

# Scarborough Shoal at the turn of the 20th Century: Debunking Myths

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*As it might be difficult for China and the Philippines to defend their official claims over Scarborough as their own territory before the 20<sup>th</sup> century in an international court, both countries should engage in constructive negotiations over joint development. This is still the best option to avoid deterioration of the conflict for now and the years to come.*

## **Introduction**

Scarborough Shoal (15.07'-15,14'N / 117.44-117,48'E), also known as Panatag Shoal or Bajo de Masinloc in Philippine Tagalog and Huangyan Dao in Mandarin Chinese, is currently subject to dispute between China and Taiwan, and the Philippines. Being an area where the Chinese Coast Guard reportedly intercepted some Philippine fishermen out in June 2018,<sup>1</sup> and currently under complete Chinese control, Scarborough Shoal is a semi-submerged shoal where dispute initially flared back in 1997. The most severe incident occurred however during a standoff in April 2012 that eventually led to the Chinese control of the area (even though they are yet to station personnel there) and later to the Philippines's initiation of arbitral proceeding in January 2013 at the Permanent Court of Arbitration (PCA) against China. Even though in July 12, 2016 the arbitral tribunal awarded the related case in favor of the Philippines, China has refused to accept the legal award.

In spite of the relevance of current international law norms, namely the Law of the Sea, which has becoming the accepted norm to regulate the international order at sea, both China and the Philippines now rely on historical evidence to justify their own territorial and jurisdictional claims. In June 2015, the Philippines reportedly announced its intention to submit to a tribunal the so-called Murillo Velarde Map, reportedly dated 1734, to help document historical arguments over Scarborough Shoal.<sup>2</sup> Therefore, it has been increasingly

manifest that Manila wants to base its case of sovereignty over Scarborough Shoal also on historical grounds besides claiming maritime jurisdictions at sea on basis of UNCLOS stipulations.

One important historical and legal question is when the shoal was discovered or otherwise incorporated into the national territory of China or the Philippines. In trying to debunk current crystalized narratives, the analysis centers at the turn of the 20<sup>th</sup> century, a relevant period of history both for the colonial legacy in the Philippines and for the end of the Qing dynasty in China. Was Scarborough Shoal placed by China or the Philippines as part of their border territory in the South China Sea by the turn of the 20th century or with the change of regime, or before that? How this maritime area has been currently imagined or re-imagined as a national frontier?

### **The Chinese narrative**

As to when Scarborough Shoal, or Huangyan dao, became Chinese territory, their academic historiography places at the time of the Yuan Dynasty during the 13<sup>th</sup> century.<sup>3</sup> Unfortunately for China, there is a huge span of time even by Chinese standards in which there is no mention to the territory. In a huge leap forward, during the 20<sup>th</sup> century, the shoal has been listed three times, namely in 1935 under the name of Sikabaluo jiao (Scarborough Shoal), in 1947 as Minzhu dao (Democracy Reef/Island), and in 1983 as Huangyan dao.<sup>4</sup> Chinese narrative goes on claiming the area of Scarborough Shoal was also, as in the case of the Spratlys, a fishing ground for Chinese fishermen. Wu Shicun pointed out in 2012 that there is evidence that in The Book on Voyage Routes (*Geng Lu Bu*) and other annuals there contain a complete record of the sailing routes of Chinese fishermen there,<sup>5</sup> a claim that if true might probably put the Chinese presence by the end of the Ming, early-Qing dynasties.<sup>6</sup> In a rebuttal of the Philippine claim that Scarborough belonged to them during the Spanish colonial period, the Chinese narrative even points out that by late-19<sup>th</sup> century, Spain considered as territorial waters only 6 miles from the Philippine mainland.<sup>7</sup>

Some important points can be mentioned regarding the Chinese overall narrative. First, until the beginning of the 20<sup>th</sup> century and indeed during the

interwar period, the claim of possession is weak. By the late-Qing, Scarborough Shoal was known either as Changsha and Wanli Changsha, namely, part of the Xisha Qundao. Second, when Chinese Admiral Li Zhun was ordered a naval circuit to the Paracels in 1909, Scarborough Shoal was not included. Moreover, this shoal was not claimed until 1933 by the time Japan and France -as the colonial power ruling Vietnam- engaged in the so-called Nine Isles Incident over the Spratlys, as France deployed troops in several features and proclaimed them as territory part of the Indochina Federation. Fourth, Scarborough Shoal was only included until 1935 in the official list of South China Sea features, which, based on the naming of several isles in the whole region, probably led some to believe that the shoal was only known through Western cartography. And fifth, there is no *Geng Lu Bu* fishermen traditional navigation maps presented by China for Scarborough Shoal as in the case of the Spratlys.

