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LEGAL STATUS OF THE PARACEL AND THE SPRATLY ISLANDS

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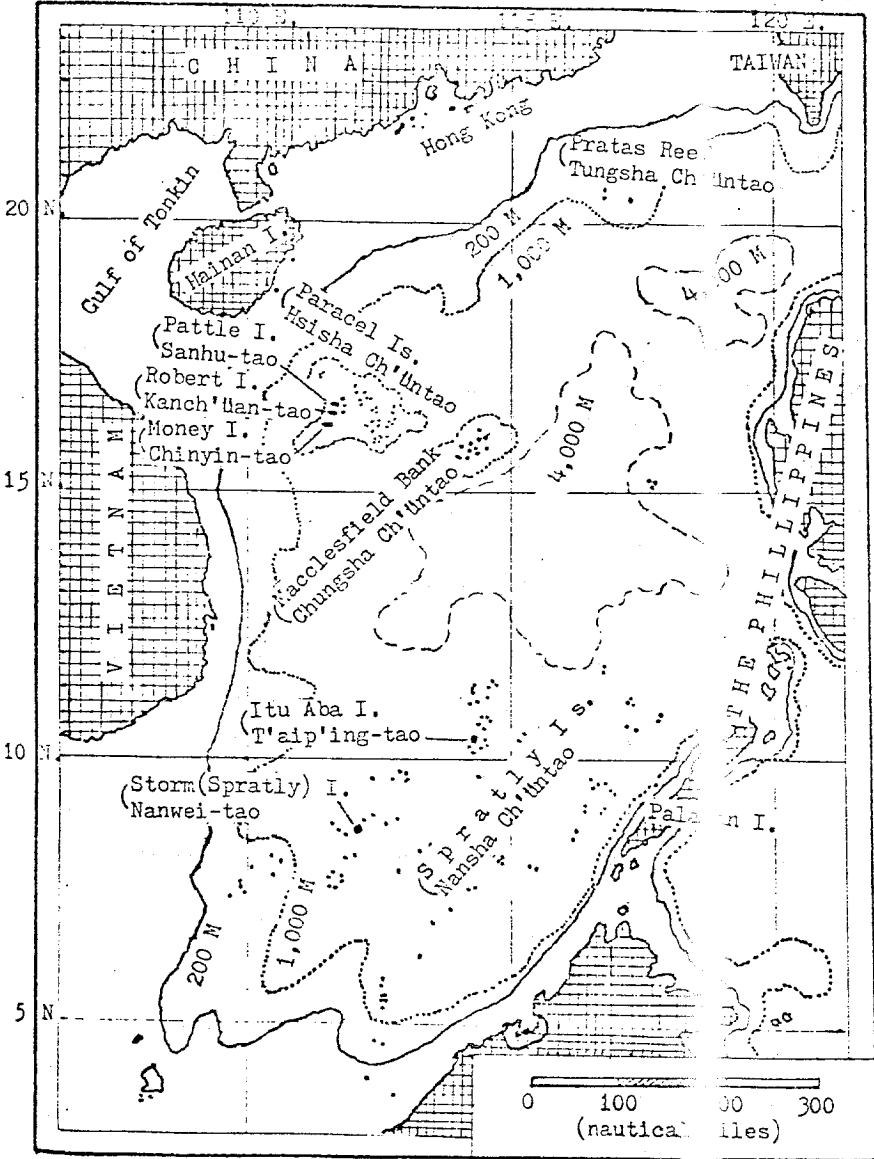
I. Introduction

On January 19th and 20th, 1974, after a week of controversy over the ownership of the Paracel and Spratly Islands in the South China Sea, an armed conflict broke out between the air and naval detachments of the People's Republic of China (PRC) and the Republic of Vietnam (RVN) in the vicinity of the Paracels. In the series of skirmishes, the Vietnamese were hopelessly outmatched by the Chinese, who are now in control of the three islets on which the fighting took place (see map). However, nothing was legally settled as a result of this first military encounter. It was merely the dramatic emergence of a new phase of an old territorial dispute, undoubtedly one of the most complicated of our time. Furthermore, the fact that the piece of territory in question has only negligible value in itself suggests that the real interest of the parties in this issue has been prompted not only by territorial but also by economic and strategic considerations, as will be seen below.

Historically, ownership of the Paracel and Spratly Islands has been assumed by different dynasties and governments of both China and Vietnam, but often without the other claimant knowing of the action and seldom with resort to force. During the recent decades, frequent assertions of ownership made by different countries finally culminated in what may be called a fitful competition among four main claimants: the Republic of China (ROC),

1:650,000

(for illustrative purpose only)



(Chiu and Park, 1974)

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the PRC, the pre-division Vietnam and the RVN. Each claimant merely repeated its previous assertions at each occasion. There were also two short-lived claimants, France and Japan. During the 1920's and 1930's, France claimed jurisdiction to the Islands in behalf of Vietnam, then *its* protectorate. Japan placed them under *its* jurisdiction from 1939 up to the time of *its* defeat in the War in 1945. The ROC and the Republic of the Philippines (ROP) are also reported to have been in control of some islets in the Spratlies prior to the recent clash of arms between the PRC and the RVN. As recently as 1956, a private claim was made with respect to part of the Spratlies by a Filipino, whose assertion of its discovery invited a chorus of protests from the above claimants. The only prospective party that has thus far withheld its claim is the Democratic Republic of Vietnam (DRVN), which, because of its relations with the PRC, is evading the issue by saying that the parties involved should settle such disputes by negotiation. It is likely that no other islands have ever been claimed by so many for so long and with so much persistence.

As general background, it is necessary to note the context of this territorial dispute in East Asia. In this region, there are already three other territorial disputes which have arisen from conflicting claims to the ownership of 'a few fly-specks' on the map. These include: the disputes between the Soviet Union and Japan over the Northern Islands, ¹ between Korea and Japan

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over the Tokdo-Takeshima Island,² and between China and Japan over the Tiao-yut'ai-Senkaku Islands.³ Each of these disputes has flared up into an acrimonious political issue between the parties at one point, and remains potentially volatile. This explains that, for historical reasons, the East Asian countries are particularly sensitive to territorial issues. International disputes within the region are further complicated by the unique fact that three of the four divided nations of the world (China, Germany, Korea and Vietnam) are situated in East Asia. In connection with the present dispute, it is also important not to overlook the fact that the Tiao-yut'ai-Senkaku dispute between the PRC or the ROC and Japan in the East China Sea is strikingly similar in many ways to this Paracel-Spratly dispute between the PRC or the ROC and the RVN in the South China Sea. These two disputes are interlocked not only by the fact that the PRC or the ROC is a common party to both, but also by the substantial economic interest both are thought to involve. For these reasons, neither dispute is likely to be settled independently or differently from the other.

Essentially a territorial issue like its companion in the East China Sea, the present dispute has been brought to the fore by two non-territorial factors, one economic and the other strategic. These are reflected in the attitude of the parties. The contribution of the economic factor can be seen from the four developments which took place in the periphery of the South China Sea prior to the PRC-RVN clash of January 1974. First, in September 1973, the Interior

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Ministry of the RVN placed eleven islets of the Spratly group under the jurisdiction of Phuoc Tuy Province. Reportedly this was done at the recommendation of the RVN National Petroleum Board, in order to preempt the continental shelf off the Spratlies as well as the mainland.⁴ It was in response to this incorporation that the PRC made a strong protest on January 11, 1974.⁵ It was followed by a series of statements from both sides and from the ROC until the armed clash in the vicinity of the Paracels one week later. In other words, the controversy began over the Spratlies, although actual conflict occurred over the Paracels. Second, in July 1973, the RVN opened 30 of ^{the} 40 offshore tracts along its south coasts for bidding. Oil and gas exploration contracts were awarded to four Western oil companies initially with respect to eight tracts.⁶ Third, from the direction of the Philippines, a consortium of local and foreign oil companies began the biggest oil exploration in the country along the offshore waters of Palawan in September 1973. The Spratlies are much nearer the Palawan than the territories of the PRC or the RVN.⁷ Also in September 1973, it was reported that the Philippines was seeking cooperation with the Soviet Union for the development of its oil resources.⁸ Fourth, it was reported in September 1973 that the DRVN had been discussing the development of oil in the Gulf of Tonkin with Japanese companies. The existence of oil in that area had reportedly been confirmed with Soviet technical aid.⁹

