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**A Historical Analysis of the Ownership of
the Diaoyutai/Senkaku Islands**

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Abstract

Disputes over small places have led to catastrophic wars such as World War I and World War II (Ferguson, 2012). Although it would seem too early to predict that the Diaoyutai/Senkaku Islands dispute would lead to the start of WWIII, as some might suspect, tensions over this dispute have nevertheless escalated as time goes by. The claimants (i.e., the ROC on Taiwan, the PRC, and Japan) of the islands have been fighting hard for the islands and defending their claims by citing official records, archives, and historical evidence, only to find the said dispute has yet to be solved. Much of the arguments point to the status of the islands prior to Japan's incorporation of them in 1895, with the Chinese claiming the islands have always been an inalienable part of their territory and the Japanese claiming that the islands were *terra nullius* in the aforementioned year and that their incorporation of the islands was legal and valid. Therefore, whether or not the status of the disputed islands was *terra nullius* is a crucial question with regard to the ownership of the islands located in the East China Sea.

Having exchanged accusations and employed counter-measures against one another, the claimants have found themselves stuck in this long-fought dispute. All of a sudden, Japan purchased three of the islands from a Japanese private citizen on September 11, 2012. From this point, with various factors (rise of nationalism, hunger for resources, etc.) coming into play, protests over this dispute in China, Taiwan, Hong Kong, and Japan have gotten ever-fiercer like never before. It is not clear as to when this dispute will eventually come to an end. However, by analyzing the claims of the disputants through the lens of history, as well as taking international law and other related regimes into consideration, we might gain some insightful findings and perspectives regarding this issue. It is thus the intention of this research to scrutinize the claims based on their official documents, archives, and historical evidence from the parties concerned.

Keyword: Diaoyutai/Senkaku, territorial dispute, East China Sea, Sino-Japanese relations

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Chapter 1

INTRODUCTION

1.1 Research Background

Disputes over small places have led to World War I and World War II.¹ Although it would seem too early to predict that the Diaoyutai/Senkaku Islands dispute would lead in WWII, tensions over this dispute have escalated as time goes by. The claimants (i.e., the ROC on Taiwan, the PRC, and Japan) of the islands have been fighting hard for the islands and defending their claims by citing official records, archives, and historical evidence, only to find the said dispute has yet to be solved. Much of the arguments point to the status of the islands prior to Japan's incorporation of them in 1895, with the Chinese claiming the islands were an inalienable part of their territory and the Japanese claiming the islands were *terra nullius*. In 1895, after the first Sino-Japanese war, Japan incorporated the above-mentioned islands into its territory. Since then, Japan had exercised control of the islands until it was defeated in WWII. After the conclusion of WWII, all the islands including the disputed islands once designated under the Nansei Islands within the pre-war Japanese Empire were occupied by the US military and later placed under U.S. administration in 1953 pursuant to Article 3 of the 1951 San Francisco Peace Treaty with Japan until May 15, 1972, when the United States handed over the islands to Japan according to the Okinawa Reversion Treaty of June 17, 1971. Therefore, Japan once again has in effect controlled the islands. The fact that the US decided to hand over the disputed islands to Japan has inevitably made itself a key role in this nettlesome dispute, albeit the States have always claimed its neutrality in this issue. In addition, the Emery Report that estimated a large amount of oil deposits and natural gas reserves in the vicinity of the islands has further complicated this

¹ Niall Ferguson, "All the Asian Rage," *Newsweek*; October 1, 2012.

issue.² The last straw, as it were, is Japan's purchase of the islands from a Japanese private citizen on Sept. 11, 2012. From this point, with various factors including nationalism and continuing need for resources coming into play, protests over this dispute in China, Taiwan, Hong Kong, and Japan have gotten ever-fiercer like never before. It is not clear as to when this dispute will eventually come to an end. However, by analyzing the claims of the disputants through the lens of history, as well as taking international law and other related regimes into consideration, we might gain some insightful findings and perspectives regarding this issue. It is thus, the intention of this research to scrutinize the claims based on their official documents, archives, and historical evidence from the parties concerned. Detailed claims from the claimants as well as the evidence cited will be presented in Chapter 2.

1.2 Research Motivation

As mentioned earlier, several decades have passed by since the Diaoyutai/Senkaku Islands Dispute arose, and much of it has to do with the political and economic implications the islands carry and lack of willingness to initiate talks among the claimants. Take the Japanese claim, for instance. They've reiterated in public that there is no so-called territorial dispute over the Diaoyutai/Senkaku islands. On the website of the MOFA of Japan, in the section titled *Fact Sheet on the Senkaku Islands*, it reads, "Japan's position is that there exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands." It is thus no wonder that Japan has always shelved the issue and is unwilling to initiate talks with other claimants. However, insisting on one's own stance would not do any good to this evidently existing problem but only bring about a catch-22 situation, as it has always been. Put the stance of the governments aside, much historical evidence has been provided to support their claim from the academia of the claimants. Only by focusing on facts, not one's

² CCTV, "The Diaoyu Islands of China Part 3: Turbulence," October 9, 2012

personal prejudice, can there be some hope of putting this long-fought dispute to an end. Hence, it is the motivation of the researcher to conduct an in-depth research in a meticulous manner into analyzing the history of the islands and the evidence cited from each party concerned.

1.3 Research Objectives

This research intends to achieve objectives listed below:

1. to weigh the historical evidence cited from the claimants,
2. to yield some insightful perspectives and findings for the claimants as well as independent observers,
3. to invite everyone to look into this dispute through the lens of history rather than groundless accusations commonly seen in this kind of highly emotional subject, and
4. to produce an effect that will more or less help bring an end to lengthy dispute.

1.4 Research Limitations

There are several limitations in this research. As suggested from the title, the research mainly focuses on historical facts, archives, and historical evidence cited by each disputant; therefore, this research does not have intention to analyze the dynamic political implications the islands carry as well as the effect which the rivalry between the ROC and the PRC may make on this issue in depth, for those analyses indeed deserve yet another scope of research to cover. Nevertheless, the essential aspects of abovementioned factors will be studied in this research to make this paper reasonably comprehensive.

1.5 Research Framework

In Chapter 1 the basic elements of this research, i.e. the background, the motivation, the objectives, and the limitations, are provided. Chapter 2 provides a literature review of related fields. Chapter 3 presents what method the researcher adopted throughout the project as well as how the author collected and analyzed the information and documents gathered. Chapter 4 lays out the author's analysis of the said documents and the arguments from the claimants concerned. Last but not the least, chapter 5 concludes the research by summarizing the project's content, answering the research questions, and predicting the future track the dispute will take.

1.6 Research Questions

This study is aimed to delve into questions as follow:

1. Were the Diaoyutai/Senkaku Islands *terra nullius* before Japan incorporated them in 1895?
2. Was Japan's incorporation of the islands valid and legal before international law?
3. Why the Chinese claim did not manifest itself over the disputed islands until in late 1960s when the possible oil resources were believed to exist around the region?
4. Which side, based on historical evidence, seems to be the rightful owner of the islands?
5. What would be some/the possible solutions that put an end to this long-standing dispute?

Chapter 2

LITERATURE REVIEW

Given that the PRC and the ROC on Taiwan have shared the same history prior to 1949, when the ROC retreated to Taiwan, it is inevitable that claims from both sides shall be regarded as one claim and their claim is hereafter referred as the Chinese claim. This is not to say, however, that the author has ignored the polarized discrepancies of these two parties in terms of political ideologies and foreign policies. Although it is the hope of the author not to complicate this already-complex issue by shying away from the Cross-Strait relations whenever possible, crucial implications of the relations will still be discussed in this paper.

2.1 Background of the Diaoyutai/Senkaku Islands

The so-called Diaoyutai/Senkaku Islands are made up of eight islets in total, and together they are known as the Diaoyutai Islands to the Chinese and Senkaku to the Japanese. The islands are located in waters of the East China Sea about 120 nautical miles northeast of Taiwan, 200 nautical miles east of mainland China, and about 200 nautical miles southwest of the city of Naha, Okinawa. In the middle of the said islands lies the 2,270 meter deep Okinawa Trough with a maximum depth of 2,717 meters that geographically separates the disputed islands from the Okinawa Islands.



Figure 1. The East China, South China, and Yellow Seas

Source: *Encyclopædia Britannica, Inc.*

The archipelago is made up of eight islets, five of which are uninhabitable and three barren rocks. Geologically, all of the eight islets are volcanic formations from the Neocene age and share common geographical features characterized by high peaks and steep cliffs.³

The Chinese term, Diaoyutai, means “Fishing Platform” and is also transliterated into English as Tiao-yu-tai under the Wade-Giles system widely

³ Ma, Ying-jeou, *Legal Problems of Seabed Boundary Delimitation in the East China Sea* (Baltimore: University of Maryland, Occasional Papers/Reprint Series in Contemporary Asian Studies, 1984): 72

used in Taiwan. The collective term used by the Japanese, Senkaku Islands, is a translation of the island's antiquated Western name, Pinnacle Islands, which was given by the British Navy upon seeing them during sailing missions to the Far East in mid-19th century.⁴ Below is a more detailed piece of information of the said islets.

Table 1
Tiaoyu/Senkaku Islands

Chinese name	Japanese name	Latitude(N)	Longitude(E)	Size(km ²)
1. Tiaoyutai	Uotshui-Shima	25°45'	123°29'	4.319
2. Huangwei Yu	Kuba-shima	25°58'	123°41'	1.08
3. Nanxiao Dao	Minami Kojima	25°44'	123°34'	0.463
4. Beixiao Dao	Kita Kojima	25°45'	123°33'	0.302
5. Chiwei Yu	Taisho-Kojima	25°55'	124°33'	0.154
6. Dabeixiao Dao	Okino Kitaiwa			
7. Dananxiao Dao	Okino Minamiwa			
8. Feilai Dao	Tobise			

Sources: T Okuhara, *15 Japanese Annual of International Law* (1971): 106 and Zhongguo Diminglu [Gazetteer of China] (Beijing: Ditu(map) Publisher, 1983)

As shown in the table above, the islets are rather small and, since five of which are not inhabitable and three merely barren rocks, they are seemingly insignificant. Historically, given that the islands are inhabitable and rather remote, they retained little intrinsic value.⁵ Since the 14th century, the islands were used

⁴ Inoue Kiyoshi 井上清, "Senkaku" Islands: A Historical Explanation of the Diaoyu Island 「尖閣島」 --釣魚諸島の史的解明 (Tokyo: Daisan Shokan, 1996): 69-82

⁵ Professor Shaw Han-yi (邵漢儀) is a Taiwanese academic and research fellow at the National Chengchi University. He wrote a thesis titled *The Diaoyutai/Senkaku Islands Dispute: Its History and An Analysis of the Ownership Claims of the P.R.C., R.O.C., and Japan*, in which he presented a great deal of historical evidence (most of which had never been revealed before the publication) in favor of the Chinese claim.

by the Chinese as navigational reference points by imperial envoys en route to the Ryukyu Kingdom, a military post of Chinese naval forces, and an operational base by fishermen from Taiwan.⁶ For the Japanese, in the other hand, recorded usage of the islands did not begin until the end of the 19th century, when a Japanese civilian, Koga Tatsushiro 古賀辰四郎, began to use for of the islands for the family business of collecting albatross feathers and other marine products.⁷ Put political and strategic implications that the islands carry aside, their economic value is the rich fish stocks around the islands with diverse species ranging from sharks, tuna, marlin, to scombrids and the possible hydrocarbon deposits and natural gas reserves in the seabed.

2.2 Background of the Dispute

2.2.1 Causes of the Dispute

The dispute over these troubled islands traces back as early as 1895, when Japan incorporated the Diaoyutai/Senkaku Islands. Yet, it was not until the late 1960s and the early 1970s, when the controversial Emery Report which suggested a huge amount of potential oil deposits and gas reserves in the proximity of the islands came out, that the dispute escalated to a barnburner in the region. As of the year when the said report was released, several protests, oftentimes fierce, have been taking place in Hong Kong, Taiwan, China, and Japan.

2.2.2 Course of the Dispute

As mentioned earlier, the fact that Japan incorporated the Diaoyutai/Senkaku Islands in 1895, after the second Sino-Japanese War, had emphatically started this longstanding feud. As a result, the islands had since been under the administration

⁶ According to a report conducted by the Su-ao Fishermans Association in 2011, it estimates that Taiwanese fishermen captured approx. 3400 tons of fish in the area in the that year, a stark difference from that of the estimated annual fish captured in 1996 which amounted as much as 54,000 tons. Source: <http://www.suaofish.org.tw/> (December 20, 2012).

⁷ Shaw Han-yi 邵漢儀, *The Diaoyutai/Senkaku Islands Dispute: Its History and An Analysis of the Ownership Claims of the P.R.C., R.O.C., and Japan.* (Baltimore: University of Maryland, Occasional Papers/Reprint Series in Contemporary Asian Studies, 1999)

of Japan until 1953, when US administration of the islands began pursuant to Article 3 of the 1951 San Francisco Peace Treaty with Japan, by which the United States obtained in the rights “to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.”⁸ On May 15, 1972, US administration of the contested islands came to an end when the islands were handed over to Japan by the States according to the “Treaty Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands,” also known as the Okinawa Reversion Treaty of June 17, 1971. The act has inevitably switched the United States from an irrelevant role to a pivotal player in this dispute, notwithstanding the constant efforts of the US to assume a neutral stance on this nettlesome issue. This tangled dispute, however, could have been much less complicated, or even have been solved, had the United States returned the islands to the Chinese. Detailed analysis and explanations will be provided later.

