

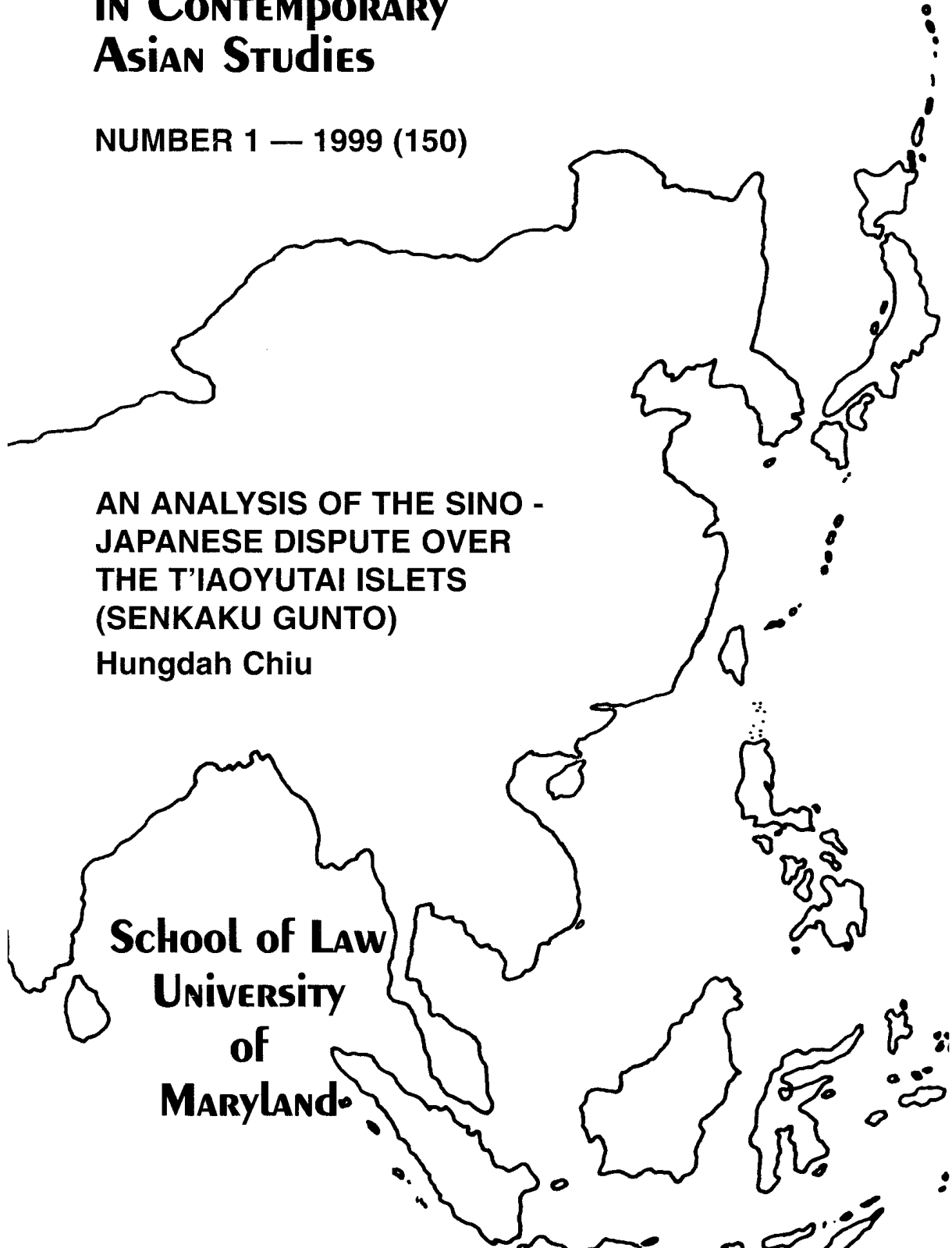
**OCCASIONAL PAPERS/
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IN CONTEMPORARY
ASIAN STUDIES**

NUMBER 1 — 1999 (150)

**AN ANALYSIS OF THE SINO -
JAPANESE DISPUTE OVER
THE T'IAOYUTAI ISLETS
(SENKAKU GUNTO)**

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UNIVERSITY
of
MARYLAND**



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Tel.: (410) 706-3870

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Price for single copy of this issue: US \$6.00

ISSN 0730-0107

ISBN 0-925153-65-6

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of International Law and Affairs

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Hungdah Chiu

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* This article was originally published in *Chinese Yearbook of International Law & Affairs*, Vol. 15 (1996-1997), pp. 9-31, reprinted with permission. Original page number of the article appears in brackets.

AN ANALYSIS OF THE SINO-JAPANESE DISPUTE OVER THE T'IAOYUTAI ISLETS (SENKAKU GUNTO)*

*Hungdah Chiu***

(This paper was originally published in *T'iaoyu Tai Leih-yu Chuch'uan Cheng-chih Wen-t'i Chi-ch'i Chieh-chueh Fan-fa Ti Yen-chiu* (A study of the question of the sovereignty dispute over the T'iaoyutai Islets and the methods of its settlement), Taipei: Institute of International Relations of National Chengchi University, 1991, revised and updated for publication in this *Yearbook*. A shorter version of this paper in Chinese was also published in *Chung-yang jih-pao* (Central Daily News), Taipei, October 8, 1996, p. 11, October 9, p. 10 and October 11, p. 10; and *Cheng Ming Monthly*, Hong Kong, Issue No. 229, November 1, 1996, pp. 42-46.)

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I. Introduction

The T'iaoyutai (Diaoyu Tai) Islets or Senkaku Gunto (in Japanese) consist of five uninhabited islets and three rocks in the East China Sea northeast of Taiwan. They are located between 25 degrees 40 minutes and 26 degrees north parallel, and 123 degrees and 124 degrees and 34 minutes longitude. The Islets are located ap-

* Japanese name is Senkakau Gunto.

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proximately 120 nautical miles west of Foochow, Fukien Province. The Japanese Yeeymu Gunto and Miyako Islands of the Ryukyu Islands are approximately 90 nautical miles south of the Islets. T'iaoyu, the largest of the group, is about 4.319 square kilometers in size; Huangwei about 1.08, Nan-hsiao about 0.465, Pei-hsiao about 0.303, Nan-hsio, about 0.465 and Chih-wei (also known as Raleigh Rock to Westerners) 0.154.¹

They are all situated at the edge of the East China Sea continental shelf as it extends from the Chinese mainland and Taiwan; they are geographically separated from the continental shelf of Japan and the Ryukyu Islands by the Okinawa Trough, which is more than 1000 meters deep.² Though these islets are very small, they contain disproportionately high peaks (383 meters on Tiao-yu), and steep cliffs are common to all islets. They have served as excellent navigational aids in the past century to navigation from Chinese Fukien Province to the Ryukyus.³

These islets have little economic value except as an occasional base for fishing by fishermen from Taiwan. Then, in November 1967, the Republic of China (Taiwan, then a member of the United Nations), the Republic of Korea, and the Republic of the Philippines under the sponsorship of the United Nations Economic Commission for Asia and the Far East (ECAFE, later renamed as the Economic and Social Commission for Asia and the Pacific) formed a Committee for Coordination of Joint Prospecting for Mineral Re-

1. See Seiho Yamaguchi, *Ishigaki Cho Shi*, Naha: *Okinawa Shoseki Kabushiki Kaisha*, 1935, p. 13. See also Cheng Li-chien, *Liu-ch'iu Ti-li Chih-lueh* (Record of Liu-ch'iu [Ryukyu] Geography), Shanghai: The Commercial Press, Ltd., 1948, p. 44; Wu T'ien-yin, (*Chia-wu chan-chien Tiao-yu-t'ai lieh-yu kuki-shu k'ao—Chien chih Jih-pen Ao-yuan Min-hsiung Chu Chiao-shou* [A Study of the Ownership of Tiao-yu-t'ai Islets before the Chiu-wu [year] War [i.e., 1895 Sino-Japanese War]—With A Question to Toshio Okuhara and Other Professors], [Wu T'ien-yin's own translation of the title is in Pinyin transliteration as follows: Wu Tianying, A Textual Research on the Ownership of the Diaoyu Islands (known as Senkaku Islands in Japan) prior to the Sino-Japanese War of 1894-95—Also a Query to Professor Toshio Okuhara and Others]), Beijing: She-hui Ko-hsueh Wen-hsien ch'u-pan she [social science literature publisher], 1994, pp. 23-24.

