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# THE PARACELS: THE 'OTHER' SOUTH CHINA SEA DISPUTE

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## ABSTRACT

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The Spratlys is not the only disputed group of reefs and islands in the South China Sea. Sovereignty to the Paracel Islands, Scarborough Shoal, and Pratas Reef and Island is also disputed. The dispute over the Paracels is not as complex as the Spratly dispute since there are only two parties, China and Vietnam (and, technically, Taiwan). But the dispute over the Paracels has a dramatic history, with an Annamese claim in 1816, rival Chinese, Franco-Annamese and Japanese-Taiwanese claims between 1909 and 1951, simultaneous Japanese-Taiwanese and Franco-Annamese occupation 1938-45, a Sino-French incident in 1947, division of the group between ROC forces (Woody Island and the Amphitrite Group) and Franco-Vietnamese (Pattle Island and the Crescent Group) 1947-50, occupation of the Amphitrite Group by the PRC 1956, an invasion by PRC forces of islands held by South Vietnam in 1974, and later the construction of PRC base facilities. The paper goes through the contemporary history of the Paracels dispute, on the basis of available literature and research in French and British archives. Emphasis is on a) how the economic and strategic importance of the Paracels have been estimated, b) the role of the Paracels dispute in Sino-Vietnamese relations, and c) how the dispute over the Paracels is – or could be – related to other sovereignty disputes and maritime delimitation in the South China Sea.

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## INTRODUCTION

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In November 1999, the member states of ASEAN agreed on a proposal for a ‘Code of Conduct’ in the South China Sea, to be negotiated with China. The main purpose was conflict prevention. All states should agree to abstain from occupying additional rocks or reefs, and all parties should abstain from resorting to violence. One of the problems that had to be resolved by the ASEAN countries before agreeing on the proposal was to define the area concerned. In the first draft, the term “the disputed area” was used. Most observers understood this to mean the vast Spratly area in the southern part of the South China Sea, where five-six states (Brunei, China, [Taiwan], Malaysia, the Philippines and Vietnam) claim sovereignty to all or part of a great many scattered islands, rocks and reefs.<sup>1</sup> Vietnam, however, challenged this interpretation, and insisted that the Paracel island group, which is situated far north of the Spratlys, at roughly equal distance from Central Vietnam and the Chinese Hainan Island, should be included. Although the other ASEAN states had no particular interest in the Paracel group, which is disputed only between Vietnam and China,<sup>2</sup> they accepted the Vietnamese view and included the Paracels in the proposal presented to the PRC. This became one of the stumbling blocks in the talks between the ASEAN and China, which despite at least four rounds of negotiations have not yet resulted in any agreement.

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<sup>1</sup> Taiwan is put in brackets partly in order not to state any opinion about its legal status, and partly because the sovereignty claims of the Republic of China (ROC) and the People’s Republic of China (PRC) in the Spratlys should probably be considered as one and the same legal claim, on behalf of ‘China’. The government in Taipei has not taken any steps to reformulate the Chinese claim of Chiang Kai-shek’s government into a ‘Taiwanese’ claim.

<sup>2</sup> To the extent that the Republic of China (Taiwan) still considers itself to represent all of China, it also maintains a claim to the Paracels on behalf of China as a nation.

The above shows that in order to understand the disputes in the South China Sea, it is important not to focus uniquely on the Spratlys, but to take the 'other disputes' in the South China Sea into consideration as well. In addition to the Paracel dispute, there is also a dispute between the Philippines and China (the PRC and Taiwan) over Scarborough Shoal (west of Luzon), and a dispute between the PRC and Taiwan over Pratas Island and Reef (southeast of Hong Kong and southwest of Taiwan).<sup>3</sup>

These disputes are important because they may block the way to further improvement of Sino-Vietnamese and Sino-Philippines relations, and because it will be difficult to approach a resolution of the dispute over the Spratlys without first – or at the same time – discussing these other disputes. Here focus will be on the Paracels.

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## GEOGRAPHY

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The Paracels are located between 15° 46' and 17° 09' North and between 111° 11' and 112° 54' East, roughly at the same distance from the coast of Central Vietnam and the southern coast of Hainan (150 nautical miles). The archipelago consists of two main subgroups. In the east is the Amphitrite group with West Sand, Tree Island, Middle Island, South Island, South Sand, and Woody Island. Lincoln Island is situated somewhat further east. In the west is the Crescent group with Pattle, Money, Robert, Drummond, and Duncan islands, with Vuladdore Reef, Discovery Reef and Passu Keah Reef in their southern vicinity. Outside of the two main subgroups is North Reef in the northwest, Triton Island in the southwest and Bombay Reef in the southeast. All of these features do of course have other names in Chinese and Vietnamese.<sup>4</sup> The Vietnamese call the Paracels *Hoàng Sa* and the Chinese call them *Xisha* (West Sand). Woody Island, the largest island in the group, is about 1.8 kms long and 1.1-1.2 kms wide.<sup>5</sup>

All the islands are tiny and the monsoon season is rough, so they never seem to have been permanently inhabited. However, fishermen – both from Hainan and Vietnam – used to stay there for certain periods every year. Today Chinese fishermen and military troops, and occasionally a research team, form the main human presence. China has built an airstrip and other military installations on Woody Island, and apparently a signal intelligence post on a reef nearby. Civilian authorities in Hainan harbour a plan to transform Woody Island into a tourist resort.

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<sup>3</sup> Macclesfield Bank (east of the Paracels) is also often listed by the PRC and Taiwan among the features they claim in the South China Sea, but since it does not rise above the water, it cannot actually be the object of a sovereignty claim. Submerged banks are part of the seabed and the country on whose continental shelf they are situated has sovereign rights to exploit their resources and a concomitant obligation to manage them responsibly and protect the environment.

