

Sino-Japanese Dispute over the Diaoyu/Senkaku Islands: The Pending Controversy from the Chinese Perspective

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The Diaoyu/Senkaku Islands have brought China and Japan into a bitter dispute for many decades. With regard to the real question of who owns sovereignty over the islands, the two claimants can not come to terms on several critical issues, such as whether the islands were terra nullius when Japan claimed sovereignty in 1895, whether Japan returned the islands to China after the Japanese defeat in WWII, and how their maritime boundary in the East China Sea should be demarcated according to international law. There is no ready solution to the longstanding stalemate, but the pending dispute could be shelved and managed from escalating into a military conflict.

Key words: Diaoyu/Senkaku Islands, Maritime Disputes, East China Sea, Sino-Japanese relations, Law of the Sea

INTRODUCTION

The Diaoyu Islands in Chinese or Senkaku in Japanese are a tiny group of islands, 6.3 km² in total, in the East China Sea. The islands consist of eight tiny insular formations, of which only two are over 1 km² (the Diaoyu/Uotsuri Island is the biggest one with 4.3 km²), five are completely barren, and none are currently inhabited or have had any kind of reported human economic activity.

Notwithstanding these unfriendly natural features, the islands have brought China and Japan into a bitter dispute since 1960's because of their strategic importance in terms of security and economy, as well as their significant political implications.

The Diaoyu/Senkaku Islands are located approximately midway between the island of Taiwan and the Japanese Ryukyu Islands, around 120 nautical miles northeast of Taiwan, 200 nautical miles southwest of Okinawa, and 230 nautical miles east of China mainland. This particular location of the Diaoyu/Senkaku Islands makes them special to both China and Japan's national defense. Should either China or Japan legally secured the sovereignty over the islands, they would grant their owner an advantage in military security with a prolonged and enlarged frontier, putting the other side into a disadvantaged position.

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Till now, however, government officials and academics seldom mention the Diaoyu/Senkaku issue in this aspect because the islands are uninhabitable and generally unusable for military defense, at least for now. Nevertheless, according to Chinese studies, some military experts in Japan have suggested that it could be possible and desirable to establish a radar system, a missile base, or a submarine base on the biggest Diaoyu/Uotsuri Island.¹ Undeniably, no-mentioning of the islands' security importance does not mean it is not a consideration in this sense. The islands' potential for future military use and implications for national defense and security seem attractive to both claimants.²

Economically speaking, the Diaoyu/Senkaku Islands are also very lucrative to both China and Japan. Sovereignty over the islets could affect 40,000 km² of surrounding continental shelf or exclusive economic zone (EEZ) area. And control of the islands would confer ownership of natural resources in their vicinity. It is not just about the industry of fishery, but particularly about potential oil and gas reserves in this region. In 1968, a report of the United Nations Economic Commission for Asia and the Far East suggested possible large hydrocarbon deposit in the waters off Diaoyu/Senkaku Islands.³ Although the potential oil reserves have not yet come to fruition, this survey fueled the dispute between Japan and China along with Taiwan authority since its publication. Given both China and Japan's increasing voracious appetite for energy, natural resources, particular the possibility of the hydrocarbon potential of the seabed surrounding the Diaoyu/Senkaku Islands, are understandably regarded as central in the dispute.⁴

With the likely security and economic benefits of the Diaoyu/Senkaku Islands said, what makes the dispute difficult to find a solution to regards not just these prospects, but more importantly regards its political implications. The dispute over the Diaoyu/Senkaku Islands is directly relevant to both China and Japan's domestic politics and international status. The handling of the dispute is seen as a factor impacting on the legitimacy of Chinese and Japanese central governments in domestic politics and on their foreign relations in the international arena.

The Diaoyu/Senkaku dispute is not the only maritime territorial dispute that either China or Japan has with their neighboring countries. The possible negative domino effect of the dispute is what China and Japan attempt to avoid. The real importance of the islands lies in the dispute's implications for the wider context of the two countries' approaches to maritime and island disputes, as well as in the way in which those issues can be used by domestic political groups to further their own objectives. This overlapping interest, however, has made finding an acceptable solution to sovereignty controversy more challenging.

Although sovereignty is the key of the Diaoyu/Senkaku dispute, this complicated issue can be broken down into three specific but inter-related aspects—the ownership of the islands, the return of the islands, and the demarcation of maritime boundary. First, China and Japan disagree on whether the islands were *terra nullius* (land unclaimed) when Japan claimed sovereignty over the Diaoyu/Senkaku Islands in 1895. Second, China and Japan dispute whether Japan

returned the islands to China after the Japanese defeat in the Second World War. Third, China and Japan debate how their maritime boundary in the East China Sea should be demarcated according to the United Nations Convention on the Law of the Sea (UNCLOS), which came into effect in 1994.

This paper focuses on these three aspects of the dispute. It attempts to present contending arguments of two sides in dispute and analyze them from historical and legal perspectives in turn. It also explores political implications of the pending dispute and looks at the prospect of its possible resolution from a Chinese perspective. It first introduces the historical background of the dispute briefly.

THE BACKGROUND OF THE DISPUTE

The Sino-Japanese dispute over the Diaoyu/Senkaku Islands dates back to as early as 1895 when Japan annexed the islands. But until late 1960's and early 1970's, with a promising prediction of hydrocarbon deposits in the seabed around the islands and the reversion of Okinawa (Ryukyu) to full Japanese sovereignty, did the dispute not come to the front burner of Sino-Japanese relations.

The dispute came into the open in 1969 after the U.S. and Japan issued a Joint Statement,⁵ which led to the Ryukyu Reversion Agreement signed in 1971 that included the Diaoyu/Senkaku Islands as part of Okinawa to be returned to Japanese rule. The Joint Statement immediately triggered a nation-wide protest by thousands of Chinese students in the United States for several months, with their major concerns expressed in an open letter to the U.S. President and Congress.⁶ Simultaneously the U.S.-Japan Joint Statement was met with challenges by Chinese people and authorities in both Taiwan and the mainland of China. In July 1970, the Japanese government, based upon the U.S.-Japan Joint Statement, notified the Republic of China's (ROC) government in Taiwan the ROC's proposed exploitation of the oil potential off the Diaoyu/Senkaku Islands was invalid. Two months later, the Chinese from Taiwan planted the ROC flag on the islands and three members of Taiwan's National Assembly visited the islands. In December 1970 the People's Republic of China (PRC) intervened in the dispute and formally stated that the Diaoyu Islands (and Taiwan) were China's sacred territory and that exploitation of the area by foreign countries would not be tolerated.⁷

Notwithstanding the controversy, in April 1971, the U.S. State Department issued a statement that President Nixon and Japanese Prime Minister Sato Eisaku had reached an agreement, by which the U.S. would return Okinawa and the "South-western islands" that included the Senkaku Islands to Japan in 1972. And in June 1971, the Agreement Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands was signed, with all of the disputed Diaoyu/Senkaku Islands included in the returned area.⁸ At first the U.S. government appeared to support the Japanese claim. However, because the U.S. government wanted to improve relations with the PRC, it then took a neutral stance over the dispute.⁹

1972 became a turning point for the dispute. In that year the U.S. ended its

trusteeship over the islands and returned the area to Japan's jurisdiction, Japan derecognized the ROC and forged a formal diplomatic relationship with the PRC. The dispute thus shifted from between the ROC and Japan to between the PRC and Japan, and for the first time the dispute turned into a real crisis between contending claimants. While no solution was found, the crisis was successfully prevented from escalating into a conflict due to an American "hand off" policy and the Sino-Japanese rapprochement.

