

TEMPEST OVER THE SOUTH CHINA SEA: THE CHINESE PERSPECTIVE ON THE SPRATLYS

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The Chinese view the presence of rival claimants in the South China Sea as the adverse outcome of the Second World War (WWII). The inability of China to pursue its claim was compounded by the Cold War, when China was blockaded by the West, and by its Internal political problems and involvement in the Korean and Vietnam wars. China considers its present predicament to be similar to the time when Japan systematically and forcibly occupied the area, beginning with the Sino-Japanese War of 1894. China finds it anomalous that it is accused by rival claimants as the illegitimate claimant when the “grab and snatch” of fragments of the Spratlys was started in the 1970s by the Philippines, Vietnam, Malaysia and Brunei. The Chinese believe that all claims after WWII have no historical basis. Indeed, except for Brunei, these were occupied by force. China already has historical title over the Paracels and the Spratlys long before the other claimants were nation states.

Although the Chinese strongly believe in the justice of their historic title, their current approach to the Spratlys dispute has been tempered by their desire to pursue their economic modernization program well into the next millennium. In the mid-1970s and late 1980s, China had violent confrontations with Vietnam, which allowed Beijing to reestablish sovereignty over the Paracels. Since then, however, China had second thoughts about using its military option. The new civilian leaders in China today will not risk the political and economic cost of a military adventure. The new leadership considers military adventure as poor strategy. The new leaders believe that it is too much of a risk to use the military option and lose the political goodwill of China’s neighboring countries, as well as some sectors of the international community, over uncertain and undetermined resources in the area. While there are many Chinese leaders who consider the diplomatic option in resolving the dispute as futile delay, it remains the best option open to all the claimants. However, China is wary of third party arbitration in negotiations, particularly by the United States of America (US), since it believes that the area is still the object of big power contention for political influence and economic

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leverage. The Chinese worldview of the Asia Pacific region matches that of the late US President Nixon: that the main source of conflict in the next millennium will “hinge on the way the US handles its relations with Japan, China and Russia.” And since the US, in the Chinese perception, still plays its post Cold War game of playing the Asians against one another, China prefers bilateral negotiation to resolve the disputes in the Spratlys.

In 1995, when China occupied Mischief Reef, a reef also claimed by Vietnam and the Philippines, it provoked adverse reaction from the Philippines, which claimed that the reef was well within its Exclusive Economic Zone (EEZ). Since then, the dispute reversed the friendly relations set by the re-establishment of China-Philippines diplomatic exchanges in 1975. At that time, China denounced its support for the Communist Party of the Philippines (CPP), when it posed a real threat to the Philippine government, and sold scarce oil resource to the Philippines at a friendship price during the oil crisis of the 1970s. Thereafter, China engaged not only in active trade but offered loans, foreign aid and technology transfer, and carried out cultural and scientific exchanges. These made the two nations relatively satisfied with their bilateral relationship. For its part, the Philippines was one of the first Asian democracies that dared to open diplomatic relations with a communist country, despite the challenges it faced from a growing Maoist guerilla rebellion and formidable pressure from an old ally and vigorous trading partner, the Republic of China (ROC), now better known as Taiwan.

The Chinese occupation of Mischief Reef caused the Philippines to take an antagonistic stance towards China. A majority of Filipino senators renewed the Status of Forces Agreement by ratifying the Visiting Forces Agreement (VFA) with the United States. It took a 180-degree turn from its position in 1992, when the Senate rejected the Military Bases Agreement. In 1999, many senators declared publicly that the ratification of the VFA will deter China from further encroaching into the Kalayaan Island Group (KIG) in the Spratlys. The attempt to strengthen Philippine claim to the Kalayaan Island Group led the Philippines to seek ASEAN (Association of Southeast Asian Nations) support as a bloc, a tactic carried out since 1992. The Philippines hoped that with the admission of Vietnam as full member of ASEAN, its own claims to some parts of the Spratlys would gain momentum and strength in impeding China from claiming territories already claimed by other ASEAN members. Indeed, from 1992 through 1996, the ASEAN organization managed to convince all claimants to resolve their differences peacefully, to bring the claimants to the conference table, to keep the claimants from using force and threats of force, and to agree to continue to talk despite irreconcilable differences.

Seeking to resolve the issue, China cooperated by agreeing to abide by the 1992 Manila ASEAN Declaration on the South China Sea. China also attended meetings of the ASEAN Regional Forum and engaged in bilateral talks with all the claimants, including pursuing confidence-building measures. China has even offered to suspend the sovereignty issue and, instead, invited the other claimants to undertake joint exploration, exploitation and production schemes.

Geography

The Spratly islands¹ are the largest group of islands in the South China Sea. The archipelago embraces a group of about 230 islands, cays, reefs, atolls, rocks, shoals and sandbars found between latitude 4° at James Shoal to 11°30' North, and East of Meridian 112° East covering 250,000 square kilometers. It traverses about 1,000 km from North to South. These are about 650 km east of the Vietnam coast; 750 km South of the Paracels; 1,000 km from China's Hainan Island to the northernmost tip of the Spratlys; 250 km from the Sabah coast; 160 km from Malaysia's Sarawak coast and 100 km west of the Philippines' Palawan island.²

The islands are small. The biggest, Taiping (Itu Aba), has an area of 0.364 sq. km. Since these islands are either volcanic in origin or are coral outcroppings, there is a continuing process of island formation taking place in the Spratlys that may give rise to new, uncharted islands or island formations.

Except for the large islands, there is no freshwater (See Figure 1.) in most of these islands. There are no arable lands, meadows or pastures. There are structures, such as stone markers, palm huts and stone temples that had been built by fishermen working in the area. But these fishermen did not hold permanent settlements. Fishermen from various countries have mined guano in the area. The islands in themselves are too small and barren to support permanent human settlements. But the underwater resources are judged to be substantial, especially aquatic, hydrocarbon and mineral resources.

The Spratly archipelago is considered very important for the following reasons:

- (1) they constitute important sea lanes for commerce and transport of critical materials in the South China Sea;
- (2) The seabed is believed to hold one of the largest oil deposits in the world³;
- (3) The body of water contains some of the richest living resources;
- (4) Control of this archipelago means control of the sea lanes in the South China Sea; and
- (5) Ownership means these islands can serve as legal base points to

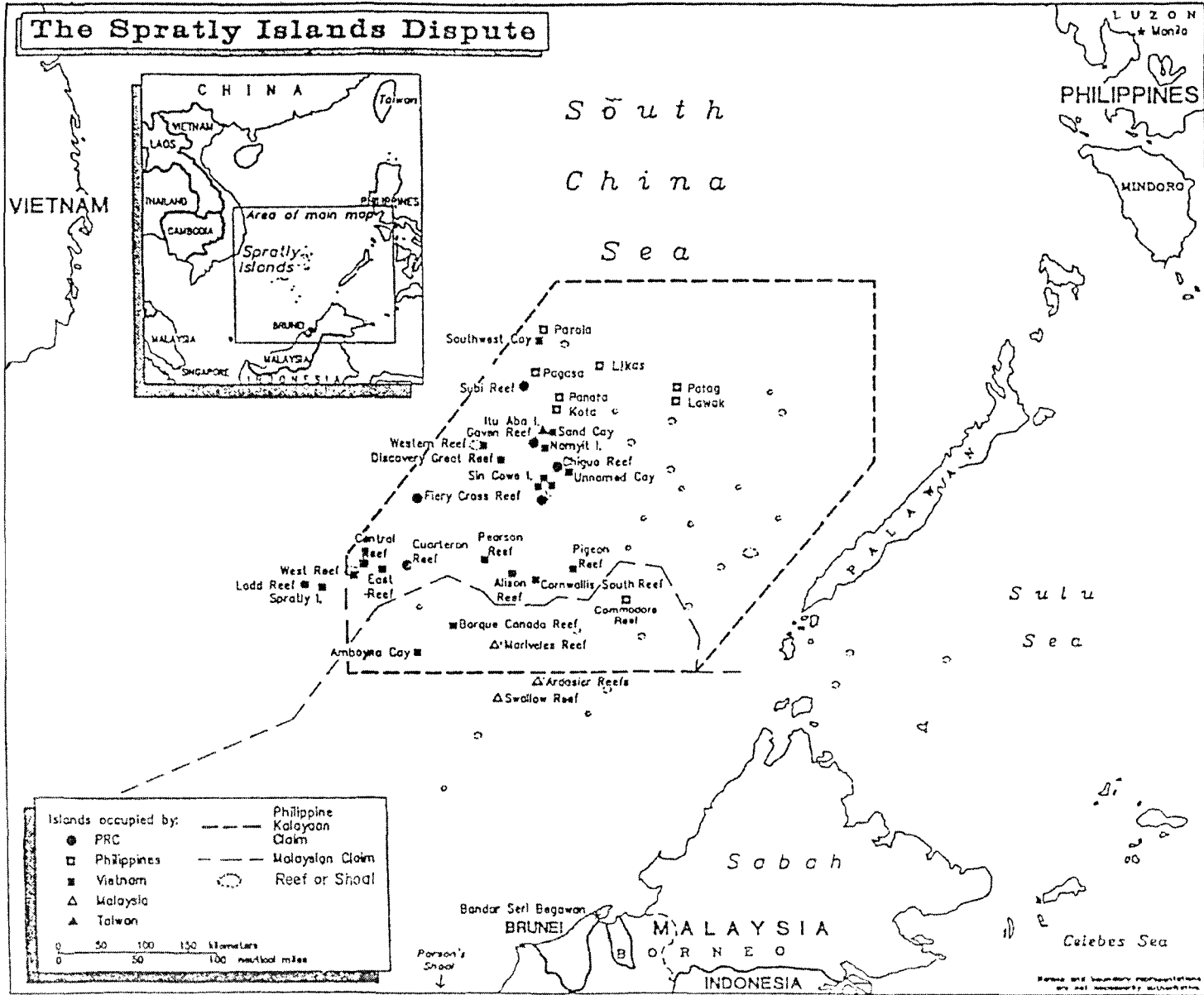


Figure 1. The disputed Spratly Islands

project claims of exclusive jurisdiction over waters and resources in the South China Sea.

To date, there are six major claimants to the Spratlys: China, Taiwan, Vietnam, the Philippines, Malaysia and lately, Brunei. China, Taiwan and Vietnam claim all the islands in the Spratlys. The Philippines claims only the western section of the Spratlys, the Kalayaan Island Group (KIG), an assortment of about 51 islands, islets, reefs, shoals, cays and rocks, depending on whether it is high tide or low tide. The KIG contains most of the larger islands in the archipelago and is nearest to Palawan. In 1956, Tomas Cloma⁴ proclaimed to the world his ownership of the island group by discovery and occupation. He mentioned 33 islands, sand cays, sand bars and coral reefs.⁵ When the Philippine Coast and Geodetic Survey Office issued a new official map in 1978, the KIG covered about 51 to 60 promontories, the numbers depend on whether it is high tide or low tide. The Philippines actually occupies eight islands, with its base on Thi Tu Island (Pagasa), the largest of the KIG. Malaysia claims the five islands and reefs it presently occupies, Swallow Reef (Tereumbu Layang Layang), Mariveles Reef (Matanani) and Dallas Reef (Ubi), as well as Amboyna Cay, which is presently held by Vietnam.⁶ In May of 1999, Malaysia occupied Investigator Reef (Peninjau and Siput reefs). Brunei has staked its claim on Louisa Reef, one of the Southern Shoals of the Spratlys, which is submerged.

Vietnam occupies 25 islands, with its main base on Spratly island (Truong Sa). China holds 12 islands and reefs. Taiwan holds Taiping (Itu Aba), the largest of the Spratlys.⁷

Background

Twentieth century claims on the ownership of the Nansha (Spratlys) started in 1917 when the Chinese were driven out of the Nansha islands by a Japanese chemical company interested in mining guano phosphates. Then in 1933, the French, on behalf of their protectorate Vietnam, invaded and claimed sovereignty over the islands on the basis of discovery and effective occupation.⁸ The French occupied the Spratly islands despite protests from China, Japan and the United Kingdom.

In 1939, the Paracels and the Spratlys were incorporated by Japanese forces into "Shinnan Gunto," or the "New South Archipelagoes."⁹

In 1941, China abrogated the Treaty of Shimonoseki with Japan, thereby ending Japan's symbolic control of the South China Sea. And on December 1, 1943, the Allied Powers and Russia declared in the Cairo Conference that all islands in the

Pacific area and all island groups in the South China Sea seized by Japan since the start of World War I (WWI) in 1914 should be returned to China.

Japan's defeat in WWII brought about its loss of territories "she has taken by violence and greed" since the Sino-Japanese War of 1894. The policy of Allied Powers relating to Japanese territories after the war were laid down by the following legal instruments:

1. 1943 Cairo Declaration;
2. 1945 Potsdam Proclamation Defining the Terms of Japan's Surrender;
3. 1945 Instrument of Surrender;
4. 1946 SCAPIN Directive 677¹⁰; and
5. 1952 Peace Treaty with Japan.

The policy of the Allied Powers under the Cairo Declaration was as follows: "It is their purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the First World War in 1914, and that all territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be returned to the Republic of China. Japan will also be expelled from all territories which she has taken by violence and greed."¹¹

Article 8 of the Potsdam Proclamation states: "The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the Islands of Honshu, Hokkaido, Shikoku, Kyushu and minor islands as we shall determine."

Japan's acceptance of the Potsdam Proclamation that contained Japan's surrender on August 14, 1945 contemplated an acceptance of terms of the Cairo Declaration, including its territorial provisions.

The administration of all territories seized by Japan was taken over by China. In May, 1945, the sixth Kuomintang Congress adopted the following foreign policy resolution: "China harbors no territorial ambitions. All she wants is the preservation of her territorial administrative integrity and fair and equal treatment for all her nationals overseas."

China's Ministry of Interior resurveyed these islands and re-erected landmarks on them. "An Outline of the Geography of the South China Sea Islands" of the *National Territory Series* was published by the Ministry of Interior on December 1, 1947. The oceanic boundary of China in the South China Sea was drawn using 11 interrupted lines to indicate the boundary of the islands, islets, reefs, banks and adjacent waters.¹² In addition, all the islands, islets, reefs, shoals, cays and sandbars were renamed. On April 7, 1949, the People's Republic of China (PRC) informed the Philippine government that China had garrisoned the Taiping Island (Itu Aba) settled by 250 troops under Commander Peng Yang Sen of the Chinese Navy.¹³

Except for China, no other claimants had their claims drawn on their national maps until the 1970s.

The Philippines' attempt to claim the Spratlys started in early 1947, when then Foreign Affairs Secretary Carlos P. Garcia asked that the Allied Forces place the 'New Southern Islands' under Philippine jurisdiction for reasons of security, since Japan used Itu Aba as a staging area to occupy the Philippines during WWII.¹⁴ In 1949, President Elpidio Quirino instructed Secretary of National Defense Ruperto Kangleon and Commodore Jose Andrada to inspect Taiping island and its vicinity, preparatory to designing Philippine claim to the Spratlys.¹⁵ Commodore Andrada reported that fishermen from Palawan often visited Taiping island. The report prompted some cabinet members to suggest that these fishermen be made to settle on the island in order for the Philippines to lay claim to the island. The Philippine government also took steps to claim the islands near the Celebes and place them under Philippine sovereignty.¹⁶ Unfortunately, Secretary Carlos P. Romulo, who represented the Philippines, did not pursue the claim in 1951 when negotiating the San Francisco Peace Treaty.¹⁷

In the San Francisco Peace Treaty of 1951, Japan renounced sovereignty over these islands, but it did not return these islands specifically to China. China and Taiwan were not included in the Conference as the United States and the USSR failed to agree on which government represented China.

During the Conference, the USSR proposal that the Japanese renunciation include a recognition of China's sovereignty over Taiwan, Pratas, the Pescadores, the Paracels, the Spratlys and the Macclesfield Bank, was rejected by 49 of the 52 participants of the Conference. As a consequence, the USSR, Czechoslovakia and Poland did not sign the Treaty.

