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The South China Sea Disputes: Who Owns the Islands and the Natural Resources?

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CHOON-HO PARK*

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Abstract Among the numerous border and territorial disputes between China and its neighbors, the Paracel-Spratly case is the most serious to date.

*Choon-ho Park is a Research Associate, East Asian Legal Studies, Harvard Law School, Cambridge, Massachusetts.

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Primarily, the dispute concerns the ownership of some 200 midocean islets in the South China Sea, most of which are coral outcroppings without much value in themselves. But the issue is complicated by the expectation that the owner(s) will be entitled to whatever natural resources may be developed from the offshore waters of the islets. Since the two-day clash of arms between China and the former Republic of Vietnam (South) in January 1974, the Paracels have been firmly in Chinese control, while the Philippines, Taiwan, and Vietnam are each holding a part of the Spratlies. The sea lane between the two archipelagoes is the only major route that links East Asia with Africa and Europe, a fact that accounts for the deep interest of the major powers in the South China Sea. Since the fall of Saigon to Hanoi in April 1975, China has to argue the same issue against its ally, Hanoi, which also happens to be an ally of China's adversary, the Soviet Union. Unless provoked forthrightly or provoked to provoke, none of the parties is likely to use force to gain control of the "flyspecks," nor would they seek international adjudication or other forms of third-party involvement to settle the dispute. Pending settlement of the ownership issue, however, delimitation of sea boundaries among the parties will be delayed, and this in turn will necessarily delay development of the sea resources. For geographical and, to a lesser extent, political reasons, the attitudes of both China and Vietnam toward the issue are going to play a decisively important role in the final settlement.

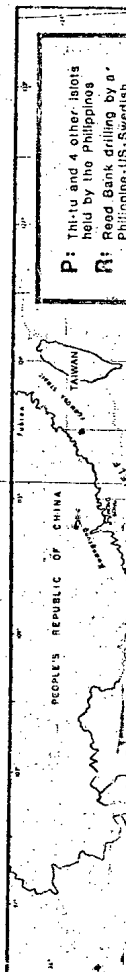
Introduction

The South China Sea has nearly 200 uninhabited islands that are hardly visible on an ordinary map.¹ Most of them are coral reefs that cannot support human habitation. Until recently they had been little used by man, except by fishermen and sailors in need of shelters or landmarks. In recent decades, countries in the region have placed claims on them at one time or another. Two major claimants, China and Vietnam, refer to these "flyspecks" as "the sacred territory of our fatherland," and are prepared to risk war over them, as happened in 1974.

Over territorial issues, feelings run high and senses low in East Asia, partly for historical reasons but, in the case of the present dispute, for other important reasons as well. The parties rightly feel that although the islands have only negligible physical value in themselves, their owner will be entitled to enormous wealth from the sea, including oil and gas. In fact, the Philippines reported discovery of oil and gas off the Reed Bank in early 1976 (Figure 1).²

The location of the islands is also highly strategic, because merchant marines, oil tankers, and major navies have to use the sea route here, which links East Asia with Africa and Europe. Hence, to the countries of the region and the major powers of the world alike, it is a matter of vital importance into whose hands the islands will ultimately fall, whether into the hands of a small country without global ambitions or those of a major power with the world's third largest navy.

Thus, the present study involves territorial ownership of uninhabited midocean islets as well as natural resource jurisdiction in the same waters. These two



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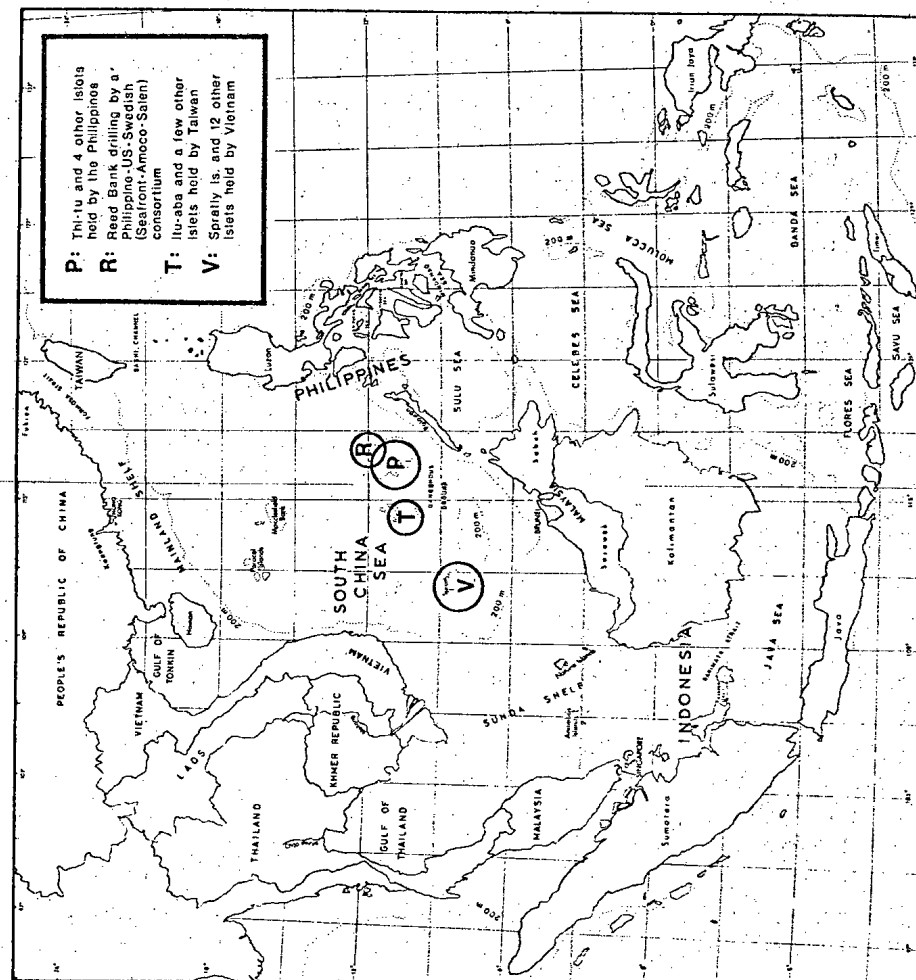


Figure 1. The Spratly Islands under divided control.

basically separate issues are so closely interlocked that the one has to be settled first for the other to be negotiated.

In January 1974, the People's Republic of China and what was then South Vietnam resumed a long-standing dispute over who owned the Paracels and the Spratlies, the two groups of tiny islands situated in the middle of the South China Sea. When each party began to repeat its earlier claims, strongly warning the other to leave the islands alone, tension built up to the point of clash. Within a week, their armed forces engaged in a fierce battle to gain control of the Paracels. In the face of devastating Chinese attacks, the Vietnamese troops collapsed within two days, suffering heavy casualties.³ This dramatic incident came to an end when, soon afterward, China released from its mainland 48 Vietnamese prisoners through the International Red Cross.⁴

With the Paracels firmly in its hands, China instantly moved on to consolidate its claims on that group of islands. Ancient relics unearthed at "a randomly selected site" on one of the islands are presented as a proof that Chinese had been active there for centuries. A four-story building erected on the main island now houses the Revolutionary Committee, whose jurisdiction includes the Spratlies, the other group of islands that "have not yet been returned to the hands of the Chinese people." Military installations have been expanded, and the fishing industry has also been modernized, with the construction of new port facilities. Since the spring of 1975, China also places some sea products, such as turtles and tunas, from the Paracels on display at the biannual (spring and autumn) sessions of the Canton Trade Fair.⁵

The Chinese argue that, in an act of self-defense, it simply resumed control of a piece of its own territory. Had South Vietnam won the battle, it would have made exactly the same argument. Conceding its defeat by China, however, South Vietnam hastened to add that "the temporary loss of physical control over a territory does not mean the relinquishing of a legitimate right."⁶ To prepare itself better for a resumption of hostilities, Saigon also began to fortify five islands in the Spratlies 300 nautical mi south of the Paracels within weeks of the first clash.⁷ Strictly speaking, therefore, the armed conflict of 1974 has not helped to improve the prospects for settling the dispute as a whole. On the contrary, the outlook has been greatly complicated by the fall of Saigon to Hanoi in April 1975 and by the winds of change that have since been blowing throughout Southeast Asia.

It is also necessary to recall how Hanoi reacted at the outbreak of the Paracel incident in 1974. In relation to China over the territorial issue, the interests of Hanoi and Saigon were identical. Neither of them could allow their internal strife to prejudice the territorial integrity of their country as a whole. On the other hand, for the conduct of a prolonged civil war against the other half of its own nation, Hanoi needed what support it could enlist from China. Caught between

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its southern compatriots and northern comrades, therefore, Hanoi cautiously evaded the issue by saying that a negotiated settlement was preferable to the use of force.⁸ But, since April 1975, when Saigon collapsed and Hanoi took over the burden of argument against China, the dispute has become an extremely delicate political issue between the two socialist neighbors.

Since, on the Vietnamese side, Hanoi—not Saigon, now renamed Ho Chi Minh City—has become the principal party to the dispute, it is important to take note of its attitude toward the issue. A number of points should be noted. First, soon after the South was “liberated,” the North Vietnamese placed under their control that part of the Spratlies that had been held by the South Vietnamese forces.⁹

Second, signs of strain between Hanoi and Peking began to appear in late September 1975, when Vietnamese Workers' Party Secretary Le Duan visited China. In a “cordial, fraternal and friendly atmosphere,” agreements were signed to facilitate interest-free loans and a supply of goods to Vietnam in 1976, but no joint communiqué was issued in the end, although it is the usual practice on such occasions. This was in sharp contrast to what happened in Moscow during Le Duan's visit to the Soviet Union less than a month later, and was suspected to have been a reflection of strained relations between China and Vietnam, presumably because of the territorial issue. Le Duan's departure from Peking without staying on for the Oct. 1 Chinese national holiday cast further doubt on their friendship.¹⁰

Third, in early November 1975, shortly after Le Duan's return from the Soviet Union and East Europe, official dailies in Hanoi like *Nhan Dan* (The People) and *Quan Doi Nhan Dan* (The People's Army) carried articles describing Vietnamese use of the Paracels and Spratlies since the early 19th century. The old map that was reprinted in these newspapers, the *Detailed Map of Dai Nam*, had previously been used by Saigon in support of Vietnamese claims to the islands.¹¹

Fourth, on his *Tet* (New Year) visit to the Camau naval base in the South in late January 1976, Defense Minister Giap was reported to have emphasized the importance of defending “Vietnamese territories including all islands and archipelagoes.” Hanoi repeated its claims on relevant occasions, such as at the time of its general election in April 1976. After the North and South were unified in June 1976, a commemorative postage stamp was issued showing the two disputed groups of islands as Vietnamese. (Two other stamps issued by Hanoi in 1970 do not include them.) For its part, Peking responded in November 1975 and May 1976 to Hanoi's Paracel-Spratly campaign by widely publicizing its own side of the controversy through its news media both at home and abroad.¹²

However, Hanoi and Peking, unlike Saigon and Peking previously, no longer level charges against each other. They just continue to make their respective positions emphatically clear. Also, in one of the *Quan Doi Nhan Dan* articles of

March 1976, Hanoi referred to the Spratlies but not to the Paracels, as the Provisional Revolutionary Government in the South did in June 1976.