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Concurrent with these events, in the southwestern sector of the South China Sea, active exploration and exploitation of oil have been in progress, especially in the coastal waters off Borneo, Cambodia, Indonesia, the Malaysian Peninsula and Thailand.¹⁰ The search for sea-bed oil was thus expanding northeastward at a rapid pace, by gradually encircling the Paracel and Spratly Islands, except on the northeast where the depth does not permit drilling using the available technology. It is inconceivable that this could have escaped the attention of the PRC, or any other country for that matter, toward which this expansion was taking place. In assessing the contribution of oil to the present dispute, however, it should be pointed out that the prospect of sea-bed oil in or around the disputed areas is yet to be substantiated by exploration. What is thought to be really at stake in the dispute, then, is not necessarily the oil to be found in or around the piece of territory in question, but rather the right to the oil to be found in the adjacent continental shelf,^a right to which either party to the dispute may eventually ^{be entitled} by virtue of sovereignty over the islets and coral reefs. This view of the dispute is substantiated by a description of the geographical features of the area, as given below.

In analyzing a territorial dispute from the standpoint of history and international law, facts of geography should not be allowed, as so often happens, to obscure the historic and legal grounds of the argument. For this reason, discussion of the geography of the Paracel and Spratly Islands is confined to a

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sketchy illustration of their physical circumstances. According to a detailed survey conducted in 1946-1947 under the sponsorship of the ROC Ministry of Internal Affairs,¹¹ the South China Sea has 127 uninhabited islets, shoals, coral reefs, banks, sands, cays and rocks. They are grouped in four mid-ocean coral archipelagoes (see map): the Pratas Reef (Tungsha in Chinese), the Macclesfield Bank (Chungsha), the Paracel Islands (Hsisha), and the Spratly Islands (Nansha).¹² The ownership of the Pratas Reef and the Macclesfield Bank, both situated closer to China than either Vietnam or the Philippines and smaller than the other two groups, has not been contested; they are Chinese, although with respect to ^{the} Macclesfield Bank, it is questionable how to own what lies underwater. Not surprisingly, the contested Paracel and Spratly Islands both have their Vietnamese names as well: Hoang-Sa and Truong-Sa respectively.

In contrast to the Yellow and East China Seas, which for the most part comprise shallow continental shelf with smooth bottom, the South China Sea is a steep basin abruptly dropping off to abyssal plains at the center. There is virtually no continental shelf along the Philippines side, the 200-meter isodepth line on the southeast running very closely along Palawan and Luzon (see map). Only on the side of the Chinese mainland, Taiwan and, to a lesser extent, Vietnam is there some breadth of continental shelf. On the southwest the whole area between Vietnam and Borneo is less than 200 meters deep. From this topographical description, it is apparent that the Paracel and Spratly Islands, about 230 nautical miles apart, are

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sitting mid-ocean where the depth drops immediately to almost 1,000 meters around the Paracels and about 3,000 meters at some points around the Spratlies. Consequently, ownership of the two archipelagoes alone is not likely to affect to any significant extent either party's share of the continental shelf, especially under the 200-meter depth criteria. Furthermore, exploitation of oil or mineral resources from the waters as deep as the Paracel-Spratly areas is not technologically possible or commercially profitable at this time. At present, it ^{is} doubtful whether the areas have even been explored to determine the promise of oil.

The impact of the strategic factor should be briefly noted. On the surface, this may not appear to be as immediate or direct as the economic factor. After analysis, however, the South China Sea emerges as one of the few, if not the only, enclosed areas of sea to which none of the four major powers, China, Japan, the Soviet Union and the United States, can afford to remain indifferent. On the southwest, it communicates with the Indian Ocean through Malacca-Singapore Straits, and on the northeast with the East China Sea which, in turn, communicates with the Sea of Japan through Korea Strait. This makes the sea lane between the Paracel and Spratly Islands a major route for the navies of the two super-powers, especially for the Soviet navy on its way to and from its base in Vladivostock. For Japan, an economic super-power heavily dependent on maritime trade, the South China Sea is also a major navigation route for its oil tankers and merchant marine vessels.

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Although the difficulty of passing through the bottlenecks in Malacca-Singapore Straits causes some super-tankers to by-pass the South China Sea route except in ballast, that does not diminish the importance of this major navigation route. This analysis makes clear the importance of controlling the Paracel and Spratly Islands, especially from the standpoint of the PRC whose offshore waters, the two China Seas, will witness increasing density of traffic by foreign vessels.

The present study intends to analyze the Paracel-Spratly dispute against this background, using for focus the numerous historic facts each party has given as grounds of argument.

II. The Vietnamese Position

As in the case of the Tiaoyut'ai-Senkaku dispute between China and Japan, each party to the instant dispute has come forward with a rather lengthy list of historic writings as the basis of its argument. However, most of the early works are merely old records which describe occasional use of the disputed islets by each country's fishermen or sailors at one time or another. On the other hand, there are some recent works that bear a resemblance to acts which, in modern terms, would have been acquisition of new territory by discovery, occupation or prescription. Thus, from the viewpoint of international law, the claims which seem to warrant more serious consideration are the ones based on the events that took place since the beginning of the present century.

As the Paracel-Spratly dispute is basically a territorial issue, the claims of the parties should be evaluated with reference to international law. In doing so, some fundamental questions arise such as: Is modern international law relating to acquisition of territory applicable to what had taken place before the East Asian countries entered the community of nations? Or, more specifically, is the law of nations as developed in Europe applicable to an Asian situation? In the instant dispute, a second line of questions arises from the fact that, at various times, each party assumed that the territory in question had not been claimed by the other or any other party. Moreover, there are a number of discrepancies in the facts which are presented by each side relating to its discovery, use, and claim. The claims of the parties

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will have to be evaluated with these points taken into consideration. The position of each party is presented in this part (Vietnam)¹³ and the next part (China).

Following analysis of the numerous historic facts made public by official sources in the RVN, the Vietnamese position with regard to the Paracels and the Spratlies may be summarized as follows.

a. The Paracel Islands

According to the RVN, "from time immemorial, [the Paracels] have been frequented by Vietnamese fishermen who went there for tortoises, sea-slugs and other marine creatures. In recent times, the Paracels have attracted exploiters of phosphates...produced by the interaction of guano...and coral limestone."¹⁴ However, the earliest historic reference to the use of the islets invoked by the RVN dates from 1802. The RVN claims that, according to Dai-Nam Nhut Thong-Chi (Annals of Vietnam)¹⁵ which were published during the reign of Emperor Tu-duc (1848-1883), Emperor Gia-long (1802-1820) formed a special company called the Hoang-Sa Company consisting of seventy experienced seamen chosen from the village of Vinh-an to supervise the exploitation of the Paracels. The team would leave for the islets in the third month of each year to stay there for about six months. The ^{sea}~~sea~~ products it collected would be brought to the port of Tu-hien. In 1816, the emperor finally annexed the archipelago to Vietnam. In 1832, Emperor

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Minh-mang (1820-1841) built a pagoda on one of the rocks called the Ban-na Rock, together with a stone monument to mark the event. The Paracels were recorded for the first time in Vietnamese maps in Hoang-Viet Dia-Du (Geography of Vietnam)¹⁶ published by Emperor Minh-mang's Hue Court in 1835, together with a sketchy description of the 130 [sic] islets. In addition to these old court documents, there are western writings which attest to the Vietnamese ownership of the Paracels; such as Monseigneur Taberd's History and Description of the Religion, Customs, and Morals of All Peoples published in 1838 and J.B. Chaigneau's (1769-1825) Memoires sur la Cochinchine.¹⁷ The former specifically recorded the Paracels as the dependencies of Cochinchina (an old name given to part of Vietnam), which had been occupying them for 34 years, and the latter referred, among other things, to Emperor Gia-long's 1816 annexation.

