THE DIAOYUTAI/SENKAKU ISLANDS DISPUTE: ITS HISTORY AND AN ANALYSIS OF THE OWNERSHIP CLAIMS OF THE P.R.C., R.O.C., AND JAPAN
Han-yi Shaw
# The Diaoyutai/Senkaku Islands Dispute: Its History and an Analysis of the Ownership Claims of the P.R.C., R.O.C., and Japan

*Han-yi Shaw*

## Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Acknowledgments</strong></td>
<td>2</td>
</tr>
<tr>
<td><strong>I. Introduction</strong></td>
<td>5</td>
</tr>
<tr>
<td><strong>II. Geographical Background of the Islands</strong></td>
<td>10</td>
</tr>
<tr>
<td><strong>III. Brief Overview of the History of the Islands Dispute</strong></td>
<td>11</td>
</tr>
<tr>
<td>1. The 1970-1972 Crisis</td>
<td>13</td>
</tr>
<tr>
<td>2. The 1978 Crisis</td>
<td>16</td>
</tr>
<tr>
<td>3. The 1990 Crisis</td>
<td>17</td>
</tr>
<tr>
<td>4. The 1996-1997 Crisis</td>
<td>18</td>
</tr>
<tr>
<td><strong>IV. Japan's Position and Supporting Evidence of Its Claim of Sovereignty</strong></td>
<td>22</td>
</tr>
<tr>
<td>1. Official Position of the Japanese Government</td>
<td>22</td>
</tr>
<tr>
<td>2. Supporting Evidence from the Japanese Academia and Media</td>
<td>28</td>
</tr>
<tr>
<td><strong>V. The PRC and ROC's Positions and Supporting Evidence of the Chinese Claim</strong></td>
<td>37</td>
</tr>
<tr>
<td>1. Official Positions of the PRC and ROC Governments</td>
<td>37</td>
</tr>
<tr>
<td>2. Historical Evidence Supporting the Chinese Claim</td>
<td>42</td>
</tr>
<tr>
<td>3. The Process of Incorporation into Japanese Territory as Revealed in Meiji Official Documents</td>
<td>70</td>
</tr>
<tr>
<td>4. Chinese Refutation to the Japanese Claim</td>
<td>112</td>
</tr>
<tr>
<td><strong>VI. U.S. Involvement and Position Toward the Islands Dispute</strong></td>
<td>123</td>
</tr>
<tr>
<td><strong>VII. Conclusion: Possible Solutions</strong></td>
<td>127</td>
</tr>
<tr>
<td><strong>Map</strong></td>
<td>134</td>
</tr>
<tr>
<td><strong>Appendix</strong></td>
<td>135</td>
</tr>
<tr>
<td><strong>Selected Bibliography</strong></td>
<td>142</td>
</tr>
</tbody>
</table>

*Han-yi Shaw earned his degree at the University of Chicago in Political Science and East Asian Languages and Civilizations. Research for this study was primarily undertaken at the University of Chicago and the Kyoto Center for Japanese Studies (KCJS) administered by Stanford University.
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Finally, as this study is a discussion of an on-going territorial dispute attached with highly emotional sentiments, its contents will inevitably be subject to considerable scrutiny and debate. Needless to say, the blame for any faults or lacunae in this study remains mine alone.
I. INTRODUCTION

For nearly three decades, the territorial dispute over the Diaoyutai/Senkaku Islands among the People’s Republic of China (PRC), the Republic of China (ROC) on Taiwan, and Japan has constantly re-erupted and become one of the most politically and emotionally sensitive conflicts between the Chinese and Japanese since the end of World War II. The origin of this long-standing dispute can be traced back to the late 1960s when reports by the United Nations Economic Commission for Asia and the Far East (ECAFE) suggested the possibility of the existence of large hydrocarbon reserves in the vicinity of the islands. Since then, the Diaoyutai/Senkaku Islands dispute has flared up repeatedly in a series of crises — in 1970-1972, 1978, 1990, and more recently 1996-1997. During each crisis, however, the aforementioned governments have tried to keep the islands dispute as low-profile as possible for the sake of preventing a deterioration of wider political relations. As a result, the dispute over the islands has been repeatedly set aside and never resolved.

While it is true that the Diaoyutai/Senkaku Islands dispute initially surfaced due to the discovery of potentially large oil reserves surrounding the islands, the significance of the islands is mainly political and far outweighs the commercial value the islands may hold. Clearly, the Diaoyutai/Senkaku Islands controversy has turned into a nationalistic dispute. For the Chinese in particular, the Diaoyutai/Senkaku Islands have become an important nationalistic symbol which reminds them of Japan’s past military aggression, frequent evasion of war responsibility, and possible military revival. Moreover, national pride on both the Chinese and Japanese sides has made any solution to the dispute difficult, including such compromises as a two-way or three-way joint exploitation of the natural resources surrounding the islands, as none of the disputants is willing to put aside its sovereignty claims.

Today, the Diaoyutai/Senkaku Islands dispute continues. While the dispute no longer receives the kind of public attention in Japan it did two decades ago, it continues to be a highly sensitive issue for the Chinese community. This is demonstrated by the wave of anti-Japanese sentiment that swept Hong Kong, Taiwan, and China in 1996 following the installation of an aluminum
lighthouse on one of the disputed islands by a Japanese right-wing political organization. On September 26, 1996, the dispute took a further bitter turn when a Chinese activist from Hong Kong drowned in the stormy waters off the disputed island as he desperately tried to demonstrate Chinese sovereignty by planting a Chinese (PRC) flag. While it is believed that the situation will once again return to normal as the crisis "passes," it is also believed that as long as the Diaoyutai/Senkaku Islands dispute is not resolved, replays of such crises will continue, as they did in 1978, 1990, and 1996.

While most of the Chinese public firmly believe that the Diaoyutai/Senkaku Islands are indisputably Chinese territory, few are truly able to clearly iterate the legal, historical, and geographical reasons why sovereignty over the islands should belong to China. Even fewer Chinese have a clear understanding of arguments held by the Japanese supporting their claim to the islands. This is also true for most Japanese, especially during a time when the Japanese public have become rather indifferent and often times even unaware of the on-going island dispute. This contrasts sharply with the well-publicized 1978 crisis that erupted between Japan and the PRC. In short, very few Chinese and Japanese fully understand the arguments held by the other.

As in most disputes, both sides of the story must be clearly understood before an acceptable solution can be reached. Given the

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1 For an excellent discussion of the islands dispute with respect to international law, 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 (1974), pp. 221-266. It should be noted, however, that Cheng's study relied only on historical evidence that was available in the early 1970s during the initial stages of the islands controversy, much of which has over the years been disproved or replaced with newly uncovered evidence.

This study does not attempt to include a discussion of the islands dispute with respect to the law of the sea and delimitation of maritime boundaries, since that is another complicated topic that deserves to be examined separately. For a comprehensive study in this area, see Ma Ying-jeou, *Legal Problems of Seabed Boundary Delimitation in the East China Sea* (Baltimore: Univ. of Maryland, Occasional Papers/Reprint Series in Contemporary Asian Studies, 1984); Jonathan I. Charney, "The Diaoyu/Senkaku Islands Maritime and Territorial Dispute," Conference paper, International Law Conference on the Diaoyutai/Senkaku Islands Dispute between Taiwan and Japan (Yi-lan, Taiwan, April 2-3, 1997); Choon-ho Park, "Oil Under Troubled Waters: The Northeast Asia Sea-Bed Controversy," *Harvard International Law Journal*, Vol. 4 (1973), p. 212.
unpleasant history of past Japanese aggression, the Chinese have undoubtedly, yet understandably, attached greater emotional sentiment to the Diaoyutai/Senkaku Islands dispute. Therefore, for the Chinese in particular, a thorough understanding not only of their own arguments, but also of those held by the Japanese, may allow them to respond and approach the issue more calmly, rationally and effectively. For the Japanese, on the other hand, understanding arguments made by the Chinese may also enable them to deal with the issue without provoking undesirable anti-Japanese sentiments within Chinese communities. In short, it would be beneficial to the Chinese and Japanese alike to better understand each other’s views regarding the islands.

This study will begin with a brief geographical description of the Diaoyutai/Senkaku Islands and an overview of the history of the dispute over the islands, which extends from the late 1960s to the present day. The main focus of this paper is the rival legal claims and historical evidence laid out by the governments, academia, and media of the PRC, the ROC on Taiwan, and Japan. During the past twenty years, efforts by Chinese and Japanese academics to search for historical evidence to support their countries' claims have been enormous. These efforts have brought a considerable amount of new evidence to light and led to a reconsideration of the validity of some evidence used in the past. By drawing upon new evidence from recent studies by Chinese and Japanese scholars alike, this paper demonstrates that certain past arguments and evidence used by the Chinese have been proven inaccurate, and that some used by the Japanese are unfounded as well. This study will also present a more detailed account of evidence that has been further confirmed through both subsequent studies and new discoveries. And finally, this paper demonstrates that the roots of this dispute can be found in the late 19th century, particularly in the past aggression of an emerging Meiji Japan and the inability of a weakening Chinese Empire to understand and employ prevailing international law for the purpose of defining and securing its territory traditionally recognized under the East Asian World Order.

Previously, English translations of evidence provided by the Chinese and Japanese have been virtually nonexistent. For the first time since the beginning of the islands dispute nearly thirty years
ago, the majority of such evidence has been thoroughly translated into English for the purpose of this study, including all critical official Japanese documents from the Meiji period that explain the process by which the islands were incorporated into Japanese territory in 1895. I would like to direct special attention to these Meiji documents, not only due to their importance and greater implications for the dispute, but also because the enormous time and effort that went into gathering and translating them while preparing this paper. In short, all English translations of evidence provided in this paper are my own unless otherwise indicated --- in a few instances I have found elegant and accurate existing translations provided by other writers and chose not to retranslate them since they either need not or simply cannot be further improved upon.2

As mentioned above, the point of focusing on the claims and evidence put forth by all disputants is to facilitate a basic understanding of the other side's argument. This focus also allows the issue to be approached and dealt with in a rational rather than highly-charged manner. It can be clearly seen from the past thirty years that none of these many patriotic yet provocative acts taken either by political or civil groups, Chinese and Japanese alike, such as erecting lighthouses or planting flags, has in any way actually strengthened the claim of one side or weakened the claim of the other, nor have such acts led to any constructive solution. To the contrary, such acts have only further heightened the tension and animosity between the governments and people of the concerned countries and further rendered the dispute difficult to resolve. During this process, much energy has been wasted, and in extreme cases, an invaluable life lost.

In short, from a presentation and examination of the base claims of each disputant, it is hoped that an alternative mentality

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2 This study uses the pinyin system throughout for transliteration of Chinese names and terms, with exceptions for those that are more commonly known under the Wade-Giles system, in particular names of places and people from Taiwan.

Chinese and Japanese personal names are usually given in their original order, with the surname preceding the given name (e.g. Li Hongzhang and Ito Hirobumi). In many cases, romanized personal names are followed by the original characters in their respective languages.

In some instances where Chinese and Japanese terms may be difficult to translate into English, their original characters are provided when appropriate.
DIAOYUTAI/SENKAKU ISLANDS DISPUTE

can be taken by all sides in approaching the issue --- a mentality based on historical facts, international law, and reason, instead of one based solely on nationalism, emotional sentiments and frequently misinterpreted facts. Only with such a mentality can it be possible for one to recognize that a solution should be reached not by taking provocative actions against each other, but rather from an intention to settle the matter through rational and equitable means. This might include, for example, presenting the case to the International Court of Justice, or negotiating a joint development regime to cooperatively manage and apportion the islands' resources. This paper does not go into detailed discussion of what may be the most viable solutions to the dispute, or how these solutions should be brought about, for those are complex issues that cannot be handled sufficiently within the scope of this paper. Instead, as mentioned above, it is hoped that this paper can help all concerned parties to recognize the complexity of the dispute. This may serve as a reasonable first step in bringing this controversy, which has troubled the three governments for more than a quarter of a century, to an end.
II. GEOGRAPHICAL BACKGROUND OF THE ISLANDS

At the center of this dispute are a chain of tiny islets commonly known today to the Chinese as the Diaoyutai (or simply Diaoyu) Islands 釣魚台列嶼，and Senkaku Islands 尖閣列島 to the Japanese. The islets are located in waters of the East China Sea about 120 nautical miles northeast of Taiwan, 200 nautical miles east of mainland China, and about 200 nautical miles southwest of the city of Naha, Okinawa. The islands lie within the 200-meter insobath, at the edge of the continental shelf that extends eastward from mainland China. The 2,270 meter deep Okinawa Trough lies immediately to the east of the Diaoyutai/Senkaku Islands and separates them geographically from the nearest undisputed Japanese islands of Okinawa.

There are a total of eight islets in the chain in which five are uninhabitable islands and three are barren rocks. Geologically, all of the eight islets are volcanic formations from the Neocene age and share common geographical features characterized by high peaks and steep cliffs.³ The principal and largest island of the chain is known as Diaoyu Yu 釣魚嶼 (or Diaoyutai 釣魚台) by the Chinese, and Uotsuri-shima 魚釣島 by the Japanese, which has a surface area of 3.5 square kilometers. The remaining islets in descending order in terms of their size are (with their Chinese name first followed by the Japanese): Huangwei Yu/Kuba-shima 黃尾嶼/久場島, Nanxiaodao/Minami-kojima 南小島/南小島, Beixiaodao/Kita­kojima 北小島/北小島, Chiwei Yu/Kubaseki-shima or Taisho-jima 赤尾嶼/久場赤島 or 大正島, Chongbeiyan/Okino Kitaiwa 沖北岩/沖の北岩, Chongnanyen/Okino Minamiwa 沖南岩/沖の南岩, Feilai/Tobise 飛瀬/飛瀬.⁴ Collectively, the islands are referred as the Diaoyutai Islands by the Chinese and the Senkaku Islands by the Japanese. The Chinese term, Diaoyutai, means “Fishing Platform” and is also transliterated into English as Tiao-yu-tai under the Wade-Giles system widely used in Taiwan. The collective term used by the Japanese, Senkaku Islands, is a

³ Ma Ying-jeou, supra note 1, p. 8.

⁴ The Japanese also frequently refer to the islands Huangwei Yu/Kuba­shima and Chiwei Yu/Taisho-jima by their original Chinese names, which are rendered into Japanese as Kobi Sho and Sekibi Sho, respectively.
translation of the islands’ antiquated Western name, Pinnacle Islands, which was given by the British Navy upon seeing them during sailing missions to the Far East in mid-19th century.\(^5\)

All of the islands in the group are tiny and seemingly insignificant with only a few islands supporting various tropical plants; the rest are barren. Historically, due to the islands’ remoteness and inhabitability, the islands held little intrinsic value. For the Chinese, the islands were, since the 14th century, used as navigational reference points by imperial envoys en route to the Ryukyu Kingdom, a military post of Chinese naval forces, and an operational base by fishermen from Taiwan.\(^6\) For the Japanese, recorded usage of the islands did not begin until the end of the 19th century, when a Japanese civilian, Koga Tatsushiro 古賀辰四郎 began to use four of the islands for the family business of collecting albatross feathers and other marine products. Currently, aside from the political and strategic implications of the islands, their economic value lies in the waters surrounding the islands where there are commercially exploitable fish stocks and possible hydrocarbon deposits lodged in the seabed.

**III. BRIEF OVERVIEW OF THE HISTORY OF THE DIAOYUTAI/SENKAKU ISLANDS DISPUTE**

After the conclusion of the Second World War, all islands (including the Diaoyutai/Senkaku Islands) once designated under the Nansei Islands within the pre-war Japanese Empire were occupied by the United States military and later placed under U.S. administration. Actual U.S. administration of these islands began

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\(^6\) Today, fishermen from Taiwan continue to operate heavily around the disputed islands. Statistical figures provided by the ROC Government Information Office informational pamphlet, An Objective Evaluation of the Diaoyutai Islands Dispute 釣魚台列嶼問題平議 (1996), estimates that these Taiwanese fishermen capture annually as much as 54,000 tons of fish in the area, a total value of $NT 1,514,000,000 (approx. $US 50,466,000).
in 1953 pursuant to Article 3 of the 1951 San Francisco Peace Treaty with Japan, by which the United States obtained the rights “to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.” Since the Diaoyutai/Senkaku Islands were previously grouped together with the Ryukyu Islands (which were within the geographic boundaries of the Nansei Islands prior to the end of the war), the United States also assumed its role as the sole administrating authority over the disputed islands. U.S. administration of the aforementioned islands came to an end when they were handed over to Japanese control on May 15, 1972 according to the “Treaty Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands” — or more commonly known as the Okinawa Reversion Treaty of June 17, 1971.

During the period of U.S. administration, the Diaoyutai/Senkaku Islands stirred very little Chinese or Japanese interest, since, as mentioned before, they were traditionally regarded as having very little intrinsic value. However, toward the end of their U.S. administration in the late 1960s, it was learned that there might exist large oil and gas reserves around them. The question of sovereignty over the islands and its surrounding waters was thus immediately pushed into the consciousness of all the parties concerned, i.e., the People’s Republic of China, the Republic of China on Taiwan, and Japan. Over the next twenty-five years, the Diaoyutai/Senkaku Islands dispute has flared up repeatedly — in 1970-1972, 1978, 1990, and 1996-1997. What follows is an overview of the history of the islands dispute, crisis by crisis.8

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8 For studies that provide a balanced overview and discussion of the history of the islands dispute beginning from its early stages in the 1970s, see Phil Deans, The Diaoyutai/Senkaku Dispute: The Unwanted Controversy. [online] Available HTTP: http://snipe.ukc.ac.uk/internationalpapers/dir/deans.html; Daniel Dzurek, The Senkaku/Diaoyu Islands Dispute. [online] Available HTTP: http://www.ibru.dur.ac.uk/senkaku.html.
1. The 1970-1972 Crisis

The first signs of tension between the Republic of China on Taiwan and Japan began unfolding in 1968 after reports were made public by the United Nations Economic Commission for Asia and the Far East (ECAFE) suggesting that there might exist lucrative reserves of oil and natural gas in the waters surrounding the Diaoyutai/Senkaku Islands. In May 1969, Okinawa authorities set up a concrete national marker on the main island of the Diaoyutai/Senkaku Islands engraved with “Uotsuri-shima, Senkaku Islands, Yaeyama八重山尖閣群島魚釣島” on the front side and “2392 Tonoshiro, Ishigaki-shi, Okinawa Prefecture; Erected by the City of Ishigaki 沖繩縣石垣市字登野城二三九二番地、石垣市建立” on the rear. Tensions quickly escalated as both the ROC and Japanese governments pressed forth competing claims of sovereignty over the islands and the right to investigate the oil potential of the surrounding waters.

The dispute officially broke out on July 17, 1970, when the Japanese ambassador in Taipei delivered a note to the ROC Ministry of Foreign Affairs asserting Japan’s sovereignty over the disputed islands and stating that any unilateral claims of the ROC government over the islands and its underlying continental shelf were void under international law. Later that year in September, the ROC flag was planted on the disputed islands by a group of Chinese protesters from Taiwan and consequently removed by the Okinawa authorities days later. It soon became clear that nationalist sentiments on both the Chinese and Japanese side could not be controlled and the islands dispute soon developed into the single most important political conflict between the ROC and Japan since the end of World War II. The dispute triggered a worldwide anti-Japanese protest known as the “Safeguard the Diaoyutai Islands Movement or Baodiao Movement 保釣運動,” which became a rallying call for all patriotic Chinese to defend their


territorial integrity from any foreign encroachments. The patriotic movement gained such widespread support among the Chinese --- especially intellectuals and students in Taiwan, Hong Kong, as well as those studying overseas --- that it was likened to the May Fourth Movement of 1919 at the time. The movement reached its height days before the handover of the Diaoyutai/Senkaku Islands, along with the Okinawa Islands, to Japanese rule on May 15, 1972. On May 13, thousands of overseas Chinese students mainly from Taiwan and Hong Kong, participated in protest marches in major U.S. cities. However, none of the series of official protests filed by

11 The political significance of the Safeguard the Diaoyutai Islands Movement, which lasted roughly between 1970 and 1972, is notable in particular among Chinese students in Taiwan and those studying abroad in the United States at the time. In Taiwan, the movement, initially led by students from National Taiwan University, marked one of the first occasions whereby popular protest was tacitly permitted, though strongly discouraged, by the ROC government and educational authorities. In the United States, the political significance of the movement was no less great than it was in Taiwan. Demonstration rallies were staged in front of the embassy and consulate generals of Japan in Washington D.C., New York, Chicago, San Francisco, and many other cities, in which tens of thousands of Chinese students and ethnic overseas Chinese demanded the return of the islands to China, be it the ROC or PRC. What was even more politically significant was that it created a considerable negative impact on the ROC government's image among overseas Chinese students and professionals in the United States. What initially began as a unified and concerted effort among these overseas Chinese students and professionals (the majority from Taiwan) to voice their anger against the U.S. government's decision to transfer the islands to Japan, and more importantly, dissatisfaction with the ROC government's irresolute and ineffectual handing of the issue, finally resulted in an irreconcilable rift among them due to their changing political allegiances. The underlying question had become: Whether to switch political allegiance to the increasingly "promising" PRC regime, or to remain supportive to a ROC government whose international status was rapidly declining. Given the increasingly positive international atmosphere surrounding the PRC at the time, it was not surprising that more than a considerable number of overseas Chinese students and professionals in the U.S. had become fervent supporters of "Mao's China" by mid-1972. Afterwards, though the Safeguard the Diaoyutai Islands Movement itself gradually faded away, the resulting political differences that divided these overseas Chinese students remained strong during the next few years. It was not until the late 1970s, when Deng Xiaoping had regained his power and the cruelties and atrocities of the Cultural Revolution had been fully revealed, that the leftist tendency and "romance" with the PRC entertained by many Chinese students and professionals came to an end. Accordingly, their positions toward both the PRC and ROC also underwent considerable change.
the ROC and PRC governments nor the highly emotional "Baodiao" demonstrations could alter the U.S. decision to return the Diaoyutai/Senkaku Islands to Japanese control.

