

HISTORICAL FACTS, HISTORICAL LIES, AND HISTORICAL RIGHTS IN THE WEST PHILIPPINE SEA*

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ABSTRACT

This lecture debunks the so-called “historical facts” relied upon by China to support its claims over the waters, shoals and land features in the West Philippine Sea which form part of the Philippines’ maritime zones under the United Nations Convention on the Law of the Sea.

Based on ancient maps of China (from the 12th to the early 19th century) as well as Chinese legal documents and official acts, Hainan Island has consistently been treated within and outside China as China’s southernmost territory. On the other hand, ancient maps of the Philippines show that Scarborough Shoal, which China claims as part of its territory, has consistently been considered as part of the Philippines.

The piece ends by unmasking the bases of China’s “historical rights” over the waters and land features in the West Philippine Sea as unfounded in fact and law.

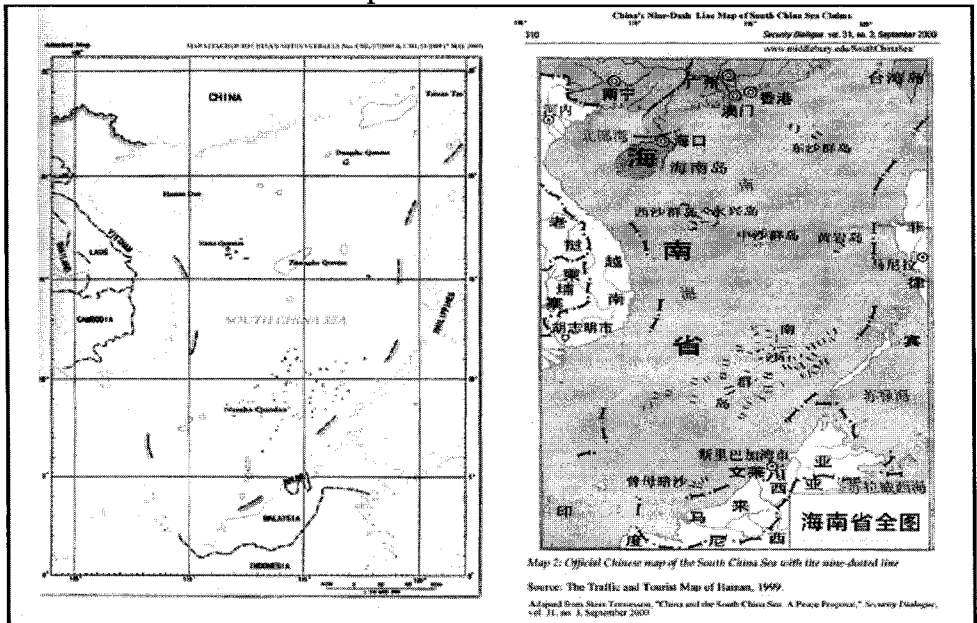
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I. THE HISTORICAL FACTS IN THE WEST PHILIPPINE SEA

China has always asserted that its nine-dashed line claim (see *Figure 1*) is based on international law. Thus, in the 2002 ASEAN-China Declaration of Conduct, China agreed that the maritime disputes in the South China Sea shall be resolved “in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea.”¹ However, there is no mention whatsoever in the 2002 ASEAN-China Declaration of Conduct that “historical facts” shall also be a basis in resolving the maritime disputes.

FIGURE 1: Nine-Dash Line Map of China



After the Philippines filed its arbitration case against China before an international tribunal in January 2013,² invoking the UN Convention on the Law of the Sea (“UNCLOS”) to protect the Exclusive Economic Zone of the Philippines, China stressed “historical facts” as another basis for its maritime

¹ 2002 Declaration on the Conduct of Parties in the South China Sea signed on 4 November 2002 in Phnom Penh, Cambodia by the Foreign Ministers, Nov. 4, 2002, *available at* <http://cil.nus.edu.sg/rp/pdf/2002%20Declaration%20on%20the%20Conduct%20of%20Parties%20in%20the%20South%20China%20Sea-pdf.pdf>.

² Republic of the Philippines v. People’s Republic of China, PCA Case No. 2013-19 (Perm. Ct. Arb.), *available at* http://www.pca-cpa.org/showpage.asp?pag_id=1529 (last accessed Jan. 21, 2014).

claims in the South China Sea. China's mantra now is that its nine-dashed line claim is based, in the words of Chinese Foreign Minister Wang Yi, on "historical facts and international law."³

General Fang Fenghui, Chief of Staff of the People's Liberation Army, recently declared during his visit to the United States that the "territory [...] passed down by [previous Chinese generations]" to the present one will not be forgotten or sacrificed.⁴ Chinese diplomats now declare that they will not give one inch of territory that their ancestors bequeathed to them. During the Shangri-La Regional Security Forum in Singapore, China's spokesperson, former deputy Foreign Minister Fu Ying, declared that the islands in the South China Sea were "first discovered by China hundreds of years before they were occupied by Japan during World War II."⁵ Fu Ying stressed that "China has a very clear claim to these islands,"⁶ without, however, giving any specifics.

Chinese leaders and citizens who entered school after 1947, the year the nine-dashed line map was drawn, have been taught that China has historical rights to the South China Sea. This is, of course, false and merely constitutes state propaganda, but unfortunately the Chinese people now believe the propaganda to be "historical facts."

There are, of course, Chinese scholars who realize that China's nine-dashed line claim cannot stand impartial scrutiny based on actual historical facts. Professor Jin Canrong of Renmin University in Beijing, who attended the Shangri-La Regional Security Forum in Singapore, said that China should be given more time to clarify its nine-dashed line claim because if it clarifies its claim now, it will face domestic political pressure. Professor Jin said, "Give China some time, it will change its stance in the future."⁷

That change, however, will not happen without the misimpression by the Chinese people on the so-called "historical facts" being first corrected. If the actual, unvarnished historical facts are presented to the Chinese people, then

³ Wang Yi, *Wang Yi Press Conference*, Voltairenet.org, Mar. 8, 2014, available at <http://www.voltairenet.org/article182652.html>.

⁴ Brian Yates, *China Refuses to Back Down in the South China Sea*, Liberty Voice, May 16, 2014, available at <http://guardianlv.com/2014/05/china-refuses-to-back-down-in-the-south-china-sea/>.

⁵ Xinhua, *Freedom of Navigation more important to China: Fu Ying*, GlobalTimes.cn, (2014), available at <http://www.globaltimes.cn/content/863244.shtml> (last accessed July 12, 2014).

⁶ *Id.*

⁷ Goh Sui Noi, *Chinese General Vague on Extent of Claims*, Asia News Network, June 2, 2014, available at <http://www.asianewsnet.net/Chinese-general-vague-on-extent-of-claims-61013.html>.

change will follow naturally. That is why it is important to discuss the actual historical facts in the West Philippine Sea, with a caveat.

Historical facts, even if true, relating to discovery and exploration in the Age of Discovery⁸ or even earlier, have no bearing whatsoever in the resolution of maritime disputes under the UNCLOS.⁹ Neither Spain nor Portugal can ever revive their 15th century claims to ownership of all the oceans and seas of our planet, despite the 1481 Papal Bull confirming the division of the then-undiscovered world between the two kingdoms. By the same reasoning, the sea voyages of the Chinese Imperial Admiral Zheng He, from 1405 to 1433, can never be the basis of any claim to the South China Sea. Neither can historical names serve as bases for claiming the oceans and seas. The South China Sea was not even named by the Chinese but by European navigators and cartographers. The Song and Ming Dynasties called the South China Sea the *Giao Chi Sea*, and the Qing Dynasty, the Republic of China, as well as the People's Republic of China have called it the *South Sea*, without the word *China*. India cannot claim the Indian Ocean, and Mexico cannot claim the Gulf of Mexico, in the same way that the Philippines cannot claim the Philippine Sea, just because historically these bodies of water have been named after these countries.

Neither can ancient conquests be invoked under international law to claim territories. Greece cannot claim Egypt, Iran, Turkey and the land stretching up to Pakistan just because Alexander the Great conquered that part of the world from 334 to 323 BC. Neither can Mongolia claim China just because Genghis Khan and Kublai Khan conquered China, with Kublai Khan founding the Yuan Dynasty that ruled China from 1271 to 1368 AD. Neither can Italy claim the land, stretching from Europe to the Middle East, which was conquered and ruled by the Roman Empire from 27 BC to 476 AD.

Under international law, as held in the famous 1928 Island of Palmas case¹⁰ between the United States as the colonial power in the Philippines and the Netherlands as the colonial power in Indonesia, a state cannot maintain title to territory based on discovery alone where, subsequent to such discovery, another state has shown "continuous and peaceful display of territorial sovereignty"¹¹ over the same territory. While mere discovery may have been sufficient to acquire valid title to territory in the 16th century, the continued validity of such title over the centuries necessitates compliance with new conditions required by

⁸ The Age of Discovery covers the early 15th century until the 17th century.

⁹ United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter "UNCLOS"].

¹⁰ Island of Palmas (U.S. v. Neth.), 2 R.I.A.A. 829 (Perm. Ct. Arb. 1928).

¹¹ *Id.* at 829.

evolving international law for the acquisition of such title. Besides, since the time of decolonization after World War II, the consent of the people in the disputed territory is now paramount to any territorial claim as embodied in the right to self-determination of nations that were conquered and colonized by other states.

In the early 17th century, Hugo Grotius, the founder of international law, wrote that the oceans and seas of our planet belonged to all mankind, and no nation could claim ownership to the oceans and seas.¹² This revolutionary idea of Hugo Grotius later became the foundation of the law of the sea under international law. Coastal nations could claim as their territorial sea only a narrow belt of coastal waters extending to three miles from their shore—the distance that a cannon ball could travel. The maritime space and resources beyond this three-mile territorial sea belonged to all nations.

Under the 1982 UNCLOS, this belt of three-mile territorial sea was extended to 12 nautical miles (“NM”).¹³ Beyond this area up to 200 NM from the baseline of its coast,¹⁴ a coastal state has only specific sovereign rights, like the exclusive right to exploit the living and non-living resources found within this maritime area called the Exclusive Economic Zone (“EEZ”).¹⁵ Beyond the 12 NM territorial sea and within the 200 NM EEZ, all states have freedom of navigation and freedom of over-flight.¹⁶ Beyond the 200 NM EEZ up to 350 NM from the baselines of the coast, the coastal state has only the sovereign right to exploit the non-living resources in its continental shelf,¹⁷ and all states, coastal or landlocked, have a right to exploit the living resources within this same maritime zone. Beyond the 350 NM Extended Continental Shelf lies what is called in the UNCLOS as the *Area*,¹⁸ which is the “common heritage of mankind,”¹⁹ an area completely belonging to all states, coastal or landlocked.²⁰ (See *Figure 2*)

¹² HUGO GROTIUS, *THE FREEDOM OF THE SEAS* 6-8 (Ralph van Deman Magoffin trans., 1916) (1609).

¹³ UNCLOS, art. 3.

¹⁴ Art. 57.

¹⁵ Art. 56.

¹⁶ Art. 58.

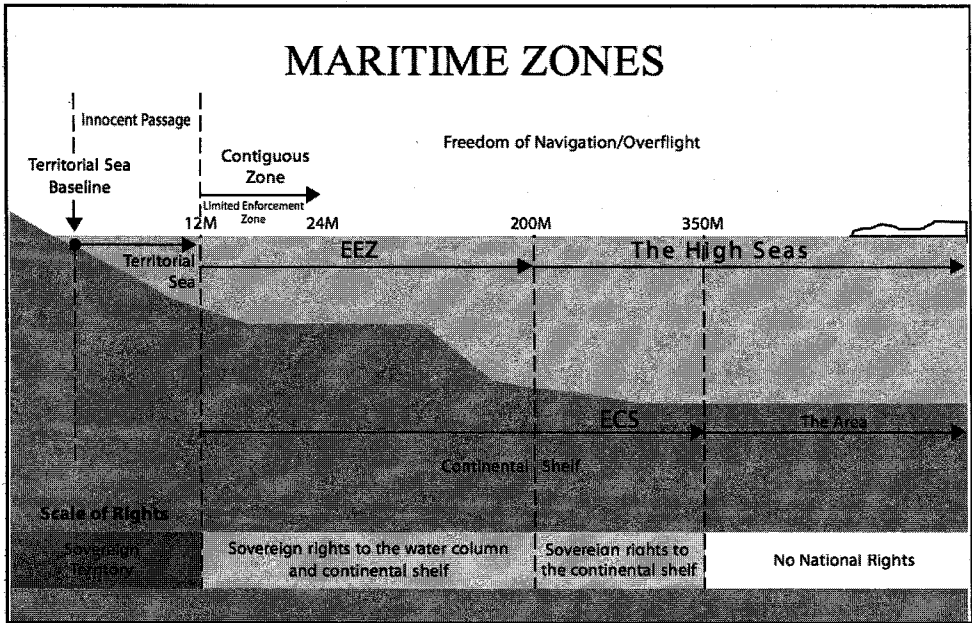
¹⁷ Art. 77.

¹⁸ Part XI.

¹⁹ Art. 136.

²⁰ Art. 137, 140.

FIGURE 2: Maritime Zones



Despite the irrelevance of historical facts, such as ancient discovery, exploration or conquests, to present-day maritime claims under the UNCLOS, China persists in invoking "abundant historical facts" as basis for its nine-dashed line claim. China, however, does not specify what these historical facts are. As a matter of academic exercise, and to present the actual historical facts to the Chinese people, we shall gladly oblige China by discussing the actual historical facts in the South China Sea, beginning 4000 BC.

Between 4000 and 3000 BC, people from the southern coast of China migrated to Taiwan, crossing the narrow Taiwan Straits.²¹ These migrants were not Chinese because they did not speak Chinese but an early version of the Austronesian language. These migrants cultivated rice and yam, and domesticated pigs and chickens. Over a thousand years, they developed the Austronesian language in Taiwan. Then, from 2000 BC onwards, they started to migrate to the Batanes Islands, then to Northern Luzon, the Visayas, and Mindanao. Around 1500 BC, they reached onto Sulawesi, Java, the Malaysian Peninsula, Sumatra, Papua New Guinea, Timor, the Pattani region in Thailand, and the Chams area in Vietnam and Cambodia. Also in around 1500 BC, they reached Palau, the Marianas, Guam, Micronesia, Melanesia, and Polynesia.

²¹ PURISSIMA BENITEZ-JUHANNOT, PATHS OF ORIGINS: THE AUSTRONESIAN HERITAGE 14 (2011).

Around 1000 AD, they reached Madagascar, and New Zealand, and thereafter Easter Island and Hawaii.²²

The Austronesian migration is the widest dispersal of people by sea in human history, stretching from Madagascar in the Indian Ocean off the coast of Africa to Easter Island in the southern Pacific.²³ What binds the people who populate all these far-flung islands is the Austronesian language. The Malayo-Polynesian languages, which include Tagalog, are derived from the Austronesian language. The word Austronesian comes from the Latin word *auster*, which means south wind, and the Greek word *nesos*, which means island.²⁴ More than 350 million people speak Austronesian languages.²⁵ The purest Austronesian languages are found in Taiwan, where some one-half million Taiwanese Austronesians, the natives of Taiwan, still live today. The homeland of the Austronesian people is Taiwan.

This remarkable Austronesian migration which covered vast distances in the Pacific Ocean, Indian Ocean and South China Sea was facilitated by the outrigger sailboat—called *balangay* in the Philippines, *vaka* in Hawaii, *vavaka* in Polynesia, and *vahoaka* in Madagascar. Prof. Adrian Horridge, in his paper *The Austronesian Conquest of the Sea – Upwind*, writes:

The built-up dug-out or planked canoe with an outrigger and sail has been the principal technology for survival and colonization for the sea-going peoples who spread over Island Southeast Asia and far over the Pacific for at least the past few thousand years. We deduce this from the present and presumed past distributions and structures of the canoes. With the ability to carry fire, family, dogs, chickens, tuberous roots, growing shoots and seeds by sea, the Austronesians eventually occupied the Pacific Islands, travelling into Melanesia about 3500 years ago and onwards into Polynesia.²⁶

Balangay is an Austronesian word for sailboat. The Austronesians used the *balangay* for transportation, cargo and trading. The average size of the *balangay* was 15 meters in length and 3 to 4 meters in width; the vessel carried

²² See Darrel Tryon, *Proto-Austronesians and the Major Austronesian Subgroups*, in THE AUSTRONESIANS: HISTORICAL AND COMPARATIVE PERSPECTIVES 113 (Bellwood, Fox & Tryon eds., 2006).

²³ See generally Adrian Horridge, *The Austronesian Conquest of the Sea – Upwind*, in THE AUSTRONESIANS 143 (Bellwood, Fox & Tryon eds., 2006).

²⁴ Ross Clark, *The Austronesian Languages*, in THE WORLD'S MAJOR LANGUAGES 781 (Bernard Comrie ed., 2009).

²⁵ *Id.*

²⁶ Horridge, *supra* note 23.

60 to 90 people. One balangay excavated in Butuan was 25 meters in length. The balangay was propelled by *burri* or nipa fibre sail.

Professor Horridge believes that, by 200 BC, “Austronesian sailors were regularly carrying cloves and cinnamon to India and Sri Lanka, and perhaps even as far as the coast of Africa in boats with outriggers.”²⁷ Austronesians from the Moluccas started the spice trade with India and Africa more than 1,700 years before the Portuguese reached the Moluccas.

We know from the noted Chinese scholar during the Yuan Dynasty, Ma Tuan-lin, that in 982 AD the early Filipinos were already travelling to Canton to trade.²⁸ In his book *A General Investigation of the Chinese Cultural Sources*, Ma Tuan-lin wrote about traders from the Philippines, which the Chinese at that time called *Mo-yi* or *Ma-i*. Ma Tuan-lin stated in his book, published in 1322 during the Yuan Dynasty and republished in 1935 in Shanghai, that “[t]here were traders of the country of Mo-yi carrying merchandise to the coast of Canton [for sale] in the seventh year of Tai-ping-shing-kuo [of the Sung Dynasty, that is 982 AD].”²⁹

As early as 892 AD, early Filipino traders were already sailing back and forth from the Philippines to China in their balangays to trade, more than 400 years before the Chinese Imperial Admiral Zeng He launched his famous sea voyages from 1405 to 1433 AD. Centuries before Zeng He reached Southeast Asia, early Filipino traders were likewise already regularly travelling to the Moluccas in balangays to trade. This should not be a surprise since the Austronesians—the ancestors of the early Filipinos—have conquered the Pacific Ocean and the South China Sea in the Bronze Age sailing the same balangays.

The Austronesians also developed a warship called *karakoa* by the Spaniards in the Philippines and *korakora* by the Dutch in Indonesia. The average *karakoa* was 25 meters long, with three masts, and could carry 100 oarsmen and warriors. There were bigger *karakoas* called royal *joangas* with triple-planks that carried 200 oarsmen and 100 warriors, like the one Martin de Goiti encountered when he invaded Manila in 1570.³⁰ The noted historian William

²⁷ *Id.* at 146.

²⁸ See MA TUAN-LIN, A GENERAL INVESTIGATION OF THE CHINESE CULTURAL SOURCES (1322).

²⁹ *Id.*, cited in Isaac Donoso Jiménez, *El Islam en Filipinas (siglos X-XIX)* (2011), doctoral thesis at the Universidad de Alicante, available at http://rua.ua.es/dspace/bitstream/10045/20488/1/Tesis_Donosos.pdf, at 278 n.113.

³⁰ William Henry Scott, *Boat-Building and Seamanship in Classic Philippine Society*, 30 PHIL. STUD. 335 (1982).

Henry Scott, in his paper *Boat-Building and Seamanship in Classic Philippine Society*, described the karakoa as follows:

They were sleek, double-ended warships of low freeboard and light draft with a keel on one continuous curve, steered by quarter rudders, and carrying one or more tripod masts mounting a square sail of matting on yards both above and below, with double outriggers on which multiple banks of paddlers could provide speed for battle conditions, and a raised platform amidships for a warrior contingent for ship-to-ship contact. Their tripod masts and characteristic S-shaped outrigger supports show up in the ninth-century stone carvings of Borobudur, and their other features appear in Chinese, Portuguese, Italian, Dutch, Spanish and English accounts over a period of half a millennium.³¹

Although principally a warship, the karakoa was also used as a cargo and trade vessel. An account of the 1561 Legazpi expedition describes the karakoa in this manner: “It was a ship for sailing any place they wanted.”³²

The early Filipino warriors who sailed in karakoas were like the Vikings—they pillaged coastal areas. At the end of the 12th century, a fleet of Visayan karakoas sailed to Luzon, and then to Taiwan, crossed the Taiwan Straits and raided the Fukien coast. Scott writes:

We know that Visayan caracoas were on the Fukien coast in the twelfth century. Governor Wang Ta-yu of Ch’uan-chow was eyewitness to a raid by three chiefs with several hundred followers sometime between 1174 and 1189; he said “the Visayan complexion is a dark lacquer, so their tattoos can hardly be seen.”³³

The swift, sleek and long Visayan karakoas, with hundreds of dark skinned warriors standing on their platforms with gleaming eyes, struck terror to villagers along China’s southern coast.

Evidently, the early Filipinos were masters of the South China Sea and the Pacific Ocean. Sailing the seas was part of their life and culture. In fact, the Samals and Bजाos of Mindanao and Sulu were sea nomads or sea gypsies—living in their balangays or vintas all year round, buying and selling merchandise from island to island.

³¹ *Id.* at 340.

³² *Id.* (Citations omitted.)

³³ *Id.* at 366.

Early in the 15th century, from 1405 to 1433, during the Ming Dynasty under the Yongle Emperor and the Xuande Emperor, China sent the eunuch Admiral Zheng He on seven voyages to Malacca, Thailand, Sri Lanka, India, Yemen, Saudi Arabia, Kenya, and other places. Professor Hsu Yun-Ts'iao of the Department of History and Geography, Nanyang University of Singapore, in his *Notes Relating to Admiral Cheng Ho's Expeditions*, cites the Ming Dynasty accounts of Ming Shih Luh in writing that Zheng He "led a troop of some 27,800 men and 62 big vessels, each measuring 440 feet in length and 180 feet in width."³⁴ However, Prof. Hsu puts the whole length of Zheng He's ships at 166 feet or 50.6 meters. Prof. Hsu explains that Zheng He's ships could not have had a length of 440 feet and a width of 180 feet, as cited in the Ming Shi Luh accounts, because "if a ship had such dimension, it was no other than Noah's Ark and was impossible for navigation purpose" as the "proportion of a modern vessel is 9 to 1."³⁵

Admiral Zheng He's voyages were aimed primarily to promote trade and to project the power of the Ming Dynasty. Tan Ta Sen, President of the Admiral Zheng He Society of Singapore, writes: "According to archival records, upon arrival at a native state, Zheng He first read out an imperial decree and bestowed gifts of jewelry, silk, and porcelain on the native ruler. Thereafter, trading activity was conducted."³⁶ Zheng He invited the rulers of the places he visited to send tributary trade missions to China to formalize a tributary trade system. Tan Ta Sen explains the tributary trade system in this way:

The idea of tributary trade evolved from the social relationship between the ruler and the subject. The emperor as a suzerain felt that all under Heaven are the imperial territories, and "all subjects of the world pay tribute to the emperor." Thus, for prestige reasons, the tributary transactions should be conducted in favour of the tributary states. Generous gifts were given to vassal states. During the early Ming period, the country suffered from a deficit as it gave away too much to "vassal states." The so-called vassal states were in name only. Throughout the Ming Dynasty, it had not stationed any troops in the vassal states nor occupied territories.

The vassal states were obligated to pay tributes but nothing would happen to them if they failed to send tributary missions. The benefits of sending tributary missions far exceeded that of not sending. Besides getting gifts of gold, silver and other valuables, they had the

³⁴ Hsu Yun-Ts'iao, *Notes Relating to Admiral Cheng Ho's Expeditions*, in *ADMIRAL ZHENG HE AND SOUTHEAST ASIA* 124, 135 (Leo Suryadinata ed., 2005).

³⁵ *Id.*

³⁶ Tan Ta Sen, *Did Zheng He Set Out to Colonize Southeast Asia*, in *ADMIRAL ZHENG HE AND SOUTHEAST ASIA* 42, 44 (Leo Suryadinata ed., 2005).

Ming Empire as patron to protect them. Therefore, numerous native states, big or a small, came to pay tributes to the throne. So the Ming throne maintained peace with them and treated them well. It opposed invasion. This was in line with its economic policy based on an agricultural economy. Thus, under this political system, the suzerain was only symbolic. At the most it had satisfied the ego of the feudal emperor.³⁷

From the standpoint of the trading customs of that time, the tribute was a tax imposed on those who wished to sell or buy merchandise in China. This is similar to the import or export taxes imposed by countries today. Certainly, the native rulers who sent tributes to the Chinese Emperor did not think of making themselves subjects or subordinates of the Emperor. They apparently did not mind if the tributes also fed on the ego of the Chinese Emperors.

Indeed, during his voyages, Admiral Zheng He never left a single soldier, ship, outpost or colony in any of the places he visited. He had several of the legendary “treasure ships” laden with precious gifts to give to the rulers of the states he visited. At that time, the voyages were a remarkable and extravagant goodwill visit to promote trade with China and project the Ming Dynasty’s power. Zheng He never claimed for China any of the territories he visited—certainly not the seas and oceans he traversed. After being gifted with precious jewelries and merchandise, the rulers of the states he visited welcomed Zheng He and played along with the extravaganza.

The seven voyages of Admiral Zeng He, under Emperors Yongle and Xuande, were projects of the Eunuch faction in the Imperial Court. The extravagance of these voyages, as well as other profligate projects of the Yongle and Xuande Emperors, like the transfer of the capital from Nanjing to Beijing, coupled with natural disasters, caused hardship on the Chinese people and drained the imperial coffers. The conservative Confucian faction in the Imperial Court, arguing for frugality, gained the upper hand. When the Eunuch faction suggested another voyage in 1477, the Ministry of War confiscated all Zheng He’s records in the archives, branding them as “deceitful exaggerations of bizarre things far removed from the testimony of people’s eyes and ears.”³⁸ By the end of the 15th century, China banned all oceangoing travels. Ships with more than two masts could not be built. The death penalty was imposed on those who violated the ban. In 1525, the imperial government ordered the destruction of all oceangoing ships. This ban on oceangoing ships lasted until 1567.

³⁷ *Id.* at 52-53. (Citations omitted.)

³⁸ ANTHONY PAGDEN, PEOPLES AND EMPIRES: A SHORT HISTORY OF EUROPEAN MIGRATION, EXPLORATION AND CONQUEST FROM GREECE TO THE PRESENT 57 (2007).