### **The Philippine narrative**

As for the Philippines, claims over Scarborough Shoal have been until recently based mainly on contemporary norms, in particular those emerging from the United Nations Convention on the Law of the Sea (UNCLOS) and as a result of State practice: Republic Act 9522 of July 28, 2008 defines the baselines of the Philippine archipelago under UNCLOS, and together with the Kalayaan Island Group (part of the Spratlys), Scarborough Shoal, named also Bajo de Masinloc in the bill, has been put under the regime of islands as stipulated by Article 121 of UNCLOS.<sup>8</sup>

However, the Philippines seems currently starting to base its claim over Scarborough Shoal on historical arguments. In particular, since Manila initiated arbitral proceedings in January 2013 at the PCA, the historical aspect of the claim is increasingly manifest. According to such studies,<sup>9</sup> historical sources until late-19th century, mainly maps, identify Scarborough Shoal as the following: "P. de Mandato"<sup>10</sup> in 1636's *China Veteribus Sinarum Regio Nunc Incolis Tame Dicta* by Matthaus Merian; "Panacot" in 1734 *Carta Hydrographica Y Chorographica de las Yslas Filipinas*, produced by the Jesuit Pedro Murillo Velarde -the now famous Murillo Velarde Map; "B. Mansiloc" (or Bajo de Mansiloc), in a 1784 map with the watermark PVL (for Pieter van Ley), the *Map of the Pacific Ocean between the*

*Coast of California and Mexico and Japan, Philippines, and the Coast of China*. Moreover, it is claimed that even though the Treaty of Paris of 1898 put the shoal outside the Philippines territory -as mentioned by China, in fact its 1900 Protocol (Treaty of Washington) defined islands under Philippine administration but outside de area of the Treaty of Paris as being effectively transferred to the US. It is the accepted opinion in the Philippines that the non-inclusion of Scarborough Shoal in the 1898 Treaty of Paris or its 1900 Treaty of Washington is immaterial and of no consequence as to the Philippine sovereignty.<sup>11</sup> Philippine sources also show that mid, late-19th century Spanish sources clearly portrayed the shoal in several maps:<sup>12</sup> *Borneo, Iles de la Sonde, Celebes, Moloques et Philippines*, 1860;<sup>13</sup> *Carta General el Archipelago Filipino al Mando del Capitan de navio D. Claudio Montero y Gay*, 1875;<sup>14</sup> *Derrotero del Archipelago Filipino*, 1879;<sup>15</sup> and *The Philippine Islands and Her People*, 1898, by Dean C. Worcester.<sup>16</sup>

Fortunately for the Philippine claim, by the turn of the century, American maps and documents depicted with relatively more clarity Scarborough Shoal as belonging to the Philippine archipelago, even though such analysis should not be conclusive. Among them are: *Mapa General, Islas Filipinas*, 1899, the first atlas of the archipelago, produced by the US Coast and Geodetic Survey and where the shoal was clearly identified as Philippine territory;<sup>17</sup> *A General map of the Islands and Provinces and Adjacent Waters of the Philippine Islands*, 1902, map that as in the previous one, clearly marks "B. Masinloc" as Philippine territory;<sup>18</sup> *Limits of US Jurisdiction in the Philippines*, 1905, map produced by the US Hydrographic Office that shows Scarborough Shoal outside the 1898 Treaty of Paris delimitation. Here however, it is not clear whether the shoal should be included in the 1900 Treaty of Washington as outside the 1898 treaty. The depiction of the shoal is not particularly emphasized and does not clearly shows Scarborough as Philippine territory.<sup>19</sup>