According to the RVN, in 1895 and 1896, there were two shipwrecks around the Paracels which involved foreign vessels. The Bellona wrecked on the north reef in 1895 and the Imezi Maru on the Amphitrite group in 1896, both laden with copper insured by British companies. When Chinese nationals salvaged part of the cargoes to the Chinese Island of Hainan and exhibited an intention to re-sell it to the ship-owners, a complex case of conflicting claims arose, involving Britain, China and France (Vietnam was then a French protectorate). On the ground that the Paracels did not belong to China, the local Chinese authorities

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refused to accept any responsibility either for the shipwrecks or for the salvaged cargoes case.¹⁸

In 1909, the absence of any physical sign denoting Vietnamese ownership of the Paracels led the Chinese Governor-General (Viceroy) of Kuangtung to send two gun-boats on a reconnaissance mission on June 6. They left the islets within 24 hours, after drawing a map of the area. Subsequently, increased Chinese activities on the Paracels alerted the French authorities in Vietnam, making them realize the importance of the islets for the security of Vietnam. From 1920 on, the customs patrol vessels made frequent visits from Vietnam to the Paracels, which were then a convenient haven for smugglers of arms and opium. In 1925, a scientific exploration was undertaken with the French ship De Lanessan, which hoped to discover rich beds of phosphates on the islets. Publicity concerning this expedition aroused economic interest in the Paracels, and some Japanese firms applied to the French authorities in Vietnam for permission to work the phosphate deposits there. Finding the business not particularly profitable, however, the Japanese later abandoned the enterprise.¹⁹

On June 15, 1932, the French Governor-General of Vietnam made the Paracels an administrative unit of Thus Thien Province by Decree No. 156/SC, which was subsequently confirmed in Emperor Bao-dai's Ordinance No. 10 of March 30, 1938. On May 5, 1939, the administrative limits of the Paracels were reconfirmed in the Governor-General's "Delegation Administrative du Croissant et Dependances."²⁰

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On the eve of World War II, Japan announced its decision on March 30, 1939, to place the Paracels and the Spratlies under her jurisdiction. On April 21, 1939, France protested against Japan on this decision. However, the islands remained under Japanese control until the end of the war in August 1945.²¹ Then on September 7, 1951, at the 51-nation conference held in San Francisco to sign a peace treaty with Japan, the Vietnamese delegate made the following statement reaffirming Vietnam's ownership of the archipelagoes, and was met with no objection at all:²²

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

When, on May 15, 1956, a Filipino named Tomas Cloma, Director of 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 Spratlies] of 64,976 square nautical miles," naming them "Freedomland," the PRC, the ROC and the RVN set off a chain of protests against the ROP. The RVN issued a communique on June 1, 1956, reaffirming *its* ownership of the Paracels and the Spratlies and making a specific reference to the San Francisco statement of 1951.²³ Between 1956 and 1964, a naval convoy of the RVN made regular visits to both archipelagoes to supply logistic needs for the detachments stayed on some of the islands.²⁴

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During the 1960's two domestic measures were taken by the RVN government; the Paracels were reassigned to Quang Nam from Thua Thien Province by Presidential Decree No. 174-NK of July 13, 1961; and a similar decree (Decree 709-BNV/HC) was issued on October 21, 1969.²⁵

b. The Spratly Islands

In 1927, the De Lanessan, which was on an expedition of the Paracels in 1925, was sent to the Spratlies on a similar mission. This was followed by another expedition by the La Milicieuse in 1930; on this occasion, a French flag was planted on one of the islets.²⁶ The French government finally decided to take possession of the archipelago, and sent an expeditionary team of three ships, the Alerte, the Astrolabe and the De Lanessan in 1933. During this expedition, Chinese fishermen and some mining machines left by the Japanese guano-phosphate collectors were found on some of the islets. Upon completion of this expedition, the French government placed six groups of the islets under its control by Decree No. 4762 of July 21, 1933 attaching them to Baria Province. Only the Japanese government protested, stating that there had been "a solemn occupation carried out from 1917 onwards by Japanese subjects with the support of the Imperial government."²⁷

In 1938, a weather station was built on one of the major islets by the Indochina Meteorological Service. From March 1939, when Japan decided to place the Paracels and the Spratlies under its control on the eve of World War II, the subsequent development was the same as stated above with respect to the Paracel Islands.

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On October 22, 1956, the RVN government assigned the Spratlies to Phuoc Tuy Province by Decree No. 143/NV. This was followed by two more decrees, Nos. 76/BNV/HC 9 ND of March 20, 1958, and 34/NV of January 27, 1959, whereby the 1956 decree was either reconfirmed or adjusted. The above-noted incorporation in September 1973, of eleven islets in the Spratlies must, therefore, have been a final readjustment of the three earlier decrees issued by the RVN.²⁸

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III. The Chinese Position

The Republic of China (ROC) and the People's Republic of China (PRC) have both consistently maintained that the Paracel Islands (Sisha [Hsisha] Islands in Chinese) and the Spratly Islands (Nansha Islands) are Chinese territory. The Chinese claim to these islands is based on historical records, long time use by Chinese people, treaties, and principles of international law. The following summary of the Chinese position is derived from an analysis of Chinese official documents and scholarly writings.

The earliest reliable Chinese historical writing with reference to the Paracel Islands is the famous thirteenth century book entitled Chu-fan-chi (A description of barbarous peoples), written by Chau Ju-kua while he was the Inspector of Foreign Trade in Fukien Lu (Province) in Southern Sung Dynasty (A.D. 1127-1279).²⁹ The Paracel Islands were described in the section dealing with the Hainan Island³⁰ of the Southern Sung Dynasty as follows: "To the east [of Hainan] are the 'Chien-li chang-sha' [Thousand li banks] and the 'Wan-li shih-ch'uang' [Myriad on ten thousand li rocks], and (beyond them) is the boundless ocean...."³¹ This work was translated into English by two western sinologists who identified these two places as the Paracel Islands.³²

In 1292, during the Yuan Dynasty (A.D. 1280-1368), an expedition force was sent to Java. Records of the voyage report that it sailed through "Ch'i-chou yang" (ocean of the seven islands) and the "Wan-li shih-t'ang" (Macclesfield banks).³³ The Ch'i-chou (seven islands) were the seven east islands of the present Paracel Islands and "Wan-li shih-t'ang" apparently referred to the present Spratly Islands.

When the famous Chinese navigator Cheng Ho of Ming Dynasty (A.D. 1368-1644) sailed seven times through the South China Sea and the Indian Ocean between 1403-1433, his fleet passed through the Paracel and the Spratly Islands several times and also landed on some of these islands.³⁴ A subsequent Ming dynasty publication on the products and geography of the sea entitled "Hai-yü" (On the sea) rather clearly described the geographical location of these two island groups. The text is explicitly stating that the "Wan-li chang-sha" [Myriad on ten thousand li sand banks] is located southeast of "Wan-li shih-t'ang" [Myriad or ten thousand li rocks].³⁵ This description accords with the now well known fact that the Spratly Islands are located southeast of the Paracel Islands.³⁶

In the Ch'ing Dynasty (1644-1911), a Chinese scholar Ch'en Lun-chiung again ⁵described the islands' geographical position in a book entitled "Hai-kuo wen-chien lu". (Notes on lands across the sea), published in 1730, and charted the two island groups on his map Szu-hai tsung-tu (General map of four seas). The Paracels were referred to as "Chi-yan chou" and the Spratlys, "shih-t'ang" (stone banks). It should be noted that, in other Chinese historical records, the Paracels are also referred to as "ch'i-li shan" (mountain of seven li), "ch'i-chou yang shan" (mountain in seven islands ocean), among other names "Chiu-chou yang" (ocean of nine islands), apparently referred to nine western islands of the Paracels.³⁷ But, in the late Ch'ing Dynasty, the name Sisha (Hsisha) Islands gradually become the commonly used Chinese name for the Paracel Islands. References in Chinese historical

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records to the Spratly Islands are less numerous and sometimes confuse the Spratlies with the Paracels. In addition to referring to the island group as "wan-li chang-sha" or "shih-t'ang," it is also referred to in Chinese historical records as "Ti-ja tan" (Sluice gate bank) or "Tuan-sha chün-chiao" (A group of sandrocks).³⁸ Despite the confusion of names, there is no doubt that the Chinese people from Hainan Island have since the ancient time continued to use the Spratly Islands. This has been reported by several authoritative western sources. For example, the British official publication The China Sea Pilot, Vol. III, Western Side of the China Sea, Singapore Strait to Hong Kong, records:

"Hainan fishermen, who subsist by collecting trepang and tortoise-shell, were found upon most of these islands; some of them remain for years amongst the reefs. Junks from Hainan annually visit the islands and reefs with supplies of rice and other necessaries, for which the fishermen give trepang and other articles in exchange...."³⁹

After the establishment of the Republican government in 1912, the Spratly Islands were referred to as "Tuan-sha chün-tao" (Tuan-sha archipelago),⁴⁰ but in 1947, the ROC government renamed the island groups "Nansha Island" and this has been the generally used Chinese name since that time.