Admiral Zheng He never visited the Philippines. The stories that Zheng He visited the Philippines were a mistake, as pointed out by Professor Hsu Yun-Ts'iao in his paper *Did Admiral Cheng Ho Visit the Philippines?*³⁹ Professor Chiao-min Hsieh of the Catholic University of America had previously written that Zheng He visited the Philippines, thinking that the word *Chan Cheng* in accounts written by members of Zheng He's expedition was an old Chinese name for the Philippines. The word *Chan Cheng* was actually the Ming Dynasty name for a Malay state in Indo-China.

Admiral Zheng He's voyages to Southeast Asia were a remarkable success, unlike an earlier disastrous voyage that met a disastrous fate: the 1293 Mongol-Chinese expedition to Java sent by the Mongol Emperor Kublai Khan, founder of the Yuan Dynasty. After becoming Emperor, Kublai Khan sent, in 1289, envoys to various states inviting their rulers to send tributary trade missions to China. King Kertanegara of Singhasari of Java, feeling offended at the suggestion to send tribute to Kublai Khan, branded the Chinese envoy's face with a hot iron, cut his ears, and sent him back to Kublai Khan. Apparently, Kertanegara had no intention of humoring Kublai Khan.

Enraged, Kublai Khan sent to Java a force of 20,000 troops in 1,000 ships, led by his veteran commander Shi-pi, to punish King Kertanegara. When the Mongol-Chinese expedition under Shi-pi arrived in Java, Kertanegara, the last king of the Singhasari Kingdom, had already died, having been killed in a rebellion by Jayakatwang, who proclaimed himself king. Kertanegara's son-in-law, Raden Wijaya, allied with Shi-pi's Mongol-Chinese forces to defeat Jayakatwang. Wijaya then turned against the Mongol-Chinese forces, and defeated them in battle, forcing Shi-pi to sail back to China after losing 3,000 elite soldiers.

In his book *Kublai Khan* published in 2006, John Man wrote that Kublai Khan's adventure was an example of the Law of Unintended Consequences. Kublai Khan's aim was to punish Kertanegara and to set an example to other neighboring nations, but Kublai Khan only helped establish the new Majapahit Empire, antagonistic to China, that ruled Java, Bali and Sumatra for the next 200 years.⁴⁰ Wijaya founded the city of Majapahit, after which the Majapahit Empire was named with Wijaya as the first ruler. *Maja* is a name of a fruit that grows in that place, and *pahit* means "bitter." In Visayan, the word *pa-it* also means

³⁹ Hsu Yun-Ts'iao, *Did Admiral Cheng Ho Visit the Philippines?*, in ADMIRAL ZHENG HE AND SOUTHEAST ASIA 136 (Leo Suryadinata ed., 2005).

⁴⁰ JOHN MAN, *KUBLAI KHAN* loc. 4243 (Kindle ed., 2006).

“bitter,” and in Tagalog, *mapait* means the same—examples of the spread of the Austronesian language in Southeast Asia.

China points to ancient Chinese maps as “historical facts” to claim the islands, rocks, reefs and waters within its nine-dashed line claim in the South China Sea. At the outset, we must stress that, under international law, a map per se does not constitute a territorial title or a legal document to establish territorial rights. In the leading case concerning the *Frontier Dispute*,⁴¹ the International Court of Justice explained the evidentiary value of maps in this way:

[M]aps merely constitute information which varies in accuracy from case to case; of themselves, and by virtue solely of their existence, they cannot constitute a territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights. Of course, in some cases maps may acquire such legal force, but where this is so the legal force does not arise solely from their intrinsic merits: it is because such maps fall unto the category of physical expressions of the will of the State or States concerned. This is the case, for example, when maps are annexed to an official text of which they form an integral part. Except in this clearly defined case, maps are only extrinsic evidence of varying reliability or unreliability which may be used, along with other evidence of a circumstantial kind, to establish or reconstitute the real facts.⁴²

Thus, for maps to constitute material and relevant evidence, the contending parties must agree to such maps. This is a matter of common sense, as one state cannot just unilaterally draw a map to claim an entire sea or territory and use such map as evidence of title against another state or the whole world. A state cannot enlarge its rights under international law by its own unilateral acts or domestic legislations. The Philippines cannot just draw a U-shaped map in the Pacific Ocean and claim the enclosed waters as its indisputable territory just because the ancestors of the Filipinos, the Austronesians, crisscrossed the Pacific Ocean in their balangays three thousand years ago. Yet, this is exactly what China did in 1947 when it drew its nine-dashed line map in the South China Sea, claiming as basis “historical facts.”

We shall gladly accept China’s invitation to look at the historical facts by examining three types of ancient maps:

⁴¹ *Frontier Dispute* (Burk. Faso/Mali), 1986 I.C.J. 554 (Dec. 22).

⁴² *Id.* at 582, ¶ 54.

- (1) First, ancient maps of China made by Chinese authorities or Chinese individuals;
- (2) Second, ancient maps of China made by foreigners; and
- (3) Third, ancient maps of the Philippines made by Westerners or Philippine authorities or individuals.

All these ancient maps show that since the first Chinese maps appeared, the southernmost territory of China has always been Hainan Island, with its ancient names being *Zhuya*, then *Qiongya*, and thereafter *Qiongzhou*. Hainan Island was for centuries a part of Guangdong Province until 1988 when it became a separate province.

II. ANCIENT MAPS OF CHINA MADE BY CHINESE AUTHORITIES OR INDIVIDUALS

1. Hua Yi Tu Map (1136)

FIGURE 3.1A: 1136 MAP

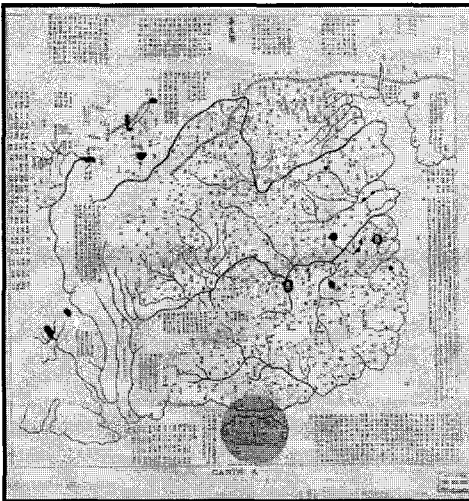
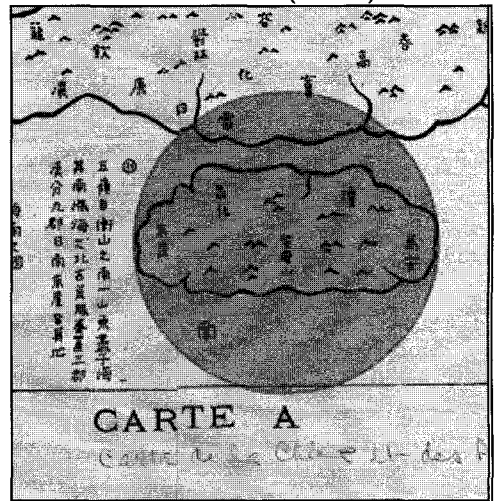


FIGURE 3.1B: 1136 MAP (ZOOM)



Source: US Library of Congress (Catalogue No. 2002626771; Digital ID g7820 ct000284). (Encircling supplied.)

Engraved in stone in Fuchang in 1136 AD during the Song Dynasty, this map of China (see *Figure 3.1A*) was published in 1903 in France from a rubbing of the stone engraving. The stone map is entitled *Hua Yi Tu* or *Map of China and the Barbarian Countries*. The stone map is now in the Forest of Stone Steles Museum in Xi'an, China. *The stone map shows Hainan Island as the southernmost*

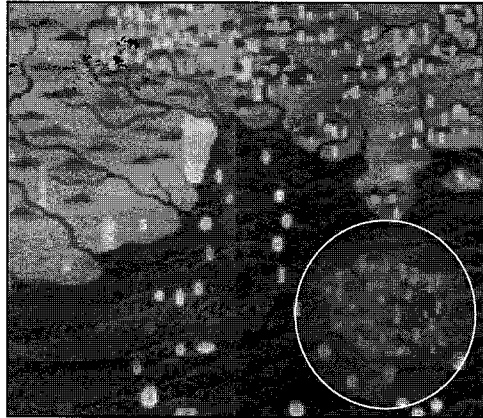
territory of China (see *Figure 3.1B*, encircled portion). The annotations on the sides of the map are not part of the stone engraving.

2. *Da Ming Hun Yi Tu* or *the Great Ming Dynasty Amalgamated Map* (1389)

FIGURE 3.2A: 1389 MAP



FIGURE 3.2B: 1389 MAP (ZOOM)



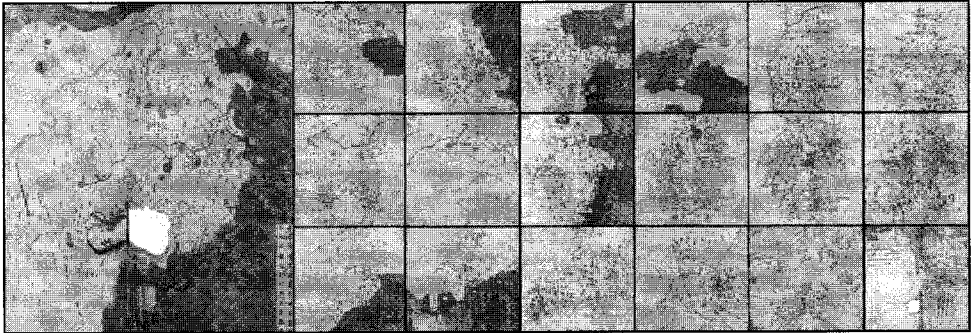
Source: Wikipedia Commons (from Hong Kong Baptist University, at http://geog.hkbu.edu.hk/GEOG1150/Chinese/Catalog/am31_map1.htm). (Encircling supplied.)

Published in 1389 during the Ming Dynasty, this map (see *Figure 3.2A*) is painted in color on silk and is entitled *Da Ming Hun Yi Tu* or the *Great Ming Dynasty Amalgamated Map*. The map shows Hainan Island as the southernmost territory of China (see *Figure 3.2B*, encircled portion). The original of the map is with the First Historical Archive of China in Beijing.

3. *Da Ming Yu Di Tu*
or *the Atlas of the Ming Empire* (1547 – 1559)

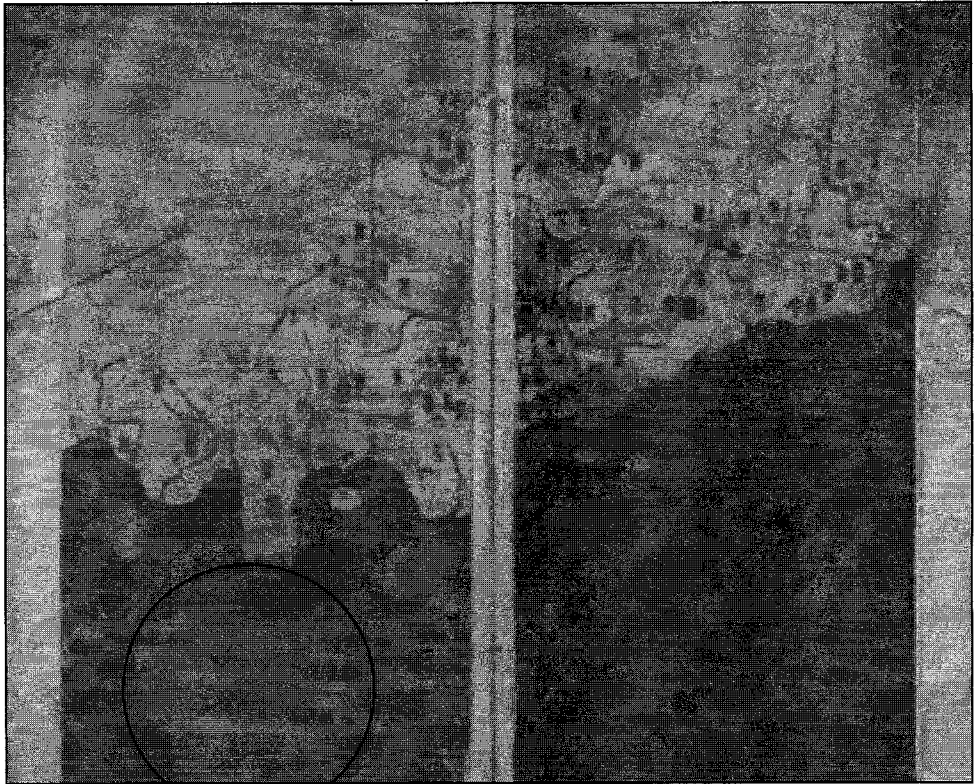
Published between 1547 and 1559 by the Ming Dynasty, this map (see *Figure 3.3A*) is entitled the *Da Ming Yu Di Tu* or the *Atlas of the Ming Empire*. The map shows the then-thirteen provinces of China; Taiwan is not included. The map shows Hainan Island as the southernmost territory of China (see *Figure 3.3B*, encircled portion).

FIGURE 3.3.A: 1547 – 59 MAP



Source: US Library of Congress (Catalogue No. 2002626776; Digital ID g7820m gct00125).

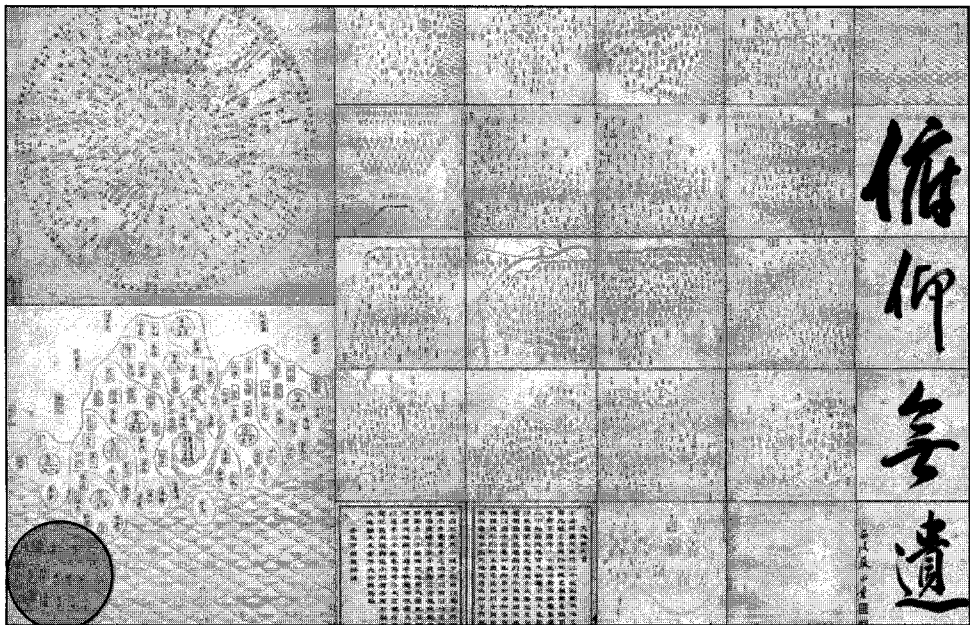
FIGURE 3.3.B: 1547 – 59 MAP (ZOOM)



4. *Tian Di Tu or the Atlas of Heaven and Earth (1601)*

Published in 1601 by Junheng Zuo during the Ming Dynasty, this map (see *Figure 3.4*) is entitled *Tian Di Tu* or the *Atlas of Heaven and Earth*. This map shows Hainan Island as the southernmost territory of China (see *Figure 3.4*, encircled portion).

FIGURE 3.4: 1601 MAP



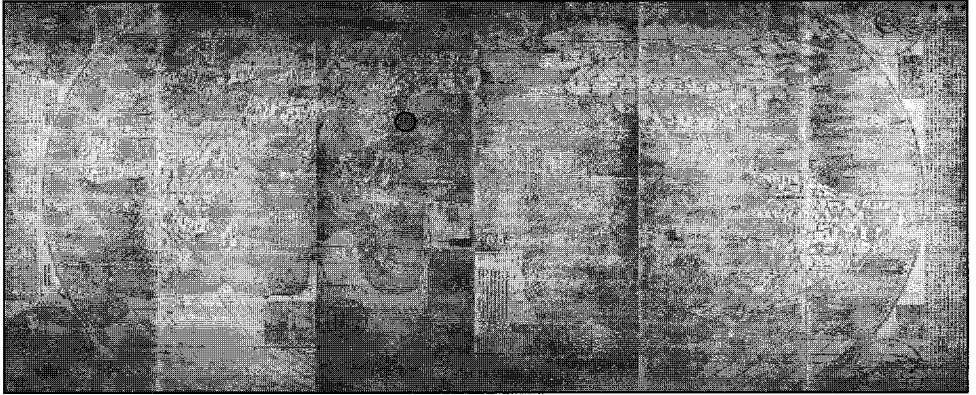
Source: US Library of Congress (Catalogue No. 200262675; Digital ID g7820m gct00225). (Encircling supplied.)

5. *Kunyu Wanguo Quantu or A Map of the Myriad Countries of the World (1602)*

Published in Beijing in 1602 by the Ming Dynasty, this map (see *Figure 3.5A*) is entitled *Kunyu Wanguo Quantu* or *A Map of the Myriad Countries of the World*. The Jesuit priest Matteo Ricci created this world map upon request of the Ming Emperor Wanli. Ricci was assisted by Zhong Wentao, Li Zhizao, and other Chinese scholars. Not wishing to offend the Chinese who believed that China was at the center of the world, Ricci moved China from the eastern fringes of his world map towards the center, placing the American continent to the right and the European and African continents to the left. However, since there are six panels in Ricci's world map, the panels can be rearranged so that

any part of the world can be placed at the center. *This map shows Hainan Island as the southernmost territory of China* (see Figure 3.5B, encircled portion).

FIGURE 3.5A: 1602 MAP



Source: US Library of Congress (Catalogue No. 2010585650; Digital ID g3200 ex000006Za,b & g3200m gex00001). (Encircling supplied.)

FIGURE 3.5B: 1602 MAP (ZOOM)



6. Selden Map of China (1606 – 1624)

FIGURE 3.6A: 1606 MAP



FIGURE 3.6B: 1606 MAP (ZOOM)



Source: Bodleian Library of the University of Oxford, at <http://seldenmap.bodleian.ox.ac.uk/map>.
(Encircling supplied.)

Published sometime between 1606 and 1624 during the Ming Dynasty, this map is called the *Selden Map of China* because it was bequeathed by John Selden to the Bodleian Library of the University of Oxford in 1659. The maker of the map is an unknown Chinese. The map (see *Figure 3.6A*) shows China, South Asia, Southeast Asia, and East Asia. The South China Sea is conspicuously at the center of the map. *The map shows China with Hainan as its southernmost territory* (see *Figure 3.6B*, portion encircled in white).

This map was re-discovered in 2008 from the basement files of the Bodleian Library, where it had gathered dust for 350 years from the time the executors of the estate of John Selden delivered the map to the same institution. There are two things unique about the map itself. First, China is not shown as the center of the world but as part of Southeast Asia and East Asia. For this reason, this map is probably not an official map of the Ming Dynasty. Second, this map shows the shipping trade routes, with compass bearings, in South Asia, Southeast Asia, and East Asia. Trade routes had not previously appeared in any Chinese map. The shipping trade routes traverse Japan, Taiwan, China, the Philippines, Borneo, Vietnam, Thailand, Malaysia, Indonesia (Java and Sumatra), Myanmar, Goa in India, and even beyond, strikingly showing that the South China Sea was a free and open international trade waterway used by all coastal and trading nations during the Ming Dynasty.

There is another unique thing accidentally related to this map: the persona of its owner after whom the map is named. John Selden (1584 – 1654) was an English jurist and philosopher. He was a polymath and prolific writer. In 1635, he wrote *Mare Clausum* under the King's patronage. *Mare Clausum*,⁴³ which means "the closed sea," refutes Hugo Grotius' *Mare Liberum*,⁴⁴ which means "the free sea." *Mare Clausum* articulated England's position then that the oceans and seas were subject to appropriation and ownership by individual states—a view that was likewise held by Spain and Portugal at that time. *Mare Clausum* was written in answer to the Netherland's position, expressed in Grotius' 1609 opus *Mare Liberum*, i.e. that the oceans and seas belonged to all nations and were, thus, incapable of appropriation and ownership by any state.

Today, England, Spain, and Portugal, together with the overwhelming majority of the members of the United Nations, are parties to the UNCLOS, which is founded on the fundamental principle, first espoused by Grotius, that beyond the territorial sea, the oceans and seas are incapable of sovereign ownership by states. China is also a party to the UNCLOS, but its position in the South China Sea adopts the *Mare Clausum* idea of John Selden—an idea which international law has long ago rejected.

Ironically, John Selden, the advocate of the closed sea, bequeathed to the world the Selden Map of China, which shows that international shipping trade waterways like the South China Sea should be free and open for use by all coastal and trading nations. Even more ironical is that John Selden wrote *Mare Clausum* after he acquired the map.

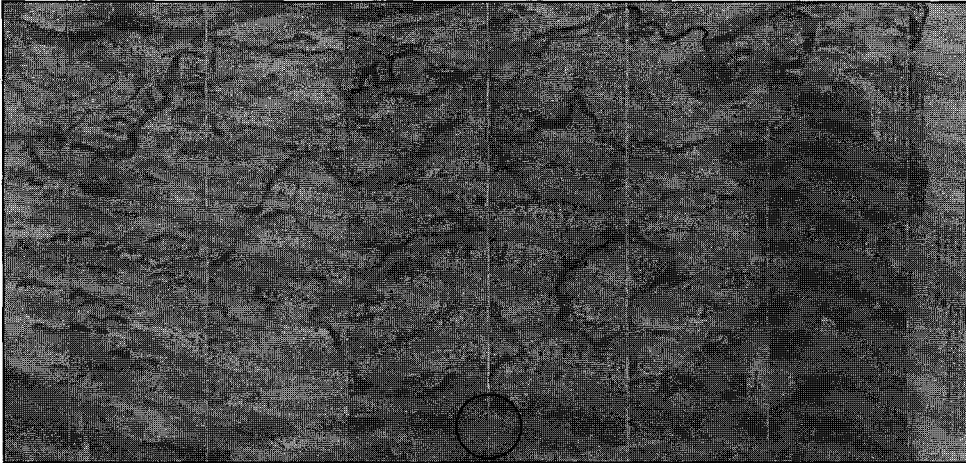
7. *Da Qing Wan Nian Yi Tong Tian Xia Quan Tu*
or *The Great Qing Dynasty's Complete Map of*
All Under Heaven (1811)

Published in China in 1811 by the Qing Emperor Jiaqing, this map (see *Figure 3.7A*) is entitled *Da Qing Wan Nian Yi Tong Tian Xia Quan Tu* or *The Great Qing Dynasty's Complete Map of All Under Heaven*. This map shows Hainan Island as the southernmost territory of China (see *Figure 3.7B*, encircled portion).

⁴³ JOHN SELDEN, *OF THE DOMINION OF, OR, OWNERSHIP OF THE SEA* (Marchamont Nedham trans., 1972) (1635).

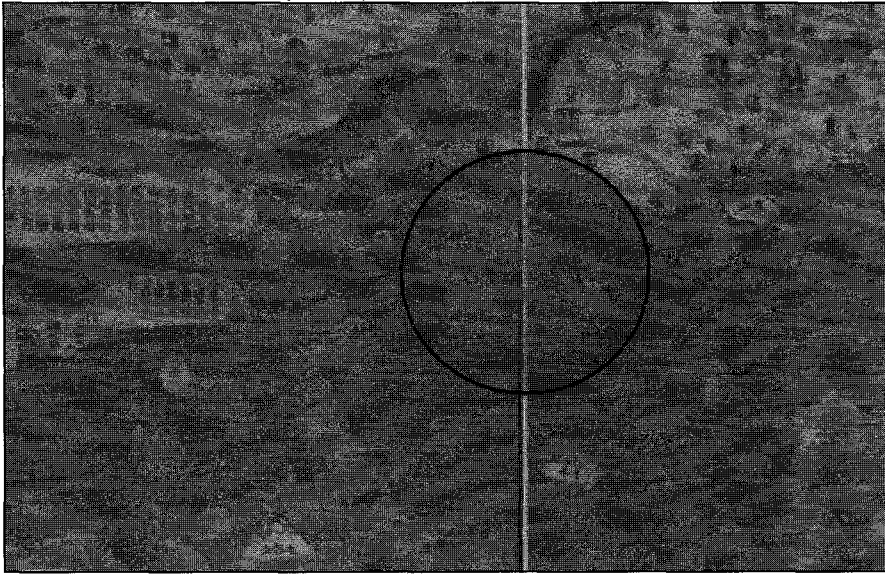
⁴⁴ See GROTIUS, *supra* note 12.

FIGURE 3.7A: 1811 MAP



Source: US Library of Congress (Catalogue No. gm71005018; Digital ID g3200 ct003403). (Encircling supplied.)

FIGURE 3.7B: 1811 MAP (ZOOM)

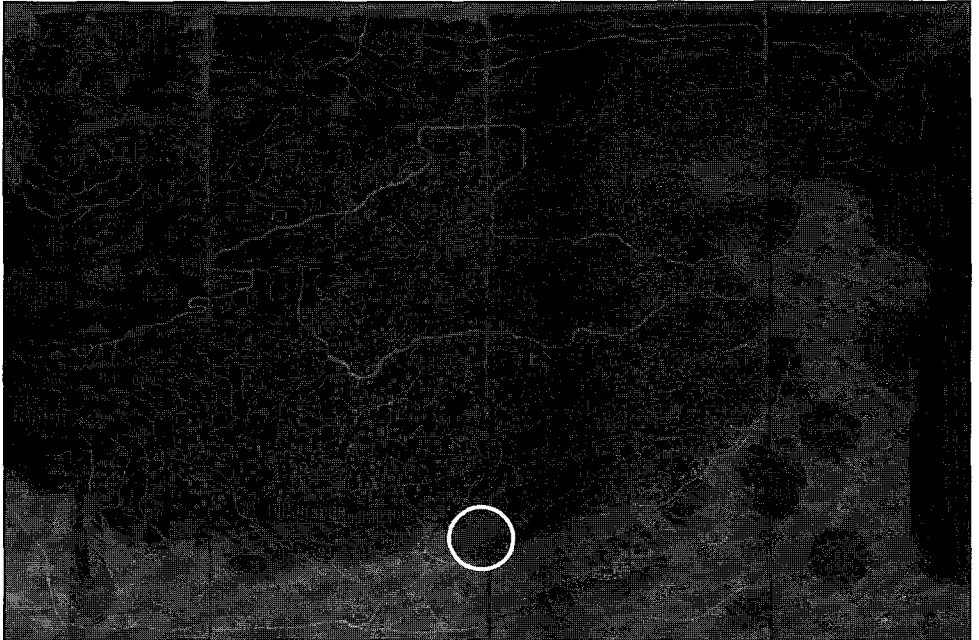


8. *Qing Wan Nian Yi Tong Di Li Quan Tu* or
The Complete Geographical Map of the Great
Qing Dynasty (1814 – 1816)

Published in China between 1814 and 1816 by Qianren Huang, this map (see *Figure 3.8A*) is entitled *Da Qing Wan Nian Yi Tong Di Li Quan Tu* or *The*

Complete Geographical Map of the Great Qing Dynasty. This map shows Hainan Island as the southernmost territory of China (see Figure 3.8B, encircled portion).

