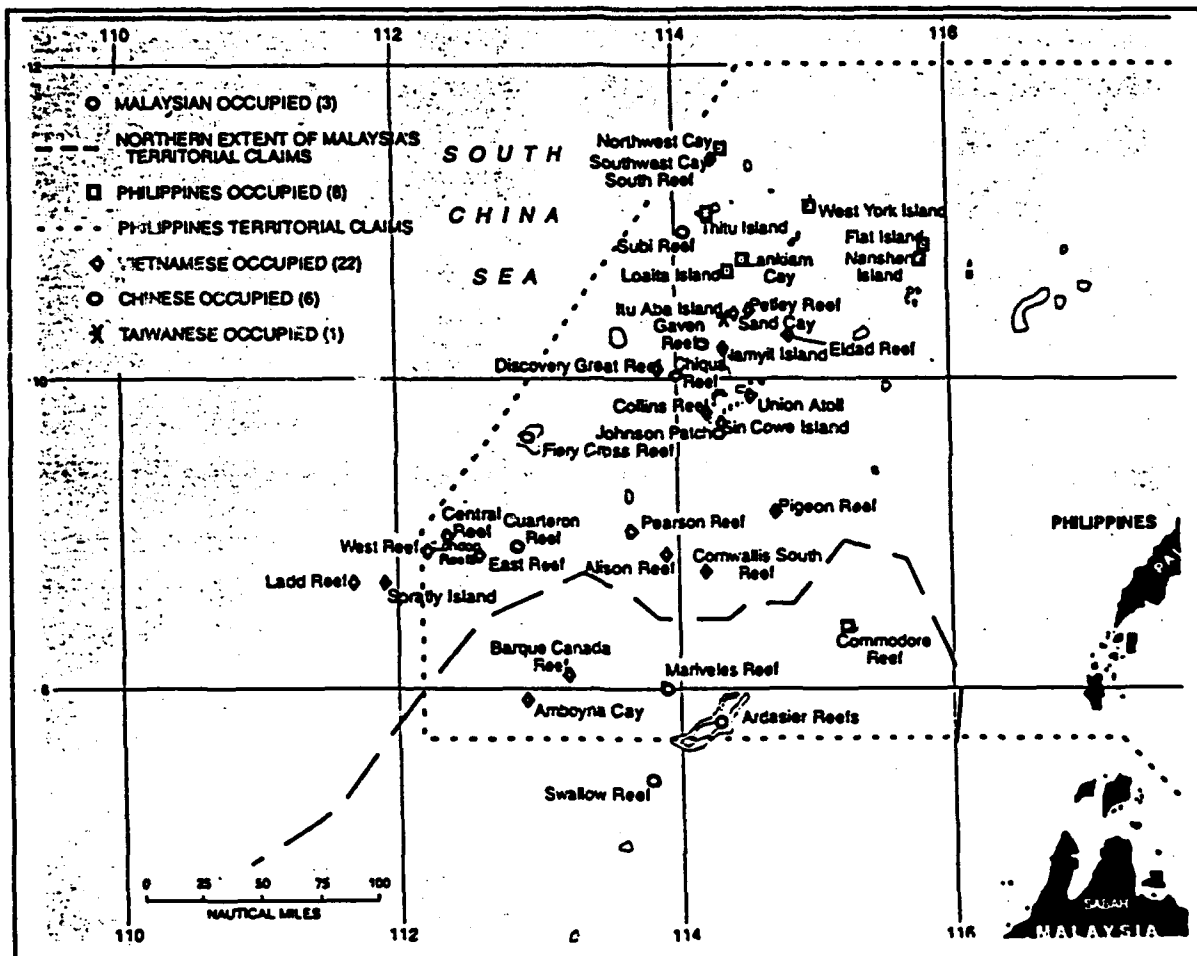


Figure 2. The Spratly Islands showing national outposts.

The Spratly Island archipelago is a widespread group of small islands and reefs scattered over an area of about 180,000 square kilometers in the southeastern part of the South China

Sea. (see map - Figure 2.). The archipelago is named after Richard Spratly, the captain of a British whaling ship, who reportedly explored the islands in 1840.<sup>1</sup> While all or parts of this group of islands have been given other names at various times in their history, for the purposes of this study, the terms "Spratly Islands" and "Spratly Island archipelago" will be used in this study to describe the entire collection of islands, reefs and shoals lying west of the Philippine province of Palawan and north of East Malaysia (Borneo) in the South China Sea.<sup>2</sup>

The Spratly Islands archipelago corresponds generally with the area that the Chinese call "Nansha Qundao"<sup>3</sup> and the Vietnam-

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<sup>1</sup> British researcher R. Haller-Trost identified two British mariners named Spratly in the Lloyd's Captains Register of 1869. Only the first, Richard Spratly, was active in 1840, the generally accepted date of the "discovery" of these islands by the British. See R. Haller-Trost, Occasional Paper No. 14 - The Spratly Islands: A Study on the Limitations of International Law (Canterbury: University of Kent Centre of South-East Asian Studies, 1990), 4 and Corazon Siddayao, The Off-Shore Petroleum Resources of South-East Asia (New York: Oxford University Press, 1978), 84.

<sup>2</sup> The area included in the Spratly Islands Archipelago is defined by geographer Marwyn Samuels as the area bounded by Latitudes 4° North to 11° 30' North and Longitudes 190° 30' East to 117° 50' East. See Marwyn S. Samuels, Contest for the South China Sea (New York: Methuen, 1982), 188. This convention has generally been maintained by contemporary analysts such as Haller-Trost.

<sup>3</sup> There are currently two principal systems for spelling Chinese characters in English. Most historical references use the Wade-Giles system, developed by two Englishmen in the late 19th century (e.g., Chou En-Lai). This system is still used by the Republic of China (Taiwan). In 1970, the People's Republic of China officially adopted another system of spelling called pinyin (e.g., Zhou Enlai). This system is used by most contemporary publications and the United States government. Pinyin will be used in this study, except in citations or names that use Wade-Giles. For a further explanation of these systems and a

ese call "Truong Sa." The area that the Philippine government calls "Kalayaan" or "Freedomland" generally includes only those Spratly Islands which lie west of Palawan and north of 7° 40' North latitude.<sup>4</sup> As will be discussed further, however, the convention of including all these islands and reefs in one archipelago is used in this case simply to avoid confusion.<sup>5</sup>

This area is of great strategic importance because the principal sea lines of communication for commercial ships transiting between the Indian and Pacific Oceans lie just to the west of the Spratlys Islands. The Chinese perspective on the strategic significance of the Spratly Islands and the Paracel Islands to the north was clearly stated in an article from the Chinese newspaper Kuang Ming Jih Pao on 24 November 1975:

As it lies between the Indian Ocean and the Pacific, the South China Sea is a vital strategic area. It acts as a gateway to the outside world for the mainland and offshore islands of China. The [Paracel and Spratly] archipelagos occupy a position central to the shipping lanes connecting Canton, Hong Kong, Manila and Singa-

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guide to pronunciation, see Lucian W. Pye, China: An Introduction 4th ed. (New York: Harper Collins, 1991), xi.

<sup>4</sup> The limits of the Philippine claim are outlined in Figure 2. For additional details, see Douglas M. Johnston and Mark J. Valencia, Pacific Ocean Boundary Problems: Status and Solutions (Boston: Martin Nijhoff Publishers, 1991), 123.

<sup>5</sup> The issue of what comprises the Spratly archipelago has been recognized by some researchers as a serious problem. See, for example, Daniel J. Dzurek, "Boundary and Resource Disputes in the South China Sea," in Ocean Yearbook 5 (Chicago: University of Chicago Press, 1985), 259. In view of the variety of names used to designate the area and to preclude confusion, Dzurek coined his own name for the region - the "Four Claim Area."

pore. [Hence] their geographic position is extremely important.<sup>6</sup>

An earlier analysis done by the author provides another reason that the region is important:

A glance at a chart shows what Chinese control of the Spratly islands would mean to the maritime interests of the United States and our Asian friends. Naval bases capable of supporting submarines and surface combatants in the Spratlys would provide China with a capability to monitor and potentially to interdict shipping of any nationality transiting the South China Sea. Chinese maps show claims to almost the entire South China Sea. It is not only the Japanese who should be concerned about such claims, but any nation whose trade moves by ship through the region, including, for example, Taiwan.<sup>7</sup>

Despite its potential strategic importance, the Spratly Island region itself has historically been best known to mariners as an area to avoid. Because of its many reefs, shoals and other hazards to navigation, the northern areas are labeled on most nautical charts simply as "Dangerous Ground."<sup>8</sup>

While the exact number of islands, shoals, reefs and cays comprising the Spratly archipelago is in dispute, it is generally agreed that only a few dozen of them are capable of sustaining human life or economic enterprise - the generally agreed upon criteria for distinguishing islands from rocks in international

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<sup>6</sup> Quoted in Samuels, 139.

<sup>7</sup> Esmond D. Smith, Jr., "The Dragon Goes to Sea," Naval War College Review, 44, No. 3 (Summer 1991): 44.

<sup>8</sup> The navigational hazards located throughout this region are detailed in Defense Mapping Agency Pub. 161 - Sailing Directions (Enroute) for the South China Sea and Gulf of Thailand, 4th ed. (Washington: Defense Mapping Agency, 1988), 10-21.



ocean boundary claims.<sup>9</sup> Indeed, until seized by the Japanese as a base for submarine operations in World War II, these islands were never permanently occupied.<sup>10</sup> Even today, the only people that can be said to "live" in the Spratly Islands are military personnel manning small national outposts on a temporary basis.

### Spratly Island Resources

The Spratly Islands area has been a traditional fishing ground for all of the contiguous states in the region, but until recently the islands themselves have been considered to have a

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<sup>9</sup> See Peter Kienhong Yu, The Four Archipelagoes in the South China Sea (Taipei: Council for Advanced Policy Studies, 1991), 7-9, for a summary discussion of the various estimates of the number of islands contained in this archipelago by governmental and other authorities. The wide range of estimates is due to variations in the definition of what comprises an island, islet or reef and the fact that some are unnamed and others are underwater at high tide. See also Joseph P. Morgan and Mark J. Valencia, eds., Atlas for Marine Policy in Southeast Asian Seas (Los Angeles: University of California Press, 1983), 35, which states that there are "33 islands, cays and rocks that stand permanently above sea level and compose the so-called Spratly Islands." Unfortunately for these geographers, however, at latest count, the five claimants have occupied 42 islands/islets in the archipelago. Chang Pao-Min's figure of "more than 230 barren islets, reefs, sand bars and atolls, about 180 of which have been named," is probably a better estimate. Chang Pao-Min, "A New Scramble for the South China Sea Islands," Contemporary Southeast Asia, 12 (June 1990): 20-21.

<sup>10</sup> It has also been argued that the first effective occupation of the Spratlys was by the French, who claim to have exercised de facto control over six of the Spratly Islands, including Spratly Island itself, from 1930 to 1939. French troops apparently withdrew from the islands when the Japanese began to occupy the area in 1939. See Dieter Heinzig, Disputed Islands in the South China Sea (Wiesbaden: Otto Harrassowitz, 1976), 27-29. The implications of this will be addressed in more detail below. See also, Michael Bennett, "The People's Republic of China and the Use of International Law in the Spratly Islands Dispute," Stanford Journal of International Law 28:371 (1992): 437.

limited intrinsic economic value - stemming principally from their guano deposits and coconut palms.<sup>11</sup>

Beyond strategic considerations, what makes the Spratly Islands important today is the potential for significant deposits of oil, gas and minerals located on and under the surrounding seabeds. The promise of large scale gas and oil finds in the South China Sea has been accepted since the late 1960s when an extensive undersea seismic survey was conducted under the sponsorship of the United Nations Committee for the Coordination of Joint Prospecting in Asian Off-shore areas. Results of the survey indicated the presence of hydrocarbons in economically exploitable quantities. It was not until the mid-1970s that technological advances in offshore oil exploration and production and other factors made it economically feasible to consider drilling in hitherto inaccessible offshore sites.<sup>12</sup>

Sovereignty over the islands would confer the legal right to develop and control the area's resources, and there are five nations (China, Taiwan, Vietnam, Malaysia, and the Philippines) that currently claim ownership to all or part of this archipelago.<sup>13</sup> All of these nations require new sources of energy, and recent advances in the technology of offshore oil and gas exploi-

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<sup>11</sup> Samuels, 3; Heinzig, 15.

<sup>12</sup> Siddayao, 22-31.

<sup>13</sup> Brunei contests the Malaysian claim to Louisa Reef but has yet to become involved in the larger territorial dispute. See B.A. Hamzah, "Jurisdictional Issues and Conflicting Claims in the Spratlys." The Indonesian Quarterly 18, no. 2 (1990): 135.

tation have made it possible to tap into the hydrocarbon-bearing sediment believed to be located under the seabed in the deep waters surrounding the islands. The Spratly Islands have thus become a valuable commodity.<sup>14</sup> The role of technology and technological development as determinants or contributing factors in this dispute will be addressed more fully in Chapter Four.

#### Recent Geopolitical Changes

At the same time, momentous political changes have occurred in the region that have significantly altered the previous military and political balance of power. The South China Sea has long been a nexus of superpower interaction. For much of this century, American military bases in the Philippines have provided the logistical support necessary to maintain American naval and air deployments throughout southeast Asia and into the Indian Ocean. The importance of these Philippine bases to American strategic interests was underscored by American naval and military operations to recover these bases in World War II. These same bases became critical staging areas for American operations in the Vietnam conflict and, more recently, in support of Operation Desert Storm in the Persian Gulf.

The construction of a Soviet naval base at Cam Ranh Bay in Vietnam in the late 1970s provided a counterbalance to the

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<sup>14</sup> Despite several efforts at conducting exploratory drilling in the northern and eastern sectors of the Spratlys, little is publicly known about the overall geology in the region. See George Kent and Mark Valencia, Marine Policy in Southeast Asia (Berkeley: University of California Press, 1985), 173 and Johnston and Valencia, 122.

constant American military presence in the region and, perhaps more importantly, a symbol of Soviet political support to Vietnam. The dissolution of the former Soviet Union in 1990 and the subsequent withdrawal of Russian naval forces, military advisors and support from Vietnam has left that country isolated from the international community and without a superpower sponsor.<sup>15</sup>

During this same period, the American military has conducted a phased withdrawal from its former naval and air bases in the Philippines after failing to negotiate new terms for continued use of the bases. The United States military presence in this region is now limited to periodic naval and air deployments, a major reduction from the "permanent" military presence in the past.<sup>16</sup>

Communist China, in the meantime, has stepped up the scope and nature of its own military deployments into the region and has expanded economic ties with many of the littoral states.

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<sup>15</sup> The possible impact of the dissolution of the Soviet Union on Chinese policies towards South East Asia are assessed by A. James Gregor, "China's Shadow Over Southeast Asian Waters," Global Affairs 7, No. 3 (Spring 1992): 1-13.

<sup>16</sup> In a 1992 interview, Vice Admiral Stanley Arthur, Commander of the U.S. Seventh Fleet, is quoted as saying that "As for our overseas commitments [in Southeast Asia] ... we are going to protect our ability to be forward deployed in the Pacific for as long as we can." An accompanying article emphasized that the U.S. interests in the region centered upon freedom of navigation and not territorial issues. See Susumu Awanohara, "Washington's Priorities: US Emphasizes Freedom of Navigation," Far Eastern Economic Review, 13 August 1992, 18-19.

These changes in the "power system"<sup>17</sup> of the region have implications for its security that have yet to be fully examined.

While the term "power vacuum" may seem simplistic, it appears to fit the current situation on the South China Sea, particularly in relation to the Spratly Islands dispute. The idea that "power" is the core issue in the Spratlys is reflected in the general perception among regional military professionals that China has hegemonic designs on this area and that a military conflict is brewing between China and Vietnam over ownership of the Spratlys. This incipient conflict is of concern to both the other countries of Southeast Asia, and also to extra-regional states concerned with maintaining freedom of the seas or with the potential growth of Chinese power and influence.

Time is a crucial element in these concerns.<sup>18</sup> Communist China, which, along with Taiwan, claims Chinese sovereignty over the entire archipelago based on historical grounds, has only recently begun to establish and consolidate a physical presence in the Spratlys. Prior to 1988, China was content to periodically reiterate its claim to the islands and to protest activity in the islands by others. This had apparently been considered sufficient to uphold China's claims of sovereignty because there has been a Chinese presence in the islands since 1946. This

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<sup>17</sup> See Frederick H. Hartmann, The Relations of Nations 5th ed. (New York: Macmillan Co., 1978), Chapters 18 and 19, for an examination of several "balance of power" systems.

<sup>18</sup> This time element has been recognized by regional scholars. See, for example, B. A. Hamzah, "China's Strategy," Far Eastern Economic Review, 13 August 1992, 153.

presence has been provided by Chinese military forces from Taiwan which have occupied Itu Aba Island since the departure of the Japanese after World War Two. The Nationalist Chinese presence in the region was considered adequate to support Communist China's territorial claims and maps published in China from the 1950s show China's national boundary line extending into the South China Sea around all of the Spratlys Islands.<sup>19</sup>

From 1988 to the present, however, China has taken a more active role in establishing her own permanent military presence in the archipelago and now occupies several of the islands with her own military forces. This change in policy is likely related to the increased interest in the Spratlys by the other regional claimants.

Over the past four years, China and Vietnam have continued to establish new military outposts on previously unoccupied islets.<sup>20</sup> This frenzy of occupation will probably end when all of the possibly inhabitable islets are occupied or the claimants exhaust their technical ingenuity in establishing outposts on

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<sup>19</sup> Chinese national maritime boundaries are illustrated in Zhonghua Renmin Gongheguo Ditu (Map of the People's Republic of China), 6th ed. (Beijing: The Cartographic Publishing House, 1971). This map is the source of the boundary lines shown in Figure 3.

<sup>20</sup> Despite the tiny size of the various reefs and islands in the Spratlys - the largest, Itu Aba, is only 960 X 400 meters and rises 8 feet above sea level - new outposts have continued to be established. Many of these outposts are built on raised platforms secured to the coral and all are highly vulnerable to weather and sea conditions. While several of the islands have their own sources of fresh water, the ability of these tiny garrisons to sustain themselves for any length of time is questionable, except on the larger islands.

barren projections of coral.<sup>21</sup> For the other claimants, however, this activity may be the final rush to establish territorial claims before an effort is made by China to resolve the dispute over sovereignty through military means.<sup>22</sup>

Due to a variety of factors discussed in more detail below, China's military activities in the Spratlys have focused on countering the Vietnamese presence in the area. But a military conflict between Chinese and Vietnamese forces in the Spratlys would be, of necessity, a naval conflict, and one that could easily spread to involve the naval and air forces of the other claimants or even non-belligerent merchant shipping transiting through the nearby sea lanes.

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<sup>21</sup> On the other hand, China and Vietnam have shown themselves to be capable of constructing "outposts" even on tiny reefs. Several of the various national "outposts" in the Spratlys consist of small, man-made structures built on to the natural coral outcroppings. The tenuous nature of these structures was illustrated by a photograph of a Chinese Navy outpost in the Spratlys published in the Asian Defence Journal 15 (November 1992): 22. The photograph shows three hexagonal buildings raised about 12 feet above a coral reef by what appear to be metal stilts secured to a circular metal framework on the reef. The buildings and their supporting structures appear to be uniform in design, suggesting that these modules have been designed by the Chinese specifically for use in the Spratlys and that other Chinese outposts may be similarly constructed. While no photographs of Vietnamese construction in the Spratlys has been published, the limited height and open exposure of all of these smaller sites would make them highly vulnerable to the frequently strong winds and seas experienced in this area.

<sup>22</sup> See Michael Richardson, "Spratlys increasing cause for concern," Asia-Pacific Defence Reporter 14 (October-November 1992): 35, for a succinct regional assessment. In addition, this concern was a recurring theme in the responses received from regional military professionals as discussed in Appendix 1.

While both China and Vietnam have recently made statements vowing to resolve this dispute by "peaceful means," their actions seem to belie their words, and both countries appear to be prepared to back their claims by military force if necessary. On 25 February 1992, for example, China enacted a new law on territorial waters, reiterating its claim to sovereignty over the Spratly Islands.<sup>23</sup> In May 1992, despite talk of shelving the issue of sovereignty to allow for joint development of resources in the South China Sea, China signed a contract with an American oil exploration firm to explore for oil in a contested area which lies within Vietnam's declared 200 nautical mile Exclusive Economic Zone and near a Vietnamese offshore oil field.<sup>24</sup>

Ignoring Vietnamese protests over their oil exploration contract, China occupied two additional islands in the Spratlys in June 1992, bringing the total number of islands occupied by China to nine. The Vietnamese, either in response to these Chinese

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<sup>23</sup> An English translation of this law was provided in "Law on Territorial Waters, Adjacent Areas," Daily Report: China, 28 February 1992, 2-3 and later published in United Nations Law of the Sea Bulletin No. 21 (August 1992): 24-27. The new law is essentially a restatement of an earlier law published in 1958. It reiterates China's claim to its offshore islands which includes the Nansha Islands (Spratlys) and defines China's territorial waters as extending 12 nautical miles from a datum line with a "contiguous area" extending a further 12 nautical miles offshore. China has not yet claimed an Exclusive Economic Zone (EEZ), but is expected to do so.

<sup>24</sup> See "Territorial Disputes Simmer in Areas of South China Sea," Oil and Gas Journal, 13 July 1992, 20-21.



moves or as part of a planned expansion, increased to 21 the number of islands under their control in 1992.<sup>25</sup>

The numbers and capabilities of the military forces now manning the various national outposts in these islands (See map, figure 2.) are relatively insignificant. But they carry a sovereign symbolism that outweighs their military or even economic significance. An armed clash between the small military units stationed on these tiny islands, often within sight of each other, could easily escalate into a full scale naval battle between China and Vietnam. Chinese naval and air force developments over the past few years indicate a growing capability to conduct the kind of military operations necessary to expel the Vietnamese outposts in the Spratlys.

In addition, China has consistently demonstrated a willingness to use force to support its territorial claims in the South China Sea. In January 1974, for example, elements of the Chinese Navy attacked and defeated Vietnamese forces in the Paracel Islands, forcing their withdrawal from that contested archipelago.<sup>26</sup> As Asian political scientist Pao-Min Chang has indicated,

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<sup>25</sup> See "South China Sea - Treacherous Shoals," the cover story in Far Eastern Economic Review, 13 August 1992, 14, for a recent summary of which islands are currently occupied by the various claimants.

<sup>26</sup> See Samuels, 86. An American Naval officer's professional assessment of this conflict in the Paracels is contained in David G. Muller, China as a Maritime Power (Boulder: Westview Press, 1984), 86-90.

the Sino-Vietnamese war of 1979 was fought over boundary issues in which the South China Sea Islands figured prominently.<sup>27</sup>

Subsequently, in March 1988, Chinese naval forces clashed with Vietnamese naval vessels supplying their outposts in the Spratlys, resulting in the destruction of three Vietnamese ships.<sup>28</sup> The international response to the latter example was extremely limited, likely due in part to Vietnam's isolation in the international community. A Chinese attack on a Philippine or even the Taiwanese outpost in the Spratlys would probably have met with more intense and meaningful international criticism, but an isolated Vietnam, no longer under the sponsorship of the former Soviet Union, appears to be fair game.

This was not always the case. Until they lost their major ally and source of military equipment following the disintegration of the Soviet Union into a number of independent states, Vietnam was arguably the single most powerful military power in Southeast Asia. The withdrawal of Soviet Naval forces from Cam Ranh Bay in 1991 has left Vietnam without a superpower protector, a fact not lost on the Chinese.

During this same period, the American naval presence in the region was also being curtailed. Unable to come to a mutually satisfactory agreement for basing rights in the Philippines, in

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<sup>27</sup> Pao-Min Chang, The Sino-Vietnamese Territorial Dispute (New York: Praeger Publishers, 1986), 86.

<sup>28</sup> The conflicting claims of Beijing and Hanoi regarding this incident are summarized by Pao-Min Chang in "A New Scramble," 25-28.

1992 the United States Seventh Fleet reluctantly departed Subic Bay, hitherto its largest base in the Western Pacific, to relocate elsewhere.

The departure of both superpowers from South East Asia occurred during a time of increased emphasis on naval force development in China that many analysts see as geared specifically to the Spratly Islands dispute.<sup>29</sup> From the mid-1980s on, the Navy of the People's Liberation Army (hereafter Chinese Navy) has been incorporating modern military technology into its operating forces at a measured pace. China has expanded the capabilities of the airfield on Woody Island in the Paracel Islands to support high performance fighter and reconnaissance aircraft and is developing an air to air refueling capability for their modern F-9 Finback aircraft. Both of these developments would be necessary to provide air support to naval operations in the Spratlys. Recent reports indicate that the Chinese are purchasing from Russia modern high performance strike/interceptor aircraft such as MiG 31 "Foxhounds" and SU-27 "Flanker" fighters.<sup>30</sup>

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<sup>29</sup> See Smith, 35-47. This article provides the authors view of recent Chinese naval developments and the Spratly Islands dispute. This view seems to be shared by several regional and other specialists. See Tai Ming Cheung "Fangs of the Dragon," Far Eastern Economic Review, 13 August 1992, 19-20; and General Mohammed Ali Alwi, "The Conflicting Claims in the South China Sea," Asian Defence Journal 15 (June 1992): 6-19, as other examples.

<sup>30</sup> These developments have been widely reported by defense analysts. See Barbara Starr "MiG Buy May Lead to Chinese Copies," Jane's Defence Weekly, 10 October 1992, 18, and Uli Schmetzer "New Arms, New Attitude: China Flexing its Muscles," Chicago Tribune, 29 September 1992, 1.

The longer ranges and sophisticated weaponry of these third generation aircraft would greatly enhance Chinese air control capabilities in the Spratlys. Even more significant for the region are the consistent rumors that China is interested in buying or building an aircraft carrier.<sup>31</sup> These and other Chinese military developments are discussed further in Chapter Five.

These trends - increasing interests in the development of offshore resources in the region; a scramble to occupy islands in the Spratlys; and developing Chinese naval and air capabilities which appear to be tailored to the Spratlys situation - may indicate a Chinese intent to resolve the Spratly dispute by military means, possibly within the near future.

#### Regional Initiatives

In the meantime, because of regional concerns about future Chinese actions, several regional efforts have been made to defuse the situation and allow for joint development of resources in the area. One of the most notable of these was undertaken by Indonesia, which sponsored a series of regional workshops on managing potential conflicts in the South China Sea beginning in January 1990.<sup>32</sup> Chinese officials were in attendance at the latest of the workshops, conducted in Jogjakarta in early July 1992. The day after this meeting ended, Vietnam claimed that

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<sup>31</sup> Smith, 39.

<sup>32</sup> See Michael Vatikiotis and Tai Ming Cheung, "Maritime Hegemony: Indonesia Propose Talks on South China Sea," Far Eastern Economic Review, 10 January 1991, 11, and B. A. Hamzah, "Why ASEAN Must Talk Security," Asian Defence Journal 15 (November 1992): 20.

China had occupied yet another atoll in the Spratlys, which appeared to belie the Chinese representative's assurances of peaceful intent at the workshop.<sup>33</sup>

Partly as a result of these Indonesian initiatives, the Spratly Islands dispute was the focus of the annual foreign minister's meeting of the Association of South East Asian Nations (ASEAN) in July, 1992, with China and Vietnam represented.<sup>34</sup> Subsequent claims were made that the ASEAN meetings had resulted in a "shelving of territorial claims" and an agreement to "pursue joint development projects." A careful reading of the Chinese foreign minister's statements, however, indicates only that China hopes to find a "peaceful solution" to the Spratly dispute and that it should be discussed "in private."<sup>35</sup>

Chinese domestic radio service XINHUA quoted a spokesman for the Chinese delegation in Manila as saying:

The basic principles expounded in the ASEAN Declaration on the South China Sea are identical or similar to what China stands for. The Chinese government has consistently advocated a peaceful settlement on territorial disputes over the Nansha (Spratly) islands through negotiation and has been opposed to resorting to armed force. China has put forward a proposal for laying disputes aside and undertaking joint development.

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<sup>33</sup> Hamzah, "China's Strategy," 22. Hamzah believes Beijing's recent actions have effectively derailed regional efforts to defuse the Spratly situation.

<sup>34</sup> Rodney Tasker, "Facing Up to Security," Far Eastern Economic Review, 6 August 1992, 8-9.

<sup>35</sup> This was not a new policy for the Chinese even though some regional analysts interpreted it to mean that China might be willing to come to some kind of accommodation over the Spratlys. See for example Michael Bociurkiw, "Spratly Claim to be Put Aside," South China Morning Post, 22 July 1992, 1.

China is willing to hold negotiations with countries concerned when conditions are ripe or to lay disputes aside for the time being when conditions are not ripe.<sup>36</sup>

Despite these claims of peaceful intent, China has consistently rejected efforts to "internationalize" the Spratlys dispute by subjecting it to multi-national negotiation or resource development. As an editorial in a Hong Kong Chinese newspaper indicates,

The reason why the Spratly issue should not be internationalized is quite simple and clear: The Spratlys have since ancient times been Chinese territory. This being the case, the possibility of internationalization does not exist.<sup>37</sup>

This seemingly intransigent attitude by China would appear to preclude a peaceful resolution to the Spratlys dispute regardless of the efforts of Indonesia and other regional states to bring the claimants together for serious negotiations. As the foremost military power in the region, China likely perceives that the very process of opening negotiations would imply that the other claimants have legitimate rights in the islands, an implication that would impugn China's own claim. China's policy statements have consistently indicated that the issue of sovereignty is non-negotiable.

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<sup>36</sup> Xiaong Changyi, "Peaceful Settlement Advocated," Beijing XINHUA Domestic Service in Chinese, translated and transcribed in Daily Report: China, 23 July 1992, 2.

<sup>37</sup> "Session on the Spratlys and China's Stand," Hong Kong WEN WEI PAO in Chinese, translated in Daily Report: China, 18 July 1992, 2.

At the same time, Vietnam has continued to press its own claim to the entire Spratly area while increasing the number of islands under its occupation. Despite this expansion, Vietnam remains diplomatically isolated and without its principal source of military and economic aid since the dissolution of the Soviet Union. Without such a powerful supporter to deter China, Vietnam rightly fears an attempt to repeat China's successful takeover of the Paracel Islands in 1974 and might agree to a negotiated settlement in the Spratlys. Vietnam, for example, is said to have "eagerly endorsed" a July 1992 ASEAN declaration calling for the peaceful resolution of the Spratly dispute without the use of military force.<sup>38</sup>

The Philippines and Malaysia have been actively involved in the efforts by ASEAN to develop a venue for a negotiated settlement of the Spratlys dispute so that they can get on with exploring and exploiting the local resources. Both fear domination of the region by an expansionist China and would like to see some sort of negotiated approach begin so as to preclude the use of military forces. The Philippines has even proposed that the Spratlys dispute be resolved by a United Nations conference, but this proposal has been rejected by Malaysia pending further study.<sup>39</sup> Such a proposal would likely be unacceptable to China

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<sup>38</sup> See Paul Lewis, "Vietnam Nears ASEAN Pact Amid Spratlys Claim," Defense News, 28 September 1992, 8.

<sup>39</sup> "Indonesia, Malaysia Favor Informal Spratly Talks," Hong Kong AFP in English, transcribed in Daily Report: China, 20 July 1992, 1.

at any rate for the reasons outlined above, and any negotiations without the inclusion of China would be almost meaningless.

The situation would seem to be at impasse: China remains intransigent, while the other claimants have stated their willingness to negotiate. Is there any way that this dispute can be resolved? To develop further insight into the possibilities, it is necessary to examine the various claims themselves in some detail as well as the actions of the claimants that relate to the Spratlys dispute. There are also other factors at work here that bear on this dispute. Not the least important of these factors is the technological imperative noted in the introduction and to which we will return in a later chapter.



## **CHAPTER TWO**

### **REVIEW OF THE LITERATURE**

Recent scholarly interest in the Spratly Islands has remained fairly limited in scope, despite the significant events that have occurred in the region since the late 1980s. Earlier studies focused mainly on the legal and political aspects of the dispute, in the context of Southeast Asia as a secondary theater for United States - Soviet Union competition. This context has now changed. The military withdrawal of both superpowers from the theater has allowed the regional actors themselves to take center stage and pursue their national objectives unconstrained by an ongoing superpower rivalry.

These developments require a review of the Spratly Islands issues through a reexamination of earlier judgments. Before examining these changes and their implications in more detail it is necessary to summarize and critique the views and conclusions of earlier researchers of the Spratly Islands issues.

Analytical approaches to the Spratly Islands dispute have generally fallen into one of three categories: (1) a strategic or geopolitical focus to explain the larger interests of the claimants through an analysis of their policies; (2) a more limited focus on the legal, territorial or ocean boundary issues involved

in the dispute; and (3) analyses based on the resource potential of the region.

### Geopolitical Assessments

The most authoritative major work on the history and geopolitics of the islands in the South China Sea, which includes the Spratly Islands, was completed in 1982 by American geographer Marwyn S. Samuels. His pioneering study provides a comprehensive historical survey utilizing many primary regional source documents from Samuel's extensive personal collection.<sup>1</sup>

Writing six years before the People's Republic of China established a military presence in the Spratlys in 1988, Samuels concluded that the contentious dispute over the South China Sea islands portended a fundamental change in the role of China as an Asian power. He contended that China's actions in the Paracels and Spratlys indicated an expanding interest in Asian maritime affairs and the reemergence of China as a maritime power in Asia. Samuels considered that,

the dispute serves to emphasize one of the most interesting and problematic issues in the history and geography of maritime Asia, i.e., the historical and contemporary ambivalence of China as a maritime power. Suffice it to say that, as depicted here, the sine qua non of the dispute over the islands and waters of the South China Sea is the curious and changing role of China as a coastal state and maritime power in the region. The rise, decline and possible re-birth of a

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<sup>1</sup> Marwyn S. Samuels, Contest for the South China Sea (New York: Methuen, 1982), 173-177. Samuels is an American geographer at Syracuse University. His study was the first full length treatment of the politics of the South China Sea islands in english.

Chinese oceanic presence is the principal sub-topic of this book.<sup>2</sup>

Samuels linked a resurgent Chinese maritime interest and capability to his perception (currently shared by many regional analysts) of China's hegemonic designs on the South China Sea. This view has been criticized as overly simplistic and without compelling historical evidence.<sup>3</sup> Nevertheless, Samuel's assessment is now emerging as the focus of real concern for the regional states. (This viewpoint will be addressed in detail below.)

In support of his hypothesis, Samuels identified several key strategic incentives for Chinese desires to control the Spratly Islands. These include the potential for control of the vital international sea and air lines of communications that pass through the South China Sea. He also noted the considerable legal and economic advantages of gaining legitimate title to the islands which would include, among others, control of their marine, continental shelf, and sea bed resources.

In an analysis of the territorial claims of the Philippines and Vietnam, Samuels briefly addressed the geopolitical importance of the region to other regional states. Curiously, his assessment did not include the claims of Malaysia, despite the

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<sup>2</sup> Ibid., xi-xii

<sup>3</sup> Chi-Kin Lo, China's Policy Towards Territorial Disputes: The Case of the South China Sea Islands (New York: Routledge, 1987), 16. Lo is an English political scientist. This work was derived from Lo's doctoral dissertation at the University of London.

fact that the Malaysian claims to parts of the southern Spratlys had been made public in 1979.<sup>4</sup>

Samuels identified Chinese concerns about Soviet Naval encirclement as a major factor influencing Chinese decisions in the region. He did not, however, foresee the retrenchment of the superpowers and the departure of the Soviet Navy from Vietnam and the American Navy from the Philippines. His awareness of this critical shift might have lent more weight to his analysis of the significance of China's emergence as a great power participant, playing an increasing role in regional and world affairs.

Samuels recognized that China's territorial interest in the South China Sea region was also related to the area's potentially extensive offshore oil resources. Samuels stressed the word "potential", noting that actual "proven" oil and gas finds had not yet met the highly optimistic projections for the region.<sup>5</sup> His cautious assessment has remained valid for the Spratly Islands area, where exploratory drilling has been limited and area oil reserves are still unproven. This uncertain situation appears to be changing, however, and as Samuels correctly foresaw, "The actual or potential offshore oil reserves of the South China Sea have become one, perhaps decisive, factor contributing to political tensions in the region."<sup>6</sup>

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<sup>4</sup> See Chapter Three.

<sup>5</sup> Samuels, 156.

<sup>6</sup> Ibid., 162.