2. See *National Geographic Atlas of the World*, Washington, D.C.: National Geographic Society, 5th edition, 1981, pp. 33, 34, 193; *Zhongguo Dituji* (College of Chinese Maps), Beijing: compiled by Zhongguo Ditu Chubanshe (Chinese Maps Publisher), 1996, and distributed by Xinhua Shudian Beijing Faxing Suo (New Chinese Bookstore Beijing Distributor), p. 3.

3. See Ying-jeou Ma, *Legal Problems of Seabed Boundary Delimitation in the East China Sea*, Baltimore, Maryland, University of Maryland School of Law: *Occasional Papers/Reprints Series in Contemporary Asian Studies, Inc.*, 1984, p. 72.

sources in Asian Offshore Areas. This Committee, assisted by the United States Naval Oceanographic Office, conducted a seismic survey of the East China Sea and the Yellow Sea in October and November 1968, and published a report the following May. It concluded that the organic matter deposited by the Yellow River and the Yangtse River may make the continental shelf in this region one of the most prolific oil and gas reserves in the world. The most favorable part of the region for development was, as identified in the report, a 200,000 square kilometer area just north of Taiwan, or almost exactly the location of the Tiao-yu-tai Islets, where the neogene sediment is more than 2000 meters thick.⁴ The optimistic prediction of oil deposits in the region triggered a dispute between China (the Republic of China in Taiwan and the People's Republic of China in the mainland) and Japan on the ownership of the T'iaoyutai [Diaoyu] Islets.⁵ At that time, Japan still recognized the Republic of China (ROC) as the only legal government of China, so the dispute was the first between the ROC and Japan, and later joined by the PRC.⁶ It has not yet been resolved.

II. The Bases of the Chinese and Japanese Claims

(1) *The Republic of China's Claims*

The Republic of China took several steps to develop the resources in the East China Sea. In September 1970, the Legislative Yuan soon enacted a Statute for Exploration and Exploitation of Petroleum in Offshore Areas.⁷ On October 15, 1970, the ROC also

4. See Emery, K.O., Hayashi, Yoshikazu; Hidle, Thomas W.D.; Kobayashi, Kazuo; Koo, Ja Hak; Meng, C.Y.; Niino, Hiroshi; Osterhagen, J.H.; Reynolds, L.M.; Wageman, John M.; Wang, C.S., and Yang, Sung Jin. "Geological Structure and Some Water Characteristics of the East China Sea and the Yellow Sea." *UNECAFE/CCOP Tech. Bull.* Vol. 2 (May 1969), pp. 3-43. It is summarized in Ma, *supra* note 3, p. 16 and Victor H. Li, "China and the Off-Shore Oil: The Tiao-yu Tai Dispute," *Stanford Journal of International Studies*, Vol. X (Spring 1975), p. 143.

5. See Takashi Oka, "Oil Under East China Sea Is the Crux of 3-Nation Issue," *The New York Times*, January 30, 1971, p. 8.

6. Japan terminated its diplomatic relations with the Republic of China on September 29, 1972 and established diplomatic relations with the People's Republic of China on the same date. See *Jen-min Jih Pao* (People's Daily), September 30, 1972, p. 1; English translation of the Joint Communiqué of the Government of Japan and the Government of the People's Republic of China on Normalization of Relations, September 29, 1972 in *Peking Review*, Vol. 15, No. 40 (October 6, 1972), pp. 12-13. After the termination of diplomatic relations between the ROC and Japan, only unofficial relations have been maintained between the ROC and Japan, and the ROC has been unable to enter diplomatic negotiations with Japan on the T'iaoyutai issue.

7. English translation in *Investment Laws of the World*, Vol. 8 (1974), p. 201.

announced the delineation of five "Reserved Offshore Petroleum Zones," stretching from Taiwan Strait (22 degrees north latitude) to the East China Sea (30 degrees north latitude). These zones are separated from one another by latitudinal lines, using the mainland Chinese coast invariably as their western limits and the west coast of Taiwan (for Zone I), the mid-channel lines of the Okinawa Trough (for Zones II, III and IV), and outer edge of the East China Sea continental shelf (for Zone V) as their eastern limits.⁸

On the international level, the ROC, then still representing China in the United Nations, ratified on October 12, 1970 the 1958 Convention on the Continental Shelf done at Geneva on April 29, 1958,⁹ but with the following reservation:

With regard to the determination of the boundary of the continental shelf as provided in paragraphs 1 and 2 of article 6 of the Convention,¹⁰ the Government of the Republic of China considers:

(1) that the boundary of the continental shelf appertaining to two or more States whose coasts are adjacent to and/or opposite each other shall be determined in accordance with the principle of the natural prolongation of their land territories; and

8. See Ma, *supra* note 3, pp. 41-42. The five zones are indicated in Map 7 of Ma's book, p. 270.

9. United Nations, *Treaty Series*, Vol. 499, p. 311.

10. Article 6:

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

....

(2) that in determining the boundary of the continental shelf of the Republic of China, exposed rocks and islets shall not be taken into account."¹¹

The reason for the reservation appears to be that, since there is a deep break in the ocean floor, the westward end of the Japanese and Ryukyu continental shelf reaches only to the Okinawa Trough and not to T'iaoyutai. Moreover, to make clear that even if Japan owns part of the T'iaoyutai, the ROC did not accept the Japanese claim to the Chinese continental shelf that extended from the Chinese coast.¹²

At that time the pre-war Japanese territory, the Ryukyu Islands, were administered by the United States in accordance with Article 3 of the 1951 Peace Treaty with Japan.¹³ However, when it was subsequently announced that the United States planned to return the then US-administered Ryukyu Islands to Japan in 1972 and that the Senkaku, which had been administered as part of the Ryukyu, would also revert to Japan, the dispute became apparent.

In July 1970, the Republic of China granted the Japanese subsidiary of an American oil company drilling rights over the seabed of a vast area of the East China Sea including the islands.¹⁴ ROC officials also claimed Chinese sovereignty over the islands, and ROC acting Foreign Minister James C.H. Shen informed the Japanese ambassador to Taipei on October 23, 1970 that these islands are part of Taiwan.¹⁵ The ROC also asked the United States to stop Ryukyu local patrol boats from chasing Chinese fishermen from the area.¹⁶ Ryukyu officials had also removed a ROC flag from one of the islands and had placed "no trespassing" markers on each of them.¹⁷

Although neither Japan nor the ROC was willing to enter into formal negotiations over the question of sovereignty over the islands, they did began an informal exchange of views over the ques-

11. Multilateral Treaties in Respect of Which the Secretary-General Performs Depositary Functions, List of Signatures, Ratifications, Accessions, etc., as at 31 December 1978, New York: United Nations, 1979, p. 568.

12. Cf. Li, *supra* note 4, p. 146.

13. United Nations, *Treaty Series*, Vol. 126, p. 50.

14. See Ma, *supra* note 3, p. 45.

15. Hungdah Chiu, assisted by Ming-shan Kuo and Ti-hung Liu, "A Study of the Tiaoyutai Islets Problems," *Cheng-ta fa-hsueh p'ing-lun* (Chengchi Law Review, Taipei), Vol. 6 (June 1972), p. 244.