<sup>4</sup> Only English names for geographic features are used in this paper, in order to remain neutral with regard to the sovereignty disputes between the local states.

<sup>5</sup> Éric Denécé. *Géostratégie de la mer de Chine méridionale et Des bassins maritimes adjacents*. Paris: L'Harmattan, 1999, p. 61. Greg Austin. *China's Ocean Frontier. International Law, Military Force and National Development*. St. Leonards: Allen & Unwin, 1998, p. 98.

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## HISTORY

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The Paracels have been known by Chinese and Southeast Asian navigators from the earliest days of sea borne trade as a danger and an area that all ships had to stay clear of.<sup>6</sup> On most maps from the 16<sup>th</sup> to 18<sup>th</sup> centuries, the Paracels figure prominently, with a wildly exaggerated size. This was because most of the ships at the time followed the old established trading route northwards along the coast of Vietnam and turning east only when Hainan was in sight, i. e., well north of North Reef. There are many tales of ships that came out of course in a storm and shipwrecked in the Paracels. The same maps that feature the Paracels prominently often fail to display any of the Spratlys, which in fact cover a much larger area than the Paracels. This is probably because the ships whose observations formed the basis for the European maps rarely ventured into the central part of the South China Sea or tried to navigate across the sea north of Borneo. It seems that the main shipping route between the Melaka Strait and Luzon went north along the Vietnamese coast, then east at the approach of Hainan and south from the Chinese coast or Taiwan to Manila Bay or other ports. The Spratly area was far away from the north-west 'maritime highway' along the western side of the South China Sea, and was therefore much less known than the Paracels. But the reason why the Paracels figured so prominently on the old maps was not that they were a source of value. The reason was that they were dangerous. In the pre-modern period, only local fishermen, whose geographic knowledge has not been preserved in atlases and libraries, are likely to have known how to approach the Paracels safely in order to collect turtles and feathers or to loot shipwrecks.

In its period of maritime expansion (1810s-30s), the Vietnamese Nguyen dynasty claimed a monopoly on the collection of goods from shipwrecks in the Paracels. A Vietnamese map from 1838 also seems to indicate that the Nguyen court was influenced by the appearance of the Paracels on European maps as a long fringe of islands off the Vietnamese coast. In the period of French colonisation, more accurate surveys were made, and the maps of the South China Sea started to resemble the ones we have today. In the 1890s, the French discussed plans to erect a lighthouse in the Paracels, but the plans did not come to fruition for lack of funding. The Qing dynasty in China had also occasionally shown an interest in the Paracels, but in 1898, the Governor of Guangzhou (Canton) claimed, in response to a request for indemnity for the plundering of a German and a Japanese shipwreck by Chinese subjects, that the Paracels did not belong to any state. The Qing dynasty would soon change its mind, however, and in 1902 and 1908 (or 1909) sent expeditions to the islands and formally claimed them on behalf of the Chinese empire. Some mandarins at the court in Hue, the capital of Annam (Central Vietnam) wanted to counter the Chinese move by reasserting the claims made by the Nguyen dynasty in the past, but France seems to have decided to turn its eye away from the Chinese actions in order not to stir up more anti-French feelings.

In the 1920s, Britain and Japan both tended to consider the Paracels to be Chinese, but the Guangzhou government did little to pursue Chinese interests, although a statement was made in 1921 to the effect that the Paracels were to be administered from Hainan.<sup>7</sup> A Chinese mission was also sent to the islands in 1928. It took until 1931 before France issued its first statement in pursuance of Annam's former claim, and another seven years before France proceeded to occupy the

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<sup>6</sup> A short historical introduction to the disputes in the South China Sea, within a context of changing regional power relations, can be found in Stein Tønnesson. "An international history of the dispute in the South China Sea". *East Asia Institute Working Paper*, no. 71, Singapore: 16 March 2001.

<sup>7</sup> Note pour Monsieur le Jurisconsulte du Département (M. Naggiar) a.s. de la souveraineté sur les Iles Paracels, 6.5.30 (archivée le 7.6.30), page 74, dos. 215 sous-dossier Chine, série Asie 1944-55, Ministère des Affaires Étrangères (MAE), Paris.

islands. The motive then was fear of Japan, who in 1936 had invaded much of China. The French wanted to forestall a Japanese occupation of the Paracels, but in 1938, when France sent an occupation force to the Paracels, they found that there was already a Japanese military presence.<sup>8</sup> From then until 1945 Franco-Vietnamese and Japanese-Taiwanese garrisons lived side by side in Woody Island, while the French officers and their Vietnamese soldiers seem to have kept Pattle Island to themselves. Franco-Japanese co-habitation lasted until the Japanese decided to dismantle the French colonial regime in Indochina in March 1945.