Nevertheless, it would be premature to agree with some observers¹³ that such an omission is a possible sign that Vietnam is relinquishing its Paracel claims. Although the Paracels are already under Chinese control, if Vietnam abandoned its claims to what it surrendered under pressure of arms, it would not only imply acceptance of a *fait accompli* but might even tend to encourage China to try similar means on the Spratlies in the future. The discussion that follows will outline the dispute as it now stands and will argue on the prospects for its resolution in the 1980s.

Bases of the Claims

Historical Background

In support of their claims to the territories in dispute, China and Vietnam have relied primarily on historical records. The following passages, as articulated in their official statements, are indicative of this approach.

China:

More than 2,000 years ago, Chinese people were already sailing on the turbulent waves of the South China Sea, as recorded in ancient Chinese literature. By the time of the Western and Eastern Han dynasties (206 B.C.-220 A.D.), the South China Sea had become an important navigation route for China. As navigation steadily developed, long years of sailing the seas enabled the Chinese people to become the first discoverers and the masters of the South China Sea Islands. Surveyed and named time and again and worked and administered without a break, these valuable islands became an inalienable part of our beautiful motherland.¹⁴

Vietnam:

From time immemorial, these islands have been frequented by Vietnamese fisherman who went there for tortoises, sea slugs, and other marine creatures. In recent times, the Paracels have attracted exploiters of phosphates, rich beds of which are produced by the interaction of the guano of seabirds with the tropical rains and coral limestone. Like the Paracels, the Spratlies are closest to Vietnam geographically and have been part of her territory early in history. In 1834, under the reign of Emperor Minh Mang, the Spratlies appeared in the first Vietnamese map as an integral part of the national territory.¹⁵

Since 1974, China and Vietnam have been engaged in what may be called a chronicle contest. The authenticity of these documents apart, neither country is short of historical records to cite as the basis of its claims to the islands. In the case of China with its long history, libraries and archives of its own as well as those abroad are known to be virtually encyclopedic as sources of such records. Hence, and for no other reason, its list of "evidences" is longer than Vietnam's.

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From their conflicting claims, however, it is possible to imagine that at various times until the late 19th century each party was, or simply pretended to have been, unaware of the claims made by the other or by any other party. For the purpose of the present study, it seems unnecessary to trace in detail claims made prior to the 1880s, because it was not until then that the tug-of-war for the control of the islands really began—not only between China and Vietnam, but also between China and newcomers such as France and Japan.¹⁶

When, in 1884, Vietnam became a French protectorate, China had a new party to argue the same issue against. Three years later it signed a boundary pact with Vietnam whereby the Paracels and the Spratlies fell on the Chinese side.¹⁷ This motivated China to tighten its control of the Paracels until the 1910s. During this period, the French also maintained customs patrols to the Paracels, which had by then become a haven for arms and opium smugglers. At the same time the Chinese and the French discovered rich deposits of guano on the Paracels, which in turn attracted Japanese interest there.¹⁸

Out of economic and strategic interest, France suddenly reasserted claims to the Paracels in 1931 and to the Spratlies in 1933. In 1938, a year after the Japanese invasion of China, France occupied the Paracels. The next year, however, Japan occupied both the Paracels and the Spratlies, incorporating them into Taiwan (then its own territory) under the name Shinnan Guntō (the New South Archipelagoes). During the Pacific war, which ended in 1945, the islands remained under the control of the Japanese, who used the Spratlies as their submarine bases.

After the war, the two original claimants, China and Vietnam, resumed their dispute over the two archipelagoes. Private ownership over part of the Spratlies was claimed in 1956 by a Filipino. The claim was based on his alleged discovery of the islands. Currently the Paracels are under the control of China, while the Philippines, Taiwan, and Vietnam each hold part of the Spratlies. China and Vietnam, nevertheless, are the central parties in the present dispute.

Legal Aspects

Both China and Vietnam have presented numerous contentions in support of their respective claims. Each side bases its argument on the discovery and use of the islands by its own countrymen, a condition modern international law regards as one of the requirements for acquisition of territory. On this account, China undeniably has a stronger position than Vietnam. Discovery, however, is not a sufficient but only a necessary condition, because it must be sustained by "continuous and uninterrupted exercise of sovereignty."¹⁹ On this point, neither side appears sufficiently persuasive.

Besides historical records, the parties also rely on foreign literature and cartographies. China cites some atlases and encyclopedias published in Britain, France,

Germany, Japan, the Soviet Union, and the United States in recent years, and Vietnam quotes some 19th- and 20th-century writings of French priests and explorers.²⁰ Strictly speaking, however, the evidentiary value of such foreign references must be considered at best doubtful, for the obvious reason that such materials cannot reach beyond information originating from the countries to which they refer.

As noted above, China also relies in part on an important boundary pact it signed with Vietnam in 1887. This agreement stipulated that all islands situated east of a specified line—as the Paracels and the Spratlies were—belonged to China. From the standpoint of Vietnam, it might be argued that a boundary line drawn in the middle of its mainland could not have referred to the ownership of midocean islands situated several hundred miles from it.

For its part, Vietnam cites an example of interest. In 1895 and 1896, two ships laden with copper were wrecked off the Paracels. When Chinese nationals salvaged part of the cargo and offered it for resale to the shipowners, complicated legal problems arose involving British (the underwriters), Chinese, and French interests. The local Chinese authorities on Hainan Island refused to accept any responsibility on the ground that the Paracels were not Chinese territory.²¹

China might, of course, question the validity of this action by its remote local authorities, especially if it were taken without authority from the central government. Since each party has a host of such examples, the legal effect of each must be weighed against that of previous and subsequent ones.

A dispute over ownership is generally a legal issue. But the present case is replete with highly complicated extralegal factors that will tend to limit the role of international law as a means of settlement greatly. The prospect of a legal solution is not encouraging. Three basic reasons support this rather pessimistic view.

The Nature of Territorial Issues in East Asia. For historical reasons, countries of East Asia are particularly sensitive to territorial disputes. When, in the mid-19th century, China began to lose its own territorial integrity in the face of Western powers, its authority as a "superpower" of the region as well as its suzerain position over vassal states like Korea and Vietnam also began to erode. With the stabilizing influence of China gone, they were often forced to cede part of their land or their rights to it to foreign invaders, few of them having been powerful enough to dispute, much less to resist, such cession or concession. Consequently, with the exception of Japan and Thailand, all the East Asian states underwent different forms of colonial experience and territorial humiliation, continuing up until the 1950s.

When sovereignty was restored to these former colonies or near-colonies during the postwar years, each state became highly conscious of its new status and

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desirous of preserving it. Only within this context is it possible to appreciate their sensitivity to whatever affects their territorial integrity, a sensitivity that has yet to subside.

Thus, a territorial dispute, especially one between a former ruler and the ruled, instantly touches the raw nerves of the people of a former colony and causes their nationalist sentiments to flare up, even if the piece of territory involved is scarcely worth arguing over. The controversy thus ceases to be a strictly legal issue but becomes a political problem, to be resolved in the language of diplomacy.

This is demonstrated not only by the present case, but also by three other interrelated territorial disputes in East Asia, all involving obscure islands: the disputes between Japan and the Soviet Union over the four Northern islands, between Japan and Korea over Takeshima-Dokdo Island, and between Japan and China over the Senkaku-Tiaoyut'ai islands.²² For instance, the Japan-Korea case concerns a cluster of midsea rocks without vegetation, a piece of territory currently under Korean control but hardly worth keeping except perhaps for reasons of national sentiment.

Contemporary International Law and New Nations. Of every three countries in the world, two became independent during the three postwar decades (1945-1975). This rapid growth of membership in the community of nations has engendered a serious crisis in traditional international law, itself a product of Christian civilization over the past 400 years. The majority, if not all, of these newly independent nations seek to reform those parts of international law which they feel are detrimental to their interests.

Since all the new countries are developing economies, one of their first targets for reform is the international law relating to the regulation of international economic activities. The reform of the law of the sea and the adoption of the New International Economic Order and its supplements, both under UN sponsorship, are two conspicuous examples of their endeavors. The argument of the new nations rests on their refusal to be bound by a system of law in whose formation they did not participate. A statement made by a Chinese delegate at the Third United Nations Conference on the Law of the Sea (Geneva, 1975) may be noted with interest:

Many of those rules had been established before the majority of developing countries became independent and did not conform with their interests. The world had changed, and developing countries could not be asked to accept out-of-date laws that operated to the sole advantage of the superpowers.²³

This attitude of the new nations in turn generates reluctance to rely on contemporary international law to settle such important issues as territorial disputes.

This point is best illustrated by the paucity of cases before the International Court of Justice. Since its inception in 1945 as one of the five component organs of the UN, the Court has handled only 26 cases in addition to 14 requests for advisory opinions. Of the more than 150 states in the world, only eight have used the Court more than once, 26 just once each, and the vast majority, including most of the socialist states, never.²⁴

In the case of the East Asian states, with the exception of Cambodia and Thailand, none—not even China or Japan—has ever appeared before the Court. The risk of losing has made these states reluctant to submit important cases to judicial settlement, and such reluctance is in direct proportion to the importance of the case. Thus, a case would have to be far less important than a territorial dispute to be left to international adjudication or other means of third-party involvement, such as arbitration or conciliation. Given the above-described attitude of East Asian states toward territorial issues, the reluctance of the present parties to the South China Sea dispute to rely on judicial means of settlement is easily understood.

Complexity of the Issue. When China was still the "Middle Kingdom" whose authority reigned virtually unchallenged in what is now East Asia, Chinese officials on their missions abroad customarily recorded in reports or logbooks the discovery of numerous uninhabited islands in remote waters. Over time, ownership of such pieces of otherwise unclaimed land was assumed as a matter of course. The Paracels and the Spratlies were no exception to this long-standing practice. Vietnam claimed the two archipelagoes under a similar theory, but such claims embraced only that period since the early 19th century, by which time China had allegedly controlled the islands for over ten centuries. During the postwar decades, the claims of both parties have remained basically unchanged.

At this point, an important question arises as to whether, at the time of the Chinese discovery, a discoverer of new territory was required to exercise uninterrupted control over such territory to become its owner. Obviously, the discovery in the present case took place long before such control was thought to be necessary under international law. The key question is whether modern principles of international law can properly be applied to actions occurring in premodern times.²⁵ The evidentiary value of the numerous historical records presented by each party will depend on the answer to this question. Fairness would seem to require that significance of the facts relating to each party's discovery and use of the disputed islands should be interpreted in the context of the time when they occurred rather than in the context of the modern law of nations.

In the final analysis, international law can effectively resolve only disputes that are basically legal, whereas the most important disputes, like the present one

with its highly complex and susceptible thereof, is not easily inclined, for a manageable instead. This point is especially difficult territorial dispute in the present one, for various reasons, neither party has legal settlement of

Coastal States' Claims

Fishery Resources. The South China Sea has some 70 million m of water, a share of approximately 10% of the higher sustainable fishery resources of 10 million tons. The sea has not been extravagantly exploited. The archipelago claims a 3-mi limit.