16. *Id.*, p. 263.

17. *Tiao-yu-t'ai lieh-yu wen-t'i* (The problem of the T'iaoyutai Islets; Taipei, 1971), pp. 2-3, 28.

tion of the exploitation of the resources of the continental shelf. The Japanese also suggested that Japan, the ROC, and South Korea cooperate in developing the undersea resources of the East China Sea without prejudice to their respective legal claims.¹⁸

On June 1, 1971, a formal statement of the ROC Ministry of Foreign Affairs was issued following a statement on the Chinese position toward the Ryukyu Islands and the T'iaoyutai Islets.¹⁹

We have learned that the U.S. government and the Japanese government will soon sign a formal document to transfer the Ryukyu Islands, [and] in that document it even includes the Tiayu Tai Islets over which the Republic of China enjoys sovereignty[.] [T]herefore the Government of the Republic of China must again solemnly announce to the whole world its position:

I. On the Ryukyu Islands: In 1943, the Republic of China, the United States of America and the United Kingdom [major allies in the Second World War], jointly issued the Cairo Declaration and in the Potsdam Declaration [Proclamation] in 1945, it was stated 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. Therefore, the future status of the Ryukyu Islands should evidently be decided by the major allies.

The Peace Treaty with Japan signed on September 8, 1951 at San Francisco is based on the contents of the above stated two declarations and in accordance with Article 3 contents of this Peace Treaty, the legal status of the Ryukyus and its future disposition have clearly been prescribed. The consistent position of the Republic of China toward the final disposition of the Ryukyus is: This question should be, in accordance with the Cairo Declaration and Potsdam Declaration, jointly decided among the allies through consultation. This position has been well known to the United States. The Republic of China is a major ally in the war against Japan and should naturally partici-

18. See Takashi Oka, *supra* note 5.

19. Statement published in *Chung-yang Jih-pao* (Central Daily News), June 12, 1971, p. 1; reprinted in Hungdah Chiu, ed., with the assistance of Chun-i Chen, *Hsien-tai Kuo-chi-fa Ts'an-kuo Wen Chien* (Reference Documents of Modern International Law), Taipei: Sun Min Book Co., 1996, pp. 946-947.

pate in such consultation, the United States suddenly decided to return the Ryukyus to Japan, and the Republic of China is very dissatisfied.

II. On the Tiaoyu Tai Islets: With respect to the United States statement that it intends to transfer the Tiaoyu Tai Islets, together with the Ryukyu Islands, to Japan, the government of the Republic of China especially feels surprised and startled.

The islets are affiliated with the Province of Taiwan and constitute a part of the territory of the Republic of China. In accordance with the geographical position, geological structure, historical connection, and long term use there by the inhabitants of Taiwan Province, the islets have been closely connected with the Republic of China and the Government of the Republic of China, in accordance with its sacred duty to safeguard national territory, and the Republic of China absolutely cannot abandon even an inch of its territorial sovereignty. Therefore, the Government of the Republic of China has repeatedly notified the U.S. Government and the Japanese Government, that the islets are, without any doubt, the territory of the Republic of China, on the basis of history, geography, usage and legal grounds. Therefore, the United States should return the islets to the Republic of China when it terminates its administration of [the Ryukyus]. Now the United States intends to directly transfer its administrative rights over the islets and the Ryukyu Islands to Japan, the Government of the Republic of China consider that it is not only absolutely unacceptable, but also cannot have any effect on the sovereign claim of the Republic of China. Therefore, the Republic of China resolutely opposes this transfer. The Government of the Republic of China expects the countries concerned to respect our sovereignty over the islets and should take reasonable and legitimate measures so as to avoid causing serious consequences in the Asian-Pacific region.²⁰

20. The original statement was issued in Chinese, translated into English by the author of this paper.

* * * * *

(2) *The People's Republic of China's Claims*

The PRC was silent in the early stage of the dispute, but made its claim to the islets, upon learning that Japan suggested the ROC, the Republic of Korea and Japan cooperate in developing the East China Sea seabed, in which the T'iaoyutai islets are located, without prejudice to the rights of each country.²¹ The PRC first entered the dispute semi-officially with an article in the authoritative *Peking Review*, accusing the United States and Japan of "reactionary" attempts to plunder Chinese and Korean seabed resources in "collusion" with the "Chiang Kai-shek Gang of [the ROC Government] and the Pak Jung Hi puppet clique [the Republic of Korea Government in South Korea]."²² The article also stated that "[s]upported by U.S. imperialism, the reactionary [Japanese] Sato government is also seeking various pretexts for incorporating the Tiaoyu, Huangwei, Chihwei, Nanhsiao, Peihshiao and others, as well as water areas which belong to China, into Japan's territory."²³

A formal statement by the PRC Foreign Ministry was issued on December 30, 1971,²⁴ stating the Chinese legal position as follows:

In the past few years, the Japanese Sato government, ignoring the historical facts and the strong opposition of the Chinese people, has repeatedly claimed that Japan has the so-called "title" to China's territory of the Tiaoyu and other islands and, in collusion with US imperialism, has engaged in all kinds of activities to invade and annex the above-mentioned islands. Not long ago, the US Congress and the Japanese Diet one after the other approved the agreement on the "reversion" of Okinawa. In this agreement, the governments of the United States and Japan flagrantly included the Tiaoyu and other islands in the "area of reversion." This is a gross encroachment upon China's

21. Takashi Oka, *supra* note 5.

22. "US and Japanese Reactionaries Out to Plunder Chinese and Korean Seabed Resources," published in PRC's *Peking Review*, Vol. 13, No. 450 (December 11, 1970), p. 15, reproduced in Jerome Alan Cohen and Hungdah Chiu, *People's China and International Law, A Documentary Study*, Vol. 1, Princeton, New Jersey: Princeton University Press, 1974, pp. 347-348.

23. Cohen and Chiu, *supra* note 22, p. 349.

24. "Statement of the Ministry of Foreign Affairs of the People's Republic of China," (Dec. 30, 1971), English translation in *Peking Review*, Vol. 15, No. 1 (January 7, 1972), p. 12, reproduced in Cohen and Chiu, *supra* note 22, pp. 349-350.

territorial integrity and sovereignty. The Chinese people absolutely will not tolerate this!

The Tiaoyu and other islands have been China's territory since ancient times. Back in the Ming dynasty [A.D. 1368-1644], these islands were already within China's sea defence areas; they were islands appertaining to China's Taiwan but not to Ryukyu, which is now known as Okinawa. The boundary between China and Ryukyu in this area lies between Chihwei Island and Kume Island and fishermen from China's Taiwan have all along carried out productive activities on the Tiaoyu and other islands. During the 1894 Sino-Japanese War, the Japanese government stole these islands and in April 1895 it forced the government of the Ching dynasty to conclude the unequal "Treaty of Shimonoseki" by which "Taiwan, together with all islands appertaining to Taiwan" and the Penghu Islands were ceded. Now the Sato government has gone to the length of making the Japanese invaders' act of aggression of seizing China's territory in the past a ground for claiming that Japan has the so called "title" to the Tiaoyu and other islands. This is sheer and outright gangster logic.

After World War II, the Japanese government illicitly handed over to the United States the Tiaoyu and other islands appertaining to Taiwan, and the United States government unilaterally declared that it enjoyed the so-called "administrative rights" over these islands. This in itself was illegal. On June 28, 1950, shortly after the founding of the People's Republic of China, Foreign Minister Chou En-lai, on behalf of the Chinese government, strongly condemned US imperialism for sending its Seventh Fleet to commit aggression against Taiwan and the Taiwan Straits, and solemnly declared that the Chinese people were determined to "recover Taiwan and all territories belonging to China." Now the US and Japanese governments have once again made an illicit transfer between themselves of China's Tiaoyu and other islands. This encroachment upon China's territorial integrity and sovereignty cannot but arouse the utmost indignation of the Chinese people.

