

Controversy of Historical Approach on Sino-Japanese Dispute over the Diaoyu / Senkaku Islands*

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Abstract: *The focus of this research was on conflict between Japan and China over Senkaku Island, which had started since 14th century and emerged to surface between 1968 and 2016. The interest of the topic was on the conflict of these two countries on their claim over Senkaku Island. The main idea of the research was on historical resources and dynamic analyzes over disputed teritory until now. This research based on historical research method to analyze books or resources related to the topic. Based on data analyses, Japan and China takes long time to solve the dispute. Aside of some negotiated alternative solutions; both conflicting parties have decided to solve the case at the international court.*

Keywords: International Conflict, Territorial Dispute, Senkaku Island, Japan, China

1. Introduction

International conflict is a usual incident in an international relation of two countries. Conflict is caused by an unilateral act that disrupted interaction of two countries. One of issues in international conflict is regional conflict. It was started since the enacment on Westphalia¹ system, a sovereignty based on clear border system and free of foreign intereference. The Westphalia system has urged all countries at the time to establish boundaries of their territories. Based on the border establishment, potential conflict emerged among two bordering countries related to their different understanding and sovereignty. Conflict is caused by a condition of an object, claimed by a party but the object is also claimed by another interested party and also rejected by another interested party. Therefore, international dispute is a non-exclusive disagreement involving two or more countries with international consequences.² International dispute may become larger conflict of a country against a country, two countries, or many countries, or even international agencies depend on the legal aspect of the conflicting subject. International dispute happened when the disagreement involved government, juristic person institution, or people on the other part of the world due to missunderstanding of an issue or violation against sovereignty, disagreement of

an issue or violation of international treaty.³ One of the prolonged international conflict was the dispute over Diaoyu/Senkaku Island.

2. Literature Survey

Senkaku or Diaoyutai Island (for the next will be mentioned as Diaoyu/Senkaku=D/S) is Island located at South East of East China Sea, 170km from Taiwan, 330km from China, 170km from Ishigaki (Japan) and 410km from Okinawa (Japan). There are eight islands in D/S Island within 6,3 km² area consists of three dry islands and five small islands.⁴ These islands and reefs are circling the big island named Uotsuri/Diaoyu.⁵ The dispute on D/S Island was started from diferent persepction between Japan and China over the Island over Shimonoseki Treaty⁶. In the agreement, there was no specific articles describing D/S Island as teritory delivered by China to Japan. According to Japan, D/S Island was already part of the Imperial before the Treaty was signed.

³ Boer Mauna. 2005. *Hukum Internasional Pengertian Peranan dan Fungsi Dalam Era Dinamika Global edisi ke- 2*, PT Alumni, Bandung, page. 193.

⁴ Zhongqi Pan, *Sino-Japanese Dispute over the Diaoyu/Senkaku Islands : The Pending Controversy from the Chinese Perspective*, Journal of Chinese Political Science, vol. 12, no. 1 (2007), page. 71

⁵ <http://tujournals.tu.ac.th/thammasatreview/detailart.aspx?ArticleID=1191>

⁶ Shimonoseki agreement was an agreement between Chinese Qing Dynasty and Imperial Japan to end Sino-Japan war. The agreement was signed on April 1895 at Shimonoseki Peace Conference held between March 20th and April 17th, 1895, on Akamagaseki City.

¹ Treaty of Westphalia was a Peace Act signed on two cities in Westphalia region at May 15th, 1648 and October 24th, 1648. The Westphalia pact underlied foundations of new international society based on the nation-state and the administration is separated from Church influence.

² Jawahir Tantowi and Pranoto Iskandar. *Hukum Internasional Kontemporer*. Bandung: PT. Refika Aditama. page. 224



China considered D/S Island as part of Taiwan. The situation emerged because D/S Island was not the area at the border of Japan and China when the treaty was signed. D/S Island became an international dispute when UNECAFE⁷ in 1968 announced potential natural resources at D/S Island. China announced to the world that D/S Island was part of China since the Ming Dynasty while Japan stated D/S Island as part of their territory with *terra nullius* status⁸. Japan and China then started meetings and negotiation since then and have not yet found any solution to the dispute for years.