After the Second World War, Chinese nationalist troops occupied northern Indochina (Vietnam and Laos north of the 16<sup>th</sup> parallel) for the purpose of disarming the Japanese and decided to tolerate the existence of the new Democratic Republic of Vietnam (DRV), which had been proclaimed by Ho Chi Minh on 2 September 1945. French forces only returned to northern Indochina in March 1946, after a Franco-Chinese agreement had been signed on 28 February. During the subsequent months, the Chinese occupation forces gradually withdrew from Vietnam and Laos. It was part of the French plan of reoccupation to also take possession of the Paracels, but the French High Commissioner in Saigon postponed sending an expedition there since his resources were limited and were needed for the expected confrontation with the newly established army of the Democratic Republic of Vietnam. The French delay gave China a chance to get first to the prey. A Chinese garrison was established in Woody Island in December 1946 or early January 1947,<sup>9</sup> while a French party arrived only later in the month (this was just after war had broken out between France and the Democratic Republic of Vietnam on 19 December). The French failed to persuade the Chinese commander to leave the island, and then instead occupied the second-largest island (Pattle in the western Crescent group). A diplomatic crisis ensued between France and China. No solution was found, and the result was that the eastern Paracels became a Chinese-occupied area, while Franco-Vietnamese forces controlled the western Paracels. A similar division had existed in the 1920s-30s with Chinese interests focussing on the Amphitrite group and Franco-Vietnamese on the Crescent group.<sup>10</sup> This remained the situation until 1974. During this period, the French-supported State of Vietnam and the US-supported Republic of Vietnam officially and repeatedly claimed sovereignty to the whole of the Paracels (*Hoàng Sa*), whereas some representatives of the Democratic Republic of Vietnam expressed support to the view that the Paracels were under Chinese sovereignty. Both the Republic of China (Taiwan) and the People's Republic of China maintained, through many official statements, a Chinese claim to all of the Paracels (*Hsisha* or *Xisha*).

In January 1974, at a time of Sino-American rapprochement, and a year after the Paris peace agreement on Vietnam, Chinese forces moved into the western part of the Paracels, planting flags on several islands.<sup>11</sup> On 19 January Chinese regular forces based on Woody Island intervened in a fight between Chinese militia and South Vietnamese forces in the small Duncan Island of the Crescent group. Fighting went on for two days, and other islands held by the South Vietnamese were bombed. After having lost Duncan Island on 20 January, the South Vietnamese forces fled and sailed south where they established the first permanent Vietnamese occupation of islands in the Spratly group.

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<sup>8</sup> R.G. Howe (FO) to the Secretary of the Admiralty, no. 1526, 11.7.38 and no. 1560, 14.7.38, ADM 1/9951, PRO.

<sup>9</sup> Marwyn Samuels says the Chinese flotilla that occupied Woody Island left Guangzhou on 9 December 1946. It is therefore normal to date the occupation December 1946. *Contest for the South China Sea*, p. 76. The French, however, did not detect any Chinese presence until 3 January 1947.

<sup>10</sup> Marwyn Samuels. *Contest for the South China Sea*. New York: Methuen, 1982, pp. 62-63, 67.

<sup>11</sup> Samuels. *Contest for the South China Sea*, pp. 1, 98-101.

There is little doubt that North Vietnam deeply resented the Chinese move, although it could not yet openly protest actions by one of its two main allies in the war against the USA and South Vietnam.<sup>12</sup> However, after the fall of the Saigon regime, when all of Vietnam was united into the Socialist Republic of Vietnam (SRV), the new government upheld South Vietnam's former claims, both to the Spratlys and the Paracels, and sought to forget statements made by DRV officials in the past in support of the Chinese claim.

Since 1974, China has maintained control of the whole of the Paracels, while Vietnam has continued to claim the island group in numerous official statements. There have been no further incidents in the Paracels, but China has built an airstrip and military barracks on Woody Island. According to the French security analyst Éric Denécé, China maintains around 1,000 troops in the Paracels. A port has been constructed on Triton Island (the one closest to Vietnam), and the airstrip on Woody Island measures 2.6 kms. This allows China to keep some twenty F-8 or H-6 fighter aircraft there.<sup>13</sup> In March 1998 it was also announced that China had built a signal intelligence listening post on a nearby islet. In the same year, the provincial authorities in Hainan, who are administratively responsible for the Paracels within the Chinese system, made known a plan to establish a tourist site on Woody Island, with the apparent intention of using the military barracks as a hotel. The initiative does not seem to have aroused much enthusiasm within the People's Liberation Army, and therefore has not apparently been followed up.

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#### ECONOMIC AND STRATEGIC IMPORTANCE

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Although the Paracels mainly represented a danger to shipping in earlier times, they also served as a source of precious items such as tortoise shells and feathers, and as a fishing ground. The seabed, however, is rocky so today's larger fishing vessels tend to avoid the area in order to not get their fishing gear destroyed. From the 1920s onwards, some Sino-Japanese companies hoped to profit from the extraction of guano (bird dung) from the Paracels, but their expectations were never fulfilled. The economic value of the Paracels must overall be said to be limited. There are no serious expectations of finding oil and gas in the Paracels or their immediate vicinity, where the waters are very deep.

Expectations of economic opportunities have often, however, been used as a smokescreen for military interest. The Japanese Navy no doubt stood behind the companies who extracted guano in the 1920s and 1930s. As mentioned, it was the rivalry between Japan and the European powers that pushed the Paracels into the focus of military planning in the late 1930s, and this is why a Franco-Vietnamese military garrison was established there in 1938. A French report written in the previous year stated that the islands had no commercial value, but could serve as a springboard for Japanese southward expansion. The proximity of the Paracels to the coast of Annam made a Japanese presence intolerable, the study concluded. It was therefore proposed to set up a lighthouse, and to study the question of permanently occupying the islands.<sup>14</sup> This shows that the Paracels had a real strategic importance as a source of threat to French Indochina (today's Vietnam). It was dangerous

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<sup>12</sup> Hanoi's proclamation, which did not take sides, but opted for negotiations, is quoted in Samuels, p. 106.

<sup>13</sup> Éric Denécé. *Géostratégie de la mer de Chine méridionale et Des bassins maritimes adjacents*. Paris: L'Harmattan, 1999, p. 321.

