

The importance of evidence: fact, fiction and the South China Sea

Bill Hayton, author 'The South China Sea: the struggle for power in Asia'

May 2015

In just a few weeks, international judges will begin to consider the legality of China's 'U-shaped line' claim in the South China Sea. The venue will be the Permanent Court of Arbitration in The Hague and the Court's first step – during deliberations in July – will be to consider whether it should even consider the case. China's best hope is that the judges will rule themselves out of order because if they don't, and the Philippines' case proceeds, it's highly likely that China will suffer a major embarrassment.

The Philippines wants the Court to rule that, under the UN Convention on the Law of the Sea (UNCLOS), China can only claim sovereignty and the rights to resources in the sea within certain distances of land territory. If the court agrees, it will have the effect of shrinking the vast 'U-shaped line' to a few circles no more than 24 nautical miles (about 50km) in diameter.

China is not formally participating in the case but it has submitted its arguments indirectly, particularly through a 'Position Paper' it published last December. The Paper argued that the Court shouldn't hear the Philippines' case until another court had made a ruling on all the competing territorial claims to the different islands, rocks and reefs. This is the issue that the judges will have to consider first.

China's strategy in the 'lawfare' over the South China Sea is to deploy historical arguments in order to outflank arguments based on UNCLOS. China increasingly seems to regard UNLCOS not as a neutral means of resolving disputes but as a partisan weapon wielded by other states in order to deny China its natural rights.

But there is a major problem for China in using these historical arguments. There's hardly any evidence for them.

This isn't the impression the casual reader would get from reading most of the journalistic articles or think-tank reports written about the South China Sea disputes in recent years. That's because almost all of these articles and reports rely for their historical background on a very small number of papers and books. Worryingly, a detailed examination of those works suggests they use unreliable bases from which to write reliable histories.

This is a significant obstacle to resolving the disputes because China's misreading of the historical evidence is the single largest destabilizing factor in the current round of tension. After decades of mis-education, the Chinese population and leadership seem convinced that China is the rightful owner of every feature in the Sea – and possibly of all the water in between. This view is simply not supported by the evidence from the 20th Century.

Who controls the past, controls the future

The problem for the region is that this mis-education is not limited to China. Unreliable evidence is clouding the *international* discourse on the South China Sea disputes. It is skewing assessments of the dispute at high levels of government – both in Southeast Asia and in the

United States. I will use three recent publications illustrate my point: two 2014 'Commentary' papers for the Rarajaratnam School of International Studies in Singapore written by a Chinese academic Li Dexia and a Singaporean Tan Keng Tat¹, a 2015 presentation by the former US Deputy-Ambassador to China, Charles Freeman at Brown University² and a 2014 paper for the US-based Center for Naval Analyses.³

What is striking about these recent works – and they are just exemplars of a much wider literature – is their reliance on historical accounts published many years ago: a small number of papers published in the 1970s, notably one by Hungdah Chiu and Choon-Ho Park;⁴ Marwyn Samuels' 1982 book, *Contest for the South China Sea*;⁵ Greg Austin's 1998 book *China's Ocean Frontier*⁶ and two papers by Jianming Shen published in 1997⁷ and 2002⁸.

These writings have come to form the 'conventional wisdom' about the disputes. Google Scholar calculates that Chiu and Park's paper is cited by 73 others, and Samuels' book by 143. Works that quote these authors include one by Brian Murphy from 1994⁹ and those by Jianming Shen from 1997 and 2002 – which are, in turn, quoted by 34 and 35 others respectively and by Chi-kin Lo, whose 1989 book is cited by 111 other works.¹⁰ Lo explicitly relies on Samuels for most of his historical explanation, indeed praises him for his "meticulous handling of historical data" (p.16). Admiral (ret) Michael McDevitt, who wrote the forward to the CNA paper, noted that *Contest for the South China*, "holds up very well some 40 years later".

These works were the first attempts to explain the history of the disputes to English-speaking audiences. They share some common features:

- They were written by specialists in international law or political science rather than by maritime historians of the region.
- They generally lacked references to primary source material

¹ Li Dexia and Tan Keng Tat, South China Sea Disputes: China Has Evidence of Historical Claims. RSIS Commentary 165 dated 15 August 2014 Available at <http://www.rsis.edu.sg/wp-content/uploads/2014/08/CO14165.pdf>. See also Li Dexia, Xisha (Paracel) Islands: Why China's Sovereignty is 'Indisputable'. RSIS Commentary 116 dated 20 June 2014. Available at <http://www.rsis.edu.sg/wp-content/uploads/2014/07/CO14116.pdf>

² Charles Freeman, Diplomacy on the rocks. Remarks at a Seminar of the Watson Institute for International Studies, Brown University 10 April 2015. <http://chasfreeman.net/diplomacy-on-the-rocks-china-and-other-claimants-in-the-south-china-sea/>

³ Pete Pedrozo, China versus Vietnam: An Analysis of the Competing Claims in the South China Sea, Center for Naval Analyses, August 2014. Available at <http://www.cna.org/sites/default/files/research/IOP-2014-U-008433.pdf>

⁴ Hungdah Chiu & Choon-Ho Park (1975): Legal status of the Paracel and Spratly Islands, *Ocean Development & International Law*, 3:1, 1-28

⁵ Marwyn S. Samuels, *Contest for the South China Sea*, Methuen New York, 1982.

