

China's Sovereignty over the South China Sea Islands: A Historical Perspective

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I. Introduction

Shortly after I wrote my article on the territorial disputes over the South China Sea Islands in 1996, which was published in *Hastings International and Comparative Law Review* in 1997,¹ I began to engage in follow-up studies of the same subject matter on an on-and-off basis. My plan was to undertake extensive research and writing projects that would yield a few research papers and eventually lead to a scholarly book. Largely due to the lack of funding, among other reasons, I had to cut short my plan. Nevertheless, thanks in part to a research grant from the University of Hong Kong, I was able to reduce part of my follow-up studies to three draft papers. The first of these, titled "Territorial Aspects of the South China Sea Islands Disputes," was presented at a conference in New York City in February 1997, and was later published in a book by Martinus Nijhoff Publishers in 1998.² The second paper, also finished in 1997, was in Chinese, and was titled "*Lun Zhongguo dui Xisha Qundao he Nansha Qundao de Zhuquan*" (On China's Sovereignty over the Xisha and the Nansha Islands).³ The third one, drafted between 1998 and 1999, was presented at an international seminar held in Macau in April 1999 and included in a collection of conference papers.⁴ In writing the present article, I

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¹ Jianming Shen, "International Law Rules and Historical Evidence Supporting China's Title to the South China Sea Islands," 21 *Hastings Int'l & Comp. L. Rev.* 40 (1997) 1-75, [hereinafter Shen, "International Law Rules"].

² Jianming Shen, "Territorial Aspects of the South China Sea Island Disputes," in Myron Nordquist & John Norton Moore, eds., *Security Flashpoints: Oil, Islands, Sea Access and Military Confrontation*, (1998), 139-217 [hereinafter Shen, "Territorial Aspects"].

³ "On China's Sovereignty over the Xisha and Nansha Islands," 1997 (in Chinese, on file with the author).

⁴ Jianming Shen, "The Essence of the Nansha and the Xisha Disputes and the Prospect of Their Settlement," *Proceedings of the Luso-Asian Forum International Seminar*:

have freely drawn upon my earlier research and writings, with necessary modifications and updates, of course.

Although my projected in-depth research on the South China Sea Islands disputes has come to a halt, I am satisfied that my past research and writings on the subject have proved to be useful. My article in the *Hastings Review* has been not infrequently cited or referred to in non-Chinese legal literatures.⁵ More importantly, I am pleased to have read the Chinese and English versions of the Chinese Foreign Ministry's 2000 document on "The Issue of South China Sea" that add affirmative support to my personal writings and position.⁶

Since 1996, little substantive progress, not surprisingly, has been achieved towards the resolution of the disputes. Media attention to⁷ and legal

The Asia-Pacific Region on the Eve of the 21st Century—Trends of Regional and Multilateral Security, Macau, April 1999 (on file with the author).

⁵ See, e.g., Eric Ting-lun Huang, "The Evolution of the Concept of Self-Determination and the Right of the People of Taiwan to Self-Determination," 14 N.Y. Int'l L. Rev. (2001), 167; Jonathan I. Charney & J. R. V. Prescott, "Resolving Cross-Strait Relations between China and Taiwan," 94 Am. J. Int'l L. (2000), 453; Omar Saleem, "The Spratly Islands Dispute: China Defines the New Millennium," 15 Am. U. Int'l L. Rev. (2000), 527; Christopher C. Joyner, "The Spratly Islands Dispute: What Role for Normalizing Relations between China and Taiwan," 32 New Eng. L. Rev. (1998), 819.

⁶ Ministry of Foreign Affairs People's Republic of China, The Issue of South China Sea (June 2000) [hereinafter FM-PRC, The Issue of South China Sea]. The document contains five parts:

- (1) "Its Origin," <<http://www.fmprc.gov.cn/eng/5767.html>> (English); <<http://www.fmprc.gov.cn/chn/5997.html>> (Chinese);
- (2) "Historical Evidence To Support China's Sovereignty over the *Nansha* Island," <<http://www.fmprc.gov.cn/eng/5765.html>> (English); <<http://www.fmprc.gov.cn/chn/5998.html>> (Chinese) [hereinafter FM-PRC, The Issue of South China Sea, Pt 2];
- (3) "Jurisprudential Evidence To Support China's Sovereignty over the *Nansha* Islands" <<http://www.fmprc.gov.cn/eng/5773.html>> (English); <<http://www.fmprc.gov.cn/chn/5999.html>> (Chinese) [hereinafter FM-PRC, The Issue of South China Sea, Pt 3];
- (4) "Basic Stance and Policy of the Chinese Government in Solving the South China Sea Issue," <<http://www.fmprc.gov.cn/eng/5747.html>> (English); <<http://www.fmprc.gov.cn/chn/6000.html>> (Chinese);
- (5) "International Recognition Of China's Sovereignty over the *Nansha* Islands," <<http://www.fmprc.gov.cn/eng/5766.html>> (English); <<http://www.fmprc.gov.cn/chn/6001.html>> (Chinese).

⁷ See, e.g., Marites Sison, "Politics: 'War on Terror' Ups U.S. Role in the Philippines," Inter Press Serv., Mar. 24, 2002; "China denies deploying warships

commentaries⁸ on the disputes, however, have continued to flourish. Recently the journal *Ocean Development & International Law* even devotes an entire issue to the South China Sea Islands disputes.⁹ Nevertheless, the nature and essence of the territorial disputes over the South China Sea Islands, particularly as to the merits of China's claims, continue to have been largely ignored and/or distorted, both before and after 1996. Misstatements about the South China Sea are almost everywhere. It has been stated, for example, that the *Xisha* (Paracel) island group "was occupied by the former regime of South Vietnam until the PRC took it by force in 1976,"¹⁰ although in fact the group was in Chinese control until South Vietnam began its invasions and occupations in the 1950's through early 1970's; further, China regained her control and occupation in 1974, not in 1976. Another example is that in June 2001 *The Washington Times* reported that "[t]he Chinese military occupation of the disputed Spratly Islands...is part of Beijing's strategy of expanding its sovereignty claims further from its coasts as part of what...is an 'island chain' strategy."¹¹ In still another instance, a commentator alleges: "[China's]

near disputed Spratly islands," AFX News, June 26, 2001; "Vietnam asserts 'undeniable sovereignty' over Spratly and Paracel Islands," BBC Monitoring, Dec. 29, 2000; "Philippines investigating alleged Spratly encroachment by Malaysia," Agence Fr.-Presse, Sept. 13, 1999; "No need for middleman to resolve Spratly issue," The New Straits Times, Jan. 16, 1999, 02.

⁸ See, e.g., Saleem, above n.5; David Whiting, "The Spratly Islands Dispute and the Law of the Sea," 26 Denv. J. Int'l L. & Pol'y (1998), 897; Carolyn Stephenson, "Stopping Spats over the Specks Called Spratly: Sharing the Resources of the South China Sea," 20 U. Haw. L. Rev. (1998), 573; Joyner, above n.5; M.J. Valencia, J.M. Van Dyke, & N.A. Ludwig, *Sharing the Resources of the South China Sea* (1997).

⁹ See, e.g., Nguyen Hong Thao, "Vietnam and the Code of Conduct for the South China Sea," 32 *Ocean Development & Int'l L.* (2001 (2)), 105-30; Zou Keyuan, "Historic Rights in International Law and in China's Practice," *ibid.*, 149-168; The remaining articles appearing in that special issue of the journal are the following: Hasjim Djalal, "Indonesia and the South China Sea Initiative," *ibid.*, 97-103; Stein Tønnesson, "Introduction," *ibid.*, 93-95; Kriangsak Kittichaisaree, "A Code of Conduct for Human and Regional Security Around the South China Sea," *ibid.*, 131-147; Alex G. Oude Elferink, "The Islands in the South China Sea: How Does Their Presence Limit the Extent of the High Seas and the Area and the Maritime Zones of the Mainland Coasts," *ibid.*, 169-190; Marius Gjetnes, *ibid.*, "The Spratlys: Are They Rocks or Islands?" 191-204; and Edgardo D. Gomez, *ibid.*, "Marine Scientific Research in the South China Sea and Environmental Security," 205-211.

¹⁰ Hasjim Djalal, "South China Sea Island Disputes," <<http://rmbr.nus.edu.sg/latest/RBZs8-South China Sea/djalal.html>>.

¹¹ Bill Gertz, "Chinese navy deploys warships to disputed Spratly island chain," *The Washington Times*, Jun 25, 2001, A1.

assertion of its claim over the Mischief Reef...is an educative case study of how China doggedly pursues its irredentist territorial claims - by stealth, if possible, and by other means, including force, if necessary.”¹² Statements such as the above tend to show, if not bias, at least the lack of knowledge of the truth.

Indeed, there seems to have been widespread anti-China propaganda among and by some politicians, commentators and journalists in the West and certain parts of Asia, possibly by reason of conspiracy, bias, misinformation, or otherwise, to have put much of the blame for the disputes on China as if it were China that was the invader or that had caused the troubles. This article, from a historical perspective, and partly based on materials newly available to me since 1996 (including some photographed pages of relevant Chinese historical books reproduced here as evidentiary exhibits), aims at neutralizing the effects of such ignorance and/or distortions by reexamining how the disputes arose, and why China possesses sound and solid sovereignty claims to the disputed areas that should prevail over the claims of competing States. By focusing on the historical aspects of China's sovereignty over the South China Sea Islands in the present article, I am leaving for another day the other aspects of the disputes, including the claims that have been made by, and arguments that have been developed for, Vietnam, the Philippines, Malaysia and Brunei, the scope and method of delimitation of territorial seas, contiguous zones, continental shelf and exclusive economic zones in the South China Sea, as well as the legal nature and status of the remaining portions of the water areas within China's U-shaped line of boundary.

II. Brief Overview of The Disputes

II.A. *The Disputes and the Disputants*

The South China Sea disputes center on two major areas: the *Nansha* Islands (the Spratly Islands) and the *Xisha* Islands (the Paracel Islands). The *Nansha* Islands consist of more than 230, perhaps as many as over 400, islands, cays, reefs, atolls, banks and shoals, and are dispersed over some 250,000 square km of the South China Sea. None of these islands and other features is permanently inhabitable. Sovereignty over these islands or some of them and other features has been hotly contested by five nations—China (including the local authorities in Taipei), Vietnam, the Philippines, Malaysia and Brunei. Currently, the local Taipei authorities remain in control of the Taiping Island (the *Itu Aba* Island), the largest island of the island group, and its surrounding

¹² B. Raman, “Chinese Territorial Assertions,” www.subcontinent.com/sapra/world/w_1999_01_21.html>.

area; about seven of these islands, reefs and atolls are in the Chinese mainland's possession; more than twenty are being occupied by Vietnam, two by Malaysia, and about eight by the Philippines. Of these contesting parties, China and Vietnam claim sovereignty of the *Nansha* Islands in their entirety. The Philippines lays claim to some 60 reefs, cumulatively called the Kalayaan chain, while Malaysia contests the sovereignty of seven smaller islands. The claims of the Philippines and Malaysia overlap with each other's, as well as with those of China and Vietnam. Further, Brunei also claims a small portion of the area that overlaps with the demands of every other claimant.

The *Xisha* Islands consist of more than 20 islands, cays, atolls, reefs banks and shoals lying about 150 nautical miles south of *Hainan* Island, China. These islands, often partly inhabited with seasonal Chinese visitors and settlers, had been grounds for fishing and other economic activities by Chinese fishermen throughout history until South Vietnam's invasion in the 1950's the early 1970's. This island group is claimed in its entirety by both China (including her Taiwan Province) and Vietnam, but has been firmly under Chinese control and administration since the battle at sea in 1974 between China and South Vietnam.

II.B. The Roots and Present Status of the Disputes

China's sovereignty over the *Nanshas* and other island groups in the South China Sea was not challenged until the arrivals of invading powers. The Chinese government in different eras always treated these islands as China's own. Basically speaking, China enjoyed peaceful and uninterrupted control over the South China Sea Islands and the surrounding waters until the 1930's when France seized the opportunity to occupy and "annex" several islands in the South China Sea. This took place at a time when the Chinese government was preoccupied with internal conflicts and threatened by the full-scale Japanese aggression, and was therefore unable to effectively defend herself except for lodging the strongest possible protests to the French government time and again.¹³

After the Pacific War broke out, Japan replaced the French and took over the entire South China Sea chain of islands (as well as *Hainan* Island) in 1939,¹⁴ placing them under the jurisdiction of Taiwan, which was then administered by Japan. Following Japan's surrender in 1945, the Chinese Government formally regained physical possession of the *Nanshas* and other

¹³ Shen, "International Law Rules," above n.1, 40-43.

¹⁴ *Ibid.*, 43.

islands in the South China Sea in 1946.¹⁵ France, and later Vietnam, subsequently re-asserted claims to the *Xisha* and *Nansha* Islands, but their claims were specifically rejected by the Chinese Government.¹⁶

It is worth noting that at the San Francisco Peace Conference held in 1951,¹⁷ Japan formally renounced all of its claims to the South China Sea Islands. China did not participate in the Conference, but Premier Zhou Enlai issued a statement reiterating China's unquestionable sovereignty over these islands and warning against any arrangement at the Conference that might be aimed at challenging or affecting China's sovereignty.¹⁸ In his address at the San Francisco Peace Conference on September 5, 1951, the Soviet representative, Andrei Gromyko, Deputy Foreign Minister of the then Soviet Union, appealed to recognize the "full sovereignty" of the "Chinese People's Republic" over "Taiwan (Formosa)..., the *Penhuletiao* Islands (the Pescadores)," the *Xisha* Islands and the "the *Nanshatsuntao* Islands including the Spratly."¹⁹ Both France and Vietnam were represented at the Peace Conference and made claims to the South China Sea Islands, but such claims were ignored at the conference in particular and by the international community in general.

Along with the gradual realization and recognition of the geographical, economic and strategic importance of the South China Sea, particularly the *Nansha* Islands,²⁰ the potential for confrontation around this area became

¹⁵ Ibid., 43-44.

¹⁶ Ibid., 45. See also Shen, "Territorial Aspects," above n.2, 177-86.

¹⁷ The United States had intended to invite the Nationalist authorities in Taiwan to participate in the San Francisco Peace Conference, but the United Kingdom insisted that the Government of the People's Republic of China should represent China at the Conference. As a compromise between the U.S. and the U.K., neither the legitimate Chinese government on the mainland nor the Nationalist regime in Taiwan was invited. China considers the Peace Conference and the resulting Peace Treaty, without the participation of China as the biggest victim and the main battle field of the Far East War, is null and invalid. India and Burma boycotted the Conference in protest of this unfair treatment. The Soviet Union attended the Conference, but its various proposals were rejected. As a result, the Soviet Union, Poland and Czechoslovakia refused to sign the Peace Treaty. See He Chunchao, ed., Guoji Guanxi Shi, A History of International Relations—1945-1980 (1986), 142.

¹⁸ See Shen, "International Law Rules," above n.1, 50.

¹⁹ Yakov Zinberg, "Securing Sovereignty in the Post Cold-War Era: The 'Kuriles Islands' between Japan and Russia," in: The 5th IBRU International Conference, Borderlands under Stress, University of Durham, July 1998, 15-17; Abstracts of Papers, <<http://www.dur.ac.uk/~dgg0www1/ibru/conf/bus/abstracts.html>>.

²⁰ The South China Sea is important for (1) the rich fishing grounds it contains, (2) the sea lanes through the *Nanshas* through which commercial and military vessels must

emerged, ultimately leading to a complex web of rivalries for and assertions of sovereignty over the *Nanshas*, the surrounding waters and the living and non-living resources in the area. In mid 1950s, the Philippines claimed to have discovered the so-called Kalayan islands and declared them to be Philippine territory.²¹ In the mean time, Vietnam began to occupy some islands in both the *Xisha* group and the *Nansha* group in the 1950s and 1960s.²² Competing claims and occupations accelerated in late 1960s, 1970s, and 1980s, with Malaysia and Brunei also joining the race.²³ These newly emerged claims, challenges and occupations have led to a few isolated conflicts.

The battle of 1974 between China and South Vietnam around the *Xishas* enabled China to regain control over this island group.²⁴ In February and March 1987, the Chinese and Vietnamese naval forces exchanged fire within the area of the *Nansha* Islands, causing casualties to both sides.²⁵ In March 1988, another major military encounter occurred between China and Vietnam around the *Chigua Jiao* atoll (Johnson Reef) and the *Yongshu Jiao* reef (Fiery Cross Reef), causing the sinking of three Vietnamese vessels and the loss of 74 lives.²⁶ In 1995, military confrontation took place between China and the Philippines when Filipino forces dispatched ten aircraft and three patrol boats near the *Meiji Jiao* Reef (Mischief Reef) area where the Chinese fishery administration was constructing shelters for Chinese fishermen who habitually engage in fishing production there.²⁷ Meanwhile, despite China's strong and persistent protests, other claimants, particularly Vietnam, the Philippines and Malaysia, have stepped up their military and nonmilitary activities in the South China Sea in order to back up their respective claims. The Philippines have on numerous occasions destroyed Chinese installations and fishing vessels on or near certain islands and reefs in the *Nansha* group and the *Huang*

sail en route to and from Southeast Asian ports and beyond, and (3) more importantly, the prospect of substantial reserves of hydrocarbons allegedly discovered on the natural continental shelf in the *Nansha* island group.

²¹ Shen, "International Law Rules," above n.1, 59-60.

²² *Ibid.*, 51-52.

²³ *Ibid.*, 52-53, 55-56, 60-61, & 63-65.

²⁴ *Ibid.*, 53 & 67.

²⁵ See Peter Forrest & Eric Morris, "Maritime Constabulary and Exclusive Economic Zones in the South China Sea: Some Strategic and Technical Considerations," in: *Fishing in Troubled Waters: Proceedings of an Academic Conference on Territorial Claims in the South China Sea*, R. D. Hill et al., eds. (1991), 302 ff., 311.

²⁶ See Chang Pao-Min, "A New Scramble for the South Sea Islands," 12 *Contemporary Southeast Asia* (1990), 20.

²⁷ Abby Tam, "Manila Tries Diplomacy In Confronting China," *Christian Science Monitor*, Feb. 22, 1995. See also *People's Daily*, Feb. 10, 1995.

Yan Island (Scarborough Shoal), and wounded, detained, arrested, prosecuted and/or released Chinese fishermen who use the *Nansha* area as their traditional fishing fields, and otherwise entered into conflicts with China's claims.²⁸ Malaysia is reported to have recently constructed structures on the *Yuya Ansha* shoal (Investigation Shoal) and the *Boji Jiao* reef (Erica Reef).²⁹ Vietnam has reportedly planned to set up an administrative office on the *Nansha* Islands,³⁰ and has even decided to hold elections on the islands it occupies within the *Nansha* group.³¹ While most claimants have openly proposed or supported the idea of a common code of conduct in the South China Sea,³² Vietnam, the Philippines and Malaysia have nevertheless continued to engage in various conducts inconsistent with the spirits of the proposed code. In essence, these claimants, by way of a proposed code or otherwise, appear to have always attempted to prevent China from doing something which is exactly what they have been doing.

