

INTERNATIONAL LEGAL BASIS FOR ESTABLISHING SOVEREIGNTY OF VIETNAM FOR THE TWO HOANG SA AND TRUONG SA ISLANDS***Dr. Nguyen Thanh Minh, Master Le Van Bao and Master Tran Ngoc Giap**

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Abstract

The international legal basis to establish the sovereignty of the Vietnamese State over the Hoang Sa and Truong Sa archipelagos is an important content, in addition to affirming that the Vietnamese State has sufficient legal evidence to Affirming sovereignty also contributes to refuting the unreasonable sovereignty claims of some countries over the Hoang Sa and Truong Sa archipelagos. The State of Vietnam is the only country in the region and the world that has a complete system of documents, historical records, and legal evidence in establishing sovereignty over the two archipelagos of Hoang Sa and Truong Sa.

Keywords: International legal basis, Sovereignty, Vietnam.

INTRODUCTION**International legal regulations on establishing sovereignty over islands**

In practice of international law, there exist five basic forms of territorial acquisition:

First, acquisition by actual possession: The form of actual possession was formed from the Berlin Convention on February 26, 1885 when two conditions are met: First, notification must be made to the participating countries wish to possess its territory. Second, the possessing countries are forced to have actual acts of possession by their government organizations in the territories intended to be possessed. The principles of the Berlin Convention are still valid today, they are unwritten rules of modern international law but must be invoked by countries, arbitrators and international judges themselves. Possession is the act of a state establishing and exercising its power over a territory that is not yet under the sovereignty of another state. This is a basic form of territorial acquisition that has always been the basis for the formation of the territory of most countries today. The prerequisite for the acquisition of territory is that the possessed territory must be ownerless territory. Although now there is no longer a derelict territory for nations to possess, its characteristics have become the criteria for judging existing territorial disputes of many countries around the world, especially in the region. East Sea. Second, acquisition by transfer: This is the voluntary transfer of territorial sovereignty from one country to another. Usually the transfer is formalized through the terms of a formal agreement that notes in detail the land being transferred, as well as the conditions under which the transfer is completed. Third, acquisition by prescription of possession: Is the actual continuous and peaceful exercise over a long period of time of a country's power over a territory that inherently belongs to the sovereignty of another country or unclear sovereignty is disputed.

Fourth, acquisition by conquest: Conquest is a method of acquiring territory that takes place after wars, whereby the winning country annexes the territory or part of the territory of the defeated country its territory. This form only existed during the feudal period. Up to now, this method has been completely rejected because it is contrary to the principle of not using force or threatening to use force in international relations. Fifth, acquisition by the impact of nature: Is a form of territorial acquisition in which a country has the right to expand its territorial area through voluntary land reclamation into the main territory or by the appearance of islands growing within a country's territorial waters, this island not only becomes part of that country's territory but also creates an expansion beyond the national borders on the sea.

Applying international legal regulations to Vietnam's Hoang Sa and Truong Sa archipelagos

Territorial acquisition in the form of possession of the Hoang Sa and Truong Sa archipelagos of Vietnam: International and Vietnamese historical data both show that the Vietnamese state has actually possessed the two Hoang Sa archipelagos. Sa and Truong Sa at least since the 17th century, before the publication of Do Ba's map in 1868. This means that the Vietnamese state used the form of actual possession to acquire the two archipelagos. Hoang Sa and Truong Sa fully met the standards of acquiring ownerless territory at those times. Regarding the Hoang Sa archipelago: Based on the presented system of historical, archaeological, legal and marine cultural evidence, it can be seen that in the first half of the 17th century sovereignty over the Hoang Sa archipelago belonged to Vietnam. Because, the Nguyen Lords and the Nguyen Dynasty have shown the continuous, peaceful management at the state level over the Hoang Sa archipelago that no country in the region and the world has opposed. In other words, at that time, no country had asserted state sovereignty over the Hoang Sa archipelago. During the first half of the 17th century and the first half of the 18th century, the Nguyen Lords established: Hoang Sa Team and Bac Hai Team to survey, plant trees, protect fishermen, erect sovereignty stele and collect marine resources precious objects in the area of the two archipelagos