⁶ Greg Austin, *China's Ocean Frontier: International Law, Military Force, and National Development*. Allen & Unwin, 1998

⁷ Jianming Shen, International Law Rules and Historical Evidence Supporting China's Title to the South China Sea Islands, 21 *Hastings International and Comparative Law Review*. 1-75 (1997-1998)

⁸ Jianming Shen, China's Sovereignty over the South China Sea Islands: A Historical Perspective, *CHINESE JIL* (2002), pp. 94-157

⁹ Brian K. Murphy, Dangerous Ground: the Spratly Islands and International Law, *Ocean and Coastal L.J.* (1994), pp. 187-212

¹⁰ Chi-kin Lo, *China's Policy Towards Territorial Disputes: The Case of the South China Sea Islands*. Routledge 1989

- They tended to rely on Chinese media sources that contained no references to original evidence or on works that refer to these sources
- They tended to quote newspaper articles from many years later as proof of fact
- They generally lacked historical contextualizing information
- They were written by authors with strong links to China

The early works on the disputes

English-language writing on the South China Sea disputes emerged in the immediate aftermath of the 'Battle of the Paracels' in January 1974, when PRC forces evicted Republic of Vietnam ('South Vietnam') forces from the western half of the islands.

The first analyses were journalistic, including one by Cheng Huan, then a Chinese-Malaysian law student in London now a senior legal figure in Hong Kong, in the following month's edition of the *Far Eastern Economic Review*.¹¹ In it, he opined that, "China's historical claim [to the Paracels] is so well documented and for so many years back into the very ancient past, that it would be well nigh impossible for any other country to make a meaningful counter claim." This judgement by a fresh-faced student was approvingly quoted in Chi-Kin Lo's 1989 book 'China's Policy Towards Territorial Disputes'.¹²

The first academic works appeared the following year. They included a paper by Tao Cheng for the *Texas International Law Journal*¹³ and another by Hungdah Chiu and Choon-Ho Park for *Ocean Development & International Law*¹⁴. The following year, the Institute for Asian Studies in Hamburg published a monograph by the German academic, Dieter Heinzig, entitled 'Disputed islands in the South China Sea'.¹⁵ These were pioneering papers but their content – and therefore their analysis – was far from neutral.

Cheng's paper relied primarily upon Chinese sources with additional information from American news media. The main Chinese sources were commercial magazines from the 1930s notably editions of the Shanghai-based *Wai Jiao Ping Lun* [*Wai Chiao Ping Lun*] (Foreign Affairs Review) from 1933 and 1934 and *Xin Ya Xiya yue kan* [*Hsin-ya-hsi-ya yueh kan*] (New Asia Monthly) from 1935. These were supplemented by material from the Hong Kong-based news magazine *Ming Pao Monthly* from 1973 and 1974. Other newspapers quoted included *Kuo Wen Chou Pao* (National News Weekly), published in Shanghai between 1924 and 1937, *Renmin Ribao* [*Jen Ming Jih Pao*] (People's Daily) and the New York Times. Cheng didn't reference any French, Vietnamese or Philippine sources with the exception of a 1933 article from *La Geographie* that had been translated and reprinted in *Wai Jiao Ping Lun*.

The paper by Hungdah Chiu and Choon-Ho Park relied upon similar sources. In crucial sections it quotes evidence based upon articles published in 1933 in *Wai Jiao Ping Lun*¹⁶ and *Wai Jiao Yue*

¹¹ Cheng Huan, A matter of legality. *Far Eastern Economic Review*. February 1974

¹² Chi-Kin Lo, China's Policy Towards Territorial Disputes. Routledge, London. 1989

¹³ Tao Cheng, Dispute over the South China Sea Islands, *Texas International Law Journal* 265 (1975)

¹⁴ Chiu & Park (1975) *ibid*

¹⁵ Dieter Heinzig. 'Disputed islands in the South China Sea: Paracels, Spratlys, Pratas, Macclesfield Bank' Institut für Asienkunde (Hamburg). 1976

¹⁶ *Wai-chiao p'ing-lun* [The foreign affairs review], Shanghai, vol. 2, no. 10 (October 1933), pp. 64-65