III. Historical Analyses

As I pointed out several years ago, China's claims to the South China Sea Islands and the adjacent waters are supported by both historical facts and rules of international law pertaining to the acquisition of territorial

²⁸ See, e.g., "Feilubin Haijun Qiangji Zhongguo Yuchuan" ("Philippines Navy Opens Fires at Chinese Fishing Boats"), *Guangzhou Daily*, May 10, 2001 <<http://www.bluedy.net/Nan Hai/index.htm>, javascript:Newswindow(46)>; "Chinese spokesman denies Philippine right to inspect boats in Spratlys," *BBC Monitoring*, Mar. 19, 2001, available at 2001 WL 16983227; "Philippines navy allows Chinese fishermen to leave Spratlys after seizing catch," *BBC Monitoring* Mar. 19, 2001, available at 2001 WL 16982973; "Jinnian Zhong Fei the *Nansha* Qundao Jiufei Yilan" (An Overview of Sino-Filipino Conflicts over the *Nansha* Islands in Recent Years"), available at <<http://www.bluedy.net/Nan Hai/index/zl7.htm>>.

²⁹ See Foreign Ministry Spokeswoman on Malaysia's construction of structures on Yuya Ansha and Boji Jiao (5/2001) <<http://www.fmprc.gov.cn/chn/1247.html>>.

³⁰ See "Yuenan ni zai the *Nansha* Qundao shang jian difang xingzheng jigou" (Vietnam to establish local administrative organs in the *Nansha* Islands), Feb. 13, 2001, <<http://www.fmprc.gov.cn/chn/8195.html>>.

³¹ See *BBC Monitoring*, May 5, 2002.

³² See, e.g., Thao, above n.9; "Malaysia, China agree on need for 'code of conduct' in disputed Spratly Islands," *BBC Monitoring*, Apr 25, 2002, available at 2002 WL 1994696; Agence France-Presse "Philippines insists on 'no occupation' provision in Spratlys code," *Agence Fr.-Presse*, Oct 10, 2000, available at 2000 WL 24732326.

sovereignty.³³ China has always taken the *Nansha* Islands, the *Xisha* Islands, *Zhongsha* Islands (Macclesfield Banks) and *Dongsha* Islands (Pratas Reefs) and the adjacent waters as part of the Chinese territory and waters. She established and has maintained her sovereignty over these island chains by ways of discovery, naming, mapping, patrol and control, public and private use, administrative allocation of jurisdiction, and other manifestations of authority throughout history.

III.A. Discovery

China was the first to have discovered the islands in the South China Sea. Chinese history books contain numerous references to the Chinese people's knowledge and actual use of the South China Sea throughout history.

In *Yi Zhou Shu* (《逸周书》), Scattered Books of the *Zhou* Dynasties) written in the early *Qin* Dynasty,³⁴ it was recorded that “in the *Xia* Dynasty [21st century-16th century B.C.] the tributes from the South Sea [by the southern “barbarians” to the *Xia* rulers] were *zhuji dabe* [珠玑大贝, pearl-carrying shellfish],” turtles and hawksbill turtles, and these tributes continued through the *Shang* Dynasty (16th century-11th century B.C.), the *Zhou* Dynasties (11th century-221 B.C.) (comprising the *West Zhou* (11th century-

³³ See Shen, “International Law Rules,” above n.1; id, “Territorial Aspects,” above n.2. My previous studies and the present article have so far referred to China’s claims to or sovereignty over the disputed islands or island groups in the South China Sea and the surrounding waters or adjacent waters. That is, I have not dealt with specific issues relating to the nature and status of the waters within China’s traditional ocean boundary in the South China Sea. For a recent and fairly balanced analysis of China’s historic rights within the U-shaped line in the South China Sea, see Zou, above n.9, 159-164.

³⁴ The original title of the books was *Zhou Shu*. Books from the *Qin* Dynasty which were not officially adopted in the education system of the *West Han* Dynasty and therefore scattered among the private were called *yi shu* (literally “scattered books”). The *Zhou Shu* volumes were among such scattered *Qin* books. They were therefore re-titled *Yi Zhou Shu*. See Ci Hai, Ban (Suoyin Ben) (A Lexicographical Dictionary, literally “The Sea of Words,” [hereinafter Ci Hai] (1979), 1059.

771 B.C.) and the *East Zhou* (770-221 B.C.), and the *Qin* (221-206 B.C.) and *Han* (206 B.C.-220 A.D.) Dynasties (see Exhibit 1).³⁵

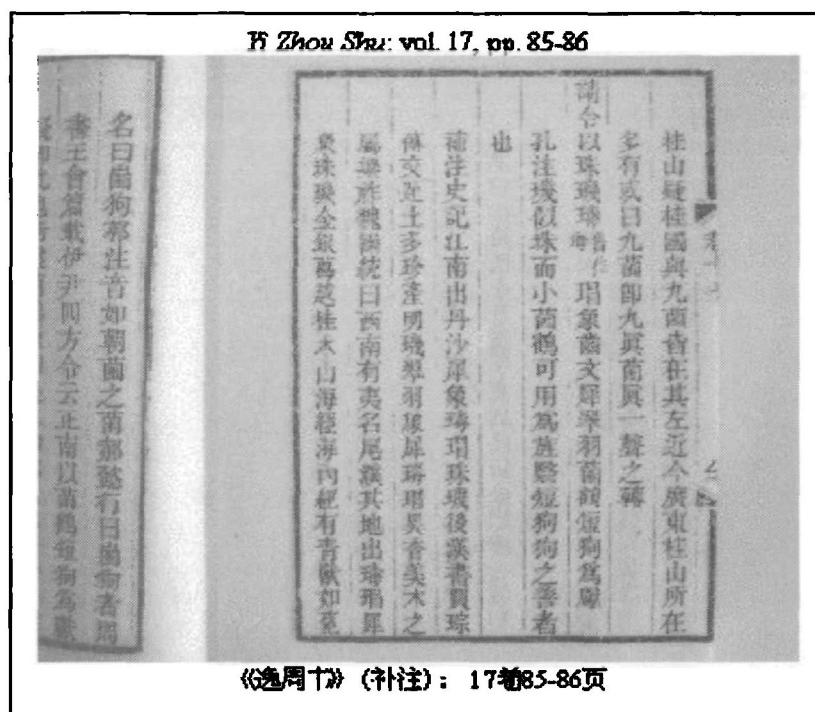


Exhibit 1

According to *Yi Zhou Shu*, six southern “barbarian” peoples were ordered to contribute “pearl-carrying shellfish” (珠玕, *zhujian*), “hawksbill turtles” (玳瑁, *daimao*) and other rarities to the rulers of the *West Zhou* Dynasty.³⁶ *Daimao* was described in *Nanzhou Yiwu Zhi* (《南州异物志》, Records of Rarities of the Southern Territories) as “living in the southern sea” (“生南方海中,” *sheng nan fang hai zhong*), which denotes the *Xisha* and the

³⁵ *Yi Zhou Shu*, vol. 17, 85-86 (see Exhibit 1). See Wang Hengjie, “Archaeological Discoveries of Remains of the New Stone Age, the Warring States Period, the *Qin* and *Han* Dynasties in the *Xisha* Islands and the History of the South China Sea,” in: Symposium on the South China Sea Islands: Selected Papers, Institute for Marine Development Strategy, State Oceanic Administration (1992) [hereinafter Selected Papers], 29-38.

³⁶ *Ibid.*, 35-36.

Nansha Islands in the South China Sea.³⁷ Indeed, *zhuji*, *dabei* and *daimao* are all produces of the *Xisha* and the *Nansha* Islands.

The famous *Shi Jing* (《诗经》) (The Classics of Poems), a collection of classics of poems of the *Spring* and *Autumn* Period (475-221 B.C.), also made a reference to the South China Sea: “*Yan yu Nan Hai*” (“言于南海,” orders or words [from the *Chu* rulers] to the South Sea),³⁸ another indication that the Chinese rulers and people were at least aware of *Nan Hai* or the South China Sea Islands more than two thousand years ago. This knowledge (and necessarily discovery) of *Nan Hai* may be “corroborated” by a similar reference to it in *Zuo Zhuan* (《左传》, Zuo’s Commentaries), another set of classics of the Spring and Autumn Period believed to be authored by Zuo Qiuming, a well-known historian of Confucius’ contemporary. Here, it was stated that “赫赫楚国，抚有蛮夷，奄征南海，以属诸夏” (“*Hehe Chu Guo, fu you man yi, yan zheng Nan Hai, yi shu zhu Xia*”).³⁹ *Xia* is the abbreviated form of *Hua Xia*, another name for *Zhong Guo* or China. When properly translated, the quoted passage means that “the illustrious Chu State appeased the barbarians to make expeditions to the South China Sea [islands], in order to make them belong to the various parts of China.”

Still another relevant set of classics of the Spring and Autumn Period titled *Guo Yu* (《国语》, Statements of the States), also believed to have been authored by Zuo Qiuming, which contained statements of nobles of the *West Xia* Dynasty and the various states in the Spring and Autumn Period, similarly referred to the South China Sea and its islands in the following words:

“赫赫楚国，而君临之，抚征南海，训及诸夏” (“*Hehe Chu Guo, er jun lin zhi, fu zheng Nan Hai, xun ji zhu Xia*”—meaning that “The illustrious Chu State was commanded by its emperor; it appeased [the barbarians] and made expeditions to the South China Sea [islands]; and its commands reached various parts of China”).⁴⁰

The above passages provide sufficient evidence that the South China Sea Islands were already destinations of Chinese expeditions and targets of conquests during the *East Zhou* Dynasty (770-221 B.C.), which comprised the Spring and Autumn Period (770-476 B.C.) and the Warring States Period (475-221 B.C.), suggesting that the South China Sea Islands might have been discovered by the Chinese in an even earlier era. Such discovery and

³⁷ Ibid., 36.

³⁸ *Shi Jing* (The Classics of Poems), quoted in Wang Hengjie, above n.35, 36.

³⁹ *Zuo Zhuan* (Zuo’s Commentaries), quoted in Wang Hengjie, above n.35, 36.

⁴⁰ *Guo Yu* (Statements of the State), quoted in Wang Hengjie, above n.35, 36.

conquest has naturally led the Chinese rulers and people to believe that the South China Sea Islands were part of China throughout history, from the *Xia* Dynasty (21st–16th centuries B.C.) to the *Qing* Dynasty (1644–1911).⁴¹

III.B. Naming

China was the first to have named the South China Sea and the island chains therein.

In the era surrounding the *West* and *East Zhou* Dynasties (1066–221 B.C.), Chinese rulers called the South China Sea *Nan Hai* (南海, The South Sea).⁴² In the *Qin* Dynasty, Emperor Qin Shihuang used the term “*San Shen Shan*” (三神山, Three Mysterious Groups of Islands) to refer to the islands and reefs in the South China Sea.⁴³

Beginning with the *East Han* Dynasty (23–220), China adopted the alternative name *Zhang Hai* (涨海, The Rising Sea) for the South Sea, and named the island chains in the South Sea *Zhanghai Qitou* (涨海崎头, literally Islands and Atolls in the Rising Sea). The term *qitou* (崎头) was the generic name used by ancient Chinese to denote islets, reefs, shoals and the like in the oceans. *Zhanghai Qitou* collectively refers to the South China Sea Islands.⁴⁴

In the *Jin* Dynasties (265–420) and pre-*Jin* era, the islands and reefs in the South China Sea were specifically referred to as *Shanhu Zhou* (珊瑚洲, Coral Islands and Reefs).⁴⁵

In the *Tang* (618–907) and *North* and *South Song* (960–1279) Dynasties and afterwards, the *Xisha* and the *Nansha* island groups were variously referred to with the following names:

- (1) *Jiuru Luozhou* (九乳螺洲, referring to the *Xisha* Islands);
- (2) *Qizhou Yang* (七洲洋, referring to the *Xisha* Islands);
- (3) *Changsha* (长沙, generally referring to the *Xisha* Islands);
- (4) *Shitang* (石塘, generally referring to the *Nansha* Islands);
- (5) *Shichuang* (石床, also generally referring to the *Nansha* Islands);
- (6) *Qianli Changsha* (千里长沙, generally referring to the *Xisha* Islands);
- (7) *Wanli Shitang* (万里石塘, generally referring to the *Nansha* Islands);

⁴¹ See Shen, “International Law Rules,” above n.1, 15–17.

⁴² See above n.38–40 and accompanying text.

⁴³ See Han Zhenhua, *Nanhai Zhudao Shi Di Yanjiu* (Studies on the History and Geography of the South China Sea Islands) (1996) [hereinafter Han Zhenhua, 1996], 53, quoting *Han Shu* (《汉书》, Books of the Han), vol. 25 (*Jiao Si Zhi*, 郊祀志).

⁴⁴ See FM-PRC, The Issue of South China Sea, Pt 2, above n.6.

⁴⁵ See below n.78–82 and accompanying text.

- (8) *Qianli Shitang* (千里石塘, generally referring to the *Xisha* Islands);
 (9) *Wanli Changsha* (万里长沙, generally referring to the *Nansha* Islands).⁴⁶

Depending on the context in which each term appeared, *Changsha* and/or its variations generally referred to the *Xisha* Islands, but they sometimes denoted the *Nansha* group; similarly, *Shitang* and/or its variations symbolized the *Nansha* island chain in most cases, although they were also used to represent the *Xisha* chain in some other cases. In still some other cases, a term was used to denote the entire South China Sea Islands, including the *Nansha* group. For example, the Chinese Foreign Ministry states:

Wang Dayuan . . . wrote about the Nansha Islands in his . . . Abridged Records of Islands and Barbarians in these words: “The base of Wanli Shitang originates from Chaozhou. . . .” Wanli Shitang here refers to all the islands in the South China Sea, including the Nansha Islands.⁴⁷

The *Ming* Dynasty continued to use some of the above-listed names for the South China Sea Islands. In an atlas entitled *Hunyi Jiangli Lidai Guodu zhi Tu* (《混一疆理历代国都之图》, Consolidated Map of Territories and Geography and Capitals of Past Dynasties) prepared in 1402 by Li Hui and Quan Jin of the *Ming* Dynasty, for instance, the South China Sea islands were all included within the boundary of China. On the map, there are three places in the South China Sea respectively marked “*Shitang*,” “*Changsha*” and another “*Shitang*.” “From the geographical locations [of these places] as marked on the Map,” as the Chinese Foreign Ministry properly states, the first *Shitang* denotes the *Dongsha* Islands, *Changsha* denotes the *Xisha* Islands, and “the second *Shitang* denotes today’s *Nansha* Islands.”⁴⁸

In the *Qing* Dynasty, the South China Sea Islands continued to be known as “*Qianli Changsha*,” “*Wanli Shitang*,” or their variations, for a considerable period of time. The Chinese people even named specific islands and reefs of

⁴⁶ See below n.136-144 and accompanying text.

⁴⁷ FM-PRC, The Issue of South China Sea, Pt 2, above n.6. See also below n.69-70 & 83-84 and accompanying text.

⁴⁸ FM-PRC, The Issue of South China Sea, Pt 2, above n.6. See also Liu Nanwei, “The Naming of the South China Sea Islands in Ancient China,” in Selected Papers, above n.35, 83-91, at 84; Wang Liyü, “Shiyong yu Nanhai Zhudao Zhuquan Guishu Wenti de Guojifa Guize” (Rules of International Law Application to the Issue of Sovereignty over the South China Sea Islands), in Selected Papers, above n.35, 15 ff., 23 (concluding that on the same map, the mark *Changsha* denotes both the *Xisha* and *Zhongsha* Islands, while the two marks of *Shitang* respectively refer to the *Dongsha* and the *Nansha* Islands).

the *Xisha* and *Nansha* island groups. For instance, the Road Map (《更路簿》, *Geng Lu Bu*) drawn up in the *Qing* Dynasty “marks the specific locations of all the islands, reefs, shoals and isles of the *Nansha* Islands which fishermen of China’s *Hainan* Island have traditionally been frequenting, including 73 named places of the *Nansha* Islands.”⁴⁹ Having always considered the South China Sea Islands as her own, the *Qing* Government exercised her right and power to rename 15 major islands and islets in the year of 1909.⁵⁰ Stone markers were erected there, Chinese flags were raised and cannon-shooting ceremonies were held to re-demonstrate China’s sovereignty over the islands.⁵¹

The above noted naming and renaming took place long before the other claimants began to even make a claim.⁵²

In the Republic of China era (1911-1949), the *Nansha* chain of islands and reefs were officially renamed *Tuansha Qundao* (团沙群岛) and later *Nansha Qundao* (南沙群岛), and the *Xisha* group the *Xisha Qundao* (西沙群岛). The Nationalist’s Government organized three rounds of large-scale survey and renaming activities respectively in 1932, 1935 and 1947. The 1935 round renamed 132 islands, reefs and banks in the South China Sea, and the 1947 round renamed 159.⁵³

The People’s Republic of China, since 1949, has continued to adopt the official names for the four major island groups in the South China Sea. On April 24, 1983, as part of the nation-wide process of standardization of geographic names, the Chinese Place Name Commission published an incomplete list of standard names for 287 islands, reefs, banks and shoals in the South China Sea.⁵⁴ The process of renaming or standardizing the names for specific islands and other features in the South China Sea is a continuing one, and is fully within China’s sovereignty power over them.

III.C. Boat Building, Expeditions and Voyages

Thanks to her relatively advanced boat-building techniques, China was the first to have made expeditions and voyages to and across the South China Sea Islands.

⁴⁹ FM-PRC, The Issue of South China Sea, Pt 2, above n.6.

⁵⁰ See below n.148-149 and accompanying text.

⁵¹ Duanmu Zheng, ed., *Guoji Fa* (International Law) (1989), 156; Lin Jinzhi, below n.75, 188 & 189.

⁵² Shen, “International Law Rules,” above n.1, 15-26.

⁵³ See below n.118-119 and accompanying text.

⁵⁴ People’s Daily, Apr. 25, 1983, 4. See also Han Zhenhua, et al., *Collection of Historical Materials on the South China Sea Islands* (1988) [hereinafter Han Zhenhua, et al.].

Expeditions and voyages to and through the South China Sea and the island groups therein were inseparable from China's discovery, naming, sea lane opening and other activities in the South China Sea. It was these expeditions and voyages, despite all sorts of hardships, that made it possible for China to discover, gain and deepen knowledge about, name, patrol, regulate, utilize and otherwise display her authority over the South China Sea Islands.

Despite her slow growth in modern history, China possessed sophisticated skills and technology in the construction or making of many types of structures and tools. Not surprisingly, ancient Chinese were able to build boats strong enough to sail to the *Nansha* area and beyond.

The *Xia* Dynasty was still a primitive society. During that period of time, the Chinese people heavily relied upon natural living creatures for food, and the period is known as an "Era of Fishing and Hunting" (渔猎时代). Those close to the coast would naturally seek food from the ocean. It was thus noted:

To catch fish in the ocean, there must first be boats. Boat-building techniques of [China] began to develop in a very early age. The book *Zhou Yi: Xi Ci* [《周易•系辞》], completed in the Spring and Autumn era, recorded that "Fu Xi Shi carved woods into boats [伏羲氏剡木为舟]." ⁵⁵

Fu Xi Shi is believed to be the Chinese inventor of boat-building and one of the second generation kings in China's pre-ancient era bearing the title of "Mu De Wang Tianxia" (木德王天下, Mu De King of the World). ⁵⁶ Whether Fu Xi Shi is a legendary figure or not, the ancient Chinese boat-building techniques may be independently assessed with the help of archeological discoveries. In 1975, a 7.1 meter long boat made of camphor wood (樟木) was unearthed in Fujian Province, which scientists say had been made in the New Stone Age. A similar boat of the Warring States era was unearthed in Jiangsu Province. ⁵⁷ According to an ancient book titled *Tong Dian* (《通典》, General Codes), nearly 4000 thousand years ago, "the voice and instructions [*i.e.*, sphere of rule] of Xia Yu [*i.e.*, the Xia rulers] reached Nan Hai [the South Sea] and Jiaozhi [now northern and central Vietnam] ("夏禹声教, 至南海交趾"). ⁵⁸

⁵⁵ Xin Yejiang, ed., *Zhongguo Nan Hai Zhu Dao* (China's South [China] Sea Islands), 1996 (1996), 267-268.