<sup>14</sup> Le Vice-Amiral Esteva, Commandant en Chef FNEO, au Ministre de la Marine, no. 19 EM2, signé à bord Lamotte-Picquet, 16.3.37, 1BB4 74, Service Historique de la Marine, Paris.



to allow the island group to be controlled by a hostile power, and the French were willing to spend resources to prevent this from happening. The French occupation of the Paracels pleased the British since they had found the group to be indefensible and therefore not worth putting money in.<sup>15</sup> The problem with defending the Paracels is partly that it is difficult to land ship from the sea when the monsoon comes in from the northeast, and partly that the waters around are so deep that they cannot be mined. Submarines can easily approach the archipelago undetected and launch devastating attacks. The Paracels thus have value only within an offensive strategy, not a defensive one.

Towards the end of the Pacific War in 1944-45, the Pentagon made a plan to invade Hainan and Tonkin (north Vietnam). The plan was never implemented, but it is interesting to note that the planners did not seem to consider the Japanese installations in the Paracels to form a threat to the US invasion force, although it would have to approach Hainan and Tonkin on sailing routes not far from the Paracels.<sup>16</sup> In the hands of a stronger power, the Paracels may form part of a threat to Vietnam, but when controlled by an inferior power they do not seem to represent any serious threat to the naval forces of a stronger power. In the 1950s and early 1960s, during the Cold War, the British once again studied the strategic value of the Paracel and Spratly islands, and concluded that it was negligible. Britain saw no need to take action to ensure friendly control of any of the two island groups despite the fact that the Paracels were located close to the main shipping route between Singapore and Hong Kong. The British just stated in internal memos that they would prefer a Franco-Vietnamese to a communist Chinese occupation.<sup>17</sup>

In 1974 the USA took no action to prevent the western Paracels from falling into the hands of the PRC, although the South Vietnamese garrison that was driven out included an American officer. The main explanation is probably that this was a period of Sino-American rapprochement and American withdrawal from Vietnam. However, it also indicates that the USA considered the strategic importance of the Paracels to be limited.

From Hanoi's viewpoint, it is of course worrisome to have a Chinese airstrip and advanced signal intelligence installation so close to the coast of Vietnam. Aircraft based on Woody Island may reach a wide range of targets along the Vietnamese coast and also in the Spratlys. Still, the distance to the Spratlys from the airport on Woody Island is longer than from the nearest airports on the coast of southern Vietnam. An effective Vietnamese air force will represent a serious threat to the communication lines between China and its forces operating in the Spratly area, and the small airstrip on Woody Island will play only a modest role in reducing that threat. In case of a war in the South China Sea, China would therefore probably need to destroy the small Vietnamese navy and air force already at the outset. The strategic value of the Paracels would then depend on the role they could play in a Chinese preventive attack on Vietnamese navy and air force. This means that, from a Vietnamese perspective, a demilitarisation of the Paracels must be highly desirable.

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<sup>15</sup> Minute by C.G. Jarrett for the Head of Military Branch, 1.3.39, ADM 1/9951, PRO.

<sup>16</sup> Joint Logistics Plans Committee Directive "Indo China as a Substitute for the Burma Supply Route", J.L.F.C. 28/3/D, 21.10.44 and other documents in CCS 381 Hainan Island (10-30-44), Record Group 218, United States National Archives (USNA), Suitland, Maryland. The latest plan included a map of distances from Hainan to imported targets that could be reached by air. On this map, which included the whole South China Sea, the Paracel and Spratly Islands did not appear. See also Stein Tønnesson, *The Vietnamese Revolution of 1945*, London: SAGE, 1991, pp. 168-170.

<sup>17</sup> Letter from John H. Lodge to Sir William Slim, 17 November 1949, and minute by R.S. Milward, 30.12.49, FO 371/76038, PRO.

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## THE TWO SOVEREIGNTY CLAIMS

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Since the economic importance of the Paracels is so limited, and their strategic value can only be realised in an offensive strategy, the main driving force behind the sovereignty dispute is probably *national pride*. In addition, the Chinese and Vietnamese governments must concern themselves with the fact that the Paracels may be used as a basis for making extensive claims to a continental shelf and economic zone. National pride and the desire for maritime space keep the sovereignty dispute alive and incite the parties to build exaggerated views of the islands' significance. In 1996, China illegitimately drew a so-called 'archipelagic baseline' around the whole of the Paracels, thus subsuming the waters within the group as internal Chinese waters. The main purpose was probably to make it possible to claim an extensive continental shelf and economic zone measured from baselines around the Paracels.

What are the main strengths and weaknesses of the rival sovereignty claims? Archaeological findings and ancient historical sources are often evoked by both sides in support of their view that the islands have belonged to them for hundreds, if not thousands of centuries. These arguments will not be repeated here. They are hardly valid in modern international law. The fact that subjects of the Chinese or Vietnamese dynasties visited the Paracels or harvested feathers or turtles there in ancient times does not give ground for a sovereignty claim today. The fact that geographers knew of and described the islands as a danger to shipping also does not help to establish a sovereignty claim. It must furthermore be remembered that for long periods historically much of today's Vietnam was either a part of China (until 1000 AD) or had a status as a tributary state to China (until the Franco-Chinese treaty of 1887). This makes it even more complicated to use ancient historical evidence to decide whether the islands are Chinese or Vietnamese. The most valid arguments must be found in modern history.