Based on historical resources from China Perspective Imperial China landed on D/S Island in 1372 and used the Island as navigational aid and source of rare herbal plants, *shicongyong*.⁹ D/S Island between 15th and 16th century was part of Imperial China. Based on Ryukyu Kingdom mission archive, an emissary sent by Ming Dynasty, Chen Kan, D/S region was gift for Ryukyu Kingdom.¹⁰ Beside that, there was also Chungshan mission archive describing Ryukyu territory, which consisted of 36 islands including D/S. In 1609, Imperial Japan ruler, Shimazu Han¹¹ conquered Ryukyu Kingdom and made all Ryukyu territory as part of Japan's Edo Bakufu. However, King of Ryukyu still obeyed to Emperor of China.

⁷UNECAFE was United Nations of Economic Commission for Asia and Far East. It is called UNESCAP (United Nations Economic and Social Commission for Asia and the Pacific) now. It was formed in 1947. The vision of the organization was to overcome challenges in the region in order to design development-oriented project to improve capacity of member countries in many sectors.

⁸ *Terra Nullius* was the name for a free territory not owned by a person or a state

⁹ Shi Cong Yong (Statice Arbuscula) was a herbal medicine to heal high blood pressure

¹⁰ Maria Fedorova, Jurnal departemen hubungan internasional universitas Ekaterinburg: The roots of Sino-Japanese differences over the Senkaku (Diaoyudao) islands (2005).

¹¹ Han was an administration system and a region controlled by Edo Bakufu (1603-1867). Hansystem was erased in 1871.

During Meiji Restoration period, between 1872 and 1879, Meiji government defined territorial control at Ryukyu island, which was still named as Shimazu Han Colony, into Meiji administration system. D/S Island was then controlled under "Okinawa Prefecture".¹² On the other side, there was a record of Koga Tatsushiro, a Japan citizen who lived in Naha since 1879 and worked as fisherman and fish exporter. In 1894, at the beginning of Sino-Japan war, Koga Tatsushiro asked the Meiji government to protect and ensure the security of the business on the island he had rented. Okinawa Governor made emergency policy by declaring D/S Island as part of Japan's territory. On January 13th, 1890, Okinawa Governor, Maruoka Kanji sent a letter to Minister of Home Affairs asking for authority to build a lighthouse on the island as sign that the island was part of Imperial Japan. The Minister rejected the proposal at first, because between 1887 and 1892 the Meiji government held a survey and the report was D/S Island was empty (non-inhabited) Island and without clear ownership or *terra nullius*. Based on the survey, the Meiji government issued a cabinet decision on January 14th, 1895. The decision was Senkaku island was officially part of Japan. Since then, Japan considered Senkaku Island as part of Nansei Shoto or Ryukyu. Unfortunately, Japan did not announce the policy to other states¹³.

The Sino-Japan war ended at April 17th, 1895, with the signing of Shimonoseki Treaty. Article 2 of the treaty stated that "...China cedes to Japan in perpetuity and full sovereignty the following territories... The island of Formosa, together with all islands appertaining or belonging to said island of Formosa." There was no specific details about D/S Island on the term of "all islands appertaining or belonging to said island of Formosa" made Japan interpreted the treaty differently. Japan did not focus on Senkaku as part of Shimonoseki Treaty since China considered the Islands as part of Formosa. The Shimonoseki agreement was never withdrawn until World War II. In the midst of World War II, the Allied Forces held a Conference and create Cairo declaration in 1943. There was an intention of Allied Forces to remove Imperial Japan's territory in Asia Pacific.

*The Cairo Declaration of 1943 stated the purpose to restore "Manchuria, Formosa and the Pescadores to the Republic of China." That Declaration, like other wartime declarations such as those of Yalta and Potsdam, was in the opinion of the United States Government subject to any final peace settlement where all relevant factors should be considered.*¹⁴

Based on quotes above, Cairo declaration stated the return of Manchuria, Formosa and Pescadores Japan's obtained during Sino-Japan war between 1894 and 1895. In 1945, after Japan's defeat in World War II, Japan's occupied by the USA. The USA government demanded the Imperial

¹² Kiyoshi Inoue. *Japanese Militarism & Diaoyutai (Senkaku) Island- A Japanese Historian's View.* (Kyoto : Kyoto University, 2004.).

¹³ Kiyoshi Inoue, *op.cit.*

¹⁴ *Aide memoire of December 27, 1950, the United States interpreted the Cairo Declaration,* <http://www.civil-taiwan.org/cairo-potsdam.htm> (downloaded on Mei 1, 2016).

Japan to hand over Ryukyu (including D/S Islands) to the USA Administration Control. USA provided residual sovereignty¹⁵ on Ryukyu and Senkakuto be used as USA military base in Pacific region. Japan controlled D/S Island under USA control and China had no objection about it.