Since the reversion of Okinawa to Japanese rule in 1972, the Japanese government has constantly sent its naval forces, called Maritime Security Forces, to eject Chinese fishermen from this area. The dispute turned into another crisis in 1978 when China and Japan negotiated a formal treaty.¹⁰ The Diaoyu/Senkaku dispute became a disturbing issue in the background of negotiations. A group of politicians from the Liberal Democratic Party in Japan raised the issue in the Diet in an attempt to damage or halt the negotiations, asking that the issue of control over the islands should be solved first. The Japanese right-wing political group Nihon Seinensha (Japanese Youth Federation) erected a lighthouse on the Diaoyu/Uotsuri Island in an attempt to legitimize Japanese territorial claim over the islands. The event raised angry protests from Chinese communities all around the world. As a response, the Chinese sent a flotilla of fishing boats to surround the islands. The Chinese government insisted that this issue in dispute should be left out of discussions. After a stand-off lasting over a week, the Chinese vessels withdrew and negotiations resumed. In October 1978 when the Treaty of Peace and Friendship between China and Japan was signed in Beijing, Deng Xiaoping, then China's Vice Premier, stated that both governments had agreed to shelve the issue in 1972 and that this was still the policy of both governments.

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.¹¹

The crisis was defused after both China and Japan agreed to shelve the issue for future resolution.

However, the crisis reemerged in 1990 when the Japanese government decided to allow the Nihon Seinensha to renovate a lighthouse they erected on the islands in 1978. The Taiwanese reacted by sending two fishing boats full of athletes from Taiwan intended to plant an Olympic torch on the islands. They were prevented from landing on the islands by the Japanese Coast Guards and Maritime Self Defense Forces (MSDF). This incident evoked anti-Japanese demonstrations in Taiwan and Hong Kong, with Japanese flags being burnt and Japanese goods destroyed. The PRC quickly entered the fray stating that the islands were Chinese territory and that the Japanese should not interfere. Following the intervention of the PRC in support of the Chinese claim, the Japanese side called for the shelving of

the incident. The incident was thus precluded from further escalation.¹²

Nonetheless, the situation did not substantially improve. The shelved dispute and hidden tension resurged now and then throughout the 1990's and beyond.¹³ In 1992, China asserted its claim by passing the Law on the Territorial Sea and Contiguous Zone, which explicitly specifies the "Diaoyu Islands" as China's territory. The Japanese Ministry of Foreign Affairs made a strong protest,

There is no doubt that *Senkaku Shoto* are uniquely Japanese territory, [both] historically and from the point of view of international law, and our country actually controls these [islands] effectively. The present Chinese Act is very regrettable and [we] demand correction.¹⁴

In June 1996 Japan declared an EEZ around the Diaoyu/Senkaku Islands (taking effect on July 20, 1996). Further escalation ensued. In July 1996, the right-wing group Nihon Seinensha made their third landing on the Diaoyu/Senkaku Islands, erecting a new lighthouse on the northern islet and requesting that the government recognize it. Though this lighthouse was unexpectedly destroyed by a typhoon, the group soon built another lighthouse on September 9.¹⁵ Again, the Chinese communities, especially from Hong Kong and Taiwan, held even larger protests against the Japanese. A nation-wide "Defending Diaoyu Movement" (*Baodiao Yundong*) was mobilized. The Chinese from both Taiwan and Hong Kong made their way to the islands to counter the actions of the Japanese youths. One Hong Kong activist died near the islands on September 26, when he attempted to swim from the protest boats to an islet. On October 7 protesters briefly landed on the Diaoyu/Uotsuri Island and raised the PRC and ROC flags, which were later removed by the Japanese.¹⁶

Since 1996, physical confrontations and clashes between Japanese right-wing groups and Chinese protesters and diplomatic wangles between two governments regarding sovereignty over the islands have been repeatedly reported. For instance, in 1997, a Japanese legislator landed on one of the islands. The PRC government denounced this act as "an illegal landing" and a "serious violation of China's territory sovereignty."¹⁷ Japan, in return, reiterated its "fundamental position" while declaring that the government was not behind such activities and did not offer any support. In September 1998, Chinese protestors landed on the Diaoyu Island after clashing with Japanese Coast Guards and the vessel "Baodiao Hao" (Defending Diaoyu) was sunk.

Since 1999, the Chinese government apparently has raised the level of its presence in the disputed area, shifting from mainly verbal claims to a physical presence in the disputed area by dispatching scientific research vessels and naval vessels to the islands. In 2000, a Japanese right-wing group landed and built a shrine on the Diaoyu Island. Beijing declared that "the Diaoyu Island and its adjacent islets have been an integral part of China," and China therefore "strongly demanded that Japan honors its commitment, restricts the ring-wing activists, and prevents similar incidents from recurring."¹⁸ Japan replied by arguing that the

islands are Japan's territory. In June 2003, another attempt of landing by Chinese protestors with a small fishing vessel was blocked by the Japanese Coast Guards.

In January 2004, two Chinese fishing vessels in waters near the disputed Diaoyu/Senkaku Islands were attacked by patrol boats of the Japanese MSDF. In March 2004 and for the first time, seven activists from China mainland landed on the islands. About 10 hours after landing and also for the first time, the Chinese protestors were taken away from the islands and detained by the Japanese Coast Guards.¹⁹ While the landing led Japan to lodge an official protest with China, Beijing expressed both concern and criticism over the arrests. On April 23, 2004 a member of a Japanese right-wing group rammed a bus into the Chinese consulate in Osaka in western Japan to protest China's claims. This invited strong protest by the Chinese government and people.

On February 9, 2005 Japan announced that it had placed under state control and protection a lighthouse erected on the largest of the Senkaku Islands by Japanese right-wing activists in 1988. The unexpectedly bold action by Tokyo prompted the Chinese Foreign Ministry to call the move by Japan "a serious provocation and violation of Chinese territorial sovereignty," which was firmly opposed by the Chinese government and people.²⁰

Furthermore, in July 2004, Japan started exploring for natural gas in its self-alleged EEZ in the East China Sea as a step to counter China's construction of a natural gas complex nearby. China disputes Japan's rights to explore the area east of the median line between the two countries, which Japan has proposed as the demarcation line for their EEZ's. A group of Chinese demonstrated outside the Japanese Embassy in Beijing to protest Japan's allegedly illegal oil exploration activities in a disputed area of the East China Sea. Beijing announced on October 19, 2004 that it would engage in bilateral discussions with Japan to discuss conflicting claims over East China Sea oil exploration.

In mid-January 2005 Japan Petroleum Exploration Co. and Teikoku Oil Co. began talks with the Japanese government on plans to drill for natural gas in the East China Sea near areas claimed by both Japan and China. On April 13, 2005 Japan announced it had decided to handle applications of the enterprises the right to oil and gas test-drilling in the waters east to the "median line" of the East China Sea. The Chinese Foreign Ministry responded that "In defiance of China's legitimate proposition, the Japanese side attempts to impose its unilaterally claimed 'median line' on China. The Chinese side has never accepted and will not accept it. Japan's action constitutes a severe provocation to the interests of China as well as the norms governing international relations. China has lodged a protest to the Japanese side, and reserves the right for further reaction."²¹

Apparently, the dispute over the Diaoyu/Senkaku Islands between China and Japan has escalated with the repeated claiming actions and counteractions from two sides. And the dispute has been made complicated, being entangled with the demarcation issue over their maritime boundary in the East China Sea. What is directly in dispute and the other factors behind the dispute are not only

controversies over the ownership and the return of the islands, but also disagreements concerning the demarcation of maritime boundary, as well as many other political divergences.

WHETHER THE ISLANDS WERE *TERRA NULLIUS*?

Japan justifies its sovereignty claim to the Diaoyu/Senkaku Islands by evoking international law concerning how *terra nullius* becomes a specific state's territory.²² There is no doubt that if the Diaoyu/Senkaku Islands were *terra nullius* per international law of the time when Japan first claimed sovereignty to them in 1895. International law would bestow support on Japan's position because it is an established principle in international law that establishing sovereignty over land territory requires the target land be *terra nullius*—a territory belonging to no one.²³ But the question is whether the islands were *terra nullius* as Japan insisted when it formally laid claim to them in 1895. Japan and China have totally contrary judgments. While Japan argues that the islands were *terra nullius*, its claim met no Chinese objections, and the 1971 Japan-US Ryukyu Islands Reversion Agreement proved Japan's sovereignty,²⁴ China contends that all Japanese arguments are completely invalid and absolutely unacceptable.