⁵⁶ Ibid, 268, quoting Liu Shu, *Tong Jian Wai Ji* (刘恕, 《通鉴外记》).

⁵⁷ Ibid, 268.

⁵⁸ *Tong Dian*, quoted in: Xin Yejiang, ed., above n.55, 268.

To make expeditions to and beyond the South China Sea, ancient Chinese rulers would need boats large and good enough to survive sailing in the open sea. According to a history work titled *Yue Jue Shu* (《越绝书》) authored by Yuan Kang (袁康) of the *East Han Dynasty*, in the Spring and Autumn and Warring States Periods, China was already capable of making five types of boats and military vessels (see Exhibit 2).



Exhibit 2

... 阖闾见 (伍) 子胥, 敢问船运之备何如? 对曰: “船名大翼、小翼、突冒、楼舡、桥舡。今船军之教比陵军 [i.e., 陆军] 之法。大翼者, 当陵军之重车; 小翼者, 当陵军之轻车; 突冒者, 当陵军之冲车; 楼舡者, 当陵军之楼车; 桥舡者, 当陵军之轻足驃骑业。” (... When Helü saw [Wu] Zixu, he asked [him]: May I ask how was your preparation for boats and transportation? [Wu Zixu] answered: “The boats are respectively named *Da Yi*, *Xiao Yi*, *Ty Mao*, *Lou Jiang* and *Qiao Jiang*. Nowadays the system of the navy is comparable to that of the army. *Da Yis* are equivalents of the heavy vehicles of the army; *Xiao Yis*

are like light vehicles of the army; *Tu Maos* are like the charge vehicles of the army; *Lou Chuan* are like the storied vehicles of the army; and *Qiao Chuan* are like light cavalries of the army.”⁵⁹

The term *Da Yi* denotes heavy and large boats; *Xiao Yi* small and light boats; *Tu Mao* boats that charge forward; *Lou Chuan* boats with two or multiple levels or stories; and *Qiao Chuan* the equivalents of mosquito boats bridging between big boats or between big boats and the coast. On the size of these boats, Wu Zixu himself wrote:

大翼，一艘广一丈五尺二寸，长十丈；中翼，一艘广一丈三尺五寸，长九丈六尺；小翼，一艘广一丈二尺，长九丈。(A *Da Yi* [big boat] is one *zhang*, five *chis* and two *cuns* wide, ten *zhangs* long. A *Zhong Yi* [median sized boat] is one *zhang*, three *chis* and five *cuns* wide, nine *zhangs* and six *chis* long. A *Xiao Yi* [small boat] is one *zhang* and two *chis* wide, nine *zhangs* long.)⁶⁰

According to Xin Yejiang and his co-authors, the measure scale system of the *Zhou* Dynasties was followed in the Spring and Autumn Period. One *chi* in the *Zhou* and *Spring* and *Autumn* eras is equivalent to 19.9 cm.⁶¹ If this is true, the size of a big boat made in Eastern Zhou would be equivalent to more than 3 meters wide and nearly twenty (19.9) meters long. This gives us an idea how advanced the Chinese already were in the art and technology of boat making in the Spring and Autumn Period which covered the first part of the entire *Eastern Zhou* Dynasty era. The exact size of a big boat made for sea going at that time might well be larger than those described above.

Boat-making techniques were further developed in the Han era. In *Taiping Yu Lan* (《太平御览》), it was recorded that “large boats [built] in Yuzhang could carry one to ten thousand people; and a palace could [even] be constructed on the boat” (豫章大船，可载万(千)人，

⁵⁹ Yuan Kang (袁康, *East Han* Dynasty), *Yue Jue Shi* (《越绝书》), quoted in: Li Fang (*North Song* Dynasty, 960-1127), *Taiping Yu Lan* (The Imperial Books of the Taiping Reign [of the *Song* Dynasty]) [hereinafter *Taiping Yu Lan*], v. 770, Section of Boats (舟部). See also Xin Yejiang, ed., above n.55, 345.

⁶⁰ Song Zhenghai, et al., *Zhongguo Gudai Haiyang Xue Shi* (A History of Oceanography in Ancient China) (1988), quoting Wu Zixu (伍子胥, of the Spring and Autumn Period), *Shuizhan Bingfa Nei Jing* (《水战兵法内经》, Internal Classics on Military Strategies and Tactics for Wars on Waters).

⁶¹ Xin Yejiang, ed., above n.55, 346.

船上起宫殿”).⁶² Chinese Southerners living in the coastal areas of Guangdong and Guangxi were good at boat-building and ocean-going. Because of their long time use of and reliance on the South China Sea, they were “not only able to build large boats with highly developed craftsmanship, but also rich in sea sailing and navigation experience.”⁶³ With the boat-making techniques being already sophisticated in the *Han* and pre-*Han* times, there is no reason why subsequent generations of the Chinese empire could not build at least equally sophisticated sea-faring boats for sailing to or through the South China Sea.

The availability of suitable boats enabled the Xia rulers to collect *zhuji*, *dabei* and *daimao* from the coral islands of the South China Sea,⁶⁴ and the Chu rulers to dispatch expeditionary forces and declare the South Sea (*Nan Hai*) as part of their territory.⁶⁵ Similarly, the *Han* Dynasty was able to make expeditions to the Malay Peninsula via the *Nansha* Islands,⁶⁶ the Wu State to send envoys to India via the sea routes through the South China Sea,⁶⁷ the Chinese *shuishì* (naval forces) in various dynasties to patrol the *Xisha* and *Nansha* Islands,⁶⁸ and so on.

In the *Yuan* era, expeditions to and/or through the South China Sea remarkably thrived. Wang Dayuan (汪大渊), a prominent Chinese navigator in the *Yuan* Dynasty, made numerous voyages to the South China Sea and beyond and even made notes of his observations.⁶⁹ Wang's voyages were but only among other expeditions and voyages in the long history of the *Yuan* Empire's existence. With respect to an expeditionary force that was dispatched to Java in 1292, for instance, Greenfield observes:

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

⁶² *Taiping Yu Lan*, above n.59, vol. 768, [Section on] Han Gongdian Shu (《汉宫殿疏》, Memorials to the Throne on the Palaces of the *Han* Dynasties), quoted in Xin Yejiang, ed., above n.55, 346.

⁶³ Xin Yejiang, ed., above n.55, 346.

⁶⁴ See text accompanying above notes 34-37.

⁶⁵ See text accompanying above notes 38-40.

⁶⁶ See text accompanying below n.76-77.

⁶⁷ See text accompanying below n.79-81.

⁶⁸ See text accompanying below n.95-104.

⁶⁹ See text accompanying above n.47 and below n.83-84.

“Wanli shih-t’ang” [now spelled *Wanli Shitang*] apparently referred to the present Spratly Islands.⁷⁰

Noteworthy is the famous Zheng He’s Seven Voyages. A well-known navigator and a high-ranking official of the Ming imperial court, Zheng He (also known as Cheng Ho, 1371-1435) led seven (or possibly eight) large-scale voyages through and beyond the South China Sea between 1405 and 1433, with each round trip taking about two years. His destinations included Southeast Asia, India, East coast of Africa and the Red Sea.⁷¹ The following observations are worth quoting:

When...Cheng Ho of the *Ming* Dynasty...sailed seven times through the South China Sea and the Indian Ocean between 1403 and 1433, his fleet passed through the Paracel and Spratly Islands on several occasions and the locations of these two islet groups were recorded on a detailed map drawn between 1425 and 1430 (the exact year cannot be determined). The Paracels were referred to as “Shih-t’ang” (Rocks) and “Wansheng shih-t’angyu” (Islands of ten thousand rocks), and the Spratly as “Shihsing shih-t’ang” (Stone star rocks). A subsequent *Ming* dynasty publication on the products and geography of the sea entitled “Haiyu” (On the Sea) also clearly described the location of these islet groups. The text explicitly states that the “Wanli changsha” (Myriad on ten thousand li sand banks) is located southeast of “Wanli shih-t’ang” (Myriad on ten thousand li rocks). The Spratly Islands are indeed located south-east of the Paracels.⁷²

III.D. *Knowledge of Geographical and Natural Features*

China was the first to know the geographical and natural features of the Nanshas and the Xishas.

As early as during the *East Han* Dynasty (23-220), the Chinese people already knew that waters in the South China Sea Islands area were shallow, so shallow that ships would get stranded by the “magnetic rocks” under beneath. In his book titled *Yiwu Zhi* (《异物志》, Records of Rarities), Yang Fu (杨孚) of the *East Han* era described the geographical features of the South China Sea islands in these words: “*Zhanghai qitou, shui qian er duo cishi*”

⁷⁰ Jeanette Greenfield, “China and the Law of the Sea,” in James Crawford & Donald R. Rothwell, eds., *The Law of the Sea in the Asian Pacific Region* (1994), 22 ff., 31.

⁷¹ See Ci Hai, above n.34, 448.

⁷² Greenfield, above n.70, 31.

(“涨海崎头，水浅而多磁石，” meaning that “There are islets, sand cays, reefs and banks in the South China Sea, the water [there] is shallow and filled with magnetic rocks or stones”).⁷³ As noted earlier, the term *qitou* refers to islets, reefs, shoals and the like in the oceans.⁷⁴ The term *cishi* (磁石), literally denoting magnetite, or magnetic “rocks” or “stones,” was vividly used in Yang Fu’s *Yiwu Zhi* to refer to the fact that ancient Chinese ships sailing to the South China Sea got stranded by the reefs, shoals and banks as if the ships were attracted by lodestones or magnetic rocks.⁷⁵

The South China Sea islands were further described in two famous books published in the period of *San Guo* (Three Kingdoms) (220-280): *Nanzhou Yiwu Zhi* (《南州异物志》, Records of Rarities in the Southern Boundary) and *Funan Zhuan* (《扶南传》, Journeys to and from Funan [now Cambodia]).

Nanzhou Yiwu Zhi, authored by Wan Zhen (万震) of the Wu Kingdom (222-280), and referred to in *Taiping Yu Lan* (《太平御览》) authored by Li Fang (李方) of the Song Dynasty, recorded the encounters of Chinese expedition sailors of the Han Dynasties (206 B.C.-220 A.D.) on their way back from the Malay Peninsula to China: “Dongbei xing, ji da qitou, chu Zhanghai, zhong qian er duo cishi” (“东北行，极大崎头，出涨海，中浅而多磁石，” meaning that “Sailing northeastward, one would encounter a large number of islets, reefs, shoals and banks becoming visible and noticeable in the South China Sea, where [the water is] shallow and filled with magnetic rocks”).⁷⁶ Elsewhere, the author made a similar reference (see Exhibit 3):

涨海崎头，水浅而多磁石，外徼人乘大船，皆以铁揲揲之。至此关，以磁，不得过。(Zhanghai qitou, shui qian er duo cishi, wai jiao ren cheng da chuan, jie yi tie die die zhi. Zhi ci guan, yi ci, bu de guo) (There are islets, sand cays, reefs and banks in the South China Sea, and the water there is shallow and filled with magnetic rocks. Officers on patrol

⁷³ Yang Fu (East Han), *Yiwu Zhi* (Records of Rarities) (no longer in existence), quoted in *Qiong Tai Zhi* (Records of Hainan and Taiwan), Volume 9, written and published during the reign title of Zhengde (1506-1521) of the Ming Dynasty (1964), “Rarities, Part Two,” 14. See Lin Jinzhi, below n.75, 181, n. 1. See also Han Zhenhua, et al., above n.54.

⁷⁴ See text accompanying above n.44.

⁷⁵ See Lin Jinzhi, “The History of the Earliest Discovery, Management and Exercise of Jurisdiction over the Islands in the South China Sea by the Chinese People,” in *Selected Papers*, above n.35, 181-199, 181.

⁷⁶ Wan Zhen (Wu State, 222-280), *Nanzhou Yiwu Zhi*, quoted in *Taiping Yu Lan*, above n.59, vol. 790, pt. “Four Barbarians,” sec. 11, “Gouzhi Guo.”

missions took big boats all covered with iron; when they approached the area, they could not proceed further because of the magnetic rocks).⁷⁷

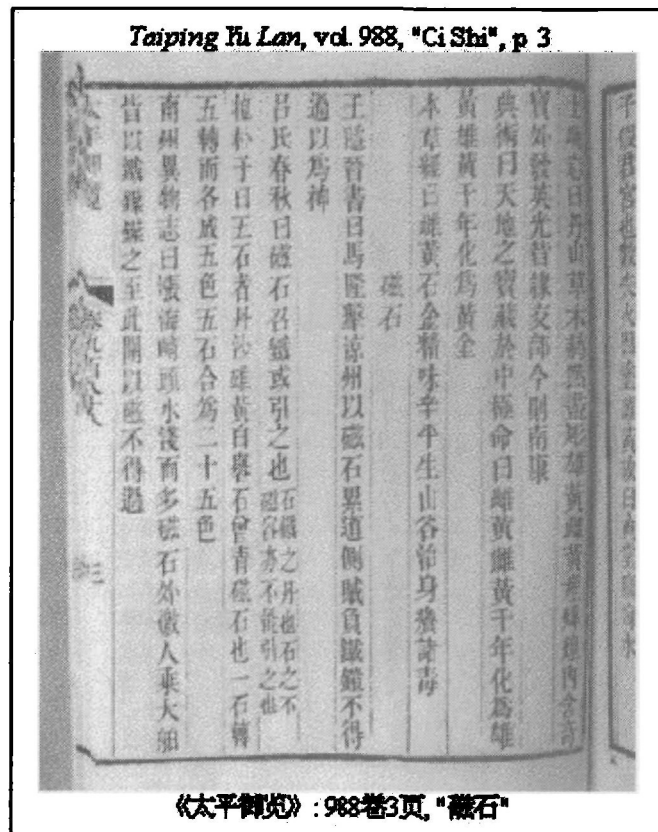


Exhibit 3

The Chinese people also learnt that these islands and reefs were formed by corals and even named these island chains *Shanhu Zhou* (Coral Islands and Reefs) in the era of *San Guo* and the *Jin* Dynasties (265-420).⁷⁸

In 226 A.D., Kang Tai (康泰), a famous ancient Chinese navigator of the Wu Kingdom, and Zhu Ying (朱应) were dispatched on diplomatic missions by Emperor Huangwu (黄武帝) via the South China Sea to Funan

⁷⁷ Ibid, vol. 988, pt. "Medicines: Magnetic Rocks."

⁷⁸ Shen, "International Law Rules," above n.1, 19-20.

(扶南, now Cambodia)⁷⁹ where they met diplomatic envoys from the State of Tianzhu (天竺, now India), and numerous other states.⁸⁰ In his *Funan Zhuan*, Kang Tai made the following observations during his journey to and from Funan (see Exhibit 4).

Zhanghai zhong, dao shanhu zhou, zhoudi you panshi, shanhu sheng qi shang ye (涨海中, 到珊瑚洲, 洲底有盘石, 珊瑚生其上也) (In the South China Sea, there are coral islands and reefs; below these islands and reefs are rocks upon which the corals were formed).⁸¹

In *Guangzhou Ji* (《广州记》, Chronicles of Guangzhou) authored by Pei Yuan (裴渊) of the Jin Dynasties (265-420), it was similarly stated:

Shanhu Zhou, zai [Dongguan] Xian nan wubai li, xi youren yu haizhong pu yu, de shanhu (珊瑚洲, 在县南五百里, 昔有人于海中捕鱼, 得珊瑚) (Shanhu Zhou [The Coral Islands and Reefs] lie five hundred *li*s south from the County of Dongguan; in the old days [prior to the Jin] people were already catching fish in the [South China] Sea, and they got corals).⁸²

The above are merely the first batch of known records in history ever depicting the geographic and other natural conditions of the South China Sea Islands. The Chinese people came to learn more about the conditions of these coral islands and reefs at later times.

⁷⁹ Funan was an ancient state established in the first century in the southern part of Cambodia. In the seventh century, the Funan State was annexed by the State of Jimie (Khmer), which had been a vassal state of Funan in the northern part of Cambodia today. See Ci Hai, above n.34, 516.

⁸⁰ Ibid, 859.

⁸¹ Kang Tai (Wu State), *Funan Zhuan*, quoted in *Taiping Yu Lan*, above n.59, vol. 69, pt. "Lands," sec. 34: "Reefs and Islands." See also Lin Jinzhi, above n.75, 181; Wu Fengbin, "Wo Guo Yongyou the Nansha Qundao Zhuquan de Lishi Zhengju" (Historic Evidences of China's Possession of Sovereignty over the Nansha Islands), in: *Selected Papers*, above n.35, 107-116, 107; Lü Yiran, "Refuting the Fallacy of 'Terra Nullius' Status of the Nansha Islands," in: *Selected Papers*, above n.35, 47-48.

⁸² Pei Yuan (North Jin Dynasty), *Guangzhou Ji*, quoted in: Le Shi (North Song), ed., *Taiping Huanyu Ji* (The World Chronicles of the Taiping Reign [of the Song State]), vol. 157, "Lingnan Dao, Guangzhou and Dongguan County." See also Liu Nanwei, above n.48, 83.



Exhibit 4

Wang Dayuan, who made multiple voyages to and through the South China Sea and its islands, wrote the following in his one-volume publication entitled *Dao Yi Zhi Lue* (《島夷志略》, Abridged Records of Islands and Barbarians):

.....石塘之骨，由潮州而生，迤邐如長蛇，橫亘海中，越海諸國，俗云：萬里石塘。以余推之，迄止萬里而已哉.....原其地脈，历历可考，一脈至爪哇，一脈至渤泥及古里地，一脈至西洋遐邇昆侖之地.....避之則吉，遇之則凶。(Shitang zhi gu, you Chaozhou er sheng, yili ru chang she, heng gen hai zhong, yue hai zhu guo, su yun: Wanli Shitang. Yi yu tai zhi, qizhi wan li er yi zai. . . Yuan qi dimai, lili

ke kao, yi mai zhi Zhuawa, yi mai zhi Boni ji Gulidimen, yi mai zhi xi yang xia Kunlun zhi di.... Bi zhi ze ji, yu zhi ze xiong).⁸³

The following is the translation of the above passage:

The base of Shitang originates from Chaozhou. It is tortuous as a long snake lying in the sea, and across the sea it reaches various states, and it is popularly called: Wanli Shitang. According to my estimates, it is less than ten thousand *lis*.... Its veins can all be traced. One such vein stretches to Java, one to Boni and Gulidimen, and one to the west side of the sea toward Kunlun in the distance.... One would be safe to avoid it, and dangerous to come across it.⁸⁴

Here, *Boni* denotes Burni, a kingdom which existed then in what is now Brunei and its vicinity on the Kalimantan Island. *Gulidimen* was another kingdom on the Kalimantan. *Kunlun* denotes the *Kunlun* Islands (Con Son Islands, also known as Is. de Paulo Condore) which is located outside the mouth of the Mekong River about 200 nautical miles away from Saigon. Given the description that the three veins of the *Wanli Shitang* each respectively extends to Kalimantan, Java and the western part of the South China Sea looking over the *Kunlun* Island in the distance, it is evident that Wang Dayuan meant the *Nansha* Islands by *Shitang* and *Wanli Shitang*.

III.E. Sea Lane Opening

China was the first to open sea lanes through the Xishas Islands and the Nanshas Islands.