In 1951, USA ended control over Japan except on Senkaku Islands which was still controlled by USA Administration until 1971. Based on *San Francisco Peace Treaty* article 2, signed at September 8th, 1951, Japan had to release Formosa (Taiwan) and Pescadores. Article 3 stated that, Japan had to obey all USA demands as being an USA controlled state. Although Japan objected on the content of San Francisco Treaty, the status of Senkaku Islands once again was not stipulated. Japan also denied statements that Senkaku Islands was part of Formosa (Taiwan) and Pescadores. San Francisco Treaty article 3 stated that, according to Japan, Senkaku Island was part of Nansei Shoto.¹⁶

Japan and China considered San Francisco Treaty was not effective and began to formulate a bilateral treaty in 1952 known as Peace Treaty of Japan-China. The idea of article 4 of the Treaty, related to earlier Shimonoseki Treaty stated "It is recognised that all treaties, conventions, and agreements concluded before 9 December 1941 between Japan and China have become null and void as a consequence of the war."¹⁷ The Cairo Declaration was also supported by Postdam Declaration¹⁸ which stated Japan's territory was only limited to large islands of Honshu, Hokkaido, Kyushu, and Shikoku, and small islands defined in Cairo Declaration. Based on China's perspective, the purpose of this treaty was to null Shimonoseki Treaty indirectly, which canceled the handover of D/S Island. Japan had declared the status of D/S Island on January 14th 1895 based on research of the island as a non-inhabited area. Therefore, Japan did not consider D/S Islands as part of Shimonoseki Treaty.

The obscurity of the agreement went on until 1968 when UNECAFE held a research at the continental shelf of D/S Islands, where they found largest potential natural oil and gas in the world. It was stated that a region of 200 km² at the north east of Taiwan contained billions of barrel oil, mineral and hydrocarbon.¹⁹ The UNECAFE result was then responded by the China's Minister of Foreign Affairs, Chou Shu-kai, on December 30th, 1971, announcing that D/S

Islands was part of China since the Ming and Qing Dynasty.²⁰ The statement was as follow,

"Daiyou Island and its affiliated islands have long been the inherent territory of China. Like Taiwan, the Daiyou Islands are [an] inalienable part of the territory of the People's Republic of China. China enjoys indisputable sovereignty over these islands and the natural resources in its affiliated sea areas"

The statement was then denied by Japan's Minister of Foreign Affairs on March 8th, 1972, Takeo Fukuda. Japan claimed Senkaku Islands in 1895 because the Islands was not inhabited and not part of Shimonoseki Treaty. USA Administration handed over Senkaku Islands to Japan around 1971-1972 after US control over Japan since 1945. Japan continued activities without US control, held sea patrol without AS supervision and established helipad and lighthouse. In 1996, Japan built a lighthouse at Uotsurijima and emerged a protest reaction from China which sent a sail to Senkaku Islands. A Chinese activist, David Chan, was drowned when trying to swim the sea in order to avoid Japan's patrol. The incident brought Japan-China relation at the lowest point, but the conflict was held down.

China issued a diplomatic protest against Japan's activity on D/S Islands in 2000 by holding a mass rally in front of Japan's Embassy in China. The mass rally went over and over again until 2006. Japan and China between 2004 and 2008 held a continuous meeting which resulted Joint Development Agreement on Senkaku Islands. However, the resolution was not completed because China was passive related to the Treaty.

On September 11th, 2012, D/S Islands was taken over by Japan when the Central Government bought the Islands from Kurihara Family in amount of 2.05 billions yen. The Kurihara Family bought the Islands from Koga Tatsuhiro family in 1970s. The nationalization move made by Japan was considered as provocation to China. As the result, Japan's Navy and China's Navy shot water cannon to each other at the region.

Minister of Foreign Affairs of China and Japan met in UN General Assembly Session on New York in 2013. They held talks about dispute over Senkaku Islands, but without any agreement. The tension in the region is still going until now, especially after Speaker of Ministry of Foreign Affairs, Takako Ito, on December 2015, protested the China Navy activity near the disputed Islands.