While there were also heated diplomatic exchanges between Japan and the two Chinese governments, the dispute was to be downplayed for the sake of wider bilateral relations between not only the ROC and Japan, but also between the PRC and Japan. Clearly, the 1970-1972 crisis was to be swallowed by larger political issues and circumstances that would leave the islands dispute unresolved. The ROC government was at pains to downplay the issue since the dispute erupted at a time it was experiencing serious diplomatic setbacks on the international stage. In October 1971, the United Nation General Assembly adopted Resolution 2758, permitting the PRC to occupy China's seat as Permanent Member of the U.N. Security Council, and compelling the ROC government to withdraw entirely from the organization. In the following February, U.S. President Richard Nixon visited China in part of an ongoing U.S. effort to normalize relations between Beijing and Washington. Meanwhile, with respect to diplomatic relations between the ROC and Japan, it was apparent that Japan was preparing to switch diplomatic recognition from the ROC to PRC, which naturally prompted the ROC to keep the dispute in low profile to avoid a further deterioration of bilateral relations.

The PRC government, on the other hand, also sought to downplay the issue in order to prevent the dispute from disrupting negotiations for the anticipated establishment of diplomatic ties. In September 1972, Japan indeed officially recognized the PRC as the only legitimate Chinese government and severed diplomatic ties with the ROC. What changed ultimately for the ROC with respect to the islands dispute as a result of Japan's de-recognition, was that the sovereignty issue subsequently become a matter unresolvable through official dialogue or diplomatic means, although the ROC government nonetheless continued to lodge protests and official statements against Japan over the years whenever the dispute resurfaced.
2. The 1978 Crisis

In 1978, the islands dispute re-erupted into another political crisis, this time primarily between the People's Republic of China and Japan. While the crisis made headlines in the Japanese media, it was given little attention in mainland Chinese newspapers perhaps due to China's intention to downplay the issue. As a result, little is known about what happened during the crisis on the Chinese side. On April 12, 1978, hundreds of mainland Chinese fishing vessels appeared in the waters surrounding the Diaoyutai/Senkaku Islands, an event which was greatly publicized by the Japanese media. This incident came at a sensitive time, since the PRC and Japan were working towards negotiating a peace treaty. Political observers believe that the appearance of the Chinese fishing vessels came as a protest to Japanese domestic anti-Treaty political forces who were insisting that the Senkaku issue be resolved as a pre-condition to signing the treaty. However, China's display of displeasure did not yield the results it initially hoped for. Instead, the strategy backfired as it caused wide dismay within the Japanese government and weakened the pro-Treaty forces.

The incident was downplayed by the PRC three days later when Chinese Vice Premier Di Biao claimed that it was a "fortuitous incident" and would not happen again. To ensure preparations toward the signing of the treaty proceed smoothly, both countries soon agreed to shelve the sovereignty issue for future negotiations. On August 23, 1978, the Treaty of Peace and Friendship was signed in Beijing. The policy of setting aside the Diaoyutai/Senkaku dispute was later confirmed and reiterated in a statement made by then Vice Premier Deng Xiaoping in a press conference during his visit to Japan on October 25, 1978.

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13 This treaty was not intended to be a "peace treaty" in the technical sense, which puts a legal end to a state of war between nations, but rather a symbolic treaty for the purpose of consolidating bilateral relations and further promoting peace and friendship.
Responding to a question put forward by a Japanese reporter, Deng said,

Our two sides agreed not to touch upon this question when diplomatic relations were normalized between China and Japan. This time when we were negotiating the Treaty of Peace and Friendship, the two sides again agreed not to touch on it... We call it Tiaoyu Island but you call it another name. It is true that the two sides maintain different views on this opinion... 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.14

To this day, both the government of the PRC and Japan have constantly referred to Deng's principle of shelving the issue for the sake of larger bi-lateral relationships, which indeed has also been the sole reason as to why the Diaoyutai/Senkaku sovereignty issue still remains unresolved.

3. The 1990 Crisis

The island dispute resurfaced in September 1990 when it was reported that Japan's Maritime Safety Agency would soon approve, as an official navigation indicator, a new lighthouse erected on one of the Diaoyutai/Senkaku Islands by the right-wing group, Nihon Seinensha (日本青年社 or Japan Youth Federation).15 This


15 The relationship between Nihon Seinensha and the disputed islands dates back to 1978, when the right-wing organization built its first lighthouse on Diaoyutai/Uotsuri Island on August 13 of that year. Ten years later, in commemoration of the 10th anniversary of the first lighthouse, a new lighthouse was erected on the same island on June 9, 1988. In August of following year, the said organization submitted an application to the Japanese government requesting official recognition of the lighthouse as a navigational indicator, which was later denied and returned on April 26, 1991. Again, on July 15, 1996, the organization built another make-shift lighthouse on Beixiao Dao/Kita-kojima and submitted another application to the Ishigaki Marine Safety Headquarters for its official recognition. Later that year on October 4, the application was again denied. (Based on the chronological description of the history of Nihon Seinensha provided on its website at: http://www.nihon-seinensha.com)

Due to the extraordinary sensitivity held by the Chinese toward the
triggered a response whereby Mayor Wu Tun-yi, head of Taiwan’s second largest city of Kaohsiung, initiated what was meant to be a nationalistic crusade by delivering the Olympic Torch of the “Taiwan Area Athletic Games” to the Diaoyutai/Senkaku Islands as a show of Chinese sovereignty. Although the ROC government notified the Japanese government of this planned visit in advance, the Japanese responded by driving back from the islands the two Taiwanese fishing boats carrying the Olympic Torch, reporters, and television crews. When Taiwan television stations showed footage of the Taiwanese fishing boats being chased away by vessels and helicopters from the Japanese Maritime Safety Agency, the response was a public uproar followed by a series of anti-Japanese demonstrations. For the Taiwanese public, the incident was regarded as a national humiliation. Once again the islands dispute brought bilateral relations between the ROC and Japan to a low point, not yet seen since the termination of diplomatic relations in 1972.

Soon after the ROC government issued a series of protests against Japan’s actions, the PRC government also stepped in and pressured the Japanese government through diplomatic channels. With an intention to prevent a deterioration of relations between Japan and the PRC, Japanese Prime Minister Toshiki Kaifu indicated on October 25 that Tokyo would adopt a “cautious attitude” towards the lighthouse and intended not to recognize it as an official navigation indicator. Once again, the sovereignty dispute was shelved for the time being.

4. The 1996-1997 Crisis

16 Events relevant to the disputed islands that took place in between the 1990 and 1996-1997 Crises include the following: In February 1996, the Chinese government promulgated the “PRC Territorial Sea and Contiguous Zone Law 中华人民共和国领海及毗连区法” declaring its sovereignty over the Diaoyutai Islands and reserving the right to use military force to defend its territorial claims. See Gazette of the State Council of the People’s Republic of China 中华人民共和国国务院公报, No. 3 (March 13, 1992), pp. 69-71.

In January 1996, the Japanese government observed a PRC oil-exploration
The fourth and most recent crisis re-erupted in July 1996 after the Japanese Diet ratified the “United Nations Convention on the Law of Sea,” establishing a 200-mile exclusive economic zone that excluded all foreign fishing. On July 14, the Japanese right-wing group Nihon Seinensha, erected a five-meter, solar powered, aluminum lighthouse on one of the islands. The group also requested approval of the lighthouse as an official Japanese navigational indicator. The lighthouse was subsequently damaged by a typhoon but the group soon returned in September to make repairs. In response to these actions, which were regarded by the Chinese as provocative, several civil groups from Taiwan and Hong Kong sailed to the islands in protest, but were driven off by the Japanese coast guards. On September 26, the islands dispute took a further turn for the worse when a Chinese activist from Hong Kong, who originally planned to plant a PRC flag on one of the disputed islands, drowned in the stormy waters surrounding the island as he was trying to avoid the Japanese coastguards’ blockade. This incident marked the first time that life was lost due to this highly sensitive territorial controversy. Pent-up anger toward Japan soon erupted in yet another wave of anti-Japanese demonstrations that swept through Chinese communities, especially in Hong Kong, Taiwan, and the PRC. Finally, on October 7, Chinese activists from Taiwan and Hong Kong succeeded in landing on Diaoyutai/Uotsuri Island and planted the flags of both the PRC and ROC, which were consequently removed days later by the Okinawa authorities.

Since then, the islands have continued to be visited by political and civil groups from both the Chinese and Japanese sides for the purpose of demonstrating sovereignty over the islands. A few of the more notable instances include the following. On April 27, 1997, a member of the city assembly of Ishigaki, Okinawa, and a newspaper reporter from the Sankei Shimbun briefly landed on Diaoyutai/Uotsuri Island. On May 7, 1997, the islands were revisited by another group of Japanese activists led by a Japanese Diet ship conducting geological research near the disputed islands. The PRC government subsequently confirmed the ship’s presence in the area, but denied that any oil-drilling activities had taken place.

In both instances, the Japanese government filed protests against PRC’s actions and reiterated its sovereignty claim over the islands.
member from an opposition party. In response to such visits by the
Japanese, a group of Chinese activists comprised of members from
Taiwan, Hong Kong, and the United States were quick to organize
a visit to the islands on May 27, 1997. Their attempt to land on
Diaoyutai/Uotsuri Island proved unsuccessful, however, as their
flotilla of sixteen protest boats and ten additional boats with local
and foreign media agencies were stopped short prior to reaching the
islands by the Japanese Maritime Safety Agency. During the
incident, four protest boats experienced minor collisions with
Japanese police vessels. Two Hong Kong activists jumped from
their protest boat onto a Japanese police vessel during a collision,
soon followed by a third Taiwanese activist from another protest
boat. The activists were detained and questioned but released
shortly afterwards. Hours later the ships headed back for Taiwan,
concluding yet another climatic and highly publicized incident.
What followed months later was yet another highly dramatic yet
very courageous event involving another group of Chinese activists
whose goal was to fly over the disputed islands and parachute down
onto them, thereby overcoming any possible hindrances imposed by
the ships of the Japanese Maritime Safety Agency. The flight took
place on September 2, 1997, departing from Philippine's Subic
International Airport. However, minutes after take off, the plane
suffered an engine failure and was forced to return to its point of
departure. The plane crash-landed, but fortunately none of the
passengers was injured.17

Since then, the magnitude and frequency of such acts of
protest from both the Chinese and Japanese sides have begun to
decline. Moreover, the desire of the governments of the PRC and
Japan to downplay the dispute is clearly evident from the new
fisheries pact treaty concluded in early November 1997 during a
trip to China by the Japanese Prime Minister Hashimoto Ryutaro
commemorating the 25th anniversary of the normalization of

17 Although this particular incident did not make front page headlines in
Chinese newspapers and received relatively little public attention in contrast to
previous attempts by other Chinese protesters to land on the disputed islands by sea,
detailed reports on this incident were nevertheless carried on The United Daily 聯合
報 on September 6, 1997 (p. 3) and September 19, 1997 (p. 17).
diplomatic relations. Under the new agreement, the two countries will establish jointly controlled sea boundaries while leaving the waters surrounding the disputed islands untouched. The treaty also calls for continued negotiations regarding the overlapping of economic zones claimed by both nations. While such developments have certainly been a step forward in terms of avoiding further conflict between the claimants, it seems reasonable to conclude, given the past turbulent history of the islands dispute, that the present cooling of tensions can only be temporary, since the question of territorial ownership has by no means been resolved by the parties. The islands dispute continues to be a time bomb awaiting another unexpected ignition.

IV. JAPAN'S POSITION AND SUPPORTING EVIDENCE OF ITS CLAIM OF SOVEREIGNTY

1. The Official Position of the Japanese Government

Japan's official position toward the Diaoyutai/Senkaku Islands dispute has been explained in a series of official statements initially issued by the Okinawa Civil Government in the early 1970s and then followed on March 8, 1972 by an official statement entitled, The Basic View of the Ministry of Foreign Affairs on the Senkaku Islands (hereafter referred to as The Basic View) issued by the Japanese Ministry of Foreign Affairs. According to these official statements, Japan claims that the Diaoyutai/Senkaku Islands were *terra nullius* (or land without owner) at the time they were formally incorporated into Japanese territory in 1895. Therefore, the fundamental Japanese claim is that the disputed islands were acquired by virtue of "discovery-occupation," one of the established modes of territorial acquisition under international law, whereby valid title over a piece of territory may be acquired through occupation if it was recognized as *terra nullius*. The first paragraph of *The Basic View*

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19 Principles of international law have traditionally distinguished five modes of territorial acquisition, namely: prior occupation (discovery-occupation), cession, accretion, subjugation, and prescription.

With respect to the principle of occupation, the generally excepted exposition is enunciated in Oppenheim's *International Law*, as follows:

Occupation is the act of appropriation by a state through which it intentionally acquires sovereignty over such territory as it is at the time not under the sovereignty of another state. It is therefore an *original* mode of acquisition in that the sovereignty is not derived from another state. ...The territory of [another] state... can only be acquired through cession, or, formally, by subjugation.

Theory and practice agree upon the rule that occupation effected through taking possession of, and establishing an administration over, territory in the name of, and for, the acquiring state. Occupation thus effected is real occupation, and, in contradistinction to fictitious occupation, is named effective occupation. Possession and administration are the two essential facts that constitute an effective occupation.

(1) Possession

The territory must really be taken into possession by the
of 1972 seeks to demonstrate this:

From 1885 on, surveys of the Senkaku Islands had been thoroughly made by the Government of Japan through the agencies of the Okinawa Prefecture and by way of other methods. Through these surveys, it was confirmed that the Senkaku Islands had been uninhabited and showed no trace of having been under 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.20

The above argument is consistent with the official statement issued two years earlier on September 10, 1970, by the Ryukyu Civil Government entitled, "Views Concerning the Title to the Senkaku Islands and Sovereign Right Over the Development of Resources of the Continental Shelf 尖閣列島の領有権及び大陸棚の開発権に関する主張." In this earlier official statement, it is claimed that "Following the previous Cabinet Decision of January 14, 1895, [the disputed islands] were made Japanese territory and placed under the administration of Ishigaki Village, Yaeyama District, Okinawa occupying state. For this purpose it is necessary that it should take the territory under its sway (corpus) with the intention of acquiring sovereignty over it (animus). This... normally involves a settlement on the territory, accompanied by some formal act which announces both that the territory has been taken possession of and that the possessor intends to keep it under his sovereignty.

(2) Administration

After having taken possession of a territory, the possessor must establish some kind of administration thereon which shows that the territory is really governed by the new possessor. If, within a reasonable time after the act of taking possession, the possessor does not establish some responsible authority which exercises governing functions, there is then no effective occupation, since in fact no sovereignty is exercised by any state over the territory.


Prefecture on April 1, 1896, based on Imperial Decree No. 13.  

Clearly, the points made above by the Ryukyu Civil Government and Japanese Government are aimed at demonstrating that Japan's occupation of the islands was done in accordance with international law and that the incorporation process was legalized through governmental administrative procedures.

In *The Basic View*, it is further argued that "the [Senkaku] Islands were neither part of Taiwan nor part of the Pescadores Islands that were ceded to Japan by the Qing Dynasty of China in accordance with Article II of the Treaty of Shimonoseki, which came into effect in May of 1895." The above point serves as a refutation of the Chinese claim that the disputed islands were traditionally Chinese territory belonging to the Island of Taiwan, and ceded to Japan according to Article 2 of the Treaty of Shimonoseki. This article stipulates,

> China cedes to Japan in perpetuity and full sovereignty the following territories:  
> (b) the island of Formosa, together with all the islands appertaining or belonging to the said Island of Formosa.

Since Japan argues that the disputed islands were *terra nullius*, they could not have been included among the islands defined in the treaty as appertaining or belonging to Taiwan. Moreover, since Japan's decision to incorporate Diaoyutai/Senkaku Islands was made by virtue of Cabinet Decision of January 14, 1895, and the

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21 Inoue Kiyoshi, *supra* note 5, p. 128.

22 The applicability of Imperial Decree No. 13 of 1896 to this dispute has been seriously questioned by scholars supporting the Chinese claim, since this document did not contain any reference to the disputed islands as claimed by the Ryukyu Government. This may explain the document's omission from the *Basic View* of 1972 issued nearly two years later by the Japanese Foreign Ministry. While the decree was initially widely used by the Japanese academia and media as evidence supporting Japan's case, some have subsequently discontinued using it as evidence in response to refutations from the Chinese side. For a full translation of the decree and more detailed discussion regarding its applicability, see Chapter V, section 3 of this study.

The Treaty of Shimonoseki was not signed until three months later on April 17 that same year, Japan claims that the incorporation of the disputed islands was an act separate and apart from the signing of the Treaty of Shimonoseki. Consequently, the islands were neither subject to the terms of the Treaty of Shimonoseki nor to any of the subsequent treaties signed after World War II that related to Taiwan. Hence, Japan argues that it is not obligated to relinquish the disputed islands as it did with Taiwan in 1945.

It is unfortunate that, whether intentionally or unintentionally, Qing China and Japan failed to clearly define in the Treaty of Shimonoseki what exactly constitutes “all the islands appertaining or belonging to the said Island of Formosa,” which has now become subject to different interpretations by China and Japan with respect to the status of the Diaoyutai/Senkaku Islands in 1895. This disagreement in interpretation essentially translates into the central question of the dispute: whether the disputed islands were Chinese territory or instead terra nullius at the time of Japan’s incorporation in January 1895.

If the Japanese are correct in asserting that the islands were terra nullius, then they could not have been islands belonging to Taiwan and consequently would be excluded from the Treaty of Shimonoseki, thus validating Japan’s claim over the islands based on the January 1895 Cabinet Decision. If the Chinese are correct, however, in their assertion that the islands were Chinese territory, then the islands were not terra nullius, thus supporting the Chinese claim that the only legal basis for Japan’s ownership of the disputed islands derives from the signing of the Treaty of Shimonoseki.

The Basic View seeks to address this question by asserting that after the conclusion of the Second World War, “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, [which] clearly indicates that China did not consider the Senkaku Islands as part of Taiwan.” As mentioned previously, after the conclusion of the Second World War, the Diaoyutai/Senkaku Islands, along with all other Japanese territories previously grouped under the Nansei Islands, fell under the control of the U.S. military. In 1951, Article III of the San Francisco Peace Treaty granted the United States sole powers of administration over “Nansei Shoto south of 29 north latitude (including the Ryukyu
and the Daito Islands).

The fact that the disputed islands were included in the “Ryukyu Islands” as described above was further exemplified in several subsequent official proclamations issued by the U.S. administration authorities. On December 19, 1951, Proclamation 11 was promulgated by the U.S. Civil Administration of the Ryukyus which specified the longitude and latitude of the geographical boundaries under U.S. administration. The coordinates were further defined in subsequent official announcement including Ordinance 68 of the Charter of the Ryukyu Government of February 29, 1952 and U.S. Civil Administration of the Ryukyus Proclamation 27 (USCAR 27) on December 27, 1953. It follows that the Japanese contention is there clearly existed more than a few instances whereby China could have lodged a protest concerning the handling of the disputed islands if it indeed regarded them to be its territory. Instead, the Chinese Government neither demanded the return of the disputed islands nor expressed any objection to their placement under U.S. trusteeship.

The Basic View further argues that the 1971 Ryukyu and Daito Islands Reversion Agreement serves as what may be viewed as a final confirmation of Japanese sovereignty over the disputed islands. The reversion agreement provided the following,

With respect to the Ryukyu Islands and the Daito Islands, as defined in paragraph 2 below, the United States of America relinquishes in favor of Japan all rights and interests under Article 3 of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951... [Japan] assumes full responsibility and authority for the exercise of all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of the said islands.

With the return of “administrative rights” over the islands from the


United States under the reversion agreement, combined with the “residual sovereignty” maintained by Japan during U.S. administrative control of the islands, Japan argues that it has reclaimed full sovereignty over the disputed islands.26

Finally, noting that “it was not until the latter half of 1970, when the question of petroleum resources on the continental shelf of the East China Sea came to the surface, that the Governments of China and Taiwan authorities began to raise questions regarding the Senkaku Islands,” the Basic View concluded that “none of the points raised by the Government of China as ‘historic, geographic or geological’ evidence provide valid grounds, in light of international law...”.

Since the initial issuance of The Basic View in 1972, the official Japanese position has been consistent and frequently reiterated during subsequent flare-ups of the dispute. Also, as a result of Japan’s actual possession of the islands, the official Japanese position since the opening of the dispute maintains that there is no dispute regarding the islands’ ownership with China or Taiwan. During the most recent flare-up, a letter from the Permanent Representative of Japan to the United Nations addressed to the Secretary General stated the following: “In view of the history of the Senkaku Islands and in light of the relevant principles of

26 Although not formally included in the peace treaty, Japan relies on the statements given by the U.S. and British Delegates at the 1951 San Francisco Peace Conference as its basis of retaining “residual sovereignty” over the Ryukyu and Bonin Islands during their U.S. administration. John Foster Dulles, the United States Delegate, stated at the conference that “Several of the Allied Powers urged that the treaty should require Japan to renounce its sovereignty over these islands in favor of United States sovereignty. Others suggested that these islands should be restored completely to Japan. In the face of this division of Allied opinion, the United States felt that the best formula would be to permit Japan to retain residual sovereignty, while making it possible for these islands to be brought into the United Nations trusteeship system, with the United States as administering authority.” See Government Printing Office, American Foreign Policy, 1950-1955, Basic Documents, Vol. 1 (Washington D.C.: Government Printing Office, 1957), p. 453.