FIGURE 3.8A: 1814 – 16 MAP



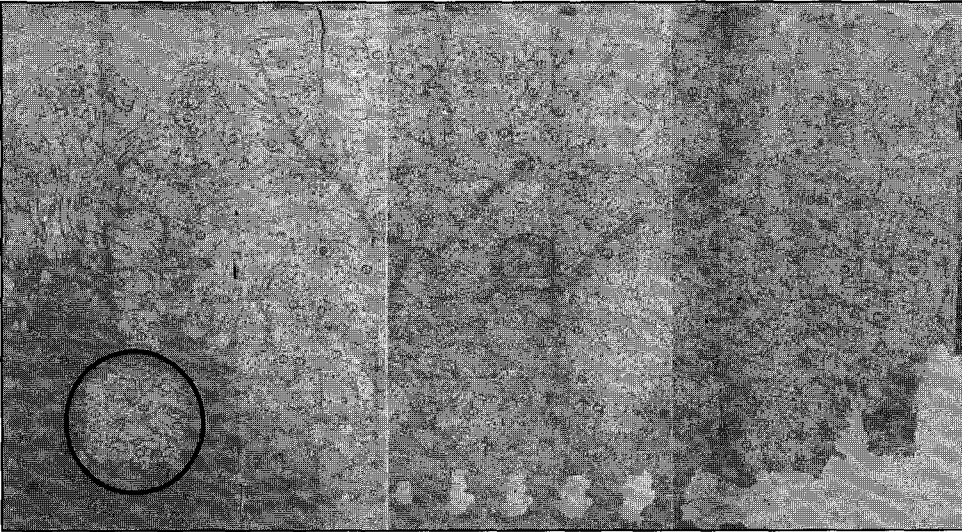
Source: US Library of Congress (Catalogue No. gm71005060; Digital ID g7820 ct002256). (Encircling supplied.)

FIGURE 3.8B: 1814 – 16 MAP (ZOOM)



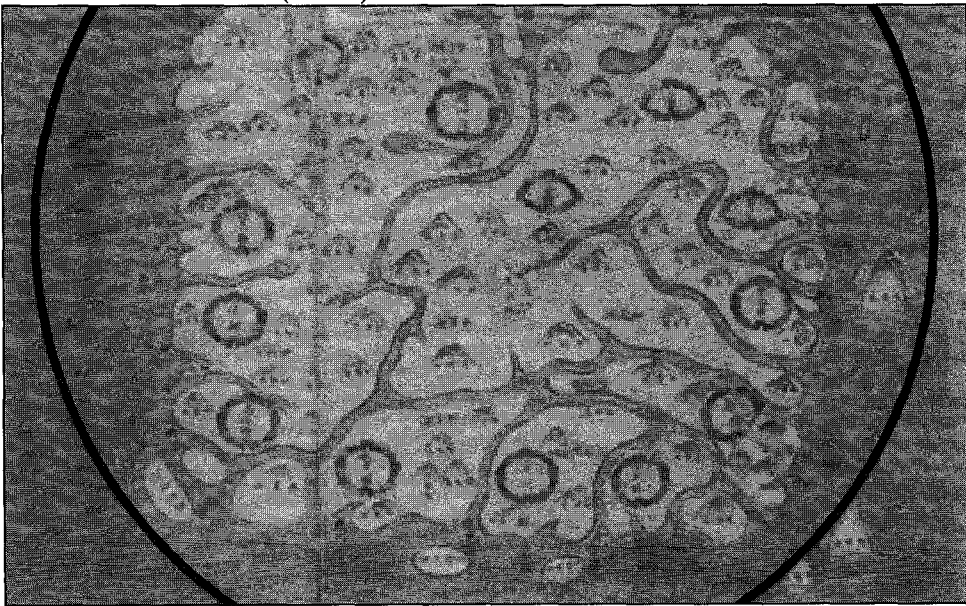
9. Guangdong Tong Sheng Shui Dao Tu *or*
Map of the Waterways of Guangdong Province
(1815)

FIGURE 3.9A: 1815 MAP



Source: US Library of Congress (Catalogue No. gm71002467; Digital ID g7823g ct003406).
(Encircling supplied.)

FIGURE 3.9B: 1815 MAP (ZOOM)



Published sometime after 1815 by an unknown Chinese publisher, this map (see *Figure 3.9A*) is entitled *Guangdong Tong Sheng Shui Dao Tu* or *Map of the Waterways of Guangdong Province*. This map shows Hainan Island as the southernmost part of Guangdong province (see *Figure 3.9B*, encircled portion).

10. *Guangdong Quan Tu* or
The Complete Map of Guangdong Province
(1864)

Published in 1864 in Wuchang, China by Hubei Sheng and Guan Shu Ju, this map (see *Figure 3.10*) is entitled *Guangdong Quan Tu* or the Complete Map of Guangdong Province. This map shows Hainan Island as the southernmost part of Guangdong province (see *Figure 3.10*, encircled portion)

FIGURE 3.10: 1864 MAP



Source: US Library of Congress (Catalogue No. gm71005120; Digital ID g7823g ct003391).
(Encircling supplied.)

11. *Da Qing Er Shi San Sheng Yu Di Quan Tu*
 or *The Complete Map of the Twenty-Three*
Provinces of the Great Qing Dynasty (1885)

FIGURE 3.11A: 1885 MAP

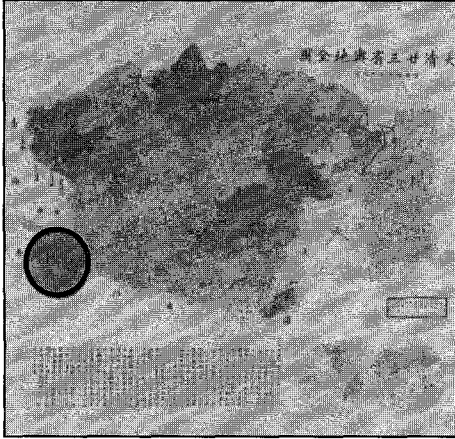
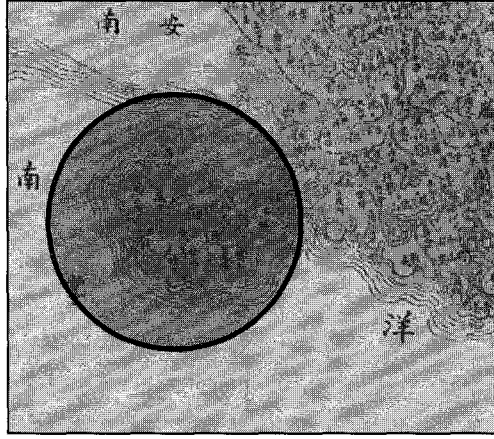


FIGURE 3.11B: 1885 MAP (ZOOM)



Source: US Library of Congress (Catalogue No. gm71005068; Digital ID g7820 ct003427). (Encircling supplied.)

Published sometime after 1885 in China by the Qing Dynasty, this map (see *Figure 3.11A*) is entitled *Da Qing Er Shi San Sheng Yu Di Quan Tu* or *the Complete Map of the Twenty-Three Provinces of the Great Qing Dynasty*. This map shows Hainan Island as the southernmost territory of China (see *Figure 3.12B*, encircled portion).

12. *Guangdong Quan Sheng Shui Lu Yu Tu* or
Map of the Waterways and Roads in
Guangdong Province (1887)

Published in 1887 in China by Li Zhongpei, this map (see *Figure 3.12A*) is entitled *Guangdong Quan Sheng Shui Lu Yu Tu* or *Map of the Waterways and Roads in Guangdong Province*. This map shows that Hainan Island is the southernmost part of Guangdong province (see *Figure 3.12B*, encircled portion). On the upper left side of the map, the annotations of Li Zhongpei state: “Qiongzhou⁴⁵ is far from the mainland, has a coastline of more than 1,400 li,⁴⁶ and is the territory [of China] that ships navigating to China will encounter when coming from Southeast Asia.”

⁴⁵ The name of Hainan Island at that time.

⁴⁶ Unit of distance in Chinese.

FIGURE 3.12A: 1887 MAP

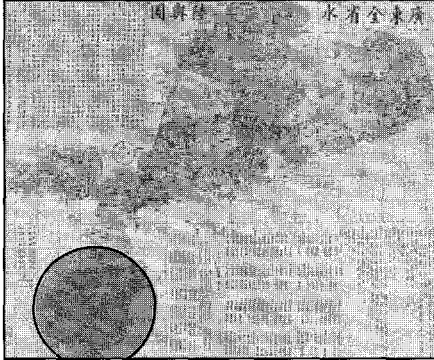
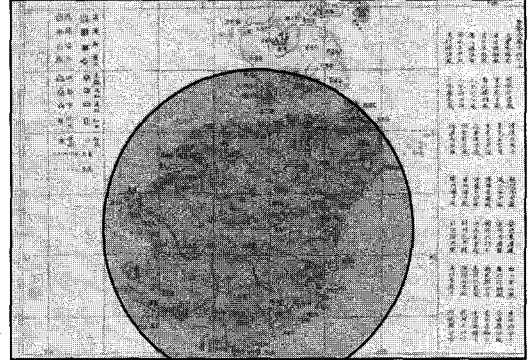


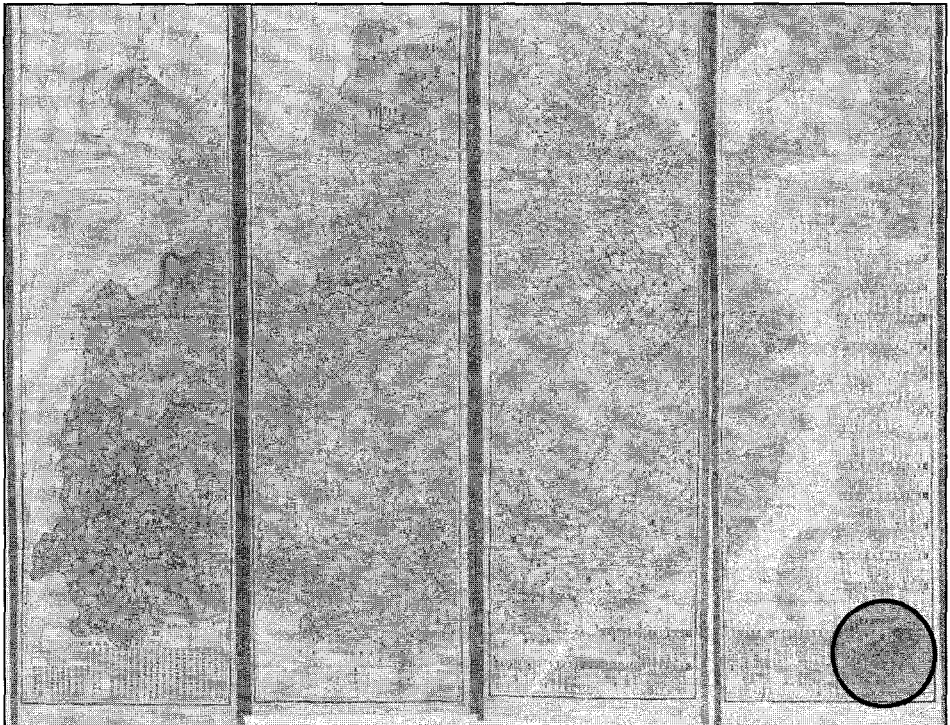
FIGURE 3.12B: 1887 MAP (ZOOM)



Source: US Library of Congress (Catalogue No. gm71005159; Digital ID g7823g ct003392). (Encircling supplied.)

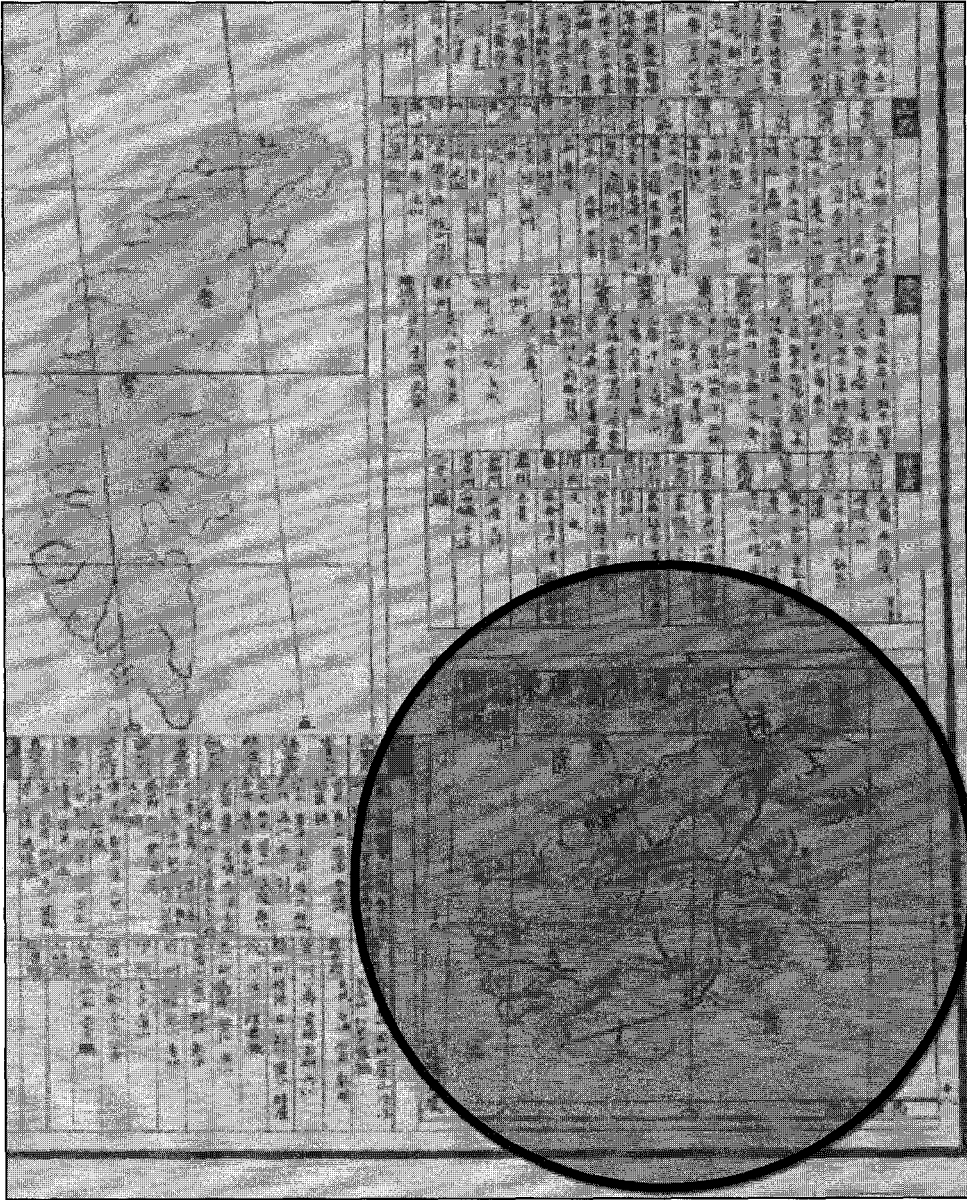
13. Huang Chao Zhi Sheng Yu Di
 Quan Tu *or the* Qing Empire's Complete
 Map of All Provinces (1896)

FIGURE 3.13A: 1896 MAP



Source: US Library of Congress (Catalogue No. gm71005083; Digital ID g7820 ct003428). (Encircling supplied.)

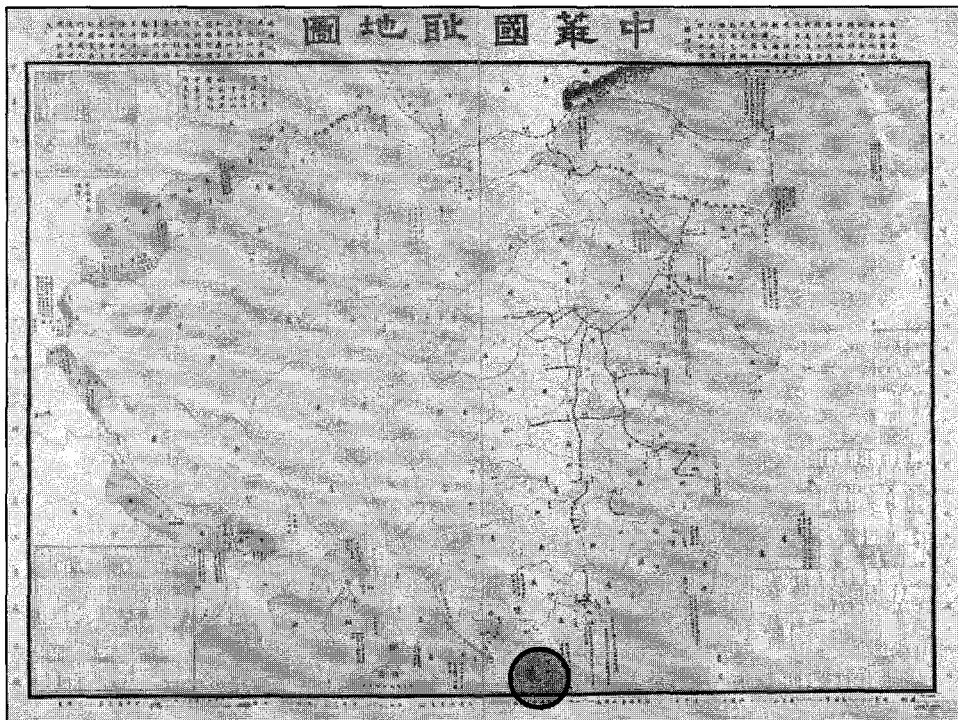
FIGURE 3.13B: 1896 MAP (ZOOM)



Published in 1896 in China by Guangxu Bing Shen, this map (see *Figure 3.13A*) is entitled *Huang Chao Zhi Sheng Yu Di Quan Tu* or the *Qing Empire's Complete Map of All Provinces*. This map shows Hainan Island as the southernmost territory of China (see *Figure 3.13B*, encircled portion).

14. *Zhong Hua Guo Chi Di Tu Map (1929)*

FIGURE 3.14A: 1929 MAP



Source: US Library of Congress (Catalogue No. 2007628129; Digital ID g7821f ct002301). (Encircling supplied.)

Published in 1929 in Beijing by Hebei Sheng and Gong Shang Ting, this map (see *Figure 3.14A*) is entitled *Zhong Hua Guo Chi Di Tu*. The map mentions the treaties signed by China and the harbors opened to foreign powers. *This map shows Hainan Island as the southernmost territory of China* (see *Figure 3.14B*, encircled portion).

15. *Zhonghua Min Guo Fen Sheng Xin Tu Map (1933)*

Published in Wuchang, China in 1933 by Ya Xin Di Xue She, this map (see *Figure 3.15A*) is entitled *Zhonghua Min Guo Fen Sheng Xin Tu*. *This map shows Hainan Island as the southernmost territory of China* (see *Figure 3.15B*).

FIGURE 3.15A: 1933 MAP



Source: US Library of Congress (Catalogue No. 2006629696; Digital ID g7821f ct002303). (Encircling supplied.)

FIGURE 3.14B: 1929 MAP (ZOOM)

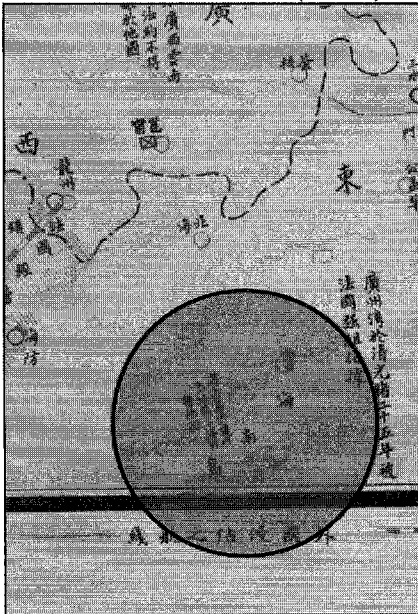


FIGURE 3.15B: 1933 MAP (ZOOM)

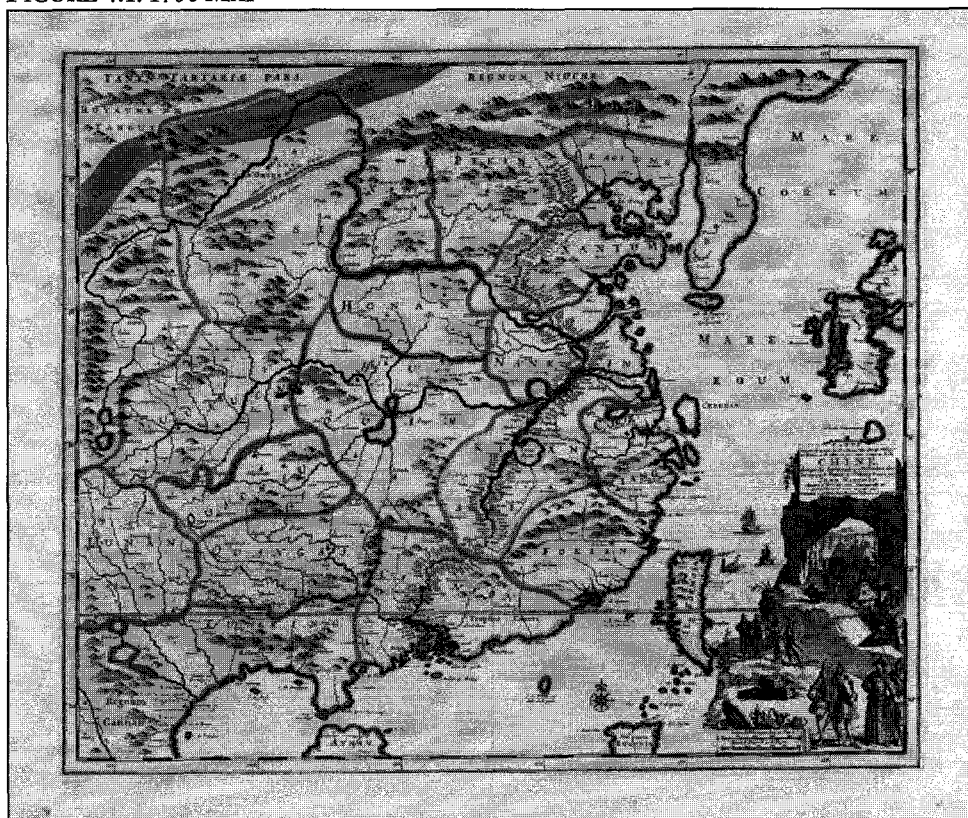


III. ANCIENT MAPS OF CHINA MADE BY FOREIGNERS

A. Three Examples

1. *Carte Exacte de Toutes les Provinces, Villes, Bourgs, Villages et Rivieres du Vaste et Puissant Empire de la Chine (1700)*

FIGURE 4.1: 1700 MAP

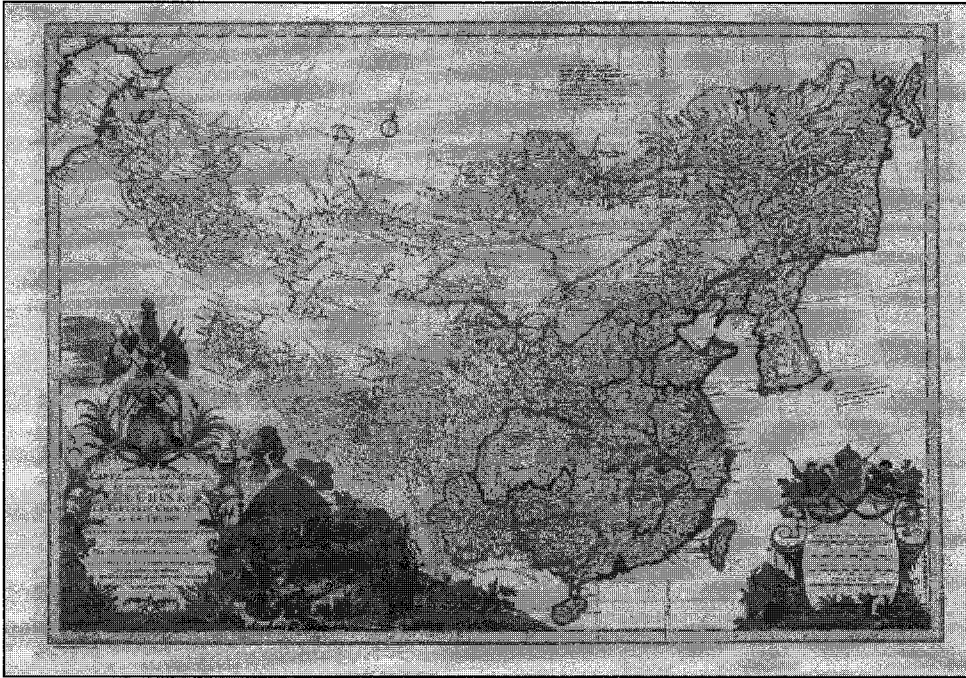


Source: US Library of Congress (Catalogue No. 87691057; Digital ID g7810 ct002857).

Published in 1700 in Leiden, The Netherlands by Johannes Nieuhof, who made the map before his death in 1672, this map (see *Figure 4.1*) is entitled *Carte Exacte de Toutes les Provinces, Villes, Bourgs, Villages et Rivieres du Vaste et Puissant Empire de la Chine* or *An Accurate Map of All the Provinces, Cities, Towns, Villages and Rivers of the Vast and Powerful Chinese Empire*. The map shows Hainan Island as the southernmost territory of China.

2. Carte la plus Generale et qui Comprehend la
Chine, la Tartarie Chinoise, et le Thibet *or*
A General Map that Includes China, Chinese
Tartary and Tibet (1734)

FIGURE 4.2: 1734 MAP



Source: National Library of Australia (Bib ID 2333624, Map Section at RM 3521).

