

Analysis on Dispute of Sovereignty of the Diaoyu Island in the Horizon of International Law

Zhi Li

College of Law and Political Science, Xingtai University, Xingtai, 054001, China

Keywords: horizon of international law, Diaoyu Island, sovereignty dispute

Abstract. Although Diaoyu Island is just a small island, it arises the sovereignty dispute between China and Japan, and both sides claim for that they have sovereignty to Diaoyu Island. Until 2012 when the issue on sovereignty of the Diaoyu Island became out of hand due to the so-called island purchase by Japan, it has become one of the important obstacles for the normal development of relationship between China and Japan. In this paper, the author will discuss and analyze the dispute of sovereignty of the Diaoyu Island in detail in the horizon of international law, and points out the limitation of modern international law in respect of the sovereignty dispute of Diaoyu Island, and it is finally affirmed that Diaoyu Island should belong to China.

Background

Diaoyu Island is a small island where no people live, but it has an important geographical position. Around the 1894 Sino-Japan Naval Battle, Japan still acknowledged that China had sovereignty to Diaoyu Island. But later, Japan has always been coveting Diaoyu Island. From then on, Diaoyu Island has gradually become one of the problems for dispute between China and Japan. Actually, under the background of normalization of diplomatic relation between China and Japan, the high levels of China and Japan once elaborated the issue of Diaoyu Island, thinking that the best disposal method was to suspend the dispute and jointly develop. Until 2012 since the governor of Tokyo declared the purchase of Diaoyu Island, a haunted shade was cast on the China-Japan relation, and the sovereignty issue of Diaoyu Island became one of the obstacles for the development of relation between China and Japan again. Although experts and scholars of China and Japan have debated and analyzed for many times, we will research and analyze the sovereignty dispute problem of Diaoyu Island from the perspective of international law and point out some limitations in the international law, thinking that we should fully use the reasonable parts in the international law and avoid the imperfect ones, and finally affirm that Diaoyu Island has been the indisputable sovereignty territory of China since the ancient times. Although it is not realistic enough to strive for the sovereignty of Diaoyu Island only by depending on the international law, at least the international law provides certain basis for us to strive for the sovereignty and lays solid foundation to settle this territorial dispute problem in the future.

Analysis on sovereignty dispute of Diaoyu Island in the horizon of international law

For the sovereignty dispute of Diaoyu Island in the horizon of the international law, the nature is the analysis on the cession and first occupation of Diaoyu Island between China and Japan. From the historical perspective of China, Diaoyu Island was first discovered and actually controlled by China, it was just later because of being defeated, the Chinese government ceded Diaoyu Island to Japan. After being defeated in the World War II, Japan clearly acknowledged that it would return the land ceded through the unequal treaties to China in Potsdam Proclamation and Cairo Declaration. However, the Japanese did not keep the promise, and they have always thought that Diaoyu Island is a terra nullius, and not the inherent territory of China, Japan obtained the sovereignty of Diaoyu Island after first occupation, and there is no dispute of sovereignty at all. Then, aimed at the quite different opinions between China and Japan, we can make a detailed analysis on the sovereignty dispute of Diaoyu Island from the perspective of international law.

International law analysis on first occupation

According to the relevant provisions in the international law, the conditions for first occupation should include the following. First, the subject of first occupation must be a normal country, second, the territory first occupied must be a terra nullius, then the country of first occupation should have some awareness of first occupation, and finally, there should be objective and actual occupation behaviors. Then, according to the expression and condition of first occupation in the international law, did Japan occupy Diaoyu Island first? To analyze this question, we should see whether Diaoyu Island belongs to a terra nullius from its sovereignty. As early as in the 19th century, Japan carried out relevant investigation and research on Diaoyu Island, thinking that the belonging of Diaoyu Island might trigger the dispute of sovereignty with China. In addition, Diaoyu Island had always been a small island where no people lived, but this does not mean that it is a terra nullius. According to relevant provisions of the international law, once the sovereignty belonging of an island where no people live is determined, the intermittent exercise of sovereignty can be implemented according to the actual condition of the island without continuous exercise of sovereignty. For Diaoyu Island, China has exercise indirect governance to it since the end of the Qing Dynasty, which can be validated from relevant historical literature of China. On the contrary, Japan is lack of enough evidences for the actual governance of Diaoyu Island. Although Japan has also proposed the so-called evidence of sovereignty of Diaoyu Island, i.e. the No.13 edict of the Mikado, such edit only belongs to the local administrative directive, without regular incorporation system, and there is no actual governance to Diaoyu Island in the specific implementation. Japan has also proposed that they have their own standard for Diaoyu Island, but such so-called standard was established later, and cannot prove that Diaoyu Island belonged to the actually ruled territory of Japan before the war. After the World War II, neither the folk society nor authority claimed the so-called sovereignty to Diaoyu Island. It was until later did Japan began to search for all treaties to defend for its sovereignty to Diaoyu Island. However, Japan has always not found out appropriate treaties to support their sovereignty appeal. Therefore, Japan began to seek for various illegal means to express its appeal to the sovereignty of Diaoyu Island, so as to create a smoke screen of first occupation. According to the above analysis, in the horizon of international law, Japan does not have the condition and possibility for first occupation of Diaoyu Island, and the theory of first occupation is completely fabricated and unreasonable.

