
Legal Basis of China's Claim over the Huangyan Island

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Official Announcements of China and the Philippines have clarified their claims over the Huangyan Island, which has compartmentalized its history into three periods. Period I: Before 1946. China had acquired its title by discovery of terra nullius, and consolidated into a full title with the historical consolidation process. The Philippines made no claims in this period; instead its laws confirmed the Island lies out of its territory. Period II: 1946–1997. The Philippine evidences are private in nature, or contradictory to its laws and governmental position, thus making its claims vulnerable. China had exercised an open and peaceful effective occupation over the Island with superior evidences. Period III: After 1997. According to the ICJ judgment, April 30, 1997 was tentatively determined the critical date. Since China acquired its territorial sovereignty over the Island before the critical date, the Philippines' acts cannot alter China's ownership of the Island.

Keywords

The Huangyan Island, Territorial Acquisition, Critical Date, Inter-temporal International Law

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1. Introduction

The Huangyan Island¹ (15°07'N, 117°51'E) lies in the southeast Zhongsha Islands, Sansha City, Hai'nan Province, China. It is about 160nm from Macclesfield Bank and approximately 130 nm from Luzon Island of the Philippines.² As the only island above sea level during high tide in the Zhongsha Islands, the Island forms a triangle-shaped chain of reefs, rocks and islets, some of which are 0.5m to 3m above water, such as South Rock (1.8m) and North Rock (1.5m),³ encompassing a 15m deep lagoon with a total area of 130km². China's sovereign jurisdiction over the island had never been challenged until April 30, 1997, when the Filipino navy drove an international amateur radio group away from the island and began to claim sovereignty over the Huangyan Island.⁴ Since then, the Filipino navy has repeatedly detained and even sunk Chinese fishing boats, arrested Chinese fishermen, and carried out so-called law enforcement activities on the Island. Meanwhile, the Philippine baseline law in 2009⁵ and initiation of the arbitral proceedings against China in 2013 have consistently escalated tension with China.⁶

The primary purpose of this research is to prove China's sovereign jurisdiction over the Huangyan Island from an international legal perspective. This article is composed of four parts including Introduction and Conclusion. Part two will compare their claims and narrow down the dispute. Part three will probe into their official claims through both the history of the Huangyan Island and the corresponding factual or evidences made by each party under international law and ICJ judgment. This is all investigated to reach a legally sound conclusion of the ownership of the Huangyan Island.

¹ The Huangyan Island (simplified Chinese: 黄岩岛; traditional Chinese: 黃岩島; pinyin: *Huángyán Dǎo*) is also known as Scarborough Shoal or Scarborough Reef in English, Bajo de Masinloc or Panatag Shoal (*Kulumpol ng Panatag* in Filipino) by the Philippines.

² Jiming Li, *On the Sovereignty Ownership of Scarborough Reef on the Basis of History and International Law of the Sea*, 4 CHINA'S BORDERLAND HISTORY AND GEOGRAPHY STUDIES 71-77 (2001).

³ See Introduction to the Huangyan Island, China Unanhai (available only in Chinese), available at <http://www.unanhai.com/a/zhongshaqundao/2012/1212/1151.html> (last visited on Sept. 2, 2013); ZHENHUA HAN, A COLLECTION OF HISTORICAL DOCUMENTS ON CHINA'S SOUTH CHINA SEA 703 (1988).

⁴ *Supra* note 2.

⁵ The Philippine president Gloria Macapagal-Arroyo approved Republic Act No. 9522 to define the archipelagic baselines of the Philippines on Mar. 10, 2009.

⁶ The Philippines initiated the arbitral proceedings to acquire its sovereign rights and jurisdiction over part of the South China Sea, including the waters adjacent to the Huangyan Island, on Jan. 22, 2013, despite China's reservation to the dispute settlement procedures.