Sovereignty and International Dispute Resolution from a Chinese Perspective

Mainland Chinese Academic Discourse on the Judicial Solution of Economic and Territorial Disputes

(working title)

Subject:
International Law and International Relations

Candidate:
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Supervisor:
Ao. Univ. –Prof. Mag. Dr. Irmgard Marboe
1.) Purpose and Methodology

Throughout the last several decades the People’s Republic of China (PRC) has been thoroughly integrated with the international economic order (WTO member since 2001), while the country’s relative importance within the international order has steadily risen. This gives rise to the question of how the PRC is going to deal with its increased influence and corresponding responsibilities, not least with regard to the international legal system and its institutions.

Of particular import will be which forms of international dispute resolution will be embraced by the PRC. This, in turn, will be linked to China’s position on the principle of sovereignty. Especially with regard to the territorial disputes around the PRC’s periphery – i.e. the East China Sea, South China Sea and Sino-Indian border disputes – the question of whether China might accept judicial dispute resolution, through the ICJ, ITLOS or ad hoc arbitration, will be crucial.

In order to clarify this question, this interdisciplinary study will first analyze the Chinese legal tradition (i.e. the lego-theoretical and lego-historical part of the thesis). An overview of Chinese legal thought and history, from Confucianism and Legalism to Sino-Marxism and the post-1978 reforms, will be provided. Thereafter, China’s relationship with international law in general and sovereignty and international dispute resolution in particular will be explored. A potentially alternate approach to law in general and public international law in particular, different lines of argumentation and the resulting positions of current Chinese international lawyers and the Chinese government will become easier to understand.

An encompassing review of Mainland Chinese academic discourse shall then allow for displaying the current Chinese positions on sovereignty and international dispute resolution (i.e. the descriptive part of the thesis). Relevant articles in leading (mainly Chinese language) Mainland Chinese law journals as well as a series of interviews with Mainland Chinese law professors will be taken into account.

Thirdly, a lego-political/heuristic final part of the thesis will analyze current positions against the backdrop of Chinese legal thought laid out in the first part. Conclusions will be drawn as to China’s future compliance with dispute resolution mechanisms in the economic sphere, and the likelihood of the PRC embracing different forms of such mechanisms for its territorial disputes. It will be discussed
whether the existing mechanisms could and should be modified, or new mechanisms created, in order to increase their attractiveness to the PRC.

The ultimate goal of this study is to 1) make Chinese positions and lines of argumentation of international law issues understandable, to 2) develop solutions for enticing the PRC to participate in more international judicial dispute resolution mechanisms in general, and to 3) develop solutions for accomplishing that regarding concrete ongoing territorial conflicts.
2.) Schedule and Funding

With eight semesters of research already behind me, I expect to finish the PhD until the fall semester 2015/2016.

The following has so far been accomplished or is planned:

Summer Semester 2011:
- SE Presentation of the PhD (2 SSt.)
- Research on Chinese legal thought and Chinese legal history

Fall Semester 2011/2012:
- VO Legal Methodology (2 SSt.)
- KU Judicature- or Text Analysis (2 SSt.)
- Research on China’s relationship to international law

Summer Semester 2012:
- Exposé and Public Presentation
- SE Second Seminar on the PhD (2 SSt.)
- Elective Subjects (6 SSt.)
- Research on current positions on sovereignty and international dispute resolution in Chinese academic discourse

Fall Semester 2012/2013 to Summer Semester 2013:
- LLM in Chinese Law at Hong Kong University
- Further research and interviews with experts in Hong Kong, Wuhan, Xiamen, Beijing, Xi’an and Singapore

Fall Semester 2013/2014:

Summer Semester 2014 to Summer Semester 2015:
- Elective Subjects (6 SSt.) and SE (2 SSt.)
- Drafting of PhD Thesis

Defensio planned for Fall Semester 2015/2016.

The candidate generally finances the PhD himself. For part of the time spent in Hong Kong, the University of Vienna granted a KWA-Scholarship.
3.) Outline (preliminary)

I. Introduction and Purpose
   1. Introduction
   2. Sovereignty Principle
   3. International Dispute Resolution

II. State of Research, Research Question and Methodology
   1. State of Research
   2. Research Question
   3. Methodology

III. Chinese Legal History and Traditional Chinese Legal Thought
   1. Origins – Confucianism vs. Legalism

IV. Chinese Positions on International law and the Sovereignty Principle
   1. Chinese Developments in International Law
   2. Encounters with “Western International Law”
   3. The PRC and International Law until 1978
   4. China after the Reforms – A Responsible Actor on the International Stage?

IV. Current Academic Discourse in the PRC
   1. Sovereignty and International Law
   2. Economic Disputes: WTO Dispute Resolution, ICSID
   3. Territorial Disputes: ICJ, ITLOS and International Arbitration

VI. Lego-political Suggestions: Getting China into the Fold
   1. Economic Disputes: Hold Your Course
   2. Territorial Disputes: A More Inclusive System

VI. Conclusions
4.) Bibliography (preliminary)

Literature

Ahl, Die Anwendung völkerrechtlicher Verträge in China (2009)

Bodde / Morris, Law in Imperial China (1967)


Brown / Weiss, International Law in a Kaleidoscopic World, 1 AsJIL (2011) 21, 32.

Bu, Einführung in das Recht Chinas (2009)


Chimni, Asian Civilizations and International Law, 1 AsJIL (2011) 39, 42.

Chiu, Communist China's Attitude Toward International Law, 2 AJIL (1966) 245-267.


Cohen (Hrsg), China’s Practice of International Law: Some Case Studies (1972)


Duan, Statement on the Rule of Law on the National and International Levels, 6 CJIL (2007) 185, 188.


Head / Wang, Law codes in dynastic China (2005)

Heuser, Einführung in die chinesische Rechtskultur (1999)


Iriye, The principles of international law in the light of Confucian doctrine (1968)


Kaminski, Chinesische Positionen zum Völkerrecht (1973)

Keller (Hrsg), Chinese Law and Legal Theory (2001)

Koh, International Law and the Peaceful Resolution of Disputes: Asian Perspectives, Contributions, and Challenges, 1 AsJIL (2011) 57, 60.

Leng (Hrsg), Law in Chinese Foreign Policy: Communist China & Selected Problems of International Law (1972)


Shaw, International Law (2008)

Tanneberger, Das Verhältnis der Volksrepublik China zum Völkerrecht (1974)

Tzou, China and International Law: the boundary disputes (1990)

Von Senger, Einführung in das chinesische Recht (1994)

Wang / Mo, Chinese Law (1999)

Xue, Meaningful Dialogue Through a Common Discourse: Law and Values in a Multi-Polar World, 1 AsJIL (2011) 13, 19.


Pending selection of articles from the following journals (preliminary):

- *Chinese Journal of International Law*, Oxford University Press in association with the Chinese Society of International Law, Peking University and Wuhan University
- *Asian Journal of International Law*, Cambridge University Press in association with the Asian Society of International Law and the National University of Singapore
- 中外法学 (*Zhongwai Faxue* – Peking University Law Journal), Peking University Press
- 清华法学 (*Qinghua Faxue* – Qinghua University Law Journal), Qinghua University Press
- 武汉国际法评论 (*Wuhan Guojifa Pinglun* – International Law Review of Wuhan University), Wuhan University Press
- 比较法研究 (*Bijiaofa Yanjiu* – Journal of Comparative Law), China University for Political Science and Law – Comparative Law Research Institute
- 中国海上法年刊 (*Zhongguo Haishangfa Niankan* – China Maritime Law Yearbook), China Maritime Law Association