Bao [*Wai-chiao yüeh-pao*] (Diplomacy monthly),¹⁷ and *Fan-chih yüeh-k'an* [Geography monthly] from 1934¹⁸ as well as *Kuo-wen Chou Pao* [National news weekly] from 1933 and the Chinese government's own *Wai-chiao-pu kung-pao*, [Gazette of the Ministry of Foreign Affairs].¹⁹ It supplements this information with material gathered from a 1948 Shanghai publication by Cheng Tzu-yüeh, *Nan-hai chu-tao ti-li chih-lüeh* (General records on the geography of southern islands)²⁰ and Republic of China government statements from 1956²¹ and 1974²².

Chiu and Park do use some Vietnamese references, notably eight press releases or fact sheets provided by the Embassy of the Republic of Vietnam in Washington. They also refer to some, "unpublished material in the possession of the authors". However, the vast majority of their sources are from the Chinese media.

Writing a year later, Dieter Heinzig relied, in particular, on editions of two Hong Kong-based publications *Ch'i-shih nien-tai* (Seventies Monthly) and *Ming Pao Monthly*²³ published in March and May 1974 respectively.

What is significant is that all these foundational papers used as their basic references Chinese media articles that were published at times when discussion about the South China Sea was highly politicised. 1933 was the year that France formally annexed features in the Spratly Islands – provoking widespread anger in China, 1956 was when a Philippine businessman, Tomas Cloma, claimed most of the Spratlys for his own independent country of 'Freedomland' – provoking counterclaims by the RoC, PRC and Republic of Vietnam; and 1974 was the year of the Paracels battle.

Newspaper articles published during these three periods cannot be assumed to be neutral and dispassionate sources of factual evidence. Rather, they should be expected to be partisan advocates of particular national viewpoints. This is not to say they are automatically incorrect but it would be prudent to verify their claims with primary sources. This is not something that the authors did.

The pattern set by Cheng, Chiu and Park and Heinzig was then repeated in Marwyn Samuels' book *Contest for the South China Sea*.²⁴ Samuels himself acknowledges the Chinese bias of his sources in the book's Introduction, when he states "this is not a study primarily either in Vietnamese or Philippine maritime history, ocean policy or interests in the South China Sea. Rather, even as the various claims and counterclaims are treated at length, the ultimate concern

¹⁷ *Wai-chiao yüeh-pao* [Diplomacy monthly], vol 3, no. 3 (Peiping [Peking], September 15, 1933), p. 78

¹⁸ *Fan-chih yüeh-k'an* [Geography monthly], vol. 7, no. 4 (Nanking, April 1, 1934), p. 2.

¹⁹ *Wai-chiao-pu kung-pao*, [Gazette of the Ministry of Foreign Affairs] vol 6, no. 3 (July-September 1933), p. 208

²⁰ Cheng Tzu-yüeh, *Nan-hai chu-tao ti-li chih-lüeh* [General records on the geography of southern islands] (Shanghai: Shang-wu ying-shu-kuan, 1948).

²¹ Statement made by the ROC Foreign Ministry on June 10, 1956, summarized in "Vietnamese Claim of Sovereignty Refuted," *Free China Weekly*, June 26, 1956, p. 3; *Chung-yang jih-pao*, June 11, 1956, p. 6; Shao Hsun-cheng, "Chinese Islands in the South China Sea," *People's China*, no. 13 (Peking, 1956) Foreign Languages Press

²² *Lien-ho-pao* [United daily news], overseas edition, February 25, 1974, p. 3; "Memorandum on Four Large Archipelagoes," ROC Ministry of Foreign Affairs (February 1974).

²³ *Ming Pao* (yüeh-k'an) No. 101 May 1974

²⁴ Marwyn S. Samuels, *Contest for the South China Sea*, Methuen, New York. 1982

here is with the changing character of Chinese ocean policy.” Compounding the issues, Samuels acknowledges that his Asian research was primarily in Taiwanese archives. However, crucial records relating to the RoC’s actions in the South China Sea in the early 20th Century were only declassified in 2008/9, long after his work was published.²⁵

There was another burst of history-writing in the late 1990s. The former US State Department Geographer turned oil-sector consultant Daniel Dzurek wrote a paper for the International Boundaries Research Unit of the University of Durham in 1996 and a book by an Australian analyst Greg Austin was published in 1998. Austin’s historical sections reference Samuels’ book, the paper by Chiu and Park, a document published by the Chinese Foreign Ministry in January 1980 entitled ‘China’s indisputable sovereignty over the Xisha and Nansha islands’²⁶ and an article by Lin Jinzhi in the People’s Daily.²⁷ Dzurek’s are similar.