As if this dispute were not complicated enough, things took a turn for the worse when the controversial Emery Report predicted possible lucrative oil deposits in the vicinity of the already-troubled islands in late 1960s. Similar surveys on the geology around the islands had already been conducted before the Emery Report came out, but none of them was conducted as elaborately as the aforementioned Report. In 1968, the newly formed Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas (CCOP [The official acronym]) sponsored, under the auspices of the U.N. Economic Commission for Asia and the Far East (ECAFE), a shipborne research program. The report, published and written by Emery and Scientists from CCOP member countries in 1969, is oftentimes referred to as the Emery Report. The report’s estimation of the oil deposits notwithstanding, whether or not the area contains valuable oil deposits as suggested by the report requires actual drilling. Regardless of the promising oil deposits the research predicted, the region has yet to be drilled due to political factors. Its optimistic prediction of oil deposits the region bears has triggered off what a commentator termed “resource wars” in East

⁸ United Nations, *United Nations Treaty Series*, Vol. 136, 50.

Asia.⁹ In July 1970, the Japanese government notified the ROC that ROC's proposed exploitation of the potential oil in the waters around the disputed islands was invalid, with its claim based upon the US-Japan Joint Statement, which later led to inception of the Ryuku Reversion Agreement.¹⁰

In May of 1969, Okinawa authorities erected a concrete national marker on the main island (i.e., The Diaoyutai/Uotsuri-shima Island) in the hope of strengthening its claim over the islands.¹¹ In September of the following year, the ROC flag was planted on the Diaoyutai/Senkaku Islands by a group of Chinese protesters from Taiwan, but was soon removed by the Japanese government. Tensions again mounted, and it soon sparked what is known "Safeguard the Diaoyutai Islands Movement ro Baodiao Movement 保釣運動," a worldwide anti-Japanese protest in the Chinese community. Notwithstanding this Movement, it did not shape the White House's decision to return the Diaoyutai/Senkaku Islands to Japanese control on May 15, 1972. One incident that happened in the preceding year might deserve our attention. In 1971, the PRC assumed China's seat at the United Nations, which the ROC originally held. In September 1972, Japan officially recognized the PRC as the only legitimate Chinese government and severed diplomatic ties with the ROC. As of that year, the major dispute switched from between the ROC and Japan to between the PRC and Japan, albeit the ROC continued to lodge protests and official statement against Japan's claim over the disputed islands. On the other hand, the PRC and Japan, for the sake of their newly-established relation, agreed to shelve this dispute indefinitely in 1997.¹² To this day, both sides have managed to stick to that principle. It is thus

⁹ James Woudhuysen, "Big trouble in the East China Sea," *spiked*, September 3, 2012

¹⁰ To see the full text, please visit: <http://www.niraikanai.wvma.net/pages/archive/sato69.html>

¹¹ Yang Chung-kuei 楊仲揆, *Ryukyu's Past and Present --- With a Discussion of the Diaoyutai Problem 琉球古今談-兼論釣魚台問題* (Taipei: Taiwan Commercial Press Ltd., 1980): 493.

¹² In October 1978, China and Japan signed the Treaty of Peace and Friendship in the hope of improving their relations. Deng Xiaoping, then China's Vice Premier, states that both governments had agreed to shelve the issue in 1972. The said statement is as follows: "It is true that the two sides maintain different views on this question.... It does not matter if this question is shelved for some time, say, ten years. Our generation is not wise enough to find common language on this question. Our next generation will certainly be wiser. They will certainly find a solution acceptable to all."

understandable that whenever the dispute resurfaces, it is always shelved for the sake of the hard-earned bilateral relations by both sides.

The crisis reemerged in September 1990 when the Japan's Maritime Safety Agency was preparing to approve a plan proposed by the Nihon Seinensha, the right-wing group, to erect a new lighthouse on the main Diaoyu Island as an "official navigation mark"¹³ to replace the old one which they built in 1978. In response to the proposal, Taiwanese soon sent fishing boats carrying the Olympic Torch, reporters, and TV crews, intending to land the Diaoyutai archipelago and to place the torch on it as a symbol of Taiwan's sovereignty. However, their attempt failed due to the intervention of the Japan Maritime Safety Agency. Afterward, Taiwan delivered a written protest to Japanese officials. China did not comment on this incident until October 18, denouncing Japan's recognition of the lighthouse and reiterating that the islands were an integral part of Chinese territory. To ease the tension, Japanese Prime Minister Toshiki Kaifu stated that Tokyo would adopt a "cautious attitude" in dealing with the lighthouse application, and the Japanese Foreign Ministry also stated that there were no plans to dispatch military ships to patrol the islands. Once again, the dispute was shelved by the disputants.

In July 1996, the dispute reemerged after Japan declared an EEZ (exclusive economic zone) around the disputed islands. In the same month, the Japanese right-wing group Nihon Seinensha erected a five-meter, solar powered aluminum lighthouse on one of the islands.¹⁴ The Baodiao Movement once again kicked off, with protests from Hong Kong and Taiwan making their way to the disputed islands to demonstrate the Chinese sovereignty over the islands. Unfortunately, one Hong Kong protester drowned¹⁵ in the waters around the island when he attempted to avoid the Japanese coastguard's blockade by landing one of the islets. This marked the first time ever that one human life was sacrificed due to this dispute. Eventually, on October 7, Chinese activists from Hong Kong and Taiwan succeeded in landing on Diaotutai/Uotsuri Island and planted on the flags of both

¹³ *Kyodo News*, September 29, 1990, in FBIS, Report: East Asia

¹⁴ Shaw, op. cit.

¹⁵ Death at sea. (1996). *Maclean's*, 109(41), 45.

the PRC and ROC, but they were removed a few days later by the Okinawa authorities.

Almost a decade after the 1996 flare-up, the dispute was reasonably well-controlled, with some sporadic protests over this issue. In March 2004, a group of Chinese activists for the first time landed on the Diaoyu/Uotsuri Island. Ten hours after their landing, however, the Japan Coast Guard took those Chinese protesters away and detained them for two days on account of violating Japanese law.¹⁶ After this incident, Japan lodged an official protest to China; China showed concern about this event but condemned the arrest of its people by Japan. In May 2004, yet another controversy arose when the Japanese maritime authorities detected a Chinese maritime research ship operating in what Japan considers its own EEZ in the East China Sea. Although Japan immediately demanded China stop this operation, the Chinese nevertheless began the construction of a natural gas drilling facility. To counter this act, Japan carried out a survey of the disputed area and started exploring the possibilities of natural gas.¹⁷ In July, the Chinese staged a series of demonstration outside the Japanese embassy in Beijing against Japan's "illegal" oil exploration activities.¹⁸ On 9 February of the following year, the Japan Coast Guard obtained possession of the lighthouse built on the Diaoyu/Uotsuri Island for its private owner had given up the ownership.¹⁹ China resented the action, while Japan had managed to play down China's protest.²⁰ In April 2005, a series of anti-Japanese rallies once again

¹⁶ Charles Smith, "Island Feud a Barometer of China-Japan Ties," *Asia Times*, May 6, 2004.

¹⁷ J. J. Pryzstup, (2004) "Not the best of times", *Comparative Connections* 6(3): 117–28.

¹⁸ *Kyodo News*, "Chinese protest at embassy over Japan's E. China Sea Moves," July 12, 2004

¹⁹ Privately held Kuba-jima Island and the Islands of Uotsuri, Kita-kojima, and Minami-kojima have allegedly been rented out to the Japanese government since 1972 and 2002, respectively, while Taisho-jima Island has always been owned by the Japanese government. For more details, see Urano (2005: 206–7).

²⁰ Robert Marquand, "Japan–China tensions rise over tiny islands: Japan took possession of disputed Senkakus", *The Christian Science Monitor*, February 11, 2005

broke out in China, resulting in damage to the Japanese embassy in Beijing and consulates in other cities in mainland China²¹.

The most controversial incident that occurred recently was Japan's purchase of the Diaoyutai/Senkaku Islands from a Japanese private citizen on September 11, 2010.²² Some commentator stated that Japan's effective nationalization of the disputed islands has opened a Pandora's box of conflicting sovereignty claims that China's late paramount leader, Den Xiaoping, locked in the late 1970s to maintain sealed until wiser generations would be able to handle this issue.²³ It's estimated that Japan bought the islands at ¥2.05 billion. Inevitably, this unexpected incident sparked a chain reaction changing the nature of Japan's relations with the other two claimants (i.e., the PRC and the ROC). On September 17, 2012, a series of massive anti-Japanese protests took place in several cities of mainland China in response to Japan's nationalization of the disputed islands. The mostly young protesters waved Chinese national flags and held portraits of the late Chairman Mao Zedong, chanted "down with Japanese imperialism," and called for war as they walked along the streets under the watchful eyes of police and guards.²⁴ Windows of some Japanese companies smashed, cars of Japanese made burned or destroyed, anti-Japanese sentiment in China has reached its peak. Japanese media also reported incidents of assault on Japanese nationals in China. In response to this, the Chinese foreign ministry spokesman insisted that the public anger was not aimed at the Japanese people. That the scale of protest being and that it was permitted by authorities was not usual in China, given the nation's negative image of cruelly repressing its dissidents. Therefore, some suspected that the nationwide rallies were sanctioned by the Chinese government, albeit China's state-run media, Xinhua, had started appealing for restraint, running commentaries that condemned violence and

²¹ The Chinese protests were triggered by Japan's authorization of its history textbooks in which have supported its claim over the islands as well as glossing over its wartime brutality and atrocities.

²² More info regarding this Japanese private citizen will be provided in the section of "the Japanese Claim."

²³ *The Japan Times*, "Senkaku purchase weakened Japan's claim to exclusive sovereignty: experts." January 1, 2013

²⁴ *CNN*, "Anti-Japan protests erupt in China over disputed islands," January 1, 2013.

lectured the public on the true meaning of patriotism. Tensions between the ROC and Japan also ran high, when about 40 Taiwanese fishing boats and 12 patrol boats made their way to waters near the islands, which ended up exchanging water cannon fire with Japanese coast guard ships on September 25, 2012. This conflict ended shortly, when the Taiwanese ships pulled back after being fired upon.²⁵ This marked Taiwan's first foray into the waters around the islands. That "protecting Diaoyutai campaign" launched by local Taiwanese fisherman was supported by R.O.C. President Ma Ying-jeou, with his praising the Taiwan's coast guard for escorting the Taiwanese vessels to the area adjacent to the islands. Japanese Chief Cabinet Secretary Osamu Fujimura, however, said Tokyo requested, through diplomatic channels, that Taiwan stop violating its water.

2.2.3 Consequences of the Dispute

Since this dispute has not come to an end yet, the full-scale consequence of it still remains to be seen. However, with the advantage of hindsight, we might foresee its full "potential" in some ways. The first and foremost consequence this dispute has led to is a destabilized East China Sea. With a rising China by all definitions and ever-close relations between Japan and the US, the strategic and political implications of the islands have thus made this otherwise reasonably "pacific" region more dynamic and turned it into, as it were, a time bomb. To make things more complex, as of the publication of the Emery Report, the possible oil deposits in the region has also sparked what a commentator termed "oil war," given the fact that oil is a vital source for a robust economy. On the other hand, because this is a sovereignty dispute, the struggle between national pride (legitimacy of the government) and bilateral relations (esp. trades) with the claimants of the islands has been going on, with prioritization of nationalism alternating with efforts made to cement about bilateral relations. More potential consequences, nevertheless, have yet to emerge on the surface.

²⁵ *Fox News*, "Taiwan, Japan fire water cannon in disputed island controversy," September 9, 2012

2.3 The Japanese Claim

2.3.1 The Official Stance

Since the inception of this dispute, Japan has always firmly stated they do not have any territorial dispute with the Chinese. Talks between these two sides have yet to yield any constructive solutions. The Japanese claims that the incorporation of the disputed islands in 1895 was valid and legal on account of the status of said islands being *terra nullius* based on surveys they conducted before the incorporation. This stance is clearly shown in the report *Basic View of the Ministry of Foreign Affairs on the Senkaku Islands* (hereafter referred as the Basic View), as one of its paragraphs reads, “There is no doubt that the Senkaku Islands are clearly an inherent part of the territory of Japan, in light of historical facts and based upon international law.” Indeed, the Senkaku Islands are under the valid control of Japan. **There exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands.**” [Emphasis is mine]²⁶ This explains why dialogues with regard to sovereignty over the islands so far have been fruitless. Furthermore, the fundamental Japanese claim is that the islands were acquired through “discovery-occupation,” one of the established modes of territorial acquisition under international law. Another key paragraph in the Basic View reads:

From 1885 on, surveys of the Senkaku Islands were thoroughly carried out by the Government of Japan through the agencies of Okinawa Prefecture and by way of other methods. Through these surveys, it was confirmed that the Senkaku Islands had been uninhabited and showed no trace of having been under the control of the Qing Dynasty of China. Based on this confirmation, the Government of Japan made a Cabinet Decision on 14 January 1895 to erect a marker on the Islands to formally incorporate the Senkaku Islands into the territory of Japan.

