International Law Rules and Historical Evidences Supporting China's Title to the South China Sea Islands

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Table of Contents

I. Introduction .......................................................................................................................... 2

II. Rules of Title Applicable to Barely Inhabitable Territories ........................................ 7
    A. General Modes of Territorial Acquisition ............................................................... 7
    B. Criteria for Sovereignty over Uninhabitable Islands ................................................ 10

III. China's Historic Title to the Xisha and Nansha Islands ............................................. 15
    A. Discovery and Expeditions Prior to the Han Dynasty ............................................. 15
    B. Chinese Activities between the Han and Song Dynasties ........................................ 17
    C. The Qian Li Changsha and Wanli Shitang of the Song Dynasty ............................. 21
    D. Chinese Activities in the Yuan Dynasty .................................................................... 27
    E. Chinese Activities During the Ming and Qing Dynasties ......................................... 29

IV. Continuing Exercise of Sovereignty since 1911 .............................................................. 37
    A. Exercise of Sovereignty by the Republic of China .................................................. 37
    B. The French and Japanese Occupations in the 1930's .............................................. 40
    C. The Return of the South China Sea Islands to China .............................................. 43
    D. Exercise of Sovereignty by the People's Republic of China .................................. 45

V. Archaeological Discoveries in the South China Sea ......................................................... 48

VI. Competing Claims and Activities .................................................................................. 50
    A. The Vietnamese Claims ........................................................................................... 50
       1. The Impact of the 1951 San Francisco Peace Conference .................................... 50
       2. Activities and Claims of South Vietnam from 1951 to 1975 ............................... 51

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** All translations by author unless otherwise indicated.
I. Introduction

_Nanhai Zhudao (South China Sea Islands):_ This is the general name of our country's various islands, reefs and banks in the South China Sea. They belong to Guangdong Province. These islands include more than 200 islets, reefs and banks. They are divided, in accordance with their geographical locations, into the four major archipelagic groups of Dongsha, Xisha, Zhongsha and Nansha, the Huangyan Island and other islets. Among these, the Nansha Islands are the largest in scope and the most in the number of islets and reefs, which include our country's southernmost territory Zengmu Ansha [Tsungmu Shoals]. The Yongxing Island in the Xisha Islands is the largest island [in the South China Sea]. The Islands in the South China Sea... have continuously been the fishing places for fishermen of Guangdong Province, and have always been our country's territories.¹

- _Cihai, 1979, at 139-140_

There has been tension in the South China Sea for more than two decades, involving a number of disputants and conflicting claims to some coral islands and their surrounding waters. The South China Sea (in Chinese, _Nan Hai_ or _Nanhai_, meaning "the South Sea") is a large marginal sea between the mainland of China and southeast Asia on its western shore and groups of major islands on the eastern. Within the Sea are dotted more than 200 islands, islets, rocks, coral reefs, cays, shoals, banks and sands. These features, having been part of the territory of China "since ancient times," have been traditionally grouped into four major parts and one iso-

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lated island: (1) the Dongsha Islands, (2) Zhongsha Islands, (3) Xisha Islands, (4) the Nansha Islands, and isolated Huangyan Island.2

The Dongsha (literally translated as “East Sand Reefs”) Islands are located in the northeast of the South China Sea. These islands are about 150 nautical miles from the port city of Shantou, and are under the jurisdiction of Guangdong Province.3 Previously transliterated as the Tungssha Islands, the Dongsha Islands are sometimes known in the West as the “Pratas Reefs” and are in fact under the control of the local authorities in Taiwan.4 Since the Taiwan Island itself is part of China, local administration of the Dongsha Islands by Taiwanese authorities enhances rather than diminishes China’s claim to sovereignty over these islands.

Situated in the center of the South China Sea, the Zhongsha (literally translated as “Central Sand Reefs”) Islands are submerged coral reefs. For centuries, the sea surrounding the Zhongsha have been a place of much activity for Chinese fishermen. Prior to the establishment of Hainan Province in 1988, which administers the Zhongsha, Xisha, and Nansha Islands,5 the Zhongsha Islands were a part of Guangdong Province.6 “Zhongsha Islands” were transliterated as “Chungsha Islands” before the adoption of the pinyin system in China, and are sometimes called “Macclesfield Banks” in the West.7 According to Elizabeth Van Wie Davis, it is “undisputed” that “the submerged [Zhongsha] is clearly Chinese territory.”8

The Xisha (literally translated as “West Sand Reefs”) Islands are located in the west of the South China Sea. This group of islands lies about 150 nautical miles south of the coast of Hainan Island, China’s second largest island. The Xishas are composed of more than 20 islets and reefs.9


5. China, Philippines Revive Spratlys Dispute, ASIAN POL. NEWS, Apr. 3, 1995, available in 1995 WL 2224929. Prior to 1988, the Zhongsha, Xisha, and Nansha Islands were under the administration of the “Special Administrative Prefecture of Hainan” which had been part of Guangdong Province until it was “upgraded” to the rank of province in the same year. Id.


7. DAVIS, supra note 4, at 13 n.13.

8. Id. at 13.

Formerly transliterated as “Hsisha Islands,” western sources now refer to them as the “Paracel Islands.” The islands are divided into two subgroups: the Yongle Islands (previously transliterated as “Yung Lo Islands”) to the west and the Xuande Islands (previously transliterated as “Hsuan Deh Islands”) to the east. The Yongle Islands are known in the West as the “Crescent Islands” and the Xuande as the “Amphritite Islands.”

The Nansha (literally translated as “South Sand Reefs”) Islands lie about 550 nautical miles away from the Hainan Island and consist of some 230 coral islands, reefs, atolls, shoals and banks scattered throughout the southernmost part of the South China Sea. They stretch about 500 nautical miles from the north to south and 400 nautical miles from west to east. Known to some Westerners as the “Spratly Islands,” the “Spratlys,” or the “Spratlies,” the Nansha Islands are for the most part submerged with 11 islands, 5 sand cays, and 20 reefs rising above sea level. None of these islets, reefs and banks is habitable on a year-round basis. Even the largest islet in the area, Taiping Island (more commonly known in the West as “Itu Aba Island”), at approximately 0.43 square kilometers in area is not large enough “to sustain permanent, independent settlements.” Other islands whose area is greater than 0.1 square kilometers include the Zhongye Dao (Thitu Island/Pagasa), Xiyue Dao Island (West York Island/Likas), Nanwei Island (Spratly Island/Truong Sa/Lagos), Nanzi Dao (Southwest Cay/Song Tu Tay/Pugad), and Beizi Dao (Northeast Cay/Song Tu Dong/Parola). The highest one, the Hongxiu Dao (Namyit Island/Binago), is only 6.2 meters above sea level.

Legally and administratively, both the Xisha and Nansha Islands and the surrounding sea surface are under the jurisdiction of Hainan Province and, more specifically, are administered by the Hainan Provincial Ocean Bureau.
Huangyan Island (Scarborough Reef) is located between the Zhongsha Islands and the Luzon Islands of the Philippines. The Huangyan Atoll includes the Huangyan Island per se, the Nanyan Island, and the Jiaotou Reef, which are all above sea level. Geographically speaking, the Huangyan Island is distant enough not to be considered a part of the Zhongsha Islands. In practice, however, the Huangyan Islands may also be grouped together with the Zhongsha Islands.

Some commentators appear not to look at the issue of the South China Sea islands from an objective point of view of historical facts and legal reasoning. Instead, their analyses all begin with dubious presuppositions: Do we want China to have control over the South China Sea islands? Is it in our interests to support China's claims? Or should we set aside the issue of sovereignty at all? For example, one commentator asserts that "China is beginning to assert itself in the region by making fallacious claims," while "[e]ach of the remaining [claimant] countries makes its valid claim to part of the islands or continental shelf." Another commentator states that "the efforts of the People's Republic of China ... to gain a more prominent position in the post-Soviet world order could turn a long-standing sovereignty dispute over the Spratlys into a serious international conflict," as if it were China that started all the controversies. These commentators have apparently ignored or forgotten one thing: China owns those islands and they are Chinese territory. Naturally, no country can be expected to remain silent if its territorial sovereignty is being offended.

The islands in Nanhai (the South Sea or the South China Sea) are considered Chinese territory by virtue of China's discovery of and long-running exercise of effective and reasonable sovereignty over them. China discovered these islands possibly as early as thousands of years ago, and at least no later than during the Tang Dynasty (206 B.C.-220 A.D.). At the latest, China began exercising jurisdiction over them during the North Song Dynasty (960-1127).

The Islands' status as Chinese territory went unquestioned until the 1930's, when France and later Japan unlawfully occupied some of the is-

17. Zeng Zhaoxuan, Zhongguo Nanhai Zhudao Huanjiao Mulu [A Catalog of Atolls of China's South China Sea Islands], in SELECTED PAPERS, supra note 2, at 283, 297.
lands by force. After the Japanese surrender and withdrawal in 1945, the Chinese government resumed authority over these islands and their status remained undisputed for years. However, in part because of the discovery of potential oil and gas deposits in the South China Sea, many of the islands and other features, especially those of the Nansha Islands, became objects of invasion, occupation, and claims by other nations, notably by Vietnam, the Philippines, Malaysia, and Brunei. Vietnam claims all of the Xisha Islands and Nansha Islands, and occupies more than twenty islands and reefs in the Nansha area. The Philippines claim part of the Nansha Islands and control more than eight of them. Malaysia and Brunei each claim a portion of the Nansha Islands on the premise that the claimed areas are within their respective continental shelf zones or exclusive economic zone. All these claimants have begun exploring and exploiting natural resources in the Nansha Islands area individually and in cooperation with Western oil companies. Malaysia even constructed a vacation resort on one of the islands and reefs it occupies.\(^2\)

Some authors add one more competing claimant - Taiwan - to the already complicated disputes in the South China Sea. This is erroneous. It would be a serious mistake for them to consider Taiwan as a sovereign, independent State.\(^2\) China and Taiwan are one country temporarily in two parts. Consequently, the claims of mainland China and of local Taiwanese authorities to the South China Sea islands are one and the same. For this reason, this paper will not treat separately claims maintained by the local Taiwanese authorities.

It has been the consistent position of the People’s Republic of China (“PRC”) as well as of the local authorities in Taiwan, that the islands in the South China Sea, including the Nansha, Xisha, Zhongsha, and Dongsha Islands and Huangyan Island, are territories of China. China’s title to Zhongsha, Dongsha and Huangyan Islands is virtually undisputed; therefore, these islands and reefs present no special problem. It is the status of the Xisha and Nansha Islands which has been a subject of heated disputes among the claimants in the South China Sea region. The most crucial issue in the South China Sea disputes remains which claimant country has sovereignty over the disputed islands and sea areas, i.e., whose claims may be justified under international law. This article explains why China’s claims prevail over conflicting ones by analyzing rules of international law that are applicable to the unpopulated Xisha and Nansha Islands in the South China Sea and, more importantly, by evaluating historical records which

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21. See infra text accompanying notes 205-287.
22. See, e.g., VALENCIA, CHINA, supra note 18, at 44; Bennett, supra note 14; Brian K. Murphy, Dangerous Ground: The Spratly Islands and International Law, 1 OCEAN & COASTAL L.J. 187 (1995).
evidence China’s discovery and long-time claims to and authority over 
these islands.

II. Rules of Title Applicable to Barely Inhabitable Territories

A. General Modes of Territorial Acquisition

Firstly, any answer to the problem of which State has sovereignty 
over the Xisha and Nansha Islands requires a general review of the relevant 
mode(s) of acquiring (and losing) title to territory, and the degree of State 
adминист ration required for the maintenance of such title.

Traditional international law recognized five modes of acquisition of 
territory: occupation, prescription, accretion, cession and subjugation (an-
nexation). Adjudication has been sometimes considered an additional 
method of acquiring or losing territory through the mechanism of adjudi-
cative settlement of territorial disputes by third-party arbitrator(s) or tri-
bunals. However, adjudication, whether in the form of arbitration or judicial 
decision, should be carried out in accordance with rules and principles of 
international law, *i.e.*, the judges or arbitrators should function to declare 
which State is entitled to what territory under applicable rules of interna-
tional law. In this sense, accordingly, adjudication is “declaratory rather 
than constitutive,” and is not of itself “the foundation of the title to the ter-
ritory but rather a confirmation of the existence of the title.”

*Occupation* denotes the act of taking possession of and acquiring title 
to a territory which belongs to no State (*terra nullius*) at the time of such 
acquisition. In other words, in order to constitute *terra nullius*, the tar-
geted territory must not be under the authority of other States in any form. 
This standard of *terra nullius* can be satisfied either by evidence of discov-
ery of land or territory not known before, or by evidence of abandonment 
by other States of the land or territory in question, no matter when it was 
discovered or who discovered it. As a general rule, establishment of title 
to territory through occupation must be accompanied with effective exhi-
bition of authority (often known as effectiveness principle). It must be 
borne in mind that there is virtually no *terra nullius* left on Earth. There-
fore, occupation has little, if any, practical application in the acquisition of 
new territory under present-day international conditions. Nonetheless, this 
mode of acquiring territory remains significant in the determination of sov-

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23. Santiago Torres Bernardes, *Territory, Acquisition*, in 10 ENCYCLOPEDIA OF 
PUBLIC INTERNATIONAL LAW 496, 503 (North-Holland 1987) [hereinafter 
“ENCYCLOPEDIA”].

24. See 1 OPPENHEIM’S INTERNATIONAL LAW 686-689 (Sir Robert Jennings & Sir 
ereignty over territory which was once terrae nullius and was acquired through occupation in the course of history.

Prescription is a process of transfer of title to land or territory by "undisturbed continuous possession... if the possession has lasted for some length of time" so that a general conviction can be generated to the effect that such continuing possession "is in conformity with international order." In contrast to occupation, possession of terrae nullius is not required in the case of prescription - the object of possession is usually a piece of land or territory which was or has been previously owned or occupied by another State. This necessarily implies that the regime of prescription did not require lawfulness or justification in the original act of possession - "international law recognized prescription both in cases where the state is in bona fide possession and in cases where it is not." However, the possession must have continued over a relatively lengthy period of time. While there was not a general rule regarding the exact number of years of possession required, the requisite time may be assessed on a case-by-case basis. More importantly, in order to acquire title and sovereignty by prescription, the State's possession during that period of time must be free from repeated and continuous protests and claims by other State(s). "As long as other states keep up protests and claims, the actual exercise of sovereignty is not undisturbed, nor is there the required general conviction that the present condition of things is in conformity with international order." Furthermore, it has become a fundamental principle of present-day international law for States to respect one another's sovereignty and territorial integrity. Application of this principle renders prescription no longer acceptable to the extent that it involves unlawful or mala fide possession of territory already owned by others.

Accretion denotes the acquisition of new land or territory which has been formed or created through natural causes (e.g., fluvial or wind-blown sand or volcano) or perhaps by artificial force in certain justifiable cases. There is no need for the State whose territory is thus enlarged to assert title, whether such enlargement takes place gradually or abruptly. This method of acquiring territory is relevant to the South China Sea dispute when new coral islands or other features are formed within the sovereign sea zone of the State which holds title to the pertinent existing islands and

25. Id. at 706.
26. Id. at 706 n.6.
27. Id.
28. Id. at 706-07.
29. Id. at 696-98. But see The Chamizal Tract Arbitration (U.S. v. Mex.), 1911 For. Rel. U.S. 573 (holding that territorial changes take place in the case of accretions caused by slow and gradual erosion, but not in the case of accretions caused by sudden "great flood").
surrounding waters. Accretion in evaluating the sovereignty over the Xisha and Nansha Islands may be ignored unless there is evidence of newly formed islands, cays, and reefs in the South China Sea.

_Cession_ is often a voluntary, at least in form, and sometimes compulsory transfer of title to territory, in whole or in part, from one State (the ceding State) to another (the acquiring State). It may take the form of a bilateral cession treaty concluded either after peaceful negotiations or after a conquest or war; or it may take the form of an agreement for the grant or sale of territory, or an agreement for the exchange of territories. The ceding State must indicate its intention to transfer its sovereignty in an agreement. Modern international law no longer recognizes the validity of transfer of sovereignty imposed by unequal cessionary treaties. Any grant as gift, sale, exchange, or cession of territory must be truly voluntary and not coerced. Since no cession has ever taken place in the South China Sea, this mode of acquiring territory is not relevant to solving the sovereignty disputes.

Finally, international law recognized the establishment of sovereignty over conquered territory through _subjugation_ or _annexation_. Subjugation was lawful when resort to war was considered a regular means for resolving disputes between States. The mere conquest of one nation by another was not sufficient for the latter to acquire sovereignty over the former. It was necessary for the conquering State to declare its intent to annex the conquered territory and population such as in the form of a decree or proclamation. The main difference between subjugation and cession is that, in the case of cession, the transfer of sovereignty over State territory takes the form of a bilateral agreement between the ceding (conquered) State and the acquiring (conquering) State, whereas in the case of subjugation, the transfer of sovereignty takes the form of unilateral action of conquest followed by unilateral annexation. At any rate, resort to war and the threat or use of force have been denounced as means of resolving international disputes, and it therefore is no longer possible under modern international law for a State to acquire territory by means of subjugation or coerced cession following a conquest.

30. _Id._ at 679-82.
32. _Id._ at 698-99.
33. _Id._ at 699.
B. Criteria for Sovereignty over Uninhabitable Islands

Occupation was often preceded by discovery. Under pre-18th century rules of international law, discovery alone was sufficient to entitle the discovering State to maintain complete, not merely inchoate, sovereignty over the discovered terra nullius — effective occupation or administration was not necessary. It has been stated that discovery per se is the "oldest, and historically, the most important method of acquiring title to territory," and that "[u]p to the eighteenth century, discovery alone sufficed to establish a legal title."34 This was particularly true with respect to the fifteenth century and earlier periods of time. One observer noted: "During the classical era of discovery," "the diplomatic correspondence of Spain, Portugal, England, France and the Netherlands contained evidence that the foreign offices of these nations considered discovery with symbolic taking of possession an adequate basis for title to terra nullius . . . ."35

The importance of discovery has decreased since the 18th century. States began to differentiate between discovery of islands and discovery of continents. In the Alaskan Boundary Case of 1903 involving a dispute of sovereignty over the American Northwest among Russia, England and the United States, Lord Stowell stated the British position:

Possession does not appear in the opinion and practice of States to be founded exactly upon the same principles in the cases of islands and continents. In that of islands, discovery alone has usually been held sufficient to constitute a title. Not so in the case of continents . . . . [I]t has not been generally held, and cannot be maintained that the mere discovery of a coast gives a right to the exclusive possession of a whole extensive continent to which it belongs . . . . An undisputed exercise of sovereignty over a large tract of such a continent and for a long tract of time would be requisite for such purposes.36

Generally, under modern international law, discovery of territory, especially that of continents, must be followed by occupation and accompanied with effective exercise of authority over the territory for a State to have a claim of possession. According to the Permanent Court of International Justice in the Eastern Greenland case, the claiming State must demonstrate an "intention or will to act as sovereign" and "some actual exer-

35. Alfred-Maurice de Zayas, Territory, Discovery, in 10 ENCYCLOPEDIA, supra note 23, at 504, 505.
cise or display of ... authority." According to the Permanent Court of Arbitration, long and continuous exercise and display of effective authority can establish title; discovery alone does not prevail over effective occupation (continuous display). In normal circumstances, mere discovery, transient passage, or hoisting of national flags is not enough to establish title — it creates an inchoate title for a reasonable period of time during which the discovering State must "complete" it "by the effective occupation of the region claimed to be discovered."

On the other hand, the post-18th century principle of effectiveness merely states a general rule which may apply only if no distinction is made between the regular land or territory that is populated or inhabitable and the irregular land or territory that is not or barely inhabitable. The degree of effective exercise of authority is directly dependent on the ecological, climatic, geographic and other natural conditions of the claimed territory. The need for differentiating unpopulated or barely inhabitable territory from populated territory in assessing exercise of sovereignty has been widely recognized by international lawyers and international tribunals.

In the highly regarded Encyclopedia of Public International Law, Professor Bernardez observes:

As to the acts of sovereignty required to be effectively performed, the geographical circumstances of the area in dispute can be relevant, for it would not be logical to require the same intensity of exercise of sovereignty as elsewhere when an area is uninhabited, inhospitable and/or of difficult access .... Consequently, effectiveness is not impaired by an accidental weakening of government activities which might be attributed to the special physical characteristics of the area ....