Until the 1930's, the Chinese claim to the Paracel and the Spratly Islands appeared to be unchallenged. It was, in fact, confirmed by several international and Chinese domestic acts. In 1883, the German government tried to survey the Spratly Islands,

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but stopped when China protested.⁴¹ After Vietnam (Annam) became a protectorate of France in 1884, a Convention respecting the Delimitation of the Frontier between China and Tonkin (Vietnam) was signed on June 26, 1887. Article 3 of the Convention provided: "Au Kouang-Tong...Les îles qui sont à l'est du méridien de Paris 105° 43, de longitude est, c'est-à-dire de la ligne nord-sud passant par la pointe orientale de l'île de Tch'a Kou ou Ouan-chan (Tra-co) et formant la frontière sont également attribuées à la Chine. Les îles Gotho et les autres îles qui sont à l'ouest du ce méridien appartiennent à l'Annam."⁴² The Chinese government spokesmen and independent writers have on a number of occasions pointed out that both the Paracels and the Spratlys lie east of the delimitation line provided in 1887 Convention and are therefore Chinese territory.⁴³

In 1907, a Japanese merchant tried to explore the resources of the Pratas Islands (Tungsha Islands) but was expelled by the Chinese government.⁴⁴ This incident prompted the Chinese government to take precautionary measures with respect to the Paracel Islands. On instruction from the Governor-General of the Kuangtung Province Chang Jen-chun, General Li Chun led a naval contingent of three warships to inspect the Paracel Islands. They found only Chinese on a few of the islands. In 1909, the naval contingent visited the Paracels ^a and established a Chinese territorial marker on the Drummond Island (Fu-po Island in Chinese). After the completion of its mission, the inspection team reported to the Governor-General's

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proposing that, Office, and in view of the confusion of the different names given to the islands by Chinese and foreigners, all fifteen islands of the Paracels be renamed. The proposal was subsequently approved by the Governor-General.⁴⁵ Between 1921 and 1932, the Kuangtung Provincial government approved at least five times the application of Chinese nationals to explore the guano and other resources of the Paracel Islands.⁴⁶ In 1928, the Kuangtung Provincial Government sent the naval vessel Hai-jui, with an investigation team organized by the provincial government and the Chung Shan (Sun Yat-sen) University on board, to investigate and to survey the islands.⁴⁷

It was not until December 4, 1931, that France on behalf of its protectorate, Vietnam, suddenly asserted its claim to the Paracel Islands. On that date, the French Quai d'Orsay sent a note to the ROC Legation in Paris, claiming Vietnamese sovereignty over the Paracel Islands. The note based the claim on historical incidents, among them that in 1816 the Vietnam King Chia-lung formally governed these islands and in 1835 King Min-mang sent some persons to build a pagoda and stone tablet on an island.⁴⁸ On July 27, 1932, the ROC Foreign Ministry instructed its legation at Paris to protest to the French Quai d'Orsay, rejecting the French claim over the Paracel Islands. The note referred to the above stated 1887 Sino-French Convention and the Kuangtung Provincial Government's approval of the applications submitted by Chinese nationals to explore the resources of the islands. It also referred to the historical use of these islands by the Chinese

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people and France's implied recognition of Chinese sovereignty over the islands at the 1930 Hong Kong Far Eastern Meteorological Conference in which the French delegate, joined by delegates from other countries, requested the ROC to build a weather station on one of the Paracel Islands. With respect to the evidences of Vietnamese control over the islands, which were cited in the French note, the Chinese note requested the French government to identify the particular island on which stone tablet and the pagoda were alleged to have been built. Moreover, the note pointed out that when the alleged Vietnamese acts were taken, Vietnam was under the suzerainty of China. It was against logic and common sense that a vassal state could arbitrarily occupy a piece of the territory of its superior (dominant state).⁴⁹ After one more diplomatic exchange with China France apparently ceased to press its claim.

Approximately the same time France asserted its claim over the Paracel Islands, it also made claim to the Spratly Islands. On July 25, 1933, France announced in its official gazette that it had occupied nine islands in the South China Sea and placed them under French sovereignty. However, France also acknowledged that when the occupation took place, the only persons found on the islands were Chinese.⁵⁰

The ROC government protested to the French government on the ground that the Spratly Islands were Chinese territory, primarily on the ground that there were Chinese residing on the islands.⁵¹ However, France continued to assert its claim to the islands. In 1939, Japan took over the Hainan, the Paracel and

Spratly Islands. On April 9, 1939, Japan announced in its official gazette that the Paracels and the Spratly Islands were placed under the jurisdiction of Kaohsiung County of Taiwan,⁵² then a territory of the Japanese Empire.

On August 26, 1945, after Japan surrendered to the Allied Powers in August 1945, Japanese forces withdrew from the Paracel and the Spratly Islands.⁵³ In November 1946, the ROC government sent a naval contingent, with officials from the Ministry of Internal Affairs and the Kuangtung Provincial Government, to take over the islands. This group of officials made a survey of each of the major islands. Garrison forces were subsequently stationed in several islands of the Paracel and the Spratly Islands. Chinese territorial stone tablets were erected on Yung-hsing Island (Woody Island) and Taiping Island (Itu Aba Island). A weather station and radio station were also built on these two islands.⁵⁴ Administratively, these islands were proclaimed to be under the jurisdiction of the Kuangtung Provincial Government, but on March 15, 1947, the National Government of the ROC issued an order to place them "temporarily under the administration of the Navy."⁵⁵ On December 1, 1947, the ROC Ministry of Internal Affairs publicly announced new names for each of the islands⁵⁶ and since then all Chinese maps have used those names/^{to}include them in the territorial scope of China. At that time, neither Vietnam nor any other country in the world protested to China regarding the take-over of these islands from Japan, the new names, or the inclusion within the territorial scope of China.

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In May 1950, the PRC forces landed on the Hainan Island and the ROC withdrew to Taiwan its forces in Hainan, the Paracel Islands and the Spratly Islands. In September 1951, the Japanese peace conference was held at San Francisco. A peace treaty was signed on September 8, which provided in Article 2, paragraph (f), that "Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands."⁵⁷ Recently the Republic of Vietnam has repeatedly pointed out that, at the time of signing the treaty, the Republic of Vietnam claimed both the Paracel Islands and the Spratly Islands and was unchallenged by the participating states.⁵⁸ However, neither the ROC or the PRC was invited to participate in the peace conference. Before the conference was held, the PRC Foreign Minister Chou En-lai made a statement on August 15, 1951, to the effect that:

"Whether or not the US-British Draft Treaty contains provisions on this subject and no matter how these provisions are worded, the inviolable sovereignty of the People's Republic of China over Nanwei Island (the Spratly Island) and Sisha Islands (the Paracel Islands) will not be in any way affected."⁵⁹

After the signing of the San Francisco Japanese Peace Treaty, a bilateral peace treaty was signed between the ROC and Japan on April 28, 1952, which provided in Article 2: "It is recognized that under Article 2 of the Treaty of Peace with Japan signed at the city of San Francisco in the United States of America on September 8, 1951, Japan has renounced all right, title and claim to Taiwan (Formosa) and Penghu (the Pescadores) as well as the Spratly Islands and the Paracel Islands."⁶⁰

According to the ROC Foreign Ministry, such an arrangement in the bilateral Sino-Japanese peace treaty clearly indicated that these two island groups were renounced in favor of the ROC and "was clear evidence [that] China has complete sovereignty over those islands."⁶¹

The situation in the Paracel and the Spratly Islands appeared relatively stable until the summer of 1956 when a Filipino named Toma Cloma suddenly announced the "discovery" of the Spratly Islands by a team under his direction and he subsequently declared the establishment of the "Free Territory Freedomland" on the islands. The ROC government immediately protested to the Philippine Government. A naval contingent was sent to patrol the Spratly Islands but found the Filipinos had already left.⁶² Later Chinese garrison forces were sent to the Taiping Island (Itu Aba) and have remained there ever since.⁶³ At that time, the official Central News Agency released an article asserting, among other points, that the Philippines has no right over the Spratly Islands because the island group is situated well outside the territorial scope of the Philippine Islands as defined by Article 3 of the Peace Treaty between the United States and Spain signed on December 10, 1898.⁶⁴ Concurrently, the PRC Foreign Ministry's spokesman issued a statement on May 29, 1956, reasserting that the Spratly Islands are Chinese territory.⁶⁵ Faced with the Chinese opposition, the Republic of the Philippines apparently dropped if an official claim was intended, its claim over the Spratly Islands.