²⁶ Ministry of Foreign Affairs of Japan, (1972) *The Basic View on the Sovereignty over the Senkaku Islands [provisional translation]* [online] Available HTTP: http://www.mofa.go.jp/region/asia-paci/senkaku/basic_view.html

The Basic View further argues that “the Senkaku Islands were neither part of Taiwan nor part of the Pescadores Islands, which were ceded to Japan from the Qing Dynasty of China in accordance with Article 2 of the Treaty of Peace signed at Shimonoseki, which came into effect in May of 1895.” This point serves as a refutation of the Chinese claim that the disputed islands were traditionally Chinese territory belonging to the Island of Taiwan, and ceded to Japan according to Article 2 of the Treaty of Shimonoseki.²⁷

2.3.2 Support from the Japanese Academia

In 1984, Midorima Sakae, a Japanese scholar, wrote a book titled *Senkaku Retto*, in which he points to the career story of Koga Tatsushiro, a native of Fukuoka Prefecture, who Japanese scholars attribute as the island’s discovery. In this book, he claims Koga had been living in Naha since 1879 and went on several exploration missions for the purpose of finding new sites to carry out his business of catching and exporting marine products. Koga reached Kuba-shima (Huangwei Yu) in 1884 and discovered a great deal of albatross feathers on the island, he later intended to run a business on the islands. He applied for a permit for exploring the islands but was declined because the government was not clear at the time whether the islands belonged to any other state. In the following decade, Koga did not give up the thought of getting the approval from the Japan to lease the islands, he went to Tokyo to submit his application to the Ministry of Home Affairs and Ministry of Agriculture and Commerce in 1894; however, the application was once again turned down because of the uncertainty of the islands’ ownership²⁸.

On June 10, 1895, six months after the Japanese government passed the Cabinet Decision to incorporate the islands (six days after Japan had officially taken over Taiwan), Koga once again filed an application to the Home Minister—his application was granted in the September of the following year.

²⁷ Shaw, op. cit., 24.

²⁸ Inoue Kiyoshi 井上清, “*Senkaku*” Islands: A Historical Explanation of the Diaoyu Island 「尖閣列島」 --釣魚諸島の史的解明 (Tokyo: Daisan shokan, 1996): 114

Consequently, Koga was permitted to rent four of the islands, Uotsuri-shima (Diaoyutai Yu), Kubashima (Huangwei Yu), Minami Kojima (Nanxiaodao), and KitaKojima (Beixiaodao) for thirty years without rent²⁹. Koga had since invested heavily in the islands and had also built the basic infrastructure that his business and his employees needed. In 1909, Koga received the prestigious Blue Ribbon Medal, honoring for his efforts into develop the islands. Koga passed away in 1918 and his business was then managed by his son, Koga Zenji. The lease expired in 1926 but was renewed by the Japanese government under the terms of the Koga family paying the rent the next year. In 1932, the Japanese government changed the status of the four islands from state-owned land to private-owned land as the islands were sold to the Koga Family.³⁰ Due to lack of funds, the Koga family's business came to an end on the eve of the Pacific War. After the WWII, the Diaoyutai/Senkaku Islands fell under the administration of the US, both Kuba-shima (Huangwei Yu) and Taisho-jima (Chiwei Yu) were designated as military firing practice targets. Later the US signed a lease (Basic Lease, GRI. No. 183-1) with Koga in 1958 for permission to use Kuba-shima for military exercises. In 1978, the Koga family sold the four islands to members of the Kurihara family at a symbolic price of thirty yen per tsubo (1tsudo is equivalent to 2.3 square meters) (Nakamura Katsunori, 1997)³¹. In short, Japanese scholars frequently point to the abovementioned developments by the Koga family as evidence of Japanese state authority over the islands by acts of administration of land, institution of the land leasing, and permission of the transferal of land ownership among private citizens³².

²⁹ Shaw Han-yi, *op. cit.*, 30.

³⁰ *Ibid.*, 31.

³¹ Nakamura Katsunori 中村勝範, "The Japan-U.S. Security Treaty and the Senkaku Islands 日米安保条約と尖閣諸島," Conference paper, conference for The Tiao-yu-tai/Senkaku Islets Symposium. Taipei, Taiwan, May 24-25 (1997): 3.

³² Shaw Han-yi, *op. cit.*, 31.

2.3.3 Evidence Cited by the Japanese

Another piece of evidence that the Japanese claim supporters always cited is a letter of appreciation issued by the Chinese consul station in Nagasaki in 1920. The photo of the said letter is shown as follows:



Figure 2. Appreciation of Letter from China

Source: the MOFA of Japan

Japanese scholars and media contend that this letter written in the consul's official capacity and affixed with an official seal is a clear example of Chinese

authorities recognizing the disputed islands to be the territory of Japan. However, Chinese claim supporters have argued that this evidence is irrelevant since not only the disputed islands but also Taiwan were under the control of Japan during the war years.

2.4 The Chinese Claim

Anyone who only has meager knowledge about the Cross-Strait issue probably would probably know that the two sides (i.e., the ROC and the PRC) are two *de facto* autonomous entities, each side having its own parliament and President. Interestingly enough, given the fact that two sides shared a common history prior to 1949, their positions (based on history per se) in this issue are paradoxically identical. Thereafter in this section presents the claim of, and the evidence cited by the Chinese (the PRC and the ROC as one entity). The Chinese have always claimed that the Diaoyutai/Senkaku Islands belong to them since ancient times, thus much resenting Japan's incorporation of their long-owned islands. They contend that the historical documents regarding Chinese sovereignty over the islands trace back to as early as the 14th century,³³ and vigorously demand Japan return the said islands to the hands of Chinese people. On the webpage of the MOFA of the ROC it reads, "The Diaoyutai Islands 釣魚臺列嶼, an island group part of Taiwan, are under the jurisdiction of Yilan County 宜蘭縣. Based on their geographical location, geological composition, relevant historical evidence, and international law, the Diaoyutai Islands form an inherent part of the territory of the Republic of China (Taiwan)."³⁴ Paradoxically, on December 28, 2012, the Foreign Ministry Spokesperson of the PRC, Hua Chunying, replied to the press when asked a question concerning the dispute at a press conference³⁵. His statement is shown as follows:

³³ Shaw, op. cit., 43.

³⁴ For the full statement, visit:

<http://www.mofa.gov.tw/EnOfficial/Topics/TopicsArticleDetail/fd8c3459-b3ec-4ca6-9231-403f2920090a>

³⁵ For the full statement and other Q&A sessions, visit:

<http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t1001466.htm>

“On the issue concerning the Diaoyu Islands, the Chinese government's position is clear and consistent. The Diaoyu Island and its affiliated islands have been China's inherent territory. China is firm and resolute in defending national territorial sovereignty”

2.4.1 Supporting Evidence of the Chinese Claim

In 1372, the Ryukyu Kingdom became a tributary state of Ming Dynasty of China and for the next five hundred years paid tribute to the emperor of China. Between 1372 and 1879 twenty-four investiture missions were sent by the Chinese Emperor to the Ryukyu Kingdom for the purpose of bestowing the formal title of Zhongshan Wang 中山王 (Zhongshan King) to a new Ryukyu ruler. The Chinese imperial envoys always kept detailed mission records of their trips to the Ryukyu Kingdom which were later submitted to the Chinese Emperor upon their return and then stored in government archives, thus indicating those records were official records accorded with the same legal efficacy as in any other official documents.³⁶

The earliest non-official reference of the disputed islands is in a Chinese navigational record entitled *Fair Winds for Escort* 順風相送 written in 1403. In the record, it identified the disputed islands within the Compass Route well-known for the Chinese navigators and suggested directions to reaching the Ryukyu Kingdom. The original version of it is now held by *BodleianLibrary* in the U.K. In 1534, Chinese investiture envoy Chen Kan 陳侃 wrote in *Records of the Imperial Missions to Ryukyu* 使琉球錄 the following:

³⁶ Yang, op. cit., 518; Tao Cheng, “The Sino-Japanese Dispute Over the Tiao-yu-tai (Senkaku) Islands and the Law of Territorial Acquisition,” *Virginia Journal of International Law*, Vol. 14 (1974): 254.

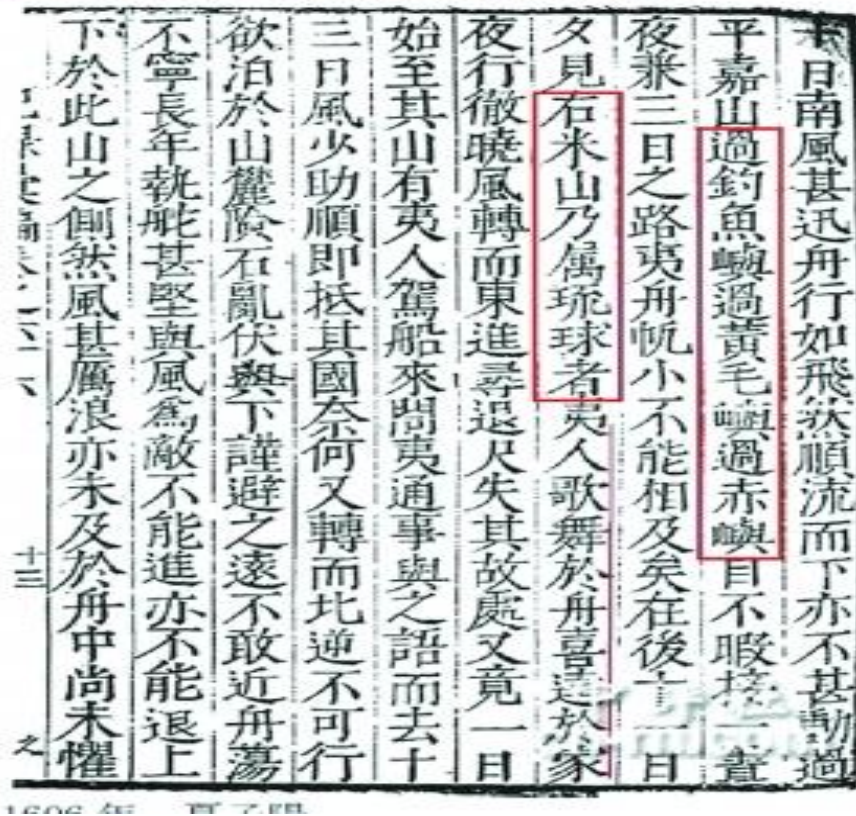


Figure 3 Records of the Imperial Missions to Ryukyu

Source: National Library of China

On the tenth, the winds heading to the south were brisk and the boat sailed swiftly. Though floating downstream with the current, the boat maintained a steady balance without being vigorously shaken. One after another, Pingjia Hill, Diaoyu Yu, Huangmao Yu [Huangwei Yu], and Chi Yu [Chiwei Yu], were left behind... One the Dusk of the eleventh, Kume Hill was in sight --- it belongs to the Ryukyus. The aborigines [Ryukyu People on board] rejoiced and were happy to have arrived home.³⁷

It wasn't until the Ryukyu people saw Kume Hill that they explicitly stated that it belonged to another country, the Ryukyu Kingdom, albeit they passed several islets before Kume Hill. Notwithstanding lack of direct statement saying

³⁷ Shaw, op. cit., 45.; Wu Tianying 吳天穎, A Textual Research on the Ownership of the Diaoyu Islands Prior to the Sino-Japanese War of 1894-95 –Also a Query to Professor Toshio Okuhara and Otehrs 甲午戰前釣魚列嶼歸屬考—兼質日本奧原敏雄諸教授 (Beijing: Shehwei Kexue Wenxian Chubanshe, 1994): 40-42.

those islets passed before Kume Hill belonged to China in the record, the Chinese claim advocates frequently cite this piece of evidence as the proof of Chinese sovereignty over the islands.

One frequently revoked map from work of a then noted Japanese cartographer, Hayashi Shihei 林子平, is *Illustrated Survey of Three Countries* 三国通覽図説 published in 1785. The map clearly shows the disputed islands at the time were recognized as Chinese's territory by not only the Chinese but also the Japanese, since the compiler of which was an eminent Japanese scholar-cartographer during the Edo Period. Hayashi used the traditional four pigment coloring method, with territories of China in the color red (including the disputed islands), territories of Japan in the color purple, and territories of the Ryukyu kingdom in the color brown.