Unlike on the deep open sea, voyages through the South China Sea are not at one's will. Reefs, atolls and shoals beneath the water surface make it difficult to sail to and across the island groups even if to do so would shorten the travel distance to a large extent. Sea routes through these coral island chains would have to be explored and actually "opened" on the basis of prior experience of expeditions, voyages and other explorative activities. In this regard, ancient Chinese made great contributions in locating dangerous sailing areas and establishing safe sea lanes through the *Nansha* and *Xisha* Islands.

⁸³ Wang Dayuan (Yuan), *Dao Yi Zhi Lue* (Abridged Records of Islands and Barbarians), entry of "Wanli Shitang," 93. See also Wu Fengbin, above n.81, 109; Lin Jinzhi, above n.75, 182.

⁸⁴ Ibid. (translation).

According to the late Professor Han Zhenhua, the West Han rulers established and maintained close navigational and commercial ties with Southeast Asia, Sri Lanka and India through the usage of sea-routes in the South China Sea.⁸⁵ It took Chinese envoys of the *West Han* Dynasty only two months to sail from the Strait of Malacca back to the coast of central Vietnam by using the sea route through the *Nansha* Islands area. In contrast, sailing through the conventional sea route along the Asian coast would have taken them several months longer.⁸⁶ Later generations either continued to utilize previously opened sea lanes, or sought to open new sea routes in order to further shorten the voyages between the Chinese mainland and destinations in and beyond the South China Sea.

Zhu Fan Tu (《诸蕃图》, Map[s] and Chart[s] of the Various Barbarian Peoples), a no-longer-available set of charts referred to in *Zhu Fan Zhi* (《诸蕃志》, Records of the Various Barbarian Peoples), a set of books authored by the South Song official Zhao Rukuo (赵汝适) in 1225, depicted navigational sea lanes from and to the Chinese mainland through the South China Sea Islands:

汝适被命来此[指泉州], 暇日阅《诸蕃图》, 有所谓石床、长沙之险, 交洋、竺屿之限。问其志, 则无有焉。.....宝庆元年[1225年]九月, 日, 朝散大夫提举福建路市舶赵汝适序。 ([I.] Rukuo was ordered to come here [*i.e.*, Quanzhou]. In my spare time, I read *Zhu Fan Tu*, which contains the so-called reference to the following words: *Shichuang*, *Changsha zhi xian*, *Jiao Yang*, *Zhu Yu zhi xian* [liberally, the dangerous water areas of the *Shichuang* and *Changsha* are the outer limits of the *Jiaozhi* Sea and the *Natuna* Islands]. When I asked whether they had records of the barbarous peoples, they did not have any.... Preface by Zhao Rukuo, *Chaosan Dafu Tiju*, Fujian Lu Shibo, September __, Year One of Baoqing [of the *Song* Dynasty] [*i.e.*, 1225 A.D.]).⁸⁷

Here, *Shichuang* (*Shitang*) denotes the *Xisha* Islands whereas *Changsha* symbolizes the *Nansha* Islands. *Jiao Yang* (交洋) is an abbreviated form of *Jiaozhi Yang* (交趾洋, *Jiaozhi* Sea), the sea area west of the *Xisha* Islands. It is what is

⁸⁵ Han Zhenhua, 1996, above n.43, 54, citing *Han Shu*, vol. 28, pt B, Geography, entry of Yue Di (《汉书》28卷下, 地理志, 粤地条末后).

⁸⁶ Han Zhenhua, 1996, above n.43, 62, n. 19.

⁸⁷ (Song) *Zhu Fan Tu* (《诸蕃图》, Maps and Charts of the Various Barbarian Peoples), quoted in Zhao Rukuo, *Zhu Fan Zhi*, Preface. See Han Zhenhua, et al., above n.54, 38-39; Han Zhenhua, "Song Dai de *Xisha* Qundao yu *Nansha* Qundao" (The *Xisha* Islands and *Nansha* Islands in the *Song* Dynasties) [hereinafter Han Zhenhua, 1991], in *Selected Papers*, above n.35, 305-15, 311.

known as *Beibu Wan* or the Gulf of Tunkin. In the words *Zhu Yu* (竺屿), *Zhu* was the traditional transliteration of *Datcu*; *Yu* means islands. The combination of these two words refers to the *Datcu* Islands (now *Natuna* Islands). The above passage means that once one passes through the dangerous sea routes across the *Xisha* and the *Nansha* Islands, one would reach the sea boundaries between China and foreign countries.⁸⁸

Lingwai Daida (《岭外代答》), literally Substitute Replies from Lingwai (now Guangdong and Guangxi), another set of books of the Song era written by Zhou Qufei (周去非) in 1178, contained a similar depiction of the sea routes through the *Nansha* Islands between China and other parts of the world that conforms with that referred to above:

...诸藩国之丰盛多宝货者，莫如大食国，其次奢婆国，其次三佛齐国，其次乃诸国耳。三佛齐者，诸国海道往来之要冲也。三佛齐之来也：正北行舟，历上下竺与交洋，乃至中国之境。其欲至广者，入自屯门；欲至泉州者，入自甲子门。奢婆之来也：稍西北行舟，过十二子石，而与三佛齐海道，合于竺屿之下。大食国之来也：以小舟运而南行，至故临国，易大舟而东行，至三佛齐国，乃复如之入中国也。其他占城、真蜡之属，皆近在交趾洋之南，远不及三佛齐国、奢婆之半，而三佛齐、奢婆，又不及大食国之半也。诸藩国之入中国，一岁可以往返，唯大食国必二年而后可。(... *Zhu fan guo zhi fusheng duo baohuo zhe, mo ru Dashi Guo, qici Shepo Guo, qici Sanfoqi Guo, qici nai zhu guo er. Sanfoqi zhe, zhu guo haidao wanglai zhi yaochong ye. Sanfoqi zhi lai ye: zheng bei xing zhou, li Shang Xia Zhu yu Jiao Yang, naizhi Zhongguo zhi jing. Qi yu zhi Guang zhe, ru zi Tunmen; yu zhi Quanzhou zhe, ru zi Jiazimen. Shepo zhi lai ye: Shao xibei xing zhou, guo Shier Zishi, er yu Sanfoqi haidao, he yu Zhu Yu zhi xia. Dashi Guo zhi lai ye: yi xiao zhou yun er nan xing, zhi Gulin Guo, yi da zhou er dong xing, zhi Sanfoqi Guo, nai fu ru zhi ru Zhongguo ye. Qita Zhancheng, Zhenla zhi shu, jie jin zai Jiaozhi Yang zhi nan, yuan buji Sanfoqi Guo, Shepo zhi ban, er Sanfoqi, Shepo, you buji Dashi Guo zhi ban ye. Zhu fan guo zhi ru Zhongguo, yi sui keyi wangfan, wei Dashi Guo bi er nian er hou ke* (emphasis added)).⁸⁹

When translated into English, the above passage reads as follows:

⁸⁸ See Han Zhenhua, 1991, above n.87, 311-312.

⁸⁹ Zhou Qufei (South Song), *Lingwai Daida* (Substitute Replies from Lingwai), vol. 3, "Hanghai Waiyi (航海外夷)" (Voyages to the External Barbarians).

...Among those foreign states which are rich in resources and treasures, none is comparable with the State of Dashi, the next is the State of Shepo, and next comes the State of Sanfoqi, followed by the other states. Sanfoqi is the strategic pass for communications between various states via sea routes. [Here is how] to travel from Sanfoqi to China: One would sail by boats northward, *pass the upper and lower Datus and the Jiaozhi Sea, and then respectively enter the territory of China* [on the sea]. To reach Guangdong, one would go through Tunmen; to reach Quanzhou, he would go through Jiazimen. From Shepo to China: Sailing northwest for some distance, passing the Twelve Rock-Islets, and meeting the sea route between Sanfoqi and China right before the Datcu Islands. From the State of Dashi to China: Taking small boats southbound, reaching the State of Gulin, changing to large boats and sailing eastward, arriving at the State of Sanfoqi, and then taking the same sea route to enter China. Other tributary states such as Zhancheng and Zhenla are all close south of the Jiaozhi Sea, and their distances to China are far shorter than half of those of the State of Sanfoqi and Shepo, while the distances of Sanfoqi and Shepo to China are again shorter than half of the distance between the State of Dashi and China. To travel from the various foreign states to China, one can complete the round trip in one year, with the only exception of the State of Dashi, the round trip between which and China must take more than two years to complete.⁹⁰

Sanfoqi refers to the Kingdom of Sriwidjaja which existed on part of what is now Sumantra Island with Palembang as its center. *Shepo* State was located in Java and part of Sumantra. The State of *Dashi* refers to the empire of Taziks, and the word *Dashi* comes from the Persian word Tazi and was used since the *Tang* and *Song* Dynasties to denote the Arabian Empire. *Tunmen* is in Kowloon, Hongkong, and was a gateway to Guangzhou. *Shi'er Zishi* (Twelve Rock-Islets) refers to the small islets north of the *Karimata* Islands near Java. *Gulin* State is the Chinese transliteration of the kingdom of Kulam which existed on the southwest coast of India. *Shang Xia Zhu* (Upper and Lower Datus) and *Zhu Yu* (Datcu Islands) both refer to the *Natuna* Islands. *Quanzhou* is located in Fujian Province. *Zhancheng* was a state in central-southern Vietnam and part of Cambodia with Qui Nhon as its capital. *Zhenla*, in most part, was what is now Cambodia.

The sea route between Sanfoqi and Guangdong and Fujian was newly opened up in the *Song* Dynasties. Part of the new sea route, *i.e.*, that between Zhancheng and Guangdong and Fujian, was the same as the old one. From

⁹⁰ Emphasis added by the author in the translation.

Sanfoqi to Zhancheng, the old sea route was along the coasts of Malay Peninsula and Indo-China, while the newly developed sea route would pass the *Natuna* Islands and then immediately enter the domain of China in the South China Sea, namely, the *Nansha* Islands water area which was then called *Changsha Hai* (Changsha Sea). Along this new sea route, one would then exit the Chinese territory in the Changsha Sea area, passing Zhancheng on the central-southern Vietnamese coast, proceed through the Jiaozhi Sea, and then re-enter the Chinese territory in the *Xisha* Islands water area called Shitang Hai (Shitang Sea). The major difference between the new route and the old one is that using the new route, one would enter China's territory on the sea twice, once in the *Nansha* Islands area and the other in the *Xisha* Islands area, whereas along the old coastal sea route between Sumantra and Zhancheng, one did not need to enter and traverse China's Changsha Sea (the *Nansha*) area, instead, he only needed to enter China's territory once in the Shitang Sea (the *Xisha*) area. The words "*li Shang Xia Zhu yu Jiao Yang, naizhi Zhongguo zhi jing*" mean that by using the new sea route, one could "enter the territory of China both after passing the Upper and Lower Datus and after traversing the Jiaozhi Sea."⁹¹

The existing and newly opened sea routes through the *Xisha* and *Nansha* areas greatly facilitated China's interactions with the outside world. When Zheng He made his famous voyages, he followed such routes through the South China Sea Islands.⁹² The sea routes that Zheng He's fleet followed, Swanson observes, "had been known and used for several centuries," and, in fact, "had been systematized into two major sea lanes" since the Song era: "the East Sea Route and the West Sea Route"; and each of the routes was "subdivided into a major and minor route."⁹³ Describing one of the routes, Swanson goes on:

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

⁹¹ Han Zhenhua, 1991, above n.87, 312.

⁹² See text accompanying above n.71-72 (Zheng He's Seven Voyages).

⁹³ Bruce Swanson, *Eighth Voyage of the Dragon: A History of China's Quest for Seapower* (1982), 37-38.

southward toward the west coast of Borneo, making land falls on the various islands in the southern portion of the South China Sea.⁹⁴

Having noted the above, I believe that more than enough historical records exist to link China with the opening and usage of sea routes through the South China Sea Islands.

III.F. Naval Patrols

China was the first to have made official naval patrols in the area surrounding the South China Sea Islands.

The practice of naval patrol, then known as *xing bu Zhang Hai* (行部涨海), started in the *Han* Dynasties when Admiral Ma Yuan conquered central and northern Vietnam.⁹⁵ In his *Hou Han Shu* (《后汉书》, Books of the Latter *Han* Dynasty), e.g., Xie Cheng (谢承) recorded that Chen Mao (陈茂), the *Bigjia* (别驾, a rank of officials lower than *Cishi* (刺史)) of Jiaozhi Province (交趾, covering most parts of Guangdong and Guangxi as well as the central and northern parts of Vietnam) of the *East Han* Dynasty, accompanied Zhou Chang (周敞), the *Cishi* (the highest official of a province) of Jiaozhou Province (交州, the same area of jurisdiction as Jiaozhi which was renamed Jiaozhou at that time), in their naval inspection and patrolling cruise to the islands in the South China Sea (“*xing bu Zhang Hai*”).⁹⁶

Surviving history books and materials indicate that such practice continued, or at least existed, in later times of the Chinese history—from the *Jin* Dynasties, the *Song State of the Southern Dynasties*, the *North Song* Dynasty, the *Yuan*, *Ming* and *Qing* Dynasties, to the Republican era.⁹⁷ In *Guangdong Tong Zhi* (《广东通志》, The General Records of Guangdong) authored by Hao Yulin (郝玉麟), e.g., it was reported that Bao Jing (鲍靓), the Administrator of *Nan Hai* (南海太守, the highest official in charge of the South China Sea affairs) of the *Jin* Dynasties (265-420), went on patrolling and inspection voyages in the South China Sea (“*xing bu ru hai*”) (“行部入海”).⁹⁸ Similarly, there were credible records of the Chinese naval force of the *Song State of Southern Dynasties* (南朝, 420-479)

⁹⁴ Ibid, 38.

⁹⁵ Shen, “International Law Rules,” above n.1, 18.

⁹⁶ Xie Cheng (Wu State), *Hou Han Shu* (Books of the *Latter Han* Dynasty). See Liu Wenzong, above n.65, 69.

⁹⁷ See Shen, “International Law Rules,” above n.1, 20-21, 24, 27-28, 31-32, 35 & 44-45.

⁹⁸ Hao Yulin (Jin), *Guangdong Tongzhi* (General Records of Guangdong), cited in: Liu Wenzong, above n.65, 69.

patrolling the *Xisha* and the *Nansha* islands in the South China Sea area. In his *Wudi Lei* (《武帝诔》, In Memory of Emperor Wudi), Xie Lingyun (谢灵运, 385-433 A.D.), a poet of the *Song State of the Southern Dynasties*, referred to the Chinese navy's activities in the South China Sea in the following words: “*Huqi Wuxi, Zhou shi Zhanghai*” (“虎骑骛隰, 舟师涨海”) (Brave cavalymen galloped across the wet lowlands, while naval soldiers fought and patrolled in the *Zhang Hai* [South China Sea]).⁹⁹ In his *Shui Jing Zhu* (《水经注》, Commentaries on the Books of Waters), the *Wei* Dynasty official and geographer Li Daoyuan (酈道元) also wrote that in Year 1 of *Yuanjia* (元嘉) of Emperor Song Wendi (i.e., 424 A.D.), naval forces of the *Song State in the Southern Dynasties* era patrolled ocean areas far south of Linyi (林邑), a place in central and southern Vietnam, including the areas around the Kunlun Islands (昆仑) near the coast of southern Vietnam.¹⁰⁰

The official *Yuan Shi* (《元史》, History of the *Yuan* Dynasty) completed in the *Ming* era not only contained a geographical description of the South China Sea islands, but also recorded that the Navy of the *Yuan* Dynasty had made inspections and patrols of the *Qizhou Yang* (七洲洋, the *Xisha* Islands) and *Wanli Shitang* (万里石塘, the *Nansha* Islands). The “*Shi Bi Zhuan*” (“史弼传,” History about [General] Shi Bi) section of *Yuan Shi* recorded the experience of Chinese naval forces led by General Shi Bi (see Exhibit 5).

十二月，弼以五千人合诸军发泉州。……过七洲洋、万里石塘，历交趾占城界……入混沌大洋、檳榔屿、假里马答、巨栏等山，驻兵伐木，造小舟。…… (Shier yue, Bi yi wuqian ren he zhu jun fa Quanzhou... Guo Qizhou Yang, Wanli Shitang, li Jiaozhi Zhancheng jie... ru Hundun Dayang, Ganlan Yu, Jialimada, Julan deng shan, zhubing famu, zao xiao zhou....) (In December, [General Shi] Bi led five thousand combined forces, sailing from Quanzhou.... [they] sailed through *Qizhou Yang* [referring to the *Xisha* Islands] and *Wanli Shitang* [referring to the *Nansha* Islands], passing the territory of *Jiaozhi* and *Zhancheng*.... [They then] landed on such islands as *Hundun Dayang*, *Ganlan Island*, *Jialimada* and *Julan*, where they stationed and cut down lumbers to build small boats....)¹⁰¹

⁹⁹ See Wang Liyü, above n.48, 25.

¹⁰⁰ Li Daoyuan (酈道元, 466-527), *Shui Jing Zhu* (《水经注》, Commentaries on the Books of Waters), vol. 36, Records of Yushui and Linyi (郁水、林邑记), cited in: Han Zhenhua, et al., above n.54, 29.

¹⁰¹ *Yuan Shi* (The History of the *Yuan* Dynasty), vol. 262, “*Shi Bi*” (The History of Shi Bi), in: Song Lian (Ming), ed., 9.

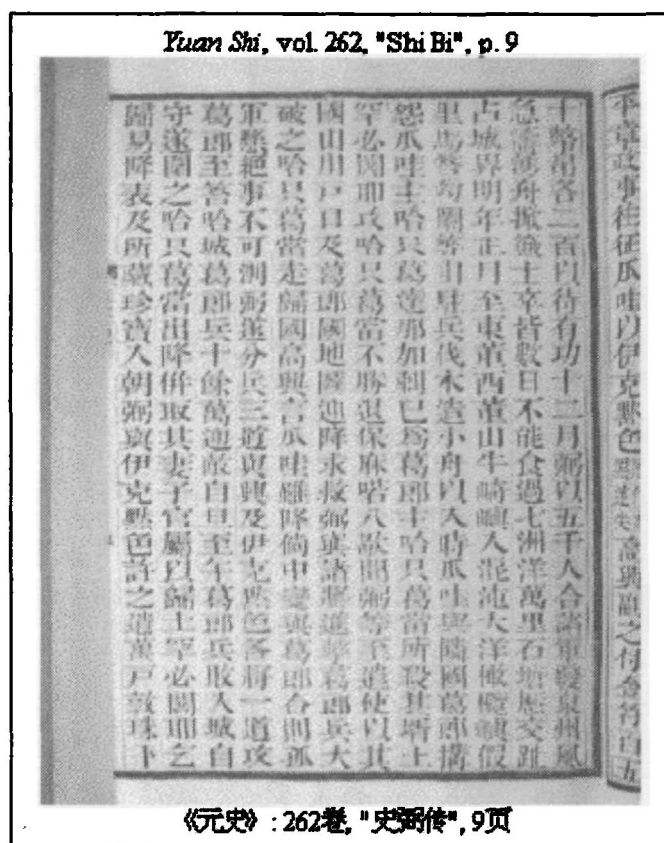


Exhibit 5

In his *Dao Yi Zhi Lue*, Wang Dayuan recorded the Yuan naval inspection and patrol activities by noting that when the navy of the Yuan Empire was patrolling the South China Sea islands and the sea zones near Kalimantan, "there were more than a hundred sick soldiers who could not go any further and had to stay on the islands" ("有病卒百余人，不能去者，遂留山中" (*you bing zu bai yu ren, buneng qu zhe, sui liu shan zhong*)).¹⁰² Here, only the number of those soldiers who could not further take part in patrolling due to ailment was given, which was already over one hundred—there must have been more healthy sailors. The scale and magnitude of patrols by the Yuan navy in the *Nansha* area thus appeared to be substantial.

