
МІЖНАРОДНЕ ПРАВО

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CHINA HAS HISTORY ON ITS SIDE: A HISTORICAL PERSPECTIVE ON THE US INVOLVEMENT IN THE SOUTH CHINA SEA DISPUTES

The South China Sea dispute between China and its neighbours has dominated recent headlines. Citing that the dispute has increased tension in Asia the US claims that its involvement is only to maintain freedom of navigation in the Pacific. China continues to hold fast noting that historically the islands belong to them. A number of documents have been produced by China to support its claim and in each case the Philippines, Japan and Vietnam, being the most aggressive in their opposition, have refused to recognise China's sovereign right to the islands. Historical documents including treaties signed at the end of WWII where Japan agreed to return all territory belonging to China is the most recent proof that the islands do not belong to Japan. The US involvement in spite of all the evidence favouring China begs the question, are America's interests in the island dispute about an assertion of US power in the region or is it a sincere willingness to support all the countries that have claims against China because the facts gives these countries the right to the islands? It comes down to China's sovereign rights and its history of nonintervention verses the US global interventionist strategy and its interest in the Pacific, hence, the US 'Pivot to Asia'.

Key words: China, US, Philippines, Japan, islands, dispute, sovereign, treaties, Dao Yu islands, South China Sea.

Scholars who published work on this subject. The South China Seas Dispute has drawn the attention of many international scholars and news agencies, the extensive list includes Panos Mourdoukoutas and Brett Davis of Forbes Magazine; Wallden Bello, Foreign Policy in Focus; Zhu Haiquan and Hrvoje Hranjski, Washington Post; Adam Bray, National Geographic; and J. Michael Cole, Taipei Times.

The article aims to shed some light on the South China Sea Dispute by defending China's claim to the islands while reminding the reader of what happens when the US gets involved in a dispute. I hope that the reader can form their own opinions on the issue after learning more about it from a historical perspective and can better understand America's and China's historical role in global affairs.

News agencies around the world seem to be churning out a never-ending stream of headlines about China's rise and its claim to the islands in the South China Sea. These headlines are much to the envy of the United States, which prides itself on being the leader of the free world and its de facto savior. Here comes China quietly rising out of the smog and smoke, a bi-product of its vast industrial and technological evolution. What China is doing today is a modern version of what America did at the turn of the last century; of what England did with the conquering of the

New World and its industrial revolution; or the Romans and the Greeks with their vast armies and military prowess; and even the Egyptians and the Ethiopians in a time that to-date baffles historians. All of the before mentioned signify change, change from one superpower to the next all with great resistance and extensive bloodshed.

China's rise can be considered superior because until now there have been no documented acts of bloodshed, something none of the past world powers can say. China has never shown military aggression against any other country. Some may want to claim otherwise by mentioning the death of 70 Vietnamese sailors in a clash over the Spratly Islands. However, defense of one's sovereignty has historical been a right which is now recognized under International Law. The concept of sovereignty is the core attribute of the modern state, hence all state authority has an inherent right to defend their territory. The lines of said inherent right becomes blurred when the territory is under dispute as in the case of the South China Seas where each party assumes the right to defend their territory. As a result of the conflicting claims it would not be accurate to label China as an aggressor when China is claiming the right of self-defence.

America is perched at the top of the world's pyramid as an immovable object with China several bricks below and climbing fast,

asserting itself as an unstoppable force. The West, in this case America, with its history of exploitation and global dominance seeks to find a weak point in the Chinese ever rising super structure, and has seemingly found one in the South China Sea disputes between China and its neighbors. But this is not the sixties, seventies or eighties; military bullying and/or underhanded interventions will not suffice. America did not get to where it is today without extensive bloodshed and political interventions. China on the other hand has risen to the number 2 position without conquering, pillaging, and intervening in other countries' domestic affairs. The US cannot find enough water to wash its blood stained hands, a similar dilemma for Japan who is continually plagued by its genocidal acts of aggression and oppression against China and other Asian countries.