Vietnam may advance the following arguments:<sup>18</sup>

- Nguyen emperor Gia Long officially claimed the Paracels in 1816, and emperor Minh Mang sent an expedition to set up a marker and build a pagoda there in 1835.<sup>19</sup>
- A Qing dynasty official, the "Vice-Roy of Canton", allegedly stated to a British official in 1898 that China carried no responsibility in connection with the looting of two ships who had stranded in the Paracels, since the islands had been abandoned and belonged neither to China nor to Annam, and no police authority existed there. The statement may be claimed to represent an estoppel of previous Chinese claims, if there were any.<sup>20</sup>

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<sup>18</sup> The list of arguments here is not exhaustive, and it must be emphasised that the present author has no legal training. Two books that treat the question exhaustively and end up with the view that the Vietnamese claim is superior are Monique Chemillier-Gendreau's book (cited above) and an exhaustive, well-researched doctoral thesis by the Vietnamese legal scholar Nguyen Hong Thao. *Le Vietnam face aux problèmes de l'extension maritime dans la mer de Chine méridionale*. Villeneuve d'Ascq: Presses Universitaires du Septentrion, 1998 (2 volumes). The Australian international affairs analyst Greg Austin reaches the opposite conclusion in *China's Ocean Frontier*, pp. 98-130 (the chapter on the Paracels).

<sup>19</sup> Marwyn Samuels. *Contest for the South China Sea*. New York: Methuen, 1982, p. 61.

<sup>20</sup> Le Gouverneur Général de l'Indochine (Pasquier) à Ministre des Colonies, 20 mars 1930, annexe 5 dans Monique Chemillier-Gendreau. *La souveraineté sur les archipels Paracels et Spratleys*. Paris: l'Harmattan, 1996, pp. 157-162. (An English translation is now available: *Sovereignty over the Paracel and Spratly Islands*. The Hague: Kluwer Law International, 2000.)



- After the Qing dynasty sent expeditions to the Paracels in 1902 and 1908 or 1909, and stated a claim to the Paracels, subsequent Chinese governments did little to follow it up through effective utilisation or occupation.<sup>21</sup>
- The French protectorate Annam revived the Nguyen dynasty's claim in 1931, and permanently occupied the islands from 1938 to 1945 (alongside a Japanese presence).
- Franco-Vietnamese forces re-established their presence in a part of the Paracels in 1947, and at each stage of Vietnam's road to independence from colonial rule, France and Vietnam agreed that the Paracels were part of the Vietnamese territory.<sup>22</sup> A statement to the effect that the Paracels were under Vietnamese sovereignty was made by the Vietnamese delegation at the San Francisco peace conference in 1950. (At the conference, Japan surrendered its claim to sovereignty in Taiwan, the Paracels, Spratlys and other South China Sea islands, but the peace treaty did not say to whom Japan surrendered this claim.)
- Between 1950 and 1955 Vietnam continuously occupied the western part of the Paracels, while no Mainland Chinese troops replaced the nationalist Chinese garrison after it had been withdrawn in 1950. Only in December 1955 did the PRC establish a regular military presence in the eastern Paracels.<sup>23</sup>
- The PRC took the western Paracels in January 1974 by force. This renders the acquisition invalid because of the prohibition against the use of force in international law.
- Since the unification of Vietnam in 1975-76, the Socialist Republic of Vietnam has consistently upheld the Republic of Vietnam's claim to the Paracels through numerous official statements.

China could possibly use the following arguments:

- In the 19<sup>th</sup> and 20<sup>th</sup> centuries, fishermen operating from Hainan inhabited the Paracels for major parts of the year. They were Chinese subjects. The visits by Vietnamese fishermen were much less frequent.
- When the Qing dynasty sent expeditions to the Paracels in 1902 and 1908 or 1909, hoisting the Chinese flag, and the Guangdong government officially stated the island group to be under Chinese sovereignty, more than half a century passed since any state had laid claim to it. The Vietnamese Nguyen dynasty did not follow up its former claim through effective

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<sup>21</sup> Samuels. *Contest for the South China Sea*, pp. 53-54. According to Samuels, the expedition took place in 1908, while French sources place it in 1909.

<sup>22</sup> By contrast to the Spratlys. Fiche sur la situation juridique des Paracels, Forces Maritimes d'Extrême Orient, 2ème Bureau, Saigon 16.9.54, dos. P01, UU-Sup 2, SHM.

<sup>23</sup> Note d'Information, signée par le Vice-Amiral Jozan, Commandant les Forces Maritimes d'Extrême-Orient, No. 3/EM2, Saigon 7.1.56, dos. "Activités des forces maritimes...", UU-Sup. 32, SHM. Briefing prepared for internal use in the Foreign Office, 1956, FC1082/4, FO 371/120937, PRO.

utilisation or occupation, not even through official statements. That claim may therefore be said to have lapsed. Also, France did not issue a protest against the Chinese claim.<sup>24</sup>

- In the 1920s, when Japanese companies were established to extract guano in the Paracels, concessions were sought from both French and Chinese (Guangdong) authorities. The French refused to issue any concessions and did not state that the islands were under French sovereignty, so operations were based on Chinese concessions.<sup>25</sup>
- In the interwar period, Britain considered the Paracels to be Chinese.<sup>26</sup>
- When a French garrison was established in the Paracels in 1938, France diplomatically informed China that this was only meant to counter Japanese expansionism and would in no way prejudice the sovereignty dispute between China and France (on behalf of Annam).<sup>27</sup>
- In early 1947, Chinese naval forces established a garrison on Woody Island, the largest of the Paracels. Later in the month, when French naval forces arrived and tried to persuade the Chinese to leave, the Chinese commander refused. The French then left Woody Island in the Amphitrite Group and established counter-presence on Pattle Island in the Crescent Group. A diplomatic crisis ensued during which France proposed to send the dispute to international arbitration. French diplomatic sources reveal that France was also contemplating in this connection the possibility of recognising Chinese sovereignty to the Paracels in return for a Chinese concession in another area.<sup>28</sup>
- After the Chinese nationalist troops left the Paracels in 1950, France did not proceed to occupy the eastern Paracels, and fishermen from the PRC, using the PRC flag, continued to

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<sup>24</sup> The French Consul in Guangzhou recommended to the French Foreign Minister that France turn its eyes the other way and refrain from issuing a protest, since “Une intervention de notre part serait susceptible de faire surgir un nouveau mouvement de chauvinisme qui nous ferait peut être plus de mal que ne vaudrait la possession reconnue des îles Paracels.” Beauvais (Canton) à MAE No. 92, 4.5.09, dos. 312, sous-série Chine, série Asie 1918-1929, Ministère des Affaires Étrangères, Paris. (Also printed as annexe 13 in Chemillier-Gendreau. *La souveraineté sur les archipels...*, pp. 196-197.)