In 1949, when the communists took over China, they claimed sovereignty over all the islands in the South China Sea. Thus on August 15, 1951, Premier Zhou Enlai, three weeks before the conclusion of the San Francisco Peace Conference, questioned the draft.

“The draft (Peace Treaty) stipulates that Japan shall renounce all claims to Nanwei (Spratly) Island and to the Hsisha Archipelago, but does not mention the problem of restitution of sovereignty. In fact, the Paracel Archipelago and Spratly Island, as well as the whole Spratly Archipelago and the Chung-sa (Macclesfield Bank) and Tung-sha (Pratas) archipelagos have always been Chinese territory. Though occupied for some time during the year of aggression unleashed by Japanese imperialism, they were taken over by the then Chinese government following Japan's surrender. The Central People's

Government of the People's Republic of China declares herewith: The inviolable sovereignty of the PRC over the Spratly Islands and Paracel Archipelago will by no means be impaired, irrespective of whether the British-American draft for a peace treaty with Japan should make any stipulations and of the nature of any such stipulations."¹⁸

In 1956, Tomas Cloma proclaimed to the world his ownership by discovery and occupation of 33 islands, cays, sand bars and coral reefs in the Spratlys.

While the Philippines planned to acquire these islands, an enlisted man in the US Army, Morton Meads, claimed that he had discovered the "Kingdom of Humanity" in 1945 in the South China Sea. The islands were supposed to be ruled by King Willis Alva Ryant. The Philippine Air Force investigated the claim and reported that Taiping Island, which was close to the Philippines, was being used by smugglers. This led Vice President and Secretary of Foreign Affairs Carlos P. Garcia to recommend to President Ramon Magsaysay that the Philippines lay claim to the island group.¹⁹

In view of these press reports, the Chinese Embassy in Manila issued the following statement on May 22, 1956:

"It has been reported that a group of Filipino individuals have in recent months been conducting survey of, and are attempting to lay claim to, a group of islands to the west of Palawan in the South China Sea.

Upon instructions, the Embassy hereby states that the abovementioned survey was determined to have been conducted in the Nansha Island Group, commonly known as the Spratly Island Group, which constitutes a part of the territory of the Republic of China. As late as July 5, 1955, in connection with the episodes of the so-called "Kingdom of Humanity," this island group was once again ascertained as within Chinese territorial limits. Historical and geographical records dating back as far as 500 years ago, now extant, are available to attest to this fact.

The Chinese Government will not recognize any claim over the island group and shall deem any such claim as infringement upon Chinese territorial rights. The Embassy is making representations to the Department of Foreign Affairs of the Philippines to the above effect."²⁰

King Willis Alva Ryant, along with five of his followers, drowned when their boat, *E Pluribus Unum*, capsized during typhoon Konsing, to the west of Mindoro.²¹

About at the same time as the discovery of the “Kingdom of Humanity,” Tomas Cloma, a Filipino businessman, navigator, owner of a fishing fleet and founder of the Philippine Maritime Institute, claimed that he “discovered,” “Freedomland” or “Kalayaan Islands.”

Immediately after Cloma made his claim, the Taiwan government (Republic of China or ROC) on May 23, 1956 filed a formal protest with the Philippine Department of Foreign Affairs, asserting that the islands in question belonged to the Nansha group, which is a part of the territory of China. Ambassador Chen Chi-mai concluded:

“The Nansha Island Group has always been and is an integral part of the territory of the Republic of China. The Chinese government cannot recognize any foreign claim over the island group and shall deem any such claim as infringement upon Chinese territorial right. In view of the friendly and cordial relationship between our two countries, it is earnestly hoped that the Philippine Government will not entertain claims that may be resented by any individual or group under the pretense of “right of discovery and occupation or any other pretense.”²²

In view of the Chinese protest, the Philippine government, at that time, adopted a hands-off attitude on the Cloma claim,²³ although in 1957, President Garcia issued a proclamation claiming that, since the islands were closest to the Philippines, or for reasons of propinquity, the Kalayaan islands belong to the Philippines. But Garcia also said that these islands are not part of the Spratlys. When Saigon and Taipei protested against the Garcia proclamation, the Philippine government quickly assured Taiwan that it was not making a formal claim to sovereignty over the islands.²⁴ However, in 1971, the Republic of the Philippines pursued Cloma’s position using discovery and contiguity, historical title, national security, economic need, abandonment and the UN Convention on the Law of the Sea (UNCLOS) provision on the continental shelf as its basis for claiming the islands.²⁵ The Philippine government formally claimed sovereignty over the 60 islets, reefs and atolls. It sent a military contingent to occupy Thi Tu island or Pag-asa and renamed these islands as the Kalayaan Island Group.²⁶ In 1974, the Philippines announced that it had garrisoned five of the islands in the archipelago. By 1975, the Philippines had landed troops on six islands.²⁷

In March 1976, when oil was discovered in the Reed Bank, midway between Palawan and the Spratlys, President Ferdinand Marcos created the Western Command (now known as the South-West Command) with instructions to defend the Kalayaan islands at all costs. In May, the Philippines announced that a consortium of Swedish and Philippine companies had signed contracts to explore oil in the Kalayaan islands, particularly the Reed Bank. Since then, the Philippines had issued permits to local and foreign companies to explore oil in the Kalayaan group.

On June 11, 1978, President Marcos issued two Presidential Decrees (PDs). PD No. 1596 claims that the islands, cays, shoals and reefs in the Kalayaan Island Group are integral parts of Philippine territory.²⁸ On September 14, 1979, President Marcos announced that the Philippines had confined its claim to seven islands which were “unoccupied, unowned and unpossessed.” They are, therefore, “new territory, *res nullius*.” The Philippine basis for *res nullius* premised on abandonment or *territorium nullius*. Since Japan renounced its title to the islands in the 1951 San Francisco Peace Treaty, and the Treaty did not give the title to the islands to any specific country, it rendered the islands *res nullius*.²⁹ Presidential Decree No. 1599 proclaimed a 321.86-km (200-mile) exclusive economic zone for the Philippines. However, some critics contend that the second Presidential Decree has some legal infirmities.³⁰ President Marcos also released a map of the new territories as issued by the Philippine Coast and Geodetic Survey Office. The Chinese do not accept these arguments.³¹

Philippine military installations were later constructed on larger islands and, in 1982, a 1,800 meter runway was built on the largest island, Pag-asa, and 500 troops were stationed on it.

Vietnam’s postwar assertion of sovereignty over the Spratlys came in a communiqué issued on May 24, 1956, asserting that the Nansha and Hsisha islands have “always been a part of Vietnam.” South Vietnamese Minister Cao Bai told his Cebu audience that the Nansha had been under the jurisdiction of the French colonial government since 1933 and were now under Vietnamese sovereignty by rights of cession from France.³² The Chinese averred that China did not yield the Spratlys to the French under the 1887 Treaty. On the contrary, the treaty gave to China all the islands east of the meridian 108°3’ E, and the Spratlys are to the east of this line.³³ France did occupy some Paracels and Spratly islands in 1931 and 1933, but their occupation was protested by China.³⁴ During WWII, the Japanese ousted the French from these islands. In 1956, France announced that it had not ceded the Spratlys to South Vietnam.³⁵

As early as September 1973, South Vietnam incorporated the Paracels into Phuc Tuy province and granted contracts to four American oil firms for offshore oil exploration.

In 1975, North Vietnamese troops seized six islands in the Spratlys which the South Vietnamese had earlier occupied in 1975, following their defeat in the Paracels. The reunited Vietnam subsequently argued Vietnamese discovery of the islands (*Vietnam's Sovereignty Over the Hoong Sa and Truong Sa Archipelago*) in the 17th century.³⁶ They showed a 15th century map of the Hoong Sa and Truong Sa Archipelago.³⁷ Vietnam also contends that the Spratlys became part of the Empire of Annam in the early 19th century.³⁸ But Chinese scholars who reviewed Vietnam's historic title claim said that Vietnam's title does not date as far back in history as China's.³⁸ Moreover, Chinese scholars have noted that the *Hungsha* Islands and the *Changsha* Islands that the Vietnamese alleged to have occupied since the 17th century are not the Spratlys but are other islands and reefs along the Vietnamese coast.⁴⁰ The Chinese showed that the Democratic Republic of Vietnam's claim of the Spratlys started only after its unification in 1975. Vietnam's new official map claiming the easternmost point of its territory of 109°29' E was changed from 109°21' E of its official geography before 1975. Even with this new claim, the Spratlys are beyond 109°30' eastward.⁴¹

In subsequent documents released by the Hanoi government in 1979 and 1983, respectively, Vietnam traces its discovery of the South China Sea islands.

In January 1974, when the South Vietnamese troops tried to occupy the Paracels island group, the Chinese engaged the South Vietnamese troops in an air and sea battle and took control of the Paracels.⁴²

Despite negotiations between China and Vietnam in late 1974, North Vietnamese troops seized six islands in the Spratlys in 1975 which South Vietnamese had earlier occupied in 1975, following their defeat in the Paracels. Between 1975 and 1976, Hanoi surreptitiously occupied another seven islands and built military installations in at least five of them. The largest of these is the Spratly island or Truong Sa.

In 1977, China and Vietnam met to discuss their territorial dispute, including the territory in the South China Sea, but the talks were suspended in 1979 and both sides took no further action in the South China Sea.⁴³

The Chinese have questioned the Vietnamese claim since then. The Chinese claimed that on June 15, 1956, Vietnamese Foreign Minister Yong Wenqian told Chinese officials that "based on materials that Vietnam has, Nansha and Xisha islands should belong to China." Still another Vietnamese deputy director of the Asian

Department of Foreign Ministry said on the same occasion: “Historically, Nansha and Xisha were already China’s territory as early as the Song dynasty.”⁴⁴ The Chinese further claimed in 1958 that the archipelagoes of the South China Sea, including the Xisha and the Nansha islands, belonged to China. Prime Minister Pham Van Dong, sent a note to Premier Zhou Enlai, declaring that: “The Government of the Democratic Republic of Vietnam recognizes and approves the PRC Government’s Declaration of its Territorial Sea on September 4, 1958... The Government of Vietnam respects the Chinese declaration.”⁴⁵ Up to 1974, Vietnamese textbooks stated that the Spratlys and the Paracels are Chinese territory.⁴⁶ Hanoi subsequently insinuated that its recognition of Chinese sovereignty over the islands was made under duress but it offered no proof. It also claimed that since China had broken its solidarity with Vietnam by invading its territory in 1974, by seizing the Crescent group in the Paracels from South Vietnamese forces and in 1979 during the Vietnamese border war, the Pham Van Dong note was no longer effective.⁴⁷

The Chinese, after capturing the Paracels, sent an archaeological team to the Paracels to investigate “the long history of Chinese contact with and control over the area.”⁴⁸ The team compiled and published a text on Chinese artifacts found in the Paracels, arguing that they constitute evidence of Chinese presence. The People’s Liberation Army (PLA) even produced a documentary of Chinese adventure in the Paracels.⁴⁹ The Chinese were already aware that there was great oil resource in the Spratlys in the early 1980s.⁵⁰ In February 1982, China’s State Council established the China National Offshore Oil Corporation (CNOOC) to contract foreign oil companies for oil explorations in the Gulf of Tonkin and in the Pearl River Basin. In 1984, China’s State Oceanic Administration and other state units were organized to draft a law of territorial waters.

In late December 1985, the head of the Chinese Communist Party, Hu Yaobang, visited the Paracels, publicizing China’s renewed interest in the South China Sea.

Hu’s visit was followed by disclosures from Chinese naval officers that the Chinese navy “reserves the right to recover the Spratlys” at “an appropriate time.”⁵¹ Meanwhile, Chinese exploration of the Spratlys was stimulated by the decision of an oceanic committee under the UNESCO that entrusted the task of setting up two permanent observation posts in the Spratlys to China.⁵² In April 1987, the Chinese launched a large-scale scientific expedition to the Spratlys. Moreover, in July 1987, the newly established province of Hainan considered the Spratlys as part of its strategic border. By November, the Chinese navy had conducted several exercises in the Spratlys as far as the James Shoal (about 2,413.95 km or 1,500 miles from the Chinese mainland).

The increase in Chinese naval presence in the Spratlys alarmed the Vietnamese and other claimants. Indeed, contentions over the Spratly Islands became the main source of tension in the South China Sea. Other claimants not only protested Chinese presence but took steps to occupy other unoccupied islands. During the same period, most other claimants signed contracts with international oil companies for offshore oil exploration in the Spratlys.

In February 1988, Hanoi, for the first time, accused China of landing troops on two islands in the Spratlys and warned of “disastrous consequences” for Chinese troops. China ignored Vietnam’s warning and instead declared its sovereignty over the entire archipelago.⁵³

On March 14, 1988, Chinese and Vietnamese navies finally clashed over Sinh Ton islands and Chigua jiao. China emerged as the victor in the 28-minute battle.⁵⁴

In April 1988, the Paracels and the Spratlys were placed by China under the administration of Hainan Province.

After the battle, China occupied two more reefs, bringing up a total of six islets under Chinese occupation by April 1988. But Vietnam, heedless of Chinese warning, occupied three more islets in April 1988. In May, China occupied a seventh islet.⁵⁵

While China and Vietnam clashed and took action to expand their respective claims, the Philippines, on March 17, 1988, warned both Beijing and Hanoi not to interfere in the islands claimed by Manila. To bolster its claim, the Philippine government sent a scientific mission in May to survey the economic resources, and placed Filipino troops on alert on its six occupied islands. In August 1988, the Philippines seized four Taiwanese fishing vessels which had intruded into the Kalayaan Island Group. On September 16, Wang Yingfan, China’s Ambassador to Manila, announced that China would not take any military action against any ASEAN member-claimant to the Spratlys.⁵⁶

Back in 1978, a Malaysian party surveyed the southern region of the Spratlys and, the following year, it published a map showing Malaysia’s new territorial boundaries. Then in 1980, Malaysia proclaimed its exclusive economic zone. In 1983, Malaysia landed troops on Swallow Reef (Layang Layang).⁵⁷ On April 4, 1988, the Malaysian navy seized three Philippine fishing vessels near Rizal Reef and detained their 49-member crew for fishing without a permit.⁵⁸ The fishermen were released by Malaysia only upon the intervention of President Corazon Aquino.

Malaysia claims sovereignty over twelve islands in the Spratly group. Its claim is based on the premise “that a state possessing a continental shelf also possesses sovereignty rights over land formations arising seaward from that shelf.”⁵⁹ Chinese scholars claim that even under the UN Convention on the Law of the

Sea, the continental shelf does not remove Chinese sovereignty over these islands.⁶⁰

Following Malaysia's claims, Brunei has claimed Louisa Reef, based on continental shelf provisions of the 1982 Law of the Sea Convention. Brunei cannot occupy the reef as it is a submerged formation. However, Louisa Reef is also claimed by Malaysia.⁶¹ In 1988, Brunei issued a map showing its continental shelf extending beyond Rifleman Bank.⁶²

In response to the firefight between Vietnam and China, Taiwan reinforced its Taiping garrison in anticipation of any contingency. Taiwan's defense minister at that time told the Parliament that while Taiwan would not take sides in the China-Vietnam conflict, it would defend Taiping Island to the last man.⁶³

By the early 1990s, in spite of rising tension among the claimants in the South China Sea, all parties appeared willing to settle disputes peacefully. Vietnam has become an advocate of settlement of differences through negotiations immediately after its violent confrontation with China.⁶⁴ Vietnamese economy was experiencing an average growth rate of seven percent GDP. Its offshore oil exploration and production appeared promising. On the part of the Philippines, President Corazon Aquino accepted China's proposal to shelve the dispute during her visit to China. The Chinese Foreign Minister, as early as May 1988, expressed China's disposition to settle the dispute in the South China Sea through friendly discussion.