International law analysis in the aspect of prescription

Japan's claim for the sovereignty of Diaoyu Island greatly contradicts and conflicts with the prescription issue of prescription in the international law, and in essence, it is an action violating the international law. According to the international law, the issue of prescription mainly means in the process when a country occupies the island of another country, there is no continuous sovereignty claim and protest from that country, and the occupation has maintained for at least 50 years, and such occupation must be stable and continuous, and only such occupation is valid. However, Japan's occupation to Diaoyu Island has always been subject to the fierce resistance and sovereignty claim from the Chinese government and folk society, and such claim is continuous, meanwhile, there are also many spontaneous protection behaviors on the sovereignty of Diaoyu Island. Then, this violates the provisions on prescription in the international law, because Japan's occupation to Diaoyu Island has always been in the actual condition of suspension of prescription. Therefore, Japan's sovereignty appeal to Diaoyu Island is violation to the prescription rules of the international law, and that is to say, Japan cannot get the actual control power to Diaoyu Island.

International law analysis in the aspect of intertemporal law

The concept intertemporal law was first proposed in "Island Palmas Arbitration Case", and later, it has always been used in a certain way in the international law, mainly used in the treaty law and dispute on territory. The basic principles of Chinese domestic law have the same connotations with the intertemporal law, i.e. the regulations in such international law should be applicable for the law when the dispute starts, and the law when the dispute starts cannot be used. In other words, such regulations are the main connotation of law of non- retroactivity. Actually, such regulations were also clearly mentioned in Vienna International Convention. According to the intertemporal law in

the international law, in the process of settling the territorial dispute, it is required to fully consider the problems in two aspects, one is the key period of the dispute, and the other is the substantial problem involved in the dispute. For the first aspect, according to the territorial dispute caused by China and Japan's sovereignty appeal to Diaoyu Island, there are two key periods for Japan, one is in 1885 when Japan affirmed that Diaoyu Island was an uninhabited island through investigation, and the second is that in the later cabinet council, Japan listed Diaoyu Island into the sovereignty scope of Japan, and established the so-called sovereignty mark. Then, for the proposal of the two key periods by Japan, we think that the affirmation of the first key period was only an analysis and investigation on whether there were people living, but did not express the sovereignty intention of subjective intention, therefore, we say that this so-called key period was ungrounded; while for the second key period, the nature is that the idea that Japan wants to illegally China's Diaoyu Island has been abundantly clear. Regardless of which key period, it can be grounded only based on which terra nullius Diaoyu Island belongs. Otherwise, the proposal of such key period may also be ungrounded, and is also meaningless and valueless. Then, does Diaoyu Island belong to a terra nullius? Obviously, no. Since the Ming Dynasty, Diaoyu Island has been recorded in the historical books of China, at that time, Diaoyu Island was a island governed by Fujian. Therefore, Japan cannot prove that Diaoyu Island is a terra nullius from the perspective of international law, so this indicates that the key period Japan proposes is ungrounded and cannot be recognized by the international society.

International law analysis in the principle of promissory estoppel

The principle of promissory estoppel first appeared and was used in the Anglo-American law system, and it was until later was it expanded into the field of international law. It generally means that one party concerned shall not violate the original promise to cause unnecessary damage to the other party. In popular terms, this principle requires that the parties under the frame of international law should not back and fill, but should keep consistent as far as possible. Such principle is mainly applicable in two aspects, one is acquiescence, and the other is unilateral declaration. It should be said that such principle has made outstanding achievements in the treatment of relevant cases with international law, especially it has undoubtedly key status and role in the treatment of some sovereignty belonging problems. Then in the sovereignty dispute of Diaoyu Island, Japan thinks that China violates this principle in the international law. Here, we will analyze whether Japan's position is accurate. Actually, we think such idea and behavior of Japan violate the principle of international law. First, Japan's so-called sovereignty occupation to Diaoyu Island in 1895 has always not been recognized by the Chinese government, and is also impossible to be recognized. Japan's proposal of its claim for the sovereignty of Diaoyu island through San Francisco Treaty of Peace with Japan and Japan-US Agreement on Return of Okinawa has even been fiercely protested by the Chinese government, and the Chinese government has never acknowledged the legal validity of these treaties. From this aspect, the Chinese government has never connived at Japan's sovereignty to Diaoyu Island. Second, Japan took the so-called "Letter of Appreciation" issued by the government of Republic of China in 1920 as the evidence occupation. Actually, Japan only filched Taiwan through the unequal treaties, while this cannot reflect that Diaoyu Island is the sovereignty territory of Japan. Finally, the illegal treaties signed between America and Japan have never been recognized by the Chinese authority, because these treaties are unreasonable in nature. As the puppet state of America, Japan is not a normal state at all and has no right to discuss the issue of sovereignty.