As Michael Akehurst stated, "even in modern times, effective control is a relative concept; it varies according to the nature of the territory concerned. It is, for instance, much easier to establish effective control over barren and uninhabited territory than over territory which is inhabited by savage tribes; troops would probably have to be stationed in the territory in the latter case, but not in the former case." Charles O'Connell in his well-received treatise of international law also convincingly wrote:

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39. Id.
40. Bernardez, supra note 23, at 499.
41. MICHAEL AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW 143 (5th ed. 1984).
The two authorities just discussed [i.e., the Palmas Island and Clipperton Island arbitrations] come very near... to proposing that very little is required in the way of display of authority if the intention and will to act as sovereign is unimpeachable; indeed in the case of uninhabited territories little more than lip service is paid to the requirement of physical control. This suggests that there is great relativity in the requirements of proof of occupation. Much less in the way of proof is required for sovereignty over remote and climatically unfavourable territories than would be required, for example, in the case of portions of European land...

Similarly, the distinguished publicists George Schwarzenberger and E.D. Brown believed that the extent of "effectiveness required varies with circumstances, such as the size of the territory, the extent to which it is inhabited and, as in deserts or polar regions, climatic conditions."  


43. G. Schwarzenberger & E.D. Brown, Manual of International Law 97 (6th ed. 1976). See also G. Schwarzenberger, Title to Territory: Response to a Challenge, 51 Am. J. Int'l L. 315 (1957) (stating that in an isolated and unpopulated area such as the Clipperton Island, an original declaration of sovereignty would suffice to maintain title); F.D. Heydte, Discovery, Symbolic Annexation and Virtual Effectiveness in International Law, 29 Am. J. Int'l L. 463 (1935) (stating that the generally required effective occupation does not mean that the State's occupation must extend to every corner of its territory; a State may acquire sovereignty over unpopulated or barely populated territory simply by symbolic occupation, and this is not a departure from the general rule of effectiveness); D.H.N. Johnson, Consolidation as a Root of Title in International Law, 1955 Cambridge L.J. 223 (1955) (stating that the State displays its territorial sovereignty over its territory through different modes, depending on whether the area concerned is populated or inhabited); M. Shaw, Title to Territory in Africa 411 (Oxford, Clarendon Press 1986) (stating that what constitutes effective control depends on the circumstances, such as the geographical nature and conditions of the territory concerned and the existence or absence of contrary claims by other States); P.C. Hingorani, Modern International Law 45 (Oceana 1979) (holding that in the case of unpopulated heights which are barely inhabitable because of weather conditions, a claim based on a map is a sufficient evidence of exercise of sovereignty as long as there is no specific competing claim; in the case of bare-rock areas, since they are not suitable for permanent settlement, surveys or measurement of maps may turn them into objects of exercise of sovereignty); M.P. Tandon & R. Tandon, Public International Law 199 (Allahabad, India, Allahabad Law Agency 14th ed. 1973) (stating that where the territory concerned is unpopulated or virtually inhabited, it is not necessary to send officials to the territory so long as the claiming State can exercise local administrative authority over the territory when it deems necessary); Oscat Svatlien, The Eastern Greenland Case in Historical Perspective 57-58 (University of Florida Press 1964) (stating that in the case of uninhabited territory very little can be required to satisfy the effective exercise of sovereignty over such territory; it would be a mis-interpretation of the principle of effectiveness to require that the claiming State maintain effective occupation of uninhabited territory at all times).
In the well-known *Clipperton Island* arbitration (1931) between France and Mexico, the arbitrator (King Victor Emmanuel III of Italy) held that France, whose naval crew members had landed and proclaimed French sovereignty over the unpopulated Clipperton Island located in the south Pacific Ocean some 670 nautical miles from Mexico without doing more, nonetheless established sovereignty over the island. King Victor Emmanuel reasoned that while the exercise of effective sovereignty normally required the establishment of an administration “capable of securing respect of the sovereign’s rights, *this was not necessary in the case of uninhabited territory* at occupying state’s absolute and undisputed disposition.”

In the *Eastern Greenland* case, the Permanent Court of International Justice also recognized that “[i]t is impossible to read the records of the decisions in cases as to territorial sovereignty without observing that in many cases the tribunal has been satisfied with very little in the way of the actual exercise of sovereign rights[,]... particularly ... in the case of claims to sovereignty over areas in thinly populated or unsettled countries.” The International Court of Justice in the *Western Sahara* advisory opinion similarly stated that even an insignificant display of sovereignty can establish title to unpopulated or barely inhabited areas.

Even the often-cited *Palmas* arbitration itself acknowledged that the displays of “territorial sovereignty assume ... different forms, according to conditions of time and place”; while “continuous in principle, sovereignty cannot be exercised in fact at every moment on every point of a territory”; and “the intermittence and discontinuity compatible with the maintenance of the right necessarily differ according as [sic] inhabited or uninhabited regions are involved ...”

Symbolic acts such as landing and flag-hoisting may entitle the discovering State to acquire sovereignty over unpopulated islands or territories. For example, in the *Aves Island Arbitration*, the arbitrators distinguished between populated territories and uninhabited territories, holding that such symbolic acts as raising national flags or pronouncing a declaration of sovereignty would enable the State concerned to acquire title to an

uninhabited territory.\textsuperscript{48} The same result has also been noted in \textit{The Bouvet Island Arbitration}.\textsuperscript{49}

According to Geoffrey Marston, Bouvet Island, located in the “sub-Antarctic waters of the South Atlantic,” was discovered by Captain Bouvet of the French Merchant Marine in 1739 by way of sighting (without landing). “Formal possession” of the island did not take place until 1825 when Captain George Norris of England hoisted the British flag on it.\textsuperscript{50} In February 1927, a Norwegian company applied to the Great Britain for a license to catch whales on and around Bouvet Island; however, in December, 1927, a Norwegian expedition occupied Bouvet Island.\textsuperscript{51} It was the British position that

\[\ldots\] [the only act of sovereignty which can conveniently be performed over these uninhabited and inaccessible islands is to let them to an applicant, when one appears. It is in this way that we have acquired our title to several of these isolated islands, and there is a stock draft for the purpose \ldots\] It is unfortunate that our applicant did not appear a little earlier, as we should then have undoubtedly forestalled the Norwegians \ldots\textsuperscript{52}

Accounts suggest that the dispute between Great Britain and Norway was resolved through compromise rather than by arbitration. Great Britain considered that “an adverse decision by an international tribunal might have an inconvenient repercussion on British claims to territory in Antarctica.”\textsuperscript{53} Consequently, on November 15, 1928, Great Britain “withdrew all claim to Bouvet Island” in exchange for the Norwegian Government’s willingness “to refrain from occupying any land within the territories” in Antarctica.\textsuperscript{54}

The rules of international law which were in force prior to the eighteenth century did not appear to require post-discovery display of effective control — discovery alone sufficed to establish title. While present-day international law does require a degree of effective control over discovered or occupied territories in general, a strict application of the effectiveness

\textsuperscript{48} Wang Liyì, \textit{Shiyong yu Nanhai Zhudao Zhuquan Guishu Wenti de Guojifa Guize [Rules of International Law Application to the Issue of Sovereignty over the South China Sea Islands]}, in \textit{SELECTED PAPERS, supra} note 2, at 15, 17 (citing \textit{The Aves Island Arbitration} (Neth. v. Venez.), 5 \textit{MOORE, ARBITRATIONS} 5037 (1865) (Spanish Report)).

\textsuperscript{49} Wang Liyì, \textit{supra} note 48, at 17 (citing \textit{Bouvet Island} arbitration; however, its source of origin remains to be ascertained.)


\textsuperscript{51} \textit{Id.} at 339.

\textsuperscript{52} \textit{Id.} at 339 (quoting Sir. G. Grindle of the British Colonial Office).

\textsuperscript{53} \textit{Id.} at 342.

\textsuperscript{54} \textit{Id.} at 342-43.
principle to unpopulated or barely inhabitable territory is neither reason-
able nor necessary. The general requirement of effective control must be
interpreted broadly so as to distinguish between continents and islands, and
particularly so as to distinguish between uninhabitable or barely inhab-
itable territories and territories suitable for permanent settlements.

III. China's Historic Title to the Xisha and Nansha Islands

A. Discovery and Expeditions Prior to the Han Dynasty

Historical records, documents and other types of evidence strongly
support China's claim of sovereignty over the Xisha and Nansha Islands.
These two archipelagic groups were already destinations of Chinese expedi-
tions during the East Zhou Dynasty (770-221 B.C.), comprised of the
Spring and Autumn Period (770-476 B.C.) and the Warring States Period
(475-221 B.C.). Moreover, these islands may have been discovered by the
Chinese even earlier.

Professor Wang Hengjie of the Central Institute for Minority Nation-
alities, based on archaeological findings in the Xisha Islands in 1991,\(^5\)\(^6\)\(^5\) concludes that "the Chu State of the Spring and Autumn Period not only
conquered the 'barbarians' in southern China, but also made expeditions in
the South China Sea [islands] to include [them] as part of China."\(^5\)\(^6\)\(^5\) He
continues:

Chinese people from the Hainan Island and southern China had a long
history of engaging in production and living in the Xisha and Nansha
areas... Since the remote primitive era, they had been engaging in
fishing there, catching hawksbill turtles and other rare marine products
needed by the central government, and giving them as tributes to the
central government; after they died in the South China Sea, they were
buried on the islands; the Chu State back in the Spring and Autumn Pe-
riod had already controlled and occupied the South China Sea [is-
lands].\(^5\)\(^7\)

Historical books and records bolster the above conclusions. In Yi
Zhou Shu (Scattered Books of the Zhou Dynasty), a series of seventy-one

\(^5\)\(^5\) See infra text accompanying note 198.
\(^5\)\(^6\) Wang Hengjie, *Xisha Kaogu Faxian de Xin Shiqi Shidai he Zhanguo, Qin Han Yiwu yu Nansha Lishi* [Archaeological Discoveries of Remains of the New Stone Age, the Warring States Period, the Qin and Han Dynasties in the Xisha Islands and the History of the South China Sea], in SELECTED PAPERS, supra note 2, at 29, 36.
\(^5\)\(^7\) Id. at 37.
volumes written during the early Qin Dynasty, it was recorded that “in the Xia Dynasty [21st century-16th century B.C.] the tributes from the South Sea [by the southern barbarians to the Xia rulers] were zhuiji dabei [pearl-carrying shellfish],” turtles and hawksbill turtles, and these tributes continued through the Shang Dynasty (16th century-11th century B.C.), the Zhou Dynasty (11th century-221 B.C.) comprising the West Zhou (11th century-771 B.C.) and the East Zhou (770-221 B.C.), and the Qin (221-206 B.C.) and Han (206 B.C.-220 A.D.) Dynasty. According to Yi Zhou Shu, six southern barbarian peoples were ordered to contribute “pearl-carrying shellfish” (zhuiji), “hawksbill turtles” (dai mao) and other rarities to the rulers of the West Zhou Dynasty. Dai mao was described in Nanzhou Yiwu Zhi (Records of Rarities of the Southern Territories) as “living in the southern sea” (sheng nan fang hai zhong), which denotes the Xisha and Nansha Islands in the South China Sea.

The famous Shi Jing, a collection of classic poems of the Spring and Autumn Period, also referred to the South China Sea: “Yan yu Nanhai” (orders or words [from the Chu rulers] to the South Sea). He Qiutao (1824-1862), a Qing scholar, believed that when Shi Jing was written, the Chu State did not yet cover the South Sea. He Qiutao wrote, more than twenty centuries after the publication of Shi Jing, “at the time the territory of the Chu State did not extend to the South Sea, so its rulers prattled about sending orders to that place). Professor Wang Hengjie responds to this analysis by noting that recent “archaeological findings in the Xisha Islands prove that what is stated in Shi Jing in fact is not prattle.” No matter what was originally meant by the words Yan yu Nanhai in Shi Jing, it is apparent that more than two thousand years ago, the Chinese rulers and people were aware of the Nanhai, which referred to the South China Sea and the islands therein.

Zuo Zhuan (Zuo’s Commentaries), another set of classics of the Spring and Autumn Period attributed to Zuo Qiuming, a well-known historian and Confucius’ contemporary, stated that “hehe Chu Guo, fu you man

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58. CIAI, supra note 1, at 1059. The original title of the books was Zhou Shu. Books from the Qin Dynasty which were not officially adopted in the education system of the West Han Dynasty and therefore scattered among the private were called yi shu (literally “scattered books”). The Zhou Shu volumes were among such scattered Qin books. They were therefore retitled Yi Zhou Shu. Id.
60. Id. at 35-36.
61. Id. at 36.
62. Id (quoting SHI JING (n.d., Spring and Autumn))
63. Id. (“Shi Chu di wei zhi Nanhai, te chi yan zhi er”).
64. Id.
yi, yan zheng Nanhai, yi shu zhu Xia.\textsuperscript{65} Xia is the abbreviated form of Hua Xia, another name for Zhong Guo or China. When properly translated, the quoted passage means that “the illustrious Chu State appeased the barbarians to make expeditions to the South China Sea [islands], in order to make them belong to the various parts of China.”

There was a third relevant set of classics of the Spring and Autumn Period titled Guo Yu (Statements of the States), also believed to have been authored by Zuo Qiuming. This 21 volume work contained statements of nobles of the West Xia Dynasty and the various states in the Spring and Autumn Period. One of the statements made a similar reference to the South China Sea: “Hehe Chu Guo, er jun lin zhi, fu zheng Nanhai, xun ji zhu Xia” (The illustrious Chu State was commanded by its emperor; it appeased [the barbarians] and made expeditions to the South China Sea [islands]; and its commands reached various parts of China).\textsuperscript{66}

The archaeological discovery of relics made in the primitive era and pre-Han eras, considered with the references in ancient Chinese books to tributes collected from and expeditions to the Nanhai, supports the conclusion that by the Spring and Autumn Period and the Warring States Period (770-221 B.C.), particularly during the Chu State’s prosperity, the Chinese rulers and people were already in control of the South China Sea islands, the discovery of which might have taken place in a much earlier primitive era.

B. Chinese Activities between the Han and Song Dynasties

In the second century B.C., particularly during the West Han Dynasty (206 B.C.-23 A.D.), China’s seafaring abilities were already highly developed. Chinese ships and crews “sailed as far as to [what is now] Sri Lanka, necessarily passing the South China Sea” and the Xisha and Nansha Islands on their way to and from each destination, and “in their practice of navigation and production, they discovered the South China Sea Islands.”\textsuperscript{67} It might be more accurate to say that the Chinese in the Han era re-discovered rather than discovered the South China Sea Islands because their ancestors might have already discovered those islands and reefs. What is certain is that the sailors of the Han Dynasty knew of the existence of the South China Sea islands.

During the reign of Emperor Wudi of West Han (156-87 B.C., reigning 140-87 B.C.), the Chinese continued to sail the South China Sea, which was the only path to destinations around and beyond the Sea. Time and

\textsuperscript{65} Id. (quoting ZUO QIUMING, ZUO ZHUAN (n.d., Spring and Autumn)).

\textsuperscript{66} Id. (quoting ZUO QIUMING, GUO YU (n.d., Spring and Autumn)).

\textsuperscript{67} Liu Nanwei, Zhongguo Gudai dui Nansha Zhudao de Mingming [The Naming of the South China Sea Islands in Ancient China], in SELECTED PAPERS, supra note 2, at 83.
time again they “rediscovered,” or at least re-encountered the vast range of islands, reefs and banks in the Xishas and Nanshas area, renamed the South China Sea Zhanghai, and “peacefully and continuously exercised sovereign jurisdiction over these islands for a long time”. During the reign of Emperor Guangwudi of the East Han (23-220), Gen. Ma Fubo (Ma Yuan) led a naval fleet to conquer the barbarians in Rinan Prefecture (now central Vietnam) in 43. After the conquest, Han officials were stationed there on a permanent basis. Xie Cheng in his Hou Han Shu (Books of the Latter Han Dynasty) recorded that Chen Mao, the Biejia of Han (a rank of officials lower than Cishi) who was dispatched to Jiaozhi Province (covering most parts of Guangdong and Guangxi as well as the central and northern parts of Vietnam), accompanied Zhou Chang, the Cishi (the highest official of a province) of Jiaozhou Province (the same area of jurisdiction as Jiaozhi which was being replaced with the name Jiaozhou at the time), to make a naval inspection and patrolling cruise to the islands in the South China Sea (“xing bu Zhanghai”).

In his book titled Yiwu Zhi (Records of Rarities), Yang Fu of the East Han Dynasty (23-220) described the geographical features of the South China Sea islands: “Zhanghai qitou, shui qian er duo cishi” (“There are islets, sand cays, reefs and banks in the South China Sea, the water [there] is shallow and filled with magnetic rocks or stones”). Qitou was the collective term used by ancient Chinese to denote islets, reefs, shoals and similar features in the oceans. Cishi literally means magnetite, or magnetic “rocks” or “stones.” It was vividly used in Yiwu Zhi in describing how an-

68. Liu Wenzong, Zhongguo dui Xisha Qundao he Nansha Qundao Zhuquan de Lishi he Falia Yiji! [Historic and Legal Bases of China’s Sovereignty over the Xisha Islands and Nansha Islands], in SELECTED PAPERS, supra note 2, at 69; see also CHAI, supra note 1, at 956 (explaining that “Zhanghai [is] the ancient name for our country’s South China Sea today”). The ancient name was referred to in the sixth volume of CHU XUE Jr, a 30-volume collection of selected works of various dynasties compiled by Xu Jing of the Tang Dynasty (618-907), which quotes HOU HAN SHU [BOOKS OF HISTORY OF THE LATTER HAN DYNASTY]. HOU HAN SHU was authored by Xie Cheng of the Wu State during the Period of the Three Warring States (222-280) and later rewritten by Fan Hua of the Song State of the Southern Dynasty (420-479). Id.

69. Liu Wenzong, supra note 68, at 69.

70. Id. (citing to XIE CHENG (Wu State), HOU HAN SHU [BOOKS OF THE LATTER HAN DYNASTY] (n.d.)).

71. QIONG TAI ZHI [RECORDS OF HAINAN AND TAIWAN] (n.d.) (written and published during the reign of Emperor Zhengde (1506-1521) of the Ming Dynasty; quoting YANG FU (East Han), YI WU ZHI [RECORDS OF RARITIES] (n.d.), reprinted in 9 RARITIES, PART TWO 14 (Shanghai, Ancient Books Publishing House 1964). See Lin Jinzhi, infra note 69, at 181. n.1. See also HAN ZHENHUA ET AL., COLLECTION OF HISTORICAL MATERIALS ON THE SOUTH CHINA SEA ISLANDS (Beijing, Dongfang Publishing House 1988) [hereinafter “HAN ZHENHUA ET AL.”].
cient Chinese ships sailing to the South China Sea were stranded on the reefs, shoals and banks as if attracted by lodestones or magnetic rocks.72

Further descriptions of the Xisha and Nansha islands appear in two famous books published in the Period of Three Warring States (220-280): Nanzhou Yiwu Zhi (Records of Rarities in the Southern Boundary) and Funan Zhan (Journeys to and from Funan [now Cambodia]). Nanzhou Yiwu Zhi, authored by Wan Zhen of the Wu State (222-280), recorded the encounters of Chinese expedition sailors of the Han Dynasty (206 B.C. - 220 A.D.) on their way back from the Malay Peninsula to China: “Dongbei xing, ji da qitou, chu Zhanghai, zhong qian er duo cishi” (“Sailing northeastward, one would encounter a large number of islets, reefs, shoals and banks becoming visible and noticeable in the South China Sea, where [the water is] shallow and filled with magnetic rocks”).73 Wan Zhen noted elsewhere in the same work:

ZHANGHAI qitou, shui qian er duo cishi, wai jiao ren cheng da chuan, jie yi tie die die zhi. Zhi ci guan, yi cishi, bu de guo (There are islets, sand cays, reefs and banks in the South China Sea, and the water there is shallow and filled with magnetic rocks. Officers on patrol missions taking big boats all had to change to small boats to reach the area; when they approached the area, they could not proceed further because of the magnetic rocks).74

Kang Tai, one of the famous navigators of the Wu State, wrote Funan Zhan. In 226, Emperor Huangwu dispatched Kang Tai and Zhu Ying on diplomatic missions via the South China Sea to Funan75 where they met envoys from the State of Tianzhu (now India), and numerous other states.76 Kang Tai observed in his Journey to and from Funan: “ZHANGHAI zhong, dao shanhu zhou, zhoudi you panshi, shanhu sheng qi shang ye” (In the

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72. See Lin Jinzhi, Zhongguo Renmin Zuizao Faxian, Jingying he dui Nanhai Zhumao Xingshi Guanzia de Lishi [The History of the Earliest Discovery, Management and Exercise of Jurisdiction over the Islands in the South China Sea by the Chinese People], in SELECTED PAPERS, supra note 2, at 181.