The year 1990 marked the start of conferences undertaken by Indonesia and Canada, the ASEAN and bilateral meetings.

The only claimant which has not declared any clear predilection towards peaceful negotiations is Taiwan. Taiwan occupied Taiping Island (Itu Aba) as a matter of course after WWII. It continues to protest against any transgression upon its sovereign rights over the Spratlys. But in 1990, the Land Administration Department (LAD) of Taiwan's (the ROC's) Ministry of Interior drafted baselines for demarcating Taiwan's territorial sea and exclusive economic zone. The LAD declared that the waters surrounding the Spratlys should be treated as "historic waters." In March 1995, Taiwanese troops on Taiping Island fired at a Vietnamese vessel that intruded into its exclusionary zone.⁶⁵

In August 1990, Chinese Premier Li Peng announced in Singapore that China was willing to set aside the sovereignty issue in favor of joint development with the other claimants in the South China Sea.

In an attempt to initiate a dialogue geared towards reaching a resolution of all the competing claims to the Spratlys, senior officials and academics from the five claimant states, as well representatives from Brunei, Indonesia, Laos, Singapore and Thailand

gathered in Bandung, Indonesia in July 1991. This conference ended with the issuance of a statement by the participants declaring commitment to the use of peaceful means for resolving their overlapping territorial and jurisdictional claims in the South China Sea. There was also agreement that they would pursue efforts to jointly cooperate on shipping, communications, scientific survey and the suppression of piracy and drug trafficking in the region.

In February 1992, the Chinese National People's Congress enacted a special Law of the Territorial Sea and Contiguous Zone to legalize its claims to the Spratlys.⁶⁶ Except for the addition of the Diaoyu islands,⁶⁷ the new law codified, elaborated and reiterated as Chinese territories all previously claimed island groups in the 1958 Declaration on the Territorial Sea.⁶⁸ Experts claimed that the requirement for prior approval of military ship passage is inconsistent with the 1982 UNCLOS provisions. There are, nonetheless, twenty-eight other countries requiring foreign warships prior permission for the transit through their territorial seas.

Still in 1992, to bolster China's claim over the Spratlys, it has deployed personnel on eight of the Spratly islets. China later engaged an American firm, Crestone Energy Corporation, for joint exploration in the southwest perimeter of the Spratlys.⁶⁹

Following China's passage of the law of the territorial sea and the Crestone contract, there was strong apprehension among some ASEAN commentators that China was drifting into a policy of expansionism.⁷⁰ Half of the 600 vessels in China's south sea fleet have been assigned to protect the offshore oil fields and Chinese waters.

During the ASEAN Ministerial meetings in Manila, the ministers issued the ASEAN 1992 Declaration on the South China Sea which listed the following principles:

Emphasize the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force;

Urge all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes;

Resolve, without prejudicing the sovereignty and jurisdiction of countries having direct interests in the area, to explore the possibility of cooperation in the South China Sea relating to the safety of maritime navigation and communication, protection against pollution of the marine environment, coordination of search and rescue operations, efforts towards combating piracy and armed robbery as well as collaboration in the campaign against illicit trafficking in drugs...

Chinese Foreign Minister Qian Qichen, who attended the meeting as an observer, assured the ASEAN that China would abide by the Manila Declaration. China would not use force in settling the Spratly dispute.

Since the establishment of the CNOOC in 1982, China has signed 100 contracts with 59 companies from 15 countries.⁷¹ However, compared to Vietnam, the Philippines and Malaysia, China had less luck in striking oil. By 1992, most of the other claimants were already engaged in producing oil from their coastal waters. Malaysia was drawing oil from ninety wells or half of the region's total offshore output, while Vietnam was becoming a regional producer of oil. The Philippines had already discovered oil off northwest Palawan island.⁷²

Despite three Indonesian-sponsored workshops between 1990 and 1992, the end of 1992 saw all claimants engaging foreign oil companies in the exploration of oil, thereby deflecting criticism to these corporations.

The start of 1993 saw all the claimants struggling to find a *modus vivendi* with China through the ASEAN and to consolidate their respective claims in the Spratlys. During the January ASEAN summit, Brunei's foreign minister announced that its EEZ claims "only seas surrounding Louisa Reef."⁷³ But from February to September 1993, Vietnam and China continued to discuss the various differences between the two countries, while at the same time making moves and countermoves on oil exploration and leasing terms. However, on October 19, 1993, the two countries signed an agreement on principles to resolve territorial disputes.⁷⁴

During 1994, China, Vietnam and the Philippines continued to bring foreign oil companies into the Spratlys. Moreover, Vietnam ratified the 1982 UNCLOS. Vietnam and China raised their meeting on the disputed islands to the ministerial level.

In March, 1994, Philippine President Fidel Ramos made a proposal to demilitarize the Spratlys, which Vietnam acknowledged enthusiastically.

From April to June 1994, China and Vietnam continued to challenge the legitimacy of their respective offshore explorations, using foreign oil companies as proxies. China challenged the legitimacy of Petro-Vietnam's contract⁷⁵ with Mobil for the Blue Dragon Prospect while Vietnam charged that Crestone was moving into the Vietnam area under the UNCLOS.⁷⁶

In May 1994, the Philippines awarded a contract to Alcorn, a subsidiary of US VAALCO, for desktop exploration (a limited area) in the disputed Spratly islands. Thereafter, President Ramos reiterated his call to demilitarize the Spratly area, set aside the sovereignty issue and develop the area through cooperation.⁷⁷

In July 1994, China and Vietnam informed and warned each other of their intention to drill in nearby Wa An Reef. China announced that CNOOC and Crestone would proceed with a seismic survey of the Vanguard Bank area.⁷⁸

In mid-July (22-23) 1994, the ASEAN held its ministerial meeting in Bangkok, which decided to accept Vietnam as a member of ASEAN. This was followed by the ASEAN Regional Forum (ARF) on July 25. Four days before the ARF meeting, China announced that the South China Sea dispute should be discussed bilaterally under the ARF and reiterated its proposal to shelve claims and discuss joint development.⁷⁹ The Chinese foreign minister, after talks with Vietnam and the Philippines, reaffirmed Chinese sovereignty over the Spratlys. Malaysia agreed with the PRC that the Spratly dispute has to be resolved bilaterally.⁸⁰

In October 1994, Vietnamese-Chinese disagreements over the Vanguard Reef dominated the headlines. However, during President Jiang Zemin's visit to Vietnam in November, the two countries agreed to form a third expert group to deliberate South China Sea issues.⁸¹ According to the Joint Communiqué: "The two countries will continue talks on their sea territorial problems to seek basic and long-term solutions acceptable to both sides..."

The year 1995 shifted the focus of attention in the Spratlys from the China-Vietnam hostility in the oil-rich areas to the Philippine-China conflict over the Mischief Reef (Panganiban for the Philippines, Meiji-jiao for China). Philippine-China relations that had been very cordial since diplomatic relations began in 1975 turned sour when the Chinese occupied Mischief Reef in February.⁸² Mischief Reef is an oblong rocky outcrop about 337.06 km (182 nautical miles) from the coast of Palawan and within the Philippines' 321.86 km (200-mile) exclusive economic zone. The reef lies at the center of the Kalayaan Island Group claimed by the Philippines, China, Taiwan and Vietnam.

Subsequent investigations by the Philippine military revealed that the Chinese had quietly constructed four octagon-shaped structures on steel pylons in the latter part of 1994. Surveillance flights by the Philippine Air Force in February 1995 revealed the presence of eight Chinese naval vessels around Mischief Reef.

President Ramos charged that the Chinese construction of structures was in violation of the spirit and content of the 1992 Manila ASEAN Declaration of the South China Sea to which both countries are parties.

While some observers were puzzled by the Chinese occupation of Mischief Reef, others believed that it was due to Manila's secret granting of a six-month oil exploration permit to Alcorn Petroleum and Minerals after talks between China and the Philippines over the Reed Bank exploration and production broke down.⁸³ To

protect Chinese interest, it occupied the nearby KIG as the best means to strengthen its claim.⁸⁴ Chinese officials, however, insisted that the structures in Mischief Reef were built for Chinese fishermen, and that Philippine fishermen and those of other countries may use the facilities.

Manila's loud protests and saber-rattling did not dislodge the Chinese from Mischief Reef. Nor did the Philippine Navy's destruction of Chinese markers erected on Jackson Atoll, Half Moon Shoal, Sabrina Shoal and other rocks make any dent on the Chinese determination to remain on the reef. Some Philippine legislators invoked the Philippine-US Mutual Defense Treaty, but were informed that the treaty did not cover contested territories.⁸⁵ This led the Philippines to shift to a diplomatic strategy, which was to talk to the Chinese, while attempting to regionalize the issue as an ASEAN problem, and to appeal for international support.⁸⁶

President Ramos protested that China had encroached on Philippine EEZ and called attention to the danger that the Chinese presence posed to the strategic sea lanes of the South China Sea.⁸⁷ On March 10, 1995, Chinese Foreign Minister Qian Qichen announced that "there is no tension in that region. I don't think any crisis will occur..." Qian also stressed that the construction of shelters in the Spratlys by local Chinese fishing authorities should not be taken as a sign of aggression."⁸⁸

On March 19, 1995, representatives of China and the Philippines met but ended the meeting without reaching an agreement. On March 25, the Philippine Navy arrested 62 Chinese fishermen and detained four PRC fishing vessels near Alicia Anne Reef.⁸⁹ On the same day, Vietnam claimed that one of its cargo ships was shelled by Taiwanese troops on Itu Aba. With the growing tension over Mischief Reef, Vietnam and China held their fourth scheduled meeting on the Tonkin Gulf.

Philippine diplomatic maneuvers finally paid off when an ASEAN delegation, concerned about stability in the region, raised the issue of Chinese occupation of Mischief Reef with China in Hangzhou. Again, in the April 1995 meeting at Sentosa Island in Singapore, the Chinese occupation of Mischief Reef was discussed. The six ASEAN foreign ministers reaffirmed the 1982 ASEAN Manila Declaration.

On May 15, 1995, the Philippine Navy ferried 36 journalists on an amphibious assault craft near Mischief Reef and subsequently flew over the outpost with helicopters.⁹⁰ Beijing denounced the media tour as a provocation and warned Manila against allowing another trip to the area.⁹¹ But Philippine officials considered it as a part of Philippine diplomatic maneuvers to gain international support. Near the end of May, both the Philippines and China toned down their rhetoric over Mischief Reef. President Ramos sent a representative to explore ways to resolve the issue. The PRC proposed a joint venture with the Philippines.⁹² In June, the Philippines was reported

to be studying a Chinese proposal for joint exploration for oil in the Reed Bank. The Philippines, in turn, floated a proposal to turn the Spratlys into a protected marine area.⁹³

In early July 1995, when the Philippine navy continued to destroy Chinese markers in the Spratlys, the Chinese warned that their restrained stance towards the conflict has reached its limits. Meanwhile, towards the end of June, Vietnam had constructed a lighthouse in Amboyna Cay.

On August 9-10, 1995, the Philippines and China held vice-ministerial talks in Manila for consultations on their disputes in the South China Sea and other areas of cooperation. During the talks, both sides claimed sovereignty over Mischief Reef. A Joint Statement was issued whereby both sides agreed to abide by the following principles for a code of conduct in the area:

Territorial disputes between the two sides should not affect their normal relations. Disputes shall be settled in a peaceful and friendly manner. Efforts must be undertaken to build confidence and trust and both sides should refrain from using force or threat of force to resolve disputes. To resolve their bilateral disputes in accordance with the recognized principles of international law, including the UNCLOS. To promote cooperation in fields such as protection of marine environment, safety of navigation, prevention of piracy, marine scientific research, disaster mitigation and control. To cooperate in the protection and conservation of marine resources of South China Sea.

The two sides agreed to hold future discussions among experts on legal issues and sustainable economic cooperation in the disputed area.⁹⁴

Two days after the meeting, Philippine Foreign Affairs Undersecretary Rodolfo Severino told reporters his assessment about the meeting with the Chinese delegation: “We agreed to a code of conduct... Eventually we hope all countries concerned will get on board.” Severino also admitted that differences between the two nations over dismantling Chinese structures built on Mischief Reef were not resolved.⁹⁵

One of the infirmities of the Joint Statement that led to subsequent disagreements between the Philippines and China was the wording of the fourth paragraph: “Pending the resolution of the dispute, the two sides agreed to abide by the following principles for a code of conduct in the area.”

Did both sides really agree to a code of conduct or only to principles for a code of conduct? The Philippine side took the Joint Statement as a code of conduct in the Spratlys. The Chinese side took it as a Joint Statement of principles for a code of conduct but the substantive components of the code had not yet been spelled out.⁹⁶

Since Beijing, Hanoi and Manila were unable to find an acceptable solution to the Spratlys issue, Indonesia sponsored a sixth nongovernmental workshop in October 1995, in the hope of finding a solution to the dispute. The PRC, Taiwan and ASEAN members concluded a two-day conference in Jakarta agreeing to cooperate on navigation, shipping and communication in the South China Sea.

During the workshop, there was frank and open discussion over many issues, but no basic agreement was forged to accept to study biodiversity in the South China Sea and to consolidate proposals in earlier meetings.

In all the Indonesian-sponsored workshops and ARF meetings wherein the Chinese participated, the Chinese agreed to joint development in the South China Sea, that pending the resolution of the sovereignty issue, they are willing to talk to the claimants individually, and to settle differences peacefully. The Chinese, however, did not agree to any multilateral scheme of settlement. They insist only on bilateral talks and no third party involvement. The Chinese were obviously looking for a settlement that would permit at least a sharing of the resources in the contested area, but not the relinquishment of sovereignty by any of the claimants. While the Chinese leave the possibility open to bilateral joint development, they do not agree to a multilateral settlement of the disputes.

In late October, 1995, China conducted naval exercises in the Yellow Sea, which was condemned by Taiwan and caused unease to the Philippines. President Ramos voiced Philippine concern thus: "The Philippines cannot be put completely at ease in our bilateral relations with China until the situation in the Panganiban Reef (Mischief Reef) in our Kalayaan group of islands is completely normalized."⁹⁷

During the 5th ASEAN Summit in Thailand in December 1995, President Ramos urged the heads of the ASEAN to "demilitarize the Spratly islands in the South China Sea as a matter of regional necessity."⁹⁸

Since the Chinese occupation of Mischief Reef, there has been greater warmth in Philippine-Vietnamese relations, although the two countries still have a long way to go before present relations acquire strategic dimension. On November 7, 1995, the Philippines and Vietnam concluded three days of talks in Hanoi and issued a Joint Statement on the Fourth Annual Bilateral Consultations. The agreement on the handling of disputes in the Spratlys appears similar to the wording of the Philippine agreement with China. On December 3, 1995, Vietnamese President Le Duc Ahn of Vietnam agreed with Speaker Jose De Venecia's call for a reduction of arms in the Spratly islands.

China's announcement to resume its military exercises in the Taiwan Strait up to March 1996, and the stationing of two aircraft carriers of the US Seventh Fleet in

nearby Taiwanese ports dominated most of the Spratly-related developments during the first half of 1996.

Due to China's military exercises the previous year, Taiwan, in early January 1997, postponed its plan to build an airstrip in Taiping island.

In early March 1997, Vietnam and China came close to a physical confrontation when a Chinese oil rig, Kantan-03, and two Chinese tug boats moved into waters near the northern coast of Vietnam.⁹⁹

Although China's military exercises ended two days after the Taiwan presidential election, the Spratly Islands claimants were not convinced or assured by Chinese Vice Foreign Minister Tang Jiaxuan's statement that China had no expansionist ambition.¹⁰⁰ They viewed Chinese military exercises as a statement of China's intent and capability of using force to reunify Taiwan with the mainland.