The tension over disputed D/S Island, potentially rich in natural gas, oil mineral and hydrocarbon, is still heating up. Both countries have interests to exploit the natural resources for their economy. On the other side, geographically, D/S Islands may become strategic military defense base for Japan and China due to its close location surrounding countries. China has another advantage if they can control D/S Islands, for Taiwan campaign. The Islands is close to

¹⁵ The meaning of "residual sovereignty" was US will not hand Ryukyu over to any country but Japan. Jean-Marc F. Blanchard, "The U.S Role in the Sino-Japanese Dispute over the Diaoyu (Senkaku) Island, 1945-1971", No. 161 (Mar., 2000), pp. 95-123

¹⁶ Zhongqi Pan, *op.cit.*, p. 104

¹⁷ <http://china.usc.edu/treaty-peace-between-republic-china-and-japan-treaty-taipei-1952>. (downloaded on April 20, 2016)

¹⁸ On August 2nd, 1945, British Prime Minister, Winston Churchill, USA President, Harry Truman, and Russia Prime Minister, Joseph Stalin, signed Postdam agreement on July 26th, 1945, titled "Proclamation Defining Terms for Japanese Surrender".

¹⁹ Maria Fedorova, *op. cit.*

²⁰ http://www.bbc.com/indonesia/dunia/2013/08/130827_cina_jepang (Accessed on 1 April 2016)

Taiwan and China may force Taiwan to reunite with China to fulfil the idea of One China Principle.²¹

3. Problem Definition

There are two main questions as problems in this research: (a) Why historical controversy outburst as a crucial problem and its used by two conflicting parties as a tool to solve the dispute?, (b) How the possibilities of two parties to solve the disputes based on International law and intensive International dialogue to create a new historical perspective in the region? As a Historian, this research is to find out and analyze the history of dispute of Diaoyu/Senkaku island. The research is to describe history of claims made by China and Japan, and also the legal status of Diaoyu/Senkaku Island.

4. Methodology

This research, based on historical approach. Data compiled based on literature studies by analyzing data found on books, science journal, news, and articles, data verification and analyzed with historical perspective.

5. Discussion

5.1 Japan's Claim

Japan's claim over D/S Islands was based on several reasons. First, on January 14th, 1895, Meiji administration issued a Cabinet policy based on survey held since 1887, so D/S Islands was not a region forcibly conquered by Japan post Sino-Japan War as stipulated in Shimonoseki Treaty. Second, D/S and Taiwan are separated region as D/S was part of Ryukyu. Third, many Japanese people moved to D/S Islands since 1900s. Fourth, Japan rescued China's vessel crews when their vessel drowned in D/S Islands. China, officially, sent letter as gratitude in 1969, declaring D/S Islands was part of Yaeyama District, Japan. Fifth, China issued a map in 1969 with the information where D/S Islands was part of Japan's territory. Sixth, Japan has controlled D/S Island since 1945 under control of USA Administration. The USA then returned D/S Islands to Japan in Okinawa Agreement between Japan and USA in 1971 and implemented in 1972. Seventh, based on historical chronology, there was no objection submitted by China between 1895 and 1968 over Japan's control of D/S Islands.

5.2 China's Claim

China's claim over D/S Island was based on several issues. First, China had controlled the Islands since the Ming Dynasty and used the Island as navigational aid and herbal medicine plants. Second, Japan issued a map in 1785, 1874 and 1877 showing D/S Islands was part of Imperial China. Third, Japan's Minister of Foreign Affairs in 1894 was afraid to issue the cabinet decision which might make China to react. Fourth, China considered D/S Islands was part of Taiwan in Shimonoseki Treaty, San Francisco Treaty,

Potsdam Treaty, including Peace Treaty between Japan and China in 1952.

5.3 Post-UNECAFE Announcement Disputes

On January 14th, 1895, D/S Islands was part of Japan based on Japan's survey over Senkaku Island with *terra nullius* status. Japan did not mention D/S Islands in Shimonoseki Treaty as it was considered as part of Japan. On the other side, based on Ming Dynasty archives, China has controlled D/S Islands since 1372.

In 1945, after Japan surrendered to the Allied Forces, Japan was under USA control including the management of D/S Island. The status of D/S Island was status quo²² in 1972 after the Okinawa Agreement between USA and Japan. Although China had the right to reclaim Senkaku Island after World War II, based on San Francisco Treaty, China did not submit official request and tend to ignore the Senkaku Island until 1968. Japan certainly, *de facto*, announced the control of Senkaku Islands when UNECAFE announced their research over Senkaku Island, while China also claimed Senkaku Islands as part of China.

