

Written by

Friday, 27 April 2012 14:13 - Last Updated Friday, 27 April 2012 17:47

JGL Eye Column

By JOSEPH G. LARIOS

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C HICAGO (jGLi) – Chinese fishermen were being credited for allegedly discovering the Scarborough Shoal (Panatag or Bajo Masinloc or Huangyan) Shoal back during the Yuan Dynasty in 1279.

And the Shoal is 126 nautical miles west of Philippines' Subic Port or about 600 nautical miles south of Guangzhou.

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Granting without admitting that the Chinese fishermen made the discovery, did it grant these poachers ownership of this Shoal, described as a triangle-shaped chain of reefs and islands of mostly rocks that is 55 kilometers (34 miles) around with an area of 150 kilometers with a lagoon of 130 square kilometers and depth of 15 meters or 49 feet?

Because of its proximity to the Philippines, the Scarborough shoal could have been visited by native Filipino fishermen, who were known to be great seafarers but they had nobody to make the report of their find.

During those Medieval Ages, discovering a new shoal did not necessarily mean ownership of shoal. The discoverers had to follow some protocol, like notifying its owner and fighting for it and winning the fight to assert ownership.

That was how Spain colonized the Philippines: the Filipino chieftain Lapulapu killed Magellan, a European explorer, and Magellan's aides. And the Europeans came back to subdue the natives, using the sword and the cross. And the natives did not just give up their lands to the Spaniards in a silver platter either.

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Seven hundred years prior to the Yuan Dynasty, ownership of uninhabited rocky lands and landmasses were asserted, using the Roman law, the cornerstone of Western civilization.

LAND CAUSED BY ALLUVIUM THAT ATTACHES TO STATE

Under the Roman law, when land areas in the neighborhood of the boundary of a state are changed, territory may be acquired by accretion. The land formed by alluvium (sediment deposited by flowing water) or in other case near the coast of a state, such land mass belongs to that state, where that land mass attaches.

Under the general principle of maritime and fluvial jurisdiction, “things of which the use is inexhaustible, such as the sea and running water, cannot be so appropriated as to exclude others from using these elements in any manner, which does not occasion a loss or inconvenience to the proprietor.” For instance, state can allow the use of sea lanes for innocent passage.

But jurisdiction of state initially extending the “open sea to a distance of three miles from the low-water mark” (in *Van Bynkershoek’s De Dominio Maris, 1702*) under the principle that “territorial jurisdiction ends where effective force of arms ends (canon-shot range)” has been later extended to six-mile limit in 1914 by Italy and extended farther by the United Nations Convention on the Law of the Sea (UNCLOS) in 1982 at most to 12 nautical miles (22 km; 14 mi).

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Under UNCLOS, a state also has an exclusive economic zone (EEZ), or has special rights over the exploration and use of [marine resources](#), including production of energy from water and wind. EEZ stretches from the seaward edge of the state's

[territorial sea](#)

out to 200

[nautical miles](#)

from its coast. It may include the territorial sea and even the

[continental shelf](#)

beyond the 200-mile limit but not to exceed 350 nautical miles.

For this reason, it is ridiculous for China to even claim the Spratly Islands (Nansha), which are 163 miles away but within 200 nautical miles of the Philippines

' EEZ.

China

is 1,000 miles away from Spratlys while

Vietnam

, which is also claiming the same, is more than 200 miles while

Malaysia

, which annexed

Sabah

although

Malaysia

is still paying its rent to the

Sabah

's Philippine Sultan's heirs,

Brunei

and

Indonesia

are said to be within their 200 EEZ.

RUTHLESS MIGHT IS RIGHT FOR CHINA

And China has refused to join the Philippines to settle their dispute before the International Tribunal on the Law of the Sea (ITLOS) in Germany. It instead bullies the Philippines and other claiming countries into using its military might to come to bilateral meetings because China would be treading on a quicksand in ITLOS.

I don't understand why China, which, like the Philippines, has ratified the UNCLOS (the U.S. still has to ratify this convention), does not want to avail of ITLOS, the tribunal that hears the complaints of UNCLOS members as do the International Court of Justice in the Hague, The Netherlands.

Maybe China knows that the United States is not going to come to the aid of the Philippines when it opens fire on the under-armed and ill-equipped Filipinos protecting Scarborough Shoal because it knows Article V. of the 1951 Mutual Defense Treaty (MDT) between the Philippines and the United States provides, "For purposes of ARTICLE IV, an armed attack on either of the Parties (U.S. and the Philippines) is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories UNDER ITS JURISDICTION IN THE PACIFIC OCEAN (emphasis supplied), its armed forces, public vessels or aircraft in the PACIFIC."

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If I were Philippine Department of Foreign Affairs Secretary Albert del Rosario and Defense Secretary Voltaire Gazmin, who would be holding a bilateral meeting on Monday (April 30) in Washington, D.C., with their counterparts, U.S. Department of State Sec. Hillary Clinton and Defense Sec. Leon Panetta, they should propose that the (MDT) be amended in such a way that the definition of Pacific Ocean should extend to the Western Philippine Sea.

I think, the U.S. is not going to abandon the Philippines not only because it will be a complete reversal of President Barack Obama's plan to focus U.S.

's resources to

Asia

and the Pacific following the drawdown of troops in

Iraq

and

Afghanistan

. But it is also in the national interest of the U.S. to keep the international shipping lanes open that would surely be affected in case China repeats its murderous attack on the Filipinos, like what the over armed Chinese Navy did to helpless, under-armed and under-equipped Vietnamese, who were massacred in 1988, while protecting a Paracel island. Sixty-four Vietnamese were killed and 61 more were missing and believed dead and some Vietnamese vessels were destroyed as shown in this video

[footage](#)

taken by the Chinese Navy. # # #

Editor's Note: To contact the author, please e-mail him at: (lariosa_jos@sbcglobal.net)

Roman Law Trumps China Claims in West Philippine Sea - MabuhayRadio

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