<sup>25</sup> Marwyn Samuels. *Contest for the South China Sea*. New York: Methuen, 1982, pp. 55ff. Steven Kuan-Tsyh Yu. “Who Owns the Paracels and Spratlys?” in Hill, R. D., Norman G. Owen and E.V. Roberts (eds.). *Fishing in Troubled Waters. Proceedings of an Academic Conference on Territorial Claims in the South China Sea*. Hong Kong: University of Hong Kong, Centre of Asian Studies Occasional Papers and Monographs no. 97, 1991, p. 51.

<sup>26</sup> “His Majesty’s Government have regarded China as having the best claim to the Paracel Islands.” Minute by C.G. Jarrett for the Head of Military Branch, 1.3.39, ADM 1/9951, Public Record Office (London).

<sup>27</sup> “en Juillet 1938 le Gouvernement français avait averti le Gouvernement chinois de l’envoi d’un détachement dans l’archipel en précisant que cette opération n’avait pas pour objet d’affecter les positions juridiques de la Chine et de la France vis-à-vis de ces îles ou d’être préjudiciable à un règlement satisfaisant de la question. Par un mémorandum remis au Département le 18 Juillet de la même année, l’Ambassade de Chine avait pris note au nom de son Gouvernement de ces indications, se bornant à réserver les droits de souveraineté de son pays.” Ministre des Affaires Étrangères (signé Chauvel) à M. Meyrier, Ambassadeur de France à Nankin, no. 87 à 90, 24 janvier 1947, marqué PB/LD, c.a.d. conçu par Philippe Baudet, dossier 214, sous-série Chine, fonds Asie-Océanie 1944–1955, Ministère des Affaires Étrangères (Paris).

<sup>28</sup> “...il convient de rappeler que sur ce dernier terrain notre position a toujours été considérée comme assez incertaine”, a French Foreign Ministry study said. It emphasised that Chinese authorities had manifested their claim to the Paracels on several occasions between 1909 and 1931 while France had not made any representations concerning Annam’s claim before 1931. Note pour le Secrétaire Général a.s. Iles Paracels, MAE Asie-Océanie, marquée RB/MP, 18.3.47, dos. 215, s/s. Chine, série Asie-Océanie 1944-1955, MAE.

inhabit the islands during much of the year until a proper PRC garrison was established in 1955-56.

- Officials of the Democratic Republic of Vietnam (DRV, North Vietnam) on several occasions issued statements in support of the PRC claim to the Paracel group, which was considered by all the socialist countries to belong to China. So did the official press of North Vietnam. These statements probably amount to an estoppel of any previous Vietnamese claim to the Paracels.<sup>29</sup> Today's Socialist Republic of Vietnam is a successor state to the DRV and the Provisional Revolutionary Government of South Vietnam (PRG), not to the Republic of Vietnam, and is therefore legally bound by statements made by officials of the DRV government during the 1950s and 1960s. The sovereignty claims of the Republic of Vietnam lapsed with the fall of that regime in 1975.
- When the PRC forces ousted the South Vietnamese forces from the western Paracels in 1974, the purpose was to reinstate the order from December 1946, when Chinese sovereignty to the whole of the Paracels was upheld through occupation of Woody Island (the largest of the islands in the archipelago) and the erection of markers in other islands.
- Since 1974 the whole of the Paracels has been under permanent occupation and utilisation by the PRC.

There thus seem to be some good arguments on both sides, and it is not evident that one or the other has a superior claim. A decision will depend on what is seen to be the critical date. If the Paracels could be considered as a number of individual islands (or two groups) rather than one entity, then a compromise solution where China gains sovereignty to the eastern part and Vietnam to the western part is conceivable. It does, however, seem unrealistic to expect China to cede any part of its alleged sovereignty in an area where it is in full military and administrative control. The most likely scenario of conflict resolution is one where Vietnam gives up its claim in return for a Chinese concession in another area, just as France considered doing in 1947.

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#### THE PARACELS IN SINO-VIETNAMESE RELATIONS

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Today, after China and Vietnam have signed agreements on their land border as well as on maritime delimitation and fishery cooperation (including a permanent common fishery zone) in the Gulf of Tonkin,<sup>30</sup> the disputes over the Paracels and Spratlys represent the main impediments to

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<sup>29</sup> A summary of these statements may be found in Greg Austin. *China's Ocean Frontier*, pp. 126-130. The most important was an official communication from Vietnamese Prime Minister Pham Van Dong in 1956 in support of the PRC's territorial sea declaration. The declaration mentioned the Paracels as Chinese territory. The DRV's estoppel of the Vietnamese claim forms one of the two premises for Greg Austin's conclusion that China has a superior claim to the Paracels. The other main premise is that France failed to uphold the former Annamese claim in the period 1885-1931.