The next major contributor to the narrative was a Chinese-American law professor, Jianming Shen based at St. John’s University School of Law in New York. In 1997 he published a key article in the *Hastings International and Comparative Law Review*. Like the *Texas International Law Journal*, the *Review* is a student-edited publication. It hardly needs saying that an editorial board comprised of law students may not be the best body to oversee works of Asian maritime history. Shen followed this article with a second in a more prestigious journal, the *Chinese Journal of International Law* – although in many sections it simply referenced the first article.

Shen’s two articles have been particularly influential – the 2014 CNA paper references them at least 170 times, for example. However, an examination of their sources shows them to be just as suspect as their predecessors. The historical sections that provide the evidence for his 1997 paper rely in large part on two sources. One is a book edited by Duanmu Zheng entitled *Guoji Fa* (International Law) published by Peking University Press in 1989 (referenced at least 18 times).²⁸ The following year Duanmu became the PRC’s second-highest ranking legal official – Vice President of the PRC’s Supreme People’s Court – and was later one of the drafters of the Hong Kong Basic Law.²⁹ In other words, he was a senior Chinese state official. Shen’s other main historical source is a collection of papers from a Symposium On The South China Sea Islands organised by the Institute for Marine Development Strategy, part of the Chinese State Oceanic Administration, in 1992 (referenced at least 11 times). It seems more than ironic that material produced by the State Oceanic Administration and the Chinese legal establishment has subsequently been processed through the writings of Professor Shen and then the Center for Naval Analyses and now become part of the Pentagon’s understanding of the history of the South China Sea.

None of the writers mentioned so far were specialists in the maritime history of the South China Sea. Instead they were political scientists (Cheng and Samuels), lawyers (Chiu and Park and

²⁵ Chris P.C. Chung, *“Since Time Immemorial”: China’s Historical Claim in the South China Sea*. MA Thesis, University of Calgary, September 2013. p8

²⁶ PRC Ministry of Foreign Affairs, China’s indisputable sovereignty over the Xisha and Nansha islands, *Beijing Review* Vol. 23 No.7 1980 pp15-24

²⁷ Lin Jinzhi, *Renmin Ribao* (People’s Daily) 7 April 1980. FBIS-PRC-80-085 30 April 1980 p.E6

²⁸ Duanmu Zheng ed. *Guoji Fa* (International Law) Peking University Press, Beijing 1989

²⁹ Interestingly Duanmu was not a member of the Communist Party, but of the China Democratic League. Colin Mackerras, *The New Cambridge Handbook of Contemporary China*. Cambridge University Press, 2001 p85.

Shen) or international relations specialists (Heinzig and Austin). As a rule their works don't examine the integrity of the texts that they quote, nor do they discuss the contexts in which they were produced. In particular Cheng and Chiu and Park incorporate anachronistic categories – such as 'country' to describe pre-modern relations between political entities around the South China Sea – for periods when political relations were quite different from those that exist today.

It's also worth noting that Cheng, Chiu and Shen were Chinese-born. Cheng and Shen both graduated with LLBs from Peking University. Chiu graduated from National Taiwan University. While this does not, of course, automatically make them biased, it is reasonable to assume they were more familiar with Chinese documents and the Chinese point of view. Both Samuels and Heinzig were scholars of China.

Flawed evidence

It is hardly surprising that the first English-language writings on the disputes, written as they were by Chinese authors and based upon Chinese sources, come down on the Chinese side of the argument. Cheng's judgement (p277) was that, "it is probably safe to say that the Chinese position in the South China Sea islands dispute is a "superior claim". Chiu and Park (p.20) concluded that "China has a stronger claim to the sovereignty of the Paracels and the Spratlies [sic] than does Vietnam". Shen's point of view is obvious from the titles of his papers: 'International Law Rules and Historical Evidence Supporting China's Title to the South China Sea Islands' and 'China's Sovereignty over the South China Sea Islands'.

These verdicts are still influential today: they were quoted in Li and Tan's 2014 papers, for example. Yet a closer examination of the evidence upon which they are based suggests they are deeply flawed. Those magazine articles from 1933, 1956 and 1974 should not be regarded as neutral evidence but as partisan readings of a contested history.

There isn't space here to cover all the claims the writers make about events before the 19th Century. In summary, the accounts by Cheng, Chiu and Park, Samuels and Shen all share the common assumption: that China has always been the dominant naval, trading and fishing power in the South China Sea. Cheng, for example puts it like this, "It has been an important part of the sea route from Europe to the Orient since the 16th century, a haven for fishermen from the Hainan Island, and the gateway for Chinese merchants from south China to Southeast Asia since earlier times" (p.266).