The Ministry of Foreign Affairs of the People's Republic of China hereby solemnly declares: Tiaoyu Island, Huangwei Island, Chihwei Island, Nanhsiao Island, Peih-siao Island, etc. are islands appertaining to Taiwan. Like

Taiwan, they have been an inalienable part of Chinese territory since ancient times. It is utterly illegal for the US and Japanese governments to include China's Tiaoyu and other islands in the so-called "area of reversion" in the Okinawa "reversion" agreement. Their act cannot in the least alter the sovereignty of the People's Republic of China over her territory of the Tiaoyu and other islands. The Chinese people are determined to liberate Taiwan! The Chinese people are determined to recover the Tiaoyu and other islands appertaining to Taiwan!

* * * * *

(3) *The Japanese Claims*

On March 8, 1972, the government of Japan, through its Foreign Ministry, issued a statement of its position regarding the islands in dispute.²⁵

After 1885 the Japanese government carried out a series of careful on-the-spot surveys of the Senkaku [Tiao Yu Tai in Chinese] Islands through the assistance of the Okinawa prefectural authorities and by other means. Having thus ascertained carefully that the islands were not only uninhabited but without any trace of control by China (Ching dynasty), the Japanese government [made a] cabinet decision on January 14, 1895, to set up posts on the Senkaku Islands to manifest Japan's territorial sovereignty and thereby formally incorporated these islands into the territory of Japan.

Since then the Senkaku Islands have been consistently a part of Japan's territory of Nansei Shoto. Naturally, these islands are not included in the islands of Formosa and the Pescadores, which were ceded to Japan under Article 2 of the Sino-Japanese Peace Treaty which entered into force in May, 1895. At the time of the San Francisco Peace Treaty, therefore, the Senkaku Islands were not renounced by Japan under Article 2 of the Treaty but were placed under the administration of the United States together with other islands of Nansei Shoto in ac-

25. "The Position of the Government of Japan on the Senkaku [Tiao Yu Tai in Chinese] Islands," March 8, 1972, official text supplied by the Japanese Government, reproduced in Cohen and Chiu, *supra* note 22, pp. 351-352.

cordance with the provisions of Article 3.²⁶ Now the administration over the Senkaku Islands and over the other islands of Nansei Shoto is to be returned to Japan under the Agreement between Japan and the United States of America concerning the Ryukyu Islands and the Daito Islands signed on June 17, 1971. All these facts testify in the clearest possible manner to the status of the Senkaku Islands as a territory of Japan.

For a long time, since the entry into force of the San Francisco Peace Treaty, China [has] raised no objection to the fact that the Senkaku Islands are included in the area placed under United States administration in accordance with the provisions of Article 3 of the Treaty. In fact, neither the government of the Republic of China nor the government of the People's Republic of China had taken up the question of sovereignty over the islands until the latter half of 1970 when movements relating to exploitation of oil resources deposited in the East China Sea continental shelf surfaced. All [of] this clearly indicates that China had not until recently regarded the Senkaku Islands as a part of Formosa.

None of the alleged historical, geographical and geological arguments set forth by the governments of the Republic of China and the People's Republic of China are acceptable as valid under international law to substantiate China's territorial claim over the Senkaku Islands.

The Japanese statement was rebutted by the PRC in an article appearing in the authoritative *Peking Review* as follows:²⁷

The "official statement" brought forth by Foreign Minister Fukuda and the Japanese Foreign Ministry alleged that "the islands were never ruled by the Ching dynasty of China. This was confirmed by a survey made in the 18th year of the reign of Meiji (1885)." The Japanese government attempts to describe China's territory Tiaoyu and other islands as belonging to "nobody" so as to create "grounds" for its occupation of them. This is a complete distortion of historical facts to confuse the issue. When

26. See *supra* note 13 and accompanying text.

27. "Sato Government Tries to Annex China's Tiaoyu and Other Islands," *Peking Review*, Vol. 15, No. 14 (April 7, 1972), p. 18, reproduced in Cohen and Chiu, *supra* note 22, pp. 352-353.

the Japanese government clandestinely made a so-called "survey" there in 1885, these islands had been under China's jurisdiction for several centuries. Historical facts cannot be changed. The "grounds" fabricated by the Sato government in distorting the historical facts can deceive nobody.

Another "reason" dreamt up by Foreign Minister Fukuda and the Japanese Foreign Ministry is that in the 28th year of the reign of Meiji (1895) the Japanese cabinet decided to incorporate the islands into Japanese territory. This is precisely a confession of the criminal act of the old Japanese militarists in annexing China's territory Tiaoyu and other islands. Historical facts show that Japanese militarism had cast a covetous eye on China's Tiaoyu and other islands for ten years since 1885, but never dared to lay a hand on them until 1895, when, taking advantage of the defeat of the Ching dynasty government in the Sino-Japanese War, it forcibly "incorporated" the Tiaoyu and other islands into Japanese territory. In April the same year, the government of the Ching dynasty was compelled to sign the unequal "Treaty of Shimonoseki,"²⁸ by which

28. On April 18, 1885, China and Japan signed a Convention for the Withdrawal of Troops from C[*K*]orea, at Tientsin, an arrangement including Korea, that both countries should withdraw their forces from Korea and Korea should train its military forces by hiring foreign military officers (other than China and Japan), so as to maintain public order and self-preservation. If in the future there would be rebellion and disturbances in Korea, either China or Japan could send forces there, and one should notify the other. Clive Parry, ed., *Consolidated Treaty Series*, Vol. 166 (1984), Dobbs Ferry, New York: Oceana Publications, 1978, pp. 99-100.

In 1884, there were internal disturbances in Korea and Korea requested China to send forces, China immediately sent a force of 1500 soldiers and notified Japan on May 2 in accordance with the Tientsin Arrangement. On July 25, Japan attacked a Chinese ship, the *Kao Sheng*, and sunk it. Japan also launched an attack on the Chinese forces stationed at Ahran. As a result, China then declared war against Japan on August 1, 1894. In October 1894, the Chinese naval fleet was defeated and Japanese forces also occupied the Liaotung Peninsula near Peking. In March 1895, China was obliged to seek a peaceful resolution. An Armistice treaty was concluded on March 30, 1895 with a duration of 21 days, i.e., up to April 20, 1895. On April 17, 1895, a peace treaty was concluded at Shimonoseki, Japan. It provides in Article 2 as follows:

Territorial Cessions by China to Japan.

China cedes to Japan in perpetuity and full sovereignty the following territories, together with all fortifications, arsenals, and public property thereon:

Island of Formosa

(b) The island of Formosa, together with all islands appertaining or belonging to the said Island of Formosa.

Taiwan together with all the islands appertaining to it and the Penghu Islands were ceded to Japan. Now the Sato government has gone so far as to take the aggressive act of grabbing China's territory by the Japanese aggressors in the past as "grounds" to support its standpoint that it should have title to the islands. This is absolute gangster logic.