Other documents include the litigation reaching the Philippine Supreme Court over the shipwreck of the S.S. Nippon at Scarborough Shoal in 1913, an incident that purportedly attracted this reef area under the jurisdiction of US colonial courts;<sup>20</sup> *The Census of the Philippine Islands*, 1918, produced by the US Bureau

of Census and based on the 1904 census, also included the shoal as part of Philippine territory;<sup>21</sup> and the Map of the Philippine Islands, 1919, an official map produced by the colonial authorities where Scarborough Shoal is clearly identified by color and marks as being part of the Philippine territory.<sup>22</sup>

Two important conclusions must be drawn from the analysis of Philippine historical sources. First, that maps, documents and the entire legal case of the S.S. Nippon in 1913 from the early-20th century US colonial period portray a more convincing evidence of Scarborough Shoal as belonging to the Philippine archipelago. That may be not the case of earlier records. Previous late-19<sup>th</sup> century Spanish and 17 and 18 century foreign maps do not seem to be strong evidence as the illustrative depiction (simplicity, absence of color, etc..) of Scarborough Shoal usually differ from the entire archipelago and it is more similar to the depiction of the Paracel islands, for example. Second, that the 1900 Treaty of Washington may represent a strong support for the interpretation that Scarborough Shoal is part of the Philippines in spite of being outside of the area stipulated in the 1898 Treaty of Paris. However, interpretation may also indicate that the sole article of the 1900 treaty was prepared to grant US rights only to Cagayan, Sulu and Sibutu islands and adjacent islands, therefore ambiguity over the case of Scarborough Shoal is persistent.

### **Value of the historical analysis of the Sino-Philippine dispute - Conclusions**

Since the Philippines started arbitral proceedings against China in 2013 at the PCA, a corpus of historical research is growing in order to support both claims, not only over Manila's entitlement of maritime jurisdiction as allowed by UNCLOS, but mainly over the claim that the feature has been colonial and now post-colonial territory of the Philippines, essentially referring to traditional international law's rules of acquisition of territorial sovereignty. China, on the other side, has not provided to the international community with further documentary evidence supporting its historic claim over Scarborough Shoal; historical arguments over the Spratlys and the Paracels have been overwhelmingly abundant in comparison with those regarding Scarborough Shoal. Chronologically, China placed Scarborough Shoal as part of its maritime

frontier until 1935 as part of a State practice and as a reaction of the inter-war Japanese, British and French presence in the South China Sea, which led to a renewed ocean identity.<sup>23</sup> It is safe to say that the turn of the 20<sup>th</sup> century and the imminent fall of the Qing dynasty did not lead to a particular interest in Scarborough Shoal as it did over the Paracels features and Pratas reefs, and later the Spratlys. Now the story is different. It is by now quite evident that Chinese Coast Guard, paramilitary maritime militia and People's Liberation Army Navy units control the shoal amid new geopolitical and security considerations, therefore its incentive to build a legal case is less than minimal.

As for the Philippine historical claim, there seems to be clear indications that by the turn of the 20<sup>th</sup> century, after the end of the Spanish colonial period, the US showed clearer awareness of Scarborough Shoal as being part of the Philippine territory at the sea frontier, even though there are still a lot of research to prove that this particular "Dangerous Ground" was of any interest of the American colonial authorities. As evidence continues to be produced from historical records, Philippine experts' own research has not yet produced strong evidence that maps before late-19<sup>th</sup> century do in fact overcome mere illustrative purposes or mere copies of previous works when depicting Scarborough Shoal, and those arguments that the feature has been part of the Philippine territory since centuries ago are generally made by inference. Facing with confronting the current Chinese narrative, in the Philippines Scarborough Shoal has been currently re-imagined as a frontier area under the Spanish colonial rule. However, stronger documentary evidence has come mainly from the early-20 century US sources. As for the wording of the 1898 Treaty of Paris and particularly the 1900 Treaty of Washington, there is a high degree of ambiguity so as to accept or not both Chinese and Philippine historical arguments over whether Scarborough Shoal was meant to be included as part of the Philippine territory.

In sum, it might still be rather difficult for both claimants to defend their official claims over Scarborough as their own territory before the 20<sup>th</sup> century in an international court such as the International Court of Justice.. It is no doubt wiser for both countries to engage in constructive negotiations over joint

development (i.e. as a common fishing ground for China, Vietnam and the Philippines). This is still the best option to avoid deterioration of the conflict for now and the years to come.