In an official statement about its sovereignty claim over the Diaoyu/Senkaku Islands, the Japanese government states that:

From 1885 on, surveys of the Senkaku Islands had been thoroughly made 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 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.²⁵

Nonetheless, China claims that it had established sovereignty over the Diaoyu/Senkaku Islands long before Japan “discovered” and incorporated them in 1895. The islands were not *terra nullius* at all.

To make its case, China points to ancient Chinese documentation of the islands dating back to the Ming Dynasty (1368-1644), as well as documentation suggesting that the islands were incorporated into the Ming and Qing (1644-1911) dynasties' maritime defenses. According to Chinese studies, Chinese historical records detailed the discovery and geographical feature of the Diaoyu Islands as early as in 1372.²⁶ The islands were then used as navigational aids and an operational base of Chinese fishermen. China incorporated the islands into its maritime defenses in 1556. The Chinese also refer to some usage of the islands as evidence of their much earlier claim. One interesting and important record is that, in 1893, just two years before Japan's claim, Dowager Empress Cixi (Tsu Hsi) of Qing issued an imperial edict, by which she awarded the Diaoyu Islands to a Chinese alchemist who had gathered rare medical herbs on the islands.²⁷ Hence, China contends that for several

centuries before Japanese claim the Diaoyu Islands had been under China's administration and jurisdiction as part of Taiwan.²⁸

As far as the ownership of the Diaoyu/Senkaku Islands is concerned, China also cites some studies by Japanese historians to support its claim. For example, in 1972, Kiyoshi Inoue, a professor at Kyoto University, argued that "The so-called Senkaku Islands were recorded in Chinese documents in the middle of the 16th century at the latest, under the names of Tiaoyu Island (Diaoyu Island, Diaoyu Tai), Huangwei Yu, etc. (Yu means islet)." After detailed historical examination of the islands, he concluded that "these islands are territory of the People's Republic of China, the only authority over the entire China." And he reiterated, "People's Republic of China alone has title to them, ... There can be no other historical conclusion!"²⁹ According to Inoue, it was only since 1900 that these islands have got their Japanese name "Senkaku."³⁰ But he emphasized that the name Senkaku Islands is an incorrect name, which was simply adopted by Japanese militarism. The only correct name in history is "the Tiaoyu Island (Diaoyutai) or the Tiaoyu (Diaoyu) Archipelago." He added that "This is the only correct name."³¹

Japan rests the legitimacy of its claim to the Diaoyu/Senkaku Islands not only on their so-called being *terra nullius* when it extended the claim in 1895, but also on China's keeping silence to Japanese claim until in the 1970's.³² Japan argues that China did not object when Japan incorporated the islands into Japanese territory in 1895 and posits that:

The fact that China expressed no objection to the status of the islands being under the administration of the United States under Article III of the San Francisco Peace Treaty clearly indicates that China did not consider the Senkaku Islands as part of Taiwan. It was not until the latter half of 1970, when the question of the development of petroleum resources on the continental shelf of the East China Sea came to the surface, that the Government of China and Taiwan authorities began to raise questions regarding the Senkaku Islands.³³

China refutes these arguments. With respect to why the Chinese did not protest Japan's claim in 1895, the Chinese explanation emphasizes the 1894-95 war between Qing and Japan. Given the background of the war, in particular because China was in the midst of losing the war, it was understandable for the Chinese side to acquiesce to any unfair and irrational requests of imperial Japan. As a result of the war, China ceded Taiwan and many other islands to Japan. China did not have sufficient bargaining leverage to keep Taiwan. How could such a weak China say no when Japan wanted to annex the Diaoyu Islands, being much smaller and less important than the island of Taiwan? Moreover, China staunchly holds that it had ceded the Diaoyu Islands along with Taiwan to Japan by the Treaty of Shimonoseki that ended the 1894-95 Sino-Japanese War. Thus, it was both impossible and unnecessary for China to express objection to Japan's control over the territory that had been ceded by China herself, albeit reluctantly. Of course, China and Japan differ on whether the Diaoyu Islands were included in the Treaty of Shimonoseki.

And that disagreement complicated the issue of return, which I will next turn to in detail.

As to the islands' status indicated by the San Francisco Peace Treaty, China definitely had expressed objection. China has never seen the San Francisco Peace Treaty as legally binding.³⁴ To the Chinese, China's objection to the San Francisco Peace Treaty indicates China's objection to all and any stipulation of this said treaty. It is unnecessary for China to enumerate its specific grievances regarding each particular article. Japan could not take its claim to the Diaoyu Islands for granted just because China did not exclusively and specifically express objection to an illegal article of an illegal treaty, in which China is not a party. Given the historical circumstance of that time, China's reaction in no way should be seen as an acceptance of the Japanese claim.³⁵

While Japan argues that the dispute came to the front burner just because of the discovery of potential energy resources in the seabed around the islands, China emphasizes that the issue came to the front burner because of the U.S.-Japan Joint Statement and the Ryukyu Reversion Agreement, which illegally include China's Diaoyu Islands in the territory to be returned to Japanese sovereignty. And Japan continuously refers to its reversion agreement with the United States to validate its sovereignty.³⁶ Japan's "basic view" states,

The Senkaku Islands have been placed under the administration of the United States of America as part of the Nansei Shoto Islands, in accordance with Article III of the said treaty (the San Francisco Peace Treaty), and are included in the area, the administrative rights over which were reverted to Japan in accordance with the Agreement Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands signed on 17 June 1971. The facts outlined herein clearly indicate the status of the Senkaku Islands being part of the territory of Japan.³⁷

However, the way that Japan refers to these agreements as the proof of its sovereignty over the disputed islands is absolutely unacceptable to the Chinese side. To the Chinese, the 1971 Japan-US Ryukyu Reversion Agreement was based on the 1951 San Francisco Peace Treaty, which included the Diaoyu/Senkaku Islands in the area of jurisdiction under America's administration, using as occasional bombing practice targets by the U.S. Air Force based on Ryukyu Islands. Given China's strong opposition to the 1951 San Francisco Peace Treaty, China clearly and firmly expressed its objection to the 1971 Ryukyu Reversion Agreement. That is why China lodged a formal protest with the U.S. government when the agreement was signed in 1971.³⁸ China believes the San Francisco Peace Treaty in question lacks any finality on the issue because neither China mainland nor Taiwan was a signatory.³⁹ Although the American inclusion of the islets in a geographic definition of the Ryukyu Islands clearly supports Japan's contention that these islets were associated with Okinawa, the US agreement with Japan cannot be viewed as changing the true sovereignty of the islets.

Still, even though Japan sees the American explicitly including the

Diaoyu/Senkaku Islands in its reversion as America's support for Japan's claim, the United States has never backed Japan's assertion. On the contrary, both the U.S. government and congress have stated clearly that the Reversion Agreement "did not affect the sovereignty" over disputed islands and the U.S. would adopt a neutral stance over the dispute. The U.S. State Department announced that America's involvement could, "... in no way prejudice any underlying claims.... The United States... considers that any conflicting claims are a matter for resolution by the parties concerned."⁴⁰ During Senate ratification of the Reversion Agreement, the Senate Foreign Relations Committee specified that, the United States "in transferring its rights of administration to Japan does not specifically constitute a transfer of underlying sovereignty nor can it affect the underlying claims of any of the disputants."⁴¹ As recently as March 24, 2004, the U.S. Department of State reaffirmed that "The U.S. does not take a position on the question of the ultimate sovereignty of the Senkaku Diaoyu Islands. This has been our longstanding view."⁴²

WERE THE ISLANDS RETURNED TO CHINA OR SHOULD THEY BE RETURNED?

Closely related to the dispute on the ownership issue of the Diaoyu/Senkaku Islands between China and Japan, the dispute over the return issue is another factor pitting the two countries with each other. Since Japan insists that the Diaoyu/Senkaku Islands were *terra nullius* when it incorporated them into Japanese territory, Japan believes that it is unreasonable and absurd for China to request for return of the islands. Japan posits that since the disputed islands are under Japanese jurisdiction, and they had not been returned to China as some relevant international agreements may indicate, they therefore should not be returned at all. While China does not deny or challenge the *de facto* control of the islands by Japan since 1895 until the end of WWII, China does take issue with and does dispute Japan's position on the return issue.