III. Evaluation of the Claims

Both the ROC government and the PRC government of China have insisted that the T'iaoyutai islets have been Chinese territory at least from the fifteenth century. The name "T'iaoyutai" was given by the Chinese in a book entitled *Shun-feng Hsiang-sung* [May Fair Winds Accompany You] published in the fifteenth century.²⁹ During the 500 year period from 1372-1879, the Chinese Emperors sent some 24 investiture missions to the Ryukyu Islands to confer the title of *Chung-Shan-Wang* (the Chung-shan King) on their new rulers. Upon their return to China the chiefs of these missions usually presented a written report to the Chinese Emperor about their journeys, often entitled "the Record on the Mission to the Ryukyus."³⁰

These writings of the ranking Chinese officials usually contained accounts of the sea-routes they sailed and their experiences on the high seas, including various comments on the geographical characteristics along the route. The "T'iaoyutai" were used as navigational aids in their route from Foochow in Fukien Province to Naha in the Ryukyus.³¹

Pescadores Group

(c) The Pescadores Group, that is to say, all islands lying between the 119th and 120th degrees of longitude east of Greenwich, and the 23rd and 24th degrees of north latitude.

Clive Parry, ed., *Consolidated Treaty Series*, Vol. 181 (1895), pp. 217-223. Also in Hungdah Chiu, ed., *China and the Taiwan Issue*, New York: Praeger Publishers, 1979, p. 214.

29. The year of publication is not clear, according to British sinologist Joseph Needham, it was published in 1430. See his *Science and Civilization in China*, Vol. 4, Part 1, Chapter 26, quoted in Fang Hao, "From 'Shun-feng Hsiang-Sung' to Explore the Possibility of Cheng Ho [a navigator] or Other People Sending Abroad to Visit Taiwan and Penghu," *Tung-Fang Tsa-Chih* (Eastern Miscellany), [Taiwan Edition], Vol. 1, No. 2 (August 1, 1967), p. 49.

30. See 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 (Winter 1974), p. 254.

31. *Ibid.*

The T'iaoyutai islets were also included within China's sea defense line in a 1561 Chinese map in *Ch'ou Hai T'u-pien* (Compilation of Maps on Managing the Sea), edited by the Chinese high official Hu Chung-hsien in the Ming Dynasty (1368-1644).³²

Furthermore, a very famous Japanese book, *Sangoku Tsuuran Zassetsu* (Illustrated Picture of Communication between Three Countries [China, Japan and Korea]), published in 1785, includes a map clearly marked the T'iaoyutai Islets as part of Fukien Province (see Map 1, at the end of this article).³³

The T'iaoyutai Islets were also included in the official map, *K'un Yu Ch'uan T'u* (World Map), drawn by French Missionary Michael Benoist at the request of Emperor Ch'ien-lung [who reigned between 1736-1796], in 1767 (see Map 2, at the end of this article).³⁴ The map includes the T'iaoyutai Islets within Chinese territorial limits.³⁵ Moreover, another official map published in 1862, *Huang Chao Chung-Wai I-T'ung Yu-T'u* (Map of Imperial China and Foreign Countries), clearly marked with Chinese names all those designated places up to *Chiwei Yu*, which were on the sea route passing through the T'iaoyutai Islets from the Fukien Province coast to the Ryukyu Islands (see Map 3, at the end of this article). Only beginning with Kumi Island of the Ryukyus did the Map also incorporate Japanese names.³⁶

32. See Japanese book Kiyoshi Inoue, *Senkaku Retton, Tsurino-Shotou No Shiteki Kaimei* (The Pinnacle Islets, Tiayu Islets and Their History), Tokyo: Kabushikigaisya Gendiu Hyouronsya, 1972, pp. 31-33.

33. *Ibid.*, last page of the map (in color). Taiwan was a part of Fukien Province until 1894, when it was made a separate province.

34. Wu Tianying, *supra* note 1, p. 93. See Map 5 of Wu's book, Map 5 is located before the table of contents of the book. It is now available for viewing at *Chung-kuo Ti-i Li-shih Tang-an-Kuan* (The First Official Historical Archives of China Museum) in China.

35. *Ibid.*

36. Published by Huipei: Fu shu Ching-hen-lou [literally should be translated as Governor's Public Office, Ching-hen Building], 1862, Vol. South 7, pp. East 1 to 4. Reproduced in Hungdah Chiu, assisted by Ming-shan Kuo and Ti-hung Liu, *supra* note 15, Map 6. The book is available in the United States at Harvard-Yenching Library of Harvard University.

Japan annexed the Ryukyu Islands formally in 1872, but the Ryukyus were under Japanese domination before that time, and since 1602 the Ryukyus were a tributary state to both China and Japan. See Huang Cheng-ming, *Chung-kuo wai-chiao shih* (Diplomatic History of China), Taipei: Cheng-Chung Shu-chu, 1959, 5th Taiwan reprint edition, 1969, p. 150.

In view of the above-stated evidence, it is clear that when Japan surveyed these islets in 1895,³⁷ they already had been Chinese territory. The date of the Japanese Cabinet decision of January 14, 1895 to incorporate the islets into Japanese territory was only after Japan had defeated China in the Sino-Japanese War in 1894. On April 17, 1895, China³⁸ was compelled to sign a Peace Treaty at Shimonoseki, Japan, to cede to "Japan in perpetuity and full sovereignty. . . the island of Formosa, together with all islands appertaining or belonging to the said Island of Formosa."³⁹ By that time, Japan even wanted to seize Taiwan (Formosa), so there was no point in China raising the objection to Japanese acquisition of the T'iaoyutai Islets—the islets appertaining to Taiwan. China was forced to cede them to Japan at that time.

If we put these events in the historical context revealed in Japanese official diplomatic archives, then it is very clear that Japan took advantage of the opportunity in defeating China in the Sino-Japanese War of 1894-1895 to seize the T'iaoyutai Islets. This is described in Japanese diplomatic papers as follows:

The islands Kume (aka) Jima (approximately seventy li [one li is approximately 500 kilometers] from Kume Jima and approximately 200 li from Foochow of China), Kubajima (approximately 100 li from Kume Jima and 60 li from Ishigaihi Island of Yeema-Gunto, and Yutiao Island (the location is the same as Kubajima but 10 li further) are spread between [the area of] Foochow of China and the Okinawa County [of the Ryukyus]. There were no traces of [them] belonging to Ch'ing [China], for these three islands are close to Miyako Island and Yeeyma Gunto under the jurisdiction of Okinawa County. With respect to establishing [a] national mark there, the magistrate of Okinawa filed [a] petition to the Prime Minister as early as October 9, 1885. The Minister of the Interior Yamagata Aritomo had consulted Foreign Minister Inoue Kaoru. After carefully reviewing this case, it was considered that these are small islets close to Chinese territory and at that time Chinese newspaper already had reported that [the] Japanese government occupied the Chinese islands near Taiwan and [caught] the attention of the Chinese govern-

37. See *supra* note 25 and accompanying text.

38. See *supra* note 28.

39. *Ibid.*

ment.⁴⁰ Based on the above reasons, the establishment of national marks and the exploration of these islands should [await a] later [date] and [this country should] act on another appropriate occasion. . . .⁴¹

When Japanese Foreign Minister Inoue Kaoru earlier sent a letter to Interior Minister advising the latter on October 21, 1885 *not* to establish national mark on the T'iaoyutai Islets, he stated:

[With respect to] the Mujintou and Kume aka Jima situated between Okinawa County and Foochow of China, the Okinawa County had made on site investigation on the question of establishing national marks. After serious consideration and consultation, it was considered that those islands are near the Chinese national boundary and are different from the Daitou Jima previously investigated; the surrounding area appears to be small and there are Chinese names on them. Recently, a Chinese newspaper already reported that our [i.e., Japanese] government [intended] to occupy the Chinese islands near Taiwan.⁴² If we suddenly establish publicly national boundary marks, it might easily invite Chinese suspicion. At present, we need only to investigate the harbor's situation, explore the products there and make a detailed report. With respect to the question of establishing national marks, we must wait until the time is appropriate.⁴³

Therefore, it was during the Sino-Japanese War of 1894-1895, and after Japan had decisively defeated China by December 1894, that the internal minister, after consulting with the Foreign Minister, was urged to jointly submit the proposal to a Cabinet meeting for establishing a national boundary mark at the T'iaoyutai Islets when the "time is appropriate."⁴⁴ Under these circumstances, the ministers jointly, on December 27, 1894, submitted a proposal to the cabinet, which was passed, and they informed the magistrate of Okinawa that the proposal to establish a national mark on the

40. The newspaper referred to here is *Shen Pao* [*Shen* is the brief name of Shanghai, *Pao* is newspaper], September 6, 1885, the title to this news is "Warning Nears for Taiwan," reproduced in Wu Tianying, *supra* note 1, p. 101.