Vietnam was not intimidated by the Chinese military exercises as it signed an exploration and production agreement with the American Oil Company Conoco on April 11, 1997 for Blue Dragon islands. When China learned of the contract, it reiterated its sovereignty claim over the Spratlys and threatened "confrontation" should Vietnam pursue the agreement. Conoco backtracked and announced that it would wait until China and Vietnam resolved the issue first.¹⁰¹ By late April, a team of Filipino and Vietnamese marine scientists undertook a marine research tour from Manila through the Spratlys to Ho Chi Minh City.¹⁰²

In April 1997, tension mounted when eight Chinese vessels were seen near Mischief Reef. At the same time, the Philippine Navy apprehended two vessels of the Chinese Oceanic Administration near Scarborough Shoal. The Chinese captains informed their counterparts that Scarborough Shoal is Chinese territory. But the Chinese claim was rejected by the Philippine government.¹⁰³ The Chinese vessels sailed away. In mid-May, two Philippine Congressmen¹⁰⁴ embarked on a trip to Scarborough Shoal, removed Chinese antennas and planted the Philippine flag. Two days after, Beijing protested the visit of the two congressmen to Scarborough Shoal and demanded the removal of the Philippine flag.

On May 20, the Philippine Navy arrested 21 Chinese fishermen who were fishing at the disputed Scarborough Shoal.

Meanwhile, on May 10, 1997, during an ASEAN Regional Forum in Yogyakarta, a Chinese delegate said that the Spratlys were not within the scope of the ARF. On May 15, China claimed an EEZ stipulated in the 1982 UNCLOS using straight baselines in its 1958 Declarations on China's Territorial Sea and its 1992 Law on the Territorial Sea and Contiguous Zone which it deposited with the UN on June 7. A Chinese foreign ministry spokesman said that China will successively determine and announce

other parts of its baseline of territorial seas, including the baseline of the PRC territorial seas around Taiwan and other outlying islands.¹⁰⁵

In early June, a four-day Asia-Pacific Conference on Maritime Security was held in Kuala Lumpur. Some delegates proposed that China should take the leading role in bringing forward concrete proposals on joint development of the disputed Spratly islands. According to Singaporean analyst Lee Tai To, chairman of the Singapore Institute of International Affairs: "The initiation of joint development in the South China Sea would also forestall possible interference from outside powers and exploitation of the conflicts."¹⁰⁶

In mid-July, Judge Eliodoro Ubiadas of Olongapo City Court dismissed the Philippine case against Chinese fishermen for illegal entry. According to the Court decision, ownership of the shoal where the foreign fishermen were arrested by the Philippine Navy last May 20 has not been resolved between the Philippines and China. "So there can be no legal basis as yet for the conclusion that the accused... entered Philippine territory illegally." The decision, however, was criticized by Secretary Siazon, who said, "It was wrong. We are filing a note to correct the record. The decision to release them is the judge's, but the rationale is disputed."¹⁰⁷

On July 28, the Philippine defense secretary reported that aerial photos taken near the Kota and Panata islands in the Spratlys showed four armed Chinese naval ships. The next day, the Philippines protested the presence of Chinese ships in a diplomatic note handed to Chinese Ambassador Guang Dengming.¹⁰⁸ On August 3, the Chinese Embassy revealed that the presence of Chinese armed naval vessels in the Spratlys were legal and normal and that the Philippine government had been informed beforehand that the ships were going to the area on a maritime survey. This was confirmed by Foreign Secretary Domingo Siazon.¹⁰⁹

In 1997, despite the Asian financial crisis, the national elections in the Philippines, and political crises in Indonesia and Malaysia, the conflict over the Spratlys did not simmer down. No doubt the immediate concern of the ASEAN nations was to overcome the financial crisis that was wreaking havoc on their respective domestic economies. Their worry was not only China's aggressive presence in the Spratlys but on whether China was going to devalue its Yuan or not. According to Undersecretary Rodolfo Severino, since 1995, talks "were unusual" since 80 percent of the discussions were centered on the South China Sea. While previous talks had included other areas, such as trade, science and technology and agriculture, in recent years the countries were preoccupied only with the Spratlys.¹¹⁰

Near the end of 1997, Vietnam claimed that China offered to relinquish its claims on parts of the Spratly Islands if Vietnam would agree to joint exploration in the area.

Vietnam accordingly rejected the offer and asserted its sovereignty over the potentially oil and mineral-rich islands.¹¹¹

In early January 1998, Maj. Gen. Reynaldo Reyes, commander of the Philippine Armed Forces' Western Command, sought the filing of a diplomatic protest against Vietnam for shooting Ibsen Abu, a Filipino fisherman. He claimed that Vietnamese soldiers tricked Ibsen Abu and five other fishermen to sail close to Tenet Reef in the Spratlys before they were pounded with M-60 machine-gun fire. According to General Reyes, the protest was "to show the government's disapproval of the shooting which resulted in the serious fatal wounding of a Filipino fisherman."¹¹²

The Philippine protest was submitted to the Vietnamese Embassy but, a week after, Vietnam denied that their forces had fired on a Philippine boat near a reef Vietnam occupies and said its forces fired only warning shots to drive the fishermen away. An embassy statement said: "Vietnam requests the Philippine side to educate its fishermen to respect Vietnam's sovereignty and territorial waters, thus preventing such similar incidents from recurring."¹¹³ But Philippine Defense Secretary Fortunato Abat stood by the military report that the Filipino fishermen were shot by the Vietnamese.¹¹⁴

In the middle of March 1998, the Philippine Navy found the Malaysians setting up a platform for high technology communication facilities on Pawikan Shoal. But when the Malaysians learned that they were being observed, they left the shoal on April 1. The Philippine Navy dismantled the structures thereafter.¹¹⁵ On April 16, the Philippine Department of Foreign Affairs announced that it will not file a diplomatic protest against Malaysia since it had aborted the plan to install communication facilities in Pawikan Shoal.¹¹⁶

The change in the national leadership of the Philippines in July 1998, from President Fidel Ramos to President Joseph Estrada, marked an escalation of tension in Philippine-China relations over the Mischief Reef when China renovated structures in the reef into two-storey buildings with two satellite dishes and a helipad.

On August 5, American and Philippine warships and aircrafts staged live-fire exercises near Scarborough Shoal. The exercises followed Manila's rejection of Beijing's offer to allow Filipino fishermen to use Chinese facilities on Mischief Reef. There was an 18-hour live-fire exercises of Philippine military forces in the area that drew protests from China. President Estrada announced that he and Defense Secretary Orlando Mercado were not informed ahead of time of the Armed Forces' live-fire exercises with the US Navy near the disputed Scarborough Shoal. "They simply forgot to tell us," President Estrada told reporters. He claimed that the exercises were scheduled during the Ramos administration.¹¹⁷ The Chinese chose to dismiss the incident. However, Chinese Embassy spokesman Hao Yinbiao

said that relations between China and the Philippines will be based on mutual trust.¹¹⁸

In September 1998, the Vietnamese entered production-sharing contracts with Japan-Vietnam Petroleum Company and Petronas to develop more oil fields at Rang Dong, which was expected to produce 12.1 million tons of crude oil per year. Then in October, Vietnam signed a landmark deal to form a joint exploration company between Petro Vietnam, Conoco, Geopetro, Pedco and SK Corporation. The contract marked the first exploration and production contract that does not follow the production-sharing contract format, whereby Petro Vietnam keeps a controlling interest.¹¹⁹

Meanwhile, the Philippines continued to condemn the Chinese renovation on Mischief Reef as a violation of the 1995 Code of Conduct. But the Chinese claimed that on October 15, 1998, they had informed the Philippine government, through the Philippine Embassy in Beijing, of China's intention to repair the existing structures on Meiji-jiao. On October 29, the Philippine Air Force spotted a bunker measuring 60-foot long and 30-foot wide near the octagon-shaped buildings in the reef. A Philippine legislator, Roilo Golez of Parañaque, who obtained pictures of Chinese presence in the Mischief Reef, claimed that "Beijing is gearing up for military operations."¹²⁰ On November 11, Malacañang called for the immediate dismantling of the new structures on Mischief Reef. President Estrada, abandoning his cautious stance toward the issue, told reporters that he ordered the blockade of Mischief Reef: "I have already instructed the Chief of Staff to block the entry and exit points so that intruders will not be able to enter anymore."¹²¹ On the same day, Philippine Armed Forces Chief, General Joselin Nazareno, ordered navy ships on patrol in the disputed Spratly islands to fire a warning shot across the bow of Chinese vessels that move closer than 9.26 km (five nautical miles) of Mischief Reef. But he also ordered Air Force planes not to fly lower than 1.52 km (5,000 feet) over Mischief Reef to avoid confrontation with the Chinese."¹²² The next day, Presidential Spokesperson Jerry Barican stressed that President Estrada did not use the word "blockade," but 'block,' which only meant stationing of more Navy and Air Force patrols in the area. Philippine Foreign Affairs Secretary Domingo Siazon told Chinese Ambassador Guang Dengming that President Estrada was misquoted. But he asked the Chinese ambassador for an explanation on the new Mischief Reef structures. The Chinese ambassador claimed that they were only repairing some structures in the reef and that "they are not military structures." He also refuted the claims of Philippine Defense Secretary Orlando Mercado that China is launching a "creeping invasion" in the Spratlys.¹²³ On November 16, Secretary Siazon met with China's Foreign Minister Tang Jiaxuan in Kuala Lumpur and they agreed to convene an experts group on confidence-building measures in January and to look into the

details of the joint-use proposal of China. On November 17, in his talks with President Jiang Zemin, President Estrada agreed to settle their respective differences through diplomatic channels.¹²⁴ The proposal on “joint-use” of the Mischief Reef facilities received mixed reactions in the Philippines. Foreign Secretary Siazon agreed in principle to a joint use of the fishing facilities.¹²⁵ But Defense Secretary Mercado rejected the proposal and warned that it would be tantamount to giving up the Philippines’ claim to the reef. On November 29, the Philippine Navy arrested 20 Chinese fishermen aboard six boats in Alicia Anne Reef, near Mischief Reef.

In early December 1998, US Representative Dana Rohrabacher, who flew on a Philippine Air Force plane that circled thrice over Mischief Reef, announced that what he saw—three Chinese warships and six ferry boats in its lagoon—was “an act of intimidation against the Filipino people.” But President Estrada refused to comment on the US congressman’s strong statement.¹²⁶

On December 16, at the annual meeting of the nine-member ASEAN at Hanoi, Secretary Siazon told reporters that China and the Philippines would hold further talks “when conditions are right.” He also said, “I hope the message gets through that the ASEAN countries really wish to have improved relations with China.”¹²⁷

The year 1999 started with the Philippine Senate seeking to strengthen its relations with the United States when it ratified the Visiting Forces Agreement (VFA). Most Philippine leaders believed that the Chinese would not have occupied Mischief Reef had the Philippine Senate ratified the draft for a new Military Bases Agreement in the early 1990s. The terms of the Status of Forces Agreement which were included in the new draft were rejected by the Philippine Senate in the early 1990s. Since then, Philippine leaders have been in search of greater maneuvering room for the Philippines. The leaders fumed not only over Chinese refusal to leave Mischief Reef but also over their continued expansion and renovation of the reef. The Philippine leaders saw in the VFA an opportunity to deter Chinese action in the Spratlys. Despite American disclaimers that the Kalayaan Island Group claimed by the Philippines in the Spratlys is not covered by the Mutual Defense Treaty (MDT), Filipino leaders are hopeful that inevitable future contradictions between China and the United States would give the US no choice but to contain China’s reassertion of sovereignty in the South China Sea. While a new Military Bases Agreement was out of the question, a restoration of the terms in the Status of Forces Agreement under the Military Bases Agreement of 1947 was possible. The VFA is therefore seen as a deterrent against China in the KIG. During President Estrada’s weekly “Jeep ni Erap” TV program, Secretary Mercado explained, “What we are saying is that, in the interest of stability in the region, there should be American presence. . . . If there is no American presence, we

all know who would come in. Isn't it obvious? Before we know it, they (the Chinese) could be in Palawan."¹²⁸

In early January 1999, Philippine Defense Secretary Orlando Mercado announced that the Philippines would push for a meeting among the rival claimants to the Spratlys to be hosted by the US. According to Mercado, "When the matter was discussed in the Pentagon with Secretary Cohen, the indication was that the US, specifically the Pentagon, was willing to be the spark plug to have the meeting get on the way."¹²⁹ China immediately rejected the US offer to mediate the territorial dispute in the South China Sea. Foreign Ministry Spokesman Sun Yuxi said, "External interference in this matter is unacceptable and will only complicate the current situation."¹³⁰ China insisted that talks on the Spratlys should be on a bilateral basis.

The same sentiments were expressed by Malaysian Foreign Minister Syed Hamir Albar who declared the next day that Malaysia will not welcome US or any third-party involvement in resolving claims over the disputed Spratly Islands. "There are mechanisms to resolve the matter. Malaysia has taken the step by trying to resolve the matter through an amicable and peaceful way," the Minister said.¹³¹

In view of these conflicting statements on the US offer to broker talks between all claimant countries, President Estrada called for a meeting of the National Security Council to tackle the Spratly issue, particularly the US offer to act as broker. President Estrada accordingly brushed aside Secretary Siazon's fears that dragging Washington into the Spratly issue could transform the territorial dispute into a nuclear conflict. "If the US can intervene, why not?" President Estrada told reporters.¹³²

Vietnam did not express approval or disapproval for a US-sponsored meeting on the Spratlys. However, its foreign minister declared that it was willing to consider a multilateral approach to the Spratlys issue. Additionally, Vietnam viewed the latest events with concern. "We are following with deep worry the complex evolution in the region Vhan Khan (Mischief Reef) in the Spratlys... These developments will not help the stability and cooperation in the region."¹³³

On January 10, 1999, in answer to the statements by US officials that China should live up to its promises and avoid actions that would increase tension in the Spratlys, Chinese Ambassador to the Philippines Guang Dengming said that the United States should stay out of the dispute over Mischief Reef. He added that the structures China built on it were not for military use. Reiterating Beijing's position, Guang Dengming said: "We can solve the problem among ourselves. Other countries cannot interfere. Our position is that this can be resolved by bilateral talks."¹³⁴ President Estrada, when asked about the Chinese Ambassador's statement, said, "They are entitled to their opinion. We are entitled to ours... The United States has a role to play in the country's

territorial dispute with China in the South China Sea... We have a mutual defense treaty with the United States. We can always invoke that.”¹³⁵

President Estrada announced on January 26, 1999, that the next RP map will include the Kalayaan Island Group, “We will call a constitutional convention. So it’s up to the delegates... It could be a part of the agenda of our constituent assembly or constitutional convention.”

President Estrada was reported on the same day to be satisfied with the proposal for joint use of the Mischief Reef facilities. He said, “I think we will solve this problem. You know, China has never had a history of invading countries, so I don’t think China will ever think of invading the Philippines.”¹³⁶

On January 30, 1999, President Estrada’s message to the Philippine Senate was: “Pass the Visiting Forces Agreement (VFA), and the country can stop the Chinese in the Spratlys.” On the same day, President Estrada, in a radio interview, said, “It is good for us to have an ally, a superpower partner so our security would be safeguarded.” Estrada cited Chinese expansion in the Mischief Reef and said that a strong alliance between the Philippines and the US would “balance power in all of Asia.”¹³⁷ A local paper reported that Foreign Affairs officials have advised Estrada against visiting China.

As the debate over the VFA gathered momentum in the Philippine senate, charges against Chinese military expansionism were aired daily by almost all advocates of the VFA. The subtext of this argument is that democracies do not go to war against each other. Democracies like the Philippines and the US must form an alliance against a non-democratic foe like China. This ideology has led to the corollary view that China’s occupation of any contested territory is a clear and flagrant indication of its expansionist goal. Hence, China’s occupation of Philippine claimed territory, particularly Mischief Reef, must be stopped at all cost.