China and Japan differ on how Japan got control over the disputed islands. Japan justifies its annexation of the islands by referring to its claim to a *terra nullius* in 1895. Japan states that,

Since then, the Senkaku Islands have continuously remained as an integral part of the Nansei Shoto Islands which are the territory of Japan. These 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 II of the Treaty of Shimonoseki which came into effect in May of 1895.⁴³

On the contrary, China argues that the Diaoyu Islands were either ceded to Japan by China according to the Treaty of Shimonoseki or stolen by Japan in 1895.

Most Chinese contend that the islets were transferred along with Taiwan to Japan under the Treaty of Shimonoseki that ended the 1894-95 Sino-Japanese War. The terms of Article 2(b) of the Treaty of Shimonoseki stated that China ceded to Japan,

The island of Formosa (i.e. Taiwan), together with all islands appertaining or belonging to the said island of Formosa.⁴⁴

Although the Diaoyu Islands were not explicitly specified in this Article, they are definitely included in the category of ceded islands since they undoubtedly appertain or belong to Taiwan from the Chinese perspective. And the Diaoyu Islands were not separately mentioned in the Treaty of Shimonoseki for good reasons. They are tiny and have never been inhabited. They had little value until offshore energy resource was predicted in the late 1960's. Therefore, while Japan casts doubt on whether the Diaoyu Islands were implied to be ceded to Japan by the Treaty of Shimonoseki, Chinese literature almost invariably claims that these islands were among the "islands appertaining or belonging to the said island of Formosa" that were ceded to Japan under the Treaty of Shimonoseki.⁴⁵

To defend Japan's position, the Japanese argue that Japan seized and laid claim to the Diaoyu Islands before the Treaty of Shimonoseki was signed and took effect in 1895. As a response, some other Chinese argue that the islands were stolen by Japan when the 1894-95 Sino-Japanese War was coming to the end and Japan was sure of winning it.

Japan took over the Ryukyu Islands from the Ryukyu Kingdom and proclaimed it to be part of Okinawa Prefecture in 1879. After the incorporation of the Ryukyu kingdom into the Japanese empire, the Japanese government turned its attention to other small islands, including the Diaoyu Islands, in the surrounding seas. And there were a number of Japanese attempts to incorporate administration of the islands into Okinawa.⁴⁶ In 1885, Tokyo declared sovereignty over the North and South Ufuagari Jima (today's Daito) Islands and placed them under the jurisdiction of Okinawa Prefecture. But with regard to the petition for the take-over of the Diaoyu Islands proposed by the Japanese-appointed governor of Okinawa during this period, the Japanese government hesitated according to some Japanese historians.⁴⁷ Not until January 1895 when Japan was confident it would soon defeat China, did Japan formally incorporate the islands into Okinawa Prefecture by a Cabinet Decision of the Japanese Government.⁴⁸ However, it was the Imperial Decree No. 13 of Japan in March 1896 that made the islands finally come under Japanese jurisdiction.

From the Chinese perspective, the time lag between Cabinet Decision and Imperial Decree only indicates that Japan's annexation of the islands was simply a policy based on its imperial expansion. Why did Japan claim the islands in 1895 but not earlier, for example, in 1885 when Japan took over today's Daito Islands? The most plausible explanation is that Japan was clearly aware of that the Diaoyu Islands were Chinese territory. Only through victory over China in war could Japan find a valuable opportunity to fulfill its ambition of territorial expansion. As Japan expected, the Japanese take-over of Taiwan in 1895 under the Treaty of Shimonoseki ceased any possible dispute over the Diaoyu/Senkaku Islands with China, at least for a few decades, that is, the time span defined by the Treaty.

Interestingly, some Japanese historians also come to conclusion similar to that

of the Chinese in this regard. For example, Inoue argued that the hesitation of the Japanese government when the Okinawa governor asked to take over the Diaoyu Islands is precisely because Japan was certain that “the island was clearly Ching (Qing) territory, not a piece of land the title to which was uncertain.” Therefore, “until the outbreak of the Japan-Ching war, Japan had not even thought of claiming title to the Tiaoyu (Diaoyutai) and other islands or challenging Ching’s title to the islands.” Why was the January 14, 1895 cabinet decision enforced 10 months after the Japan-Ching war had ended, the peace treaty had become effective (May 1895) and Japan had actually taken possession of Taiwan and other islands (June)? Because “the Tiaoyu (Diaoyutai) and other islands were regarded as Japanese territory only after Japan had seized Taiwan and other places from Ching through the Japan-Ching war as part of a series of territories wrested from Ching.”⁴⁹

Based on their resonance, Chinese scholars usually prefer to cite Japanese studies to make their case, assert that the islands were absolutely not free for the taking in 1895 when Japan claimed, and contend that they were stolen by Japan from China and therefore should be returned to China.⁵⁰ And to most Chinese, these islands should have already been returned to China and placed under Chinese jurisdiction after the end of WWII under provisions of the 1943 Cairo Declaration, the 1945 Potsdam Proclamation, and other peace treaties,⁵¹ while Japan argues otherwise by resorting to the 1951 San Francisco Peace Treaty, the 1971 Ryukyu Reversion Agreement, and other peace treaties as well.

Therefore, the Sino-Japanese dispute focuses on what the implications of these various peace treaties are on the return issue. To Japan, since the Diaoyu/Senkaku Islands were not specifically enumerated by the Treaty of Shimonoseki, the Senkaku Islands are not included in the territory that Japan renounced under Article II of the San Francisco Peace Treaty, which stipulates that “Japan renounces all right, title and claim to Formosa and the Pescadores.”⁵² However, to the Chinese, in particular in Taiwan, since the Diaoyu Islands are one part of Taiwan, it is reasonable to take the view that the Diaoyu Islands were included in the Treaty of Shimonoseki, and they should be returned to China according to Article IV of the peace treaty signed between Japan and the ROC in 1952, which declared that,

all treaties, conventions, and agreements concluded before 9 December 1941 between Japan and China have become null and void as a consequence of the war.⁵³

While Japan cites the 1971 Ryukyu Reversion Agreement to validate its sovereignty claim, China, as well as the United States to some extent, disagrees and refutes Japan’s argument, as mentioned above.

From the Chinese perspective, what is more relevant is the 1943 Cairo Declaration and the 1945 Potsdam Proclamation, by which Japan was requested to return China’s territories. The Cairo Declaration jointly issued by China, the United States and the United Kingdom during World War II stipulates the return to China by Japan of all the territories Japan had stolen from China during and after the

Japan-China war. The Potsdam Proclamation issued by the allies stipulates that Japan must carry out the clauses of the Cairo Declaration.⁵⁴ With the defeat and surrender of Japan as the result of WWII, its government accepted the terms that stated in these documents,

... all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China.⁵⁵

However, the Japanese later claimed that, because the islands came under Japanese control before the signing of the Treaty of Shimonoseki, they should not be included under the jurisdiction of the 1943 Cairo Declaration and the 1945 Potsdam Proclamation.⁵⁶ This met strong challenge from the Chinese. The Chinese argue that, no matter whether the Diaoyu Islands were ceded to or stolen by Japan, the 1943 Cairo Declaration and the 1945 Potsdam Proclamation are all applicable.

Despite the fact that Japan questions the inclusion of the islands in the Treaty of Shimonoseki, what matters today is not just the Treaty of Shimonoseki, but also the 1943 Cairo Declaration and the 1945 Potsdam Proclamation. Likewise, in the 1972 Joint Communiqué between China and Japan, Japan promised that “it firmly maintains its stand under Article 8 of the Potsdam Proclamation.”⁵⁷ The 1978 Treaty of Peace and Friendship between China and Japan merely confirms their Joint Communiqué.⁵⁸ Given that Japan agreed to the terms of the Communiqué, it should return the islands accordingly.

