



Research Article

PRINCIPLE OF ACQUISITION PRESCRIPTION IN INTERNATIONAL LAW ON SEA AND ISLAND DISPUTE SETTLEMENT: A CASE OF VIETNAM'S SOVEREIGNTY OVER THE HOANG SA AND TRUONG SA ARCHIPELAGOES

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ABSTRACT

There have been many disputes over territorial sovereignty between countries, lasting many years with different viewpoints, principles, and historical shreds of evidence between countries. In order to thoroughly settle territorial disputes between countries, since the Berlin Convention in 1885, most countries in the world, including Vietnam, have agreed to apply the principle of acquiring territory in sovereignty dispute settlement among countries. Establishing a country's sovereignty over territories must be based on the rules of international law on territorial acquisition. It plays an essential role in resolving territorial disputes. Territorial acquisition regulations help address the question of how a state can legally establish sovereignty over a new territory against the claims of other states. These are also the legal principles that Vietnam has relied on to prove and affirm Vietnam's sovereignty over the Hoang Sa and Truong Sa archipelagos in the East Sea.

KEYWORDS

Sovereignty; Territorial Acquisition; Acquisition prescription; Real possession; Hoang Sa; Truong Sa; Vietnam.

INTRODUCTION

The principles and legal norms establishing territorial sovereignty are mainly used to arbitrate territorial disputes and prove as a basis for proving the rights of a country over the disputed territory. Therefore, the principles of establishing territorial sovereignty and

methods of acquiring territory issues should have been studied thoroughly.

Acquisition of territory is the practice of a country establishing its sovereignty over a new territory, or in

other words, expanding an existing territory, adding a new territory to its national territorial map. “Territory acquisition” is usually employed as meaning the establishment of sovereignty over a given piece of land¹. This definition was referred by the United Nations Security Council Resolutions 242 in 1967 in the aftermath of the 1967 Arab-Israel War. Accordingly, “acquisition of territory” in this manner refers to the The preamble of this Resolution refers to the “inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in the Middle East in which every State in the area can live in security”². As an institution of international law, establishing national sovereignty over a territory must comply with certain principles of international law. Therefore, the acquisition of territory must also comply with the basic principles of international law.

One of the most basic principles of international law directly related to the issue of “territory acquisition,” is the principle of possession. The purpose of this article is to assess the role of territory acquisition principle in dispute settlement of Vietnam’s sovereignty over the Hoang Sa and Truong Sa archipelagoes against other countries’ claims.

RESULTS

How Acquisitive prescription works

Prescription, in the context of ownership and possession, “is another mode of acquiring ownership and other real rights over immovable property. It is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the conception should be in the concept of an owner, public, peaceful, uninterrupted and adverse”³.

Acquisitive prescription is among the five modes of acquiring territory in international law. It has been defined as “the result of the peaceable exercise of de facto sovereignty for a very long period over territory subject to the sovereignty of another”⁴. Acquisitive prescription is supposed to attribute title to the state, which can prove a peaceable or undisturbed possession of the territory over a long period of time⁵. First, possession had to be exercised à titre de souverain. Not only should the state display state sovereignty, it also could not recognize any other state’s sovereignty to the territory concerned. Second, possession should be peaceful and uninterrupted. In its most extreme interpretation, this meant that the possession had to go unchallenged. Third, possession should be public. Fourth, it must persist⁶.

These original values is still applied by international jurisdictions in resolving territorial disputes⁷. This principle has been applied to settle many international disputes over territorial sovereignty, such as the Palmas Island 1928 between the United States and the

¹ Marcelo G Kohen, Mamadou Hébié (2021). Territory, Acquisition, *Oxford Public International*, [https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1118#:~:text=1%20The%20expression%20'acquisition%20of,notably%20Resolution%20242%20\(1967\).](https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1118#:~:text=1%20The%20expression%20'acquisition%20of,notably%20Resolution%20242%20(1967).)

² United Nations (2012). United Nations Security Council Resolution 242,

<https://digitallibrary.un.org/record/90717?ln=en>

³ Heirs of Arzadon-Crisologo v. Rañon, G.N. No. 171068, September 5, 2007.

⁴ I.A. Shearer (ed.), *Starke’s International Law* (11th ed., 1994)

⁵ R. Jennings and A. Watts (eds.), *Oppenheim’s International Law* (9th ed., 1992)

⁶ P. Fauchille, *Traité de droit international public* (8th ed., 1925)

⁷ Nguyen Ba Dien (2020), “Principles of Territorial Acquisition in International Law and Disputes in the South China Sea”, *International Studies*, <https://nghiencuuquocte.org/2020/01/21/nguyen-tac-thus-dac-linh-tho-luat-quoc-te-tranh-chap-bien-dong/>

Netherlands (1928), The Clipperton Island case between Mexico and France (1931), the East Greenland case (1933) between Norway and Denmark, the Minquiers and Ecréhous case (1953) between Great Britain and France. According to the principle of real possession: The possession must be conducted peacefully over a territory that is actually derelict or has been voluntarily abandoned or implicitly abandoned by the owner; The possessing State must carry out in practice sovereignty actions to the minimum extent following the natural and population conditions of that territory; Continuity of the performance of sovereign actions on that territory, without objections from other countries.