The US has had its hands in conflicts on every continent through political intervention. It is second only to that of the British Empire and its reign of brutality over the non-white races of the world. America's brutal interventionist strategy was most notably felt in countries such as Cuba, Guatemala, the Dominican Republic, Chile, Brazil, El Salvador, Nicaragua, Grenada, Philippines, Indonesia, Iran and Iraq (the Iran Contra-Scandal), Afghanistan, Libya, Syria and the list goes on, possibly only the CIA knows where it stops.

China has no known overseas military installations, and is not trying to establish any. Nor does China have a history of interfering in other countries domestic affairs, spreading or imposing its Communist ideology or any form thereof, and has not supported any form of intervention in other countries' domestic affairs whether through the United Nations or otherwise. "China says its decisions on its foreign policy is derived from the five Principles of Peaceful Coexistence: mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence. The Chinese leadership originally enumerated these principles in 1954 when China, with a communist government, was trying to reach out to the non-communist countries of Asia." China has held this non-intervention principle throughout their 5000 years' history as a civilization and continues to date to stand steadfast with their non-intervention, nonaggression state of existence. China as a permanent member of the United Nations Security Council chooses to vote negatively against any act of aggression or intervention by the council or one of its members, often angering countries like the United States who favour intervention. China's stance on non-intervention has often been ignored or met with harsh criticism despite non-intervention being part of the UN mandate. China's staunch non-interventionist stance can be seen in modern times. The list below outlines examples of war

and conflicts where China refused to intervene and advised others to do the same.

On the war between Iran and Iraq (America not only intervened but broke their own laws to do so, see; the Oliver North and Ronald Reagan Iran Iraq Contra Affair).

The struggle between Israel and the Arabs (the US continues to support Israel's occupation of Palestinian land by providing Israel with yearly financial support and large caches of advanced weaponry, this is also coupled by the US using its veto power to block any attempt by the UN to end or ease the suffering of the Palestinian people).

The rivalry between North and South Korea (starting with the American intervention in the Korean war, and the continued military presence in South Korea, which according to the North Koreans serves as a threat to their sovereignty).

The conflicts in the former Yugoslavia and the list can go on.

The principle of non-intervention is not just a political ploy or choice, it is enshrined and enforced by international law, see the Corfu Channel case (Merits, 1949), in which the International Court regarded "the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given right to the most serious abuses and as such cannot, whatever be the present defects in international organization, find a place in international law" (ICJ Reports 1949, p. 35). As the International Court of Justice noted in its 1986 judgment in the Nicaragua case, "the principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the Court considers that it is part and parcel of customary international law..." (ICJ Reports 1986, p.106, Para. 202). It went on to say that "the principle forbids all States or groups of States to intervene directly or indirectly in the internal or external affairs of other States" and that "a prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones.... The element of coercion ... defines, and indeed forms the very essence of, prohibited intervention" (see Para. 205). In *DRC V. Uganda* (2005), the Court noted that Nicaragua had "made it clear that the principle of non-intervention prohibits a State "to intervene, directly or indirectly, with or without armed force, in support of the internal opposition within a State"" (ICJ Reports 2005, see Para. 164). Prima facie China is within the legal margin of correctness in its stance on nonintervention.

The United States in contrast to China is attempting to plant its military in every corner the globe, more so in Asia than any other place. America's military presence in Asia can be seen in Hawaii, Guam, Japan, South Korea, the Philippines, for the first time marines are stationed in Australia and an increase in flights from Singapore. The "wolf in sheep's clothing" analogy is evident to even the most innocent of political thinkers after not only having knowledge of America's history of aggression but by also reading the works of various political commentators, most notably Geof Dyer of the Financial Times. Dyer reported that, "Pentagon officials have also raised the prospect of some sort of temporary presence in other countries such as Vietnam, Indonesia and Malaysia, which Mr. Obama visited on the weekend. Dyer further quoted General Herbert 'Hawk' Carlisle, commander of US Pacific Air Forces, who said in 2013, "We're not going to build any more bases in the Pacific," and "The term you'll hear that we use often is places, not bases. It's building relationships." Yes, it can be seen as 'building relationships', however, what is the purpose of the relationships and what measures were taken by the United States to cultivate the various relationships remains to be seen.

The Philippines for example had expelled the US military from its territory in 1991 but has since rescinded that decision allowing the US to return. This decision came at the height of the Philippines' dispute with China over the South China Seas and part of the US famed Pivot to Asia.