41. *Nihon Gaikou Bunsho* (Japanese Diplomatic Papers, Vol. 18, Tokyo: Japanese Association of the United Nations, 1950, p. 575.

42. See *supra* note 40.

43. *Japanese Diplomatic Papers*, *supra* note 41, p. 575.

44. *Japanese Diplomatic Papers*.

T'iaoyutai Islets was approved.⁴⁵ Thus, it appears clear that Japan took the opportunity after defeating China in the 1894-1895 War and before the conclusion of the peace treaty on April 17, 1895 to seize the T'iaoyutai Islets and make it part of the Ryukyus.

However, it was not until 1902 that Japan formally incorporated the T'iaoyutai Islets into the Ryukyus as its territory.⁴⁶

IV. The Status of the Islets After the End of the Second World War

After the defeat of Japan in the Second World War in 1945, Japan concluded a peace treaty with the Republic of China, then in Taiwan, on April 28, 1952,⁴⁷ Article IV of the Treaty specifically provided: "It is recognized that *all* treaties, conventions and agreements concluded before December 9, 1941, between China and Japan have become null and void as a consequence of the war"⁴⁸ (emphasis added). These provisions of course include the Treaty of Shimonoseki, concluded on April 7, 1895.⁴⁹

Article II of the said Treaty provides:

It is recognized that under Article 2 of the Treaty of Peace with Japan signed at the city of San Francisco in the United States of America on September 8, 1951 (hereinafter referred to as the San Francisco Treaty), Japan has renounced all right, title and claim to Taiwan (Formosa) and Penghu (the Pescadores) as well as the Spratly Islands and the Paracel Islands.⁵⁰

Since the bases of Japanese claims to the T'iaoyutai no longer existed, the islet should be restored, like Taiwan, to its original place as part of Chinese territory.

45. *Ibid.*, p. 531.

46. In an article published in *The Okinawa [Quarterly]* (in Japanese), Vol. 56—Special Issue on Senkaku Islands, p. 251, it was stated that the incorporation was based on an edict issued on April 1, 1896 by the Japanese Emperor. However, there was no such edict, and it was in 1902 that Japan formally incorporated the T'iaoyutai into its territory. Even after Japan's incorporation of the islets, some maps still used Chinese names for the islets. E.g., see J.G. Bartholomew, *The Times Survey Atlas of the World*, London: Times Printing House, 1922, plate 65 and Columbus Weltatlas, Berlin/Stuttgart, 1950, p. 50.

47. *UNTS*, Vol. 136, p. 45.

48. *Ibid.*, p. 45.

49. For Treaty of Shimonoseki, see *supra* note 28.

50. *UNTS*, Vol. 136, p. 48. The Treaty of Peace with Japan signed at San Francisco is in *UNTS*, Vol. 136, p. 45.

Furthermore, the people on Taiwan have been using the T'iaoyutai for many years, even during the Japanese occupation during the Taiwan period (1895-1945).⁵¹ Since 1945 the islets have been used by Chinese from Taiwan and one even served as a base for anti-Communist guerrilla forces.⁵² For these reasons, the June 1, 1971 statement of the ROC that the T'iaoyutai Islets are the territory of the ROC "in accordance with history, geography, usage and legal grounds"⁵³ is accurate and true. At that time, the Chinese Communists had already established "the People's Republic of China" (PRC) on the Chinese mainland and the United Kingdom had recognized the PRC as the legal government of China and der-ecognized the ROC on Taiwan, while the U.S. still recognized the ROC as the legal government of China until January 1, 1979. The United States and the United Kingdom could not agree at that time which government of China should be invited to the San Francisco Peace negotiation. However, the United States got Japan to promise to enter into a bilateral peace treaty with the ROC.⁵⁴

The bilateral peace treaty between the ROC and Japan was signed on April 28, 1952 at Taipei, Taiwan, ROC.⁵⁵ Article IV of the Treaty provides: "It is recognized that all treaties, conventions and agreements concluded before December 9, 1941, between China [i.e., ROC] and Japan have become null and void as a consequence of the war."⁵⁶ The Treaty of Shimonoseki was concluded in 1895; therefore, it also has become null and void. As a result, the T'iaoyutai Islets which were part of Chinese territory on Taiwan should also be restored to their original owner.⁵⁷

It is true that the ROC did not raise this issue until 1971, but this was because, until that time, the T'iaoyutai Islets were under

51. See *Taiwan No Suisan*, compiled by Taiwan Shoutokufu shokusanakyoku, No. 2 (January 17, 1915), p. 24.

52. Ch'i T'ung-hsin, "A Succinct Introduction to Chien-Ko Islets [Senkaku Gunto]," *Chung-yang Jih-pao* (Central Daily News), International Edition, August 18, 1970, p. 1.

53. See *supra* note 19.

54. Chung-hua min-kuo Wai-chiao wen-t'i yen-chiu hui, *Chin-shan ho-yueh yu Chung-jih ho-yueh ti kuan-hsi*, compiler (The relationship between the San Francisco Peace Treaty and the Sino-Japanese Treaty), Taipei: published by the Compiler, 1966, p. 78. The compiler is the Association for the Study of Diplomatic Question of the Republic of China and the materials contained in this book are obviously provided by the ROC Ministry of Foreign Affairs from diplomatic archives. The compiler appears to be a temporary organization and has been dissolved.

55. *UNTS*, Vol. 138, p. 38.

56. *Ibid.*, p. 40.

57. *Supra* note 28.

U.S. administration. The United States was an ally of the ROC and had a mutual defense treaty.⁵⁸ Article VII of the Treaty provides:

The Government of the Republic of China grants, and the Government of the United States of America accepts, the right to dispose such United States land, air and sea forces in and about Taiwan and the Pescadores as may be required for their defense, as determined by mutual agreement.⁵⁹

Therefore, during the period of U.S. occupation of the Ryukyus, which included the T'iaoyutai Islets, the ROC did not raise the question of restoring the Islets to the ROC. Moreover, during that period, Chinese fishermen continued to use the islets as a fishery base without any interference from the U.S. administration. Furthermore, during this period (1946-1970), the ROC government was preoccupied with the civil war between the Chinese communists forces and the Nationalist (ROC) forces and the United States was the *only* ally to have a Mutual Defense Treaty with the ROC. Because of considerations of security in East Asia, it was inappropriate for the ROC to raise the issue of the T'iaoyutai Islets with the United States,⁶⁰ which never offered any indication of a territorial ambition toward the Islets.

On June 17, 1971, the United States decided to end its occupation of the Ryukyus and return them to Japan.⁶¹ Before that date, however, the ROC raised the issue of the T'iaoyutai Islets with the United States on June 1 and made it clear that the Islets were Chinese territory, and should not be included in the Ryukyus when the latter reverted to Japan.⁶² As a result of the ROC's position, when the Senate gave its advice and consent to the Agreement on Reversion to Japan of the Ryukyu and Daito Islands,⁶³ its Foreign Rela-

58. *UNTS*, Vol. 248, p. 213.

59. *Ibid.*, p. 215 (Chinese text in p. 219).