From the Chinese point of view, Japan has already agreed to fulfill its obligations outlined in the Cairo Declaration and the Potsdam Proclamation. These islands have been legally reverted to China as its territory just as Taiwan has been automatically returned to China from the time Japan unconditionally accepted the Cairo Declaration and the Potsdam Proclamation and surrendered to the allies including China. It follows that these islands are territories of China.

HOW TO DELIMIT THE MARITIME BOUNDARY?

Another issue in dispute between China and Japan over the Diaoyu/Senkaku Islands is the demarcation of the maritime boundary.⁵⁹ The two claimants of the islands differ on how the maritime boundary between China and Japan in the East China Sea should be delimited according to international law. While Japan insists on the equidistance (median line) principle, China puts emphasis on the natural prolongation principle.⁶⁰

UNCLOS, to which both China and Japan are parties, legitimizes a 12-nautical-mile territorial water from the shore base line and the coastal state’s “sovereign rights” over the exploration and exploitation of the continental shelf as well as a seaboard or island state’s “exclusive economic zone” within 200 nautical miles. Understandably, a continental state would surely seek the most generous delimitation of its continental shelf, while an island state would claim a maximum permissible area around it as the EEZ.

The UNCLOS codifies the right of both China and Japan to claim 200 nautical miles of maritime space from the coast or a qualified island, regardless of the geophysical circumstance of the adjacent seabed. Such claims would overlap in the East China Sea, as the coast-to-coast distance is less than 400 nautical miles (only 360 nautical miles in fact).⁶¹ Under the UNCLOS, the Diaoyu/Senkaku Islands can be a factor that significantly influences the location of a maritime boundary between China and Japan.⁶² Ownership of the Diaoyu/Senkaku Islands would enable China to claim sovereign rights over the continental shelf plus the EEZ to the north and east of the Diaoyu Islands. This would give China exclusive economic rights to the whole southern portion of the East China Sea. Sovereignty over these islands, if assigned to Japan, would entitle Japan to an EEZ, which would extend Japan's sovereign rights 200 nautical miles to the north and west, leaping over the Okinawa Trough and securing base points from which to claim China's continental shelf area.⁶³

As Jean-Marc Blanchard observes, "UNCLOS not only created or magnified many maritime disputes in the region [Asia] but also shapes the legal and normative discourse on the area's maritime affairs."⁶⁴ According to the UNCLOS, when there is disagreement on the demarcation of EEZ's between any countries, the parties concerned should negotiate on the fair principle, seek means acceptable to all, and avoid anything that could undermine an eventual agreement. By referring to the equidistance principle, Japan prefers to set the median line that divides the sea equally between the two countries' coastlines as the maritime boundary.⁶⁵ Tokyo's proposal, however, has not been accepted by Beijing.

China, in contrast, favors the natural prolongation principle, by which China posits that the Okinawa Trough is the natural maritime boundary between China and Japan.⁶⁶ Geologically, all the Diaoyu/Senkaku Islands are on the Asian continental shelf and separated from the Ryukyu Islands by a deep underwater trench. The 2,719-meter-deep Okinawa Trough lies seaward of the Diaoyu Islands, separating them from the nearest undisputed Japanese islands.⁶⁷ The Okinawa Trough arguably is the outer reach of the natural prolongation of the continental margin adjacent to the Chinese mainland toward Japan, and thus it is their natural maritime boundary given the islands belonging to China.⁶⁸ The Chinese acknowledge that the continental shelf as defined by the equidistance principle and the concept of EEZ have been adopted by the UNCLOS. But they emphasize that the natural prolongation principle in bilateral boundary delimitation remains one of the valid criteria for determining the outer limit of continental shelf. The EEZ and equidistance principle have no impact on the continental shelf beyond 200 nautical miles.⁶⁹

To defend their claim, the Chinese also cite geographical and historical evidence. In terms of distance, the distance between Taiwan and the Diaoyu Islands is indeed shorter than that between Okinawa and the Diaoyu Islands. It seems reasonable to see the Diaoyu Islands as a part of Taiwan, rather than as a part of Okinawa. And historically, the acknowledged boundary between China and Ryukyu

until the demise of the Ryukyu Kingdom was somewhere in the sea east and south of the Diaoyu Islands (west and north of the Ryukyu Islands). This Sino-Ryukyuan boundary became a Sino-Japanese boundary when Japan took over Ryukyu and proclaimed it Okinawa Prefecture in 1879.⁷⁰

Clearly, the inconclusive nature of UNCLOS generates irresistible temptations for China and Japan to secure sovereignty over the Diaoyu/Senkaku Islands.⁷¹ Each party involved is eager to secure sovereignty over the islands, as doing so will ensure tens of thousands of square kilometers of EEZ in the surrounding waters. That is why the Sino-Japanese sovereignty dispute over the Diaoyu/Senkaku Islands has intensified in the recent past.

THE POLITICAL IMPLICATIONS OF THE DISPUTE

What makes the Sino-Japanese dispute over the Diaoyu/Senkaku Islands complicated is not only controversies regarding the ownership, return, and demarcation issues, but also its political implications. From a political perspective, the dispute is very implicative to both China and Japan's dealing with their other similar maritime territorial disputes, their domestic legitimacy, and their bilateral relations in general.

The Diaoyu/Senkaku Islands dispute is neither China nor Japan's only maritime territorial problem with their respective neighbors. Neither side wants the settlement of this dispute to set an unfavorable precedent for the resolution of other similar troubles. For China, the sovereignty of the Diaoyu Islands has a strong implication for Chinese concern with their sovereignty in the South China Sea. The reason that Beijing cannot soften its attitude toward the Diaoyu Islands is clear. If it softens its posture over the Diaoyu Islands, it might be considered as softening of its position on the Spratly and Paracel islands disputes in the South China Sea. For Japan, the Diaoyu/Senkaku Islands dispute also implies Japanese attitude toward the territorial disputes with Russia over the "Northern Territories" and with Korea over the Dokdo (Takehima/Takdo) Island. Any softening on the Diaoyu/Senkaku Islands dispute might undermine the Japanese claims to both the "Northern Territories" and the Dokdo Island. Since international credibility is taken into account, the two sides involved are adamant and steadfast in their claims to the disputed islands.

While the issue of ownership of natural resources that may be conferred by control of the islands is relevant, the dispute itself is not simply about "oil" or "gas." Obviously, the question of sovereignty also raises nationalism in both Chinese and Japanese sides. Any attempt to demonstrate its sovereignty over the disputed islands by either side would provoke strong nationalist protests of the other, as repeatedly displayed in the historical evolution of the dispute. The nationalist protests usually target the opposite party, but sometimes also target their own side. Given the strong connection of the Diaoyu/Senkaku Islands dispute with nationalism, both the Chinese and the Japanese governments link their stance and attitude with their respective legitimacy in domestic politics.⁷² Nationalism serves

as wild card that might constrain the ability of both Japanese and Chinese leaders to pursue compromise.

In Japan, the islands have become an important nationalist symbol that is used by the right-wing parties to attack the government. The most critical point is that the extreme nationalist groups can make gestures about the Diaoyu/Senkaku Islands at any time and may thus cause serious problems for Japan's relations with China, as was demonstrated by the 1990 crisis. And the dissident groups in the Japanese Diet are able to cause even greater problems over the islands to serve their own ends, as is most clearly shown in the causes and consequences of the 1978 crisis. Should domestic legitimacy be taken into consideration, no Japanese government could afford to be regarded as "soft" or "weak" on this dispute.