74. Li FANG, Medicines: Magnetic Rocks, in 988 TAIPING YU LAN, supra note 73 (quoting WAN ZHEN).

75. Funan was an ancient state established in the first century in the southern part of Cambodia. In the seventh century, the Funan State was annexed by the State of Jimie (Khmer), which had been a vassal state of Funan in the northern part of Cambodia today. CHHAI, supra note 1, at 516.

76. Id. at 839.
South China Sea, there are coral islands and reefs; below these islands and reefs are rocks upon which the corals were formed).  

In a work authored by Pei Yuan of the Jin Dynasty (265-420) and entitled Guangzhou Ji (Chronicles of Guangzhou), it was similarly stated: “Shanhu Zhou, zai [Dongguan] Xian nan wubai li, xi youren yu haizhong pu yu, de shanhu” (Shanhu Zhou [The Coral Islands and Reefs] lie five hundred lis south from the County of Dongguan; in the old days [prior to the Jin] people were already catching fish in the [South China] Sea, and they collected corals).  

The Jin people knew the geographical location of the Xisha and Nansha Islands by their nearest distance (500 ancient lis from Dongguan County, a coastal county south of Guangzhou). They were also calling the islands in the South China Sea by the collective name “Coral Islands and Reefs,” the earliest scientific naming of such islands known today. Further, the pre-Jin people of China, at least before 265, were already engaging in fishing and other production activities in the South China Sea islands area. Also, the local government of the Jin Dynasty (265-420) was also exercising jurisdiction over the Xisha and Nansha Islands by sending patrolling naval boats to the surrounding sea areas. In Guangdong Tong Zhi (The General Records of Guangdong) authored by Hao Yülín, it was reported that Bao Jing, the Administrator of Nanhai (the highest official in charge of the South China Sea affairs) of the Jin Dynasty made patrols and inspection voyages in the South China Sea (xing bu ru hai).  

In the South China Sea Islands, archaeologists found Chinese-made potteries, porcelains and other historical relics originating, inter alia, during the Southern Dynasty (420-589), the Sui Dynasty (581-618), the Tang Dynasty (618-907), the Song Dynasty (960-1279), the Yuan Dynasty (1206-1368), the Ming Dynasty (1368-1644), the Qing Dynasty (1644-1911), and since 1912. It is thus apparent that by the fifth century, Chinese people were already engaging in production activities in the South

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77. Li Fang, Lands, sec. 34, Reefs and Islands, in 69 TAIPing YU LAN, supra note 73 (quoting KANG TAI (Wu State), FUNAN ZHUAN [JOURNEYS TO AND FROM FUNAN] (n.d.)). See also Lin Jinzhi, supra note 72, at 181; Wu Fengbin, Wo Guo Yongyou Nansha Qundao de Lishi Zhengji [Historic Evidences of China’s Possession of Sovereignty over the Nansha Islands], in SELECTED PAPERS, supra note 2, at 107, 107; Li Yiran, Jiao Nansha Qundao “Wuzhu Tudi” Lun [Refuting the Fallacy of “Terra Nullius” Status of the Nansha Islands], in SELECTED PAPERS, supra note 2, at 47-48.  
79. Liu Wenzong, supra note 68, at 69 (citing HAO YÜLIN (Jin), GUANGDONG TONGZHI [THE GENERAL RECORD OF GUANGDONG] (n.d.)).  
80. See infra text accompanying notes 196-201.
China's Title To the South China Sea Islands

China Sea islands and were perhaps living in some of the islands as well. The Chinese navy force of the Song State of Southern Dynasty (420-479) was even patrolling the Xisha and Nansha islands in the South China Sea area. In his Wudi Lei (In Memory of Wudi), Xie Lingyun (385-433), a poet of the Song State of the Southern Dynasty, referred to the Chinese navy's activities in the South China Sea by the following words: "Zhou shi Zhanghai" (Naval soldiers patrolling in the South China Sea). In the Tang Dynasty, the Xisha and Nansha Islands were already placed under the jurisdiction and authority of the Qiongzhou Prefecture (now Hainan).

C. The Qian Li Changsha and Wanli Shitang of the Song Dynasty

China's administration of the South China Sea continued into the North and South Song dynasties (960-1279), during which references to the South China Sea islands were made in numerous chronicles, records and historic books. Greenfield notes:

Reliable Chinese historical reference to the Paracel Islands [i.e., the Xisha] is found in the famous 13th century book entitled Chufan Chi (A Description of Barbarous Peoples) written by Chau Jukua while he was inspector of foreign trade in Fukien Lu [sic.] Province during the Southern Song Dynasty (AD 1127-1279). The Paracel Islands were described in the section dealing with Hainan Islands of the Southern Song Dynasty in the following words: "To the east [of Hainan] are the 'Ch'ienli Changsha' (thousand li banks) and the 'Wanli shihch'uang' (ten thousand li rocks), and [beyond them] is the boundless ocean . . . ." The Western sinologists who translated this work identified these two places as the Paracel Islands.

Chufan Chi is the traditional transliteration of the book Zhu Fan Zhi (Records of the Various Barbarian Peoples), written in 1225. Chau Jukua is a different transliteration of the same author Zhao Rushi. "Ch'ienli Changsha" is now transliterated as "Qianli Changsha" and "Wanli shihch'uang" as "Wanli Shitang" or "Wanli Shichuang." Changsha literally means "long ranges of shoals", while Shitang and Shichuang both literally mean "atolls surrounding a lagoon." The context in Zhu Fan Zhi in which "Qianli Changsha" and "Wanli Shitang" appeared is quoted below:

82. Liu Rongzi, Ying Shi Nansha Yuye Ziyuan Wei Guoyou Ziyuan [The Fishery Resources in the Nansha Islands Area Should be Considered China's State-owned Resources], in SELECTED PAPERS, supra note 2, at 96.
83. Greenfield, China, supra note 10, at 31. One li now equals 0.5 kilometer. The exact length of a li in ancient China may not necessarily be the same as that used today.
In the fifth year of Zhenyuan [of the Tang Dynasty, i.e., in the year of 789 A.D.], Qiong was named the capital [of Hainan], and that has been followed to date. When one reaches Jiyang, that would be the southernmost point of Hainan [Island], and there would be no further road on the land. Beyond [Jiyang], there are zhous [islands in the sea], and they are respectively called Wuli and Sujilang. To the south is Zhancheng; to the west is Zhenla; and to the east are Qianli Changsha and Wanli Shitang. The [Changsha and Shitang] area is vast and without a limit, and the sky and water meet with the same color. Ships and boats sailing through the area are solely dependant on the compass to guide their navigation. Days and nights the compass has to be carefully observed, because even an slightest error may make a difference between life and death.84

Wuli Zhou and Sujilang (i.e., Sumijilang, an ancient transliteration of Sa Karang or Sa Bat Karang) Zhou are small islands off the coast of central-northern Vietnam. Zhancheng is located in central-southern Vietnam. Zhenla is the ancient name for Cambodia. While some Western sinologists and a few Chinese authors hold that Qianli Changsha and Wanli Shitang both denote the Xisha Islands,85 most Chinese historians and legal scholars believe that the words Qianli Changsha (Chienli Shoals, or "Thousand Li Shoals") refer to the Xisha Islands while the words Wanli Shitang (Wanli Atolls or "Ten Thousand Li Atolls") referred to the Nansha Islands.86 Those who believe that both groups belong to Xisha Islands probably have taken Jiyang or Hainan Island as the viewing point: logically, they would find that Zhancheng (of Vietnam) is in the south, Zhenla (Cambodia) is in the west, while the Xisha islands are in the east (Interpretation One).

However, if one strictly takes Jiyang as the viewing point, the ambiguous paragraph quoted above could be even more confusing: to the west of Jiyang, one would not find Zhenla, but central-northern Vietnam; and neither the Nanshas nor the Xishas lie to the east of Jiyang - they are in fact southeast of Hainan. The ancient Chinese understanding of the orientation of the east, west, south and north might not be exactly the same as

84. ZHAO Rushi (South Song), Hainan [Southern Sea], in Zhi Wu [Records of Things], in ZHU FAN ZHI [RECORDS OF THE VARIOUS BARBARIAN PEOPLES] (n.d.) ("Zhenyuan wu nian, yi Qiong wei dufu, jin yin zhi .... Zhi Jiyang, nai Hai zhi ji, wu fu lu tu. Wai you zhou, yue: Wuli; yue: Sujilang. Nan dui Zhancheng, xi wang Zhenla, dong ze Qianli Changsha, Wanli Shitang. Miaomang wuji, tianshui yise, zhoubo lai-wang, wei yi zhinanzhen wei ze, zhouye shoushi wei jin, haoli zhi cha, shengsi xi yun").

85. Han Zhenhua, Song Dai de Xisha Qundao yu Nansha Qundao [The Xisha Islands and Nansha Islands in the Song Dynasties], in SELECTED PAPERS, supra note 2, at 305, 309.

86. See, e.g., Wang Liyu, supra note 48, at 24; Lü Yiran, supra note 77, at 48; Wu Fengbin, supra note 77, at 107.
that as understood today, and their descriptions of geographical objects could be inaccurate. This is still true even among some contemporary Chinese, especially those with little or no modern education. For example, it is not unusual for one who asks for directions and distance information in rural areas of China to get the same answer in different places vis-à-vis the same destination:

“What is the distance from here to Beili Village?”, a walker might ask the first farmer he encounters.

“Five lis,” the first farmer would probably respond.

The walker proceeds, walks a few lis, and then asks a second farmer:
“How many lis ahead is Beili Village from this point?”

“Five lis.”

The walker walks another few lis, and then encounters a third farmer:
“How many more lis do I have to go to get to Beili Village?” he asks.

“Five lis” might still be the third farmer’s answer . . .

While the above situation is often talked about as a joke, it does take place from time to time. *Qianli Changsha* is not to be taken as an exact measure of “one thousand lis” of shoals, nor is *Wanli Shitang* to be understood to represent an accurate scale of “ten thousand lis” of coral atolls. They were so called just as names which were typically colored with permissible literary and artistic exaggerations and rhetoric in the Chinese language. If the author of *Zhu Fan Zhi* could write, from the point of view of Jiyang, that Cambodia, which is in fact southwest of Jiyang, was to the west, there is no reason why he couldn’t mean that *Qianli Changsha* and *Wanli Shitang*, which he described as being to the “east” (of Jiyang, if one may so interpret), referred to the Xisha and Nansha Islands even if they are in fact southeast of Jiyang (Interpretation Two).

Another possibility might be that the viewing points could have changed from Jiyang to Zhancheng, or from place to place referred to in *Zhu Fan Zhi*. Zhancheng is truly to the south of Jiyang and/or the Wuli Zhou and Sumijilang Zhou; Zhenla is exactly to the west of Zhancheng; more or less to the east of both Zhenla and Zhancheng are the Xisha and Nansha Islands (Interpretation Three).

Nevertheless, none of the above three possible interpretations, including the first, can be ruled out at this time. In any event, *Qianli Changsha* and *Wanli Shitang* included at least part of the South China Sea islands, and they were considered Chinese territory. In an official chronicle book published in the South Song Dynasty (1127-1279) titled *Qiong Guan Zhi* (Records of the Qiong Prefecture and its Jurisdiction), it was specifi-
cally mentioned that the *Qianli Changsha* and *Wanli Shitang* were under the jurisdiction of the Qiong Prefecture (now Hainan Province). Similar references can also be found in such Song-related books as *Song Hui Yao Ji Gao* (Selected Manuscripts of the Digests of the Song Dynasty), *Song Shi* (The History of the Song Dynasty), and *Zhu Fan Tu* (Maps of the Various Barbarian Peoples, the North Song Dynasty). According to a Chinese textbook on international law, the Chinese government of each dynasty since the *Songs* (960-1279) has exercised jurisdiction over Xisha and Nansha Islands. There are historic records which indicate that the navy of the North Song Dynasty (960-1127) sailed to the Xisha Islands to patrol the area.

There does not appear to have been any uniform designation for the Xisha or Nansha group. Sometimes the words *Shitang* or *Shichuang* designated the Nansha Islands; at other times, they referred to the Xisha or Zhongsha Islands. So too with the understanding of the term *Changsha*. The actual group of islands which these words referred to must be determined in the concrete context in which they were used. For example, in *Zhu Fan Tu* (Maps and Charts of the Various Barbarian Peoples) and its illustrations, which were charted in the Song Dynasty, it was stated that "Shichuang, Changsha zhi xian, Jiao Yang, Zhu Yu zhi xian" ("The dangerous water areas of the Shichuang and Changsha are the outer limits of the Jiaozhi Sea and the Natuna Islands"). Here, *Shichuang* (Shitang) denotes the Xisha Islands whereas *Changsha* refers to the Nansha Islands. *Jiao Yang* is an abbreviated form of *Jiaozhi Yang* (Jiaozhi Sea), the sea area west of the Xisha Islands. In the phrase *Zhu Yu*, *Zhu* was the traditional transliteration of "Datcu"; *Yu* means islands. The combination of these two words refers to the Datcu Islands (now known as the Natuna Islands). The above passage means that once one passes the dangerous water areas of the Xisha and Nansha Islands, one reaches the sea boundaries between China and foreign countries. This interpretation is supported by

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89. *Zhancheng Zhuan [Chronology of Zhancheng]*, in 489 *Song Shi [The History of Song Dynasty]* (Tuo Tuo (1314-1355, Yuan), Ai Tu (Yuan) & Ouyang Xuan (1274-1358, Yuan) eds., n.d., Yuan) (Zhancheng is now part of Guangdong, Guangxi and Vietnam).
90. Han Zhenhua, *supra* note 85, at 305, 311-12.
92. *Id.*
93. Han Zhenhua, *supra* note 85, at 311 (quoting *Zhu Fan Tu [Maps and Charts of the Various Barbarian Peoples]* (n.d., Song Dynasty)).
94. Han Zhenhua, *supra* note 85, at 311-12.
the following quotation from the Song scholar Zhou Qufei’s ten volume *Lingwai Daida* (1178), a title which, although difficult to translate, literally means Substitute Replies from Lingwai (now Guangdong and Guangxi):

Among those foreign states which are rich in resources and treasures, none is comparable to the State of Dashi; the next is the State of Shepo, and next comes the State of Sanfoqi, followed by the other states. Sanfoqi is the strategic pass for communications between various states via sea routes. [Here is how] to travel from Sanfoqi to China: One would sail by boats northward, *pass the upper and lower Datcu and the Jiaozhi Sea, and then respectively enter the territory of China* [on the sea]. To reach Guangdong, one would go through Tunmen; to reach Quanzhou, he would go through Jiazimen. From Shepo to China, one sails northwest for some distance, passing the Twelve Rock-Islets, and meeting the sea route between Sanfoqi and China right before the Datcu Islands. From the State of Dashi to China: Taking small boats southbound, reaching the State of Gulin, changing large boats and sailing eastward, arriving at the State of Sanfoqi, and then taking the same sea route to enter China. Other tributary states such as Zhancheng and Zhenla are all close south of the Jiaozhi Sea, and their distances to China are far shorter than half of the distances to the State of Sanfoqi and Shepo, while the distances of Sanfoqi and Shepo to China are again shorter than half of the distance between the State of Dashi and China. To travel from the various foreign states to China, one can complete the round trip in one year, with the only exception being the State of Dashi, the round trip between it and China taking more than two years to complete (emphasis added).

Sanfoqi is the same kingdom of Sriwidjaja which existed on part of what is now Sumatra Island with Palembang as the center. Shepo State was located in Java and part of Sumatra. The State of Dashi refers to the empire of Taziks, and the word Dashi comes from the Persian word Tazi and was used since the Tang and Song dynasties to denote the Arabian

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Empire. *Tunmen* is in Kowloon, Hongkong, and was a gateway to Guangzhou. *Shi'er Zishi* (Twelve Rock-Islets) refers to the small islets north of the Karimata Islands near Java. *Gulin* State is the Chinese transliteration of the kingdom of Kulam which existed on the southwest coast of India. *Shang Xia Zhu* (Upper and Lower Daticus) and *Zhu Yu* (Daticu Islands) both refer to the Natuna Islands. *Quanzhou* is located in Fujian Province. *Zhancheng* was a state in central-southern Vietnam and part of Cambodia with Qui Nhon as its capital. *Zhenla* consisted mostly of what is now Cambodia.

The sea route between Sanfoqi and Guangdong and Fujian was newly opened during the Song Dynasty. Part of the new sea route, that between Zhancheng and Guangdong and Fujian, was the same as the old one. From Sanfoqi to Zhancheng, the old sea route was along the coasts of Malay Peninsula and Indo-China, while the newly developed sea route passed the Natuna Islands and then immediately entered the domain of China in the South China Sea, namely, the Nansha Islands water area which was then called Changsha Hai (Changsha Sea). Along this new sea route, one would then exit the Chinese territory in the Changsha Sea area, passing Zhancheng on the central-southern Vietnamese coast, proceed through the Jiaozhi Sea, and then re-enter the Chinese territory in the Xisha Islands water area called Shitang Hai (Shitang Sea). The major difference between the new route and the old one is that using the new route, one would enter China's territory on the sea twice, once in the Nansha Islands area and the other in the Xisha Islands area, whereas along the old coastal sea route between Sumatra and Zhancheng, one did not need to enter and traverse China's Changsha Sea (Nansha) area. Instead, he only needed to enter China's territory once in the Shitang Sea (Xisha) area. The words "*Ii Shang Xia Zhu yu Jiao Yang, naizhi Zhongguo zhifing*" mean that by using the new sea route, one could "enter the territory of China both after passing the Upper and Lower Daticus and after traversing the Jiaozhi Sea."

Taking both *Zhu Fan Tu* and *Lingwai Daida* into consideration, one can conclude that during the Song Dynasty, the area where the dangerous zone of the Shitang Sea (Xisha area) and the Jiaozhi Sea met was considered the sea boundary between China and the Jiaozhi Sea, and the beginning of the dangerous zone of the Changsha Sea (Nansha) was considered the sea boundary between Natuna Islands and China. Once one reached those sea boundaries, one then "reached Chinese territory." It is thus evident that no matter how one is to interpret the words *Qianli Changsha* and *Wanli Shitang* in the famous *Zhu Fan Zhi*, both the Xisha Islands and the Nansha Islands were within the boundary of the Song Empire.

96. Han Zhenhua, *supra* note 85, at 312.
97. *Id.* at 311-12.
D. **Chinese Activities in the Yuan Dynasty**

In 1279, the emperor of the Yuan Dynasty (1279-1360) sent Guo Shoujing, the famous high-level official and astronomer, to the South China Sea to survey and measure the islands and the surrounding ocean. Guo's research base was located exactly in the Xisha Islands. The *Yuan Shi* (History of the Yuan Dynasty) clearly recorded Guo's activities, which are also discussed in some detail by Chinese historians and legal scholars.98

Around the same time as Guo's survey, an “expeditionary force” was dispatched to Java in 1292. It was noted:

Records of the voyage report that it sailed through “Chi’chou yang” (the ocean of the seven islands) and the “Wanli shih[sic.]-t’ang” (Myriad on ten thousand li rocks). The “Chi’chou yang” [now spelled Qizhou Yang] (Seven Islands) were the seven islands of the present Paracel Islands and “Wanli shih-t’ang” [now spelled Wanli Shitang] apparently referred to the present Spratly Islands.99

The official *Yuan Shi* (History of the Yuan Dynasty) completed during the Ming era not only contained a geographical description of the South China Sea islands, but also recorded the Yuan navy’s inspections and patrols of the Qizhou Yang (Xisha Islands) and Wanli Shitang (Nansha Islands). The “Shi Bi Zhuan” (Supplementary History) of the work recorded that Chinese naval forces:

... guo Qizhou Yang, Wanli Shitang, li Jiaozhi Zhancheng jie.... ru Hundun Dayang, Ganlan Yu, Jialimada, Julan deng shan, zhubing famu, zao xiao zhou.... (... sailed through the Qizhou Yang and Wanli Shitang, passing the territory of Jiaozhi and Zhancheng.... [They then] landed such islands as Hundun Dayang, Ganlan Island, Jialimada and Julan, where they stationed and cut down lumbers to build small boats....)100

Respectively, *Qizhou Yang* and *Wanli Shitang* refer to the Xisha Islands and Nansha Islands. “*Shan*” means the islands in and surrounding the South China Sea. *Jialimada* refers to the Kalimantan Island (Borneo). The above passage suggests the range and breadth of naval activities of the Yuan Dynasty in the South China Sea.