60. See Acting Foreign Minister James C.H. Shen's reply to a question raised by a member of the Legislative Yuan (Parliament), *Li-fa-Yuan K'ung-pao* (Gazette of the Legislative Yuan), Vol. 59, No. 70 (September 26, 1970), pp. 35-36.

61. See Agreement concerning the Ryukyu Islands and the Daito Islands. See with related agreements, signed on January 17, 1971, reported in *Central Daily News*, June 18, 1971, p. 1. The Agreement entered into force on May 15, 1972, see *United States Treaty and Other International Acts* (usually referred to as UST), Vol. 23, p. 446.

62. See ROC's statement in *supra* note 19.

63. Under U.S. Constitution and practice, this is an agreement which usually does not need to go through advice and consent of the Senate, but the Senate treated it as a treaty. The reason for doing so was not explained in the Senate Executive Report, No. 92-10. The said report used the heading "OKINAWA REVERSION TREATY."

tions Committee made the following comment in its Report to the Full Committee:

In an agreed Minute to Article I, the parties specify the geographical coordinates defining the territory covered by the Treaty. These coordinates make it clear that the Senkaku (Tiao Yu Tai) Islands are included as part of the territory administered. In addition, two of the military facilities listed as being retained by the United States are in the Senkakus. The Republic of China, the People's Republic of China and Japan claim sovereignty over these islands. The Department of State has taken the position that the sole source of rights of the United States in this regard derives from the Peace Treaty under which the United States merely received rights of administration, not sovereignty. Thus, United States action in transferring its rights of administration to Japan does not constitute a transfer of underlying sovereignty (which the United States does not have), nor can it affect the underlying claims of any of the disputants. The Committee reaffirms that the provisions of the Agreement do not affect any claims of sovereignty with respect to the Senkaku or Tiao Yu Tai Islands by any state.⁶⁴

64. *Okinawa Reversion Treaty*, Senate Executive Report, No. 92-10, 92nd Congress, 1st session, p. 6. The Agreed Minutes attached to the Okinawa Reversion Agreement states the territories limits as follows:

The representatives of the Government of the United States of America and of the Government of Japan wish to record the following understanding reached during the negotiations for the Agreement between the United States of America and Japan concerning the Ryukyu Islands and the Daito Islands, signed today:

Regarding Article I:

The territories defined in paragraph 2 of Article I are the territories under the administration of the United States of America under 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:

<i>North Latitude</i>	<i>East Longitude</i>
28 degrees	124 degrees 40 minutes
24 degrees	122 degrees
24 degrees	133 degrees
27 degrees	131 degrees 50 minutes
27 degrees	128 degrees 18 minutes
28 degrees	128 degrees 10 minutes
28 degrees	124 degrees 40 minutes

Therefore, it is clear that the reversion of Okinawa (capital city of the Ryukyus) does not affect Chinese sovereignty over the T'iaoyutai Islands, over which the Chinese side already restored its sovereignty with the termination of the 1895 Treaty of Shimonoseki as explained earlier.⁶⁵

V. Recent Developments

Article 33 of the United Nations Charter⁶⁶ provides: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." When Japan recognized the People's Republic of China on September 29, 1972, "as the sole legal Government of China," the question of the T'iaoyutai Islets was not mentioned.⁶⁷ PRC Vice-Minister of Foreign Affairs Ch'i Huai-yuan stated in his talk with Japanese Ambassador Hashimoto Hiroshi on October 27, 1990, that both countries at that time decided they should "consider the issue later on" (*i-hou tsai shuo*).⁶⁸

In a 1987 book, entitled "Tang-tai Chung-kuo Wai-chiao" (Diplomacy of Contemporary China), which covers Sino-Japanese relations to early 1987, there was no mention of the T'iaoyutai issue.⁶⁹ Despite the PRC's decision to shelve the issue indefinitely, rightist Japanese groups took some provocative actions by, in one instance, invading the T'iaoyutai Islets and installing a lighthouse there. Therefore, on September 10, 1996, the Director of Asian Affairs of the PRC Foreign Ministry, Wang Yi, under instructions from his superior to urgently lodge a strong protest with the Japanese ad hoc Charge d'Affaires at the PRC Foreign Ministry and to request that

Supra note 56, p. 475. The geographical location of the T'iaoyutai Islets is between 25 degrees, 40 minutes and 26 degrees north parallel, and 123 degrees and 1224 degrees 34 minutes longitude. See *supra* note 1 and accompanying text.

65. See *supra* note 57 and accompanying text.

66. *United States Statute at Large*, 78th Congress, 1st Session 1945, Vol. 59, Part 2, Washington, D.C.: U.S. Government Printing Office, 1946, pp. 1033-1054.

67. See Joint Communique of the Government of Japan and the Government of the People's Republic of China on the Normalization of Relations, September 29, 1972, in *Peking Review*, Vol. 15, No. 40 (October 6, 1972), pp. 12-13 and *The Japanese Annual of International Law*, No. 17, 1978, pp. 81-83.

68. See *Central Daily News*, international edition, October 29, 1990, p. 2.

69. See this book, *Peking: Chinese Social Science Press* (for internal circulation), 1987, pp. 192-212, 291-299 on Sino-Japanese relations.

Japan take effective action to eliminate the ill effects of such actions. On the same date, the spokesman of the PRC Foreign Ministry expressed the PRC's indignation toward such an "invasion" of Chinese territory and asserted that any installation erected on the islets was illegal.⁷⁰

On September 11, 1996, PRC Ambassador to Japan Hsu Tun-hsin also lodged a strong protest on the above issue with the Japanese Vice-Minister of Foreign Affairs.⁷¹

On March 29-30, 1997, when Japanese Foreign Minister Ikeda Yukihiko visited China, he was received by Vice-Premier and Foreign Minister Chien Ch'i-sheng. He repeated the PRC's position on the T'iaoyutai Islets and stressed that Japan should strictly control their rightist groups' activities so as not to disturb the relations between the two countries in general. He agreed that the territorial dispute between the two countries should not affect the relations in general, and Japan is willing to calmly deal with this issue and make an effort to prevent the outbreak of future incidents.⁷²

At the time of this writing in August, 1998, the issue remains, but both the PRC and Japan appear willing to shelve this issue indefinitely while they continue to increase reciprocal economic and commercial relations.⁷³

VI. Conclusion

Despite the willingness of both the PRC and Japan to shelve the dispute over the T'iaoyutai Islets indefinitely, the issue is a time bomb and can explode at anytime. The PRC already has enacted a law entitled "The Territorial Sea and Contiguous Zone" of the People's Republic of China" on February 25, 1992.⁷⁴ Article 2 includes the T'iaoyutai Islands as the territory of the PRC.

Judicial settlement through resort to the International Court of Justice appears unlikely as Japan's acceptance of the compulsory

70. Policy Research Office of the PRC Foreign Ministry, *Chung-Kuo Wai-chiao* (Chinese Diplomacy), 1997, Beijing: *Shih-jie Chih-Shih Ch'u-pan she* (World Knowledge Press), 1997, p. 46.

71. *Ibid.*

72. *Chinese Diplomacy*, 1998, Beijing, 1998, p. 46.

73. See "China and Japan appear to shelf the dispute over T'iaoyutai islets dispute," *Ya-chou chou-k'an* (Asia Weekly), Hong Kong, November 17, 1997, p. 40 and "From Li Peng's Visit to Japan to Observe the Development of Sino-Japanese Relations," *Kung-tang wen-fi yen-chiu* (Studies in Chinese Communism), Taipei, Vol. 23, no. 12, December 15, 1997, p. 118.