Kenneth Younger, the British Delegate, supported the U.S. position by also stating “as regards the Ryukyu and Bonin Islands, the [San Francisco Peace treaty] does not remove these from Japanese sovereignty; it provides for a continuance of United States administration over the Ryukyu Islands south of 29 north latitude...” For full text of Younger’s statement, see Department of State, Conference for the Conclusion and Signature of the Treaty of Peace with Japan: Record of Proceedings (Washington D.C.: Government Printing Office, 1951), pp. 88-97.
international law, there is no question that the islands are an integral part of the territory of Japan, and that Japan has always been exercising effective control over them. It is thus the position of the Government of Japan that no question of territorial title should arise with respect to those islands.\(^{27}\)

In addition to such official statements that have reiterated the government's insistence that the islands are not in dispute, instructions from the Japanese Ministry of Education concerning the handling of territorial disputes in textbooks also reinforces this position. According to a report from *The Japan Times*, when a textbook publisher submitted a draft of its geography textbook that contained the following description, “In the case of Japan, it has [territorial dispute] issues of the Northern Territories, the Takeshima islets and the Senkaku islands,” the publisher was given orders to “[r]evise the descriptions because it is inappropriate to put the Senkaku issue in the same category with the Northern Territories and Takeshima.” The ministry explained that the difference was that Japan currently does not effectively control the Northern Territories and the Takeshima islets, citing the official position reiterated at the Diet in 1995 by then Foreign Minister Yohei Kono. The finalized version of the text first cites the two territorial disputes of the Northern Territories and Takeshima islets, and continues with, “In addition, there are such problems as invasion of territorial waters as seen at the Senkaku Islands.”\(^{28}\)

2. Supporting Evidence from the Japanese Academia and Media

In addition to the Japanese government’s stance toward the Diaoyutai/Senkaku Islands dispute as summarized above, many Japanese scholars and media reports have supplemented the official


Japanese view with evidence they believe further substantiates the claim that the islands were *terra nullius* at the time Japan incorporated them, and Japan henceforth exercised “effective control” over the islands. Among many of the supporters of the Japanese claim, international law professor Okuhara Toshio 奥原敏雄 of Kokushikan University, is perhaps the most fervent academic supporter of the Japanese claim. Over the years, Okuhara has published numerous articles aimed at supporting the Japanese claim, largely through the refutation of evidence presented in academic studies provided by supporters of the Chinese claim. It would not be an overstatement to say that Okuhara’s studies have provided the essence of all subsequent scholarly work supporting the Japanese claim. This has made his work frequently subjected to debate by Chinese and Japanese scholars supporting the Chinese claim. Some of his more important refutations of the Chinese claim will be briefly presented in the following chapter analyzing the Chinese claim, as they are best understood in reference to the Chinese standpoint.

Among the many academic studies supporting the Japanese claim, one of the more important recent publications is a book entitled *Senkaku Retto*, by Midorima Sakae 緑間 栄, a law professor at Okinawa International University. In his book, Midorima documents most of the evidence and arguments put forth by the Japanese government and academia up until the day of

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the book's publication in 1984. With the aim of demonstrating that Japan has exercised effective control over the islands since its incorporation of the Diaoyutai/Senkaku Islands in 1895, Midorima records nearly all instances whereby the Japanese government displayed authority over the islands. The following is a presentation of the more important examples presented in Midorima's book.

As a supplement to the official claim that the islands became Japanese territory in accordance to the discovery-occupation principle of international law, Midorima points to the career story of Koga Tatsushiro, a native of Fukuoka Prefecture, who Japanese scholars attribute as the islands' discoverer. Koga had been living in Naha since 1879 and went on several exploration missions for the purpose of finding new sites to carry out his business of catching and exporting marine products. Koga arrived at Kuba-shima (Huangwei Yu) in 1884 and found an abundance of albatross feathers and immediately expressed his interest in using the islands for his business. Koga filed his first application in 1885 to the Okinawa Prefectural authorities to lease the islands but was denied on the grounds that it was not clear at the time whether or not the islands belonged to the Japanese empire. During the next ten years, Koga's desire to lease the islands persisted and in 1894 personally went to Tokyo to present his application to the Ministry of Home Affairs and Ministry of Agriculture and Commerce but was again denied due to the uncertainty of the islands' ownership.

On June 10, 1895, six months after the passing of the Cabinet Decision to incorporate the islands (Chinese scholars note that it was six days after Japan had officially taken over Taiwan, see Chapter V, section 3), Koga filed yet another application directly to the Home Minister. More than a year later in September 1896, the Ministry of Home Affairs finally approved Koga's application and loaned him the four islands, Uotsuri-shima (Diaoyutai Yu), Kuba-shima (Huangwei Yu), Minami Kojima (Nanxiaodao), and Kita Kojima (Beixiaodao) for thirty years without rent. In the following year, Koga invested large amounts of capital to develop the islands for carrying out his business.

During the first four years of Koga's business, as many as 136 persons were brought in to work on the islands. In an effort to
improve the living and working conditions on the islands, Koga also devoted himself to developing the islands, whereby he built houses, reservoirs, docks and bridges. In 1909, Koga received the prestigious Blue Ribbon Medal, a medal of honor awarded by the Japanese emperor, as a recognition of his efforts to developing the islands. Koga died in 1918 and his son, Koga Zenji 古賀善次, continued to use the islands mainly for fish and bird canning industries. In 1926, after the expiration of the previously obtained thirty years lease term, the Japanese government extended the land loan to Koga but required rent to be levied beginning the following year. Finally in 1932, the Japanese government changed the status of the four islands from state-owned land to private-owned land as the islands were sold to the Koga family. Koga's family-run business eventually came to an end on the eve of the Pacific War mainly because transportation expenses had become too costly as result of the war. Soon afterwards, the islands became once again uninhabited.

After the Second World War, when the Diaoyutai/Senkaku Islands came under the administration of the United States, both Kuba-shima (Huangwei Yu) and Taisho-jima (Chiwei Yu) were designated as military firing practice grounds. Since one of the islands, Kuba-shima (Huangwei Yu), was owned by Koga, the United States signed a lease (Basic Lease, GRI. No. 183-1) with Koga in 1958 for permission to use Kuba-shima for military functions. In 1978, the four islands were sold by the Koga family for a symbolic price of thirty yen per tsubo (1 tsubo is equivalent to 2.3 square meters) to members of the Kurihara 栗原 family, who currently reside in Saitama Prefecture 埼玉県 and continue to maintain the islands' ownership. Taisho-jima has, since its initial entry into the land registry in 1921, maintained the status of state-owned land and currently belongs to the Ministry of Finance. In short, Japanese scholars frequently point to all of the above developments surrounding the Koga family as evidence of Japanese state authority over the islands manifested through acts of administration of land, institution of land leasing, and permission of the transferral of land ownership among private citizens.

Other instances frequently invoked as evidence of Japanese effective control over the islands since their 1895 incorporation mainly involve events such as formal entry of the islands into the land registration, successive field surveys conducted by government and academic agencies, as well as several emergency rescue operations. While Japanese scholars have indeed provided a considerable list of such instances, the following are a few of the more significant examples: In 1901, the first detailed land survey of the islands (excluding Chiwei Yu/Kubaseki-shima) was carried out by Okinawa Prefecture, whereby the first accurate reduced scale maps of the islands were also made. In December 1902, the surveyed islands were entered into the land registry under the administrative unit of Tonoshiro Village, Ohama Magiri, Ishigaki-jima 石垣島大浜間切登野村 and given lot numbers.32 Belatedly, Kumeseki-shima was for the first time entered into the land registry on July 25, 1921 and renamed as Taisho-jima.33 In 1940, a rescue mission was carried out by Japanese police officers dispatched from the Yaeyama Police Department after a civil aircraft flying from Naha, Okinawa to Keelung, Taiwan, made an emergency landing on Uotsuri-jima (Diaoyutai Yu). Another instance occurred in June 1945, when 180 residents from Ishigaki-jima sailing to Taiwan were attacked by U.S. military aircraft, resulting in a shipwreck on the shores of Uotsuri-shima (Diaoyutai Yu). As the Japanese authorities were not immediately aware of such an occurrence, the victims were left stranded on the island for nearly two months. Finally, in mid-August, Japanese police and military personnel arrived at the scene to rescue the remaining 130 survivors from this tragic incident.

One piece of evidence also involving an emergency rescue mission perceived to be particularly persuasive in substantiating their case is a letter of appreciation issued by the Chinese consul stationed in Nagasaki in 1920. From the contents of this letter of appreciation, it is contended that the Chinese consul, an official of high rank, recognized the islands to be Japanese territory. This letter was first cited as evidence in the December 1972 issue of Okinawa Quarterly 沖縄季刊. Subsequently, it has appeared

32 Midorima Sakae, supra note 24, p. 102.

frequently in the media, with the most recent case being in a front page story of the September 23, 1996 the Sankei Shimbun 産経新聞. The full letter of appreciation reads as follows:

Certificate of Appreciation
During the winter of the eighth year of the Republic of China [1919], Guo Heshun, and thirty-one other fishermen from Huei'an Prefecture, Fujian Province, were met with contrary winds and drifted to Wayo Island, Senkaku Islands, Yaeyama District, Okinawa Prefecture, Empire of Japan. With the earnest rescue by Mr. Tamaesu from Ishigaki Village, the fishermen were able to survive and return to their homeland. Deeply moved by such neighboring sympathy and willingness to perform charity without hesitance, I hereby present this certificate to express my gratitude and thankfulness.

Feng Mian, Consul of the Republic of China in Nagasaki
May 20th, The Ninth Year of the Republic of China [1920]

The main point of focus of this letter lies in the words, “Wayo Island [identified as Diaoyu Yu/Uotsuri-shima by Japanese scholars], Senkaku Islands, Yaeyama District, Okinawa Prefecture, Empire of Japan.” Japanese scholars and media contend that this letter, which was written in the Consul’s official capacity and affixed with an official seal, is a clear example of Chinese authorities recognizing the disputed islands to be beyond Chinese control and under the jurisdiction of the Japanese Empire.

As mentioned in The Basic View, one of the main points which constitutes the Japanese claim is that both the PRC and ROC only advanced territorial claims over the disputed islands following the ECAFE reports, which suggested potentially large oil reserves surrounding the islands. For the purpose of supplementing this particular argument, Japanese scholars have directed attention to several instances as evidence that both the PRC or ROC governments acknowledged the islands to be beyond Chinese jurisdiction while failing to advance any objection to the islands’
being placed under foreign control.

A few of the more important examples involve workers from Taiwan using the disputed islands as work sites for dismantling salvaged ships. On August, 12, 1968, forty-five workers from Taiwan dismantling a salvaged ship were found on Minami-kojima (Nanxiaodao) by Ryukyu Government officials. The several permits shown by the workers to the Ryukyu officials included emigration permits issued by authorities of the ROC government. The workers did not carry either passports or the appropriate immigration permits issued by the Ryukyu government and were therefore requested to leave the island for illegal entry into territory under the jurisdiction of the Ryukyu Civil Government. Afterwards, the workers applied for permission from the High-Commissioner of Okinawa and consequently received permission to return to their original work site to continue their business the following year. A similar instance also occurred in 1970 whereby a separate group of ship dismantling workers from Taiwan were found at Kuba-shima (Huangwei Yu) and ordered by Ryukyu officials to leave their work site. While Japanese scholars point to the above incidents as evidence of effective control over the islands by Ryukyu authorities, their main focus lies on the fact that the Taiwanese workers found at Minami Kojima were issued emigration permits by the ROC government which is an indication that the islands were not under Chinese jurisdiction. It is contended that this lack of challenge from the ROC government with respect to foreign jurisdiction over the islands is a clear indication that it did not regard them to be Chinese territory.

Other instances have also attracted the attention of Japanese scholars and media and been used as evidence that prior to the reports of both the PRC and ROC China did not regard the islands to be its territory include the following. With respect to the PRC, a front page news report that appeared on the October 3, 1996 edition of the Sankei Shim bun, reported that the PRC government evidently recognized the disputed islands as Japanese territory as revealed in a government sponsored publication. This particular publication is identified as the January 8, 1953 edition of The Peoples’ Daily, China’s official party newspaper, in which an article entitled “The People of the Ryukyu Islands Struggle Against

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34 Midorima Sakae, supra note 24, p. 76-79.
American Occupation” noted the Senkaku Islands as one of the subgroups of islands that constituted the Ryukyu Islands. Attention has also been placed on a Chinese high school geography textbook published by the ROC government’s educational authorities in January 1970, which listed the islands under their Japanese names with no indication that they were Chinese territory. Additionally, Japanese scholars point to several other maps published prior to the opening of the dispute in both China and Taiwan, which also labeled the disputed islands in a similar fashion, as examples that “the islands were treated as territory of Japan”.

The Japanese legal position toward the disputed islands can be best summarized as follows: It is claimed on behalf of Japan that the incorporation of the disputed islands in 1895 was completely legal under the principal of discovery-occupation under international law because 1) the islands were *terra nullius* at the time of initial occupation; 2) Japan displayed its intention and will to act as a sovereign to occupy the islands through the Cabinet Decision on January 21, 1895; and, 3) Japan henceforth demonstrated a continuous and peaceful display of state authority on the islands. In addition, with respect to invoking other principles of international law in supporting Japan’s case, some Japanese writers have also suggested that even if China indeed maintained title to the disputed islands prior to 1895, given the lack of protest or competing claims from China, Japan’s claim over the islands can be consolidated by the principle of acquisitive prescription.

It should be reminded that the key issue to the entire

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36 According to Malcolm N. Shaw’s *International Law* (1991), acquisitive prescription is defined as “a mode of establishing title to territory which is not *terra nullius* and which has been obtained either unlawfully or in circumstances wherein the legality of the acquisition cannot be demonstrated. It is the legitimization of a doubtful title by the passage of time and the presumed acquiescence of the former sovereign...” However, the required “passage of time” to establish valid title over the territory in question will “depend, as so much else, upon all the circumstances of the case, including the nature of the territory and the absence or presence of any competing claims.”

dispute is whether the islands were terra nullius or Chinese territory on January 14, 1895 — which in effect also determines their relationship with the Treaty of Shimonoseki. If the islands were indeed terra nullius as claimed by Japan, then the Cabinet Decision to incorporate the islands would remain a valid one; if the islands were Chinese territory, then their transferral to Japan was based on the 1895 Treaty of Shimonoseki and should have been returned to China after the second world war.

The next chapter presents the legal basis on which the Chinese claim over the islands is based. The main point of much of the argument on the Chinese side is that, contrary to what is claimed by Japan, the islands were not terra nullius but indeed Chinese territory, which thereby renders the 1895 Japanese Cabinet Decision a unilateral and illegal one. Since China claims a relationship with the islands that reaches back into history since the 14th century, the task of demonstrating Chinese sovereignty over the disputed islands through a relatively long period has resulted in a rather lengthy — and equally impressive — presentation of historical evidence supporting its case.
V. THE PRC AND ROC'S POSITIONS AND EVIDENCE SUPPORTING THE CHINESE CLAIM

1. Official Positions of the PRC and ROC Governments

While the governments of both the Republic of China and the People's Republic of China have in the past thirty years each separately issued numerous official statements reiterating their claims over the islands, their positions are essentially identical since they are based on a shared historical past. Any parting of the ways between the two governments exists only when dealing with events that occurred after 1949. Following a series of public announcements in mid-1970 made by ROC government officials asserting Chinese ownership over the islands, the first official protest filed by the ROC against Japan took place in February 1971. The PRC's first official claim came later, when its Ministry of Foreign Affairs issued an official statement on December 31 that same year. While the ROC's Ministry of Foreign Affairs has issued numerous open statements and protests reaffirming sovereignty over the islands, none have been as detailed as the aforementioned 1972 Basic View issued by the Japanese government or the PRC official statement issued in 1971, whereby a clear summary of what exactly constitutes the historical and legal basis of official claim is provided. Therefore, to fully understand the ROC's claim to the islands one needed to turn to the abundance of academic writings provided by scholars supporting the Chinese claim. Belatedly, in September 1996, the ROC Government Information Office finally published an informational pamphlet entitled An Objective Evaluation of the Diaoyutai Dispute, which presented a brief yet comprehensive overview of the historical and legal claims held by the government. This pamphlet confirmed that the ROC official claim is indeed essentially consistent with that of the PRC's and with what the academia has been suggesting over the past twenty years.

The common position of Beijing and Taipei according to both the 1971 PRC official statement and the ROC governmental pamphlet can be summarized as follows. Both governments claim

that historical records demonstrate that the Diaoyutai/Senkaku islands were first discovered, named, and used by the Chinese as early as the 14th century. Therefore, Japan's claim that it incorporated the islands based on the principle of "prior occupation" is untenable, as the islands were not *terra nullius*. Ample Chinese, Ryukyuan, and Japanese historical records and maps can be used to demonstrate that during the five hundred years prior to 1895, the Diaoyutai Islets belonged not to the Ryukyus, but to China --- a well-recognized fact by all of the aforementioned during that time. Such historical documents have shown that the boundary line between China and the Ryukyus existed in the high sea between China's Chiwei Yu/Kumeseki-shima (the most northeastward island of the Diaoyutai/Senkaku chain) and Ryukyu's Kume-jima. Moreover, in 1562, the disputed islands were incorporated into the Chinese coastal defence system established by the Ming government to deal with intensified raids by the so-called Woko 倭寇 (Japanese pirates, *wako* in Japanese). During the 18th century, the Qing government further placed the disputed islands within the coastal defence system of Taiwan, which were patrolled by Chinese naval forces stationed on the said island. In view of the disputed islands historical ties with China, in particular the island of Taiwan, both Chinese governments contend that China transferred the disputed islands in accordance to the 1895 Treaty of Shimonoseki, which concluded the Sino-Japanese War of 1894-1895. By virtue of Article II of the peace treaty, China was forced to cede to Japan "the island of Formosa, together with all the islands appertaining or belonging to the said Island of Formosa." Therefore, China contends that the disputed islands were incorporated into Japanese territory not by discovery-occupation but rather by the signing of an international agreement, i.e., the Treaty of Shimonoseki.

It is uniformly agreed by both the PRC and ROC that after the conclusion of World War II, the disputed islands should have been returned to China as a result of Japan's renunciation of its claim to Taiwan and appertaining islands. It is important to note here, however, that as a result of the political differences that existed after 1949 between the ROC and PRC, the legal claims of the two governments differ somewhat as the two governments each point to different treaties signed separately with Japan after 1949.
The ROC legal position is that the disputed islands should have been returned to China under the provisions of the 1943 Cairo Declaration, 1945 Potsdam Proclamation, the 1951 San Francisco Treaty, and 1953 Peace Treaty between the ROC and Japan. In 1943 when victory for the allies seemed likely, China, Great Britain, and the United States jointly issued the Cairo Declaration which stated that the following,

Japan shall be stripped off... all territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed...38

It can be seen that the references to Formosa and the Pescadores were patterned on the 1895 Treaty of Shimonoseki. Thus, there is no reason to suppose that reference to Formosa in the Cairo Declaration did not include “all islands appertaining or belonging to the said island of Formosa.” The provisions iterated in the Cairo Declaration were reaffirmed by the 1945 Potsdam Proclamation which provided, as a condition of Japan’s surrender, that “Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu and other minor islands as we [the Allies] determine.”39 When Japan signed the Instrument of Surrender on September 2, 1945, it agreed to “accept the provisions of the declaration issued by the Governments of the United States, China, and Great Britain on 26 July 1945 at Potsdam.”40 Moreover, by virtue of Article 2 of the 1951 San Francisco Peace Treaty signed by Japan and the Allied Powers (excluding both the ROC and PRC), Japan renounced “all right, title, claim to Formosa and the Pescadores.” Lastly, the terms were reiterated in Article 4 of the Treaty of Peace between


the Republic of China and Japan signed at Taipei on April 28 1952 which stated,

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... 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.41

This provision completes the chain of treaties and agreements that legally require Japan to renounce its claim to Taiwan and, by implication, all the islands that appertain to or belong to Taiwan. Also as a result of this provision, the 1895 Treaty of Shimonoseki became nullified. Viewed together, the above treaties and agreements form the legal basis of the ROC’s claim to the disputed islands.

As previously mentioned, the legal basis of the PRC parallels that of the ROC with respect to events prior to 1949. The PRC also relies on the 1943 Cairo Declaration, 1945 Potsdam Proclamation and Japan’s acceptance of the Instrument of Surrender as its sole legal basis to the disputed islands. Since the PRC did not participate in the signing of either the 1951 Multilateral Peace Treaty or 1952 Treaty of Peace between the ROC and Japan, the PRC government has consistently denounced the legality of both treaties and uses neither of them in its claim over the title of the Diaoyutai/Senkaku Islands, or even Taiwan for that matter. Instead, with respect to treaties or agreements signed after 1949, the PRC points to the Joint Communique between the People’s Republic of China and Japan signed in 1972 which states that Japan “adheres to stand of complying with Article 8 of the Potsdam Proclamation.”42 The provisions in the Joint Communique are further confirmed by the Treaty of Peace and Friendship between the PRC and Japan, signed on August 28, 1978. In short, the PRC’s legal basis is essentially identical to Taiwan’s --- that a series of treaties and agreements between China and Japan renders any Japanese claims to the island of Taiwan and, by implication, all the islands that appertain to or belong to Taiwan.


Noteworthy is that in regard to the PRC's position toward the placement of the disputed islands under U.S. administration after the war in accordance to Article 3 of the 1951 San Francisco Peace Treaty, the PRC has constantly denounced it as illegal since it was signed with neither the presence nor consent of China. This point has also served as a refutation of Japan's claim that China gave no objection to the placement of the disputed islands under US administration.