Addressing the possibility for resolving the Spratly dispute by peaceful means, Samuels took the obvious position that resolution to the Spratlys dispute is inconceivable without the active participation of China. This proviso remains the major problem facing claimants like the Philippines and Malaysia, who are amenable to some sort of international adjudication. His analysis of the legal claims of the disputants demonstrates the difficulties involved in attempting to resolve this dispute strictly by recourse to international law:

At the outset, the legal dimensions of the dispute are clouded by the lack of any clearly delineated claims. All of the claims, with the possible exception of the Philippines, are zonal in character. Save for the occasional mention of some specific islet, reef or shoal, it is not at all clear where the boundaries of each claim might be drawn. Both the PRC and ROC maps, for example, simply indicate an enormous zone encompassing most of the South China Sea. Vietnam incorporates the Paracel and Spratly islands, but not necessarily their connecting waters. And while the Philippines sought to desegregate its claim called Kalayaan (Freedomland) from the Spratly Islands, some maps of this zone include most of the islands otherwise known as the Spratlys. Furthermore, of the four main participants in the dispute, only the Philippines asserts a primarily legal argument based on the ambivalent status of the Spratly Islands in the post-World War II treaties with Japan. Though the PRC, ROC and Vietnam employ various legal arguments to bolster their claims, their positions are essentially irredentist in nature.<sup>7</sup>

Samuels concluded that none of the claimants have established an unquestionable legal case for their ownership of the Spratly Islands. He considered that this impasse merely reflect-

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<sup>7</sup> Ibid., 7.

ed the real nature of this dispute, which he saw as political rather than legal:

Such legal ambivalence does not mean, of course, that international law cannot apply in the analysis of the dispute, or that there is no legal or jurisdictional resolution to the dispute. Rather, it simply infers [sic] that the dispute is primarily geopolitical and historical, and that its resolution will likely come in the working out of the historical, geographical and political contexts of the larger contest for power in the region.<sup>8</sup>

Because much of Samuels' perceptive analysis appears to remain sound today, his central theme of China's resurgence as a regional maritime power with hegemonic interests in the South China Sea will form a basis in this study for an assessment of subsequent events relating specifically to the Spratly Islands. Samuel's views have taken on new significance in light of the changing geopolitical situation in Southeast Asia.

Another assessment of China's interests in the South China Sea Islands was completed in 1986 by British political scientist Chi-kin Lo who used the islands as a case study for examining China's general policy towards territorial disputes. Lo developed a framework for analyzing China's strategies in various territorial disputes by focusing on China's policies and deportment vis-a-vis the Paracel and Spratly Islands.

His study looked at the Spratlys dispute from the viewpoint of China's shifting foreign policy positions and with an underlying assumption that "there is no simple direct relationship

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<sup>8</sup> Ibid.

between what China claims and how it behaves in a territorial dispute."<sup>9</sup> He concluded that geopolitical interests have been the dominant factor in China's policies towards the South China Sea islands.

Lo considered that Chinese actions in the region have been dictated by the overarching ambition to contain the influence of the Soviet Union. While offshore resources are important, the principal motivating factor behind Chinese moves in the Spratly and Paracel Islands has been the geopolitics of the Sino-Soviet dispute. He attributes China's actions in the South China Sea and elsewhere to a dominant concern with geopolitical power on the world scene.

Lo's study provides interesting insights to Chinese policy which are useful in viewing subsequent events in the region. Nonetheless, his analysis and conclusions are seriously flawed by inconsistency and over-generalization. At the outset, for example, Lo attempts to categorize earlier studies of China's policies in territorial disputes as either "irredentist" or "geopolitical." By "irredentist", Lo means analysts that consider China to be driven by ambitions to recover all its former territory. Included by Lo in this category are such well-respected American sinologists as C. P. Fitzgerald, John Fairbank and Harold Hinton. Marwyn Samuels' study of the South China Sea was also labeled "irredentist" by Lo because,

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<sup>9</sup> Lo, 184.

Samuels argues that China wants to reassert an historical presence at the southern maritime frontier, [and that China's] ... irredentist goals include not only the land (the islands), but also the waters.<sup>10</sup>

Lo believes the irredentist viewpoint to have serious shortcomings, not least of which was the flawed idea that a "Sinocentric world order is an accurate description of the Chinese view of their place in the world."<sup>11</sup> While he recognizes the importance of China's imperial past, Lo is convinced that contemporary Chinese leaders have renounced any hegemonic desires. As evidence for this, Lo points out that the Chinese have "already come to accept the independence of former tributaries like Korea, the small Himalayan countries and those in Southeast Asia."<sup>12</sup>

The second error in the irredentist argument, according to Lo, concerns China's use of force in territorial disputes. Lo states that the Sino-Indian conflict of 1962 is erroneously considered to be "a classic example of China invading a neighboring country as a direct result of its irredentist ambitions."<sup>13</sup> In fact, Lo contends, it was India, not China, that was largely responsible for the outbreak of war along the Sino-Indian border.<sup>14</sup> As his final proof of the inadequacy of the

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<sup>10</sup> Ibid., 68.

<sup>11</sup> Ibid., 7.

<sup>12</sup> Ibid., 8.

<sup>13</sup> Ibid., 6.

<sup>14</sup> Ibid.



irredentist theory, Lo points out that despite the 1974 Sino-Vietnamese clash in the Paracel Islands and China's attack on Vietnam in 1979, there are several other cases of territorial disputes in which China has not resorted to the use of force, including the Spratly Islands.<sup>15</sup> Unfortunately for this aspect of Lo's critique, China did, in fact, use military force in the Spratlys Islands just prior to the publication of his study. (This is addressed further below.)

After criticizing the shortfalls of the irredentist view, Lo suggests a "geopolitical" interpretation of China's motivation in territorial disputes. This view, he considers, provide a better explanation of China's behavior than simple irredentism. Lo supports his case with a detailed, if somewhat selective, examination of China's dispute with the other claimants in the Paracels and Spratly Island disputes. Lo claims that,

In order to account for China's behavior in territorial disputes, the interpretation of geopolitical interests [as opposed to the irredentist interpretation] appears to have provided fruitful results.<sup>16</sup>

Both of Lo's categories - "irredentist" and "geopolitical" - appear to be simply different facets of the same causes which are traditionally used to explain political actions. Thus, China may have acted for geopolitical, irredentist and other motives. These other motives might include the needs of China's techno-

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<sup>15</sup> Ibid. Other examples cited by Lo include China's use of peaceful means to resolve territorial disputes with the Soviet Union, Vietnam, Burma, Nepal, Pakistan and Mongolia.

<sup>16</sup> Ibid., 9.

logical modernization, ideological factors, internal social and political concerns, the personalities and mindset of Chinese decision-makers, and international events that may have had an impact on their decisions. In short, all of those elements of national power, interests and security that comprise the traditional focus of political scientists.<sup>17</sup> Separating "irredentism" from "geopolitics" only obfuscates the fact that in the case of China, at least, one may be a subset of the other.

Lo has not made the case for ignoring China's "irredentist" past as a factor in determining her perspective on the geopolitical future. He himself was critical of Samuels' study because he felt that Samuels had not thoroughly analyzed the Chinese use of military force in the Paracel Islands in January 1974 despite the availability of adequate material on this operation when Samuels was completing his work in the early 1980s.<sup>18</sup> Lo used such materials in his own study to try to prove that China's actions were not based simply on "knee-jerk" irredentism but were influenced by a wide variety of other "geopolitical" concerns. Lo's analysis appears to be a restatement of the obvious. Surely Samuels himself would agree that nothing

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<sup>17</sup> Frederick H. Hartmann, The Relations of Nations, 5th ed. (New York: Macmillan, 1978), 17. His "four cardinal principles" of international relations demonstrate the narrowness of Lo's categorization. As Hartmann states, "These principles tell us how to understand the overall behavior we observe in the state system. They give us insight into what accounts for change. They point to the predictive possibilities inherent in a proper analysis of the system."

<sup>18</sup> Lo, 16.

in his analysis stated or was meant to imply that China's emergence as a maritime power could be considered as the sole reason for her actions in the Paracels.

Finally, Lo's own treatment made no mention of a major change in the Spratly situation that occurred just prior to its publication. While Lo completed his study before the March 1988 Sino-Vietnamese naval clash in the Spratlys and the occupation of several of those islands by China, his book was not published until 1989. No mention was made of this critical event, even in his acknowledgement which was dated July 1988.

Despite these limitations, however, Lo provides useful reading for the student of Chinese policy regarding the South China Sea Islands. He identifies some of the likely factors that continue to shape that policy: China's evolving position on the Law of the Sea, the influence of potential offshore oil reserves in the South China Sea, and concerns for the sensitivities of the ASEAN states. Lo recognized such examples as constants affecting contemporary Chinese foreign policy. Nevertheless, his assessments, like some of those of Samuels, may have been overtaken by events. Lo himself noted how time and chance may challenge his prognosis:

In the long run, ... there is the possibility that China's policy towards other issues in the region will no longer be closely tied to the Soviet factor as before. So far, there is not enough evidence to say how strong such a possibility is. However, it is certainly one that must be taken into consideration for

any future examination of China's policy towards the disputes over the Paracel and Spratly Islands.<sup>19</sup>

Regarding prospects for resolution of the Spratlys dispute, Lo differentiates between China's policy towards Vietnam and her policy towards the other claimants. While he indicates that there may be some hope for peaceful resolution of China's territorial dispute with Malaysia and the Philippines, perhaps through some sort of joint development scheme, he is not so sanguine about resolving the conflicting Sino-Vietnamese claims:

Other factors being equal, the possibility of more serious conflict over the Vietnamese-held islands of the Spratly group will probably increase as the desire of China to gain access to the sea areas further south in the South China Sea continue to grow. So far, such a desire has been constrained by military and political constraints...None the less, as China's military modernization progresses and its stature as a major power in the region grows, the threat to the Vietnamese-held islands of the Spratly group will inevitably grow.<sup>20</sup>

"Other factors," of course, have not remained equal, but, as will be argued here, the geopolitical changes that have taken place in the region make Lo's conclusions even more pertinent today. The last few years have witnessed the withdrawal of both the Soviet Union and the United States from South East Asia and the dissolution of the former USSR into several independent states. These events have drastically altered China's geopolitical situation by removing the security threat from its southern maritime flank and by leaving Vietnam, its principal

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<sup>19</sup> Ibid., 192.

<sup>20</sup> Ibid., 193-194.

adversary in the territorial dispute over the South China Sea Islands, without major superpower support. Whatever the impact of these changes, Chinese interest in the islands is currently very high. While the Chinese themselves constantly deny any "irredentist" ambitions, their efforts to convince other regional states about their benign intentions have somewhat failed to reassure them.

Another scholarly view of Chinese interests and intentions in the South China Sea was provided by political scientist Pao-Min Chang, whose study of the territorial disputes between China and Vietnam was published in 1986.<sup>21</sup> This examination of the origins of the Sino-Vietnamese territorial dispute provides a reasoned and well-documented historical survey of the various claims and issues involved in the dispute that is very helpful for an understanding of the political positions of both claimants today. Chang's masterly exposition will be drawn upon frequently in the ensuing chapters of this study.

Territorial counterclaims between China and Vietnam are at the core of the Spratly Islands dispute, and Chang's analysis provides valuable background and insights into this central concern. He examined the 1974 Sino-Vietnamese clash in the Paracels Islands together with the Chinese invasion of Vietnam in 1979, and concluded that both of these actions were linked to

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<sup>21</sup> Pao-Min Chang, The Sino-Vietnamese Territorial Dispute (New York: Praeger, 1986), 10-11. Chang is a regional political scientist (Singapore) who has written extensively on the relations between China and Vietnam.

Chinese territorial ambitions. These policies center on three main issues, each with its own unique set of problems: the 800 mile-long land border between the two countries, the division of authority over the waters of the Gulf of Tonkin between the northern coast of Vietnam and the Chinese island of Hainan, and sovereignty over the offshore islands in the South China Sea, which include the Paracel Islands group in the north and the Spratly Islands group in the south.<sup>22</sup>

Chang makes the case that all three issues are interrelated, but contrary to appearances, ownership of the Spratly and Paracel Islands has been and continues to be the main territorial concern of the protagonists. As he puts it, "although much attention has been focused on the land border, the real bone of contention is actually the South China Sea islands."<sup>23</sup>

Chang's examination of the Sino-French Treaty Convention of 1887, which demarcated the land border between China and Vietnam, is highly relevant to our study because this treaty has been used by both sides to provide legal justification for their respective territorial claims.<sup>24</sup> Most recently, for example, both sides

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<sup>22</sup> Ibid., 11.

<sup>23</sup> Ibid., 86.

<sup>24</sup> "Convention Relative à La Délimitation De La Frontière Entre La Chine Et Le Tonkin, Signée à Pékin Le 26 Juin 1887," in China. The Maritime Customs III - Miscellaneous Series: No. 30: Treaties, Conventions, Etc., Between China and Foreign States Vol I, 2d ed., (Shanghai: Inspectorate General of Customs, 1917), 933-945. In French and Chinese.

have agreed to use this treaty to resolve their land border issues.<sup>25</sup>

This treaty was concluded between France, then a strong colonial military power, and a China that had been dangerously weakened by decades of internal corruption and external assault. For the Chinese, this was yet another "unequal treaty," wrung under duress by powerful European imperialists.<sup>26</sup> It is ironic that the Chinese would invoke such a treaty today as legal justification for a territorial claim, since the terms of most other treaties considered "unequal" by the Chinese have long since been denounced. As Chang comments,

From the Chinese point of view, all the so-called unequal treaties signed by the Imperial Chinese government with foreign countries in the nineteenth century should be in principle negotiable, if only because of their dubious legal quality, their technical ambiguities, and the fact that they were politically outmoded. This has been China's consistent stand on all territorial disputes with its neighbors and in the conclusion of new treaties.<sup>27</sup>

He points out, moreover, that there is ambiguity in this treaty convention, both in delimiting the land border and particularly in determining ocean boundaries. The land border difficulties stem in part from unclear and inconsistent map references, the mountainous terrain of much of the border area,

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<sup>25</sup> See Murray Hiebert, "Comrades Apart: China, Vietnam Fail to Resolve Differences," Far Eastern Economic Review, 17 December 1992, 23

<sup>26</sup> See Jonathan D. Spence, The Search for Modern China (New York: W. W. Norton, 1990), 221.

<sup>27</sup> Chang, 40.

and the cross-border traffic of many of the non-Chinese and non-Vietnamese minority inhabitants.<sup>28</sup> These issues can probably be resolved through bilateral negotiations of the kind that are currently taking place. The more significant issue for the present study stems from the treaty provisions on ocean boundaries, which results, in part, from a disagreement between the French and Chinese language versions of this treaty convention. As Chang indicates:

The 1887 Sino-French Convention on the boundary between Annam (Vietnam) and China's Guangdong Province made an implicit reference to the gulf (of Tonkin) by drawing a straight red line on relevant maps extending from the eastern end of the Sino-Vietnamese land border southward towards the gulf. Although the convention specifically states that islands located east of this line belong to China and islands lying west of it belong to Annam, there are apparent discrepancies between the Chinese and French versions of the Convention as to whether the line divides only the islands or whether it separates the water area as well. Whereas the Chinese text is quite clear that the red line applies "so far as the islands in the sea are concerned," the French text defines the red line as coinciding with 108 degrees and 3 minutes 30 seconds east of the Greenwich meridian and "as making up the frontier" between China and Annam.<sup>29</sup>

At issue here is sovereignty over the islands in the South China Sea east of 108 degrees, 3 minutes and 30 seconds East longitude and the demarcation of national economic zones in the Gulf of Tonkin. The Chinese position in their ongoing territorial dispute with Vietnam is that this 1887 treaty convention addressed only the islands and should not be used as a basis for

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<sup>28</sup> Ibid., 12.

<sup>29</sup> Ibid., 13.



subdividing the Gulf of Tonkin. To do so would be advantageous to Vietnam by giving it control over a greater part of the Gulf.<sup>30</sup>

The Chinese also insist, however, that since no limits on the length of the "red line" were indicated in the treaty, the treaty constituted recognition by France that China owned all of the islands located to the east of its southward extension, which include the Paracel and Spratly groups. Chang points out the dubious nature of this claim: if this line is extended to the south, parts of the Vietnamese mainland and several coastal Vietnamese islands also fall to the east of it, clearly indicating that the "red line" was not intended to be extended beyond the Gulf of Tonkin.<sup>31</sup>

Chang further indicates that the Treaty itself does not mention the Gulf of Tonkin and this ambiguity allows both sides to interpret the convention in ways most favorable to their own interests.<sup>32</sup> Vietnam, for example, claims that the Convention

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<sup>30</sup> Ibid., 14.

<sup>31</sup> Chang, 13. See also Hungdah Chiu and Choon-Ho Park, "Legal Status of the Paracel and Spratly Islands," Ocean Development and International Law 3 (1975): 19.

<sup>32</sup> As pointed out in a legal analysis by R. Haller-Trost, the treaty itself was entitled "Convention entre la France et la Chine relative à la Délimitation de la Frontière entre la Chine et le Tonkin." From this title, Haller-Trost wrongly infers that the treaty was relevant only to Gulf of Tonkin area. The term "Tonkin" in this context appears to refer to the Vietnamese ("Tonkinese") government rather than to a geographical area. See R. Haller-Trost, Occasional Paper No. 14 - The Spratly Islands: A Study on the Limitations of International Law (Canterbury: University of Kent Centre of South-East Asian Studies, 1990), 46.

"red line" was meant only to establish the Sino-Vietnamese ocean boundary only in the Gulf of Tonkin, whereas, as mentioned, the Chinese state that it applies only to a demarcation of offshore islands.<sup>33</sup>

The legal implications of these claims will be further examined in detail, for Chang makes it clear that more is at stake here than mere territory. The territorial dispute, Chang asserts, reflects "a fundamental conflict between China and Vietnam over post-war territorial realignment throughout the region."<sup>34</sup> This puts the Spratly Island dispute in the center of a political contest between China and Vietnam for regional power and influence, an assessment currently supported by several regional authorities. As Chang indicates,

The prolonged, heated debate over the South China Sea islands since the 1979 war suggests that the posture taken by both sides on the land and gulf issues and all the wrangles over them had in fact been calculated to strengthen their respective bargaining positions on the South China Sea islands and in particular to compel each other to give up its claims to the Spratlies [sic].<sup>35</sup>

Chang further suggests that,

The reasons that both China and Vietnam have focused their attention on the Spratlies [sic] do not lie merely in the vast sea area the archipelago embraces, the strategic position it occupies, and the potentially rich energy and marine resources it promises. Perhaps the most important reason is that these islands and the surrounding area have to a large extent remained a res

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<sup>33</sup> Chang, 14.

<sup>34</sup> Ibid., 86.

<sup>35</sup> Ibid.

nullius because of the difficulty of permanent settlement and effective occupation, and whatever claims made to the entire archipelago are yet to be substantiated beyond reasonable doubt. Some form of international recognition thus becomes the most desirable way of acquiring sovereignty.<sup>36</sup>

This perspective on the central significance of the Spratly islands to China and Vietnam seems to have been born out by the recent activities of both countries to establish new outposts in the islands, as noted earlier. These actions were summarized by Chang in a more recent journal article entitled "A New Scramble for the South China Sea Islands," which discusses the significance of the establishment of new Chinese outposts in the Spratly islands.<sup>37</sup>

Chang's essentially geopolitical analysis of the Sino-Vietnamese territorial dispute provides valuable insights into the motives of China and Vietnam in the Spratly Islands. These views are particularly relevant in light of the recent resolution of some of the other major issues between the two countries that most political analysts consider were more proximate causes of the 1979 Sino-Vietnamese war.<sup>38</sup> This resolution has included a

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<sup>36</sup> Ibid., 87.

<sup>37</sup> Pao-Min Chang, "A New Scramble for the South China Sea Islands," Contemporary Southeast Asia 12 (June 1990): 20-30.

<sup>38</sup> See, for example, William A. Duiker, "China and Vietnam and the Struggle for Indochina," in Postwar Indochina: Old Enemies and New Allies, ed., Joseph J. Zasloff (Washington: Foreign Service Institute, 1988), 172. Duiker writes, "It is clear that, although it was the Cambodian issue that was most directly responsible for causing the 1979 war, the conflict between China and Vietnam is the product of a number of additional factors, some of them deeply rooted in history."

Vietnamese withdrawal from Cambodia and the ongoing negotiations between China and Vietnam regarding the treatment of Chinese minorities, demarcation of their land border and marine boundaries in the Gulf of Tonkin.<sup>39</sup>

While discussions of the Spratly Islands dispute sometime appear on the agenda of Sino-Vietnamese bilateral conferences, there has been little apparent progress on its resolution. The issue of sovereignty over these islands remains an intractable problem for the two countries, lending weight to Pao-Min Chang's assessment of its central importance to both countries.

#### Legal Assessments

The second category of scholarly analysis of the Spratly Islands dispute focuses on the legal nature of the various claims to sovereignty in the region. These analyses address methods of testing the validity of conflicting territorial claims under contemporary international or marine law. Such studies have usually taken the form of journal articles, monographs or case studies in legal works discussing marine boundary or international law issues. While the findings of some of these assessments appear to be influenced by national bias, all provide valuable insights and different viewpoints of the dispute.

Several pertinent studies of this nature were written in the wake of the 1974 Chinese attack on Vietnamese garrisons in the Paracel Islands. Two studies completed by regional scholars in

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<sup>39</sup> See, for example, "Positive Results Seen in SRV Border Talks," Beijing China Radio International in Vietnamese, translated and transcribed in Daily Report: China, 31 August 1993, 9.

the 1970s on the legal issues involved in the Spratly dispute are particularly useful. The earlier study by American international law specialists Hungdah Chiu and Choon-Ho Park (1975), concluded that despite the historical claims of the Chinese and Vietnamese, "only those events that took place since the 1930s are relevant to the analysis of the present dispute."<sup>40</sup> This assessment maintained that it was only with the Japanese occupation of the islands in the 1930s that valid claims of sovereignty through effective occupation could be made. The authors argued that while Chinese historical claims to the islands could establish an inchoate or incipient right to sovereignty, such a right must be followed up with de facto occupation of the territory to establish legal sovereignty. This occupation was not attempted by China until after World War II. Since troops of the Republic of China were the first to occupy one of the Spratly islands after the Japanese withdrawal in 1945, however, Park and Chiu consider that the Chinese claim to the Spratlys is stronger than that of the Vietnamese.<sup>41</sup>

In a later article (1978), Park alone argued that a Chinese or a Vietnamese claim, based only on discovery and historical usage of the islands,

is not a sufficient but only a necessary condition [for claiming sovereignty] because it must be sustained by continuous and uninterrupted exercise of sovereignty.

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<sup>40</sup> Hungdah Chiu and Choon-Ho Park, "Legal Status of the Paracel and Spratly Islands," Ocean Development and International Law 3 (1975): 19.

<sup>41</sup> Ibid., 20.

On this point neither side appears to be sufficiently persuasive.<sup>42</sup>

Park identified three basic reasons why the Spratly Islands dispute is not likely to be resolved by a legal settlement. These included: (1) the extreme sensitivities of Asian countries to territorial issues, (2) a general reluctance of Asian states to rely on contemporary international law to settle important disputes, and (3) the complex nature of the dispute itself.

Park raises an interesting question regarding the applicability of modern international law in this context which will be discussed further below. He inquires,

whether, at the time of the Chinese discovery [of the islands], a discoverer of new territory was required to exercise uninterrupted control over such territory to become its owner.... The key question is whether modern principles of international law can properly be applied to actions occurring in premodern times.<sup>43</sup>

Park recognizes the limitations of legal decisions in determining ownership of the Spratly Islands and concludes that purely legal arguments have little standing:

In the final analysis, international law can effectively resolve only disputes that are basically legal, whereas the most important disputes, like the present one with its highly complicated historical background, are political in nature and susceptible therefore of political resolution only.<sup>44</sup>

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<sup>42</sup> Choon-Ho Park, "The South China Sea Disputes: Who Owns the Islands and the Natural Resources?" Ocean Development and International Law 5 (1978): 33.

<sup>43</sup> Ibid., 36.

<sup>44</sup> Ibid., 37.

Another opinion on the legal validity of the various claims to the islands was prepared by American political scientist Martin Katchen. Writing in 1976, Katchen held to the principle of right by possession:

Under International Law, effective occupation provides far better grounds for a land claim than mere prior discovery. On this ground, Taiwan has the right to the one island which it possessed in 1955, and has continued to possess, Itu Aba; Vietnam has clear rights to Spratly Island which it has occupied since 1956, and probably has legal claim to those islands which it seized in 1974; the Philippines likewise would have rights to the islands it has occupied.<sup>45</sup>

This seemingly straightforward assessment was based upon the existing situation in the Spratlys at the time. It ignores, however, the questions raised by Park and others regarding the appropriateness of judging historical claims by contemporary legal standards - especially in the light of the complex historical and political issues involved in this dispute. Katchen's article remains helpful, however, because he does make explicit the strategic issues involved in this controversy. As he noted,

The Spratly Islands claims have the potential for extending the authority of the nation that holds them across the South China Sea, particularly under the rapid changes being made in the Law of the Sea. Because of this, questions must be asked regarding this island group. What would be the effects of the extension of either the PRC's or Vietnam's claim to the region upon the geopolitical map of Asia?<sup>46</sup>

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<sup>45</sup> Martin H. Katchen, "The Spratly Islands and the Law of the Sea: 'Dangerous Ground' for Asian Peace," Asian Survey 17, No. 12 (1977): 1180.

<sup>46</sup> Ibid., 1181.

As we see, the question of China's intentions in the Spratlys continues to be a major concern, both for the regional states and for others concerned for security of sea lanes and freedom of the seas.

Several recent articles and monographs on the legal issues involved in the Spratlys dispute are also worth notice. Particularly interesting are two studies written by employees of the American State Department, Daniel Dzurek and Bradford Thomas. While their opinions are not to be interpreted as official American policy on these issues, their articles can be said to reflect the views of informed American policy officials.

Daniel Dzurek is a political analyst at the State Department who coined the term "Four Claim Area" in his study of the Spratly Islands.<sup>47</sup> Dzurek provides an authoritative summary of the legal and resource issues involved in the dispute, the positions of the various claimants regarding the Law of the Sea and other ocean boundary issues, and a country-by-country summary of the various overlapping territorial claims. Unlike Park and Katchen, Dzurek makes no judgment regarding the various claimants. Although not specifically mentioned, this position likely reflects official American policy on this dispute.<sup>48</sup>

Another example of American analysis is a working paper written in 1990 for the Peace Research Centre of the Australian

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<sup>47</sup> Daniel J. Dzurek, "Boundary and Resource Disputes in the South China Sea." in Ocean Yearbook 5 (Chicago: The University of Chicago Press, 1985), 259.

<sup>48</sup> Ibid., 254.



National University by Bradford Thomas, currently a geographer with the State Department. Thomas's study was not a legal assessment per se, although it did summarize the legal positions of the claimants.<sup>49</sup> His concise analysis of strategic considerations in this area certainly reflects the actual concerns of the United States on the key issue of freedom of the seas. Considering his official position in the American State Department, his assessments might be taken as an accurate reflection of perceived official United States interests in the region. Thomas asserts that, "It would not do to have a hostile power in the Spratly Islands with the power to interdict this shipping."<sup>50</sup>

More pertinent for this study is Thomas's pessimistic assessment of the likelihood of peaceful resolution of the dispute. This would require a demilitarization of the islands, which he considers to be unlikely in current circumstances.<sup>51</sup> Identifying the intransigence of China as a major obstacle for a diplomatic settlement, he concludes that,

Despite China's bilateral expressions for peaceful settlement, its foreign ministry continues to voice China's all-inclusive claim to the South China Sea. Until China modifies this position more formally, peace in the Spratly Islands will elude their claimants and exploitation and development of their resources will remain beyond reach.<sup>52</sup>

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<sup>49</sup> Bradford L. Thomas, "Working Paper No. 74 - The Spratly Islands Imbroglia: A Tangled Web of Conflict." (Canberra: Australian National University Peace Research Centre, 1990), 1-5.

<sup>50</sup> Ibid., 8.

<sup>51</sup> Ibid., 10.

<sup>52</sup> Ibid., 12.

A more detailed scholarly paper on the significance of the legal issues involved in the Spratlys dispute was written in 1990 by R. Haller-Trost. His purpose was to demonstrate the limitations of contemporary international law in resolving territorial claims in the South China Sea. He also provides a useful summary of the geographic and strategic aspects of the dispute, the basis for the various claims to ownership of the islands, and an analysis of these claims from the standpoint of modern international law.

Haller-Trost concluded that, historical claims notwithstanding,

Japan took possession of the archipelago, or at least greater parts of it, by conquest in 1939, but the necessary juridical status of confirming the title internationally was lost by Japan in the San Francisco Peace Treaty [when] it had to renounce its claims over the Spratlys."<sup>53</sup>

From that time on, however, Haller-Trost points out that subsequent claims and counterclaims have not been so simple to assess. Despite Vietnam's claims to the islands on historical grounds, for example, Haller-Trost dismisses Vietnam's legal argument. Statements made in 1956 and 1958 by the then North Vietnamese government indicated acceptance of People's Republic of China authority over the islands.<sup>54</sup> Haller-Trost believes that such

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<sup>53</sup> Haller-Trost, 59.

<sup>54</sup> A point which figures prominently in China's rebuttal to Vietnam's territorial claims to the islands. See Chapter Three and Chinese Ministry of Foreign Affairs, "China's Indisputable Sovereignty Over the Xisha and Nansha Islands," Beijing Review 23 (18 February 1980): 21.

statements are still binding on the current Vietnamese regime. The issue is further complicated by a Vietnamese military presence in the islands. For that reason alone, Haller-Trost concludes that their claims "cannot be disregarded."<sup>55</sup>

In like manner, Haller-Trost considered that the China's legal position on the islands, based on applicable international law, "is not only weak de jure, but also de facto," principally because China had done nothing to exercise their jurisdiction over the Spratlys until it established its own outposts in the area in 1988.<sup>56</sup>

The legal claim of Taiwan (the Republic of China) to the Spratly Islands is likewise unconvincing to Haller-Trost. He points out that Taiwan's military presence in the area was intermittent after World War II and that since the mid-1950s, Taiwan has occupied only one island in the Spratlys.<sup>57</sup> Haller-Trost concludes that Taiwan has a valid claim to only that one

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<sup>55</sup> Haller-Trost, 69.

<sup>56</sup> Ibid., 61.

<sup>57</sup> There is some uncertainty regarding the exact length of time that Chinese military forces occupied Itu Aba island during this period. Most authorities agree that Chinese military forces left the Spratly islands in May 1950 due to the civil war in China and only returned in July 1956, possibly in response to exploratory activity in the area by Philippine nationals. During an interview in Taipei in March 1993, this absence of a Chinese military presence in the island for several years was confirmed by Vice Admiral Liu Ta-Tsai (ROC Navy - retired), a member of the Society for Strategic Studies in Taiwan. Pao-Min Chang, however, apparently accepts a Chinese study indicating that a "small contingent of Taiwanese troops remained on the largest island - Itu Aba (Taipingdao) - in the Spratly group" during this period. Pao-Min Chang, Sino-Vietnamese Territorial Dispute, 18.

island, Itu Aba, that they have effectively held and developed.

He notes, however,

Taiwan cannot deduce from this any claim to the whole archipelago (which is, after all, an arbitrary definition in regard to insular affiliation and dimension) just because it occupies one feature of the group.<sup>58</sup>

Haller-Trost does not seem to understand that the actions of both mainland China and Taiwan in the Spratlys are in support of a single Chinese claim. Taiwan's occupation since 1946 of what could arguably be called the "main island" in the Spratlys group must therefore also be considered to support the claims made by mainland China.

Haller-Trost dismisses the Philippine claim to the Kalayaan Island Group as being in "open contrast to international law principles," and best described as "creeping annexation."<sup>59</sup> His main reasons for this judgment are the prior existing claims to the territory by other nations and the inconsistencies in logic and relevance of other aspects of the Philippine claim.

Malaysia's limited territorial claims in the Spratly area are treated at length by Haller-Trost, focusing in part on Malaysia's bizarre misuse of international legal principles. Malaysia claims several of the southern islands in the Spratlys because they located within the self-proclaimed Malaysian Continental Shelf. Haller-Trost explains the fallacy of this argument:

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<sup>58</sup> Haller-Trost, 61.

<sup>59</sup> Ibid., 62-63.

The justification for appropriating territory because it lies in insular form within a country's continental shelf puts an incongruous aspect to the règlement governing the acknowledged rules of territorial acquisition, as it reverses the fundamental factors for the rights to maritime zones. According to the principles of international law, it is the title to an island that generates the right to maritime zones and not vice versa.<sup>60</sup>

After reviewing the validity of all the national claims, Haller-Trost concludes that,

There seems to be no solution for the problem in contemporary international law. The only common basis between the states involved is that all contestants attempt now to justify their claims on its principles. If the contestants continue to persist in debating their individual rights according to certain provisions ... of international law (which is often ambiguous in its interpretation) there will be no solution .... The main aim of all contestants is to gain influence within the region, and insofar as this is not possible, to prevent others from achieving singular dominance.<sup>61</sup>

Haller-Trost's study of the legal aspects of the Spratlys dispute highlights many of the ambiguities in contemporary international law. He points to the apparently deliberate exploitation of these ambiguities by the disputants in support of their own national interests.

His monograph also makes explicit the differences between international law as it relates to territorial acquisition and international law as it regulates maritime regimes and is embodied in the Law of the Sea. This distinction is at the heart of the Spratlys dispute, which is over claims to territory. As

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<sup>60</sup> Ibid., 65.

<sup>61</sup> Ibid., 78.

Haller-Trost insists, until this territorial dispute is resolved, The Law of the Sea cannot be invoked to adjudicate equitable maritime zones in the South China Sea.<sup>62</sup>

A further detailed examination of the legal claims surrounding the Spratly dispute was prepared in 1990 by Chinese International Law specialist John K. T. Chao, a visiting professor of International Law at Rand Afrikaans University in Johannesburg, South Africa. His review of the legal issues involved in the Spratlys dispute were presented to the International Academic Conference on Territorial Claims in the South China Sea, held at the University of Hong Kong in December 1990.<sup>63</sup>

Chao offers an extensive chronology of the sequence of the various claims and counterclaims to the South China Sea islands, and he assesses the validity of these claims based on contemporary international law. His conclusions argue for historical priority:

On examination of Chinese historical sources, it is manifest that the Chinese were the first to discover, use, settle, and administer the Hsisha [Paracels] and Nansha [Spratly] Islands. [Administrative] Jurisdiction was exercised over them by successive Chinese governments for more than one thousand years.<sup>64</sup>

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<sup>62</sup> Ibid., 77-78.

<sup>63</sup> John K. T. Chao, "South China Sea: Boundary Problems Relating to the Nansha and Hsisha Islands," Volume 9 (1989-1990) Chinese Yearbook of International Law and Affairs (Taipei: Chinese Society of International Law, 1991), 66.

<sup>64</sup> Ibid., 83.

In Chao's reasoned assessment, China's claim to the Spratlys based on early discovery has some modern validity:

In summing up, after the discovery of the Hsisha and Nansha Islands, groups of Chinese people came to visit and develop them. In view of the doctrine of inter-temporal law, discovery per se in the second century B.C. may be considered to found a good title.<sup>65</sup>

Chao interpreted the doctrine of inter-temporal law further as denoting that "the effect of an act [is] to be determined by the law of the time when it was done."<sup>66</sup> In other words, actions must be viewed in their historical legal context. In the case of sovereignty, Chao asserts that China's historical actions themselves are sufficient to establish a valid modern claim to the islands. As he explains:

It has been indicated that the formal ceremony of taking possession was then generally regarded as being wholly sufficient per se to establish immediate right to sovereignty over areas so claimed and did not require to be supplemented by performance of other acts, such as "effective occupation." It was widely accepted in the practice of states that the act of possession is landing, hoisting the flags, and proclaiming the significance of these acts. These ceremonies were regarded as being wholly sufficient in themselves to establish sovereignty over the claimed land.<sup>67</sup>

Chao noted another important point regarding the Chinese historical claim: Chinese historical records dating back to the 2nd Century B.C. pre-date the historical claims of Vietnam. This does not mean that the islands were never explored or used by

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<sup>65</sup> Ibid., 110.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid., 77.