74. *Chung-huo Jen-min K'ung-kuo Kuo-wu-yuan K'ung-pao* (Gazette of the State Council of the People's Republic of China), 1992, No. 3 (March 13, 1992), pp. 69-71.

jurisdiction of the ICJ refers only to "all disputes which arise on and after the date of the present declaration with regards to *situations or facts* subsequent to the same date [i.e., September 156, 1958] and which are not settled by other means of peaceful settlement."⁷⁵ Although the Republic of China accepted the compulsory jurisdiction of the ICJ on December 10, 1956,⁷⁶ the PRC refused to recognize such jurisdiction.⁷⁷

Of course, if both the PRC and Japan agree, they can refer the case to an *ad hoc* arbitration tribunal to be established, as explained in Part III of this paper. However, since the law apparently favors the Chinese side, there appears to be little incentive for the PRC to agree to arbitrate this territorial dispute.

75. See International Court of Justice, *Yearbook 1988-1989*, The Hague: I.C.J., 1989, pp. 74-75.

76. Louis B. Sohn, ed., *Basic Documents of the United Nations*, Brooklyn, New York: The Foundation Press, Inc., 1968, p. 257. United Nations, *Treaty Series*, Vol. 1, p. 35.

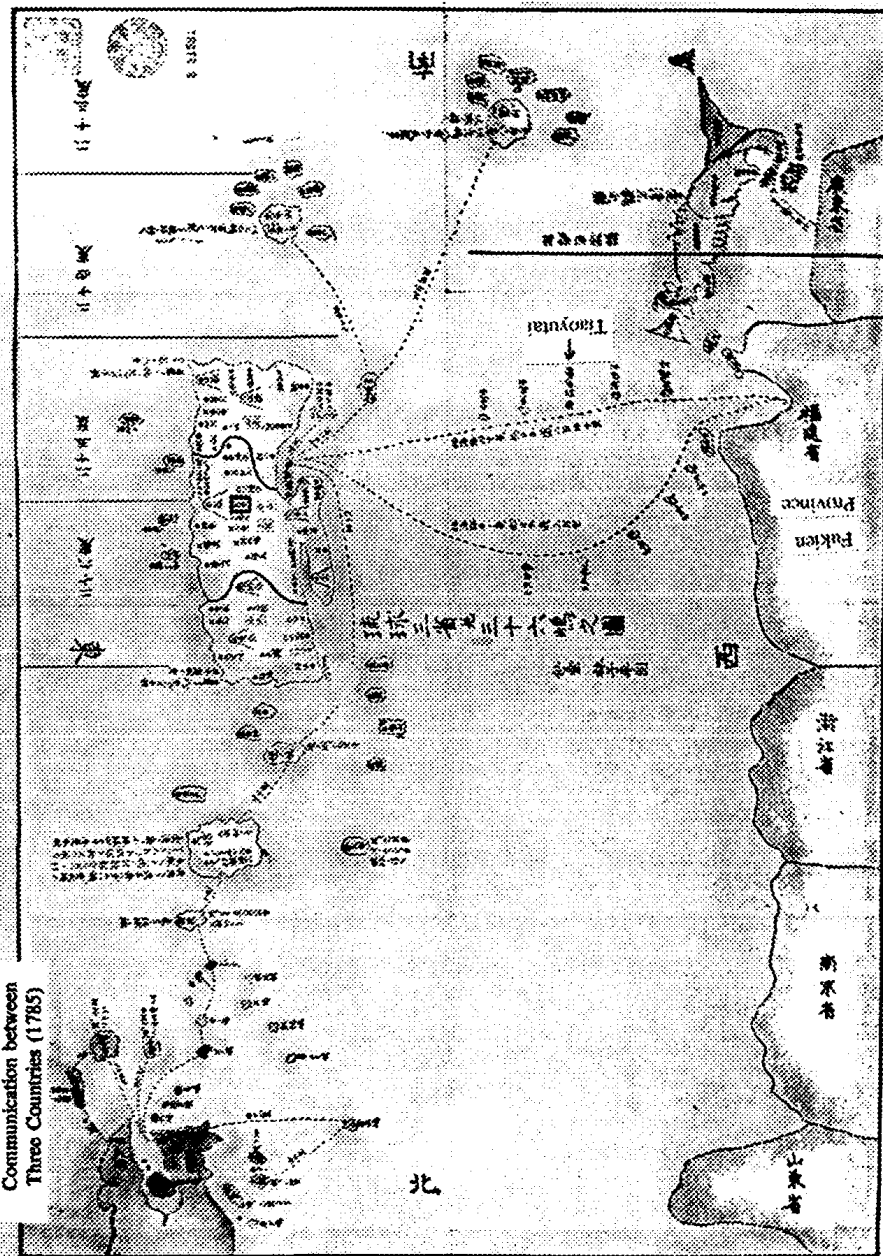
77. On December 5, 1972, soon after the PRC took over the Chinese seat at the United Nations on October 26, 1972, it issued the following declaration:

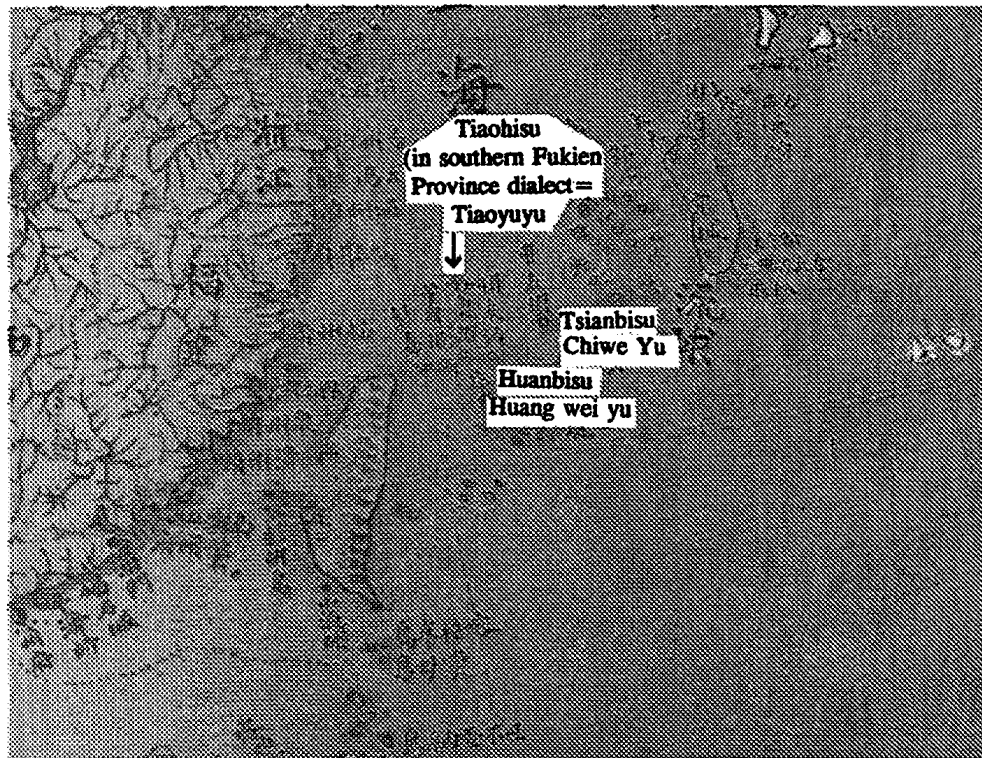
The Government of the People's Republic of China does not recognize the statement made by the defunct Chinese government on 26 October 1946 in accordance with paragraph 2 of Article 36 of the Statute of the International Court of Justice concerning the acceptance of the compulsory jurisdiction of the Court.

United Nations, *Treaty Series*, Vol. 850, New York: United Nations, 1977, p. 282.

Map 1
Sangoku Tsuuran Zassetsu.
Illustrated Picture of
Communication between
Three Countries (1785)

林子平『三國通覽圖説』付図「琉球三省并三十六島之図」





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