

Escalating Dispute over Senkaku/Uotsuri/Diaoyutai Islands How strong are Japan's and China's claims?

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1 Who really owned it before 1895?

In an effort to argue against China's claim to ownership of the Fishcatching (Senkaku/Uotsuri/Diaoyutai) Islands, a Japanese professor presented evidence that the Ming Dynasty did not claim control to them.

His argument is not very strong, because relying on documents from Ming dynasty, which is known to have been a non-maritime power that tried hard not to own anything off its coast, so as to better isolate itself, and which paid for this policy by having its coast infested with Japanese pirates for 200 years. What really matters is the following Qing dynasty (1644-1911). More precisely, what matters is whether the Japanese ownership declaration of 1895 told the truth or just provided a way to artificially split a territory that Japan was really grabbing from China together with Taiwan during that year. The fact that the defeated Qing government didn't formally contradict the Japanese declaration may be a strong legal argument in favor of Japan's current claim, but, at least in the eyes of Chinese patriots who point to slightly earlier Qing Dynasty documents claiming the territory, just proves that these islands were taken from China in the same aggression context and thus, according to Potsdam declaration wording, had to be restored to China together with Taiwan in 1945.

2 ICJ Caselaw in favor of Japan?

Some French articles give great weight to the Japanese declaration of 1895. They do not dispute that China discovered and at times somehow owned the islands first. Here the

authors conclude "En droit international, la souveraineté effective japonaise sur les îles pendant plusieurs décennies pèse bien plus que la réalité géologique et l'antériorité de la découverte chinoise." which means "according to international law, effective sovereignty of Japan on the islands during multiple decades is more relevant than geology or who discovered the islands first." The Chinese government could file a complaint to the International Court of Justice (ICJ) like Germany and France did in certain cases. In the current case, Chinese government would have to bring the case first to ICJ.

3 Effective Exercise of Sovereignty by Japan since 1945?

However it seems questionable whether Japan exercised effective sovereignty on these islands since 1945. Japanese control was limited to the occasional landing and building of structures like a lighthouse by private right-wing groups. When Japan and PRC established official relations, both counterparts agreed to leave the dispute to later generations. Efforts were made to engage in joint sino-japanese exploration of under-sea resources there. Ambiguous peace-love rhetoric about a "sea of friendship" by politicians like prime minister Hatoyama irritated Japanese patriots. Last year Tokyo Governor Ishihara Shintarō, by announcing purchase of the territory by Tokyo, tried to dispel the ambiguities and make Japan's control effective. Thereby he escalated what had so far been a frozen conflict. Ironically the Japanese national government's attempt to refreeze the conflict through formal "nationalization", which would have once again made it off limits for effective use, then sparked off another Chinese protest movement and brought the Right into power in Japan. Freezing the conflict now seems to have become as difficult as squeezing toothpaste back into its tube. No politician of either country can now afford to admit that the other side too might have some valid arguments.

South Korea is trying to legitimate its otherwise rather questionable claim to Takeshima/Dokto by means of effective control and the Japanese are talking about bringing a case to the ICJ. I don't know if the Chinese government has reasons to distrust the ICJ, but normally getting this petty and damaging dispute resolved in a face-saving way should be in its interest, regardless of the outcome. Maybe they don't want to empower the ICJ in view of numerous island disputes in the South China Sea where they have the upper hand.