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At this time when the ROC and the Republic of ^{the} Philippines were both claiming ownership of the Spratly Islands, the RVN joined the dispute by reasserting its claim over both the Paracel and the Spratly Islands. The ROC resolutely rejected this Vietnamese claim⁶⁶ and protested strongly when it learned that the RVN naval unit had landed on Storm Island (Nanwei) of the Spratly Islands.⁶⁷

In 1957, the PRC's New China News Agency (NCNA) reported that the "South Vietnam Ngo Dinh Diem troops" illegally occupied Robert Island (Kan-chuan) and several small islands nearby, such as Pattle Island (Sanhu) and Money Island (Chin-yin) of the Paracel Islands.⁶⁸ Then, on September 4, 1958, the PRC issued a Declaration on Territorial Sea, extending its territorial sea to 12 nautical miles and stipulating the use of the straight baseline method to delimit its territorial sea. It also provided that these two principles "likewise apply to... the Hsisha [Sisha] Islands, the Chungsha Islands, the Nanhai Islands, and all other islands belonging to China." Surprisingly, the RVN did not respond to the PRC's reassertation of Chinese sovereignty over the Paracel and the Spratly Islands. Subsequently, however, according to the PRC, on February 22, 1959, the RVN navy invaded Duncan Island of the Paracel Islands and arrested 82 Chinese fishermen who were later released upon a strong protest of the PRC.⁷⁰ A month later, the PRC reported that a RVN gunboat again invaded the same island for the purpose of "pillaging" Chinese fishermen. A strong protest was again issued

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by the PRC.⁷¹ In mid-1960, the PRC government disclosed that it had issued 19 "serious warnings" to the United States before 1960 for violating the territorial airspace of the Paracel Islands.⁷² From 1960 to the end of 1971, the PRC issued several hundred "serious warnings" to the United States for violating its territorial sea or airspace and a substantial number of these "warnings" concerned the Paracel Islands area. For instance, in 1963, the PRC in total issued 47 "serious warnings" (227th to 274th) and 11 of them related to the Paracel area.⁷³ The last (497th) PRC "warning" against the United States, issued on December 25, 1971, also happened to be related to the Paracels.⁷⁴ With the recent improvement of relations between the United States and the PRC, no "warning" against the United States had been reported in the PRC press from late 1971 to February 15, 1974. It is not clear whether the absence of such "warning" was due to a more tolerant attitude on the part of the PRC toward American "intrusion" into China's territorial sea and airspace, or the United States had abandoned its reconnaissance activities near Chinese coastal areas.

On the ROC side, according to the information released by the ROC government, since 1956, ^{the} Chinese navy has periodically sent a contingent to inspect the various islands of the Spratly Islands and to resupply Chinese garrison troops on the Itu Aba Islands. From October 6 to 27, 1963, the Ministry of National Defense, the Ministry of Internal Affairs, and the Naval General Headquarters jointly organized an inspection team to visit Itu Aba, Storm, Amboyna Cay (An-po sha-chou), Thi-Tu (Chung-yeh), S.W. Cay (Nan-tzu-chiao), N.E. Cay (Pei-tzu-chiao), West

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York (Hsi-yüeh), Loaita (South Island of Horsbung, Nan-yao in Chinese), Sandy Cay (Tun-ch'ien sha-chou) and Namyit (Hung-hsiu) Islands of the Spratly group. In 1966, the ROC sent a naval contingent to Re-erect Chinese national boundary tablets at S.W. Cay, N.E. Cay, Thi-Tu and Namyit islands.⁷⁵ It was also reported that on September 26, 1972, a Chinese patrol boat captured a Japanese fishing boat entering the territorial sea of Itu Aba Island (Tai-ping). The Japanese boat was released after which an inspection by the Chinese patrol boat found nothing illegal.

In international affairs, the ROC never delayed in asserting its claim over these islands on appropriate occasions. At two recent sessions of the United Nations Cartographic Conference for Asia and the Far East, a statement was made by the ROC delegation reaffirming the Chinese sovereignty over the islands.⁷⁷ Similar statements were issued by the ROC Foreign Ministry in response to the RVN and the Philippines assertion of sovereignty over the Paracel or the Spratly Islands.⁷⁸ In addition, the ROC on a number of occasions made diplomatic protests or representations to these two states rejecting their challenge to Chinese sovereignty over the islands.⁷⁹

IV. Concluding Observations

Before proceeding with an analysis of the validity of the claims made by China and the RVN, it is necessary to clarify two general characteristics of territorial title in international law. First, title in international law is a relative concept in contrast to title in municipal law which is absolute. Thus, in evaluating the competing claims to territory in international law, ^{at times} it cannot be said that one side is totally right or totally wrong, nor is it possible to say that one side has completely fulfilled the requirements (assuming treatise writers all agree on these requirements) necessary to acquire territory in international law. If there is no competing claim, territorial title may be acquired even by a symbolic act. This is not the case in domestic law, where even if there is no competing claim to land the claimant must fulfill the requirements prescribed by law, or he will not acquire title. The lack of definite legal requirements in international law means the only evaluation one can reasonably make regarding competing claims to a territory is a relative one, that is to say, which side has the better claim.

Secondly, many treatises of international law have specified modes of acquisition of territory, namely, occupation, prescription, cession, annexation and accretion. However, in practice, the arguments used by a state to establish territorial title rest on

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multiple foundations; therefore, it is usually difficult to classify the claim of a state entirely under one of the five modes. This is especially true of occupation and prescription. Having these two general points in mind, the validity of the parties' claims can be analyzed as follows:

(1) The Paracel Islands

Analysis of the position of the RVN reveals that its claim must be based either on occupation or on prescription, or on both. The RVN cannot readily rely on occupation because under international law only terra nullius (land belongs to no state) can be the object of occupation. However, the RVN does not have this relationship with the Paracels. As stated in part III of this paper, there is no doubt that China discovered and used the Paracels for several hundred years before Vietnam began asserting its claim in 1802.⁸⁰ At that time, China at least had a so-called "inchoate title" and under international law "has a privilege to perfect its title...though any other State has an equal privilege to frustrate it by taking more final and decisive sovereign act."⁸¹ Did Vietnam or its protecting state, France, ever take such "final and decisive sovereign act" to frustrate the Chinese claim? A careful reading of the RVN's arguments as stated in Part II does not seem to support an affirmative reply to this question. In the 1920s, it was reported that even the French Acting Governor-General of Indochina acknowledged that "jusqu'à plus ample informé les îles Paracels doivent être considérées comme appartenant à la China."⁸² A French navigator in the early 1930s

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also said that "il semble qu'à l'heure actuelle l'Annam [Vietnam] n'ait plus aucune relation avec les îles Paracels."⁸³

Moreover, as has been shown in Part III, after Vietnam or France (in its capacity as the protecting power of Vietnam) began to assert the Vietnamese ^{claim} to the Paracels in the early nineteenth century, China took a series of actions to consolidate its claim to the Paracels. Neither Vietnam nor France took any steps to challenge these Chinese actions until the 1930s. Although France, on behalf of Vietnam, did reassert its claim to the Paracels in the 1930s,⁸⁴ this was immediately challenged by China and France apparently dropped its claim after 1945.