Created in 1734 (as shown on the map) in Paris by Jean Baptiste Bourguignon D'Anville, this map (see *Figure 4.2*) is entitled *Carte la plus Generale et qui Comprehend la Chine, la Tartarie Chinoise, et le Thibet* or *A General Map that Includes China, Chinese Tartary and Tibet*. D'Anville was then the Royal Cartographer of France and had access to the works of the Jesuit cartographers in China through his friend, the French Jesuit Du Halde, who was a specialist on China. As the map itself states, the map was taken from surveys made by the Jesuit missionaries from 1708-1716 upon instructions of the Emperor Kangxi of the Qing Dynasty. *The map shows Hainan Island as the southernmost territory of China.*

3. *Carte de L'Empire Chinois et du Japon* or A French Map of the Chinese Empire together with Japan (1833)

FIGURE 4.3: 1833 MAP



Source: Wikimedia Commons (http://en.wikipedia.org/wiki/File:L%27Empire_Chinois_et_du_Japon_%281833%29.jpg).

Published in 1833 in Paris by Conrad Malte-Brun, this map (see *Figure 4.3*) is entitled *Carte de L'Empire Chinois et du Japon* or *A French Map of the Chinese Empire together with Japan*. This map shows Hainan Island as the southernmost territory of China.

B. Hainan Island as the Southernmost Territory of China

It is clear, patent, and obvious from all these ancient Chinese maps, whether made by Chinese authorities and individuals or by foreigners, that the southernmost territory of China has always been Hainan Island. Throughout the Chinese dynasties, China's territory never included the Spratlys and Scarborough Shoal. There is not a single ancient Chinese map, whether made by Chinese or foreigners, showing that the Spratlys and Scarborough Shoal were ever part of

Chinese territory. To repeat, in all these ancient Chinese maps, the southernmost Chinese territory has always been Hainan Island.

When the Qing Dynasty ended in 1912, the Chinese republicans led by Dr. Sun Yat Sen established the Republic of China. As regards national territory, each of the five constitutions of the Republic of China had a specific provision.

- (1) Article 3, Chapter 1 of the Provisional Constitution of the Republic of China of March 11, 1912 states: "The territory of the Republic of China is composed of 22 provinces, Inner and Outer Mongolia, Tibet and Qinghai."⁴⁷

As we have seen in the maps of the Qing Dynasty, one of the 22 provinces is Guangdong, which includes Hainan Island as the southernmost territory of China.

- (2) Article 3, Chapter 1 of the Constitution of the Republic of China of May 1, 1914 states: "The territory of the Republic of China continues to be the territory of the former empire."⁴⁸

The editorial comment in the *Regulations of the Republic of China Concerning Rule over Tibet* explains the words *former empire* as "referring to the Qing Dynasty."⁴⁹

- (3) Article 3, Chapter 2 of the Constitution of the Republic of China of October 10, 1924 states: "The territory of the Republic of China continues to be the traditional territory."⁵⁰
- (4) The Constitution of the Republic of China of January 1, 1937 states: "The territory of the Republic of China continues to be the territory it owned in the past."⁵¹
- (5) Article 4, Chapter 1 of the Constitution of the Republic of China of December 25, 1946 states: "The territory of the

⁴⁷ REGULATIONS OF THE REPUBLIC OF CHINA CONCERNING RULE OVER TIBET (1912-1949) 3 (China National Center for Tibetan Studies, China No. 2 History Archives, China Intercontinental Press, eds., 1999), *citing* REP. CHINA PROVISIONAL CONST. (1912) ch. 1, art. 3.

⁴⁸ *Id.*, *citing* REP. CHINA CONST. (1914) ch. 1, art. 3.

⁴⁹ *Id.*

⁵⁰ *Id.* *citing* REP. CHINA CONST. (1924) ch. 2, art. 3.

⁵¹ *Id.* at 4, *citing* REP. CHINA CONST. (1937).

Republic of China shall be that encompassed by its traditional boundaries[...]"⁵²

All these constitutional provisions are from an official publication of the People's Republic of China, entitled *Regulations of the Republic of China Concerning Rule over Tibet*.⁵³ Thus, after the fall of the Qing Dynasty, the new Republic of China reiterated to the world that its territory remained the same as the territory of the Qing Dynasty, with Hainan Island as China's southernmost territory.

Under international law, the effect of these unilateral declarations in several Constitutions of the Republic of China is to bind China to these declarations as against the international community. In the *Nuclear Test* cases involving Australia and New Zealand against France,⁵⁴ the International Court of Justice ruled:

It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding. In these circumstances, nothing in the nature of a quid pro quo nor any subsequent acceptance of the declaration, nor even any reply or reaction from other States, is required for the declaration to take effect, since such a requirement would be inconsistent with the strictly unilateral nature of the juridical act by which the pronouncement by the State was made.⁵⁵

Thus, under international law, the territory of the Republic of China as of the effectivity of these Constitutions is limited to the territory of the Qing Dynasty, with Hainan Island as the southernmost territory of China.

⁵² *Id.* at 30, citing REP. CHINA CONST. (1946) ch. 1, art. 4.

⁵³ *Id.* at 3-4, 31.

⁵⁴ *Nuclear Tests (Austl. v. Fr.)*, 1974 I.C.J. 253 (Dec. 20); *Nuclear Tests (N.Z. v. Fr.)*, 1974 I.C.J. 457 (Dec. 20).

⁵⁵ *Nuclear Tests (Austl. v. Fr.)*, 1974 I.C.J. 253, 267, ¶ 43 (Dec. 20); *Nuclear Tests (N.Z. v. Fr.)*, 1974 I.C.J. 457, 472, ¶ 46 (Dec. 20).

As late as 1932, China has been telling the world that its southernmost border was Hainan Island. In a *Note Verbale*⁵⁶ to the French Government on September 29, 1932, protesting the French occupation of the Paracels, the Chinese Government officially declared:

NOTE OF 29 SEPTEMBER 1932 FROM THE
LEGATION OF THE CHINESE REPUBLIC IN FRANCE
TO THE MINISTRY OF FOREIGN AFFAIRS, PARIS

On the instructions of its Government, the Legation of the Chinese Republic in France has the honor to transmit its Government's reply to the Foreign Ministry's Note of 4 January 1932 on the subject of the Paracel Islands.

The Si-Chao-Chuin-Tao Islands, also known as Tsi-Cheou-Yang and called the Paracel Islands in the foreign tongue, lie in the territorial sea of Kwangtung Province (South China Sea); the northeast are the Ton-Chao Islands; the Si-Chao-Chuin-Tao Islands form one group among all the islands in the South China Sea which are an integral part of the territorial sea of Kwangtung Province.

According to the reports on the Si-Chao-Chuin-Tao (Paracel) Islands drawn up in the Year XVII of the Chinese Republic (1926) by Mr. Shen-Pang-Fei, President of the Commission of Inquiry into these islands, and to the files of these islands compiled by the Department of Industry of Kwangtung Province, the islands lie between longitude 100°13' and 112°47' east. More than 20 in number, large and small, most of them are barren sandbanks, 10 or so are rocks and 8 are true islands. The eastern group is called the Amphitrites and the western group the Crescent. *These groups lie 145 nautical miles from Hainan Island, and form the southernmost part of Chinese territory.*⁵⁷

In short, in 1932 the Chinese Government officially declared to the world that the "southernmost part of Chinese territory" was Hainan Island, which, for the first time, the Chinese claimed included the Paracels. This declaration categorically affirmed the previous official maps of the Song, Yuan, Ming, and Qing Dynasties that showed Hainan Island as the southernmost territory of China. James Shoal, 800 NM away from the Paracels and 950 NW from Hainan Island, was never in Chinese history the southernmost territory of China.

⁵⁶ Note of 29 September 1932 from the Legation of the Chinese Republic in France to the Ministry of Foreign Affairs, Paris, Sept. 29, 1932 [hereinafter "1932 Note Verbale"].

⁵⁷ *Id.* (Emphasis supplied.)

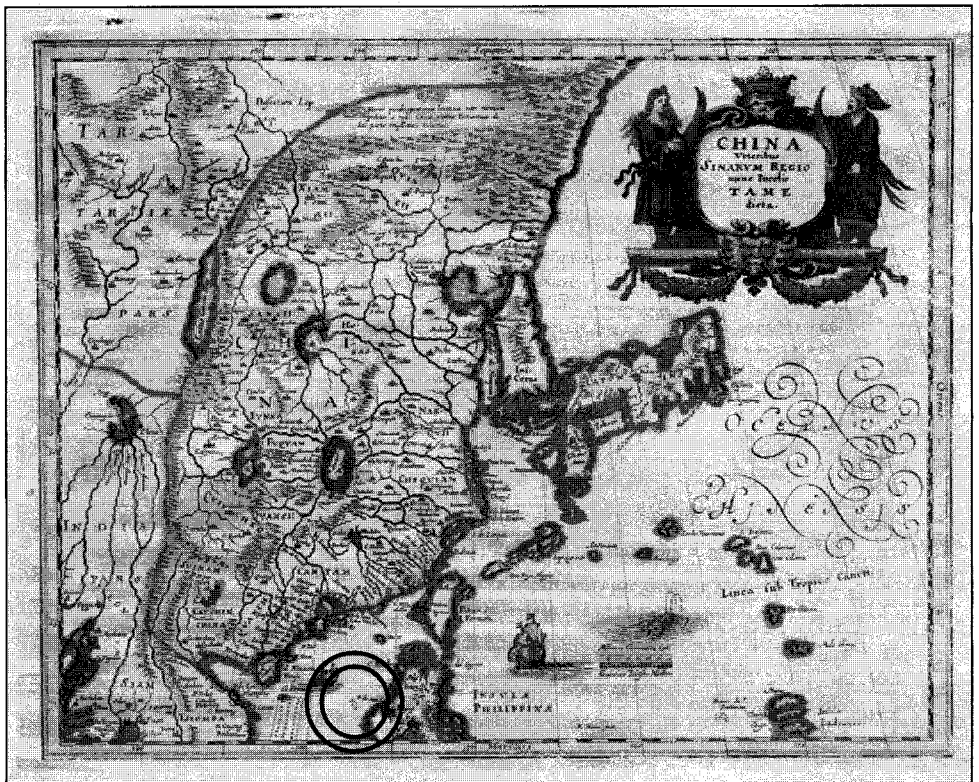
The same is obviously true for Scarborough Shoal, which is 380 NM from the Paracels and 500 NM from Hainan Island. Since Hainan Island or even the Paracels are the southernmost territory or border of China as officially declared by China in its September 29, 1932 *Note Verbale* to the French Government, then Scarborough Shoal is not part of, and could never have been part of, Chinese territory.

IV. ANCIENT MAPS OF THE PHILIPPINES MADE BY PHILIPPINE AUTHORITIES OR BY FOREIGNERS

A. Ancient Maps of the Philippines

1. China Veteribus Sinarum Regio Nunc Incolis Tame Dicta (1636)

FIGURE 5.1A: 1646 MAP



Source: Barry Lawrence Ruderman Antique Maps, Inc., at <http://www.raremaps.com/gallery/detail/36716>. (Double encircling supplied.)

Published in Frankfurt in 1636 by map maker Matthaus Merian, this map (see *Figure 5.1A*) is entitled *China Veteribus Sinarum Regio Nunc Incolis Tame Dicta*. This map shows China, Korea, Japan, Taiwan, and Northern Luzon. On the western side off the coast of Central Luzon, there is an unnamed shoal below the words *P. de Mandato* (see *Figure 5.1B*). The Spanish phrase *P. de Mandato* means the point of command—which implies there was a Spanish military garrison in that coastal place. *The unnamed shoal off this coastal place would later be called Panacot by the Jesuit Pedro Murillo.*

FIGURE 5.1B: 1646 MAP (ZOOM)

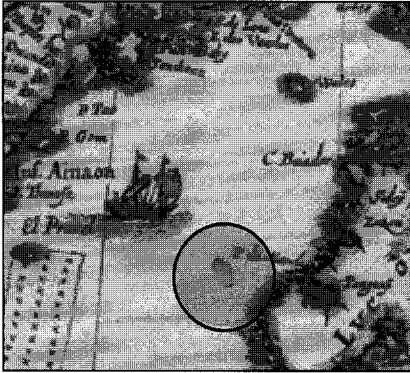
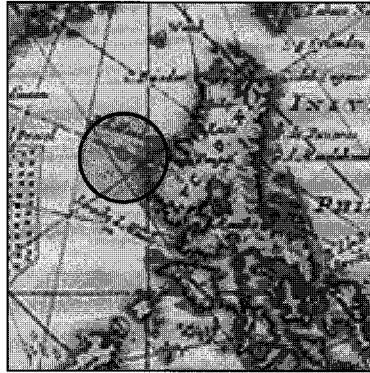


FIGURE 5.2B: 1650 MAP (ZOOM)



2. Carte Generale des Indes Orientales et des Isles Adiacentes (1650)

FIGURE 5.2A: 1650 MAP

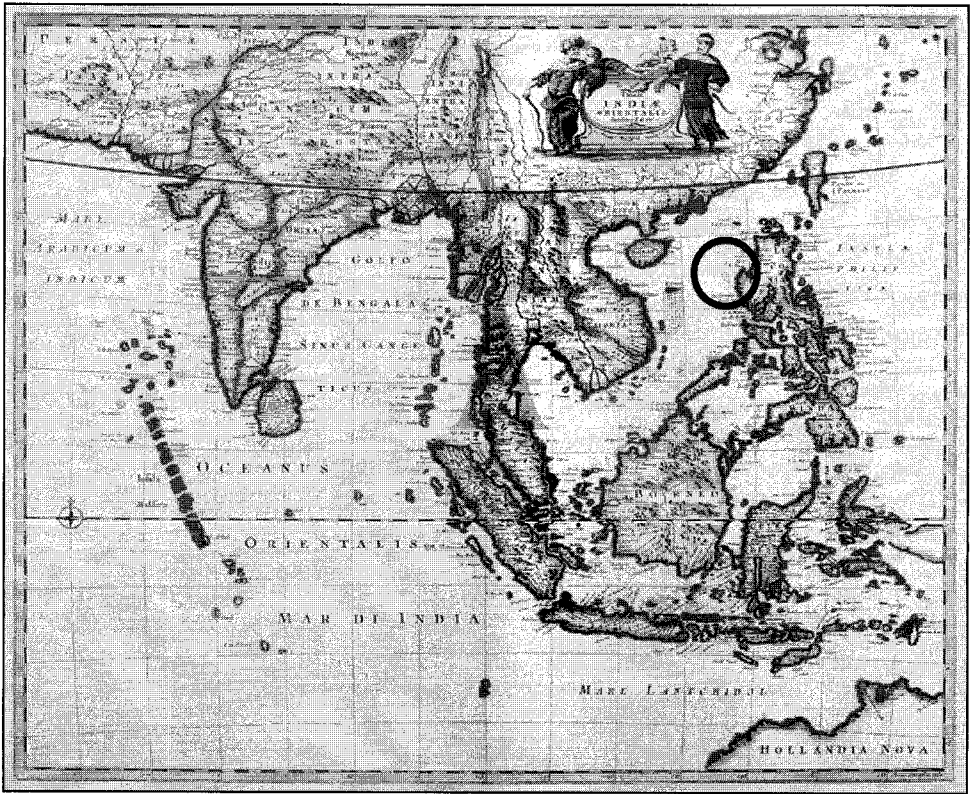


Source: Barry Lawrence Ruderman Antique Maps, Inc., at <http://www.raremaps.com/gallery/detail/30701>. (Encircling supplied.)

Published in Paris in 1650 by the map maker Pierre Mariette, this map (see *Figure 5.2A*) is entitled *Carte Generale des Indes Orientales et des Isles Adiacentes*. On the western side off the coast of Central Luzon, there is an unnamed shoal below the words *P. de Mandato* (see *Figure 5.2B*). *This unnamed shoal would later be called Panacot.*

4. Tabula Indiae Orientalis (1662)

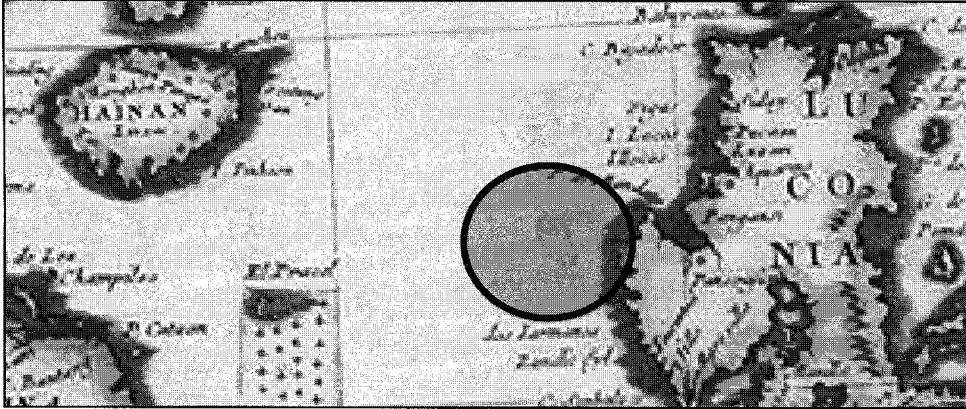
FIGURE 5.3A: 1662 MAP



Source: Barry Lawrence Ruderman Antique Maps, Inc. at www.raremaps.com/gallery/detail/31529/Tabula_Indiae_Orientalis/De%20Wit.html. (Encircling supplied.)

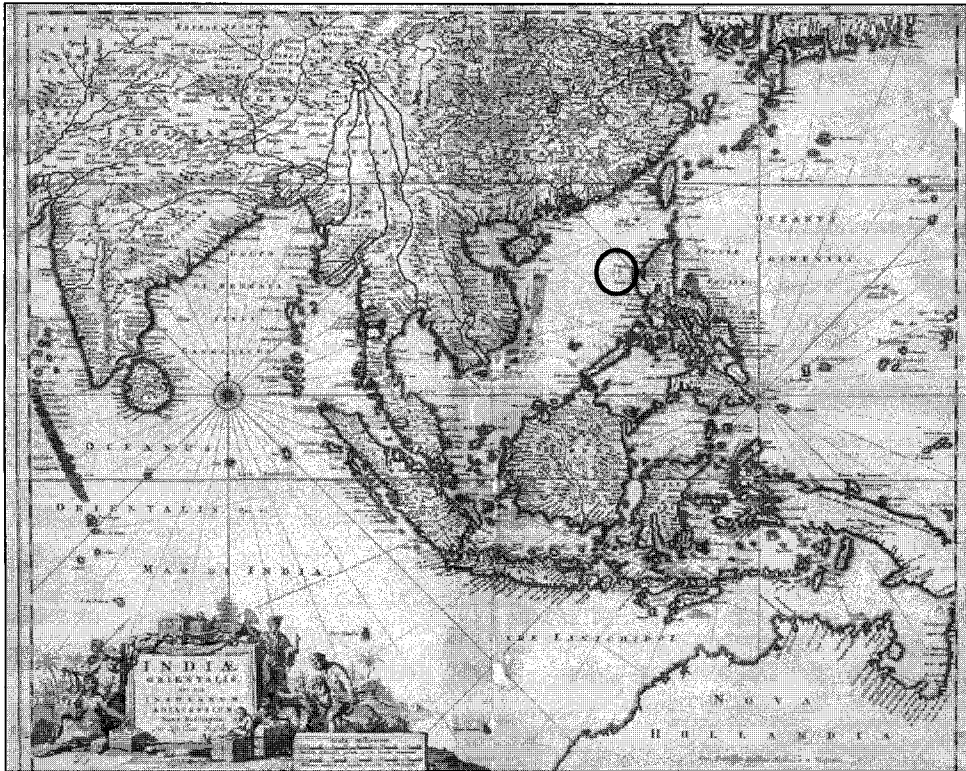
Published in Amsterdam in 1662 by Fredrick De Wit, this map (see *Figure 5.3A*) is entitled *Tabula Indiae Orientalis*. On the western side off the coast of Central Luzon, there is an unnamed shoal below the words *P. de Mandato* (see *Figures 5.3A* and *5.3B*, encircled portions). *This unnamed shoal would later be called Panacot.*

FIGURE 5.3B: 1662 MAP (ZOOM)



3. Indiae Orientalis nec non Insularum
Adiacentium Nova Descriptio (1670)

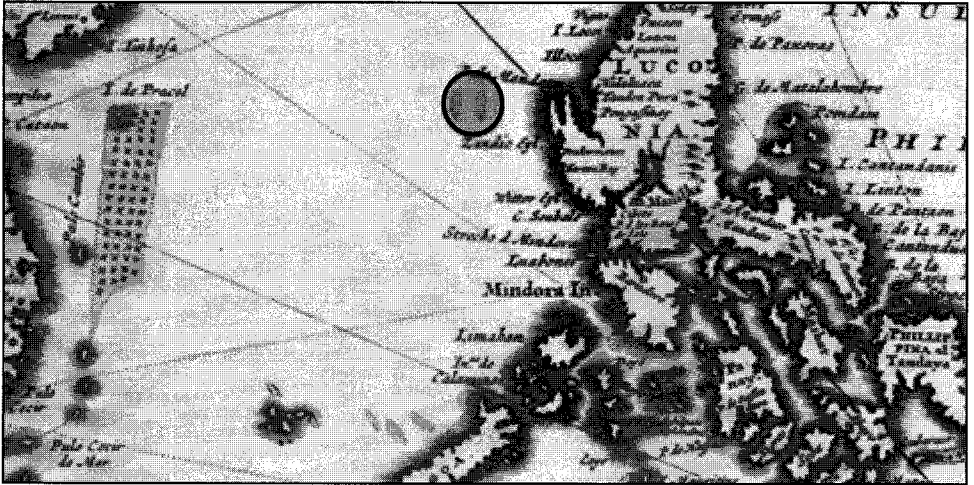
FIGURE 5.4A: 1670 MAP



Source: Barry Lawrence Ruderman Antique Maps, Inc., at www.raremaps.com/gallery/detail/35549/Indiae_Orientalis_nec_non_Insularum_Adiacentium_Nova_Descriptio/Visscher.html. (Encircling supplied.)

Published in Amsterdam in 1670 by Nicholaus Visscher, this map (see *Figure 5.4A*) is entitled *Indiae Orientalis nec non Insularum Adiacentum Nova Descriptio*. On the western side off the coast of Central Luzon, there is an unnamed shoal below the words *P. de Mandato* (see *Figure 5.4B*, encircled portion). *This unnamed shoal would later be called Panacot.*

FIGURE 5.4B: 1670 MAP (ZOOM)



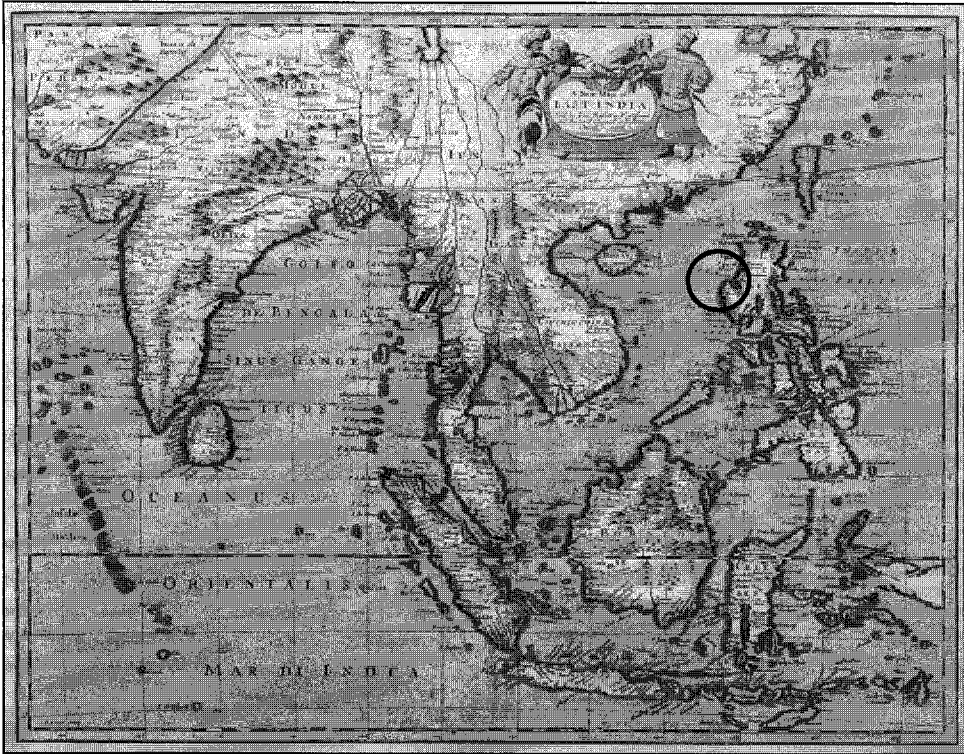
5. A New Map of East India (1676)

Published in London in 1676 by John Speed, this map (see *Figure 5.5A*) is entitled *A New Map of East India*. On the western side off the coast of Central Luzon, there is an unnamed shoal below the words *P. de Mandato* (see *Figure 5.5B*, encircled portion). *This unnamed shoal would later be called Panacot.*

6. India Orientalis et Insularium Adiacentum Antiqua et Nova Descriptio (1697)

Published in Leiden, Netherlands in 1697 by Philip Cluverius, this map (see *Figure 5.6A*) is entitled *India Orientalis et Insularium Adiacentum Antiqua et Nova Descriptio*. On the western side off the coast of Central Luzon, there is an unnamed shoal below the words *P. de Mandato* (see *Figure 5.6B*, encircled portion). *This unnamed shoal would later be called Panacot.*

FIGURE 5.5A: 1676 MAP



Source: Barry Lawrence Ruderman Antique Maps, Inc., at http://www.raremaps.com/gallery/detail/32192/A_New_Map_of_East_India/Speed.html. (Encircling supplied.)