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of Hoang Sa and Truong Sa returned to the court. These are important actions to affirm the establishment of Vietnam's sovereignty in terms of the state over the Hoang Sa archipelago. For the Spratly Islands: A study of historical sources shows that the work of Lord Nguyen's Bei Hai Team has an affirmative meaning in terms of exercising sovereignty at the state level over the Spratlys, followed by the North. The Nguyen family has also continued to demonstrate a long and peaceful management history over the Spratly Islands without any objections from any country. Following the historical line when France came to invade Vietnam, France claimed French sovereignty over the Spratly Islands in 1925; informed the great powers that the Spratlys belonged to France in 1930; In 1933, France annexed Truong Sa archipelago into Ba Ria province. It was not until 1939 that Japan disputed the Spratly Islands with France. Not only that, Japan gave up its claim of sovereignty over the Spratly Islands in the 1951 San Francisco Agreement. It was not until after World War II that China disputed the Spratly Islands with France, ie after when France claimed sovereignty over 20 years since the French invaded Vietnam. On the basis of the evidence presented by the parties, when China began to claim sovereignty over Vietnam's Truong Sa archipelago, after World War II, the Truong Sa archipelago belonged to Vietnam. and when the Philippines, Brunei and Malaysia began to claim sovereignty over the Spratly Islands, sovereignty over the Spratlys belonged to Vietnam.

Thus, the principle of continuous and peaceful exercise of state power to create the title of sovereignty has been accepted in international practice when resolving territorial disputes. Therefore, Vietnam can use this principle in the case of the Hoang Sa and Truong Sa archipelagos. Because in history, the Vietnamese state has, through the Hoang Sa and Bac Hai fleets, continuously and peacefully exercised its power over the two archipelagos and thus established sovereignty there. Regarding the continuity condition: This is clearly shown in the case of the Vietnamese state establishing sovereignty over the two archipelagos. For more than two centuries, the activities of the Hoang Sa and Bac Hai fleets established and organized by the State were continuous and uninterrupted. Regarding peace conditions: When establishing sovereignty over the two archipelagos, the State of Vietnam met the conditions for peace. In the 17th century, when the State of Vietnam organized the exploitation of the two archipelagos, they were never under the sovereignty of any country. Western countries, when passing through the two archipelagos, have no will to possess the two archipelagos and still consider them to be Vietnamese territory. A Western missionary traveling on the Amphitrit ship from France to China wrote a letter clearly stating: The Parasels Islands belong to the Kingdom of An Nam (Vietnam). Furthermore, the activities of the Hoang Sa team and the Bac Hai team are public. Even China knew about this activity and did not object. The sovereignty of the State of Vietnam over the two archipelagos existed peacefully without dispute until 1909, the first year China spoke up for its unjustified sovereignty over the Hoang Sa archipelago. The act of exploiting peacefully and continuously over a long period of time by the Hoang Sa and Bac Hai fleets of the Vietnamese State was not opposed and fully met the conditions of the form of occupation really.

The international legal basis rejects a number of views of the parties related to the issue of asserting unreasonable sovereignty over the seas, islands and archipelagos under the sovereignty of the Vietnamese state

National sovereignty over islands is not based on contiguity: Analyzing this point of view to refute the current Philippine position that offers contiguity in the process of claiming sovereignty, the Philippines considers that part of the archipelago Truong Sa is located near the Philippines, so the Philippines has sovereignty. At the same time, analyzing this point of view is to refute China's view that the Paracel Islands are located closer to China, so sovereignty belongs to China. In practice, there is no provision in international law that stipulates that a coastal state with a nearby island belongs to that state's sovereignty may belong to another country regardless of geographical location, proximity.

In practice, customary international law and the principles of modern international law have affirmed that a state's sovereignty over territories depends on the process of establishing its state sovereignty, not the state does not depend on proximity. For example, the islands of Jersey, Guernsey, Alderney and Sark are located closer to France than England, but the actual sovereignty belongs to the UK, Phu Quoc island is closer to Cambodia than Vietnam, but the actual sovereignty belongs to the State of Vietnam. The evolution of modern international law and international law of the sea to the formation of the provisions of UNCLOS in no way presupposes a state's geographical advantage for asserting sovereignty over the sea. a territory such as rocky islands, shoals, and shoals. Based on the basic principles of modern international law, the practice of customary international law, the international law of the sea, especially the provisions of UNCLOS, the following arguments are false and have no legal value. According to China's point of view, China always argues that the Paracel Islands belong to China, because the archipelago is located closer to China than Vietnam. . The Philippines' position holds that some rocks, islands and shoals in the Spratly archipelago are located closer to the Philippines than Vietnam, so the sovereignty of those rocks, islands and shoals belongs to the Philippines. Malaysia's point of view is that some rocky islands are located closer to Malaysia than Vietnam, so the sovereignty of those rocky islands belongs to Malaysia. Brunei's view is that some rocky islands are located closer to Brunei than Vietnam, so the sovereignty of those rocks belongs to Brunei.