Wang Dayuan, a prominent Chinese navigator of the Yuan Dynasty who made numerous voyages to the South China Sea and beyond, recorded


100. *Shi Bi Zhuan [Supplemental History], in Yuan Shi, supra* note 98.
the Yuan naval inspection and patrol activities in his publication entitled Dao Yi Zhi Lue (Abridged Records of Islands and Barbarians):

The base of Shitang originates from Chaozhou. It is tortuous as a long snake lying in the sea, and across the sea it reaches various states, and it is popularly called: Wanli Shitang. According to my estimates, it is less than ten thousand li . . . . Its veins can all be traced. One such vein stretches to Java, one to Boni and Gulidimen, and one to the west side of the sea toward Kunlun in the distance . . . . One would be safe to avoid it, and dangerous to come across it.101

Here, Boni denotes Burni, a kingdom which existed in what is now Brunei and its vicinity on the Kalimantan Island. Gulidimen was another kingdom on the Kalimantan. Kunlun denotes Kunlun Island, located outside the mouth of the Mekong River and about 200 nautical miles away from Saigon. Given the description that the three “veins” of the Wanli Shitang respectively extend to Kalimantan, Java and the western South China Sea overlooking the Kunlun Island in the distance, it would appear that Wang Dayuan meant the Nansha Islands (and perhaps other islands in the South China Sea) by Shitang and Wanli Shitang. Wang Dayuan further recorded that when the navy of the Yuan Empire was patrolling the South China Sea islands and sea zones near Kalimantan, “you bing zu bai yu ren, buneng qu zhe, sui liu shan zhong” (there were more than a hundred sick soldiers who could leave and had to stay on the islands).102 Given only the number of soldiers who could no longer patrol because of illness, more than one hundred, one can imagine the scale of patrols by the Yuan navy in the Nansha Islands area.

Moreover, Yuan Shi clearly stated that the South China Sea islands were within the boundary of the Yuan Dynasty.103 Maps published in the Yuan era invariably included the Changsha (the Xisha Islands) and the Shitang (the Nansha Islands) within the domain of Yuan. Such maps included the Yuandai Jiangyu Tu Xu (Map of the Territory of the Yuan Dynasty Illustrated), the Sheng Jiao Guang Bei Tu (also a map of the Yuan Dynasty) of 1330 by Li Zemin, the Hunyi Jiangli Tu (Consolidated Maps of Territories) of 1380, and the authoritative Yu Di Tu (The Maps of the


102. WANG DAYUAN, supra note 101, at 93. See Wu Fengbin, supra note 77, at 109.

103. Dili [Geography], in YUAN SHI, supra note 98 (stating that the territory of the Yuan Dynasty to the north extended to the Mountain (Bei yin shan), and to the south across the South China Sea (Nan yue hai biao)). See Wu Fengbin, supra note 77, at 109.
E. Chinese Activities During the Ming and Qing Dynasties

Local annals and other historic materials of the Ming Dynasty (1367-1644) and the Qing Dynasty (1644-1911) also contained geographical descriptions of the Xisha Islands and Nansha Islands. The Qiongzhou Fu (Qiongzhou Prefecture i.e., the name of the highest administrative authority in Hainan), exercised jurisdiction over the Xisha and Nansha Islands throughout the Ming and Qing dynasties. For example, Tang Zhou of the Ming Dynasty recorded in his Zhongde Qiong Tai Zhi (Records of Qiongzhou and Taiwan During the Reign of Emperor Zhengde) that the sphere of jurisdiction of the Qiongzhou Prefecture included the Qianli Changsha and Wanli Shitang, which respectively referred to the Xisha Is-

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105. Id.
lands and Nansha Islands. According to Qiong Guan Gu Zhi (Ancient Records on the Jurisdiction of Qiongzhou Fu) written in the same era contained the same information. According to Guangdong Tong Zhi (General Records of Guangdong Province) prepared by Jin Guangzu of the Qing Dynasty, in the Ming era, Wan Zhou (Sub-Prefecture) of Qiongzhou Prefecture not only had jurisdiction over the Qianli Changsha and Wanli Shitang, but also had authority over the “Changsha Hai, Wantang Hai” (Changsha Sea and Wantang Sea), the sea areas surrounding the Xisha Islands and Nansha Islands. Various maps and charts drafted in the Ming Dynasty also indicated that the South China Sea islands were Chinese territory. For example, in an atlas entitled Hunyi Jiangli Lidai Guodu zhi Tu (Consolidated Map of Territories and Geography and Capitals of Past Dynasties) prepared in 1402 by Li Hui and Quan Jin of the Ming Dynasty, the South China Sea islands were all included within the boundary of China. On the map, there are three places in the South China Sea respectively marked “Shitang”, “Changsha” and “Shitang”. “From the geographical locations of these places as marked on the map, the first Shitang denotes the Dongsha Islands, Changsha denotes the Xisha Islands, and the second Shitang denotes the Nansha Islands.” Another Ming map published in 1637 also included the entire South China Sea islands as part of the Ming Empire’s territory.

In addition to Zheng He’s well-known seven voyages to the Pacific and Indian Oceans through the South China Sea, the navy of the Ming Dynasty continued to patrol the Xisha Islands and Nansha Islands and the surrounding seas. With regard to Zheng He’s activities:

When the famous Chinese navigator Cheng Ho [i.e., Zheng He] of the Ming Dynasty . . . sailed seven times through the South China Sea and the Indian Ocean between 1403 and 1433, his fleet passed through the

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109. Wu Fengbin, supra note 77, at 110.
110. JIN GUANGZU (Qing), Shanchuan: Wan Zhou [Land: Wan Sub-Prefecture], in 13 GUANGDONG TONG ZHI [GENERAL RECORDS OF GUANGDONG] (n.d.). See Wu Fengbin, supra note 77, at 110. The Wan Sub-Prefecture was a zhou level local administration in the southeast part of Hainan Island, covering areas such as Wanning County and Lingshui County.
111. Liu Nanwei, supra note 67, at 84. See also Wang Liyü, supra note 48, at 23 (concluding that on the same map, the mark Changsha denotes both the Xisha and Zhongsha Islands, while the two marks of Shitang respectively refer to the Dongsha and Nansha Islands).
112. Wang Liyü, supra note 48, at 26 (referring to WUBEI MISHU DILI FU TU [A GEOGRAPHICAL MAP ANNEXED TO THE SECRET MANUAL ON DEFENSE PREPARATIONS] (1637)).
China's Title To the South China Sea Islands

Paracel and Spratly Islands on several occasions and the locations of these two islet groups were recorded on a detailed map drawn between 1425 and 1430 (the exact year cannot be determined). The Paracels were referred to as "Shih-t'ang" (Rocks) and "Wansheng shih-t'angyu" (Islands of ten thousand rocks), and the Spratly as "Shihsing shih-t'ang" (Stone star rocks). A subsequent Ming Dynasty publication on the products and geography of the sea entitled "Haiyu" (On the Sea) also clearly described the location of these islet groups. The text explicitly states that the "Wanli changsha" (Myriad on ten thousand li sand banks) is located southeast of "Wanli shih-t'ang" (Myriad on ten thousand li rocks). The Spratly Islands are indeed located south-east of the Paracels.\(^{113}\)

Zheng He's fleet used the Xisha and other islands in the South China Sea as stop-over points during voyages to and from the Indian Ocean and other destinations. According to Bruce Swanson, a U.S. naval historian, the sea routes followed by Zheng He's "naval captains had been known and used for several centuries. Since the Song Dynasty, in fact, the routes had been systematized into two major sea lanes: the East Sea Route and the West Sea Route. Each was subdivided into a major and minor route."\(^{114}\)

Swanson continues:

Following the period of intensive training, the fleet wound its way through the Taiwan Strait and sailed directly into the South China Sea, where land falls were made on Hainan Island and the Xisha Islands (Paracel Islands). From the Xishas the fleet turned westward and made for an anchorage at modern-day Qui Nhon on the Champa [i.e., southern Vietnam] coast. The total time of the Fujian-Champa transit was about ten days. Once there, provisions were taken aboard and the crews had "liberty" and "sim call." From Qui Nhon the fleet sailed southward toward the west coast of Borneo, making land falls on the various islands in the southern portion of the South China Sea.\(^{115}\)

The navy of Hainan Garrison Force (Hainan Wei) in the Ming Dynasty was responsible for inspections and patrols as part of exercising its jurisdiction over the entire South China Sea. It was recorded that "Guangdong bin da hai, hai wai zhuguo jie neishu" (Guangdong is adjacent to the grand [South China] Sea, and the territories beyond the Sea all internally belong [to the Ming State]), and that "Gong tong bing wanyu, ju jian wushi sou, xunluo hai dao ji wan li" (the General led more than ten thousand sol-

\(^{113}\) Greenfield, China, supra note 10, at 31.


\(^{115}\) Id. at 38.
diers and fifty huge ships to patrol several ten thousand lis on the South China Sea. The patrolled area included the Nansha Islands, the Xisha Islands and the Zhongsha Islands.\footnote{116}

Chinese activities in the South China Sea continued to grow, as did Chinese knowledge about the Sea during the Qing (Ch'ing) Dynasty (1640-1911). The geographical positions of the Xisha Islands and Nansha Islands were described in Haiguo Wenjian Lu or Haikuo Wenchien Lu (Notes on Lands across the Sea), a book authored by Chen Lunjong (Ch'en Lunchung), a famous Qing scholar, and published in 1730.\footnote{117} Chen Lunjong created a set of maps called “Sihai Zongtu” (transliterated “Szuhai Tsungtu”) (General Maps of the Four Seas), which referred to the Xisha group of islets as “Changsha” and “Qizhou Yang” (“Chichou Yang”) and the Nansha group as “Shitang” (“Shih-t'ang”).\footnote{118} Chen is the first Chinese person known to have identified the South China Sea islands into five large groups: the Qi or the Nan’ao Qi (Dongsha Islands), the Shatou (the Nanxu Shayin in the Dongsha Islands), Qizhou Yang (Xisha Islands), Changsha (Zhongsha Islands) and Shitang (Nansha Islands).\footnote{119} It is notable that Chen’s chart placed Qizhou Yang in the west of the South China Sea, thereby denoting the whole or part of the Xisha Islands; Shitang was located in the south of the South China Sea between Wenlai (Brunei) and Kunlun Island, the approximate location of the Nansha Islands.

\footnote{116} Wu Fengbin, supra note 77, at 110 (citing 14 Li Xi, QIONGSHAN XIAN ZHI [RECORDS OF THE QIONGSHAN COUNTY] (n.d.)). \textit{See also} Hu Ruishu, Bian Hai WaiGuo [The Boundary Seas and Foreign Countries], in 4 WAN ZHOU ZHI [RECORDS OF THE WAN SUB-PREFECTUR] (n.d.).

\footnote{117} Wu Fengbin, supra note 77, at 108; Greenfield, China, supra note 10, at 31.

\footnote{118} Wu Fengbin, supra note 77, at 108; Greenfield, supra note 10, at 31-32.

\footnote{119} Wu Fengbin, supra note 77, at 108.
In the twenty-fourth year of Emperor Daoguang’s reign (1844), Yang Bingnan recorded the oration of Xie Qinggao, a Qing official, in the book *Hai Lu* (Illustrations of the Sea), in which the South China Sea islands were described in four groups: Jichuan, Dongsha, Changsha and Shitang. Although some Chinese authors disagree as to the islands corresponding to the Jichuan and Dongsha groups, they all agree that Changsha refers to the Xisha Islands and Shitang to the Nansha Islands. Also during Daoguang’s reign (1821-1851), a sea chart entitled *Yiban Lu* (Particular Illustrations), prepared by Zheng Guangzu contained the marks of "Luoji," "Dongsha," "Xisha," and "Shitang" positioned respectively in the locations of the Dongsha, Zhongsha, Xisha and Nansha Islands.

120. Liu Nanwei, supra note 67, at 86-87 (citing XIE QINGGAO & YANG BINGNAN, HAI LU [DESCRIPTIONS OF THE SEA] 1844 (n.d.) (Jingdu Gaoxuan Version)).
121. Cf. Liu Nanwei, supra note 67, at 87; Wu Fengbin, supra note 77, at 108.
Various maps charted and published by the Qing Dynasty, without exception, included the islands of the South China Sea within the territory of the Great Qing. Virtually all these maps specifically referred to the Xisha Islands as *Qianli Changsha* and the Nansha Islands as *Wanli Shi-tang*. Examples of such official maps included, but were not limited to, the following:

1. the *Da Qing Zhong Wai Tianxia Quan Tu* (The Complete Sino-Foreign Maps of the Great Qing) of 1709;
2. the *Qing Zhi Sheng Fen Tu* (Individual Maps of the Provinces Directly under the Administration of the Qing Empire) of 1724;
3. the *Huang Qing Ge Zhi Sheng Fen Tu* (Individual Maps of the Provinces Directly under the Administration of the Royal Qing) of 1755;
4. the *Da Qing Wan Nian Yitong Quan Tu* (The Complete Maps of the Unified Great Qing for Ten Thousand Years) of 1767 charted by Zhu Xiling and revised by Huang Zhengsun;
5. the *Qing Hui Fu Zhou Xian Ting Zong Tu* (The Qing-Charted General Maps of the Capital Cities, Prefectures, Counties and Tings)\(^{123}\) of 1800 charted by Xiao Feng;
6. the *Da Qing Wan Nian Yitong Tianxia Quan Tu* (The Complete Maps of the Whole Unified Country of Great Qing for Ten Thousand Years) of 1803 charted by Yang Senzhong;
7. the *Da Qing Wan Nian Yitong Dili Quan Tu* (The Complete Geographical Maps of the Unified Great Qing for Ten Thousand Years) of 1810;
8. the *Da Qing Yitong Tianxia Quan Tu* (The Complete Maps of the Whole Unified Country of Great Qing) of 1817;
9. the *Gu Jin Di Yu Quan Tu* (The Complete Maps of the Lands and Territories Then and Now) of 1895;
10. the *Da Qing Tianxia Zhonghua Ge Sheng Fu Zhou Xian Ting Dili Quan Tu* (The Complete Geographical Maps of the Provinces, Capital Cities, Prefectures, Counties and Tings of the Whole China of the Great Qing) of 1904 charted by Wu Changfa; and

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\(^{123}\) Tings were created in the Qing Dynasty as an administrative locale at both the prefecture level and the county level in newly established provinces. The prefecture-level Tings were called *Zhili Ting* (Tings Directly under Provinces) which were parallel to the capital cities (*Fus*) and prefectures (*Zhous* or *Zhili Zhous*); the county-level Tings were called *San Ting* (Scattered Tings or sub-Tings) which were parallel to counties (*Xi-ans*) and sub-prefectures (*San Zhou*). CIHAI, *supra* note 1, at 146.
During the reign of Emperor Kangxi (1662-1722) of the Qing Dynasty, the Navy of Guangdong (Canton) was responsible for patrolling the South China Sea. Records of the era reflect that from 1710 to 1712, the Vice-Admiral of the Guangdong Navy (Guangdong Shuishi Fujiang), Wu Sheng, personally led his fleet to the Xisha Islands and the surrounding vicinity to patrol the seas: “Zi Qiongya, li Tongku, jing Qizhou Yang and Sigeng Sha, zhou zao sanqian li gongzi xunshi” ([The fleet) started from Qiongzhou [of Hainan] by way of Tonggu, passing through the Qizhou Yang [the Xisha Islands] and the Sigeng Sha, traveling three thousand lis [about 1,500 km], with [General Wu Sheng] leading the patrol personally].

The Qing Government “on several occasions” went to the rescue of both foreign ships or their crews caught in distress in the South China Sea. For example, in the twentieth Year of Emperor Qianlong (1755), the Qing Government rescued sixteen foreign sailors whose were wrecked by storms in the Xisha Islands area. In the twenty seventh Year of Qianlong (1762), the Governor of Guangdong ordered his subordinates to rescue some ships from Xianluo (now Thailand) which had met with mishap in Qizhou Yang (the Xisha Islands). In 1883, the Qing Government lodged strong protests against Germans surveying in the Xisha and Nansha areas; as a result of such protests, the Germans terminated their surveys. In 1887, the Qing government was compelled to accept an inequitable treaty with France concerning the delineation of boundaries between China and Vietnam (then known as An’nam and Tonkin). The 1887 treaty expressly provided that islands east of a delimitation line belonged to China. The Xisha and Nansha Islands are all located east of the Sino-Tonkin delimitation line.

126. Lin Jinzhi, supra note 72, at 191.
127. Id. (citing the Archives of the Ming and Qing Dynasties in the Archives Department of the Beijing Imperial Palace).
128. Id.
130. Convention relative à la délimitation de la frontière entre la Chine et le Tonkin, Peking, June 26, 1887, 169 C.T.S. 345. ZHAO LIHAI, HAIYANG FA DE XIN FAZHAN [NEW DEVELOPMENTS IN THE LAW OF THE SEA] 216 (Beijing, Peking University Press 1984);
During the reign of the Qing Emperor Tongzhi (1862-1874), the Qing Customs and General Revenue Office planned to establish lighthouses in the Dongsha Islands to facilitate navigation in the South China Sea. In response to requests by foreign States, the customs office of the Qing made plans in 1908 for erecting lighthouses on the Xisha Islands to improve navigation.

Later, in 1909, the Liang Guang Zongdu (Governor of both Guangdong and Guangxi) Zhang Renjun sent the naval officer-in-charge, Li Zhun, to the Xisha Islands area, where his crew identified and renamed 15 islands and islets. Stone markers were erected there, Chinese flags were raised and cannon-shooting ceremonies were held as a show of China’s sovereignty over the islands.

In 1910, the Qing Government decided to “zhao lai hua shang cheng ban dao wu” (invite Chinese merchants to contract for the administration of the development affairs of the South China Sea islands). Meanwhile, it demanded that “guan wei baohu weichi, yi zhong lingtu, er bao quanli” (officials shall provide protection and maintenance in order to highlight [Qing’s] territory and to protect [Qing’s] titles and interests).

In addition to these examples, numerous other history and geography texts of the Qing Dynasty state without exception that the sphere of jurisdiction of the Qiongzhou Prefecture (or of the Wan Sub-Prefecture under it) included what are now known as the Xisha and Nansha Islands, or recorded the Qing Government’s activities in the South China Sea. In short, the Qing government, like its predecessors, not only claimed, but actually exercised sovereignty over, the Xisha and Nansha Islands. Throughout the history of the Qing Dynasty, that sovereignty was never challenged by China’s neighboring states.


131. QINGJI WAIJIAO SHI LIAO [HISTORIC MATERIALS ON THE DIPLOMACY OF THE QING DYNASTY]. See Lin Jinzhi, supra note 72, at 188.

132. Lin Jinzhi, supra note 72, at 188.

133. Duanmu Zheng ed., supra note 2, at 181; Lin Jinzhi, supra note 72, at 188, 189.

134. GUANGDONG SHUISHI GUOFANG YAOSAI TUSHUO [STRATEGIC DEFENSE FORTRESSES OF THE GUANGDONG NAVY ILLUSTRATED] (Li Zhun (Qing) ed., 1910). Lin Jinzhi, supra note 72, at 188.

135. See, e.g., JIN GUANGZU (Qing), GUANGDONG TONG ZHI [GENERAL RECORDS OF GUANGDONG] (n.d.); XU JIAGAN (Qing), YANG FANG SHUO LUE [A BRIEF INTRODUCTION TO DEFENSE ON THE SEA] (n.d.); MING YI (Qing), QIONGZHOU FU ZHI [RECORDS OF THE QIONGZHOU PREFECTURE] (n.d.); ZHONG YUANDI (Qing), YA ZHOU ZHI [RECORDS OF THE YA SUB-PREFECTURE] (n.d.); YAO WEN (Qing), JIANG FANG HAI FANG CE [STRATEGIES OF RIVER DEFENSE AND SEA DEFENSE] (n.d.); See also Lin Jinzhi, supra note 72, at 183; Wu Fengbin, supra note 77, at 110.
IV. Continuing Exercise of Sovereignty since 1911

A. Exercise of Sovereignty by the Republic of China

Since the replacement of the Qing Dynasty with the Republic of China in 1911, the Chinese government entrusted administration of the Xisha, Nansha and Zhongsha Islands to the local government of Hainan, which was a special prefecture within Guangdong Province until April 1988 when it was “upgraded” to the status of a province. The Republic of China continued to exercise authority over the South China Sea islands through such means as granting licenses or contracts to private Chinese merchants for the development and exploitation of guano and other resources on those islands. Official and non-official maps published in the Republic era invariably included the Xisha and Nansha Islands as Chinese territory.

In 1911, the new Government of Guangdong Province decided to place the Xisha Islands under the jurisdiction of the Ya Xian County (Ya County) of Hainan Prefecture. In 1921, the Southern Military Government reaffirmed the 1911 decision. These decisions do not imply that China did not assume jurisdiction over the Xisha Islands until 1911. Rather, these decisions were matters of internal administrative and geographical redistribution, which took place repeatedly throughout the history and territory of China. Nor do they suggest that China had sovereignty merely over the Xisha Islands. They simply mean that beginning in 1911, the Ya County of Hainan, rather than the higher level government or governments, had original administrative and other jurisdiction over the Xisha Islands, while China’s sovereignty over the Nansha Islands and other islands in the South China Sea remained under the control of the relevant governments at the prefecture, provincial and central level.