Once the regime of the sea will be has become a part of the China Sea will be a part of the sea, because, with the coastal states are situated in the fishing industry, disputes will arise in the fishing Olympic games.

In order to avoid disputes, will have to be taken into consideration. Fortunately, the Pacific Fisheries Commission (FAO) of the United Nations and Thailand already has a special project called the Fishing Program, to be implemented.

In the interest of peace and energy posed by the sea for Hanoi and Peking, the parties to a dispute

with its highly complicated historical background, are political in nature and susceptible therefore of political resolution only. Furthermore, states are generally inclined, for obvious reasons, to keep important issues fluid and thereby manageable instead of relying on an inflexible judicial framework for settlement. This point is especially relevant to China; China has a series of other extremely difficult territorial disputes, including another island dispute, strikingly similar to the present one, with Japan over the Senkaku-Tiaoyut'ai islands. For these reasons, neither party, China in particular, is likely to seek or agree to any type of legal settlement of the Paracel-Spratly dispute.

Coastal States' Claims to Natural Resources

Fishery Resources. Currently the world's annual catch of fishes amounts to some 70 million metric tons, of which the South China Sea contributes a modest share of approximately 5 million tons. This area is known to have potential for higher sustainable yields, so that its annual catch may be increased by another 3 million tons. The statutory claims of the coastal states to fishery jurisdiction have not been extravagant. With the exception of the Philippines which, under modified archipelago claims, does not maintain a uniform limit, and Singapore, which claims a 3-mi limit, they have adopted the popular 12-mi limit.

Once the regime of a 200-mi economic zone is put into practice—and that it will be has become a virtual certainty—however, the entire waters of the South China Sea will be divided into numerous sectors of national jurisdiction (Figure 2), because, with the Paracels and the Spratlies taken as base points, all the coastal states are situated within 400 mi of one another. In the years ahead, when the fishing industries of the coastal states will have greatly improved, fishery disputes will arise from high competition in what is sometimes called "the fishing Olympic games in national lakes."

In order to avoid overfishing or depletion of resources, conservation measures will have to be taken, measures that are not possible without regional cooperation. Fortunately, the South China Sea falls within the jurisdiction of the Indo-Pacific Fisheries Council, a regional organ of the Food and Agriculture Organization (FAO) of the UN, to which Cambodia, Indonesia, Malaysia, the Philippines, and Thailand already belong. In fact, the Council is currently running a five-year special project called the South China Sea Fisheries Development and Coordinating Program, to be completed in 1979.²⁶

In the interest of developing fisheries in the South China Sea area, where food and energy pose the two most serious problems, it would seem highly desirable for Hanoi and Peking to join the Council. On the other hand, it is possible that, as parties to a dispute over an issue more important to them than fisheries, either or

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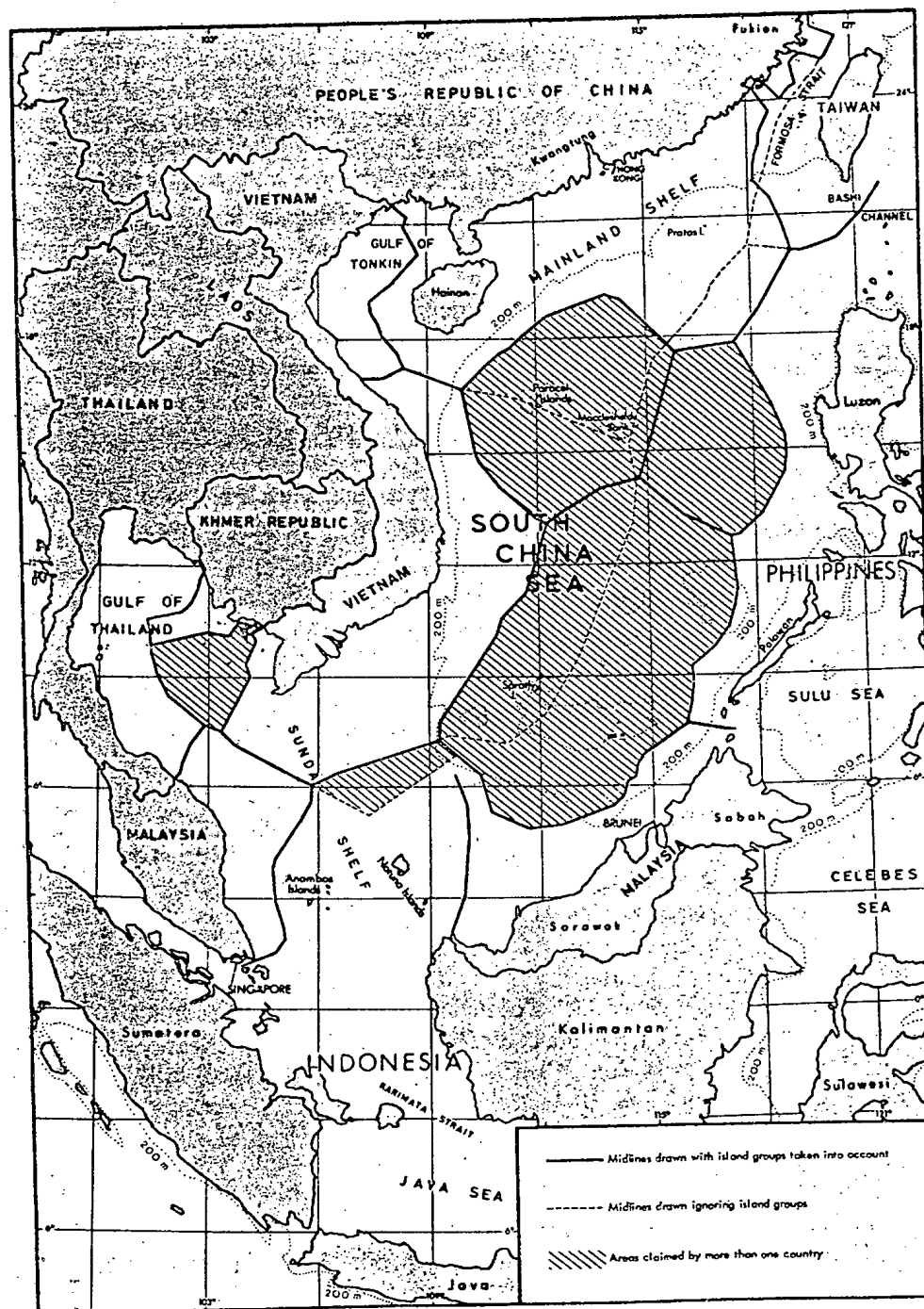


Figure 2. Hypothetical boundaries in the South China Sea.

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both may prefer agreement on the Spratlies.

Protection of regional cooperation number of regional arrangements has could no longer states of the South but there are regions now, substate. In general, lems, except in increase. Despite serious marine but this seems

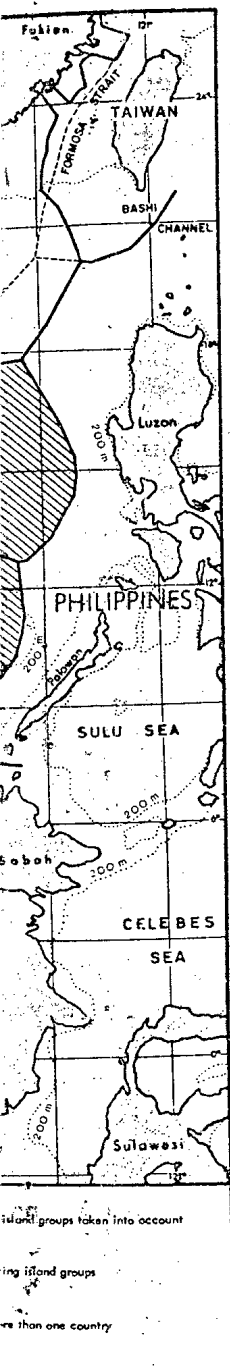
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Mineral Resources
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both may prefer to stay outside of an organization that might eventually seek agreement on fishery zone boundaries in areas including the Paracels and the Spratlies.

Protection of the marine environment is another problem area calling for regional cooperation. In recent years, coastal states of enclosed seas have made a number of regional arrangements to protect their marine environment. But such arrangements have usually been concluded only when these states felt that they could no longer safely ignore strong warnings from the scientists. The coastal states of the South China Sea have not yet been warned in any serious fashion, but there are reasons to believe that unless they turn to the examples of other regions now, such warnings will be forthcoming sooner than they might anticipate. In general, these states remain indifferent to marine environmental problems, except in their coastal waters, where land-based pollution has been on the increase. Despite the increasing density of sea traffic and fishing operations, no serious marine pollution incident has occurred in the area except off Singapore,²⁷ but this seems to have been more a matter of luck than anything else.

For these reasons, it is becoming increasingly important for the South China Sea coastal states to institute antipollution measures similar to those being employed in the Baltic Sea,²⁸ the Mediterranean Sea,²⁹ and the North Sea,³⁰ among others. In the case of China, at the UN Stockholm Conference on Human Environment in 1972, its attitude toward regional regulation of marine pollution was made unequivocally clear.³¹ However, the political relations among the South China Sea countries are not yet favorable to multilateral regional arrangements.

On the other hand, pollution problems are apolitical and ideologically neutral, and must be treated accordingly. A patch of oil spillage floating in the middle of an enclosed sea allows for no political or ideological ping-pong games between the coastal states. A state refusing multilateral arrangements for political reasons might deprive itself of the benefit of compensation, scientific and technical exchanges, and environmental funds that such arrangements would facilitate.