林子平「三国通覽図説」付図「琉球三省并三十六島之図」

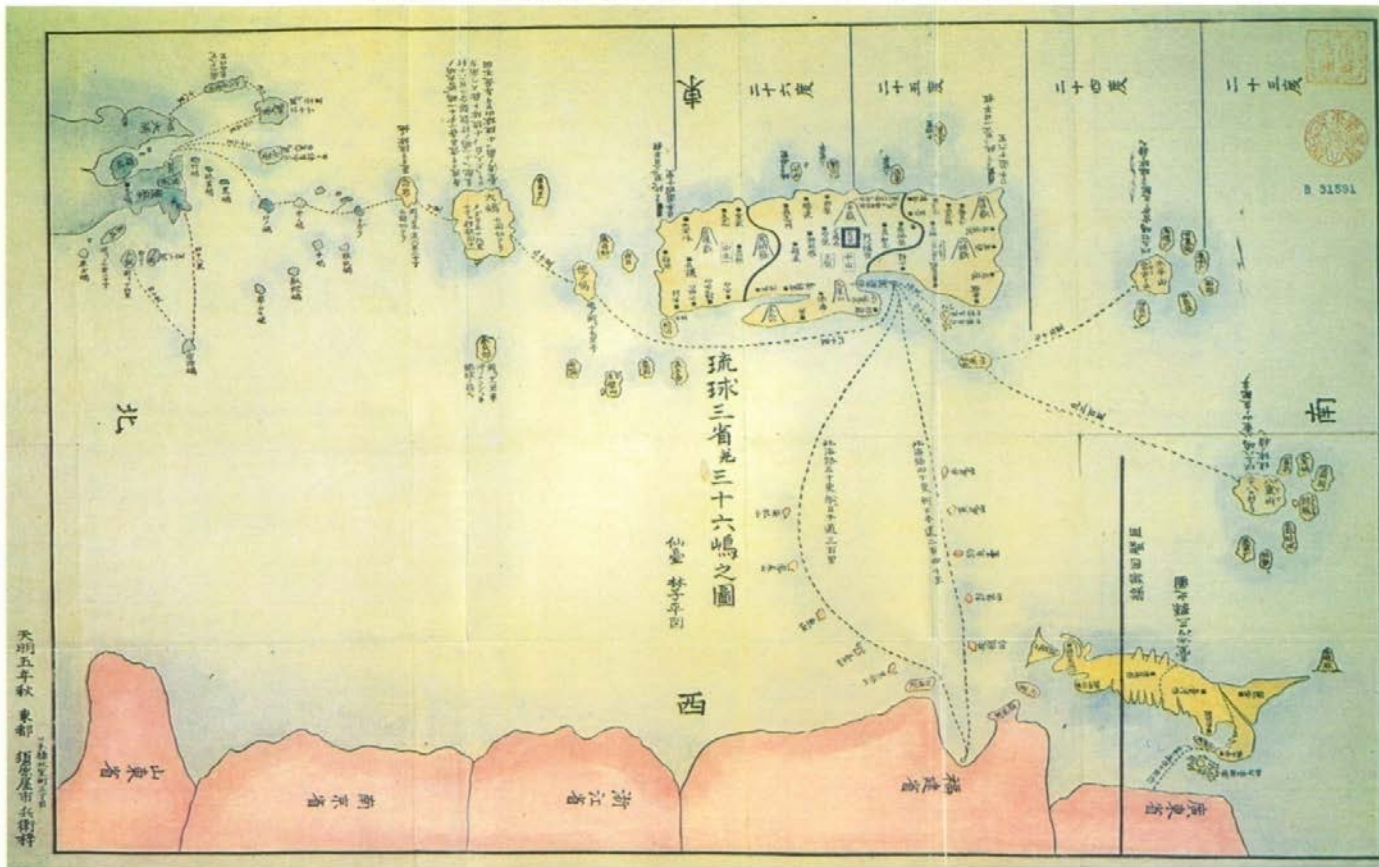


Figure 4 *Illustrated Survey of Three Countries* 三国通覽図説 Source: 鄭海麟 JHENG, HAI-LIN 論釣魚台列嶼主權歸屬 Discussion of the Ownership of the Diaoyutai Islands

Though some Japanese scholars have sought to discount the value of this map, arguing that Hayashi Shihei mechanically colored the disputed islands as red since he referred to *Zhongshan Mission Records* before the completion of this map, the historical value of this map remains high. In his book *A Historical Explanation of the Diaoyu Island*, Inoue Kiyoshi gave credit to *Illustrated Survey of Three Countries* with regard to its historical value³⁸. In addition, this map has also been translated into French and published in 1832 by Heinrich Klaproth, a German scholar of Oriental studies. Therefore, the authoritativeness of Hayashi's map was also recognized European scholars.

Evidence demonstrating Chinese' effective control of the disputed islands is also found in several official documents. From the Ming Dynasty to the Qing Dynasty, the disputed islands were incorporated into the Chinese naval defense system. Since the onset of the 16th century, the Chinese coast was frequently visited by notorious Japanese privates. To guard its people and crack down those malicious privates, the Ming government appointed Hu Zongxian 胡宗憲 as Commander-in-Chief of the Chinese Coastal defense in 1556, with Zheng Rozeng 鄭若曾 assisting him in compiling a volume of thirteen scrolls collectively entitled *Illustrated Treatise on Coastal Defense* 籌海圖編. Compiled in 1562, the volume recorded all Chinese military deployments in the coastal area from the northern Liaodong Peninsula to the southern province of Guandong, on the mainland and offshore islands. The disputed islands were recorded in two maps labeled Fu7 and Fu 8 in the first scroll of the volume whose title is "*Atlas of the Islands and Shore of the Coastal Region* 沿海山沙圖." Given it was conducted for national defense purpose, this work without a doubt represents the Chinese authority and effective control over the Diaoyutai islands.

³⁸ Inoue Kiyoshi 井上清, "*Senkaku*" *Islands: A Historical Explanation of the Diaoyu Island* 「尖閣列島」 -- 釣魚諸島の史的解明 (Tokyo: Daisan shokan, 1972): 46-48.



Figure 5. Atlas of the Islands and Shore of the Coastal Region 沿海山沙圖

Source: China-America Digital Academic Library

Likewise, Chen Shouqi's 陳壽祺 *Revised Gazetteer of Fujian Province* compiled in 1871 further indicates the precise administrative division to which the disputed islands belonged.³⁹ In the section of "Key Locations of Each Country 各縣衝要" under the chapter of "Costal Defense," Chen records the following:

噶瑪蘭廳

葛瑪蘭即廳治北界三貂東言大海生番句處時有匪船踪...蘇澳港在廳治南港寬闊可容大舟屬葛瑪蘭分防又後山大洋北有釣魚臺港深可泊大船千艘崇爻之薛坡蘭可進杉板船。⁴⁰

Gemalan Department

Gemalan constitutes a department (ting 廳) which to the north borders Sandiao, and to the east faces the ocean. Wild savages are found to Gather and reside within; and pirate ships frequently lurk about [the area]... Suao Harbor is located at the southern part of the Department, with a broad entrance capable of accommodating large ships--- it belongs to the defense sector of Gemalan. In addition, in the north of the ocean Behind the mountain [i.e., Taiwan] there lies Diaoyutai where a thousand or so large ships can be anchored. Xuebolan of Chongyao [both are names] can accommodate sampan boats.

³⁹ Shaw, op. cit., 58.

⁴⁰ Chen Shouqi 陳壽祺, *Revised Gazetteer of Fujian Province* 重纂福建通志 (1871)



Figure 6 Revised Gazetteer of Fujian Province

Source: The East Asian Library of the University of Chicago

To counter Japan's claim that the islands were *terra nullius* based on its investigations on the islands, scholars supporting the Chinese claim have constantly cited some official Japanese documents regarding this dispute. Below is an official letter indicating that the Japanese government was aware of the fact the islands were not *terra nullius* and therefore was taking caution with regard to the incorporation process.

十月廿一日発遣
親展第三十八号

外務卿伯爵 井上 馨

内務卿伯爵 山県有朋殿

沖縄県ト清国福州トノ間ニ散在スル無人島、久米赤島外二嶋、沖縄県ニ於テ実地調査ノ上国標建設ノ義、本月九日附甲第八十三号ヲ以テ御協議ノ趣致熟考候処、右嶋嶼ノ義ハ清国国境ニモ接近致候。曩ニ踏査ヲ遂ケ候大東島ニ比スレハ、周回モ小サキ趣ニ相見ヘ、殊ニ清国ニハ其島名モ附シ有之候ニ就テハ、近時、清国新聞紙等ニモ、我政府ニ於テ台湾近傍清国ノ所屬ノ島嶼ヲ占拠セシ等ノ風説を掲載シ、我国ニ対シテ猜疑ヲ抱キ、頻ニ清政府ノ注意ヲ促シ候モノモ有之際ニ付、此際ニ遽ニ公然国標ヲ建設スル等ノ処置有之候テハ、清国ノ疑惑ヲ招キ候間、差向実地ヲ踏査セシメ、港湾ノ形状并ニ土地物産開拓見込ノ有無ヲ詳細報告セシムルノミニ止メ、国標ヲ建テ開拓等ニ着手スルハ、他日ノ機会ニ譲リ候方可然存候。

且曩ニ踏査セシ大東島ノ事并ニ今回踏査ノ事共、官報并ニ新聞紙ニ掲載不相成候方可然存候間、夫々御注意相成置候様致度候。

右回答旁拙官意見申進候也。

追テ御差越ノ書類及御付候御落手相成度候也。

Figure 7 Letter of Response from the Foreign Minister to the Home Minister

Source: Shaw Han-yi

The translation of the said document is as follows⁴¹:

Sent October 21, 1885

Personal Correspondence No. 38

[From] Foreign Minister Count Inoue Kaoru

[To] Home Minister Count Yamagata Aritomo

In response to your letter Annex No. 38 received on the ninth of this month, in which you requested deliberation over the matter concerning placing national markers on the uninhabited islands of Kumeseki-shima and two other islands spread out in between Okinawa and Fuzhou [China] after investigating them, I have given much thought to the matter. The aforementioned

⁴¹ Since the author's knowledge of Japanese is rudimentary, the translated versions of cited Japanese documents thorough the paper were extracted from Prof. Shaw's work, *The Diaoyutai/Senkaku Islands Dispute: Its History and An Analysis of the Ownership Claims of the P.R.C., R.O.C., and Japan*.

islands are close to the border of China, and it has been found through our surveys that the area of the islands is much smaller than the previously surveyed island, Daito-jima; and in particular, *China has already given names to the islands. Most recently Chinese newspaper have been reporting rumors of our government's intention of occupying certain islands owned by China located next to Taiwan, demonstrating suspicion toward our country and consistently urging the Qing government to be aware of this matter. In such a time, if we were to publicly place national marker on the islands, this must necessarily invite China's suspicion toward us. Currently we should limit ourselves to investigating the islands, understanding the formations of the harbors, seeing whether or not there exist possibilities to develop the island's land and resources, which all should be made into detailed reports. In regard to the matter of placing national markers and developing the islands, it should await a more appropriate time.*

Moreover, the survey conducted earlier of Daito-jima and the investigation of the above mentioned islands should not be published in the *Official Gazette* (官報) or newspapers.

Please pay special attention to this.

The foregoing is my opinion on the matter. [Emphasis added]⁴²

The then Japanese foreign minister, Inoue Kaoru, knew very well that the islands already were named by Chinese and that this matter had to be taken with great caution so that tension between these two countries would not arise. Finally, he added that they had to wait for a more “appropriate” time before placing national markers on the islands. What exactly does a more appropriate time mean? Were they waiting for a significant event that would be a game changer? Let history offer the explanation.

⁴² Shaw, op. cit., 75

Following is a document showing that the so-called investigations of the islands conducted by Japanese were in fact incomplete.

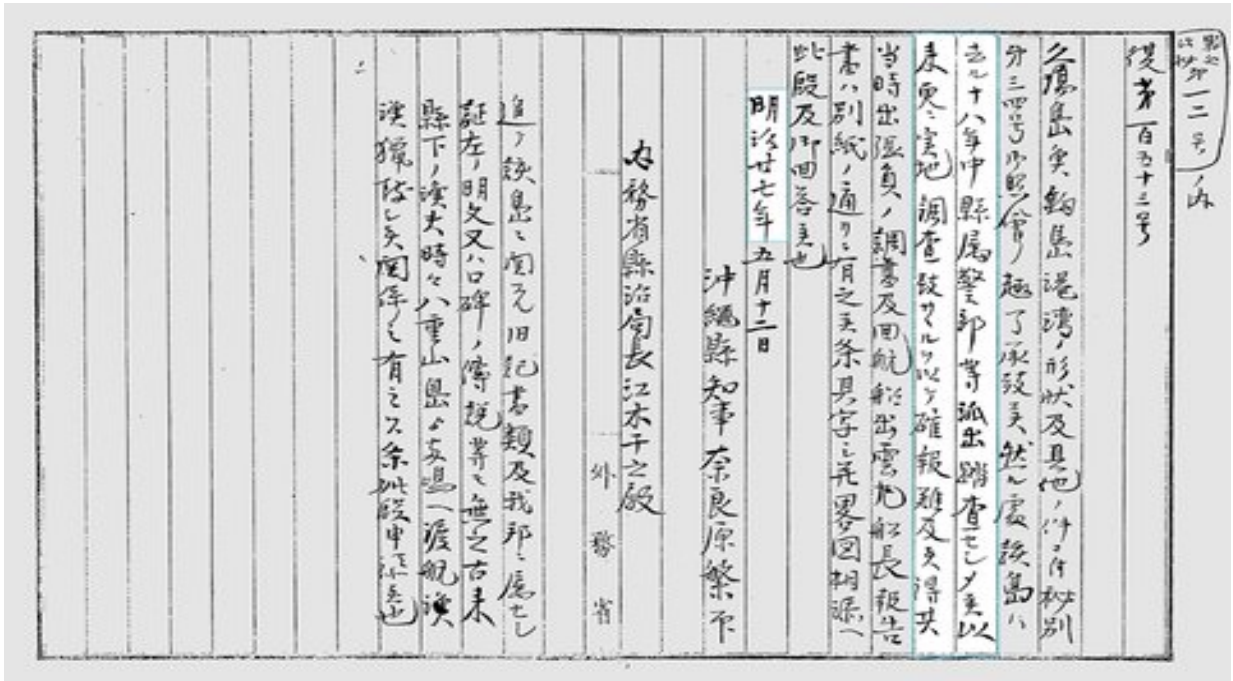


Figure 8 Letter from the Okinawa Prefectural Governor

Source: Japan Diplomatic Records Office.