FIGURE 5.5B: 1676 MAP (ZOOM)

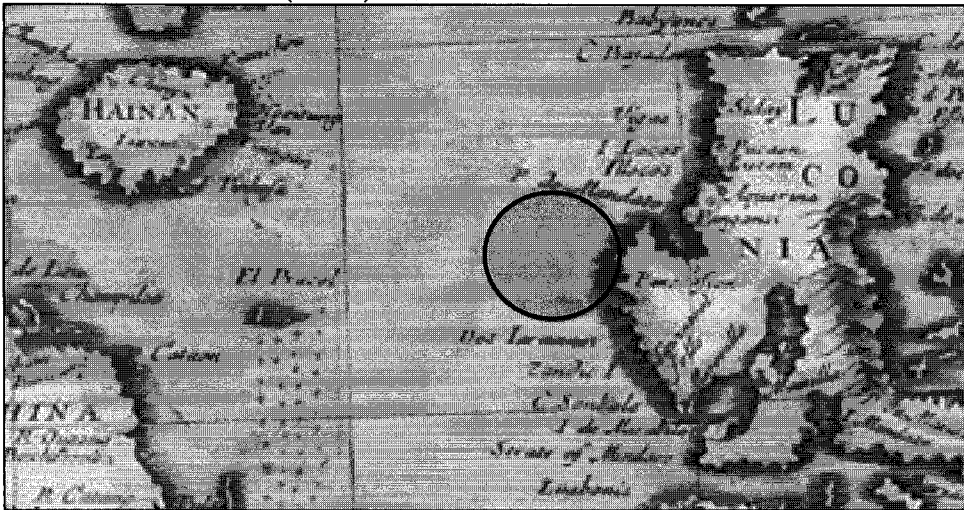
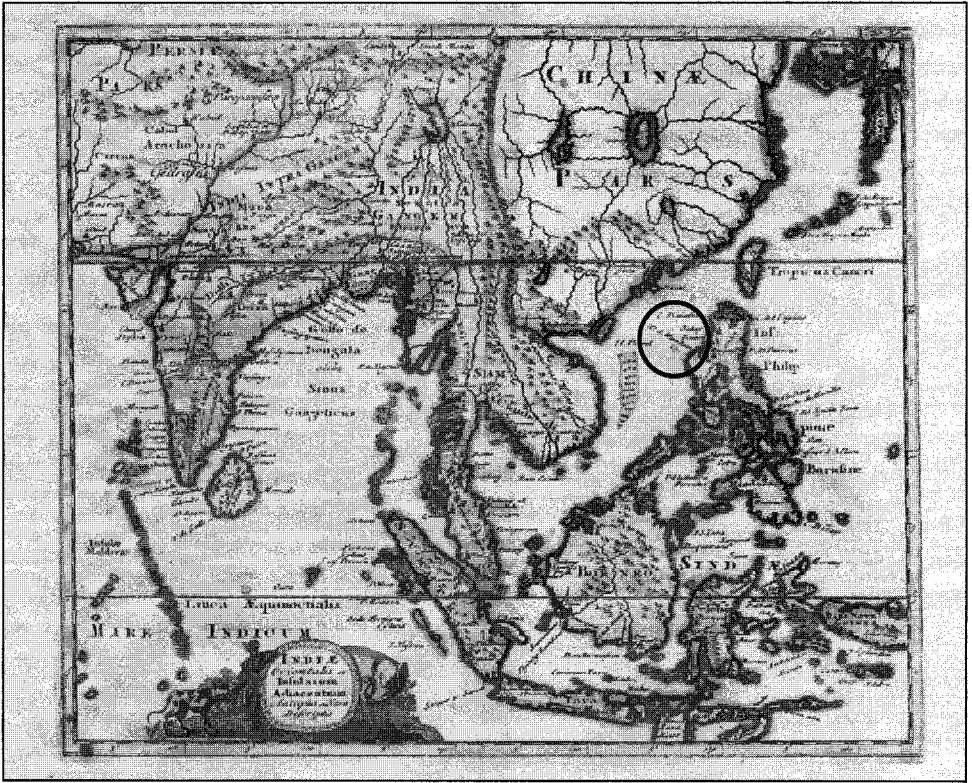
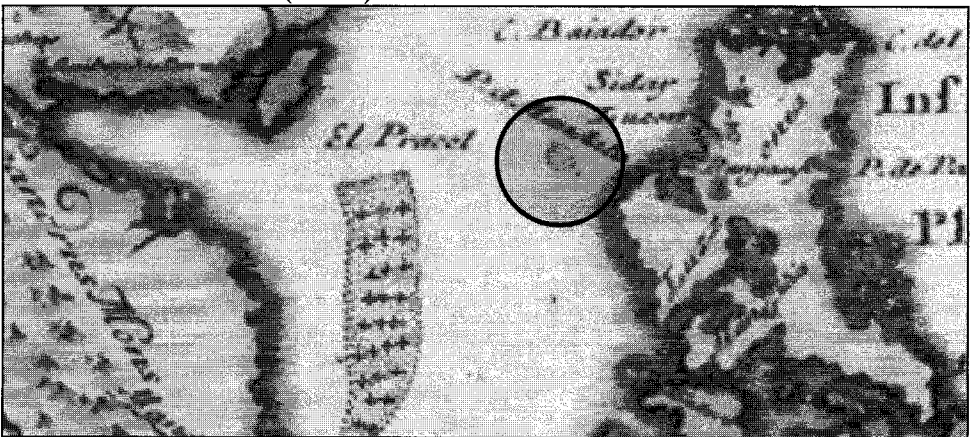


FIGURE 5.6A: 1697 MAP



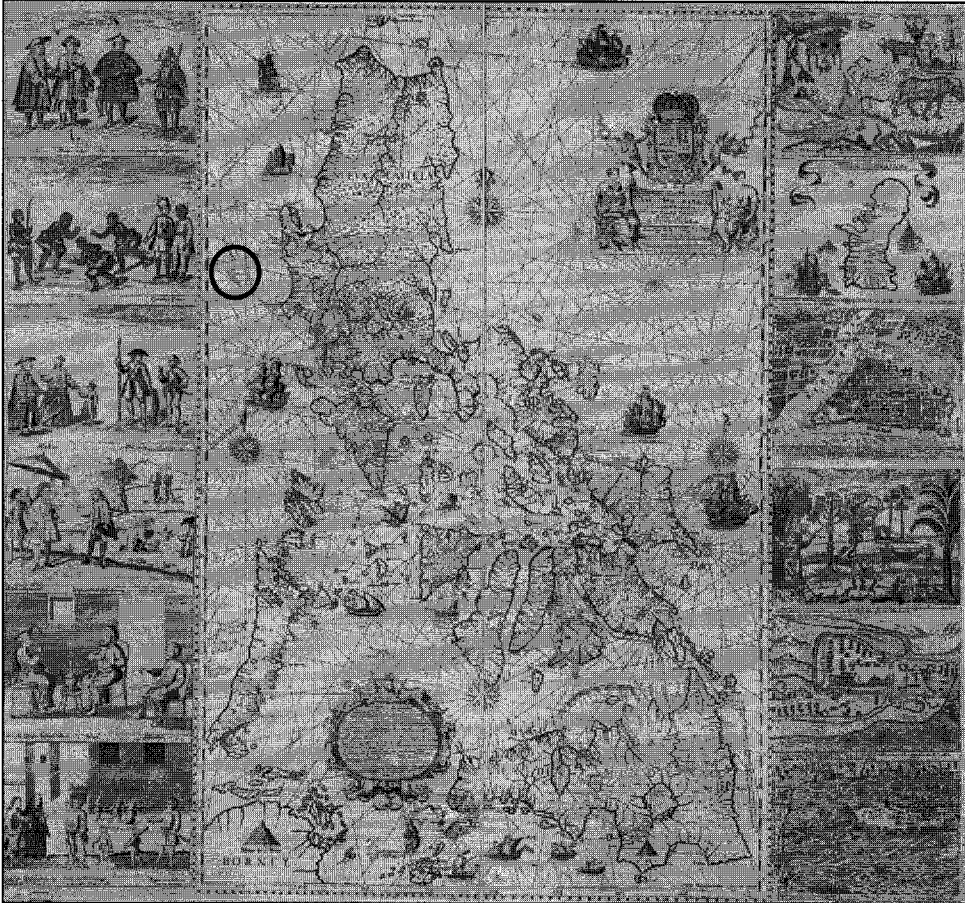
Source: Barry Lawrence Ruderman Antique Maps, Inc., at <http://www.raremaps.com/gallery/detail/36938>. (Encircling supplied.)

FIGURE 5.6B: 1697 MAP (ZOOM)



7. Carta Hydrographica y Chorographica de las Yslas Filipinas (1734)

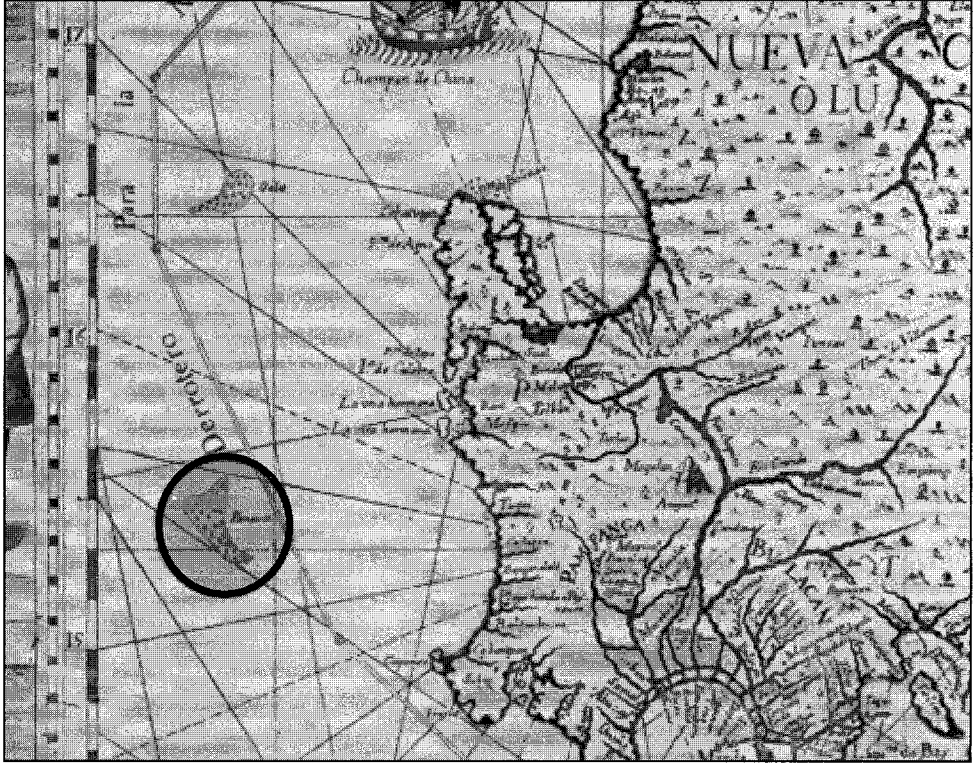
FIGURE 5.7A: 1734 MAP



Source: Library of Congress (Catalogue No. 2013585226; Digital ID g8060 ct003137). (Encircling supplied.)

Published in 1734 in Manila by the Jesuit Pedro Murillo, this map (see *Figure 5.7A*) is entitled *Carta Hydrographica y Chorographica de las Yslas Filipinas*. This is the oldest map that gives a name to Panacot shoal (see *Figure 5.8B*, encircled portion). Panacot is the Tagalog word for “threat” or “danger.” Prior to this 1734 map, no map had ever given a name to this shoal. The map itself names two Filipinos, Francisco Suarez (who drew the map) and Nicolas dela Cruz Bagay (who engraved it). This map is considered the “mother of all Philippine maps.”

FIGURE 5.7B: 1734 MAP (ZOOM)



8. Mapa delas Yslas Filipinas Hecho (1744)

FIGURE 5.8A: 1744 MAP



FIGURE 5.8B: 1744 MAP (ZOOM)



Source: National Library of Australia (Bib ID 1958890, MAP G8061.S1 1744). (Encircling supplied.)

Published in 1744 in Manila by the Jesuit Pedro Murillo, this map (see *Figure 5.8A*), entitled *Mapa delas Yslas Filipinas Hecho*, is a reduced version of the 1734 Murillo map. This 1744 Murillo map does not have the vignettes or scenes of people and places in the archipelago that appear in the 1734 map. The map is signed by the engraver, Nicholas dela Cruz Bagay. Panacot shoal (see *Figure 5.8B*, encircled portion) is shown as in the 1734 map.

9. Carte Hydrographique & Chorographique des Isles Philippines (1760)

FIGURE 5.9A: 1760 MAP

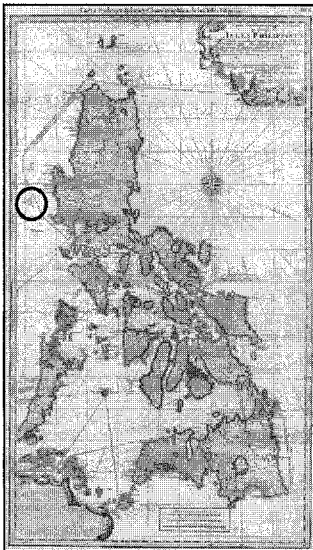
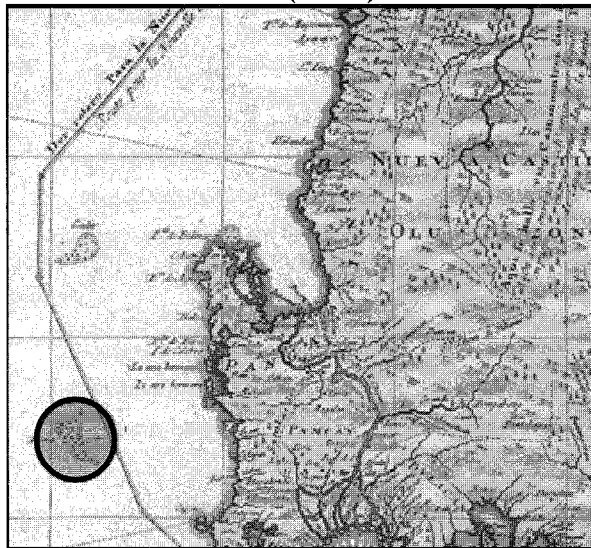


FIGURE 5.9B: 1760 MAP (ZOOM)



Source: Barry Lawrence Ruderman Antique Maps, Inc., at http://www.raremaps.com/gallery/detail/35555/Carre_Hydrographique_and_Chorographique_des_Isles_Philippines_Dediee_a_Sa/LowitzHomann%20Heirs.html. (Encircling supplied.)

Published in 1760 in Nuremberg by George M. Lowitz based on the Murillo map (although there is no such acknowledgment on the map), this map (see *Figure 5.9A*) is entitled *Carte Hydrographique & Chorographique des Isles Philippines*. The map shows the Panacot shoal (see *Figure 5.9B*, encircled portion).

10. A General Map of the East Indies and that Part of China where the Europeans Have Any Settlements or Commonly Any Trade (1761)

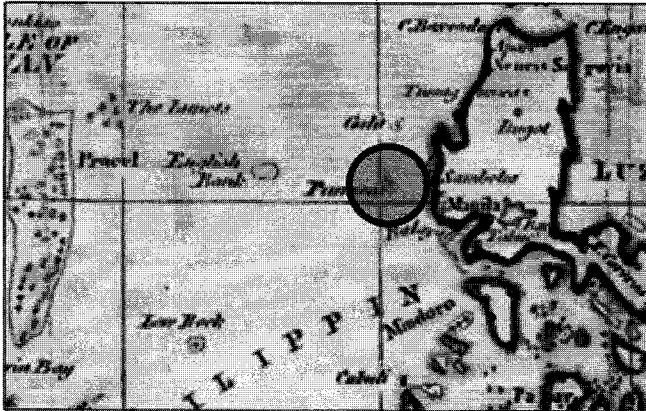
Published in 1761 in London by the map maker Thomas Kitchin, this map (see *Figure 5.10A*) is entitled *A General Map of the East Indies and that Part of China where the Europeans Have Any Settlements or Commonly Any Trade*. This map shows Panacot shoal (see *Figure 5.10B*, encircled portion).

FIGURE 5.10A: 1761 MAP



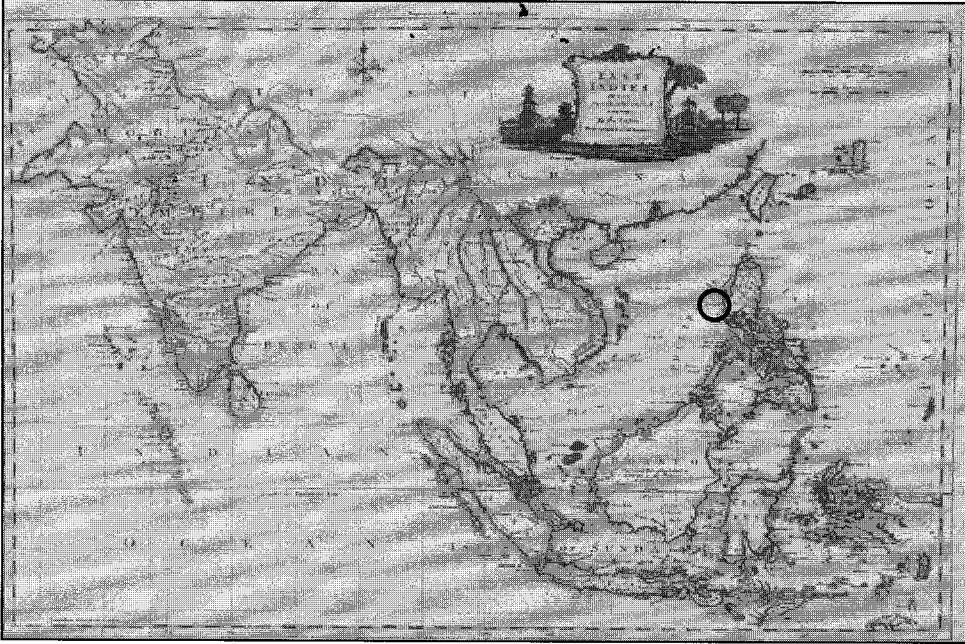
Source: Barry Lawrence Ruderman Antique Maps, Inc. at <http://www.raremaps.com/gallery/detail/0176gh>. (Encircling supplied.)

FIGURE 5.10B: 1761 MAP (ZOOM)



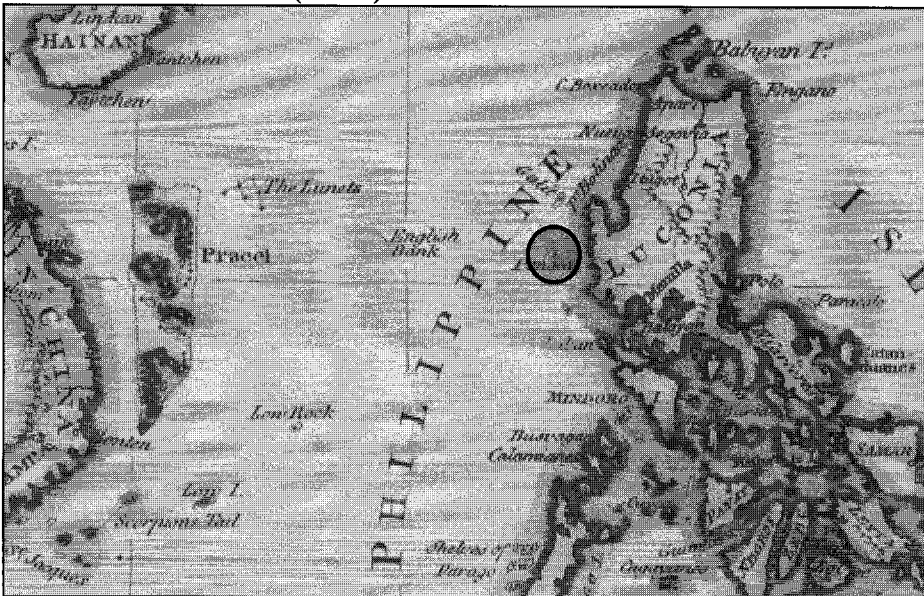
11. East Indies (1770)

FIGURE 5.11A: 1770 MAP



Source: National Library of Australia (Bib ID 3620673, map-rm 1424). (Encircling supplied.)

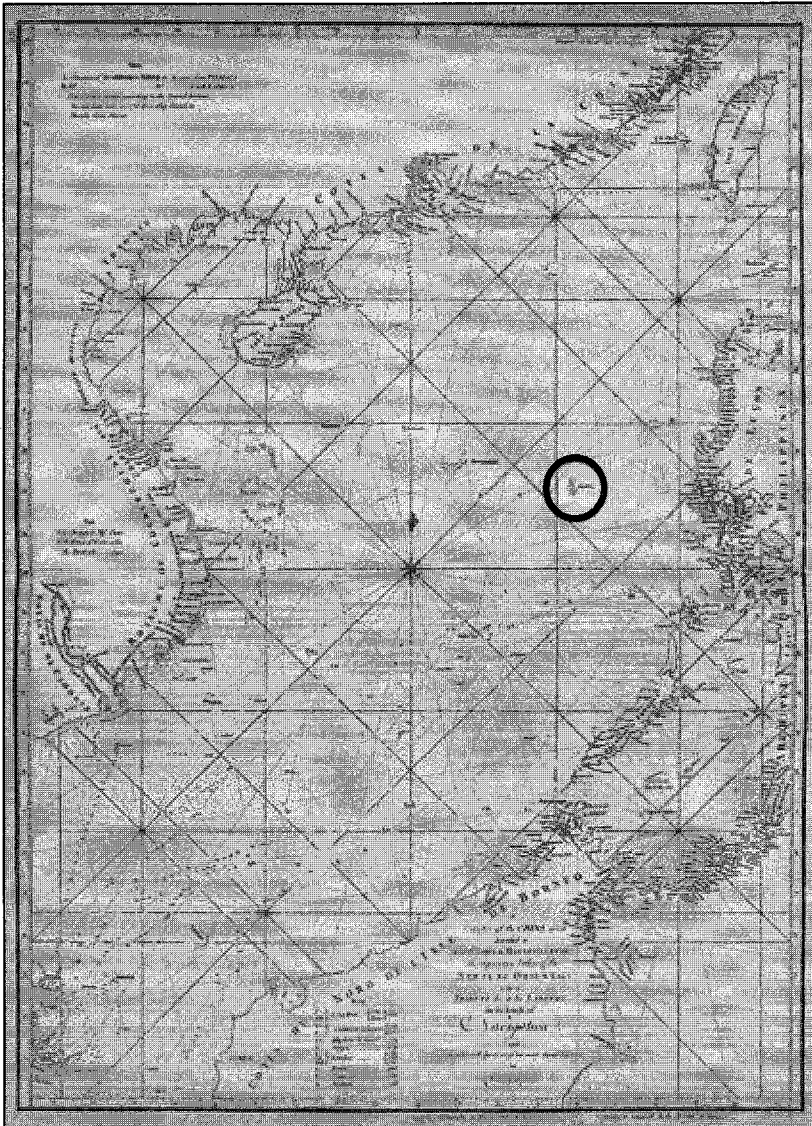
FIGURE 5.11B: 1770 MAP (ZOOM)



Published in 1770 in London by Thomas Kitchin, then-Royal Hydrographer, this map (see *Figure 5.11A*) is entitled *East Indies*. This map shows Panacot shoal (see *Figure 5.11B*, encircled portion).

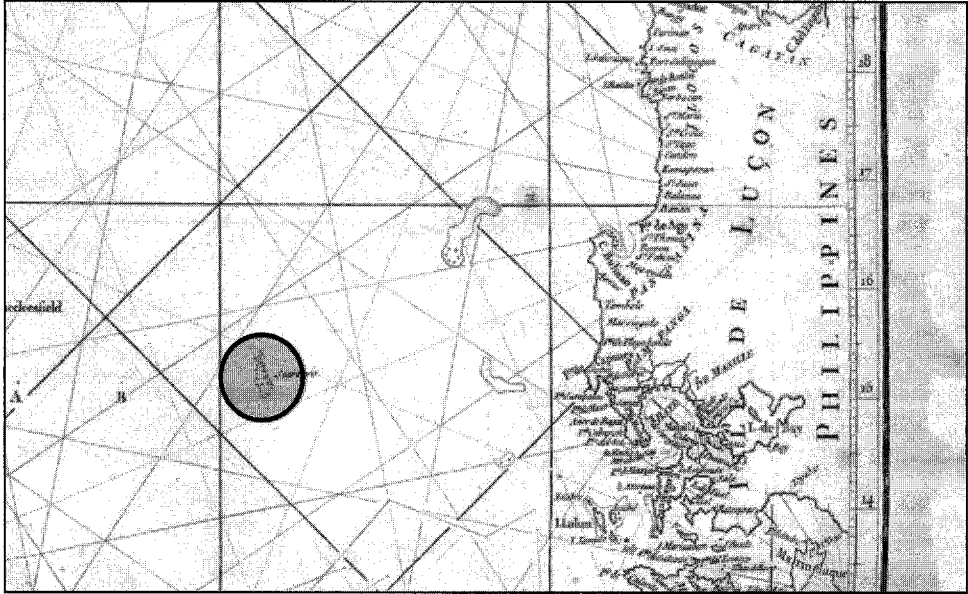
12. A Chart of the China Sea (1775)

FIGURE 5.12A: 1775 CHART



Source: National Library of Australia (Bid ID 3770071, map-ra49-s32). (Encircling supplied.)

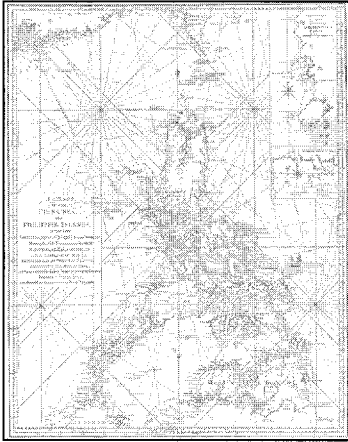
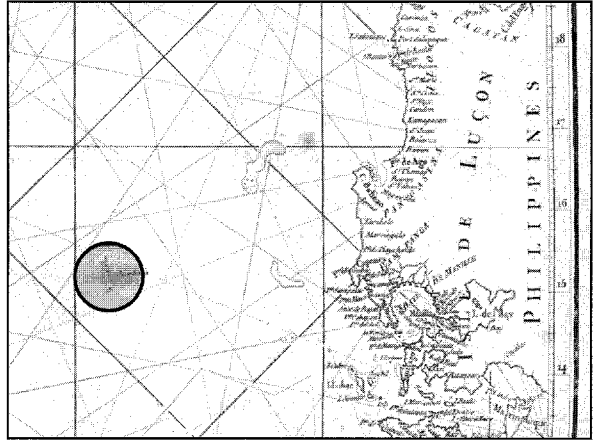
FIGURE 5.12B: 1775 CHART



Published in 1775 in Paris by D'Apres de Manneville, this chart (see Figure 5.12A) is entitled *A Chart of the China Sea. The map shows "Scarboro" shoal.* The British tea clipper *Scarborough* struck the rocks of the shoal on September 12, 1748, and so European cartographers named the shoal *Scarborough* (see Figure 5.12B, encircled portion).