Mineral Resources: Unilateral claims by coastal states on the periphery of the South China Sea to offshore mineral resources—mainly oil and gas—conflict at many points, especially in shallow waters where the same continental shelf is contiguous to the coasts of different claimants. Off the coast of Cambodia, for instance, the claims of Cambodia, Malaysia, Thailand, and South Vietnam overlapped (Figures 3 and 4). In the adjacent area south of the Mekong River Delta, Indonesia and Malaysia are also claiming some parts of the seabed claimed by South Vietnam (Figure 3). A major conflict in the entire South China Sea was thus between South Vietnam on one side and these four states on the other, which claim nearly half of the 40 blocks into which South Vietnam divided the seabed claimed by it (Figure 3).³²

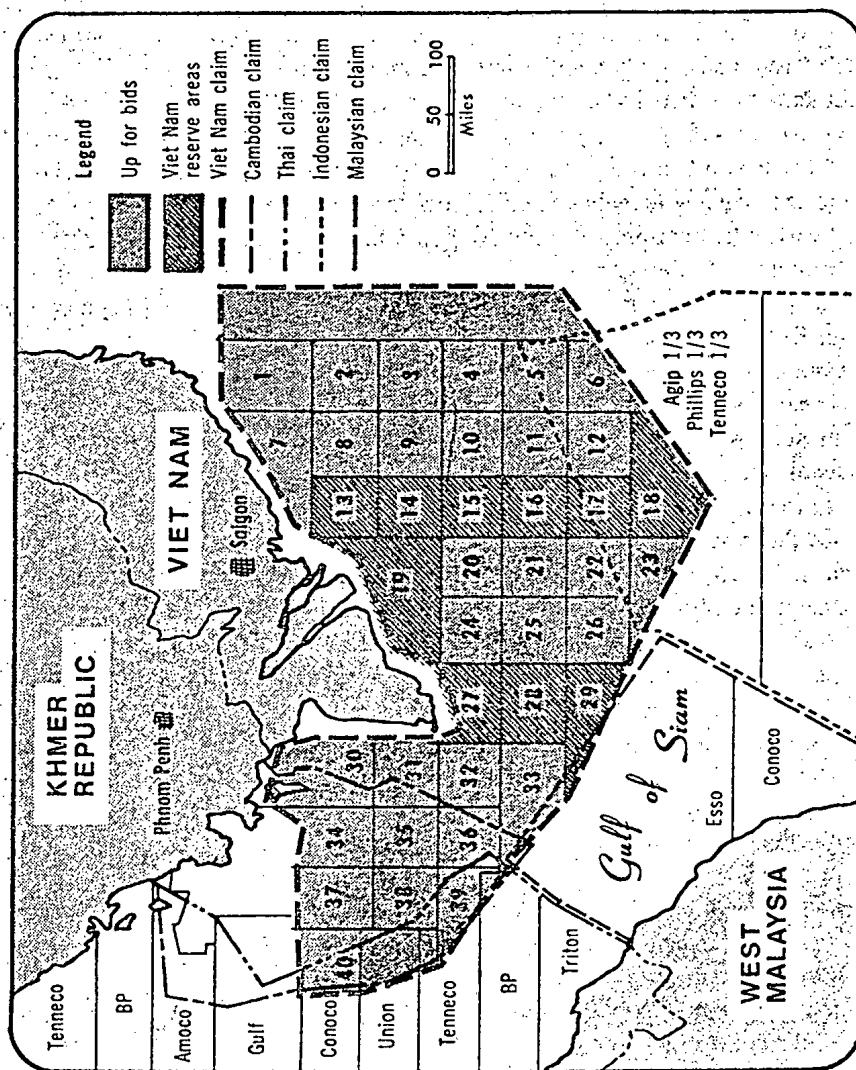


Figure 3. Overlapping claims between the former South Vietnam and other states.

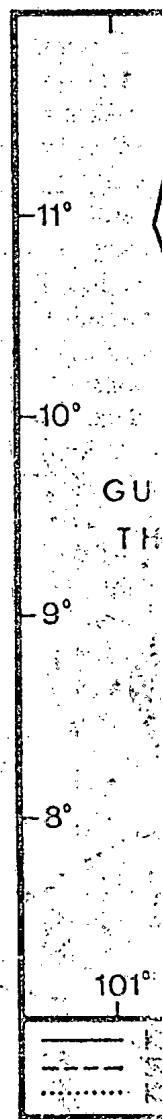


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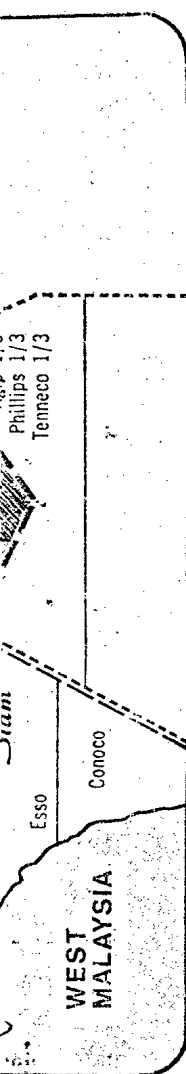


Figure 3. Overlapping claims between the former South Vietnam and other states.

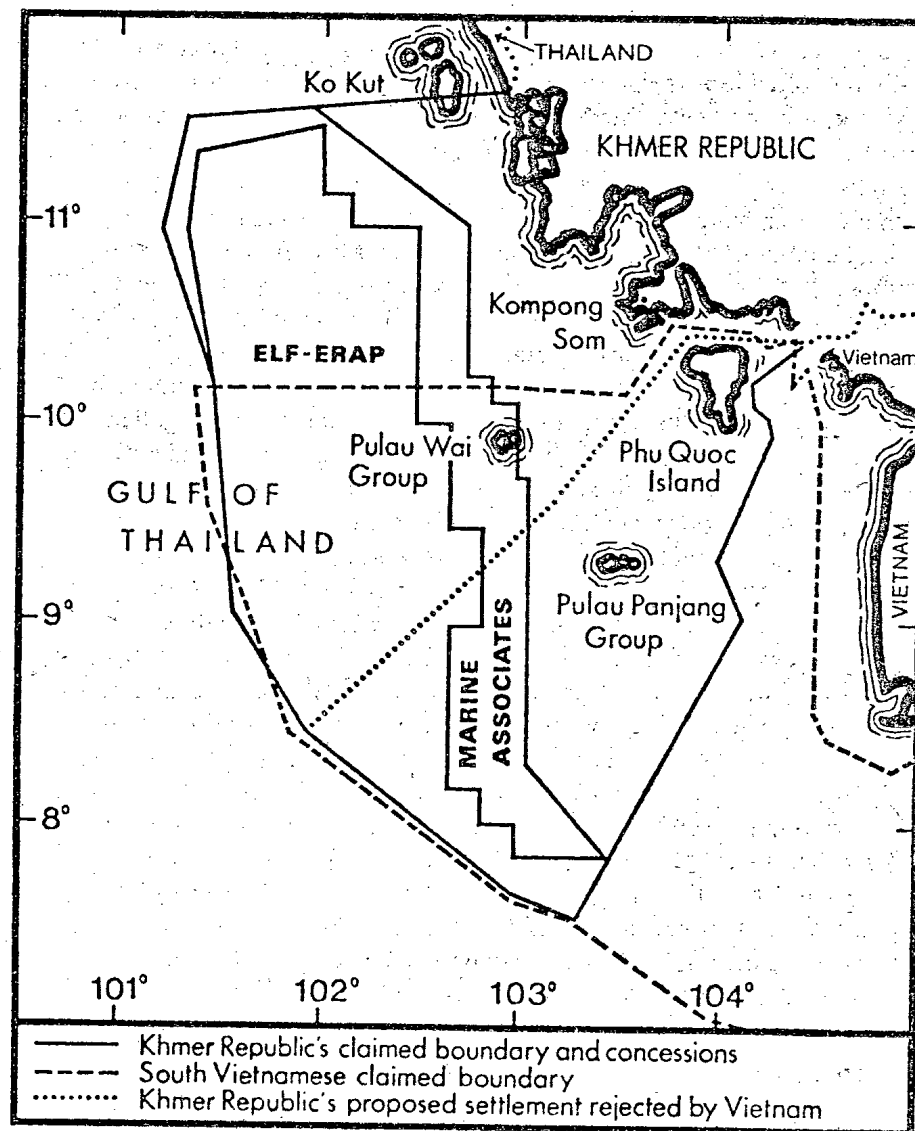


Figure 4. Claims in the Gulf of Thailand.

In the main basin of the South China Sea, a serious seabed controversy took place in June 1976 when China strongly protested against Philippine oil operations at the Reed Bank of the Spratlies (Figure 1), asserting that "China has indisputable sovereignty over [the Spratlies] and their adjacent sea areas and that the resources there belong to China." In other areas of the Spratlies as well as off

the Paracels, where the depth of the sea drops abruptly to 1,000-3,000 m, development of oil is thought to be either technologically unfeasible or commercially unprofitable at the present time. In the Gulf of Tonkin, no specific claims have been made as yet either by China or by Vietnam, although Hanoi has been reported to be in touch with foreign oil concerns interested in oil exploration in the region.

In order to rebuild its economy from the ashes of a 30-year civil war, Hanoi is making enormous efforts to develop oil and other energy resources both on and offshore. In the context of the present study, three points are worth noting. First, in August 1975, within four months of its "liberation" of Saigon, thirteen concession contracts for drilling rights between the former Saigon government and foreign companies were invalidated by the Provisional Revolutionary Government, which at the same time voiced its readiness to negotiate similar agreements on its own behalf with interested foreign companies.³³ Second, Hanoi has been actively seeking the cooperation of foreign governments and private firms in more than 12 countries for the development of Vietnam's oil resources. For instance, under the terms of a five-year (1976-1980) economic and technical cooperation agreement with the Soviet Union, Russian geologists are to assist Vietnam in prospecting for oil and other mineral resources, and a French oil company is to build a logistic base at Vung Tau for offshore operations.³⁴ Third, foreign oil companies like Gulf and Shell that had previously operated in Vietnam have reportedly been invited by the new regime to resume their Vietnamese operations.³⁵

From the standpoint of international law, four of the principal coastal claimants to offshore resources in Southeast Asia—Cambodia, Indonesia, Malaysia, and Thailand—rely on the so-called median-line principle for offshore boundary delineation. There is no argument here, as there was in the cases of the Yellow Sea and the East China Sea, over which of the two conflicting principles, the median-line principle or the natural prolongation of land territory principle, should be adopted. Instead, controversies over boundary delineation in the Gulf of Thailand and Sunda Shelf have all arisen from the ambiguous legal status of offshore islands, especially of those situated near the coasts of other countries as well as of those whose ownership is in dispute.

Taken as a base point for the measurement of distance, even the most obscure island situated between two claimants of the same continental shelf can substantially affect the division of the seabed greatly in favor of its owner. The problem of islands is further complicated in this region by the important fact that Indonesia, with nearly 14,000 islands, and the Philippines, with over 7,000, are not at all likely to compromise their common position favoring the so-called "archipelago theory," whereby all outlying islands may be enclosed for pur-

poses of del-
tion.³⁶

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poses of delimiting a state's territorial sea and establishing its maritime jurisdiction.³⁶

The other principal claimants, China and Vietnam, have yet to specify their claims to seabed resources. China has on many occasions objected to the specific claims of other states like Japan, the Philippines, South Korea, and South Vietnam, without, however, advancing any specific claims of its own. The only principle of international law mentioned in its numerous statements so far has been that of "agreement between states concerned." While certainly a major principle of international law, nevertheless, in the present context, it seems to be little more than a multipurpose noncommittal phrase of indeterminate meaning.³⁷

This ambiguity in the Chinese position can be attributed to the fact that, having made extravagant claims to the resources in the Yellow, East, and South China seas, the three waters troubled with almost every conceivable problem in the law of the sea, China can only get specific at its peril. Hanoi has neither made its claims specific with regard to its continental shelf resources nor supported or renounced former South Vietnamese claims. There is no reason to expect Hanoi's position to be substantially different from that of its predecessor. Thus, it seems reasonable to say that, since the fall of Saigon in April 1975, the seabed controversy in this region remains potentially as volatile as ever, although dormant at the present time.

Potential for Resolution

As noted earlier, neither China nor Vietnam is likely to agree to a legal approach to the settlement of their dispute. Nor are the claims of the parties flexible enough to be negotiated directly; each side has gone too far with its legal claims on its "sacred territory." For the settlement of international disputes, China has been known to prefer direct negotiations to the use of third parties; but this preference clearly does not extend to negotiation over legal ownership of territory that it has consistently claimed as its own. From all indications, therefore, it appears inconceivable that either party, China in particular, will accept any form of divided ownership.