The US has since aided Philippines with two warships, which are outdated by US standards and since encouraged the Philippines to unilaterally bring a case against China although China has offered to meet with the Philippines to discuss and come to a bilateral agreement favourable to both countries. Understanding the before mentioned military strategy of the United States gives new meaning to the term 'military aggression', because the US has not attacked China, has not threatened China with military action, and/or made any substantiated incursion into Chinese territory with aggressive intent. However, there are numerous reports of US naval vessels passing through the disputed waters in the South China Seas. This also includes US military aircraft flying over the disputed islands. So although there has been no act of imminent war, they were numerous acts of provocation by the US. To say China has shown acts of aggression by building military installations in the South China Sea on territory that China historically and legitimately believe belongs to China is an exaggeration of the term aggression and blatant hypocrisy by the US.

To fully understand the scope of the US hypocrisy one only needs to look at the list of International Laws, Treaties and Conventions that the US claims to be enforcing but has

not signed (or ratified in some cases). The list is as follows:

1930 – Forced Labour Convention, not ratified;

1948 – Freedom of Association and Protection of the Right to Organise Convention, not signed;

1949 – Right to Organise and Collective Bargaining Convention, 1949, not signed;

1950 – Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, not signed;

1951 – Convention relating to the Status of Refugees, party to only the 1967 protocol

1951 – Equal Remuneration Convention, not ratified;

1954 – Convention relating to the Status of Stateless Persons, not signed;

1958 – Discrimination (Employment and Occupation) Convention, not ratified;

1960 – Convention against Discrimination in Education, not ratified;

1961 – Convention on the Reduction of Statelessness, not signed;

1962 – Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, signed but not ratified;

1964 – Employment Policy Convention, 1964, not ratified;

1966 – International Covenant on Economic, Social and Cultural Rights, signed but not ratified;

1966 – First Optional Protocol to the International Covenant on Civil and Political Rights, not signed;

1969 – Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, not ratified;

1969 – Vienna Convention on the Law of Treaties, signed but not ratified;

1972 – Anti-Ballistic Missile Treaty, signed but withdrew in 2002;

1977 – American Convention on Human Rights, signed but not ratified;

1977 – Protocol I (an amendment protocol to the Geneva Conventions), not ratified;

1977 – Protocol II (an amendment protocol to the Geneva Conventions), not ratified;

1979 – Convention on the Elimination of All Forms of Discrimination against Women, signed but not ratified;

1981 – Occupational Safety and Health Convention, 1981, not ratified;

1989 – Second Optional Protocol to the International Covenant on Civil and Political Rights, not signed;

1989 – Convention on the Rights of the Child, signed but not ratified;

1989 – Basel Convention, signed but not ratified;

1990 – United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, not signed;

1991 – United Nations Convention on the Law of the Sea, not signed;

1992 – Convention on Biological Diversity, signed but not ratified;

1994 – Convention on the Safety of United Nations and Associated Personnel, signed but not ratified;

1996 – Comprehensive Test Ban Treaty, signed but not ratified;

1997 – Kyoto Protocol, signed but not ratified;

1997 – Ottawa Treaty (Mine Ban Treaty), unsigned;

1998 – International Criminal Court, signed by not ratified;

1998 – Rome Statute of the International Criminal Court, signed but not ratified;

1999 – Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, not signed;

2002 – Optional Protocol to the Convention against Torture, not signed;

2006 – International Convention for the Protection of All Persons from Enforced Disappearance, not signed;

2007 – Convention on the Rights of Persons with Disabilities, signed but not ratified;

2008 – Convention on Cluster Munitions, not signed;

2016 – Trans-Pacific Partnership, signed but not yet ratified.

The number of unsigned or not yet ratified treaties is alarming, especially the failure to sign or ratify the Convention on the law of the sea while speaking out against China in a manner louder than those who are actually party to the dispute and a signatory to the Convention. Not signing a treaty for whatever political reason is not a problem, the problem comes when you try to enforce it in an issue you have little or no say in except in support of an ally. Before venturing into the South China Sea dispute it would be fitting to look at the Kyoto Protocol and how the US and China differs, serving as a stark example of US hypocrisy. China has not only ratified the Kyoto Protocol but has made great efforts to implement it. This is coupled with financial and political support from the Chinese government.