Vietnamese or Filipino fishermen, but that the Chinese were the first to document their early presence. Chao concludes that:

From the foregoing, it is true that the weight of the evidence appears in the present case to be on the Chinese side, although this may reflect mainly the greater industry of traditional Chinese authors in keeping geographical and historical records.<sup>68</sup>

Chao briefly addresses another issue of relevance to this study, namely the concept that the occupation of one or two islands of an archipelago confers sovereign rights to the entire archipelago. This position has been maintained by China and Taiwan, whose claims to the Spratlys are based in part on the actual occupation of one island, Itu Aba (Taiping Island in Chinese). Following the legal precedent of the 1953 International Court of Justice Minquiers and Ecrehos Case, Chao quotes Judge Levi Carniero as stating that "the occupation of the principal islands of an archipelago must also be deemed to include the occupation of islets and rocks in the same archipelago, which have not been actually occupied by another state."<sup>69</sup>

While this legal precedent may have had some validity in the Spratlys prior to 1956, the subsequent uncontested occupation of several islands in the archipelago by Vietnam, the Philippines and Malaysia demonstrated the limited nature of Taiwan's effective control over the islands. In addition, it is difficult to determine which islands in the Spratlys are the "principal

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<sup>68</sup> Ibid., 113.

<sup>69</sup> Ibid., 85.



islands," since the archipelago is comprised of several island groups. Spratly Island, for example, is currently occupied by Vietnam and could be considered to be the "principal island" of the Central Spratlys.

Chao's balanced and rigorous analysis of the legal claims to the Spratlys is useful in understanding the present dispute, but he acknowledges the limits of the law in his concluding remarks:

Boundary delimitations, whether on land or in the sea, may involve factors which transcend purely legal consideration. Even where there are clear rules of international law and practice to be followed, agreements may be difficult to reach because the littoral States of the South China Sea have promoted their national interests in a manner which does not always fit in with international law.<sup>70</sup>

Along with Haller-Trost, Chao concludes that the Spratly Islands dispute demonstrates the limitations of contemporary international law in resolving boundary issues.

Chao's high standards of objective scholarship have not been matched by other legal analyses of the Spratlys dispute, which are often slanted to reflect the authors' national affiliation. A 1991 monograph by Peter Kien-Hong Yu of National Sun Yat-sen University in Taiwan, for example, reviews the legal positions of the various claimants and examines the Chinese claim of Taiwan and mainland China in some detail.<sup>71</sup>

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<sup>70</sup> Ibid., 153.

<sup>71</sup> Peter Kien-hong Yu, The Four Archipelagoes in the South China Sea (Taipei: Council for Advanced Policy Studies, 1991), 10-18.

Peter Yu points out that there is really no conflict between the sovereignty claims of the China and Taiwan over the Spratlys. Both countries are representing Chinese claims, and "historically, there is no question that the Paracels and Spratlys belong to China."<sup>72</sup> Peter Yu's legal analysis of the various claims has serious shortcomings, however, because he examines the issues from the standpoint of the Law of the Sea rather than as territorial demands. He concludes, for example, that all of the territorial claims are flawed because none of the claimants can fully enforce the Law of the Sea in their respective waters. However, this assertion ignores the point maintained by Haller-Trost that the Law of the Sea only addresses the use of the water areas and cannot be used to adjudicate what is essentially a territorial dispute.<sup>73</sup>

Peter Yu further discusses the policies of the government of Taiwan in the Spratlys dispute. He examines the likely options for Taiwan in the Spratlys, concluding that her policy towards the islands has been ambivalent; Taiwan's military is unable to protect their distant garrison on Itu Aba from a military threat, yet Taiwan continues to maintain their relatively large military presence there, despite its vulnerability. Yu considers that Taiwan's interests might best be served by using the island as a

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<sup>72</sup> Ibid., 27.

<sup>73</sup> Haller-Trost, 50.

bargaining chip in negotiations with the mainland or other claimants.<sup>74</sup>

Yu advances the debatable opinion that the military significance of the islands, adjacent to vital sea lanes, has diminished in the "missile age." He contends that modern long-ranged weapons and sensor systems make a national physical presence in the region unnecessary, yet he offers no other basis for this assertion.<sup>75</sup>

Peter Yu also argues that none of the countries involved in the Spratly dispute will use force to support their claims. He considers, for example, that it is more important for China to "win the hearts of the people on Taiwan"<sup>76</sup> than to launch an attack on their garrison in the Spratlys. He admits, however, that a Chinese attack on Vietnamese garrisons in the Spratlys is possible "should the China perceive that it cannot politically handle the situation."<sup>77</sup>

Peter Yu's study, which, unfortunately, is poorly documented, provides an interesting addition to the literature on the Spratlys, in that it represents a view from Taiwan. A similar bias is also evident in an evaluation by Steven K. T. Yu from National Taiwan University. He finds with Chao that the "pre-modern" Chinese claims to the islands must be considered valid

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<sup>74</sup> Yu, 117-133.

<sup>75</sup> Ibid., 55.

<sup>76</sup> Ibid., 57.

<sup>77</sup> Ibid., 58.

and that subsequent Chinese rights to sovereignty have been effectively established by occupation, but, unlike Chao, fails to take into account the other factors complicating this issue.<sup>78</sup> Both of these two studies from Taiwan are flawed by their oversimplification and apparently unquestioning acceptance of the Chinese claims, particularly, government statements.

While Chao and other scholars have amply demonstrated that the Chinese historical claim to the Spratlys has legal merit, weighty and complicated extra-legal issues raised by the various claimants to the islands constitute a complex situation that would be difficult in the best of circumstance to adjudicate solely on legal merit. Simply arguing the position of one claimant, as is essentially the gist of these two studies, does not further efforts to understand the full problem or advance a solution.

#### Technological Assessments

The legal assessments examine the Spratlys dispute with the aim of a territorial sovereignty settlement. Purely maritime aspects of the dispute have been seen as adjuncts to the conflicting territorial claims. Other recent studies, however, examine the Spratlys from a variant perspective of marine policy and emerging maritime jurisdictional disputes stemming from the need to develop and exploit ocean resources. This demand is

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<sup>78</sup> Steven Kuan-Tsyh Yu, "Who Owns the Paracels and the Spratlys? - An Evaluation of the Nature and Legal Basis of the Conflicting Territorial Claims," in International Academic Conference on Territorial Claims in the South China Sea Centre of Asian Studies (Hong Kong: University of Hong Kong, 1991), 29.

becoming increasingly urgent as the developing nations of East and Southeast Asia become aware that natural resources are vital to survival. Oil and other essential resources are finite in quantity and resource competition is a zero-sum game in which one nation's gain may necessarily means another's loss. Among the competing claimants, this issue is at the core of the Spratlys Islands dispute.

Philippine economic analyst Corazon Siddayao examined in 1978 the evolving issues raised by the resource competition that was incited by developments in off-shore technologies in Southeast Asia. Siddayao described the developing demand for petroleum resources in the region and assessed potential local resources in order to identify possible areas of conflict. She recognized that:

The problem of conflicts or cooperation among nations is a topic that has many facets and may involve a multitude of issues, for example, legal, economic, technical, security, etc. In relation to off-shore petroleum resources, conflicts, although essentially legal in origin, have economic aspects.<sup>79</sup>

Using quantitative data from available public sources, Siddayao demonstrated that extent offshore petroleum production in Southeast Asia was far below the estimated potential for the region. An estimated 57% of potentially recoverable oil was believed to be as yet untapped.<sup>80</sup> Siddayao pointed out that

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<sup>79</sup> Corazon Morales Siddayao, The Off-Shore Petroleum Resources of South-East Asia (New York: Oxford University Press, 1978), xvii.

<sup>80</sup> Ibid., 27.

exploitation of this potentially huge supply of offshore petroleum has been made even more attractive by advances in off-shore oil drilling technologies. Distant and deeper undersea areas were becoming accessible to commercial development.

She also identified other economic incentives, including the increased crude oil prices resulting from the 1973 Middle East oil embargo and surging international demand for petroleum products. Demand made the high investment costs associated with offshore petroleum production increasingly attractive. Siddayao's description of the economies involved in assessing the commercial viability of an offshore well at the time (1978) provides a practical standard by which to compare the economics of contemporary offshore oil exploration efforts. Her account is worth quoting at length:

Because of higher operating costs, an off-shore well must produce several times as much as one on-shore to be considered commercially attractive. An offshore rig of average complexity is reported to cost around US-\$20,000 to US\$35,000 per day to operate, depending on both technological and economic conditions ... On some of the more sophisticated drillships, these costs run up to US\$90,000 per day. Thus, an off-shore exploratory well in East Asia was expected to cost an average of around US\$5 million. In the earlier years of off-shore exploration, oil firms were said to require that, to be commercially viable, a South-East Asian off-shore well should produce a minimum of 2500 barrels per day in a field capable of a total production of about 50,000 barrels per day - in contrast to a minimum of 500 barrels per day for a commercial field on-shore. Multiple price increases in the 1970s may suggest that fields capable of producing 25,000 barrels per day and per-well production of 1250-1500 barrels per day (or less) could prove to be commercial.<sup>81</sup>

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<sup>81</sup> Ibid., 30-31.

According to oil industry sources, current oil field development factors have nearly doubled, both in the costs of operating exploratory and production offshore wells and in the production levels required to make offshore wells commercially viable.<sup>82</sup> Siddayao's 1978 figures, however, provide valuable insight into the economic calculus of cost versus benefits associated with offshore oil exploration and the importance of developing technology in these equations.

Sidayao identifies the Spratly Islands dispute as one of the major oil-related areas of conflict in Southeast Asia, and she describes in summary form the positions of the major claimants. Like Lo and several other analysts mentioned earlier, Siddayao views the Chinese claim to the Spratlys within the context of the Sino-Soviet dispute. This was a logical position in the 1970s but she overlooked the serious nature of Chinese territorial claims in the region for their own sake (which, it must be admitted, did not clearly manifest itself until the mid-1980s).<sup>83</sup>

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<sup>82</sup> In a telephone interview with the author (12 December 1992), American oil industry executive Randall Thompson put the current costs of exploratory drilling at about \$140,000 per day with a total cost averaging about \$10 million to drill a production well and another \$20-25 million to complete it and start production. Crude oil is currently (1994) selling for about \$20 per barrel. At this price, the costs associated with exploration and setting up the production infrastructure for a well producing 4-5000 barrels per day is expected to be returned in one year, with oil company profits averaging \$5 per barrel.

<sup>83</sup> Siddayao, 87.

In her introductory statements, Siddayao stressed that disputes over ownership of petroleum resources constituted major impediments to development and utilization, hence the need to examine the economics involved in prolonged disagreements.<sup>84</sup> Her subsequent examination of the controversy caused by one exploratory drilling (in the Reed Bank area of the Spratly Islands by a joint Swedish-Philippine consortium in 1976) provides an excellent example of the risks involved in such a dispute. Immediate and strident reactions by Vietnam and mainland China as well as Taiwan, coupled with warnings that military force might back up their territorial claims, threatened the security of the operation and eventually resulted in its termination.<sup>85</sup>

Siddayao's study provided a useful compilation of practical data relating to the economics of oil exploration in Southeast Asia. Her discussion of relevant economic factors and models for examining the costs and risks of offshore oil exploration and production remain informative, even if the factors themselves have altered over time.<sup>86</sup>

On the basis of her economic analysis of the various elements involved in the regional disputes over oil resources, Siddayao concludes that for basic economic reasons alone, regional cooperation in energy matters has become essential. In her

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<sup>84</sup> Ibid., xviii.

<sup>85</sup> Ibid., 91-92.

<sup>86</sup> Ibid., 119-162.



words, "Oil resources have become important enough to make countries willing to risk confrontation to attain ownership of such resources".<sup>87</sup> Subsequent events, such as the 1988 clash between Chinese and Vietnamese naval forces in the Spratlys, have born out the validity of this assessment.

While experts see the potential of petroleum deposits in the Spratly Islands area, many uncertainties remain regarding the size and location of such deposits. Geophysical surveys have apparently been conducted by most of the claimants, but little data is publicly available.<sup>88</sup> Writing in 1991, maritime law specialists Douglas Johnston and Mark Valencia acknowledged this lack of hard information, but summarized the evidence that suggested a potential for future oil finds:

Little is known about the geology of this region, despite the massive publicity and government interest it has attracted. The irregular shoals, submarine plateau, and small intermediate-depth basins have been interpreted as representing a foundering mass of continental crust. The crust beneath the shoal areas to the northwest of the basin, including Macclesfield Bank and the Paracel Islands, may also be continental. Tertiary deposits to a thickness of 4 km or more are known geophysically and from drilling. The thickness of Cretaceous and possibly Jurassic sediments may reach 5-6 km in the southeaster portion of the Reed Bank.<sup>89</sup>

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<sup>87</sup> Ibid., 168.

<sup>88</sup> Vietnam is reported to have spent \$89 million on oil exploration and development in the South China Sea in 1991. Malaysia and the Philippines are also sponsoring offshore oil exploration. See "Territorial Disputes Simmer in areas of the South China Sea," Oil and Gas Journal, 13 July 1992, 20-21.

<sup>89</sup> Douglas M. Johnston and Mark J. Valencia, Pacific Ocean Boundary Problems: Status and Solutions (Boston: Martinus Nijhoff, 1991), 122.

An earlier study by Mark Valencia alone in 1985 contained a similar statement, indicating that little new exploratory data made its way into the public domain during the intervening years.<sup>90</sup> This is perhaps not surprising in view of the national rivalries involved in developing offshore oil resources in such a fiercely contested area.<sup>91</sup> Indeed, prospects of large scale offshore oil deposits in the Spratlys area has been widely recognized as a major reason for the continuing dispute over ownership of the islands.<sup>92</sup>

Offshore oil exploration and drilling methods are technology-driven fields with capabilities improving over time. The impetus for this technology stems from another technological demand, the need for oil to fuel modern economies. As a non-renewable resource, new deposits of oil are continually required to meet rising international demands, which are themselves fueled by industrialization and other forms of technological change.

Despite the central role that technology plays in the Spratly dispute, this important motive and necessity pressuring

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<sup>90</sup> Mark J. Valencia, "Oil and Gas Potential, Overlapping Claims, and Political Relations," in Marine Policy in Southeast Asia ed. George Kent and Mark J. Valencia, (Berkeley: University of California Press, 1985), 173.

<sup>91</sup> This is not to say that the oil companies lack such information. Crestone Energy Corporation President Randall K. Thompson told the author that he has had access to several sources of geological data on Crestone's contract area in the South China Sea, including data from Chinese surveys.

<sup>92</sup> See, for example, the cover story "South China Sea: Treacherous Shoals," Far Eastern Economic Review, 13 August 1992, 14-17, and more recently, "BP Find Heats Up China Sea," International Herald Tribune, 27-28 February 1993, 6.

the rival claimants to the Spratlys seems hardly to have been recognized by either the nations themselves or area scholars and political analysts. This subject will be examined further in Chapter Four, but before assessing the technological reasons for the several national claims to sovereignty over the Spratly Islands, it will be helpful to examine these competing claims more closely.

## CHAPTER THREE

### THE CLAIMS

The conflicting claims to the Spratlys have been well documented as indicated earlier. It will be useful, however, to summarize these claims here in order to assess the relative legal merit of each claim in contemporary international law.

#### SUMMARY OF SPRATLY CLAIMS

\* China (China and Taiwan) - Exploration since 2nd cent. B.C.; written records of Chinese activities in area from 3rd century; administration as Chinese territory since late 17th century; international recognition of claim; occupation of largest island since 1946 (Taiwan) and nine others since 1988 (China).

\* Vietnam - Historical usage by Vietnamese fishermen; annexation in 19th century; reversion from colonial France after WWII; occupation of twenty-one islands since 1956.

\* Philippines - Discovery of unoccupied islands in 1956; occupation of seven islands since mid-1960s.

\* Malaysia - Several islands located within continental shelf; occupation of three islands since late 1970s.

Summary of the Spratly Island Claims.

Regardless of the effort that each country has made to develop a legal rationale for its claim, one must accept that this is basically a political dispute over territory, not merely a legal controversy. Legal aspects of this dispute do enter into it, however, by providing all of the claimants with some sem-

blance of legitimacy, useful both for domestic and foreign audiences. The care with which each country has crafted their legal claim and the efforts each has made to explain it in legal terms demonstrates the importance of establishing legal "rights" in this dispute.

This issue, however, is not likely to be resolved simply through the adjudicative mechanisms of international law or through the application of the international Law of the Sea. At the core of this dispute are control, ownership and sovereignty over hundreds of tiny islands, reefs and atolls. Resolution of this basic territorial issue is required before the questions of ocean boundaries, economic zones, and other resource-related issues can be addressed.

As noted in Chapter Two, despite the optimism of some regional analysts<sup>1</sup>, serious flaws and inconsistencies in all claims to ownership of the Spratlys make a strictly legal adjudication of the dispute very difficult. These inconsistencies stem from partial records, inconsistent interpretations and biased perspectives on international law dealing with territorial acquisitions.

If the Spratlys dispute were viewed solely as a political issue, then legal inconsistencies would seem irrelevant. But the fact that none of the claimants can establish an exclusive, clear-cut and compelling legal claim to the islands makes it

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<sup>1</sup> See, for example, the works of Peter Kien-hong Yu, Steven Kuan-tsyh Yu, and Choon-Ho Park discussed in Chapter Two.

unlikely that they will be willing to submit the dispute to legal arbitration. With the exception of the Philippines, none of the claimants has proposed or would likely agree to a legal adjudication by the World Court. As it stands, the dispute would most likely be resolved either through negotiation, force of arms, or a combination of the two, and not in an international court.

Nevertheless, despite the apparent futility of judicial measures, the claimants have attempted to establish a legal basis for their claims. Because the claims may later prove to be important, it will be helpful to summarize the legal issues involved in each claim within the framework of contemporary concepts of territorial acquisition. Aside from the Chinese claim (espoused by both mainland China and Taiwan), each of the other claims is based on different principles of international law.

Vietnam, for example, cites historical ownership and usage as the legal basis for their claims. Vietnam also posits, however, that French sovereignty over the islands was established by occupation in the early 1930s. They claim that, while French occupation was interrupted by a Japanese invasion in 1939, this sovereignty devolved to Vietnam after WWII with the breakup of the French Colonial Empire in Indochina.

The Philippines, on the other hand, claim to have "discovered" several of the unoccupied Spratly Islands in the 1950s. They employ the legal term "terra nullius" to claim the area that they call Kalayaan under the right of discovery of unoccupied and

unclaimed territory. Malaysian claims are based on the fact that several of the southern Spratly Islands lie within the self-declared Malaysian continental shelf.

China and Taiwan aside, each of the other claimants have thus developed a different legal basis for their territorial claims. How well these claims would fare in an international court is problematic. As we shall see in this Chapter, for example, most commentators consider the legal basis for the claims of the Philippines and Malaysia to be highly questionable.

As observed in Chapter Two, legal assessments of the claims sometimes appear to be flawed by national bias. There are some well-established and generally agreed upon principles in international law that pertain to the acquisition of territory, however, and such principles can provide a conceptual framework for assessing the relative legal merit of the various claims to the Spratlys. The applicable legal principles have been addressed in detail in separate professional journal articles by R. Haller-Trost, B. A. Hamzah and John K. T. Chao, international Law specialists from England, Malaysia and Taiwan, respectively.<sup>2</sup>

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<sup>2</sup> R. Haller-Trost, Occasional Paper No. 14 - The Spratly Islands: A Study on the Limitations of International Law (Canterbury: University of Kent Centre of South-East Asian Studies, 1990), 77-78; B.A. Hamzah, "Jurisdictional Issues and the Conflicting Claims in the Spratlys," The Indonesian Quarterly 18, no. 2 (1990): 133-153; and John K. T. Chao, "South China Sea: Boundary Problems Relating to the Nansha and Hsisha Islands," Volume 9 (1989-1990) Chinese Yearbook of International Law and Affairs (Taipei: Chinese Society of International Law, 1991), 128-151.

These principles will be briefly examined to provide a basis for further discussion of the national claims to the Spratlys.

### Acquisition of Territory in International Law

According to Hamzah's analysis of the legal basis for various territorial claims<sup>3</sup>, there are three types of territory recognized in international law: territory that belongs to some state; territory that belongs to no state (terra nullius); and territory that belongs to all states (terra communis). Generally, only terra nullius territory can be appropriated by a state. The concept of terra nullius is complicated by the fact that according to the authoritative Encyclopedia of Public International Law, this term "covers, in addition to areas which have never been the object of any appropriation, those which have been successively appropriated and abandoned."<sup>4</sup> The issue of what constitutes terra nullius is a key concern in the Spratly Islands dispute.

Under current international law, there are five ways in which territory can be acquired by a state: occupation, prescription, accretion, cession and conquest.<sup>5</sup>

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<sup>3</sup> Hamzah, "Jurisdictional Issues," 143-154.

<sup>4</sup> Santiago Torres Bernadez, "Territory, Acquisition," in Encyclopedia of Public International Law, (North Holland: Max Planck Institute, 1988), Volume 10, 500. This encyclopedia is an authoritative reference work on international law. It contains a collection of topical summaries on international law written by noted legal specialists in their fields.

<sup>5</sup> Hamzah, 144. See also, Haller-Trost, 44-47, and Bernadez, 497.



Occupation is the principal means of acquiring territory not belonging to another state (terra nullius) and of exercising or demonstrating sovereignty over territory acquired by other means. To be valid,

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.<sup>6</sup>

Haller-Trost adds that "mere discovery of a terra nullius is not sufficient to obtain a valid title based on occupation. Such involves effective control by the state."<sup>7</sup> Chinese legal specialist John Chao adds that historically,

title by discovery was a mode of the original acquisition of sovereignty, as first possession was usually done and proclaimed as a notification of discovery. When the fact of discovery had been notified, other states by courtesy should pay respect to the notification. If discovery had been followed by settlement of a State, it constitutes a perfect title.<sup>8</sup>

Chao indicates that two additional elements are thus involved in establishing a valid claim to terra nullius by occupation - annexation and settlement, with settlement demonstrating "actual physical possession of the territory".<sup>9</sup> Discovery and

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<sup>6</sup> Hamzah, 144.

<sup>7</sup> Haller-Trost, 44.

<sup>8</sup> Chao, 110.

<sup>9</sup> Ibid., 79.

annexation can provide an inchoate (partial or incomplete) title which may "serve as a temporary bar to occupation by any other state."<sup>10</sup> However, as noted in the Encyclopedia of Public International Law, to validate such a title,

the State must within a reasonable period of time display such activity on the discovered territory as will qualify as effective occupation, for example by establishing a military garrison or civilian settlement, or by performing other acts of sovereignty.<sup>11</sup>

The importance of effective occupation in establishing a valid claim to sovereignty has led Spanish international law authority Santiago Torres Bernadez to state that "some writers have even suggested that all of the above modes of acquisition be reduced to just one: effective occupation."<sup>12</sup> The significance of this judgment in the Spratlys dispute will become evident in the following pages.

Prescription as a mode of territorial acquisition also requires effective occupation to be valid,

but differs from occupation only with regards to the status of the territory at the time 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 ... and by the acquiescence of the other claiming party. [emphasis added]<sup>13</sup>

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<sup>10</sup> Ibid., 78.

<sup>11</sup> Bernadez, 504.

<sup>12</sup> Ibid., 497.

<sup>13</sup> Hamzah, 144.

In essence, prescription "is based on a peaceful, unopposed and continuous manner of governance by one state, while the territory actually belongs to another."<sup>14</sup> This principle is hardly applicable in the Spratlys dispute because of the unwillingness of any of the claimants to concede that the islands have ever effectively belonged to any other claimant.

The principle of accretion, on the other hand, may have relevance in this dispute. Accretion is generally considered to occur "when new territory is formed through the operation of nature."<sup>15</sup> This would occur when a coastline recedes or a river changes course and exposes new territory. Hamzah includes "the emergence of an island in the territorial sea [or] the EEZ [Exclusive Economic Zone] of a state," as another example of accretion. As such, this principle might have bearing on the Spratlys dispute.<sup>16</sup> Malaysia, for example, bases its claim to some of the southern islands on their location within its declared continental shelf and Exclusive Economic Zone.

In addition, the Encyclopedia of Public International Law raises the possibility that,

Accretion may also appear to be involved when a state extends its territory by carrying out operations thereon which modify its physical nature (artificial accretion) at the expense of either the international community ... or of a neighbor state.<sup>17</sup>

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<sup>14</sup> Haller-Trost, 44.

<sup>15</sup> Hamzah, 144.

<sup>16</sup> Ibid.

<sup>17</sup> Bernadez, 501.

Examples of "artificial accretion" might include the semi-permanent, inhabitable structures built by the claimants on several of the reefs and atolls in the Spratlys that would otherwise not be considered islands as defined in article 121 of the Law of the Sea.<sup>18</sup> In this way, manmade structures on reefs and islets that could not normally be used as a basis for measuring territorial waters or economic zones might be considered to be "artificial accretion," changing them into legitimate territorial entities. Even if this were the case, however, Bernadez adds that "it would seem logical in such cases to require some kind of recognition or acquiescence [by other nations] to consolidate acquisition of title."<sup>19</sup>

Cession, that is, the voluntary or forced transfer of territory from one state to another, is generally concluded by means of a treaty or formal agreement in which one state renounces title in favor of another.<sup>20</sup> In the Spratlys case, Japan can be considered to have voluntarily relinquished its interests in the Spratlys when it withdrew from the islands in August 1945. Unfortunately, there is some ambivalence regarding which state Japan ceded these interests to, as will be discussed later.

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<sup>18</sup> The Law of the Sea (New York: United Nations, 1983), 39. Article 121 states in part that "Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

<sup>19</sup> Bernadez, 501.

<sup>20</sup> Ibid., 502; See also Hamzah, 144; and Haller-Trost, 46.

Forced cession and conquest - the acquisition of territory through the threat or use of force - are not considered valid modes of acquiring territory under contemporary international law, being incompatible with modern principles governing the appropriate uses of force and the political independence of states. In the past, however, these modes were considered legitimate means of acquiring territory, and both have some relevance to the Spratly dispute.

This brief review of the principles for acquiring territory demonstrates the potential complexities in modern international law pertaining to territorial disputes. These complexities are magnified exponentially by the wide variety of "principles" advanced by the Spratly claimants to establish the legality of their own claims and to derogate the claims of the others. These claims will be examined in turn.

#### The Chinese Claim

China, with the oldest and longest-standing claim to the Spratly Islands, must be considered the prime contender to sovereignty over the islands.<sup>21</sup> A chronological outline of Spratly Islands history is contained in Appendix 2. According to geographer Marwyn Samuels, the oldest written reference to this region is found in Chinese chronicles dating from the 3rd century A.D., although he considers it likely that the area known today as the

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<sup>21</sup> As indicated earlier, the Chinese claim is put forward by both mainland China and Taiwan.

South China Sea was explored by the Chinese much earlier.<sup>22</sup> The Chinese claim that the geographic features of the Spratly Islands were described in written works dating back to the 2nd century B.C.. In the aftermath of the Sino-Vietnamese War of 1979, China's Ministry of Foreign Affairs published a document entitled "China's Indisputable Sovereignty over the Xisha and Nansha Islands" which detailed China's historical claims to the Paracel and Spratly Island groups. This document indicated that,

as early as the 2nd century B.C., at the time of the Emperor Wu Di of the Han Dynasty, Chinese people began sailing the South China Sea. After long years of navigation, they discovered successively the Xisha [Paracel] and Nansha [Spratly] Islands. The geographical features of these islands are described in Nan Zhou Yi Wu Zhi (Strange Things of the Southern Provinces) by Wan Zhen and Fu Nan Zhuan (An Account of Fu Nan) by Kang Tai, both of which were written in the Three Kingdoms period (220-265 [A.D.]).<sup>23</sup>

The Chinese historical claim was succinctly summarized by Pao-Min Chang:

Beijing contended that the Chinese discovered the two archipelagos in the second century B.C. and had begun to inhabit them as early as the seventh century. By the tenth century, Chinese naval patrols had reached the Xisha islands and placed them under Chinese jurisdiction. In the ensuing centuries, the Chinese government continued to conduct surveys around the islands and dispatch naval patrols to their adjacent areas. To further strengthen its legal position, Beijing also produced both imperial and foreign maps, atlases, and

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<sup>22</sup> Marwyn S. Samuels, Contest for the South China Sea (New York: Methuen, 1982), 10.

<sup>23</sup> "China's Indisputable Sovereignty Over the Xisha and Nansha Islands," (Beijing: Ministry of Foreign Affairs of the People's Republic of China, 30 January, 1980), trans. in Beijing Review 23 (18 February 1980): 15-24.

encyclopedias to show that not only had the Chinese government repeatedly asserted its sovereignty over the islands in recent times, but also that the two island groups had long been recognized as Chinese territory in the international community.<sup>24</sup>

While the earliest claims may be open to question<sup>25</sup>, there can be little doubt that the Chinese knew of the presence and general location of the Spratly Islands by the 11th century, even if only to avoid them. The great maritime expansion of China under the Sung, Yuan and Ming Dynasties from the 11th to the 15th centuries provided ample opportunities for Chinese mariners to explore and examine the islands of the South China Sea. As Samuels indicates, however, awareness did not necessarily mean control:

In short, interest in the islands was limited to the traditional navigational concerns and they held few attractions sufficient to justify extensive textual commentary. As with other unincorporated areas, the islands were accorded little attention. In the world of the Confucian literati, they were merely in the way or on the way, as it were - a series of navigational hazards forming part of the eastern edge of China's maritime gateway to the lands of the Southern Sea.<sup>26</sup>

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<sup>24</sup> Pao-Min Chang, The Sino-Vietnamese Territorial Dispute (New York: Praeger Publishers, 1986), 135.

<sup>25</sup> Samuels warns that none of these early references are unequivocal. Samuels also makes the point that a lack of specific early references to what we now call the Spratly Islands should not be considered unusual since the islands were outside of the regular trading routes. He states, "contact with the islands was ... almost always accidental, and the lack of detailed information about them can be attributed to nothing more subtle than the fact that few managed to survive the encounter." Samuels, 11.

<sup>26</sup> Ibid., 22.

As cited earlier, Chao's application of the doctrine of intertemporal law (the legality of an act being determined by the law at the time of the act) indicates that "discovery alone in the second century B.C. may be considered to found a good title".<sup>27</sup> Although such a claim might provide the basis for an incipient or partial title, the claim would have to be followed up by positive steps such as occupation. Consequently, using Hamzah's definition of occupation, China does not appear to have met the criteria of prior effective occupation, since it did not have a continuous presence in the Spratlys before the Japanese occupation of the islands in 1939, which appears to be the first time that the Spratlys had been effectively occupied in modern history.<sup>28</sup>

After the Japanese defeat in 1945, the former Japanese naval base on Itu Aba (Taipingdao in Chinese), the largest of the Spratly Islands, was occupied by troops of the (pre-Communist) Republic of China. This occupation was interrupted in 1950 during the Chinese civil war and the subsequent consolidation of the Nationalist Chinese government on Taiwan, but a permanent Chinese

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<sup>27</sup> Chao, 110.

<sup>28</sup> See Haller-Trost, 44. As he points out, the occupation of several of several of the islands by France in the early 1930s might have met the legal criteria for occupation but, "there is no evidence that France physically had governed the Spratlys, even if they included them pro forma into their colonial administration." He also notes that France did not make any claims to the Spratlys at the Treaty of San Francisco in September 1951 at which the Japanese relinquished control of the islands.



military presence on Itu Aba Island was reestablished by Taiwan in 1956 and has continued to the present.

The Chinese (China and Taiwan) can thus claim to have both discovered and used the Spratly Islands in the distant past and well as effectively occupied and controlled what is the largest and arguably the "principal island" in the archipelago since at least 1956. As mentioned earlier, there is precedent in International Court of Justice rulings to conclude that, as stated by one of the judges, "the occupation of the principal islands of an archipelago must also be deemed to include the occupation of islets and rocks in the same archipelago, which have not actually been occupied by another state."<sup>29</sup>

Communist China's first public claim to the Spratlys was prompted by the international conference convened in 1951 in San Francisco to formally conclude the war with Japan. While neither Communist China nor Nationalist China on Taiwan was represented at the conference, Communist China's Foreign Minister Zhou Enlai declared in a statement before the conference opened that:

The Xisha [Paracel] and Nansha [Spratly] Islands have always been China's territory.... Whether or not the U.S.-U.K. Draft Treaty contains provisions on this subject and no matter how these provisions are worded, China's sovereignty over the Xisha and Nansha Islands will not be in any way affected."<sup>30</sup>

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<sup>29</sup> Judge Levi Carneiro, quoted in Chao, 85. This precedent was established in the 1953 Minguiera and Ecrehos Case in which the Court ruled that ownership of the principal Channel Islands gave England rights to other nearby islands.

<sup>30</sup> Quoted in "China's Indisputable Sovereignty," 18. This document also cites the post-war activities of the Nationalist Chinese government (Taiwan) as supporting evidence for the

While Japan renounced its claim to the Spratlys in the Treaty of San Francisco, the pact did not specify the country to which they were being returned. Subsequently, in a separate, bilateral peace treaty concluded between the Republic of China on Taiwan and Japan in 1952, the Spratly and Paracel islands were included with Taiwan and the Pescadore Islands (a small group of islands off the west coast of Taiwan) as territories to which Japan had renounced all claims. Since the Republic of China was then occupying Taiwan and the Pescadores, the Chinese consider that this act of cession implied that the Japanese claims to the other islands had also been renounced in favor of (and ceded to) the Republic of China.<sup>31</sup> Further support for this view was the fact that as a precondition for negotiating with Taiwan, Japan had insisted that "only territorial issues related to the Republic of China should be subject to the treaty."<sup>32</sup>

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Chinese claim to these islands. No such document has been published by the government of Taiwan, but commentators from Taiwan have made it clear that the Chinese claims of both China and Taiwan are identical and that statements such as this one from Beijing "are essentially supplementary to those of Taipei." See Steven Kuan-Tsyh Yu, "Who Owns the Spratly Islands? -- An Evaluation of the Nature and Legal Basis of the Conflicting Territorial Claims," in International Academic Conference on Territorial Claims in the South China Sea (Hong Kong: University of Hong Kong, 1991), 16.

<sup>31</sup> Hungdah Chiu and Choon-Ho Park, "Legal Status of the Paracel and Spratly Islands," Ocean development and International Law 3 (1975): 14.

<sup>32</sup> Haller-Trost, 50. It should also be noted that when this treaty was signed, Japan recognized only the Republic of China on Taiwan as the legitimate government of China.

In 1980, China's Ministry of Foreign Affairs called attention to additional evidence of Japan's intention to cede the Paracel and Spratly Islands to China:

Although the [1951] ... peace treaty with Japan did not mention the ownership of these islands [the Paracels and Spratlys], in 1952, the year after the San Francisco Peace Treaty with Japan was signed, the 15th map, Southeast Asia, of the Standard World Atlas, which was recommended by the signature of the then Japanese Foreign Minister Katsuo Okazaki, marks as part of China all the Xisha [Paracels] and Nansha [Spratly] Islands.<sup>33</sup>

Further evidence that China's claim to the Spratly Islands was recognized by other states came in October, 1955, when, at an international conference on aviation safety,

the British delegation and the delegation of the International Aviation Transport Association jointly submitted an official proposal requesting the government of the Republic of China [Taiwan] to establish a meteorological post on one island in the Nansha [Spratly] archipelago.<sup>34</sup>

China's legal claim to the islands is thus based upon discovery, annexation and occupation, as well as past recognition of their claim by other states and international organizations. Viewed in isolation, these events would seem to give China clear

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<sup>33</sup> "China's Indisputable Sovereignty," 20.

<sup>34</sup> Chao, 89. Of interest, a similar statement was made by the government of China regarding a French claim to the Paracel Islands in 1931. A Chinese protest referred inter alia to France's recognition of Chinese sovereignty over the Paracels which was implied when a French delegate to the 1930 Hong Kong Far Eastern Meteorological Conference agreed to a request that China build a weather station on one of the Paracel Islands. In a response to this protest a year later, the French claimed that the conference in question was scientific and did not deal with political questions. See Chiu and Park, 12-13.

title to sovereignty of the Spratlys after WWII, particularly since Taiwan had effectively occupied the principal island in the Spratly group.<sup>35</sup> Immediately after the war, however, other claimants began coming forward to challenge this claim.

#### The Vietnamese Claim

At the conclusion of a 51-nation conference held in San Francisco in 1951 to mark the end of the war with Japan, a Vietnamese delegate to the conference announced Vietnam's ownership of both the Spratly and Paracel island groups. The Vietnamese insisted: "We affirm our rights to the Spratly and Paracel Islands, which have always belonged to Vietnam".<sup>36</sup>

Vietnam's claim to these island groups in San Francisco was uncontested by other nations at the conference, primarily because of the absence of any Chinese representatives. The claim was subsequently rejected by both China and Taiwan<sup>37</sup>, and after the 1951 treaty conference, the Government of Vietnam made no effort to back up their declaration with action. It was not until 1956 that the Vietnamese established a permanent presence in the Spratlys.<sup>38</sup>

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<sup>35</sup> As pointed out by Taiwanese commentator Peter Kien-hong Yu, the occupation of several of the islands by military forces from mainland China since 1987-88 means that "the burden of defending [the Chinese claim to] the Spratly archipelago has been shifted from the ROC [Taiwan] to the PRC [Communist China]." Peter Kien-hong Yu, The Four Archipelagoes in the South China Sea (Taipei: Council for Advanced Policy Studies, 1991), 73.