The Chinese side finds itself in an equally precarious situation regarding nationalist sentiments. It is almost the same to the Chinese government. Though Chinese protesters seldom turn their resentment toward Beijing, nobody in Beijing dares to take that for granted. Avoiding the backfire of an anti-Japanese nationalist movement is undeniably a big concern for the Chinese leadership. Unlike the situation in Japan, the nationalists in China generally link Japan's actions on the Diaoyu Islands with Japanese militarism and aggression, other than with Chinese government's legitimacy. A nation-wide exceptional and extraordinary public survey, conducted in late 1996 and published by *China Youth Daily* in early 1997, showed that 95.9 percent respondents clearly acknowledge that "the sovereignty of the Diaoyu Islands lies in China" and 91.5 percent agree with the statement that the 1996 erecting of a new lighthouse on the islands by Japanese right-wing group was a grave challenge of the revived Japanese militarism against China. The same public survey found 75.5 percent respondents believed that the Diaoyu Islands issue is one major factor that impedes the normal development of Sino-Japanese relations, this percentage came in second, only losing out to one of the eight possible options in the survey, "Japan's attitude toward its invasion history."⁷³

What puts Chinese government's domestic legitimacy at real stake is the potential linkage of the dispute to the reunification of Taiwan. From the Chinese perspective, the question of national identity is involved in its East China Sea dispute. China's claim to the Diaoyu Islands and its claim to Taiwan are largely interdependent. Although both Beijing and Taipei's claims to the Diaoyu Islands are identical and parallel (therefore this paper does not discuss Taipei's claim separately), the implications of the claims to them are somehow different. While to Taipei, the claim may only indicate national pride and territorial integrity, to Beijing, it indicates more than that. Beijing sees the Diaoyu Islands as a part of Taiwan and validates its claim to the islands by its claim to Taiwan. China's softening of its posture on the dispute over the islands with Japan would not only endanger its claim to the islands themselves, but also jeopardize its claim to Taiwan by sending wrong signals toward separatist forces in Taiwan that seeks independence. If the Chinese government wavers in its position on the Diaoyu Islands, its legitimacy would be immediately challenged by the Chinese people in both the mainland and Taiwan.

The Diaoyu/Senkaku Islands dispute is directly relevant to sovereignty issues, and maybe due to the “adolescent problem”⁷⁴ of Asian countries, as a scholar interestingly describes, none of the governments involved can afford to give ground on the solution of this issue. To a great extent, however, the dispute is terribly detrimental to general Sino-Japanese relations. As the historical background of the dispute has obviously demonstrated, its implications on Sino-Japanese relations are unequivocally negative. Sukanuma even writes that: “If there is a flash point to ignite a third Sino-Japanese War, it will be the ownership of the Diaoyu Islands in the East China Sea.”⁷⁵

With regard to this dispute, it would be best if both China and Japan could find a way to shelve their differences regarding this issue. However, since the dispute over the Diaoyu/Senkaku Islands is not the only problem dividing China and Japan, and since it is frequently interlocked with other Sino-Japanese disputes such as historical issue, Yasukuni Shrine visit issue, and textbook issue, to name only a few, the dispute either serves as a source igniting Sino-Japanese confrontations, or becomes a result deriving from other troubles in Sino-Japanese relations. None of the relevant parties want the issue to become a source of difficulties in their bilateral relationship. But a number of other bilateral factors, beyond their immediate control, make this difficult. And more often than not, the escalation potential of the islands dispute makes the amelioration and improvement of general bilateral relationship between China and Japan problematic.

CONCLUSION

The Sino-Japanese dispute over the Diaoyu/Senkaku Islands is not single or simple as it itself may indicate. Instead, it is a multifaceted and complicated issue. The complexity of the dispute lies not only in its multiple and interrelated foci such as its ownership, its return, and the demarcation of Sino-Japanese maritime boundary, but also in its entanglement with other problems in bilateral relations, both China and Japan’s domestic politics, and their respective broad foreign relations as well.

Since the disagreements between China and Japan over the islands are too complex to be reduced to a single cause and both sides prefer to attach great significance to their claims to the disputed islands due to their security, economic, and political implications, the claimants find great difficulties in coping with this issue. Although the dispute has not led to direct military conflict between the parties involved, neither side can afford to relax its vigilance. The governments have been at pains to downplay the issue, keep the dispute as low-key as possible, and prevent the trouble from deteriorating bilateral relations. But they are at the mercy of domestic and international political factors beyond their immediate control. Occasional incidents instigated by nationalist extremists in both China and Japan remain devastating.

While military conflict between China and Japan over the islands is unlikely, so is any form of resolution of the dispute. Given its complexity and escalation

potential, the dispute is far from being solved. A compromise over the islands would appear very hard to achieve. It is even difficult for China and Japan to initiate a solution-finding process, let alone to reach an acceptable and permanent solution to the problem. As Taylor Fravel convincingly demonstrates, unlike territorial disputes involving land territories, offshore islands are “cheap for the claimants to dispute, requiring few troops to maintain a claim,” and therefore “states are most likely to adopt a delaying strategy to maximize the potential economic and strategic benefits.”⁷⁶

Perhaps, maintaining the status quo is the most likely prospect of the dispute in the foreseeable future. In light of the fact that a major Sino-Japanese military conflict seems improbable, both sides will likely continue to practice mutual self-restraint, shelving the dispute as long as they can, and avoiding any flare-ups connected to the problem, which would inevitably damage the bilateral relationship. As long as the pending dispute does not pop up to the top of the agenda in Sino-Japanese relations, both China and Japan might be expected to not make solving the dispute their first priority. Due to complicated and difficult Sino-Japanese relations of today, a breakthrough in the dispute over the Diaoyu/Senkaku Islands seems unlikely. The dispute will likely remain a pending controversy.

Although the prospects for resolution of such a pending controversy seems gloomy, it does not mean that both China and Japan should do nothing but nail-biting. While formal negotiation and compromise at the governmental level is difficult to proceed, a similar solution-finding program at the non-governmental level, in particular the academic level, or through a track two channel should be encouraged. While political deadlock is difficult to break, two disputants could jointly exploit the economic resources of the Diaoyu/Senkaku Islands following a model of cooperation that already exists in East Asia in the Republic of Korea-Japan Joint Development Area, for example.⁷⁷ While China and Japan could not agree on the exact principle governing their maritime boundary delimitation, they could think about alternatives within the current framework of UNCLOS such as the principle of the proportionality of the length of the coasts. In the interests of amity and international cooperation, both sides would be best served by calming down and building up a conflict avoidance and coordination facilitating regime.⁷⁸ Only by facing the future and putting the handling of the dispute back on the right track, can progress toward gradual resolution of this pending dispute be made.

Notes

¹ See, for example, Li Guoqiang, “Exploration on the Sovereignty Dispute over the Diaoyu Islands” [Diaoyudao zhuquan zhengyi tanwei], *Tuanjie Bao*, February 24, 2005, p. 2. Its Chinese version is available at <http://www.historychina.net/cns/QSYJ/ZTYJ/BJYQY/04/22/2005/5615.html>

² See Wu Xinbo, “The Security Dimension of Sino-Japanese Relations: Warily Watching One Another,” *Asian Survey*, Vol. 40, No. 2, March/April 2000, pp. 296-310; Wang Jianwei,

“Confidence-Building Measures and China-Japan Relations,” in Benjamin Self and Yuki Tatsumi, eds., *Confidence-Building Measures and Security Issues in Northeast Asia* (Washington D.C.: The Henry L. Stimson Center, Report No. 33, February 2000), pp. 51-91.

³ The first geological survey claiming the area might contain significant petroleum deposits is reprinted in K. O. Emery, et al, “Geological Structure and Some Water Characteristics of the East China Sea and the Yellow Sea,” *UNECAFE/CCOP Technical Bulletin*, No. 2, 1969, pp. 3-43.

⁴ Mark Valencia, “Energy and Insecurity in Asia,” *Survival*, Vol. 39, No. 3, Autumn 1997, pp. 85-106; Mikkal Herberg, “Asia’s Energy Insecurity: Cooperation or Conflict?” in Ashley Tellis and Michael Wills, eds., *Strategic Asia 2004-05: Confronting Terrorism in the Pursuit of Power* (Seattle, W.A.: The National Bureau of Asian Research, 2004), pp. 338-78.

⁵ The full text of the 1969 U.S.-Japan Joint Statement is available at <http://www.niraikanai.wvma.net/pages/archive/sato69.html>

⁶ “An Open Letter to President Nixon and Members of the Congress,” *The New York Times*, May 23, 1971, p. E7.