These are wrong views on legal science, without international legal validity, but most claimants have raised in the course of legal and diplomatic struggles related to the dispute sovereignty over the two archipelagos of Hoang Sa and Truong Sa in the territory of Vietnam. From the perspective of international law, the above views have no legal value, because in the norms of the modern international legal system, the international law of the sea and the provisions of UNCLOS do not have a clause. There are no regulations on the contiguity and of course an island located near a coastal state does not necessarily belong to that country's sovereignty, that is also natural. In terms of the state establishing sovereignty over the Hoang Sa and Truong Sa archipelagos, only Vietnam has evidence consistent with the principles of international law on establishing sovereignty over the territorial waters earth. With the legal basis expressed through aspects such as history, archaeology, law and marine culture, it was clearly demonstrated that it was in the first half of the seventeenth century when Vietnam established sovereignty over the sea. In terms of state for the two archipelagos of Hoang Sa and Truong Sa, there has not been any country in the region and in the world that has established state sovereignty over those two

archipelagoes. During the time when Lord Nguyen exercised state sovereignty over the Hoang Sa and Truong Sa archipelagoes, no country had asserted state sovereignty over these two archipelagoes. The exercise of sovereignty by the Nguyen Lords in terms of the state is clearly shown through important events: that is, in the first half of the seventeenth century, the Nguyen Lords organized the Hoang Sa team. The task of the Hoang Sa team is to collect goods from sunken ships, catch rare and precious seafood to bring to the court, and at the same time conduct measurements and plant trees on the Hoang Sa archipelago. This is an act showing the establishment of state sovereignty of the Nguyen Lord over the Hoang Sa archipelago.

Following in the first half of the 18th century, Lord Nguyen organized the Bac Hai team, the Bac Hai team was granted a license to go to the Truong Sa archipelago to collect goods from sunken ships, catch rare and precious seafood return and pay tribute to the royal court; At the same time, measuring and planting trees on Truong Sa archipelago. This is an act demonstrating the establishment of complete state sovereignty of Lord Nguyen over the Hoang Sa and Truong Sa archipelagoes. Thereby showing us that the establishment of Vietnam's sovereignty over the Hoang Sa and Truong Sa archipelagoes is in terms of the state, meeting the criteria of international law, not aggression occupied by an individual. The establishment of Vietnam's state sovereignty is completely consistent with the principles of international law on asserting sovereignty over a territory of the country. Vietnam is also the only country in the region that has an international legal basis with this absolute advantage to apply in the process of international negotiations on dispute settlement with relevant countries in the region related to the sovereignty of the Hoang Sa and Truong Sa archipelagos of the State of Vietnam.

Sovereignty over islands is not based on seabed topography: Analysis of this point of view aims to refute the point of view of Malaysia and Brunei that have introduced sovereignty based on seabed topography to assert sovereignty over some of the rocky islands in the South China Sea. Truong Sa archipelago of Vietnam. In practice, international law does not regulate the sovereignty of an island based on the seabed topography. International law has recognized that an island is located on a natural extension of the mainland of a coastal state, sovereignty can still belong to another state. For example, the islands of Jersey, Guernsey, Alderney and Shark belong to the UK, although based on the topography of the seabed, these islands are located near France, but that does not mean that the sovereignty of these islands belongs to France, the court ruled that the sovereignty of the two island groups belonged to Britain. Therefore, the arguments of Malaysia and Brunei that some of the rocky islands in the Spratly Islands area of Vietnam are under the sovereignty of Malaysia and Brunei based on the natural prolongation of the mainland of these countries are the erroneous arguments, have no legal basis, are invalid, and are inconsistent with the principles of international law, international law of the sea and the provisions of UNCLOS. State sovereignty over islands is not based on exclusive economic zones according to UNCLOS: The modern international legal system, especially UNCLOS, does not contain any content that stipulates sovereignty over islands located in the exclusive zone economy belongs to the country that has that exclusive economic zone. An island within the exclusive economic zone of a coastal state may still be subject to the sovereignty of another country. According to the

provisions of UNCLOS, sovereignty over islands generates sovereign rights and jurisdiction in the so-called EEZ and EEZ may be a consequence of sovereignty over the islands, but not The exclusive economic zone does not give rise to sovereignty over the island. Therefore, Malaysia's argument that some of the rocky islands in the Spratly archipelago of Vietnam belong to Malaysia because these islands are within its exclusive economic zone is not correct. This is a false argument and has no international legal validity, and is contrary to the provisions of international law, contrary to international law of the sea, especially the provisions of UNCLOS.