As critics of the VFA have anticipated, sooner or later, the supporters of the VFA would argue that Chinese occupation of Mischief Reef was a security threat to the Philippines and therefore required US military presence for national and regional security.¹³⁸ Indeed, on February 17, General Joselin Nazareno told reporters that the Chinese occupation of Mischief Reef “is a very serious threat to national security. It is not just a threat, it’s already there... We can see the line of atolls that they have developed starting from Fiery Cross... In other words, it’s a line starting from China toward our EEZ... The next nearest reef is Reed Bank, where there is oil exploration, as well as other nearby reefs and atolls, where the Malampaya oil exploration of the country is ongoing.”¹³⁹

While Filipino leaders accused China of harboring military objectives against the Philippines by its occupation of Mischief Reef, on March 2, China protested against

plans by Philippine legislators to buildup military structures and a runway on Pag-asa island. Chinese Foreign Ministry Spokesman Zhu Bangzao said, “China demands that the Philippine side stop all actions that may inflame the situation and create tension.” The next day, Secretary Mercado announced that he had ordered the repair of a runway on Pag-asa island, a Philippine-claimed island in the disputed Spratlys, to fix some minor damage that may pose danger to aircraft. Mercado also announced that 8 million pesos had been earmarked for the repair. According to Mercado, such repairs have been periodically undertaken since 1995.¹⁴⁰

On March 4, President Estrada, in a speech to Southeast Asian judges attending a conference on environmental law, proposed the creation of an international court to settle territorial disputes between nations so as to avoid military conflicts. He said, “Instead of using military might to resolve territorial disputes over small islands in the South China Sea, a petition can be made to an international judicial body to have these islands declared as maritime sanctuary. Then all claimants can jointly manage the site for eco-tourism purposes.”¹⁴¹

Neglecting China’s position against involving third parties in resolving the Spratly issue, President Estrada, in his meeting with UN Secretary General Kofi Annan in New York in early March, brought up the subject of Chinese occupation of Mischief Reef and the dispute over the Spratlys.¹⁴² On his return to the Philippines, President Estrada said UN Secretary Kofi Annan promised to help settle the territorial dispute. He stated, “I asked him if he could intervene in this process so that we may have diplomatic talks for a peaceful resolution of the conflict over the Spratly Islands and Mischief Reef... The UN Secretary General promised that he will do everything to resolve this problem through peaceful means through diplomatic means.”¹⁴³

On March 22-23, 1999, the Philippines and China held bilateral talks in Manila on Confidence Building Measures and “Joint-use” of the Chinese facilities on Mischief Reef. While delegates from both sides described the two-day talks as a “fruitful discussion” and that exchange of views was done in a “frank and friendly manner,” the issue of joint use was not discussed. Chinese Foreign Assistant Secretary Wang Ni denied that China offered joint use of its structures on Mischief Reef, while Philippine Foreign Undersecretary Lauro Baja, Jr. asked that China dismantle its structures or turn over the management of the structures “under a mutually agreed arrangement.” The Chinese ignored the demands and stood firm that the reef is under Chinese sovereignty. The Philippine delegates also asked for access to the structures at any time, but their Chinese counterparts said that it was not necessary to do so because they were not for military use.

The Philippine offer appears to be an “all or nothing” proposition: no new occupation, suspension of sovereignty claim but not the suspension of Philippine EEZ claim. This means that either the Chinese leave Mischief Reef or open their facilities to joint management. Since it was an “all or nothing” proposition, the Chinese replied in kind: they have “indisputable sovereignty over the Spratlys,” including Mischief Reef. The Chinese would not give up the advantage they had established by their occupation of the reef. Nevertheless, they believed it was important to proceed with further talks to preserve the appearance of a reasonable, flexible Chinese position and that a solution was possible in the future.

In view of these differences, their Joint Communiqué only restated the principles that had been affirmed earlier, to wit: To settle the differences in a friendly manner, to exercise self-restraint and not to take any actions that might escalate the situation in the region; to refrain from the use of threats or force; and to work together to maintain peace and stability in the region. The two sides also agreed to continue talks on confidence-building measures.

In a meeting between China and the nine-member ASEAN, the Philippines sounded out China on a proposal for a regional code of conduct, which would spell out guidelines governing activities in the disputed chain in accordance with international maritime laws. The regional code of conduct will be signed by claimants to the Spratlys. The plan for such a code was discussed in Hanoi in 1998. But China’s assistant Foreign Minister Wang Ni said that a statement signed in 1997 between ASEAN and Chinese leaders was sufficient and represented “a confidence building measure. . . . As long as both sides observe the orientation and content of the joint statement, then South China Sea will continue to maintain stability.”¹⁴⁴

While the Chinese, at various times, claimed that they have agreed to the principles for a code of conduct, they now claim that such principles were sufficient provided that the signatories “observe the orientation and content of the joint statement.” The Chinese are not about to be boxed in by a multilateral agreement in the form of a regional code of conduct.

China’s Agriculture Vice Minister Qi Jingfa was quoted by the *China Daily* on March 24 making the following announcement: “From June 1, 1999, a two-month fishing ban will be imposed each year on the South China Sea north of 12 degrees latitude, including Beibu Gulf.” The ban was intended to replenish depleted fish stocks.

Reacting to the Chinese announcement, President Estrada said that China had no right to ban Philippine fishermen from operating in the disputed areas of the Spratly islands.

Interpreting China's pertinacity on the issue of Mischief Reef, the Philippine foreign office announced that President Estrada has cancelled his visit to China in May. "We have problems scheduling the visit," Secretary Siazon told reporters. "Under the present circumstances, it is inauspicious for him to go to China," a senior diplomat said.

The cancellation was interpreted by most observers as a diplomatic rebuke to China, since this was a personal invitation of President Jiang Zemin when they met for the first time in Kuala Lumpur during the Asia-Pacific Economic Cooperation summit in November. Moreover, immediately after he assumed office, President Estrada expressed the desire to make China the first country he would visit, but he was prevailed upon by his advisers to make a customary visit to ASEAN countries first.¹⁴⁵ Referring to joint use, "I think they (the Chinese) are just showing their inconsistencies before the world because, as you remember, in the ASEAN dialogue meetings in Kuala Lumpur, the Chinese President Jiang Zemin made that offer and everybody remembers that."¹⁴⁶

During the May 1999 China Petroleum Conference in Beijing, Chevron Overseas Inc. announced that it would invest \$60 million in China that same year. Since 1979, Chevron had invested some \$400 million in onshore and offshore oil exploration and development in China. The 1999 investment would go to exploration and development in Bohai Bay, the South China Sea and Shengli Basin.¹⁴⁷

On May 17, 1999, in his keynote address to more than 200 of the most influential business leaders in the Pacific region in Hong Kong, President Estrada said, "China's sweeping claim to the Spratlys is not merely about barren and uninhabitable islets. It is about Southeast Asia's bottom-line-security." He also said Southeast Asia has "political anxieties currently centering on China's effort to project power" into the region's "maritime heartland."¹⁴⁸

Back home in the Philippines, President Estrada was criticized for "twitching the dragon's tail." Senator Raul Roco said that the President's posturing on the Spratlys issue is a ploy to provoke China into an act of aggression that can be used as an excuse to expedite the ratification of the proposed RP-US Visiting Forces Agreement. "It seems to me we have to anger China just to approve this special treatment agreement between the US and the Philippines called the VFA," Roco said.¹⁴⁹

On May 25, 1999, Philippine papers reported the sinking of a Chinese fishing vessel by a Philippine Navy patrol ship in the Scarborough Shoal, north of the Spratlys. Philippine military officials said the navy ship could not have deliberately slammed into the fishing boat because this would have damaged the navy ship too. But the Chinese Consul General said that the Chinese fishing boat sank when the Philippine Navy ship

rammed the boat.¹⁵⁰ Chinese survivors insisted that the Philippine Navy ship rammed into their boat, not just once but twice, causing it to sink. To the surprise of most political observers, the Chinese tempered their reaction, and only asked compensation for the Chinese fishermen and punishment for the Navy personnel responsible for ramming their boat.¹⁵¹

President Estrada's visit to Japan, aimed at getting massive Japanese economic aid, was designed to avoid raising sensitive political issues. But he made it sound overwhelmingly political by attacking the Chinese occupation of Mischief Reef.

In his predeparture press statement on June 2, President Estrada said that he would convey to his Japanese hosts the Philippine government's view on future security cooperation in Asia. He would also bring up one sticky issue, the Philippines' festering dispute with China over the Spratly islands. But he would avoid raising the issue of Filipino comfort women who were forced by the Japanese military to be sex slaves during World War II.¹⁵²

In mid-June, Philippine Defense Secretary Orlando Mercado reported that Malaysia had constructed a 20-meter by 50-meter concrete platform on Investigator Shoal (Pawikan) with a helipad and a two-storey building housing radar facilities. Philippine Air Force reconnaissance planes had sighted two naval vessels, three barges with cranes, several tugboats and groups of men in dark gray and blue-gray uniforms, indicating they were members of Malaysia's Navy.

The shoal is some 444.48 km (240 nautical miles) from Palawan and it lies within the Kalayaan Island Group, the area in the Spratlys being claimed by the Philippines.¹⁵³

President Estrada ordered Secretary Siazon to lodge a diplomatic protest with Malaysia over its occupation of a shoal being claimed by both countries in the Spratlys. "We will exhaust all means to arrive at a diplomatic solution... But if they are already putting up structures, we should also put our own."¹⁵⁴

Malaysian Foreign Minister Syed Hamid Albar declared that, "The features on the shoal are those that we have access to within our sovereign rights." He stressed that the shoal is within Malaysia's continental shelf and its exclusive economic zone.¹⁵⁵

After being shown the Philippine diplomatic protest, Prime Minister Mahathir Mohamad said the territory, referred to by Malaysia as the Peninjau and Siput reefs, were within Malaysia's exclusive economic zone and did not belong to the Philippines.

Meanwhile, Secretary Siazon said that the Malaysian action could adversely affect any ASEAN effort in acting as a block to resolve the territorial dispute with China.¹⁵⁶

But, China said that it owned the shoal claimed by Malaysia and the Philippines, and called Malaysia's occupation of the territory illegal.¹⁵⁷ Vietnam joined the fray when its Foreign Ministry Spokeswoman Phan Thuy Thank said that Vietnam had "full historical evidence and a legal basis to claim its sovereignty" over the Spratlys. Then, he added that "Vietnam advocates a fundamental and long-term solution to disputes over the archipelagoes through negotiations. . . Pending such a solution, concerned parties should refrain from making the situation more complicated, and from the use of violence and threat to use violence."¹⁵⁸

The Spratlys controversy between the Philippines and China took a back seat during the visit of Chinese Agriculture Minister Chen Yaobang to the Philippines. Both sides even vowed to activate a joint committee on fisheries research and protection of marine environment to diffuse the tension in the Spratlys when Minister Chen called on President Estrada in Malacañang on July 12.

"Through this joint research we hope that while the Spratlys problem is an irritant, it will soon be placed on the larger context of our relationships," Philippine Agriculture Secretary Edgardo Angara said.

Minister Chen expressed the Chinese government's plan to help the Philippines achieve self-sufficiency by developing hybrid rice. Chen also assured Philippine officials that the Chinese structures in the Mischief Reef were "civil structures, that is providing shelter to fishermen and to rescue distressed fishermen."¹⁵⁹

Near the end of July 1999, the ASEAN Foreign Ministers met in Sentosa Island, Singapore to discuss the ASEAN role in settling diplomatic disputes and addressing questions like human rights and democracy.

The ministers called on the six nations with conflicting claims to the Spratly islands in the South China Sea to exercise "self-restraint" and "remain committed to peaceful settlement of disputes."

The Philippines had also agreed to simplify its proposed code of conduct to reduce conflicts in the disputed area. Other ASEAN members said that the Philippine original draft was "too legalistic and took the form of a treaty." The draft lists 15 main issues with some 36 subdivisions covering regional military cooperation, piracy and drug trafficking. It also bans the building of new structures in the Spratly archipelago. Secretary Siazon said that the simplified version would be accepted by the ASEAN foreign ministers.¹⁶⁰

On August 19, 1999, the Philippines lodged another protest with Kuala Lumpur after discovering Malaysian structures on Erica Reef (Gabriela Silang Reef). The *note verbale* asked Malaysia to reconsider its activities in Erica Reef and to exercise self-restraint. But Kuala Lumpur once again rejected the Philippine protest, prompting

President Estrada to announce on August 23 that the Philippines may raise a protest with the United Nations.

However, the foreign office softened President Estrada's off-the-cuff statement about bringing the controversy to the UN. According to a ranking Foreign Affairs official, the Philippine delegation would only raise the "country's difficulties" with Malaysia over the two reefs at the UN General Assembly meeting the next month.

Defense Secretary Orlando Mercado, meanwhile, announced that the Philippine military will continue its maritime patrol of unoccupied islands and reefs in the KIG. He also said he views "with a certain level of understanding" Malaysia's position, noting that both reefs were "closer to their territory."¹⁶¹

Bases of Claims

Based on published documents and declarations of the claimants over the Spratlys, they have used the following principles and international statutes as the bases of their claims: historic titles, discovery and subsequent occupation, and international agreements, including the Law of the Sea Convention and its Exclusive Economic Zone.

China and Taiwan rely heavily on historic documents and international agreements and, lately, China has aggressively occupied some of the unoccupied islands. The Philippines uses discovery and occupation. It has some problems using the UNCLOS EEZ, as some provisions of the EEZ conflict with certain provisions of the 1987 Philippine Constitution. Malaysia and Brunei are basing their claims mainly on international agreements, particularly the UNCLOS' EEZ.¹⁶²

There is no doubt each claimant tries to belittle, if not dismiss altogether, the arguments of rival claimants and reinforce arguments that support their own claims. Among all the claimants, China and Taiwan have the best documented historic titles. Vietnam has correspondent historic titles, too. But the Philippines and Malaysia argue that historic titles are not necessarily valid evidence for establishing sovereignty over a disputed territory. They have in mind the ruling on *Las Palmas*, which recognized the validity of historic titles but also noted that actual occupation is the more effective basis of claim to territory.¹⁶³ The Chinese argue that their historic title was recognized as early as 1930 by the Conference on International Law and again restated in Section 4, Article 7 in the Law of the Sea in 1956 and in Sec. 6, Article 7 in the Convention on Territorial Waters and Adjacent Areas passed in 1958. The Chinese also cited International Law, which states that the effect of an action should be judged by the law¹⁶⁴ at the time of the action, not by the law at the time when new requests are raised.

Understandably, later claimants choose to ignore historic titles as a basis for claiming the contested islands. China may have the most authentic title as the basis of its comprehensive claim, but among the major claimants, China occupies only a few islands in the Spratly archipelago. Instead, later claimants have used the *Palmas* rule as the standard for laying their claim. They have thus stationed military troops and maintained some level of activity in their respective “spheres of influence.” Precisely because the *Palmas* ruling dissociated historic claims from occupation as a means to assert sovereignty, it has opened the Spratlys to unilateral activities and justifications for asserting claims.