In the initial decades of the Republic, the central and local governments took effective measures to encourage Chinese companies and businessmen to participate in the development of the Xisha Islands. The Xisha Islands are closer to Hainan Island and the mainland. Their geographical and other natural conditions, although less than ideal, are more favorable than those of the Nansha Islands. This explains why the Chinese Government, especially that of the Republic of China, considered the development and exploitation of the Xisha Islands a priority. Nothing suggests that

137. For an incomplete list of such maps, see Wu Fengbin, supra note 77, at 111.
138. Liu Wenzong, supra note 68, at 70; Lin Jinzhi, supra note 72, at 191.
139. Lin Jinzhi, supra note 72, at 191.
China ever had any intention of ignoring or abandoning the Nansha Islands.

Since the 1910s, an increasing number of Chinese merchants and businessmen applied for license to develop and exploit minerals and other natural resources on the Xisha Islands. Examples of development and exploitation activities in the Xisha Islands include the following:

- In 1917, a Chinese businessman of the Hai Li Company, He Cheng'en, applied to the Office of the Governor of Guangdong Province for permission to mine phosphorus ore; 140

- In 1919, businessman Deng Shiying applied to develop selected islands in the Xisha for planting and farming. 141

- In 1921, the Ministry of Internal Affairs of the Republic of China approved the application of a businessman of Guangdong, He Ruinian (Ho Shui-nien), to engage in fishing, reclamation and cultivation, as well as to develop and exploit minerals. However, when the Chinese Government later discovered that Mr. He had assigned his license to a Japanese company, Nanxing Shiye Company, it revoked the license. 142

- In May 1928, the Government of Guangdong Province organized a team of military officers, government officials and scientific and technological personnel, which sailed to the Xisha Islands on board a warship to carry out field surveys and investigations. The team produced a detailed Report of Surveys on the Xisha Islands. 143

- Also in 1928, the Provincial Government of Guangdong entrusted Zhongshan University of Guangzhou with the administration of the Xisha Islands provisionally. 144

- From 1929 to 1931, Chinese businessmen including Song Xiquan and Yan Jingzhi submitted applications for licenses to exploit guano. The Guangdong Provincial Government approved these licenses. 145

- In 1932, the Chinese Government contracted with the Zhonghua Guochan Feitian Gongsi (China National Fertilizer Co.) for the development and exploitation of natural resources. 146

140. Liu Wenzong, supra note 68, at 70.
141. Id.
142. Id. See also Lin Jinzhi, supra note 72, at 191 (citing CHEN TIANXI, XISHA DAO CHENG AN HUIBIAN [A COMPILATION OF MATERIALS CONCERNING THE XISHA ISLANDS CASE] (1928)).
143. Liu Wenzong, supra note 68, at 70; Lin Jinzhi, supra note 72, at 191.
144. Lin Jinzhi, supra note 72, at 191.
145. Id.
146. Id.
In 1932, the Industrial Testing Institute of the Department of Construction of the Guangdong Provincial Government began mining guano on the Xisha Islands.\textsuperscript{147}

In 1933, the Department of Construction of the Guangdong Provincial Government made preparations for the construction of a Guano Fertilizer Producing Plant on the Xisha Islands and made plans for developing the entire Xisha Islands.\textsuperscript{148}

Between 1932 and 1933, the Chinese Government established a Committee for the Review of Maps of Lands and Waters, which was officers and officials from the military Department of General Staff, the Ministries of Internal Affairs, Foreign Affairs, Navy, Education and the Tibetan and Mongolian Affairs Commission. In December 1932 and March 1935, the Committee convened two meetings, specifically reviewing the names of the islands in the South China Sea and reaffirming the division of China's \textit{Nanhai Zhudao} into four groups which were respectively called at that time the Xisha Islands, the Nansha Islands (now the Zhongsha Islands), the Dongsha Islands and the Tuansha Islands (now the Nansha Islands).\textsuperscript{149}

In April 1935, the Committee for the Review of Maps of Lands and Waters charted and published a map entitled \textit{Zhongguo Nanhai Ge Daoyu Tu} (Map of the Islands of China in the South [China] Sea), which specifically depicted the Xisha Islands and the Tuansha (Nansha) Islands, among others, as within the boundary of the territory of the Republic of China, and detailed the specific names and locations of all islands, shoals, reefs and banks.\textsuperscript{150}

In 1936, in accordance with a resolution adopted by the 1930 Hong Kong Conference on Meteorology in the Far East, the Chinese Government in the Xisha Islands constructed meteorological observatories, radio stations, lighthouses and similar types of structures. Broadcasts from Xisha radio stations reached Liaoning Province in the north and beyond Singapore to the south.\textsuperscript{151}

Throughout the 1930s and 1940s, the Chinese Nationalist Government was constantly at war on the mainland with forces led by the Chinese Communist Party and with Japanese invaders. Nevertheless, the Chinese Government, far from "forgetting" or "neglecting" the South China Sea

\begin{itemize}
\item \textsuperscript{147} \textit{Id.}
\item \textsuperscript{148} \textit{Id.}
\item \textsuperscript{149} \textit{Id.} at 192.
\item \textsuperscript{150} \textit{Id.}
\item \textsuperscript{151} \textit{Id.} at 191.
\end{itemize}
islands, took every opportunity it could to reiterate China’s sovereignty over the Xisha Islands and Nansha Islands.\textsuperscript{152}

\textbf{B. The French and Japanese Occupations in the 1930's}

On May 21, 1921, French Premier and Foreign Minister Aristide Briand recognized, with regard to the Xisha Islands, that “since the Chinese Government has established her sovereignty since 1909, it is impossible for us now to lay a claim on these islands.”\textsuperscript{153} Briand’s belief that China established sovereignty over the Xisha Islands only in 1909 was a mistaken one, arising from the false impression that the flag-raising and cannon-firing ceremony held on the Xisha Islands in 1909 constituted China’s first ever declaration of China’s title to the Xishas. The ceremony was in fact a reaffirmation of China’s sovereignty on the occasion of renaming fifteen of the Xisha Islands. Nevertheless, Premier Briand correctly acknowledged that at the time of his speech the Xisha Islands were Chinese territory.

On December 4, 1931, France attempted to invade the Xisha Islands on the ground that it needed the islands for the protection of An’nan (Vietnam). France’s territorial claims were condemned by the Chinese Government.\textsuperscript{154} The French claims were based on the alleged 1816 occupation of the “Hoang Sa” by the emperor of Vietnam and his alleged construction of temples and monuments there in 1835. On July 27, 1932, the Chinese Foreign Ministry instructed the Chinese Envoy to France to lodge a diplomatic protest to the French Foreign Ministry and to deny France’s claims to the Xisha Islands. On September 29, 1932, the Chinese Government dispatched a note to the French Government stating that the Guangdong Provincial Government of China had granted applications to Chinese nationals to develop and exploit natural resources in the Xisha Islands, that China had long exercised sovereignty over these islands, that the Chinese Government was skeptical about the alleged Vietnamese activities in the Xisha Islands in 1816 and 1835, and that the Chinese Government would require the French to provide confirmation of the locations of the alleged Vietnamese-built monuments and temples.\textsuperscript{155} In a subsequent diplomatic note presented to the French Government by the Chinese Embassy in Paris, the Chinese Government stated:

\begin{itemize}
  \item \textsuperscript{152} Id. at 192-93; Liu Wenzong, \textit{supra} note 68, at 71-73. See also infra text accompanying notes 155-79.
  \item \textsuperscript{153} Liu Wenzong, \textit{supra} note 68, at 71 (quoting \textit{WAIJIAO PINGLUN ZAZHI} [\textit{JOURNAL OF DIPLOMATIC REVIEW}] 77 (No. 4, 1934)).
  \item \textsuperscript{154} Duanmu Zheng ed., \textit{supra} note 2, at 156; Liu Wenzong, \textit{supra} note 68, at 71.
  \item \textsuperscript{155} Liu Wenzong, \textit{supra} note 68, at 71 (citing \textit{WAIJIAO BU GONGBAO} [\textit{GAZETTE OF THE MINISTRY OF FOREIGN AFFAIRS (Nanjing)}], July-Sept. 1933, at 203-09.
\end{itemize}
Based on our research and investigation, in 1816, An'nan was subject to China. Whether in terms of might or in terms of reason, it was impossible for An'nan to invade China's territory. What's more, in the history and books of China, there is no recordation whatsoever that the Xisha Islands were once occupied by [China's] vassal State An'nan. The records of the Vietnamese history must have been inconsistent with the facts. The hoisting of flags and firing of cannons by [General] Li Zhun in 1909 [in the Xisha Islands] were merely a kind of commemorative ceremony for renaming the islands. The fact that these islands became occupied and owned by China took place long before General Ma Fubo of the Han Dynasty made expeditions to the south.... All these prove that these islands are China's territory. The Chinese Government has been always exercising effective administration [of the Xisha Islands].

No further response from France to the above diplomatic statement was received. One might infer that the French authorities did not have evidence to substantiate their allegation that Vietnam once controlled the Xisha Islands.

After France's attempted occupation of the Xisha Islands in 1931 failed, French forces subsequently invaded and occupied Nanwei Island (referred to by the French as Storm Island; also known as Spratly Island) and five other islands in the Nansha area without notifying the Chinese Government. On July 25, 1933, France declared that it had occupied and acquired sovereignty over nine of the islands in the South China Sea.

On August 4, 1933, the Chinese Government promptly notified the French Government that China reserved its title to the islands in question pending an investigation. The diplomatic note, which was delivered by the Chinese Ministry of Foreign Affairs to the Minister of the French Legation in Nanjing, stated:

The Chinese Government is very much concerned with this matter [i.e., the French-declared occupation of and sovereignty over nine islands in the South China Sea]. She hereby requests Your Excellency, the Minister of the French Legation, to inquire into and ascertain the name, the exact location and the longitude and latitude of each island and report the same to the Chinese Government. Pending such investigation and

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156. Liu Wenzong, supra note 68, at 71 (quoting Xisha Qundao An [The Case of the Xisha Islands], Ministry of Foreign Affairs of the Nationalist Government, No. 2, Archive No. 483-1 (March 1934).
158. Tao Cheng, South China Sea, supra note 157, at 268-69.
verification, the Chinese Government reserves her titles vis-à-vis the afore-mentioned declaration of the French Government.159

The Chinese Government may have merely "reserved" its rights in the above note because the French declaration did not specify the names and locations of the nine islands in the South China Sea. While China had always considered the Dongsha, Zhongsha Islands, the Xisha Islands, the Nansha Islands, and Huangyan Island and their surrounding waters as part of China, it did not claim sovereignty over the entire South China Sea. One could not exclude the possibility that there might be undiscovered islands or newly formed coral features within the South China Sea but outside of the scope of islands and waters rightfully owned by China. Given the lack of sufficient certainty and specificity in the French declaration, a reservation of title pending investigation was the most appropriate response to the French claims.

Probably because it later became apparent that the nine islands occupied by the French authorities were in fact islands of China's Nansha Islands, Ambassador William Koo (Gu Weijun) of the Chinese legation in France, shortly after the above diplomatic communications, delivered China's protest against the French occupation, stating that those islands and the entire Nansha (Spratly) Islands were the territory of the Republic of China.160 Because the Chinese Government troops were at war with the communist forces, diplomatic protest and reservation of rights were the most China could do at the time:

The Japanese Government also protested the 1933 French occupation of the nine Nansha Islands on the ground that they had been discovered by the Japanese in 1920 and therefore were Japanese territory.161 This signaled that the Japanese might later invade the same area.

Despite China's protest, the French maintained possession of the nine islands until the Japanese invasion in 1939. At the time of the occupation, the French Government stated that the islands in question were terra nullius, but conceded that during their occupation, "the only people living on the islands were Chinese."162

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162. Bennett, supra note 14, at 437 n.68. See also Chiu & Park, supra note 160, at 18.
On July 3, 1938, French troops invaded and occupied China's Xisha Islands. This took place shortly after the Japanese invasion against China; China was fully engaged in resisting Japan's invasion. In Paris, Ambassador William Koo immediately lodged a diplomatic protest with the French Government. On July 6, 1938, the Japanese Foreign Ministry also issued a declaration in protest of the French occupation, stating:

The statements of Great Britain and France made respectively in 1900 and 1921 already declared that the Xisha Islands were a part of the Administrative Prefecture of Hainan Island. Therefore, the current claims of An'nan or France to the Xisha Islands are totally unjustifiable.

While the Japanese protest against the French seizure of the Xisha Islands effectively recognized China's sovereignty over the Xisha Islands, in substance it was reserving for itself an opportunity for future Japanese intervention by denying the French claims. Thus, in 1939, the Japanese navy occupied the Xisha and Nansha Islands after Japan had invaded China and other parts of Asia. After the Japanese troops took over the nine islands and other islands in the South China Sea in 1939, Japan renamed the islands Shinnam Gunto (New South Islands), incorporated them into the jurisdiction of the Japanese Governor General of Taiwan (which was then under Japanese rule), and remained in control of the Xisha and Nansha area until the end of the Second World War. 

'Like the French occupation, the Japanese occupation of the South China Sea islands had no legitimate justification. Japan did not and could not gain title to the Xishas and Nanshas, no more than it did or could over the mainland of China, even though it invaded and occupied the Chinese mainland for more than eight years and the South China Sea islands for more than six years. Japan's relatively brief invasions and occupations did not and could not divest China of rightful title to its territory, including the South China Sea Islands.

C. The Return of the South China Sea Islands to China

On August 15, 1945, Emperor Hirohito formally announced Japan's surrender to the Allies through a broadcast to the entire Japanese people.
Japanese forces withdrew from the Xisha and Nansha Islands on August 26, 1945.167

From October through November 1946, the Nationalist Government of the Republic of China formally retook the Xisha, Nansha and other islands in the South China Sea, thus confirming the division of China’s islands in the South China Sea into the Dongsha, Zhongsha, Xisha and Nansha Islands, and reiterating China’s territorial sovereignty.168 It should be emphasized that neither the French nor the Japanese occupations changed the territorial status of the South China Sea islands because they were illegal and invalid under international law. It was a natural consequence of the defeat of Japan for China to resume its sovereignty over those islands. According to a Chinese naval officer, “[t]he Xisha and Nansha Islands have always been our territory. They were occupied by the Japanese during the war. Now that we are victorious naturally we have to have them back.”169

Following Japan’s retreat from the South China Sea, France made no attempt to regain control of the Nansha area or the Xisha area. Between the Japanese withdrawal in 1945 and the Chinese reoccupation in 1946, the South China Sea was virtually empty of military forces for about one year. That did not mean that the islands became terra nullius during that time, as China never gave up its rights and sovereignty over the South China Sea islands. It should not be forgotten that the Chinese people and the Nationalist Government were faced with many other post-war priorities before they could dispatch a naval contingent to take over the Xisha and Nansha Islands in October and November 1946.170

It is noted that “one of the first operations carried out by the ex-British ship the Fubo (formerly HMS Petunia) was the reoccupation of the Xisha (Paracel) and Nansha (Spratly) islands. In October and November 1946, a Chinese naval squadron visited these islands and assisted in setting up radio and meteorological stations.”171 Along with the naval contingent went officials from the Ministry of Internal Affairs to survey and engage in other administrative functions with regard to major islands and reefs of the Xisha and Nansha Islands.172 On Taiping Island, troops were stationed to

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167. Liu Wenzong, supra note 68, at 72.
169. SWANSON, supra note 114, at 169.
171. SWANSON, supra note 114, at 169.
172. Id.

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oversee and patrol neighboring islands and sea area, and a weather station was built there.\textsuperscript{173}

In January 1947, China made several demonstrations of its sovereignty over the Xisha Islands. First, in response to a renewed French claim on January 19, 1947, the Chinese Embassy in France issued a public notice that the Republic of China had sovereignty over the Xisha Islands.\textsuperscript{174} This was rapidly followed by the Chinese foreign ministry’s delivery of a diplomatic note to the French embassy in Nanjing, which solemnly stated that sovereignty over the Xisha Islands belonged to China, and rejecting the French claims to the Xisha Islands as illegitimate.\textsuperscript{175} Finally, on January 28, 1947, the Chinese Foreign Ministry delivered another diplomatic note to the French Embassy in Nanjing protesting France’s invasion and occupation of the Shanhu Dao (Shanhu Island or Coral Island) in the Xisha Islands.\textsuperscript{176}

Additional evidence of China’s claim to Xisha and Nansha was offered in June, 1947, when the Government of Guangdong Province organized an Exhibition Fair of Items and Rarities from the Xisha and Nansha Islands, covering more than 1,300 types of items.\textsuperscript{177} China made other gestures of administrative and military authority over the Xisha and Nansha Islands in late 1947 and early 1948. For example, the Committee on Natural Resources of China requested the central government to consider entrusting the \textit{Zhongyuan Qiye Gongsi} (Zhongyuan Enterprise Co.) with mining guano in the Xisha Islands. Two months later, the Chinese Ministry of Internal Affairs renamed many of the islands on the basis of comprehensive surveys conducted jointly by the navy and the Ministry of Internal Affairs officials.\textsuperscript{178} In March 1948, more than one hundred Chinese marines were sent to the Xisha Islands, Nansha Islands and Dongsha Islands to relieve previously stationed troops.\textsuperscript{179} Civil war in China in the late 1940s as well as the harsh conditions in the Xisha and Nansha areas prevented the Chinese Government from pursuing a more active program for the development and administration of the South China Sea islands.

\textbf{D. Exercise of Sovereignty by the People’s Republic of China}

After the Nationalists fled to Taiwan Province in 1949, fearing that the People’s Liberation Army (PLA) might continue on to the South China

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\textsuperscript{173} Id.
\textsuperscript{174} Lin Jinzhi, \textit{supra} note 72, at 193.
\textsuperscript{175} Id.
\textsuperscript{176} Id.
\textsuperscript{177} Id.
\textsuperscript{178} Id.
\textsuperscript{179} Id.
Sea, they withdrew their troops from the area, including Taiping Island, in May 1950. Local Taiwanese troops did not return to the South China Sea until 1956. The withdrawal, however, could in no sense be interpreted to be an act inconsistent with China's sovereignty over the South China Sea islands.

First, even if authorities in Taiwan had indeed intended to "abandon" the South China Sea islands, they could have done so only on behalf of their own political forces, not on behalf of China as a country, for the new Government in Beijing had replaced the Nationalists as the sole legitimate Government of China.

Second, the Nationalists' withdrawal of troops was in fact based solely on military and political considerations—they had no intention of abandoning the islands on behalf of China.

Third, given the virtual uninhabitability of these islands, permanent stationing of troops was not legally necessary for the purpose of maintaining China's well-established ownership. Indeed, the People's Republic of China's (PRC) delay in sending PLA troops to replace the Nationalist troops in the South China Sea could not in any manner affect the legal status of the islands there. The continuing claim of well-rooted sovereignty by the PRC should be sufficient to maintain such sovereignty irrespective of the absence or presence of any military force in the area. This was particularly true when the PRC was preoccupied with other important matters on the mainland and was further prevented from sending troops to the South China Sea due to the temporary lack of naval capacity. The fact that a State is temporarily unable to actively patrol, administer or defend part of its territory does not in itself result in the loss of such territory. Contemporary international law no longer recognizes the validity of the taking of territory by one State from another simply because the latter lacks the ability to defend itself.

