

REGIONAL FOCUS & CONTROVERSIES

The Philippine Claim to Bajo de Masinloc in the Context of the South China Sea Dispute

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The Philippine claim to Bajo de Masinloc, otherwise referred to as Scarborough Shoal, finds solid basis in international law. The territorial claim of the Philippines over Bajo de Masinloc is strong relative to the claim of China as well as with respect to the principles on the acquisition of territory in international law, in particular, on the basis of effective occupation. The sovereign rights and jurisdiction asserted by the Philippines over the maritime entitlements of the features in Bajo de Masinloc are founded on principles of international law and consistent with the United Nations Convention on the Law of the Sea, which both the Philippines and China have signed and ratified. This paper aims to examine the Philippine claim over Bajo de Masinloc particularly focusing on the 2012 standoff between the Philippines and China and the arbitration case filed by the Philippines against China over the West Philippine Sea.

Keywords

Philippine claim, Scarborough Shoal, Bajo de Masinloc, South China Sea

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1. Introduction

The Philippine claim to Bajo de Masinloc, otherwise referred to as Scarborough Shoal, finds solid basis in international law.¹ The territorial claim of the Philippines over Bajo de Masinloc is strong relative to the claim of China as well as with respect to the principles on the acquisition of territory in international law, in particular, on the basis of effective occupation.² The sovereign rights and jurisdiction asserted by the Philippines over the maritime entitlements of the features in Bajo de Masinloc are founded on general principles of international law and consistent with the United Nations Convention on the Law of the Sea (“UNCLOS”), which both the Philippines and China have signed and ratified.³

The Philippines considers Bajo de Masinloc an integral part of Philippine territory on the basis of continuous, peaceful and exclusive exercise of effective occupation and effective jurisdiction over the shoal.⁴ The Philippine claim over Bajo de Masinloc is not based on proximity despite the same being located 120 nautical miles (“nm”) west of the nearest coast of the Philippine island of Luzon and more than 350 nm from the nearest coast of China.⁵ The title of the Philippines is not based on the cession of the Philippine archipelago from Spain to the United States under the 1898 Treaty of Paris and related colonial treaties.⁶ In this regard, the non-inclusion of the features within the limits of the Treaty of Paris is immaterial and of no consequence.

¹ This paper adopts the Philippine name of Scarborough Shoal, which is Bajo de Masinloc. This paper treats China and Taiwan as one claimant and assumes that their positions over the Bajo de Masinloc are identical.

² R. JENNINGS, *THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW* 6 (1963). See also S. SHARMA, *TERRITORIAL ACQUISITION, DISPUTES, AND INTERNATIONAL LAW* 188 (1997); H. KELSEN, *PRINCIPLES OF INTERNATIONAL LAW* 225 (2003); S. ODA, *FIFTY YEARS OF THE LAW OF THE SEA* 22-27 (2003).

³ United Nations Convention on the Law of the Sea, signed on Dec. 10, 1982, 1833 U.N.T.S. 3, [1994] ATS 31, 21 I.L.M. 1261 (1982). The Philippines and China ratified UNCLOS on May 8, 1984 and June 7, 1996, respectively.

⁴ Department of Foreign Affairs, Philippine position on Bajo de Masinloc (Scarborough Shoal) and the waters within its vicinity, Official Gazette of the Republic of the Philippines, Apr. 18, 2012.

⁵ Republic of the Philippines, Department of Foreign Affairs, Notification and Statement of Claim, Manila ¶ 10, (Jan. 22, 2013).

⁶ Three colonial treaties define the Philippine territorial boundaries: (1) Treaty of Paris, U.S.-Spain, Dec. 10, 1898, T.S. No. 343; (2) Cession of Outlying Islands of Philippines, U.S.-Spain, Nov. 7, 1900, T.S. No. 345; (3) Boundaries, Philippines and North Borneo, U.S.-U.K., Jan. 2, 1930, T.S. No. 856. For materials that discuss the Philippine Treaty Limits, please see L. Bautista, *The Historical Context and Legal Basis of the Philippine Treaty Limits*, 10 *ASIAN PACIFIC L. POL’Y J.* 1 – 31 (2008); L. Bautista, *Philippine Boundaries: Internal Tensions, Colonial Baggage, Ambivalent Conformity*, 16 *J. SOUTHEAST ASIAN STUD.* 35-54 (2011); L. Bautista, *The Legal Status of the Philippine Treaty Limits in International Law*, 1 *AEGEAN REV. L. SEA & MARITIME L.* 111-139 (2010); L. Bautista, *The Historical Background, Geographical Extent and Legal Bases of the Philippine Territorial Water Claim*, 8 *J. COMP. ASIAN DEV.* 365-395 (2009); L. Bautista, *The Philippine Treaty Limits and Territorial Water Claim in International Law*, 5 *SOC. SCI. DILIMAN* 107-127 (2007).