



## The Establishment of Sovereignty of The State of Vietnam over The Hoang Sa and Truong Sa Archipelagoes is Based on The Principle of International Law on The Right to Acquire Territory



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**Abstract.** International law exists in many different forms of territorial sovereignty, creating the sovereign territories of each country depending on the historical and historical conditions of each nation. There is a form of acquisition that is appropriate for one historical period in the development of international law, but not for another. Each form of territorial acquisition has a set of constitutive requirements, known as the characteristics of the acquisition. Depending on historical conditions, these requirements also change. There is a claim of a form of acquisition that is appropriate for this period, but not for the next in history.

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### 1. The Acquisition of Sovereignty

In practice, international practice shows that the establishment of national sovereignty over the territory has different views, there have been many cases of territorial disputes between countries based on legal standards. very different content.

Previously, the establishment of national sovereignty over the territory was the occupation of a certain territory according to certain legal standards and the establishment of national sovereignty on it. International law recognizes that one of the fundamental bases, also known as basic principles, to legally establish the title of territorial sovereignty of a country is: the establishment of sovereignty must be based on methods of recognition. legal territory.

A method of acquiring territory is considered lawful when it is conducted on a suitable territorial object, which means that the object of effective occupation is derelict or abandoned territory. The subject of the claim of sovereignty must have the status of a state and be exercised in the manner required by international law on territorial acquisition.

In the practice of international law, there are five basic forms of territorial acquisition as follows: Acquisition by actual possession; Acquired by transfer; Acquired by possession according to the statute of limitations; Acquired by conquest; Acquired by the influence of nature.

The real form of possession was formed from the Berlin Convention of February 26, 1885. Accordingly, the form of territorial occupation is actually formed if two

conditions are met: First, it must notify the countries participating in the Convention about its territorial possession. Second, the possessing countries are required to carry out actual acts of occupation by their governmental organizations in the territory intended to be occupied.

The principles of the Berlin Convention are still valid today, and still exist as unwritten rules of modern international law but must be invoked by states, arbitrators, and international judges themselves. guide.

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 occupied territory must be derelict territory. Although there is no longer a derelict territory for countries to take possession of, its characteristics have become the criteria for judging existing territorial disputes of many countries in the world and especially the United States. In the East Sea area, there are currently disputes related to territorial sovereignty over islands and sea areas.

Acquisition by transfer is the voluntary transfer of territorial sovereignty from one country to another. Usually, the form of transfer is formalized through the terms of a formal agreement that meticulously notes the land to be transferred, as well as the conditions for the transfer to be fulfilled.

Acquisition by the statute of limitations is the real continuous and peaceful exercise over a long period of a

state's power over a territory that is already under the sovereignty of another state or beyond. clearly disputed.

Acquisition by conquest is a method of territorial acquisition that occurs after wars, whereby a victorious state annexes the territory or part of the territory of the defeated state into its own territory. This method only existed in the feudal period and also died out at the end of the feudal period, now this method is completely rejected because it is contrary to the principle of not using force or threatening to use force. force in international relations.

Acquisition by the influence of nature is a form of territorial acquisition in which a state has the right to expand its territorial area through voluntary reclamation into its main territory or by the presence of islands that arise within the territorial sea of a country, this island not only becomes a part of the territory of that country but also constitutes an extension beyond the national border at sea.

In addition to the above-mentioned forms of territorial acquisition, there are a number of other forms of territorial acquisition, but over time they have increasingly lost their practical significance. For example, the donation, and the inheritance of the territory of the feudal kings. These forms were also formerly the basis for the acquisition of territories by many countries.

In addition to cases of territorial change in accordance with the content and basic principles of international law that are generally recognized, occupation and acquisition are often very complicated for derelict regions and territories.