In search of a breakthrough in an otherwise endless war of nerves and battle of slogans, China might be tempted to go a step further and place the Spratlies under its control, thus closing the dispute for good. This would involve the cumbersome task of removing the Filipinos and Vietnamese from the Spratlies, and the fraternal gesture of pardoning the Taiwanese there. For Vietnam to terminate the dispute in its favor would involve, on the other hand, fighting the Filipinos and Taiwanese off the Spratlies and the Chinese off the Paracels. Taiwan poses no threat to the other claimants and its interests in relation to them ultimately coincide with those of Peking. The interests of the Philippines lie more in drilling

for oil in the Spratly area despite Chinese objection than in claiming territorial ownership, which is tenuous in any event.

In terms of physical capability alone, China could easily accomplish this task, as it did in 1974, when it gained control of the Paracels, while Vietnam could not. However, hasty reliance on force is as much taboo for China as it is for Vietnam. The party casting the first stone will be forced to pay dearly for it. Provoked by Vietnam, for instance, China could hardly have a better excuse to launch a blitzkrieg and take over at least that part of the Spratlies currently under Vietnamese control. This would greatly simplify the solution of the dispute in favor of China.

On the other hand, should China take over the islands without an urgent cause, many nations in the region, as well as the major users of the South China Sea like Japan, the Soviet Union, and the United States, would regard such an incident as a clear threat to their national interests. Furthermore, China has said so much against superpower hegemony that, in the absence of provocation, it can hardly use force against small nations without itself looking hegemonic in their eyes.

Causes of Increasing Tension

The above is an oversimplification of the goals of the parties to the dispute and of the inhibitions that will prevent them from hastening to attain these goals. In any case, disquieting factors exist that will tend to increase tension in the South China Sea and its periphery in the next decade or so. Three such factors may be noted:

"Creeping Jurisdiction." In the fashion of the time, virtually every state has begun to extend its offshore jurisdiction in recent decades. By virtue of a new concept that ocean resources are the common heritage of mankind, 30 landlocked states have claimed their share of the resources to be found in waters beyond the limits of national jurisdiction. Only two decades ago, talk of a 12-mi limit of the territorial sea was considered a daydream, but now it has been accepted by almost every state. Until as recently as the early 1970s, a 200-mi limit of maritime jurisdiction was little heard of, except in some Latin-American quarters and as a conspiracy against the traditional law of the sea. Today, the regime of a 200-mi exclusive economic zone has become a certainty. Even if by any chance the current United Nations Law of the Sea Conference fails to write these two regimes into an international treaty, they will be adopted as a popular practice. In fact, three of the major maritime states in the Americas—namely, Canada, Mexico, and the United States—have already adopted the 200-mi fisheries zone, as have many other countries, including the Soviet Union. Even Japan, traditionally the most conservative claimant of maritime jurisdiction, has adopted it.

In applying the 12-mi limit of the territorial sea and the 200-mi limit of the economic zone to their offshore waters, the coastal states of the South China Sea

will face serious legal status of an island, the of Chinese or applied instead vessels and islands incalculable the measurement South China jurisdiction of

From current sea boundary terms of its position can be reached coastal states islands in this base points and its resources

While the seabed boundary nine coastal these states, only a few have

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will face serious conflicts of interests arising from the ownership as well as the legal status of the islands in dispute. If each rock or reef were given full status as an island, the South China Sea would be studded with numerous circular patches of Chinese or Vietnamese territorial sea, and if the archipelago theory were applied instead, large expanses of sea and air space could be closed to foreign vessels and aircraft. This would render the strategic value of even the tiniest islands incalculable. Furthermore, if these islands were used as base points for the measurement of a 200-mi distance vis-à-vis other coastal states, most of the South China Sea and, of course, the natural resources in it, would come under the jurisdiction of the states that own the islands.

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

While the territorial issue mainly concerns China and Vietnam, the question of seabed boundary delineation in the South China Sea area involves as many as nine coastal states altogether, including British Brunei. Between and among these states, over a dozen continental shelf agreements will be required, of which only a few have been concluded to date with respect to less controversial areas.³⁸

Among the natural riches with which the South China Sea is known to be endowed are food and energy resources, the two most pressing needs in the region. Since, in enclosed waters, agreement on boundaries is prerequisite to resource development, it is imperative that the coastal states of the South China Sea determine one another's share of the seabed first in order to avoid what has taken place in the Yellow Sea and the East China Sea—an endless delay in oil development, pending agreement on boundaries.³⁹ Once the United Nations adopts a new law of the sea treaty in Caracas (where, at its 1974 session, the UN Law of the Sea Conference decided to sign its final agreement back here), these coastal states of the South China Sea will have to seek agreement on their seabed boundaries, an inherently difficult undertaking which, in their case, will be further complicated by their geopolitical circumstances.

Demand for Food and Energy Resources. As a region, Southeast Asia is richly endowed with a number of important natural resources, among them bauxite, copper, lumber, oil, rubber, and tin. But the geographical distribution of these resources within the region varies widely from country to country. For instance, Indonesia meets nearly 60% of its government expenditure with oil revenue, but

it has to import rice. In contrast, Thailand exports rice and other farm products, but it has to import oil and other industrial needs. Although none of the countries in Southeast Asia is a single-commodity economy to the extent that most of the oil-producing countries in the Middle East are, the export of raw materials plays an important role in their economic upkeep.

On balance, however, the region as a whole is plagued by the shortage of two basic needs in a modern economy; namely, food and energy resources. In fact, this is a global phenomenon but, in the case of Southeast Asia, where population grows at an impossibly high rate of about 3% per year and every state seeks to industrialize its economy, the pressure of such shortages is as high and the urge to seek a solution to them as strong as anywhere else.⁴⁰

Naturally, as a potential source of both food and energy, the sea has become very important for the countries of Southeast Asia. Nevertheless, they have a rather modest record in their use of the sea to date. For instance, the entire catch of fishes by these countries is surpassed, although narrowly, by that of China alone. But current trends in world fisheries show that developing countries are becoming increasingly competitive with developed countries. In fact, the countries in this region already have ambitious plans to improve their fisheries and are looking beyond their own coastal waters into the South China Sea. As may be seen from the examples of other enclosed waters, therefore, fishing rights disputes such as that between South Vietnam and Thailand of 1972-1974 are likely to be on the increase in the South China Sea in the future.⁴¹

As for energy resources, the prospects are far more complicated than for fishing rights. Developing countries with the promise of oil in their offshore waters tend to regard it as a possible panacea for their economic difficulties, and readily stake out claims that are usually extravagant. In the case of the South China Sea coastal states, the need for energy resources from the sea is equally pressing on all of them, except perhaps China, which has sufficient supplies inland. But no country has too much in the way of natural resources, much less China, with over 900 million people to care for.

In the present context, however, the most important country to be watched is Vietnam, because once it specifies its offshore claims, it is bound to run into conflict with all the other coastal states. The tension that will arise from such confrontation will be much greater than that from the current Reed Bank oil dispute between China and the Philippines. Thus, as potential causes of tension, the demand for sea resources and the "creeping jurisdiction" noted above are complementary to each other.

Safety of Passage. As a potential cause of tension, the issue of safe passage in the South China Sea is a concern more of noncoastal users of the seaway than of

the coastal states of the Soviet Union, and

Japan, the world's largest consumer of mineral resources. Japan consumes over 10 million tons of raw oil each year. With a national annual demand of 10 million tons, over 70% of Japan's oil is imported from the South China Sea. Over 200 tankers are engaged in the oil embargo of Japan, and the risk of disruptions is high.

The Soviet Union's and commercial shipping companies' use of the Vladivostok-Batavia route, with various sizes of ships flying the flag to friends and allies, is also significant.

The old dictum that the growing Soviet Union will challenge Western shipping is not without basis. Shipping companies below those of the United States are active in the area.

In the case of this global power, the need for naval mobility and four alternate energy sources are all factors in the United States' hegemony over the South China Sea. A common concern of all the coastal states is the end of the status quo.

The use to date of the South China Sea is assumed to be for the benefit of the coastal states, however, whose interests are often in conflict with those of the noncoastal states. On foreign trade routes, which pass through the South China Sea, China's maritime interests are also significant.

From all indications, the issue of safe passage is becoming increasingly important in the People's Republic of China's foreign policy.

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the coastal states themselves. Foremost among the major users are Japan, the Soviet Union, and the United States.

Japan, the world's third largest economy without domestic supply of important mineral resources, relies on maritime commerce to import as much as 600 million tons of raw materials and to export 60 million tons of manufactured goods a year. With a negligible domestic production of crude oil—barely 0.03% of its annual demand—Japan imports approximately 1,800 million barrels every year. Over 70% of it comes from the Middle East and other sources for which the South China Sea is the main shipping route. A break in the shuttle chain of some 200 tankers en route would mean a fatal clot on Japan's "lifeline." The oil embargo of 1973–1974 was an eloquent testimony of Japan's vulnerability to disruptions in its oil lifeline.

The Soviet Union and the United States use the South China Sea for both naval and commercial purposes. On its cruises to and from the Indian Ocean the Vladivostok-based Soviet Pacific Fleet, reported to comprise 750 vessels of various sizes and functions, finds the South China Sea route ideal for showing its flag to friends and foes alike.

The old dictum that trade follows the flag remains as valid as ever. The rapidly growing Soviet merchant marine is also making its presence felt by Japanese and Western shipping industries. Operating as an outsider, the Soviet Far Eastern Shipping Company (Fresco Line) is reportedly charging rates as much as 60% below those of the conference lines.⁴²

In the case of the United States, the fall of South Vietnam in April 1975 has left this global power without a solid base on continental Southeast Asia, making U.S. naval mobility more vital than ever before. The South China Sea is also one of the four alternate east-bound routes used by tankers sailing for the West Coast of the United States from the Persian Gulf. Competing fiercely with each other for hegemony over the seas of the world, the two superpowers nevertheless share a common concern for free passage through the world's major seaways and regard anything endangering such free passage as jeopardizing their interests.

The use to date of the seaways by the South China Sea coastal states themselves is assumed to be more for maritime commerce than for military purposes. China, however, whose economy is for the most part self-contained, has so far depended on foreign trade only marginally. But, judging from its long-range economic plans, which project through the year 2000, we can predict that in the years ahead China's maritime trade will increase at a rapid pace, as will that of the other coastal states.

From all indications, therefore, traffic in the South China Sea is likely to become increasingly dense. Chinese concern on this point may be seen from a report in the *People's Daily* of May 1976 that "every day numerous foreign vessels and

over a hundred aircraft, including those of the enemy, use the Paracel area. Those belonging to the enemy should be watched with vigilance."⁴³

Who is meant by "the enemy" is not made clear. If traffic density in the South China Sea is to cause tension, however, it is more likely to appear in the Spratly area than in the Paracel area. Major routes such as the Palawan Passage and other routes linking Hong Kong, Manila, and Singapore and leading to Northeast Asian ports all use the Spratlies rather than the Paracels.

Containment or Settlement?