More empirically-based histories of the Sea suggest the situation was much more complex. Works by the historians Leonard Blussé, Derek Heng, Pierre-Yves Manguin, Roderich Ptak, Angela Schottenhammer, Li Tana, Nicholas Tarling and Geoff Wade have revealed a much more heterogeneous usage of the sea in the pre-modern period. Chinese vessels and merchants played almost no role in seaborne trade till the 10th Century and even after that were never dominant but shared the sea with Malays, Indians, Arabs and Europeans. Research by François-Xavier Bonnet³⁰, Ulises Granados³¹ and Stein Tonnesson³² show how similar patterns persisted into the 20th Century.

³⁰ Bonnet, Geopolitics of Scarborough Shoal. *Discussion Paper #14*. IRASEC (Research Institute on Contemporary Southeast Asia), Bangkok. November 2012

Accounts from the early 20th century demonstrate that the Chinese state had great trouble even controlling its own coast, and was completely unable to project authority to islands hundreds of miles offshore. For example, two articles in *The Times* of London from January 1908 describe the inability of the Chinese authorities to control ‘piracy’ in the West River – inland from Canton/Guangzhou.³³ A 1909 article by the Australian newspaper, *The Examiner* tells us that foreigners (“two Germans, one Japanese, and several Malays”) had begun mining operations on Hainan Island without the authorities finding out until much later.³⁴

What these contemporary accounts reveal is a South China Sea that until the mid 20th Century was essentially ungoverned, except for the occasional interventions of foreign powers against piracy. It was only in 1909, following the scandal surrounding the occupation of Pratas Island by a Japanese guano entrepreneur Nishizawa Yoshiji, that the Chinese authorities became interested in the offshore islands.³⁵

Protests against German surveys

Samuels (p52), however, argues that an implicit Chinese claim to the Spratly Islands might be dated to 1883 when – according to his account – the Qing government officially protested against a German state-sponsored expedition to the *Spratly Islands*. The assertion is sourced to the May 1974 edition of the Hong Kong-based magazine *Ming Pao Monthly* without other corroborating evidence. Chiu and Park (in footnote 47) ascribe it to an article published 50 years after the alleged events in question in the September 1933 edition of *Wai Jiao Yue Bao* (*Wai-chiao yüeh-pao*) [Diplomacy monthly],³⁶ Heinzig quotes the same edition of *Ming Pao* that Samuels relies on to state that the 1883 German expedition actually withdrew following the Chinese protest.

This claim seems highly unlikely because the German surveyors mapped the *Paracel Islands* (not the Spratlys) between 1881 and 1883, finished their work and subsequently published a chart. A French edition was published in 1885.³⁷

The 1887 Sino-Tonkin convention

Samuels argues that the 1887 Sino-Tonkin convention negotiated by the French government, nominally on behalf of Tonkin, amounted to an international agreement allocating the islands to

³¹ Ulises Granados, *As China Meets the Southern Sea Frontier: Ocean Identity in the Making, 1902-1937*. *Pacific Affairs* Vol. 78, No. 3 (Fall, 2005), pp. 443-461

³² See, in particular, Stein Tonnesson, *The South China Sea in the Age of European Decline*. *Modern Asian Studies*. Vol 40, Issue 01. February 2006, pp 1-57 and *An International History of the Dispute in the South China Sea*, *East Asia Institute Working Paper* No. 71 (2001)

³³ *The Times* “Chinese foreign relations” Jan 18, 1908; pg. 5; *The Times* “The recent piracy in Canton waters”. Jan 25, 1908; pg. 5;

³⁴ *The Examiner* (*Launceston, Tasmania*) “China and her islands-keeping an eye on foreign nations” Saturday 12 June 1909 p 8

³⁵ See Granados (2005) above

³⁶ This was disclosed by the Kuangtung Provincial government in 1933. See Cho Min, “The Triangular Relationship Among China, France and Japan and the Question of Nine Islands in South Sea,” *Wai-chiao yüeh-pao* [Diplomacy monthly], Vol 3, no. 3 (Peiping [Peking], September 15, 1933); p. 82, note 4.

³⁷ Hydrographic Office, The Admiralty, *The China Sea Directory*, Vol. 2, London, 1889, p.103. Quoted in Bonnet 2012. See also David Hancox and Victor Prescott, *A Geographical Description of the Spratly Islands and an Account of Hydrographic Surveys Amongst Those Islands*, *Maritime Briefing* Vol1 No6, International Boundaries Research Unit, University of Durham 1995 p36

China (p52). Article 3 of the Convention does indeed allocate islands east of the Paris meridian 105°43' to China. But Samuels and the other authors failed to notice that the Convention applied to Tonkin – the northernmost area of what is now Vietnam and therefore can only relate to islands in the Gulf of Tonkin. The Paracels and Spratlys lie much further south in what were then the realms of Annam and Cochinchina, not covered by the Convention.