As demonstrated above, both the PRC and ROC governments view the Treaty of Shimonoseki of 1895 as the only legal basis of Japan's claim to the islands. With respect to the Japanese contention that the islands were officially incorporated by a series of Japanese legal domestic procedures prior to the signing of the Treaty of Shimonoseki, China regards any such decisions or actions taken to annex the islands as invalid or illegal, since a unilateral claim of one state cannot possibly constitute legal title over territory that clearly belongs to another. From China's perspective, the legal effect of a unilateral action by one State simply cannot be equivalent to an international agreement made between two States which deal with the same subject. Chinese and Japanese writers supporting the Chinese claim have further sought to demonstrate that while the said Meiji government's decision to incorporate the islands was by nature a unilateral one, more importantly, it was intentionally carried out in secrecy without any notification to the sole and only possibly concerned party, China. Thus, China was denied the information that might have generated a protest (see section 3 of this chapter).

The brevity of the official statements of the PRC and ROC, however, has compelled numerous Chinese and Japanese scholars to supplement them by presenting more detailed accounts of historical evidence either mentioned in official statements, or those that may have been left out or discovered later. Indeed, scholarly works have proliferated over the past twenty years. Generally speaking, scholars supporting the Chinese claim have had three principal aims. First, to demonstrate through historical records and maps from China,


Japan, and the previous Ryukyu Kingdom that the disputed islands were recognized as Chinese territory evidenced by centuries of open, continuous, and uncontested use of the islands. Clearly this is aimed at invoking the principle of “discovery-occupation” under international law. Second, the scholars hope to present in their entirety all major Meiji official documents that dealt with the incorporation process of the islands, from the initial intention in 1885 to the final decision to officially incorporate them ten years later. It is contended that these official documents clearly demonstrate that the Meiji government understood very well that the islands were defined as Chinese territory under the traditional East Asian World Order. This awareness in turn led the Japanese Government to take a cautious and patient attitude toward the incorporation of the islands to avoid any possible confrontation with China. Chinese writers contend these Meiji documents are crucial evidence that only further reveals the islands’ true ownership and undermine the Japanese claim that the islands were terra nullius at the time of their incorporation in 1895. The third and final aim is to refute the Japanese contention that China did not regard the islands as its territory because it expressed no objection to any of the post-World War II arrangements of the islands.

The following is a presentation of all relevant evidence presented to this date to support the Chinese claim. The presentation follows the above outline.

2. Historical Evidence Supporting the Chinese Claim

Many Chinese and Japanese scholars have searched Chinese, Ryukyuan, and Japanese historical records to support the claim that the Diaoyutai/Senkaku Islands were first discovered, named, and used by the Chinese. It is worth noting that a significant amount of historical evidence used toward demonstrating China’s historical claim over the islands has in fact been provided by a noted Japanese historian, Inoue Kiyoshi 井上清. \(^{45}\) In his book entitled “Senkaku”
Islands: A Historical Explanation of the Diaoyu Islands published in 1972, Inoue provides much evidence from Chinese, Ryukyuan, and Japanese historical records which demonstrate that the Diaoyutai/Senkaku were traditionally recognized as Chinese territory by all three counties. Much of the subsequent academic work done on the Chinese side since the publication of Inoue’s book has relied heavily on evidence provided by Inoue, in particular those that concern the actual process by which the disputed islands were incorporated into Japanese territory in 1895. The following begins a presentation of all relevant historical evidence supporting the Chinese claim to the islands, which represents an accumulative and joint effort on numerous scholars, many of which are Chinese and some Japanese, in searching through vast amounts of historical records dating back to as early as the 14th century.

In 1372, the Ryukyu Kingdom became a tributary state of the Ming Dynasty of China and for the next five hundred years offered tribute to the emperor of China. (For an explanation of the tributary system under the traditional East Asian World Order, see later.) Between 1372 and 1879, twenty-four investiture missions were sent by the Chinese Emperor to the Ryukyu Kingdom for the purpose of bestowing the formal title of Zhongshan Wang 中山王 (Zhongshan King) to a new Ryukyu ruler. During each of these investiture missions to the Ryukyu Kingdom, Chinese imperial envoys kept detailed mission records which were to be submitted to the Chinese Emperor upon their return and later stored in government archives --- which indicates that they were official Chinese claim which have been cited frequently by Chinese scholars in subsequent studies on the subject.

Inoue’s “Senkaku” Islands: A Historical Explanation of the Diaoyu Islands 「尖閣列島」—釣魚諸島の歴史解明 was first published in October 1972 by Gendai Heironsha and re-published by Daisan Shokan in 1996 under its original title in response to the re-occurrence of the 1996-1997 islands dispute crisis. Other publications by Inoue on the subject include the following, “The Tiaoyu Islands (Senkaku Islands) are China’s Territory 釣魚諸島 (尖閣列島) は中国領である,” Historical Research 歷史學研究 (February 1972); “The History and Sovereignty of the Tiao-yu-tai Islands (Senkaku Islands) 釣魚諸島 (尖閣列島等) の歴史と帰属問題,” Japan-China Culture Exchange 日中文化交流 (February, 1972); The History and Sovereignty of the Tiao-yu-tai Islands — A Re-assessment 釣魚諸島 (尖閣列島等) の歴史と帰属問題 (再論), Chinese Studies Monthly 中国研究月報, No. 292 (1972).
In these detailed mission reports, Chinese envoys commonly recorded the route they took to reach the Ryukyu Kingdom, which typically began at the Chinese port city of Fuzhou, followed by passing a series of islands (including the disputed islands), and finally arriving at the Ryukyuan port city of Naha. This particular route was commonly referred to as the “Compass Route 針路” since it required the envoys to set and reset their compasses each time they passed by an anticipated island in order to reach the next one, ultimately leading them to their final destination. Scholars supporting the Chinese claim have placed particular emphasis upon these mission reports, since they contend that not only do these reports demonstrate that the disputed islands were first discovered and used by the Chinese as navigational aids over a period of about five hundred years, but more importantly, they contained passages indicating Chinese ownership over the islands.

The earliest certain reference of the disputed islands is in a non-official Chinese navigational record entitled *Fair Winds for Escort* 順風相送 written in 1403. This record identified the disputed islands within the Compass Route familiar to the Chinese navigators, and included directions suggesting the proper ways in setting and re-setting one’s compass to successfully reach the Ryukyu Kingdom. The earliest official investiture mission record still in existence today dates back to 1534, and was written during the twelfth mission (the first and last mission were in 1372 and 1866, respectively). It is unfortunate that earlier investiture mission records prior to 1534 have been lost due to fire at the imperial archives. Nonetheless, in these remaining mission records, it is shown that passing by the island Chi Yu (another name for Chiwei Yu/Kumeseki-shima, the most northeastward island of the Diaoyutai/Senkaku Islands chain) meant reaching the “boundary

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between China and foreign land.” Moreover, as the Chinese investiture ships sailed further eastward, only upon the sighting of Kume Hill 古米山 (known today as Kume-jima 久米島) did the envoys indicate the sighting of Ryukyu territory.48 Among the many existing investiture mission records, the following are a few of the most frequently cited.

In 1534, Chinese investiture envoy Chen Kan 陳侃 wrote in Records of the Imperial Missions to Ryukyu 使琉球錄 the following:

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

After departing from the Chinese port city of Fuzhou, a series of islands were passed by prior to reaching Ryukyu Kingdom. From the passage above, it can be seen that envoy Chen recorded the specific names of each island his ship passed by en route to Ryukyu. What this passage suggests, according to Chinese scholars, is that envoy Chen regarded all islands passed prior to reaching Ryukyu's Kume Island as Chinese territory, since only upon reaching Kume Island did he first indicate that it belonged to another country, the Ryukyu Kingdom.50

48 For the purpose of this study, it is important to note that the characters shan (山 hill/mountain) and yu (屿 island) were both used interchangeably in ancient Chinese texts to denote islands.

49 Wu Tianying, supra note 47, p. 44.

50 An analogy that parallels the cited passage would run as follows: at one o’clock in the afternoon, I, John Smith, drove past Philadelphia; hours later, New York city was also left behind. On the next day at five o’clock in the morning, I arrived at Toronto --- it belongs to Canada. My Canadian friends in the car were excited to be home. (Continued on following page)
In 1561, Chinese investiture envoy Guo Rulin 郭汝霖 wrote in his edition of *Records of the Imperial Missions to Ryukyu* 使琉球錄 the following, “On the first of the fifth intercalary moon we passed by Diaoyu Yu; on the third we reached Chi Yu [Chiwei Yu/Kumeseki-shima]. Chi Yu is a regional hill delimiting Ryukyu territory. With another day of [favorable] wind, Kume Hill will be in sight ład the first of the fifth intercalary moon we passed by Diaoyu Yu; on the third we reached Chi Yu [Chiwei Yu/Kumeseki-shima]. Chi Yu is a regional hill delimiting Ryukyu territory. With another day of [favorable] wind, Kume Hill will be in sight. Chinese scholars point to this passage to demonstrate that Chi Yu (Chiwei Yu/Kubaseki-shima) was considered a regional island at the Chinese frontier separating Chinese and Ryukyu territory. Hence, Chi Yu and the islands that came before it (collectively, the Diaoyutai/Senkaku Islands) were well within the perimeters of the Chinese border; while islands that lay beyond it constituted Ryukyu territory, beginning from Kume Island.

Among the many mission records written during the five centuries since Ryukyu became a Chinese tributary state in 1372, one of the most detailed and authoritative works is *Zhongshan Mission Records* 中山傳信錄 written by Xu Baoguang 徐葆光, the nineteenth Chinese investiture envoy to Ryukyu, in 1719. Xu’s work contained detailed descriptions of the thirty-six islands comprising the Ryukyu Kingdom as well as various maps relevant to his journey, such as a map of the renowned Compass Route and a map of Ryukyu Kingdom. Xu specifically mentioned in the preface of *Zhongshan Mission Records* that his work was completed and validated with the assistance of high-ranking Ryukyu officials sent by the Zhongshan Wang (Ryukyu King), in particular, the distinguished scholar Tei Junsoku 程順則. As a result, envoy Xu’s *Zhongshan Mission Records* was not only authoritative in the sense of its accuracy, but also because it reflected the official views held by Chinese scholars believe that it was only natural and logical for envoy Chen to omit any references of ownership of certain locations that he regarded as self-evidently Chinese territory. With respect to the above analogy, Chinese scholars would similarly attempt to demonstrate that the American traveler, John Smith, would not find the need to specify in his travel diary that Philadelphia and New York were American soil, simply because their ownership is obvious to him. Yet, upon reaching a location that is not within the American border, John would most likely indicate that he has entered foreign soil by noting its owner. In John’s case, this place is Toronto.
both China and Ryukyu at the time. It has also been noted by Japanese scholars that Zhongshan Mission Records found its way to Japan and was translated into Japanese during the late Edo period, allowing it to become the most comprehensive and authoritative source of knowledge about the Ryukyu Kingdom at the time.

With respect to Kume Island, envoy Xu specifically identified it as “a garrison hill on the southwest border of Ryukyu.” In addition, in neither of the descriptions of the thirty-six islands comprising Ryukyu Kingdom or the included “Map of the Thirty-six Islands of Ryukyu” were traces of any of the Diaoyutai/Senkaku Islands found. Therefore, it can be seen that Kume Island was indeed regarded as the doorstep to Ryukyu territory, a fact defined in clear terms and agreed upon by the Chinese and Ryukyuans. Supporters of the Chinese claim argue that when viewing the above three investiture mission records of Chen, Guo, and Xu altogether, one can unmistakably conclude that Ryukyu territory was regarded as beginning from Kume Island and the area east of it, whereas Chiwei Yu and the area west of it belonged to the Chinese.

In response, some scholars supporting the Japanese claim, including Okuhara Toshio, have argued that while such ancient Chinese navigational records prove that Kume Island belonged to Ryukyu Kingdom, it does not necessarily connote that the islands prior to reaching Kume Island were Chinese territory, since the records did not explicitly say that each of the islands prior to Kume Island belonged to China. Okuhara therefore maintains that the Diaoyutai/Senkaku Islands were terra nullius at the time. This point raised by Okuhara has been refuted by Chinese scholars by pointing to certain other more specific passages, such as those found in investiture envoy Wang Chi’s Records of the Imperial Missions to Ryukyu 寫琉球雜錄 written in 1683:

At the fifth hour [between seven and nine o’clock] during early morning, Pengjia Hill was passed by; and at the tenth hour [five to seven o’clock] Diaoyu Yu was left behind. The boat sailed as if aloft in air, and was

51 Yang Chung-kuei, supra note 10, p. 524.

52 Inoue Kiyoshi, supra note 5, pp. 38-40.
accompanied by the singing of those aboard... On the twenty-fifth day a hill was in sight. Although Huangwei should come before Chi Yu [Chiwei Yu], the boat reached Chi Yu directly and Huangwei Yu was not seen. At dusk as the boat passed the outskirts (or noted as trough), heavy winds and strong tides rose up. One pig, one lamb, and five pecks of rice and congee were offered to the ocean. Paper boats were burnt, gongs stroked and drums beaten. The soldiers on board put on armor, sat straight while revealing their swords as if preparing for a battle; this guard of defense was not relaxed until a long time had passed. Upon [my] inquiring about what the outskirts meant, I was told that it was the boundary between Chinese and foreign land; and upon inquiring how the boundary was differentiated, I was told through estimation. [Emphasis added]

When the investiture envoy’s ship passed beyond the island Chiwei Yu and entered an area referred by the Chinese navigators on board as jiao 郊 (outskirts) or gou 溝 (trough), envoy Wang asked what the area represented. The response he received was straightforward, “the boundary between China and foreign land 中外之界也.” This particular area also noted as gou 溝 (trough) was more commonly known by its full name, heishui-gou 黑水溝 or “Black Water Trough,” which derived its name from the sudden change in the color of sea water from dark blue to dark black perceivable to the eyes of those who sailed over it. Chinese historians familiar with such mission records note that this sudden change in sea water color was known to create a strong sense of fear and unpredictability among those who set sail across it, since reaching this area meant

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53 Wu Tianying, supra note 47 p. 56.

54 Chinese historians have noted that the reason why envoy Wang recorded the area known as jiao 郊 (outskirts) also as gou 溝 (trough) is because while the two Chinese characters are pronounced differently in many Chinese dialects, they are both pronounced as kan in Fukienese. As a result, when envoy Wang, a native of Jiangxi Province, learned from the Fukienese-speaking navigators on board that they had passed an area referred by them as kan, he recorded it as “outskirts” and “trough” since both appropriately described the area.

See Wu Tianying, supra note 47 p. 100.
exiting familiar Chinese waters. In response, a habitual sacrificial ceremony found its origin in the purpose of praying for safety while sailing in alien waters. Other measures taken for the purpose of calming those on board included symbolic military preparations.

In *Records of Ryukyu Kingdom* 琉球國志略 written in 1756, investiture envoy Zhou Huang 周煌 provides a comprehensive narrative of a geographical and historical background of the Ryukyus. Zhou’s work also contained a brief description of the Black Water Trough and its location as follows, “[The Ryukyu Kingdom] is surrounded by the sea. To the west of its surrounding sea is the Black Water Trough which delimits Fujian Waters. To set sail from Fujian to reach the Ryukyus, one must advance through the blue waters and then cross the black waters” [琉球] 環島皆海也，海面西距黑水溝與閩海界，福建開洋至琉球必經滄水過黑水.” [emphasis added] This passage further demonstrates that the “Black Water Trough” served as the natural boundary that divided Ryukyuans from Chinese waters (Fujian waters). Since the disputed islands were located westward of the trough, they were clearly within Chinese waters. Viewed together with the previous passage found in envoy Wang Chi’s *Records of the Imperial Missions to Ryukyu*, there can be no mistake that the “boundary between Chinese and foreign land” was indeed recognized to be the Black Water Trough that lay between Chiwei Yu and Kume Island.

Modern oceanographers now know that what the ancient Chinese once referred to as the Black Water Trough, is in fact what is known today as the Okinawa Trough. Modern Chinese scholars on the subject point to the fact that nowhere between the mainland Chinese continent and the Ryukyu islands does there exist an area deeper than 200 meters, other than the 2,270-meter-deep Okinawa Trough that divides the two. Hence, what was known as the Black Water Trough to the Chinese diplomat-navigators, now known as the Okinawa Trough, was regarded as the natural boundary between China and the Ryukyu Kingdom. Chinese writers have also noted that, geographically speaking, the existence of the trough is indication that the disputed islands are associated with Taiwan,


56 Wu Tianying, *supra* note 47, p. 56.
not Okinawa. Noteworthy however, is that many modern Chinese writers on the subject have in their works mistakenly labeled the Okinawa Trough 沖縄海溝 with another term, the Ryukyu Trench 琉球海溝. The reason for this confusion in terminology is due to the fact that the Chinese have been accustomed to referring to Okinawa by its historical name, Ryukyu. Normally, it is acceptable to use the term Ryukyu rather than Okinawa since they refer to the same group of islands. However, in reference to Okinawa Trough, the term Okinawa should not be replaced with Ryukyu since there actually exists a Ryukyu Trench located west of the Okinawa Islands. Obviously, the Ryukyu Trench is not what the Chinese intended in their references. While this error in terminology does not hinder the Chinese claim, it nonetheless deserves some attention and should be corrected for the sake of accuracy.

Since the Black Water Trough was traditionally considered to be the natural boundary between China and Ryukyu as previously demonstrated, it is evident that both countries considered themselves to be adjacent to one another. Throughout the five hundred years of established tributary relations between China and Ryukyu, official statements that confirm the fact that China and Ryukyu traditionally regarded themselves as immediate neighboring countries have been frequent. One of the many instances that serve to illustrate this idea can be seen in a memorandum (ziwen 書文) written by the Ryukyu King in 1640 addressed to the Governor of Fujian, which in its opening stated, "Ryukyu has been known to be stationed at the eastern corner for centuries, whose joy and sorrow is closely tied [to China], and land adjoined with Fujian in one continuous stream; sharing a natural bond [with Fujian] created by heaven and put in place by earth, and separated by a strait of delimiting water. 照得琉球世守東隅, 休戚相關, 毗連福建, 壟綿一脈, 天造地設, 界水分遙." Chinese scholars contend that such statements only reinforce the point that there could not have possibly existed any islands that were terra nullius.

57 I hereby express my appreciation to Prof. Ma Ying-jeou who verbally informed me of this information during our conversation in his office at National Chengchi University in December 1997.

58 Wu Tianying, supra note 47, p. 60.
since: 1) the disputed islands’ existence was well-known to both China and Ryukyu; 2) Ryukyu territory began from Kume Island extending eastward; and 3) both countries regarded themselves as immediate neighbors separated by a “delimiting water.” Although the name of the “delimiting water” was not specified in the said memorandum, it goes beyond saying that it referred to the Black Water Trough.

In addition to these past mission records that dealt solely with the diplomatic exchanges between China and the Ryukyu Kingdom, supporters of the Chinese claim have also directed attention to several other historical documents to substantiate their argument. One Chinese ancient record frequently referred to is A Chronicle on Japan 写本撰 Volt written in 1556 by Zheng Shungong 鄭舜功, a Chinese envoy to Japan. Many Chinese scholars regard Zheng’s reference of the disputed islands as indisputable evidence that the disputed islands did not belong to the Ryukyus, but in particular, to the island of Taiwan. In his book, Zheng writes, “Diaoyu Yu, a small island of Xiaodong 釣魚嶼, 小東小嶼也.” It is worth explaining here that Xiaodong was another ancient Chinese name referring to the island of Taiwan. Therefore, supporters of the Chinese claim regard the significance of this particular passage, as it is an ancient version of saying: the Diaoyutai/Senkaku Islands are “islands appertaining or belonging to the said Island of Formosa” as noted in the 1895 Treaty of Shimonoseki. Consequently, the islands should have been returned to China as was Taiwan after World War II.

59 Yang Chung-kuei, supra note 10, p. 519-520.

60 A supporter of the Chinese claim, Prof. Chiu Hungdah has noted that this particular piece of evidence may in fact present problems to the Chinese claim since Taiwan itself had not yet been officially recognized as Chinese territory at the time of the publication of Zheng Xungong’s A Chronicle on Japan 写本撰 Volt in 1556. Indeed, this contention appears accurate considering that official Chinese authority on Taiwan had not yet been established until 1662, when the renowned Ming-loyalist, Zheng Chenggong 鄭成功 (Koxinga), arrived at Taiwan and made it into an operational base for Ming loyalist resistance against the Qing.

As will be shown later in this study, ample official Qing documents (local gazetteers or fangzhi) demonstrate that the Diaoyutai/Senkaku Islands were administrated under the Taiwan Prefecture of Fujian Province during the Qing Dynasty. And as already shown, official Ming documents (such as the envoy records)
In addition to navigational records, scholars supporting the Chinese claim have pointed to several historical maps produced by the Chinese and Japanese which denote the islands as Chinese territory. The most frequently invoked map is from the work of Hayashi Shihei 林子平, an eminent Japanese scholar-cartographer during the Edo Period. Among Hayashi's most celebrated works is his *Illustrated Survey of Three Countries* 三国通覧図說, a geographical treatise on Korea, the Ryukyu Kingdom and Ezo (now Hokkaido). Included in this publication is a map entitled “Map of the Three Provinces and Thirty-six Islands of the Ryukyus 琉球三省井三十六島之圖,” which is most frequently invoked by supporters of the Chinese claim as evidence that the disputed islands were well-recognized to be Chinese territory even by the Japanese. This map, which used the traditional four pigment coloring method, utilized the colors red, yellow, green, and brown to indicate geographical differences between and within nations. In the

show that the previous Ming government regarded the islands as strictly within Fujian Province, and located within Fujian Waters (閩海 Min hai) --- rather than belonging to Taiwan simply because the later had not yet come under Ming China's authority. This therefore suggests that Zheng's account that the disputed islands belonged to Taiwan (at the time of the publication of his work in 1556) is indeed problematic.