5.4 Dispute Settlement Based on Law of The Sea Perspective

Although China and Japan had acknowledge US Convention on Law of The Sea UNCLOS 1982²³, they still keep different perspective on the D/S dispute. Japan proposed a dividing zone based on Exclusive Economic Zone (200 miles from baseline shore), while China referred to more than 200 miles from baseline shore. Article 74 of UNCLOS stated that the EEZ of a country with close shoreline to other country (below 200 miles), should be arranged through International Treaty. If the treaty cannot be signed, the dispute should be solved in a peaceful manner. All conflicting parties, while waiting for dispute solution, may exploit the natural resources in the disputed area through joint cooperation. The differences on sea border at the East China Sea between Japan and China has not yet been resolved until now, which may emerge conflict in the future.

5.5 Dispute Settlement Based on Historical Perspective

According to terms of Discovery and Occupation, an ownership of a region was based on the first party who owned and occupied the area. Imperial China has strong argument since China found D/S Islands in 1372. However, the argument was denied by Japan since Japan held a survey which found the Island is empty and the only family lived in the island was Koga Tatsuhiro. Japan claimed the Islands as national property after they bought the D/S Islands from Kurihara Family who said to have bought the Islands from Koga's family. China rejected the purchase condition of the Islands.

²¹One China Principle is a diplomatic statement policy where there is only one Chinese country in the world.

²²Status quo was a steady situation at recent time following the previous situation

²³United Nations Convention on the Law of the Sea was agreement on the law of the sea resulted in UN Conference between 1973 and 1982.

Based on Potsdam Treaty, the impact of Japan's surrender in World War II was on Japan's territory which was claimed after Meiji Era. In other words, territory of Japan should be returned to the situation in Meiji Era and all other controlled regions should be returned to the previous condition. However, these countries did not state the condition of D/S Islands. Although Japan had to release regions controlled beyond the Meiji Era, Japan still in control of D/S Island. Japan still considered D/S Islands as part of Japan before Potsdam Treaty was signed. China, on the other hand, did not respond to the option of territorial reclaim after the Potsdam Treaty was signed.

5.6 Dispute Settlement Based on UN Charter

International dispute solution based on UN Charter can be implemented in several options. First is negotiation. Japan and China had held two major negotiation "Sea of Peace, Cooperation and Friendship"²⁴ in 2007 and "Principle consensus"²⁵ in 2008. Key points of these two Treaties were joint cooperation in natural gas exploitation in East China Sea. Second is investigation. China had more favor than Japan in UN investigation because D/S Island is connected to China mainland. Both patterns had been conducted but have not yet found favorable solution for both parties.

Some alternative solutions which have not yet performed are, first, mediation, where the two conflicting countries appointed third parties and UN as mediator to have joint agreement. Second, conciliation through formal mediation and stages facilitated by a UN made commission. Third, international arbitration through Permanent Court of Arbitration (PCA). However, result of arbitration does not have any legal obligation for both conflicting parties. Last but not least, International Court, especially International Court of Justice (ICJ), International Criminal Court, and International Tribunal on the Law of the Sea. If any of these alternative solution was selected, the dispute could be solved in UN matters and avoid the war.

6. Conclusion

Japan's claim was focused on situation after World War II because Japan is still in control of D/S Islands, while China focused on situation before World War II based on 14th century archives and related Treaties. China brought the claim issue of D/S Islands after UNECAFE finding, while before 1968, China did not ever claim D/S Islands as part of their territory. Japan also have diplomatic flaw over

²⁴ Agreement was an effort of two countries to hold consultation and agreement for Joint Development without disrespecting each country's law by holding a joint research to determine strategic joint development for both parties.

²⁵ The result of the negotiation was :

1. Solve territorial dispute and differences in perspective about natural gas exploitation on East China Sea
2. Agree to hold annual leader meeting to reduce the tension
3. Use positive perspective in diplomatic relation among two countries so they do not see each other as a threat.

D/S Islands to international society that may raise tension with neighboring countries.

Japan and China have tried diplomacy, negotiation and investigation to solve the dispute, but have not yet found a favorable solution. Therefore, there should be alternative solution through third party and file the case to International Court.

7. Future Scope

It must be tried to find out the best method to solve the conflict. Each parties must has a broad perspective on "criticism of historical evident" and create new evidence as apart of historical critical of old historical situation and fact. It means that dissolving conflict base on new perspective and peace coexistences changed conflict into mutual understanding and cooperation of both parties in management of natural resources of Diaoyu/Senkaku Island.

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