The mystery of the 1902 voyage

There also appears to be some confusion about the date of the first visit by Chinese officials to the Paracel Islands. Samuels (p.53), on the strength of the 1974 Ming Pao Monthly article, puts it in 1902 with a return visit in 1908. Austin and Dzurek follow Samuels in this. Li and Tan (2014) also assert the 1902 claim, along with one of a separate expedition in 1907. Cheng dates it to 1907, based on several 1933 references³⁸ as do Chiu and Park who make reference to a 1933 edition of *Kuo-wen chou-pao*.³⁹ However, in contrast to these accounts, written 26 and 72 years after the events they supposedly describe, a survey of contemporaneous newspapers makes it quite clear that the voyage took place in 1909.

There is good reason for the confusion about the 1902 expedition. In June 1937 the chief of Chinese Administrative Region Number 9, Huang Qiang, was sent on a secret mission to the Paracels – partly to check if there was Japanese activity in the islands.

But he had another role too – which a secret annex to his report makes clear. An excerpt of the annex was published in Chinese in 1987 by the Committee of Place Names of Guangdong Province.⁴⁰ His boat was loaded with 30 stone markers – some dated 1902, others 1912 and others 1921. On North Island, they buried two markers from 1902 and four from 1912; on Lincoln Island, the team buried one marker from 1902, one from 1912 and one from 1921 and on Woody Island, two markers from 1921. Finally, on Rocky Island, they deposited a single marker, dated 1912.

The markers were forgotten until 1974 when, after the battle of the Paracels, they were found and the ‘discovery’ was trumpeted in Hong Kong newspapers – such as Ming Pao Monthly. The non-existent 1902 expedition then entered the history books. Only now has it been debunked by the Manila-based French geographer Francois-Xavier Bonnet.⁴¹

The island names

In his 1997 paper Shen claims the RoC Government “reviewed the names of the islands in the South China Sea” in 1932. In fact that government committee simply translated or transliterated the existing British or international names. As a result several of the Chinese names continue to

³⁸ Cheng references: Saix, *Iles Paracels*, La Geographie (Nov.-Dec. 1933), reprinted in 3 *Wai Chiao Ping Lun* (Foreign Affairs Review), No. 5 (Hu Huan-Yung Chinese transl. May 1934), at 65-72; at 67; Hu, *Fa-jen Mou-tuo Hsi-Sha Ch'ün-tao* [The French Plot to Snatch the Paracel Islands], 3 *Wai Chiao Ping Lun* (Foreign Affairs Review), No. 4 (April 1934), at 92.

³⁹ "On Li Chun's Patrol of the Sea" *Kuo-wen chou-pao* [National news weekly], vol. 10, no. 33 (August 21, 1933), p. 6.

⁴⁰ Committee of Place Names of the Guangdong Province [Guangdong sheng di ming wei yuan hui], Compilation of references of the names of all the South Sea islands [Nan Hai zhu dao di ming zi liao hui bian], Guangdong Map Publishing Company [Guangdong sheng di tu chu ban she], 1987, p.289

⁴¹ Paper presented by Francois-Xavier Bonnet at the Southeast Asia Sea conference, Ateneo Law Center, Makati, Manila. March 27 2015. (Reported here: <http://opinion.inquirer.net/84307/a-chinese-strategy-manipulating-the-record>)

honour the British surveyors that first mapped the features. In the Paracels, *Ling yang Jiao* – Antelope Reef – is named after a British survey vessel, the Antelope. *Jin yin Dao* – Money Island – is not named after notes and coins – but after William Taylor Money, the Superintendent of the Bombay Marine – the navy of the East India Company.

1933 diplomatic protest?

One argument that is key to China's claim to the Spratlys is the oft-repeated assertion that the Republic of China made a formal protest to the Government of France following the latter's formal annexation of several features in the Spratly Islands on 26 July 1933. It's certainly true that the annexation provoked consternation in government and nationalist anger among the public. But was a formal protest ever lodged?

Tao Cheng, in his 1975 paper, references an article in *Xin Ya Xi Ya Yue Kan* [*Hsin-ya-hsi-ya yueh kan*] (New Asia Monthly), from two years later, 1935.⁴² Chiu and Park state in a footnote that, "there is proof that China also protested". They reference an article in *Wai-chiao yueh-pao* [Diplomacy monthly] by Cho Min⁴³, and a 1948 book by Cheng Tzu-yueh *Nan-hai chu-tao ti-li chih-lueh* [General records on the geography of southern islands].⁴⁴

However, they concede that, "The date of the Chinese note was not reported in Cheng's book, nor is it mentioned in the 'Memorandum on Four Large Archipelagoes of the Republic of China in South Sea,' issued by the ROC Ministry of Foreign Affairs in February 1974. See *Lien-ho-pao* [United daily news], overseas edition, February 25, 1974, p. 3."