A high ranking member of the Chinese Communist Party, Vice Minister Liu Jiang of the National Development and Reform Commission (NDRC) said, “China will honour its commitments in accordance with the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, and will work together with the international community to seek effective measures addressing climate change.” Speaking at a related conference, Liu also said, “China would observe the principle of common but differentiated responsibilities for developed and developing countries, continuing to work toward comprehensive, sustainable development while improving energy efficiency, developing and applying new and renewable energy sources and increasing forestation.” The US in all fairness has inadvertently fulfilled

the requirements of the Kyoto Protocol but like so many other important treaties refuses to sign and ratify it. In addition, unlike China where the treaty and its requirements have received full government support, US politicians are still divided as to whether there is a need for the Kyoto Protocol and whether Global Warming is a reality.

Looking at the South China Sea dispute from a historical perspective China has the moral high ground. From as far back as 1372 (the fifth year of the reign of Emperor Hongwu of the Ming Dynasty). China has documented directly and indirectly its claim to the disputed islands. China's historical maps as well as correspondences between admirals unquestionably document that the Imperial Envoys visited the Ryukyu. As documented by Chen Kan in 1534, Chen Kan at the time an Imperial Envoy from the Ming Dynasty Court noted in his report that, “the ship has passed Diaoyu Dao, Huangmao Yu, Chi Yu... Then Gumi Mountain comes into sight, that is where the land of Ryukyu begins.” This being one of several documentations, others being in 1562 and 1719.

Japan's claim to the Diaoyu Dao Islands was not until the Sino-Japanese War of 1895 some three centuries after China first documented the Diaoyu Dao Islands as their own. China acted upon this belief in accordance with international law by sending its envoys to visit and enforce its sovereign rights over the islands, none of which Japan officially did until the Sino-Japanese war. This fact is supported by several Japanese scholars, most notably Murata Tadayoshi, who in his work asked the question, ‘Are the Diaoyu Islands Japans Inherent Territory? A Comment on The Origins of the Japan-China Territorial Issue, he noted that Japan was aware of the Qing Dynasty's claim over the island but sought to covertly covet the islands. The US has encouraged Japan, Vietnam and the Philippines to act unilaterally in their attempt to prevent China from holding on to what is historically theirs. If a four-hundred-year old historical document/s is not enough to solidify China's claim how about a seventy-year-old document?

The Potsdam Proclamation of July 1945 states at item “(8) The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine. As we determine meaning the signatories to the document China, the US and the UK.” The Potsdam Proclamation made reference to the Cairo Declaration of December 1, 1943 in which China, United States, and Britain agreed that, “Japan shall be stripped of all the islands in the Pacific” it had seized or occupied since the beginning of World War I and “all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa (Taiwan) and the Pescadores, shall be re-

stored to the Republic of China". The declaration also demanded Japan "be expelled from all other territories which she has taken by violence and greed". This is reiterated by the US State Department Archives which states inter alia, "In November and December of 1943, US President Franklin D. Roosevelt met with Chinese President Chiang Kai-shek and British Prime Minister Winston Churchill in Cairo, Egypt to discuss the progress of the war against Japan and the future of Asia. In addition, to discussions about logistics, they issued a press release that cemented China's status as one of the four allied Great Powers and agreed that territories taken from China by Japan, including Manchuria, Taiwan, and the Pescadores, would be returned to the control of the Republic of China after the conflict ended." Thus, further proving the US hypocrisy on the issue of the Diaoyu Dao Islands.

China's rise is an unstoppable force while the US which sees itself as the immovable world's premier super power has reached its precipice. The South China Sea dispute between China, Vietnam, Philippines, South Korea and Japan will either be the nail in the coffin that kills China's rise to the position now held by the US or it will be the nudge that pushes the US from its plateau of global dominance. Both countries seem to know and understand full well the stakes at hand.

China wants what is rightfully theirs and has always stood up for what they perceive as a fact, well documented by history and supported by international law, treaties and proclamations. However, China is finally at an economic point in its history where it does not need to speak softly and act humbly in establishing its claim. Normally the US would intervene with treats of embargos, promises of economic and military support and if all else fails military intervention. But China is not Somalia or Iraq, China is a rising force that unlike all other countries in the world, has wisely broadened its political and economic horizons so that no number of US interference can stop the Great China Rising and its claim to what is historically hers.