National sovereignty over an island is not based on the first discovery of that island: In practice of international law, the basic principles of UNCLOS clearly stipulate that discovery only leads to acquisition of ownership rights if it goes hand in hand with state action to assert sovereignty. Even in that case, what leads to the acquisition of sovereignty is state action to assert sovereignty, not discovery. The discovery by an individual of a territory does not result in the sovereignty of the state whose nationality the individual discovers. One of the arguments that China makes is to say that the Hoang Sa and Truong Sa archipelagos belong to this country, because the Chinese were the first people to discover these two archipelagos. This argument is completely incorrect because: First, there is no evidence to prove that the Chinese discovered the Hoang Sa and Truong Sa archipelagos before the Vietnamese people. Second, international law and modern international maritime law stipulate that what gives rise to sovereignty is the action of the state to assert and maintain sovereignty, not the discovery of an individual.

Individual actions are not the basis of sovereignty: As analyzed above, the basis of sovereignty is the state's actions to assert and maintain sovereignty, which does not belong to the individual. One of the arguments that China makes is that the Chinese have exploited the Hoang Sa and Truong Sa archipelagos since ancient times and when the French arrived in the Truong Sa archipelago in the 1930s, they found Chinese fishermen temporarily reside there. First, there is no evidence to prove that the Chinese have exploited the Hoang Sa and Truong Sa archipelagos since ancient times. Second, there is no evidence to prove that when the Chinese exploited the Hoang Sa and Truong Sa archipelagos, the Vietnamese people did not exploit these two archipelagos. Third, the actions of individuals exploiting these two archipelagos are not actions at the state level to assert and maintain state sovereignty according to the provisions of the modern international legal system.

Occupation by force is not recognized by international law as acquiring sovereignty and has no international legal value: History shows that China used force to occupy the An Vinh group of the Hoang Sa archipelago since 1956 and occupied the entire Hoang Sa archipelago since 1974. Up to now, Vietnam's entire Hoang Sa archipelago is being illegally occupied by China. As analyzed, in the modern world, international law does not recognize the acquisition of sovereignty by conquest or invasion. For example, Resolution No. 2625 dated October 24, 1974 of the United Nations General Assembly on the Declaration on the Principles of Public International Law on Relations and Cooperation between States under the Charter of the United Nations stipulates: The territory of a State cannot be subject to military occupation following the use of force contrary to the

provisions of the Charter of the United Nations. The territory of a State cannot be the subject of an acquisition by another State following the use of force or threat of force. No acquisition of territory by the threat or use of force shall be recognized as legitimate. Up to now, in resolving the sovereignty dispute over the Hoang Sa and Truong Sa archipelagos of Vietnam, the sovereignty claims and actions of the Nguyen Lords to the Nguyen Dynasty of Vietnam are the earliest evidence has been launched on action at the state level to assert and enforce sovereignty over the Hoang Sa and Truong Sa archipelagos. China has not provided any scientifically-based evidence to clearly demonstrate that before the 20th century, China took actions at the state level to assert and enforce its sovereignty over the world. The two archipelagos of Hoang Sa and Truong Sa belong to the territory of Vietnam.

Conclusion

In the world and the region today, there is an increase in disputes over sovereignty of seas, islands, archipelagos, shoals, and reefs that are increasingly taking place from many different angles, demonstrating complexity, severity, and uncertainty. There are concessions. Sovereignty disputes over seas and islands take place in many aspects such as politics, legality, and diplomacy, not only in the East Sea region but also in many other areas around the world, with serious impacts. To a peaceful and stable environment in the region and the world. Sovereignty disputes over seas, rocks, archipelagos, shoals, and reefs occur due to many different reasons such as resources, strategic location, geo-economics, geopolitics and the influence of the sea islands for the region and the world. In addition, there are historical reasons why sovereignty disputes over seas and islands are difficult to resolve, take a lot of time, and require investment to conduct systematic research.

Vietnam is a country with maritime zones adjacent to many countries in the East Sea region. Over a long period of time, Vietnam has achieved brilliant achievements in maritime delimitation negotiations with relevant countries in the region, actively contributing to creating a peaceful environment and conditions for economic development, especially the marine economy. Through studying the legal basis system in terms of maritime politics, history, archeology, law, and marine culture, we can confirm that the two archipelagos of Hoang Sa and Truong Sa belong to legal sovereignty of Vietnam, in accordance with the provisions of modern international law, international maritime law, especially UNCLOS regulations.

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