¹⁰² Wang Dayuan, above n. 83. See Wu Fengbin, above n.81, 109.

In the *Ming* Dynasty, the naval arm of *Hainan Garrison Force* (*Hainan Wei*) was particularly responsible for patrolling as well as exercising jurisdiction over the South China Sea and its islands. In the official Records of Qiongzhou County (《琼山县志》) compiled by Li Xi (李熙) of the *Ming* era, it was recorded:

.....广东濒大海，海外诸国皆内属.....公统兵万余，巨舰五十艘，
.....[巡逻]海道几万里。(...*Guangdong bin da hai, hai wai zhuguo jie neishu...*
Gong tong bing wanyu, ju jian wushi sou, ...[xunluo] hai dao ji wan li...) (...
Guangdong is adjacent to the grand [South China] Sea, and the
territories beyond the Sea all internally belong [to the Ming
Empire]...The General led more than ten thousand soldiers and fifty
huge ships to patrol several ten thousand *lis* on the South China Sea.)¹⁰³

During the reign of Emperor Kangxi (1662-1722) of the *Qing* Dynasty, the Navy of Guangdong (Canton) (广东水师) was responsible for patrolling the South China Sea. In 1710 to 1712, *e.g.*, Wu Sheng (吴升), Vice-Admiral of the Guangdong Navy (广东水师副将, Guangdong Shuishi Fujiang), personally led his fleet to the South China Sea Islands and the vicinity to patrol the sea area:

.....吴升，擢广东副将，调琼州。自琼崖，历铜鼓，经七洲洋、四
更沙，周遭三千里，躬自巡视，地方宁谧。..... (...*Wu Sheng, zhuo*
Guangdong Fujiang, diao Qiongzhou. Zi Qiongya, li Tonggu, jing Qizhou Yang and
Sigeng Sha, zhou zao sanqian li gongzi xunshi, difang ningyi...) (... Wu Sheng was
promoted to the position of Vice-Admiral of Guangdong [Navy], and
was transferred to Qiongzhou [of Hainan]. [The fleet] started from
Qiongya [of Hainan] by way of Tonggu, passing through Qizhou Yang
and Sigeng Sha, traveling three thousand *lis*, with [General Wu Sheng]
leading the patrol personally, leaving every place [of patrol] in peace.)¹⁰⁴

The patrol activities of various Chinese dynasties were unparalleled, and constituted an important aspect of China's active exercise of authority over the South China Sea Islands.

¹⁰³ Wu Fengbin, above n.81, 110, citing Li Xi, *Qiongzhou Xian Zhi* (Records of Qiongzhou County), vol. 14. See also Hu Ruishu, *Wan Zhou Zhi* (Records of Wan Zhou Sub-Prefecture) [hereinafter *Wan Zhou Zhi*], vol. 4, "Bian Hai Waiguo" (The Boundary Seas and Foreign Countries).

¹⁰⁴ *Quanzhou Fu Zhi* (Records of Quanzhou Prefecture). See Wang Liyu, above n.48, 25; Duanmu Zheng, ed., above n.51, 156.

III.G. Scientific Surveys

China was the first to engage in systematic scientific surveys of the South China Sea and the Xisha and the Nansha Islands.

As early as 1279, the emperor of the *Yuan* Dynasty (A.D. 1279-1360) dispatched the well-known high-level official and astronomer, Guo Shoujing (郭守敬), to the South China Sea to survey and measure the *Xisha* and the *Nansha* islands and the adjacent sea area.¹⁰⁵ The Chinese government in the early and latter parts of the twentieth century also conducted various surveys and studies of the *Nanshas* and the *Xishas*, long before Vietnam, the Philippines, Malaysia and Brunei advanced their respective claims.¹⁰⁶

III.H. Mapping

China was the first known State to have mapped the South China Sea and its island groups, and the first to have adopted an official U-shaped line to enclose the South China Sea Islands and their adjacent waters within her defined claims.

As early as in the *Song* Dynasties, as well as through the *Yuan*, *Ming* and *Qing* Dynasties, the South China Sea Islands were referred to as *Qianli Changsha*, *Wanli Shitang* or the like in China's official maps.¹⁰⁷ *Zhu Fan Tu* (《诸蕃图》, Maps of the Various Barbarian Peoples) of the *North Song* Dynasty mentioned earlier may be said to be one of the sets of ancient Chinese maps that referred to the South China Sea Islands as being subject to the Chinese rulers.¹⁰⁸

Maps published in the *Yuan* era invariably included the *Changsha* (the *Xisha* Islands) and the *Shitang* (the *Nansha* Islands) within the domain of *Yuan*. *Yuandai Jiangyu Tu Xu* (《元代疆域图叙》, Map of the Territory of the *Yuan* Dynasty Illustrated) stated that China's territory included the North Sea to the north and the South Sea to the south (北至于北海,南至于南海). Other maps of the type included *Sheng Jiao Guang Bei Tu* (《声教广被图》) of 1330 by Li Zemin, the *Hunyi Jiangli Tu* (《混一疆理图》, Consolidated Maps of the Territory [of the *Yuan* Dynasty]) of 1380, and the authoritative *Yu Di Tu* (《舆地图》, The Maps of the Territory [of *Yuan*]) drawn and illustrated by Zhu Siben (*Yuan*),¹⁰⁹ which

¹⁰⁵ Shen, "International Law Rules," above n.1, 27.

¹⁰⁶ Ibid, 37-45.

¹⁰⁷ Ibid, 15-26.

¹⁰⁸ See text accompanying above n.87-88.

¹⁰⁹ See Wu Fengbin, above n.81, 109.

invariably included *Shitang* and *Changsha* as being within the scope of the Chinese territory.

In the *Ming* Dynasty, official Chinese maps continued to indicate China's sovereignty over the South China Sea Islands. In *Hunyi Jiangli Lidai Guodu zhi Tu* 《混一疆理历代国都之图》 (Consolidated Map of Territories and Geography and Capitals of Past Dynasties) (1402), for example, the South China Sea Islands were all included within the boundary of China.¹¹⁰ Another *Ming* map published in the year of 1637 also included the entire South China Sea Islands as part of the *Ming* Empire's territory.¹¹¹ Chinese maps and charts drawn up in the *Ming* era were convenient tools utilized by and throughout the well-known Zheng He's Seven Voyages.¹¹²

In his *Haiguo Wenjian Lu* (《海国闻见录》) published in 1730, Chen Lunjiong, the *Qing* scholar, re-depicted the geographical positions of the *Xisha* Islands and *Nansha* Islands.¹¹³ The book contained a set of maps called "*Sihai Zongtu*" ("General Maps of the Four Seas"), which referred to the *Xisha* group of islets as "*Qizhou Yang*" and the *Nansha* group as "*Shitang*."¹¹⁴ Chen also identified the other groups of islands in the South China Sea: *Qi* or *Nan'ao Qi* for today's *Dongsha* Islands, *Shatou* for the Nanxu Shayin in today's *Dongsha* Islands, *Qizhou Yang* for the *Xisha* Islands), and *Changsha* for today's *Zhongsha* Islands.¹¹⁵ *Qizhou Yang* was drawn in the west of the South China Sea, thereby denoting the whole or part of the *Xisha* Islands; *Shitang* was marked in the south of the South China Sea between *Wenlai* (Brunei) and *Kunlun* Islands (Con Son Islands), which roughly represents the location of the *Nansha* Islands.

Official maps of the *Qing* Dynasty invariably enclosed the *Nansha* Islands and other parts of the South China Sea Islands within the *Qing* boundary, and they were many.

- (1) *Da Qing Zhong Wai Tianxia Quan Tu* (The Complete Sino-Foreign Maps of the Great Qing) of 1709;
- (2) *Qing Zhi Sheng Fen Tu* (Individual Maps of the Provinces Directly under the Administration of the Qing Empire) of 1724;

¹¹⁰ See text accompanying above n.48.

¹¹¹ (Ming) *Wubei Mishu Dili Fu Tu* (A Geographical Map Annexed to the Secret Manual on Defense Preparations) (1637) referred to in Wang Liyü, above n.48, 26.

¹¹² Greenfield, above n.70, 31.

¹¹³ Wu Fengbin, above n.81, 108; Greenfield, above n.70, 31.

¹¹⁴ Wu Fengbin, above n.81, 108; Greenfield, above n.70, 31-32.

¹¹⁵ See Shen, "International Law Rules," above n.1, 32-33 (text and chart), citing Wu Fengbin, above n.81, 108.

- (3) *Huang Qing Ge Zhi Sheng Fen Tu* (Individual Maps of the Provinces Directly under the Administration of the Royal Qing) of 1755;
- (4) *Da Qing Wan Nian Yitong Quan Tu* (The Complete Maps of the Unified Great Qing for Ten Thousand Years) of 1767 charted by Zhu Xiling and revised by Huang Zhengsun;
- (5) *Qing Hui Fu Zhou Xian Ting Zong Tu* (The Qing-Charted General Maps of the Capital Cities, Prefectures, Counties and *Tings*)¹¹⁶ of 1800 charted by Xiao Feng;
- (6) *Da Qing Wan Nian Yitong Tianxia Quan Tu* (The Complete Maps of the Whole Unified Country of Great Qing for Ten Thousand Years) of 1803 charted by Yang Senzhong;
- (7) *Da Qing Wan Nian Yitong Dili Quan Tu* (The Complete Geographical Maps of the Unified Great Qing for Ten Thousand Years) of 1810;
- (8) *Da Qing Yitong Tianxia Quan Tu* (The Complete Maps of the Whole Unified Country of Great Qing) of 1817;
- (9) *Gu Jin Di Yu Quan Tu* (The Complete Maps of the Lands and Territories Then and Now) of 1895;
- (10) *Da Qing Tianxia Zhonghua Ge Sheng Fu Zhou Xian Ting Dili Quan Tu* (The Complete Geographical Maps of the Provinces, Capital Cities, Prefectures, Counties and *Tings* of the Whole China of the Great Qing) of 1904 charted by Wu Changfa; and
- (11) *Da Qing Tianxia Zhonghua Ge Sheng Fu Zhou Xian Ting Dili Quan Tu* (The Complete Geographical Maps of the Provinces, Capital Cities, Prefectures, Counties and *Tings* of the Whole China of the Great Qing) of 1905 charted by Wang Xingshun.¹¹⁷

While the above-mentioned ancient maps lack precision due to limitations on map drawing techniques, they do establish that China not only considered the South China Sea Islands her territory by action and words, but also illustrated her sovereignty over these areas through visual devices.

In April 1935, the Committee for the Review of Maps of Lands and Waters of the Republic of China charted and published a map entitled *Zhongguo Nan Hai Ge Daoyu Tu* (Map of the Islands of China in the South [China] Sea), which specifically depicted the *Dongsha* Islands, *Xisha* Islands, “*Nansha* Islands” (now *Zhongsha* Islands) and “*Tuansha* Islands (now *Nansha*

¹¹⁶ *Tings* were created in the *Qing* Dynasty as an administrative locale at both the prefecture level and the county level in newly established provinces. The prefecture-level *Tings* were called *Zhili Ting* (*Tings* Directly under Provinces) which were parallel to the capital cities (*Fus*) and prefectures (*Zhous* or *Zhili Zhous*); the county-level *Tings* were called *San Ting* (*Scattered Tings* or sub-*Tings*) which were parallel to counties (*Xians*) and sub-prefectures (*San Zhou*). See Ci Hai, above n.34, 146.

¹¹⁷ See Wu Fengbin, above n.81, 111; Wang Liyu, above n.48, 26-27.

Islands), among others, as within the boundary of the Chinese territory, with detailed and specific names and locations of some 135 major islands, cays, reefs, banks and shoals.¹¹⁸ This was the *first official* map of the kind published by the Republic of China.¹¹⁹

In January 1948, the Chinese Ministry of Interior published the Map of Locations of South China Sea Islands (*Nan Hai Zhudao Weizhi Tu*) with a U-shaped intermittent line to indicate the traditional boundary of China's territory in the South China Sea.¹²⁰ The 1948 Map, with newly standardized names of most specific islands and other features, encloses all the island groups in the South China Sea that are considered to be under Chinese sovereignty, *i.e.*, the *Dongsha* Islands, the *Zhongsha* Islands, *Xisha* Islands, and the *Nansha* Islands. Later maps published before 1949 continued to adopt the less ambiguous U-shaped line (*vis-à-vis* previous maps) to delimit China's traditional ocean boundary.¹²¹

Since 1949, the People's Republic of China has invariably adopted the same U-shaped intermittent line in all of her official maps covering the South China Sea area.¹²² By continuing the U-shaped line on her official maps,

¹¹⁸ Ibid.

¹¹⁹ See Han Zhenhua, et al., above n.54.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² See, e.g., Map of the People's Republic of China (Zhonghua Renmin Gonghe Guo Ditu) (1971); World Atlas (Shijie Ditu Ce) (1972), 2 (World), 3 (Asia), 4 (China), 6 (Eastern and Southern China), 12 (Vietnam, Laos, and Cambodia), 14 (Malaysia, etc.), & 15 (the Philippines, etc.); Topographic Map of the People's Republic of China (Zhonghua Renmin Gonghe Guo Dixing Tu) (1989); Map of the People's Republic of China (Zhonghua Renmin Gonghe Guo Ditu) (1991); Atlas of Transportation of China (Zhongguo Jiaotong Tu Ce) (1998), 2, 4, 6, 8, 10, & 98. Once again, neither the post-1949 Chinese Government, nor her predecessor, has delineated or clarified the exact legal meaning, nature and consequence of the U-shaped intermittent line. Lawyers and scholars on both sides of the Taiwan Strait are in disagreement with respect to these difficult issues, basically with some considering the entire-enclosed water area as China's historic water, and others favoring a less rigid concept of priority rights in the area. For a study on China's historic rights in the area enclosed by the U-shaped line, see Zou, above n.9, 159-164 (discussing the concept of historic rights in light of its reference in China's 1998 Law on the Exclusive Economic Zone and Continental Shelf [see below n.201], and suggesting preference of historic rights in the enclosed area over simply historic waters). See also Fu Kuen-Chen, Nan (Zhongguo) Hai Falü Diwei zhi Yanjiu [Legal Status of the South (China) Sea] (in Chinese) (1995) (maintaining China's priority rights and obligations in the U-shaped line-enclosed water area as China's historic waters); Yann-huei Song & Peter Kien-hong Yu, "China's 'Historic Waters' in the South China Sea," 12 [4] American Asian Review (Winter, 1994),

China has been able not only to demonstrate China's sovereignty over the South China Sea Islands, but also to tell the world public, with a considerable degree of relative certainty, where China's territorial claims end.

III.I. Fishing and Other Private and Public Uses

China was the first to make use of the South China Sea Islands, not only for fishing and other private ends, but also for public and official purposes.

The Chinese people and their rulers had a history of more than two thousand years in making economic, navigational and other uses of the South China Sea and the *Nansha* and the *Xisha* Islands.

Rarities and other valuable items collected from these island groups were used as official tributes to the Chinese rulers, a practice that started in the *Xia* Dynasty more than three thousand years ago.¹²³ The words "*Yan yu Nan Hai*" in *Shi Jing* indicate that the Chinese rulers and people at least were also making use of the South China Sea and the islands and banks therein during the East Zhou era.¹²⁴

According to the Chinese Foreign Ministry, "fishermen from Haikou Port, Puqian Port, Qinglan Port and Wenchang County [of the Ming Empire] went to the *Nansha* Islands to fish sea cucumber and other sea produce."¹²⁵ Indeed, Chinese fishermen from *Guangdong*, *Hainan* and other coastal areas have habitually taken the South China Sea Islands area as their fishing grounds. They would also take some of the atolls and islands as shelters and/or stopping spots *en route* to and from remote fishing grounds.¹²⁶ Seasonal Chinese settlers would also engage in some forms of plantation in the *Nansha* Islands, a practice that was started no later than the *Ming* Dynasty.

The economic activities of Chinese fishermen on the *Xisha* and *Nansha* Islands have been lively spotted and vividly described by foreign visitors to these islands. For instance, the 1868 edition of *China Sea Directory* published by the London Hydrographic Office contains the following observations made in the Qing era:

Fishermen from Hainan Island went to Zhenghe Isles and Reefs and lived on sea cucumber and shells they got there. The footmarks of

83-101 (assessing the difficulty of meeting the criteria of historic waters and favoring focusing on the "ownership of South China Sea Islands").

¹²³ Shen, "International Law Rules," above n.1, 15-16.

¹²⁴ See text accompanying above n.38.

¹²⁵ FM-PRC, The Issue of South China Sea, Pt 2, above n.6.

¹²⁶ Shen, "International Law Rules," above n.1, 15-16.

fishermen could be found in every isle of the [Spratly] Islands and some of the fishermen would even live there for a long period of time. Every year, there were small boats departing from Hainan Island for the Nansha Islands to exchange rice and other daily necessities for sea cucumber and shells from the fishermen there. The ships used to leave Hainan Island in December or January every year and return when the southwesterly monsoon started.¹²⁷

Traditions of Chinese people conducting economic activities in the *Nansha* and *Xisha* Islands have been carried on generations upon generations. Since the *Qing* Dynasty, as the Chinese Foreign Ministry observes, “fishermen from *Hainan* Island and *Leizhou* Peninsula of China have kept going for fishing on the *Nansha* Islands. Most of the fishermen come from *Wenchang* County and *Qionghai* County. One or two dozens of fishing boats from these two counties *alone* would go to the *Nansha* Islands every year.”¹²⁸

The Chinese development and productive activities in the South China Sea Islands during the Republic of China era may be reflected upon in the following observations:

Mr. Okura Unosuke of Japan wrote about his expedition trip to *Beizi Island* [*i.e.*, Northeast Cay] in 1918 in his book *Stormy Islands*, which reads: “[H]e saw three people from Haikou of Wenchang County when the expedition team he organized arrived in Beizi Island.” In 1933, Miyoshi and Matuo of Japan saw two Chinese people on the Beizi Island and three Chinese people on the Nanzi Island [*i.e.*, Southwest Cay] when they made an investigation trip to the Nansha Islands. It is also recorded in *A Survey of the New South Islands* published in Japan that [Chinese] “fishermen planted sweet potato on Zhongye Island [*i.e.*, Thitu Island] [and that] fishermen from the Republic of China resided on the islands and grew coconuts, papaya, sweet potato and vegetables there.”¹²⁹

Private use of the South China Sea Islands was generally with the blessing, permission, encouragement or support of the Chinese central or local

¹²⁷ China Sea Directory, London Hydrographic Office (1868) quoted in: FM-PRC, The Issue of South China Sea, Pt 2, above n.6 (referring the book as Guide to the South China Sea).

¹²⁸ FM-PRC, The Issue of South China Sea, Pt 2, above n.6 (emphasis added). The Chinese version contains the words “jin cong...,” meaning “from...alone.”

¹²⁹ Ibid.

government, and, not infrequently, even organized by the government itself.¹³⁰ In the imperial periods of time, Chinese fishermen and other sea-going people making use of the South China Sea Islands would pay tributes and taxes to the Chinese government in kind or otherwise out of the proceeds of their fishing and other production activities in that area.¹³¹ Since the end of the imperial era, both private and government licensed or sponsored fishing and other economic activities have been conducted in the *Xisha* and *Nansha* Islands areas.¹³²

III.7. Jurisdictional Allocations

China was the first to officially place the South China Sea Islands under the jurisdiction of her national and/or local governments.