This claim appears in Ambassador Freeman's presentation and in the CNA paper – which quoted Shen. In his 1997 paper Shen quotes two sources: Cheng and Chiu and Park – but as we have just seen – they do not provide any references for their claim. In his 2002 paper, Shen references papers from the State Oceanic Administration's symposium.⁴⁵ These papers are not available outside China but there is good evidence that all of these works are simply wrong.

Francois-Xavier Bonnet has found American records showing that immediately after the French announcement the Chinese government had to ask its consul in Manila, Mr Kuan-ling Kwong to ask the American colonial authorities there for a map showing their location. Only then was the government in Nanjing able to understand that these islands were not in the Paracels and then decide not to issue any formal protest.⁴⁶

According to Bonnet, the reason is evident from minutes of a meeting of the Republic of China's Military Council on 1 September 1933, "All our professional geographers say that Triton Island

⁴² Lu, Hsi-sha Ch'iin-tao Chih-yao [A Brief Note on the Paracel Islands], 9 Hsin Ya Hsi Ya Yueh Kan No. 6 (June 1935), at 50-54.

⁴³ Cho Min, "The Triangular Relationship Among China, France and Japan and the Question of Nine Islands in South Sea," *Wai-chiao yueh-pao* [Diplomacy monthly], vol 3, no. 3 (Peiping [Peking], September 15, 1933), p. 78;

⁴⁴ Cheng Tzu-yueh, *Nan-hai chu-tao ti-li chih-lueh* [General records on the geography of southern islands] (Shanghai: Shang-wu ying-shu-kuan, 1948), p.80

⁴⁵ Jianming Shen, International Law Rules and Historical Evidence Supporting China's Title to the South China Sea Islands, 21 *Hastings International and Comparative Law Review*. 1-75 (1997) footnote 160.

⁴⁶ François-Xavier Bonnet, *Geopolitics of Scarborough Shoal*, IRASEC Discussion Papers #14, Bangkok November 2012.

[in the Paracels] is the southernmost island of our territory.”⁴⁷ The RoC decided that it had no claim in the Spratly Islands at that point and therefore had nothing to protest against.

Research by Chris Chung, a Canadian PhD student, has found that by 1946, RoC files were referring to China's formal protest in 1933 as if it were fact. This then became the Chinese justification to ‘reclaim’ the islands from Japan after the Second World War.⁴⁸

In summary, what seems to have happened is that over the 13 years after the French annexation a different understanding of what had happened in 1933 took hold in RoC governing circles. My hypothesis is that Chinese officials confused a real 1932 protest to the French about activity in the Paracels with a non-existent 1933 protest about the Spratlys.

1930s surveys

In his 2002 paper, Shen claims the RoC, “organized three rounds of large-scale survey and renaming activities respectively in 1932, 1935 and 1947” (p.107) but there was no surveying work done in the Spratly Islands, just copying from international maps. This seems to be why the RoC mistranslated the name of the James Shoal – initially calling it *Zengmu Tan*. *Zeng-mu* is simply the transliteration of James. *Tan* means sandbank, when in fact the shoal is underwater. By this simple mis-translation a piece of seabed became an island and to this day is regarded as China’s southernmost territory – even though it doesn’t exist! The names were revised by the RoC in 1947 (at which point *Zengmu Tan* became *Zengmu Ansha* – reef) and the again by the PRC in 1983.⁴⁹

The Cairo Declaration

Shen (2002 p139) and Xi and Tan (2014) follow the PRC foreign ministry in arguing that, under the 1943 Cairo Declaration, the wartime allies awarded the South China Sea islands to China. The CAN paper discusses this claim and explicitly rejects it on the grounds that,

“The *Cairo Declaration*, as reinforced by the *Potsdam Proclamation*, only provides that China would recover Manchuria, Formosa [Taiwan], and the Pescadores [Penghu Islands] after the war. The next sentence simply provides that Japan would be expelled from “other territories” which it had taken by violence, but it does not indicate that these “other territories” would be returned to China. Although not specifically stated, the only logical conclusion is that these “other territories” included the Spratly and Paracel Islands, which were seized by violence from France, not China.” (p97)

⁴⁷ *Wai Jiao bu nan hai zhu dao dang an hui bian* [Compilation by the Department of Foreign Affairs of all the records concerning the islands in the South Sea], Vol. 1, Taipei, 1995, p. 47-49. Quoted in François-Xavier Bonnet, Geopolitics of Scarborough Shoal. *Discussion Paper #14*. IRASEC (Research Institute on Contemporary Southeast Asia), Bangkok. November 2012