The reason why many Chinese scholars may have overlooked the above problem with Zheng's account is most likely due to their assumption that Taiwan was administratively a part of China prior to the 1600s --- a common assumption is that Taiwan was placed under the Penghu (Pescadores Islands) Sub-Magistrate Office (澎湖巡檢司 Penghu xunjiansi) installed by the Yuan government in 1281 which was retained by the Ming government until 1388 and later re-installed in 1563.

While the Penghu Sub-Magistrate Office indeed established official Chinese authority on the Pescadores Islands, the island of Taiwan was recognized at the time to be beyond its jurisdiction. Taiwan was not brought under official Chinese authority until Zheng Chenggong arrived and in 1662 drove out the Dutch, who had previously occupied Taiwan since 1624. Finally, after Zheng's regime was conquered by Qing forces in 1683, Taiwan's administrative status was officially promulgated by the Qing government as Taiwan Prefecture (of Fujian Province), with its prefectural capital at Tainan.

As indicated by Qing local gazetteers, the Diaoyutai/Senkaku Islands subsequently came under the administrative division of Taiwan Prefecture. See next section of this chapter.

Note: Despite the similarities in their names, Zheng Xungong and Zheng Chenggong bear no relation.
explanatory section of the map regarding the usage of colors, Hayashi notes that areas colored as red indicate the following: territories of China, an “uninhabited island” (Hayashi identifies it as Ogasawara Islands), and Kamchatka Peninsula (Russian territory at the edge of the Japan-Russian border). In Hayashi’s map, the Diaoyutai/Senkaku Islands are situated on the well-known Compass Route and are colored as red indicating Chinese ownership. The Ryukyu Islands, which were depicted as beginning from Kume Island and extending eastward --- are colored yellow. While some Japanese scholars have sought to refute the importance of this map by arguing that Hayashi “mechanically” colored the disputed islands as red since he referred to the Zhongshan Mission Records while completing the map, Chinese scholars contend that this only further demonstrates the authoritativeness of the Zhongshan Mission Records among Japanese scholars at the time. It


62 Some Japanese scholars have sought to undermine the validity of Hayashi’s map as an indication of territorial ownership based on the fact that Hayashi colored the island of Taiwan (which was Chinese territory and a well-recognized fact at the time of the map’s publication) yellow instead of red. While many Chinese scholars have responded to this challenge presented by the Japanese by offering separate explanations as to why there exists a difference in the coloring between Taiwan and China, I personally have found them to be inadequate. I have sought to study the map itself and conduct some research on my own in order to seek for what might be a satisfactory answer. I believe that the following most closely explains the rationale behind Hayashi’s decision to indicate China and Taiwan (or different regions of the same country) with separate colors. First and foremost, one must not overlook the limitations of the four pigment coloring system that Hayashi faced while creating this map. Many scholars have been unaware of an important feature of Hayashi’s map: the area known to represent the homeland of the rulers of the Qing Dynasty, Manchuria, was also not colored red; instead green was used, the same color used for Japan. At first, this may appear to further support the Japanese contention that Hayashi’s method of coloring cannot be used to denote territorial ownership. But upon further examination of the entire map, one will begin to appreciate Hayashi's genius and expertise as an exceptional cartographer-scholar. As one examines the territories of China in Hayashi’s map, one will find that all together three different colors (i.e., red, green, yellow) were
used. However, keeping in mind that Hayashi also specifically noted that red was used to indicate territories belonging to China, one will realize the following: while Hayashi wished to use the very limited traditional coloring system to denote different countries, it was also his intention to denote different geographical features within a given country. To overcome the limitation of only four different colors, Hayashi had to wisely and carefully use and re-use the four colors to successfully denote borders between countries and geographical differences between within a country without causing any confusion. With respect to China, there is no doubt that an expert on geography such as Hayashi would not have known that Manchuria and Taiwan were Chinese territory. Aware that such territories were self-evidently Chinese territory but also geographically unique, Hayashi chose to depict such differences in his map by using two non-red colors, green for Manchuria and yellow for Taiwan, respectively. Using green for Manchuria also did not create any confusion regarding delimitation between Manchuria and foreign territory since no other neighboring country was also colored as green, except for Japan, which was separated from Manchuria not only by a Korea colored as yellow but also by sea. Also, Hayashi must have also been aware that it was rather unlikely that his Japanese fellowmen would be misled by the use of green for both Manchuria and Japan and hence mistake their country as belonging to Manchuria. Another instance of Hayashi’s cleverness in his use of colors can be seen in his choice to color both China and Russia’s Kamchatka Peninsula as red. It can be seen that Hayashi’s intention to denote the border between Japan and Russia was also effective as the usage of green and re-use of red provided an obvious distinction. And lastly, with respect to the islands situated on the Compass Route, the Diaoyutai/Senkaku Islands were colored red, and the nearest Ryukyu island on the route, Kume Island, was colored brown --- thus indicating the boundary between China and Ryukyu Kingdom. In short, while no two bordering countries in Hayashi’s map shared the same color which allowed borders to be immediately apparent, areas which shared different geographical features could also be easily identified.

If the above explanation proves to be true, then another minor point must also be noted. It can be seen from Hayashi’s map, that while he regarded the Diaoyutai/Islands as Chinese territory, he may have been uncertain as to whether the islands were under Fujian Province or more specifically, under Fujian’s Taiwan Prefecture. In any case, Hayashi chose to color the islands red, indicating a closer geographical relationship with Fujian Province. This seems understandable from Hayashi’s point of view, since he sketched the islands closer to Fujian Province than to Taiwan Prefecture (Hayashi’s map was not always in size or distant as proportioned as one would expect in modern maps). One may then question whether Hayashi’s association of the disputed islands with Fujian instead of Taiwan undermines the Chinese contention that the islands traditionally belonged to the latter. To answer the above question once again requires an understanding of the administrative status of Taiwan --- which will bring us to the conclusion that the above does not present a challenge to the Chinese claim. During the Qing dynasty, Taiwan Prefecture remained administratively under the jurisdiction of Fujian Province until it was upgraded to provincial status equal to Fujian in 1885.
has also been noted by supporters of the Chinese claim that the authoritativeness of Hayashi’s maps were recognized by European scholars. Heinrich Klaproth, a German scholar of Oriental studies, translated the maps into French and published them back in 1832. In addition, the Meiji Government also found the very same maps of Hayashi to be useful evidence in demonstrating that the Ogasawara Islands were long considered by its people as Japanese territory during territorial negotiations with the United States back in the 1860s.63

The other most frequently invoked map is an official Chinese map entitled *Imperial Map of Native and Foreign Lands*, which was published in a series of volumes by the Hubei provincial government in 1862. In one of the maps labeled “Southern Portion” found in Volume Seven, the disputed islands were included as Chinese territory. As explained in the introductory section to this series of maps, all place names on the map followed the principle of “the name follows its owner,” This meant that in the case of the inclusion of foreign land on the map, their foreign names would also be listed. The disputed islands were labeled only by their Chinese names, whereas all islands beginning from Kume Island extending eastward, for example, were labeled first by their Ryukyuan names and then followed by their Chinese names.

In addition to demonstrating that the disputed islands were traditionally well-recognized as Chinese territory, scholars supporting the Chinese claim have also focused on demonstrating that China displayed state authority over the disputed islands through effective control. The basis of this claim derives from the fact that the disputed islands were incorporated into the Chinese

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Therefore, at the time of publication of Hayashi’s map, whether the disputed islands were indicated as belonging to Fujian Province or Taiwan Prefecture is irrelevant, since both the disputed islands and Taiwan Prefecture were under the jurisdiction of Fujian Province at the time.


64 Wu Tianying, *supra* note 47, p. 95
naval defence system beginning from the Ming Dynasty and lasting well into the Qing Dynasty. From the beginning of the 16th century, the Chinese coast suffered from increasingly frequent and ferocious raids by Japanese pirates (wako in Japanese). In response, the Ming government appointed Hu Zongxian 胡宗憲 as Commander-in-Chief of the Chinese Costal Defence in 1556, with the primary responsibility of deterring Japanese pirates. With the assistance of Zheng Rozeng 鄭若曾, one of the most reputable experts on costal geography at the time, Commander Hu compiled a volume of thirteen scrolls collectively entitled Illustrated Treatise on Costal Defence 筆海圖編 in 1562. This volume recorded all Chinese military deployments in the costal area from the northern Liaodong Peninsula to the southern province of Guangdong, on the mainland and offshore islands. Within the first scroll of the volume entitled “Atlas of the Islands and Shores of the Costal Region 沿海山沙圖,” there contained two maps labeled Fu 7 and Fu 8, detailing all the islands offshore of Fujian Province. It is in these two maps that the disputed islands are included among others in the following order from right to left, Pengjia Shan, Diaoyu Yu, Huaping Shan, Huangmao Shan (Huangwei Yu/Kuba-shima), Ganlan Shan, and Chi Yu (Chiwei Yu/Kumeseki-shima).65 Another publication demonstrating that the Ming reign incorporated the disputed islands within China’s costal defence system is the Treatise on Military Preparations 武備志 published by Mao Yuanyi 茅元儀 in 1621. Under the “Costal Defence” section of Mao’s work is the map, “Atlas of the Islands and Shores of the Costal Region of Fujian 福建沿海山沙圖,” in which the disputed islands are once again listed in the order previously found in the work of Hu.66

Subsequent Chinese historical documents reveal that the disputed islands remained under China’s maritime defence system well into the Qing Dynasty, only with increased ties to the island of Taiwan. A historical document entitled Records of An Inspection Tour of Taiwan 臺灣使槎錄, completed by imperial inspector-general Huang Shuijing upon his survey of Taiwan in 1722, holds further evidence of Chinese state authority over the disputed islands

65 Ibid., p. 82.

66 Ibid., p. 88-89.
manifested by the deployment of Chinese naval forces from Taiwan. In his book covering various topics about the island of Taiwan, Huang devotes a section to the island's military-related affairs entitled as "Military Preparation." In this section, the following is noted:

In the north of the ocean behind the mountain [i.e., Taiwan] there lies a mountain named Diaoyutai where ten or more large ships can be anchored.

山後[台灣]大洋北，有山名釣魚台，可泊大船十餘。67

Similar and occasionally more detailed descriptions indicating deployment of Chinese naval forces to the disputed islands as seen above are also evident throughout many of the local gazetteers (方志 fang zhi) covering the administrative areas of Fujian Province and its subsidiary, Taiwan Prefecture. Scholars who have devoted themselves to a serious learning of Chinese history would most likely also find himself quite familiar with these so-called local gazetteers. Generally speaking, these gazetteers were known as official records covering a vast variety of topics mainly focusing on the regional history and geography of a given geographical administrative unit under the Chinese empire. Since these gazetteers were compiled under the bureaucratic sponsorship of the central government of the Chinese empire and used by local officials as a basis for the implementation of government rule and public policy, these local gazetteers were authoritative official records in every respect.68

67 Ibid., p. 92.

68 To further illustrate the close association between these local gazetteers and the State it may be useful to give a brief history of their origin. The prototype of the local gazetteer was what was known as tujing 圖經 or tuzhi 圖志 (illustrated treatises) which date back as early to Qin Dynasty (221-206 B.C.). Beginning from the Sui period (581-618 B.C.), these treatises began to expand its content to cover various aspects of local affairs essential to the operation of government, such as local geography, administrative structure, local customs, renown historical sites, local worthies, etc. In 780 BC, the Tang Emperor made it mandatory for all sub-prefectures (zhoujun 州郡) to submit to the central government a local tujing every few years for the purpose of political reference. By the Ming Dynasty (1368-1643),
Following is a list of the many gazetteers written on Fujian Province and its subsidiary Taiwan Prefecture throughout the Qing Dynasty which contained descriptions indicating usage of the disputed islands by the Chinese naval forces: Revised Gazetteer of Taiwan Prefecture 重修臺灣府志 and Subsequent Revision of the Gazetteer of Taiwan Prefecture 續修臺灣府志 both written by Fan Xian 范咸 in 1747 and 1764, respectively; Records of Taiwan 臺灣志略 by Li Yuanchun 李元春, Subsequent Revision of the Gazetteer of Taiwan Prefecture 續修臺灣府志 by Yu Wenyi 余文義 in 1764, Revised Gazetteer of Taiwan County 重修臺灣縣志 by Wang Bichang 王必昌 in 1752, and Revised Gazetteer of Fujian Province 重纂福建通志 by Chen Shouqi 陳壽祺 in 1871. Some of these works even went further and indicated the precise administrative division to which the disputed islands belonged. In Chen Shouqi’s Revised Gazetteer of Fujian Province 重纂福建通志, for example, the islands

the fang zhi, or local gazetteers came to replace the formerly widely used tujing, with a expanded coverage on local affairs including topics such as establishment of administration, topography, tax revenue, population, military preparations, etc. In 1412, the Ming central government ordered that the format and content of the local gazetteers to be standardized at all prefectural, sub-prefectural, and county levels; and in 1673, Qing Emperor Kangxi further ordered that gazetteers compiled on the provincial level must also follow state instituted directives. With increasing sponsorship from the central government through time, it can be seen that the number of publications of such official records increased from 28 during the Sung Dynasty (1068-1289) to an astonishing 4,655 during the Qing Dynasty (1644-1911).

Since the compilation of gazetteers were based on the hierarchy of geographical administrative divisions, on the highest level of gazetteers stood the comprehensive gazetteers (yitong zhi 一統志) which covered the geographical history of essentially all areas under the Chinese Empire. Next in descending in order were the provincial gazetteers (sheng zhi 省志 or tung zhi 通志), followed by the prefectural gazetteers (fu zhi 府志), sub-prefectural gazetteers (zhou zhi 州志), department gazetteers (ting zhi 郡志), and lastly, the county gazetteers (xian zhi 縣志).


DIAOYUTAI/SENKAKU ISLANDS DISPUTE

are listed under the jurisdiction of the navel commands stationed at Gemalan Department, which was the administrative unit that now constitutes the present day Yi-lan County 宜蘭縣. In the section “Key Locations of Each County 各縣要塞” under the chapter of “Costal Defence,” Chen records the following:

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

It is contended by Chinese scholars that such examples seen in Chinese official records are decisive information that demonstrates: 1) that the islands were considered Chinese territory as evidenced from their inclusion in Chinese local gazetteers; 2) China’s title over the disputed islands was perfected by its official and exclusive usage of the disputed islands which was entered into official records making such evidence the strongest and most direct evidence supporting the Chinese claim to the islands;71 and, 3) the islands were initially under the jurisdiction of Taiwan Prefecture, a

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70 Chen Shouqi 陳壽祺, *Revised Gazetteer of Fujian Province 重纂福建通志* (1871). The East Asian Library of the University of Chicago holds an extensive collection of Chinese local gazetteers, from which an original copy of Chen’s *Revised Gazetteer of Fujian Province* was located and used for this study.

71 One instance that further demonstrates the official and authoritative nature of official gazetteers is their usage by the Qing government to demonstrate what constitutes Chinese territory. During diplomatic negotiations between Qing China and Meiji Japan over the Taiwan Expedition Controversy in 1874, gazetteers of the Taiwan Prefecture were constantly invoked by the Qing government as evidence that it considered the entire island of Taiwan to be its territory. For details, see section 3 of this chapter.
subsidiary of Fujian Province, and then accordingly under the sole jurisdiction of Taiwan Province as the latter was upgraded to provincial status in 1885 --- a confirmation of the Chinese claim that the disputed islands belonged directly to Taiwan. The above view is also supported and reiterated in the pamphlet *An Objective Evaluation of the Diaoyutai Dispute* published by the ROC government, stating that such patrolling authority displayed by Imperial China is the most effectual and conceivable evidence of past Chinese state authority and effective control over the islands. Lastly, given that the islands were extremely small, remote, and uninhabitable, it is contended that China's deployment of its navel forces over the islands was an adequate and only possible form of "effective control" during an era characterized by the traditional East Asian World Order.

While the effort to search for evidence supporting the Chinese claim has certainly been enormous, it must be noted that this search has also resulted in the discovery of "evidence" that has been revealed to be of a dubious nature or nothing more than rumor. Altogether, there are two pieces of evidence that have been proven to be problematic through studies done by Chinese scholars, many of whom happen also to be the most prominent supporters of the Chinese claim. The first piece of problematic evidence concerns an Imperial Edict issued by Empress Dowager in 1893, and the second one concerns a court case between fishermen Taiwan and Okinawa over fishing rights in waters surrounding the disputed islands. For more than twenty years, the above two pieces of evidence have been frequently used to support the Chinese claim while the academic studies revealing their inadequacy continue to this day to be overlooked by the media, general public, and, often times, scholars. For the purpose of objectivity of this paper, these two evidence were not included along with the presentation of evidence not in question, but are presented and discussed separately as follows.

The first piece of evidence that has been subjected to debate regarding its authenticity is what appears to be an Imperial Edict issued by Empress Dowager Cixi in 1893. According to this edict, Empress Dowager Cixi awarded to Sheng Xuanhuai a high-ranking official, three islands in the Diaoyutai/Senkaku chain to commend his gathering of highly effective medicinal herbs. The
complete translation of the edict is as follows:

(Imperial Edict of Empress Dowager Tsu Hsi issued on the 10th month of the 19th year of Emperor Kuang Hsu, 1893)
The medicinal pills submitted by Sheng Hsuan Huai, Tai Chang Szu Cheng have proved to be very effective. The herbs used in making the pills are said to have been collected from the small island of Tiao Yu Tai, beyond the seas of Taiwan. Being made of ingredients from the sea, the prescription is more effective than that available in the Chinese mainland. It has come to my knowledge that the said official's family has for generations maintained pharmacies offering free treatment and herbs to destitute patients. This is really most commendable. The three small islands of Tiao Yu Tai, Huang Wei Yu, Chi Yu are hereby ordered to be awarded to Sheng Hsuan Huai as his property for the purpose of collecting medicinal herbs. May the great universal benevolence of the Imperial Dowager Empress and of the Emperor be deeply appreciated.

(Seal of Queen Mother Tzu Hsi) 72

Many Chinese use this piece of evidence to argue that an official document such as this imperial edict ordered by the Dowager Empress to her subject is a clear example of displaying state authority over the islands. While it is true that Sheng Xuanhuai did indeed maintain a well-known herbal pharmaceutical house Guangren Tang, and it is quite possible he actually had people sent to the disputed islands to collect medicinal herbs given his capacity as a high official himself and his close ties with Shao Youlian, the governor of Taiwan, the authenticity of the edict has been subject to considerable debate.

The Japanese have cast doubt on its authenticity based on their belief that the document was nothing more than a commercial

72 This translation is cited from Congressional Records-Proceedings and Debates of the 92nd Congress, First Session, Vol. 117, No. 169, p. 17,967 (daily edition November 9, 1971).
advertisement for Sheng’s pharmaceutical house; some Chinese scholars including Chiu Hungdah and Wu Tianming (both among the most prominent supporters of the Chinese position from Taiwan and China, respectively) who upon examining the document have also suggested that certain components of the edict are indeed problematic. Such components in question include the quality and color of the paper, the location and details of the imperial seal, certain expressions and terminology related to specific official positions, all of which were found to be either unusual in comparison to typical Qing official edicts or contained references that did not conform to actual historical events.

For the purpose of an impartial and objective usage of evidence on the Chinese side, both Chinese scholars do not hesitate to point out in their studies that the imperial edict suffers from doubtful authenticity. However, as noted in Chiu’s study, given that the imperial edict itself is not a genuine one, the fact remains that Sheng Yu-chen (also known as Grace Hsu), the granddaughter of Sheng Xuanhuai, inherited the edict in question along with several letters concerning the edict from her father back in 1947 — long before the opening of the islands dispute. Therefore, it should be safe to conclude that the imperial edict in question was not “created” for the purpose of strengthening China’s case with respect to the dispute since it already existed prior to the islands dispute. Perhaps it may be also suggested that while the imperial edict per se is not a genuine one and was possibly used merely as a commercial advertisement for Sheng’s pharmaceutical house, evidently it was “fabricated” based on the common understanding of the Chinese public that the islands were Chinese territory — in other words, an “edict” depicting Chinese state authority over territory that belonged to another country would be a self-defeating advertisement. At any rate, the uncertainties of the origin of the imperial edict and the problems inherent in the imperial edict itself seem sufficient to rule out the appropriateness of its usage as viable evidence supporting the Chinese claim.

The second piece of evidence of dubious authenticity which

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is also frequently used by supporters of the Chinese claim is a court case said to have occurred during the period of Japanese colonial rule over Taiwan. It is said that in a 1944 court case between Taipei County and Okinawa Prefecture over the fishing jurisdiction of the waters surrounding the disputed islands, the Supreme Court of Japan ruled that the islands belonged to Taipei County on the grounds that they were historically a part of Taiwan and not Okinawa. It is hence argued that during times of Japanese colonial rule, even the Japanese government recognized the disputed islands as associated with no other but Taiwan County and placed them under its jurisdiction.

The usage of this court case as evidence has for the past twenty years been extremely widespread with few questioning its authenticity. The ROC president, Lee Tung-huei, during a reception of politicians visiting from Japan, reportedly also mentioned to his guests the court case as evidence of the islands previously belonging under the jurisdiction of Taiwan during Japanese colonial rule. However, noteworthy is that for more than twenty years, none of those who point to the court case in question has ever been able to specify the case number or actual date of judgment, which has led most Japanese scholars to cast doubt as to the validity of such a ruling. In response to the confusion surrounding the validity of this piece of evidence and for the sake of objectivity, academic studies by Chinese scholars have led to a thorough search through the vast amount of Japanese court case archives.