Chinese Historic Claims

China was the first country in the twentieth century to claim complete sovereignty over the entire archipelago.¹⁶⁵ China based its claims on discovery, historic title and continuous benefaction.¹⁶⁶ The Chinese purported that archeological findings showed that as early as 770-476 B.C., Chinese fishing expeditions visited the Xisha and the Nansha region.¹⁶⁷ References were made that the Nansha islands were under the jurisdiction of the Qiongzhu Administration of Hainan during the Tang Dynasty (618-907) and in Chou Ch’u-fei’s *Ling-Wai-tai-ta (Information on What Lies Beyond the Passes)* during the Sung Dynasty (960-1280 A.D.).¹⁶⁸ According to records of the Sung Dynasty, *Wujing Zongyao*, there were four island groups in the South China Sea — Chi Yang Chou (Tungsha), Chui Chou Yang (Hsisha), Sha Shih Tang (Chungsa) and Chien Li Shih Tang (Nansha).¹⁶⁹ Through the Sung documents, the Chinese claimed that the Sung government, in the name of the state, had included these states as part of China’s territory and was not challenged by any other state.¹⁷⁰ During this period, most of the other claimants were not even nation states. Emperor Cheng Tsu, the imperial ruler of the Ming Dynasty (1368-1644 A.D.), after conquering his enemies in the northeast beyond the Great Wall, turned to overseas exploration. He ordered the construction of a large fleet of ships, recruited tens of thousands of sailors and designated Cheng Ho to explore the South China Sea islands, the Malay Peninsula, the Indian Ocean and the eastern coast of Africa. Cheng Ho claimed many of the islands in the South China Sea for China. One of the islands was named Cheng Ho Gun Chiao (Tizard Bank and Reefs). Since then, Chinese fishermen have been plying between Kwangtung, Fujian, Hainan and the Nanshas. Some Chinese seafarers even built a Buddhist temple in one of the islands.¹⁷¹

In *China’s Indisputable Sovereignty Over the Xisha and Nansha islands*, China presented excerpts from two books, *Nanzhou Yiwushi* and *Funanzhuan* from

the 3rd century to prove that China was the first to discover the Spratlys and the Paracels and to exploit their resources. Although these documents did not directly refer to the Spratlys, they identified points such as “Chien-Li changsa” and “Wan-li shih Tang,” areas now known as the Paracels and the Spratlys.¹⁷²

The first specific reference in Chinese records was a book published in 1730 by Ch'en Lun-chiung, entitled *Hai-kuo wen-chien lu* (*Sights and Sounds of Maritime Countries*), which refer to a group of islands south of, and distant from the Paracels, now identified as “Wan li ch'ang sha.”¹⁷³

Records of Chinese navigators during the Qing dynasty (18th Century) included naval activity in the region.¹⁷⁴

In January of 1998, Chinese archeologists in Beijing claimed to have located 2,000 shipwrecks off the southern coast of China. Zhang Wei, director of underwater archeology at the National Museum of Chinese History, told Chinese Xinhua, a Chinese news agency, that the findings “will shed new light on the ancient maritime trade routes through the South China Sea.” Zhang added that “One of the sunk ships belonged to the fleet by Admiral Zhen Chenggong from the late Ming dynasty (1368-1644).” The 2,000 wrecks date from the Tang dynasty (618-907) up to the Qing dynasty (1644-1911). Due to this discovery, “China will make the South China Sea the main focus of research in coming years,” he said. Findings from the wrecks included Chinese coins, bronze cannons and pottery. Beijing has bolstered its claim in recent years using Chinese artifacts uncovered around islands which it says proved Chinese control.¹⁷⁵

During the turn of the century, in 1908, the Qing ruler sent a fleet of three warships led by Admiral Li Chun on a survey mission. They explored the Nansha archipelago, planted markers and erected the Chinese Yellow Dragon flag. Li reported that there were people from Hainan who settled in the Nansha islands. The Chinese asserted that unofficial maps published in China since the 1920s have designated either interrupted or uninterrupted lines to indicate the boundary within which China exercised sovereignty. In 1935, the Chinese published an official map of the South China Sea Islands, which included Zengmu Ansha (James Shoal)¹⁷⁶ about 1,500 km south of mainland China.

Means of Settlement: Bilateral or Multilateral Negotiations?

China has the most comprehensive claim to the Spratly archipelago. Because of this, most other claimants have engaged in bilateral talks with China at one time or another.

In 1976, when the Philippines contracted a consortium of Swedish companies to explore and exploit oil in the Reed Bank, the Chinese protested, and bilateral talks were held.

On April 9, 1980, Malaysia divulged that Vietnam and Malaysia were going to discuss their territorial dispute over the coral reef of Pulau Kecil Amboyna, about 160.93 km or 100 miles north of Sabah. Vietnam, on March 2, 1980, had stationed a garrison on this reef.

On March 17, 1988, three days after the naval clash between China and Vietnam, the Vietnamese called for a bilateral settlement of the issue. Manila likewise asked China and Vietnam to settle the disagreement peacefully.

On April 6, 1988, China announced that Beijing was ready to settle its dispute with Malaysia and the Philippines through friendly discussions.

In June 1988, the Malaysian Deputy Prime Minister announced that Malaysia was ready to settle with other claimants over the Spratlys based on international law.¹⁷⁷ Then, in September 1988, President Aquino announced that the representatives of Malaysia and the Philippines will hold talks over Malaysia's arrest of Philippine fishermen.

In January 1989, Vietnam held bilateral talks with China on the Spratlys. Then later, on March 19, the Chinese held bilateral talks with the Philippines again on its claims to the Kalayaan Island Group.

By the early 1990s, except for Taiwan, all claimants to the Spratlys were talking to each other and have attended multilateral nongovernmental fora on the subject.

Unfortunately, the outcomes of earlier bilateral talks have not been fruitful. This had led some claimants, especially Vietnam, Malaysia and the Philippines, to propose a multilateral approach to the problem. Accordingly, since there are several claimants to the Spratlys, a multilateral meeting may produce better results. This especially applies to claims that overlap. For instance, if Vietnam and the Philippines were to reach a satisfactory agreement over an area claimed by China and Malaysia, the agreement would be meaningless, unless China and Malaysia approve the settlement.

But a multilateral negotiation would mean that China and Taiwan accept the status quo as a *fait accompli*. But since Vietnam, Malaysia, and the Philippines have rejected the historic title claims of China and Taiwan, it is unreasonable to expect China and Taiwan to agree to an arrangement that would negate their claims altogether. Moreover, the multilateral scheme has other implications for China. If China agrees to Taiwan taking part in the negotiations, this can lead Taiwan to claim that it is entering the negotiations as a sovereign nation. And since Taiwan's independence is nonnegotiable to China, a multilateral settlement involving Taiwan is doomed to fail from the very start. Yet without Taiwan's participation, the multilateral scheme becomes meaningless.

Assuming that China and Taiwan both agree to a multilateral settlement, there are other complications. Both parties will be using the same historic titles and claiming the same territory and waters. This means that they will cancel out each other's claim. For the multilateral settlement to prosper, the claimants must first wait for either of the following to take place:

- a. China and Taiwan are reunited and therefore appear on the negotiating table as one party;
- b. Taiwan is recognized internationally as an independent nation and therefore China cannot deny it a seat in the multilateral negotiation.
- c. However, if Taiwan becomes independent, it would have to renounce its historic claim to the Spratlys.

Assuming that the China-Taiwan issue has been resolved, the other questions to be resolved are: What portion of the Spratlys will be on the agenda for discussion? How much territory and water must each claimant give up? What kind of decision-making arrangement should be adopted in the negotiation? Will it be one-claimant-one-vote on the entire Spratly archipelago? Is it a matter of simple majority vote on all issues? How many points must be given to claims made on the basis of historic title? How many points by military occupation and by international statutes?

In view of these difficulties, it is no wonder that bilateral talks are not binding while multilateral means of settlement appear impractical and unrealizable for now. A third solution has been suggested by some parties, which is the setting aside by all claimants of the framework of territorial sovereignty, and the use of an alternative framework to resolve the problem.

But some political analysts have warned that this suggestion may have the effect of inviting other nations as claimants who will then use alternative frameworks as their compelling reasons for their claims. For instance, the US or Japan may use security¹⁷⁸ as a new framework. Worse, generating other frameworks could also lead to setting up an international regime to guarantee the implementation of such a framework.

The Chinese government, cognizant of a myriad of problems that come with territorial dispute, has suggested that, instead of settling the sovereignty issue, why not shelve it for now? In the meantime, all the claimants can "jointly develop and share the oceanic resources in order to promote economic development and social progress of those countries around the rim of the South China Sea."¹⁷⁹

The underlying Chinese assumption is that a settlement can be achieved if there is willingness on the part of all claimants to accommodate one another. In advocating the shelving of sovereignty, the Chinese have provided the practical steps needed to implement an agreement, such as joint development and sharing of the oceanic resources. But the Chinese left unanswered the concept of joint development. Does the “joint” here cover all the claimants? Is the joint enterprise a pure business venture? How can the claimants be convinced that the risks of joint development are less than the risks of the status quo? There is, of course, hardly any evidence that anything approaching a consensus among the other claimants could be reached with respect to the Chinese proposal. Vietnam and Malaysia have agreed to a joint exploration and production scheme on their disputed area in the Gulf of Thailand. China and Vietnam may yet come to an agreement on the Wan ‘an Bei or Vanguard Bank area.

Existing realities suggest that the intentions of the Chinese and the other parties will have to undergo a confidence-building process. Among others, it is the lack of protocol on joint enterprises that perhaps deter the other claimants from giving the Chinese proposal a chance. Most other claimants would likely want to see how a joint venture would operate in practice. Details, such as how much investment and how much returns and what is the duration of the project have to be spelled out first. Besides the shelving of claims of sovereignty, all parties must agree to refrain from applying additional military forces on those already stationed in the contested islands. All parties must have the ability to monitor compliance through a joint surveillance force, and the force must have competence and capability to neutralize violations of the agreement.

Certainly, it would appear that the Chinese have moved beyond the demand that there be a multilateral resolution on the issue of sovereignty. Advocates of multilateral settlement have taken the rigid position that no other agreement can be negotiated except through a multilateral approach. Rather, they aim to make the Chinese concede to their claim right away, and then proceed to negotiate on how much territory and waters they can keep. On the other hand, the Chinese offer precludes the settlement of sovereignty, but yields to the joint exploration and exploitation of the resources in the area. In many respects, this position represents a large concession on the part of the Chinese. To the Chinese view, territorial claims are intended to insure for the claimants the use of the resources in the Spratly archipelago. Extracting resources is better than investing in nonproductive armed resources in the area. It would appear that in the Chinese view, violent confrontations are not only costly, these also lead to more armed conflicts.

Finally, there is the question of the role of the United States, the ASEAN and

other outside powers.

The ASEAN's strength is also its weakness. While it has the insider's view of the dispute, many of its members are claimants, so it cannot play the role of an objective mediator. At the same time, in attempting to speak with one voice against China, it could antagonize unwilling nonclaimants, thus damaging ASEAN's famous decision-making process by consensus. Assuming that the ASEAN can act as an objective, non-interested mediator, the most basic question that can be raised is whether it can argue and arbitrate the case of China and other member-claimants credibly.

From 1992 to 1994, there appeared to be ASEAN solidarity against China. In 1995, many members did not hesitate to start raising objections. When Philippine Foreign Affairs Undersecretary Rodolfo Severino wanted the ASEAN-sponsored Regional Forum (ARF) to discuss the Spratly issue with China collectively, some members objected. Other ASEAN members were unwilling to antagonize China. After the financial crisis and political turmoil in Indonesia, ASEAN leaders found themselves divided on many issues.

No doubt the US is the only superpower in the world, but it does not have the freedom of action it enjoyed during the Cold War years. The US cannot choose to intervene in favor of its allies without regard to economic consequences. American actions in the coming millennium cannot be a repeat of the Cold War years, although many of its Pentagon officials still use the Cold War as the framework for deciding who are friends and foes.

In January of 1999, the US offered to broker talks between all claimant countries, but the offer was rejected by China and Malaysia. Washington's offer was seen by China and Malaysia as a flagrant attempt to pursue the US's own agenda by taking advantage of the weaknesses of the disputants. Similarly, proposals for joint ventures with third parties as guarantors were not acceptable. Accordingly, agreements reached by claimant parties cannot be guaranteed by the United States and other outside powers. This would leave the door wide open for third party interference. Suspicions aside, Washington had repeatedly announced that it will not take sides in the Spratlys disputes. Furthermore, Washington needs the cooperation and goodwill of all parties to keep US economic, political and military paramouncy in Asia.

The Chinese View and Policy on the Spratlys

Chinese scholars tend to view China as "a victim of snatchers" in the Spratlys and not as an aggressor. They insist that other claimants are using all sorts of tactics to

create the status quo of their sovereignty over these islands.¹⁸⁰ Officially, “China maintains that disputes on territorial and marine rights and interests between China and neighboring countries are to be solved through consultation. Putting the interest of the whole above everything else, so that the disputes will not hamper the normal development of state relations and stability of the region. China maintains that territorial disputes should be settled through friendly and candid dialogues and cooperation with the other side on an equal footing, and at the same time by observing principles of seeking common grounds of agreement while putting aside differences, enhancing mutual understanding, reducing trouble and refraining from confrontation.”¹⁸¹

China assures its rival claimants in the Spratlys that it will solve the claims in accordance with commonly accepted international laws and modern maritime laws, including the UNCLOS. China seems to prefer that claims of sovereignty be suspended, and that bilateral talks be pursued with other claimants. Citing the advice of the late Deng, Chinese analysts state the following: “Ownership and sovereignty cannot be resolved in the next five or ten years even if we get Japan, the US and other big powers into the act.”

Thus, while China still maintains that these islands are historically Chinese territory, they are willing to suspend sovereignty in the meantime and share the resources in the area through joint development.

Chinese Premier Li Peng reiterated his position during his visit to Malaysia in December 1990: “The Nansha Islands are historically Chinese territory over which China has indisputable sovereignty. However, taking into consideration the practical situation there, our country holds the view that conflicts there should be solved through peaceful means, disputes should be put aside and joint development be made in this area.”¹⁸²

The Chinese see economic cooperation as the primary key for regional harmony and peace.¹⁸³ This is due to their view that the present and future stability and peace in the region are greatly dependent on how relevant states would make use of their ever growing economic leverage in the creation of a new regional order, given the dynamics of the economies of East Asia.

In the mid-1980s, when China abandoned the so-called communist bloc and opened up to the rest of the world, the Chinese leaders gained another insight. China discovered that for most of Asia, the approval rating of Japan was very much higher than that of China. This was a far cry from the years immediately after WWII, when

Japan's approval rating was at its lowest. The Chinese admitted that their strict adherence to the communist ideology, combined with Western anti-communist propaganda, had isolated China from most of Asia. They have now overcome these problems and, in so doing, have reassessed Japan's role in Asia. Chinese leaders have realized the significant role of Japan in the modernization of Asian economies. Japan's overseas aid and investments, the largest in the world, have raised the status of Japan in the eyes of fellow Asians, on whom they inflicted terrible sufferings during WW II. In 1987, Japan offered ASEAN \$1.4 billion in governmental development aid, compared to \$300 million from the US. During the recent ASEAN meeting, Japan offered a \$30 billion aid package, while US Vice President Al Gore attacked Prime Minister Mahathir for violation of human rights. Aid and investments also gave Japan considerable leverage over the economic policies of recipient governments. Japan's successful wooing of ASEAN countries strengthened China's resolve not only to modernize its own economy but also to forge economic cooperation with other Asian countries.

Moreover, Chinese analysts claim that while Western strategic thinking tends to stress security in military terms, the Asian experience has shown that nonmilitary threats, such as challenges to national integrity, domestic stability, economic development, environmental protection and promotion of national cultural traditions and values are equally important factors in bringing about security. Views on national security have therefore become more comprehensive. Internal and external challenges are considered to have equally dangerous implications on national security. Singapore, for instance, defines "total security" as "total defense plus diplomacy, plus internal stability," with defense having five dimensions: psychological defense, social defense, economic defense, civil defense, and military defense." Similarly, the Japanese claim that comprehensive security means "efforts in non-military as well as military terms are equally important for ensuring national security today." The Chinese have almost similar views on comprehensive security: "Political security, economic security, military security, environmental security and the strengthening of comprehensive national power which includes military and security strategies."¹⁸⁴

Thus, when the Chinese say prosperity breeds peace, this implies that as far as their relations with other countries are concerned, they give the highest priority to economic development within China, coupled with economic cooperation with other countries. Apart from superpower intervention in the internal affairs of Asian countries, the Chinese trace the existing tensions to the uneven development existing in the different countries, not to differences in ideology nor to any fundamental differences in economic

policies. The growth of economic and comprehensive power of one state may be worrisome to another state. Tensions also arise when several countries rely on the same waters and underwater resources perceived to be essential to their respective economic development and modernization programs.