⁷ 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, No. 2, 1974, pp. 248-60; Phil Deans, “The Diaoyutai/Senkaku Dispute: The Unwanted Controversy,” *Kent Papers in Politics and International Relations*, Vol. 6, 1996. The full text of this paper can be found at <http://www.kent.ac.uk/politics/research/kentpapers/deans.html>

⁸ The full text of the Ryukyu Reversion Agreement is available at <http://www.niraikanai.wvma.net/pages/archive/rev71.html>

⁹ Jean-Marc Blanchard, “The US Role in the Sino-Japanese Dispute over the Diaoyu (Senkaku) Islands 1945-1971,” *China Quarterly*, No. 161, March 2000, pp. 95-123.

¹⁰ For background to the 1978 dispute, see Daniel Tretiak, “The Sino-Japanese Treaty of 1978: The Senkaku Incident Prelude,” *Asian Survey*, Vol. 18, No. 12, December 1978, pp. 1235-49.

¹¹ Deng Xiaoping, quoted in Chi-kin Lo, *China’s Policy toward Territorial Disputes: The Case of the South China Sea Islands* (London: Routledge, 1989), pp.171-72.

¹² Phil Deans, “The Diaoyutai/Senkaku Dispute: The Unwanted Controversy.”

¹³ See Erica Strecker Downs and Philip Saunders, “Legitimacy and the Limits of Nationalism: China and the Diaoyu Islands,” *International Security*, Vol. 23, No. 3, Winter 1998/99, pp. 114-146.

¹⁴ Quoted in Linus Hagstrom, “Quiet Power: Japan’s China Policy in Regard to the Pinnacle Islands,” *The Pacific Review*, Vol. 18, No. 2, June 2005, pp. 159-88.

¹⁵ Clive Schofield, “Island Disputes in East Asia Escalate,” *Jane’s Intelligence Review*, Vol. 8, No. 11, November 1996, pp. 517-521.

¹⁶ “Protester Dies in Defense of Disputed Asian Islands,” *Washington Post*, September 27, 1996, p. A32.

¹⁷ Quoted in Steven Wei Su, “The Territorial Dispute over the Tiaoyu/Senkaku Islands: An Update,” *Ocean Development & International Law*, Vol. 36, 2005, pp. 45-61.

¹⁸ *Ibid.*

¹⁹ Charles Smith, “Island Feud a Barometer of China-Japan Ties,” *Asia Times*, May 6, 2004.

²⁰ “Japan Action Violation of Chinese Sovereignty,” *China Daily*, February 12, 2005.

²¹ China Foreign Ministry Spokesperson Qin Gang’s Remarks on Japan Granting Its Enterprises Right to Oil and Gas Test-drilling in the East China Sea, April 15, 2005, available at <http://www.fmprc.gov.cn/eng/xwfw/s2510/t191718.htm>

²² *Terra nullius* means “unclaimed territory,” which is literally translated as “no man’s land” or “vacant land,” referring to land that is hitherto not claimed or settled by any person or state. Under international law, a *terra nullius* territory may be added to a state’s national territory if that state can perfect valid title through effective occupation or prescription.

²³ Robert Jennings, *The Acquisition of Territory in International Law* (New York, N.Y.: Oceana Publications, 1963), pp. 21-23.

²⁴ Matsui Yoshiro, "International Law of Territorial Acquisition and the Dispute over the Senkaku (Diaoyu) Islands," *Japanese Annual of International Law*, No. 40, 1997, pp. 3-31; Suganuma Unryu, *Sovereign Rights and Territorial Space in Sino-Japanese Relations: Irredentism and the Diaoyu/Senkaku Islands* (Honolulu, H.I.: University of Hawaii Press, 2000), pp. 120-21.

²⁵ Japanese Ministry of Foreign Affairs, "The Basic View on the Sovereignty over the Senkaku Islands." The full text can be found at www.mofa.go.jp/region/asia-paci/senkaku/senkaku.html

²⁶ Wu Tianying, *An Examination of the ownership of the Diaoyu Islets before the 1894-95 Sino-Japanese War* [Jiawu Zhanqian diaoyu lieyu guishu kao], (Beijing, China: Zhongguo Shehui Kexue Chubanshe, 1994); Suganuma, *Sovereign Rights and Territorial Space*, 2000, pp. 42-44.

²⁷ Tao, "The Sino-Japanese Dispute," 1974, pp. 248-60; Victor Li, "China and Off-Shore Oil: The Tiao-yü Tai Dispute," *Stanford Journal of International Studies*, Vol. 10, Spring 1975, pp. 151-53.

²⁸ Tao, "The Sino-Japanese Dispute," 1974, pp. 248-60; Matsui, "International Law of Territorial Acquisition," 1997, pp. 3-31; Suganuma, *Sovereign Rights and Territorial Space*, 2000, chapter 2.

²⁹ Kiyoshi Inoue, "Japanese Militarism & Diaoyutai (Senkaku) Island—A Japanese Historian's View: 'The Tiaoyu Islands (Senkaku Island) are China's Territory.'" The full text is available at <http://www.skycitygallery.com/japan/diaohist.html> Its abridged version can be found as "The Tiaoyu Islands (Senkaku Islands) and Other Islands are China's Territory," *Peking Review*, Vol. 15, No. 19, May 12, 1972.

³⁰ For a full background to the origin of the Japanese name for the islands, see Inoue, "Japanese Militarism & Diaoyutai (Senkaku) Island" and Choon-ho Park, "Oil under Troubled Waters: The Northeast Asia Sea-Bed Controversy," in Choon-ho Park, *East Asia and the Law of the Sea* (Seoul: Seoul National University Press, 1983), pp. 1-50.

³¹ Inoue, "Japanese Militarism & Diaoyutai (Senkaku) Island."

³² Matsui, "International Law of Territorial Acquisition," 1997, pp. 3-31; Suganuma, *Sovereign Rights and Territorial Space*, 2000, chapter 4.

³³ Japanese Ministry of Foreign Affairs, "The Basic View on the Sovereignty over the Senkaku Islands."

³⁴ In fact, the PRC rejected all of the provisions of the San Francisco Peace Treaty. John Price observes that the territorial issue is among what the PRC registered specific objections on. See John Price, "A Just Peace? The 1951 San Francisco Peace Treaty in Historical Perspective," Japan Policy Research Institute Working Paper, No. 78, June 2001, at <http://www.jpri.org/publications/workingpapers/wp78.html>

³⁵ Wu Hui, "The Sino-Japanese Dispute over the Diaoyu Islands and the Prospect for Its Resolution: An International Law Perspective" [Cong guojifa lun zhongri diaoyudao zhengduan jiqi jieju qianjing], *Zhongguo Bianjian Shidi Yanjiu*, Vol. 10, No. 1, March 2001, pp. 75-83.

³⁶ Toshio Okuhara, "The Territorial Sovereignty over the Senkaku Islands and Problems on the Surrounding Continental Shelf," *Japanese Annual of International Law*, Vol. 15, 1971, pp. 97-102.

³⁷ Japanese Ministry of Foreign Affairs, "The Basic View on the Sovereignty over the Senkaku Islands."

³⁸ Lee Wei-chin, "Trouble under the Water: Sino-Japanese Conflict of Sovereignty on the Continental Shelf in the East China Sea," *Ocean Development and International Law*, Vol. 18, 1987, pp. 585-611; Li, "China and Off-Shore Oil," 1975, pp. 151-53.

³⁹ For the history of the 1951 San Francisco Peace Treaty and its relation to the origin of the dispute of the Diaoyu/Senkaku Islands, see Seokwoo Lee, "The 1951 San Francisco Peace Treaty with Japan and the Territorial Disputes in East Asia," *Pacific Rim Law & Policy Journal*, Vol. 11, No. 1, 2002, pp. 63-146.

⁴⁰ Park, "Oil under Troubled Waters," p. 37. For the motives behind the US government's changing stance, see John Welfield, *Empire in Eclipse: Japan in the Postwar American Alliance System* (London: Athlone Press, 1988), p. 310.