China had regarded the South China Sea and the islands therein to be subject to her authority and control since no later than the *Han* Dynasties.¹³³ In the *Tang* Dynasty, the *Xisha* and the *Nansha* Islands were placed under the jurisdiction and authority of the *Qiongzhou* Prefecture (now *Hainan*).¹³⁴ Various official records of *Guangdong*, *Hainan* and some of their lower level administrative prefectures and counties prepared in the periods from the *North Song* Dynasty to the *Qing* Dynasty invariably confirm that China intended to, and did, exercise jurisdiction over the *Nanshas* and the *Xishas* and their adjacent waters.¹³⁵

In an official chronicle book published in the *South Song* Dynasty (1127-1279) titled *Qiong Guan Zhi* (《琼管志》, Records of the Qiong Prefecture and its Jurisdiction), it was specifically mentioned that the *Qianli Changsha* (now the *Xisha* Islands) and *Wanli Shitang* (now the *Nansha* Islands) were under the jurisdiction of the Qiong Prefecture (now *Hainan* Province).¹³⁶ Similar references can also be found in such *Song*-related books as *Song Hui Yao Ji Gao*

¹³⁰ See, e.g., Shen, "Territorial Aspects," above n.2, 183-184; id, "International Law Rules," above n.1, 45-47.

¹³¹ See text accompanying notes 34-37 & 123.

¹³² See Shen, "Territorial Aspects," above n.2, 174 ff. & 183 ff.

¹³³ Shen, "International Law Rules," above n.1, 17-18.

¹³⁴ Liu Rongzi, "The Fishery Resources in the *Nansha* Islands Area Should be Considered China's State-owned Resources," in *Selected Papers*, above n.35, 96-99, 96.

¹³⁵ Shen, "International Law Rules," above n.1, 21 ff.

¹³⁶ See Wang Liyü, above n.48, 24.

(《宋会要辑稿》, Selected Manuscripts of the Digests of the Song Dynasties),¹³⁷ *Song Shi* (《宋史》, The History of the Song Dynasties),¹³⁸ and *Zhu Fan Tu* (《诸蕃图》, Maps of the Various Barbarian Peoples, the North Song Dynasty).¹³⁹

Tang Zhou (唐胄) of the Ming Dynasty recorded in his *Zhengde Qiong Tai Zhi* (《正德琼台志》, Records of Qiong[zhou] and Tai[wan] During the Reign of Emperor Zhengde) that the sphere of jurisdiction of the Qiongzhou Prefecture included the *Qianli Changsha* and *Wanli Shitang*, which respectively referred to the *Xisha* Islands and the *Nansha* Islands.¹⁴⁰ *Qiong Guan Gu Zhi* (《琼管古志》, Ancient Records on the Jurisdiction of Qiong[zhou Fu]), also written in the Ming era, provides the same evidence.¹⁴¹

In the Qing Dynasty, the official Records of Wanzhou Subprefecture (《万州志》) stated that within the sphere of jurisdiction of Wanzhou, there were *Qianli Changsha* and *Wanli Shitang* (万州有千里长沙、万里石塘), and that “sea boats would be smashed when encountering atolls [in the *Xisha* area], and wouldn’t be able to come out once entering the reefs [in the *Nansha* area]” (“海舟触沙立碎, 入塘无出理, 人不敢近”).¹⁴² Similarly, the Records of Qiongzhou Prefecture (《琼州府志》) recorded that “Wanzhou has jurisdiction over *Qianli Shitang*, *Wanli Changsha*, which are the most dangerous areas of the Qiong Ocean [i.e., the South China Sea]” (“万州有千里石塘, 万里长沙, 为琼洋最险之处”).¹⁴³ Here, *Qianli Shitang* refers to the *Xisha* Islands, while *Wanli Changsha* denotes the *Nansha* area.

More importantly, the Chinese Government in the Ming and Qing Dynasties invariably considered itself to have sovereignty over both the South China Sea Islands and their adjacent seas. According to *Guangdong Tong Zhi* (《广东通志》, General Records of Guangdong) prepared by Jin Guangzu

¹³⁷ Xu Song (1781-1848, Qing), ed., *Song Hui Yao Ji Gao* (Selected Manuscripts of the Digests of the Song Dynasties), 366 vols., vol. “Fan Yi” (The Barbarian Peoples), Pt. 4, Sec. 99 (reprinted in 1936).

¹³⁸ Tuo Tuo (1314-1355, Yuan), Alu Tu (also Yuan), & Ouyang Xuan (1274-1358, Yuan), eds., *Song Shi*, 496 vols., vol. 489: “Zhancheng Zhuàn” (Chronology of Zhancheng [now part of Guangdong, Guangxi and Vietnam]).

¹³⁹ See Han Zhenhua, 1991, above n.87, 305 & 311-312.

¹⁴⁰ Tang Zhou (Ming), *Zhengde Qiong Tai Zhi* (Records of Qiong[zhou] and Tai[wan] During the Zhengde Reign), entry of “Jiangyu” (Territory or Scope of Domain). See Wu Fengbin, above n.81, 110.

¹⁴¹ See Wu Fengbin, above n.81, 110.

¹⁴² *Wan Zhou Zhi*, above n.103, vol. 3, entries of “Changsha Hai and Shitang Hai” (长沙海、石塘海).

¹⁴³ Ming Yi (Qing), *Qiongzhou Fu Zhi* (Records of Qiongzhou Prefecture), quoted in: Wu Fengbin, above n.81, 110.

(金光祖) of the *Qing* Dynasty, in the *Ming* and *Qing* era, Qiongzhou Prefecture and its Wanzhou Subprefecture had jurisdiction not only over *Qianli Changsha* (the *Xisha* Islands) and *Wanli Shitang* (the *Nansha* Islands), but also over the “*Changsha Hai, Wantang Hai*” (长沙海、万塘海, Changsha Sea and Wantang Sea), i.e., the sea areas respectively surrounding the *Xisha* Islands and the *Nansha* Islands.¹⁴⁴ Subsequent governments of China have followed basically the same ownership claim and pattern of jurisdictional allocation.

It deserves emphasizing that China's persisting claim to the South China Sea Islands has never been changed or interrupted in spite of modern and contemporary intervening events such as the French and Japanese occupations, and the current demands of and occupations by the other claimants. From the first time the South China Sea Islands became the targets of foreign assertions to the present, China has persistently and resolutely reiterated her sovereignty and opposed all forms of foreign claims, occupation and interference.¹⁴⁵

III.K. Other Acts of Sovereignty

China has exercised various other sovereign rights and performed various other sovereign duties in the South China Sea.

Throughout history, China has performed various other acts not covered above that amount to active display of sovereign authority. These sovereign activities include the installation of facilities for fishing, forecasting and navigation, rescues of Chinese and foreign vessels in mishaps, granting and revoking licenses to private companies for the exploration and exploitation of natural resources, and organizing large scale fishing and other production activities around the *Xishas* and the *Nanshas*.

Between 1862 and 1874, the Qing Customs and General Revenue Office made plans to erect lighthouses in the *Dongsha* Islands for facilitating navigation in the South China Sea.¹⁴⁶ In 1908, the Qing Customs Office

¹⁴⁴ Jin Guangzu (Qing), *Guangdong Tong Zhi* (General Records of Guangdong), vol. 13, “Shanchuan: Wan Zhou” (Land: Wan Zhou [Sub-Prefecture]). See Wu Fengbin, above n.81, 110. The *Wan* Sub-Prefecture was a *zhou* level local administration in the southeast part of *Hainan* Island, covering areas such as Wanning County and Lingshui County.

¹⁴⁵ See text accompanying below n.167-212 (China's protests against foreign encroachments).

¹⁴⁶ *Qing Ji Waijiao Shi Liao* (Historic Materials on the Diplomacy of the *Qing* Dynasty). See Lin Jinzhi, above n.75, 188.

similarly planned to build lighthouses on the *Xisha* Islands upon the request of foreign countries.¹⁴⁷

In 1909, the Governor of Guangdong and Guangxi, Zhang Renjun, sent the naval officer-in-charge Li Zhun (李准) to the *Xisha* and *Nansha* Islands area. An anti-China and pro-Vietnam website states: "The first time China sent its stationed troop to *Nansha* Islands (Taiping) is 1910 by the navy minister Li Zhun. Due to the Xin Hai Revolution of 1911, they starved there soon."¹⁴⁸ It is not clear what happened to Li Zhun's troop later on, but it is certainly wrong to regard Li Zhun's dispatch of troop to the *Nansha* Islands as China's first attempt to do so. Nevertheless, the above quoted passage at least acknowledges that Li Zhun's crew did sail to the *Nansha* Islands (in addition to the *Xisha* Islands) to demonstrate sovereignty on behalf of the Qing Government. Further, Li Zhun's mission identified and renamed 15 islands and islets, where his crew erected stone markers, raised Chinese flags, and held cannon-shooting ceremonies. These acts were performed in order to re-demonstrate China's sovereignty over the entire South China Sea island groups.¹⁴⁹

In 1910, the Qing Government decided to invite Chinese merchants to contract for administering the development and exploitative affairs of the South China Sea Islands. Meanwhile, it demanded that "*guan wei baohu weichi, yi zhong lingtu, er bao quanli*" ("the government shall provide protection and maintenance in order to strengthen [Qing's] territorial sovereignty and to protect [Qing's] titles and interests").¹⁵⁰

After the 1911 Revolution, the New Government of Guangdong Province made redistribution of jurisdictional spheres by placing the *Xisha* Islands under the jurisdiction of the *Ya Xian* (Ya County) of Hainan Prefecture instead of being directly under the Prefecture itself.¹⁵¹ In 1921, the Southern Military Government affirmed and adopted the 1911 decision.¹⁵² To be sure, these decisions do not mean that China merely had sovereignty over the *Xisha* Islands. Instead, they simply meant that starting with 1911, the Ya County of Hainan, rather than the higher level government or governments, would have

¹⁴⁷ Lin Jinzhi, above n.75, 188.

¹⁴⁸ "Paracels Forum: Questions about History?"
<<http://members.tripod.com/paracels74/>.

¹⁴⁹ Duanmu Zheng, ed., above n.51, 156; Lin Jinzhi, above n.75, 188 & 189.

¹⁵⁰ Li Zhun (Qing), ed., Guangdong Shuishi Guofang Yaosai Tushuo (Strategic Defense Fortresses of the Guangdong Navy Illustrated) (1910). See Lin Jinzhi, above n.75, 188.

¹⁵¹ Liu Wenzong, above n.65, 70; Lin Jinzhi, above n.75, 191.

¹⁵² Lin Jinzhi, above n.75, 191.

original administrative and other authoritative jurisdiction over the *Xisha* Islands, while China's sovereignty over the *Nansha* Islands and other islands in the South China Sea would remain to be exercised directly by the relevant governments at the prefecture, provincial and central level.

In her initial decades, the Republic of China put more emphases on encouraging Chinese companies and businesses to participate in the development of the *Xisha* Islands. There were numerous examples of the Chinese Government granting licenses or taking other measures for developing the *Xisha* island group.¹⁵³ The *Nansha* Islands are much more difficult to sustain year-round human inhabitation than the *Xisha* Islands. Further, the *Xisha* Islands are closer to *Hainan* Island and the Chinese mainland. The *Xisha* group's geographical and other natural conditions, still primitive, are more favorable than those of the *Nansha* Islands. Consequently, development and exploitation of the latter group naturally became China's priority in the South China Sea. Nevertheless, such priority programs by no means suggest that China ever had any intention of ignoring or abandoning the *Nansha* Islands.

China's civil wars and the war of resistance against the Japanese aggressors to a large extent interrupted China's exercise of sovereignty over the South China Sea Islands. Nevertheless, the Chinese Government, far from "forgetting" these island groups, took every opportunity it could to exhibit China's sovereignty over the *Xisha* Islands and *Nansha* Islands throughout the 1930's and 1940's.¹⁵⁴

III.L. *Recovery from Japan*

China is the only State to have accepted the Japanese surrender and gained legal recovery over the robbed or stolen territory in the South China Sea.

During the Second World War, Japan invaded and occupied not only a large part of the Chinese mainland, but also some major islands in the South China Sea in 1939. It renamed the *Nansha* island chain *Shinnan Gunto* (新南群岛, New South Islands), and placed these islands under the jurisdiction of Taiwan, which had been under Japanese rule since 1895.¹⁵⁵ The Chinese people and Government engaged in relentless struggles of resistance against the Japanese occupation of China's territories, including Taiwan and the

¹⁵³ See Shen, "International Law Rules," above n.1, 38-40.

¹⁵⁴ See Shen, "Territorial Aspects," above n.2, 192-193; Liu Wenzong, above n.65, 71-73. See also text accompanying below n.155-179.

¹⁵⁵ Shen, "Territorial Aspects," above n.2, 181.

South China Sea Islands, which in substantial part led to China's victory and Japan's surrender and withdrawal in 1945. It was these relentless efforts that culminated in China's resumption of her physical exercise of sovereignty over these islands and the adjacent waters:

...China made unremitting efforts for the recovery of these islands from the Japanese occupation. In 1943, China, the United States and the United Kingdom announced in the Cairo Declaration that all the territories that Japan had stolen from China should be "restored to China," including "Manchuria, Taiwan and the Penghu Islands." At that time, Japan put the Nansha Islands under the jurisdiction of Taiwan. The territories to be restored to China...naturally included the Nansha Islands. The 1945 Potsdam Proclamation confirmed once again that the stolen territories should be restored to China. [In accordance with] the Cairo Declaration and Potsdam Proclamation, China recovered the Nansha Islands in 1946. At the same time it went through a series of legal procedures and announced to the whole world that China had resumed the exercise of sovereignty over the Nansha Islands. Subsequently, the Chinese Government held a take-over ceremony and sent troops to the islands on garrison duty. An official map of the Nansha Islands was drawn and printed, the Nansha Islands were renamed, collectively and individually, and the earliest book of the physical geography of the Nansha Islands was also compiled and printed.¹⁵⁶

Writing about China's recovery of the South China Sea Islands, Swanson observes that "one of the first operations carried out by the ex-British ship [the *Fubo*] was the reoccupation of the *Xisha* (Paracel) and *Nansha* (Spratly) islands. In October and November 1946, a Chinese naval squadron visited these islands and assisted in setting up radio and meteorological stations."¹⁵⁷ Along with the naval contingent went officials from the Ministry of Internal Affairs to carry out survey and other administrative functions with regard to selected islands and reefs of both island groups.¹⁵⁸ The Chinese Government stationed troops on the largest island in the *Nansha* Group, the Taiping Island, to oversee and patrol neighboring islands and adjacent waters, and constructed a weather station on the island.¹⁵⁹

¹⁵⁶ FM-PRC, The Issue of South China Sea, Pt 3, above n.6.

¹⁵⁷ Swanson, above n.93, 169.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

It is interesting to note that prior to the Japanese takeover, Japan had recognized China's sovereignty over the South China Sea Islands. In 1938, for example, Japan found and declared it "unjustifiable" for France to claim title to the *Xisha* island group given the fact that both France and the United Kingdom had previously recognized the *Xisha* Islands as part of China's Hainan Administrative Prefecture.¹⁶⁰ Needless to say, Japan's declaration must have been out of its own interest-driven considerations. To deny the French claims by recognizing China's sovereignty would give Japan justification and latitude to occupy and "annex" the South China Sea Islands *vis-à-vis* France and the West in the near future.

While the West regarded Japan as the administrator of the entire South China Sea Islands for the period of its occupation, it is highly questionable whether Japan established its title to these island groups at all, because invasion and occupation *per se* do not suffice to acquire title to territory. In this regard, Japan was in a like position as France—the mere presence of claims and physical occupation, over China's persistent objections, would establish title neither for France, nor for Japan. Upon Japan's defeat at the end of the Second World War, it was only logical and natural for China as the legitimate title-holder to recover the South China Sea Islands from Japan. Indeed, China was the only country that dispatched naval forces and government officials to the *Xisha* and the *Nansha* areas to formally accept the Japanese surrender and withdrawal in the South China Sea areas and to declare her *recovery* of the entire South China Sea Islands.¹⁶¹ For China, the status of the *Nansha* and *Xisha* Islands after Japan's surrender would not and should not depend on Japan's renunciation of claims and/or any international scheme of disposition; because Japan never acquired title to the islands from China—it merely acquired physical control. China, and China only, would be entitled to recover what she considers to be inalienable parts of her territory irrespective of how a peace treaty with Japan would provide. On this point, Premier Zhou Enlai made it very clear in his "Statement on the United States' and Great Britain's Draft Treaty of Peace with Japan and the San Francisco Conference" of 1951: China's inviolable sovereignty over the *Nansha* and *Xisha* Islands would not be affected by the draft peace treaty, regardless of whether and how it provides for their status.¹⁶²

Even if we conceded to accept the proposition that Japan's full-scale occupation and annexation of the entire South China Sea island chains would

¹⁶⁰ Shen, "Territorial Aspects," above n.2, 181 & 211.

¹⁶¹ Shen, "International Law Rules," above n.1, 44-45.

¹⁶² See text accompanying below n.181.

have established its title to the disputed area, subsequent events would still allow China to legally restore her sovereignty over the *Dongsha*, *Zhongsha*, *Xisha* and *Nansha* Islands. Under the unconditional 1943 Cairo Declaration¹⁶³ and the 1945 Potsdam Proclamation,¹⁶⁴ Japan was to return to China all territories that it had stolen from China during and prior to the war, which indisputably included the *Xisha* and *Nansha* Islands. More specifically, under Article 2 of the San Francisco Peace Treaty of September 8, 1951, "Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands."¹⁶⁵ The fact that the Treaty does not specifically provide that these islands be returned to China is insignificant; such express provision is not required.

In the first place, the return by Japan of all stolen territories to China was already guaranteed under the Cairo Declaration and the Potsdam Proclamation.

Secondly, the provision of specific recipients of territories formerly occupied by a defeated power is necessary only where the territory concerned was *terra nullius* or otherwise not falling under the jurisdiction of any other State prior to the occupation. Where an occupied territory was formerly under the sovereignty of another State, renunciation of all claims by the defeated State to the territory would automatically restore ownership and control to the former titleholder. Since China was the sole legitimate titleholder of the *Xisha* and *Nansha* Islands before Japan's occupation (note that France never acquired any title interest in the island groups), Japan's *de facto* and *de jure* renunciation of its claims to the South China Sea Islands would only lead to China's full recovery.

Thirdly, Japan's prior recognition of China's ownership of the South China Sea Islands, and its implied or express intention to return them to China, were important factors in re-establishing China's ownership. Japan's intention to return the island groups to China is strongly indicated in a Japanese map published in 1952, the Map of Southeast Asia of the Standard World Atlas, the first Japanese official world atlas after the 1951 San Francisco Peace Treaty. The atlas (and the map in question), endorsed by the

¹⁶³ Conference of President Roosevelt, Generalissimo Chiang Kai-shek, and Prime Minister Churchill in North Africa, Dec. 1, 1943, 9 Dep't St. Bull. (1943), 393.

¹⁶⁴ Proclamation Defining Terms For Japanese Surrender, July 26, 1946, 13 Dep't St. Bull. (1945), 137.

¹⁶⁵ Treaty of Peace with Japan, signed at San Francisco, Sept 8, 1951, entry into force Apr 28, 1952, 136 UNTS 45-164 (1952), art. 2(f). The text is available at <www.isop.ucla.edu/eas/documents/peace1951.htm>.

then Japanese Foreign Minister, Mats Okazaki, with his signature, clearly marks the entire *Xisha* and *Nansha* island groups as part of China.¹⁶⁶

Lastly, it is significant to observe that neither France, nor Vietnam, nor the Philippines, nor any other country advanced any protests or objections when China resumed her sovereignty and control over the *Nansha* and *Xisha* Islands in 1946. Nor was there any objection on the part of any country when China renamed the island groups and published a list of standardized names for each of the major islands, reefs, banks, atolls and banks.