The US knows full well that the world is watching, big countries like Russia, small countries like North Korea, and rogue organisations like Al Qaeda, watching to see how powerful the US actually is. Normally with such issues as territorial disputes between countries, the US would have already gotten its way at a price to be paid by the beneficiary of its actions and hell to be paid by those who oppose. But China is strong and united behind the Chinese claim. To make things worse for the US, China's economic position in the world is so wide spread that when the US sneezes China will not catch a cold but will profit from the sale of medicine and medical equipment to those who suffered as a result of the US ills. The 2008 US financial crisis serves as a stark reminder of China's wisdom and financial strength.

Conclusions. The US strategy so far is to encourage the countries involved in the disputes to stand their ground even if common sense says otherwise. These countries are advised to ignore sound political and economic strategy by coming to a win compromise with China. Instead they are encouraged by the US to pursue a winner takes all strategy based on the promise of unending support in future endeavours, which, by now most countries should know is not a guarantee. The US should not play any part in the South China Sea dispute since it has no territory in the disputed area. The countries that are party to the dispute should be allowed to settle the dispute on their own terms without outside influence and if the US wishes to play a role in the dispute it should do so as mediator and not as instigator. The US should use its influence in a non-confrontational way.

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Паул Л. Д. Історичні факти на користь Китаю: історична перспектива участі США в спорі про Південно-Китайське море

У статті розкрито історичну перспективу участі США в спорі про Південно-Китайське море між Китаєм і сусідніми країнами. Спір загострює обстановку в Азії, США стверджують, що їх участь спрямована тільки на збереження свободи судноплавства в районі Тихого океану. Китай продовжує стверджувати, що історично ці острови належать йому. Китай розробив ряд документів, що задовольняють вимоги найбільш агресивних в опозиції країн (Філіппіни, Японія, В'єтнам), що відмовилися визнати суверенне право Китаю на острови. Історичні документи, включаючи договори, підписані наприкінці Другої світової війни, коли Японія погодилася повернути всю територію, що належить Китаю, є останнім доказом того, що острови не належать Японії. Участь США, незважаючи на всі докази на користь Китаю, викликає запитання: Америка хоче задовольнити свої інтереси про острови й затвердити свою владу в регіоні чи це щире бажання підтримати всі країни, що мають претензії до Китаю? Усе зводиться до суверенних прав Китаю і його історії невтручання проти глобальної інтервенціоністської стратегії США і їх зацікавленості в Тихому океані, отже, "півот в Азію").

Ключові слова: Китай, США, Філіппіни, Японія, острови, спір, суверенність, міжнародні договори, острови Дяюйдао, Південно-Китайське море.

Паул Л. Д. Исторические факты в пользу Китая: историческая перспектива участия США в споре о Южно-Китайском море

В статье раскрывается историческая перспектива участия США в споре о Южно-Китайском море между Китаем и соседними странами. Спор обостряет обстановку в Азии, США утверждают, что их участие направлено только на сохранение свободы судоходства в районе Тихого океана. Китай продолжает утверждать, что исторически эти острова принадлежат ему. Китай разработал ряд документов, удовлетворяющие требования самых агрессивных в оппозиции стран (Филиппины, Япония, Вьетнам), которые отказались признать суверенное право Китая на острова. Исторические документы, включая договоры, подписанные в конце Второй мировой войны, когда Япония согласилась вернуть всю территорию, принадлежащую Китаю, являются самым последним доказательством того, что острова не принадлежат Японии. Участие США, несмотря на все доказательства в пользу Китая, вызывает вопрос: Америка хочет удовлетворить свои интересы в споре об острове и утвердить свою власть в регионе или это искреннее желание поддержать все страны, которые имеют претензии к Китаю? Всё сводится к суверенным правам Китая и его истории невмешательства против глобальной интервенционистской стратегии США и их заинтересованности в Тихом океане, следовательно, "пивот в Азию").

Ключевые слова: Китай, США, Филиппины, Япония, острова, спор, суверенность, международные договоры, острова Дяюйдао, Южно-Китайское море.