<sup>36</sup> Quoted in Chao, 88. See also Chiu and Park, 8.

<sup>37</sup> Chao, 88.

<sup>38</sup> Chiu and Park, 19.

Vietnam's historical claim to the Spratlys is based in part on exploration and exploitation of the islands since the 18th century and in part on the later activity of the French in the area.<sup>39</sup> Details of the Vietnamese historical claim were published in a "White Paper" by the Ministry of Foreign Affairs of the Republic of Vietnam (South Vietnam) in 1975. They include historic documents, maps and other evidence that the Vietnamese were aware of and had conducted economic activity in the Spratly and Paracel Island groups starting as early as the 18th century.<sup>40</sup>

In 1956, following the announcement by Philippine national Tomas Cloma that he was staking a claim to a number of the Spratly Islands, the Government of South Vietnam also put forward the claim that in the 1930s the Spratlys had been "under the jurisdiction of the French Colonial government and that Vietnam subsequently had jurisdiction by virtue of grant of sovereignty by France."<sup>41</sup>

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<sup>39</sup> Hungdah Chiu, "Spratly Archipelago," in Encyclopedia of Public International Law Volume 12 (North Holland: Max Planck Institute, 1990), 358.

<sup>40</sup> Republic of Vietnam Ministry of Foreign Affairs, White Paper on the Hoang Sa (Paracel) and Truong Sa (Spratly) Islands (Saigon: 1975), 32. See also "False Claims to China's Islands," Beijing Review 23 (12 July 1982): 13-14.

<sup>41</sup> This was initially contested by the French, who, in 1956, claimed to have ceded the Paracels to Vietnam but not the Spratlys. A Vietnamese spokesman subsequently indicated that the Spratlys had been officially incorporated into the Vietnamese province of Baria in 1929 (pre-dating the French occupation of some of the islands in 1933) and so was automatically included in the French transfer of sovereignty to Vietnam. This point was apparently conceded by the French because no subsequent French

The French occupation of several of the Spratly Islands from 1933 to 1939 is considered by the Vietnamese to be a additional basis for their current legal claim to the islands.<sup>42</sup> It has been pointed out by John Chao, however, that the French occupation of the islands was officially protested at the time by the Chinese government and that the French have acknowledged that Chinese residents had been met in the Spratlys.<sup>43</sup> These facts detract considerably from the claims of French sovereignty since they indicate that the islands were not terra nullius at the time of the French occupation. In addition, the Japanese government also refused to recognize these early French claims.<sup>44</sup> These may be moot points, however, as Martin Katchen, writing in 1976, points out,

Whether or not France occupied the Spratly Islands as terra nullius, or whether or not the Chinese presence on the islands raises doubts about the legality of the French occupation, the fact is that the French did occupy the Spratlys and conquest is still a valid method of transferring territory under international law. However, the Japanese conquered the Spratlys from France, and then yielded them after World War II, without any specification to whom the islands were to be yielded.<sup>45</sup>

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claims to the islands have been made. See Chao, 94-95.

<sup>42</sup> Chiu, 358.

<sup>43</sup> See Chao, 80-81.

<sup>44</sup> Chiu and Park, 12.

<sup>45</sup> Martin Katchen, "The Spratly Islands and the Law of the Sea," in Asian Survey, 17 (December 1977): 1179-1180. As indicated above, under current principles of international law regarding the use of force, conquest is now considered a questionable means of obtaining title. It can be argued, however, that such was not the case in the 1930s. See also Haller-Trost,

If the French possession of the Spratlys in 1933 constituted a valid claim of sovereignty, then the unopposed Japanese conquest of the islands in 1939 must also be considered valid, despite French diplomatic protests.<sup>46</sup> On the other hand, if France's occupation did not constitute valid title, then Vietnam's subsequent claim is weakened. As Haller-Trost argues, "if France never owned the Spratlys, Vietnam, as a successor state, cannot claim it inherited the islands."<sup>47</sup> Since the French claim to the Spratlys is ambiguous, the Vietnamese claim to the islands based on colonial French title must also be considered questionable. Haller-Trost further notes that:

There is no evidence in any relevant documentation - unlike in the case of the Paracels - to suggest that the Spratlys were handed over to the new Republic of Vietnam (North or South) upon dissolution of the French Empire in the Far East. Therefore Vietnam's claim that, as a successor state, it inherited the islands, is incorrect.<sup>48</sup>

While the validity of Vietnam's historical title may be ambiguous, current Vietnamese claims do not rest solely on historic grounds, cession from France, or public declarations. It also bases its sovereignty on physical occupation. Since 1956, Vietnam has aggressively established and expanded a physical presence in the islands. In August, 1956, the South Vietnam-

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<sup>46</sup> See Chao, 82-83.

<sup>47</sup> Haller-Trost, 45.

<sup>48</sup> Ibid., 60.

ese government is reported to have occupied Spratly Island (Truong Sa Dao in Vietnamese) and decreed the annexation of the Spratly Islands to Phuoc Tuy province. It then began to make regular naval patrols in the area, sparking protests from both China and Taiwan.<sup>49</sup>

At the same time, however, the communist government of North Vietnam, possibly out of the need for continued material support from Communist China, appears to have accepted Chinese sovereignty over the Paracel and Spratly Island groups. This acknowledgment of Chinese sovereignty was spurred by the promulgation of a Chinese law. On 4 September 1958, China issued a "Declaration on Territorial Waters", proclaiming the limit of the Chinese territorial sea to be 12 nautical miles. This declaration stated clearly that it applied to all Chinese territories, including and specifically mentioning the Hsisha (Paracel) and Nansha (Spratly) Islands.<sup>50</sup>

Ten days later, in a note to Chinese Premier Zhou Enlai, North Vietnamese Premier Pham Van Dong expressed his government's support and recognition of China's Declaration, stating in part,

the Government of the Democratic Republic of Viet Nam recognizes and supports the Declaration of the Govern-

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<sup>49</sup> Chiu, 358. John Chao, however, states that South Vietnam did not incorporate the Spratlys into Phuoc Tuy province until September 1973. See Chao, 97.

<sup>50</sup> "Declaration on China's Territorial Sea," Beijing Review 1 (9 September 1958): 21. See also, "China's Indisputable Sovereignty," 21.



ment of the People's Republic of China on China's territorial sea made on September 4, 1958.<sup>51</sup>

This statement has subsequently been put forward by the Chinese as proof that the government of the Democratic Republic of Vietnam had once acknowledged China's sovereignty over the Paracel and Spratly Islands.<sup>52</sup> While not denying that the letter was sent, the Communist Vietnamese government issued a statement in August, 1979, indicating that, "the spirit and letter of the note were strictly confined to recognition of China's 12-mile territorial waters."<sup>53</sup> Despite this denial, the fact that a senior official of the North Vietnamese government wrote in support of a Chinese declaration that explicitly mentioned the Chinese claim of sovereignty over the Spratly archipelago is considered by most commentators to constitute recogni-

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<sup>51</sup> Ibid. A photograph of the original letter in Vietnamese is contained in this Chinese document. An independent translation of this letter confirms the English translation in this passage of the source document, in particular the explicit Vietnamese "recognition" of China's 4 September 1958 Declaration. Prime Minister Pham Van Dong, Democratic Republic of Vietnam, Hanoi, to Secretary of State Chu An-Lai, People's Republic of China, Beijing, 14 September 1958, trans. Cuong Tien Pham, 24 March 1994, Portsmouth, RI.

<sup>52</sup> Ibid. Also see Chao, 96-97.

<sup>53</sup> "Vietnam - China: Background to the Conflict," Keesing's Contemporary Archives 25 (October 1979): 29870. It is noted that the third and longest sentence in this four sentence letter does refer specifically to support for China's newly-declared 12 mile territorial sea limit. By "recognizing" China's declaration without reserve, however, Vietnam appears to have legally accepted all of its provisions, including sovereignty over the Spratlys.

tion of that claim and thus to weaken subsequent Vietnamese counterclaims.<sup>54</sup>

While this diplomatic exchange between North Vietnam and China was taking place, the government of South Vietnam was ignoring Communist China's Declaration on Territorial Waters and stepping up its military activity in the Paracel Islands. This activity culminated in early 1959 with a South Vietnamese naval invasion of Duncan Island in the Paracels, occupied at the time by Chinese fishermen. South Vietnam's aggressive move was protested vigorously by the Chinese and followed by intensified diplomatic and military posturing by both sides.<sup>55</sup> The resulting dispute between China and South Vietnam over sovereignty of the Paracels waxed and waned for over a decade, eventually resulting in a well-orchestrated and successful attack in January 1974 by Chinese forces to push the Vietnamese out of the Paracel group. The South Vietnamese military forces departing the Paracels reportedly moved south and established new garrisons on several unoccupied islands in the Spratlys, augmented by additional troops from Vietnam.<sup>56</sup> After the fall of the Saigon regime in April 1975, six of these garrisons were taken over by

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<sup>54</sup> Chao, 97. See also Hamzah, 140 and Haller-Trost, 60.

<sup>55</sup> See Dieter Heinzig, The Disputed Islands in the South China Sea (Otto Harrassowitz: Wiesbaden, 1976), 33, and Chiu and Park, 15-16.

<sup>56</sup> Chao, 101.

Vietnamese communist forces, thus maintaining continuity in the Vietnamese presence on these islands.<sup>57</sup>

These bases and the additional islands subsequently occupied by Vietnam in the Spratlys provide Vietnam's strongest argument for a territorial claim. Despite periodic protests from China, Vietnam has gradually taken physical possession of more Spratly Islands than any other claimant. By 1992 they had reportedly occupied twenty-one of the islands. While the legal justification of these landings can be questioned, the fact that Vietnam now has de facto control of these islands and reefs must provide some rights to at least the territory they occupy.<sup>58</sup> The importance of effective occupation in determining territorial sovereignty under contemporary international law has already been discussed. The legal rights accruing to Vietnam by its extensive physical presence in the Spratlys is likely one of the principal reasons that China has refused to consider international arbitration of the dispute.<sup>59</sup>

It should also be noted that these Vietnamese military outposts are spread out more widely throughout the archipelago than those of the other claimants. They span 400 nautical miles from their northern-most garrison on Southwest Cay (Sung Tu Tay Dao in Vietnamese) to Vanguard Bank (Bai Tu Chinh) in the south-

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<sup>57</sup> "Vietnam - China: Background to the Conflict," 29870.

<sup>58</sup> Haller-Trost, 60.

<sup>59</sup> See Douglas M. Johnston and Mark J. Valencia, Pacific Ocean Boundary Problems: Status and Solutions (Boston: Martinus Nijhoff Publishers, 1991), 128.

west and are fairly evenly distributed in between. This widespread physical presence gives the Vietnamese potential claim to more coastal water area based on occupation than the other claimants.

These strategic moves have not been lost on the Chinese. In a statement protesting the Vietnamese occupation of another island in April 1987, the Chinese claimed that "Vietnam's purpose in illegally dispatching troops to Bojiao island is to occupy the continental shelf nearby to pave the way for its future exploitation of oil."<sup>60</sup> During the same period, possibly in recognition of the need to have its own physical presence in the islands to augment the Chinese presence afforded by Taiwan's garrison on Itu Aba Island (Taiping dao), China established its first outpost in the Spratlys, on Fiery Cross Reef (Yungshu jiao).<sup>61</sup> Since that time, China has established garrisons on eight additional islands or reefs in the Spratlys.

While many commentators consider the Vietnamese historical claim to ownership of the Spratly Islands to be legally questionable, their physical presence on the islands gives them some rights under contemporary international law. A similar judgment can be made on the Philippine and Malaysian claims. Although the claims of both countries are based on weak legal principles, they

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<sup>60</sup> Quoted in "Continued Border Tension with China - Re-emergence of Spratly Islands Dispute as Source of Sino-Vietnamese Conflict," Keessings Record of World Events 34 (1988): 35902.

<sup>61</sup> See John W. Garver, "China's Push Through the South China Sea: The Interaction of Bureaucratic and National Interests," in The China Quarterly 131 (Sept 1992): 1009-1013.

have also backed up their stakes in the Spratlys with a physical presence.

### The Philippine Claim

The Philippine island province of Palawan lies less than 50 nautical miles from the easternmost islands in the Spratly archipelago. The Philippine Republic is thus the closest claimant to the Spratly Islands, and this proximity explains Philippine interests in the islands. It is interesting, therefore, that no territorial claim was officially made by the Philippines until the 1970s. Parts of the archipelago were explored by Philippine civilians shortly after World War II, but it was not until the temporary withdrawal of Chinese military forces from Itu Aba Island in the early 1950s that these provided grounds for a new claimant to come forward:

On May 15, 1956, a Filipino named Tomas Cloma, director of the Maritime Institute of the Philippines, issued a "Proclamation to the Whole World" claiming "ownership, by discovery and occupation, of all the territory, 33 islands, sand cays, sand bars, coral reefs and fishing grounds [in the Spratlys] of 64,976 square nautical miles," naming them "Freedomland."<sup>62</sup>

The "Cloma Affair", as it came to be called, has been well chronicled by Samuels.<sup>63</sup> Cloma's claim of discovery and annexation of these islands, first for himself as a private citizen and later for the Philippine Republic, elicited official protests from Vietnam, China and Taiwan and triggered the reestablishment

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<sup>62</sup> Chiu and Park, 9.

<sup>63</sup> Samuels, 78-82.

of the Itu Aba Island garrison by troops from Taiwan.<sup>64</sup> While Tomas Cloma's claim did not initially receive Philippine government approval or support, Cloma's action provided the basis for a subsequent territorial claim to a large part of the Spratly archipelago by the government of the Philippines in 1978.<sup>65</sup> As summarized by Chiu, this official Philippine claim is based on a questionable interpretation of the status of the islands prior to Cloma's "discovery", as well as a contention that the islands claimed as Kalayaan ("Freedomland" in the tagalog language) are not part of the Spratly archipelago:

In July 1971, President Ferdinand Marcos announced that the 53-island group known as Kalayaan, exclusive of the Spratlys [emphasis added], which Philippine explorer Tomas Cloma explored and occupied from 1947 to 1959, was regarded as res nullius and may be acquired according to the modes of acquisition of territory recognized under international law, among which are occupation and effective administration.... Presidential Decree No. 1596, issued on June 11, 1978, formally declared that these islands were part of Philippine territory.<sup>66</sup>

The area claimed by the Philippines as Kalayaan was described in the 1978 Presidential Decree as a polygon that encompasses the northern three quarters of the Spratly archipelago and extends some 300 nautical miles west of Palawan Island into the center of the South China Sea. (See map, Figure 2.) The wes-

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<sup>64</sup> Ibid., 84-86.

<sup>65</sup> See Haller-Trost, 50-55, for details of the timing and extent of the Cloma/Philippine claim.

<sup>66</sup> Chiu, 359.

ternmost boundary stops just short of Spratly Island itself, which is not included in the Philippine claim.<sup>67</sup>

The Philippine claim to the area that is called Kalayaan rests principally on the basis of the effective occupation (initially by Tomas Cloma and his associates as private individuals) of islands that belonged to no other state (res nullius). This ignores all previous claims to the islands by other states.<sup>68</sup> Despite historic Chinese and Vietnamese claims to these islands, the Philippine rationale for considering the islands acquirable was explained by Corazon Siddayao:

At the time Cloma staked his claim in 1956, the Philippine Department of Foreign Affairs stated that the Philippine government regarded the islands, islets, etc. within Freedomland as res nullius, that some of them were 'newly risen'; therefore, they were available for economic exploration and settlement by Philippine nationals under international law. It was also argued that the Spratlys (and the Paracels) had been turned over to the Allied Powers by Japan in the Peace Treaty signed in San Francisco on 8 September 1951, but disposition of the territories had remained unsettled.<sup>69</sup>

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<sup>67</sup> See Bradford L. Thomas, "The Spratly Islands Imbroglia: A Tangled Web of Conflict," Working Paper No. 74 (Canberra: National Library of Australia, 1990), 4.

<sup>68</sup> Three of the islands (Pagasa, Nanshan and Flat Island) were garrisoned by the Philippine military as early as 1968, three years prior to President Marcos' statement on Kalayaan and ten years before their official annexation as part of the Philippines. See Donald E. Weatherbee, "The South China Sea: From Zone of Conflict to Zone of Peace?" in East Asian Conflict Zones eds. Lawrence E. Grintner and Young Whan Kihl (New York: St. Martin's Press, 1987), 128.

<sup>69</sup> Corazon M. Siddayao, The Off-shore Petroleum Resources of Southeast Asia (New York: Oxford University Press, 1978), 89.

The latter argument was resurrected briefly in 1974, when the Philippine government stated its view that because Japan had not specified who the islands should go to, "the islands are under the trusteeship of the victorious Allied Powers of World War II, and their status should be jointly decided by the Allied Powers of the United Nations."<sup>70</sup> This claim was subsequently dropped by the Philippines following protests by China, Taiwan and Vietnam and their sense that none of the other signatories to the San Francisco Peace Treaty would support it.<sup>71</sup>

Since 1971, the Philippine government has used several different arguments to justify its territorial claim to Kalayaan, including the proximity of the islands to the Philippines, Philippine economic and national defense interests, and rights acquired under the 1958 Geneva Convention on the Continental Shelf.<sup>72</sup> Both Hamzah and Chao point out that the proximity argument for territorial acquisition has no foundation in international law,<sup>73</sup> while Haller-Trost demonstrates that

The argument of "indispensable need and security grounds" may be raised by any other littoral state as well; that "much of the relevant area in part of the continental shelf [claim] of the Philippine Archipelago" is geographically incorrect; and that "claims to the group have lapsed by abandonment" is true only in

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<sup>70</sup> Chao, 103.

<sup>71</sup> Haller-Trost, 58.

<sup>72</sup> See Siddayao, 89. and Haller-Trost, 52-54.

<sup>73</sup> Hamzah, 144; Chao, 91.



relation to the French position, still leaving the other contestants parties to the dispute.<sup>74</sup>

Despite the tenuous legal nature of these Philippine claims, the fact remains that they, like the Vietnamese, are currently in de facto control of several of the islands and must be said to have established "effective occupation" of these. Further, they appear to be prepared to defend them by force if necessary.<sup>75</sup> It should also be noted that the Philippine government is the only party to the Spratly dispute that has indicated a willingness to submit its claims to the International Court of Justice or any other international arbiter for adjudication.<sup>76</sup> The fact that the Philippine government has several well-established garrisons on several of the islands would presumably give them some rights in the event an international body were to adjudicate the various claims.

#### The Malaysian Claim

In contrast to the complexity and variable basis of the Philippine claim, Malaysia's claim to several of the southern islands in the Spratly archipelago is simple and straight forward, despite its doubtful validity under contemporary interna-

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<sup>74</sup> Haller-Trost, 62.

<sup>75</sup> Weatherbee, 128. See also Lee Yong Leng, "The Malaysian-Philippine Maritime Dispute," Contemporary Southeast Asia 11 (June 1980): 70-71.

<sup>76</sup> Haller-Trost, 81.

tional law.<sup>77</sup> This claim first came to public attention in December 1979 when the government of Malaysia promulgated a map showing demarcation lines for its self-proclaimed continental shelf.<sup>78</sup> This continental shelf line enclosed several of the islands and reefs in the southern part of the Spratly Islands that were considered by Malaysia to be part of Malaysian territory. In other words, Malaysia's basis for claiming these islands is that they are located "within the unilaterally promulgated boundaries of the continental shelf."<sup>79</sup> Malaysia is, in effect, using a self-proclaimed maritime boundary to lay claim to territory. This is not a valid method of acquiring territory that is recognized under contemporary international law since it reverses the established procedure of using territory to establish maritime zones.<sup>80</sup>

In fact, as pointed out by Haller-Trost<sup>81</sup>, Article 76 of the United Nations Law of the Sea, which defines the continental shelf, refers only to sea-bed and submarine areas, not to land

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<sup>77</sup> Haller-Trost, 63-77. This section of Haller-Trost's work provides a detailed discussion of the legal limitations of Malaysia's claims which is summarized here.

<sup>78</sup> The map itself was based on Malaysia's Continental Shelf Act of 1966 which defined the continental shelf as "the seabed and subsoil of submarine areas adjacent to the coast of Malaysia, but beyond the limits of the territorial waters of the States, the surface of which lies at a depth no greater than 200 meters below the surface of the sea." See Haller-Trost, 64.

<sup>79</sup> Haller-Trost, 65.

<sup>80</sup> See Bernadez, 496.

<sup>81</sup> Haller-Trost, 66.

which is above water level.<sup>82</sup> The irony here is that if Malaysia's claims to these islands were to be upheld by an international court, they could then use the islands as an extension of their territorial baselines to expand the maritime area claimed. Each island would then have an economic zone or continental shelf of its own.

This incongruous use of the Law of the Sea to justify Malaysian territorial claims was reaffirmed by the Malaysian Deputy Foreign Minister after Chinese and Vietnamese forces clashed in the Spratlys in February 1988. He is quoted as stating:

The islands and atolls are under Malaysian sovereignty, and Malaysia has in the past reaffirmed its jurisdiction ... They are within Malaysia's continental shelf area and Malaysia's sovereignty over them has been officially declared through the new Map of Malaysia, published on December 21st, 1979 .... The claim is in line with the Geneva Convention of 1958 pertaining to territorial waters and continental shelf boundaries, and the UN Convention on the Law of the Sea, as well as other international practices.<sup>83</sup>

The dubious nature of Malaysia's initial legal claim to part the Spratlys has become less important now, however, because of the occupation of three of the islands inside its continental shelf boundaries by Malaysian military forces beginning in May 1983. With a military outpost well established on Swallow Reef (Terumbu Layang Layang in Malay), Malaysia can also claim to be in "effective occupation and control" of these islands and thus

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<sup>82</sup> The Law of the Sea, 27.

<sup>83</sup> Quoted in Haller-Trost, 65.

eligible for some rights under international law. The seriousness with which Malaysia views these rights was illustrated by the reaction of a Malaysian military leader to the Chinese promulgation of their new Law on the Territorial Sea in February 1992, which reiterated the Chinese claim to all of the Spratly Islands:

The Commander of the Malaysian armed forces, Yacob Zain, reacted in March by saying that his country would defend the islands it claimed in the Spratly grouping "until the last drop of blood."<sup>84</sup>

Malaysian claims for a continental shelf line that encompasses several of the Southern Spratlys puts it in direct conflict with all of the other claimants, including the Philippines (see map, Figure 3.). Malaysia is actively discussing maritime boundary issues with the Philippines. These ongoing talks relate to other outstanding territorial and maritime boundary issues between the two countries, but the Spratly Island claims are also said to be included in these discussions.<sup>85</sup> Unfortunately, these bilateral discussions, while possibly easing tensions and lessening the potential for armed clashes between Malaysia and the Philippines, will do little to resolve the conflicting claims of the other parties to the Spratly dispute. Depending on the outcome of these discussions, however, they might set an example

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<sup>84</sup> "Spratlys Discussed With Malaysian Officials," Hong Kong AFP in English 18 August 1992 transcribed in Daily Report: China, 18 August 1992, 10.

<sup>85</sup> For a discussion of other maritime issues between the two countries see Lee Yong Leng, "The Malaysian-Philippine Maritime Dispute", Contemporary Southeast Asia 11 (June 1989): 71.

for future negotiations and resolution of regional territorial issues.

### Conclusions - The Claims

This brief survey of the various legal and historical claims to the Spratlys illustrates the wide variety of concepts on which they are based and the fundamental de jure importance of occupation as a means of demonstrating sovereignty. The significance of post World War II developments in international law and the Law of the Sea on this multinational dispute have been remarked upon elsewhere<sup>86</sup>, and the important influence of international rules should not be understated. It is noteworthy in this regard that even China and Taiwan, who consider that the Spratlys have "been China's territory since ancient times," now couch their territorial claims in legalistic terms.<sup>87</sup> As indicated above, modern legal concepts have also provided the conceptual basis for the relatively more recent legal and military claims by the Philippines and Malaysia.

While these legal principles are obviously significant in the Spratly dispute, the fact remains that each of the claimants has also felt it necessary to back up legal claims with a physical presence in the islands. This can be interpreted as an indication that all of the claimants recognize the limitations of purely de jure claims without direct initiatives. Most international law specialists consider that effective occupation is the

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<sup>86</sup> Johnston and Valencia, 3.

<sup>87</sup> "China's Indisputable Sovereignty," 15.

only valid mode of territorial acquisition<sup>88</sup>, another way of saying that "possession is nine-tenths of the law." Even China, content for decades to let Taiwan's outpost on Itu Aba Island represent the "Chinese" presence in the Spratlys, has considered it necessary to establish its own garrisons in the islands.

The significance of this gradual expansion of national outposts in the Spratlys was discussed by Korean analyst Choon-Ho Park in 1978 under the subheading of "Creeping Jurisdiction":

From current trends in the law of the sea, it can be foreseen that for purposes of sea boundary delineation in the future, an island will not be defined solely in terms of its physical size or usefulness, because even an obscure low-tide elevation can be reinforced with artificial construction on it. Some South China Sea coastal states might eventually be tempted to expand a few strategically situated islands in this way, in order to foreclose argument against their legal status as base points. Thus, it would appear that in order to 'own' the South China Sea and its resources, a claimant has only to own the 'flyspecks'.<sup>89</sup>

Political scientist Martin Katchen's assessment is even more to the point: "The Spratly Islands claims have the potential for extending the authority of the nations that hold them across the South China Sea, particularly under the rapid changes being made in the Law of the Sea."<sup>90</sup> Some of these changes will be addressed in the next Chapter.

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<sup>88</sup> Bernadez, 497.

<sup>89</sup> Choon-Ho Park, "The South China Sea Disputes: Who Owns the Islands and the Natural Resources?" in Ocean development and International Law 5 (1978): 45.

<sup>90</sup> Katchen, 1181.

With all of the readily occupied islands in the Spratlys garrisoned by the military forces of the five claimants<sup>91</sup>, the stage is now set for the next act in the Spratly drama. Before discussing future scenarios, however, it is necessary to examine some of the underlying forces and dynamics driving this dispute and to address the questions: Why the Spratlys? and Why now?

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<sup>91</sup> As indicated in Chapters Three, the five Spratly Islands claimants are considered in this study to be China, Taiwan, Vietnam, Malaysia and the Philippines. Maritime law specialist Mark Valencia contends that Brunei is also a claimant in this dispute, presumably because Brunei contests Malaysian ownership of Louisa Reef and Brunei's potential 200 mile Exclusive Economic Zone would include a narrow corridor of water space in the extreme southern part of the disputed region. See Mark J. Valencia, "A Spratly Solution," Far Eastern Economic Review, 31 March 1994, 30. Despite this contention, however, Brunei has not put forward a claim to any of the Spratly Islands. A statement by two Chinese writers that Indonesia and Brunei have extracted oil from the Spratly Islands is also misleading. While both countries have actively exploited offshore oil, none of their offshore fields are in the Spratlys region. See You Ji and You Xu, "In Search of Blue Water Power: The PLA Navy's Maritime Strategy in the 1990s," The Pacific Review 4, no. 3 (1991): 137-138. Neither Indonesia nor Brunei have publicly articulated a claim to the Spratly islands and are thus not considered here as "claimants."

## CHAPTER FOUR

### THE TECHNOLOGICAL IMPERATIVE

#### Technology as a Political Factor

The stubborn convictions and intractable positions held by Spratly Island claimants demonstrate that these Asian countries are deadly serious in pursuing national policies that could lead to armed conflict. How much power and prestige each of these nations is willing to risk for possession of these tiny but strategically important islands is not clear. What is clear, however, is that they all consider the Spratlys to be valuable enough to risk the possibility of a military clash with other claimants.

What makes the Spratlys so controversial and what impact does technology have on this dispute? There are at least three different areas in which technology is affecting national policies in the Spratlys. These include technological developments in the exploitation of petroleum resources; new concepts of international maritime law affecting ownership of these resources; and military technologies that are expanding both the military reach and the staying power of the principal beneficiary of this technology - China - in the South China Sea.

A thesis of this study is that relatively recent developments in each of these technological fields are creating both



possibilities for cooperation and pressures for military action in the Spratlys. In other words, while technology itself is apolitical and amoral, relative technological applications have a political and ethical dimension. By providing fiercely national countries with previously unavailable capabilities, technology can have an impact on state policies and international security. While addressing the likely effect of these trends on the policies of China towards the Spratlys, each technological trend will briefly be described and discussed.

#### Oil and the Spratlys

As indicated in Chapter One, the obvious explanation of the current scramble for ownership of the Spratly Islands is the seismic projection of significant offshore petroleum resources in the region. In 1969, the United Nations published the results of a geological survey which first noted the possible presence of sizable petroleum-forming sedimentary deposits beneath the seabed of the South China Sea.<sup>1</sup> At that time, the depths in much of the South China Sea, including the waters around the Spratly archipelago, made oil exploration and drilling technologically impractical. As one researcher observed in 1976,

In the case of the South China Sea, exploration activity has been constrained not only by the cost and by the political uncertainties found in other East Asian offshore areas but also by the unusually deep water

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<sup>1</sup> K. O. Emery et al., "Geological Structure and Some Water Characteristics of the East China Sea and Yellow Sea." Technical Bulletin No. 2 (Committee for the Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas [CCOP] of the United Nations Economic Commission for Asia and the Far East [ECAFE], 1969), 40-43.

there. A [United Nations] CCOP task force found that the water depth in one part of the South China Sea, known as the China Basin, exceeds 2.5 miles in some places, which is far beyond the reach of present deep-water production technology. As the task force report noted, however, "more than half" of the China Basin is not that deep, and much of it is now or will soon be within the reach of drilling technology, including areas near the Paracels and the Spratly islands believed to contain petroleum deposits. In the long run, many geologists think that the deep-water reserve potential of the South China Sea holds even more promise than that of the East China and Yellow Seas.<sup>2</sup>

While many of the earlier sovereignty disputes remain operative today, advances in offshore oil drilling technology over the past twenty years have made it technically feasible and cost effective to drill exploratory wells and establish production wellheads in water depths and conditions found in the Spratlys region. As a recent (1992) scientific article on petroleum production indicates,

Seismic surveys provide a remarkably detailed overview of the geologic, structural, and stratigraphic conditions beneath the surface and under exceptional conditions may reveal directly the presence of gas. New technologies, employing lasers and satellites, are also being used to detect minute seepages that indicate underlaying deposits. Normally, however, drilling is necessary to confirm the presence or absence of commercially producible amounts of gas and oil. Geologic information is also provided by drilling and is obtained through the use of modern borehole logging techniques. Drilling technology has advanced substantially in recent decades, particularly with respect to the capability of drilling from ships in water as deep as 1,800 m (6,000 ft), or from platforms whose legs are anchored to the seafloor. The development of horizontal drilling techniques has increased productivity,

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<sup>2</sup> Selig S. Harrison, China, Oil and Asia: Conflict Ahead? (New York: Columbia University Press, 1977), 54.

allowing producers access to deposits that were previously left untapped.<sup>3</sup>

The horizontal drilling technique is, according to the latest edition of Modern Petroleum: A Basic Primer of the Industry, "the newest and most rapidly growing movement in the drilling industry," and "could easily become the method of choice for the future."<sup>4</sup> This method uses state of the art tools, sensors and control mechanisms to change the axis of a vertical hole to the horizontal plane - either to tap into oil-bearing sediments of deposits from the side, (which increases production) or to reach petroleum deposits not directly under the drilling platform. Slant or horizontal drilling is particularly well suited for offshore oil production because one offshore drilling rig can tap into several potential oil deposits.<sup>5</sup>

Using this technique, an offshore platform can, in relatively shallow water (or, in the Spratly Islands, on land), reach deposits located nearby in deep water. While these and other technological developments have made oil exploration and production feasible in the Spratlys, such operations to date have remained fairly limited in scope and outcome, primarily because of political constraints.

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<sup>3</sup> Academic American Encyclopedia, 1992 ed., s.v. "Petroleum."

<sup>4</sup> Bill D. Berger and Kenneth E. Anderson, Modern Petroleum: A Basic Primer of the Industry, 3d ed. (Tulsa: PennWell Publishing Company, 1992), 126-127.

<sup>5</sup> Ibid., 131.

In early 1976, a joint Swedish-Philippine consortium began conducting exploratory drilling for oil in the Reed Bank area of the northeastern Spratlys, located about 260 kilometers west of the Philippine province of Palawan.<sup>6</sup> The first of several exploratory wells, "Sampaguita No. 1," was drilled to a depth of over 4000 meters in a water depth of about 200 meters, but then the well was plugged and abandoned - although it showed positive evidence of gas deposits.<sup>7</sup> Despite the harsh protests of China and Vietnam over this exploratory drilling in an area that both claimed as their sovereign territory, at least five additional wells were subsequently drilled in the Reed Bank area by the Philippine consortium.<sup>8</sup>

While none of these exploratory wells was converted to oil or gas production, because of threatening protests by Vietnam and China,<sup>9</sup> the positive results from the first well confirmed the presence of petroleum-bearing deposits in the northeastern

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<sup>6</sup> Corazon M. Siddayao, The Off-shore Petroleum Resources of Southeast Asia (New York: Oxford University Press, 1978), 90.

<sup>7</sup> George Kent and Mark J. Valencia, Marine Policy in Southeast Asia (Berkeley: University of California Press, 1983), 173.

<sup>8</sup> Ibid. This period also marks the first American involvement in the quest for resources in the Spratlys. While drilling by the Swedish firm SALÉN EXPLORATION COMPANY at Sampaguita No. 1 was underway, the American-owned AMOCO company became a partner to the consortium and drilled two additional exploratory wells using a U. S.- registered drill ship. Both holes were eventually plugged and abandoned as "dry holes" and AMOCO subsequently resigned as an operator in 1978. Three additional wells were drilled by SALÉN in 1978, 1979 and 1981. All have likewise been plugged and abandoned.

<sup>9</sup> See Siddayao, 90-91

Spratlys. This finding was substantiated by additional offshore oil strikes made by the Philippines in January 1992.<sup>10</sup> These recent strikes were located approximately 100 nautical miles east of the Reed Bank area, but provide additional evidence of exploitable petroleum-bearing sediments in the general area.

In the meantime, the presence of additional petroleum reserves in other areas of the Spratlys has reportedly been indicated by technical surveys conducted by mainland China. Writing in 1985, George Kent and Mark Valencia concluded that,

In addition to the Reed Bank area, there may be hydrocarbon potential in the southern part of the region. While the Chinese isopachs [seismic survey results] must be viewed with some skepticism, they do indicate that the area claimed by both Malaysia and the Philippines includes some elongated sediment pods several kilometers thick and reefs such as Amboyna, Barque Canada, Mariveles, and Commodore, which are situated to be used as drilling platforms. There are also some sediment pods under the continental slope in presumed Vietnamese waters to the west of the Malaysian Shelf claim and along the continental margin off Vietnam.<sup>11</sup>

More recently (1992), according to the petroleum industry's Oil and Gas Journal,

Geological surveys by the Chinese Ministry of Geology and Mineral Resources and the Chinese Academy of Sciences led to speculation the Nansha area [Spratlys] could contain as much as 70 billion bbl [barrels] of oil equivalent.<sup>12</sup>

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<sup>10</sup> Rigoberto Tiglao, "Barrels of Hope: Palawan Oil Find Could Bolster Philippine Economy," Far Eastern Economic Review, 6 February 1992, 36-37.

<sup>11</sup> Kent and Valencia, 175.

<sup>12</sup> "Territorial Disputes Simmer in Areas of South China Sea," Oil and Gas Journal, 13 July 1992, 20.

On the basis of such information, the Beijing government contracted with an American oil exploration company, Crestone Energy Corporation, to conduct exploratory drilling in an area of the western Spratlys located some 125 nautical miles off the coast of Vietnam and claimed by Vietnam as part of her Economic Exclusion Zone. (See Map below, Figure 3.<sup>13</sup>)

This zone is also located about 200 nautical miles east of Vietnam's highly productive "White Tiger" offshore oil field, which is further hard evidence of offshore petroleum deposits in this region of the South China Sea.<sup>14</sup>

With such strong indications of oil and gas deposits in the Spratlys, there is little doubt that the oil potential of the region, now within reach through advances in technology, is a major factor in the current territorial dispute.