“Ever since the islands were investigated by Okinawa police agencies back in 1885, there have been no subsequent field surveys conducted,” the Okinawa governor wrote in 1892.⁴³

The so-called investigations, in fact, were never completed due to bad weather condition, which contradicts Japanese government official claim iterated in *The Basic View* of 1972 which stated, “From 1885 on, surveys of the Senkaku Islands had been thoroughly made by the Government of Japan through the agencies of the Okinawa Prefecture and by way of other method.”⁴⁴ However, the incorporation proposal had been promptly approved by Japanese government

⁴³ Shaw Han-yi, “The Inconvenient Truth Behind the Diaoyu/Senkaku Island” *The New York Times*, <http://kristof.blogs.nytimes.com/2012/09/19/the-inconvenient-truth-behind-the-diaoyusenkaku-islands/> (December 28, 2012)

⁴⁴ Ministry of Foreign affairs of Japan (1972), op. cit.

nearly at the end of the Sino-Japanese War. What follows next is a secret document sent to the then Japanese Prime Minister by Home Affairs Minister requesting approval of the incorporation.

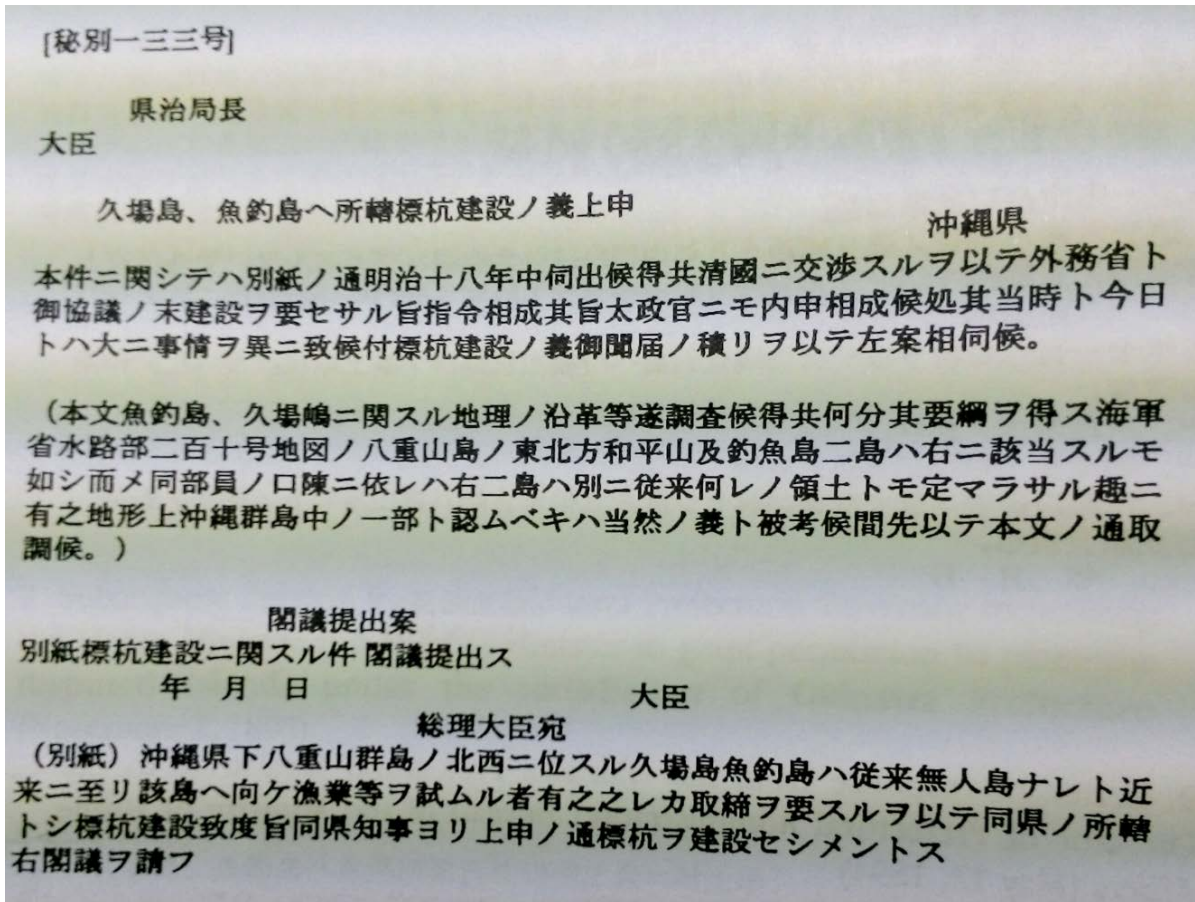


Figure 9 Home Affairs Minister's Letter to Prime Minister

Source: the Diplomatic Record Office of the Ministry of FOREIGN Affairs of Japan in Tokyo

And the translation is shown below:

[Secret No. 133, December 15, 1894]

[From:] Director of the Prefectural Administration Bureau

[To:] Minister [of Home Affairs]

Petition Regarding the Construction of Jurisdiction Markers at
Kuba-shima and Uotsuri-shima

Okinawa Prefecture

As indicated in the attachment paper, although this matter was previously submitted in 1885, due to the [Home Ministry's] concern that *this matter involves negotiation with Qing China*, orders to forgo construction [of the national markers] were conferred after consulting the Foreign Ministry [of Japan]. In addition, this matter was also brought to the attention of the Grand Council of State. However, *since the situation today is greatly different from the situation back then*, I humbly inquire about your intentions on the matter and submit the following petition for your reviewal.

(The geographical history of Uotsuri-shima and Kuba-shima, etc., have been investigated and a synopsis of such matters has been acquired. It *appears* that the above islands are the two islands, Wahei-san (和平山) and Chiyogyo-shima (釣魚島), located northeastward of the Yaeyama Islands, found on Map No. 210 of the Hydrographic Office, Navy Ministry. Based on the verbal descriptions of an official from the Hydrographic Office, it *appears* that the islands have not yet been previously claimed by any [nation]. From a typographical perspective, it can be *assumed* that the islands are necessarily a part of the Okinawa Archipelago. Investigations have initially been carried out in the manner described in this section.)

Petition to the Cabinet Meeting

Attachment Paper: Matter concerning the construction of markers to be submitted to the Cabinet Meeting

__Month__Day, __Year

[From:] Minister [of Home Affairs]

To Prime Minister

(Attachment Paper) The islands, Kuba-shima and Uotsuri-shima, located northwestward of Yaeyama Islands under the jurisdiction of Okinawa Prefecture, have heretofore been uninhabited islands. Due to recent visits to the said islands by individuals attempting to conduct fishing related businesses, and that such matters require regulation, it is desirable to have [the islands] be put under the

jurisdiction of [Okinawa] Prefecture as requested in the Okinawa Prefectural Governor's petition. For the purpose of recognizing [the islands] under the jurisdiction [Okinawa] Prefecture, markers should be constructed in accordance to⁴⁵ the said petition.

It is requested of the Cabiner Meeting to decide on the above matter.
[Emphasis is mine]⁴⁶

As seen above, not only did they mention the state clearly that this matter (regarding the disputed islands) involved negotiation with Qing China, they also came to conclusion that the disputed islands belonged to part of the Okinawa Archipelago based simply on speculations. The former contradicts their official claim written in *The Basic View*, which iterates that the islands were terra nullias in 1895 and that they do not have any territorial dispute with the Chinese over the islands, and the latter is obviously a wild guess. As mentioned earlier in the paper, there lies the Okinawa Trough that naturally separates the disputed islands from the Okinawa islands.

Nevertheless, the above letter was soon approved by Home Minster and the petition was enclosed alone with another letter sent to Foreign Minister Mutsu Munemitsu 陸奥宗光 on December 27, 1894. The letter reads as follows,

⁴⁵ Having consulted my personal dictionaries including *Shorter Oxford English Dictionary, the sixth edition, Marriam-Webster's 11th Collegiate Dictionary*, as well as *Random House Webster's Unabridged Dictionary*, I came to conclusion that the preposition "to" should have been "with," which might merely be a slip of the pen.

⁴⁶ Shaw, op. cit., 88

秘別第一三三号

久場島、魚釣島へ所轄標杭建設ノ儀、別紙甲号ノ通り沖繩知事ヨリ上申候処、
本件ニ関シ別紙乙号ノ通り明治十八年貴省ト御協議ノ末指令ニ及ヒタル次第モ有
之候共、其ノ当時ト今日トハ事情モ相異候ニ付キ、別紙閣議提出ノ見込ニ有之候
条、一応及御協議候也。

明治廿七年十二月廿七日

内務大臣子爵 野村 靖[㊟]

外務大臣子爵 陸奥宋光殿

Figure 10. Home Minister's Letter to Foreign Minister Source: MOFA of Japan

And the translated version is shown below:

Secret (in red) No. 133

In regard to the matter of constructing jurisdiction markers on Kuba-shima and Uotsuri-shima, and in accordance to Attachment Paper A consisting the petition from the Okinawa Magistrate, and the relating Attachment Paper B, orders [to forego the placement of markers] were conferred after our deliberation with yours ministry during the 18th year of Meiju [1885]. However, considering the fact that the situation today has changed relevant to the situation back then, I plan to submit this matter to the Cabinet Meeting for approval in an attachment paper. I therefore request to discuss with you this matter in advance.

December 27, 27th Year of Meiji [1894]

Home Minster Viscount Nomura Yaushi

To Foreign Minister Viscount Mutsu Munemitsu [Emphasis is mine]⁴⁷

⁴⁷ Ministry of Foreign Affairs of Japan, *Nihon Gaiko Bunsho (Japan Foreign Affairs Documents)* 日本外交文書, Vol. 23 (Tokyo:1952): 532

At last, the proposal was presented to Prime Minister Ito Hirobumi 伊藤博文 in an attachment paper under the title, “Secre No. 133: Matter Concerning the Placement of Markers,” on 12 January 1895. Two days after, the proposal was brought before the Cabinet Meeting on January 14, 1895 and the following resolution was adopted,

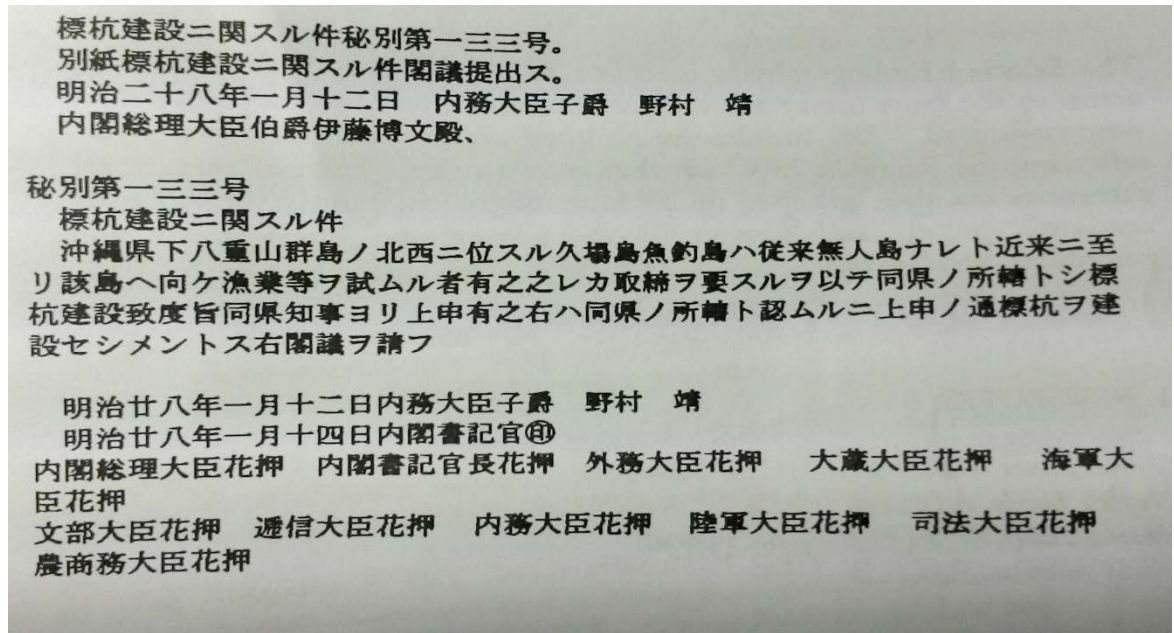


Figure 11. Resolution Adopted on January 14, 1895 Source: Ryukyu Government⁴⁸

The Home Minister has requested a cabinet decision on the following matter: the islands, Kuba-shima and Uotsuri-shima, located northwestward of Yaeyama Islands under the jurisdiction of Okinawa Prefecture, have heretofore been uninhabited islands. Due to recent visits to the said islands by individuals attempting to conduct fishing related businesses, and that such matters require regulation, it is decided that [the islands] be placed under the jurisdiction of Okinawa Prefecture. Based on the decision, the Okinawa Prefectural Governor’s petition should be approved. Since there are no disagreements on the matter, it shall proceed based on the above decision.