III.M. Persistent Sovereign Claims and Protests against Foreign Encroachments

Having always treated the South China Sea Islands as her own, China has persistently and consistently reiterated her "indisputable" sovereignty over them, and has opposed any form of foreign encroachments, invasions and occupations.

Because foreign powers generally recognized and respected China's sovereignty over the South China Sea Islands, there were few instances that would give rise to the need for China to make formal protests. Whenever foreign encroachments, invasions and occupations take place or continue, however, China has invariably declared her oppositions by way of protests, reiteration of China's sovereignty and/or otherwise.

III.M.i. The Qing Government

Since no foreign claims to the South China Sea Islands were known to the Qing Government and her predecessors, there was no felt need for the Central Kingdom to declare to the outside world that these islands and their adjacent waters were China's historic territories and waters. Still less were there circumstances requiring the then Chinese Government to make any objection to a foreign party absent any competing claim. When such a chance did arise, however, China wasted no time in taking responsive actions. Such was the case in 1883 when the Qing Government lodged strong protests against Germany upon learning that the Germans were conducting survey activities in the *Xisha* and the *Nansha* areas without China's permission. It was reportedly because of such protests that the Germans terminated their survey activities.¹⁶⁷

¹⁶⁶ Ministry of Foreign Affairs of the People's Republic of China, China's Sovereignty over the *Xisha* Islands and *Nansha* Islands Indisputable (Jan. 30, 1980), People's Daily, Jan. 31, 1980.

¹⁶⁷ Duanmu Zheng, ed., above n.51, 156.

III.M.ii. *The Republic of China*

When the French laid claims to and forcibly occupied nine islands in the *Nansha* group, the Chinese people and Government in various forms demonstrated their strong protests and resistance. As the Chinese Foreign Ministry stated in 2000:

In 1933, France invaded and occupied 9 of the Nansha Islands, including Taiping and Zhongye Islands. The Chinese fishermen who lived and worked on the Nansha Islands immediately made a firm resistance against the invasion and the Chinese Government lodged a strong protest with the French Government.¹⁶⁸

The following account written in 1933 by a Chinese historian and geographer, Ling Chunsheng (凌纯声), as translated by the present author, not only evidences Chinese fishermen's resistance against the French claims, but also demonstrates China's traditional links with and entitlement to the *Nansha* Islands:

- (1) Amboyna Cay [*i.e.*, *Anbo Shazhou*]...There is no natural water on the cay, nor plant. Yet, traces of fishermen temporarily living on the Cay are everywhere.
- (2) Is. Tempete, Storm Island, also known as Spratly Island [*i.e.*, Nanwei Island]...There are plants on the island. French men raised the French flag on the island in 1930, and the flag post remains there. However, the flag on the post has been replaced with a new [Chinese] flag that the Chinese [residents] on the island bought from Hainan. When the French vessel, *The Malisieuse*, arrived here in 1930, there were already four Chinese men on the island, who had dig a well of natural water, and planted coconut trees, banana trees,...and vegetables. Their main occupations were to catch sea turtles...
- (3) Itu Aba Island [*i.e.*, Taiping Island]...The largest island of the [Nansha] Islands... There are plenty of plants on the island, including newly grown *meng* trees and coconut trees. There are currently no residents on the island, but there are many traces of inhabitation. People used to exploit phosphate deposits in 1920... There are three wells, one of them being natural water well. There is also a water tank. Buildings are very sloppy... Plants and trees include coconuts, bananas, pineapples, *fan gua*, etc. The above...suffices to indicate that fishermen recently lived here...

¹⁶⁸ FM-PRC, The Issue of South China Sea, Pt 2, above n.6.

- (4) Loaita Island [*i.e.*, Nanyue Island]...Plants on the island include *meng* trees, coconut trees and other trees. There are no residents for the time being, but vestiges of human inhabitation remain fresh. Fragrant joss sticks placed before a shrine are still there. Under a big tree is a thatched cottage, beside which there is a teakettle and a furnace...
- (5) Thitu Island [*i.e.*, Zhongye Island]...There are *meng* trees, one coconut tree and several other big trees on the island. Five fishermen from China's *Hainan* Island are living here this year. There is one well of natural water, yielding enough water for the five men to drink. Besides fishing, these men plant coconuts, bananas and *fan gua*, and also exploit phosphate deposits.
- (6) Shuang Islands [*literally* Twin Islands, also known as Two Islands], the northernmost islands in the [Nansha] Islands....The Northeast Island has been named *Is. Allette* [the North East Cay, *i.e.*, Beizi Island]. Phosphate deposits on the island have not been exploited. No one is currently living here. There are only a few thatched cottages left. The French wrote the following large words on a cottage with white powders: "French vessels have been here and raised the French flag. France has occupied the two islands. Chinese fishermen were fishing here, but that already became past history."
- (7) On the Southwest Island [South West Cay, *i.e.*, Nanzi Island], there are seven Chinese people, including two children, all from *Hainan* Island. Food supplying boats did not come last year, but food deposits are still enough. [The Chinese] are raising tens of chicken...

In addition to the above seven islands, there are also...two small islands, the Nam Yit Island [now the Hongxiu Island] neighboring the Itu Aba Island, and the [West York, now Xiyue] Island near Loaita Island. There are all together nine islands [claimed by France], three of which are currently inhabited by Chinese. The other islands are also frequented by Chinese from time to time. Whether these inhabited islands are the so-called *terra nullius* under international law, and whether France could unilaterally occupy and claim as its own, are seriously questionable.¹⁶⁹

¹⁶⁹ Ling Chunsheng, "The Geography of the French-Occupied Islands in the South Sea," 7 [5] *Fangzhi Yuekan* (《方志月刊》, Local Records Monthly) 1-4 (April 1934), quoted in Han Zhenhua, et al., above n.54.

The resistance of Chinese residents on the French-claimed islands in the *Nansha* group is also evidenced in the interviews of some Chinese fishermen of *Hainan* Island conducted by the late Professor Han Zhenhua and his team during the 1970's. Here's the notes taken during one of the interviews:

On June 30, 1977, we interviewed the old fisherman Fu Guohe (72 years old) of the Xingguang Village of Longlou Commune, Wenchang County, Hainan Island. He recalled: When he was in his 20's and 30's, he spent a total of seven to eight years fishing in the *Nansha* Islands. His fellow village man Fu Hongguang (deceased in 1976) not only refused to raise the foreign flag which the foreigners (*i.e.*, the Frenchmen) gave him and requested him to raise on the Niaozi Zhi (now the Nanwei Island), but also tore it up afterwards, in order to show his resolute resistance...¹⁷⁰

More importantly, when and after the French invasions of some of the islands in the *Xisha* and *Nansha* Islands took place, the Chinese Government repeatedly reaffirmed her title to the South China Sea Islands and lodged her protests against the French actions.¹⁷¹ According to a Chinese newspaper, the Chinese Foreign Ministry Spokesman, on July 26, 1933, made the following statement:

The coral islands between the Philippines and Vietnam have been inhabited by Chinese fishermen only, and have been recognized by the international community as China's territories. We are shocked to have received the official French journal announcing France's formal occupation. The French Government makes no justification for its actions. This [Foreign] Ministry, in addition to instructing by wire the Chinese Embassy in France to make inquiries for clarifications, is also actively considering countermeasures together with the Ministry of Navy, and will put forward serious protests over the French actions.¹⁷²

Meanwhile, the Guangdong Provincial Government, which was charged with special responsibility to deal with the French authorities because of Guangdong's jurisdiction over the South China Sea Islands and its proximity

¹⁷⁰ Han Zhenhua, et al., above n.54.

¹⁷¹ See Shen, "Territorial Aspects," above n.2, 177-83; see also id, "International Law Rules," above n.1, 40-43.

¹⁷² "France Occupies Nine Islands in Yue Hai [*i.e.*, the South China Sea]; Foreign Ministry Protests," *Shen Bao* [《申报》], July 27, 1933, quoted in Han Zhenhua, et al., above n.54.

to Vietnam, also lodged a strong protest to the French authorities. The same newspaper reported:

The Southwest Commissioner is seriously concerned with the incidents of France occupying the coral islands, and will do everything he can to preserve China's sovereignty over these island groups. Xiao Focheng [, the identity of whom is unclear,] states today that the Yue [*i.e.*, Guangdong] Provincial Government, upon instructions, has already lodged protests to the French authorities. The Southwest Commissioner is submitting this matter to the world public in request for justice.¹⁷³

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

The Chinese Government is very much concerned with this matter [*i.e.*, the French-declared occupation of and sovereignty over nine islands in the South China Sea]. She hereby requests Your Excellency, the Minister of the French Legation, to inquire into and ascertain the name, the exact location and the longitude and latitude of each island and report the same to the Chinese Government. Pending such investigation and verification, the Chinese Government reserves her titles *vis-à-vis* the afore-mentioned declaration of the French Government.¹⁷⁴

When the names and locations of the nine islands claimed and occupied by the French later became known, it was apparent that these islands were in fact among China's *Nansha* Islands (then known as *Wanli Shitang* and various other names), Ambassador Wellington Koo (Gu Weijun) of China to France, subsequently delivered China's protest against the French occupation, stating that those islands and the entire Spratly Islands (*Nansha* Islands) were the territory of the Republic of China.¹⁷⁵

¹⁷³ Shen Bao, Aug. 2, 1933, quoted in Han Zhenhua, et al., above n.54.

¹⁷⁴ Note of the Chinese Ministry of Foreign Affairs to the Minister of the French Legation, Aug. 4, 1933, Archive No. 483-5, Archives of the Ministry of Foreign Affairs of the Nationalist Government (Aug. 1933), "Fa Zhan Xiao Jiu Dao An" (The Case of the French-Occupied Nine Little Islands), No. 2, quoted in: Liu Wenzong, above n.65, 72, n. 1.

¹⁷⁵ Hungdah Chiu & Choon-Ho Park, Legal Status of the Paracel and Spratly Islands, 3 Ocean Dev. & Int'l L.J. (1975), 1, 12. See Tao Cheng, South China Sea, above n.157, 268-269.

Shortly after the Second World War, France once again laid claims to some of the islands in the South China Sea. The Chinese Government repeatedly rejected the French claims by reiterating China's sovereignty over those islands. On January 19, 1947, for example, in response to a re-emerging French claim to the *Xisha* Islands, the Chinese Embassy in France issued a public notice, stating that the *Xisha* Islands are China's territory.¹⁷⁶ On January 21 of the same year, the Chinese Foreign Ministry delivered a diplomatic note to the French Embassy in Nanjing to reject the French claims, stating that the *Xisha* Islands belong to China.¹⁷⁷ On January 28, 1947, upon learning of France's invasion and occupation of the *Shanhu* Island, the Chinese Foreign Ministry delivered another diplomatic note to the French Embassy in strong protest of the French action.¹⁷⁸

In November 1947, the Chinese Ministry of Internal Affairs renamed many of the islands on the basis of comprehensive surveys conducted jointly by the navy and the Ministry of Internal Affairs officials.¹⁷⁹

III.M.iii. The People's Republic of China

Since 1949, the Chinese Government has on numerous occasions repeated her indisputable sovereignty over the entire four island groups in the South China Sea, issued various declarations and statements protesting against each and every foreign claim to and invasion of any part of the South China Sea Islands within the sphere of China's claimed boundary, and invariably declared that any foreign occupation of, or any foreign action concerning the ownership of the South China Sea Islands, particularly the *Nansha* and *Xisha* groups, would be illegal and invalid.¹⁸⁰

Several important facts in the history of the PRC are worth mentioning here. The first of such facts was Premier and Foreign Minister Zhou Enlai's "Statement on the United States' and Great Britain's Draft Treaty of Peace with Japan and the San Francisco Conference" issued on August 15, 1951. The Statement states, in part:

The *Xisha* Islands and *Nansha* Islands, like the *Dongsha* and *Zhongsha* Islands, have always been China's territory. China's sovereignty over the

¹⁷⁶ Lin Jinzhi, above n.75, 193.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ See Han Nianlong, et al., "Diplomacy of Contemporary China," (Hong Kong: New Horizon Press, 1990) 331. See also Shen, "International Law Rules," above n.1, 55-72.

Xisha Islands and Nansha Islands shall not be affected no matter whether the U.S./U.K. Draft Peace Treaty with Japan would contain provisions [pertaining to these islands] and how it would provide [for them].¹⁸¹

On May 29, 1956, in protest of the Philippines' claims of May 1956 to some islands in the *Nansha* island group, the Chinese Foreign Ministry issued a Declaration of Sovereignty over the *Nansha* Islands to the effect that the "Taiping Island and *Nanwei* Island in the South China Sea, together with the small islands in their vicinity, are known in aggregate as the *Nansha* Islands. These islands have always been a part of Chinese territory. The PRC has indisputable, legitimate sovereignty over these islands."¹⁸² The Declaration emphasized that "China's legitimate sovereignty over the *Nansha* Islands shall under no circumstances be violated by any country on any ground or by any means."¹⁸³

On September 4, 1958, the Chinese Government issued the PRC's Declaration on Territorial Sea. Articles 1 and 4 of the Declaration expressly stated that the *Xisha* Islands and *Nansha* Islands, as well as the *Dongsha* and *Zhongsha* Islands, are China's territory since ancient times, and that the principles of the Declaration shall equally apply to these island groups.¹⁸⁴

On February 27, 1959, in protest of South Vietnam's continuing encroachments upon some of the islands in the *Xisha* Group and its abduction of Chinese fishermen off *Chenhang* Island (Duncan Island), the Chinese Foreign Ministry lodged a strong protest, reiterating that "the *Xisha* Islands are China's territory."¹⁸⁵

On July 16, 1971, in protest of increased encroaching activities of Vietnam, the Philippines and Malaysia in the South China Sea Islands, the Chief of the General Staff of the PLA stated that "the *Xisha* and *Nansha* Islands have always been China's territory."¹⁸⁶

In response to South Vietnam's increased occupations of and claims to islands in the South China Sea in 1973, the spokesman of the Chinese Foreign

¹⁸¹ Documents of Foreign Relations of the People's Republic of China (1958) [hereinafter FM-PRC Documents], vol. 2, 32. See Shen, "International Law Rules," above n.1, 65-66. Note that there are different versions of translation of the above passage, but the disparities are insignificant.

¹⁸² FM-PRC Documents, above n.181, vol. 4, 62. See also Greenfield, above n.70, 33.

¹⁸³ Ibid.

¹⁸⁴ Ibid, vol. 5, 162-63.

¹⁸⁵ Ibid, vol. 6, 27-28 (1961).

¹⁸⁶ People's Daily, July 17, 1971, 5.

Ministry issued a statement on January 11, 1974, warning against South Vietnam's territorial claims over the Taiping Island, the Nanwei Island and more than 10 other islands, and reiterating China's indisputable sovereignty over the *Nansha*, *Xisha*, *Zhongsha* and *Dongsha* Islands.¹⁸⁷

Ignoring China's "repeated warnings," troops of the "Saigon South Vietnam regime," starting from January 15, 1974, constantly intruded into China's territory, territorial waters and air space around and over the *Xisha* Islands. On January 17, the Saigon troops forcibly occupied the *Ganquan* Island (Robert Island) and *Jinyin* Island (Money Island), and removed Chinese flags on the islands. On January 18, the Saigon forces attacked Chinese Fishing Vessels No. 402 and 407, totally disabling Fishing Vessel No. 407 near the Lingyang Reef (Antelope Reef). On January 19, 1974, at about 7:00 am, the Vietnamese forces attempted to occupy the Chenhang Island (Duncan Island), fired at Chinese fishermen on the island, causing a number of deaths and wounds. The Chinese fishermen and militia were forced to fight back in self-defense, expelling the intruders' attacks. At 10:20 am the same day, South Vietnamese naval vessels began firing at the Chenhang Island. At 10:30 am, four Vietnamese military airplanes bombed and raked the Chenhang Island. At the same time, four South Vietnamese naval forces opened fires at patrolling PLA vessels in the *Xisha* Islands.¹⁸⁸ The Chinese naval patrollers had no choice but to fight back "in self-defense against invading South Vietnamese troops," sinking one Vietnamese navel vessel and repulsing three others.¹⁸⁹ By January 20, 1974, the Chinese soldiers, with the help and cooperation of local Chinese fishermen and militia, had recovered the *Ganquan* Island, the *Jinyin* Island, and the *Shanhu* Island (Pattle Island), completely defeating the intruding South Vietnamese forces.¹⁹⁰

The Chinese Foreign Ministry, in its declaration of January 20, 1974, reiterated that the "Xisha Islands, Nansha Islands...have always been China's territory."¹⁹¹ On February 4, 1974, the spokesman of the Chinese Foreign Ministry, in his declaration in strong protest against the South Vietnamese intrusion and occupation of the *Nanzi* Island (South West Cay) and several others of the *Nansha* Islands, once again pointed out: "The *Nansha* Islands, *Xisha* Islands, *Zhongsha* Islands and *Dongsha* Islands, are all part of Chinese

¹⁸⁷ Ibid, Jan. 12, 1974, 1.

¹⁸⁸ "China's Fishermen and Navel Vessels Forced to Fight Back in Self-Defense against the Saigon South Vietnam Regime Outrageous Encroachments upon China's *Xisha* Islands," People's Daily, Jan. 20, 1974, 1.

¹⁸⁹ Ibid.

¹⁹⁰ People's Daily, Jan. 21, 1974, 1.

¹⁹¹ Ibid, Jan. 21, 1974, 1.

territory. The People's Republic of China has undisputable sovereignty over these islands and their surrounding sea area."¹⁹²

At the second meeting between Chinese Vice Foreign Minister Han Nianlong and his Vietnamese counterpart on April 26, 1979, the Chinese Vice Foreign Minister made the following statement:

The Xisha Islands and Nansha Islands have always been an inalienable part of Chinese territory. The Vietnamese part should come back to its original position of recognizing that fact, respect China's sovereignty over these two sets of islands, and withdraw all its personnel from those islands of the Nansha Islands which it occupies.¹⁹³

In his statement of September 26, 1979, the spokesman of the Chinese Foreign Ministry reiterated that China has undisputable sovereignty over the *Xisha* Islands and *Nansha* Islands and their surrounding sea areas. He emphasized that the natural resources in these areas are China's property.¹⁹⁴

On January 30, 1980, the Chinese Foreign Ministry issued an official document titled "China's Sovereignty over the *Xisha* Islands and *Nansha* Islands Indisputable." The document cited a significant amount of historical material, records, maps, and cultural relics to demonstrate that these islands have been China's territory since no later than the *Song* Dynasty.¹⁹⁵

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

Recently, the Danwan Reef located within China's Nansha Islands was illegally occupied by foreign armed forces; some other countries subsequently made territorial claims towards certain islands and reefs of China's Nansha Islands. China has undisputable sovereignty over the Nansha Islands and the surrounding sea areas, and the natural resources within such areas are China's property. China's legitimate sovereignty over the Nansha Islands is under no circumstances allowed to be violated by any country on any ground by any means. Any and all occupations,

¹⁹² "Statement of the Spokesman of the Foreign Ministry of the People's Republic of China, February 4, 1974," *People's Daily*, Feb. 5, 1974, 1.

¹⁹³ *Ibid*, Apr. 27, 1979, 5.

¹⁹⁴ *Ibid*, Sept. 27, 5.