#### The Demands of Technology

At the same time, the demand for oil, both for domestic use and for profit through foreign sales, has increased throughout Southeast Asia. This growing urgency for oil and petroleum-based products such as plastics and fertilizer is viewed as essential to further economic development throughout the region and particularly among the claimants to the Spratlys. Both Vietnam and the

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<sup>13</sup> This map also shows the vast expanse of China's claimed territorial boundaries in the South China Sea as shown on maps produced in China. See for example the South China Sea insert in Zhonghua Renmin Gongheguo Ditu (Map of the People's Republic of China) 6th ed. (Beijing: The Cartographic Publishing House, 1971).

<sup>14</sup> Ibid., 21.

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<sup>14</sup> Ibid., 21.

support their own industrial development and to lessen their expensive dependence on foreign oil imports.<sup>15</sup>

The high rate of economic growth experienced by China in recent years has depended in part on reliable supplies of petroleum, both for energy requirements and through export to generate hard currency. Writing in 1989, energy analysts Kim Woodard and Bruce Vernor forecast future deficits for China's domestic petroleum supplies due to rapidly expanding demands:

On the demand side, consumption of refined petroleum products is rising at a rate of six to 10 percent a year, relentlessly driven by China's rapidly expanding domestic economy.... The sectors that rely on gasoline, kerosene, diesel fuel and petrochemical feedstocks are growing even faster than the economy as a whole. China's vehicle fleet, for example, is expanding at 15-20 percent a year. The number of diesel-fueled tractors has quadrupled to six million since 1980. Domestic air transportation of both passengers and freight is growing at 20-25 percent a year. And the urban population is mushrooming; projections are that it will exceed 40 percent of the total population in 1990 and reach 50 percent by 2000. Domestic consumption of light and middle distillates is surging an average of 15-20 percent a year.<sup>16</sup>

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<sup>15</sup> See, for example, Tiglao, 36 and Murray Heibert, "Second Time Lucky: Foreign Oil Firms Bullish about Vietnam's Prospects," Far Eastern Economic Review, 7 May 1992, 64.

<sup>16</sup> Kim Woodard and David Vernor, "Petroleum Exploration Update: China's Strategy into the '90s," East Asian Executive Reports 2 (15 March 1989): 9.



This assessment has proven to be fairly accurate. A report in 1992 indicated that consumption of refined oil in China rose by seven percent a year between 1985 and 1992.<sup>17</sup> Despite record outputs of coal, oil and electrical power in 1992, however, China's current energy production cannot keep pace with this rising internal demand.<sup>18</sup> By the year 1995, China is expected to become a net importer of oil.<sup>19</sup>

While the bulk of China's electrical energy production still comes from coal (74%) with only 12% from gas and oil, internal shortages of both oil and gas are expected to limit future growth.<sup>20</sup> The seriousness of China's resource problem was outlined in a report to China's State Council by a research group of the Chinese Academy of Sciences in 1992, which concluded that "the country faces a crisis of shortages in key mineral resources and oil."<sup>21</sup>

More recently (May 1993), an editorial in the Oil and Gas Journal succinctly described China's economic dilemma:

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<sup>17</sup> Carl Goldstein, "China's Oil Shock," Far Eastern Economic Review, 12 November 1992, 53.

<sup>18</sup> "Coal, Power and Oil Output Hits Record High", Beijing XINHUA in English 16 October 92, transcribed in Daily Report: China, 20 October 1992, 31.

<sup>19</sup> Wang Ya, "Oil Imports Expected to Exceed Exports by 1995", Beijing CHINA DAILY (BUSINESS WEEKLY) 13-19 December 1992, 1. Quoted in Daily Report: China, 14 December 1992, 48.

<sup>20</sup> "Energy Shortage Hinders Economy," Beijing Review 36 (4-10 Jan 1993): 5.

<sup>21</sup> "Scientists Warn of Resource Shortages," Beijing Review 35 (18-24 May 1992): 7.

China's economy has expanded at the rate of 8%/year recently - 12% last year [1992] alone. Growth in the booming southeastern provinces may reach 20% this year. This puts China in league with other go-go Asia-Pacific economies, but size sets it apart. The country has one-fifth of the world's population. Rising Chinese oil demand is straining processing capacity and the government's insistence on sustaining oil exports. Future demand will depend greatly on construction of roads and other transportation infrastructure. Most estimates see 120,000-140,000 b/d/year oil demand growth for at least several years.<sup>22</sup>

China currently produces some 142 million tons of oil annually.<sup>23</sup> Only about 3 million tons of this oil are produced from offshore wells.<sup>24</sup> Production at the large onshore oil fields at Daqing in northeastern China (which currently provide 40% of China's total oil production) is reportedly declining at a rate of 4-6% per year.<sup>25</sup> Further, even this level of production requires increasingly costly and sophisticated techniques (such as the injection of large volumes of water and polymer liquids

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<sup>22</sup> "External Pressures Won't Change China," Oil and Gas Journal, 10 May 1993, 17.

<sup>23</sup> See "Final Frontier," Far Eastern Economic Review, 10 June 1993, 55 and "Oil Industry Fulfills Plan Ahead of Schedule," Beijing XINHUA in English 29 December 1992, transcribed in Daily Report: China, 31 December 1992, 41.

<sup>24</sup> This total is a projection based upon the production figures reported in Beijing. See "Offshore Production Almost Fulfilled," Beijing XINHUA in English 19 October 1992, transcribed in Daily Report: China, 20 October 1992, 32.

<sup>25</sup> Wang Ya, 49.

into the wellheads to force oil to the surface), suggesting that the economic viability of such wells has a limited future.<sup>26</sup>

In addition to extending the production levels of large onshore areas such as Daqing, China also plans to cope with her escalating petroleum requirements by expanding land and offshore exploration. Exploitation of the huge petroleum potential of the Tarim basin in extreme western China is China's principal hope for the future. Chinese estimates indicate that the Tarim basin holds more than 70 billion barrels of oil and large deposits of natural gas.<sup>27</sup> As one Asian business analyst explains, the acquisition of this new domestic source of oil is vitally important to China:

Peking has launched a crash program to develop the Tarim's potentially vast oil resources. Much rides on its success. With its economy growing by leaps and bounds, China badly needs a replacement for the now-dwindling reserves of its eastern provinces. Unless big new fields can be tapped in the next few years, China will cease to be a net exporter of oil, instead facing a net drain on its foreign-exchange reserves.<sup>28</sup>

Unfortunately, the isolated location and terrain of the desert-like Tarim basin will require considerable investment

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<sup>26</sup> The implications of this need for increasingly costly techniques to maintain constant production levels were recognized as early as the mid-1980s. See, for example, Kim Woodward, "Development of China's Petroleum Industry: An Overview," in China's Petroleum Industry in the International Context, eds., Fereidun Fesharaki and David Fridley (Boulder: Westview Press, 1986), 100.

<sup>27</sup> Carl Goldstein, "Final Frontier," Far Eastern Economic Review, 10 June 1993, 54.

<sup>28</sup> Ibid.

before it can begin to produce large quantities of oil. The most expensive and difficult project will be a \$10-12 billion pipeline to transport the new oil eastwards. While some oil from this region is currently being transported by tank truck and rail, the area's transportation infrastructure is primitive and will require a huge investment to develop the road network necessary for large-scale exploration and production.<sup>29</sup> Thus, while the Tarim basin holds some promise for meeting China's oil production needs in the distant future, China also needs to develop other sources of oil to meet near-term requirements.

In this regard, another major component of China's petroleum strategy is the expansion of offshore oil exploration and production.<sup>30</sup> To date, China's offshore oil production has not met earlier expectations:

China started offshore exploration and development about ten years ago [1982], a campaign that has yielded some discoveries of note with foreign assistance, but not the world class finds that had been anticipated. Of the total potential resource of more than 7 billion bbl identified by that effort, about 4 billion bbl is believed recoverable .... Disappointments aside, China continues to place heavy emphasis offshore, especially for offsetting onshore declines in order to boost total oil production slightly by the mid-1990s.<sup>31</sup>

In this context, the Chinese estimates of up to 70 billion barrels of oil in the offshore Spratlys region (equal to the oil

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<sup>29</sup> Ibid. See also "Opportunities, Problems seen in China's Remote Tarim Basin," Oil and Gas Journal, 12 April 1993, 36.

<sup>30</sup> See Woodard and Vernor, 13.

<sup>31</sup> "Foreign Firms to Figure More in Rebounding China E&B Scene," Oil and Gas Journal, 28 September 1992, 23.

potential of the entire Tarim basin) becomes very significant. As long as the offshore oil resources of the Spratlys area remain untapped, China can afford to appear conciliatory. She is willing to discuss "shelving disputes and conducting joint exploration" in the Spratlys with visiting leaders from Southeast Asia such as Philippine President Fidel Ramos.<sup>32</sup> Such "principled" statements are meant to reassure regional states that China has no hegemonic ambitions in Southeast Asia.

In the meantime, China has not openly made any efforts to conduct "joint development" of petroleum resources in the Spratlys, preferring a unilateral program of oil exploration while protesting the activities of the other claimants in the area.<sup>33</sup> China's 1992 contract with the American oil exploration company Crestone Energy Corporation for exploratory drilling in an area designated as Wan'an Bei-21 was mentioned earlier. Crestone's president, Randall Thompson, has stated that he expects to find over one and a half billion barrels - \$10-15 billion worth of oil - in this contract area alone (See map, Figure 3.).<sup>34</sup> If such large quantities of oil or gas are found in the Spratlys,

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<sup>32</sup> "Ramos' First China Visit," Beijing Review, 36 (10-16 May 1993): 5.

<sup>33</sup> Geophysical survey activity was reportedly conducted in May 1993 by both Chinese and Vietnamese ships in the same area of the Spratlys, resulting in protests by both claimants. See "Sino-Viet Nam Territorial Dispute Flares Up Again," Oil and Gas Journal, 14 June 1993, 23, and "Knotty Reefs," Far Eastern Economic Review, 10 June 1993, 9.

<sup>34</sup> Randall Thompson, telephone interview by author, 6 January 1993. See also "Crestone Signs China Oil Deal," The Denver Post, 19 June 1992, D1.

the value of these islands will increase and China's public position regarding the desirability of joint development of these valuable resources may change.

### The "Technology" of International Law

Another technological advance that appears to be influencing China's policy-makers is a newly developed concept of "maritime rights" as defined in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The idea that coastal states have exclusive "rights" to extensive areas of undersea resources out to 200 nautical miles or more from their coastline is a relatively new concept in international law. First codified under the Geneva Continental Shelf Convention of 1958, the concept that coastal states had "sovereign rights" to exploit the natural resources of the seabed of their continental shelf - initially defined as extending from the territorial sea of the coastal state out to a water depth of 200 meters<sup>35</sup> - marked the beginning of an international scramble by coastal states to stake out as much undersea territory as possible.

Ocean Law specialists Douglas Johnson and Mark Valencia have summarized the recent evolution of the Law of the Sea as follows:

Before the First World War - throughout the classical period of international law - it was generally agreed that the jurisdiction of the coastal states should be restricted in scope to an area not exceeding three or four miles from their shoreline....But by the 1950s, under the impact of spectacular advances in science and technology, the ocean was beginning to be perceived to be amenable to a widening range of human activities

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<sup>35</sup> D. P. O'Connell, The Influence of Law on Sea Power (Manchester: Manchester University Press, 1975), 147.

derived from platform as well as vessel technology. With surprisingly little objection from the 'geographically disadvantaged', coastal states naturally endowed with broad continental margins were conceded in principle to have exclusive rights to the resources of the continental shelf far beyond the seaward limits of their territorial sea. Legal debate focused on the formula to be applied to the definition of the shelf, rather than on the question of entitlement itself.<sup>36</sup>

This debate took place in the Third United Nations Conference on the Law of the Sea (UNCLOS III), which was held in Caracas, Geneva and New York from 1973 to 1982 and involved more than 160 states and international entities.<sup>37</sup> While it was initially hoped that this conference would lead to an increasingly open and cooperative use of the ocean's vast resources, national self-interest eventually triumphed over global collaboration. Rather than opening up large areas of the seabed as the "common heritage of mankind," UNCLOS III succeeded in clarifying and expanding the national rights of coastal states to offshore resources by setting the limit of allowable "exclusive economic zones" (EEZ) as 200 nautical miles to seaward of the baseline of the coastal state's territorial sea.

Despite the apparent consensus of most of the developing nations participating in this series of conferences, the result

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<sup>36</sup> Douglas M. Johnston and Mark J. Valencia, Pacific Ocean Boundary Problems: Status and Solutions (Boston: Martinus Nijhoff, 1991), 3.

<sup>37</sup> Yann-Huei Song, "A Pathfinder on the Law of the Sea and Marine Policy," Ocean Development and International Law 24 (1993): 205.

was not encouraging for those who had hoped for a new era of international harmony. As Johnston and Valencia put it,

Instead, the coastal states, developed and developing alike, saw in the newly available ocean areas an unexpected windfall, offering the prospect of a previously unimagined extension of their natural resource base. Within less than five years the economic goal of national autonomy had prevailed over the interest in global cooperation, setting in motion the process of establishing vast national enclosures of offshore areas, especially those enclosures consonant with the new exclusive economic zone (EEZ) regime.<sup>38</sup>

Geographer Marwyn Samuels has noted that China's traditional views of sovereignty differed considerably from those of the West and consequently, "the issue of oceanic sovereignty has little or no precedence in Chinese or Asian history."<sup>39</sup> China's relatively recent interest in its maritime "rights" coincides with the development and codification of an international legal regime that cedes resource jurisdiction over large areas of ocean to coastal states. China's contemporary position on this newly emerging oceanic jurisdiction has been characterized by political scientist Samuel Kim as being based on the three principles of "opposing hegemony, supporting Third World countries, and protecting China's maritime rights."<sup>40</sup> Kim indicates that China exhibited little interest in international legal developments

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<sup>38</sup> Johnston and Valencia, 4.

<sup>39</sup> Marwyn S. Samuels, Contest for the South China Sea (New York: Methuen, 1982), 7.

<sup>40</sup> Samuel S. Kim, "Reviving International Law in China's Foreign Policy," in Chinese Defense and Foreign Policy, ed. June Teufel Dreyer (New York: Paragon House, 1989), 112.



during the 1950s and 1960s, largely because of its tumultuous domestic situation. This indifference continued even after China joined the United Nations in 1971, with the exception of Law of the Sea issues. As Kim recalls,

China's UN debut came at a time when the UN was still in the preparatory process for path-breaking work on the progressive development and codification of a new global law of the sea. China has participated in all three phases of this protracted process.<sup>41</sup>

The reason for China's interest and active participation in the development of a global Law of the Sea regime is clear from her position on the key issues:

On jurisdictional issues, China has taken an absolute resource-sovereignty approach in defining the outer limits of coastal state sovereign rights. Viewed from this angle, UNCLOS-III [sic] is a triumph for China and other maritime and coastal powers, as some 40 percent of the area of the entire ocean and most of its resources have been placed under the jurisdiction of coastal states. China's expansive claims ... are congruent with the relevant provisions of the Convention, especially those on EEZs (Articles 55-75).<sup>42</sup>

China is thus well aware of the economic and strategic implications for internationally recognized maritime "rights" to a nation with an extensive coastline. An evolving appreciation of these rights is at the core of Chinese naval developments.

#### Technology and the Chinese Navy

As indicated in Chapter Two, most studies of the geopolitics of the Spratly Islands area were completed prior to the collapse

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<sup>41</sup> Ibid., 111.

<sup>42</sup> Ibid., 113.

of the former Soviet Union and the international disengagement of the so-called "Commonwealth of Independent States" led by the Russian Republic. These studies appropriately focused on the key relationships of the China with the United States and the Soviet Union superpowers as major determinants of Chinese strategic concerns in the South China Sea. Chinese policy towards Vietnam prior to the dissolution of the USSR, for example, was apparently motivated by Chinese concern over a strategic encirclement by the Soviet Union through the expansion of Soviet influence and military capabilities along China's southern flank.<sup>43</sup> Indeed, Chinese military strategy, from the mid-1960s on, focused on continental defense and was focused on defending Chinese territory against the threat of a massive Soviet attack across China's border with Russia.<sup>44</sup>

As a separate and secondary branch of the Chinese military, the principal mission of the Chinese Navy has been to provide support to the ground forces and defend China's coast from

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<sup>43</sup> This was the principle point of Chi-kin Lo's "geopolitical interpretation" of China's actions in the South China Sea. Chi-kin Lo, China's Policy Towards Territorial Disputes: The Case of the South Sea Islands (New York: Routledge, 1987), 186. See also Jonathan Pollack and Yao Wenbin, "China's Relation with East Asia and the Pacific Region: Part I and Part II" in East Asia, the West and International Security: Prospects for Peace, Adelphi Paper # 217, (London: International Institute for Strategic Studies, Spring 1987).

<sup>44</sup> Paul H. B. Godwin, The Chinese Communist Armed Forces (Maxwell Air Force Base, Alabama: Air University Press, 1988), 30.

invaders.<sup>45</sup> This function was explicit in the Chinese Navy's "War Doctrine" developed in the 1950s, which stated that:

The navy should be a light-type navy, capable of in-shore defense. Its key mission is to accompany the ground forces in war actions. The basic characteristics of this navy is fast deployment, based on its lightness.<sup>46</sup>

This defensive, coastal orientation for the Chinese Navy began to change in the early 1980s as it became apparent to the Chinese political leadership that the threat of a major military confrontation between China and either the United States or the Soviet Union was low. This strategic reassessment was at first viewed by the Chinese Navy leadership as potentially nullifying their aims and justification for building "a powerful navy and maritime transport system to meet the threat of the two superpowers."<sup>47</sup>

By mid-decade, however, a new rationale for naval expansion had been formulated. Citing internal Chinese military sources, two Chinese maritime analysts writing in 1991 stated:

In 1985, the navy announced that its maritime strategy would be shifted from passive brown water defence to active green water defence. The document stipulated that the navy modernization must enable it to obtain better firepower in an offshore conflict, to exercise

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<sup>45</sup> Ibid., 120.

<sup>46</sup> You Ji and You Xu, "In Search of Blue Water Power: The PLA Navy's Maritime Strategy in the 1990s," The Pacific Review 4, no. 3 (1991): 137. This article provides an authoritative overview of Chinese naval development plans written by two Chinese visiting scholars in Australia.

<sup>47</sup> David G. Muller, China as a Maritime Power (Boulder: Westview Press, 1991), 87.

effective control over the sea transportation lines radiating from China's territorial waters, and to conduct warfare in the waters adjacent to China.<sup>48</sup>

This shift in emphasis in naval doctrine from passive to active defense coincided with a major reassessment of the missions and functions of the entire Chinese military establishment, which resulted in a substantial reorganization and restructuring of the various land, air and sea branches of the People's Liberation Army (PLA). The restructuring had both internal and external implications, as seen by another analyst of Asian military affairs:

In 1988, there were descriptions [in Chinese military journals] of a "rapid reaction force" (RRF). The role of this force would be twofold: to react to internal disturbances beyond the capabilities of the local police, like the situation in Beijing [in 1989], and to deploy for border fighting.<sup>49</sup>

After China's leaders announced in 1986 that a major nuclear war was no longer likely, military publications began to discuss the problem of "limited war."

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<sup>48</sup> You Ji and You Xu, 137. "Brown water" refers to coastal operations, generally within sight of land. "Green water" indicates an expansion of operations offshore to include a larger region such as the South and East China Seas. Both of these terms are meant to contrast with the traditional global "Blue water," open-ocean or high-seas operations of modern maritime powers such as the United States.

<sup>49</sup> Harlan W. Jencks, "The Military in China," Current History 88 (September 1989): 267.

In the Chinese Navy, the development of a rapid reaction force was seen as key to the concept of an active, forward defense at sea known as "peripheral defense":

This is intended to act as a strategic guide for the armed forces in the 1990s. It is an outgrowth of Deng Xiaoping's perception that general war will not be a part of this decade and that the old threat from the north, i.e., the former Soviet Union, is much reduced. Instead emphasis will be placed on localized border operations. According to one commentator, "the growing military strength of regional powers (has) increased the likelihood of small-scale wars around China's periphery".<sup>50</sup>

The development and the application of this concept to the maritime arena have been linked to the efforts of one man, Admiral Liu Huaqing, and his strong belief that China requires a professional, high-seas navy to defend her widespread maritime interests.<sup>51</sup> A veteran of the "Long March" and a protege of Deng Xiaoping, Liu was transferred from the Army to the Navy in 1950 and studied naval science in the Soviet Union. From the 1950s to the present, Liu has been highly influential in the evolution of the Chinese Navy from an ancillary support unit of the ground forces to an independent maritime force, capable of extended, although still limited, high seas operations.

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<sup>50</sup> Keith Jacobs, "China's Military Modernization and the South China Sea," Janes Intelligence Review 4 (June 1992): 278.

<sup>51</sup> John W. Garver, "China's Push Through the South China Sea: The Interaction of Bureaucratic and National Interests," The China Quarterly 131 (September 1992): 1020-1022. This recent work provides a concise summary of Liu Huaqing's career and influence on Chinese naval developments.

It was during his tenure as the Commander of the Chinese Navy from 1982 to 1989 that the basis was laid for the Chinese navy of the future. As the current Vice-Chairman of the Central Military Commission, the highest ranking decision-making body in the Chinese military, Liu Huaqing continues to provide support for "his" navy.<sup>52</sup>

While the naval construction programs instituted by Liu Huaqing are impressive, an equally decisive contribution has been Liu's efforts to "professionalize" the Chinese Navy officer corps. At issue here was whether the navy wanted its personnel trained to be technically proficient or ideologically correct. The debate in China over this "Red versus Expert" dilemma is part of the negative legacy of Maoist communism.<sup>53</sup> This term refers to the constant tension in communist China between those, like Mao himself, who believe that ideology is more important than technology, and others, like Deng Xiaoping, who recognize the critical importance of technical expertise to modernization. The politically correct answer to this question has varied over time, but Liu Huaqing has successfully insisted that the highly techni-

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<sup>52</sup> On the occasion of his appointment as Vice Chairman of the Central Military Commission at the 14th Chinese Communist Party Plenum in October 1992, a biographical sketch of Liu Huaqing was issued by Chinese government media. See "Liu Huaqing", Beijing XINHUA in English 19 Oct 1992, transcribed in Daily Report: China, 19 October 1992, 17-18.

<sup>53</sup> See Lucian W. Pye, China: An Introduction, 4th ed. (New York: Harper Collins, 1991), 273-285 and 360-363 for summary discussions of the "Red versus Expert" issue in China. See also Muller, 203-204 for an assessment of the impact of this issue on the PLA-Navy.

cal nature of modern naval warfare requires a professional cadre of trained and technically competent personnel.

The reasons for Chinese naval professionalism are the same ones that drove American naval developments a century ago. As American naval historian John Hattendorf has described it,

The means to reform the Navy were facilitated by growing professionalism within the Navy. During the last decades of the 19th century, many occupations in America began to develop a sense of group identity, which was expressed by the formation of professional associations and journals that promoted the development of a specialized and theoretical knowledge relating to the occupation.<sup>54</sup>

In the United States, this professional development involved two aspects:

On the one hand, officers saw the need to develop technical and scientific expertise which would allow full use of modern armaments .... On the other hand, they also saw the need to develop the critical and analytical skills which would facilitate a full examination of the purposes, functions and limitations of naval power and allow officers to formulate effective strategy, tactics and logistics.<sup>55</sup>

Chinese naval developments over the past two decades have mirrored these considerations, with Liu Huaqing stressing both the technical and theoretical aspects of maritime power:

In the late 1970s Liu Huaqing played a major role in the [Chinese] Navy College's reactivation of its lapsed doctrinal research organization. One of Liu's major concerns was with the idea of "coastal defence" (jinhai fangyu) and "active defence" (jiji fangyu), which the CMC [Central Military Commission] had prescribed as the

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<sup>54</sup> John B. Hattendorf, et al., Sailors and Scholars: The Centennial History of the U.S. Naval War College (Newport: Naval War College Press, 1984), 5.

<sup>55</sup> Ibid., 6.

general line for the PLA-N [Chinese navy]. Under Liu Huaqing's guidance, researchers at the Navy College elaborated those concepts in ways that demanded high-seas missions and capabilities ... [and] formulated the naval construction program and budgetary requirements necessary for the PLA Navy's new missions.<sup>56</sup>

While the debate over "Red versus Expert" may have been rekindled by the student-led protests at Tienanmen in 1989, the Chinese Navy officer corps has remained focused on mastering the technological developments pertaining to naval warfare and refining the theoretical rationale for China's continued naval development.<sup>57</sup>

At the same time that these ideological policies were pragmatically modified, events in the South China Sea were spurring a new focus of Chinese maritime ambitions. Paramount among these concerns was

China's worry about the encroachment in its territorial waters by other states. China lays claim to a coastline of 18,000 km and a vast expanse of ocean spanning some 3.6 million square km. However two-thirds of its territorial waters are subject to dispute. A large number of islands in the Nansha [Spratly] and Xisha [Paracel] islands claimed by China have been occupied by Vietnam, the Philippines, Malaysia and Indonesia [sic]. In 1985 alone, Brunei, Malaysia and Indonesia extracted 100 million tons of oil from these islands.-

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<sup>56</sup> Garver, 1021.

<sup>57</sup> In December 1987 the author visited the Chinese Navy's Command College in Nanjing with a group of U.S. Naval officers. A written description of the College provided to us indicated that its research missions included the study of "strategic problems concerning our navy, combat tasks and patterns likely to be assumed by our navy as well as relevant operational and tactical problems, the problems of naval institutions, the direction of the development of naval equipment, operational command, logistic support, history of naval battles (Chinese and foreign) and the navies of foreign countries."



... In recent years the exercise of sovereignty over the Nansha and Xisha islands through naval activities has remained high on the agenda of the CMC [Central Military Commission].<sup>58</sup>

Protecting these maritime interests is now seen as a "sacred duty" of the Chinese Armed Forces. Discussing the successes achieved by Chinese Navy in recent years (which include the construction of an ocean observatory in the Spratly Islands), a recent Chinese news broadcast concluded that:

As the state's economic power continues to become stronger during the course of reform and opening up, the People's Navy will certainly achieve even more firsts in its modernization and also greater successes in carrying out its sacred mission of safeguarding the motherland's territorial waters and maritime rights and interests in the future.<sup>59</sup>

These new concepts of Chinese maritime interests which must be protected from foreign encroachment coincided with a drastic shift in the strategic situation and the withdrawal of both the Soviet Union and the United States military forces from the South China Sea area. In addition, new military technology was becom-

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<sup>58</sup> You Ji and You Xu, 137-138. This article was written in 1989 and published in 1991. While it provides a compelling analysis of Chinese Naval developments, it also contains some significant errors of fact. Since 1974, for example, China has maintained sole control of the Paracel Islands (Xisha). In addition, despite the contention of these analysts, Brunei and Indonesia have made no claims to the Spratly Islands and have neither occupied any island in the Spratly archipelago nor drilled for oil nearby. To the contrary, Indonesia has taken the regional lead in attempting to bring all claimants to the negotiating table. See page 129, note 91.

<sup>59</sup> Huang Caihong, "PLA Navy Achieves '14 Firsts' in 14 Years," Beijing XINHUA in Chinese 3 Jan 1993. Translated and transcribed in Daily Report: China, 7 January 1993, 29.

ing available on the open market as a result of the collapse of the former Soviet Union. The significance of modern technological developments in weapon systems was amply demonstrated by the successful (and highly visible) use of high-technology weapons against Iraq by the United States in Operations Desert Storm.

Based in part on their analysis of this large scale military operation, several Chinese military commentators have concluded that,

the new technological revolution that began in the 1970s has led to a sudden change in the arena of military technology, and the effects of these changes on the modes of war will be more profound and far-reaching.<sup>60</sup>

The same authors conclude that "High-tech weaponry is the decisive factor in high-tech warfare."<sup>61</sup>

The result of these trends - economic, political, strategic and technological - has been the systematic development of Chinese naval power in the South China Sea area, a power designed to protect and enforce Chinese territorial claims in the Spratly Islands. These developments will be briefly summarized here.

With hindsight, Chinese naval activities in the South China Sea from the 1970s onward appear to be part of a comprehensive long term strategy for establishing hegemony in the region. Recent Chinese military writings indicate that Chinese operations

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<sup>60</sup> Yang Wei, et al., "Roundup on High Technology Warfare Tactics," Beijing JIEFANGJUN BAO in Chinese 28 May 1993, 3. Translated and transcribed in Daily Report: China, 2 July 1993, 22.

<sup>61</sup> Ibid., 25.

against the Vietnamese forces in the Paracel Islands in 1974 were not simply a response to Vietnamese provocations but the result of premeditated plan, developed in part by Deng Xiaoping and approved by Mao Zedong himself.<sup>62</sup>

Two unarmed Chinese fishing boats were sent into an area patrolled by the Vietnamese to precipitate a hostile act so that subsequent Chinese actions could be viewed as "defense against Vietnamese aggression."<sup>63</sup> Similar tactics were also used during the 1979 Sino-Vietnamese border war (which China termed "a self-defensive counterattack,"<sup>64</sup>) and they appear to have been part of a Chinese imperative to seize the moral "high ground."

While not explicit in either Chinese accounts or in Western analyses of the Paracels operation, the Chinese clearly learned several lessons from this clash. These include: the requirement for specialized ground troops trained in amphibious warfare and small unit tactics (i.e., marines or naval infantry), the importance of all-weather air cover to support distant naval and ground force operations, and the need for larger, more powerful naval units for operations in the South China Sea.

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<sup>62</sup> See Dangdai Zhongguo Haijun (The Modern Chinese Navy) (Beijing: Zhongguo Shehui Kexue Chubanshe, 1987), 392-395. This is one of two recent official histories of the Chinese Navy. The other is Haijunshi (Naval History) (Beijing: Jiefangjun chubanshe, 1989). See also Garver, 1000.

<sup>63</sup> Garver, 1003.

<sup>64</sup> See Dangdai Zhongguo Haijun, 392. See also King C. Chen, China's War with Vietnam, 1979 (Stanford: Hoover Institute Press, 1987), 87. Chen develops a useful model of the Chinese decision-making process for military operations which remains relevant today.

That these lessons were learned by the Chinese from their Paracels operation is evidenced by the construction in 1978 of a military airfield on Woody Island in the Paracels (and its improvement and expansion to handle high-performance interceptors which continues to date), the establishment of the First Brigade of the Chinese marine corps on Hainan Island in December 1979, and the gradual transfer since 1981 of several destroyers and auxiliary ships from the North and East Sea Fleets to the South Sea Fleet.<sup>65</sup>

Chinese military operations in the Spratly Islands appear to have begun tentatively in 1980, with the first of several air reconnaissance patrols in the region by Chinese long range bomber aircraft. This incursion was reportedly followed by marine surveying operations by Chinese oceanographic and other research vessels beginning in 1983 and periodic transits or patrols through the region by naval auxiliary ships.<sup>66</sup> These operations were paralleled by a gradual buildup and development of a military infrastructure in the South Sea Fleet homeport of Zhanjiang on China's southern coast and in the Paracels, both likely geared to support expanded operations to the south.

Mainland China did not begin to establish a permanent physical presence in the Spratlys until 1987 when it was asked by

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<sup>65</sup> Garver, 1007-1008. The Chinese Navy is operationally organized into three Fleets: The North Sea Fleet homeported in Chingdao; the East Sea Fleet homeported in Shanghai; and the South Sea Fleet homeported in Zhanjiang.

<sup>66</sup> Ibid., 1008-1009.

the United Nations Educational, Scientific and Cultural Organization (UNESCO) to establish a marine weather observation station in the Spratlys. The speed with which the Chinese responded to this request in March with ships dispatched in April, suggests that they had anticipated (and possibly orchestrated) the UNESCO request.<sup>67</sup> After surveying the Spratlys with research ships accompanied by navy destroyers, the Chinese eventually drew up a plan to establish the oceanic observation station on Fiery Cross Reef (Yungshujiao), strategically located in the geographic center of the Spratlys.

Construction of a habitable station on a reef that is often submerged at high tide presented some unique technical problems for the Chinese. First, channels had to be blasted through the outer portion of the reef to allow ships to enter the lagoon inside it. Then the channels and the interior anchorages of the lagoon were deepened by dredging which also provided the coral landfill needed to enlarge the land surface of the reef. Two oval-shaped concrete buildings were then built on top of steel caissons driven into the coral reef. A larger building, housing the ocean observation station and barracks, was built on the

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<sup>67</sup> Ibid., 1009. Such a request, orchestrated or not, lends an international legitimacy to a Chinese presence in the area. It may be recalled that another international organization, the International Aviation Transport Association, had asked Nationalist China (Taiwan) to establish a weather station in the Spratlys in 1955, a fact that was later used to bolster Chinese territorial claims in the area. See Chapter Three, page 109.

landfill. Construction of these sites reportedly began in February 1988 and was completed in August 1988.<sup>68</sup>

While this base construction was taking place on Fiery Cross Reef, the Chinese were apparently exploring the possibilities of establishing outposts elsewhere in the Spratlys as well. Chinese accounts indicate that in March 1988 Chinese personnel landed on Johnson Reef, part of the Union Reefs located some 80 nautical miles east of Fiery Cross Reef.<sup>69</sup> They were reportedly attacked by an armed Vietnamese amphibious force on 14 March 1988. Chinese Navy ships then opened fire on the Vietnamese vessels, sinking one, damaging two others and taking several Vietnamese prisoners.<sup>70</sup>

This incident, the first serious armed clash between Chinese and Vietnamese forces in the Spratlys, was a clear victory for superior Chinese firepower. It demonstrated that China would not hesitate to use force to protect its interests in the Spratlys, a point not lost on other regional states.<sup>71</sup>

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<sup>68</sup> Ibid., 1010.

<sup>69</sup> United States Central Intelligence Agency. The Spratly Islands and Paracel Islands [3 Maps] (Washington: Central Intelligence Agency, 1992). This CIA map indicates that the PRC currently occupies Johnson Reef South, while Vietnam has outposts on Johnson Reef North and Collins Reef, both located within a few miles of the PRC base and part of the same atoll. If these Vietnamese garrisons were in place prior to March 1988, it is easy to understand why the Vietnamese would consider the Chinese occupation of Johnson Reef South as aggressive behavior.

<sup>70</sup> Garver, 1012.

<sup>71</sup> See Michael Richardson, "China's Build-up Rings Alarm Bells," in Asia-Pacific Defence Reporter 15 (February-March 1993): 10-11, for a summary of regional conc Malaysian

In fact, as political analyst John Garver points out, there is some evidence that China had been methodically preparing for a military clash with the Vietnamese in the Spratlys from mid-1988 onwards. He further suggests this move was preempted, first by severe fiscal constraints and later by overriding political considerations stemming from international reactions to the 1989 Tienanmen massacre.<sup>72</sup> Whatever their initial intent in 1989, however, the Chinese have, up to the present, continued to consolidate their position in the Spratlys and to enhance their military capabilities for operations in the region.<sup>73</sup>

Brief clashes with lightly armed Vietnamese forces are one thing; forcing the Vietnamese out of the Spratlys is another. The first operation depends on local short-term superiority, the second on a superior force with staying power, capable of pro-

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strategic analyst B. A. Hamzah has also repeatedly voiced his concerns over China's demonstrated willingness to use military force in support of its interests in the region. See Hamzah's "China's Strategy," in Far Eastern Economic Review, 13 August 1992, 22; *idem*, "Why ASEAN Must Talk Security," in Asian Defence Journal 15 (November 1992), 10-22, and "The South China Sea Conflict: The Need for Policy Transparency," in Asian Defence Journal 16 (Jan 1993): 122-125. Hamzah's statements echo those made by several regional naval professionals in statements to the author. (See Appendix 1.)

<sup>72</sup> Garver, 1014-1015.

<sup>73</sup> There is an interesting parallel between the Chinese military action that forced the South Vietnamese out of the Paracel Islands in 1974 and the clash between Chinese and Vietnamese military forces in the Spratly Islands in 1988. Both were preceded by methodical surveys and reconnaissance of the areas by the Chinese and both took place at times when the superpower allies of the Vietnamese governments (The U.S. in 1974, the U.S.S.R in 1988) were preoccupied by events elsewhere. In both instances, the Chinese leadership had correctly decided that the risk of outside intervention was low.

jecting air and ground power ashore and defending itself against Vietnamese counterattacks. Garver indicates that developing such a capability is in the institutional interest of the Chinese Navy and coincides with the recent availability of modern military technology.<sup>74</sup> The navy's doctrinal developments already discussed are a part of this specialized military technology, but new weapon systems are also providing the Chinese with further capabilities.