On January 21, 1895, Prime Minister Ito approved this cabinet decision and the incorporation of the islands by Japan had finally been realized.

⁴⁸ Ryukyu Government, “Reference 3: Official Documents, “History of Okinawa Prefecture, Vol. 13 沖縄県史,卷十三(1967): 593.

2. 5 Findings of Related Papers

Since the dispute surfaced, there is no shortage of papers on the discussion of the ownership of the islands. Interestingly enough, among papers adopted in the historical approach on this dispute, the first and arguably the most influential one is late Japanese historian Inoue Kiyoshi's book, *Senkaku Islands: A Historical Explanation of the Diaoyu Islands*. In this book he provides a great deal of evidence from Chinese, Ryukyuan, and Japanese historical records that corroborates the fact that the disputed islands traditionally belonged to the Chinese. Teaching at Tokyo University of History Department, Inoue was a well-respected scholar in Japanese academia and an avid Chinese claim supporter, writing several journals on the Diaoyutai Islands dispute. For the completion of the said book, he conducted field research on Okinawa, interviewing the locals and examining the local archives. From this research, he concludes that contrary to what Japan has claimed in public, the senior Okinawa islanders and their ancestors had little connection with the disputed islands before 1895, and that their knowledge about the islands were acquired from the Chinese.⁴⁹ On the other hand, in Shaw's exhaustive thesis⁵⁰, he reveals a great many classified Japanese official documents as well as essential Chinese archives, calling Japan's official claim into question. On September 19, 2012, Shaw posted an article on *The New York Times*, in which he explores documents regarding the dispute. That article posted online has received comments as many as 620. It's worth noting that a two-time Pulitzer Prize winner and columnist for *The York Time*, Nicholas D. Kristof, after reading the above-mentioned post, also expresses sympathy to the Chinese position.⁵¹ Based on the historical, linguistic, geographic, and anthropologic perspective, Jheng in his book *Discussion of the Ownership of the Diaoyutai Islands* plausibly argues that the islands categorically belong to the Chinese and that both parties across the Taiwan Strait should put aside their differences, adopt the same stance on this matter, and together solve this dispute

⁴⁹ Inoue Kiyoshi, op. cit., 112

⁵⁰ See footnote 2

⁵¹ Shaw, op. cit.

with Japan through peaceful means.⁵² In the author's opinion, Jheng's book is so far the most compelling and comprehensive work on this subject. I encourage anyone interested in this topic to peruse this well-written book as well as his other books on the same subject.

2.6 Political Implications of this Dispute

Unlike other territorial disputes, the Diaoyutai Islands dispute is particularly troublesome because it involves many cognate issues: Japanese's rising neonationalism, Japanese leader's frequent visit to Yasukuni Shrine, power struggle in the East China Sea between the US-led camp and an ever-growing China, and the unsolved Cross-strait issue. With the benefit of hindsight, it was wise of Den Xiaoping to publicly state that the Diaoyu Islands issue should be left to posterity.⁵³

Domestically, Japan's right-wing extremists have created ultra-nationalism that has played an influential role in both the society and the politics, making the Diaoyutai Islands dispute an ultra-emotional matter. For example, former Prime Minister Hosokawa Morihiro was almost assassinated by a radical right-wing extremist after he extended heartfelt apology to victims of empire Japan during war years. In August 1993, a group within the LDP formed the 107-member *Rekishu Kento Inkai* (Committee on History and Screening, or CHS) to examine Hosokawa's apology. Soon they summarized that Nanjing Massacre and stories about Comfort Women were made up; that acknowledgement of Japan's invasion and atrocities on history textbooks at school had to be removed; that a national movement was needed to disseminate the historical view put forward in the first two points.⁵⁴ Abovementioned summary written is apparently not factual and is outrageous to victims of Japan's atrocities during times of war. Unfortunately,

⁵²Jheng Hai-lin 鄭海麟, *Discussion of the Ownership of the Diaoyuta Islands 論釣魚台列嶼主權歸屬* (Taipei: Haixia Publications, 2011): 300.

⁵³Unryu Sugnama, *Sovereignty Rights and Territorial Space in Sino-Japanese Relations: Irredentism and the Diaoyu/Senkaku Islands* (Honolulu: Association for Asian Studies and University of Hawaii Press, 2000)

⁵⁴Unryu Sugnama, "The Diaoyu/Senkaku Islands: A Hotbed for a Hot War?" in *China and Japan at Odds*, ed. James C. Hsiung (New York, NY: PALGRAVE MACMILLAN, 2007):164.

conscientious Japanese statesmen who dare to the truth in public are oftentimes faced with death threats or assaults from right-wing fanatics.⁵⁵ In addition, with a new hawkish Primer in power, it's inconceivable that the extreme right-wing neonationalism in Japan will die down. Furthermore, Japanese leader's frequent visit to Yasukuni Shrine, where the war dead including those committing blatant massacre during the war years and pronounced war criminals by International Military Tribunal for the Far East (IMTFE) are commemorated, has further complicated the dispute. However, Japan's opposition against then Prime Minister Koizumi's visit to the Yasukuni Shrine dropped from 87% in the first half to 46% in the second half of the year 2006.⁵⁶ The Chinese view the visits as symbolic of an unfailing resurgence of Japanese militarism.⁵⁷ Those visits are equally disturbing to its neighboring countries that fell victims to the war dead enshrined in Yasukuni Shrine during the World Wars. Yet, those activities should not come as a surprise, since Japan is notorious for using nationalism to divert its people's attention from its domestic problems. As Ezra Vogel, professor emeritus at Harvard University, comments, "We need to tell Japan, as a friend, that the way it handles the shrine makes the United States' job in the region more difficult. We can say that if Japan wants to promote friendship in East Asia, this is not the way to do it."⁵⁸ Indeed, to secure peace in the East China Sea, Japanese leader must first stop visiting the controversial shrine at the official level. By the same token, the Chinese side, especially China, should also refrain itself from abusing nationalism, because it all too often is a double-edged sword. As discussed previously, China seemed to deliberately tolerate the highly emotional Chinese demonstrators who shouted anti-Japanese chants angrily and irrationally smashed windows of Japanese companies and damaged Japanese-made cars in mainland China over the Diaoyutai Islands dispute last year. Sensing its potential harm to the Sino-Japanese relation, China managed to cool down the anti-Japanese

⁵⁵ Ibid, 165

⁵⁶ The *Kyunghyang newspaper* (May 29, 2005)

⁵⁷ James C. Hsiung, "Periscoping the Future: Will China and Japan Ever Be Like France and Germany?" in *China and Japan at Odds*, ed. James C. Hsiung (New York, NY: PALGRAVE MACMILLAN, 2007), 212.

⁵⁸ Robert Marquand, "Koizumi Visit Presents a Tougher Japan," *Christian Science Monitor*, June 28, 2006

sentiment before it spiraled out of control. Explosive rage based on the moral superiority of “resistant nationalism,” which is a type of nationalism that enables nationalism to remain strong through collective experiences and memories of victimization long after the event, and can be observed in Asia’s Third World countries such as Korea and China former victims of imperial aggression, can become a substantial burden for the Chinese government in its future relations with Japan.⁵⁹ It should be born in mind that nationalism consequently harbors potential danger of igniting uncontrollable conflict when coupled with structural, institutional and accidental factors.⁶⁰

To be sure, the implication of the unsolved Cross-strait issue for the dispute is too great to be ignored. This issue alone affects all the parties concerned. That is, Japan also has its high stake in Taiwan’s stability and prosperity, albeit its continuing efforts to maintain an amicable relationship with China.⁶¹ The Taiwan Issue is entangled with innumerable factors in which the U.S., China, Japan, and, of course, Taiwan all have a big stake. For instance, if the Diaoyutai Islands belong to the Chinese, which is proven to be true based on the findings shown in this paper, which party across the Taiwan Strait then should be granted the title to the islands’ sovereignty? To answer this question, the Cross-strait issue must be solved first. Yet, history has revealed that it is a thorny issue that will very likely be evaded by the major players, the P.R.C. and the R.O.C. Shinkich Eto, who has long observed the Cross-strait relation, made a rather apt metaphor as follows. “Matters that China regards as most central to its national interest—for example, the territorial issues revolving around Taiwan and Tibet—should be regarded as the sensitive hairs on the elephant’s chin: one prerequisite for a manageable relationship [with China] is never to touch them.”⁶² Nevertheless, both entities

⁵⁹ Jiyong Choi, “Chinese Nationalism in Sino-Japanese Relations,” in *New Dynamics between China and Japan in Asia*, ed. Guy Faure (Singapore, SG: World Scientific Publishing, 2010), 39

⁶⁰ E. S. Downs and P. C. Saunders. Legitimacy and the Limits of Nationalism: China and the Diaoyu Islands. *International Security*, Vol. 23, No.3, 115. Winter (1998-1999)

⁶¹ Taeho Kim, “Anchoring the Right Pattern of Interdependence and Rivalry: China-Japan Relations under the New Leadership,” in *New Dynamics between China and Japan in Asia*, ed. Guy Faure (Singapore, SG: World Scientific Publishing, 2010), 23

⁶² S. Eto, China and Sino-Japanese Relations in the Coming Decades. *Japan Review of International Affairs*, Vol. 10. 1, 23, 1996

across the Strait currently claim overlapping territories (the R.O.C. claims the while mainland of China). Japan, on the other hand, would be greatly influenced if a significant change were to take place regarding the Taiwan Issue. In February 2005, Washington and Tokyo agreed that peaceful resolution of issues concerning the Taiwan Strait is one of their common strategic objectives.⁶³ Considering the P.R.C. has constantly stated that it does not give up solving the Cross-strait issue through a military means, if the PLA were to annex Taiwan, it is highly possible that the Diaoyutai Islands would be engulfed as well. The very thought of the said scenario is indeed disturbing to Japan. On the other hand, Japan is also concerned about the likelihood of the PRC and the ROC cooperating on this matter, because it would be a one-against-two game. Nevertheless, despite the fact that the U.S. has always claimed to hold a neutral stance on this subject, it is jittery about a scenario in which the PRC and the ROC co-control the dispute islands and cooperate politically with one another to solve other territorial disputes, because that would mean the first island chain which comprises both the dispute islands and Taiwan and is used to contain China is impaired. With its pivot toward the Asian Pacific Ocean, the U.S. by no means wants the said scenario to play out. In the foreseeable future, with U.S. remaining to be the sole hegemon, the ownership of the Diaoyutai Island will keep its status-quo due to its political implications. That is, issues concerning its sovereignty question are likely to be shelved for the years to come.

2.7 Comparing East China Sea Territorial Dispute to South China Sea Territorial Dispute

Comparing the Diaoyutai islands dispute with South East China Sea dispute might shed light on its possible problem-solving mechanisms or its future development because of their geographical proximity and political implications. There are similarities between territorial disputes in the South China Sea and

⁶³ James, *op. cit.*, 182

those in the East China Sea. For instance, both the Chinese entities have claimed sovereignty in these two regions, with China claiming most of the islands and Taiwan claiming the biggest island, the Taiping Dao. Inevitably, the conflict in the South China Sea is also linked to the unsolved Cross-strait issue.⁶⁴ The stark difference is the absence of Japan's participation in the South China Sea. Similar to the Diaoyutai Islands dispute, China has based its claim over islands in the South China Sea on historical reasons, which claims that the islands had been an inalienable part of its territory as early as the Han Dynasty.⁶⁵ In 1974-76, however, China snatched the Paracel Islands from Vietnam and ousted the Vietnamese troops, leading to a subsequent bellicose clash between the two countries in 1988 and an interruption of diplomatic ties between these two states for longer than a decade.⁶⁶ Taiwan, again, also uses the same claim the PRC does with regard to the islands in the region. Interestingly enough, the Philippines claim that some contested islands were *terra nullias* before a Pilipino citizen occupied them in 1954, much resembling Japan's role in the Diaoyutai Islands dispute.⁶⁷ Malaysia, on the other hand, argues that three islands and four rocks that fall within its EEZ should belong to them. Apparently, the number of claimants and its variants in the South China Sea are much more than in the East China Sea, making the region one of the hot-spot areas in the 21st century. A recent incident in which a Taiwanese fisherman was murdered by a Philippine coast guard has flared up tension between these two countries. Faced with hesitation to offer a sincere apology from the Philippines, the R.O.C. government sent two warships to disputed waters claimed by both countries, in addition to extending tough labor and tourism sanctions on its rival island nation.⁶⁸ Worrying about the possibility of a military conflict between the Philippines and Taiwan, the U.S. State Department spokesman Patrick Ventrell said the US hoped both sides would "refrain from actions that could further escalate tension," adding that "We want

⁶⁴ Martin Lohmeyer, op. cit., 129

⁶⁵ Marwyn S. Samuels, *Contest for the South China Sea* (1st ed., 1982), 52 Wolfgang Bethge, "Der Wettlauf um die Spratly Inseln" <http://bethge.freepage.de/spratlydeutsch.htm> (May 19, 2013)

⁶⁶ Martin Lohmeyer, op. cit., 130

⁶⁷ Ibid.