13. A Chart of the China Sea and the Philippine Islands with the Archipelagos of Felicia and Soloo (1778)

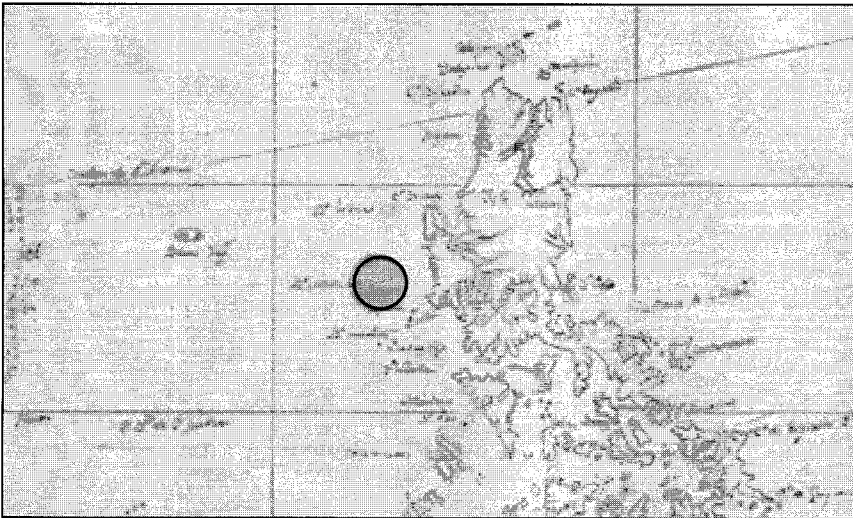
Published in 1778 in London by R. Sayer and J. Bennett, this map (see Figure 5.13A) is entitled *A Chart of the China Sea and the Philippine Islands with the Archipelagos of Felicia and Soloo.* Panacot or Marsingola Bank is the name given to one feature and Scarborough Shoal is the name given to a nearby shoal, with the words "the Scarborough Sept. 12, 1748," the date when the British tea clipper struck the shoal (see Figure 5.13B, encircled portion).

FIGURE 5.13A: 1778 CHART**FIGURE 5.13B: 1778 CHART (ZOOM)**

Source: National Library of Australia (Bib ID 3667413, map-ra52-s70). (Encircling supplied.)

14. Map of the Pacific Ocean between the Coast of California and Mexico and Japan, Philippines, and the Coast of China (1784)

Published in 1784 with the watermark *PVL* (for *Pieter van Ley*), this map (see *Figure 5.14*) is entitled *Map of the Pacific Ocean between the Coast of California and Mexico and Japan, Philippines, and the Coast of China*. This map shows a shoal named *B. Mansiloc* (see *Figure 5.14*, encircled portion).

FIGURE 5.14: 1784 MAP

Source: US Library of Congress (Catalogue No. 91680984, Digital ID g9230 Ih000015). (Encircling supplied.)

15. Isole Filippine (1785)

FIGURE 5.15A: 1785 MAP



FIGURE 5.15B: 1785 MAP (ZOOM)



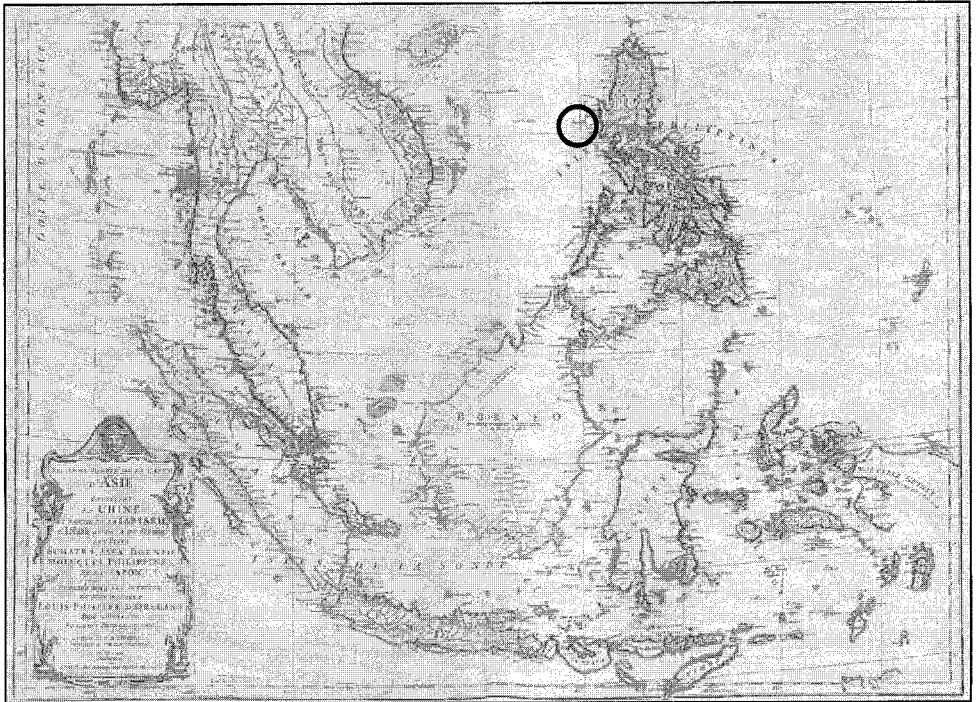
Source: Barry Lawrence Ruderman Antique Maps, Inc., at <http://www.raremaps.com/gallery/detail/33827>. (Encircling supplied.)

Published in 1785 in Venice by Antonio Zatta, this map (see Figure 5.15A) is entitled *Isole Filippine*. This map is based on the Murillo map although there is no such acknowledgment in the map. Panacot shoal appears on this map as in the Murillo map (see Figure 5.15B, encircled portion).

16. Atlas de D’Anville (1786)

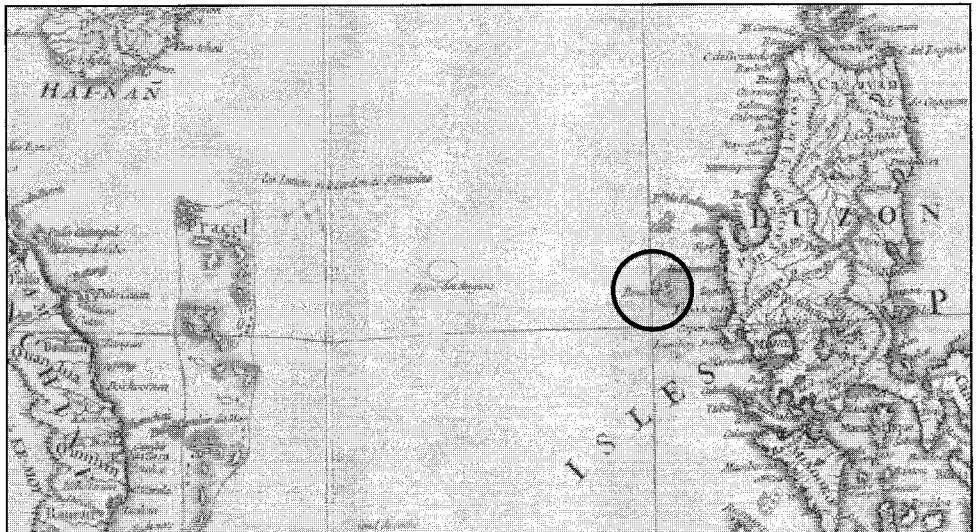
Published in 1786 in Paris by Jean Baptiste B. D’Anville as part of his *Atlas de D’Anville*, this map (see Figure 5.16A) is entitled *Seconde Partie de la Carte D’Asie* or *Second Part of the Map of Asia*. The map shows Sumatra, Java, Borneo, Moluccas, Philippines, and Japan. The first part of the map of Asia is basically the 1734 China map of D’Anville. D’Anville’s Atlas was later re-printed by Robert Sayer, Laurie and Whittle and others. *This map also shows Panacot shoal. In the later reprinted maps of Sayer, and Laurie & Whittle, Panacot is called Scarborough shoal.*

FIGURE 5.16A: 1786 MAP



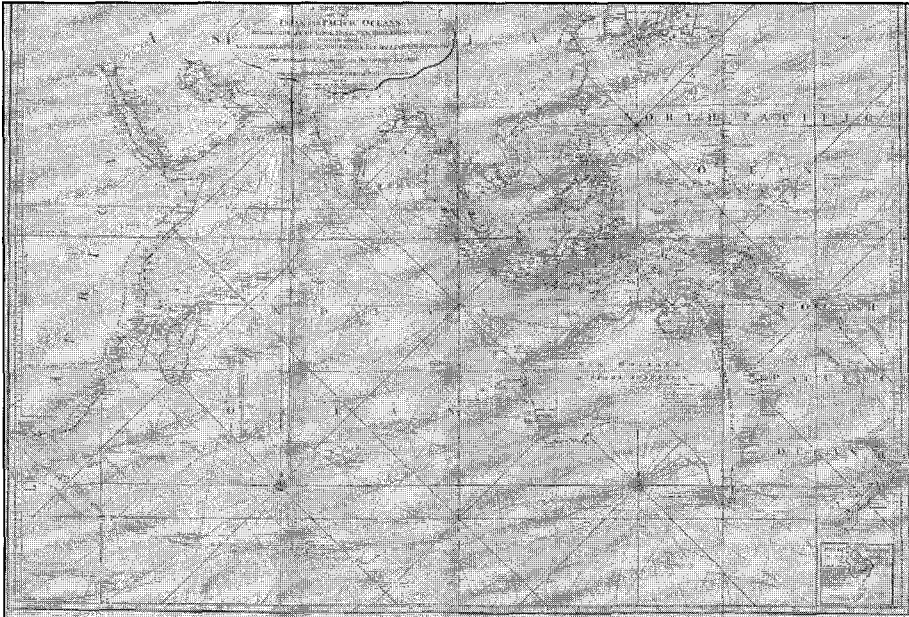
Source: National Library of Australia (Bib ID 1372672, map-ra-39). (Encircling supplied.)

FIGURE 5.16B: 1786 MAP



17. A New Chart of the Indian and Pacific Oceans between the Cape of Good Hope, New Holland and Japan (1787)

FIGURE 5.17A: 1787 “NEW CHART” MAP



Source: National Library of Australia (Bib ID 3507852, map-rm-451). (Encircling supplied.)

FIGURE 5.17B: 1787 “NEW CHART” MAP (ZOOM)

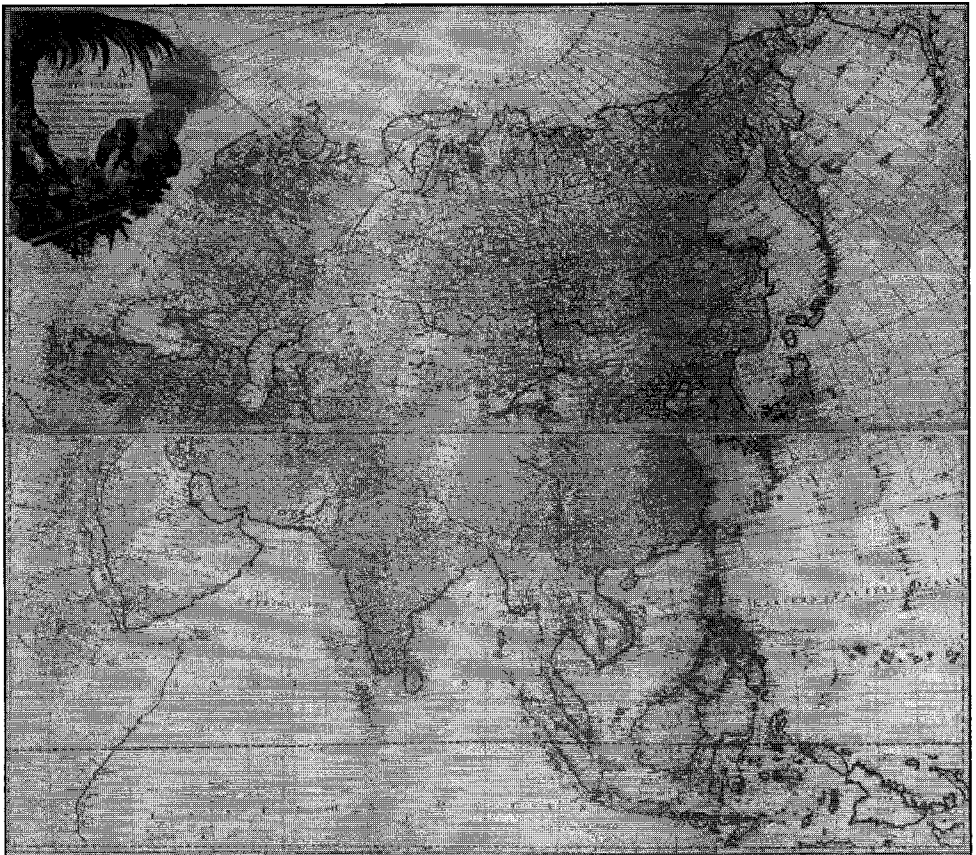


Published in 1787 in London by Robert Sayer, this map (see *Figure 5.17A*) is entitled *A New Chart of the Indian and Pacific Oceans between the Cape of Good Hope, New Holland and Japan*. This map shows “Scarboro” shoal (see *Figure 5.17B*, encircled portion).

18. Asia and its Islands
according to D’Anville (1787)

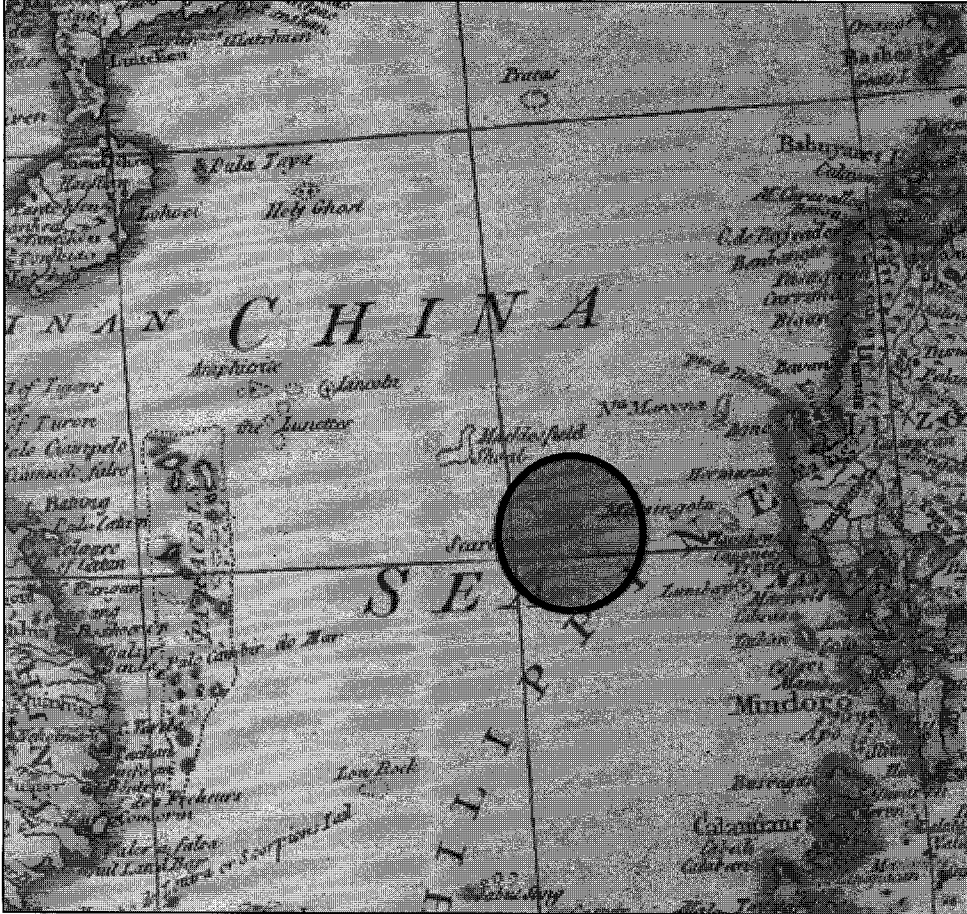
Published in 1787 in London by Robert Sayer based on the 1786 Atlas de D’Anville, this map (see *Figure 5.18A*) is entitled *Asia and its Islands according to D’Anville*. The map shows “Scarborough” shoal (see *Figure 5.18B*, encircled portion). The map also states that the delineations of all the discoveries of Captain Cook are included in the map.

FIGURE 5.18A: 1787 D’ANVILLE MAP



Source: Original map owned by Atty. Anne Marie Corominas of Manila and Cebu. (Encircling supplied.)

FIGURE 5.18B: 1787 D'ANVILLE MAP (ZOOM)



19. Plano de la Navigacion (1792)

Published in Madrid by the Direccion de Hidrografica from the surveys of the Malaspina Expedition, this 1792 chart (*plano de la navegacion*; see Figures 5.19A and 5.19B) is the route of the navigation taken by Alessandro Malaspina's ship *Sta. Lucia* when Malaspina surveyed what is stated in the map as "Bajo Masinloc o Scarborough." *This is the first time that the shoal is also called Bajo Masinloc.* On May 4, 1792, the day he surveyed Bajo de Masinloc, Malaspina wrote in his journal: "on [this shoal] Spanish and foreign ships have been lost."

FIGURE 5.19A: 1792 PLAN

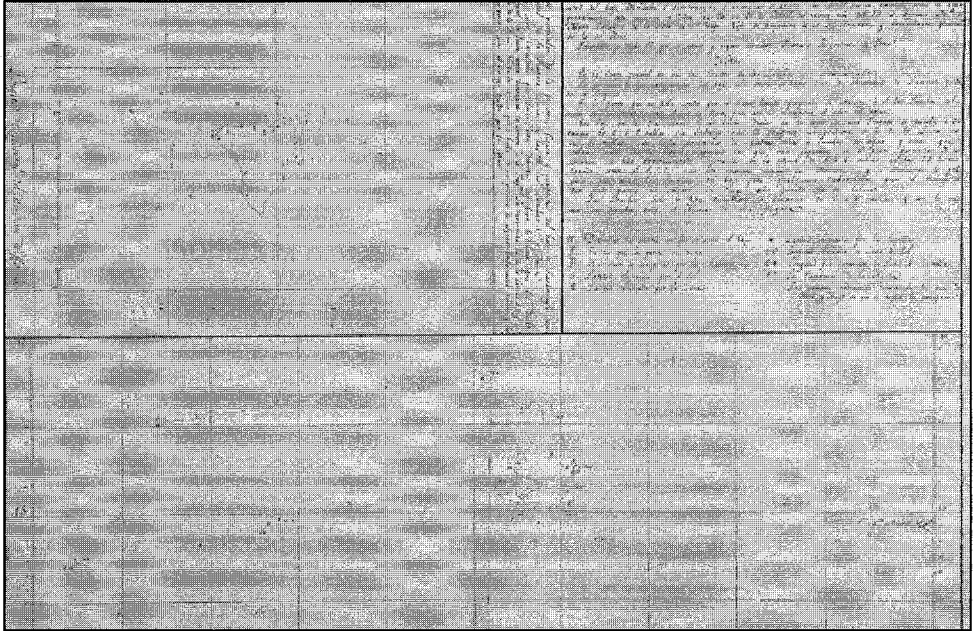
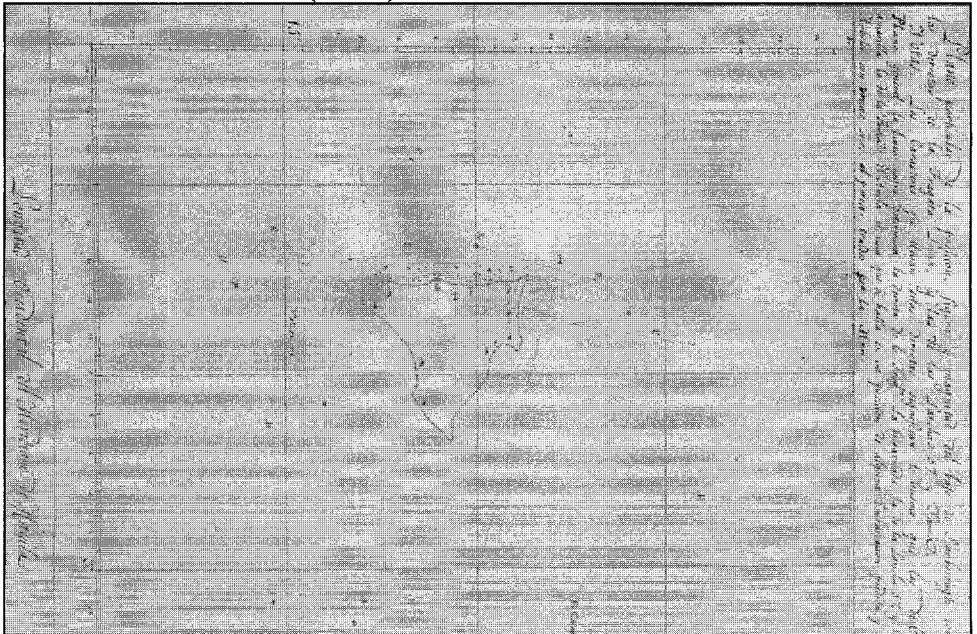


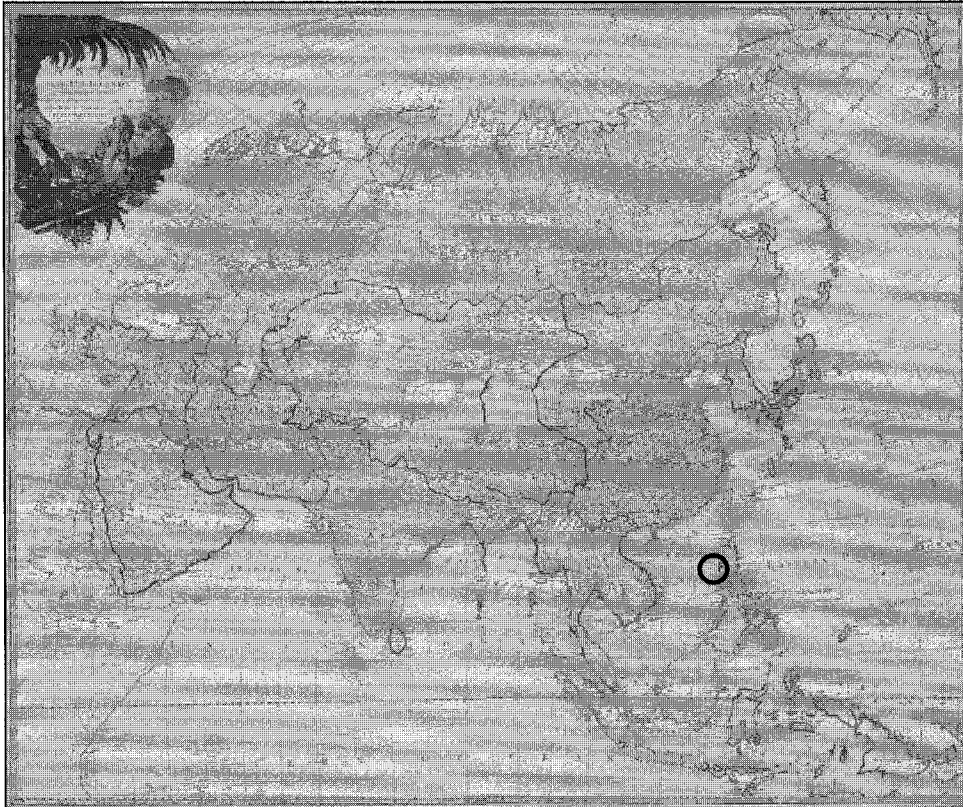
FIGURE 5.19B: 1792 PLAN (ZOOM)



Source: Museo Naval de Madrid; copied by the Philippine Embassy in Madrid.

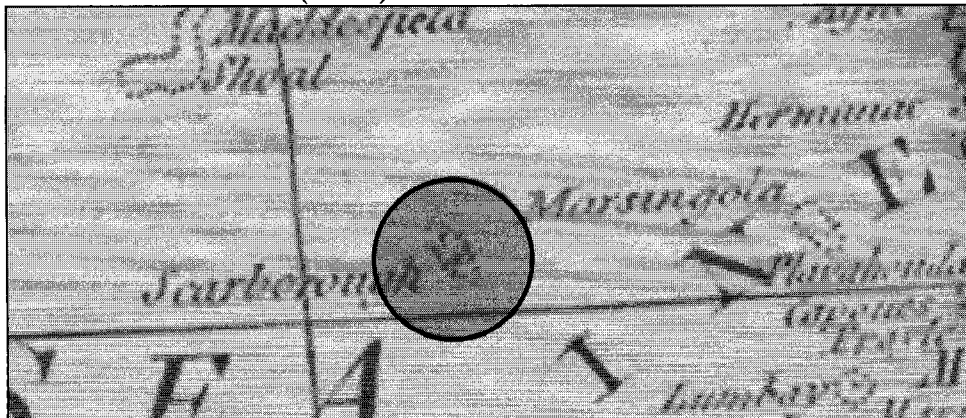
20. Asia and its Islands according to D'Anville
(1794)

FIGURE 5.20A: 1794 MAP



Source: National Library of Australia (Bib ID 2133866, map-rm 1865). (Encircling supplied.)

FIGURE 5.20B: 1794 MAP (ZOOM)



Published in 1794 in London by Robert Laurie and James Whittle, this map (see *Figure 5.20A*) is entitled *Asia and its Islands according to D'Anville*. The map says that the delineations of all the discoveries made by Captain Cook are incorporated in the map. *The maps shows "Scarborough" shoal* (see *Figure 5.20B*).

21. A New Chart of the China Sea and its
Several Entrances (1802)

FIGURE 5.21A: 1802 CHART

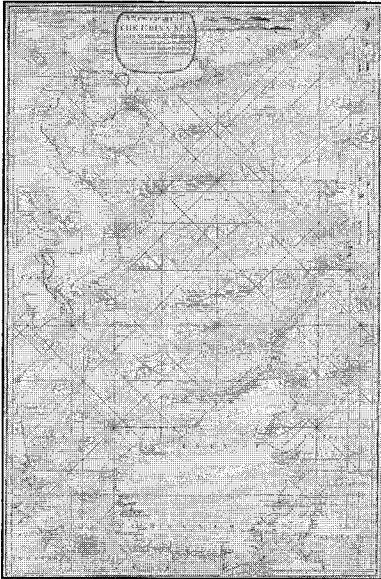
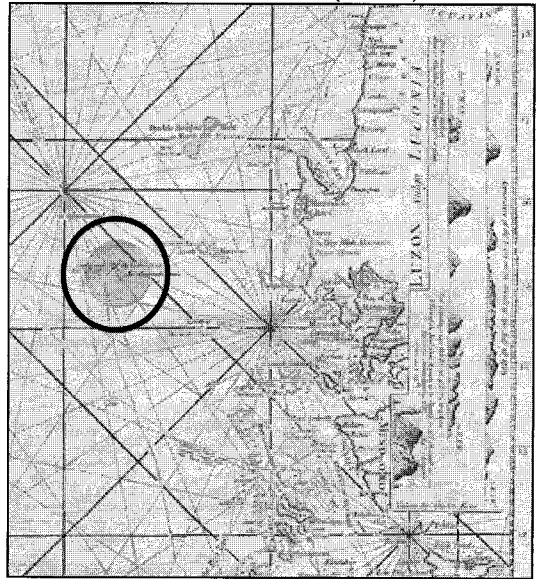


FIGURE 5.21B: 1802 CHART (ZOOM)



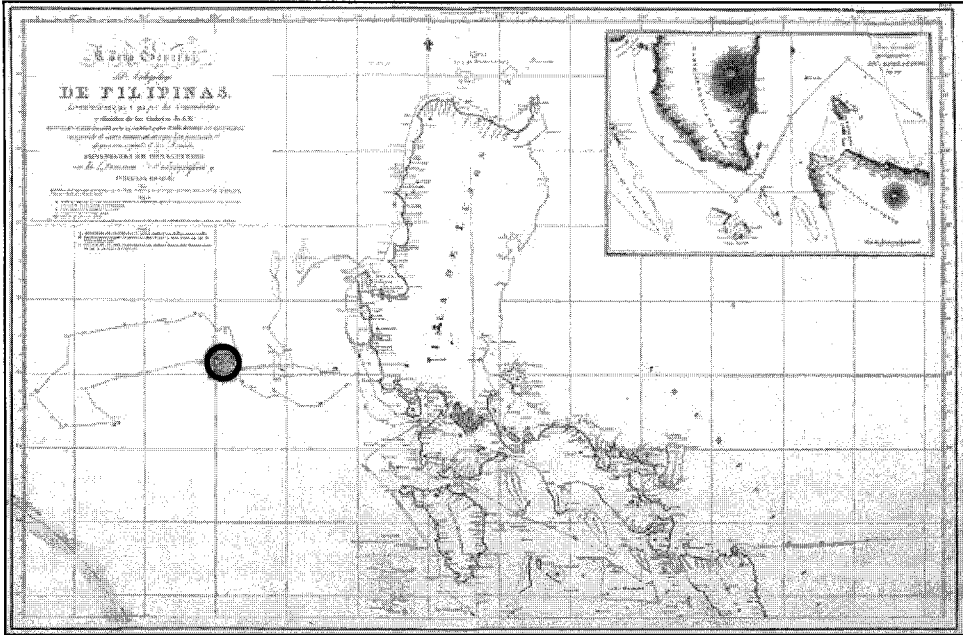
Source: National Library of Australia (Bib ID 3620691, map-rm 1425). (Encircling supplied.)