Future trend of sovereignty dispute of Diaoyu Island in the horizon of international law

According to the above analysis on the sovereignty dispute of Diaoyu Island under the international law, we think that this dispute has the following trends. First, the general experience of international law tells us that the sovereignty dispute of Diaoyu Island has obvious "non-justification", because this dispute involves in the major political interest, and it is affirmed in the international law that such dispute is not appropriate for judgment in the international court, and it will cause unfair and unconvinced award and also concerns the dignity of a state and nation, and even will trigger the

major economic and public opinion pressure of the losing party. Second, the current situation of dispute on Diaoyu Island implies that both China and Japan do not have the real desire of submitting this dispute to the international court. Within the scope of international law, the mainstream juridical concept is the core of national accordance. However, the interest involved in Diaoyu Island is the core interest, so as the disputing parties, China and Japan are difficult to reach accordance. In order to win more economic development opportunities, China is unwilling to spend so many energies in submitting the dispute of Diaoyu Island to the international court, and legal means is not the only one to solve international dispute. Meanwhile, the actual control of Japan to Diaoyu Island does not achieve certain breakthrough fundamentally, and the Japan government more expects to maintain the current status, so as to find out the reasonable legal guarantee from the so-called approaches of international law and even denies that there exists no sovereignty dispute at all in Diaoyu Island. Therefore, both China and Japan will not solve the problem of dispute on Diaoyu Island before the international court in the short term. Furthermore, from the process of international jurisdiction, China is in the disadvantageous state due to lack of soft power, and if China submits the dispute to the international court really, the judge will have some unreasonableness to the judgment of the dispute due to self-cultural tradition and value orientation etc. From the current situation, there is a serious trend of westernization and Americanization in the international jurisdiction, which is beneficial to China in the dispute on the sovereignty of Diaoyu Island between China and Japan, because they are difficult to understand the traditional cultural connotation of China thoroughly. In order to solve this problem, China must improve its soft power as soon as possible. Finally, as Diaoyu Island is an island affiliated to Taiwan, so the problem of dispute on sovereignty of Diaoyu Island will also concern the problem on the relation between Chinese mainland and Taiwan. However, at present, the Chinese mainland and Taiwan have not formed the consistent cooperation willingness, which also buries a hidden danger for the sovereignty dispute of Diaoyu Island. For example, Taiwan issued directive in 1972, making clear the Diaoyu Island is under the governance of Yilan County, Taiwan, and the Chinese mainland has confirmed it, thinking that both sides of the Taiwan Strait have responsibility to protect the territorial sovereignty of Diaoyu Island, but this is unilaterally rejected by the Taiwan authority.

Conclusion

How to end the sovereignty dispute of Diaoyu Island is still unknown, but according to the analysis of international law, we think that Diaoyu Island has always been the legal and inherent territory of China that cannot be infringed since the ancient times, and various behaviors and ideas to strive for the sovereignty to Diaoyu Island all are illegal and undesirable. Although both China and Japan have proposed the basis of international law to Diaoyu Island, by comparison, the evidences proposed by Japan violate the basis of international law. China has always been seeking for the settlement through peaceful approaches, and Japan should think more when considering the core interest of a nation, and should fully respect the sovereignty and territorial integrity of China, only this is the attitude taken and behavior implemented by Japan in the sovereignty dispute of Diaoyu Island. Of course, the Taiwan authority should also cooperate well to make contribution for the sovereignty dispute of Diaoyu Island.

References

- [1] Li Guoqiang Research on Issue of Diaoyu Island in Recent 10 Years [J] Study of Historical Geography on China's Borderland, 2002 (1)
- [2] Sun Chuanxiang, On Limitation of Territorial Sovereignty-Rethinking on International Law In Respect of Sovereignty of China Diaoyu Islands [J], Ocean Development and Management, 2010 (1)
- [3] Wang Meili, Song Qiuchan, On Solutions of Diaoyu Island Dispute under the New Situation: Take Legal Means as the Horizon [J] Journal of Southwest University of Political Science and Law, 2011 (4)
- [4] Yao Ying, Discussion on Juridical Routines to Settle China-Japan Dispute on East Sea [J], Contemporary Law Review, 2011 (3)