Accordingly, the situation in the Korean peninsula, the disputes over the Nansha islands (Spratlys) and the festering Cambodian problem at that time, have led rival parties to be more suspicious of one another's intentions. And these have led to the formation of bloc alliances or security alliances against third parties.¹⁸⁵

Considering all these factors, one can deduce some observations and conclusions. To the Chinese, suspicions are not dangerous, as long as they do not shake the foundation of regional stability. Suspicions can be diffused, if not totally removed by means of diplomatic negotiations and economic and technical cooperation, rather than by military measures. This is why the Chinese are exerting efforts to eliminate mutual suspicions and forge economic and technical cooperative and joint programs, and people-to-people relations as confidence-building measures.

However, the Chinese still maintain that China has historic title over the Nansha islands.¹⁸⁶ China also claims that approximately 1,287,440 sq. km (800,000 square miles) of its territory have been encroached upon by the regional powers during the Cold War, despite China's protest concerning the status of the Spratlys. During the Cold War period, China was prevented from occupying the islands, mainly because of the coercive presence of the US Seventh Fleet on the Taiwan Strait. This resulted in China's inability to pursue its claims in the South China Sea. China was identified with the other side of the US security bloc, meaning the USSR and the other communist states such as North Vietnam and North Korea. As a consequence, despite China's repeated assertions of its claim, these territories were systematically occupied by countries whose leaders learned of the rich water and underwater resources.¹⁸⁷

The Chinese admit that the issue not only has deep historical roots, but new complications that involve several other claimants.¹⁸⁸ Given these complexities, it is very difficult, for the time being, to find a fundamental solution to the contradictions or for a way to eliminate all the sources of conflicts. The good thing is, under the 1992 Manila Declaration, all claimants have agreed to settle their differences through dialogue and not to use force to pursue their claims, to deal with this issue in a peaceful way, and to jointly exploit the islands' resources. From China's point of view, the conflict has been reduced to a political problem and therefore needs a political solution. But the political solution must be one that would be acceptable to all parties concerned. In order to find such a solution, there is a need for measures that would lay down the

groundwork for confidence-building among the claimants. Military measures certainly will not inspire confidence. All parties have agreed not to resort to military force in settling their differences. Military measures, whether through bilateral security arrangement or bloc arrangement, can only lead to confrontation and even a military showdown. On the other hand, economic cooperation is not only conducive to confidence-building but also provides a direct stimuli for all parties to reach a compromise over a final political solution. Tangible economic benefits gained by the claimants would prompt them to agree on what to disagree on.

As to what form of economic measures should be and could be taken for confidence-building in the South China Sea, the Chinese appear to be handling it like a business discussion and negotiation. Many approaches could be explored, ranging from bilateral joint exploration of resources to multilateral cooperative development programs.

The Chinese are establishing joint development programs that need not be based on security-driven incentives. Regional economic trends and the economic environment also appear in favor of carrying out joint development programs in the South China Sea. Drastic political changes and economic reforms in East Asia in the last 20 years have given rise to the parallel development of globalism, on the one hand, and regionalism and subregionalism, on the other. The issue of security has been shelved altogether.

They see two patterns of economic development in East Asia. First is the intraregional economic cooperation among the developing countries in East Asia,¹⁸⁹ which grows much faster than transregional economic exchanges between these economies and the rest of the world. The fact that East Asia has become the largest trading partner of the US and Japan, and the second largest trading partner of the EU since 1993, indicates the strong trend towards globalism, and has led to stronger regional development.

Second, regionalism is, in turn, paralleled by the prevalence of subregionalism in East Asia—examples are the “growth triangles.”¹⁹⁰ No doubt, new joint projects could lead to new growth areas.

The Korean peninsula has become an example to demonstrate that economics play an important role, even if conflicts do involve military confrontation. Both Koreas have been building up their military forces in order to deter each other from waging another war. Indeed, for a time, everyone was predicting war in this peninsula. Militarily, there was no basis for compromise except on nuclear disarmament. In the meantime, both sides agreed to undertake economic exchanges and, in fact, over the years, these

have led to a reduction of tensions. North Korea agreed to change its nuclear plan from the manufacturer of nuclear arms to “light water nuclear reactor program.” This was brought about by “rice diplomacy.”

From the aforementioned developments, the Chinese concluded that economic measures can be used as a tool in preventive diplomacy. Unlike confidence-building measures taken by contesting parties in any conflict, preventive measures involve mediation by the UN or other central organizations. The UN and other major countries, for instance, have used preventive action, both in Cambodia and North Korea (Democratic People’s Republic of Korea or DPRK). Mr. Hun Sen was brought to the negotiating table because of his need for economic support and aid from the UN, Japan, France, the US and other countries.

The Chinese are convinced that economic cooperation is more than an expedient tool for managing regional conflict and security issues. For them, this is in line with the desire of most countries in the post-Cold War era to forge more peaceful, more prosperous and less belligerent nations. In their view, such an approach can bring about the long term objective of laying down a framework for a peaceful international order.

This will also lead to an international order that will not be based on a pole-centered, power politics-oriented, military power-dominated framework. This will be realized, especially when cooperation is based on an equal footing among states in the region. Regional economic cooperation should not be subject to the will and interests of any one economic superpower. It should not be a tool for serving the strategy of any big power to maintain its regional and global influence. Above all, regional cooperation should not pursue the aim of isolating or containing any state, especially in the political and security field. To maintain regional stability, each country needs to search for potential opportunities for cooperation, instead of viewing others’ economic growth as a threat.

Given China’s change of world-view, it is clear that it does not believe in a military solution to resolve differences among the claimants in the Spratlys. As the Chinese put it: “Military measures can only lead to more military measures.”

Moreover, the Chinese now appear to believe that military measures are not lasting and will not resolve the issue to the satisfaction of all claimants. They point to the case of Japan during WWII when it claimed ownership of all the islands, not only in the Sea of Japan but in the South China Sea and the Pacific as well. Japan’s defeat after WWII forced it to give up nearly all the islands it seized during the war.

To the Chinese, economic cooperation is the best means for confidence-building. For them, this is in line with the desire of most countries in the post-Cold War era to forge more peaceful, more prosperous and more equal nations. In their view, such an approach can bring about the long-term objective of laying down a framework for future international order. They are therefore suggesting joint exploration and exploitation of the resources in the South China Sea.

The fact that the Chinese are proposing common solutions to regional problems shows that they have compromised their claim of absolute sovereignty over the Spratlys. They know that taking a hard line on their claim of sovereignty over the Spratlys will not only cause more tensions in the region but will impede or delay China's own plan of full-scale economic development and scientific modernization in the next 10 or 20 years.

Notwithstanding the claims that there are rich biological and hydrocarbon resources in the area, China's current modernization program is not contingent on these resources alone, although it is true that with additional resources, China's ambition to become one of five largest economies in the world by 2020 might be realized earlier.

No doubt, China's decision to postpone the sovereignty issue is in the interest of all claimants. China therefore strives to win the confidence of the other claimants. If it does, it will free everyone from conflict with one another. And it will allow China to continue its modernization program unhampered.

Similarly, China's proposal for joint exploration and exploitation of the Spratlys' resources could also be mutually beneficial for all claimants, given their common interest in developing offshore petroleum and in harvesting other marine resources in the Spratlys.

Conclusion

Tensions and conflicts in the Spratlys are due to an unresolved dominion or sovereignty issue over the area, including access to and control over marine, hydrocarbon and mineral resources. It is generally recognized that unless the disputes are settled, the South China Sea will remain one of the "flashpoints" in the coming millennium. To most claimants this diagnosis is incorrect. Military offensive is not only risky but expensive. It invites military retaliation from the other side. It may tempt weaker claimants to invite third parties to take part in the conflict, leading to further escalation of violence. This was one reason why China objected to the Philippines'

ratification of the Visiting Forces Agreement with the US. In China's view, when weak nations fan flames of aggression against another claimant for its own purpose, it will only help increase the power of the superpower protector and diminish the benefits for the claimants. This only invites the supposed protector to become a predator. In the current state of the contemporary world, stereotyping distinguishes between friends and foes, and clients are in a constant state of flux. Economic and political interests are ever shifting in various directions at breakneck speed, requiring all institutions to be constantly alert and fit to adjust to all kinds of contingencies.

China's current concern is economic development and it uses the offer of joint development as an indication of its willingness to share the resources in the South China Sea with the other claimants. It has also accepted the ASEAN declaration that urged claimants to settle the disputes peacefully. But the other claimants appear reluctant to accept China's joint development offer and prefer that they preserve their status quo claims to the Spratlys. In short, Vietnam, the Philippines and Malaysia, while they sued for the settling of disputes through peaceful negotiations after they "grabbed them by force," are not ready to suspend sovereignty claims for China's joint development offer.

An analysis of the Chinese position during the Indonesian-sponsored meetings and ARF deliberations show that the Chinese have accommodated the other claimants on the following:

1. That pending on the resolution of the sovereignty issue, the Chinese are willing to talk to the other claimants individually.
2. The Chinese have agreed to settle the differences peacefully.
3. The Chinese are eager to undertake bilateral confidence-building measures with all the claimants.
4. The Chinese are willing to forge joint development projects in the South China Sea.

About the only proposal the Chinese did not accept was multilateral negotiations. While this means that resolution of disputes in "multiple claim area" will be difficult, it is not unattainable. Meanwhile, most nonclaimants appear to be more concerned only in open sea lanes, and safe and unhampered passage in the area.

What is keeping the claimants from arriving at a settlement is their reluctance to suspend the sovereignty issue. Whether it is China, Vietnam or the Philippines or Malaysia, they all consider the issue of sovereignty over their claimed areas in the Spratlys as nonnegotiable. China and the Philippines have often declared their willingness to suspend sovereignty while seeking for a mutually beneficial arrangement to explore,

exploit and conserve the resources in the area. Yet, in the final analysis, the suspension of their claim to sovereignty appears to be only rhetoric. Whenever bilateral talks were held to settle disputes, both sides tended to remind each other of their “indisputable sovereignty over the area.” It is as if negotiators from both panels went to the meeting to listen, to repeat what has been said earlier and to object to everything that is being said by the other side. They end up signing joint statements that restate positions that had been previously agreed upon and promise to have further talks.

Sovereignty is the main issue that is preventing the claimant parties from undertaking joint development in the area. China has repeatedly offered joint development of the area to Vietnam and the Philippines. While these two countries welcome the move, they tend to postpone discussions for a designated area for such a joint project, and the terms of financing, production and profit-sharing. There is, of course, some semantic differences in designating the area for joint development. As far as the individual claimants are concerned, it should not be the area they are claiming.

No doubt, over time, the sovereignty issue has been influenced by the domestic structures of the claimants. In the Philippines, for instance, holding on to the claims and attacking the other claimants are symbols of nationalism, power and leadership. Thus, during the local and national elections, the budget proposal for the modernization of the armed forces and the government campaign for the Philippine Senate’s ratification of the Visiting Forces Agreement, all these contributed to the hard-line stance against the other claimants, especially China. Vietnam, on the other hand, in view of its high domestic needs for hydrocarbon resources, and the time and resources required to extract these offshore resources, tended to pursue bilateral and multilateral negotiations and the development of areas with overlapping claims. China sees opportunity in its military strength, which equals that of a major power, but is tempered by its national priority to modernize its economy. It cannot risk the political and economic cost of any military adventure. China, therefore, pursues joint development as the next logical step to confidence-building measures. While this appears to be China’s most reasonable offer, it has been perceived by the other claimants as a weakness. While China agrees to settle the dispute in the Spratlys peacefully and acquiesces to the exploitation of the hydrocarbon and other resources by Vietnam, the Philippines and Malaysia, it is not getting any meaningful concessions in turn from these claimants. But then, why should the other claimants share the resources when, under current conditions, they can keep all the resources without any meaningful challenge from China? On the other hand, if the other claimants will not give the Chinese proposal a serious response, how long can the current Chinese leadership continue to promote a reasonable but unfruitful

policy? Is it still China's interest to keep peace or to pursue a joint development policy when there are no takers? It may lead the Chinese leadership to change its current policy of the suspension of the sovereignty issue and pursuing joint development. Thus, it is equally unrealistic for the other claimants to expect the Chinese to continue to offer joint development, a position that the other claimants exploit to China's disadvantage.

Since the risk and dangerous consequences of military adventure are clear to all claimant parties, they reject the military option in the Spratlys, unless there is a third party superpower interference. But the drive to settle the disputes peacefully through negotiations depends on the claimants' resolve to continue the preparation to embark on mutually-acceptable formulas and not just on the skills of the negotiators. There must be real progress in the negotiations, otherwise, the idea of resolving their differences peacefully would crumble. If all sides decide to tough it out for a long, long time, there may be no peaceful solution at all. Reviewing over what had been decided in previous agreements, it appears that all claimants engage more in plain and simple foot dragging.

For all parties, there is the question of what is possible and what is desirable. If previous agreements failed to mitigate undesirable actions of the other claimants and had actually worsened the situation, then questions should be raised as to the sincerity of their commitments to peace. Rules of negotiations are intended to make the rival claimants somewhat more predictable, set limits to extreme actions and help avert confrontations of any kind. Usually, both sides negotiate with maximum demands, but after negotiations, they have to be willing to compromise, and to settle for something less than what they demanded at the beginning. Even if each side only gets halfway of its demands, or something in between, nonetheless by coming into an agreement, both sides gain something, and it is therefore a win-win solution. Negotiators must be prepared to discuss problems that divide them and work for practical, fair solutions on the basis of mutual compromise. If one party is willing to negotiate with another—what will be negotiated? what is wanted? and how is it to be translated into policy and proposals for negotiation in the disputed area?—all these require an honest-to-goodness willingness to suspend the sovereignty issue. For China, if its offer of joint exploitation and development of the Spratlys is perceived as a sign of weakness by the other claimants, China may have to shift to other options that are less beneficial to the other claimants.

From a larger perspective, the other claimants should not make their claims to the Spratlys as the main focus of their relations with China, to the exclusion of other aspects and dimensions of their relations with that vast country. Nor should they use Chinese insistence on its historic title and therefore refusal to yield to this island group,

as the justification to divert their precious and meager national resources to prepare for armed conflict against each other. Fear of China, which is a colonial legacy from the colonial period, a fear intensified by the Cold War in the case of nonsocialist countries, is not the most rational basis for forging a meaningful and constructive settlement policy. The truth of the matter is that even with a modernization of the claimants' respective military forces, and even after the ratification of the VFA with the US and the Philippines, the Chinese cannot be pressured into surrendering the Spratlys.

It is in the interest of all parties concerned to strengthen their relations with China, whose economy is fast becoming one of the largest economies in the world, despite its domestic problems. All parties should view the conflicting claims over the Spratlys as only one of the kinks in their current relations. In the meantime, all parties must try to forge a more meaningful and constructive settlement scheme that is mutually beneficial in the long run.

Asia cannot remain a collection of contending economically weak states. It will have to reshape its identity and destiny in order to survive the new challenges of the new millennium.

Notes

1. Named after the British cartographer, Captain Spratley, who drew the map in the 1860s.
2. See Marwyn Samuels, *Contest for the South China Sea* (New York & London: Methuen, 1982) cited in Gerardo Martin Valero's *Spratly Archipelago: Is the Question of Sovereignty Still Relevant*, Institute of International Legal Studies, U.P. Quezon City, 1993... Ridao, "The Philippine Claim to Internal Waters and Territorial Waters and Territorial Sea: An Appraisal," *Phil. Yrbk. Intl'l. L.* 57, 58-60, cited in Haydee Yorac's "The Philippine Claim to the Spratly Islands Group," *Philippine Law Journal* Vol. 53, No.2, 1983.
3. Some of those who explored the Spratly archipelago are convinced that the Reed Bank and its environs and the Wan An Bei region are the only potential oil-rich areas. According to E.F. Durkee of Cophil Exploration Corp., "Wan

An Bei has thick sedimentary rock sections and very large anticlinal and fault closures (potential hydrocarbon traps)." But the area between the Reed Bank and Wan An Bei is "not an oil rich area." E.F. Durkee "Spratly Islands: Not So Oil Rich After All," *Philippine Daily Inquirer*, March 13, 1995.