¹⁹⁵ *Ibid*, Jan. 31, 1980, 1.

exploration, exploitation and other activities in the Nansha Islands areas by any foreign country are all illegal and impermissible.¹⁹⁶

In May 1987, the PLA dispatched naval vessels to the *Nansha* Islands area to perform patrols.¹⁹⁷ On February 12, 1988, the spokesman of the Chinese Foreign Ministry stated that China's normal patrols and other operations in some of the *Nansha* Islands and their surrounding waters are matters which are entirely within China's sovereign rights, and that Vietnam had no right to interfere.¹⁹⁸ On March 14, 1988, Vietnamese naval vessels opened fire at China's naval patrol forces which were conducting surveys on the *Chigua Jiao* Reef (Johnson Reef; also known as Mabini Reef). The Chinese forces were compelled to return fire in self-defense.¹⁹⁹

In February 25, 1992, China passed her Law on Territorial Sea and Contiguous Zone, which reiterates that "the territory of the People's Republic of China includes...the *Dongsha* Islands, *Xisha* Islands, *Zhongsha* Islands, *Nansha* Islands, and all other islands that belong to the People's Republic of China."²⁰⁰ Two other relevant pieces of legislation passed respectively in 1998 and 1999 would create the same scope of applicability to cover the South China Sea Islands.²⁰¹

On May 11, 1995, in reference to the Philippines' encroaching activities in the *Nansha* Islands, Shen Guofang, the spokesman of the Chinese Foreign Ministry, accused the Philippines of these moves, and reiterated China's "irrefutable sovereignty" over the *Nansha* Islands.²⁰² Shen stressed that "China is an independent state and is a country which will stick to its principles and will not bend down in the face of any pressure. China will not give limitless

¹⁹⁶ Ibid, Sept. 15, 1983, 1.

¹⁹⁷ Lin Jinzhi, above n.75, 196.

¹⁹⁸ People's Daily, Feb. 23, 1988.

¹⁹⁹ Ibid, March 16, 1988.

²⁰⁰ Law of the People's Republic of China on Territorial Sea and Contiguous Zone, adopted at the 14th Sess. of the Standing Committee of the 7th National People's Congress, available at <<http://www.hriscs.com.cn>>, art. 2, para. 2.

²⁰¹ Law of the PRC on Exclusive Economic Zone and Continental Shelf, adopted June 26, 1998 at the 3rd Sess. of the Standing Committee of the 9th National People's Congress, available at <<http://www.hriscs.com.cn>>; Law of the PRC on the protection of the Ocean Environment, adopted Dec. 25, 1999 at the 13th Sess. of the Standing Committee of the 9th National People's Congress, also available at www.hriscs.com.cn.

²⁰² China slams U.S. over interference in Spratlys issue, Asian Political News, May 15, 1995, available at 1995 WL 2225274.

tolerance to these encroachments and provocations on China's sovereignty and dignity."²⁰³

On May 15, 1996, the Standing Committee of the NPC of China passed a Decision to Ratify the United Nations Convention on the Law of the Sea. The Decision declares that China reiterates its titles and rights to the various islands referred to in Article 2 of the 1992 Law on Territorial Sea and Contiguous Zone,²⁰⁴ which include the *Xisha* and *Nansha* Islands. Meanwhile, China issued her "Declaration...on the Baselines of the Territorial Sea of the People's Republic of China." The Declaration announces the baselines "of part of [China's] territorial sea adjacent to the mainland and those of the territorial sea adjacent to [the] Xisha Islands," and states that the baselines for the *Nansha* Islands and other islands of China are to be issued separately.²⁰⁵

On June 329, 1999, Zhang Qiyue, Spokeswoman for the Chinese Foreign Ministry, commented on the reportedly Malaysian construction of facilities on the *Yuyue Ansha* (Investigation Shoal) and *Boji Jiao* (Erica Reef) of the *Nansha* island group. She said China has irrefutable sovereignty over the *Nansha* Islands and their adjacent waters, and that the construction of facilities on the *Yuya Ansha* and *Boji Jiao*, by whatever other country for whatever purposes, had already constituted an encroachment upon China's territorial sovereignty, and would therefore be illegal and null and void. She added that the Chinese Government had sent a diplomatic Note of Protest to Malaysia, demanding the latter to undo what it had been doing, and stop its encroachments upon China's territory.²⁰⁶

On March 2, 1999, the Chinese Foreign Ministry Spokesman, Zhu Bangzao, expressed China's strong protests over the Philippines' construction of airport runways and other military installations on the *Zhongye Island* (Thi Tu Island). Reiterating that the *Zhongye Island* is an integral part of the entire *Nansha* island group, over which China has indisputable sovereignty, he said the Philippines' conduct constituted a grave violation of China's territorial

²⁰³ Ibid.

²⁰⁴ Decision to Ratify the United Nations Convention on the Law of the Sea, adopted May 15, 1996 at the 19th Sess. of the Standing Committee of the 8th NPC, People's Daily, May 16, 1996, 1.

²⁰⁵ Declaration of the Government of the People's Republic of China on the Baselines of the Territorial Sea of the People's Republic of China, May 15, 1996, People's Daily, May 16, 1996, 1.

²⁰⁶ "Foreign Ministry Spokesperson: ...Malaysia's Construction of Structures on the *Nansha* Islands Encroachments upon China's Territorial Sovereignty," People's Daily, Jun 30, 1999, 4.

sovereignty.²⁰⁷ On January 27, 2000, the Chinese Foreign Ministry spokesman reiterated China's indisputable sovereignty over the *Nansha* Islands, and "warned the Philippines not to create any new 'trouble' in the South China Sea."²⁰⁸

On February 13, 2001, the Chinese Foreign Ministry spokesman, Zhu Bangzao, reiterated China's "indisputable sovereignty over the *Nansha* Islands and the adjacent waters" when expressing China's "serious concerns" over reports that Vietnam was planning to install an administrative function in the *Nansha* area.²⁰⁹ "Any unilateral act by any other country concerning the Islands," he stated, "will constitute an infringement upon China's territorial sovereignty and will be illegal and null and void."²¹⁰

On March 20, 2001, when rejecting the Philippines' claim of March 15, 2001 to the *Huang Yan Island* (Scarborough Shoal), the Chinese Foreign Ministry spokesperson made the following remarks:

The Huang Yan Island is China's innate territory and the waters around it is the traditional fishing area for the Chinese fishermen, for which China has abundant historical and jurisprudence backings. Ever since the ancient times, numerous documents on the Chinese history have put down definitely in writing that the Huang Yan Island belongs to China's territory. The fact that China has sovereign right and exercises jurisdiction over the Huang Yan Island is widely respected by the international community.

The Huang Yan Island has never been within the territorial limits of the Philippines. A series of treaties on the delimitation of the Philippine territory have stipulated explicitly that the demarcation line in the west of the territorial limits of the Philippines is at 118 degree east longitude while the Huang Yan Island is to the west of it and a component part of China's Zhongsha Islands. The map published by the government of the Philippines also clearly indicates that the Huang Yan Island is not within the Philippine territorial limits.²¹¹

²⁰⁷ "Foreign Ministry Spokesperson: China Strongly Opposed to the Philippines's Construction of Military Installations on the *Nansha* Islands," *People's Daily*, Mar. 3, 1999, 4.

²⁰⁸ "China FM Spokesman Warns Philippines on Spratlys," *World News Connection*, Jan. 27, 2000, available at 2000 WL 12121779.

²⁰⁹ "China calls for Vietnamese clarification over disputed isles," *BBC Monitoring*, Feb. 13, 2001, available at 2001 WL 13662778.

²¹⁰ *Ibid.*

²¹¹ *People's Daily*, Mar. 21, 2001, 1.

When commenting on the Philippine navy's boarding some 10 Chinese fishing boats near the Huang Yan Island and confiscating some fishing equipment and catches a week earlier, the spokesperson stated that since the Huang Yan Island is an innate part of the Chinese territory and its adjacent waters is a traditional fishing area for Chinese fishermen, the fishing activities of the Chinese fishermen in the waters near the Huang Yan Island were "proper and normal." The spokesperson added that the Philippines "has no right whatsoever to go aboard the Chinese boats in the waters around the Huang Yan Island for inspection and take any measure."²¹²

The above are but some examples of China's efforts in protecting and maintaining China's sovereignty over the South China Sea Islands. The Chinese claims of sovereignty and objections to foreign assertions concerning the South China Sea Islands have been persistent and consistent throughout history, and such claims and efforts are continuing.

IV. Conclusions

The above analysis shows that China has strong and convincing evidence of sovereignty over the *Xisha* and *Nansha* Islands. Nevertheless, over the years since I became interested in the issue of the sovereignty over the South China Sea islands, I have read and heard scholars and non-scholars questioning the historical bases of China's sovereign claims to the *Xisha* and *Nansha* Islands. For example, Joyner, citing the *Legal Status of Eastern Greenland* case,²¹³ writes that "discovery only creates inchoate title, which must be perfected by subsequent continuous and effective acts of occupation, [*i.e.*]...permanent settlement," and that "[e]vidence of such permanent settlement is not compelling in the case of China's claim to the Spratlys."²¹⁴ Clagett, in his opinion paper commissioned by Vietnam, took a similar line of argument.²¹⁵ Finally, an unsigned commentary published on the web also took a similar line, and seized upon an alleged Chinese government report published in 1928 that allegedly did not mention the *Nansha* (Spratly)

²¹² Ibid.

²¹³ *Legal Status of Eastern Greenland* (Den. v. Nor.), 1933 P.C.I.J. (Ser.A/B) No. 53.

²¹⁴ Christopher C. Joyner, "The Spratly Islands Dispute: What Role for Normalizing Relations between China and Taiwan," 32 New Eng. L.R. (1998) 819, 825-26.

²¹⁵ Brice M. Clagett, "Competing Claims of Vietnam and China in the Vanguard Bank and Blue Dragon Areas of the South China Sea: Part I," [1995] 10 Oil & Gas L. & Tax. Rev. (Oct. 1995), 375-388, 388, available at <<http://www.cov.com/publications/CLAGETT1.asp>>.

Islands.²¹⁶ This unsigned commentary gives no citation to this alleged report, nor does it mention which office issued it, or what purpose the report served.

What Joyner, like others, relies upon is the general rule of modern international law on the acquisition and perfection of territorial title. The general rule had been earlier outlined in the *Island of Palmas Arbitration*,²¹⁷ which is regarded a landmark case containing a more authoritative statement of the general rule, but to which Joyner makes no reference. He, like many commentators, fails to consider the other side of the *Legal Status of Eastern Greenland* case that states an important exception to the general standard, an exception which governs the acquisition of title to thinly populated or unsettled territory, and which I will discuss shortly.²¹⁸

It is true that, surviving historical records, judged against the above-referred-to general rule governing the acquisition of titles in *normal* territorial situations, when viewed piece by piece, may seem less than overwhelming. However, a single piece of evidence, no matter how probative, does not necessarily in itself suffice to lead to a conclusion in one direction or the other. One cannot look at the largely scattered pieces of evidence in isolation from one another, nor can he or she neglect to ask the questions of what types of territorial situations are at issue and therefore what rules of law (or exceptions thereto) should be the governing law.

What I mean is as follows. In the first place, we must weigh the evidence in its *totality* rather than in a piece meal fashion. Putting aside the question of which side has genuine and reliable historical records, an issue I intend to specifically deal with at a later time, and assuming that all evidence put forward by the claimants is genuine and credible, we must decide in whose favor the totality of the evidence weighs on the balance. As far as I am aware, none of the other claimants to the South China Sea Islands, according to the *Eastern Greenland* standard,²¹⁹ has made out a "superior" claim over that of China's—their claims came rather too late to defeat China's title. In the absence of more compelling contrary evidence, the afore-discussed lines of historical materials, which by no means are exhaustive, do constitute in their entirety an abundance of overwhelming evidence sufficient to make the

²¹⁶ Quoted in: <<http://members.tripod.com/paracels74/chinaargument.htm>> (Paracels Forum) (author and source of publication unspecified).

²¹⁷ *Island of Palmas Arbitration* (U.S. v. Netherlands), P.C.A., 1928, 2 U.N.R.I.A.A. 829.

²¹⁸ See text accompanying below n.226.

²¹⁹ See text accompanying below n.227.

balance in China's favor. This is so even under the general international law rule governing the acquisition of territorial title in *normal* situations.²²⁰

Secondly, assuming the alleged 1928 Chinese report mentioned in the unsigned commentary mentioned above did exist, the existence of which nevertheless needs to be verified, such alleged evidence, even coupled with other China-disfavored evidence, if any, in no sense appears to reach a level sufficient to chip away at the totality of the evidence in China's favor.

If such a neglect did exist, it could only be inadvertent, and thus not meaningful, and could not constitute any abandonment or disclaimer of China's sovereignty over the areas in question by any scale. The unnamed author did not tell us which government office issued the report or for what purpose the report was issued. Without such information, one cannot give the report any value, even under normal circumstances. Besides, China was constantly at civil wars in the first half of the 20th century, particularly in the 1910's, 1920's, and 1930's, resulting in a China with one country and two and sometimes several governments, none of which at times could speak for the entire country. If, for the sake of argument, any maps and publications published during these periods did neglect to mention the South China Sea Islands, even if under official color, they could hardly be considered to represent the *true and real official* position of China as a country. Indeed, the very first relevant official map approved by the Chinese central authorities after the 1911 Revolution was not published until 1935,²²¹ a fact that places the alleged 1928 Chinese "official" report in serious doubt.

Most importantly, neither Vietnam, nor the Philippines, nor any other contender to the South China Sea Islands, has presented any "superior" map or other document covering the same period of time in history as China does. Regardless of the existence or non-existence of the alleged 1928 report, and absent any "superior" map or claim by other claimant in light of the standard outlined in the *Eastern Greenland* case,²²² the abundance of Chinese maps and other documents in China's favor suffices to support China's claims to the South China Sea Islands.

Thirdly, the principle of inter-temporal law requires that when dealing with territorial disputes, the applicable law is not the law that is in effect when the disputes arise or are submitted for resolution; rather, the law that was in effect at the time of alleged acquisition governs. Under pre-18th century rules of international law, discovery alone, or at most discovery along with some

²²⁰ See Shen, "International Law Rules," above n.1, 10-12.

²²¹ See text accompanying above n.118-119.

²²² See text accompanying below n.227.

form of symbolic acts, was all that was required to establish title to territory. Under the then applicable law, China had long before discovered the South China Sea Islands, and had done more than mere symbolic acts to display her authorities. Therefore, China had unquestionably acquired title to the South China Sea Islands before any foreign claims arose, regardless of whether China was aware of the existence of *general* rules of international law at that time.²²³

Fourthly, while the general rules requiring actual and continuous display of authority in *regular* and *normal* territorial situations, as were typically outlined in the *Palmas* and the *Eastern Greenland* cases,²²⁴ continue to be the general law, one must take into account the enormous *irregularity* and *abnormality* of the South China Sea Islands as well as an important exception to the general rule, *i.e.*, the exception that governs the establishment of sovereignty over *abnormal* territories requiring little actual display of authority. This exception to the general rules of present-day international law has been well delineated in a number of holdings of international tribunals, and widely supported by State practice and scholarly writings.²²⁵

The Permanent Court of Arbitration in the *Palmas* case, while mainly discussing the general rule, wasted no time in recognizing the exception. It held that the displays of “territorial sovereignty assume...different forms, according to conditions of time and place,” that while “continuous in principle, sovereignty cannot be exercised in fact at every moment on every point of a territory,” and that “the intermittence and discontinuity compatible with the maintenance of the right necessarily differ according as [*sic*] inhabited or uninhabited regions are involved...”²²⁶

In the *Legal Status of Eastern Greenland* case, the Permanent Court of International Justice similarly observed and upheld that “in many cases the tribunal is often satisfied with very little in the way of the actual exercise of sovereign rights, provided that the other state could not make out a superior claim,” and that “[t]his is particularly true in the case of claims to sovereignty over areas in thinly populated or unsettled countries.”²²⁷

The Clipperton Arbitration tribunal stated this exception to the general rule in crystal clear tones: Although the exercise of effective sovereignty *normally* required the establishment of an administration “capable of securing respect of

²²³ See Shen, “International Law Rules,” above n.1, 73-75.

²²⁴ *Ibid*, 10-11.

²²⁵ *Ibid*, 11-15.

²²⁶ *Island of Palmas*, above n.215.

²²⁷ *Eastern Greenland*, above n.213.

the sovereign's rights, *this was not necessary in the case of uninhabited territory at occupying state's absolute and undisputed disposition.*"²²⁸

The International Court of Justice, in the *Western Sahara* advisory opinion, similarly held that even an "insignificant display of sovereignty" can establish sovereignty over an unpopulated or barely inhabited area.²²⁹ Indeed, as has been rightly stated, "[i]n a remote, uninhabited territory the degree of authority actually displayed may be relatively small, whereas in a populated area the degree must be greater."²³⁰

Few territorial features in the world, perhaps, can more adequately be described as "remote" and/or "uninhabited" than the South China Sea Islands. Except for a few in the *Xisha* Islands, the South China Sea Islands are so hard to sustain human settlement on a permanent basis that they are virtually entirely uninhabitable. Even the Yongxing Island (Woody Island) in the *Xisha* group, the very largest one, did not have potable water until 1996. Given the high *abnormity* and *uninhabitability* of the South China Sea Islands that China undeniably discovered, it is clear that the general rule of territorial acquisition does not apply; rather, the exception to the general rule governs. In other words, China did not, and does not, need to display such extensive acts of sovereignty as required by the general rule, *e.g.*, transporting migrants, setting up administrations and/or stationing troops, in order to perfect or maintain her already established sovereignty over the *Xisha* and *Nansha* Islands and their adjacent seas. All that may be required of China under the exception to the general rule of international law is to exhibit some form of symbolic authority over these self-discovered uninhabitable territories, a test which China has far more than satisfied over a period of more than two thousand years.

Before concluding, I feel compelled to come back to the allegations that China was making expansions in the South China Sea, or that China was claiming or occupying parts of the *Nansha* island group by stealth or force.²³¹ As demonstrated in the above analysis of historical evidence, these areas have already been within Chinese control and under her sovereignty since ancient times. Any allegation that China was making expansions in the South China Sea, or that China was claiming or occupying parts of the *Nansha* island group

²²⁸ Clipperton Island Arbitration, 2 U.N.R.I.A.A. 1105, 26 Am. J. Int'l L. (1931), 390 (*emphasis added*).

²²⁹ Advisory Opinion on the Status of Western Sahara, 1975 I.C.J. Rep. 12, 43 (Oct. 16, 1975).

²³⁰ Kriangsak Kittichaisaree, "The Law of the Sea and Maritime Boundary Delimitation in Southeast Asia," Oxford University Press, 1987, 141.

²³¹ See text accompanying above n.11-12.

by stealth or force falls apart. To the contrary, China has simply been safeguarding what's rightfully her own.

As a peace-loving nation, China has exercised an extreme degree of forbearance, tolerance and self-restraint in the face of frequent and offensive foreign claims, intrusions and occupations, so as to avoid armed conflicts and maintain peace and stability in the region and good relationship with the other claimant parties. This high degree of self-restraint, however, should not be interpreted as a limitless one. Nor should it be read to mean that forcible recovery could never be an option. As the titleholder, China has the right to decide whether, when and how to utilize these island chains and natural resources therein, to make and maintain physical presence there, and to install military and non-military facilities for the purpose of self-defense and/or protection of Chinese fishing and other economic and non-economic activities. She has the right to maintain peace and order in the area within her jurisdiction. She also has the right, if she so wishes and when she deems it necessary, to expel invading foreign occupiers as an alternative to diplomatic and political measures, although whether and when to exercise such right is entirely at China's discretion as the titleholder. Peaceful settlement through negotiation, adjudication or otherwise, as all parties seem to prefer, must, of course, remain the desirable means.