<sup>30</sup> An English translation of the treaty on fishery cooperation, including a discussion of it, can be found in Zou Keyuan. "Sino-Vietnamese fishery agreement in the Gulf of Tonkin". *East Asia Institute Working Paper*, no. 77. Singapore: 23 May 2001. The treaty on the maritime border has unfortunately not yet been publicised, and the Agreement on fishery cooperation, which is linked to the delimitation agreement, has not yet entered into force. The Agreement is stipulated to have a duration of 12 years.

further improvement of the relationship between the two countries, even though this has already improved tremendously since normal diplomatic relations were established in 1991.<sup>31</sup> The borders had been opened for petty trade a few years earlier. Railways and roads have since been reconnected. Border trade is flourishing. Vietnam has looked to China for advice on how to manage a socialist market economy. Although there have been several incidents in the South China Sea, linked to fisheries and oil exploration, none of them has degenerated into open conflict. In December 1999, the two countries were able to sign a treaty on their land border, and in December 2000, they signed agreements on fishery cooperation and maritime delimitation in the Gulf of Tonkin. In order not to alienate China, Vietnam has kept its ties with the US military to a minimum, and has even postponed normalising its trade relations with the USA in order to preserve the leading role of the state in the economy and placate China.

However, in the run up to the 9<sup>th</sup> Congress of the Vietnamese Communist Party in April 2001, general secretary Le Kha Phieu came under criticism not only for bad management, but also for having been too soft on China. According to the international press, this was part of the reason why Nong Duc Manh replaced him as party leader. Shortly before the Congress, in connection with a visit to Vietnam by the Chinese Minister of Defence, a war of words broke out concerning the Spratlys and the Paracels.<sup>32</sup> The question may therefore be asked if a ten-year long trend of improvement in Sino-Vietnamese relationship has come to an end, or if the two socialist states can now start to approach an understanding concerning the larger maritime disputes in the South China Sea.

Three bilateral relationships could play a key role in paving the way for conflict resolution in the South China Sea. These are the one between the Philippines and China, the (inter-Chinese) relationship between Taiwan and the PRC, and the relationship between China and Vietnam. If all three bilateral relationships improve, then there might be a chance to initiate genuine multilateral talks on the question of the Spratlys and the delimitation of maritime zones. The way to improve the relationship between China and the Philippines in the maritime area may be to negotiate an agreement on Scarborough Shoal. The way to improve the relationship between Taiwan and the PRC in the maritime area could be to reach a formal agreement that Taiwan is occupying Pratas Island (*Dongsba*) and Itu Aba island (*Tai ping Dao*) in the Spratlys *on behalf of China as a whole*, and to establish a joint team to negotiate with the ASEAN countries on behalf of China. And the way to further improve the Sino-Vietnamese relationship within a maritime context could be to establish a mutual understanding to the effect that a bilateral agreement on the Paracels will be part of a larger solution to the dispute over the Spratlys and over maritime delimitation in the central part of the South China Sea.<sup>33</sup>

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<sup>31</sup> This paragraph is inspired by manuscript for a political science thesis on the Sino-Vietnamese relationship which is being written at the University of Oslo, by Mr. Sveinung Johannese Sloreby.

<sup>32</sup> Carlyle Thayer. "Regional Rivalries and Bilateral Irritants." *Comparative Connections*, Pacific Forum Program, Hawaii, June 2001: <http://www.csis.org/pacfor/>

<sup>33</sup> The Singapore-based Chinese specialist in international law Zou Keyuan has ventured the opinion that "the conclusion of the agreements regarding the boundary delimitation and fishery management in the Gulf of Tonkin can facilitate the resolution of the South China Sea dispute. It probably can be used as a benchmark for the resolution of the Parcel and Spratly Islands dispute." Zou Keyuan. "Sino-Vietnamese fishery agreement in the Gulf of Tonkin", p. 15.

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## THE PARACELS IN THE SOUTH CHINA SEA DISPUTE

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In the last couple of years, the main role of the Paracels dispute within a regional context has been to contribute to preventing ASEAN from agreeing with China on a regional Code of Conduct. The ASEAN's Code of Conduct proposal of 1999 was meant as an exercise in preventive diplomacy. It restated the prohibition in international treaty and customary law against the use of force or threat of force. It called for the exercise of self-restraint, more precisely in refraining from occupying any features that were not already under occupation. It established a need to develop confidence-building measures (CBMs) as well as cooperation between the countries concerned, and consultations. Much of the proposal represented an attempt to codify in one single document some relevant rules of conduct that are already recognised by the individual states concerned. It does not seem to be the intention of the negotiators to agree on a legally binding treaty, but many of the rules included in the draft (such as the prohibition against the use of force) are already legally binding on all parties since they form a part of customary international law.

The Code of Conduct has its background partly in various declarations made by the ASEAN countries since the organisation was founded in 1967, and partly in two bilateral agreements that were agreed upon in the aftermath of certain incidents in the mid-1990s. After China had constructed installations on Mischief Reef in the Spratly area, not far from the Philippines, Manila negotiated a joint statement with China on a Code of Conduct in August 1995, and signed a similar agreement with Vietnam in November. The Sino-Philippine Code of Conduct may since have played a certain role in preventing incidents between the two countries, notably around Scarborough Shoal, from degenerating into open conflict. In 1999, the Philippines and Vietnam together drafted ASEAN's proposal for the regional Code of Conduct. They intended to first reach an agreement among the ASEAN members and then negotiate with China. The ASEAN did reach agreement, and China, in a shift from its earlier refusal of multilateral talks about the South China Sea, accepted after some hesitation to enter into talks. Before the first round of negotiations, however, China came up with its own quite different draft. The Chinese draft was less specific as far as preventive diplomacy and self-restraint were concerned, but went further than the ASEAN draft in calling for cooperation. There have now been at least four rounds of negotiations, in Bangkok March 2000, in Malaysia May 2000, in Ta Lian (Dalian) August 2000, and in Hanoi October 2000, but the parties have been unable to make much progress.<sup>34</sup> The parties have not been able to agree on the geographical area to be covered by the Code of Conduct. In the first draft from the Philippines, focus seems to have been only on the Spratlys. Vietnam persuaded the Philippines and the other ASEAN countries to include the Paracels. China has refused to do this and has also refused to speak about "disputes" at all. Since China considers its sovereignty both to the Paracels and Spratlys indisputable, it prefers to speak only about "differences". China also does not seem to see the same need as the ASEAN countries to specify exactly the area concerned.