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## Notes

<sup>1</sup> Alexis Romero, "Duterte expresses concern over fishermen's plight in Panatag Shoal", *PhilStar*, 12 June 2018, online at <https://www.philstar.com/headlines/2018/06/12/1823981/duterte-expresses-concern-over-fishermens-plight-panatag-shoal>

<sup>2</sup> Jerry E. Esplanada, "To support claim, PH to submit 1734 map", *Inquirer*, 9 June 2015. Online at <https://globalnation.inquirer.net/124398/to-support-claim-ph-to-submit-1734-map>

<sup>3</sup> Li Jinming, *cong lishi yu guojihaiyangfa kan huangyandao de zhuquan guishu* (On the Sovereignty Ownership of Scarborough Reef Based on History and International Law of the Sea), *China's Borderland History and Geography Studies* 4 (2001); Li Jinming, *jinnia lai feilibing zai huangyan dao de huodong pingxi* (Study of Philippine activities in Scarborough Reef in recent years), *Southeast Asian Affairs* 3 (2003); Zhangwei, Fangkun (ed.), *zhongguo haijiang tongshi* (A complete history of China coastal areas and territorial seas), Hangzhou, Zhongzhou guji chubanshe, 2003, p. 249.

<sup>4</sup> Chen Keqin (ed.) *Zhounquo nanhai zhudao* (South China Sea Islands), Haikou, Hainan guoji xinwen chuban zhongxin, 1996, p. 542.

<sup>5</sup> <http://ph.china-embassy.org/eng/zt/nhwt/t931870.htm>

<sup>6</sup> See Ulises Granados, "The South China Sea and Its Coral Reefs during the Ming and Qing Dynasties: Levels of Geographical Knowledge and Political Control", *East Asian History* 32/33 (2006/2007), pp. 125-127.

<sup>7</sup> Li Jinming, *cong lishi yu guojihaiyangfa*. The shoal is 123 miles from the island of Luzon.

<sup>8</sup> Republic Act No. 9522, 28 July 2008 (10 March 2009), online at [https://www.lawphil.net/statutes/repacts/ra2009/ra\\_9522\\_2009.html](https://www.lawphil.net/statutes/repacts/ra2009/ra_9522_2009.html)

<sup>9</sup> Among representative sources are the following: National Mapping and Resource Information Authority, *Bajo de Masinloc -Scarborough Shoal – Maps and Documents*, Diliman, University of the Philippines Law Center, 2014; Antonio T. Carpio, *The South China Sea Dispute: Philippine Sovereign Rights and Jurisdiction in the West Philippine Sea*, Manila, Institute for Marine and Ocean Affairs, 2017, online at <https://www.imoa.ph/downloads/>; Lowell Bautista, *The Philippine Claim to Bajo de Masinloc in the Context of the South China Sea Dispute*, *Journal of East Asia and International Law* 2 (September 2013): 497-529.

<sup>10</sup> Punto de Mandato, or Point of Mandate in Spanish language.

<sup>11</sup> Bautista, *the Philippine Claim*, p. 498.

<sup>12</sup> See in particular: National mapping and Resource Information Authority, *Bajo de Masinloc*.

<sup>13</sup> *Bajo de Masinloc*, Doc. 20.

<sup>14</sup> *Bajo de Masinloc*, Doc. 21.

<sup>15</sup> *Bajo de Masinloc*, Doc. 22.

<sup>16</sup> *Bajo de Masinloc*, Doc. 25.

<sup>17</sup> *Bajo de Mansiloc*, Doc. 26.

<sup>18</sup> *Bajo de Mansiloc*, Doc. 29.

<sup>19</sup> *Bajo de Mansiloc*, Doc. 30.

<sup>20</sup> *Bajo de Mansiloc*, Doc. 34.

<sup>21</sup> *Bajo de Mansiloc*, Doc. 35.

<sup>22</sup> *Bajo de Mansiloc*, Doc. 36.

<sup>23</sup> Ulises Granados, *As China Meets the Southern Sea Frontier: Ocean Identity in the Making, 1902-1937*, *Pacific Affairs* 78 (3) (2005): 443-461.