The recent acquisition and adaptation of the French Crotale Surface-to-Air missile systems for Chinese LUDA class destroyers, for example, provides these ships - the largest surface combatants in the Chinese inventory - with an integral air self-defense capability, allowing them to operate in areas, like the Spratlys, beyond the range of land-based air cover.<sup>75</sup> The purchase of modern air superiority fighters like the SU-27 Flanker interceptors from Russia will expand the range and capabilities of land-based Chinese air support. The first 24 of these aircraft are already based on Hainan Island, where they can be used in the South China Sea.<sup>76</sup> As one analyst has noted:

These combat machines have the range and the capabilities that make them well-suited for combat roles in the South China Sea. Reports that China has acquired in-flight refueling kits from Iran suggest that the PLA [Chinese] Air Force has the potential to extend the

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<sup>74</sup> Garver, 1021-1023.

<sup>75</sup> See Keith Jacobs, 281.

<sup>76</sup> See Michael Richardson, "China's Build-Up Rings Alarm Bells," Asia-Pacific Defence Reporter 15 (February-March 1993): 10.



existing combat range of any newly procured aircraft.<sup>77</sup>

Perhaps the most ominous signal of Chinese naval designs on the Spratly Islands stems from the repeated rumors and reports that China will purchase or build an aircraft carrier. The two principal purposes of an aircraft carrier are to launch air power for sea-to-shore strikes and to provide air support for fleet operations at sea. Both of these capabilities would be essential in a major naval operation in the Spratlys. As two Chinese researchers have put it:

According to some naval planners, the acquisition of an aircraft carrier is the crux and symbol of the [Chinese] navy's blue water strategy .... Without air cover provided by an aircraft carrier the ocean-going task force, centered on medium-sized ships, cannot be confident of a mission to secure sea territories 500 nm beyond the mainland. If the navy has a carrier with 40 aircraft on board, it can achieve the combat effectiveness of 200 to 800 coast-based fighters in air support functions. And the sea area under control of a convoy headed by a carrier is fifty times as large as that controlled by a convoy of destroyers. The navy only needs one such task force to control the entire sea and air space around the Nansha islands.<sup>78</sup>

Rumors of Chinese interest in purchasing a partially completed aircraft carrier from Russia or the Ukraine have surfaced repeatedly since 1989, but have been consistently denied by Chinese officials. Despite their denials, however, a widespread belief persists in Asia that China was interested in the carrier

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<sup>77</sup> A. James Gregor, "China's Shadow Over Southeast Asian Waters," Global Affairs 7 (Spring 1992): 8.

<sup>78</sup> You Ji and You Xu, 145.

but was deterred by the price - reportedly more than US\$2 billion.<sup>79</sup> More recent reports indicate that the Chinese Navy may build its own carrier. A Japanese press report, for example, quotes the Commander of the Chinese Navy Air Force as stating that "as long as the economic reform continues to strengthen the country, China's naval air force will continue to modernize and the construction of an aircraft carrier could become a certainty."<sup>80</sup>

While the specter of a Chinese aircraft carrier patrolling the South China Sea is of obvious concern to all East Asia, it should be noted that such a development is not likely to occur overnight. The technology for building and operating an aircraft carrier is readily available to the Chinese, but this would remain a complex, expensive and time-consuming project. The need to construct and commission the ship itself, to build or otherwise acquire aircraft capable of shipboard operations, and to train pilots to operate in a maritime environment would likely take several years. During this time negative political reactions or financial reverses could jeopardize this expensive program. An operational aircraft carrier may be some years away, but the other offensive preparations described here obvi-

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<sup>79</sup> Tai Ming Cheung, "Arm in Arm: Warming Sino-Russian ties alarm US," in Far Eastern Economic Review, 12 November 1992, 28.

<sup>80</sup> "Naval Commander on Making Aircraft Carrier," Tokyo KYODO in English 27 Jun 1992, transcribed in Daily Report: China, 29 June 1993, 42.

ously enhance China's capabilities for military operations in the Spratlys if and when they decide on this course.

Modern technology is thus changing mainland China's concept of sea power. Expanding requirements for oil, new capabilities for developing petroleum resources in deep offshore waters, novel concepts legitimizing national control over vast expanses of ocean areas, and newly-acquired modern military hardware give China the motive, rationale and capability to take over the entire Spratlys area. These are factors that cannot be ignored. Whether the Chinese will eventually use their growing naval power to uphold their valued rights in the Spratly Islands will most likely depend on how much oil is found in the area and how aggressively Vietnam and other relevant parties push their claims to these islands.

## CHAPTER FIVE

### ASSESSING THE POSSIBILITIES

Previous chapters have examined the background of the Spratlys dispute, the various legal claims made by the states competing for sovereignty over these islands, and the pressures, particularly on China, that both cause and require newly available technologies to satisfy emerging economic and industrial needs. Up to this point, the study has been primarily a matter of record rather than interpretation. The more important question of what course China will likely take in resolving the Spratlys dispute must now be addressed.

To broaden an understanding of Chinese interests and intentions in the Spratlys, the author has interviewed and corresponded with dozens of Asian military professionals on the subject. The results of this survey, conducted over the course of a four year period, are analyzed at length in Appendix 1, but the central points will be summarized here. The expert opinions and assessments of these regional professionals have provided valuable primary source data for the conclusions reached in this study.

#### China and the Technological Imperative

The harsh measures taken by the Chinese government against the demonstrators at Tienanmen Square in June 1989 evoked inter-

national concern about the legitimacy and intentions of the Chinese leadership. Partly as a result of international economic and political pressures, China has subsequently projected a more reasonable image to the outside world and has been successful in regaining the confidence of the international business community.

Despite Chinese reassurances of peaceful intent, however, survey responses from Asian military professionals generally indicate considerable apprehension regarding China's interests and intentions in the Spratly Islands and ultimately in Southeast Asia as a whole.<sup>1</sup> The author's assessment of China's naval development over the past two decades supports this apprehension.<sup>2</sup> The specific concerns of the experts are focused on China's intentions in the Spratlys. The "imperative" of the technological developments described in Chapter Four can substantially influence China's intentions in several ways.

First, the growth of China's economy has placed increasing demands on the government to develop new energy and mineral resources. Concurrently, offshore oil exploration and drilling technologies have progressed to the point of (theoretically) satisfying these requirements. It is now both technically feasible and, depending on the quantities of petroleum discovered, economically practical to exploit offshore oil deposits in the waters surrounding the Spratly Islands. As mentioned in

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<sup>1</sup> See a detailed discussion of the results of this survey in Appendix 1.

<sup>2</sup> Esmond D. Smith, Jr., "The Dragon Goes to Sea," U.S. Naval War College Review 44, no. 3 (Summer 1991): 44.

Chapter Three, China has already taken steps to begin this process by contracting with an American oil exploration company, Crestone Energy Corporation, to conduct test drilling near the Spratly Islands and in an area claimed by both China and Vietnam.<sup>3</sup>

Despite placatory statements about being willing to "shelve the problems of sovereignty" and being ready to cooperate with regional states "for the development of the Nansha [Spratly] Islands,"<sup>4</sup> China has pressed ahead unilaterally, conducting oceanographic surveys in the region<sup>5</sup> and constructing its own outposts in the islands, manned and supported by naval forces. As many survey respondents indicated, China's aggressive actions in the Spratlys appear to be spurred, in large part, by emerging oil requirements and the area's resource potential.

The impact of this technological imperative is also evident in recent interpretations and applications of maritime law. New concepts of international law regarding ocean boundaries and resource ownership appear to guide Chinese policies. These developments in international maritime law over the past two

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<sup>3</sup> See map, Figure 3. The strategic implications of this contract for the United States are addressed below.

<sup>4</sup> Statement by Chinese Premier Li Peng to Malaysian Defense Minister Mohamed Najib on 18 August 1994 in Beijing, reported in "Li Peng: 'Will Never Seek Sphere of Influence'," Beijing XINHUA in English transcribed in Daily Report: China, 19 August 1992, 12.

<sup>5</sup> See "Navy Ship Ends Oceanographic Survey in the Spratlys," Beijing Central People's Radio Network in Mandarin, transcribed and translated in Daily Report: China, 14 June 1993, 47.

decades parallel the growing attempts of the various claimants to establish both a physical presence in the islands and an ironclad legal claim to island territory.

These legal claims were discussed at length in Chapter Three, with the conclusion that the Spratlys dispute is primarily a question of territorial sovereignty rather than a Law of the Sea issue. If the issue of sovereignty can be resolved, however, the maritime jurisdictional principles embodied in the UN Convention on Law of the Sea can be applied in the Spratlys. This application would cede the undersea resource rights of much of the southern South China Sea to the recognized owner. Such a ruling would not have been legal as late as the 1950s. The impact of the Law of the Sea on this dispute can be put into perspective by demonstrating how the maritime "value" of Spratly Island ownership changes radically under the new principles embodied in that Law as influenced by changes in military technology.

Prior to the 1958 Geneva Continental Shelf Convention, the traditional limit of state coastal jurisdiction was three nautical miles from a state's coastline. This was the maximum sea area which a coastal state could control using the military technology of the 19th century when these concepts were established.<sup>6</sup> If this distance remained in effect today for the

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<sup>6</sup> The three mile limit established for territorial seas reportedly reflected the nominal range of cannonshot during the late 18th and early 19th century. See D. P. O'Connell, The Influence of Law on Sea Power (Manchester: Manchester University Press, 1975), 24.

Spratlys, and even assuming that each of the Spratly Islands were large enough to warrant its own territorial sea, the area of ocean coming under the a claimant's control would be limited to the immediate area within three nautical miles of the islands.

If, however, each island is considered to have a surrounding 200 nautical mile Exclusive Economic Zone around it, the resources of almost two thirds of the South China Sea would belong to the state exercising sovereignty, opening thousands of square miles to legal exploitation. For this reason, the new, technology-driven revisions in the Law of the Sea have had a profound bearing on the stakes involved in the Spratlys dispute and has strongly affected Chinese policies and plans for the islands.

A third area in which technology is creating new disquiet is in the field of military power and it is this aspect that was obviously of most concern to the regional respondents, themselves military professionals. Many of them noted that the availability of new military technology has benefitted China most, because of the relative size and strength of her economy. None of the other claimants, Vietnam, Malaysia, or the Philippines, can afford to take advantage of newly available, but expensive, weaponry.

If resource requirements are pressuring the Chinese to develop new sources of fuel, modern offshore oil technologies are making exploitation of the potential petroleum reserves in the Spratlys area possible, and recently developed concepts of ocean law are legitimizing sovereign control over large areas of maritime resources, the ability to bring military power to bear



in the Spratlys becomes an important factor in Chinese decision-making towards this area. The danger signals of the Chinese naval and air force developments relating to the Spratlys have already been addressed, but it is worth noting that even the most optimistic of my respondents acknowledges that China is the military power to reckon with in the South China Sea.

Several of the Asian experts from countries closely involved in or concerned over the Spratlys dispute (i.e., Taiwan, Indonesia, Malaysia and the Philippines) were optimistic that China would not directly threaten them in the near term. They generally conceded, however, that China had long term expectations of becoming the dominant regional power. Their remote forecasts about China were not definite, but there was a prevailing sense of the inevitability of ultimately accepting an expanded Chinese role in the South China Sea. This prevailing disquiet was aptly captured by one Malaysian respondent who explained that "it is only natural for us Asians to massage the Chinese."

China has demonstrated by attacks on Vietnamese forces in the Paracels (1974) and in the Spratlys (1988) that it will not hesitate to use military force to support its interests in the South China Sea. This was also the consensus generated through interviews with Asian military officers at the Naval War College. Many other regional strategists consider a Chinese attack against Vietnamese outposts in the Spratlys a probable outcome of the current dispute.

Yet, even as their military capabilities and naval operations in the Spratlys expand, the Chinese have consistently disavowed any intention to resort to the use of force to resolve territorial disputes. Speaking before the Foreign Correspondent's Association in Singapore on July 24, 1993, for example, Chinese Vice Premier and Foreign Minister Qian Qichen gave typical assurances:

Territorial disputes, border disputes as well as other disputes between Asian countries, should be settled peacefully through negotiations in accordance with relevant international conventions without resort to force or threat of force .... The Chinese government has all along pursued an independent foreign policy of peace. We stand for mutual respect, noninterference in each other's internal affairs and peaceful coexistence among all countries.<sup>7</sup>

These reassurances by China can be viewed as either valid statements of policy or as political rhetoric meant to allay regional concerns. A cynic would point to the obvious escape clauses in such statements. Diplomatic vagueness conceals China's real intentions in the Spratlys. While China declares that all disputes "should be settled peacefully," for example, routine Vietnamese military operations in the Spratlys could justify an armed attack by the Chinese under the "right of self-defense." Likewise, the Spratlys dispute could be rationalized by China to as an "internal affair" in which Vietnam is illegally intervening.

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<sup>7</sup> "China Ready to Take Part in Asian Security Dialogues," Beijing Review 39 (9-15 August 1993): 9. (Excerpts of Qian Qichen's 24 July 1993 speech).

Until China backs her reassurances with negotiations or other positive actions, it is difficult to take her calls for peaceful settlement of the dispute seriously. China could, for example, demilitarize her Spratly outposts or enter into serious bilateral discussions with Vietnam to resolve their territorial disputes. In the opinion of many of this studies Asian observers, however, China will watchfully keep her options open and take whatever action she deems necessary when her leaders consider the time is right. The technological imperative, as illustrated earlier, will continue to exert the strongest pressure on Chinese policies in the Spratlys.

In light of these developments, regional military analysts will watch closely what China does and says regarding the Spratlys, although each observer views Chinese actions through a personal prism of national interests in the region. Despite the wide differences in these claims and interests, our survey data indicates a common concern among all Asian and American military professionals over China's intentions in the Spratlys and throughout the South China Sea.

The technological demands driving the vast nation of China provide the impetus and strategic rationale for an aggressive Chinese policy towards the Spratlys dispute. This realization has evoked unease among regional military professionals over China's longer term intentions.<sup>8</sup> While our survey shows no

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<sup>8</sup> These concerns are clearly evident in the written and verbal responses that are discussed in Appendix 1.

agreement among these military professionals on the nature and timing of the Chinese progression in the Spratlys, near unanimity was reached on China's long-term strategic interest in the South China Sea. The question is not whether China will move into this region but when and what form this expansion will take.

These regional strategists who look to a peaceful settlement of the Spratlys dispute have been unable to suggest any realistic scenario through negotiations. China has refused to "internationalize" the dispute or to consider submitting it to any international body for adjudication. Bilateral discussions between China and Vietnam over other border and sovereignty issues have continued. They have reportedly made some progress on establishing a land border and delineating each other's rights to the resources in the Tonkin Gulf, but on the question of the South China Sea Islands, only an "exchange of views" has been reported.<sup>9</sup>

In the meantime, however, both China and Vietnam have continued to bolster their military outposts in the Spratlys. Whether this is done to reinforce their respective legal positions for negotiations or in preparation for military action is not the point: what is significant is that the Spratly Islands are now militarized, a fact that greatly increases the potential for conflict in the region.

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<sup>9</sup> See "Positive Results Seen in SRV Border Talks," Beijing China Radio International in Vietnamese 30 Aug 1993, transcribed and translated in Daily Report: China, 31 August 1993, 9.

For Vietnam and China, the Spratlys dispute can be viewed as a "zero-sum game." Both claim sovereignty to all of the Spratlys and if one claim is upheld, the other's must be denied.<sup>10</sup> In turn, compromise or partial concession by either party would undermine the legitimacy of their historical claims and thereby enhance the claims of Malaysia and the Philippines. While Vietnam might make concessions from its position of relative political, economic and military weakness, it is difficult to conceive of China accepting a compromise for a variety of cultural and political reasons. Not the least of these would be the precedent set by submitting to adjudication. This precedent could have a major impact on her other territorial disputes, such as that with Japan over the Senkaku Islands in the East China Sea.

China will continue to be the major actor in the Spratlys archipelago and, consequently, in the South China Sea. While estimates among Asian military professionals vary on the timing of China's conclusive decisions in the Spratlys, there is reasonable consensus that China will act - either through reluctant negotiations or militarily action - to establish her predominance in the area at the opportune time. Technology has provided China with both the motive (oil prospects and new maritime rights) and the opportunity (offshore bases and military capabilities) to become the major power in the Spratlys. Whether the Chinese

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<sup>10</sup> See Victor Basiuk, ed. Technology and International Affairs (New York: Praeger, 1981), 227.

presence evolves through peaceful discussions over time or results in aggressive military action, China will be guided by the pressing demands of her vast population. China must continue to develop and to expand her industries. She is driven to explore and exploit the potential offshore petroleum reserves of the area, using her military capability, if necessary, to protect and support such operations. This inevitable trend will have serious strategic implications for both the regional states and the United States.

#### Strategic Implications for the United States

Exploratory oil operations in 1994 or 1995 by the United States-based Crestone Energy corporation in a zone contested by China and Vietnam could spur a military response by Vietnam. Even if, as Crestone President Randall Thompson stated, "China has promised the full support of its navy to protect Crestone,"<sup>11</sup> the Crestone oil rig could find itself endangered by clashing naval forces.

The major question is whether or not the American Seventh Fleet would be called upon to protect this American-owned drilling rig. While the United States State Department tried to distance itself from the Crestone contract, the fact remains that an official from the American Embassy in Beijing attended the signing of the contract, lending a visible symbol of tacit

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<sup>11</sup> Thompson is quoted by Kelly Richmond, "Crestone Signs China Oil Deal," The Denver Post, Friday, June 19, 1992, C1.

American approval to this venture.<sup>12</sup> Thus, there is a clear possibility that this could translate into active American military support or assistance in the event that the Crestone operation is threatened or attacked by Vietnam.

As one Chinese scholar has indicated, the Chinese choice of a United States contractor implicitly involved the American military. By putting "a wedge between Hanoi and Washington, going around the government of the U.S. by linking up with a nongovernmental U.S. company," China intends to dissuade Vietnam from attacking the rig.<sup>13</sup> Ensuring the safety of his drill rig was likely also the aim of Crestone President Randall Thompson when he visited Hanoi in December 1993 to discuss "potential cooperation in offshore oil exploration" with the Vietnamese.<sup>14</sup>

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<sup>12</sup> According to the petroleum industry's Oil and Gas Journal, State Department spokeswoman Margaret Tutwiler has acknowledged the presence of a senior U.S. Embassy official at the signing of the contract in Beijing but indicated that this should not be interpreted as support for Chinese territorial claims in the South China Sea and stated that the embassy had no role in the matter. See "Territorial Dispute Simmers in Areas of South China Sea," Oil and Gas Journal, July 13 1992, 20.

<sup>13</sup> Georgetown University Professor Chong-Pin Lin quoted in Kelly Richmond, "Crestone Signs China Oil Deal," The Denver Post, Friday, June 19, 1992, C1.

<sup>14</sup> Randall K. Thompson, Denver, CO, to Esmond D. Smith, Jr., Portsmouth, RI, 22 November 1993, letter containing undated Crestone Energy Corporation press release describing plans for the Vietnam trip. Subsequent reports indicate that this visit, originally scheduled for November, was delayed until 13-15 December and concluded with Vietnamese demands to Thompson that Crestone cancel their contract with China because it is "entirely illegal" and a "violation of Hanoi's territorial sovereignty." China News Digest [Electronic Newsletter], 23 December 1993, available from Listserv China-NN@SUACAD.BITNET.

In addition to the Crestone involvement, the United States is directly concerned with the security of the Philippines through a Mutual Defense Treaty. While Philippine claims to the islands post-date the 1951 treaty and have not been recognized by the United States government, the treaty states in Article V that,

An armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories under its jurisdiction in the Pacific or on its armed forces, public vessels and aircraft in the Pacific.<sup>15</sup>

An attack on Philippine ships or aircraft could be construed as an attack on the Philippines itself, with the result that the Philippine government could demand American military assistance. In addition, while the Spratly islands claimed by the Philippines are not within the territory specified in this mutual defense treaty, a clash between Chinese (or Vietnamese) and Philippine forces in the Spratlys could easily spill over to Philippine bases in nearby Palawan. This island is integral to the Philippine republic and within the mutual defense treaty area.

Philippine forces are well-entrenched on the eight islands that they occupy in the area that they call Kalayaan and they appear unlikely to give them up. How would the United States respond if the Chinese were to attack Philippine forces in the Spratlys or her military bases in the Philippines proper? This

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<sup>15</sup> Department of State, "Mutual Defense Treaty Between the United States and the Republic of the Philippines," 30 August 1951, TIAS no. 2529, United States Treaties and Other International Agreements vol. 3, 3947-3952.



issue has been raised by Philippine Foreign Secretary Roberto Romulo, who has reportedly asked for a review of the United States-Philippine Defense Treaty to determine specifically "what Washington would do if hostilities broke out in the South China Sea." He also called for stronger support by the United States for efforts by the Association of Southeast Asian Nations (ASEAN) to resolve the Spratlys dispute by peaceful means.<sup>16</sup> It is ironic that after ending almost a century of American dominance and exploitation of the Philippines for its own strategic and geopolitical purposes, the United States may face a treaty obligation to support the Philippines in a conflict threatening Philippine expansionist interests.

Finally, and perhaps most importantly, a military conflict in the Spratlys could threaten the security of vital ocean shipping lanes in Southeast Asia. These sea lanes are critically important for American world trade. Japan, the United States' largest trading partner outside of North America, is almost totally dependent on oil that must be transported through the South China Sea to meet its ever-increasing energy requirements. The sea lanes that pass through the South China Sea are equally essential to all of Asia. They provide the pathway for the imports and exports that represent the economic basis for Asian industrial development. The crucial importance of these ocean shipping routes was addressed at an international forum in 1987:

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<sup>16</sup> Jose Fernandez, "Manila Seeks US Pledge on Spratlys," Asian Defence Journal 16 (January 1993): 150.

The nations of the Western Pacific are increasingly dependent upon ocean shipping - the Sea Lanes of Communications (SLOC)- for their economic and industrial survival. Any interruption of shipping, even for a brief period, could be used to coerce or progressively to injure a nation sufficiently to cause it to lose vital political and economic strength.<sup>17</sup>

A quick naval clash in the Spratlys would probably not endanger the security of adjacent sea lanes, which are largely located well to the west of the islands. On the other hand, any prolonged conflict in the region could seriously curtail the shipment of goods and commodities through the region. Could the United States afford to stand by without response to such a threat? What would happen if an American-flag ship were involved?

In the event that a Chinese and Vietnamese clash in the Spratlys was short-lived and confined to a few naval forays, a Chinese victory appears a foregone conclusion to most naval analysts. The long-term implications of such a clash would appear to be counter to United States interests and those of America's Asian allies. Such a victory would make China the dominant power by force of arms.

Contrary to the views of some analysts of Chinese military affairs, the Chinese military would see no advantage in simply defeating Vietnamese forces in the Spratlys area and then with-

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<sup>17</sup> "Committee Statement: Security of the Asian-Pacific Sea Lanes," in Committee on the Sea Lanes of Communication of Asia, by Worth H. Bagley, Chairman (New York: International Security Council, 1988), 7.

drawing back to their bases in the Paracels or Hainan Island<sup>18</sup>.

A domineering Chinese naval and military presence in the Spratlys would be the obvious outcome of a Sino-Vietnamese conflict there, similar perhaps to the Chinese occupation of the Paracel Islands after they drove the Vietnamese out of those islands in 1974.

The map at Figure 3. shows the vast extent of Chinese-claimed territorial waters in the South China Sea. It is self-evident that a Chinese political hegemony in the region, backed up by dominant military bases, is not in American or Asian interests.

It can be argued that Chinese control of the Spratly Islands does not necessarily threaten international trade or economic interests. Even permanent naval bases would only provide a potential threat to the sea lanes through the region. Such bases could operate simply as China's instrument for maintaining control in and around the islands themselves. Unfortunately, with absolute control of the Spratly Islands, China will surely attempt to exercise the maximum rights accorded her under the Law of Sea. These rights will bring thousands of square miles of ocean area under Chinese control as an Exclusive Economic Zone.

As pointed out by political analyst Yann-Huei Song, China, in Law of the Sea deliberations, has consistently tried to maximize the legal control available to the coastal states. In

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<sup>18</sup> This scenario was raised as a possibility by Commander Scott Slaybecker, USN, in an interview with the author on 12 November 1992. At that time Commander Slaybecker was the principal Asian Navies analyst for the Office of Naval Intelligence. He indicated that this is also the prevailing view among Washington naval analysts.

reference to the right of innocent passage of naval and other shipping through "territorial seas" (including Exclusive Economic Zones), China consistently proposed that a vessel's prior notification and coastal state authorization be a requirement of the Convention.<sup>19</sup> If China should claim a full archipelagic Exclusive Economic Zone around the Spratly Islands<sup>20</sup> and attempt to enforce such restrictions on foreign naval forces transiting through the area, this could provoke a dangerous confrontation with American or allied naval forces. While one cannot presume that China would take such extreme and risky steps while consolidating her control of the Spratlys, such a policy cannot be ruled out over the longer term. Chinese control of the Spratlys offer many restrictive options under the provisions of the Law of the Sea, and China can be expected to take maximum advantage of them.

Several possible Chinese scenarios on the Spratlys should concern American policy and military planners. None of these outcomes are necessarily preordained, but all have serious implications for the United States. The common thread running through these eventualities is the assumption of Chinese domination of the Spratlys archipelago and thereby the maritime core of Southeast Asia. This future appears inevitable unless some major

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<sup>19</sup> Yann-Huei Song, "China and the Military Use of the Ocean," Ocean Development and International Law 20 (1989): 216.

<sup>20</sup> Under the terms of the UN Law of the Sea, the baselines for measuring marine zones can be drawn from the outermost islands of an archipelago or group of islands like the Spratlys. See Article 47, "Archipelagic Baselines," in The Law of the Sea (New York: United Nations, 1983), 15.

modification in China's approach to the Spratlys dispute occurs. The crucial question here seems to be one of timing. China's urgent and rapid economic development has led to severe stress under her socialist system of government. The trend towards economic privatization suggest that political changes will occur and the direction of this political change could have a significant impact on China's actions in the Spratlys.

If China becomes preoccupied with internal dissent and security, the Spratlys dispute might be shelved for some years. If, on the other hand, the aging Chinese leadership maintains the political power to construct a true socialist-market economy, then the need for oil in an enhanced economic upsurge may incite China to resolve the Spratlys dispute on her own terms by military force. In addressing this unstable situation, American policy makers should in the near term pragmatically define United States' interests in the South China Sea, and then they should lay out positive measures for responding to the dispute itself. In the longer term, the American government must develop realistic options on the certainty of dealing with China as a major regional maritime power in the South China Sea.

## CHAPTER SIX

### ETHICAL ISSUES IN THE SPRATLY DISPUTE

#### Ethics in a Technological Age

As introduced earlier in this study, the concept of a "technological imperative" implies that if technology is available, it will be used - regardless of whether or not it should be used. This study on the Spratly Islands has examined how technological changes influence Chinese policies in order to shed some light on what China will do in the Spratlys. The question of whether China should use the new technologies to the detriment of her neighbors is an ethical one that can only be stated but not resolved here. A brief review of some of the relevant ethical issues involved in the Spratlys dispute will suffice to show that ethics have not, at least until now, played a central role in either Chinese or American decision-making on the Spratlys dispute.

Ethics is understood here as "any culturally grounded and historically conditioned system for discerning values and guiding human conduct, both individually and corporately, in the moral realm."<sup>1</sup> Among Western peoples, at least since the 18th century Enlightenment, teleological or consequentialist systems of

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<sup>1</sup> This description of ethics is from the unpublished lectures notes of Professor Eugene Hillman of Salve Regina University, March 1994.

utilitarian ethics have tended to predominate, although often in combination with deontological criteria borrowed from non-consequentialist or duty-based ethics, both religious and/or contractual. John Stewart Mill's utilitarian principle of "the greatest happiness" is often expressed in the form of a slogan: "the greatest good of the greatest number."<sup>2</sup> This is taken as a criterion for distinguishing morally right from wrong behavior.

Contemporary German Philosopher Hans Jonas has pointed out that these ethical traditions were based upon certain implicit ideas:

All previous ethics - whether in the form of issuing direct enjoinders to do and not do certain things, or in the form of defining principles for such enjoinders, or in the form of establishing the ground of obligation for obeying such principles - had these interconnected tacit premises in common: that the human condition, determined by the nature of man and the nature of things, was given once and for all; that the human good on that basis was readily determinable; and that the range of human action and therefore responsibility was narrowly circumscribed.<sup>3</sup>

While these traditions in ethical theory have guided human actions in the past, Jonas suggests that the premises on which they are based are no longer adequate. He considers that, because of the immense powers afforded by technology,

the nature of human action has changed, and, since ethics is concerned with action, it should follow that the changed nature of human action calls for a change

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<sup>2</sup> See John Stuart Mill, Utilitarianism, On Liberty, and Essay on Bentham, ed. Mary Warnock (New York: New American Library, 1974), 256-278.

<sup>3</sup> Hans Jonas, The Imperative of Responsibility: In Search of an Ethics for the Technological Age (Chicago: University of Chicago Press, 1984), 1.

in ethics as well... the qualitatively novel nature of certain of our actions has opened up a whole new dimension of ethical relevance for which there is no precedent in the standards and canons of traditional ethics. [Emphasis in original]<sup>4</sup>

Precisely because "modern technology has introduced actions of such novel scale, objects and consequences that the framework of former ethics can no longer contain them,"<sup>5</sup> Jonas considers that technology itself "assumes ethical significance by the central place it now occupies in human purpose."<sup>6</sup> The critical task for modern man is to formulate an ethical response to the impact of technology.<sup>7</sup>

The acute nature of this need for major changes in human ethical principles is echoed by American philosopher Ian Barbour:

The reorientation of technology toward justice, participation, and sustainability will require a major change from past attitudes and values.... Education, political action, catalytic crises, and the vision of new alternatives offer hope of averting the environmental and social disasters toward which current policies seem to be leading.<sup>8</sup>

The concerns of such modern critics about the adequacy of man's ethical underpinnings seem especially relevant when assessing the actions of nation-states in today's technological age.

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<sup>4</sup> Ibid.

<sup>5</sup> Ibid., 6.

<sup>6</sup> Ibid., 9.

<sup>7</sup> Ibid., xi.

<sup>8</sup> Ian Barbour, Ethics in an Age of Technology (San Francisco: Harper, 1993), 258.



Policy decisions by independent national actors may now have global and even transgenerational impact. It may be appropriate to ask: what ethical premises or moral grounds are informing these decisions?

### The Question of International Ethics

Ancient concepts of international law implied that ethical principles should apply to individual nations as well as individuals.<sup>9</sup> This remains the case today, although the lack of a universal authority provides a major stumbling block in enforcing such principles. While standards of ethical conduct vary widely in the conduct of international relations,<sup>10</sup> there are several areas in which the consolidation and expansion of Chinese military power in the Spratly archipelago pose potential or actual ethical problems. These ethical concerns relate to issues of resource sharing, the resolution of disputes, and protection of the environment.

All of these ethical themes were specifically addressed in the United Nations Convention on Law of the Sea, to which China, Malaysia, Vietnam and the Philippines were all signatories. Indeed, a key accomplishment of the conference was the development and codification of a series of duty-based principles of

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<sup>9</sup> See Dennis F. Thompson, Political Ethics and Public Office (Cambridge: Harvard University Press, 1987), 3.

<sup>10</sup> It has been argued, however, that respect for autonomy and sovereignty in international relations implies some basic degree of moral obligation among States. See Michael J. Smith, "Ethics and Intervention" in Ethics and International Affairs 3 (1989): 21.

conduct for nation-states in the international maritime realm. As United Nations Under-Secretary General Bernard Zuleta remarked in his introduction to the Convention, the signing of this document,

marked the culmination of over 14 years of work involving more than 150 countries representing all regions of the world, all legal and political systems, [and] all degrees of socio-economic development .... The elaboration of the Convention represents an attempt to establish true universality in the effort to achieve a "just and equitable international economic order" governing ocean space.<sup>11</sup>

This UN Convention and the three Conferences on Law of the Sea that preceded it were involved in nothing less than gaining universal consensus on principles governing the actions of states as they relate to the oceans. These agreed principles led to "the codification of customary norms" and the "progressive development of international law."<sup>12</sup> While the term "ethics" is not found in this document, a deontological ethic is nonetheless implied in its call for all states to "respect the rights of others," noting that "the enjoyment of rights and benefits involves the concomitant undertaking of duties and obligations."<sup>13</sup> The moral tone of these proceedings was also evident in the conference's central concept of the oceans as a the "common heritage of mankind":

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<sup>11</sup> Bernardo Zuleta, "Introduction" in The Law of the Sea, (New York: United Nations, 1983), ix.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid., xxiv.

In 1970 the General Assembly adopted a Declaration of Principles (General Assembly Resolution 2749 (XXV)), following upon negotiations which took place in the Sea-Bed Committee, which resolution solemnly declared that "The sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction... as well as the resources of the area, are the common heritage of mankind" and "shall not be the subject to appropriation by any means by States or persons". In addition, it was declared that this area "shall be open to use exclusively for peaceful purposes by all States ... without discrimination". Thus the common heritage was formally spelled out.<sup>14</sup>

In the area of resource sharing, the Convention's ethically commendable intent was clearly stated in the document's preamble:

[This Convention will] promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources .... [These goals will] contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked.<sup>15</sup>

Traditional duty-based moral concepts of justice and fairness, as well as utilitarian principles of the "greater good" (i.e., "the needs of mankind as a whole") were thus implicitly included in the Convention.

On the other hand, Part V of the Convention describes the sovereign rights of a coastal State to establish Exclusive

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<sup>14</sup> Ibid., xx. With its emphasis on the oceans and sea-bed as the "common heritage of mankind," it is ironic that by codifying the concept of a coastal state's "right" to a 200 nautical mile Exclusive Economic Zone, the Law of the Sea has succeeded in extending the national jurisdiction of coastal states into areas that were once considered to be the high seas, thereby denying the use of these areas to others.

<sup>15</sup> "Preamble", The Law of the Sea, 1.

Economic Zones. These can extend up to 200 nautical miles beyond the baselines of a territorial sea and include

sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters adjacent to the sea-bed and the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone.<sup>16</sup>

While the coastal State is cautioned to "have due regard to the rights and duties of other States and ... act in a manner compatible with the provisions of this Convention,"<sup>17</sup> there is no compelling legal reason for a coastal State, such as China, to share the resources within its Economic Zone with any other State. This despite the established fact that, as is clear in the case in the Spratlys, the area's resources have traditionally been exploited by fishermen and others from the Philippines and Vietnam.

Like the United Nations Charter itself,<sup>18</sup> the Law of the Sea Convention raise as self-evident some lofty ideals of justice and equity<sup>19</sup> which hardly seem to relate to the anarchic nature

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<sup>16</sup> Ibid., Article 56, 16.

<sup>17</sup> Ibid.

<sup>18</sup> See specifically, articles 1 and 2 of the Charter of the United Nations.

<sup>19</sup> The ethic implicit in both UN Charter and the precepts of The Law of the Sea appear similar to the tenets of John Rawls's "principles of justice," a duty-based, social-contract ethical theory based on the overarching concept of "equal liberty" for all. See John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971), 302.

of contemporary international society. Indeed, as political scientist Samuel Kim has noted,

From a world order perspective ... the creation of a universally based normative order seems seriously constrained by dominant statist interests and the structure of the present international system. Although UNCLOS-III was launched in response to normative pressures to manage the global commons on the basis of shared community interests, it ended with the triumph of dominant state interests.<sup>20</sup>

Despite its shortcomings, the Law of the Sea Convention does, however, provide for a generally agreed-upon standard of conduct among states in issues regarding the sea. As a signatory to the Convention, China may be held to the ethical standards contained in this agreement. The question to be asked then, is whether China's actions in the Spratlys are in accordance with the norms and principles embodied in Law of the Sea that relate to resource sharing, settlement of disputes and protection of the environment?<sup>21</sup> If not, then what does this reveal about the weight of contemporary international ethics?

### The Chinese Position

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<sup>20</sup> Samuel S. Kim, "Reviving International Law in China's Foreign Policy," in Energy, Security and Economic Development in East Asia, ed. June Teufel Dreyer (New York: Paragon House, 1989), 117.

<sup>21</sup> As indicated earlier, the Spratlys dispute itself is over a territorial issue, and the provisions of the Law of the Sea would only come into effect after the issue of sovereignty is resolved. The provisions of the Law of the Sea regarding Exclusive Economic Zones and the rights of coastal states in these zones assume a clear and unchallenged sovereignty over the coastal land area. This sovereignty is an unsettled issue in the case of the Spratlys. As already noted, however, each of the claimants has made some reference to the Law of the Sea in establishing their legal claims.