4. Tomas Cloma, a Filipino fishing magnate and founder of the Philippine Maritime Institute, claimed to have discovered Freedomland in 1956. Cloma's "Notice to the World" read: "Notice is hereby served to the whole world that the undersigned, in his behalf, in behalf of his associates, and as citizens of the Philippines, claims ownership over a territory bounded as follows... This territory is composed of islands, sand cays, sand bars, coral reefs, and fishing ground with a total of 64,976 square nautical miles. This claim is based on the rights of discovery and/ or occupation open, public and adverse against the whole world..." (See A.V.H. Hartendorp, *History of Industry and Trade of the Philippines*. 1961).
5. Yorac, *ibid.*, p.45. See also Cheng, *The Dispute Over the South China Sea Islands* and Perfecto, *The Philippines' Kalayaan Islands*, both cited by Yorac.
6. See Chang Pao-Min, "A New Scramble for the South China Sea Islands," *Contemporary Southeast Asia*, v12, No.1, June, 1990, pp. 20-38.
7. Valero *op. cit.*, p. 4. Singapore and Malaysia are both claiming sovereignty over Pisang Island and Pulau Batu Putih ("White Rock") which is in the waters of the Malacca and Singapore Straits. Similarly, Indonesia and Vietnam are contesting the ownership of Natuma Islands off the northwestern coast of Indonesia's Kalimantan Island. China, Taiwan and Vietnam are each contesting the other's claim to sovereignty over the Paracel Island group. Taiwan has disputed China's claim to Pratas Island, Macclesfield Bank, 100 km east of the Paracels.
8. See Chiu and Park, *Legal Status of the Paracel and Spratly Islands*, 3 Ocean Dev. Int'l. L.J. 9 (1978).
9. Marwyn Samuels, *Contest for the South China Sea*, Note No.4, pp. 137-144, 1982.
10. SCAPIN Directive 677 of January 29, 1946 defined under paragraph 3 Japan's territory as follows:
 - a. For the purpose of this directive, Japan is defined to include the four main islands of Japan (Hokkaido, Honshu, Kyushu and Shikoku) and approximately 1,000 smaller adjacent islands, including the Tushima Islands

and the Ryukyu (Nansei) islands north of 30° North Latitude (excluding Kuchinoshima Islands); and excluding (a) Utsuryo (Ullung) Island, Liancourt Rocks (Take Island) and Quelpart (Saishu or Cheju) Island, (b) the Ryukyu (Nansei) Islands south of 30° North Latitude (including Kuchinoshima Islands), the Izu, Nanpo, Bonin (Ogasawara) and Volcano (Kazan or Two) Island Groups, and all other outlying Pacific Islands {including the Daito (Chigasi or Oagari) Island Group and Par'ee Velo including (Okino-tori), Marcus (Minamitori) and Ganges (Nakanotori) Islands}, and (c) the Kurilie (Chisima) Islands, the Habomai (Hipomaze) Island Group (including Suisho, Yuri, Akiyuri, Shibotsu and Taraku Islands) and Shikotan Island.

- b. Further areas specifically excluded from the governmental and administrative jurisdiction of the Imperial Japanese Government are the following: (a) all Pacific Islands seized and occupied under mandate or otherwise by Japan since the beginning of the World War in 1914, (b) Manchuria, Formosa, and the Pescadores, (c) Korea, and (d) Karafuto (southern part of Sakhalin).
11. The Cairo Declaration released December 1, 1943.
 12. Pan Shiyong, "South China Sea and The International Practice of Historic Titles," paper delivered at Seminar on South China Sea organized by the American Enterprise Institute, Washington D.C., September, 1994. Pan Shiyong, "The Nansha Islands: A Chinese Point of View," *Windows*, Hong Kong, September 3, 1993. pp. 3-4.
 13. Hsiao Shi-Ching, *History of Chinese-Philippine Relations*, 2nd ed., Bookman Printing House, Q.C., Philippines.
 14. Yorac, *op. cit.*, p. 45 Valero, *op. cit.*, pp. 15-160.
 15. *Manila Bulletin*, April 14, 1949. Cited in Hsiao Shi-Ching, p. 58.
 16. *Manila Evening News*, April 8, 1950.
 17. Valero, *ibid*.
 18. *Collected Documents on the Foreign Relations of the People's Republic of China* (Beijing: Ministry of Foreign Affairs, 1961), Vol. 2, p. 32.
 19. A.V.H. Hartendorp, *History of Industry and Trade of the Philippines, the*

Magsaysay Administration (Manila: Philippine Education Company, 1961), pp. 210-211.

20. *Ibid.*
21. *Daily Mirror*, July 18, 1972.
22. Noted R. NE. No. 12607 dated May 23, 1956 from Ambassador Chen Chih-mai to Vice President Carlos P. Garcia.
23. Ramon Tulfo, "The Man Who 'Discovered' Freedomland," *Daily Express*, February 8, 1974.
24. Valero, pp. 65-67.
25. See Haydee Yorac, "Philippine Claim to the Spratlys Island Group," 58, *PLJ* 44 (1983).
26. At a press conference on July 10, 1971, President Marcos argued that after Japan renounced its sovereignty over the islands, they became a de facto trusteeship of the allied powers, and that this trusteeship precluded the setting up of garrisons on any of them without the allies' consent. See Day, *op. cit.*
27. Yorac, *op. cit.*, pp. 44-46. Valero, *op. cit.*, pp. 5-8 Chang, *op. cit.*, p. 23.
28. Presidential Decree No. 1596 declared in one of its provisions: Whereas, while other states have laid claims to some of these areas, their claims have lapsed by abandonment and cannot prevail over that of the Philippines on legal, historical and equitable grounds.
29. Yorac, p. 62.
30. Republic Act 3046 as amended by RA 5446 defined the straight baselines of the Philippine territorial sea by connecting with straight lines the outermost points of the outermost islands of the Philippines. But stipulations in the 1973 and 1987 Philippine Constitutions encompass the waters from the straight baselines to the boundaries set in the 1898 Treaty of Paris, the 1900 US-Spain Treaty and the United States and United Kingdom Treaty. The declared Philippine EEZ overlaps with large portions of territorial sea defined under Republic Act 3046. According to Atty. Raphael Lottilla, "There is a conflict here since EEZ is not subject to the coastal state's sovereignty (only to its jurisdiction over specified matters), while territorial sea is subject to state powers. RA 3046, being earlier in time is deemed

- modified by EEZ presidential decree (PD 1599) in case of conflict.” See Raphael Lottilla, “Defining Maritime Boundaries,” *The South China Sea Disputes: Philippine Perspectives*. 1992.
31. Lu Yiran, “Bo Nansha Quandao ‘Wuzhu Tudi’ Lun” in China State Oceanic Administration’s (ed.), *Nanhai Zhudao Xueshu...*” pp. 47-55. Cited by Sheng Lijun, p. 5.
 32. A.V.H. Hartendorp. pp. 216-217.
 33. Marwyn Samuels, *Contest for the China Sea*, p. 84.
 34. Chen, *Weihu Nansha Quandao...* p. 160.
 35. Samuels, *op. cit.*
 36. White Paper issued by the Vietnamese Foreign Ministry on September 27, 1979 and White Paper II on January 18, 1982. Cited in Valero’s *Spratly...* and Pan Shiyong’s “South China...”
 37. Valero, *op. cit.*, p.18.
 38. Day, Alan, J. *Border and Territorial Disputes*, U.K. Singapore, 1982., pp. 329-330.
 39. See Brandford Thomas, *The Spratly Islands Imbroglia: A Tangled Web of Conflict*, Working Paper No. 54 (Peace Research Centre, Australian National University, Canberra, 1989).
 40. Chen Degong (Institute of Oceanic Developmental Strategy, China Oceanic Administration), “Weihu Nansha Quandao Zhuquan He Ziyuan Gongtong Kaifa Yu Quyu Hezuo” (Protecting the Sovereignty of Nansha Islands, Joint Development of Resources and Local Cooperation),” China State Oceanic Administration’s (ed.), *Nanhai Zhudao Xueshu Taolunhui Lunwen Xuanbian* (Selected papers of the Symposium on the South China Sea, Beijing 1992). Cited in Sheng Lijun’s “China’s Policy...”
 41. *Renmin Ribao*, 15, May 1979, cited in Shen Lijun, p. 4.
 42. Chang, *op. cit.*, p. 22.
 43. Chang, *op. cit.* p. 22.

44. China State Oceanic Administration (ed.), *Nanhai Zhudao Xueshu Taolunhui Lunwen Xuanbian* (Selected papers of the Symposium on South China Sea), p. 27. Cited in Sheng Lijun's "China's Policy Towards..."
45. *Renmin Ribao* (*People's Daily*), Sept. 5 and Sept. 20, 1958. Cited by Pan Shiyang. See Valero, pp. 44-45.
46. Chen Degong, *Weihu Nansha Quandao...* p. 160.
47. White Paper II. Valero, p.45.
48. Shao Hsun-Cheng, "Chinese Islands in the South China Sea," *People's China*, vol. 13, p. 27, (1956).
49. Valero. *op. cit.*, pp. 29-30.
50. See John W. Garver, "China's Dash through the South China Sea: The Interaction of Bureaucratic and National Interests," *The China Quarterly*, December, 1992. Alan Day ed., *Border and Territorial Disputes*, 2nd ed. (London: Longman Group, UK, 1987).
51. Chang, p. 24.
52. *Ibid.*
53. *Ibid.*, p. 25.
54. According to Hanoi, three Chinese warships equipped with missiles first intruded into the Sinh Tong islands on March 14. Then, more than seventy armed men landed on Gac Ma Reef (Chigua in Chinese). They removed the Vietnamese flag and planted a Chinese flag. When asked to leave, the Chinese opened fire on unarmed Vietnamese personnel on the reef. Chinese warships began shelling unarmed Vietnamese supply ships anchored nearby. As a result, one Vietnamese soldier was killed and 74 were reported missing. According to Beijing, a Chinese survey team first landed on Chigua Jiao in order to set up an observation post. Then, three Vietnamese ships arrived on the scene and 43 Vietnamese armed personnel landed on the reef, too. When the Chinese asked them to leave, the Vietnamese opened fire and wounded one Chinese. The Vietnamese ships also started machine-gunning Chinese personnel on shore. Chinese vessels were, therefore, compelled to return fire and eventually set all the three Vietnamese vessels ablaze. See John Garver's "China's Dash Through the South China Sea..."

55. *Ibid.*
56. Sheng Lijun, p. 12.
57. Malaysia's claim has been questioned. The UN Law of the Sea does not cover the status insular property but the effect of islands on the ocean regime. See Haller-Trout, "Limitations of International Law, The Case of Malaysia's Territorial Claim in the South China Sea," (2nd Workshop on Managing Potential Conflicts in the South China Sea: Bandung, Indonesia, 1991).
58. Chang, *ibid.*, p. 28.
59. Joyner, pp. 829-830. See also R. Haller-Trout, "Limitations of International Law: The Case of Malaysia's Territorial Claims in the South China Sea" and Kahadijah Muhamed and Tunku Shamsul Bahrin, "Scramble for the South China Sea: The Malaysian Perspective." Both in *Fishing In Troubled Waters: Proceedings Of An Academic Conference On Territorial Claims in the South China Sea*. R.D. Hill *et al*, eds., 1991).
60. Chen, *Weihu Nansha Quandao...* p. 161.
61. Muhamed and Bahrin, pp. 237-250.
62. Haller-Trout, p. 4.
63. Chang, pp. 28-19.
64. *The Hoang Sa and Truong Sa Archipelagoes and International Law*, (Press Release of the Ministry of Foreign Affairs of the Socialist Republic of Vietnam: Hanoi. 1988).
65. R.L. Chen, "Vietnam, Spratly Protest Rejected," *China Post* (Taipei) April 3, 1995.
66. "The Law of the People's Republic of China on Territorial Sea and Contiguous Zone" in *People's Daily*, February 26, 1992. Reprinted in United Nations, *Law of the Sea Bulletin* No. 21, August, 1992, pp. 24-27. People's Republic of China, National People's Congress, Legislative Affairs Commission, 'Law of the People's Republic of China on the Territorial Sea and Contiguous Zone,' adopted February 25, 1992.
67. Japan and China are disputing ownership over the Diaoyu (Senkaku) Islands in the East Asian Sea.

68. See "Law on Territorial Waters, Adjacent Areas," *Xinhua* (Beijing), February 25, 1992. Translated in FBIS, China, February 28, 1992.
69. See N.D. Kristof, "China Signs U.S. Deal for Disputed Waters," *New York Times*, June 18, 1992. Michael Richardson, "Strategic Signpost for Asia," *Asia-Pacific Defense Reporter*, January 1995.
70. B.A. Hamzah, "China Strategy," *Far Eastern Economic Review*, August 13, 1992.
71. Joyner, p. 834. See "China's Upstream Programs Advance Onshore and Offshore," *Oil and Gas Journal*, September 25, 1995.
72. Bilson Kurus, "Territorial Disputes Simmer in Areas of the South China Sea," *Oil and Gas Journal*, July 13, 1992, pp. 20-21.
73. See Daniel Dzurek, "The Spratlys Dispute: Who's First?" *Maritime Briefing*, 1996.
74. "China, Vietnam Agree Not to Use Force in Border Disputes," *Straits Times*, October 20, 1993.
75. The Vietnamese government controls both the oil and gas upstream and downstream. Vietnam Oil and Gas Corporation (Petro-Vietnam), a government-owned corporation, is the only firm authorized to conduct petroleum operations.
76. See "Vietnam Warns China Over Crestone Work Near Spratly Island," *Oil Daily*, May 6, 1994. "Chinese Claim for Oil Field: Sovereignty Battle with Hanoi," AFP (Beijing) May 10, 1994.
77. "Ramos Defends Oil Search in Dispute Waters," *Kyodo* (Tokyo) July 6, 1994.
78. John Rogers, "Spratlys Row Hangs Over Vietnam-China Talks," Reuters (Hanoi), August 13, 1994.
79. "PRC: ARF Should Discuss South China Sea," *The Nation*, (Bangkok) July 22, 1994.
80. "Nations Differ on Spratlys Talks Proposal," *The Sunday Nation*, (Bangkok) July 24, 1994.
81. "New Talks, Old Split Over Spratly Islands," *Washington Post*, November 23, 1994.

82. "Manila Probes Report of Chinese Ships in the Spratlys," Reuters, (Manila) January 30, 1995; "Philippine Navy Sends Ships to Disputed Shoal," Reuters (Manila) February 2, 1995. William Branigan, "China Takes Over Philippine-claimed Area of Disputed Island Group," *Washington Post*, February 11, 1995. According to the Philippine Navy spokesman his office had received reports as early as January 22 about the Chinese in Mischief Reef. "Military finds no trace of Chinese naval base," *The Philippine Star*, January 26, 1995.
83. Rigoberto Tiglao, "Troubled Waters," *Far Eastern Economic Review*, June 30, 1995. On July 19, the Philippine Government restricted the area of Alcorn's 'desk top' survey...
84. See Lt. Michael Studeman, "Calculating China's Advances in the South China Sea: Identifying the Triggers of 'Expansionism.'" 1997. On July 19, the Philippine Government restricted the area of 'desk top' survey. According to Philippine Energy Secretary Viray, there were no commercial quantities of oil in the Spratlys.
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