⁶⁸ Scott Murdoch, "Taiwan's warships sail into dispute" *The Australian*, May 19, 2013

them to work through their differences on the issue as expeditiously as they can.”⁶⁹ Indeed, the U.S. would be stuck in a catch-22 if a military conflict occurred between the Philippines, whom it consider a major non-Nato ally, and Taiwan, with whom it has a close relation as well as a legal commitment through the 1979 Taiwan Relations Act, respectively.⁷⁰

Like the Diaoyutai islands, the Paracel Islands and Spratlys Islands have little intrinsic value. What drive the claimants so keen about the islands are their geopolitical location and the potential vast natural resources in this area. However, to the author’s mind, what really troubles this region is the former, their political implications. The U.S. will always pay attention to these two regions, that is, the South China Sea and the East China Sea, echoing its pivoting toward Asia. On the other hand, disputants whose claim conflicts with that of China need the Uncle Sam’s support and assistance to prevent China from conducting any bellicose actions that will threaten the status-quo. Both the Philippines and Taiwan form parts of the so-called first island chain designated by the U.S. to contain China. Should China and Taiwan operate and somewhat co-administer disputed islands adjacent to the Philippines, the first island chain scheme would greatly be jeopardized and the U.S. would definitely be ill at ease as a result. However slim the possibility it might be, it’s worth one’s pondering that if the abovementioned scenario were to take place in the near future, would it serve as a catalyst in the East China Sea. Like the Diaoyutai Islands dispute, the dispute in the South China Sea, to this day, remains unsolved.

⁶⁹ Editorial, *BBC*, May 19, 2013

⁷⁰ *Ibid.*

Chapter 3

METHODOLOGY

3.1 Research Method

This is qualitative research. The author gathered and examined documentation concerning the dispute throughout this project. Since the author attempted to answer the sovereignty issue over these islands and to probe the status of the islands prior to Japan's incorporation, he inevitably had to gather and read documents concerning the topic which is steeped in a lengthy history dating back as early as the 14th century. However, due to the time constraint and limited access the researcher had, no first-hand documentation was used; second-hand documents were gathered and cited throughout the paper instead. In the first section of Literature Review, a brief introduction of the islands including their location, names and sizes are provided. What follows is a short background of the dispute—when and how the dispute started, what significant events have happened with regard to this dispute, and what its current situation is—is also presented. These two sections are provided for readers who are not familiar with or have not yet comprehended this intricate dispute. To figure out the status of the islands before 1895 and early Chinese connection with the islands, the researcher had read books on the ownership analysis of the islands, some of which present a great many first-hand invaluable photos and records regarding this subject. The Japanese claim and the Chinese claim and their respective evidence cited are reviewed, respectively, as the third and fourth sections. Together they form the core section of the paper and a more detailed analysis of the evidence is presented in Chapter 4. Readers might find the historical evidence cited by the Japanese claim supporters to be scarce; however, considering that the Chinese have long had relation with the islands, which is explained in the paper, the relatively abundant evidence supporting the Chinese claim should not come as a surprise. The author also took pains to provide a section in which he summarizes the

findings of books and journals on the sovereignty analysis of the islands from a historical perspective. The findings are summarized in 2.5 in Chapter 2 and the purpose of it is to preserve impartiality in this paper. To grasp its up-to-date political and economic implications this dispute carries that might serve as an impediment to putting an end to this dispute or a sign for its future development, the author also perused journals, periodicals, theses, and news articles with regard to the Diaoyutai Islands Dispute. The findings of which are shown in 2.6 in Chapter 2. Last but not the least, believing that the South China Sea Dispute has much to do with that of East China Sea because of their similar political implications and geographical proximity, the author provides a section on the comparison of the disputes in these two adjacent areas as the last part of Literature Review. Though some might find this section not so relevant, the author nevertheless believes that these two disputes are inescapably linked to the seemingly shaky balance of power between the US-led camp and an ever-growing China by all definitions and its allies, with time in China side's favor. If the status-quo of the dispute in either area were upset or even changed, it would likely, if not certainly, trigger a spillover effect on the other region changing the whole game. On the other hand, given the similarities of the two disputes in these two regions, agreements reached or problem-solving mechanisms employed in one area could also serve as a good example for disputants in the other region.

3.2 Limitations of Research

The author's efforts to remain impartial on this subject notwithstanding, due to his meager knowledge of the Japanese language, the researcher had no choice but to solely rely on translated documentation originally written in Japanese that had either been rendered into English or Mandarin, both of which languages are apprehensible to the author. Nevertheless, without solid knowledge of the Japanese language, the researcher might risk misinterpreting the documentation being read. Hence, the author highly recommended back-translation, which is a method used in translation works in which a translation of a translated text back into the language of the original text, made

without reference to the original text, for future researchers who only understand either Mandarin or Japanese in order to achieve the accuracy of the source texts being read.

Second, this topic inevitably is involved in the unsolved Cross-Strait Issue, since both entities claim the dispute islands. For instance, if the Islands belong to the Chinese, which has been corroborated by the findings in the paper, which Chinese entity, then, should be granted the legitimate sovereignty title to the islands? However, as mentioned earlier, this intricate subject alone was not manageable for the author who had limited time and superficial knowledge of legality. Yet, the author managed to provide a brief analysis of the said Issue's role in the Diaoyutai Islands Dispute. Nevertheless, the absence of an exhaustive analysis of the ambivalent relationship across the Taiwan Strait will unavoidably be one of the weaknesses in this paper.

Chapter 4

ANALYSIS OF RELEVANT DOCUMENTS AND ARGUMENTS

4.1 The Status of the Disputed Islands prior to 1895

The key question these two parties have been arguing over is whether or not the islands were *terra nullius* before they were incorporated by the Japanese in 1895. Having delved into several archives regarding the islands, the researcher found out that the islands have long belonged to the Chinese. The earliest archive corroborating such likability is a non-official Chinese navigational record entitled *Fair Winds for Escort* 順風相送 written around A.D. 1400. The document records the locations of the disputed islands and also suggests routes for sailors. It survey conducted under the courtesy of the Ming Dynasty shows the Chinese have long been familiar with the islands and have paid visits to the area on a regular basis. This detailed document is still available at Bodleian Library.

In *Records of the Imperial Missions to Ryukyu*, it is clear that both Ryukyu people and the accompanying Chinese recognized that the islands before Kume Hill [Cheiwei Yu] belonged to the Chinese; otherwise they would not have stated clearly that the Kume Hill belonged to the Ryukyus when they spotted it after passing several islets along the way. And it is perfectly natural that Chen Kan did not mention the ownership of the islets before Kume Hill since it was simply a given. That is a fact which both the Chinese and the Ryukyus agreed on; the Ryukyu people would have felt so happy that they started to dance when Diaoyu Yu was in sight had it belonged to the Ryukyus Kingdom.

Interestingly enough, *Illustrated Survey of Three Countries* 三国通覽図説, which was compiled by Hayashi Shihei 林子平, a celebrated Japanese scholar then, also shows that the fact that the islands belong to the Chinese was accepted

by the Japanese themselves. Unfortunately, the significant evidence is seldom mentioned among the Japanese in favor of the Japanese claim or is otherwise underrated. As mentioned earlier in the paper, it is this deliberate neglect and downplaying of the said evidence that reflects how significant Hayashi Shihei's work is, not to mention that his work had been translated into French and was published in 1832, and it later caught the attention of international community.⁷¹

In addition, official documents including *Illustrated Treatise on Coastal Defense* 籌海圖編 compiled by Hu Zongxian 胡宗憲 and Zheng Rozeng 鄭若曾 and Shouqi's 陳壽祺 *Revised Gazetteer of Fujian Province*, both of which were conducted for national defense purpose, further corroborate the fact that the Diaoyu Islands were under the administration of the Chinese prior to 1895. Japanese's claim that the status of the islands being *terra nullius* is therefore disproved based on the above arguments.

Last but not the least, the secret Japanese documents revealed in Prof. Shaw's thesis corroborate the fact that the Japanese were aware of Qing's relation with the disputed islands and therefore took a great deal of caution and patience concocting the scheme. At last, they fulfilled the incorporation at an opportune time—right before the Sino-Japanese War came to an end in 1895. On contrary to what the Japanese have been claiming in public, they knew that the islands had close relation with the Chinese government all along.

4.2 Analysis of the Japanese Claim

One of the evidence the Japanese claim supporters cite frequently, the appreciation from China, is problematic. Though the Japanese consider it to be the recognition of the islands belong to the Japanese from the Chinese officials, this is problematic because during that time not only the disputed islands but also Taiwan were ceded to Japan as a result of the first Sino-Japanese war. Therefore, it is natural that the Chinese officials regarded the Diaoyutai Islands as Japan's

⁷¹ Jheng Hai-lin, op. cit., 102

territory at the time and sent a letter of appreciation to the Japanese after the heroic deed.

While the Japanese incorporated the islands in 1895, it wasn't until in 1969 that they posted a national marker on the national marker on the main island (i.e., The Diaoyutai/Uotsuri-shima Island) in the hope of strengthening its claim over the islands⁷². Since they have been firm about their legitimacy over the islands, why did it take 74 years for them to make such a symbolic movement?

Considering the Japanese have earnestly white-washed the description of the atrocities they committed during the two World Wars in their history textbooks for students, one cannot help but wonder to what extent one can trust what they claim. Its blatant distortion of the historical facts has always been getting on the Chinese's nerves and those of other victims outside the Chinese community, for that matter.

4.3 The Application of International Law

The Japanese consistently claim that they are entitled to the sovereignty over the islands simply because they discovered them; however, that statement simply cannot stand scrutiny. The Chinese gained an inchoate title⁷³ to the islands and have turned it into a real title of occupation when they exercised effective control of the islands by putting them under their administration. Hence, Japanese incorporation of the islands was illegal and invalid. In addition, Japanese's claim that they incorporated the disputed islands through the virtue of occupation, which is an original mode of acquisition and refers to territory, which at the time of occupation was not under the sovereignty of any other state,⁷⁴ is problematic because the status of the disputed islands was not *terra nullias* as they claimed, therefore making their attempted application occupation principle invalid. The Japanese seem to have misconstrued the meaning of *terra nullias*,

⁷²Yang Chung-kuei 楊仲揆, *Ryukyu's Past and Present --- With a Discussion of the Diaoyutai Problem* 琉球古今談-兼論釣魚台問題 (Taipei: Taiwan Commercial Press Ltd., 1980), 493.

⁷³Jheng Hai-lin, *op. cit.*, 160

⁷⁴Surya P. Sharma, *Territorial Acquisition, Disputes and International Law* (1st ed., 1997), 61

thinking that a land without human inhabitation is therefore a *terra nullius* land. However, a land without any human inhabitation could either be a case where the government doesn't allow its people to live on that land or the environment there simply can't sustain human inhabitation. The latter was the exact reason why the Japanese did not spot any Chinese inhabitation trace on the islands. In addition, official documents such *Illustrated Treatise on Costal Defense* compiled by Hu Zongxian and Zheng Rozeng and Chen Shouqi's *Revised Gazetteer of Fujian Province* indicate Chinese effective administration over the disputed islands, which is a necessary step for one country to fully acquire sovereignty over a land after discovering it in accordance with the international law.⁷⁵ Shown in maps published in Japan, French, the U.K., the U.S., and Spain, among others, Chinese' authority over the islands in the 19th century was also accepted by the international community.⁷⁶

The other principle Japanese have earnestly clung to is a proclamation (hereafter referred to as Proclamation 27) that the U.S. issued on November 25, 1953, which states as follows:

Article 3 of the Treaty of Peace with Japan, and are, as designated under Civil Administration Proclamation Number 27 of December 25,

1953, all of those islands, islets, atolls and rocks situated in an area bounded by the straight lines connecting the following coordinates in the listed order:

North latitude	East Longitude
28 degrees	124 degrees 40 minutes
24 degrees	122 degrees

⁷⁵ Gillian D Triggs, *International Law: Contemporary Principles and Practices* (1st ed., 2006), 215

⁷⁶ Jheng Hai-lin, *op. cit.*, 161

24 degrees	133 degrees
27 degrees	131 degrees 50 minutes
27 degrees	128 degrees 18 minutes
28 degrees	128 degrees 18 minutes
28 degrees	124 degrees 40minutes ⁷⁷

Not surprisingly, the location of the disputed islands happens to fall within the zone delimited in accordance with Proclamation 27. However, this delimitation conflicts with international law by ignoring the historical boundary and the geographical difference between the disputed islands and Japan's undisputed territories in proximity to the Diaoyutai islands. In envoy Chen Kan's *Records of the Imperial Missions to Ryukyu*, it was stated that Kume Hill served as a boundary between China and the Ryuku Kingdom. There also lies the Okinawa Trough in the middle of the disputed islands and the Ryuku Islands, which is deemed as yet another natural boundary. In President Ma's early dissertation, he also points out that there lie two seaward curving arcs that respectively delineate the general configuration of Chinese and Japanese coastlines in the East China Sea.⁷⁸ With regard to Ryuku Kingdom's relation with the disputed islands, late professor Inoue Kiyoshi mentioned in his paper that the Ryukyu people hardly had any relation with the disputed islands.⁷⁹

With all facts cited above, the delineation of Japan's territory in vicinity to the disputed islands based on the Proclamation 27, unfortunately, is invalid before the international law.