Traditional Chinese concepts of ethics and morality are somewhat different from those of the West. Indeed, the strength of traditional Chinese moral codes obviated the need for laws to balance competing societal forces. As noted sinologists Edwin Reischauer and John Fairbank indicate,

in Chinese life, the personal virtues of probity and loyalty, sincerity and benevolence, inculcated by a family system, provided the norms for social conduct ... personal morality was the foundation of society.<sup>22</sup>

This social tradition was founded upon ethical principles established by Confucius in the 4th century B.C., in which duty and responsibility were fixed by social position. The most respected social class was the "scholar-administrator, who as an educated man was presumed to be morally superior."<sup>23</sup> At the apex of Chinese society was the Emperor, towards whom all owed loyalty and obedience. This duty-based relationship worked both ways, however, and the emperor, at least in theory, was held to be responsible for the welfare of his subjects.

Chinese moral codes thus formed a web of reciprocal strands of obligation and responsibility connecting all of society. The strength and utility of this moral system is indicated by its survival to the present day, despite the often intense efforts of

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<sup>22</sup> Edwin O. Reischauer and John K. Fairbank, East Asia: The Great Tradition (Boston: Houghton Mifflin Company, 1960), 30.

<sup>23</sup> Ibid.

the Chinese communist government to debase it and replace it with Maoist ideology.<sup>24</sup>

Despite this ancient ethical tradition, now overlaid with a veneer of Maoist/Marxist ideology, economic development and technological advancement appear to have become the prevailing moral imperative in modern Chinese society. This phenomenon has recently been analyzed by two American sociologists, Li Cheng and Lynn White. They conclude that, within the past two decades, China has changed from an ethics-based meritocratic society to an amoral "technocracy" whose leaders and managerial class are increasingly technicians, committed not to communist or socialist ideals, but to the "scientific" pursuit of progress. They consider that this transformation has occurred equally on both sides of the Taiwan strait, decreasing any clear moral distinctions between socialism and capitalism in both China and Taiwan.<sup>25</sup>

While their case seems somewhat overstated, the increasing lack of moral direction in China has also been remarked upon by the Chinese themselves. One of China's leading dissident intellectuals, astrophysicist Fang Lizhi, raised this issue in an

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<sup>24</sup> These efforts were often connected to personal vendettas among the Chinese communist leadership. See, for example, Lucian Pye's discussion of the "anti-Confucius" campaign in 1975 as an attempt to discredit Chinese Premier Zhou Enlai. Lucian W. Pye, China: An Introduction 4th ed. (New York: Harper Collins, 1991), 321.

<sup>25</sup> Cheng Li and Lynn White, "Elite Transformation and Modern Change in Mainland China: Empirical Data and the Theory of Technocracy," The China Quarterly 25 (March 1990): 34.

essay written in 1980.<sup>26</sup> In it, Fang likened Maoist communism to a religion, stating that "Chinese intellectuals should pay careful attention to the ways [the] Renaissance and Reformation reduced the sway of religion over [western] intellectual life: the former by humanizing divine authority, the latter by proclaiming the moral autonomy of the individual."<sup>27</sup> Such changes in Chinese society and culture are seen by Fang as a prerequisite to modern progress. In the West, he argues,

science grew hand-in-hand with humanism and democracy. Without democracy, there is no stable guarantee of human rights; without rights, there is no protection of intellectual freedom; without freedom of mind, there is no real science.<sup>28</sup>

As his comments indicate, Fang believes that fundamental social and political changes are required in China, not only to nurture science and technology for their own sake but because of their direct bearing on the development of human freedom. "Science and technology per se are no panacea for China's problems,"

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<sup>26</sup> In June, 1989, following the repression of student demonstrations at Tienanmen Square, Fang Lizhi sought asylum with the U. S. Embassy in Beijing out of fear that he and his wife would be arrested for their opposition to the repressive policies of the current Chinese regime. He was subsequently permitted to depart the U.S. Embassy with the proviso that he maintain silence on Chinese political matters. See James H. Williams, "Fang Lizhi's Expanding Universe," The China Quarterly 25 (September 1990): 460.

<sup>27</sup> Ibid., 472.

<sup>28</sup> Ibid.



he stated in 1980, as "any society's real issues are "ultimately human."<sup>29</sup>

Fang also suggests that traditional Chinese ethical teachings may be still be useful today. In a 1991 interview, he is quoted as saying:

There are people who say that Newton is finished and we ought to throw him out. But some of his thinking is quite valuable. So is much of Confucius's. Confucius unfortunately emphasized order over democracy. But if you take away that emphasis, what remains is quite compatible with human rights and individual freedom. What we have to do is reevaluate a few of his first principles.<sup>30</sup>

From this brief discussion, it appears that even as the West struggles to develop or redefine an ethical base adequate to the demands of technology, the same quest is taking place in China. In the meantime, however, China's actions in the international arena seem to be based, not on ethical principles, but on self-interest alone.

As described earlier, China seems most interested in maximizing its expansive claims under Law of the Sea provisions. It has not yet appeared willing to address the de facto or de jure rights of the other Spratly claimants to share in the area's offshore resources. Until such time as China goes beyond diplomatic protests to attack others exploiting Spratly oil resources, however, China cannot be accused of violating the norms of the

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<sup>29</sup> Ibid.

<sup>30</sup> Fergus M. Bordewich, "Kong: Here Dwelt Confucius, Among His Clan," Conde Nast Traveler February 1991, p. 124.

Law of the Sea Convention regarding resource sharing - with one notable exception.

This exception is the oil exploration contract signed in May 1992 between the China National Offshore Oil Corporation and Crestone Energy Corporation of Denver, Colorado. The area under contract - Wan'an Bei-21 - lies in an area claimed by both China and Vietnam, but it is just outside the boundary claims of Malaysia and the Philippines. (See Map, Figure 3.) The northwest corner of the area actually lies within 200 nautical miles of the Vietnamese coast. Under the terms of the Law of the Sea Convention this area could be part of Vietnam's 200 mile Exclusive Economic Zone regardless of her other claims to the Spratlys. In this case, China does not appear to be interested either in sharing resources with Vietnam or recognizing Vietnam's legitimate economic ocean boundary claims. China's position on this issue appears to be illegal as well as unethical.

In disputes over ocean boundaries, as this one between China and Vietnam, the Law of the Sea calls for all parties to settle their disagreements by peaceful means in accordance with the appropriate Articles of the United Nations Charter.<sup>31</sup> As an

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<sup>31</sup> "Part XV: Settlement of Disputes," The Law of the Sea, 97. Of interest and related to earlier comments on the state of Sino-Vietnamese border negotiations, Article 283 of this section calls for disputing parties to "proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means."

Australian colleague has written,<sup>32</sup> the South China Sea also fits the criteria for a "semi-enclosed sea" under Article 122 of the Convention. In this event, the States bordering the area are urged to cooperate and coordinate their resource exploitation efforts, if necessary through an "appropriate regional organization."<sup>33</sup>

If China and Vietnam were to agree to such adjudication of this issue, their maritime boundaries and even their larger territorial dispute over the Spratly Islands might be formally addressed by the Association of South East Asian Nations (ASEAN). This regional organization has taken an active role in encouraging all of the Spratly claimants to resolve their disputes through compromise. Classifying the South China Sea as a "semi-enclosed sea" would imply that several States have potential rights in the region, but this concept is unlikely to be useful while the major claimants hold contrary positions.

In the meantime, China's public statements on the Spratlys dispute have consistently called for "peaceful settlement" in accordance with "relevant international conventions." However, China's actions contradict her conciliatory words. Since 1988 China has acted unilaterally both in establishing new outposts in the islands and in contracting for offshore oil exploration. At

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<sup>32</sup> Lee G. Cordner, Commander, Royal Australian Navy, "The Spratly Islands Dispute and the Law of the Sea" (Elective Course Paper: WE-551, Naval War College, Newport, 1993), 18.

<sup>33</sup> The Law of the Sea, Articles 122 and 123, 39.

the same time, China has been steadfast in refusing all proposals for international adjudication of the dispute.

Despite her acceptance of selected principles in the Law of the Sea, China appears to be unwilling to accept the fundamental view of the ocean and its resources as part of the general "heritage of mankind," and the deontological notion of duties and obligations to others. Instead, China continues to aggressively pursue her own national self-interests in the Spratlys at the expense of the bordering regional States. International Conventions and legal norms to the contrary, such national self-interest appears to be the prevailing ethical basis for decisions in contemporary international politics.

China's track record on protecting the environment within her borders is equally dismal. This may be due in part to the attitudes of the Chinese government towards environmental issues. As Hans Jonas has commented,

a Marxist authority will by its nature have fewer inhibitions [in the use of technology] than the bourgeois Western world, where so many, various remnants of tradition and religion can interfere with choices.<sup>34</sup>

Environmental specialist Vaclav Smil has detailed the extensive air and water pollution, deforestation and loss of farmland caused by China's expanding population pressures and economic developments.<sup>35</sup> Chinese military bases and resource

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<sup>34</sup> Jonas, 156.

<sup>35</sup> Vaclav Smil, "China's Environmental Morass," Current History 88 (October 1989): 277-280.

recovery operations in the Spratlys are not yet believed to be on a sufficient scale to damage the area's ecology. In the future, however, China cannot be expected to be overly sensitive to the environmental impact of her activities in a group of pristine but distant islands when she is unable or unwilling to address her "environmental morass" at home.

If oil in economically exploitable quantities is discovered in the Spratlys, pumping it from offshore platform and transporting it by sea will greatly increase the risk to the local ecology and living resources. Even if China were to take the most stringent precautions (which, based on her past environmental performance, is unlikely), oil spills will continue to occur, eventually resulting in serious and possibly irreversible ecological damage in the region.

In addition, as Ian Barbour points out, we are only beginning to understand the ecological implications of man's profligate use of fossil fuels for energy. Air and water pollution, as well as other negative effects of burning fossil fuel, such as acid rain, can have a regional impact. The Greenhouse Effect, caused by the release of carbon dioxide when fossil fuels are burned, has a global impact. This effect is believed to cause global warming, which could drastically alter global climate and weather patterns, with unpredictable results.<sup>36</sup> While the developed nations of the west, particularly the United States, have been the cause of most of this pollution to date, the future

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<sup>36</sup> Barbour, 118-121.

unfettered use of fossil fuels by China, with a quarter of the world's population, could seriously exacerbate this problem, with global implications.

### Ethical Issues for the United States

The implications of China's disregard for ethical principles in the Spratlys have been demonstrated by her military actions against Vietnam and her refusal to concede any rights in the islands but her own. There are also some compelling ethical issues for the United States in this dispute. These issues arise in large part from past American policies regarding both China and South East Asia as a whole.

Regional military respondents for this study generally agreed that the American military withdrawal from the Philippines in 1991-2 and the coincident withdrawal of Soviet military forces from Vietnam created the strategic opportunity for China to seek to dominate the region.<sup>37</sup> Most experts consulted believe that some sort of continued American military presence and commitment to the region provides the only realistic hedge against Chinese hegemony for the near future.

Eventual Chinese dominance in the region over the longer term was recognized by many as inevitable. In future decades, a modus vivendi might be achieved with China through lucrative trade compacts. In the near term, however, many of these regional professionals strongly advocate a continued American military

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<sup>37</sup> See Appendix 1. for a detailed discussion of the opinions of these area experts.

presence in Southeast Asia. They consider that the United States still has a major role to play in protecting and supporting the independence of the regional states.

Recent years have seen a general American retrenchment from global military commitments, driven in part by economic curbs, and resulting in a decreased American military presence in Southeast Asia. While no American bases remain in the Philippines, periodic naval deployments do continue throughout the region. With American naval and air forces still based in Japan and Korea, the United States has maintained the military capacity to respond to a regional crisis in Southeast Asia. The question prompted by this study is how this capability should be used and what United States policy and practice should be in the Spratlys dispute.

Some military scholars have already begun the task of defining American interests in the Spratlys dispute.<sup>38</sup> However, the ethical aspects of American policy in these matters deserve further comment. In a world of independent nation-states it has traditionally been considered ethically correct for each state to pursue policies that support their larger national interests if these aims do not infringe on the rights of other countries.

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<sup>38</sup> This has been attempted by several Naval War College colleagues. See Crian J. O'Connell, "The Spratly Islands Issue: Strategic Interests and Options" (Operations paper, Naval War College, 20 November 1992), 13-16; Susan Harding, "What is the Security Threat to the United States of Exclusive Economic Zones in the Spratlys Islands?" (Operations paper, Naval War College, 21 June 1991), 16-19; and Frederick H. Grant, "China at the Turn of the Century: A Handbook for Operational Planners" (Advanced Research paper, Naval War College, 3 March 1993), 75-80.

Indeed, in a democratic country like the United States, it is the mandate of the duly-elected government to protect the interests of the people.<sup>39</sup>

This view of international ethics does not imply that there are no moral restraints on government policies. Indeed, several recent analysts have concluded that in general practice, an ethical "code of conduct" has evolved over time in the relations of nations. This "code" includes such core and universally accepted values as sovereignty, territorial integrity and adherence to freely agreed-upon obligations.<sup>40</sup>

Within these broad ethical constraints, it is ethically compelling and generally in the interests of the United States to take public initiatives to resolve the Spratly Islands dispute by peaceful means. Current American policy on this dispute falls well short of this declaration of active concern. This policy makes no judgment on the merits of the claims and merely acknowledges that sovereignty over the Spratly Islands "is in dispute."<sup>41</sup> Since the other nations involved in the dispute with China are not strong enough militarily to deter or resist Chinese

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<sup>39</sup> Thompson, 12.

<sup>40</sup> See, as example, Cathal J. Nolan, "The United States, Moral Norms, and Governing Ideas in World Politics: A Review Essay," Ethics and International Affairs 7 (1993): 223-224.

<sup>41</sup> According to a State Department official contacted by the author, this "policy" towards the Spratly dispute has not been explicitly promulgated in any official statement or document. Bradford Thomas, Office of the Geographer, United States State Department, telephone interview by author, 8 June 1992. See also, Susumu Awanohara, "South China Sea: Washington's Priorities," Far Eastern Economic Review, 13 August 1992, 18.



military advances in the Spratlys, the United States has a moral duty as well as a strategic interest in preventing China from consolidating control over the Spratlys by force at the expense of the other claimants.

Mere statements of concern may not be enough to deter China, but concerted diplomatic, economic and political actions, coupled with the periodic presence of the United States Seventh Fleet in joint maneuvers with countries along the Southeast Asian littoral, might give China pause in the Spratlys.

In addition, as China's trade with the United States continues to grow (over 25% of China's exports now go to America) the United States is acquiring economic leverage which might be used to exert pressure on China to negotiate a settlement.<sup>42</sup> Most Favored Nation (MFN) status for China has been the subject of debate in the United States because of persistent internal human rights violations. Aggressive Chinese actions in the Spratlys would create further serious stresses on Sino-American economic relations and China should be reminded of the heavy cost of such aggression.

The key to effective United States policy in the South China Sea is the clear identification of American concerns well before China acts. China needs to understand that there will be a significant political risk involved in using her superior military power to consolidate control over the Spratly Islands. As

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<sup>42</sup> David Zweig, "Clinton and China: Creating a Policy Agenda that Works," Current History 92 (September 1993): 249.

the former guarantor of security from external attacks in South-east Asia, the United States can and should act to prevent or at least limit Chinese consolidation of control over the Spratlys by force. China has freely joined the international community of nations, implicitly accepting and even contributing to the evolving "rules of the game." The United States could insist that responsible behavior in accordance with the established norms of international relations, which would include a peaceful settlement of the Spratlys dispute through negotiation or adjudication, be a precursor to further access to American markets and technology.

Economic leverage may become the "ethically correct" form of interstate coercion if it can be made to work. Unfortunately, economic sanctions are slow to take effect and, as some analysts have pointed out, often have more effect on civilians than on their rulers. Assessing the economic sanctions imposed by the United States against Iraq after the Gulf War, Peter Steinfels commented that,

Most ... observers soon realized that sanctions did exactly what they had considered most morally reprehensible about military action: wreak injury on civilians. Sanctions, it turned out, struck more directly at civilians than did smart bombs. Sanctions even seemed to strike at precisely those civilians - infants, children, women, the elderly - who were most vulnerable and least responsible for the [Hussein] regime's political or war-making strength.<sup>43</sup>

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<sup>43</sup> Peter Steinfels, "Belief," New York Times, 8 January 1994, sec. L, 9.

In addition to these legitimate concerns over the unintended effects of economic pressures, recent events in Haiti and Iraq have shown that economic sanctions are not "surgical strikes" and do not always result in coercing the desired activity. The Chinese, in particular, have stubbornly resisted American efforts to tie expanded economic relations to China's progress with human rights, claiming that such policies infringe on China's sovereign rights to deal with her own internal affairs.

There are some signs, however, that American policymakers are beginning to understand that the increased contact required by expanded economic relations may, in it itself, have a gradual impact on the very human rights with which we are concerned. As political commentator Thomas Friedman sees it, the current American administration is now hoping that "intensified economic and political contacts with Beijing will prove more effective than the threat of trade sanctions has been in changing China's human-rights policies."<sup>44</sup> With all of these caveats in mind, the use of some forms of economic leverage, including import quotas and bilateral tariff arrangements, are a traditional political "technology" for influencing the actions of nation-states and are certainly to be preferred over more drastic and dangerous forms of interstate conflict.

As the superpower with the closest political and economic ties to the non-communist countries of this region, the United

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<sup>44</sup> Thomas L. Friedman, "U.S. Shifting Policy Toward China", The Providence Sunday Journal, 23 January 1994, A6.

States has a moral obligation to persuade China not to force its views on others in the region militarily, if, by doing so, they infringe on others' rights. That this moral imperative coincides with American strategic self-interests in preventing the South China Sea from becoming a "Chinese Lake" only makes the ethical case more compelling and the political actions that it demands more palatable.

## CHAPTER SEVEN

### CONCLUSIONS: CONFLICT OR COMPROMISE?

#### The Technological Imperative Revisited

The stage appears to be set for further military confrontations between China and Vietnam in the Spratly Islands. Technological pressures - the technological imperative - exacerbate the historic enmity between these two countries in what is essentially a conflict over strategic dominance in the South China Sea. While the political and strategic issues involved in this conflict are widely recognized and understood,<sup>1</sup> the technological dimension has not been widely studied or acknowledged.

One need not agree with the pessimistic conclusions of Jacques Ellul to recognize the relevance of his views on technology to our current era. Technology, in the broadest sense of the word, is an increasingly important component in determining the quality of life on this planet. From the beginning homo sapiens was also homo faber - man the maker.

What man makes, he must use. New techniques, instruments, concepts and capabilities have been developed for maximum employment. How and in what context these discoveries are to be used can not be dictated by the technology itself. These decisions must remain in man's power. Recognizing that technology can be

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<sup>1</sup> See Appendix 1.

used for good as well as evil, philosopher Ian Barbour set the appropriate agenda for modern man when he wrote: "The Challenge for our generation is to redirect technology toward realizing human and environmental values on planet earth."<sup>2</sup>

Lecturing at the California Institute of Technology in the 1950s, historian Elting Morison aptly expressed the importance of this key responsibility in describing man's relationship to computers, and by extension, to all of modern technology:

The computer is no better than its program: the quality of its decision is determined by what is put into it, and men will decide what will be put into it. This is a source of hope and delight in one way. It means that like the steam engine, the steel mill, the dynamo, the computer is an opportunity to be exploited, an immensely powerful extension of man's ingenuity and power in the service of his will. But it is also a source...of concern. If we put the wrong things into it, if we select the wrong problems or state the right problems incorrectly, we will get unsatisfactory solutions. Perhaps the easiest way to put it is that in using the computer, man will get the answers he deserves to get. [Emphasis added]<sup>3</sup>

Man should not be diminished or destroyed by his own inventions. Modern man does need, however, to understand the concept of a technological imperative as a reality in the modern world, a phenomenon that cannot be wished away and that has an impact on all aspects of human progress. As in this study of the effect of advanced technology on international relations, for example, we need to understand the role that technology plays in the formula-

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<sup>2</sup> Ian Barbour, Ethics in an Age of Technology (San Francisco: Harper, 1993), xix.

<sup>3</sup> Elting E. Morison, Men, Machines and Modern Times (Cambridge: MIT Press, 1966), 79.

tion of both policy and strategy. Rather than considering technology as simply an instrument for man's use or as an uncontrollable force, with designs "for the mechanization of everything it encounters,"<sup>4</sup> we should understand the technological imperative as technology providing new capabilities and thus new options for humans to choose from. This realization puts the responsibility for and the future of technology back under human control.

Victor Basiuk, former Director of Columbia University's Institute of War and Peace Studies, succinctly described the issue that has been at the core of this study:

They [decision-makers and political scientists] need to understand better the complex ways in which changes in technology widen or narrow the range of policy choice and complicate or facilitate the making of choices.<sup>5</sup>

Basiuk later expands on this concept and introduces the normative factor of human will:

Technology thus creates something of a paradox. On the one hand it immensely broadens horizons for societies to change their environments and to mold their own futures by making available the necessary technological instruments for that purpose. On the other hand, it greatly handicaps decision making and mobilization of human will to steer societies effectively into better futures.<sup>6</sup>

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<sup>4</sup> Jacques Ellul, The Technological Society, trans. John Wilkinson (New York: Vintage Books, 1964), 12.

<sup>5</sup> Victor Basiuk, Technology, World Politics & American Policy (New York: Columbia University Press, 1977), xi.

<sup>6</sup> Basiuk, 2-3.

Ultimately it is human decision-making that will determine whether newly developed oil drilling technology will be used to exploit oil reserves in the Spratlys or if newly available military technology will be used to enforce territorial claims in the region. The fact that technology has provided these options, each with qualitatively different implications, does not make the decisions to use them inevitable. Indeed, a different kind of technology, involving conflict management and negotiation techniques, has also produced a variety of internationally accepted instruments to expedite a peaceful settlement of the Spratlys dispute. The need for such ameliorative methods was foreseen by biologist Rene Dubos over two decades ago:

New formulas of social planning must be discovered to make technology subservient to worthwhile human needs, instead of allowing it to grow for its own sake or as a tool for economic or national expansion.<sup>7</sup>

New techniques for resolving multinational disputes are readily applicable to the Spratlys. Ocean Law specialists Douglas Johnston and Mark Valencia, for example, have proposed the formation of a "cooperative regime," perhaps in the form an "International Spratly Authority," as "the only realistic alternative to the dangerous status quo" in the Spratlys.<sup>8</sup> In a later study, Mark Valencia alone proposes a draft multilateral "Spratly Treaty" in which all of the claimants would shelve the

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<sup>7</sup> Rene Dubos, So Human an Animal (New York: Charles Scribner's Sons, 1968), 231.

<sup>8</sup> Douglas M. Johnston and Mark J. Valencia, Pacific Ocean Boundary Problems (Boston, Martinus Nijhoff: 1991), 125-127.



sovereignty issue in order to "jointly explore and develop the oil, gas and fisheries resources in the area."<sup>9</sup>

The problem with this reasonable but less than likely proposal is that China has steadfastly refused to subject her claim to the Spratlys to any foreign or multinational arbitration. Without Chinese cooperation, as even Johnston and Valencia admit, a "cooperative regime" for the Spratlys would be meaningless. Given appropriate incentives for her cooperation, however, China might consider such a proposal to be in her longer term interests. The difficulty here is convincing China that this is the case.

When independent states continue to compete for limited resources, each state will use the "best" technology it can afford in pursuit of its national interests. In this sense, technological developments are working in China's favor. Only China, among all the other claimants, is economically able to take advantage of the latest military technology, a fact not lost on regional analysts. This technological inequality among nations is nothing new. As Basiuk points out:

Historically the impact of technological change on societies has seldom, if ever, been the same [on all states]. Some states tended to benefit from a particular technological innovation or a particular technological trend more than others; still others were affected adversely or not at all. This differential impact of technology has been especially true in terms of power.<sup>10</sup>

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<sup>9</sup> Mark J. Valencia, "Spratly Solution Still at Sea," in The Pacific Review 6, no.2 (1993): 163.

<sup>10</sup> Ibid., 135.

This technological might is particularly relevant to the Spratly Islands where a combination of economic and strategic factors allow China to benefit from new naval and military technology denied to the other claimants.

The Spratly Islands Dispute: Conflict or Compromise?

The most important question in the Spratly Islands dispute concerns China's future initiatives. Will China choose conflict or compromise? Her decision will no doubt be influenced by the results of the exploratory oil drilling scheduled to take place in mid-1994. The determining factor, however, is likely to be China's pragmatic calculation of the risks and gains involved in a military show-down with Vietnam and other states in the Spratlys.

China's risks here are principally economic and political. They relate to the growing trade and economic ties between China and the regional states of Southeast Asia, and with Japan and the United States. A military move by China to enforce territorial claims in the Spratlys would threaten the political independence of the regional states and the strategic interests of Japan and the United States. China's economic dependence on Japan and the West as both markets and sources of technology provide a strong argument against aggression.

On the other hand, Vietnam, China's main rival here, is currently politically isolated. She could expect little outside assistance in the event of a Chinese attack. This situation, however, is changing rapidly. Driven in large part by the

Western need to sell new technology, relations with the outside world are improving. Current trade negotiations between the United States and Vietnam will eventually provide access to Vietnamese markets and resources. Once American business interests are firmly entrenched in Vietnam, the risks involved in a Chinese attack on nearby Vietnamese bases in the Spratlys will increase significantly.

A further strategic factor involves Hong Kong. The international community will be watching China carefully in 1997 when Hong Kong reverts to Chinese sovereignty. An aggressive China in 1997 would disturb the international financial and trade interests in Hong Kong, nullifying China's hopes to capitalize on Hong Kong as a gateway to international trade.

Analysts may thus view the chances of a Sino-Vietnamese conflict as a matter of timing. A "window of opportunity" could be perceived to exist for the Chinese to take action against the Vietnamese in the Spratlys in the near term, before Vietnam is able to develop and strengthen her international ties and before world attention is focused on Chinese policies in the Hong Kong takeover.

China's past aggression against Vietnamese forces includes the Paracel Islands in 1974, the Sino-Vietnamese land war of 1979, and the Spratlys in 1988. These clashes demonstrate that China is fully capable of orchestrating an incident that portrays Vietnam as the aggressor. China could then claim the international accepted moral sanction to defend their "sacred territo-

ry." A clash at sea, nominally initiated by the Vietnamese, could, for example, provide the casus belli and rationale for further Chinese military actions. By attacking a few key Vietnamese outposts in the Spratlys with naval and air power and interdicting reinforcement and resupply, China could effectively neutralize the Vietnamese forces in the Spratlys within a few days.

The scope of this military action would become known to the world only through Vietnamese or Chinese press releases as there are no independent press sources in the Spratlys. The regional states would likely register their concern and receive Chinese reassurances. It is unlikely that any significant international reaction could be mobilized before the Chinese quickly ended the conflict by neutralizing or isolating the Vietnamese garrisons. Chinese magnanimity could subsequently be demonstrated by allowing neutral ships to withdraw the beleaguered Vietnamese garrisons from "Chinese territory."

The minimum international outcry would likely be assured in this scenario if one side were designated as an "aggressor" and quickly crushed. On at least three occasions, China has used this method to justify to the world the use of military force against Vietnam. Another such operation would entail some risk to China's expanding international ties, but China might consider the temporary penalty of international censure worth the gain of the Spratly Islands resources.

Other, more optimistic but less probable scenarios include the arrangement of serious bilateral discussions between China and Vietnam, with or without the other claimants, over the sharing of resources in the Spratlys region. Such negotiations would bypass the core issue of territorial sovereignty as being unsolvable under present conditions. This negotiation device or technique would allow both states to go forward with oil and other resource development under a temporary agreement on sharing the resources produced or by accepting separate geographical areas for oil exploitation.

These short-term solutions should be linked to serious talks on a permanent settlement. The initial negotiations, however, would be fraught with delicate problems: the precise division of oil products or the exact delineation of the divided Spratlys. Yet it might be further suggested that such prolonged discussions could lead to a better climate of cooperation and a permanent compact on the Spratlys. These simple but critically important steps demonstrate one remote, but realistic, possibility for peaceful resolution of the Sino-Vietnamese territorial dispute in the Spratlys. The overriding need of both countries to develop new sources of oil to drive their respective economies could provide the impetus for such an agreement.

In the end, of course, Chinese final decisions in the Spratlys will depend on how the Chinese themselves view their opportunities, risks and requirements. As has been argued, technology offers China new capabilities for peace or war, but

the decision to make use of these new technologies is left to China's leaders. While these leaders are perhaps not motivated by western moral or ethical considerations, they recognize that China must adhere to commonly held norms of international behavior in her dealings with other nations. Whether the Chinese consideration of these norms will outweigh the technological imperative to use the technology at their disposal for aggression in the Spratlys remains to be seen.

#### Chinese Options in the Spratlys

The final pages of this study offer a summary of the basic options for war or peace in the Spratly Islands. These options are listed in order of likelihood, based on the author's opinions.

Option One: That China will subjugate the Spratlys by military force. This is the most realistic if bleak assessment about Chinese intentions in the Spratlys. Aggressive conquest is not inevitable, however, and China understands the risk of military aggression to her growing economic ties in Southeast Asia. China may also take note that, after failing to create a "Greater East Asia Co-Prosperity Sphere" by force of arms in World War II, Japan has succeeded in establishing her economic dominance in Southeast Asia through peaceful enterprise. Will the pragmatic Chinese profit by this lesson?

Option Two: That China will maintain her present policy for an indefinite period, expanding her Spratly bases and unilaterally conducting oil exploration, without resorting to large-scale fighting. This is a cautious option, especially if the other claimants acquiesce and adopt a posture of watchful waiting. Should, however, the Spratly oil deposits prove extensive and valuable, then the chances for violent conflicts over the various claims will increase rapidly.

Option Three: That China and Vietnam establish a modus vivendi in the Spratlys, entering into joint ventures or agreeing to separate zones for exploitation. This option would be a step in the right direction, employing techniques of arbitration and joint cooperation for the economic benefit of both countries. This exclusionary option does not, however, address the persistent claims of neighboring states. Furthermore, as a pact between two communist countries, this option does not necessarily guarantee open sea lanes or meet the other strategic concerns of the world's maritime powers.

Option Four: That China and all the Spratly Island claimants agree on the principle of shared rights to the islands, perhaps within the context of the establishment of an Asian common market for free trade and economic cooperation. This option may appear the least likely, but this approach does

suggest an attractive technique for luring China to the bargaining table.

As was emphasized early in this study, the Spratly problem cannot be solved solely on the basis of legal conventions. This dispute involves politics, technology, and economics. Today's technology is changing national economic goals and political aspirations. In an industrialized world, creating trading partners and raising living standards make more sense than maintaining regional antagonisms. This ideal represents the global megatrend, as illustrated by the European Common Market and the North American Free Trade Agreement.

Technological opportunities as well as both pragmatic and ethical concerns for improving the lot of the Asian peoples could spur the preferred approach outlined in Option Four for settling such problems as the Spratlys dispute. It has been evident for some time, in both China and Vietnam, that their dogmatic communist ideologies must change to meet the needs and aspirations of their people. In the rush to take advantage of the world's free markets, China understands the importance of continued economic access to other nations. If a broad agreement on economic cooperation in the Spratlys clearly indicated greater benefits to all parties, then the purely nationalistic claims or legal precedents may lessen in importance.

The United States and Japan can play key roles in bringing together the claimants to the Spratly Islands in order to resolve



this dispute by peaceful means. Both nations enjoy a privileged position in China due to their key roles in China's economic development. This gives them political power that should be used to convince China that aggressive military action to uphold their claims in the Spratlys will be counterproductive. Diplomatic initiatives by the United States and Japan should reassure China that her historic claims and territorial rights would not be threatened by agreeing to negotiate this dispute. China should be reminded that internationally-recognized sovereignty over a portion of the Spratly islands may be better than a disputed claim to them all which constantly threatens to erupt in conflict.

The regional states of the Association of Southeast Asian Nations (ASEAN) can also contribute to such a resolution. Individually and collectively, these nations have a major stake in what occurs in the Spratlys. Economic relations between these nations and China will continue to grow. China must be constantly reminded that aggressive actions in the Spratlys would put the future of these relations at risk. ASEAN can also offer its "good offices" as an Asian multinational organization to help all of the claimants resolve this dispute peacefully. By convincing China that they offer a forum that is regional, unbiased, and unaffected by the purely economic or strategic considerations of the western nations, ASEAN could become a credible venue for further discussions and negotiations regarding the Spratlys.

China, with its vast strengths and many weaknesses, is not blind to the advantage of economic ties and global markets. In seeking a peaceful resolution of the Spratly Islands dispute and other Asian controversies, it is in America's ethical and strategic interests to promote Asian economic cooperation and perhaps even an Asian common market. Such a regional arrangement would be of great potential value, both for the material benefit of China and all the peoples in the region and as an instrument for stabilizing the region.

By actively working to turn national priorities from the technologies of aggression to the technologies of resource-sharing, industry and trade, the United States and the Asian nations may find in such agreements as a Spratlys Treaty the catalyst that will change old antagonisms into new partnerships for progress.

## APPENDIX 1

### RESEARCH SUMMARY

#### A Note on Methodology

Over the course of a four year period while conducting research for this paper, the author undertook a series of interviews and correspondence with several senior Asian military professionals on the subject of Chinese interests and intentions in the Spratlys. Their expert opinions and assessments, in conjunction with the technological developments already discussed, have provided significant insights into regional concerns and perceptions of the Spratly dispute. These insights have provided a uniquely valuable source of raw data for this study.

This assessment data has been collected in two ways: through direct conversations and by correspondence. Individual interviews and group discussions were held with three groups of senior East Asian naval professionals attending the senior international course at the United States Naval War College between 1990-1993, approximately twenty individuals in all. In addition to the insights gained through these discussions, correspondence was initiated with eighteen Naval War College alumni from Asia who had advanced to positions of senior leadership within their prospective naval services, asking each of them to respond to a series of questions.

These questions focused on eliciting their personal perspectives on Chinese intentions, motivations and capabilities in the

Spratly Islands dispute. To encourage candor, these individuals were assured that their comments would be anonymous; they would not be personally quoted or otherwise identified as sources. This was considered a necessary condition to get opinions that went beyond official, government policy perspectives. While opinions will therefore not be attributed, their comments are in some cases identified by country of origin, which gives the reader a source of perspective without compromising the respondent's anonymity. Respondents are listed by name as primary sources in the bibliography.

A "Research Memorandum" sent to these individuals posed seven questions, designed to gain their views on Chinese motivations and probable actions in the Spratlys, as well as to estimate the reactions of their own governments in the event of Chinese military aggression in area. The last question summarized four possible courses of Chinese policy and my correspondents were asked to select which scenario they thought the most likely. These questions and an analysis of their responses are discussed further below.<sup>11</sup>

#### Summary of Survey Responses

In assessing the interests and motivation of China in the Spratlys, my survey disclosed general agreement on the importance

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<sup>11</sup> The questions asked were purposely slanted towards the key question of Chinese use of military force in the Spratlys. This was done to elicit responses specifically about this possibility from several viewpoints such as their reading of recent economic, political and military developments. The questions are worded to emphasize China's military but to allow for other explanations of her expansionist moves.

of oil and other offshore resources in influencing Chinese behavior and objectives in the Spratlys. Significantly, however, China was also seen to be interested in the Spratlys as a key part in a larger strategy for controlling the South China Sea and establishing a superior-subordinate relationship with the countries in the region. This was described as a component of a traditional Chinese "Central Kingdom" or irredentist mentality in which China seeks to regain its historically dominant position in Southeast Asia.

Many observers expressed concern over China's newly developed sense of "maritime rights" as they might be applied in the Spratlys area. My respondents, mostly naval professionals, were particularly concerned about the implied threat to regional sea lines of communication posed by a permanent Chinese naval presence in the Spratlys. These concerns stemmed both from China's uncooperative attitude towards the dispute and from recent Chinese naval developments in the region, such as those discussed earlier.

Most of my respondents felt that peaceful resolution of the Spratlys dispute was unlikely. This did not necessarily mean that the dispute would be resolved by force in the near term. Several of my respondents indicated that the dispute might well remain unresolved or at least deferred for some time. Even if a military clash were to occur in the Spratlys, my respondents considered it likely that only China and Vietnam would be involved. Several indicated the possibility, however, that a

Chinese attack on Vietnamese outposts in the Spratlys could spill over inadvertently to threaten the security interests of the regional states. This possibility will be addressed further in greater detail below.

In reference to probable Chinese actions in the near term, my survey results suggests general agreement that the Chinese would continue to improve their infrastructure for supporting military operations in the Spratlys. They would resist all outside pressure to negotiate a settlement of the issue of sovereignty, for the Chinese claim is non-negotiable. In other words, the status quo would continue.