According to these studies, it has been found that the court ruling in question was indeed non-existent and was most likely confused with another court case of a similar nature. The court case that was discovered instead concerned a dispute between fishermen from Taiwan and Okinawa during 1939-1940 over fishing rights not surrounding the disputed islands, but rather in the waters that are located between Ishigaki Island and Yonaguni Island.

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and Iriomote Island (all of which are Okinawa territory not in dispute). A settlement was finally reached between the Taiwan and Okinawan fishermen through mediation by the Japanese central government, deciding that joint exploitation of resources would best serve both parties. Therefore, while the authors of these studies are not hesitant to point to the non-existence of the alleged court case, they nonetheless believe that there is more than ample evidence from other sources leading to the conclusion that “The Diaoyutai Islands were originally Chinese territory, what difference does a Japanese court ruling make?”

To this point, all historical evidence presented by the Chinese side that does not involve the actual process by which the disputed islands were incorporated by the Japanese government (which will be introduced in the following section as a continuation of the presentation of evidence supporting the Chinese claim) has been discussed in this paper. Before proceeding any further, an important point regarding the application of modern principles of international law to the Diaoyutai/Senkaku Islands dispute deserves our attention. Many Chinese scholars have argued that when evaluating the various historical evidence put forth by the Chinese side, one must not fail to recognize important political realities of the time from which they originated, namely, an era characterized by the East Asian World Order (otherwise known as the Chinese World Order).

The underlying concern is the following: whether principles of modern international law, which has its origin in the European tradition of international order, can properly judge a territorial dispute involving countries historically belonging under the East Asian World Order with fundamentally different ordering principles from its European counterpart. First and foremost, it should be noted that the East Asian World Order was a system of international relations characterized as Sinocentric and hierarchical rather than one based on sovereign equality of nations. Under such a framework, relations between nations were not governed by


principles of international law known to the West, but instead by what is known as the “tributary system” instituted by Imperial China. Insofar as non-Chinese states wished to have contact with the hegemonic power in the region, they were expected to formally recognize Chinese “cultural and political prestige” and the “universal preeminence of the Son of Heaven [the Chinese Emperor]” through subordination and maintaining a tributary relationship.78 In turn, the Chinese Emperor conferred title on the rulers of these non-Chinese states, including the Ryukyu Kingdom, through investiture missions and permitted such states to trade with China.79 Moreover, due to China’s hegemonic position in the region, it seldom needed to forge or rely on formal agreements with its subordinate tributary nations to officially declare or specify what constituted Chinese territory. Boundary lines between China and its surrounding tribute states were sufficiently clear and customarily recognized and respected by all of the nations under the traditional world order.

Clearly, the East Asian World Order was completely different from the European order under which nation-states were theoretically “equal in sovereignty and mutually independent” with a strong emphasis on “precise division of territories” and “balance of power among the nations.”80 The European World Order, which later defined the modern international world order through a system of equal sovereigns, came into collision with the East Asian World Order by the mid-19th century. Initially aiming to overcome Western influence and its military threat, Japan was able to adopt the new standards represented by the European World Order and learn to replace title to its territory previously recognized within the framework of East Asian World Order with “another title valid according to the law of the time of replacement” under


79 Countries that traditionally accepted a tributary status with China included Korea, Annam (Vietnam), Ryukyu, Siam, Burma, and several other near neighbors in Central and Southeast Asia. For a brief period (1404-1549), Japan also accepted a role in China’s tributary system.

80 John K. Fairbank (ed.), supra note 78, p. 9.
the new international (Western) world order. China, on the other hand, due to its reluctance to adopt the principles of prevailing international law at the time (which would require China to give up its millennia-old insistence of the traditional world order it created) did not complete this transition until the collapse of the Qing Empire in 1911.

After the Meiji Restoration of 1868, Japan sought to challenge and redefine the traditional East Asian World Order that was still practiced by China, and to a lesser extent Korea. With respect to the status of the disputed islands, Chinese writers contend that as a result of China's gradual decline in prestige and power in face of Japan's rejection of the traditional world order through an increasingly expansionist foreign policy, the Meiji government was able to strip the disputed islands from any status held traditionally and reduce it to a mere *terra nullius*, a pretext necessary for a justifiable territorial acquisition under rules of the new order.

Many Chinese scholars further contend that modern Japanese scholars on the subject continue to reject China's traditional ownership of the islands on the grounds that they were

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81 Matsui Yoshiro, *supra* note 27, p. 11.

82 The difference between Japan's receptiveness and China's resistance to the usage of international law was evident throughout the 19th century. The rationale behind China's resistance to international law can be illustrated and readily understood in the following quotes. In 1874, tensions between China and Japan began to mount over Japan's intention to annex the Ryukyu Kingdom. While Japan sought to use international law to its advantage by refuting the centuries old Chinese suzerainty over the Ryukyu Kingdom, China objected to Japan's words and actions on the following grounds: "That which is known as *wan guo gong fa* (The Common Law of All Nations, or international law), is a recent compilation of the respective nations of the West, which does not include any recordings specifically related to our Qing Empire. Therefore, we will not adopt to its theories. By negotiating [with Japan concerning the status of Ryukyu] in accordance with principles of justice/righteousness alone should be sufficiently adequate." In 1878, when formal negotiations between China and Japan took place over ownership of the Ryukyu Kingdom, the Chinese minister to Japan protested by stating, "[Japan] always turns to the precedents of other [Western] nations, and this is truly troublesome."

terra nullius by evaluating historical documents through modern re-interpretations uncharacteristic of situations of the time in which they were produced. While it is completely legal for the Japanese to place historical documents strictly under the lenses of modern international law regarding territorial acquisition, it may not be entirely sensible, since such documents were produced during the era of the East Asian World Order --- such an evaluation necessarily removes important political realities traditionally associated with the disputed islands, which must be considered when determining the islands’ status.

Clearly, such contentions of Chinese scholars have come as a response to several points made by the Japanese side. Japanese scholars have refuted most of the historical evidence presented by Chinese supporters (such as those provided earlier in this chapter) on the ground that they do not fulfill the requirements of the discovery-occupation principle as recognized under modern international law. First, Japanese scholars argue that although the disputed islands may have been first discovered and named by the Chinese, there was no display of any intent to occupy them for their sovereign. Second, the incorporation of the islands into the Chinese coastal defence system is not necessarily equivalent to declaring that they are Chinese territory. It is argued of the possibility that such islands were only strategically included in the defence system as a result of their inclusion in an area frequently visited by Japanese pirates. In other words, the concept of the “Chinese coastal defence system” is ambiguous.

Chinese writers contend that while the above arguments indeed are plausible under modern concepts of international law concerning territorial ownership, none of these arguments rightfully describes the political realities that surrounded the disputed islands under the East Asian World Order. While it is true that Imperial China may not have manifested its sovereignty over the islands in a manner of a “modern state” in accordance to the modern version of the discovery-occupation principle, the abundant historical evidence presented by the Chinese side demonstrates that there was no confusion regarding traditional Chinese ownership of the islands by

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either China herself, the Ryukyu Kingdom, or even Japan.

As explained earlier, under the ordering principles of the traditional world order, it was not a customary practice for China to officially declare what was self-evident Chinese territory in a manner preferred by international law, especially when there was no acknowledged territorial competition. Simply, given the remoteness and inhabitability of these islands in pre-modern times, what more could Imperial China have done to display its ownership over these islands other than its open and notorious use of them as navigational aids on a route for diplomatic purposes and military posts where Chinese navel ships were deployed and anchored? While it is true that the concept of a costal defence system is not necessarily equivalent to territorial ownership today, such a distinction was not a significant one under the traditional East Asian World Order. Due to China’s hegemonic position in the area, no other nation would have claimed territory ownership in an area where China’s state authority was clearly acknowledged. On the other hand, China would also not have been able to randomly deploy its navel ships at its own discretion to territories recognized as belonging to the Ryukyu Kingdom or Japan without stirring agitation among them.

In short, Chinese scholars insist that it cannot be denied that Imperial China indeed exercised some degree of “effective control” over the islands. Whether or not China’s past display of state authority meets the requirements of international law concerning territorial acquisition thus depends on how the doctrine of “effective control” is applied.84 It is hoped therefore that, whether the case is to be judged under the modern version of the discover-occupation principle or some form of intertemporal law, the unique historical framework in which the disputed islands belonged to must also be taken into consideration.

The following chapter is a presentation of the process by which the Japanese officially incorporated the islands into Japanese territory in the late 19th century, revealing that many high ranking Japanese officials were also aware of the islands’ actual ownership at the time of the incorporation. For the Chinese, this serves as final evidence that the islands were considered Chinese territory and is presented as a classic example that the legacies of the traditional

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84 Tao Cheng, *supra* note 1, p. 263.
world order remained strong during the late 19th century. It will be observed that a withering (yet still existent) recognition for previously prevailing traditional rules continued to play a significant role in the minds of many Japanese high officials, as they too were aware that many of the century-old traditional ordering rules could not be entirely dismissed at their disposal --- including those with respect to the ownership of the disputed islands. With this in mind, it took the officials of Meiji Japan a period as long as ten years until they decided that the opportune time had arrived to incorporate the islands. That time arrived in 1895 --- the year in which an ever-victorious Japanese imperial military would pronounce a decisive victory over a humiliated and devastated China during the first Sino-Japanese War of 1894-1895.
3. The Process of Incorporation into Japanese Territory as Revealed in Meiji Official Documents

The following section represents perhaps one of the most persuasive segments of the overall presentation of evidence supporting the Chinese claim, namely, a presentation of all original Meiji period official Japanese documents that dealt with the process by which the islands came to be under Japanese control. These documents consist mainly of confidential letters among officials between the years 1885 and 1895, as well as other relevant documents, such as the actual contents of the January 14, 1895 Cabinet Decision. Chinese scholars on the subject contend that a thorough presentation of all of such documents unmistakably reveals that: 1) the disputed islands were well recognized to be Chinese territory under the traditional world order even by the highest level Japanese officials involved in the assimilation process which led to the indefinite postponed of the incorporation in 1885; 2) the decision to finally incorporate the islands through Cabinet Decision of January 14, 1895 was passed in deliberate and total secrecy in order to avoid precisely what Japan now unjustly accuses China of failing to do back in 1895 --- the lodging of a protest against Japan's incorporation of the islands; and, 3) after quietly waiting for a ten year period since 1885, the decision to finally incorporate the islands in 1895 was not a "result of repeated surveys of the islands" as claimed by Japan, but was only due to China's catastrophic defeat on land and sea during the ongoing Sino-Japanese War of 1894-1895, which had in effect rendered China no longer in a position to safeguard its territory through either military or diplomatic means.

While many of such Meiji documents were brought to the public's attention during the early stages of the islands dispute by Inoue Kiyoshi, the renowned Japanese scholar supporting the Chinese claim, this study includes several relatively new documents whose existence may not have been fully acknowledged by scholars concerned with the subject. For the purpose of this study, I have chosen to present all of such Meiji documents in their entirety for the sake of objectivity (which undoubtedly added to the difficulty in completing this paper as translating them proved to be an enormously challenging task). Also stressed in this study is
DIAOYUTAI/SENKAKU ISLANDS DISPUTE

accuracy in their English translations and to this end I have included
the original Japanese texts of these documents in the Appendix.
The following presentation includes all Meiji official letters and
documents pertaining to the Japanese incorporation process of the
disputed islands in 1895 that have been uncovered to date, with a
consideration of their underlying implications to the islands' status
prior to 1895.

The sweeping institutional and economic reforms
introduced in Japan following the Meiji Restoration in 1868 had in
a short period of time enabled the Meiji government to adopt an
increasingly active and forceful expansionist foreign policy. Japan’s
forceful assertion of its authority over the Ryukyu Kingdom in
1874 was soon followed by its “opening” of Korea in 1876. By
1879, the Meiji government abolished the Ryukyu Kingdom and
annexed it to form the administrative unit henceforth known as
Okinawa Prefecture. In line with Japan’s territorial ambitions, the
Diaoyutai/Senkaku Islands, which were located nearby the recently
acquired Okinawa, naturally became among the next “logical”
targets for further territorial expansion.

From an exchange of a series of letters between high-level
Japanese officials, it can be seen that the Meiji government’s
intention to occupy the Diaoyutai/Senkaku Islands was initially
conceived in 1885. In a letter dated September 22, 1885 by
Nishimura Sutezo 西村捨三, the Okinawa Prefectural Magistrate 沖
繩県令, addressed to Yamagata Aritomo 山脇有朋, the Home
Minister, the Okinawa Prefectural Magistrate requested additional
instructions regarding the placement of national markers on the
Diaoyutai/Senkaku Islands.

Although the letter was titled “Petition Regarding
Investigations at Kumesekishima and Two Other Islands,” the
actual contents of the letter demonstrate that: 1) the letter was not a
petition but in fact a letter reporting the progress made in
investigating the islands; 2) the investigations were conducted by
the Okinawa Prefectural Magistrate as a result of “secret orders”
previously ordered by the Home Minister, instead of the Okinawa
Prefectural Magistrate’s own initiative as often claimed by
supporters of the Japanese claim; and, 3) the Okinawa Prefectural
Magistrate indicated that the investigations revealed that the islands
were already named by the Chinese and officially used as
navigational aids, therefore suggesting that it may not be appropriate to place national markers on the islands. The Okinawa Prefectural Magistrate also cautioned the Home Minister of possible conflict with China if the latter were to decide that markers should be placed. The magistrate's letter reads as follows:

Attachment Paper A
No. 350
Petition Regarding Investigations at Kumeseki-shima (久米赤島) and Two Outer Islands

In regard to the uninhabited islands spread out between this prefecture and Fuzhou, China, a summary of the surveys conducted at those islands in accordance to the secret order previously conferred to the secretary of our prefecture stationed in the capital is described as follows in the enclosed attachment paper (omitted). Because Kumeseki-shima, Kuba-shima (久場島) and Uotsuri-shima (魚釣島) have since ancient time been the names used by this prefecture to refer to them, and since they are uninhabited islands close to the islands, Kume (久米), Miyako (宮古), Yaeyama (八重山) under the jurisdiction of this prefecture, there should not exist any difficulties hindering their incorporation into this prefecture. Yet, due to their differences in terms of topography from the earlier reported island Daitojima (situated between this prefecture and Osagawa Islands), the possibility must not be ignored that they are the same islands recorded as Diaoyutai (釣魚台), Huangwei-yu (黃尾堰), and Chiwei-yu (赤尾堰) in the Zhongshan Mission Records (中山傳信錄). If they truly are the same islands, then it is obviously the case that the details of the islands have already been well-known to Qing envoy ships dispatched to crown the former Zhongshan Wang, and already given fixed [Chinese] names and used as navigational aids en route to the Ryukyu Islands. It is therefore worrisome regarding whether it would be appropriate to place national markers on these islands immediately after our investigations. During the middle of next month, upon the return of the employed survey ship, Izumo-maru, which was despatched to conduct surveys of the two islands (Miyako, Yaeyama), I will immediately submit a detailed report. In regard to the issue of the placement of national markers, your further instructions are requested.

September 22, 1885

Nishimura Sutezo
Okinawa Prefectural Magistrate

To Count Yamagata Aritomo
Home Minister [Emphasis is mine]85

Among the straightforward implications of this letter as previously mentioned, scholars supporting the Chinese claim place special attention to the fact that the Okinawa Prefectural Magistrate did not investigate the islands on his own initiative, but rather in response to the secret order given by the Home Minister. This observation has led scholars to ask the following two questions: 1) Why was the letter submitted by the Okinawa Prefectural Magistrate labeled as a petition letter requesting permission to investigate the islands, when it was in fact the Home Minister who was planning and directing the matter from above? 2) Why did the Home Minister choose to secretly give his instructions in a manner that did not follow usual ordering procedures whereby directives are carried in official letters and sent to the intended receiver? Supporters of the Chinese claim believe that such a situation was a result of the Home Minister’s intention to not only keep the matter sub-rosa, but more importantly, to remain behind-the-scenes by creating an impression that the investigations and placement of markers on the islands were requests of local authorities thereby masking any association to the Ministry of Home Affairs and suspicion of any military and strategic intentions behind such moves.86

After receiving the above letter, the Home Minister decided to ignore the cautionary suggestions submitted by the Okinawa Magistrate and chose to proceed with his decision to have the disputed islands brought under Japanese control. After drafting a petition letter to the Grand Council of State for approval, the Home Minister enclosed the petition in a letter addressed to the Foreign Minister for the purpose of inquiring into the latter’s opinion on the subject matter as a final step before submitting the petition for approval.87 The draft of the petition enclosed in the

86 Historians have noted that Yamagata Aritomo was a conservative military and political leader who had a reputation for being Japan’s foremost expansionist at the time. If one considers, say, Ito Hirobumi to be the civil politician, then Yamagata was the soldier, who had at all times stressed strategic priorities.

87 The following is a brief description of the Dajokan 大政官 or Grand Council of State. The early Meiji government was collectively known as the Dajokan. The functions of the Dajokan was defined in the Constitution of 1868 (Seitaisho) as “All power and authority in the empire centers in the Council of State
letter reads as follows,

Attachment Paper B
Petition to the Grand Council of State

In regard to the investigations of the two outer islands of the uninhabited Kumeseki-shima spread out between Okinawa Prefecture and Fuzhou, China, the Okinawa Magistrate submitted a petition letter as indicated in the attachment paper. Although the above mentioned islands are the same as those found in the Zhongshan Mission Records, they were only used to pinpoint direction during navigation, and there are no traces of evidence that the islands belong to China. Also, with respect to the names of the islands, it is merely a matter of difference of nomendenture between them [China] and us [Japan]. Therefore, upon completion of Okinawa Prefecture’s investigations of the [said] uninhabited islands located in the vicinity of islands Kume, Miyako, and Yaeyama under the jurisdiction of Okinawa Prefecture, it is believed that there is no obstruction to placing national markers. I urgently request that this matter be decided. Enclosed in this petition is the aforementioned attachment paper.

Home Minister

To the Grand Minister of State&88

From the above letter, it can be seen that the Home Minister sought to incorporate the islands by asserting that their close ties with China did not constitute a legitimate Chinese claim over the islands. However, as with the Okinawa Prefectural Magistrate, the Foreign Minister did not share the view of the Home Minister. Upon receiving the above cited letter, the Foreign Minister dealt with the matter with great concern as he responded in a confidential letter addressed strictly to the Home Minister’s personal attention. In this letter, it could be seen that the Foreign Minister was fully aware of the obvious relationship between China and the disputed islands and had thus decided that the matter required much greater caution. The letter reads as follows.

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(Dajokan). By this means the difficulty of divided government is obviated. The power and authority of the Council is threefold; legislative, executive, and judicial.”


Sent October 21  
Personal Correspondence No. 38  
[From] Foreign Minister Count Inoue Kaoru  
[To] Home Minister Count Yamagata Aritomo  

In response to your letter Annex A No. 38 received on the ninth of this month, in which you requested deliberation over the matter concerning placing national markers on the uninhabited islands of Kumeseki-shima and two other islands spread out in between Okinawa and Fuzhou [China] after investigating them, I have given much thought to the matter. The aforementioned islands are close to the border of China, and it has been found through our surveys that the area of the islands is much smaller than the previously surveyed island, Daito-jima; and in particular, China has already given names to the islands. Most recently Chinese newspapers have been reporting rumors of our government's intention of occupying certain islands owned by China located next to Taiwan, demonstrating suspicion toward our country and consistently urging the Qing government to be aware of this matter. In such a time, if we were to publicly place national markers on the islands, this must necessarily invite China's suspicion toward us. Currently we should limit ourselves to investigating the islands, understanding the formations of the harbors, seeing whether or not there exists possibilities to develop the island's land and resources, which all should be made into detailed reports. In regard to the matter of placing national markers and developing the islands, it should await a more appropriate time.  

Moreover, the surveys conducted earlier of Daito-jima and the investigation of the above mentioned islands should not be published in the Official Gazette (官報) or newspapers. Please pay special attention to this.  

The foregoing is my opinion on the matter. [Emphasis is mine]89  

Scholars supporting the Chinese claim contend that the above letter demonstrates that the Foreign Minister was well aware of the fact that the islands were regarded to be within the sphere of Chinese sovereignty, which led him to advocate restraint. Had the Foreign Minister not considered the islands to be Chinese territory, there would be no other reason for him to fear that Japan's actions would "necessarily invite Qing China's suspicion toward us." This prompted him to immediately inform the Home Minister that not only should the matter be taken with a cautionary attitude, it should be postponed until "a more appropriate time." Chinese scholars contend that during a time the Chinese government had  

89 Ibid, p. 575.
been reminded of possible violation of Chinese sovereignty by Japan, the only conceivable purpose behind the Japanese Foreign Minister's advice to forego the decision to incorporate the islands and keep the matter confidential was to prevent any legal challenges from China. While Chinese scholars point to the above letter as decisive evidence that proves Japanese officials at the time were well aware of the islands' Chinese ownership, it also demonstrates that the ordering principles of the traditional world order still had a lingering effect on the minds of such officials, who were not prepared to readily dismiss its validity in face of China.

Since the disclosure of such Meiji official letters, efforts have been made by Chinese scholars to search for the Chinese newspapers articles referred to by the Foreign Minister in his letter. One of such newspaper articles has been found recently in the well-known Shanghai-based newspaper, *Shen Bao* 申報, dated September 6, 1885, about a month prior to the Foreign Minister's letter as presented above. The article contained the following account,

An Alarming Report Concerning the Island of Taiwan: *The Shanghai Mercury* has reported news received from Korea concerning several Japanese persons hoisting the Japanese flag on the island(s) northeast of Taiwan, apparently with the intention to occupy them. It is unclear what the implications [of this occurrence] are, it is thus recorded here and to be further supplemented pending future developments.