In the process of developing regulations on the occupation of derelict territories, there are two periods corresponding to different applicable legal principles and standards. Previously, because a number of countries discovered and discovered new lands for a long time, international law recognized the principle of formal occupation. The content of this principle recognizes that the acquirer of territory only needs to perform certain acts of a formal or symbolic nature.

For example, a country that can establish its sovereignty over a newly discovered territory by hoisting its national flag, declaring or placing its coat of arms on this territory is also legally eligible for the territory to be raised. that territory becomes the territory of the State without regard to the fact that such governance exists. Such acts are considered as the basis for establishing or establishing national sovereignty over a new territory. But later on, formal occupation was not recognized as a sufficient legal basis for acquiring new territory.

In the normative system of international law, another principle is recognized as the real principle, in some documents this principle is also called the principle of effective occupation. This is a principle derived from the international practice of settling disputes over territorial sovereignty in Asia, Europe, Africa, the Americas and in the Pacific Ocean. Especially, the dispute settlement cases that took place in the last decades of the twentieth century

have great legal and practical value for countries having territorial sovereignty disputes, especially countries with territorial sovereignty disputes. in the East Sea region.

The international practice has established international legal standards to establish or determine sovereignty over derelict territory also known as abandoned territory. That is, the territory that was previously occupied, then the possessing state renounces its right of possession. The derelict territory is understood in a broader form: When a certain country exercises its state sovereignty over territory for a long period of time and is not opposed by other countries. It is the real continuous and peaceful occupation of the state.

International law considers these standards as proof of sovereignty over territories. Real possession is the peaceful possession and establishment of power by the state. The State must exercise real continuous and peaceful state power in this territory.

The first condition of the form of territorial acquisition by possession is that the territory or island occupied must be derelict and not in the geographical and administrative system of any country. The derelict territory is territory that has never been under the administration of a certain country. That territory does not yet have a national organization, there may be residents living in that territory but there is no state organization on it yet. Possession of derelict territory is a form of legal acquisition.

The second condition of the form of territorial acquisition by possession is that the possession must be an act on behalf of the state or authorized by the state, that is, not a private act. Any action from people who are not in the name of the state is not enough to affirm the territorial sovereignty of the state, and cannot change the nature of sovereignty even when individuals gather as a collective or a company unless authorized by the state.

Modern international law affirms the legality of possession that the occupation must be through a series of actions that clearly and continuously manifest national sovereignty. The peacefulness of possession and possession must be accepted by contemporary public opinion without objection.

The combination of the above criteria constitutes the title of acquisition. In many cases, territorial sovereignty disputes are materialized into comparisons of acquired titles. The sovereignty of the disputed territory shall belong to the State whose title of acquisition is higher, more continuous, and in accordance with international law. First discovery and real possession are the two principal and dialectical methods of constituting title acquisition for derelict territories.

In the above two titles, the original right of discovery cannot constitute State sovereignty over a derelict territory, if it is not subsequently consolidated by the second title of actual possession. For example, in the sovereignty dispute between the United States and the Netherlands over the island of Palmas, arbitrator Max

Huber declared that the peaceful exercise of de facto power over a long period of time was sufficient and necessary for the determination of the law. established sovereignty over a derelict territory, the final ruling of the arbitrator Max Huber was that the sovereignty of the island of Palmas belongs to the Netherlands.

In short, possession is actually an important form of territorial acquisition that constitutes the title of national sovereignty over a derelict territory. This form is represented by a series of complex and diverse claims that are closely related, from first possession by peaceful means by individuals authorized by the state and then followed. by the continuous exercise of national sovereignty over that territory with a method sufficiently appropriate to the circumstances of the territory occupied (Nguyen Chu Hoi 2019).

The practice of modern international law has established that, after making an assertion of sovereignty, the state concerned must maintain its sovereignty by exercising its sovereignty at the state level in a peaceful and inclusive manner. continuous substance. Importantly, even after acquiring sovereignty, a country can still lose that sovereignty in the event of a dispute if it is proven that it has failed to maintain its sovereignty.