Upon the founding of the People's Republic of China in 1949, the South China Sea Islands continued to be incorporated into the Hainan Special Administrative Prefecture. Chinese fishermen continued to fish in the Xisha and Nansha waters and to take shelter in these islands as well. The local Chinese governments continued to exhibit authority over the Xisha and Nansha Islands on behalf of the central government. The following are examples of the PRC's exercise of such authority:


182. Lin Jinzhi, supra note 72, at 194-98.
From 1950 to 1952, the governments of Wenchang County, Qionghai County, Lingshui County and others organized fishermen of Hainan to exploit the waters surrounding the Xishas and Nanshas; this practice has continued ever since.\textsuperscript{183}

In 1953, the Aquatic Products Corporation of the Hainan Special Administrative Prefecture began to mine and exploit guano in the Xisha Islands.\textsuperscript{184}

In May and June 1955, the Hainan Special Administrative Prefecture dispatched a survey and reconnaissance group to the Xishas to assess the natural resources on the islands. Members of the group included personnel from the Hainan Supply and Marketing Cooperative, the Water Conservancy Bureau of Hainan, the Public Health Bureau of Hainan, the Construction Engineering Corporation of Hainan, the Department of Agriculture of Guangdong Province, and the Supply and Marketing Cooperative of Guangdong Province.\textsuperscript{185}

In April 1956, the Aquatic Products Department of Guangdong Province organized a reconnaissance team to investigate the aquatic resources in the Xisha Islands. A central working station was established on Yongxing Island, and branch stations were set up on other islands. More than two hundred team members worked all over the islands. The team also set up Supply and Marketing Cooperatives (small shops), medical clinics, clubs and power stations.\textsuperscript{186}

In 1957, the Guano Corporation of the Hainan Special Administrative Prefecture mined guano and phosphate rocks on the Yongxing Island, with more than one hundred workers participating.\textsuperscript{187}

In 1958, the Hainan Special Administrative Prefecture established an "Administrative Bureau of the Xisha, Nansha and Zhongsha Islands" with its headquarters stationed on the island of Yongxing, one of the Xisha Islands, the largest island in the South China Sea.\textsuperscript{188}

From the Winter of 1959 to April 1960, the Aquatic Products Bureau of the Hainan Special Administrative Prefecture organized 131 fishing boats and 1752 fishermen from the coastal counties to engage in large-scale fishing in the waters surrounding the Xisha and Nansha Islands.\textsuperscript{189}

\textsuperscript{183} Id. at 197.
\textsuperscript{184} Id.
\textsuperscript{185} Id. at 197-98.
\textsuperscript{186} Id. at 198.
\textsuperscript{187} Id.
\textsuperscript{188} Id. But see Duanmu Zheng ed., supra note 2, at 156 (stating bureau established in 1959).
\textsuperscript{189} Lin Jinzhi, supra note 72, at 198.
In March 1969, the Administrative Bureau of the Zhongsha, Xisha and Nansha Islands was renamed "The Revolutionary Committee of the Xisha, Zhongsha and Nansha Islands of Guangdong Province". At the same time, a People's Armed Forces Department and a local Public Security Station were set up on Yongxing Island.  

In 1979, "The Revolutionary Committee of the Xisha, Zhongsha and Nansha Islands of Guangdong Province" was renamed "The Committee of Guangdong Province on the Affairs of the Xisha, Nansha and Zhongsha Islands," placing these islands under the direct jurisdiction of Guangdong Province.  

In April 1988, upon the establishment of Hainan Province, the administrative organ for the South China Sea islands was renamed "The Committee of Hainan Province on the Affairs of the Xisha, Nansha and Zhongsha Islands," transferring the jurisdiction over these islands from Guangdong Province to Hainan Province.  

In August 1988, an Oceanic Meteorological Observation Station was set up on the Yongshu Reef in the Nansha Islands.  

Meanwhile, the naval force of the PLA, although young and not well-equipped, has been assigned responsibility for patrolling and protecting the South China Sea islands and their surrounding waters. For example, a naval unit that is to be stationed in Hong Kong after July 1, 1997, "was originally a submarine chase brigade established in 1959 and ... had played an active role in patrolling the Spratlys." China's exercise of sovereignty has also been reflected in its responses to foreign claims and activities with regard to the South China Sea islands.  

V. Archaeological Discoveries in the South China Sea

In 1920, ancient Chinese coins were discovered in the Xisha Islands by Japanese fishermen. In 1947, Professor Wang Guangwei of Zhongshan University (located in Guangzhou) found on the Xisha Islands additional numismatic artifacts from ancient China. Similar ancient Chinese coins
were also uncovered in 1935 by Fang Jun, Director of the Radio Station in the Dongsha Islands. 196

Between 1974 and 1975, archaeologists of Guangdong Province uncovered thousands of pieces of historical relics on Jinqing Island, Yongxing Island, nine other islands, and sand cays and reefs of the Xisha Islands. Among the relics unearthed include pottery and porcelain items dating from the Southern Dynasty (420-589), the Sui Dynasty (581-618), the Tang Dynasty (618-907), the Song Dynasty (960-1279), the Yuan Dynasty (1206-1368), the Ming Dynasty (1368-1644), the Qing Dynasty (1644-1911), and modern times (1912-) originating from such provinces as “Jiangxi, Zhejiang, Fujian, Guangdong and Guangxi.” 197

During May and June 1991, a group of experts led by Professor Wang Hengjie, an authoritative and prominent Chinese archaeologist, uncovered valuable historical Chinese relics in the Xisha Islands. Among the islands they visited were Ganquan, Jinyin, Zhongjian, Shanhu, Yongxing, Guangjin, Shi Dao, and Chenhang. Relics of pottery and stoneware unearthed from the Xisha group included those made in the primitive era (pre-21st century B.C.), the Spring and Autumn Period (770-476 B.C.), the Warring States Period (476-221), the Qin Dynasty (221-206 B.C.), the Han Dynasty (206 B.C.-220 A.D.), the Tang Dynasty (618-907), the Song Dynasty (960-1279), the Yuan Dynasty (1279-1368), the Ming Dynasty (1368-1644), and the Qing Dynasty (1644-1911). 198

In early 1995, Chinese archaeologists discovered residential houses of the Ming and Qing dynasties (1368-1911) on the Xisha Islands. According to Professor Wang, a leading archaeologist, the discovery of these houses, the largest residential area discovered so far on the islands, proves that “Chinese people have lived in the South [China] Sea area for quite a long period in history.” 199

Through April and May 1996, a Chinese research team discovered numerous stone sculptures, granite pillars, beams and other items “in the middle west of the South China Sea, to the northeast of Shanhu Island of the Xisha Islands, more than 200 nautical miles off the Chinese mainland.” 200 These “remarkable finds” include a 300-year-old “headless stone sculpture of a man dressed as an ancient minister”, a “small sculpture of a stone lion” and other sculptures, as well as “a great number of fragments of

196. Lin Jinzhi, supra note 72, at 187.
197. Id.; see also Wang Liyl, supra note 48, at 24.
pottery and porcelain from the Song (960–1279), Yuan (1271–1368), Ming (1368–1644) and Qing (1644–1911) dynasties.  

These archaeological discoveries demonstrate China’s historical ties to the Xisha Islands and other areas in the South China Sea.

VI. Competing Claims and Activities

A. The Vietnamese Claims

1. The Impact of the 1951 San Francisco Peace Conference

At the 1951 San Francisco Allied-Japanese Peace Conference, Japan renounced all of its claims to the South China Sea islands and other territories it had occupied before and during the Asian-Pacific War. The resulting peace treaty, however, failed to make any reference to the return of these islands to China. Neither the new Government of the People’s Republic of China nor the remaining local Nationalist authorities in Taiwan participated in the Peace Conference. Immediately prior to the convening of the Peace Conference, the Chinese Premier and Foreign Minister Zhou Enlai (Ch’ou En-lai) made a declaration to warn against any prospective conflicting claims by other countries to the South China Sea islands:

[The Xisha Islands and Nansha Islands] have always been China’s territory. . . . Although they [had] been occupied by Japan for some time during the war of aggression . . . they were all taken over by the then Chinese government following Japan’s surrender . . . Whether or not the U.S.-British Draft Treaty contains provisions on this subject and no matter how these provisions are worded, the inviolate sovereignty of the People’s Republic of China over Nanwei Islands [i.e., Nansha Islands] and Hsisha Islands [i.e., Xisha Islands] will not be in any way affected.

201. Id.

The San Francisco peace treaty’s failure to specifically mention China as the recipient of the South China Sea islands may have been due to China’s absence from the peace conference. Even the Japanese renunciation of Taiwan was not accompanied with an express provision for Taiwan’s return to China. Professor Cheng observes:

It may be noted that Article 2 of the San Francisco Treaty provides for the Japanese renunciation of claims in two different ways in terms of their recipients, which may be determinable: (1) in the case of Korea and the League Mandate territory the recipients are specifically mentioned; and (2) in the case of those territories acquired by Japan from Russia or China the names of the recipients are left open. This was understandable in view of the cold-war situation in which the Treaty was made. Neither the Soviet Union
While France made no further claim to the South China Sea islands, at the Peace Conference Vietnam for the first time laid claims to the Nansha Islands on the basis of the prior French occupation. It was asserted that the Vietnamese claims were not contested by other participants in the Peace Conference. However, the fact that the Peace Treaty did not identify whom the South China Sea islands should be returned is itself a rejection of Vietnam’s claims. Had the Chinese Government participated in the Conference, China would have objected to any conflicting claims by Vietnam or any other country. The Treaty’s silence on the post-war status of the Xisha and Nansha Islands should not be interpreted as having left the issue of ownership open. Rather, it should be interpreted against recognizing any conflicting and ungrounded claims such as those advanced by the Vietnamese. Further, even assuming that the Treaty had a provision that would in effect transfer the South China Sea islands to Vietnam, such a hypothetical provision would have been valid only if China’s express consent had had been obtained.

Although an express reference should have been made regarding the return of the Xisha and Nansha Islands’ to China, such a reference was not legally necessary, as China had always been the sole title holder of the South China Sea islands prior to the illegal French and Japanese occupations of the 1930s. Neither the French nor the Japanese could have legally established title to the islands as they were not terra nullius and were therefore not capable of being the targets of discovery and legal occupation. France’s physical occupation and Japan’s subsequent takeover of the South China Sea islands were without any validity under modern international law. When the Japanese Government renounced its claims to these islands, they could be returned to no other party than the Chinese Government, the sole legitimate title holder.

2. Activities and Claims of South Vietnam from 1951 to 1975

The following is a non-exhaustive list of relevant South Vietnamese activities:

- In April 1956, South Vietnamese armed forces invaded and occupied the Shanhu Dao (Coral Island) in the Xisha Islands. In July 1956,
South Vietnam invaded and occupied the Gan Dao (Gan Island) in the Xisha Islands.\textsuperscript{205}

- In February 1957, South Vietnam claimed sovereignty over the Xisha and Nansha Islands.\textsuperscript{206}
- In February 1959, South Vietnamese warships invaded the Chenhang Island in the Xisha Islands. Their crew members destroyed the Chinese national flags flown on the island, destroyed Chinese fishing boats, and forcefully abducted eighty two Chinese fishermen and seized five fishing boats and other property of these fishermen.\textsuperscript{207}
- In March 1959, South Vietnam established a Kangshi Taisha (transliteration from Chinese) Company, attempting to engage in the exploitation of phosphate deposits in the Xisha Islands.\textsuperscript{208}
- In April 1959, South Vietnam invaded and occupied Chenhang Island and Jingqing Island in the Xisha Islands.\textsuperscript{209}
- From 1960 to 1967, South Vietnamese warships, on numerous occasions, invaded the Anbo Shazhou (Anbona Sand Cay, known in the West as Amboyna Cay), Zhongye Island (Thitu Island), Nanyao Island (Loaita Island), Shuangzi Jiao (Shuangzi Reef) and eleven other features in the Nansha Islands, engaging in illegal surveys and mapping, and destroyed Chinese stone tablets and buildings long present on the islands.\textsuperscript{210}
- In July 1961, South Vietnam declared its annexation of the Xisha Islands into its Guang Nan (Chinese transliteration) Province.\textsuperscript{211}
- In May 1971, South Vietnam invaded Zhongjian Island in the Xisha Islands to conduct surveys.\textsuperscript{212}
- In May 1973, South Vietnam invaded the Zhongye Island, Nanyao Island and Beizi Island (Northeast Cay) in the Nansha Islands to complete surveys which China considers illegal.\textsuperscript{213}
- In July 1973, South Vietnam invaded and occupied the Hongxiu Dao (Namyit Island) in the Nansha Islands and renamed it Nanxie (Nam Yit) Island.\textsuperscript{214}

\begin{itemize}
\item \textsuperscript{205} Id.
\item \textsuperscript{206} Id.
\item \textsuperscript{207} Id.
\item \textsuperscript{208} Id.
\item \textsuperscript{209} Id.
\item \textsuperscript{210} Id. at 245-46.
\item \textsuperscript{211} Id. at 245.
\item \textsuperscript{212} Id.
\item \textsuperscript{213} Id. at 246.
\item \textsuperscript{214} Id. The Hongxiu Island is sometimes mistakenly transliterated as Hung Ma Island.
In July 1973, South Vietnam “granted” concessions to foreign companies for the exploitation of natural resources in the Xisha Islands.\textsuperscript{215}

In September 1973, South Vietnam published a new map which incorporated the Xisha Islands as part of its territory.\textsuperscript{216}

In January 1974, South Vietnam invaded and occupied Jinyin and Ganquan Islands in the Xisha Islands. The Chinese navy and local residents firmly responded and forced the Vietnamese out of the area.\textsuperscript{217}

In February 1974, South Vietnam invaded and occupied Nanzi Island (Southwest Cay), Dunqian Shazhou (Dunqian Sand Cay), Jinghong Island (Sin Cowe Island), Nanwei Island (Spratly Island), and Anbona Sand Cay in the Nansha Islands.\textsuperscript{218}

In February 1975, South Vietnam issued a White Paper on the Hoang Sa (Paracel) and Truong Sa (Spratly) Islands, declaring that the Vietnamese had sovereignty over the Xisha and Nansha Islands.\textsuperscript{219}


Between its establishment in September 1945 and its victory over South Vietnam in April 1975, the Democratic Republic of Vietnam (DRV or North Vietnam) not only failed to contest China’s declared sovereignty over the South China Sea islands, but on numerous occasions expressly recognized China’s sovereignty over the Xisha and Nansha Islands. The following is a non-exhaustive list of statements made by high-level DRV officials, and of other DRV activities with bearings on China’s sovereignty over the Xisha and Nansha Islands:

- On June 15, 1956, during his meeting with Li Zhimin, China’s Chargé d’Affaires ad Interim to the DRV, the Vietnamese Vice Foreign Minister Yong Wengqian (transliteration from the Chinese characters) stated that “according to the material of Vietnam, from the point of view of history, Xisha Islands and Nansha Islands should be part of Chinese territory.”\textsuperscript{220}

\begin{itemize}
\item \textsuperscript{215} Id. at 245.
\item \textsuperscript{216} Id.
\item \textsuperscript{217} Id.; Duanmu Zheng ed., \textit{supra} note 2, at 156.
\item \textsuperscript{218} Hou Mengtao, \textit{supra} note 204, at 246.
\item \textsuperscript{219} Id. The white paper was published by the Ministry of Foreign Affairs of the Republic of Vietnam, Saigon, 1975. \textit{See} MARWYN S. SAMUELS, \textit{CONTEST FOR THE SOUTH CHINA SEA} 176, 179 (Methuen & Co. 1982).
\end{itemize}
On the same day, Li Lu (Chinese transliteration), the Acting Director of the Asian Affairs Division of the Vietnamese Foreign Ministry, who was present at the same meeting, further acknowledged to the Chinese Chargé d’Affaires ad Interim, through the presentation of specific evidence, that “from the point of view of history, Xisha Islands and Nansha Islands already belonged to China back in the Song Dynasty.”

On September 4, 1958, the same day that China issued its Declaration on Territorial Seas, the People’s News, the official newspaper of the Vietnamese Communist Party and the DRV, covered the contents of the Declaration in detail on the front page. No objection or demurrer was made to the Declaration’s explicit provision that the principles therein should equally apply to China’s Xisha Islands and Nansha Islands.

On September 14, 1958, Vietnamese Premier Fan Wentong (Chinese transliteration) dispatched a note to Premier Zhou Enlai. Premier Fan’s note solemnly declared that “the Government of the Democratic Republic of Vietnam recognizes and agrees with the Declaration of the Government of the People’s Republic of China dated September 4, 1958 concerning its territorial sea,” and “respects such a decision” of the PRC on the 12-mile territorial sea - thereby recognizing that the Xishas and Nanshas are Chinese territory.

In 1960, the Headquarters of General Staff of the Vietnamese People’s Army published a Map of the World charted by its own cartographers. That map clearly identified and marked the Xisha Islands and Nansha Islands by their Chinese names and specifically noted that these islands belonged to China.

On May 9, 1965, the Vietnamese government issued a declaration regarding the U.S. government’s announcement of an escalation of the war in Vietnam and its surrounding waters. The declaration stated that “President Johnson of the United States has designated as the combat area the entire Vietnam and the water areas near it - an area about 100 nautical miles away from the Vietnamese coast and part of the territorial sea of the Xisha Islands of the People’s Republic of China.”

In May 1972, the North Vietnam’s Bureau of Survey and Cartography published an Atlas of the World which continued to use the Chinese

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221. Foreign Ministry Document, supra note 220.
222. Id.
223. Id. See also Vietnam Recognizes the Our Government’s Declaration Concerning Its Territorial Sea, PEOPLE’S DAILY, May 15, 1979.
names for the Xisha Islands and Nansha Islands, thereby recognizing Chinese sovereignty.\footnote{Id.}

- In 1974, the Vietnamese Education Publishing House published an official textbook on Geography for ninth graders. In its lesson on the “People’s Republic of China,” the textbook wrote: “From the Nansha Islands and the Xisha Islands to the Hainan Islands, Taiwan Island, Penghu Islands, Zhoushan Islands, ... these islands form an arch, and constitute a Great Wall protecting the mainland of China,”\footnote{Id.} further indicating that Chinese sovereignty over the islands was axiomatic to the Vietnamese.

4. Activities and Claims of the Unified Vietnam since 1975

The attitude of the DRV dramatically changed after it defeated South Vietnam and unified Vietnam in April 1975. It not only continued to occupy those islands, cays, and banks which had been occupied by the South Vietnamese authorities, but also began to increase its military presence and expand its sphere of occupations in the sea region, especially in the Nansha Islands area. Since its unification in 1975, Vietnam has engaged in the following activities in the Nansha Islands.

- In April 1975, North Vietnam replaced South Vietnam to continue its occupation of the Nanzi Island (Southwest Cay), Dunqian Shazhou (Dunqian Sand Cay), Jinghong Island (Sin Cowe Island), Nanwei Island (Spratly Island), and Anbona Sand Cay.\footnote{Id.}

- In May 1975, Vietnam declared the incorporation of the Xisha Islands and Nansha Islands into the territory of Vietnam, renaming the Xisha Islands as Hoang Sa (Hoang Archipelagoes) and the Nansha Islands as Truong Sa (Truong Archipelagoes).\footnote{Id.}

- In March 1976, Vietnam incorporated the Nansha Islands into the Province of Tongnai (transliteration from the Chinese pronunciation).\footnote{Id.}

- In March and April 1978, Vietnam invaded and occupied the Ranqing Shazhou (Ranqing Sand Cay), Zhong Jiao (Zhong Reef) and Bisheng Jiao (Bisheng Reef, Pi Sheng Reef, or Pearson Reef) in the Nansha Islands.\footnote{Id.}

- In July 1978, the Vietnamese government and Japanese companies signed cooperation agreements for the exploration and exploitation of oil and natural gas resources on and around the Nansha Islands.\footnote{Id.}

\footnote{226. Id.} \footnote{227. Id.} \footnote{228. Hou Mengtao, supra note 204, at 246.} \footnote{229. Id. at 245-46.} \footnote{230. Id. at 246.} \footnote{231. Id.} \footnote{232. Id.}
In 1979, Vietnam invaded the Zhongjian Island in the Xisha Islands and engaged in what China regarded as "provocative activities." In July 1980, Vietnam and the Soviet Union reached an agreement for the cooperative exploration and exploitation of oil and natural gas resources in the South China Sea. In March 1982, a Vietnamese reconnaissance vessel invaded the Xisha Islands sea zone and engaged in alleged "illegal activities." It was captured by the Chinese navy. In February 1987, Vietnam invaded and occupied the Bo Jiao (Bo Reef) of the Nansha Islands, which include the Danzhu Shi (Danzhu Rock) and the Wugui Ding Shi (Wugui Ding Rock). In January 1988, Vietnam invaded and occupied the Xi Jiao (Xi Reef or West Reef) in the Nansha Islands. In February 1988, Vietnam invaded and occupied the Riji Jiao (Riji Reef), Wumie Jiao (Wumie Reef), Dong Jiao (Dong Reef or East Reef) and Daxian Jiao (Daxian Reef or Great Discovery Reef) in the Nansha Islands. In March 1988, Vietnam invaded and occupied the Nanhua Jiao (Nanhua Reef), Guihan Jiao (Guihan Reef), Qiong Jiao (Qiong Reef) and Liumen Jiao (Liumen Reef) in the Nansha Islands. In April 1988, Vietnam invaded and occupied the Bolan Jiao (Bolan Reef) and Nailuo Jiao (Nailuo Reef) among the Nansha Islands. Between June and July 1989, Vietnam invaded and occupied the Guangya Tan (Tuangya Shoals), Pengbo Bao (Pengbo Barrier Reef) and Wan'an Tan (Wan'an Shoals, Vanguard Reefs) of the Nansha Islands. In May 1991, Vietnam announced that it would set up a satellite television ground reception station on one of the islands it occupies in the Nansha Islands.