In August 1945, when Japan surrendered to the Allied Powers, the Office of the Supreme Commander of the Allied Powers issued an order which, among other matters, instructed Japanese forces north of the 16 degree parallel of Vietnam to surrender to China.⁸⁵ As a result the northern part of Vietnam was placed under Chinese military occupation. Subsequently, when China turned over the occupied part of northern Vietnam to France in March 1946, France did not inquire into title to the Paracels and the Spratlies. Nor did France or Vietnam protest when China took over the Paracels and the Spratlies in late 1946,⁸⁶ renamed the islands in 1947,⁸⁷ and included them in the 1952 ROC-Japan bilateral peace treaty.⁸⁸

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Although Vietnam did raise the question of the Paracels and the Spratlies at the 1951 San Francisco Japanese Peace Conference, it did not take sufficient action to substantiate its claim, as one can determine from facts presented in Parts II and III of this paper.

With respect to the question of the RVN's invocation of the principle of prescription, the evidence it presented did not even approximate the requirement of "continuous and undisturbed exercise of sovereignty over [a territory]." Its actions concerning the Paracels were sporadic and frequently challenged by China.

Finally, neither Vietnam nor France has ever responded to the Chinese invocation of the 1887 Sino-French Convention respecting the Delimitation of the Frontier between China and Tonkin (Vietnam),⁹⁰ which explicitly provided that islands east of a delimiting line should belong to China. Both the Paracels and the Spratlies are situated east of that line.

Under the above analysis, it appears that China has a better claim to the sovereignty of the Paracels than does Vietnam.

(2) The Spratly Islands

France, on behalf of Vietnam, began to claim the Spratly Islands in 1933, acting on the assumption that these islands were terra nullius.⁹¹ The official Chinese challenge to the French action was based primarily on the ground that Chinese people had continuously resided or used these islands, evidencing Chinese sovereignty.⁹² Although the weight accorded settlement or use by private persons supporting a claim for territorial sovereignty is questionable in international law, Professor O'Connell has pointed out:

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In short, acts of private individuals are in themselves insufficient for occupation, but nonetheless there may be no occupation without them. In the Minquiers and Ecrehos case the court treated the "actual and permanent settlement" of Englishmen on the islands among the acts indicative of sovereignty. Judge Carneiro went even further and said that "the presence of private persons who are nationals of a given State may signify or entail occupation by that State...such individual actions are particularly important in respect of territories situated at the border of two countries which both claim sovereignty in that region."⁹³

The Chinese discovery and historical use of, or settlement on these islands,⁹⁴ could at least establish that in 1933 China did have some rights to these islands, though these rights might be of ^{an} inchoate nature only. Consequently, unless France took a "more final and decisive sovereign act to frustrate the Chinese rights, the French occupation of the Spratlies can not be considered valid in international law. It does not appear that France did in fact take any action which can be considered as a "final and decisive sovereign act."

The post-World War II developments relating to the Spratlies (1945-1952) paralleled what is stated above with respect to the Paracel Islands. Therefore, even if France did validly occupy the Spratlies in 1933, which is doubtful, France apparently relinquished its sovereignty over the islands after 1945.

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As a successor to French rights in Vietnam, the RVN clearly can not invoke a right previously relinquished by its predecessor.

Finally, the above stated 1887 Sino-French Convention is equally applicable to the Spratlies case and neither France nor Vietnam has responded to the Chinese invocation of this treaty.

Under the above analysis, it appears, as in the case of the Paracels, that China has a better claim than Vietnam with respect to the sovereignty of the Spratlies.

Footnotes

1. For an informative summary of this dispute, see Tokino Ugoki [A Japanese language bi-monthly on current topics, edited by the Office of the Prime Minister], "Hokpo Ryodo Mondai" (Problems of the northern territory), No. 431 (August 15, 1973), pp. 14-19.
2. For the Korean position, see Hwang Sang-ki, Tokdo Ryungyukwon Munje (Ownership problem of Tokdo), Seoul: Kunlo Haksangsa, 1965; and for the Japanese position, see Taijudo Kanae, "The Dispute between Japan and Korea Respecting Sovereignty over Takeshima," Japanese Annual of International Law, Vol. 12 (1968), pp. 1-17.
3. For the Chinese position, see Jerome Alan Cohen and Hungdah Chiu, People's China and International Law: A Documentary Study, Vol. I, Princeton, N.J.: Princeton University Press, 1974, pp. 346-353; and Hungdah Chiu, ed., Hsien-tai kuo-chi fa (Modern international law), Vol. I, Taipei: San-min shu-chü, 1973, pp. 350-361. For the Japanese position, see Okuhara Toshio, "The Territorial Sovereignty over the Senkaku Islands and Problems on the Surrounding Continental Shelf," Japanese Annual of International Law, Vol. 15 (1971), pp. 97-106; for a collection of general references to the Japanese argument, see Okinawa (a monthly on Okinawa in Japanese), No. 56, Tokyo: Nampo Doho Enokai, March 1971; for the official position of

the government, see the statement of March 8, 1972, by the Foreign Ministry, an English translation of which may be found in Cohen and Chiu, Vol. I, supra, note 3, pp. 351-352; and for a collection of dissenting opinions, see Inoue Kiyoshi, Senkaku Retto (The Senkaku Islands), Tokyo: Gendai Hyoronsha, 1972.

4. CNA (Central News Agency) release from Saigon, September 24, 1973.
5. Peking Review, Vol. 17, No. 3, January 18, 1974, p. 3.
6. Oil and Gas Journal, May 21, 1973, p. 69, and July 16, 1973, p. 80; and Washington Post, December 10, 1973, p. A16.
7. Foreign Broadcast Information Service (FBIS), IV, September 10, 1973, p. P2.
8. ib. and FBIS, III, September 26, 1973, p. K1.
9. FBIS, IV, October 31, 1973, p. C9, and December 27, 1973, p. C4; and Ocean Science: On Station, Washington: Nautilus Press, January 4, 1974.
10. Europa Yearbook: Far East and Australia 1973, London: Europa Publishing Co., 1973, p. 389, and Oil and Gas Journal, July 16, 1978, p. 80.
11. Cheng Tze-yüeh, Nan-hai chu-tao ti-li chih-lüeh (General records on the geography of southern islands), Shanghai: Shang-wu ying-shu-kuan, 1948.
12. The Pratas Reef (Tungsha ch'üan-tao) consists of two banks and an island; a fishermen's settlement was once reported on the island, Cheng Tzu-yüeh, supra, note 11, pp. 26, 83.

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The Macclesfield Bank (Chungsha ch'un-tao) consists of 24 shoals, 3 reefs and 2 banks, all of which are under water. This archipelago runs from northeast to southwest and is about 75 miles long and 35 miles wide at its widest point, ibid., pp. 37, 85.

The Paracel Islands (Hsisha ch'un-tao) is an archipelago consisting of 15 islands, 5 reefs, 5 banks, 4 sands, and a rock, all clustered in three groups. The largest island (in the four archipelagoes of the South China Sea), Woody Island (Ying-hsing-tao),

situated on the northeast, is about 1,950 meters long and 1,350 meters wide. The three islands on which the military clash took place between the PRC and the RVN in January 1974 are much smaller than Woody Island, being only 800, 400, and 1,400 meters long respectively. Ibid., pp. 28, 30, 32-33 and 83. The Spratly

Islands (Nansha ch'un-tao), the largest of the four archipelagoes, consists of 26 reefs, 21 shoals, 10 banks, 5 islands, and 3 cays. This archipelago covers a wide expanse of the sea between Vietnam and the Philippines. Itu Aba Island (T'aip'ing-tao), about 1,270 meters long and 350 meters wide, is the largest as well as the most important in the Spratlies; it was used by the Japanese navy during the War. Storm (Spratly) Island (nanwei-tao), which is about 500 meters long and 300 meters wide, probably comes next in strategic importance. Ibid., pp.

39, 45; 52 and 87. Both Itu Aba and Storm Islands (see map) were included in the eleven islands which the RVN incorporated into Phuoc Tuy Province in September 1973, and were also referred to in the PRC protest of January 11, 1974.