Published in 1802 in London by Robert Laurie and James Whittle, this map (see *Figures 5.21A* and *5.21B*) is entitled *A New Chart of the China Sea and its Several Entrances*. *The map shows "Scarborough" shoal, with the words "Scarborough Sept. 12th, 1748" and "the Negroes Head."*

22. Carta General del Archipiélago de
Filipinas (1808)

Published in 1808 in Madrid by the Direccion de Hidrografica from the surveys of the Malaspina Expedition, this map (see *Figure 5.22*) is entitled *Carta General del Archipiélago de Filipinas*. *The shoal is called Bajo de Masingloc, but the map also adds "o Scarborough."*

FIGURE 5.22: 1808 MAP



Source: Museo Naval de Madrid; copied by the Philippine Embassy in Madrid. (Encircling supplied.)

**23. East India Islands on Mercator’s Projection
(1814 – 1832)**

Published between 1814 and 1832 in London by Thomas Kelly, this map (see *Figure 5.23A*) is entitled *East India Islands on Mercator’s Projection*. The map shows “Scarboro” shoal (see *Figure 5.23B*, encircled portion).

24. Asia (1818)

Published in 1818 in Philadelphia by John Pinkerton, this map (see *Figure 5.24A*) is entitled *Asia*. The map shows Scarborough shoal (see *Figure 5.24B*, encircled portion).

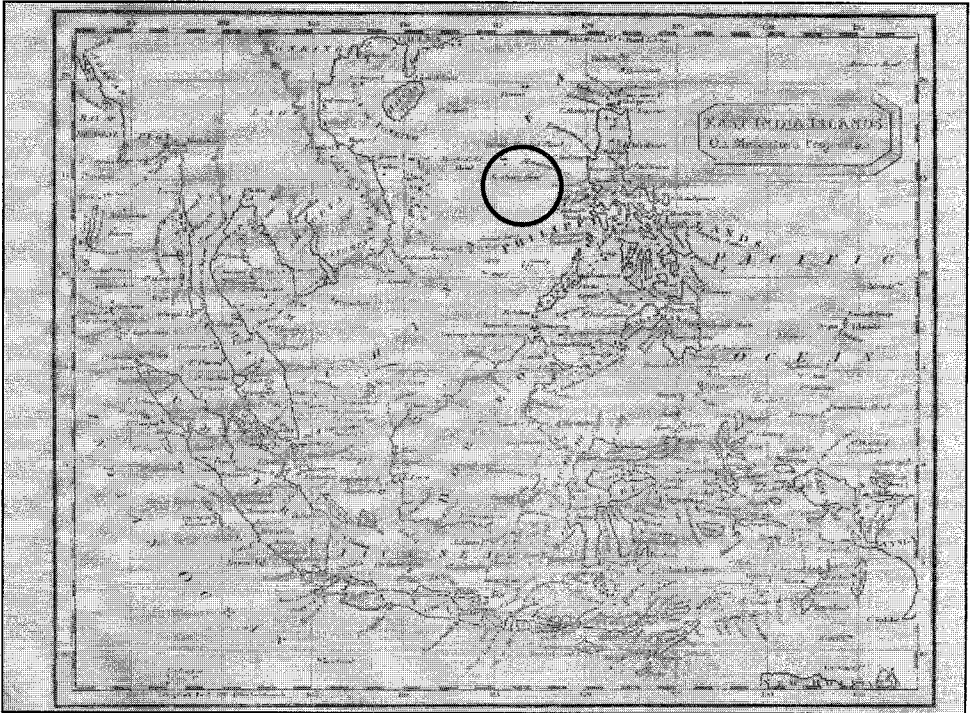
25. Islas Filipinas (1852)

Published in 1852 in Madrid by Antonio Morata and D. Francisco Coello, this map (see *Figure 5.25A*) is entitled *Islas Filipinas*. The maps shows Bajo Masinloc (see *Figure 5.25B*, encircled portion).

26. Carta Esferica del Oceano Indio (1861 – 1865)

Published in 1861 and 1865 in Madrid by the Direccion de Hidrografica, this map (see *Figure 5.26A*) is entitled *Carta Esferica del Oceano Indio*. The map shows “B. Masingloc” (see *Figure 5.26B*, encircled portion).

FIGURE 5.23A: 1814 – 32 MAP



Source: National Library of Australia (Bib ID 1493073, map-rm2639). (Encircling supplied.)

FIGURE 5.23B: 1814 – 32 MAP (ZOOM)



FIGURE 5.24A: 1818 MAP



Source: US Library of Congress (Catalogue No. 2006636622, Digital ID g7400 ct1990). (Encircling supplied.)

FIGURE 5.24B: 1818 (ZOOM)

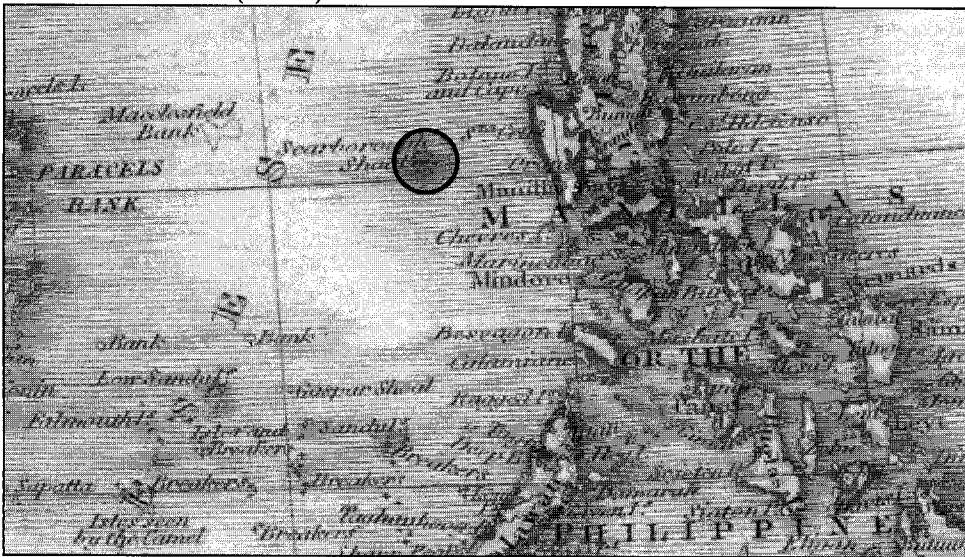
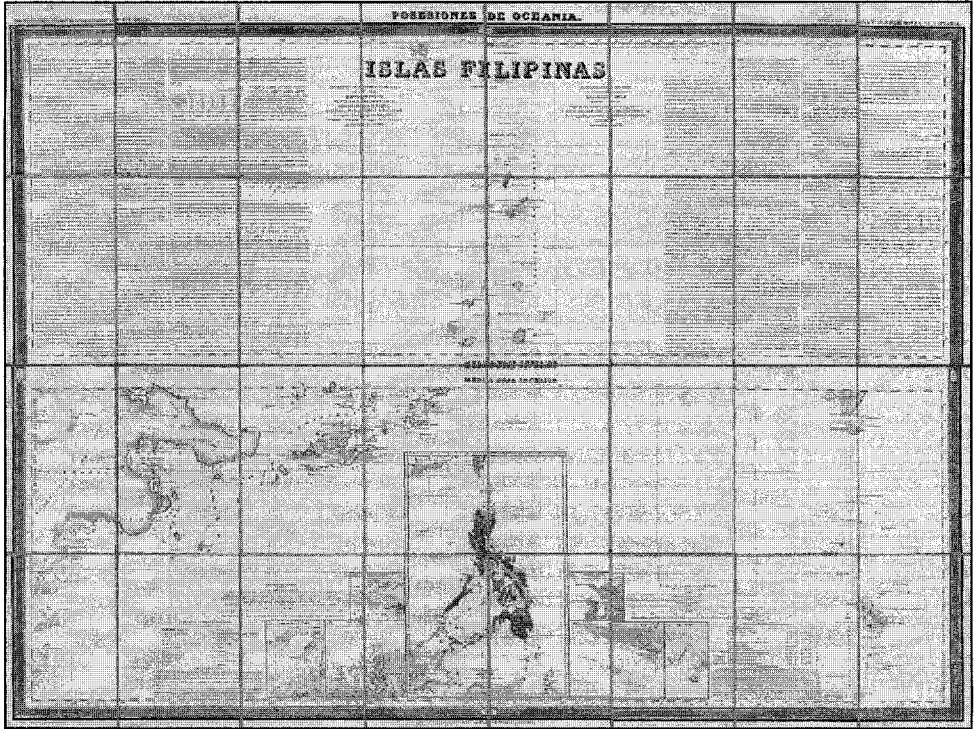


FIGURE 5.25A: 1852 MAP



Source: National Library of Australia (Bib ID 3639193, map-rm1608). (Encircling supplied.)

FIGURE 5.25B: 1852 MAP (ZOOM)

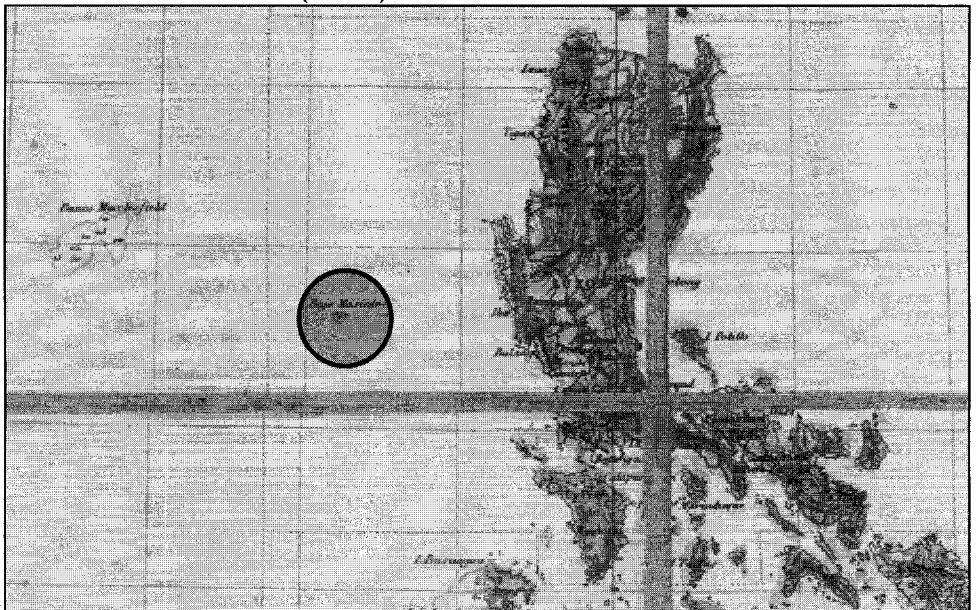
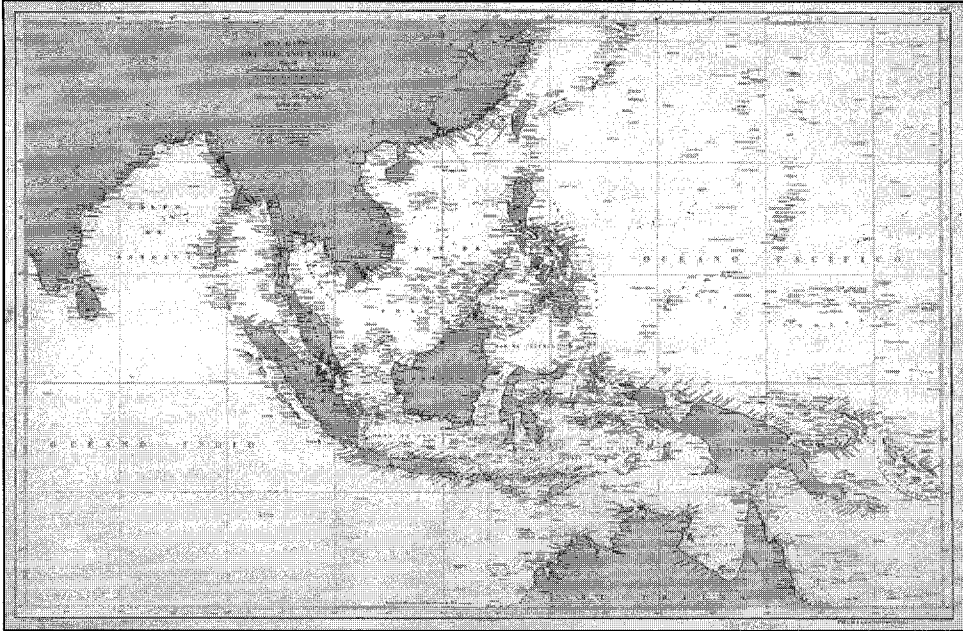
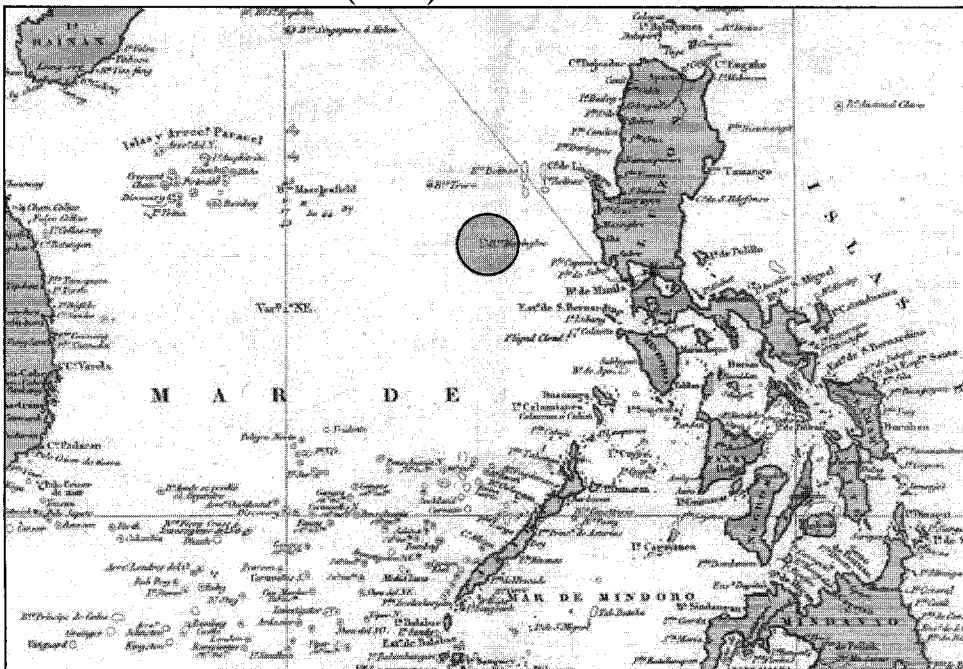


FIGURE 5.26A: 1861 – 65 MAP



Source: National Library of Australia (Bib ID 122670, map-rm2237). (Encircling supplied.)

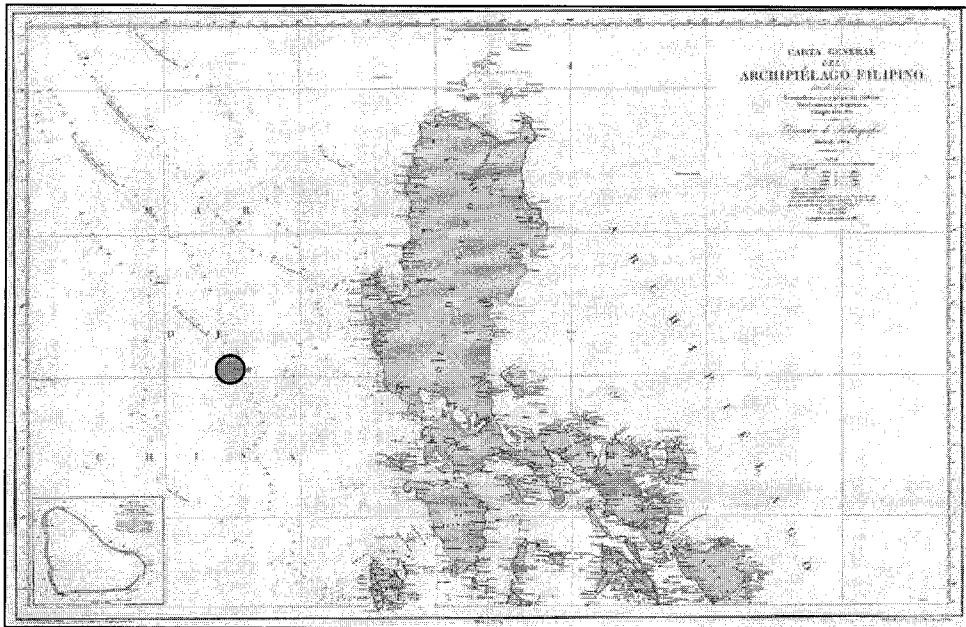
FIGURE 5.26B: 1861 – 65 MAP (ZOOM)



27. Carta General del Archipelago Filipino (1862)

Published in 1862 in Madrid by the Direccion de Hidrografia, this map (see *Figure 5.27*) is entitled “Carta General del Archipelago Filipino.” *This map shows “Bajo Masingloc o Scarborough”* (see *Figure 5.27*, encircled portion and inset).

FIGURE 5.27: 1862 MAP



Source: Museo Naval de Madrid; copied by the Philippine Embassy in Madrid. (Encircling supplied.)

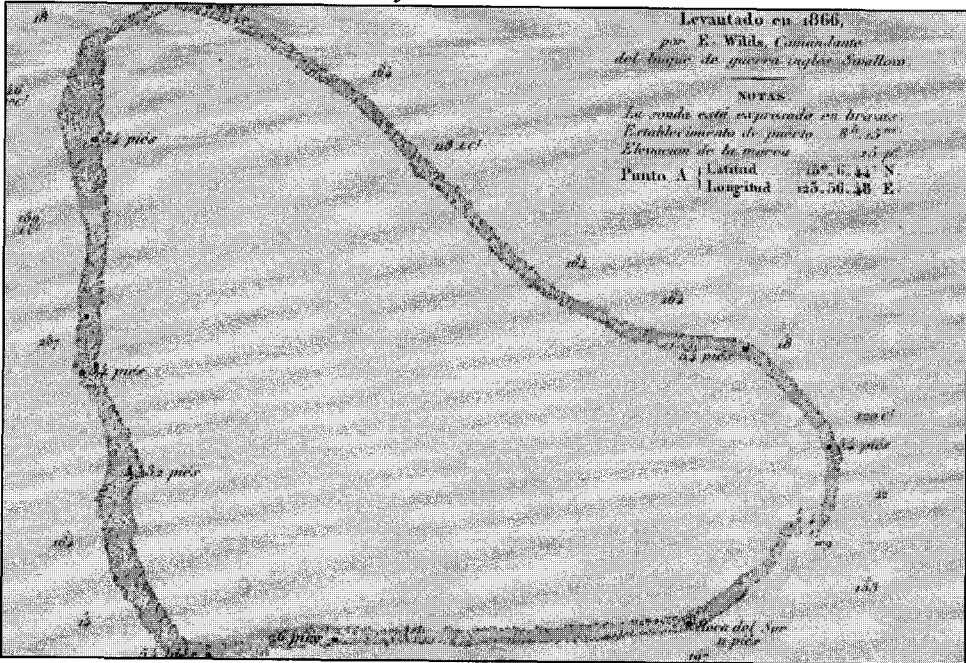
28. Plano del Bajo Masingloc (1866)

Published in 1866 by E. Wilds, the Commander of the English warship *Swallow*, this map (see *Figure 5.28*) is entitled *Plano del Bajo Masingloc*.

29. Carta General del Oceano Indico (1871)

Published in 1871 in Madrid by the Seccion de Hidrografia, this map (see *Figure 5.29A*) is entitled *Carta General del Oceano Indico*. *The map shows “B. Masingloc”* (see *Figure 5.29B*, encircled portion).

FIGURE 5.28: 1866 PLANO DEL BAJO MASINGLOC



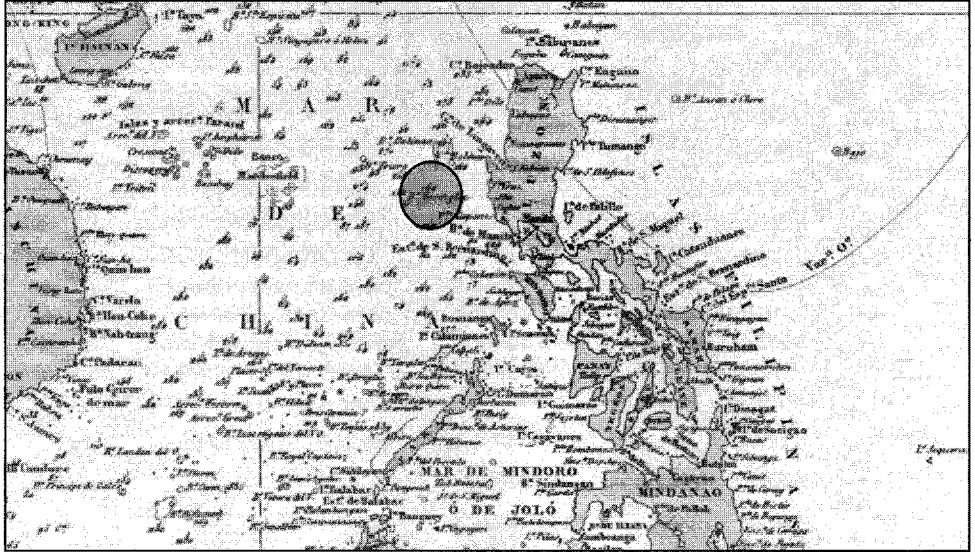
Source: Museo Naval de Madrid; copied by the Philippine Embassy in Madrid.

FIGURE 5.29A: 1871 MAP



Source: National Library of Australia (Bib ID 2823213, map-rm2235). (Encircling supplied.)

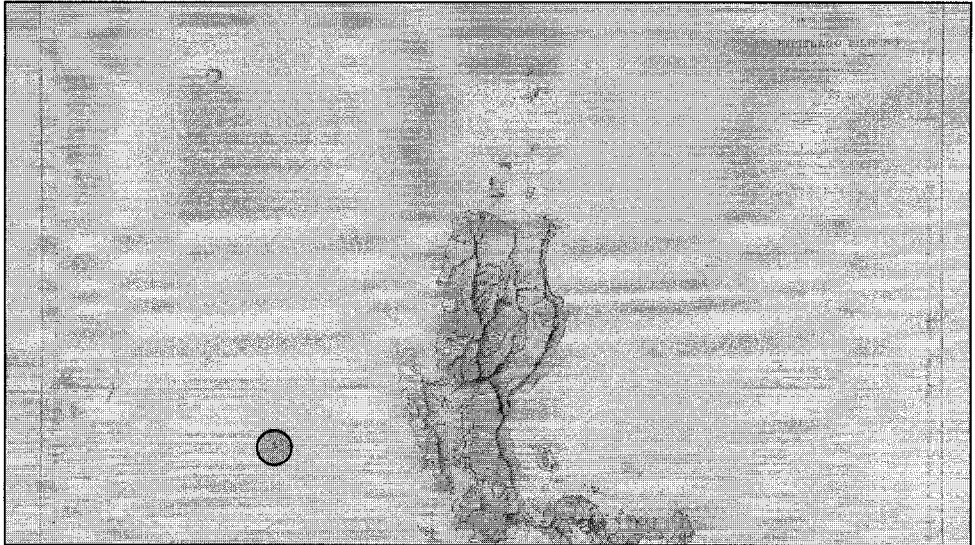
FIGURE 5.29B: 1871 MAP (ZOOM)



30. Carta General del Archipelago Filipino (1875)

Published in 1875 in Madrid by the Direccion de Hidrographia, this map (see Figure 5.30) is entitled *Carta General del Archipelago Filipino*. The map shows “B. Masingloc o Scarborough.”

FIGURE 5.30: 1875 MAP (PORTION)



Source: Museo Naval de Madrid; copied by the Philippine Embassy in Madrid. (Emphasis supplied.)