⁷⁷ Japan's Basic Position on the Senkaku Islands and Facts, Ministry of Foreign Affairs of Japan, accessed on May 15, 2013. Available online at http://www.mofa.go.jp/region/asia-paci/senkaku/pdfs/senkaku_en.pdf

⁷⁸ Ma, Ying-jeou, op. cit., 10

⁷⁹ Inoue Kiyoshi, op. cit., 112

Last but not the least, Japan, defeated in the Second World War, had conceded the Treaty of San Francisco 1951, in which Japan agreed to renounce all the territories she snatched during the war years. In addition, Japan also signed the Treaty of Taipei in 1952. In Article 4 of the Treaty, it reads, “the Japanese conceded that all treaties prior to 1941 became void as a consequence of the war.” It is deducible that the islands were included in the Treaty of Taipei of 1952⁸⁰, since they were ceded through the Treaty of Shimonoseki in 1895; as a result, the disputed islands should have been returned to their previous owner, the Chinese, after the Second World War. In fact, as of the Treaty of Taipei came into force, the *de jure* sovereignty of the islands was returned to the Chinese.⁸¹

4.4 The Lack of Protests from the Chinese

The Japanese have always argued that the Chinese only complained and began staging a series of protests after the completion of the report suggesting a great deal of oil deposits existence in the vicinity of waters surrounding the islands. In addition, they argued that the Chinese did not object to their incorporation of the islands in 1895 nor did the Chinese protest against the U.S. administration over the islands after the Second World War, which, as a result, indicates acquiescence of the Chinese to Japan’s authority over the islands.⁸² This notion, unfortunately, is simply wrong. As cited in Chapter 4 in this paper, Japan’s incorporation of the disputed islands was stealthy, which contradicts the occupation principle in which the occupants should publicize their incorporation. It is also worth noting that the incorporation of the islands and the transfer of Taiwan and its appertaining islands happened only three months apart. Given the secrete nature of Japanese incorporation of the islands and the situation back then, one would naturally construe Japan’s authority of the disputed islands as booty of war. With regard to Chinese absence of protests against U.S. administration over

⁸⁰ Taira Koji, “The China-Japan Clash Over the Diaoyu/Senkaku Islands,” (www.zmag.org/content/print_article.cfm?itemID=6269§ionID=1) (May 24, 2013)

⁸¹ Martin Lohmeyer, *The Diaoyu / Senkaku Islands Dispute Questions of Sovereignty and Suggestions for Resolving the Dispute*. (University of Canterbury 2008), 193

⁸² Park, “Oil Under Troubled Waters: The Northeast Asia Sea Bed Controversy“, Vol. 14 (Harvard International Law Journal, 1973), 255

the islands after Second World War, we have to look at both Chinese entities separately. For R.O.C., it was an economically and militarily weak entity after a long battle with the Japanese army and a fierce civil war with Chinese communists. When the U.S. gained its trusteeship of the disputed islands, the R.O.C. did not have a problem with it on the grounds that U.S. military presence near Taiwan would actually be crucial to its regime survival and that the U.S. trusteeship had nothing to do with sovereignty issue. As then Secretary of State William P. Rogers said in 1971, “This treaty does not affect the legal status of those islands of all,” the U.S. merely transferred the administrative rights of the islands to Japan.⁸³ Prof. Shaw also argues that the distinction made between “administrative rights” and “sovereignty” in these U.S. official statements is of particular significance for the Chinese because the United States could not have transferred to Japan something that it did not own, namely, sovereignty of the disputed islands.⁸⁴ For the P.R.C., having always denied the legality of San Francisco Peace Treaty signed in 1951, it has regarded U.S. administration over the former Japanese Nansei Islands including the disputes islands as illegal. That said, scholars like Professor Shaw have deemed such neglect as a political misstep—that the Chinese would have gained an upper hand with regard to this ongoing dispute had they taken assertive actions in the early phrase⁸⁵.

⁸³ Okinawa Reversion Treaty, *Senate Executive Report*, No. 92-10, 92nd Congress, 1st Session, 6

⁸⁴ Shaw, *op. cit.*, note 12, 124

⁸⁵ *Ibid.*, 121.

Chapter 5

CONCLUSION

5.1 Answers to the Research Questions

As cited in the previous session, ancient maps and official documents have clearly shown that not only the Chinese discovered the islands, used the islands as a navigational point, named the islands, but also exercised effective control over the islands by putting the islands within its national defense zones. There is no doubt that the islands, before being incorporated by Japan in 1895, were not *terra nullius*, but an integral territory of the Chinese. Furthermore, the stealthy nature of Japan's incorporation made it hard for both P.R.C. and the R.O.C to come to realization of its scheme. The Chinese hold an inalienable inchoate right to the islands, thus making Japan's so-called occupation principle problematic. Notwithstanding Japan's current control of the islands, the status-quo is indeed outrageous to all Chinese people and against international law based on the arguments made in Chapter 4. Albeit several decades that have elapsed since the dispute broke out, this dispute remains unsolved.

Much of evidence leads to a conclusion: the Diaoyutai islands undoubtedly belong to the Chinese. Based on his findings, the author has found the answers to the research questions in his research.

Q1: Were the Diaoyutai/Senkaku Islands *terra nullius* before Japan incorporated them in 1895?

A1: Based on the documents gathered in his research, the author concludes that the disputed islands were not *terra nullius*—no man's land—before Japan incorporated them in 1895.

A2: Was Japan's incorporation of the islands valid and legal before international law?

Q2: On legal grounds, Japan's incorporation of the islands was not valid and legal. Since the status of the disputed islands was not terra nullius in 1895, the occupation principle could not be applicable to Japan's incorporation of the islands. In addition, the said state failed to conform to international law which requires every occupying state to make an official announcement of its incorporation.

A3. Why the Chinese claim did not manifest itself over the disputed islands until in late 1960s when the possible oil resources were believed to exist around the region?

Q3. First and foremost, Japan's secret incorporation of the islands made it nearly impossible for both the P.R.C. and the R.O.C. to come to realization that the islands had been annexed by Japan. Furthermore, given the political climate back then, that neither the R.O.C. nor the P.R.C. bothered to bring up this issue before the economic factor came into play is understandable.

Q4. Which side, based on historical evidence, seems to be the rightful owner of the islands?

A4. On the grounds of international law, relevant Treaties signed during the war years, and ancient-to-current documents gathered, the Chinese seem to deserve the sovereignty title to the Diaoyutai Islands.

Q5. What would be some/the possible solutions that put an end to this longstanding dispute?

A5. Because of its great political implications and the lack of common ground between the claimants, the sovereignty issue is very likely to continuously be shelved for the years to come. However, by peaceful means like the Peace East China Sea Initiative proposed by President Ma, we might see a relatively peaceful East China Sea and more amicable relations among the claimants in the near future. In other words, through co-exploring the desirable resources surrounding

the islands and evading sovereignty issue, the claimants would share the common goods without their claim compromised.

5.2 Possible Solutions

Though this dispute has not yet escalated into a big scale military confrontation, given the benefit of hindsight, it is worth noting that China remains determined to resort to force if necessary. As was observed in the rivalry between China and Vietnam over maritime disputes in June 2011,⁸⁶ China staged an anti-submarine-warfare exercise off Hainan Island, one of six major exercises held by the People's Liberation Army Navy (PLAN) that month. Beijing later denied that these had anything to do with maritime disputes. However, editorials in China's state-run media in June and July claimed that "if Vietnam wants to start a war, China has the confidence to destroy invading Vietnam battleships," and that "no-one should underestimate China's resolve to protect every inch of its territories." Notwithstanding a six-point Sino-Vietnamese agreement reached by both countries in October 2011, tension between these two still exists.

Given the ever-growing economic relations among the contesting states, solving the Diaoyutai Islands dispute by means of military confrontation would be more and more costly as time passes and would also put their hard-earned friendly relationship in jeopardy. Therefore, the possibility of adopting such a solution by any claimant concerned is very slim. A territorial dispute among states might be solved through the ICJ, a third-party arbitration, or a mutual agreement among disputants. For the first scenario, the willingness of the claimants to resort to such a mechanism is not high. As then Foreign Ministry Press Secretary Hiroshi Hashimoto on 13 February 1996 said, "As far as I understand, we have no intention to do so, because in general I can tell you, unless the two parties agree, they cannot go to the International Court of Justice."⁸⁷ Japan simply does not want to do anything that might change the status-quo since the situation is in its

⁸⁶ (2012): Chapter Six: Asia, The Military Balance, 112:1, 207, <http://dx.doi.org/10.1080/04597222.2012.663215> (April 1, 2013)

⁸⁷ Ministry of Foreign Affairs of Japan, Press conference by the press Secretary (February 13, 1996). [online] available HTTP: <http://www.mofa.go.jp/announce/press/1996/2/213.html>.

favor. This also explains why Japan always refuses to acknowledge that there exists a territorial dispute over the islands with its neighboring countries, which is an undeniable fact. The legal status of the R.O.C., on the other hand, impedes Taiwan from resorting to bringing the case to the ICJ since it is not a member of the U.N. A third-party arbitration, otherwise known as mediation, might be of little help to this dispute. In order to mediate successfully in a conflict, the mediator must be one that all the claimants agree upon and one that has credibility. The most likely candidate for this dispute is the U.S. However, the United States has iterated that it holds a neutral stance on this issue. Similar to the incident that involves the Philippines and Taiwan over the death of a Taiwanese fisherman, the U.S. would be hard put to take a neutral position if it were invited by both sides to play a mediating role because two of the disputants, the R.O.C. and Japan, are of great importance to its regional strategies in the area. Furthermore, the down side of mediation is that the result might be incomplete in the end and that failure is sometimes unavoidable.⁸⁸ Perhaps the most workable solution to this dispute is achieved through joint development. That is, evade the sensitive sovereignty issue and share the common goods—the natural oil deposits. It goes without saying that the implications of the Cross-strait issue will play a significant role in this dispute. For the R.O.C., this option provides it a way that would not make it repeat its claims to the seabed beyond the median line based on its claim of jurisdiction over the mainland.⁸⁹ Based on the current progress of this issue, all the claimants seem to have shown interest in this solution. It is hoped that through this mutually beneficial way the international community will soon see a relatively destabilized East China Sea.

5.3 Concluding remarks

Progress has been made since the claimants have inked fishery agreement with one another allowing their fishing boats to operate in proximity of the

⁸⁸John Merrils, "The means of Dispute Settlements", in: Malcom D. Evans (ed.), *International Law* (1st ed., 2003), 533, 535

⁸⁹ Marc J. Valencia, "The East China Sea Dispute: Context, Claims, Issues, And Possible Solutions", Vol. 31 *Asian Perspective* (2007), 162

disputed islands. For example, China and Japan signed a fishery agreement in 1997, authorizing a certain number of fishing boats to pursue their business without prior approval of the other state's government,⁹⁰ with the island-affected area omitted to preserve the status-quo.⁹¹ On the other hand, President Ma proposed the East China Sea Peace Initiative in August of 2012, calling for a peaceful resolution to this dispute. Having held annual talks with Japan over the fishery right for as many as sixteen times, the R.O.C. has eventually inked a fishery pact with Japan in April, 2013, in which vessels from both sides can operate in proximity of the contested islands.⁹² However, Taiwanese fishing boats are not allowed to enter within the 12 nautical miles of the Diaoyutai Islands under the accord. Nevertheless, after 16-year fruitless negotiation between Taiwan and Japan, the inking of the said agreement has proven a breakthrough in Taiwan's diplomatic history and has been widely praised by Taiwanese fishermen and the local statesmen.⁹³

With the new hawkish Japanese primer in the office, the likelihood of making a mutually acceptable solution to the sovereignty issue is rather slim. To the author's mind, both parties across the Taiwan Strait should be more united to solve this particular issue and earnestly seek support from the international community to place international pressure on Japan. After all, their claim is basically identical since they share a common history for a period of time. On top of it, the P.R.C. and the R.O.C. should also initiative talks over fishery rights in the vicinity of the islands. By so doing each claimant will have a fishery agreement with one another bilaterally, adding odds of a trilateral agreement signed by all disputants. It is hoped that one day a trilateral agreement will be

⁹⁰ Mark J. Valencia, Yoshihisa Amae, "Regime Building in the East China Sea", Vol. 43 Ocean Development & International Law (2003), 195; People's Daily, New Sino-Japanese Fishery Agreement to Take Effect, www.english.peopledaily.com.cn/english/200003/24/eng20000324W104.html (May 22, 2013).

⁹¹ S. W. Su, "The Territorial Dispute over the Tiaoyu/Senkaku Islands: An Update", Vol. 36 Ocean Development & International Law, 56; English text see: Vol. 41 Japanese Annual of International Law (1998), 122-129

⁹² Editorial, Taipei Times, May 22, 2013

⁹³ Executive Yuan, Press Release,

http://www.ey.gov.tw/pda_en/News_Content.aspx?n=1C6028CA080A27B3&sms=E0588283EFAA02AD&s=75D57AEAF8A01565 (May 22, 2013).

concluded, putting an end to this long-fought dispute. Sovereignty issue aside, this dispute, seems to have been on the right track toward a peaceful outcome. Therefore, the author is cautiously optimistic about the progress of this issue. Yet, before the islands are once again under the control of their previous owner, the Chinese, this dispute, unfortunately, is still present and calls for solutions.

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