It can be seen that the establishment of territorial sovereignty by possession is legally valid when it meets the following conditions⁸:

- Territory may be acquired by the States, but it has not yet been granted territorial sovereignty.
- Territory that cannot be governed by a state such as the high seas and the exclusive economic zones.
- Territory that has never belonged to any other State, but these States have their own status the peacefulness of possession.
- Sovereignty cannot be established by violent invasion or threat of force; Possession must be accepted by contemporary public opinion.

Vietnam's occupation of the two archipelagoes of Hoang Sa and Truong Sa

⁸ Gideon Boas, Public International Law Contemporary Principles and Perspectives Chapter 4 at 4.6.1 (Edward Elgar Publishing Limited, 2012).

In collected official historical documents and folk documents revealed Vietnam established the management of Hoang Sa and Truong Sa archipelagoes very early, at least from the 17th century. Since then, Vietnam has continuously developed and exercised the sovereignty over the Hoang Sa and Truong Sa archipelagoes. The process of possession by the State of Vietnam over these two archipelagoes is proven through many documents from time to time. Some activities and documents from each period can be cited as follows:

Sovereignty of Hoang Sa and Truong Sa Sea areas under The Nguyen Lords

- In the 17th, 18th centuries

Thuan Hoa is the old land of the Kingdom of Champa. Under the reign of Nguyen Lords, the inhabitants of Thuan Hoa reached out to claim ownership of the East Sea.

This historical fact was recorded on many maps by contemporary Western navigators. A typical example is the World Map of the Dutch geographer G. Mercator (1512-1594), drawn in 1569, including 18 pieces published from 1585-1595, which marked the value as the most complete and accurate map of the time. This map marks the shoals southwest of the Paracel Islands under Baixos de Champa (Champa shoal) and Pulo Capaa (Champa's island). To the end of the 17th century, the Map of the coastline of Quinam, Tonquin, Cochinchina, and Aynam drawn in 1659 by the Netherlands clearly showed the large islands near the shore, such as Cu Lao Cham and Cu Lao Re Islands with rivers and estuaries in Quy Nam (Quang Nam) and Isla de Pracel (Paracel Islands, shown as five small islands

located at the northern pole of the sand strip and shoals). This map objectively and accurately represents the relationship between the Hoang Sa archipelago and the coastal islands, rivers, and estuaries on the central coast of Vietnam.

Under Nguyen Lords, the more they pushed their territory to the South, the more they became aware of the crucial position of the archipelagos in the East Sea and soon set forth policies to occupy these archipelagos.

Historian Phan Huy Chu wrote in “Lich Trieu Hien Chuong Loai Chi” (Classified Rules of Dynasties): “Hoang Sa flotilla was set up by the Nguyen Lords with 70 crewmembers chosen from An Vinh village (Ly Son of Quang Ngai) on a rotational basis. In the third month of every year, by order of the Nguyen Lords, the men sailed on five small vessels, bringing with them enough food for six months, and reached these islands after three full days. There, they were free to catch fishes for food and collect plenty of precious items. In the eighth month, the sailors returned to the mainland through Thuan An estuary, then they came to Phu Xuan citadel to hand over items they have collected.”⁹.

The above-cited historical document indicated that Vietnam was well aware of the location and importance of the Hoang Sa and Truong Sa archipelagos during the period of the Nguyen Lords. Having availed themselves of the advantage that inhabitants in Quang Ngai, particularly, and southern coastal provinces in Central Vietnam, were experienced seafarers, the Nguyen Lords established Hoang Sa and Bac Hai flotillas to patrol a vast marine region and islands, including Hoang Sa and Truong Sa. As recorded, it took three full days for the Vietnamese

vessels to reach Hoang Sa and Truong Sa. The sailors would stay there for five or six months to perform their duties, then return to Phu Xuan citadel, the seat of the Nguyen Lords, to report on the situation there and the performance of their duties.

- In the 19th century

Under the Nguyen Dynasty, the records of Vietnam's sovereignty in Hoang Sa and Truong Sa were vibrant and varied, with specific information in many fields. The massive and informative book about Hoang Sa and Truong Sa is Dai Nam Thuc Luc (Tien Bien and Chinh Bien).