Chinese scholars note that while the newspaper article spoke of "island(s) to the northeast of Taiwan," the Foreign Minister described them as "islands belonging to China," confirming that the minister was well aware of the islands belonging to Qing China. While the *Shen Pao* news report cites the source of this piece of information as *The Shanghai Mercury* 文匯報, Chinese scholars have

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90 *Shen Bao* was founded on April 30, 1872 in Shanghai by Ernest Major. While the founder was not a Chinese national, the editors of the newspaper were mainly Chinese intellectuals and the newspaper was published in Chinese. *Shen Bao* was one of the more influential Chinese newspapers of the time.

91 Wu Tianying, *supra* note 47, p. 100.
so far not been able to locate existing copies.92

To return to the presentation of Meiji official documents, after the Foreign Minister sent the previously cited letter to the Home Minister, the Okinawa Magistrate submitted a letter on November 24, 1885 to the Home Minister as a follow up to his previous letter expressing concern over the islands' obvious relationship with China. The letter reads as follows.

In regard to the matter under my jurisdiction concerning the uninhabited islands, I hereby submit as an attachment paper a report of the mission to investigate the said islands previously ordered upon me. In regard to the construction of national markers, as I already noted to you in my previous letter of inquiry, since this matter is not unrelated to China, if problems do indeed arise, I would be in grave repentance for my responsibility. As I am uncertain on how to handle this matter, I await for your most urgent instructions.

November 24, 1885 [Emphasis is mine] 93

From the letter above, it can be seen that the Okinawa Prefectural Magistrate, who had become aware of the islands’ status through his investigation of the islands, shared a view that resonated with the view expressed earlier in the Foreign Minister’s letter. While the letters from the Okinawa Magistrate may not have been enough to alter the Home Minister’s determination to place national markers on the islands, he clearly changed his mind after consulting with the Foreign Minister. On November 30, 1885, the Home Minister replied in a letter to the Foreign Minister that he had decided to forego the placement of markers on the islands in accordance with the suggestions of the latter. Included in this letter were specific orders to forego the placement of markers which the Home Minister requested the Foreign Minister to co-sign before issuing them to the Okinawa Prefectural Magistrate. The attached order reads as follows,

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92 The Shanghai Mercury (Wenhuei Bao) was an English Newspaper founded in Shanghai by J.D. Clark and C. Rivington on April 17, 1879. See Wu Tianying, supra note 47, p. 100.

Secret No. 218 (b)

Based on the reasons given in your [previous] letter of inquiry, please acknowledge that construction [of the national markers] shall currently not to be undertaken.

Both Ministers

On December 4, 1885, the Foreign Minister replied that he had no objection to the Home Minister's decision and gave his approval of the orders to be sent to the Okinawa Magistrate. For obvious reasons, the above series of letters have been regarded by Chinese scholars as direct evidence that the islands' Chinese ownership was recognized by Japanese officials who were knowledgeable about the islands. As indicated by the Foreign Minister's earlier letter of October 21, 1885, due to his concern that any actions to take the islands might provoke suspicion from Qing China, it was suggested that the Japanese government "should await a more appropriate time" to incorporate the islands --- which was indication that the intention to acquire the islands was not truly abandoned, but merely postponed pending the arrival of an opportune occasion. In the meantime, the Japanese government followed a policy of keeping the matter secret to avoid suspicion from China. For this purpose, all subsequent letters or documents related to the islands issued by the Ministry of Home Affairs and Ministry of Foreign Affairs after 1885 were classified and handled as documents of confidentiality --- including the final cabinet decision to incorporate the islands ten years later in 1895.

Clearly, it was the view of the Japanese government that the opportunity had not arrived immediately since it denied two subsequent petitions submitted by Okinawa Prefecture in 1890 and 1893. The first petition letter was submitted on January 13, 1890 by Maruoka Kanji 丸岡兼吉, the Okinawa Prefectural Governor, requesting the Ministry of Home Affairs to incorporate the islands under the jurisdiction of Okinawa Prefecture for the purpose of regulating fishing related business carried out by persons (identity not specified) around the islands. Maruoka's petition

94 Ibid., p. 576.

95 Along with a nationwide change in administrative policy put into effect by the Japanese central government in 1886, the official title name of Okinawa Prefectural Magistrate (kenrei 県令) was changed to Okinawa Prefectural Governor
reads as follows,

(A) Number 1
In regard to the uninhabited island, Uotsuri-shima, and two outer islands, close to Ishigaki Island of the Yaeyama Islands Group under the jurisdiction of this prefecture, orders on the matter were conferred [by the Home Ministry and Foreign Ministry] on December 5 the same year in response to Report No. 384 of November 5, 1885. However, since the above mentioned uninhabited islands have heretofore remained under no specific jurisdiction, and due to the recent need to regulate marine products, the Yaeyama Islands Office has requested their [the said islands'] appropriate jurisdiction to be decided. At this time, I intend to place them under the jurisdiction of the Yaeyama Islands Office, and hereby submit this matter for your approval.
January 13, 1890

Prefectural Governor

Since the above petition was not approved by the ministry, a second petition was submitted about four years later on November 2, 1893 by Narahara Shigeru, 奈良原繁, Maruoka’s successor as Okinawa Prefectural Governor. In this petition, Narahara wrote, “Recently there have been persons attempting to conduct fishing related businesses at the islands and have involved many issues concerning regulation. As with the petition of the 18th year of Meiji [1885], since it is desirable to place markers on the islands and incorporate them under the jurisdiction of Okinawa Prefecture, your most urgent instructions are requested.” However, as the Ministry of Home Affairs continued to deem that the long awaited opportune time still had not arrived, permission was not granted to Narahara’s


urgent request to have the islands incorporated and the matter was once again postponed for an indefinite time.

Nearly a decade after the initial decision to forego national markers on the disputed islands in 1885, a series of events that took place beginning in the later half of 1894 allowed the Japanese government to re-consider its previous decisions. From a series of subsequent confidential letters written by Japanese officials throughout 1894, it can be seen that as of May 1894 the Japanese government policy to withhold the decision to place national markers was still intact. More importantly, the arrival of the long awaited "appropriate occasion" can be established as the last few months of 1894. It should be noted that among the confidential letters produced during the year 1894 presented in this chapter, I have included three relatively newly uncovered documents. While the contents of these three official documents have been partially cited in previous Chinese studies on the subject, for the purpose of this study, they will be presented in their entirety for the very first time as follows.98

The first of these three official documents is an internal document of the Ministry of Home Affairs dated April 14, 1894 written by Egi Kazuyuki 江木千之, Director of the Prefectural Administration Bureau of the Ministry of Home Affairs 内務省県治局長, and addressed to his superior, the Home Minister. From this document, it can be seen that neither had any new information on the islands been acquired by the Ministry of Home Affairs nor had the political circumstances matured enough to alter the

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98 I would like to express my sincere appreciation to Prof. Chang Chihsiung of the Institute of Modern History of the Academia Sinica 中央研究院 of the Republic of China, who generously took the time to send to me copies of several important Meiji official documents for use in this paper and offered his interpretations of them. The three confidential official documents presented in this chapter dated April 14, 1894, May 12, 1894, and December 15, 1894 were uncovered by Prof. Chang during the early 1990s in the archives of the Diplomatic Record Office of the Ministry of Foreign Affairs of Japan 外務省外交史料館 in Tokyo. The said three documents first appeared in partial citation in his work, "The Problem of Territorial Sovereignty over the Diaoyutai Islands: An Evaluation of the Japanese claim under International Law 釣魚台列嶼主權歸屬問題：日本領有主權的國際法論證," Bulletin of the Institute of Modern History, Vol. 22:II (Taipei: Academia Sinica, 1993), pp. 109-135. As I have used and interpreted the said three documents differently from Prof. Chang, he is not responsible for any errors that I may have made in that regard.
government’s policy of withholding the placement of markers on them. Egi’s internal document reads as follows,

[Secret No. 34]  
[From:] Director of the Prefectural Administration Bureau  
[To:] Minister [of Home Affairs]  

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

Please judge the appropriateness of my inquiring about the above matter. Additionally, as indicated in the attachment paper, although this matter was previously submitted back in 1885, due to the [Home Ministry’s] concern that this matter involves negotiations with Qing China, orders to forgo construction [of the national markers] were conferred after consulting the Foreign Ministry. In addition, this matter was also brought to the attention of the Grand Council of State.

Subject of Communication  
The petition dated November 2 of last year concerning the construction of jurisdiction markers at Kuba-shima and Uotsuri-shima has been submitted. However, further information on the following subjects is desired,

1. The formation of the harbors of the said islands;  
2. The possibilities of development of the islands’ land and natural resources;  
3. Whether there are evidence such as old records or folklore that demonstrate the islands belong to our country, or indicate their traditional relationship with the Miyako and Yaeyama Islands.

___ Month ___ Day, ____ Year  
The above is the subject of communication.

Okinawa Prefectural Governor  
Director of the Prefectural Administration Bureau  
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Through the above internal document, Egi informed the minister that both the Okinawa Prefectural Governor and he had received the minister’s instructions to find out certain aspects about the islands. It is thus evident that almost a decade after the initial investigations of the islands carried out by Okinawa Prefecture in 1885, very little progress had been achieved in terms of obtaining new information on the islands. Certainly, without possessing any

new knowledge on the islands and no major events fundamentally altering Sino-Japanese relations, it is no surprise that Japan had maintained a consistent policy to forego placing national markers on the islands by denying subsequent petitions from the Okinawa Prefecture.

As indicated in Egi's letter cited above, instructions from the minister were also received by the Okinawa Prefectural Governor. In a letter of response dated May 12, 1894, by the Okinawa Prefecture Governor addressed to Egi, the fact that no subsequent investigations of any kind of the islands had been carried out since 1885 was further confirmed. The letter of response from the Okinawa Prefectural Governor reads as follows,

Return No. 153
Your letter of inquiry, Secret No. 34, concerning the formation of the harbors and other related matters of Kuba-shima and Uotsuri-shima has been received. However, ever since the said islands were investigated by persons dispatched by police agencies of Okinawa Prefectural back in 1885, there have been no subsequent field surveys conducted. As a result, it is difficult to provide any specific reports on them. Enclosed as attachment papers are the previous investigation reports by the dispatched personal and the captain of Izumo-maru. Detailed copies of the above reports and a general map are both included in this letter of response.

May 12, 1894

[From:] Okinawa Prefectural Governor Naraha Shigeru

[To:] Director of the Prefectural Administration Bureau of Ministry of Home Affairs Egi Kazuyuki

Additionally, there exists no old records related to the said islands or any transcribed evidence or folklore and legends demonstrating that the islands belong to our country. The only relation [with the islands] is that fishermen from Okinawa Prefecture have since ancient times occasionally sailed from the Yaeyama Islands to the southern islands for fishing and hunting purposes. I hereby supplement this letter with the above information. [Emphasis is mine] 100

From the letter above written by the Okinawa Prefectural Governor himself, it can be seen that no investigations of any sort were carried

100 Transmitted to me by Prof. Chang Chi-hsiung. Original copy at the Diplomatic Record Office of the Ministry of Foreign Affairs of Japan in Tokyo.
Letter from Narahara Shigeru, Okinawa Prefectural Magistrate, to Egi Kazuyaki, Director of Prefectural Administration Bureau of the Ministry of Home Affairs dated May 12, 1894.
out after 1885 by any agencies of the Okinawa Prefecture to further determine the status of the disputed islands. This is contrary, however, to the official claim of the Japanese government iterated in *The Basic View* of 1972 (previously cited in Chapter IV) which stated, “From 1885 on, surveys of the Senkaku Islands had been thoroughly made by the Government of Japan through the agencies of the Okinawa Prefecture and by way of other methods.”

The letter from the Okinawa Prefectural Governor clearly indicates that the Japanese government’s *The Basic View* contains factual distortions. It may also be further concluded from the above-mentioned letter by the Okinawa Prefectural Governor that between May 12, 1894 (the day the above letter was written) and January 14, 1895 (the day the cabinet decision to incorporate the islands was finally passed), a major event of some kind must have occurred to allow Japan to alter its previously maintained decision to forgo placement of national markers on the disputed islands despite the fact that no new information had been acquired on the status of the islands since 1885. The long awaited “appropriate occasion” previously spoken of had finally arrived.

To understand what may have been considered by Japan as a turning point that allowed it to reconsider its decision, a brief background of historical events that occurred with respect to China and Japan after May 1894 is helpful. By mid-1894, a Korean domestic uprising known as the Tonghak Rebellion had become so widespread it threatened the Korean court. Unable to suppress the rebellion, the Korean government turned to Qing China for military assistance. As an effort to assist the Korean court and solidify its deteriorating position in Korea, China agreed to the Korean request and dispatched 3,000 troops on June 7, 1894. China notified Tokyo of its action in accordance with the 1885 Convention of Tianjin (Tientsin) signed by China and Japan, which included a clause stipulating that “before dispatching troops to Korea in the future, the signatories should notify each other in advance, and after the restoration of order, withdraw troops at


Determined to use any pretext available to challenge China's position in Korea, Japan regarded China's action of dispatching troops as an opportune occasion to dispatch troops as well. Accordingly, no sooner had the Tonghak Rebellion been suppressed with the help of Chinese troops, Japan dispatched an army of 8,000 troops and seven warships under the pretext of protecting Japanese citizens in Korea. With the rebellion suppressed, China proposed to Japan a joint withdrawal that was supported by the Korean government and Western powers. However, determined to further take advantage of the situation, Japan rejected China's plan and suggested instead a proposal of joint intervention for internal reform in Korea --- a proposal Japan knew was unacceptable to China and would necessarily be rejected, thereby creating a pretext for military confrontation. Indeed, negotiations between the two nations became deadlocked, and led to a war signifying a competition for ascendancy of a prostrate Korea. The war was known as the Sino-Japanese War of 1894-1895.

Hostilities broke out on July 25, 1894 with a preemptive attack by the Japanese navy, which sank a Chinese troop transport ship carrying 1,200 soldiers. On August 1, Japan and China officially declared war on each other. The Japanese forces maneuvered brilliantly and proved victorious in battle after battle, on both land and sea. On September 15, at the pivotal battle of Pyongyang, China's best land forces suffered a crushing defeat. Two days later, China's Northern (Beiyang) fleet suffered a similar fate in a critical naval battle off the Yalu River in the Yellow Sea; the Chinese fleet was badly damaged and retreated to the Chinese naval base at Port Arthur after losing four ships and more than a thousand officers and men while the Japanese fleet suffered the loss of but one ship. In the meantime, Japanese land forces pushed forward to cross the Yalu River and entered into southern Manchuria. By early November, the Japanese advanced into the Liaodong Peninsula and seized the city of Dairen. On November 22nd, the heavily fortified Chinese naval harbor, Lushun (Port Arthur), also fell into the hands of the Japanese; on the same day,

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104 Ibid., p. 340.
China proposed a peace settlement to Japan. By this time, it had become clearly evident to both the Chinese and Japanese that the eventual victory of Japan was only a matter of time. In fact, earlier on October 8, the British minister in Japan learned that the Japanese government had been anticipating a final victory and therefore had already begun work on drafting its demands, including acquisition of Chinese territory, to be included in the peace terms. As the situation worsened for China, the Japanese Foreign Minister on December 18 further rejected China’s proposal to have a peace conference held in Shanghai. The minister indicated that any conference must take place in Japan, thus signifying that it was China, not Japan, who was in the inferior position of pleading for peace.105 With this summary of the situation between China and Japan as it stood by the end of 1894, we now turn our focus to an evaluation of its implications and relation with respect to the status of the disputed islands.

Seven months after the previously cited letter sent on May 12, 1894 by the Okinawa Prefectural Governor reporting that no further information had been acquired on the disputed islands, the matter concerning the placement of markers on the disputed islands was once again revived in an internal document dated December 15, 1894 by Egi, addressed to the Home Minister. In this document (as also in his earlier letter of April 14), Egi acknowledged that the reason behind the earlier decision that the placement of markers on the islands should not be undertaken was because the matter “involved negotiation with Qing China.”

However, based on his reasoning that “the situation today is greatly different from the situation back then,” he then inquired about the minister’s inclinations on the matter. Egi also prepared a draft of a preparatory proposal written on the behalf of the minister, which in the event that the matter was approved by the minister, could be submitted to the Cabinet Meeting requesting the necessary final approval. The contents of the preparatory proposal were largely based on the previously denied petition submitted by the Okinawa Prefectural Governor on January 13, 1890, citing the

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regulation of marine product-related businesses around the islands as the purpose of requesting markers to be placed on the islands. Egi’s internal letter reads as follows.

[Secret No. 133, December 15, 1894]
[From:] Director of the Prefectural Administration Bureau
[To:] Minister [of Home Affairs]

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

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

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

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

__ Month __ Day, __ Year

[From:] Minister [of Home Affairs]
To Prime Minister

(Attachment Paper) The islands, Kuba-shima and Uotsuri-shima, located northwestward of Yaeyama Islands under the jurisdiction of Okinawa Prefecture, have heretofore been uninhabited islands. Due to recent visits to the said islands by individuals attempting to conduct fishing related businesses, and that such matters require regulation, it is desirable to have [the islands] be put under the jurisdiction of [Okinawa] Prefecture as
requested in the Okinawa Prefectural Governor’s petition. For the purpose of recognizing [the islands] under the jurisdiction of [Okinawa] Prefecture, markers should be constructed in accordance to the said petition.

It is requested of the Cabinet Meeting to decide on the above matter. [Emphasis is mine]106

Finally, the above document reveals that, after nearly a decade, the decision to forego placement of markers on the islands was about to be reversed. To fully comprehend what had led to this change in policy with respect to the disputed islands, one must turn to a consideration of the historical and political background at the time this particular document was written. As shown previously, by the end of October 1894, the tide had turned against China as a result of the Sino-Japanese War of 1894-1895, as had been well recognized by both sides; and the above internal document was not produced until an even later date in mid-December when an already devastated China was eagerly seeking peace. Therefore, by taking into account this historical background, it can be readily understood what Egi meant at the time he said “the situation today is different from the situation back then” --- which was in fact the only reason given by him explaining why the matter had been brought up for re-consideration. Also, the assertion that the matter “involved negotiations with Qing China” in the letter confirms the fact that the Japanese officials were clearly aware of the islands’ obvious relationship with China; yet there are no official documents from Qing China or Meiji Japan indicate that the matter was ever brought up by Japan and discussed with China.

While examining the above internal document, one must be particularly careful with the contents of the second paragraph. At first sight, it appears that agencies of the Japanese Imperial Navy had investigated the islands to some certain degree. However, it can be seen in the wording of the paragraph that there exists a noticeable degree of uncertainty and ambiguity which reveals that the investigations were far from complete. Moreover, the paragraph specifically mentioned that the focus of the investigation was the geographical aspects of the islands, not their political background.

106 Transmitted to me by Prof. Chang Chi-hsiung. Original copy at the Diplomatic Record Office of the Ministry of Foreign Affairs of Japan in Tokyo.
In an effort to determine how thoroughly the investigations were carried out, I have personally sought to evaluate the validity of the information given in the paragraph. In the internal document, Egi remarked that “it appears that the above two islands [Kuba-shima and Uotsuri-shima] are, Wahei-san and Chiyogyo-shima, found on Map Number 210.” However, it is not surprising to see that Map Number 210 invoked by Egi actually only contains Wahei-san and not Chiyogyo-shima (author’s note: Japanese transliteration of Chinese name, Diaoyu Island), since they are two different names of the same island --- Diaoyutai/Uotsuri Island. Evidently, Egi’s

107 In order to examine what sort of information the Imperial Map Number 210 provided Egi, I decided to locate the map and examine it myself. Indeed, enormous amounts of time and effort were spent just to locate the map, but it eventually yielded fruitful results. After learning that the University of California at Berkeley maintains an excellent collection of nineteenth century Japanese maps produced by the Hydrographic Office of the Navy Ministry, I was fortunate to locate and acquire the maps needed for this study. I must note that Map Number 210 was published under two editions during the Meiji era. The initial edition of the map was published by the Hydrographic Office of the Imperial Navy on July 21, 1888 under the title “Japan Kagoshima Gulf to Taiwan with adjacent coast of China” and re-printed every few months afterwards with occasional minor corrections. The second edition of the map covered the same geographical area as the previous version but contained substantial revisions. This edition of the map was first published on March 29, 1897 under a new title as “Japan and China: Nagasaki and Amoy,” replacing the earlier edition. As suggested by the titles, both editions of the map included Japanese and non-Japanese territory. It was also indicated on the maps that the earlier edition was based on the British Admiralty Chart No. 2412, and the later edition was based on a 1891 edition of the same British map. Since Egi’s internal document was written in 1894, it is certain that he consulted the earlier edition of Map Number 210 produced by the Japanese Hydrographic Office, i.e., the 1888 edition.

108 In order to understand why the main island of the disputed islands chain, Diaoyutai/Uotsuri Island, was also known to the Japanese Navy as Wahei-san during late 19th century, a brief history of the origin of the islands’ names will be helpful. The term Wahei-san was derived from a series of British Admiralty Charts published since 1845, in which Diaoyutai/Uotsuri Island was labeled as Hoapin-san and Huangwei Yu/Kubashima as Tiau-su. [Note: san and su are the Fukienese pronunciations of shan 山 (mountain) and yu 島 (island) in Mandarin Chinese which were used interchangeably for names of islands] The British Navy was incorrect in using Hoapin-san and Tiau-su to label Diaoyutai/Uotsuri Island and Huangwei Yu/Kuba-shima, respectively, since these Chinese names referred to
Map No. 210: Japan Kagoshima Gulf to Taiwan with Adjacent Coast of China, 1888 Edition. Published by (Earth Sciences & Map Library, University of California at Berkeley)
lished by the Hydrographic Office of the Navy Ministry of Japan.
Map No. 210: Japan and China — Nagasaki to Amoy, 1897 Edition. Published by the Hydrographic (Earth Sciences & Map Library, University of California at Berkeley)
Office of the Navy Ministry of Japan.
investigation of the islands was not characterized by precision since he mistook Wahei-san and Chiyogyo-shima to be two separate islands. It should also be noted that the names of the disputed islands in the map were Japanese transcriptions of their British names instead of their more commonly used Chinese or Japanese traditional names, which suggests that they were merely copied off British Admiralty Chart No. 2412.109

other islands. Hoapin-su is the Fukienese pronunciation of 花瓶嶼 (Huaping Yu in Mandarin Chinese), the name of an island located northeast of Taiwan that bears no relation to any of the disputed islands. Tiau-su, on the other hand, is a transliteration of the Fukienese pronunciation of Diaoyu Yu, which is the main island of the disputed islands group, rather than Huangwei Yu/Kubashima the British Navy mistakenly identified.