In the foregoing discussions, the prospects for a judicial or a negotiated settlement of the dispute have been ruled out. Nor would any outside pressure to enforce settlement terms on the parties be effective. China would regard the issue as no one else's business and reject interference; Vietnam, now the third largest state within the socialist camp, would stay equidistant from both China and the Soviet Union rather than closer to either of its mutually hostile supporters. The chances for a peaceful settlement of the dispute are thus foreclosed, leaving containment as the next best remedy. Since, in terms of power and political influence, China is by far the superior of the two parties, the dispute could more easily be contained through outside leverage on China than on Vietnam. Four such leverages, each with different weight, are conceivable.

Developments in Indochina. As it relates to the Paracel-Spratly dispute, Hanoi's victory over Saigon has placed China in an awkward position. Now China has to argue the same issue against an important ally, which also happens to be an important ally of its own adversary, the Soviet Union. At present, opinions vary over whether the territorial dispute with China will push Vietnam closer to the Soviet Union than to China. But it would require more than a hasty conclusion based on isolated incidents to ascertain the truth. For instance, if the lack of a joint communiqué at Le Duan's visit to Peking in September 1975 had any meaning, his silence in Moscow the next month on the Soviet proposal on collective security in Asia should have meant something equally significant. In reality, however, Hanoi's primary concern is not to manipulate its relations with the two socialist superpowers but to build its postwar economy with aid available, no strings attached, from any sources.⁴⁴ Pressed hard by China on the territorial issue, therefore, Vietnam can easily choose to swing in the Soviet Union's favor, to China's peril.

The Association of Southeast Asian Nations (ASEAN). ASEAN has had little to do with the Paracel-Spratly issue to date. This is not going to be the case in the future, however. One of ASEAN's primary objectives is to promote peace and security in Southeast Asia through political neutrality. Although the organization

still consists only of Indochinese and other Ministers' Conference attended as observer states in the region. Manila in June 1976 as an observer.

For their part, Cambodia opened (all except Indonesia, Singapore—within that soon after its unions with all the ASEAN and the sentence, which may pass as the one ASEAN

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still consists only of its original five members, it will seek to include the three Indochinese and other Southeast Asian states. In fact, at its Seventh Foreign Ministers' Conference held in Jakarta in May 1974, which Cambodia and Laos attended as observers, the members reaffirmed their willingness to invite all states in the region to its future meetings. At the Ninth Conference, held in Manila in June 1976, the newly independent Papua New Guinea was also present as an observer.

For their part, the attitude of Cambodia and Vietnam is also noteworthy. Cambodia opened diplomatic relations with four of the five ASEAN members (all except Indonesia), and with three of them—Malaysia, the Philippines, and Singapore—within a week in the spring of 1976. Even more significant is the fact that soon after its unification in June 1976, Vietnam exchanged good-will missions with all the ASEAN members to negotiate diplomatic relations with them. ASEAN and the socialist Indochina are thus moving toward peaceful coexistence, which may prove to be the beginning of a more cooperative system, such as the one ASEAN upholds in earnest.

At the Seventh Foreign Ministers' Conference of May 1974, the first to be held after the Paracel incident four months before, ASEAN members agreed to set up "effective measures for the peaceful settlement of disputes in the region." China cannot comfort itself with the fact that Vietnam is not a member of ASEAN. On this account, however, ASEAN's involvement in the Paracel-Spratly dispute would be, at best, indirect.

It is the Reed Bank oil controversy between China and the Philippines that, if aggravated, will bring ASEAN into play. The Philippine position on the present dispute may be seen more clearly from its statement that, in the interest of regional security, the Spratlies should under no circumstances be allowed to fall into the hands of any one country.⁴⁵ However, in July 1976, the Philippine national oil company advanced a bold proposal that the Paracels be divided between China and Vietnam and that the entire Spratlies be owned by the Philippines.⁴⁶ With the exception of the claimants themselves, most other countries, interested in the South China Sea would perhaps go even further to say that, for exactly the same reason, no one country should be allowed to own both the Paracels and the Spratlies.

ASEAN came into being in 1967 with high-sounding slogans and has made great strides in its first decade. In recent years, its status has been enhanced by two important events: by the oil crisis of 1973-1974, which has become a global crisis of natural resources, and by the withdrawal of the United States from Vietnam, which has hastened ASEAN's pace toward neutrality. Two examples of ASEAN's endeavors to enhance its identity may be noted with interest. The Sarawak branch of the Malaysian History Society proposes to call the South China Sea "the ASEAN Sea," because more than half of it is enclosed by

ASEAN members. The Philippines plans to build "ASEAN cars" for sale within the region and to run an "ASEAN cruise" for tourists.⁴⁷

ASEAN derives its influence from the economic potential of the states it comprises and it now seeks to style itself as a local version of UN, EEC, and OPEC combined. Without reference to its economic potential, therefore, it is difficult to conceive of ASEAN as an outside leverage for the containment of major disputes in the South China Sea community.

As a supplier of raw materials and as a market for manufactured goods, Southeast Asia is of great importance to industrial nations, Japan in particular. Japanese dependence on Southeast Asia for major resources such as lumber, oil, and tin (to name a few) is substantial. No wonder that 92.7% of the Japanese government's overseas development aid between 1970 and 1974 went to Southeast Asia, most of it for mining and other economy-related fields.⁴⁸ Now East Asia is also Japan's largest market; in 1975, Japanese exports to the United States reached \$11.1 billion, while those to East Asia reached \$12.5 billion, almost half the amount to the ASEAN members.⁴⁹

In excess, however, interdependence communicates economic depression, as is currently happening between Japan and Southeast Asia. ASEAN seeks to avoid this by diversifying its foreign trade relations, particularly with China, Europe, and Oceania on the one hand, and by promoting intraregional exchanges on the other. Reportedly, efforts are being made to exchange Indonesian oil and Thai rice and to produce fertilizer within the region under the so-called ASEAN Fertilizer Plan. A higher level of self-sufficiency in fertilizer, one of the essential needs of the region, is thought to be feasible with ammonia from Indonesian and Malaysian natural gas, phosphate from Philippine copper, and potassium from Thai kalium, with Singapore cooperating with capital and marketing. In fact, a Tennessee Valley Authority study predicts that Southeast Asia can produce 1.8 times as much ammonia in 1980 as in 1975.⁵⁰

However, the economic potential of the ASEAN members has to be seen in regional context, because most of them are beset with such debilitating problems as food, energy, population, race, and even border insurgency. In many parts of the region, the development of infrastructure is lagging, if not lacking entirely. In the case of Indonesia, for instance, only about 1,000 of the nearly 14,000 islands are inhabited and over 6,000 of them are unnamed. It is also a novelty for Malaysia to have to "consult with Thailand on ways to eliminate piracy in the South China Sea and with Indonesia on measures to prevent illegal activities in the Malacca Straits."⁵¹

For the ultimate solution to their problems, the ASEAN members have turned to their natural riches. From the beginning, ASEAN has thus made it completely clear on many occasions that its goal is to build a self-contained regional economy in an environment of political neutrality, a goal which they feel confident of

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reaching in time. Anything that interferes with their access to natural resources or threatens peace and security in the region would instantly arouse strong reactions, and the Paracel-Spratly dispute fits squarely into both situations. Therefore, China is compelled to act much more cautiously should it choose to risk another miniwar as in 1974. Certainly it would be in no way in China's interest to estrange a group of nations in which Japan, the Soviet Union, and the United States are also keenly interested. On the other hand, it may be argued whether a strong ASEAN, useful as an outside leverage on China with respect to the Paracel-Spratly dispute, would be equally advantageous otherwise to these three major powers as well as to other countries interested in Southeast Asia.

The United Nations. At the outbreak of the Paracel incident in January 1974, South Vietnam requested an urgent meeting of the UN Security Council to consider what Saigon called "the blatant violation of territorial sovereignty" of Vietnam by China. The president of the Council responded that, since China as a permanent member of the Council had the veto power, there was no hope for constructive debate or action and that these communications to the Council were aimed only at drawing attention to the situation.⁵² This is a procedural barrier that Vietnam or any other state trying to introduce the Paracel-Spratly issue to the United Nations will find insurmountable. As one of the parties to the dispute, China will certainly foreclose in the Security Council any decision against itself. Furthermore, a statutory barrier exists as well: according to Article 2(7) of its Charter, the United Nations is not authorized to take up matters that are "essentially" the internal affairs of a state. On account of these two barriers, the role of the United Nations as it relates to the present dispute will end before it can even reach the merits of the issue.

Major Powers. Now that the Paracels are firmly under Chinese control, the three major powers—Japan, the Soviet Union, and the United States—are concerned with the fate of the Spratlies. For political reasons, the Soviet Union openly supports the Vietnamese claims, while Japan and the United States prudently assume the attitude of a silent watcher. Although, in the South China Sea, each of them has a different stake in the dispute, they have two important concerns in common: free passage of vessels and development of sea resources.

So far as navigation is concerned, it would not be in their interest for the Spratlies to belong to either claimant alone, much less to the one already in control of the Paracels. By the same token, it would be to their advantage for the dispute to be frozen at its current status rather than to be changed in either party's favor. However, if the situation remains unchanged, the sea boundary delineation would be delayed, which would in turn delay the sea resource development. To the extent that the coastal states may require foreign participation to develop

their sea resources, this would not be in the interest of the three major powers. For them, clearly, a conflict exists between their strategic and their economic interests.

Since the demand for sea resources is growing rapidly everywhere, such a conflict can in time be resolved between the coastal states and the major powers. The least desirable situation for the major powers would be if both the Paracels and the Spratlies fell into the hands of one claimant and if that claimant chose to develop its sea resources without foreign participation. Undoubtedly, this is exactly the kind of situation that China would prepare itself to step into. As reported in the *People's Daily* in early July 1976, with two self-built 10,000-ton marine science vessels (the *Hsiang-yang-hung* No. 5 and No. 11), China has conducted extensive oceanographic research in the Pacific Ocean.⁵³ Thus, in its own way, China has emerged as a competitor with Japan, the Soviet Union, the United States, and a few West European countries in the Pacific. Furthermore, in terms of tonnage alone, these two new vessels signify a great leap forward from the level of China's previous marine science vessels, such as the 2,500-ton *Tung-fang-hung*, launched in 1954, and the 3,000-ton *Shih Chien*, built during the Cultural Revolution of 1965-1968.⁵⁴

Since the situation of the dispute itself is thus subject to different variables, it is not necessary to discuss in detail here the leverage the major powers can exert on China with respect to the Paracel-Spratly case. On the negative side, however, some factors that will limit the impact of such leverage may be considered in general terms. First, a territorial dispute like the present one is not readily open to third-party involvement, unless it really endangers regional or international peace and security. Second, the fact that China itself is also a major power makes this country much less vulnerable to outside pressure than others with lesser influence. Third, with sufficient natural resources inland, China is under no pressure to develop sea resources quickly; its policy is to develop them by itself at its own pace.⁵⁵ Fourth, being ideologically incompatible with Japan and the United States, and politically hostile to the Soviet Union, China is under no obligation to cooperate with them, unless such a policy is dictated by its own interests. Fifth, between and among these four major powers, as many as ten (six bilateral and four trilateral) combinations of alignments are possible, out of which only one trilateral and three bilateral cases exclude any one of them. It may be seen from this that the probability of any two or all three of them turning against any one is basically low. On balance, therefore, major power leverage on China in the present case is not likely to be effective, except under grave conditions.