During the reign of Emperor Gia Long, he re-established the Hoang Sa flotillas according to the prototype of the Hoang Sa flotillas from the reign of Lord Nguyen Phuc Nguyen in the early seventeenth century and re-established the Bac Hai flotillas similar to Bac Hai flotillas set up by the Nguyen Lords more than a hundred years ago. Equipment, ships, and weapons have been enhanced, increasing the capacity of military operations at sea. In 1815 and 1816, Emperor Gia Long continuously deployed a series of sovereign activities in Hoang Sa and Truong Sa through Hoang Sa and Bac Hai flotillas, such as sending out surveys, measuring, and studying about waterways.

The sovereign activities of Gia Long's reign in Hoang Sa and Truong Sa are preserved in archival sources and attested by many Westerners. For example, Jean Baptiste Chainneau (1769-1825) - a French naval officer who arrived in Cochinchina in 1794, has a memoir that clearly states: The Land of Dang Trong includes a few inhabited islands not far from the coast and the archipelago. Hoang Sa Island consists of small islands, reefs, and uninhabited rocks. In 1816 King Gia Long

⁹ Phan Huy Chu: Lich Trieu Hien Chuong Loai Chi, vol.1, Education Publishing House, Hanoi, 2007, pp.196-197.

took possession of this archipelago¹⁰. The Partie de la Cochinchine map, completed in 1826, belongs to the second sheet (Asia) of the six-volume World Atlas series published in Brussels, Belgium, in 1827, geographical features, and Western names of the largest and most important islands in the Paracels. This map is located in the area of Cochinchine (Cochinchina, which was the name Westerners at that time used to refer to the central region of Vietnam), which was an integral part of the Annam empire, demonstrating a fully, clearly Vietnam's sovereignty over the Paracels at least in the early years of Minh Menh's reign.

- The period from the beginning of the 20th century to the present

By the time Vietnam temporarily divided the North and the South, the Hoang Sa and Truong Sa archipelagos were located below the 17th parallel, so the polities in South Vietnam, as entities with legal status in international relations, continued to protect and manage the two archipelagos of Hoang Sa and Truong Sa from 1954-1975. The South Vietnamese polities have continuously exercised Vietnam's sovereignty over the Hoang Sa and Truong Sa archipelagos by state administrative documents and by exercising actual sovereignty over the two archipelagos. From April 13 to 28, 1975, the South Vietnamese People's Liberation Army forces, under the leadership of the Provisional Revolutionary Government of the Republic of South Vietnam, took

over the islands inhabited by the Republic of Vietnam army¹¹.

After the South was completely liberated, the National Assembly of Unified Vietnam, elected on April 25, 1976, decided to change the country's name to the Socialist Republic of Vietnam. The State of the Socialist Republic of Vietnam has continued to manage and protect Vietnam's sovereignty over the Hoang Sa and Truong Sa archipelagos through many activities while ensuring complete and correct procedures in terms of legal struggle while consolidating and maintaining the presence of troops and people on geographical entities under the management of the State of the Socialist Republic of Vietnam¹².

Acquisitive prescription in settling disputes in the East Sea of Vietnam

China is disputing Vietnam's sovereignty over the Hoang Sa and Truong Sa archipelagos. Applying the principle of possession of international law to dispute settlement in the case of the Hoang Sa and Truong Sa archipelagos, historical evidence and legal grounds both show that the Vietnamese State has occupied these two archipelagos for hundreds of years in a real, effective, uninterrupted, peaceful, transparent manner. Vietnam has provided historical evidence that Vietnam was the first country to occupy these two archipelagos since the seventeenth century through the activities of the Hoang Sa and the Beihai teams and the primary enforcement activities. Later rights of the Nguyen Dynasty, the colonial government, the

¹⁰ Nguyen Quang Ngoc (2022), Hoang Sa, Truong Sa – Vietnam's sovereignty: Historical documents and facts, Publishing House, Hanoi.

¹¹ KimThanh (2020), "The Hoang Sa and Truong Sa belong to Vietnam", Communist Party electronic newspaper dated May 1, 2020,

<https://dangcongsan.vn/bien-dao-viet-nam/hoang-sa-truong-sa-la-cua-viet-nam-553850.html>

¹² KimThanh (2020), "The Hoang Sa and Truong Sa belong to Vietnam", Communist Party electronic newspaper dated May 1, 2020, <https://dangcongsan.vn/bien-dao-viet-nam/hoang-sa-truong-sa-la-cua-viet-nam-553850.html>

government of the Republic of Vietnam, and now the State of the Socialist Republic of Vietnam.