⁴¹ Hearings on the Okinawa Reversion Treaty before the U.S. Senate Committee on Foreign Relations, 92nd Congress, 1st Session, October 27-29, 1971, pp. 88-93, 144-154; Tao, "The

Sino-Japanese Dispute,” 1974, p. 251.

⁴² Daily Press Briefing by Adam Ereli, Deputy Spokesman at the U.S. State Department, Washington, D.C., March 24, 2004. The full text is available at <http://www.state.gov/r/pa/prs/dpb/2004/30743.htm>

⁴³ Japanese Ministry of Foreign Affairs, “The Basic View on the Sovereignty over the Senkaku Islands.”

⁴⁴ The full text of the Treaty of Shimonoseki is available at <http://www.taiwandocuments.org/shimonoseki01.htm>

⁴⁵ See Koji Taira, “The Sino-Japanese Dispute over Diaoyu/Senkaku Islands: What Price Sovereignty?” *The Ryukyuanist*, No. 63, Spring 2004, available at <http://www.uchinanchu.org/uchinanchu/ryukyuanist63.pdf>

⁴⁶ For the background to Japan’s annexation of the Ryukyus and Japan’s attempts to link the Diaoyu Islands with the newly established Okinawa Prefecture, see Inoue, “Japanese Militarism & Diaoyutai (Senkaku) Island” and Park, “Oil under Troubled Waters,” p. 37.

⁴⁷ Suganuma, *Sovereign Rights and Territorial Space*, 2000. See also Koji, “The Sino-Japanese Dispute,” 2004.

⁴⁸ See J. R. V. Prescott, *The Maritime Political Boundaries of the World* (London and New York: Methuen, 1985), p. 245.

⁴⁹ Inoue, “Japanese Militarism & Diaoyutai (Senkaku) Island.”

⁵⁰ Liu Jiangyong, “The Sovereignty Problem of the Diaoyu Islands” [Lun Diaoyudao de zhuquan guishu wenti], *Riben Xuekan*, No. 6, 1996, pp. 13-28.

⁵¹ Tao, “The Sino-Japanese Dispute,” 1974, pp. 248-60; Li, “China and Off-Shore Oil,” 1975, pp. 151-53.

⁵² The full text of the San Francisco Peace Treaty is available at <http://www.taiwandocuments.org/sanfrancisco01.htm>

⁵³ The full text of the Treaty of Peace between the Republic of China and Japan is available at <http://www.taiwandocuments.org/taipei01.htm>

⁵⁴ Article 8 of the Potsdam Proclamation states that “The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.” The full text of the Potsdam Proclamation is available at <http://www.taiwandocuments.org/potsdam.htm>

⁵⁵ The full text of the Cairo Declaration is available at <http://www.taiwandocuments.org/cairo.htm>

⁵⁶ Japanese Ministry of Foreign Affairs, “The Basic View on the Sovereignty over the Senkaku Islands.”

⁵⁷ The full text of the Joint Communiqué of the Government of Japan and the Government of the People’s Republic of China is available at <http://www.taiwandocuments.org/japan01.htm>

⁵⁸ The full text of the Treaty of Peace and Friendship between the People’s Republic of China and Japan is available at <http://www.taiwandocuments.org/beijing.htm>

⁵⁹ See Ma Ying-Jeou, *Legal Problems of Seabed Boundary Delimitation in the East China Sea* (Maryland: Occasional Papers/Reprints Series in Contemporary Asian Studies, No. 3, 1984).

⁶⁰ On summary of various principles that govern maritime boundary delimitation, see Jon van Dyke, “The Republic of Korea’s Maritime Boundaries,” *The International Journal of Marine and Coastal Law*, Vol. 18, No. 4, 2003, pp. 509-540.

⁶¹ For a detailed legal analysis of the claims, see Jeanette Greenfield, *China’s Practice in the Law of the Sea* (New York: Oxford University Press, 1992), pp. 127-149.

⁶² Steven Wei Su, “The Tiaoyu Islands and their Possible Effect on the Maritime Boundary Delimitation between China and Japan,” *Chinese Journal of International Law*, Vol. 3, 2004, pp. 385-420.

⁶³ Daniel Dzurek, “The Senkaku/Diaoyu Islands Dispute,” at the International Boundary Research Unit web site, University of Durham, UK, October 1996. Its full text is available at <http://www-ibru.dur.ac.uk/resources/docs/senkaku.html>

⁶⁴ Jean-Marc Blanchard, "Maritime Issues in Asia: The Problem of Adolescence," in Muthiah Alagappa, ed., *Asian Security Order: Instrumental and Normative Features*, Stanford, Calif.: Stanford University Press, 2003, pp. 424-457.

⁶⁵ Yoshihisa Komori, "Japan and PRC Agree to Swiftly Promote Cooperation in Dealing with Maritime Activities," *Sankei Shimbun*, September 15, 2000.

⁶⁶ See Tong Sheng, "The Legal Analysis of the Diaoyu Islands, EEZ, and the Continental Shelf in the East China Sea" [Guanyu zhongguo donghai de diaoyudao, zhuanhu jingji qu he dalujia wenti de failu fenxi], *Riben Xuekan*, No. 6, 2003, pp. 69-81.

⁶⁷ Qin Yunshan, Zhao Yiyang, Chen Lirong, and Zhao Songling, eds., *Geology of the East China Sea* [Donghai dizhi], (Beijing, China: Kexue Chubanshe, 1996), pp. 1-3.

⁶⁸ "China's Claim to Diaoyu Island Chain Indisputable," *Beijing Review*, Vol. 39, No.45, November 4-10, 1996.

⁶⁹ Steven Wei Su, "The Territorial Dispute over the Tiaoyu/Senkaku Islands."

⁷⁰ "History Proves Diaoyu Islands are China's Territory," *Beijing Review*, Vol. 39, No.39, September 23-29, 1996.

⁷¹ Sugauma, *Sovereign Rights and Territorial Space*, 2000, p. 33; Greg Austin, *China's Ocean Frontier: International Law, Military Force and National Development* (Canberra: Allen and Unwin, 1998), p. 57.

⁷² Phil Deans, "Contending Nationalisms and the Diaoyutai/Senkaku Dispute," *Security Dialogue*, Vol. 31, No. 1, March 2000, pp. 119-131; Mark Valencia, "Domestic Politics Fuels Northeast Asian Maritime Disputes," *The Asia Pacific Issues*, East-West Center, No. 43, April 2000, pp. 1-8; Chung Chien-Peng, "The Diaoyu/Tiaoyutai/Senkaku Islands Dispute: Domestic Politics and the Limits of Diplomacy," *American Asian Review*, Vol. 16, No. 3, Fall 1998, pp. 135-64; Downs and Saunders, "Legitimacy and the Limits of Nationalism," 1998/99, pp. 114-146.

⁷³ "Chinese Youth's Perceptions on Japan" [Zhongguo qingnian kan riben], *Zhongguo Qingnian Bao*, February 15, 1997, p. 8.

⁷⁴ Jean-Marc Blanchard, "Maritime Issues in Asia: The Problem of Adolescence."

⁷⁵ Sugauma, *Sovereign Rights and Territorial Space*, 2000, p. 151.

⁷⁶ Taylor Fravel, "Regime Insecurity and International Cooperation: Explaining China's Compromises in Territorial Disputes," *International Security*, Vol. 30, No. 2, Fall 2005, pp. 46-83.

⁷⁷ The Republic of Korea-Japan Joint Development Area is an area south of the Republic of Korea and south-west of Japan. Both countries have jointly agreed to share the resources of the sea in an area where both countries' maritime zones overlap. See Choon-ho Park and Jae Kyu Park, eds., *The Law of the Sea: Problems from the East Asian Perspective* (Honolulu: The Law of the Sea Institute, University of Hawaii, 1987), p. 180.

⁷⁸ See Mark Valencia and Yoshihisa Amae, "Regime Building in the East China Sea," *Ocean Development & International Law*, Vol. 34 2003, pp. 189-208.