5. Flaws in the Vietnamese Claims

Vietnam's claims rest largely on two points: (1) Vietnam's alleged historic control over the Xisha Islands; and (2) its succession to the alleged...
rights acquired by France. Neither of these claims is persuasive. In the first place, China discovered the Xisha and Nansha Islands more than two thousand years ago, and has been maintaining sovereignty over them from dynasty to dynasty continuing into modern times. Although international law does not require China to demonstrate uninterrupted activity in these virtually uninhabitable islands and sea areas, China has effectively maintained its sovereign title through naval patrols, official surveys, namings and renamings of the islands, ongoing geographical descriptions of the islands, charting and publishing maps showing sovereignty, sponsoring and encouraging Chinese fishermen and businessmen to engage in production and development activities in the South China Sea islands, and protesting against foreign invasions and occupations. China has never lost its title to the islands in question, even if many of them have been forcibly occupied by Vietnam and other States. Since no terra nullius is involved, there is no room for Vietnam to make any claim.

Secondly, China’s title to the islands in the South China Sea was expressly recognized by North Vietnam before 1975. According to the well-settled principle of estoppel in international law, Vietnam is not allowed to assert something which is contrary to what it specifically admitted in the past. The Vietnamese Government must be held to its express declarations made prior to 1975 with regard to China’s sovereignty over the South China Sea islands.

Thirdly, notwithstanding its allegations to the contrary, Vietnam has no historic connection with any of the South China Sea islands. Vietnam claims that there are references in its history books to Truong Sa and Hoang Sa, and maintains that they respectively denote the Nansha Islands and Xisha Islands. However, the alleged Truong Sa and Hoang Sa which are referred to in Vietnamese history books are neither the Nanshas nor the Xishas. Rather, as Professor Liu Wenzong’s study points out, they denote the Canton Islands off the coast of Vietnam which are far from both the Xishas and the Nanshas. The Chinese Foreign Ministry reached the

243. See, e.g., IAN BROWNLE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 161-62 (Oxford, Clarendon Press 4th ed. 1990). Brownlie states: .... The principle of estoppel undoubtedly has a place in international law ..., and it has played a significant role in territorial disputes .... In many situations acquiescence and express admissions are but part of the evidence of sovereignty. Estoppel differs in that, if it exists, it suffices to settle the issue because of its unambiguous characterization of the situation .... Id.


245. Liu Wenzong, supra note 68, at 66-69. See also Dai Kelai, Yuenan Guji zhong de “Huangsha”, “Changsha” Bushi Woguo de Xisha he Nansha Qundao [The “Hoang
same conclusion in 1988 that the _Truong Sa_ consists of coastal islands off Central Vietnam and that it has nothing to do with the Nansha Islands.246

Furthermore, Vietnam’s alleged connection with the South China Sea islands did not allegedly come to be until the nineteenth century, while China’s documented domination of the area had been in effect for more than two thousand years.

Moreover, ever since General Ma Fubo (Ma Yuan) of the East Han Dynasty conquered Vietnam about two thousand years ago, Vietnam basically had been a “subjugated state” or “tyrannized” vassal state subordinated to the Chinese central rulers until the French took over Vietnam and turned it into a dependent state in the latter part of the 19th century. The Vietnamese themselves acknowledge that the “Nguyens family,” which ruled the central and southern part of Vietnam from 1558 to 1775, “always maintained an attitude of blindly yielding to the Manchurian Qing Dynasty,” and “because of this completely subservient yielding consciousness, [the Nguyens family] was afraid of offending the Great Qing Empire.”247 It is unlikely that the subordinate Vietnamese rulers would be able to replace the Chinese central rulers as the title-holders to the South China Sea islands.

Finally, because France did not acquire any title to the South China Sea islands despite its occupation,248 there is nothing in the South China Sea for the subsequently independent Vietnam to succeed to from France. Had France acquired title to the Nansha or Xisha Islands prior to the Japanese occupation in 1939, then France, being one of the major powers dominating at the 1951 San Francisco Peace Conference, would not have allowed the San Francisco Peace Treaty to fail to specifically mention France as the recipient of the Paracels and the Spratlys. Despite the Peace Treaty’s failure to specify that Chinese and Soviet territories occupied by Japan before and during the Second World War should be returned to them (largely due to China and the Soviet Union’s absence from the conference), the fact that Japan under the Treaty renounced all its claims to these territories of Russia and China naturally and logically leads to a conclusion that they should be returned to their respective prior legitimate title holders. Moreover, the fact that the Republic of Vietnam, an attendee of the San Francisco Conference which made claims to the Xishas and Nanshas at the

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248. See _supra_ notes 153-64 & 203 and accompanying text.
China’s Title To the South China Sea Islands

Conference, failed to win support for its claim further indicates that Vietnam never has had a valid claim to these islands.

B. Activities and Claims of other Countries

1. The Philippines

The Philippines maintains claims to a substantial portion of the Nansha Islands, and is in possession of some of the islands, cays, shoals, and reefs. It did not start asserting title to the claimed area until the 1950s, and did not take physical possession of some of the islands and reefs until the 1970s. The Philippines bases its claim on three grounds: (1) the islands are vital to the Philippines’ security and economic survival; (2) the Philippines are the most proximate State to these islands; and (3) none of the claimed islands, cays, shoals, or reefs legally belonged to any country, and they were therefore either terra nullius when they were “discovered” by a Philippine exploration team, or, alternatively, if there had been prior claims by other states, those claims had been abandoned.249

The following is a list of events and activities associated with the Philippines’ claims.

- In 1948, Tomas Cloma, the President of the Navigation School of Manila, led a surveying expedition to Taiping Island and its vicinity in the Nansha Islands.250 Mr. Cloma and his team claimed to have discovered these islands and named them in aggregate “Kalayaan” (Freedomland), a new state which they attempted to establish on those islands.251 In October 1954, Filipino ships once again sailed to Taiping Island and its vicinity.252 In May 1956, Mr. Cloma wrote to the Foreign Ministry of the Philippines and requested permission to occupy the Nansha Islands.253

- On May 19, 1956, the Philippine Vice President and Foreign Minister asserted that the Philippines had discovered a chain of islands and reefs in the South China Sea which he asserted were neither owned by any country nor inhabited by any humans, and, based on this discovery, formally advanced a claim to Taiping Island (otherwise known in the West as Itu Aba), Nanwei Island (known as Spratly Island proper) and a number of other islets and reefs in the Nansha Islands, asserting that “the Philippines

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250. Hou Mengtao, supra note 204, at 246; Lü Yiran, supra note 77, at 47.
252. Hou Mengtao, supra note 204, at 246.
253. Id.
has the right to occupy [these islands] upon their discovery." He further explained in a subsequent press meeting that these islands should inevitably have belonged to the Philippines because of their proximity to the Philippines.

- In May 1957, Mr. Cloma and his crew invaded the Shuangzi Jiao (Shuangtzu Reef). In September 1970, the Philippines invaded and occupied the Mahuan Dao (Mahuan Island or Nanshan Island) and Feixin Dao (Flat Island). From May to July 1971, the Philippines invaded and occupied Zhongye Dao (Thitu Island), Nanyue Dao (Loaita Island), Beizi Dao (Northeast Cay) and Xiyue Dao (West York Island).

- In July 1971, President Ferdinand Marcos announced that the Philippines had granted a foreign concession to explore and exploit oil and natural gas in the Nansha Islands.

- In June 1973, a Philippine reconnaissance vessel invaded the Nanzi Dao (Southwest Cay), Beizi Dao (Northwest Cay), Nanyue Dao (Loaita Island), Zhongye Dao (Thitu Island) and other areas of the Nansha Islands and engaged in surveys and investigations.

- In March 1974, the commander-in-chief of the Philippine Navy announced that the Philippines had erected a lighthouse on Beizi Dao (Northwest Cay).

- In January 1976, the Philippines signed a secret agreement with Swedish companies to explore Liyue Tan (the Reed Banks).

- In June 1976, the Philippines "granted" a concession area covering the Zhenghe Qun Jiao (Chengho Reefs) and Andu Tan (Andu Banks) as "licensed areas" to foreign companies.

- In February 1978, the Philippines constructed a small airport on Zhongye Dao (Thitu Island).

- In June 1978, the Philippines issued Presidential Decree No. 1596, declaring that some of the islands and reefs of the Nansha Islands were to be incorporated into the Philippines territory.

254. Lü Yiran, supra note 77, 47; Hou Mengtao, supra note 204, at 246.
255. Lü Yiran, supra note 77, at 47; Hou Mengtao, supra note 204, at 246.
256. Hou Mengtao, supra note 204, at 246.
257. Id.
258. Id.
259. Id.
260. Id.
261. Id.
262. Id.
263. Id.
264. Id.
In 1980, the Philippines invaded and occupied Siling Jiao (Commodore Reef). 266

In September 1994, the Philippine naval force arrested 55 Chinese fishermen for alleged "illegal entry" into "one of the [Nansha] islands claimed by the Philippines" in an attempt to establish homes. 267

In February 1995, the Philippines announced that it was constructing lighthouses on Philippine-occupied islets and reefs of the Nansha Islands. 268

On March 25, 1995, the Philippine navy intercepted four Chinese fishing boats and detained sixty-two Chinese fishermen in the vicinity of the Banyue Huanjiao (Half-Moon Shoal) who were fishing in waters they believed to be in China's territory. 269

In April 1995, the Philippines announced that it had destroyed Chinese territorial markers on several islands and seized four Chinese trawlers in the Nansha Islands area. 270

In June 1995, the Philippines announced that it was erecting lighthouses on the Liyue Tan (Reed Banks), Nares Bank and Seahorse Bank, all in the Nansha Islands, in order to create legal bases for asserting new boundary lines. 271

From an international law perspective, none of the grounds advocated by the Philippines for its alleged sovereignty over the islands appears to be justifiable. A territorial claim based on economic and security interests does not by itself confer legitimate sovereignty. Even if the Philippines were truly in desperate need of oil and other natural resources to keep its economy moving, and even if its national security were endangered, there is no justification to claim territories under the sovereignty of another State.

Second, the proposition that because the Nansha Islands are so close to the Philippines they should only belong to the Philippines is not persuasive. According to this proposition, the Nicobar Islands should belong to Indonesia rather than to India, because they are right by the north-west tip

265. Id.; see also Bennett, supra note 14, at 425 n.84 (1992) (citing Diane C. Drigot, Oil Interests and the Law of the Sea: The Case of the Philippines, 12 OCEAN DEV. & INT'L L.J. 23 (1983)).

266. Hou Mengtao, supra note 204, at 247.

267. VALENCIA, CHINA, supra note 18, at 44.

268. Id. at 47.


270. Philip Shenon, Rival Claims to Island Chain Bring Edginess to Asia's Rim, N.Y. TIMES, Apr. 5, 1995, at A11; see also VALENCIA, CHINA, supra note 18, at 46-47.

271. VALENCIA, CHINA, supra note 18, at 47 (citing REUTERS, Philippines to Build Lighthouses on the Spratlys, June 14, 1995).
of Sumatra Island; the Falkland Islands (Malvinas) are so near to Argentina and so remote from the United Kingdom that they would more easily appear to be the former's territory; St. Pierre and Miquelon would belong to Canada rather than to France because they are just off the coast of Newfoundland; Gibraltar located at the southern tip of Spain would be Spanish rather than British territory; and Greece would lose title to some of its islands in the Aegean Sea because of their proximity to Turkey, and so on. Just as none of these title-holding states would accept the proximity-based rationale for ceding their territory, China should not accept that some of its islands and water areas in the South China Sea must be transferred to the Philippines simply because they are closer to the Philippines than to the mainland of China.

Third, and most important, the Philippines' assertion that the South China Sea islands were *terra nullius* is totally contrary to fact. The Philippines knew and should have known that China had owned and administered the Nansha Islands and other islands in the South China Sea for centuries. Whether the Philippines actually knew or not, China's discovery of and continuous sovereignty over the entire chain of the Nansha Islands were well-known and well-established. In order for a territory to constitute *terra nullius*, it must be one which either has never been discovered hitherto, or, after being discovered and titled, has been clearly abandoned by the prior discoverer.

Abandonment does not mean simple withdrawal or failure to station troops or effectuate settlements after discovery. It requires the presence of an intention to disown and never to re-claim again. For hardly inhabitable islands, one cannot expect the discoverer and title holder to maintain a permanent presence on the islands. Few would argue that uninhabitable islands are not ownable. The United States, for example, owns many uninhabited islands in the Pacific, but can hardly be said to be in danger of losing its sovereignty over them absent its declared intention and will to abandon them.

The presumption that if the islands claimed by the Philippines were once owned by other States, and that their ownership had been abandoned is simply untenable. China has never abandoned its title to any of its islands and waters in the South China Sea, nor has the local regime in Taiwan. To the contrary, China, through the central government and the local Taiwanese authorities, has taken reasonable measures required of it by international law to maintain its sovereignty over the Nanshas and other areas. No one can discover or “rediscover” an already owned island no matter whether it is inhabited or actually occupied at the time of the alleged “discovery” or “rediscovery.” Therefore, the Nansha Islands were not *terra nullius* when the Cloma team happened to arrive - they were not discoverable or rediscoverable by Tomas Cloma or anyone else.
Malaysia's claims to some of the features of the Nansha Islands are similarly motivated by economic considerations. Malaysia did not become an interested party to the South China Sea disputes until the late sixties, and more particularly since the seventies. Some of its claims overlap with those of the Philippines and Brunei and all of its claims contradict those of China and Vietnam. What follows highlights the Malaysian claims and activities in the South China Sea area from the 1960's to the 1990's.

• In 1968, Malaysia declared that the Nankang Ansha (Nankang Shoals), Haining Jiao (Haining Reefs), Beikang Ansha (Beikang or Peikang Shoals) and Zengmu Ansha (Zengmu or Tsungmu Shoals), all in the Nansha Islands, were within its “mining area,” and granted a concession to the Shell Oil Company of the United States.²⁷²
  
  • In 1970, Malaysian vessels started drilling in the Nankang Shoals and Beikang Shoals.²⁷³
    
    • In 1971, Malaysia began drilling in Haining Jiao (Haining Reefs) and Tanmen Jiao (Tanmen Reefs) in the Nansha Islands.²⁷⁴
    
    • In 1972, Malaysia started drillings in the Kangxi Ansha (Kangxi Shoals) in the Nansha Islands.²⁷⁵
    
    • In 1973, Malaysia started drillings in the Mengyi Ansha (Mengyi Shoals) in the Nansha Islands.²⁷⁶
    
    • In December 1979, Malaysia published a map which formally incorporated into its territory the Siling Jiao (Commodore Reef), Polang Jiao (Polang Reef), Nanhai Jiao (Mariveles Reef), Anbo Shazhou (Amboyna Cay), Nanyue Ansha (Nanyue Shoals), Xiaowei Ansha (Xiaowei Shoals) and the sea zone south of these islands, all among the Nansha Islands.²⁷⁷
    
    • In August 1983, Malaysia invaded and occupied the Danwan Jiao (Swallow Reef) in the Nansha Islands.²⁷⁸
       
    • In October 1986, Malaysia invaded and occupied the Guangxing Zai Jiao (Little Guangxing Reef or Andasier Bank) and Nanhai Jiao (Mariveles Reef) in the Nansha Islands.²⁷⁹
       
    • In May 1991, Malaysia announced that it would develop a tourist resort on the Danwan Jiao (Swallow Reef).²⁸⁰

²⁷². Hou Mengtao, supra note 204, at 247.
²⁷³. Id.
²⁷⁴. Id.
²⁷⁵. Id.
²⁷⁶. Id.
²⁷⁷. Id.
²⁷⁸. Id.
²⁷⁹. Id.
²⁸⁰. Id.
On March 23, 1995, Malaysian naval forces opened fire on a Chinese fishing vessel in the South China Sea and injured four Chinese fishermen.\(^2\)

In May 1995, Malaysian Prime Minister Mahathir paid a visit to the Danwan Jiao (Swallow Reef), which Malaysia had occupied since 1983.

The Malaysians base their claims mainly on the assertion that those islands and reefs so claimed are within Malaysia’s zone of continental shelf.\(^2\) Under the continental shelf approach, if Malaysia could claim title to some of the islands in the South China Sea, there necessarily must be a pre-condition, \textit{i.e.}, those islands must not have been owned by any other State and must be thus \textit{terra nullius}. Malaysia’s assertion of the continental shelf approach is hardly justifiable, as it is an inadequate application of the continental shelf approach to acquiring rights to islands in the high seas. The reefs and islands claimed by Malaysia are not \textit{terra nullius}; China has title to these islands based on historical use and control. China’s title makes it impossible for Malaysia to base its claim on the allegation that the claimed reefs and islands are within its continental shelf zone. Even the zone of the Malaysian continental shelf itself may be subject to doubt. If China had not had sovereignty over the disputed islands, they might well be located within the natural or legal zone of Malaysia’s continental shelf as permitted by international law. Unfortunately, that is not the case. Malaysia may not extend its continental shelf into the territory or sovereign domain of China or any other State, no matter how short the distance between the shores of Malaysia and the claimed islands, reefs and banks in the South China Sea. To determine where its continental shelf ends, Malaysia would have to negotiate with China on the delimitation of continental shelf (and other sea zones) between its own territories and the relevant Chinese-owned islands and other areas in the South China Sea in accordance with international law, particularly the United Nations Convention on the Law of the Sea, to which both China and Malaysia are now parties.

3. \textit{Brunei}

Brunei was once under British rule and did not become independent again until 1984. In 1954, the British authorities claimed a line of sea area 100 fathoms away from the Brunei coast. Following the prior British claim, Brunei has advanced a claim to a portion of the area on the basis of

\(^{280}\) Id.
\(^{282}\) Valencia, \textit{Spratly Solution}, supra note 249; see also Zhao Lihai, \textit{Yanju}, supra note 225, at 28-29; see also Lui Yiran, \textit{supra} note 77, at 47; see also Zhao Lihai, \textit{Xin Fazhan}, \textit{supra} note 130, at 30.
the Law of the Sea Convention provisions relating to the Exclusive Economic Zone (EEZ). Brunei claims China’s Nantong Jiao (Louisa Reef) at 6°20'N and 113°14'E, which is also claimed by Malaysia. In addition, in a 1988 map published by Brunei, the continental shelf area claimed by Brunei extended further over China’s Jindun Anjiao (Rifleman Bank), currently occupied by the Vietnamese. The Brunei claim “takes the form of a corridor extending to the south of the Spratlys proper and beyond 200 nautical miles from its coast to include Rifleman Bank and a small corner of Kalayaan.” However, Brunei maintains no physical occupation of any island, reef, or shoals in the Nansha Islands.

As in the case of Malaysia, any claims that Brunei can validly make to the above area must rest on a predicate assumption that no part of the claimed EEZ is already owned by any other State. Since a substantial portion of Brunei’s claimed EEZ intrudes into China’s Nansha Islands and their surrounding water areas, this portion of the Brunei EEZ claims has no merit under international law. The real issue that exists is the delimitation of the sea zone boundaries between Brunei and China in accordance with international law.

C. Responses of the People’s Republic of China

The Chinese Government has consistently declared against any foreign encroachment of the Xisha and Nansha areas and China’s other islands in the South China Sea. The following is a partial list of occasions involving China’s unyielding position on its sovereignty over the Xisha and Nansha Islands.

- On August 15, 1951, in his Declaration Concerning the Draft Peace Treaty between the United States, the United Kingdom and Japan at the San Francisco Conference, Chinese Premier and Foreign Minister Zhou Enlai solemnly declared: “The Xisha Islands and Nansha Islands, like the Dongsha and Zhongsha Islands, have always been China’s territory. China’s sovereignty over the Xisha Islands and Nansha Islands shall not be affected no matter whether the U.S./U.K. Draft Peace Treaty with Japan

284. VALENCIA, CHINA, supra note 18, at 8.
285. See, e.g., Declaration on China’s Territorial Sea, PEKING REV., Sept. 9, 1958, at 21; See also China’s Indisputable Sovereignty over Xisha and Nansha Islands, BEIJING REV., Feb. 18, 1980, at 15; see also Document on China’s Claim to Xisha and Nansha Islands, BBC SUMMARY OF WORLD BROADCASTS, Feb. 1, 1980, available in LEXIS, News Library, ARCNWS File.
would contain provisions [pertaining to these islands] and how it would provide [for them]."

- After the Philippines' Vice President and Foreign Minister laid claims to some islands in the Nansha area in May 1956, the Chinese Government protested the Philippine claim by reiterating that the "Taiping Island and Nanwei Island in the South China Sea, together with the small islands in their vicinity, are known in aggregate as the Nansha Islands. These islands have always been a part of Chinese territory. The PRC has indisputable, legitimate sovereignty over these islands."  