Vietnam's possession and exercise of sovereignty over these two archipelagoes is clear, continuous, and peaceful, in line with the current principle of territorial acquisition - the principle of real possession - of international law. Vietnam has enough historical evidence of legal value to prove and protect its sovereignty over these two archipelagoes through historical periods. Applying the principle of possession of international law in asserting sovereignty, it can be seen that Vietnam has a basis to assert its sovereignty over the Hoang Sa and Truong Sa archipelagoes, shown in the following legal bases: :

The first content of the principle of possession (Territory may be acquired by the States, but it has not yet been granted territorial sovereignty). History clearly shows when the Vietnamese inhabitants of the Nguyen lords reached out to the East Sea, mastering the archipelagoes when any other country or state did not yet possess them.

With the second content (Territory that cannot be governed by a state such as the high seas and the exclusive economic zones) this notion refers the possession must be an action of the state, not of the local government, Vietnam's sovereign activities in the Hoang Sa and Truong Sa are all carried out by the Vietnamese states over the years. Implementation period, from the feudal states to the revolutionary states later and today, to the French colonial government as the representative of the State of Vietnam in the colonial period.

With the third content (Territory that has never belonged to any other State, but these States have their own status the peacefulness of possession). The possession must be real and apparent; the sovereign

must show the will to exercise this sovereignty and the acts of continuously flaunting this sovereignty. It can be seen that the possessing state must perform actual continuous performance of sovereign actions to the minimum extent appropriate to the nature and population conditions of that territory. Historical evidence shows that in 1816, King Gia Long sent flotillas to the Hoang Sa archipelago to plant the Vietnamese flag and claim sovereignty. After that, the Hoang Sa and Bac Hai flotillas continuously conducted surveys, measurements, understanding waterways, and deployed activities of the Vietnamese navy. Regarding the continuity of the exercise of sovereignty actions on that territory, without any objection from other countries, the historical fact has shown that during three centuries, from the 17th century to the end of the 19th century. Despite going through 3 different dynasties, Vietnam has carried out its sacred mission as the State of Dai Viet, to seize and exercise Vietnam's sovereignty over the Hoang Sa and Hoang Sa archipelagoes—Truong Sa archipelago. The Hoang Sa flotillas is an organization set up by the state to manage, protect and exploit the two archipelagoes of Hoang Sa and Truong Sa. During the colonial period, the French colonialists, as the representative of the State of Vietnam in foreign affairs under the 1884 Treaty of Patenotre, also protected and managed the two archipelagos of Hoang Sa and Truong Sa under legal procedures. Nowadays, The Nha Trang Institute of Oceanography has regularly and continuously conducted patrol, control, and scientific research activities in these archipelagos. In the later period under the management of the State of the Republic of Vietnam or the present period under the management of the State of the Socialist Republic of Vietnam, the possession of the two archipelagoes of Hoang Sa and Truong Sa also continuously, fully deploying sovereignty activities and recognized by the international community.

With the fourth content (Sovereignty cannot be established by violent invasion or threat of force; Possession must be accepted by contemporary public opinion), historical occupation of Vietnam's ownership of the two archipelagoes of Hoang Sa and Truong Sa reveals that this occupation is entirely peaceful, without violent invasion, without using force or threatening force. Vietnam's occupation of these two archipelagoes has historically been accepted by contemporary public opinion, not opposed by any country. This is first shown in the world maps published by the Netherlands in the 17th century and many other maps, as well as the records of Western researchers, that clearly show the sovereignty of Vietnam in Hoang Sa and Truong Sa.

Besides, Vietnam's sovereignty continued to be affirmed based on universally valid international legal bases, the United Nations Charter, and the 1982 Convention on the Law of the Sea, which all signatories must be respected. The establishment of territorial sovereignty in the remaining documents and political history indicate that Vietnam's sovereignty over the Hoang Sa and Truong Sa archipelagos has legally valid because it meets the conditions of territory may be acquired by the States; cannot be governed by a state such as the high seas and the exclusive economic zones; has never belonged to any other State, but these States have their own status the peacefulness of possession; cannot be established by violent invasion or threat of force; and possession must be accepted by contemporary public opinion.

CONCLUSION

Vietnam and other countries in the East Sea region have been facing territorial disputes based on the provisions of international legal documents and the principles of international law. Basic principles of territorial sovereignty, such as the principle of

possession, are essential to ensure the lawful determination of sovereignty, to ensure the legitimate rights and interests of the countries concerned, and to contribute to preserve peace and harmony—regional and global peace and security. Historical documents show that Vietnam is the first country to possess the two archipelagoes of Hoang Sa and Truong Sa; this possession took place continuously through the periods of historical time, carried out by the State of Vietnam during the dynasties; and possession recognized by other countries, without any objection.

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