Conclusion

The South China Sea disputes involve two issues that are basically different from each other—namely, ownership of territory and jurisdiction over resources. The

one is between China and the other coastal states on the margin. The other coastal states have to argue with the major powers. From this large extent, on the one hand, resolving the issue is a bedfellow.

Negotiations to one hand and China on the other hand can begin once the coastal states boundary rules to another. Of course, growing demands for resource development in Vietnam as one of the approaches in its external policy of Thailand and the decade.

In sharp contrast to other coastal states, the longer period of the Spratly dispute is faced with two sides to decide how an shelf boundary is favorable to its own in the name of the obscured in its effort to remain.

In the case of sustained efforts on its own standpoint, doubtful whether the Sea. As a self-stated about the value, negotiate with its stated position needs in the country be as patient with South Korea has China the kind of

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one is between China and Vietnam, with the Philippines edging in as a third party on the margin. The other is, for the most part, between Vietnam and each of the other coastal states. China and Vietnam are the most deeply involved, each having to argue not only against the other but also against almost all the other parties. From this it follows that peace in the South China Sea will depend, to a large extent, on what these two socialist states are prepared to do in the way of resolving the issues and, in turn, on the future relations between these strange bedfellows.

Negotiations to agree on continental shelf boundaries between Vietnam on the one hand and Cambodia, Indonesia, Malaysia, and Thailand on the other will begin once the current United Nations Law of the Sea Conference adopts sea boundary rules to be applied by states situated opposite or adjacent to one another. Of course, that agreement will not be easy to reach, but in the face of growing demands for food and energy the parties cannot endlessly delay sea resource development by delaying boundary delineation. It is also reassuring that Vietnam as one of the principal parties is taking an increasingly realistic approach in its external relations. In sum, therefore, the sea controversy in the Gulf of Thailand and Sunda Shelf is not likely to drag on very far beyond the current decade.

In sharp contrast, the delineation of shelf boundaries between China and the other coastal states, and Vietnam in particular, is likely to remain undecided for a longer period of time, for two reasons. First, China cannot consider the Paracel-Spratly dispute separately from the Senkaku-Tiaoyut'ai dispute with Japan and, faced with two serious issues of a similar nature, it has to think harder and longer to decide how and when to settle them. Second, the Chinese position relative to shelf boundary delineation has been mired in contradiction. The position most favorable to its own interests does not coincide with the one it publicly supports in the name of Third-World interests. So far, this dilemma has been effectively obscured in its carefully guarded statements. China will, therefore, make every effort to remain unspecific on this point as long as it can manage to do so.

In the case of the Yellow and East China Seas, China has flatly ignored the sustained efforts of Japan and South Korea to seek boundary agreement. From its own standpoint, there has been no real need to hasten to do so. But now it is doubtful whether it is going to be able to react in the same way in the South China Sea. As a self-styled advocate of Third-World interests, China has said too much about the value of natural resources in developing countries. The reluctance to negotiate with Southeast Asian states for sea boundaries will be contradictory to its stated position, especially if the resources involved represent the greatest needs in the countries concerned. Certainly, these countries will feel no need to be as patient with China as Japan has been in the interest of its China trade and South Korea has been in the absence of choice. They have no reason to grant China the kind of noncooperator's benefit that it has reaped in Northeast Asia.

The confrontation here, however, is between a big power with all kinds of important natural resources and a group of small states in need of its aid. For instance, the Philippines are trying to challenge Chinese sovereignty over part of the Spratlies on the one hand and seek to continue import of Chinese oil at a reduced price and on a steady basis on the other. As a matter of fact, when China suspended shipment of oil to the Philippines in early April 1976, Manila found itself in a mini-emergency situation and had to seek oil even from Japan. In the case of Thailand, its import of Chinese crude is at times paid in kind with rice. Vietnam has been receiving Chinese oil for over 10 years. China calls such deals with countries in need "a friendship price" or "a friendship trade."⁵⁶ These examples betoken the futility of bilateral effort, whether for sea boundary delineation or for territorial settlement, and show the need for a collective approach. This is exactly where ASEAN finds a mission to fulfill.

ASEAN is building up its competence to handle the affairs of the region. The Philippines will use the influence of ASEAN to protect its Reed Bank oil operations from Chinese intervention. Malaysia will do the same, if its claims conflict with those of China off Sarawak in the future. Oil development will gradually expand seaward off the coasts of Malaysia, the Philippines, and Vietnam. But the situation will become formidably difficult for China should Vietnam decide to join ASEAN. In the long run, the chances for Vietnamese membership in ASEAN cannot be ruled out; in fact, China can improve or even hasten such chances by pressing Vietnam too hard over the territorial issue.

Other occupiers of the Spratlies will not have to be concerned about the immediate future of their occupation, because the Chinese claim to sovereignty over the islands is one thing and expeditions to take them over are quite another. In the Senkaku-Tiaoyut'ai case, China cannot be unaware of what has been happening on the disputed islands in the East China Sea ever since the Sino-Japanese "war of claims" in the early 1970s: Japanese patrols from Okinawa occasionally chase Taiwanese "intruders" haunting the area for flying fish and birds' eggs.

Taken at face value, Chinese claims include the entire South China Sea and all its resources. In fact, maps printed in China customarily place Chinese border lines off the coasts of Malaysia, the Philippines, and Vietnam. With Vietnam, ASEAN, and the three major powers vigilantly watching its every word and deed regarding the South China Sea disputes, however, it is not likely that China will take the initiative to assume control of the Spratlies, unless provoked overtly or a grave situation, such as a war, occurs. Nor will it allow Vietnam or the Philippines to make any further advances, however insidiously. In the final analysis, therefore, their war of nerves and battle of mouths will, under normal circumstances, continue into the 1980s and beyond, with each of them testing the others' patience and trying not to lose face.

Acknowledgment

This is an expanded version of a paper presented at the R. Murrow Center, and presented at a meeting at Keio University in

Notes

¹For the geographical circle, see *Nan-hai Chu-tao Ti-li Ch'ien-t'ung* (ed.), *Wo-kun* (English translation entitled *Research Service*, no. 14, *Chu-tao* [China's South Sea] *de Truong-Sa Selon les Auteurs* [History and Geography of the South China Sea] by Vietnamese on the Paracels (South) Vietnam, *White Paper*, 1975; and Dieter Heinz, *Macclesfield Bank*, Institute of the Paracels, see *Heinz* (the first issue of a planned series), *Sinica*, Peking, since 1971; Parke, Jr., L. O. Emery, *Continental Margin in Southeast Asia*, vol. 55 (1971), p. 723.

²*Nihon Keizai Shinbun*, the announcement was made after minor gas shows from the islands, 10 (January 1977), p. 3.

³For reports on the armed forces, 20 January, p. A1:1:6; 22 January, Soviet Union to the incident, *Post*, 23 January, 1974.

⁴*Hsinhua Weekly*, 18 Feb.

⁵*New York Times*, 8 Dec. 1975; *Asahi Shinbun*, English weekly edition.

⁶*White Paper*, note 1, at

⁷*Foreign Broadcast Information Service*

⁸*FBIS*, vol. 4 (22 Jan.)

⁹*FBIS*, vol. 4 (7 May, 1976)

¹⁰*Peking Review* (26 Sep. 1976, morning edition), p. 1.

¹¹*Yomiuri Shinbun*, 1 Feb. 1976, was also reproduced in

¹²*Mainichi Shinbun*, 1 Feb. 1976, produced in *Newsweek*, 1 Feb. 1976, Lenin's 100th birthday anniversary (including the Provisional

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This is an expanded and revised version of a paper commissioned by the Edward R. Murrow Center, the Fletcher School of Law and Diplomacy, Tufts University, and presented at a meeting of the Joint Oil Policy Project of the Fletcher School and Keio University in Tokyo, Japan, on 30 June, 1976.

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¹For the geographical circumstances of the four South China Sea archipelagoes, see Cheng Tze-yüeh, *Nan-hai Chu-tao Ti-li Chih-lüeh* [The Geography of the South Sea Islands], Shanghai, 1948; Ch'en Tung-kang (ed.), *Wo-kuo ti Nan-hai Chu-tao* [Our Country's South Sea Islands], Peking, 1962 (English translation entitled *Our Country's South China Sea Archipelagoes* in Joint Publications Research Service, no. 14-424, 28 March, 1963), 2nd printing, 1964; Li Hua, *Chung-kuo Nan-hai Chu-tao* [China's South Sea Islands], Hong Kong, 1974; Vo Long Te, *Les Archipels de Hoang-Sa et de Truong-Sa Selon les Anciens Ouvrages Vietnamiens d'Histoire et de Geographie*, Saigon, 1974; *Su Dia* [History and Geography], no. 29, January-March, 1975 (a feature issue of the quarterly in Vietnamese on the Paracel and Spratly Islands), Saigon; Ministry of Foreign Affairs, Republic of (South) Vietnam, *White Paper on the Hoang Sa (Paracel) and Truong Sa (Spratly) Islands*, Saigon, 1975; and Dieter Heinzig, *Disputed Islands in the South China Sea: Paracels-Spratlys-Pratas-Macclesfield Bank*, Institute of Asian Affairs in Hamburg, Wiesbaden, 1976. For the fauna and flora of the Paracels, see *Hai-yang K'e-shüeh Chi-kan* [Studia Marina Sinica], no. 10, August 1975 (the first issue of a planned series on five major surveys conducted under the auspices of Academia Sinica, Peking, since 1955). For the geophysical circumstances of the South China Sea, see M. L. Parke, Jr., L. O. Emery, Raymond Szymankiewicz, and L. M. Reynolds, "Structural Framework of Continental Margin in South China Sea," *The American Association of Petroleum Geologists Bulletin*, vol. 55 (1971), p. 723.

²*Nihon Keizai Shinbun*, Japanese economic daily, 3 August, 1976, morning edition, p. 4. Reportedly, the announcement was made originally by the Office of the Philippine President, but subsequent reports from other sources say that "the wildcat was plugged and abandoned [on] August 10, 1976 after minor gas shows from two zones below 10,000 ft." *Petroleum News: Southeast Asia*, vol. 7, no. 10 (January 1977), p. 37.

³For reports on the armed clash, see the *Washington Post*, 17 January, p. A2:1; 19 January, p. A11:1; 20 January, p. A1:1:6; 21 January, p. A1:4, 1974; and for the reaction of the United States and the Soviet Union to the incident, see the *New York Times*, 22 January, 1974, p. 3:1; and the *Washington Post*, 23 January, 1974, pp. A20:6, A21:1.

⁴*Hsinhua Weekly*, 18 February, 1974, p. 13.

⁵*New York Times*, 8 December, 1974, p. 1:19:1; *Jinmin Chugoku*, Peking monthly in Japanese, March 1975; *Asahi Shinbun*, Japanese daily, 13 May, 1975, morning edition, p. 7; *Ta Kung Pao*, English weekly edition, 23 October, 1975, p. 8; and *People's Daily*, 31 August, 1976, p. 4.

⁶*White Paper*, note 1, above, p. 85.

⁷*Foreign Broadcast Information Service* (FBIS), vol. 4 (31 January, 1974), p. L1.

⁸FBIS, vol. 4 (22 January, 1974), p. P1.

