



MARITIME ISSUES REVIEW

Volume I

WRITTEN BY
JIN YONGMING

TRANSLATED BY
CHEN LING



中央编译出版社
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Preface

Mr. Jin Yongming has long been dedicated to the study of international law of the sea and achieved a lot. This time, he compiles his research results on many major maritime issues faced by China, especially East China Sea issues and South China Sea issues, combining situation of ocean issues, and publishes them for the readers in the form of *Maritime Issues Review*. Congratulations!

The sea is the real resources of human life.

The United Nations Charter and its basic principles of international law are the core of existing international legal order and the cornerstone of orderly development of international relations. The United Nations Convention on the Law of the Sea (hereinafter referred to as Convention) and its ocean legal system are the kernel and footstone of legal system of the sea, becoming the international compulsory legal norms. The Third UN Conference on the Law of the Sea puts forward the principle of Common Heritage of Mankind, but it is not applied for determining the ownership and sovereignty of territories. In the Preamble of the Convention, it is clearly stated that with due regard

for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment, bearing in mind that the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole. Meanwhile, the Convention also clearly puts forward that any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from any compulsory procedures. In a new century, peaceful settlement of disputes is still a basic principle and negotiation is the preferential choice and best way of settling disputes. The Security Council of United Nations, when it considers necessary, shall urge parties involved to settle their dispute by this means. It should be pointed out that the legal basis of international in history is Roman law which governed equal parties. International judicial institution has only consensual jurisdiction and its judgment lacks enforcement. Just like International Court of Justice, International Tribunal for the Law of the Sea renders definite judgment which shall be followed by parties involved in the dispute. However, such judgment shall be not binding on parties for issues other than such specific dispute. The international law is not a case law so any case is not binding on any third party, is not a law or can not change current laws and rules of international law before

it evolves to be a customary law.

The development of international society, especially the development of scientific technology prompts the law of the sea to evolve continually. Communist Manifesto points out that the discovery of America and navigation bypassing the Africa created a new world for emerging bourgeoisie. (*Collected Works of Marx and Engels*, Volume 2, Beijing, People's Publishing House, 2009 Edition, p.32). Thus, the scopes of ocean exchange between countries and the utilization of the sea are expanding; therefore the scope of the law of the sea is inevitably expanding. All world powers are ocean powers, which is a final conclusion by history. Spain used to seize countless treasures by taking advantage of its unbeatable fleet; Britain opened doors of all countries in the world through its powerful warships and cannons; nowadays the fleet with Star-Spangled Banner will go to any place related to American interest all over the world at any time. Beyond all doubt, each ambitious nation shall not and will not remain indifferent when seeing this historic track. China is an ocean power and clearly states in Government Working Paper of 2014 that China shall insist on coordination of the land and the sea to implement the ocean strategy all over the country, develop ocean economy, preserve ocean environment, firmly protect China's ocean rights and vigorously build an ocean power.

Diaoyu Islands in East China Sea is an inherent territory of China; Dongsha Islands, Xisha Islands, Zhongsha Islands and Nansha Islands are an integral part of Chinese sacred territory since ancient

times. China holds definite historical and legal foundations for this. These islands were once occupied by Japanese invaders but invasion can not lead to sovereignty nor become the basis of law-violator's legal rights. American president Roosevelt said that these principles are very simple. They include returning stolen properties to the original owner when he signed the Cairo Declaration in 1943. Article 8 of the Potsdam Proclamation clearly points out that the terms of the Cairo Declaration shall be carried out. Moreover, the Cairo Declaration clearly stipulates that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China. China firmly opposes and suppresses that Japan invades China's sovereignty over Diaoyu Islands in any form. China's sovereignty over islands in South China Sea and sovereign rights and jurisdiction over South China are formed in the long course of historical development. Chinese government restored islands in South China Sea from Japanese invader according to the Cairo Declaration and the Potsdam Proclamation and drew the dotted lines. Other littoral countries around the South China Sea did not put forward any doubt for this before the 70s of 20th century. The Convention which has become effective since 1994 recognizes historic rights in the sea. The United States and Japan, respectively as one of victorious nations and one of the defeated nations in the World War II should know this history well.

However, there are a great deal of volatilities in East China Sea and South China Sea and the situation is serious and complex. Encouraged

by the US's strategy of Asian rebalancing, Japan and some countries are eager to try and attempt to create chaos and suppress China. China has clear and persistent stance that it will unswervingly protect the integrity of national sovereignty and territory and unshakably defend fruits of victory of the world anti-fascist war. China will make no compromise on two matters of principle: history and territory. We hope that the US and Japanese leaders could understand these basic principles and respect human conscience and the base line of international justice. Ocean problems in recent years were triggered due to provocation of some nations. China will not give up the long-standing stance of peaceful settlement of disputes, but facing such provocation, China must make powerful response to not only protect its own sovereign rights but also maintain the peaceful and stable order in the whole region.

International law plays an increasingly important role in promotion of world peace and development. Every country values the international law more and more to protect its own rights and interests. This is a trend of international society which is worthy of attention. We shall follow and maintain rules of international law and also, together with people all over the world, continue to make efforts to improve and develop international law, push the international law to head for facilitating establishment of a new peaceful, stable, fair and reasonable international political and economic order. How to reasonably handle and deal with maritime issues is a major issue faced by Chinese government and people and also a significant research task for scholars. It is undoubtedly an important path

selected to research maritime issues from the perspective of the law of the sea. Many international law and ocean law scholars and practitioners home and abroad have made comprehensive and thorough research into maritime issues and disputes and have achieved fruitful results. A number of insightful papers and books have been published. It is gratifying.

Maritime Issues Review, published by Mr. Jin Yongming, is a fruit of such effort. Mr. Jin Yongming must be a man with the above-mentioned endeavor. He, from the perspective of the law of the sea, combines the situation of maritime issues to conduct a profound study in simple terms on many major maritime issues faced by China, especially East China Sea issues and South China Sea issues, in the hope of making some academic contribution to China's construction of an ocean power including cognizing and understanding maritime issues as well as developing China's ocean undertakings, and also playing a certain role as a scholar by providing materials and references for further publicity and explanation of the essence of maritime issues. It is worthy of praise and recognition.

I am looking forward to more excellent academic achievements. The aforesaid serves as a preface.

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July 2014
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Foreword

China is and will be facing threats and challenges from maritime issues for long at present and for some time to come. In other words, China has entered a period of outbreak of maritime issues, a key period of dealing with maritime issues and an important period of researching maritime issues. How to reasonably handle and deal with maritime issues is a major issue faced by Chinese government and people and also a significant research task for scholars. To research maritime issues from the perspective of the law of the sea is undoubtedly an important path selection. Therefore, *Maritime Issues Review* (Volume I), from the perspective of international law, combines the situation of maritime issues to explain a profound study in simple language on many major maritime issues faced by China, especially East China Sea issues and South China Sea issues, with the aim to make a small academic contribution to China's construction of an ocean power including getting knowledge of and understanding maritime issues as well as developing China's ocean

undertakings and also play a small role as a scholar by providing materials and references for further publicity and interpretation of the essence of maritime issues.

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Theory of the Law of the Sea and China