## **2. The acquisition of territory by possession of the two archipelagoes of Hoang Sa and Truong Sa of Vietnam**

According to historical data, the Vietnamese State has actually possessed the two archipelagoes of Hoang Sa and Truong Sa since at least the seventeenth century, that is, before the publication of Do Ba's map in 1868. This means that the State of Vietnam has used the actual form of possession for the acquisition of the Hoang Sa and Truong Sa archipelagoes for the State of Vietnam. This is completely consistent with the State's announcement in the white paper of the Socialist Republic of Vietnam.

From historical evidences, the State of Vietnam has in fact mastered the two archipelagos of Hoang Sa and Truong Sa by organizing activities of exploiting, surveying, placing steles, building temples, planting trees, and protecting fishermen... , as well as have shown the will through the behavior of the authorities authorized by the state to exercise the State's sovereignty over the two archipelagoes by setting strict reward and punishment regulations, performing obligations in the guarantee of safety by international navigation, the rescue of the victims... The State had fully met the standards of acquiring derelict territory at those times.

Thus, the principle of peaceful and continuous exercise of state power in the name of sovereignty has been accepted in international practice when settling territorial disputes. Therefore, Vietnam can use this principle in the case of the Hoang Sa and Truong Sa archipelagos. Because in the history, the State of Vietnam, through the two teams Hoang Sa and Bac Hai, continuously and peacefully exercised its power over the two archipelagos and thus

established sovereignty there. Regarding the condition of continuity: this is clearly shown in the case where the State of Vietnam establishes sovereignty over the two archipelagoes. For more than two centuries, the activities of the Hoang Sa and Bac Hai teams established and organized by the State were continuous and uninterrupted.

Regarding peace conditions: peace here must be understood as establishing sovereignty over a territory that is not under the sovereignty of any country, by peaceful means without being opposed by any country. . When establishing sovereignty over the two archipelagoes, the State of Vietnam has met this condition. In the seventeenth century, when the State of Vietnam organized the exploitation of the two archipelagoes, they were never under the sovereignty of any country. Western countries, when passing through the two archipelagos, did not have the will to possess the two archipelagoes, even considering this to be the territory of Vietnam. A Western missionary traveling on the Amphitrit ship from France to China wrote a letter stating: The Paracels Islands belong to the Kingdom of Annam. Moreover, the activities of Hoang Sa and Bac Hai teams are public (Tran Cong Truc, 2022).

Even China, knowing about the operation, did not object. The sovereignty of the State of Vietnam over the two archipelagoes existed peacefully without dispute until 1909, the first year that China raised its unreasonable claim to the Paracels. Originally, the peaceful and continuous exploitation for a long time by the two teams of Hoang Sa and Bac Hai of the State of Vietnam was not opposed, and fully met the requirements of this form of occupation. real possession. Because Vietnam's act of possession belongs to the State, and when the State of Vietnam takes possession, the two archipelagoes, especially the Hoang Sa archipelago, are derelict.

With a different approach, by comparing the historical title of the principally disputed states, Vietnam and China, over the two archipelagoes through historical, feudal, colonial and colonial periods. modern period.

A comparison of the Vietnamese and Chinese nominals shows that in any case, the Vietnamese nominals are higher than China's. Vietnam has made continuous and peaceful occupation of the two archipelagoes of Hoang Sa and Truong Sa since they were still derelict territory. The title earned from feudalism may have been reduced due to the French colonialists' ignorance of Vietnam's history in the first period of the newly established colonial regime, which was not properly consolidated and maintained. effective by the French.

This title is neither lost nor abandoned. Even during the colonial period, Vietnam's representative was deprived of the right to speak in diplomatic means, but every opportunity solemnly affirms that the Hoang Sa and Truong Sa archipelagoes have belonged to Vietnam for a long time. evidence on the aspects of history, archeology, law, rich marine culture./.

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