A large number of my respondents felt, however, that China may become more politically aggressive as her economy continues its rapid growth. The obvious targets for China's aggression in the Spratlys are Vietnam's military outposts in the region, and some believe that a Chinese attack on these outposts is likely in the near term. Vietnam's international isolation and China's need to find new sources of oil to fuel her expanding economy were considered major factors in making this assessment.

Few of my respondents held out any hope for peaceful negotiation or a diplomatic settlement of the Spratlys dispute, especially between China and Vietnam. The best case scenario that China and Vietnam would gradually develop a modus vivendi to develop resources in the Spratlys, deferring the issue of sovereignty indefinitely. This optimistic case was considered unrealistic, however, as the physical proximity of the Chinese and

Vietnamese garrisons in the Spratlys would make periodic contact - and clashes - inevitable. Remarkably, none of my respondents considered that China was likely to opt for international adjudication. The regional naval professionals consulted all concluded that the chances of China accepting or pursuing a peaceful settlement of the Spratly dispute was highly remote.

#### Analysis of Responses

While these responses were necessarily personal and subjective, I have attempted to organize both the direct discussions as well as written correspondence, into a quantified framework to the extent possible. In some cases (especially in the written responses) my questions were only partially answered or not specifically addressed at all. This might have been due to either disinterest or discretion, particularly if the respondent was reluctant to contradict or criticize his government's official position. In such cases, when a respondent's opinions could clearly be inferred from other comments, they were included in the quantitative statistics. If a respondent's stand on the issue was unclear, he was not counted. This accounts for the varied totals in my quantitative base.

My quantitative methodology, based in part on subjective comments, is not rigorous. Nor was it intended to be. The purpose, rather, is to summarize the data so that majority trends in Asian professional perspectives might be identified. Majority opinion is not necessarily any more valid than individual estimates when it comes to predicting the actions of nations. What

the results show is how some maritime professionals in the region interpret the Chinese and the Spratly dispute. These insights represent an important consideration and influence on regional military affairs.<sup>12</sup>

**Question One:** Why do you believe that China and Vietnam are pursuing their claims so aggressively in the Spratlys at the present time?

Eighteen out of twenty-nine responses to this question (62%) focused primarily on resources issues such as the presence of oil in the area, and the growing economic needs of China.<sup>13</sup> Over half of regional respondents (16 out of 29 or 55%) also identified a strategic aim in China's actions in the Spratlys. This related to both a traditional Chinese "Central Kingdom" mentality (which included controlling Southeast Asia) and a newly developed sense of "maritime rights."

Several respondents from Australia, Japan and Indonesia believe that China regards the South China Sea as part of China.

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<sup>12</sup> Quantification of subjective data requires a certain amount of over-simplification and interpretation of the responses which automatically injects further subjectivity into the process. The quantified data in this paper is not meant to be construed as "hard", factual data. Quantification is used here to simplify and summarize over 200 pages of textual information to understand general regional perspectives on these issues.

<sup>13</sup> Although the question was asked about both China and Vietnam, less than 10% of my responses even mentioned Vietnam; all answers were specifically about China, possibly an indication of relative regional concerns.



She wants to dominate the region by controlling the strategically important Sea Lanes of Communication (SLOCs) passing through the region. Respondents from Malaysia and India also concluded that China was taking advantage of the "power vacuum" created by the withdrawal of American and Soviet military forces from the area.

The data support a general view among Asian naval professionals that China is intent on becoming a regional leader in Southeast Asia due to a confluence of historical, strategic and economic factors. These factors have been augmented by a new sense of "maritime rights" which have come about through the development and codification of an international Law of the Sea regime.

**Question Two:** Is a peaceful settlement or compromise possible among the various nations that claim sovereignty of the islands? If so, what form could such a settlement take?

On this question the negative responses were more sharply defined, with 13 out of 19 or almost 70% indicating that they could foresee no prospects for a peaceful resolution of the conflicting claims to sovereignty. The most common explanation was China's perceived intransigence and unwillingness to compromise over the issue of sovereignty. Several Japanese respondents saw no incentive for China to compromise its claims in the Spratlys because its territorial claims elsewhere (e.g., the Senkaku Islands) would also be affected. Five respondents from

Taiwan were unanimous in agreeing that China would not be likely to negotiate on the issue of sovereignty in the Spratlys.

Several respondents from the Philippines, Indonesia and Malaysia, indicated that peaceful resolution of the dispute would be possible through multi-national negotiations, although most thought that China would be unwilling to participate in such a forum, at least in the near term. One respondent from the Philippines felt that China would eventually agree to negotiate because of the growing economic and political ties between China and the Association of South East Asian Nations (ASEAN) countries. Three Australian respondents suggested that, technically, there is no reason that the Spratlys dispute could not be settled peacefully. This might involve joint development negotiated by all of the disputants (as in the Timor Gap agreement between Australia and Indonesia), through adjudication by an international body, such as the World Court or through the efforts of a regional organization. They recognized, however, that China's refusal to participate in any multilateral negotiations on the Spratlys makes such a solution currently impossible.

These responses to question two show a clear awareness on the part of Asian experts of the various precedents and techniques available for resolving territorial and maritime boundary disputes through negotiation. They also represent a widespread recognition of the central role of China in any effort to resolve the Spratly dispute peacefully. The principal differences among viewpoints relate to the possibility of China agreeing to any

resolution short of full acceptance of China's territorial claim to all of the islands. Even those who assume that China will eventually negotiate a resolution to the dispute agreed that this was unlikely to occur in the near future. The consensus on this question then is that the Spratly Islands dispute cannot be resolved through peaceful means as long as China refuses to participate in the process.

**Question Three:** What do you believe that the Chinese and Vietnamese will do next?

A majority opinion of 11 out of 19 or almost 60% was that the actions of the various claimants in the Spratlys would continue to support their respective claims at the present low key. No aggressive or preemptive action by either Vietnam or China was contemplated in the near term. In other words, the status quo would continue. An Australian colleague, interviewed early in the course of my research, noted that China would not want to take aggressive action in the Spratlys while making a bid to host the year 2000 Olympic Games. Now that this bid has been rejected by the Olympic authorities, China may feel less constrained to act in the Spratlys.<sup>16</sup> Several noted that China was concerned with international relations involving economic and

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<sup>16</sup> Beijing was one of five international sites under consideration for the Year 2000 Olympiad. On 16 September 1993, the International Olympic Committee selected Sydney, Australia to host this event.

political ties within and without the region. This was judged the main reason that offensive action by China in the Spratlys was inopportune.

This view was also accepted by 6 out of 19 or 32% of respondents who predicted that China would become more aggressive in the Spratlys in the near term. These observers warned, however, that the need for oil and the need to prevent others from exploiting oil would create pressure on China to act in the near term to consolidate control over the Spratlys. These pressures would outweigh any concerns over international image.

Only one Malaysian and one Filipino respondent opined that negotiations would lead to peaceful resolution in the Spratlys. Their rationale for this position is that China looks to resolve the sovereignty issue in the near term so that she can get on with oil and mineral exploitation. On the other hand, this same rationale might also lead to more aggressive actions by China in the Spratlys and the consolidation of Chinese control by military force rather than diplomatic agreement.

The responses to this speculative question clearly accent the issues and ambiguities involved in predicting China's future moves in the Spratlys dispute. On the one hand, there are many reasons why China would not want to act aggressively in the islands. These were identified by respondents as primarily political and economic. Any act of aggression by China in the Spratlys would invite the condemnation and possible reprisals by the international community. Such conduct would seriously strain

China's regional relations, particularly with the Asian countries with which China has been developing important economic ties.

In addition, several Asian analysts pointed out that China does not now have the military capability to conduct an extended campaign in the Spratlys. They would probably take no action until their forces were adequate to the task. There was general agreement, however, that China is actively pursuing the capabilities necessary for such operations. An astute colleague from the Philippines reasoned that both the Chinese and the Vietnamese were "sobered" by their military clash in 1979. Neither would resort to a military solution in the Spratlys unless they were assured of victory.

On the other hand, several motives were offered that would induce China to appropriate the Spratlys in the near term. In addition to the need for oil and other resources already mentioned, these included the current international isolation of China's principal adversary, Vietnam, the present power vacuum in the region created by the withdrawal of superpower military forces, the preoccupation of Japan, Russia and the United States with internal economic affairs, and internal pressures within China to protect their newfound maritime rights.

These conflicting concerns were distilled even further by an Australian observer who viewed the policy choice for China simply as a political versus an economic issue. The alternative that he posed was whether the political costs of China's taking military action in the Spratlys in the near term outweigh the

economic benefits of establishing Chinese control of the resources in the South China Sea basin. One would conclude that it is China's own assessment of risk versus gain that will determine China's strategy in the Spratlys. Estimating China's naval potential to support her intent in the South China Sea is a subjective judgement and, as several respondents admit, it is very difficult to gain an accurate reading of China's own assessment of its capabilities.

**Question Four: How would your government react to a Chinese attack on Vietnamese garrisons in the Spratlys?**

Predictably, responses to this question appeared to be related to the proximity of the respondent's country to the Spratlys and the involvement of their government in the dispute. Replies from countries outside of Southeast Asia, such as Australia and Japan, for example, suggested that in response to a Chinese military attack in the islands their governments would register diplomatic concern, call for United Nations intervention, offer to participate in UN military peacekeeping plans, and collaborate with efforts to mediate.

Most observers inside the region, representing Indonesia, Thailand, Singapore, Malaysia, the Philippines and Taiwan, viewed such aggression more seriously as a potential threat to their own security. Even these respondents, however, did not consider their countries likely use military force to respond to Chinese

aggression against Vietnam except in self-defense. Among these states, diplomacy and international or regional mediation were also the preferred courses of action. These cautious reactions indicated a strong respect for growing Chinese military and political power.

**Question Five:** What are the strategic interests of your country in this region?

Respondents from extra-regional states such as the United States, Australia, Japan, India and the Republic of Korea were concerned about the broader strategic issues of economic stability, freedom of the seas and protection of maritime rights in the region. Respondents from the adjacent states of Southeast Asia on the other hand, were more concerned about specific threats to their own economic and security interests posed by increasing Chinese and Vietnamese development in the islands. Three naval professionals from Malaysia, for example, expressed concern about the "militarization" of the Spratlys and the effect of this military buildup on the security of the three islands in the Spratlys that they currently occupy. Likewise, respondents from the Philippines expressed concerns regarding the possible impact of increased military activity in the Spratlys on Philippine national economic and resource developments in the region.

**Question Six:** How do you view recent Chinese naval developments, including discussions about acquiring an aircraft carrier?

These national concern outlined above were expressed in a different way in responses to this question about recent Chinese maritime developments. All analysts indicated serious concerns about growing Chinese naval capabilities, although they differed widely in assessing both the strength of these capabilities and the intentions behind them. Most responses (15 of 21 or 72%) agreed that China will eventually become the dominant maritime power in Southeast Asia. A Malaysian colleague believes that Chinese naval developments are in answer to expanding Japanese military capabilities and that a Chinese-Japanese rivalry for economic and political influence in Southeast Asia was behind these developments.<sup>15</sup> Several others attributed more ambitious motives to China. An Indian authority, for example, proposed that China's developing naval capabilities were a clear indication that the Chinese are intent on becoming the next world military superpower.

A considerable spread of opinion was registered on estimating the near term capabilities of China's navy to support sustained operations in the Spratlys area. The prevailing view was

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<sup>15</sup> This "natural" competition between China and Japan seems to be widely recognized in the region and probably exerts an influence on the military developments of both countries. A senior Japanese naval officer respondent, for example, pointed to reported Chinese efforts to obtain an aircraft carrier as a principal reason for the Japanese to do the same.



that Chinese naval capabilities were still limited and that China could not now sustain any serious naval operation in the distant Spratlys. A senior official from Taiwan estimated that with the new weapon systems currently being acquired from Russia, China could conduct successful operations against the Vietnamese in the Spratlys within the next 5-10 years. At least three Asian analysts, however, are convinced that China already has the capability to seize the Vietnamese-held islands in the Spratlys even if unable to establish maritime control over the entire archipelago. These naval professionals from Australia, Japan and Malaysia pointed to the development of Chinese naval power over the past 25 years as supporting Chinese plans to expand into the South China Sea.

**Question Seven: What is a likely future scenario for Chinese actions in the Spratlys?**

My final question offered four options to predict China's future course in the Spratlys. These options, similar to those discussed in Chapter Seven, ranged from deferring a settlement to using military force against the Vietnamese. They were developed in my preliminary discussions with students and faculty at the Naval War College. While not exhaustive, I consider that they represent a realistic and reasonable set of policy options for China.

Chinese Options

1. To defer the issue of sovereignty to allow for joint or multinational oil and mineral exploration;
2. To submit the dispute to an international body (e.g., the United Nations or the World Court) for adjudication;
3. To negotiate sovereignty issue with Vietnam and others to establish boundaries for national exploitation of resources;
4. To use military (naval) force to resolve the sovereignty issue with Vietnam, then use "peaceful means" to negotiate a settlement with other countries.

An implied variation of option one was simply to maintain the status quo, i.e., to take no steps to resolve the dispute while unilaterally proceeding with resource exploration and development. While this appears to be China's present policy, increased commercial and military activity in the Spratlys will inevitably bring Chinese and Vietnamese naval forces into danger of conflict. The Chinese response to such situations will depend on which of the options above (or variations of them) China has chosen.

Not surprisingly, there is strong correlation between the responses to question three (What will China do next?) and this question on China's policy options. Those who predicted that China would maintain the status quo (12 of 25 or 48%) selected option one of deferring sovereignty issues. On the other hand, those who believed that China would become more aggressive (7 of 25 or 28%) favored option four (use of military force). The remaining 24% (6 of 25) of my respondents felt that option three

(negotiations with Vietnam and others) was a likely option, while none considered that option two (adjudication by an international organization) was possible.

While these responses provide useful insights into regional perspectives on China's options, several Asian analysts were reluctant to predict which policy option China would select, pointing out the difficulties inherent in such projections - especially with a closed government such as China's.<sup>16</sup> Others also noted the volatile nature of contemporary international relations and key questions regarding Chinese domestic politics and the role of the military in Chinese decision making. Despite these limitations, however, the data provides a fair measure of the spread of opinions among Asian naval professionals regarding Chinese plans in the Spratlys.

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<sup>16</sup> These responses (and my questions) all assumed that a communist regime would remain in power in China. If a more open and tolerant "post-Marxist" form of government were to emerge in China, it might allay regional concerns about China's long-term intentions in Southeast Asia.

## APPENDIX 2

### AN UNOFFICIAL SPRATLY ISLANDS CHRONOLOGY<sup>1</sup>

- 2nd century B.C. - Early Chinese Voyages through the South China Sea during Han Dynasty.
- 3rd century A.D. - Islands described in written documents of the Three Kingdom period - circa 220 A.D.
- 11th century - Song dynasty records describe and give names to many of the islands, reefs and sand cays of the Spratly and Paracel island groups.
- 14th century A.D. - Ming Dynasty Indian Ocean voyages of Admiral Cheng Ho, the "Three-Jeweled Eunuch". Cheng reportedly explored and left artifacts on several islands in the Spratly group.
- 1883 - German naval unit sent to Spratlys to conduct survey. Operation terminated due to Chinese protests
- 1887 - Sino-French Convention on boundary between Annam (Vietnam) and China's Guangdong Province states that the islands to the east of 108-03-13E longitude belong to China. (No mention made where line should end)
- 1925-1927 - French Research ship De Lanessan sent on survey mission to Spratlys.
- 1930 - French ship La Milicieuse expedition to Spratlys; plants French flag on one island.

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<sup>1</sup> Conflicting statements, politically motivated rhetoric and, in some cases, fading memories, make it difficult to construct a straightforward, accurate and fully documented chronology of the Spratlys. This "unofficial" chronology represents a compromise between fidelity to conflicting documentation and analytical license. In the interests of clarity, it is meant to provide the reader with a general outline of events and occurrences in the Spratly Islands, not a detailed and thoroughly documented reference. The most helpful written sources for this information include the works listed in the bibliography by Chang Pao-Min, John K.T. Chao, King C. Chen, Hungdah Chiu, B. A. Hamzah, Marwyn S. Samuels and Mark Valencia.

1933 - Fourth French expedition of three ships; on completion, France places six groups of islets under its control by Decree No. 4762 of 21 July 1933, attaching them to Baria Province in Vietnam.

1933 - French briefly occupy nine islands in Spratlys including Loaita Island, claims jurisdiction on behalf of Vietnam.

1934-1935 - Republic of China's "Committee for the Examination of Land and Sea Maps" with representatives of the Foreign, Interior and Naval ministries approve names of South China Sea Islands and print "Map of the South China Sea Islands", showing Spratlys and other island groups as Chinese territory.

March 1938 - Vietnam's emperor Bao Dai issues ordinance to put Spratlys and Paracels under Vietnamese administration; move protested by France.

April 1939 - Japanese take control of Paracels and Spratlys, rename them "Shinnan Gunto" (New South Archipelago) and put them under the administration of Takaoshu (Kaohsiung district); Japanese construct submarine base on Itu Aba island.

Jan 1945 - Japanese submarine base at Itu Aba shelled by USS Hoe.

August 1945 - Japanese garrison depart Itu Aba.

October 1946 - French battleship Chevraud lands crewmen on Itu Aba and Spratly Island to drop off stone markers.

Nov/Dec 1946 - Two Chinese warships (Destroyer's Taiping and Zhongye) dispatched to the Spratlys to establish garrison.

December 1947 - First Chinese naval officer arrives on Itu Aba to assume command of base.

1947 - Philippine private citizen Tomas Cloma, founder of Philippine Maritime Academy, launches expedition to Spratlys.

1 Dec 1947 - Chinese Government promulgates names of all islands claimed in the South China Sea which includes Spratlys.

1 October 1949 - People's Republic of China (PRC) established in Beijing; defeated political and military leaders of the Kuomintang reestablish government of Republic of China (ROC) on the island of Taiwan.

May 1950 - Chinese (ROC) military garrison departs Itu Aba to assist in defense of Taiwan from expected communist attack..

15 Aug 1951 - PRC Foreign Minister Zhou Enlai declares that all islands in the South China Sea, including the Paracels and Spratlys, "have always been Chinese territory. Although they were occupied by Japan for some time during the war of aggression waged by Japanese imperialism, they were all taken over by the then Chinese government following Japan's surrender."

September 1951 - Japan signs peace treaty in San Francisco. Article 2(f) states that "Japan renounces all right, title, and claim to the Spratly Islands and to the Paracel Islands." (But does not state to whom the islands should devolve).

September 1951 - Vietnamese Prime Minister Tran Van Huu, delegate to San Francisco Peace conference, claims sovereignty of Spratly and Paracel Islands, "which have always belonged to Vietnam." No objection made by other delegates: (neither PRC nor ROC were represented at conference).

26 October 1955 - Republic of Vietnam (ROV) established, dividing Vietnam into two parts at the 17th parallel; North Vietnam or the Democratic Republic of Vietnam (DRV) in Hanoi and South Vietnam (ROV) in Saigon.

October 26, 1955 - At International Civil Aviation Organization's Regional Conference in Manila, British delegate and delegation from International Aviation Transport Association submit official request for the Government of the Republic of China to establish a meteorological post in Spratly Islands, implying international recognition of Chinese sovereignty over the islands.

May 16, 1956 - Tomas Cloma issues "A Proclamation to the Whole World" claiming that he has discovered an unoccupied group of islands (the Spratlys), names them Kalayaan (Freedomland) and seeks protectorate status from Philippine Government based on rights of discovery and occupation; Cloma's men occupy four islands; Philippine government ignores request.

May 23, 1956 - Chinese (ROC) Ambassador in Manila files formal protest to Philippine Foreign Minister, claiming that islands "found" by Cloma belong to the Nansha Island group which is part of the territory of the China; ROC Ministry of Foreign Affairs presents documents to Philippine Embassy in Taipei which "proves" Chinese sovereignty over the islands.

May 24, 1956 - South Vietnam (ROV) issues communique stating that the Nansha Islands "have always been part of Vietnam."

May 29, 1956 - China (PRC) Foreign Ministry issues statement that "Taiping [Itu Aba] and Nanwei [Storm/Spratly] Island in the

South China Sea, together with the small islands in their vicinity, are known in aggregate as the Nansha Islands. These islands have always been a part of Chinese territory. The People's Republic of China has indisputable, legitimate sovereignty over these islands."

June 2, 1956 - American Ambassador to Taipei assures ROC Foreign Minister that the United States has no intention of getting involved in the Spratly dispute between China and the Philippines; United States position was that ownership of the islands was unsettled.

June 5, 1956 - South Vietnamese (ROV) Minister Cao Bai states that the Spratly and Paracel Islands had been under the jurisdiction of the French colonial government and that Vietnam subsequently had jurisdiction by virtue of grant of sovereignty by France.

Early June 1956 - China (ROC) reestablishes garrison on Itu Aba; South Vietnam (ROV) lands naval unit in Spratlys.

June 8, 1956 - South Vietnamese Foreign Minister reiterates claim to Spratly and Paracel Islands.

June 9, 1956 - French Chargé in Manila informs Philippine Foreign Ministry that the Spratlys belongs to France by virtue of occupation effected in 1932-33; states that while France had ceded the Paracel Islands to Vietnam, it had not ceded the Spratlys.

15 June 1956 - North Vietnamese (DRV) Vice-Foreign Minister Van Khiem states to Chinese Chargé that: "According to Vietnamese data, the Xisha and Nansha (Paracel and Spratly) Islands [are] historically part of Chinese territory."

11 July, 1956 - ROC naval force briefly lands on Nanwei (Spratly) Island located approximately 180 nautical miles SW of Itu Aba Island.

27 August, 1956 - South Vietnamese (ROV) force occupies Nanwei (Spratly) Island and several others; Protests filed by both PRC and ROC.

October 1956 - South Vietnam (ROV) assigns Spratly administratively to Phuoc Tuy Province.

4 September 1958 - China (PRC) promulgates territorial sea claims in a "Declaration on Territorial Seas" which, inter alia, includes restatement of claims to Spratly and Paracel island groups.

14 September 1958 - North Vietnamese (DRV) Premier Pham Van Dong sends note to Zhou Enlai stating that "The Government of the Democratic Republic of Vietnam recognizes and supports the declaration of the Government of the People's Republic of China on its decision concerning China's territorial sea made on September 4, 1958."

October 1963 - Chinese (ROC) Ministry of National Defense inspection team visits several islands in the Spratlys.

October 1966 - Chinese (ROC) naval contingent sent to Spratlys to re-erect national boundary tablets on several islands.

1967 - Malaysia promulgates Continental Shelf Act of 1966, claiming "...the seabed and subsoil of submarine areas adjacent to the coast of Malaysia, but beyond the limits of the territorial waters of the States, the surface of which lies at a depth no greater than 200 meters below the surface of the sea..."

July 1971 - Philippine President Marcos declares the islands known as Kalayaan in the Spratlys to be "derelict and disputed," claiming that henceforth "occupation and control" would be sufficient for a country to acquire legitimate claim to the islands.

26 September 1972 - Chinese (ROC) patrol boat boards and inspects a Japanese fishing vessel detected entering its territorial waters near Itu Aba Island.

September 1973 - South Vietnam (ROV) interior ministry announces the issuance of oil exploration permits to seven foreign companies and places eleven islands of the Spratlys under the jurisdiction of Phuoc Tuy Province.

11 January 1974 - PRC Foreign Ministry call South Vietnamese announcement "... a wanton infringement on China's territorial integrity and sovereignty."

16 January 1974 - PRC Naval/air operation defeats South Vietnamese garrison and naval forces in the Paracel Islands, sinking one ROV patrol boat and capturing 48 Vietnamese soldiers.

February 1974 - South Vietnam (ROV) occupies six islands in the Spratlys in retaliation for the Chinese defeat of Vietnamese forces in the Paracels.

June 1974 - China (PRC) publishes map showing Chinese "territorial seas" extending 3000 nm south of Hainan Island and within 50 nm of the coastlines of Vietnam, Malaysia and the Philippines.



- August 1974 - During negotiations on the delineating an ocean boundary in the Gulf of Tonkin, North Vietnam position is that the Gulf had already been divided by the Sino-French convention of 1887; China rejects this position on grounds that the line was not meant to determine the sea boundary and would give Vietnam the larger share of the Gulf.
- February 1975 - "White Paper on the Hoang Sa and Truong Sa Islands" issued by South Vietnam (ROV)
- April 1975 - Hanoi sends troops to occupy the six Spratly islands seized by South Vietnam a year earlier.
- May 1975 - United Vietnam (DRV) publishes map showing Spratly Islands as Vietnamese territory, begins negotiations with foreign oil companies for exploration in adjacent areas.
- 24 November 1975 - PRC's Guangming Daily has lengthy article presenting historical claims to South China Sea islands.
- Early 1976 - PLA "August First Film Studio produces documentary entitled "Islands of the South China Sea" showing early Chinese presence in islands and archeological findings in area from Tang and Sung Dynasties.
- March 1976 - Philippine President Marcos establishes a Western Command on Palawan Island to defend Kalayaan "at all costs".
- 14 June 1976 - PRC Foreign Ministry issues warning to Vietnam: "The Nansha Islands, as well as the Xisha, Zhongsha, and Dongsha islands, have always been part of the territory of China, which has indisputable sovereignty over them and the adjacent seas: any armed invasion and occupation, or exploitation and exploitation of oil and other resources there by any foreign country constitutes encroachments on China's territorial integrity and sovereignty and are impermissible."
- June 1976 - Joint Philippine-Swedish consortium began drilling test well in Reed Bank area of Spratlys (Sampaguita No. 1) about 200 km west of Philippine territorial sea; PRC Foreign ministry issues statement that "exploitation of oil and other resources in the Spratlys constitute encroachment on China's territorial integrity and sovereignty and are impermissible."
- 31 Aug 1976 - In response to Hanoi's suggestion about sharing the South China Sea islands, PRC spokesman reiterates Chinese claims to all the islands as "fully proven" by historical evidence. Islands called "sacred territory since ancient times."

20 May 1977 - Vietnam declares 12 mile territorial seas and 200 mile Exclusive Economic Zone (EEZ), stating that "...all the islands and archipelagos belonging to Vietnamese territory and situated outside the territorial seas mentioned..." have their own territorial waters and EEZs.

June 1978 - Philippines claims 200 nm EEZ and sovereignty over Kalayaan to be administered by Palawan Province.

17 February 1979 - PRC attacks Vietnam across land border in response to Vietnamese actions against ethnic Chinese and escalating border problems and to "teach Vietnam a lesson"; PRC troops withdraw by mid-March.

18 April 1979 - Sino-Vietnamese peace/border talks begin.

30 July 1979 - Chinese delegation to 2nd round of peace talks in Beijing circulates pamphlet entitled "Some Documents and Materials Concerning the Vietnamese Government's Recognition of the Xisha and Nansha Islands as Chinese Territory."; includes copies of statements made by former Vietnamese President Pham Van Dong on 14 September 1958 and Hanoi's endorsement of Chinese declaration on 9 May, 1965 as well as Vietnamese maps showing Spratlys as Chinese territory.

August 1979 - Hanoi rebuts Chinese statements, claiming that China had distorted the "letter and spirit" of the 1958 and 1965 statements; claimed that China had misused trust by printing a number of Vietnamese maps which showed Paracels and Spratlys as Chinese territory.

28 September 1979 - Vietnam issues "White Book" entitled "Vietnam's Sovereignty over the Hoang Sa and Truong Sa Archipelagos" containing documents establishing Vietnam's historical claims.

September 1979 - Republic of China (on Taiwan) announces 200 nm EEZ.

December 1979 - Malaysia publishes map showing its 200 nm EEZ which encompasses several southern Spratly Islands.

30 January 1980 - China publishes document entitled "China's Indisputable Sovereignty over the Xisha and Nansha Islands" containing data from the 3rd century on showing that China had discovered the two archipelagos in the 3rd century B.C. and had begun to inhabit them by the 7th cent AD. Claimed that seizure by French in 1933 was an act of aggression that could not establish sovereign rights; that Vietnamese government itself had repeatedly recognized China's sovereignty prior to 1974; that China had named major islands in Spratlys and Paracels as early as the Sung Dynasty (960-1297 AD);

and that islands known as Hoang Sa and Truong Sa were actually the small island groups lying near the Vietnamese coast.

April 1980 - Malaysia claims 200 nm EEZ which encloses Swallow Reef, Amboyna Cay, Mariveles Reef and Commodore Reef in Spratlys.

May 1980 - Vietnam awards USSR major rights to exploit offshore oil deposits in southern part of Vietnam's continental shelf.

July 1980 - Vietnam concludes formal agreement with USSR to cooperate in exploration for oil along Vietnam continental shelf; PRC protests Soviet-Vietnamese agreement for joint exploration and exploitation of petroleum; "It is illegal for any country to enter these areas (the so-called "continental shelf" of Vietnam) without China's permission..."

September 1980 - Ship from Taiwan Fisheries Research Institute studies area around Tizard Bank in Spratlys as fishing ground; concludes that area was not an economical fishing ground for Taiwan.

2 December 1980 - China publishes article stating that French-Chinese treaty of 1887 demarcation line at 108 West could not be considered to have delineated Gulf of Tonkin but merely established ownership of some coastal islands in the Gulf.

18 January 1982 - Vietnam's Foreign Ministry releases second white paper entitled "The Hoang Sa and Truong Sa Archipelagoes: Vietnamese Territories"; contains more historic documents and states that Vietnam had exercised "long-standing and uninterrupted sovereignty" over the Paracels and Spratlys; Chinese occupation of Paracels and Itu Aba island (by ROC forces) were acts of aggression and could not be used to establish sovereignty; these acts and China's invasion of Vietnam in 1979 showed China's plan for "turning eventually (sic.) the Eastern Sea (ie. South China Sea) into a Chinese lake."

February 1982 - Soviet Chief of the General Staff Ogarkov leads military visit to Hanoi.

May 1982 - China opens bids for oil fields in southern part of the Gulf of Tonkin.

11 June 1982 - XINHUA commentary rebuts Vietnamese claims, stating that China's claims to the South China Sea islands had been repeatedly recognized by Vietnam itself as well as

other nations before 1974; accuses Vietnam of distorting history and fabricating lies.

12 November 1982 - Vietnam's National Assembly promulgates territorial sea claims, premised on continued legal validity of 1887 French-Chinese Gulf of Tonkin territorial demarcation (108 degree W longitude line); 12 Soviet Naval ships based at Cam Ranh Bay.

April 1983 - Philippine Prime Minister states that "any offensive action against Kalayaan will be considered an assault against the Republic..."

June 1983 - Malaysia occupies Swallow Reef (Terumbu Layang-Layang) with small military garrison in conjunction with military exercise in its claimed maritime zone; action protested by China, Vietnam.

April 1984 - Join Vietnam-Soviet amphibious exercise inside Gulf of Tonkin South of Haiphong.

May 1984 - Chinese Naval Task force circles Spratlys, returns to Chinese waters for large scale amphibious exercise around Hainan Island.

November/December 1985 - PRC Naval Task Force visits Indian Ocean; Conducts exercise at sea with American Naval units in South China Sea on return.

December 1985 - Chinese Communist Party chief Hu Yaobang visits Paracel Islands, signifying renewed interest in South China Sea islands.

June 1986 - PRC Naval exercises and patrols begin in Spratlys.

November 1986 - Malaysia occupies Mariveles Reef and Ardasier Bank (Matanani and Ubi).

April 1987 - PRC Scientific expedition to Spratlys, surveying more than ten islands in 50 days; New China News Agency reports that Chinese Navy had completed comprehensive tour of Spratlys and conducted amphibious exercise on one of the islands; Vietnam occupies Barque Canada Reef (Thu Yen Chai).

June 1987 - Vietnam issues public protest regarding PRC naval patrols in Spratlys.

July 1987 - PRC announces that Spratly Islands constitute part of "strategic border" of newly established Hainan province.

October/November 1987 - PRC conducts series of naval exercises in Spratlys, operating as far south as James Shoal.

November 1987 - Bill drafted by Philippine Congress to redefine Philippine sea boundaries to include claimed islands in the Spratlys (Kalayaan).

December 1987 - Chinese (PRC) conference on Spratlys held in Guangdong Province.

February 1988 - PRC occupies six islands in Spratlys coincident with establishment of UNESCO-sponsored weather research station; Vietnam charges that PRC warships were hampering "circulation of Vietnamese vessels" and violating Vietnamese sovereignty.

February 1988 - ROC Minister of National Defense refutes Malaysia's claims in Spratlys.

14 March 1988 - PRC/Vietnam naval engagement in Spratlys results in 3 Vietnamese ships sunk, 72 Vietnamese killed and 9 prisoners taken with limited Chinese casualties.

17 March 1988 - Manila warns Beijing and Hanoi not to interfere in Philippine-claimed islands; ROC conducts emergency supply mission to its garrison on Itu Aba Island, Defense Minister Hao tells Taiwan parliament that Taiwan would fight to the last man to defend Taiping island against any aggressor.

April 1988 - Vietnam occupies three additional islands; Vietnamese Defense Minister visits Spratlys to reaffirm determination to defend the islands.

May 1988 - PRC Foreign Ministry issues statement demanding the Hanoi immediately withdraw all "illegally occupied islands and reefs of China's Nansha Islands", declares Beijing's willingness to settle dispute through consultation if Vietnam withdrew from the Spratlys completely; PRC Navy conducts exercises in region; Philippines conducts scientific survey of sixty islands in Kalayaan.

June 1988 - Vietnam expands construction on Nanwei (Spratly) Island; PRC states that Chinese Marine corps is increasing its training "to defend the islands in the South China Sea"; senior naval officer reiterates vow to recover all the twenty-one islands held by Vietnam "at an appropriate time."

July 1988 - Three American Navy fliers crash-land in Spratlys enroute Philippines; PRC completes permanent base at Fiery Cross Reef (Yongshu Jiao) to include oceanographic observation station, helicopter pad, 300 meter pier, postal and telecommunications links to mainland.

January 1990 - Workshop on Managing Potential Conflicts in the South China Sea held in Bali, Indonesia; attended by representatives of six ASEAN states.

December 1990 - International Academic Conference sponsored by Indonesia on Territorial Claims in the South China Sea in Hong Kong with international representatives; PRC and DRV did not attend, ROC not invited.

January 1991 - Taiwan (ROC) Interior ministry hosts conference on Spratlys; Admiral Liu Ta-Tsai says it is time for China to "drive foreign troops" out of the Spratlys.

May 1991 - Lingnan College in Hong Kong invites scholars from Taiwan, PRC and Hong Kong to discuss the Spratlys issue.

July 1991 - Indonesia hosts 2nd Workshop on Managing Potential Conflicts in the South China Sea in Bandung; attended by ASEAN members as well as PRC and ROC (but not Vietnam); attendees agreed to seek "peaceful solutions" to Spratly issues.

25 February 1992 - PRC passes new law on territorial waters reiterating claims to all Spratly and Paracel Islands.

March 1992 - Commander of Malaysian Armed Forces Yacob Zain states that his country would defend the islands it claimed in the Spratlys grouping "until the last drop of blood".

8 May 1992 - PRC's China National Offshore Oil Corporation signs a petroleum contract with US oil exploration firm, Crestone Energy Corporation, to explore for oil in a 10,000 square mile block in the southwestern Spratly Islands area. This block is contiguous to a Vietnamese offshore oil block, within 200 Km of Vietnam's White Dragon oil field, and in waters claimed by both Vietnam and China; PRC assures Crestone that they will provide security for drilling operations; American Embassy official present at signing of contract in Beijing.

9 July 1992 - In response to DRV claim that PRC had landed troops on Da Lac Reef in Spratlys, PRC Foreign Ministry spokesman reiterates that Nansha archipelago, which includes Nanxun (Da Lac) reef, have been Chinese territory since ancient times

21-26 July 1992 - ASEAN Foreign Ministers meeting attended by PRC; Spratly islands discussed; PRC Foreign Minister Qian Qichen quoted as saying that the Spratlys dispute has been exaggerated by outside observers and the Beijing has no interest in filling a perceived power vacuum in the region; PRC wants to pursue peaceful solution but in future, issue

should be discussed in private; PRC spokesman said China has consistently advocated a peaceful settlement of territorial disputes over the Nansha Islands through negotiation and has been opposed to resorting to armed force.

August 1992 - PRC Defense Minister Qian Jiwei discussed Spratlys with Malaysian Defense Minister Razak in Beijing.

13-15 December 1993 - Crestone Energy Corporation President Randall Thompson meets with Vietnamese officials in Hanoi. Thompson is upbraided for his company's "illegal" oil development deal with China in an area of the South China Sea which Vietnam says is within its territory.

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