Why did Vietnam insist to include the Paracels? Hanoi must have anticipated China's negative reaction and understood that the demand could undermine the possibility of reaching an agreement at all. Moreover, there does not seem to be much need for preventive diplomacy in the Paracels, or

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<sup>34</sup> Barry Wain. "A Code of Conduct in the South China Sea?" *Asian Wall Street Journal*, 10-11 March 2000. Barry Wain. "At loggerheads with Beijing." *Asian Wall Street Journal*, 6 October 2000. Kriangsak Kittichaisaree. "A Code of Conduct for Human and Regional Security around the South China Sea." *Ocean Development & International Law*, vol. 32, no. 2 (2001): 131-148. Nguyen Hong Thao. "Vietnam and the Code of Conduct for the South China Sea." *Ocean Development & International Law*, vol. 32, number 2 (2001): 105-130.



any realistic expectation of cooperation, since it is unlikely that any Vietnamese fishermen or naval vessels will openly challenge Chinese authority. One of Vietnam's reasons may have been to acquire a bargaining chip; another could be to draw international attention to a half-forgotten claim. Since China for more than 27 years has been in full control of the whole island group, the world might start to forget about the dispute and remember only the Spratlys. In addition, Hanoi may have looked ahead and considered the possibility of a multilateral process of conflict resolution in a larger maritime context. The Paracel dispute could have a significant role to play since the island group will no doubt be used as a basis for delimitating the continental shelf and exclusive economic zones of the surrounding countries. When, at some point in the future, the countries around the South China Sea are ready to start negotiations about maritime delimitation, they must take both the Paracels, the Spratlys and other islands into consideration, and make up their mind as to how much weight they shall have relative to the mainland coasts. In that context, a range of opportunities will emerge for Vietnam to extract concessions from China in return for a Vietnamese recognition of China's sovereignty in the Paracels.

Today, as mentioned, the disputes over the Paracels and Spratlys represent the main impediments to further improvement of the Sino-Vietnamese relationship. It will probably be difficult, if not impossible, for the two countries to reach any kind of understanding on the Spratlys unless they also arrive at an agreement on the Paracels. In this context we must emphasise the basic difference between the Spratlys, Scarborough Shoal and the Paracels. The islands and reefs in the Spratlys are occupied by troops from no less than five different states (if we include Taiwan). This means that a resolution of the sovereignty dispute that goes in favour of one or the other of these states would alter local power relations considerably. It would be deeply resented by several countries. There is therefore little chance that the parties will ever agree to a court decision on the sovereignty question or send it to international arbitration. From a conflict resolution perspective, it seems preferable to shelve the dispute over sovereignty and find a way to localise it so as to make it possible for more vital matters, such as environmental protection, management of fish stocks and maritime delimitation, to get into focus. Scarborough Shoal, by contrast, is not under the occupation of any state. This makes it possible also here to shelve the sovereignty dispute between the Philippines, China and Taiwan, and find a way to cooperate in protecting the environment, managing fish stocks, and delimitating maritime zones. The Paracels are under the effective control of only one state and is claimed only by one other state. Not much will therefore be gained from shelving the sovereignty dispute. This would just mean a *de facto* recognition by Vietnam of the Chinese occupation. At the same time, as mentioned earlier, the dispute over the Paracels blocks the road towards further improvement of Sino-Vietnamese relations and towards agreeing on a Code of Conduct for the Spratly area.

The big challenge for Vietnam is to be able to tone down its claim to the Paracels in preparation for a compromise solution. The immediate challenge for China is to reassure Vietnam, for instance by demilitarising the Paracels and instead setting up a tourist resort. Then China could offer concessions to Vietnam in another field so as to make it possible for Vietnam to concede Chinese sovereignty in the Paracels. One possible Chinese concession would be to express agreement with the Vietnamese view that the Spratly islands are all too small to generate permanent human habitation of their own, or a self-sustained economy. The Spratly islands would then not fulfil the requirements established in the United Nations Convention of the Law of the Sea for being able to generate a continental shelf and a 200 nautical mile exclusive economic zone.<sup>35</sup> They would only have the right to 12 nautical mile territorial waters. This would in turn allow Vietnam to fully realise its claim for a 200 nautical mile continental shelf and economic zone outside southern Vietnam. This is an area where, despite the general disappointment with oil exploration in the South China Sea, there

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<sup>35</sup> See paragraph 121.3 in the LOS Convention: <http://www.un.org/Depts/los/losconv1.htm>

may yet be hope of finding significant reservoirs of oil and gas.<sup>36</sup> It seems that if China and Vietnam manage to further improve their relationship, they may gradually build a sensible compromise solution where Vietnam gives up its claim to the Paracels, and China abandons its hopes of gaining control of the seabed and maritime resources in the area between and around the Spratlys.

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<sup>36</sup> Stein Tønnesson, "China and the South China Sea: A Peace Proposal", *Security Dialogue*, vol. 31, no. 3, September 2000: 307-326.