⁴⁸ See Ministry of Foreign Affairs, “Nansha Qundao [南沙群島, or the “Spratly Archipelago”],” The Historical Archives of the Department of Modern History in the Academia Sinica [Zhongyang Yanjiuyuan Jindaishi Yanjiusuo Dang’an Guancang 中央研究院近代史研究所檔案館藏], file series 019.3/0012, file 031. This ROC official telegram is dated August 24, 1946. AND Ministry of Foreign Affairs, “Nansha Qundao [南沙群島, or the “Spratly Archipelago”],” The Historical Archives of the Department of Modern History in the Academia Sinica [Zhongyang Yanjiuyuan Jindaishi Yanjiusuo Dang’an Guancang 中央研究院近代史研究所檔案館藏], file series 019.3/0012, file 145-146. This ROC official telegram is also dated to 1946. The month is unclear.

⁴⁹ Chen Keqin, *Zhong guo nan hai zhu dao* (China’s south sea islands) Hainan International Press and Publication Center, Haikou 1996

Freeman (2015), however, argues that, because the Japanese authorities incorporated the Paracels and Spratlys into their province of Taiwan, the Cairo Declaration returns them, along with the rest of 'Taiwan Province' to China. But the Declaration doesn't mention the word 'Taiwan', it talks about Formosa and the Pescadores. The logical conclusion is that the allies only agreed that these particular islands should be returned to China.

The surrender of the Japanese garrisons in the Paracels and Spratlys

The CNA paper and Ambassador Freeman's presentation both carry claims that Chinese forces received the surrender of the Japanese garrisons in the Paracels and Spratlys at the end of the Second World War. Freeman has argued that the US Navy actually transported Chinese forces to the islands for this purpose. In personal communication with the author he has not been able to provide any corroborating evidence for the assertion.

Based upon evidence from US and Australian military archives, the claim seems very unlikely to be true. During the war Japan had military bases on Woody and Pattle islands in the Paracels and Itu Aba in the Spratlys. Woody Island was shelled by the submarine USS Pargo on 6 February 1945⁵⁰ and on 8 March American aircraft bombed both it and Pattle Island.⁵¹ When another submarine, the USS Cabrilla, visited Woody Island on 2 July, the French tricolour was flying, but this time with a white flag above it.⁵²

Itu Aba was napalmed by US planes on 1 May 1945. Six months later, the US Navy sent a reconnaissance mission to Itu Aba, It landed on 20 November 1945 and found the island unoccupied – the Japanese had fled.

It wasn't until more than a year later – December 1946 that a Chinese landing party – using second-hand American warships just transferred to the RoC Navy – was able to reach the island. (The French had arrived two months before and reclaimed the island but that's rarely mentioned in Chinese sources.) The Chinese name for Itu Aba is *Tai ping Dao*, named after the warship that carried the landing party. The *Tai ping* was previously the USS Decker. The irony is that if the US had not supplied those warships China would have no claim in the Spratly Islands today!

Conclusion

A review of the verifiable evidence tells a different history about the islands in the South China Sea than that found in the most of the commonly used reference texts. The Chinese state's interest in them only dates from the 20th Century. There's no evidence yet put forward for any Chinese state official visiting the Paracel Islands before 6 June 1909. It was only in 1933 that national attention was turned to the Spratly Islands – and at that time the Republic of China decided *not* to press a claim to them. Attention was revived immediately after the Second World War, based on misunderstandings about what happened in 1933 and for the first time ever, a Chinese official landed in the Spratly Islands on 12 December 1946.

⁵⁰ A.B. Feuer, *Australian Commandos: Their Secret War Against the Japanese in World War II* (Mechanicsburg, Pennsylvania, 2006), Chapter 6.

⁵¹ US Navy Patrol Bombing Squadron 117 (VPB-117), Aircraft Action Report No. 92, available at <<http://www.fold3.com/image/#302109453>>.

⁵² US Navy, USS Cabrilla Report of 8th War Patrol, available at <<http://www.fold3.com/image/#300365402>>.

In 1933, 1956, 1974 and again today histories of the islands were written and rewritten. During each crisis advocates of the Chinese position published new versions of history that often recycled earlier mistakes and sometimes added in more of their own. By the time these accounts leapt the language barrier into English in the mid-1970s their shaky foundations appeared solid to those exploring the history for the first time. They were printed in western academic journals and 'became fact'. But a review of their sources reveals their inherent weakness.

It is no longer good enough for advocates of the Chinese claim to base their arguments on such baseless evidence. It is time that a concerted effort was made to re-examine the primary sources for many of the assertions put forward by these writers and reassess their accuracy. The resolution of the disputes depends on it – both in the courtrooms of The Hague and in the waters of the South China Sea.

END