⁹FBIS, vol. 4 (7 May, 1975), p. K1.

¹⁰*Peking Review* (26 September, 1975), p. 6; and *Yomiuri Shinbun*, Japanese daily, 1 February, 1976, morning edition, p. 4.

¹¹*Yomiuri Shinbun*, 1 February, 1976, morning edition, p. 4. The map the Vietnamese dailies used was also reproduced in *White Paper*, note 1, above, p. 32.

¹²*Mainichi Shinbun*, Japanese daily, 2 February, 1976, morning edition, p. 4. The stamp was reproduced in *Newsweek*, 2 August, 1976, p. 14. One of the two 1970 stamps was to commemorate Lenin's 100th birthday and the other to call for a united struggle of the four Indochinese governments (including the Provisional Revolutionary Government in South Vietnam) "against the US im-

- perialists." A full-page article describing the Chinese side of the controversy was published in both *Kwangming Daily* (24 November, 1975, p. 2) and *People's Daily* (25 November, 1975, p. 2), and the English version in *Peking Review* (12 December, 1975), p. 10.
- ¹³*Asahi Shinbun*, 30 March, 1976, morning edition, p. 7; and *Nihon Keizai Shinbun*, 6 June, 1976, morning edition, p. 5.
- ¹⁴*Peking Review* (12 December, 1975), p. 10.
- ¹⁵*Fact Sheet*, no. 2/74, South Vietnamese Embassy, Washington, D.C., 28 January, 1974, p. 2.
- ¹⁶For details of the Chinese and the Vietnamese arguments, see Hungdah Chiu and Choon-ho Park, "Legal Status of the Paracel and Spratly Islands," *Ocean Development and International Law*, vol. 3 (1975), p. 1; and Tao Cheng, "The Dispute Over the South China Sea Islands," *Texas International Law Journal*, vol. 10 (1975), p. 265. See also Keishiro Iriye et al., *Gendai Chugokuno Kokusai Kankei* [The International Relations of Modern China], 1975, p. 167.
- ¹⁷Chiu and Park, note 16, above, p. 11.
- ¹⁸For details of the historical background, see Chiu and Park, note 16, above, p. 3.
- ¹⁹Oppenheim, *International Law*, 8th ed., 1955, vol. 1, p. 576.
- ²⁰*People's Daily*, 12 December, 1975, p. 2; and *White Paper*, note 1, above, pp. 16, 23.
- ²¹Chiu and Park, note 16, above, p. 7.
- ²²Each of these disputes still remains a major political issue between the parties. It may be noted in passing that the Sino-Soviet dispute of March 1969 over the Ussuri River boundary also involves ownership of islands. The Ussuri River system is known to have about 700 midstream islands, out of which the Soviet Union claims some 600; China is reported to disagree (*Asahi Shinbun*, 4 December, 1976, morning edition, p. 4).
- ²³*Third United Nations Conference on the Law of the Sea, Official Records*, vol. 4, pp. 97-98.
- ²⁴John K. Gamble and Dana D. Fischer, *The International Court of Justice: An Analysis of the Failure* (1976), p. 84.
- ²⁵Huber, *Reports of International Arbitral Awards*, vol. 2, The Island of Palmas Arbitration (1928) p. 845.
- ²⁶Food and Agriculture Organization, *South China Sea Fisheries*, FAO (Indo-Pacific Fisheries Council)-UNDP, South China Sea Fisheries Development and Coordinating Programme series, Rome, 1973-; and John C. Marr, *Fishery and Resource Management in Southeast Asia*, Paper 7, Program of International Studies of Fishery Arrangements, Resources for the Future, Inc., Washington, D.C., 1976.
- ²⁷The Showa-maru accident of January 1975 was the most serious one in recent years. The Japanese tanker (237,698 deadweight tons) ran aground in Indonesian territorial waters south of Singapore and spilled more than 1 million gallons of crude oil. It took 10 days to control the spreading slick. For compensation, Indonesia demanded of Japan \$13.5 million, and Malaysia and Singapore somewhat less each. For details, see Senkuttuvan, "The Showa Maru Sails On," *Far Eastern Economic Review* (13 February, 1976) p. 45; *Asahi Shinbun*, 7 February, 1977, morning edition, p. 6; and *Yomiuri Shinbun*, 25 February, 1977, morning edition, p. 5.
- ²⁸Convention on the Pollution of the Marine Environment of the Baltic Sea Area, signed at Helsinki, 22 March, 1974; text reproduced in *International Legal Materials* (ILM), vol. 13 (May 1974), p. 544.
- ²⁹United Nations Environment Programme: Final Act of the Conference on the Protection of the Mediterranean Sea, signed at Barcelona, 16 February, 1976; text reproduced in *ILM*, vol. 15 (March 1976), p. 285.
- ³⁰Agreement Concerning Pollution of the North Sea by Oil, signed at Bonn, 9 June, 1969; text reproduced in *ILM*, vol. 9 (March 1970), p. 359.
- ³¹*Peking Review* (16 June, 1972), p. 6.
- ³²For a detailed description of the oil situation in Cambodia, Hong Kong, Laos, the Philippines, Thailand, and Vietnam, see Murakami, "Tonan Ajiyani okeru Sekyu Keizaino Doko" [Trends of Oil Economy in Southeast Asia], part 1, *Refuransu* [Reference], no. 297, Tokyo, 1975.

³³Murakami, note 32

³⁴Awanohara, "The Eastern Economic R morning edition, p.

³⁵*New York Times*, N

³⁶O'Connell, "Mid-C Law, vol. 45 (1971), I Issues," in *Needs and Alexander* (Kingston,

³⁷For details of the se "Oil Under Troubled Law Journal, vol. 14.

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³⁸Rüster, "Staaten- un Internationales Recht.

³⁹In the Yellow Sea 2 exploration-exploitation (January 1977), a feat Southeast Asia.

⁴⁰Tonan Ajiya Chosak Manual], annual issue

⁴¹*Tonan Ajiya Yoran*;

⁴²For a nine-page featu for articles on Soviet n 46; and *Christian Scie*

⁴³*People's Daily*, 15 N

⁴⁴For the draft of a 25 March, 1977, p. 10-4;

⁴⁵*Tonan Ajiya Yoran*,

⁴⁶*Nihon Keizai Shinbun*

⁴⁷*Asahi Shinbun*, 5 Ma

⁴⁸*Nihon Keizai Shinbun* between Japan and Sc

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⁴⁹*Asahi Shinbun*, 4 Ma

⁵⁰*Yomiuri Shinbun*, 8 F morning edition, p. 6; a

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⁵¹*FBIS*, vol. 4 (21 Aug

⁵²*UN Monthly Chronicle*

⁵³*People's Daily*, 6 Jul,

⁵⁴*Nihon Keizai Shinbun*

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³³Murakami, note 32, above, p. 42.

³⁴Awanohara, "The Rush for Vietnam's Oil," and Chanda, "Hanoi Keeps its Option Open," *Far Eastern Economic Review* (20 February, 1976), p. 36; and *Nihon Keizai Shinbun*, 30 April, 1977, morning edition, p. 1.

³⁵*New York Times*, May 5, 1976, p. 3:1.

³⁶O'Connell, "Mid-Ocean archipelagoes in International Law," *British Yearbook of International Law*, vol. 45 (1971), p. 1; and Kusumaatmadja, "The Legal Regime of Archipelagoes: Problems and Issues," in *Needs and Interests of Developing Countries, 7th Annual Conference Proceedings*, ed. Alexander (Kingston, R.I.: Law of the Sea Institute, University of Rhode Island, 1972), p. 166.

³⁷For details of the seabed controversies in which China is directly involved, see Choon-ho Park, "Oil Under Troubled Waters: The Northeast Asia Sea-Bed Controversy," *Harvard International Law Journal*, vol. 14 (1973), p. 212; "The Sino-Japanese-Korean Sea Resources Controversy and The Hypothesis of A 200-Mile Economic Zone," *Harvard International Law Journal*, vol. 16 (1975), p. 27; and "Marine Resource Conflicts in Northeast Asia," in *Marine Policy and the Coastal Community*, ed. Douglas M. Johnston (London, 1976) p. 215; and Selig Harrison, *China, Oil and Asia: Conflict Ahead?* (New York: Columbia University Press, 1977), chapters IV, VII, VIII, and IX.

³⁸Rüster, "Staaten- und Vertragspraxis zum Festlandssockel im südasiatischen Raum," *Jahrbuch für Internationales Recht*, vol. 17 (1974), p. 225.

³⁹In the Yellow Sea and the East China Sea, foreign oil companies are not seeking extension of exploration-exploitation contracts. For details, see *Petroleum News: Southeast Asia*, vol. 7, no. 10 (January 1977), a feature issue giving current offshore oil activities of 19 countries in Northeast and Southeast Asia.

⁴⁰Tonan Ajiya Chosakai [Southeast Asia Research Council], *Tonan Ajiya Yorān* [Southeast Asia Manual], annual issues of recent years.

⁴¹*Tonan Ajiya Yorān*, 1975, p. 5:47.

⁴²For a nine-page feature article on Soviet naval activities, see *Spiegel* (5 January, 1976), p. 54; and for articles on Soviet merchant marines, see *Far Eastern Economic Review* (13 February, 1976), p. 46; and *Christian Science Monitor*, 16 March, 1976, p. 16.

⁴³*People's Daily*, 15 May, 1976, p. 6.

⁴⁴For the draft of a 25-article guidelines on foreign investment, see *Asian Wall Street Journal*, 14 March, 1977, p. 10:4; and for comments on it, see the *New York Times*, 19 March, 1977, p. A16:1.

⁴⁵*Tonan Ajiya Yorān*, 1975, p. 9:9.

⁴⁶*Nihon Keizai Shinbun*, 25 July, 1976, morning edition, p. 4.

⁴⁷*Asahi Shinbun*, 5 May, 1976, morning edition, p. 6.

⁴⁸*Nihon Keizai Shinbun*, 7 July, 1976, morning edition, p. 3. For the political and economic relations between Japan and Southeast Asia, see Raul S. Manglapus, *Japan in Southeast Asia: Collision Course* (New York: Carnegie Endowment for International Peace, 1976); and Bernard K. Gordon, "Southeast Asia in US Foreign Policy: Toward Zero-Based Planning," Twenty-ninth Annual Meeting, Association of Asian Studies, New York, 25-27 March, 1977. For the oil relations between Indonesia and Japan, see Robert F. Ichord, *Energy Policies of the World: Indonesia* (Newark, Del.: Center for the Study of Marine Policy, University of Delaware, 1976).

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⁵⁰*Yomiuri Shinbun*, 8 February, 1976, morning edition, p. 9; *Nihon Keizai Shinbun*, 21 June, 1976, morning edition, p. 6; and Paul J. Stangel, "A Suggested Strategy for the Development of a Nitrogen and Phosphate Fertilizer Industry in Indonesia" (Jakarta, USAID/TVA, 1974).

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⁵³*People's Daily*, 6 July, 1976, p. 1.

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⁵⁵Choon-ho Park and Jerome A. Cohen, "The Politics of China's Oil Weapon," *Foreign Policy*, no. 20 (Fall 1975), p. 34.

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