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13. The description of the Vietnamese position here is based mainly on the following eight papers made available by the Embassy of Vietnam in Washington, D.C.: I. Press Release, Vols 5-6, March 16, 1959; II. Foreign Ministry Note (No. 1858/AC/TBD), April 10, 1971, to the Embassy of Malaysia in Saigon; III. Press Release, No. 3/74, January 17, 1974; IV. Press Release, No. 4/74, January 21, 1974; V. Press Release, No. 5/74, January 21, 1974; VI. Fact Sheet, No. 2/74, January 28, 1974; VII. Vietnam Bulletin, Vol. 9, No. 4, Special Issue on the Paracels Incident, February 8, 1974; and VIII. Fact Sheet, No. 04/74, February 15, 1974. (Hereinafter referred to as Paper I, Paper II...). The source of historic claims or other facts ^{has} ~~have~~ to be precisely identified in the event they are presented in a diplomatic negotiation or international adjudication.
14. Paper VI, supra, note 13, p. 2.
15. Paper I, supra, note 13, p. 4.
16. Ibid. The authors are unable to locate this map in the major libraries of the Eastern United States, nor did the RVN reproduce this map for reference.
17. Ibid., p. 5.
18. Ibid., p. 6. However, the Chinese side argued that it could not find any records of the case in its files. The RVN or France did not come forward with any evidence to establish the ^{existence} ~~evidence~~ of the alleged case. See summary of ^{the} Chinese note in Wai-chiao pu kung-pao (Gazette of the Ministry of Foreign Affairs), Vol. 6, No. 3 (July-September 1933), pp. 209-210.

19. Ibid., p. 7. The RVN's assertion here is tenuous. The Chinese side presented evidence showing that in 1921, Japanese merchants induced a Chinese merchant named Ho Jui-nien to apply for the establishment of Hsi-sha ch'ün-tao shih-yeh kung-szu (Paracel Islands Industrial Company). After the Chinese government granted Ho's company the right to explore the islands' resources, it secretly assigned the right to the Japanese merchants. In 1927, in view of the growing anti-Japanese movement in Kuangtung Province, the Japanese merchants quietly withdrew from the islands. For details of Japanese exploration of the islands' resources under cover of the Chinese company, see Shen P'eng-fei, ed., Tiao-ch'a Hsi-sha [Sisha] ch'ün-tao pao-kao-shu (Reports on the investigation of the Paracel Islands), n.p., 1928, pp. 36-51.
20. Paper III, supra, note 13, p. 3.
21. Ibid.
22. Conference for the Conclusion and Signature of the Treaty of Peace with Japan, San Francisco, California, September 4-8, 1951, Record of Proceedings, Washington, D.C.: Government Printing Office, 1951, p. 263; and for other references to the Paracels and the Spratlies, see ibid., pp. 119, 314. Neither the ROC nor the PRC participated in the peace conference, see infra, notes 53, 55, 56, and accompanying text.
23. Paper I, supra, note 13, p. 2 and Richard Hughes, [no title was given to the article], Far Eastern Economic Review, Vol. 82, No. 42, October 22, 1973, p. 27.

24. Paper II, supra, note 13, p. 3.
25. Paper III, supra, note 13, p. 3.
26. According to the Chinese version of the incidents, the French flag was planted on Storm (Spratly or Nanwei in Chinese) Island, but after the French left the island, Chinese fishermen from Hainan Island removed the French flag and replaced it with a Chinese flag. See Ling Ch'un-shen, "The Geography of the French Occupied Small Islands in the South Sea," Fan-chih y'eh-k'an (Geography monthly), Vol. 7, No. 4 (Nanking, April 1, 1934), p. 2.
27. Paper I, supra, note 13, pp. 9-12. Although the RVN claims that only Japan protested against the French decree of July 21, 1933, there is proof that China also protested. For the substance of the Chinese protest, see Cho Min, "The Triangular Relationship Among China, France and Japan and the Question of Nine Islands in South Sea," Wai-chiao y'eh-pao (Diplomacy monthly), Vol. 3, No. 3 (Peiping [Peking], September 15, 1933), p. 78; Cheng Tzu-y'eh, supra, note 11, 30; and infra, note 47, and accompanying text.
28. Paper I, supra, note 13, p. 12 and Paper VIII, ibid., p. 4.
29. Translated from the Chinese and annotated by Friedrich Hirth and W.W. Rockhill under the title Chao Ju-kua: His Work on the Chinese and Arab Trade in the Twelfth and Thirteenth Centuries, Entitled Chu-fan-chi (St. Petersburg: Printing Office of the Imperial Academy of Sciences, 1911).

30. Ibid., pp. 175-190 on the Island of Hainan.
31. Ibid., p. 176. A li is about 1/2 of a kilometer or a 1/3 of a mile.
32. See map attached to Chao Ju-kua..., supra, note 1.
33. Ibid., p. 185, note 4. Hirth and Rockhill regarded "ch'i-chou" (seven islands) as the Paracel Islands.
34. See Cheng Tzu-yüeh, supra, note 11, p. 74; Mo Yün-yü, "The Nan-sha Islands Are the Sacred Territory of Our Country, Encroachment Upon which Cannot Be Tolerated," Nan-fang jih-pao (Southern daily), Canton, August 13, 1956, p. 3.
Both Cheng and Mo were special commissioners of the Territorial Department of the ROC Ministry of Internal Affairs in 1946-47.
35. Huang Chung (1474-1553), Hai yü (On the sea), Vol. 2, pp. 1-2, in Chou Hsin-ju, ed., Fen-hsin-ko ts'ung-shu (1827).
36. Cf. Chung-yang jih-pao (Central daily news), June 11, 1956, p. 6.
37. Cheng Tzu-yüeh, supra, note 11, p. 75.
38. Ibid., p. 43.
39. 2nd edition, London: Published for the Hydrographic Department of the Admiralty by His Majesty's Stationery Office, 1923, cited from Shao Hsun-cheng, "Chinese Islands in the South China Sea," People's China, No. 13, p. 27 (Peking, 1956).
40. E.g., see Hsiu-chen Kuang-tung fen-hsien ming-hsi tu (Pocket detailed county map of Kuangtung Province), Shanghai: Pai-hsin shu-tien, 1941.

41. The information was disclosed by the Kuangtung Provincial Government in 1933. See Cho Min, supra, note 27, p. 82, note 4.
42. Hertslet's China Treaties, Vol. I (Third edition), London: printed for His Majesty's Stationery Office, by Harrison and Sons, 1908, p.315. Before 1884, Vietnam was a tributary state of China.
43. E.g., Shao Hsun-cheng, supra, note 39, p. 26 (Spratly Islands); Lu Tung-ya, "What [We] Should Know About the Sisha Islands," Wai-chiao p'ing-lun (The foreign affairs review), Vol. 2, No. 10 (Shanghai, October 1933), pp. 64-65 (Paracel Islands); and Note from ROC Legation to French Government dated July 26, 1932, in Wai-chiao pu kung-pao, supra, note 18, p. 209.
44. See Cheng Tzu-ydeh, supra, note 11, pp. 70-73; Shao Hsun-cheng, supra, note 39, p. 125.
45. See Wai-chiao pu kung-pao, supra, note 18, p. 208.
46. See ibid., p. 210.
47. See Shen P'eng-fei, supra, note 19.
48. See summary of the French note in Wai-chiao pu kung-pao, supra, note 18, pp. 208-209.
49. See summary of the Chinese note in ibid., pp. 209-210.
50. See Hsu Kung-su, "The Incident of French Occupation of Nine Small Islands," Wai-chiao p'ing-lun (The foreign affairs review), Vol. 2, no. 9 (September 1933), pp. 13-14, 21.
51. Cheng Tzu-ydeh, supra, note 11, p. 80. The date of the Chinese note was not reported in Cheng's book, nor is it mentioned in the "Memorandum on Four Large Archipelagoes of the Republic