- On May 29, 1956, partly in response to the South Vietnamese authorities' invasion and occupation of the Shanhu Island in April 1956, the spokesman of the Foreign Ministry of the PRC issued a Declaration of Sovereignty over the Nansha Islands, emphasizing that "China's legitimate sovereignty over the Nansha Islands shall under no circumstances be violated by any country on any ground or by any means."  

- On September 4, 1958, the Chinese Government issued the PRC's Declaration on Territorial Sea. Articles 1 and 4 of the Declaration expressly stated that the Xisha Islands and Nansha Islands, as well as the Dongsha and Zhongsha Islands, belong to China and that the principles of the Declaration shall equally apply.

- On February 27, 1959, following South Vietnam's violation of China's territory in the Xisha Islands and abduction of Chinese fishermen off Chenhang Island, the Chinese Foreign Ministry lodged a strong protest, reiterating that "the Xisha Islands are China's territory."

- On April 5, 1959, the Chinese Foreign Ministry protested against the South Vietnamese encroachment over Chenhang Island and Jinqing Island in the Xisha Islands, and their seizure and maltreatment of Chinese fishermen.

- From May 1959, through December 1971, U.S. military airplanes and warships violated China's territorial air space and territorial sea in the Xisha Islands area more than 200 times. The Chinese Foreign Ministry issued stern warnings against such actions after each violation.

286. 2 Documents of Foreign Relations of the People's Republic of China 32 (Beijing, World Knowledge Publishing House 1958) [hereinafter "Foreign Relations Documents"]).

287. Greenfield, China, supra note 10, at 33 (quoting Shao Hsun-cheng, supra note 203).

288. 4 Foreign Relations Documents, supra note 286, at 62.

289. 5 id. at 162-63.

290. 6 id. at 27-28 (1961).

291. Id. at 37-38.

292. Lin Jinzhi, supra note 72, at 194.
China's Title To the South China Sea Islands

On July 16, 1971, the Chief of the General Staff of the PLA stated that "the Xisha and Nansha Islands have always been China's territory." 293

On January 11, 1974, the spokesman of the Foreign Ministry protested against South Vietnam's territorial claim over the Taiping Island, Nanwei Island, and other islands.294

On January 15 - 19, 1974, in response to South Vietnam's invasion of China's Xisha Islands, the PLA and local militia fought back in self-defense, defeated and drove away the South Vietnamese armed forces from the islands they had invaded.295 The Chinese Foreign Ministry, in its declaration of January 20, 1974, reiterated that the "Xisha Islands, Nansha Islands, Zhongsha Islands have always been China's territory."296

On February 4, 1974, the spokesman for the Chinese Foreign Ministry, in his declaration in protest against the South Vietnamese invasion of several of China's Nansha Islands, once again pointed out: "The Nansha Islands, Xisha Islands, Zhongsha Islands and Dongsha Islands, are all part of Chinese territory. The People's Republic of China has indisputable sovereignty over these islands and their surrounding sea area."297

On July 2, 1974, in his speech at the Third United Nations Conference on the Law of the Sea, Cai Shupan, the head of the Chinese Delegation, asserted: "The Xisha Islands and Nansha Islands in the South China Sea have always been an inalienable part of Chinese territory. The Chinese government and the Chinese people shall under no circumstances allow the Saigon Authorities to violate China's territorial sovereignty."298

On June 14, 1976, the spokesman for the Chinese Foreign Ministry stated that China has maintained indisputable sovereignty over the Xisha Islands and Nansha Islands and their surrounding sea areas, and the natural resources in these areas are China's property.299

On December 29, 1978, the spokesman for the Chinese Foreign Ministry made an additional declaration, stating that "as in the case of the

293. Encroachment of the Nansha Islands Will Not Be Tolerated, PEOPLE'S DAILY, July 17, 1971, at 5.
296. Condemning the Saigon Authority for Encroaching the Chinese Nansha Islands, PEOPLE'S DAILY, Jan. 20, 1974, at 5.
299. Any Claims by Foreign Sovereigns over the Nansha Islands Are Illegal and Invalid, PEOPLE'S DAILY, June 15, 1976, at 1.
Xisha Islands, Zhongsha Islands and Dongsha Islands, the Nansha Islands are always part of Chinese territory.\(^{300}\)

- On April 26, 1979, at the second meeting of negotiations between vice foreign ministers of China and Vietnam, Han Nianlong, the head of the Chinese Delegation, asserted in a speech: “The Xisha Islands and Nansha Islands have always been an inalienable part of Chinese territory. The Vietnamese part should come back to its original position of recognizing that fact, respect China’s sovereignty over these two sets of islands, and withdraw all its personnel from those islands of the Nansha Islands which it occupies.”\(^{301}\)

- On September 26, 1979, the spokesman for the Chinese Foreign Ministry reiterated that China has indisputable sovereignty over the Xisha Islands and Nansha Islands and their surrounding sea areas, and the natural resources in these areas are China’s property.\(^{302}\)

- On January 30, 1980, the Chinese Ministry of Foreign Affairs issued a document titled “China’s Sovereignty over the Xisha Islands and Nansha Islands Indisputable.” The document significant historical material, records, maps, and cultural relics to demonstrate that these islands had been China’s territory since the Song Dynasty.\(^{303}\)

- On July 21, 1980, the spokesman of the Chinese Foreign Ministry made a statement concerning the signing of an agreement between the Soviet Union and Vietnam on cooperative exploration and exploitation of oil and gas on the “Southern Continental Shelf of Vietnam,” an area intruding into Xisha and Nansha Islands and the surrounding waters. The statement stressed that “the Xisha and Nansha Islands, just like the Dongsha and Zhongsha Islands, have always been part of Chinese territory; the natural resources in the above areas belong to China”; it further pointed out that the Soviet-Vietnamese agreement and the like are invalid.\(^{304}\)

- On March 4, 1982, PLA forces stationed in the Xisha area seized a Vietnamese reconnaissance warship within the territorial sea of the Xisha Islands.\(^{305}\)


\(^{301}\) Seriously Debunk Rumors by the Vietnamese against Our Nation, PEOPLE’S DAILY, Apr. 27, 1979, at 4.

\(^{302}\) Foreign Ministry Re-affirms That Nansha Islands are China’s Territory, PEOPLE’S DAILY, Sept. 27, at 5.

\(^{303}\) China’s Sovereignty over Xisha and Nansha Islands Indisputable, PEOPLE’S DAILY, Jan. 31, 1980, at 1.


\(^{305}\) PLA Stationed in Xisha Islands Seized Vietnamese Reconnaissance Boat, PEOPLE’S DAILY, Mar. 11, 1982, at 4.
On November 28, 1982, the spokesman for the Chinese foreign Ministry declared: "The so-called Beibu Wan [Tonkin Gulf] Boundary claimed by the Vietnamese Government is illegal and invalid. It is hereby reiterated that the Xisha Islands and Nansha Islands are an inalienable part of China's sacred territory." \(^{306}\)

On April 24, 1983, the Place Name Commission of China published a partial list of standard names for 287 islands and other features in the South China Sea. This was part of the nation-wide process of standardization of place names. \(^{307}\)

On November 14, 1983, Qi Huaiyuan, the Head of the Press Division of the Chinese Foreign Ministry, made the following statement at a press conference:

Recently, the Danwan Reef of China's Nansha Islands was illegally occupied by foreign armed forces; some other countries subsequently made territorial claims towards certain islands and reefs of China's Nansha Islands. China has indisputable sovereignty over the Nansha Islands and the surrounding sea areas, and the natural resources within such areas are China's property. China's legitimate sovereignty over the Nansha Islands under no circumstances ought to be violated by any country on any ground by any means. Any and all occupations, exploration, exploitation and other activities in the Nansha Islands areas by any country other than China are all illegal and impermissible. \(^{308}\)

On April 15, 1984, the Foreign Ministry of China issued a declaration in strong protest of Vietnam's illegal occupation of some of the islands of China's Nansha Islands, and requested the Vietnamese to withdraw from all islands which it had occupied illegally. \(^{309}\)

In May 1987, the Chinese navy dispatched warships to the Nansha Islands area to perform patrols. \(^{310}\)

On January 18, 1988, the Chinese Navy entered the Yongshu Jiao (Fiery Cross Reef) area; in February 1988, China began to construct an oceanic observatory on the reef. \(^{311}\)

\(^{306}\) Xisha and Nansha Islands are China's Sacred Territory, PEOPLE'S DAILY, Nov. 29, 1982, at 1.

\(^{307}\) Names for South China Sea Islands Approved, PEOPLE'S DAILY, Apr. 25, 1983, at 4.

\(^{308}\) Nansha Islands Have Always Been Chinese Territory, PEOPLE'S DAILY, Sept. 15, 1983, at 1.

\(^{309}\) Foreign Ministry Spokesperson Condemns Vietnamese Authorities, PEOPLE'S DAILY, Apr. 20, 1984, at 1.

\(^{310}\) Lin Jinzhi, supra note 72, at 196.

\(^{311}\) Id.
On February 12, 1988, the Chinese Foreign Ministry spokesman stated that China’s normal patrols and other operations in some of the Nansha Islands and their surrounding waters were matters within China’s sovereign rights and that Vietnam had no right to interfere.  

On March 14, 1988, Vietnamese naval forces opened fire on and engaged in other provocative activities against China’s naval forces which were conducting surveys on the Chigua Jiao (Mabini Reef). The PLA was compelled to return fire in self-defense.  

In February and March 1988, Chinese naval forces landed on the Huayang Jiao (Cuarteron Reef), Nanxun Jiao (Gaven Reefs), Dongmen Jiao (East Gate Reef), Chigua Jiao (Mabini Reef) and Zhubi Jiao (Chow-wei Reef).

On December 27, 1990, the spokesman for the Chinese Foreign Ministry reiterated the Chinese position that the Nansha Islands have been China’s territory since ancient times, that the Vietnamese Government recognized China’s sovereignty prior to 1975, that in 1975 the Vietnamese Government suddenly changed its position, and since then had continuously sent troops to invade and occupy parts of the Nansha Islands, and that such actions constituted blatant encroachment upon China’s territorial sovereign rights. The Foreign Ministry demanded that Vietnam withdraw from all islands and reefs it occupied in the Nansha area.

In February 25, 1992, China passed its Law on Territorial Sea and Contiguous Zone, which reiterates that “the territory of the People’s Republic of China includes . . . the Dongsha Islands, Xisha Islands, Zhongsha Islands, Nansha Islands, and all other islands that belong to the People’s Republic of China.”

In May 1995, in reference to the Malaysian Prime Minister’s visit to the Malaysian-occupied islet Danwan Jiao (Swallow Reef) of China and his assertion of Malaysian sovereignty over it, the Chinese Foreign Ministry’s spokesman “issued a strong rebuttal” to the Malaysian assertion.

314. Lin Jinzhi, supra note 72, at 197.
On May 11, 1995, Chinese Foreign Minister Shen Guofang condemned the Philippines' organizing of tours of the Nansha Islands for foreign journalists as an encroachment of China's "irrefutable sovereignty." Shen stressed that "China is an independent state and is a country which will stick to its principles and will not bend down in the face of any pressure. China will not give limitless tolerance to these encroachments and provocation on China's sovereignty and dignity."318

On December 29, 1995, a spokesman for the Chinese Foreign Ministry demanded that Manila release four Chinese fishermen sentenced to 10 months in jail for entering waters claimed by the Philippines in the Spratly Islands, saying the verdict was "illegal." He repeated China's position that "China has indisputable sovereignty over the Nansha islands," and noted that "these Chinese fishermen were conducting normal fishing activities" in Chinese waters. He concluded by asserting that "[t]he verdict passed on the fishermen by the Philippine side is illegal, null-and-void, and unacceptable, and the Philippine side should release the fishermen and the fishing boats at an early date."319

On April 18, 1996, in response to a report on a contract signed on April 10 between Petro Vietnam and the U.S. company Conoco for joint operations in oil and gas prospecting and drilling in the Wan'an Tan (Vanguard Bank) area of China's Nansha Islands, the Chinese Foreign Ministry spokesman again asserted that China has incontestable sovereignty over the Nansha Islands and their adjacent waters.320

On May 15, 1996, the Standing Committee of the Chinese National Peoples' Congress passed a Decision to Ratify the United Nations Convention on the Law of the Sea. The Decision declares that China reiterates its titles and rights to the various islands referred to in Article 2 of the 1992 Law on Territorial Sea and Contiguous Zone.321 On the same date, China issued the Chinese Government's declaration on its territorial sea boundaries, announcing these boundaries as "part of its territorial sea adjacent to the mainland and those of the territorial sea adjacent to its Xisha Islands," and leaving the baselines for the Nansha Islands and other islands of China.

318. Id.
to be issued separately." These efforts to reiterate and protect China's sovereignty over the South China Sea islands continue to this day.

VII. Conclusions

The subjects of ancient Chinese rulers discovered the entire chain of the South China Sea islands no later than the Spring and Autumn Period and perhaps at a much earlier stage in ancient Chinese history. Even if the exact date of Chinese discovery cannot be ascertained, it is safe to conclude that, based on an abundance of historic evidence, China was the first recorded discoverer of the Xisha, Nansha and other groups of islands in the South China Sea.

Under rules of international law prior to the eighteenth century, China's discovery alone would suffice to entitle China to establish and maintain sovereignty over the Xisha Islands, the Nansha Islands and other claimed features in the South China Sea. According to principles of inter-temporal and international law, the evaluation and determination of historic titles should be made in light of the rules of international law which were in force at the time such title was allegedly acquired, not in accordance with the rules of law at the time of subsequent disputes.

More importantly, even if one does not take due account of the principle of inter-temporal law and instead applies the standards of present-day international law to the South China Sea disputes, China can still prove and justify its exclusive sovereignty over the claimed islands. While contemporary international law requires extensive exhibition of authority over a claimed territory, it has also created both less-demanding rules and exceptions concerning the acquisition of unpopulated or uninhabitable lands and territories. It is unrealistic and unnecessary to require the claiming State to transport a sizable population to the discovered or claimed territory for the purpose of establishing and maintaining permanent settlements where the territory in question has insufficient resources to support such settlements. Nor is it necessary for the title-holding State to station troops or maintain an administrative presence in such territories. Where the title State considers it necessary and possible to administer, patrol or even sta-

323. See supra text accompanying notes 55-66, 198.
324. See, e.g., The Grisbadarna Case, Hague Ct. Rep. (Scott) 121 (Court of Tribunal), 11 R.I.A.A. 147; Clipperton Island Arbitration, supra note 44; The Western Sahara Advisory Opinion, supra note 46; The Palmas Arbitration, supra note 47. See also 10 Encyclopedia, supra note 23, at 499; see also ZHAO LIHAI, YANJIU, supra note 225, at 2-4; Wang Liyü, supra note 48, at 19.
tion troops in such territory, then international law does not require that the State must do so at all times and with regard to every corner of the territory. It is undisputed that virtually the entire South China Sea islands are uninhabitable or barely able to sustain permanent settlement. Even the biggest among them, Yongxing Island in the Xisha group, did not have fresh water until 1996. With regard to these irregular territories discovered by the Chinese, it is clear that China did not and does not need to display such extensive acts of sovereignty as transferring migrants, setting up administrations and stationing troops in order to perfect its title to them. All that is required of China by the rules of international law is to maintain its claims, which China has been doing for more than two thousand years.

Even if one conceded that the exceptional rules do not apply, China still has valid claims to the islands under the general rules of international law on the basis of extensive and continuous display of Chinese authority following discovery. At the least, China’s discovery at least gave it an inchoate title to the South China Sea islands. China perfected that inchoate title into a complete title by repeated exhibition of authority over the islands throughout history. China’s documented official exploitation of the areas (e.g., for collecting tributes to and satisfying the needs of the Chinese rulers) since the Chu State, its naval forces’ repeated surveys and patrols in the area from the Chu State, the Han Dynasty and Song Dynasty, and on through the modern eras of the Republic of China and the People’s Republic, both government-sponsored and private Chinese activities on and surrounding the South China Sea islands, all constitute evidence of effective administration of and sovereignty over the islands in the South China Sea.

China’s well-founded sovereignty over the South China Sea Islands has been recognized by legal commentators. For example, Professor Greenfield states that “China appears to have a considerable amount of historical evidence to support her claims” of sovereignty over the Spratly Islands.325 Elsewhere, she recognizes that “[f]or many centuries, ... Chinese fishermen used these islands as landing posts and they were mapped,” that “China has also continuously expressed its intention not to abandon its title to the islands,” that “China . . . has quite strong historical arguments in its favour” and that “China’s modern (post-1945) presence in the South China Sea is regarded by it as a consistent reiteration of historic rights.”326

On the other hand, there have been some misunderstandings concerning the South China Sea disputes. For example, some might say that other parties took early actions to occupy certain islands in the Spratlys,

326. Greenfield, China, supra note 10, at 29, 32.
whereas China “waited” until the 1980s. Others consider that the concept of sovereignty “is becoming obsolete” and “less important due to the emergence of global economics,” and therefore “Sovereignty over the Spratly archipelago is a non-issue.” These propositions may be refuted in the following ways.

This author does not believe that the concept of sovereignty has become antiquated. States are far from ready to give up their authority and sovereignty. Globalization of the world economy requires cooperation and coordination among States in economic life for their balanced interests, but it neither requires nor suggests a trend of States relinquishing their exercise of internal and external sovereignty. The cooperation itself results from the exercise of such sovereignty. A determination or clarification on who owns the South China Sea islands does not solve all the disputes, but it may help solve many other controversies which depend on the outcome of the sovereignty issue. While nothing restricts the legitimate title holder from reaching compromised settlements with conflicting claimants either now or in the future to promote peace and reduce conflicts, such holder is under no obligation to do so. Even if the title holder chooses to do so, it has every right to clarify the sovereignty issue before entering into any settlement.

Further, it is mistaken to say that China began to take possession of some of the reefs and other features in the Nansha Islands only in the 1980s. Since the entire area of the Nansha Islands has been Chinese territory at least since the Song Dynasty, and since most of the islets, reefs, and other features in the Nansha Islands are not inhabitable, the PRC did not need to physically “occupy” them in order to establish and/or maintain title, nor was there a need for a permanent Chinese military presence in the area. Nothing in international law requires a State, for the purpose of keeping the State whole, to maintain a permanent population, much less a military presence, in areas within its territory which are not suitable for settlement or other activities due to weather or geographical conditions. Consequently, failure to establish settlements in no sense amounts to an abandonment of the areas. Among the more than 13,660 islands and reefs owned by Indonesia, only 931 of them are inhabited and therefore physically “occupied,” yet it cannot be said that Indonesia has not acquired sovereignty, or if it has sovereignty, it must lose its sovereignty over the

327. See, e.g., Murphy, supra note 22, at text accompanying note 22 (stating that “while China may base part of its claim to the Spratlys on [the] 1887 treaty [between China and France for boundary delimitation], China waited more than a century (until 1988) to actually occupy any of the islands”).
328. Dubner, supra note 19, at 325.
329. PHIPHAT TANGSUBKUL, ASEAN AND THE LAW OF THE SEA 9 (Singapore, Institute of Southeast Asian Studies 1982).
remaining islands and reefs because the Indonesians have not "occupied" them. By the same logic, China should not be expected to disown or lose title to any part of the Xisha and Nansha Islands merely because of a lack of permanent Chinese presence and settlement.

In addition, the People's Republic of China restraint in handling the dispute with other states does not weaken its sovereignty over the Islands. It has to the greatest possible extent attempted to avoid direct military conflicts with neighboring states, and has called for a peaceful withdrawal of foreign armed forces and other personnel from the occupied areas. Although China did not physically obstruct the majority of the foreign occupations of the islands in the Nansha area, this in no sense constitutes China's agreement or concession to the legitimacy of foreign claims. On the contrary, China has protested against every foreign occupation or activity in the South China Sea islands, and time and again reiterated China's sovereignty. One cannot expect that the occupying States would over time mature their claims into valid titles, because modern international law no longer recognizes that a State can acquire territories by means of prescription, namely, by prolonging its occupation of territories that belong to another State.

In the last analysis, a State has the right to defend itself against foreign intrusion and occupation. Increasing unlawful foreign occupations and activities in the Nansha Islands that required China send troops to protect China's sovereignty and the interests of Chinese fishermen, marine researchers and other personnel in the area. China continues to exercise a high degree of self-restraint in order to seek a peaceful solution through negotiations. The restraint and patience, however, should not be interpreted as any form of compromise of its sovereignty over the Nansha Islands and other Chinese-owned islands in the South China Sea. China reserves, and should reserve, the right to take military actions to take back those islands and sea areas being unlawfully occupied and exploited by foreign states.