31. Carta General del Oceano Pacifico (1897)

FIGURE 5.31A: 1897 MAP

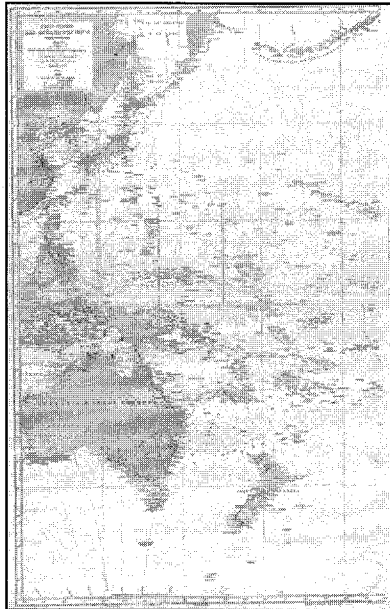
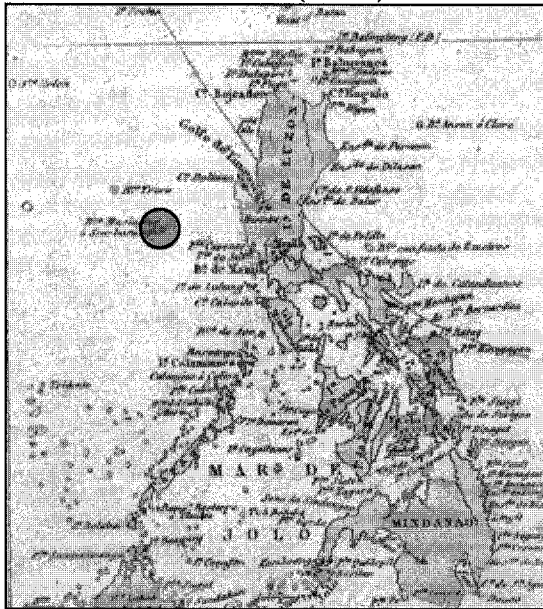


FIGURE 5.31B: 1897 MAP (ZOOM)



Source: National Library of Australia (Bib ID 1449962, map-rm3380). (Encircling supplied.)

Published in 1897 in Madrid by the Seccion Hidrographia, this map (see Figure 5.31A) is entitled *Carta General del Oceano Pacifico*. The map shows “B. Masingloc o Scarborough” (see Figure 5.31B, encircled portion).

32. Islas Filipinas—Mapa General—Observatorio de Manila (1899)

Published in 1899 in Washington, DC by the Jesuit Jose P. Algue and the US Coast and Geodetic Survey, this map (see Figure 5.32A) is entitled *Islas Filipinas—Mapa General—Observatorio de Manila*. The map shows “B. Masinloc” (see Figure 5.32B, encircled portion).

33. Map of the Philippine Islands (1908)

Published in 1908 in Baltimore by Caspar Hodgson, this map (see Figure 5.33A) is entitled *Map of the Philippine Islands*. The map shows “Scarborough” shoal (see Figure 5.33B, encircled portion).

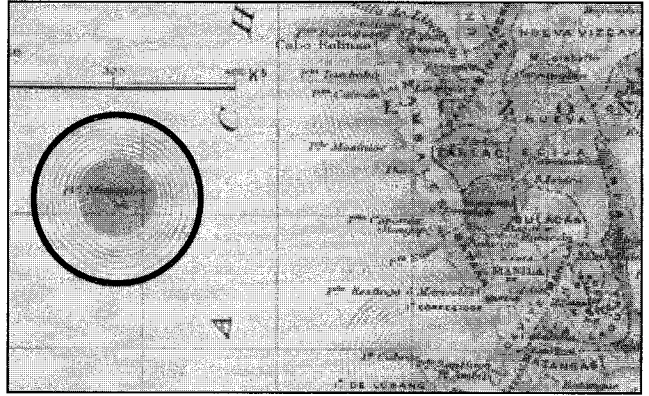
34. Philippine Islands (1933)

Published in 1933 and reissued in 1940 in Washington, DC by the US Coast and Geodetic Survey, this map (see *Figure 5.34A*) is entitled *Philippine Islands*. The map shows “Scarborough” shoal with depth soundings (see *Figure 5.34B*, encircled portion).

FIGURE 5.32A: 1899 MAP



FIGURE 5.32B: 1899 MAP (ZOOM)



Source: Atlas de Filipinas, Internet Archive, Ohio State University Library, at <https://archive.org/details/AtlasDeFilipinasColeccionDe30MapasTrabajadosPorDelineantes/ark:/13960/t2d804v8j>. (Encircling supplied.)

FIGURE 5.33A: 1908 MAP

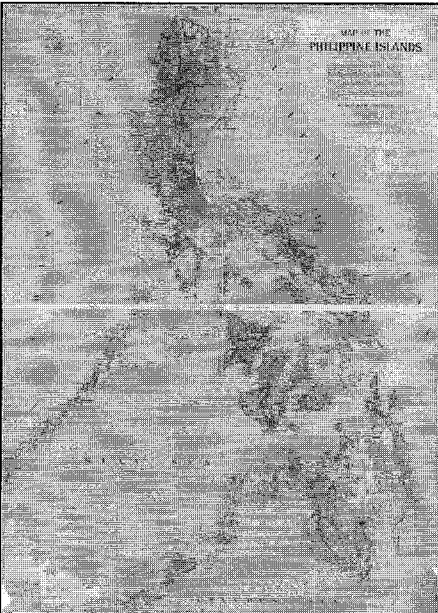
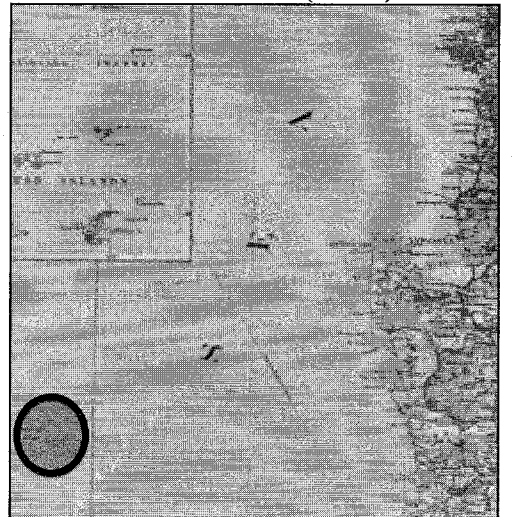


FIGURE 5.33B: 1908 MAP (ZOOM)

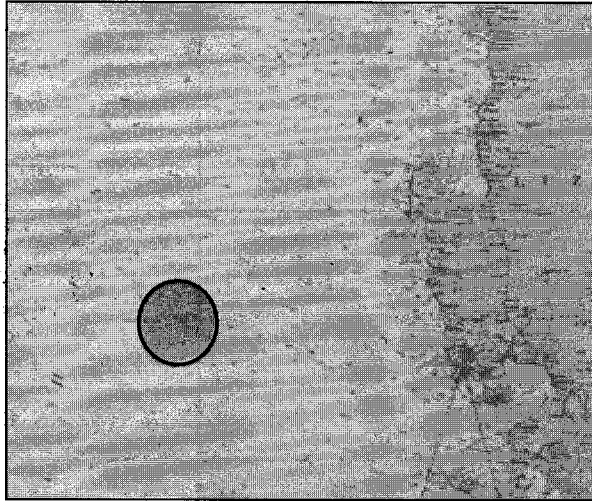


Source: US Library of Congress (Catalogue No. 2013590196, Digital ID g8060 ct003965). (Encircling supplied.)

FIGURE 5.34A: 1933 MAP



FIGURE 5.34B: 1933 MAP (ZOOM)



Source: US Library of Congress (Catalogue No. 2011592026, Digital ID g8061p ct003542). (Encircling supplied.)

B. The Philippine Claim to Scarborough Shoal

All these maps of the Philippines, from 1636 to 1940, a period of 304 years, consistently show Scarborough Shoal, whether named or unnamed, as part of the Philippines. Colonial administrators, navigators, cartographers, historians, seamen, voyagers, and fishermen have all, through the centuries, considered Scarborough Shoal as part of the Philippines.

The 1898 Treaty of Paris between Spain and the United States drew a rectangular line wherein Spain ceded to the United States all of Spain's territories found within the treaty lines.⁵⁸ Scarborough Shoal is outside the treaty lines. However, two years later, in the 1900 Treaty of Washington, Spain clarified that it had also relinquished to the United States "all title and claim of title, which [Spain] may have had at the time of the conclusion of the Treaty of Peace of Paris, to any and all islands belonging to the Philippine Archipelago, lying outside the lines" of the Treaty of Paris.⁵⁹ Thus, Spain ceded Scarborough Shoal to the United States under the 1900 Treaty of Washington.

⁵⁸ Treaty of Peace Between the United States and Spain, U.S.-Spain, art. 3, Oct. 1, 1898, available at http://avalon.law.yale.edu/19th_century/sp1898.asp.

⁵⁹ Treaty Between the Kingdom of Spain and the United States of America for Cession of Outlying Islands of the Philippines, U.S.-Spain, Nov. 7, 1900, available at <http://www.gov.ph/1900/11/07/the-philippine-claim-to-a-portion-of-north-borneo-treaty-between-the-kingdom-spain-and-the-united-states-of-america-for-cession-of-outlying-islands-of-the-philippines-1900/>.

Under the Philippine-US Military Bases Agreement of March 14, 1947, the US established military bases in the Philippines.⁶⁰ From the 1960s to the 1980s, US military warplanes, together with Philippine Air Force warplanes, used Scarborough Shoal as an impact range when they practiced bombing runs.⁶¹ Neither China nor any other country protested these bombing practices by American and Philippine warplanes, despite worldwide prior Notices to Mariners, through the International Maritime Organization of the United Nations, to keep away from Scarborough Shoal during the bombing practices. If the Philippines can bomb a shoal repeatedly over decades without any protest from neighboring states, it certainly must have sovereignty over such shoal.

V. HISTORICAL LIES IN THE WEST PHILIPPINE SEA

The claim by China that the islands, rocks, reefs, as well as waters enclosed by its nine-dashed line, belong to China based on ancient history is glaringly false. Since 6,000 years ago until the present, the South China Sea has been the migration and trading routes, as well as fishing grounds, of all the peoples and states bordering the South China Sea. China's claim today that the South China Sea belonged to China since time immemorial is an egregious historical lie, and patently contrary to indisputable historical facts. Historical records actually show that ancient China, a land power dependent on an agricultural economy, is a latecomer to the waters of the South China Sea. The sea voyages of Admiral Zheng He came several thousand years after the sea migrations and maritime trading activities of the Southeast Asian peoples.

Since the Song Dynasty until 1946, China's official maps, its Republican Constitutions, and its official statement to the world as shown by its 1932 *Note Verbale* to France,⁶² China has always officially declared to the world that its southernmost territory is Hainan Island. China's assertion today that its nine-dashed line claim is based on abundant historical facts is a blatant lie, so obviously contrary to its own official historical documents and pronouncements.

China's nine-dashed line claim is on its face a gigantic historical fraud. Under the nine-dashed lines, China claims that its southernmost territory is

⁶⁰ Agreement Between the United States of America and the Republic of the Philippines Concerning Military Bases, Phil-U.S, Mar. 14, 1947, 43 U.N.T.S. 271.

⁶¹ Scott Tuason, a Filipino diver and author of several books on underwater wildlife photography, has taken pictures of wreckages of dummy ordnances in the waters of Scarborough Shoal.

⁶² 1932 Note Verbale, *supra* note 56.

James Shoal, 50 NM from the coast of Bintulu, Sarawak, Malaysia. James Shoal is a fully submerged reef, 22 meters under water, entirely within Malaysia's 200-NM EEZ and more than 950 NM from China. How did the fully submerged James Shoal become China's southernmost territory? In an article on the James Shoal published by Bill Hayton, a well-known British journalist, he states:

How did the Chinese state come to regard this obscure feature, so far from home, as its southernmost point? I've been researching the question for some time while writing a book on the South China Sea. The most likely answer seems to be that it was probably the result of a translation error.

In the 1930s, China was engulfed in waves of nationalist anxiety. The predation of the Western powers and imperial Japan, and the inability of the Republic of China to do anything meaningful to stop them, caused anger both in the streets and the corridors of power. In 1933, the republic created the "Inspection Committee for Land and Water Maps" to formally list, describe and map every part of Chinese territory. It was an attempt to assert sovereignty over the republic's vast territory.

The major problem facing the committee, at least in the South China Sea, was that it had no means of actually surveying any of the features it wanted to claim. Instead, the committee simply copied the existing British charts and changed the names of the islands to make them sound Chinese. We know they did this because the committee's map included about 20 mistakes that appeared on the British map—features that in later, better surveys were found not to actually exist.

The committee gave some of the Spratly islands Chinese names. North Danger Reef became Beixian (the Chinese translation of "north danger"), Antelope Reef became Lingyang (the Chinese word for antelope). Other names were just transliterated so, for example, Spratly Island became Sipulateli and James Shoal became Zengmu. And this seems to be where the mistakes crept in.

But how to translate "shoal"? It's a nautical word meaning an area of shallow sea where waves "shoal" up. Sailors would see a strange area of choppy water in the middle of the ocean and know the area was shallow and therefore dangerous. James Shoal is one of many similar features in the Spratlys.

But the committee didn't seem to understand this obscure English term because they translated "shoal" as "tan"—the Chinese word for beach or sandbank—a feature which is usually above water. The committee, never having visited the area, seems to have declared

James Shoal/Zengmu Tan to be a piece of land and therefore a piece of China.⁶³

Apparently, Chinese leaders and cartographers claimed James Shoal as China's southernmost territory even without seeing James Shoal. Certainly, no Chinese could have gone ashore to "visit" James Shoal. James Shoal is the only national border in the world that is fully submerged and beyond the territorial sea of the claimant state.

Today, when Chinese naval vessels visit James Shoal, they would occasionally drop to the bottom of James Shoal cement and steel markers to designate China's southernmost territory. Of course, this is blatantly contrary to the UNCLOS, which prohibits any state from appropriating submerged features beyond its territorial sea. Not even Malaysia, whose coastline is just 50 NW away, can claim James Shoal as its sovereign territory.

Bill Hayton's account of how James Shoal became China's southernmost territory gives us an idea how dubious China's "historical facts" are under its nine-dashed line claim.⁶⁴

Another obvious anomaly in China's nine-dashed line claim is China's insistence that what is internationally known as Macclesfield Bank (or English Bank in earlier maps) are islands, which China calls *Zhongsan Islands* (meaning "Central Sandy Islands"). Macclesfield Bank is not an island because it is a fully submerged atoll, the highest point being 9.2 meters below the sea level. With an area of 6,448 square kilometers, Macclesfield Bank is one of the largest atolls in the world. It is named after HMS Macclesfield, a British warship that ran aground in the area in 1804.

Under the UNCLOS, an island is defined as a naturally formed area of land, surrounded by water, and above water at high tide.⁶⁵ How a fully submerged atoll can be called *Zhongsan Islands* is yet another lie that China is trying to foist on coastal states in the South China Sea. The undeniable fact is Macclesfield Bank, being fully submerged and beyond the territorial sea of any coastal state, is not capable of appropriation by any state under international law and the UNCLOS. It cannot even form part of an EEZ because it is more than 200 NM from either Hainan Island or Luzon. The waters and living resources of

⁶³ Bill Hayton, *How a Non-existent Island Became China's Southernmost Territory*, South China Morning Post, Feb. 9, 2013, available at <http://www.scmp.com/comment/insight-opinion/article/1146151/how-non-existent-island-became-chinas-southernmost-territory?page=all>.

⁶⁴ Bill Hayton is coming out in 2014 with his book *Spratlys: Dangerous Grounds*, which will detail how China invented its nine-dashed line claim.

⁶⁵ UNCLOS, art. 121(1).

Macclesfield Bank are part of the high seas, belonging to all mankind. China cannot unilaterally appropriate for itself what international law and the UNCLOS have reserved for all mankind.⁶⁶ To do so would amount to a grand theft of what belongs to all nations, coastal and landlocked.

Another glaring historical lie being spread by China is the claim that Scarborough Shoal, or *Huangyan Island* to the Chinese, is the *Nanhai Island* that the 13th century Chinese astronomer-engineer-mathematician Guo Shoujing allegedly visited in 1279, having been ordered by Emperor Kublai Khan to conduct a survey of the Four Seas to update the Song Dynasty calendar system. Thus, the website of the Chinese Embassy in Manila claims:

Huangyan Island was first discovered and drew [sic] into China's map in China's Yuan Dynasty (1271-1368 AD). In 1279, *Chinese astronomer Guo Shoujing performed surveying of the seas around China for Kublai Khan, and Huangyan Island was chosen as the point in the South China Sea.*⁶⁷

The alleged visit of Gou Shoujing to Scarborough Shoal in 1279 is the only historical link that China claims to Scarborough Shoal.

However, in an official document issued on January 30, 1980, China's Ministry of Foreign Affairs officially declared that the Nanhai Island that Guo Shoujing visited in 1279 was in *Xisha* (or what is internationally called the Paracels), a group of islands more than 380 NM from Scarborough Shoal. China issued this official document to bolster its claim to the Paracels to counter Vietnam's strong historical claims to the same islands. This Chinese official document states:

Early in the Yuan Dynasty, an astronomical observation was carried out at 27 places throughout the country. In the 16th year of the reign of Zhiyuan (1279) Kublai Khan or Emperor Shi Zu, [sic] personally assigned Guo Shoujing, the famous astronomer and Deputy Director of the Astronomical Bureau, to do the observation in the South China Sea. According to the official History of the Yuan Dynasty, Nanhai, Gou's observation point, was "to the south of Zhuya" and "the result of the survey showed that the latitude of Nanhai is 15°N." *The astronomical observation point Nanhai was today's Xisha Islands. It shows that Xisha Islands were within the bounds of China at the time of the Yuan dynasty.*⁶⁸

⁶⁶ Art. 137.

⁶⁷ Embassy of the People's Republic of China in the Republic of the Philippines, *China's Sovereignty over the Huangyan Island is Indisputable*, Chinese Embassy in Manila Website, May 6, 2012, available at <http://ph.china-embassy.org/eng/zt/nhwt/t931870.htm>. (Emphasis supplied.)

⁶⁸ Chinese Ministry of Foreign Affairs, *China's Sovereignty Over Xisha and Zhongya Islands Is Indisputable*, Beijing Rev., Feb. 18, 1980. (Emphasis supplied.)

China is now estopped from claiming that Scarborough Shoal is Nanhai Island. China has officially declared that Nanhai Island is in the Paracels, and thus China can no longer claim that Scarborough Shoal is the Nanhai Island that Gou Shoujing visited in 1279. Besides, it is quite ridiculous to claim that the famous Chinese astronomer-engineer-mathematician would visit and write for posterity about a few barren rocks that barely protruded above water at high tide.

One could not imagine how Guo Shoujing went ashore to “visit” Scarborough Shoal when it was just a rock, with no vegetation, and did not even have enough space to accommodate an expedition party. Worse, the Chinese historical account that Guo Shoujing installed one of the 27 Chinese observatories on Nanhai Island clearly rules out any possibility that Scarborough is Nanhai Island because no observatory could have possibly been physically installed on Scarborough Shoal at that time.

Based on the extant Gaocheng Observatory built in 1276 by Guo Shoujing in Henan Province, Guo Shoujing’s 27 observatories were massive 12.6 meters high structures. The purpose of the observatories was to accurately determine the duration of the calendar year. To operate such an observatory, one had to visit the top of the observatory every day of the year to take measurements. There was simply no way at that time that such an observatory could have been built and operated on the tiny rocks of Scarborough Shoal.

In short, it is both physically and legally impossible for Scarborough Shoal to be Nanhai Island—physically because no observatory could possibly have been installed in 1279 on the tiny Scarborough rocks, and legally because China has already officially declared that Nanhai is in the Paracels, more than 380 NM from Scarborough Shoal.

VI. THE HISTORICAL RIGHTS IN THE WEST PHILIPPINE SEA

Historical rights have no place in the South China Sea. First, the UNCLOS extinguished all historical rights of other states within the 200-NM EEZ of the adjacent coastal state. That is why this 200-NM zone is called “exclusive”—no state other than the adjacent coastal state can economically exploit its resources.⁶⁹ Fishing rights that other states historically enjoyed within the EEZ of the adjacent coastal state automatically terminated upon the

⁶⁹ UNCLOS, art. 56(1)(a).

effectivity of the UNCLOS. Moreover, the UNCLOS prohibits states from making any reservation or exception to the UNCLOS unless expressly allowed by the same Convention.⁷⁰ Any reservation of claims to “historical rights” over the EEZ or the Extended Continental Shelf (“ECS”) of another coastal state is prohibited because the UNCLOS does not allow a state to claim “historical rights” to the EEZ or the ECS of another state. In short, the UNCLOS does not recognize “historical rights” as basis for claiming the EEZs or ECSs of other states.

The few cases where the waters beyond the territorial sea were still treated as internal waters because of “historical rights” all happened before the advent of the UNCLOS, when the breadth of the territorial sea was still three miles. These cases involved deeply indented bays, like the Chesapeake Bay bordering Maryland and Virginia in the United States, or deeply indented gulfs, like the Gulf of Fonseca in Central America bordering Honduras, Nicaragua, and El Salvador. These bays and gulfs are adjacent to the coast and have long been accepted by other states as internal waters. With the UNCLOS, the territorial sea has been extended to 12 NM, and a 200-NM EEZ has been granted to coastal states, removing the need for a state to invoke “historical rights” to exclude other states from its deeply indented bays or gulfs. In none of these few cases has “historical rights” been invoked to claim a non-adjacent area beyond 200-NM from the coast, or to claim an entire or nearly an entire sea bordering several States.

Second, under the UNCLOS, the term *historic bays* refers to internal waters,⁷¹ and the term *historic titles*⁷² refers to territorial seas. A state can claim “historical rights” over waters only as part of its internal waters or territorial sea. The South China Sea, beyond the 12-NM territorial sea of coastal States, has never been considered as the internal waters or territorial sea of any State. Since time immemorial, ships of all nations have exercised freedom of navigation in the South China Sea. Likewise, since the time airplanes flew across the seas, aircrafts of all nations have exercised freedom of over-flight over the South China Sea. If the South China Sea were the internal waters or territorial sea of China, then no state could have exercised freedom of navigation and freedom of over-flight over the South China Sea. Indeed, China has stated that there is freedom of navigation and freedom of over-flight in the South China Sea⁷³—an

⁷⁰ Art. 309.

⁷¹ Art. 10, *in relation to art. 7, in relation to art. 8.*

⁷² Art. 15.

⁷³ “The Chinese government has always maintained that the freedom of navigation of all countries in the South China Sea should be safeguarded, and has actively participated in the maritime safety cooperation in this region. The actions taken by China in safeguarding its sovereignty and maritime interests in the South China Sea do not affect other countries' freedom

admission that the South China Sea does not constitute its internal waters or territorial sea.

The waters enclosed by China's nine-dashed line claim are neither internal waters nor territorial sea of China. The waters cannot also form part of China's EEZ or ECS because they are not drawn from China's baselines and are beyond the limits of China's EEZ and ECS as drawn from China's baselines. In other words, China's claim to the waters enclosed by the nine-dashed line claim does not fall under any of the maritime zones recognized by international law or the UNCLOS—namely, internal waters, territorial sea, EEZ, and ECS—that could be claimed by a coastal state. Only China seems to know under what maritime zone the nine-dashed line waters fall, but China is not telling the world except to claim “indisputable sovereignty” over such waters by “historical rights.”

Third, under the general principles and rules of international law, a claim of “historical rights” to internal waters or territorial sea must satisfy four conditions.⁷⁴ One, the state must formally announce to the international community such claim to internal waters or territorial sea, clearly specifying the nature and scope of such claim. Two, the state must exercise effective authority, that is, sovereignty, over the waters it claims as its own internal waters or territorial sea. Three, such exercise of effective authority must be continuous over a substantial period of time. Four, other states must recognize, tolerate or acquiesce in to the exercise of such authority.

China fails to comply with any of these four conditions. China officially notified the world of its nine-dashed line claim only in 2009. Not a single country in the world recognizes, respects, tolerates, or acquiesces to China's nine-dashed line claim. China has never effectively enforced its nine-dashed line claim from 1947 to 1994—when the UNCLOS took effect—and even after 1994 up to the present. Thus, under the general principles and rules of international law, China cannot claim “historical rights” that pre-dated the UNCLOS. Even assuming, for the sake of argument, that China has such “historical rights,” the entry into force of the UNCLOS in 1994 extinguished

of navigation and overflight which are conducted in accordance with the international law.” [Zhang Hua, Embassy of the People's Republic of China in the Republic of the Philippines, *China's Position on the Territorial Disputes in the South China Sea between China and the Philippines*, Chinese Embassy in Manila Website, Apr. 3, 2014, available at <http://ph.china-embassy.org/eng/xwfb/t1143881.htm>.]

⁷⁴ See Juridical Regime of Historic Waters, Including Historic Bays, [1962] 2 Y.B. Int'l Comm'n 1, *et seq.*, U.N. Doc. A/CN.4/143. See also CLIVE R. SYMMONS, HISTORIC WATERS IN THE LAW OF THE SEA 111-12 (2008).

such rights. Under the UNCLOS, a state cannot claim any “historical right” to the EEZ or ECS of another state.

VII. CONCLUSION

Clearly, there is nothing “historical” or “right” about China’s nine-dashed line claim. The nine-dashed line claim is based not on historical facts but on historical lies. Since the start of the Song Dynasty in 960 AD until the end of the Qing Dynasty in 1912—a period of 952 years or almost a millennium—the southernmost territory of China had always been Hainan Island, based on all official and unofficial maps of China. After the establishment of the Republic of China in 1912, the Constitutions adopted by it from 1912 to 1946 consistently declared that the territory of the Republic of China remained the same as the territory of the Qing Empire. As late as 1932, the Chinese Government in a *Note Verbale* to France reiterated to the world that the southernmost territory of China is Hainan Island. These unilateral declarations of China are binding on China under international law. The southernmost territory of China under its imperial dynasties was always Hainan Island, and has remained so under several Constitutions of the Republic of China.

Neither the Spratlys nor Scarborough Shoal appeared in any Chinese dynasty maps, as obviously the Spratlys and Scarborough are several hundred miles farther south to Hainan Island. In fact, the Spratlys are more than 600 NM, and Scarborough Shoal is more than 500 NM, from Hainan Island, which is at the other end of the South China Sea. The Chinese claim today that Scarborough Shoal is the Nanhai island where Guo Shoujing erected a celestial observatory is a double lie, because China already officially declared in 1982 that Nanhai Island is in the Paracels, and it was physically impossible for Guo Shoujing to have erected an observatory in Scarborough Shoal.

Numerous ancient maps made by westerners, and later by Philippine authorities, from 1636 to 1940, consistently showed that Scarborough Shoal, also known as *Panacot* and *Bajo de Masinloc*, has always been part of Philippine territory. Scarborough Shoal has never appeared in a single ancient Chinese map throughout the long history of China. Neither is there any historical record of any Chinese expedition to Scarborough Shoal. In contrast, the Spaniards and the Americans extensively surveyed Scarborough Shoal during the time they were the colonial powers in the Philippines.

In sum, China's so-called "historical facts" which it invokes to justify its nine-dashed lines are glaringly inconsistent with actual historical facts, based on China's own historical maps, constitutions, and official pronouncements. China has no historical link whatsoever to Scarborough Shoal. The rocks of Scarborough Shoal were never bequeathed to the present generation of Chinese by their ancestors because their ancestors never owned those rocks in the first place.

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