- of China in South Sea," issued by the ROC Ministry of Foreign Affairs in February 1974 (exact date cannot be determined), Lien-ho pao (United daily news), overseas edition, February 25, 1974, p.3.
52. Cheng Tzu-yüeh, supra, note 11, p. 80.
 53. Ibid.
 54. Ibid., pp. 80-81.
 55. Order Chu No. 442, cited in "Memorandum on Four Large Archipelagoes of the Republic of China," supra, note 51.
 56. For a list of these names, see Cheng Tzu-yüeh, supra, note 11, pp. 83-94 and "Memorandum on Four Large Archipelagoes of the Republic of China in South Sea," supra, note 51.
 57. U.N.T.S., Vol. 136, p. 48.
 58. For the Vietnamese statement at the peace conference, see supra, note 22.
 59. Chung-hua jen-min kung-ho-kuo tui-wai kuan-hsi wen-chien-chi (Collection of documents relating to the foreign relations of the People's Republic of China), Vol. 2 (1951-1953), Peking: Shih-chieh chih-shih ch'u-pan-she, 1958, p. 32; English translation cited in Shao Hsun-cheng, supra, note 39, p. 27.
 60. U.N.T.S., Vol. 138, p. 38. The treaty came into force on August 5, 1952. At the time of the negotiation of the territorial article of the peace treaty, the Japanese delegates insisted that the article should only include those areas related to the Republic of China. The Chinese delegate then explained that the Paracel Islands and the Spratly Islands were Chinese.

- territory and should therefore be included in Article 2 of the peace treaty. See Minutes of Sino-Japanese Peace Negotiation dated March 5, 1952, in Chung-hua min-kuo tui-jih ho-yüeh (Peace treaty between the Republic of China and Japan), Taipei: Chung-hua min-kuo wai-chiao wen-t'i yen-chiu hui, 1966, pp. 52, 53. The Japanese side apparently accepted the Chinese position. See Third Draft on the "Peace Treaty Between the Republic of China and Japan" submitted by the Japanese side (March 28, 1952). Ibid., p. 190.
61. Statement made by the ROC Foreign Ministry on June 10, 1956, summarized in "Vietnamese Claim of Sovereignty Refuted," Free China Weekly, No. NN-LVI-26 (June 26, 1956), p. 3.
62. See Chung-yang jih-pao (Central daily news), May 31, 1956, p. 1; ibid., June 6, 1956, p. 1. At the First Flight Conference for Pacific Area of the International Civil Aviation Organization, held on October 27, 1955, at Manila, a resolution (No. 24) was adopted which requested the ROC to supply the observation of high altitude weather conditions of the Spratly Islands four times a day. At that time, the French delegate BR. Momhez, then representing Vietnam, did not question Chinese sovereignty over the Spratly Islands. Nor did the Vietnamese government raise the issue after the conference. In 1960, the ROC expanded its weather station on the Itu Aba Island (Taiping Island) and broadcasted four times per day the ground and high altitude weather conditions of the Spratly Islands, in accordance with the resolution of the above stated conference. See "Memorandum on Four Large Archipelagoes of the Republic of China in South Sea," supra, note 51.

63. "Chinese Land Unit on Taiping Island," Free China Weekly, No. NN-LVI-29 (July 17, 1956), p. 2.
64. Papers Relating to the Foreign Relations of the United States, 1898, Washington, D.C.: Government Printing Office, 1901, pp. 832-833. The CNA article entitled, "Irrefutable Evidences Showing that Nansha Islands Belong to Our Country," appeared in Chung-hua jen-min kung-ho-kuo tui-wai kuan-hsi wen-chien-chi, May 29, 1956, p. 1.
65. Chung-hua jen-min kung-ho-kuo tui-wai kuan-hsi wen-chien-chi, supra, no. 59, Vol. 4 (1956-1957), pp. 61-62.
66. See note supra.
67. "Infringement of Nansha Islands Protested," Free China Weekly, No. NN-LVI-36 (September 4, 1956), p. 4. On August 30, 1956, the authoritative People's Daily in the PRC also carried an article by "Observer," the pseudonym for a senior Communist official denouncing the Vietnamese intrusion on the Spratly Islands. Peking, Tientsin Papers Condemn Diem Intrusion on Nansha Islands," NCNA-Peking, August 30, 1956, in Survey of China Mainland Press, No. 1363 (September 5, 1956), pp. 27-28.
68. "South Vietnam Troops Illegally Occupy Chinese Island," NCNA-English, Peking, March 6, 1957, in Survey of China Mainland Press, No. 1486 (March 11, 1957), p. 22.
69. "Declaration on China's Territorial Sea," Peking Review, Vol. 1, No. 28 (September 9, 1958), p. 21.
70. "Statement of the Ministry of Foreign Affairs on the Encroachment upon Our Territorial Sovereignty and the Capture of Our Fishermen by the South Vietnamese Authorities," February 27, 1959, in Chung-hua jen-min kung-ho-kuo tui-wai

kuan-hsi wen-chien-chi, supra, note 27, Vol. 6 (1959), Peking, 1961, pp. 27-28.

71. "Further Statement by the Ministry of Foreign Affairs of the People's Republic of China Protesting the Illegal Acts of the South Vietnamese Authorities on the Encroachment of Our Territorial Sovereignty, Capture and Mistreatment of Our Fishermen," April 5, 1959, in ibid., pp. 37-38.
72. "Talks of the Spokesman of the Ministry of Foreign Affairs on the Question of Encroaching Upon the Territorial Airspace of Our Country by the American Military Aircraft," May 13, 1960, ibid., Vol. 7 (1960), Peking, 1960, p. 154.
73. See Jen-min jih-pao t'u-shu kuan pien, I-chiu liu-san nien Jen-min jih-pao so-yin (Index of 1963 People's Daily), Peking: Hsin-hua shu-tien, 1965, pp. 288-289. Nine of the warnings were in reference to the intrusion of airspace, one related to the sea area of the Paracels and one related to the territorial sea of the Paracels.
74. See "Major Events" in I-chiu ch'i-erh Chung-kung nien-pao (1972 Yearbook on Chinese Communism), Taipei: Institute for the Study of Chinese Communist Problems, 1972, p. X-13.
75. See, Memorandum on Four Large Archipelagoes of the Republic of China in South Sea," supra, note 51.

76. Chung-yang jih-pao (Central daily news), international edition, September 27, 1972, p. 1.
77. The statement was made at the fourth session of the conference held at Manila in November 1964 and the sixth session held at Teheran in October-November, 1970. See "Memorandum on Four Large Archipelagoes of the Republic of China in South Sea," supra, note 51.
78. E.g., see ROC Foreign Ministry statement of February 10, 1974, in Free China Weekly, Vol XV, No. 5 (February 10, 1974), p. 1.
79. E.g., on July 12, 1971, ROC Foreign Minister Chow Shu-kai made a diplomatic representation concerning Chinese sovereignty over the Spratly Islands to Philippine Foreign Minister at Asian-Pacific Council conference held at Manila, Chung-yang jih-pao, international edition, July 12, 1971, p. 1. See also "ROC Note to Manila Re-asserts Claim Over Spratly Islands," Foreign Broadcast Information Service, IV, February 12, 1974, p. B1 and "Foreign Ministry Protests Saigon's Claim to Nanshas," ibid., February 8, 1974, p. B1.
80. See supra, note 16, and accompanying text.
81. D.P. O'Connell, International Law, Vol. I, 2nd ed., London: Stevens & Sons, 1970, p. 416.
82. Olivier A. Saix, "Iles Paracels," Terre Air Mer, La Geographie, Vol. LX, Nos. 5 and 6 (Paris, November-December 1933), p. 240.
83. Ibid., p. 241.

84. See supra, notes 20, 48, and accompanying text.
85. Majorie M. Whiteman, Digest of International Law, Vol. III, Washington, D.C.: Government Printing Office, 1964, pp. 487-488.
86. See supra, note 54, and accompanying text.
87. See supra, note 56, and accompanying text.
88. See supra, note 60, and accompanying text.
89. L. Oppenheim, International Law, Vol. I, 3rd ed., London: Longmans, Green, 1955, p. 576.
90. See supra, note 42. and accompanying text.
91. See supra, notes 27 and 50, and accompanying text.
92. See supra, note 51, and accompanying text.
93. O'Connell, supra, note 81, p. 418.
94. See supra, notes 33, 34 and 35.