During the last quarter of the 19th century, when the Japanese Imperial Navy began relying heavily on British Admiralty Charts to compile their own nautical charts, the names Hoapin-su and Tiao-su, were adopted and transliterated back into a separate set of Chinese characters as, 平山 (Wahei-san) and 低牙吾蘇島 (pronounced at the time as Chi-a-u-su-shima), respectively, despite the fact that they had already been commonly known to the Japanese by their correct Chinese names: Chiyogyo-sho (Japanese transliteration of Diaoyu Yu 釣魚嶼) and Kobi-sho (Japanese transliteration of Huangwei Yu 黃尾嶼). Since then there then existed two sets of names for the islands using Chinese characters (excluding their native Japanese names, which would be the third set), the Japanese Hydrographic Office used one of either two sets while never mixing them together to avoid confusion. For example, in the 1888 edition of Map Number 210, the three main islands in the disputed islands group were labeled using their British-derived names as: Wahei-san 和平山 (Hoapin-san), Chi-a-u-su-shima 低牙吾蘇島 (Tiau-su), and Ra-re-ri-iwa 爾勒里岩 (Raleigh Rock). In the later 1897 edition of the said map (not yet published at the time of Egi’s said internal document of December 15, 1894), the same three islands were labeled using their original Chinese names as Chiyogyo-sho 釣魚嶼, Kobi-sho 黃尾嶼, and Sekibi-sho 赤尾嶼. (Note: As with the Chinese, the Japanese traditionally used the characters san 山, sho 島 and shima 島 interchangeably to denote islands.)

From Egi’s internal document, it can be seen that he mistakenly asserted that Wahei-san 和平山 and Chiyogyo-shima 釣魚島 were both on Map Number 210. Evidently Egi was not aware of the following two important facts: 1) the above two names denoted the same island; 2) the said map invoked by Egi only listed the name Wahei-san and not Chiyogyo-shima. Had Egi truly conducted a careful investigation of the disputed islands, it is difficult to imagine that such an erroneous mistake could have been made.

109 My acquisition of the original copies of different editions of the Japanese Imperial Navy’s Map No. 210 has indeed been extremely useful for the purpose of this study. While it has enabled me to uncover errors inherent in Egi’s
internal document and further discuss their implications to the dispute, it has also allowed me to discover certain errors in evidence presented by Chinese scholars supporting the Chinese claim.

The evidence in question involves a confidential publication issued in 1895 by the Japanese Navy Ministry entitled Manuscripts of the History of the Sino-Japanese War 日清戰史稿本, which Chinese scholars believe can demonstrate that high-level Japanese naval commanders regarded the Diaoyutai/Senkaku Islands to be a part of Taiwan and were unaware of the Cabinet Decision of 1895 to incorporate them. In the section entitled Expedition of the Taiwan Rebels 臺灣匪賊征討 found in the said publication, the sea route taken by the Japanese navy on its way to Taiwan after the Sino-Japanese War was recorded in detail. The record shows that Kabayama Sukenori 樺山資紀, the newly appointed Governor-General of Taiwan, ordered that the gathering location for his squadron prior to landing on Taiwan was to be “90 nautical miles north of Taiwan’s Tamsui Bay (sea surface of Hsiao Keelung).” As the squadron approached the location, Kabayama further specified it as “approximately five miles south from Senkaku Island 尖閣島約五海里處.” From this statement, Chinese scholars conclude that Kabayama himself regarded the disputed islands to be a part of Taiwan since he previously referred to the area as “Taiwan’s Tamsui Bay (sea surface of Hsiao Keelung).” (For details of this contention, see Wu Tianying, supra note 47, pp. 115-120).

However, after studying the Japanese Imperial Navy’s Map No. 210 myself, I discovered that the island Kabayama referred to as Senkaku Island 尖閣島, was in fact not the disputed Diaoyutai/Senkaku Islands. Map No. 210 had mislabeled the island Huaping Yu 花瓶嶼 as Senkaku Island 尖閣島, which is understandable since British Admiralty Charts (on which Japanese Navy maps were based) had always had the two islands confused. As noted in the previous footnote, mid-19th century British Admiralty Charts contained the common error of mislabeling Diaoyutai/Ootsuri Island as Hoapin-su (which the Japanese rendered into Waheis-san 和平山), and accordingly mislabeling Huaping Yu as Pinnacle Island (which the Japanese Navy translated into Senkaku Island 尖閣島). This mistake in terminology was corrected in later British maps, whereby the name Pinnacle Island was no longer used to refer to Huaping Yu, but rather the group of islands known today as the Diaoyutai/Senkaku Islands. The fact that Kabayama meant to refer to Huaping Yu instead of the disputed Diaoyutai/Senkaku Islands is further confirmed by the coordinates he gave, which corresponded exactly to the location of Huaping Yu.

I should also note that the same errors in mislabeling Huaping Yu and the Diaoyutai/Senkaku Islands can also be seen in mid-19th century U.S. navel maps. I have found that maps used by Commodore Matthew C. Perry during his famous expedition to Japan in 1853-1854 also referred to Huaping Yu as Pinnacle Island. It is also interesting to note that sailing records made during Perry’s expedition contained the following passage:

If bound to Lew Chew [the Ryukyus], from Hong Kong, pass through the Formosa channel during the southwest monsoon, giving Agincourt [Pengjia Yu], Crag [Mianhua Yu], and Pinnacle islands [Huaping Yu],
Egi's description of his investigation is shortly concluded by noting that "Based on the verbal descriptions of an official from the Hydrographic Office, it appears that the above two islands have not yet been previously claimed by any [nation]. From a typographical perspective, it can be assumed that the islands are necessarily a part of the Okinawa Archipelago." Again, it cannot be denied that the tone of such statements carries a certain degree of uncertainty. It is also curious why the identity or level of rank of the "official from the Hydrographic Office" responsible of providing such information was not specified. Why was such critical information supposedly forming the basis of a national decision on territorial acquisition only verbally conveyed by an unidentified person from the Hydrographic Office without any reference as to how and when such information was acquired?

Perhaps more importantly, Egi was incorrect to assert that the disputed islands geographically formed a part of the Okinawa Archipelago, since it has been shown that the disputed islands are located on the edge of the East Asian continental shelf separated from the Okinawa Islands by the 2,270 meter deep Okinawa Trough. Japan's Hydrographic Office produced its first nautical map in 1871 and by the late 1880s certainly had acquired the technological capability to detect what was even noticeable by ancient Chinese navigators\(^\text{110}\) --- a sudden change in sea color indicating a significant drop in sea depth. Had thorough investigations of the islands truly been carried out by the Hydrographic Office, it is curious that such an important

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geographical feature separating the disputed islands from the Okinawa Islands could have been neglected.

As previously demonstrated, judging from the first paragraph of Egi's internal document, it is evident that the decision to incorporate the islands had already been made based solely on the fact that "times have greatly changed" due to Qing China's defeat in the Sino-Japanese War --- Qing China was simply no longer in a position to file a legal challenge whether or not it was to have detected Japan's action of incorporating the islands. How could a decision of such national importance have possibly been made based on Egi's summary of investigations which consisted of no more than three sentences? The brevity, uncertainty, and ambiguity of Egi's summary accompanied by its obvious errors only serves to further demonstrate that such a description was hastily and carelessly added only "for the record" to serve as a seemingly viable justification to finally incorporate the islands. Even if the above information given in the second paragraph did indeed result from investigations from the Hydrographic Office, it is doubtful that the investigations were carried out for the purpose of determining the islands' political background since not only was the information that resulted far too vague and prone to error to determine such an important subject, but also because the official duty of the Hydrographic Office generally did not extend beyond conducting necessary field surveys for creating nautical charts. By the end of 1894, whether or not Japan had the information to determine the status of the islands had become an issue of little relevancy (as also evidenced by the fact that the Home Ministry no longer felt compelled to order Okinawa Prefecture to resume investigations on the disputed islands despite its acknowledgment that no subsequent investigations had been carried out by Okinawa since 1885); and it is doubtful that any decisive information was truly collected during the last few months of 1894 that was not already known by Japan. As nicely put by another Chinese scholar, "there simply was nothing on or around the islands during the last year [between May and December of 1894] which could not have been discovered during the previous nine years to help determine the status of the islands."\footnote{Tao Cheng, supra note 1, p. 249.} Simply, the arrival of the Sino-Japanese War greatly weakened the once formidable Qing Empire and rendered it unable
to safeguard its own territory through either political or military means, which was precisely the opportune occasion the Japanese government had been long waiting for.

To return to the process by which the islands were incorporated, subsequent official documents reveal that with the removal of previous concerns in relation to China, the Japanese government proceeded smoothly and swiftly to bring the islands under the rule of the Japanese Empire. The previously cited petition letter drafted by Egi was quickly approved by Home Minister Nomura Yasushi and by December 27, 1894, a letter enclosing the petition had been sent to Foreign Minister Mutsu Munemitsu for his final voice on the matter. The letter reads as follows,

Secret (in red) No. 133
In regard to the matter of constructing jurisdiction markers on Kuba-shima and Uotsuri-shima, and in accordance to Attachment Paper A consisting the petition from the Okinawa Magistrate, and the relating Attachment Paper B, orders [to forego the placement of makers] were conferred after our deliberation with your ministry during the 18th year of Meiji [1885]. However, considering the fact that the situation today has changed relevant to the situation back then, I plan to submit this matter to the Cabinet Meeting for approval in an attachment paper. I therefore request to discuss with you this matter in advance.

December 27, 27th Year of Meiji [1894]

Home Minister Viscount Nomura Yasushi
To Foreign Minister Viscount Mutsu Munemitsu [Emphasis is mine]112

Though the previous concern of China detecting Japan’s actions of incorporating the islands had greatly diminished, the Japanese government continued to maintain the confidentiality of the matter as demonstrated in the above letter, perhaps for unlikely but possible unexpected contingencies. At any rate, the above letter confirms that the sole reason leading to the reversal in the policy toward the islands was indeed based on "the situation today has changed relative to the situation back then" and nothing more. On January 11, 1895, the Foreign Minister replied in a letter stating that he proposed no objection to the matter.

Finally, on January 12, 1895, the proposal was presented to Prime Minister Ito Hirobumi in an attachment paper under the title, "Secret No. 133: Matter Concerning the Placement of Markers." Two days later, the proposal was further brought before the Cabinet Meeting on January 14, 1895 and the following resolution was adopted,

The Home Minister has requested a cabinet decision on the following matter: the islands, Kuba-shima and Uotsuri-shima, located northwestward of Yaeyama Islands under the jurisdiction of Okinawa Prefecture, have heretofore been uninhabited islands. Due to recent visits to the said islands by individuals attempting to conduct fishing related businesses, and that such matters require regulation, it is decided that [the islands] be placed under the jurisdiction of Okinawa Prefecture. Based on this decision, the Okinawa Prefectural Governor's petition should be approved. Since there are no disagreements on the matter, it shall proceed based on the above decision.113

On January 21, 1895, as Prime Minister Ito gave his final approval to the cabinet decision, the scheme of Meiji Japan to incorporate the disputed islands, planned long before and awaiting only a decision on its timing, now at last was realized.

While the Japanese government has, to date, consistently regarded the above Cabinet Decision of January 14, 1895 as forming the legal basis for its claim over the disputed islands, scholars supporting the Chinese claim have pointed to some of the inadequacies that bring its legality into question. First, the cabinet decision only mentioned two of the islands belonging to the disputed islands chain, Diaoyutai Yu/Uotsuri-shima and Huangwei Yu/Kuba-shima, while leaving the third island, Chiwei Yu/Kubaseki-shima, beyond the scope of the incorporation. Second and more importantly, supporters of the Chinese claim place special emphasis on the fact that the Cabinet Decision in question (as with the entire incorporation process of the disputed islands) was carried out in total secrecy and was never notified to concerned states, in particular, Qing China.114


114 For details on the second contention with respect to the legality of the Cabinet Decision under international law, see footnote 132.
Scholars supporting the Chinese claim contend that the reason for such confidentiality is obvious: simply that the Japanese government was aware that the islands had long been considered Chinese territory under the traditional world order. Therefore, despite the diminishing possibility of a Chinese protest due to Qing China's weakening position in the ongoing war, the Japanese government nonetheless maintained its policy of concealing its designs for the islands in order to ensure that the incorporation process precede without any unlikely yet potential diplomatic trouble from China. In fact, the first time the contents of the Cabinet Decision of 1895 were disclosed to the public did not occur until more than half a century later in March 1952, when it was included in *Japan Foreign Affairs Documents*, Volume 23. In addition, Chinese and Japanese scholars on the subject have noted that national markers were in fact never placed on the islands following the Cabinet Decision of 1895 but instead were belatedly erected almost seventy years later on May 10, 1969 by the mayor of Ishigaki city in response to heated controversy over the islands' ownership. Simply put, due to the secretive nature of every aspect of the Japanese incorporation of the islands, Qing China was deprived of the opportunity to generate any kind of protest against Japan's actions.

Many supporters of the Japanese claim have argued that, one year after the Cabinet Decision of January 14, 1895, the promulgation of Imperial Decree No. 13 on March 5, 1896 incorporated the disputed islands into Japanese territory under the administrative unit of Yaeyama County of Okinawa Prefecture. Clearly, the purpose behind this argument is to foster an impression that the incorporation process of the disputed islands was legalized through Japanese domestic legislation procedures and proclaimed to the public. However, Chinese scholars have constantly refuted the applicability of Imperial Decree No. 13 to the islands dispute since nowhere in the decree could any references to the disputed

115 The series known as *Nihon Gaiko Bunsho (Japan Foreign Affairs Documents)* began its first publication in 1939, which is a chronological anthology of important documents selected from the archives of the Ministry of Foreign Affairs of Japan.

116 Inoue Kiyoshi, supra note 5, p. 18.
islands be found. The entire decree reads as follows,

WE, give sanction to the matter regarding the formation of Okinawa Prefecture, and hereby make the following proclamation:

Imperial Signature Sign Manual
Imperial Seal
March 5, the 29th year of Meiji
Prime Minister Count Ito Hirobumi
Home Minister Yoshikawa Akimasa

Imperial Decree No. 13 (Official Gazette March 7)

Article I.
Excluding the two areas of Naha and Shuri, the rest of Okinawa Prefecture is to be divided into the following five counties:

Shimajiri County Each magiri [traditional regional unit] of Shimajiri; Kume-jima; Kerama Islands group; Tonaki-jima; Aguni-jima; Iheya-jima Islands group; Tori-shima and Daito-jima.

Nakagami County Each magiri of Nakagami.
Kunigami County Each magiri of Kunigami; and Ie-jima. Miyako County Miyako Islands group. Yaeyama County Yaeyama Islands group.

Article II.
In the event that the boundaries or names of the counties need to be changed, they shall be decided by the Home Minister.

Additional Clause

Article III.
The time at which this decree goes into effect shall be decided by the Home Minister. 117

From the contents of the edict, it can be seen that the only islands placed under the administrative unit of Yaeyama County were those that have been known to constitute the Yaeyama Islands group; and the Diaoyutai/Senkaku Islands were nowhere to be seen. Since the Diaoyutai/Senkaku Islands geographically formed its own islands group separate from that known as the Yaeyama Islands group, had the imperial edict truly intended to include the disputed islands under Yaeyama County, it would have listed them

along with the Yaeyama Islands group. For example, in the case of Shimajiri County, each of the encompassed islands groups were listed individually; islands such as Tori-shima and Daito-jima, which were both geographically separate from any islands group, were also specified under Shimajiri County to avoid any confusion as to their appropriate administrative division.

To further demonstrate that the disputed islands were not promulgated into Japanese territory by Imperial Edict No. 13 of 1896, Chinese scholars have directed attention to a "Table of County District Areas" published by the Okinawa Prefectural Government. The table included a complete list of all administrative areas under each county of Okinawa Prefecture as of December 31, 1896. Under the section listing all areas administrated under Yaeyama County, the Diaoyutai/Senkaku Islands were once again absent from the list. Important is the fact that the said table specifically indicated it had been devised based on the division of administrative areas as determined by Imperial Decree No. 13.118

In short, a careful examination of the imperial edict alone sufficiently reveals that it had nothing to do with the disputed islands; the only purpose of issuing the edict was to introduce a new county system to Okinawa Prefecture, which was an entirely separate issue unrelated to the disputed islands.119 On the other hand, the said imperial edict in fact proves the opposite of what many Japanese had originally intended --- that not only were the disputed islands not recorded into the land registry of any administrative unit of Okinawa Prefecture, but more importantly, the islands were simply never publicly proclaimed as Japanese territory by any government organs or in any official declarations. Perhaps for the reasons above, the imperial edict was never included as evidence in The Basic View of 1972 issued by the Japanese Foreign Ministry. Those Chinese and Japanese scholars responsible for uncovering all of the Meiji official documents presented heretofore contend that the secretive nature of the entire


119 Inoue Kiyoshi, supra note 5, p. 128.
incorporation process revealed through these historical documents, undermines the legality of Japan’s possession of the islands based on the discovery-occupation mode of territorial acquisition. It is commonly pointed out that for discovery-occupation to be valid under international law, both possession and administration are necessary. As cited previously, with respect to possession, international law generally requires,

The territory must really be taken into possession by the occupying state. For this purpose it is necessary that it should take the territory under its sway (corpus) with the intention of acquiring sovereignty over it (animus). This... normally involves a settlement on the territory, accompanied by some formal act which announces both that the territory has been taken possession of and that the possessor intends to keep it under his sovereignty. [Emphasis is mine.]120

Taking the above into consideration, the legality of Japan’s incorporation of the disputed islands is indeed questionable since it has been revealed by Meiji official documents that the entire incorporation process was in fact kept secretive and no formal acts announcing Japan’s incorporation were carried out. Additionally, Koga Tatsushiro, the first Japanese settler on the islands, submitted his final application to the Ministry of Home Affairs to lease the islands on June 10, 1895, six days after Taiwan had been officially transferred over to Japanese control.121 Furthermore, approval of Koga’s application was delayed for more than a year and not given until in September 1896. As a result, actual settlement did not take place until 1897 when Koga began investing large amounts of capital to develop his businesses on the islands.

As such, acts of settlement by Japanese citizens did not take place within a relatively concurrent time period in which the 1895 Cabinet Decision took place (but were instead delayed for almost two years), and occurred only after the 1895 Treaty of Shimonoseki was signed. Since the Cabinet Decision of January 14, 1895 was

120 Oppenheim’s International Law, supra note 19, p. 689.

121 Chinese scholars believe that the only reason that explains why Koga submitted his application immediately after Japan had officially taken control over Taiwan but not earlier that year was simply because he too was not aware of the Cabinet Decision of January 14, 1895.
never accompanied by any formal acts announcing Japan's incorporation or acts of settlement on the islands back in 1895, Chinese scholars conclude that the only valid legal basis that can support Japan's claim over the disputed islands lies in the Treaty of Shimonoseki signed with Qing China on April 17, 1895.

To further demonstrate that the Meiji government's intention to keep the incorporation process a matter of confidentiality could have only resulted from its desire to prevent any awareness from Qing China, Chinese scholars point to several instances whereby other small islands whose status was truly terra nullius and whose ownership was not under dispute were incorporated by Japan in a manner that differed greatly from its handling of the Diaoyutai/Senkaku Islands. For example, in 1891 when the Meiji government decided to incorporate three small uninhabited islands southwest of the Ogasawara Islands, a letter from the Home Minister to the Foreign Minister specifically noted that efforts should be made to incorporate the islands in accordance with prevailing rules of international law at the time. As a result, the cabinet decision to incorporate the three islands was promulgated and made public on September 9, 1891 under Imperial Decree No. 190.122 Moreover, not only did that imperial decree specify the exact names, coordination, and designated administrating authorities of the incorporated islands, such information also was published in the Official Gazette (Kanpo 官報) and carried in Japanese newspapers. In addition, back when the Ogasawara Islands were incorporated into Japanese territory in 1876, the matter was brought to the acknowledgement of concerned states as the Japanese government notified their respective ministers residing in Japan.123

In should be noted that the approval of the incorporation of the Ogasawara Islands in 1891 and the denial of the petition of January 2, 1890 submitted by the Okinawa Prefectural Governor

122 Inoue Kiyoshi, supra note 5, p. 131. Original documents can be found in Japan Foreign Affairs Documents 日本外交文書, Vol. 24.

occurred in relatively the same time frame. Had the Diaoyutai/Senkaku Islands truly been regarded by the Japanese government as *terra nullius*, the decision to incorporate the Diaoyutai/Senkaku Islands similarly should have materialized as with the Ogasawara Islands, rather than being repeatedly denied and postponed. Furthermore, if one compares the vastly different manner by which the final step was carried out in incorporating the Ogasawara Islands in 1890 and the Diaoyutai/Senkaku Islands in 1895 --- one with full disclosure and the other by entire secrecy --- it is evident that Japan was still perfectly aware of the Diaoyutai/Senkaku Islands’ relationship with Qing China. Hence, Chinese scholars are unanimous in their belief that the islands were not truly “incorporated” by the Japanese government, but rather “stolen” from a weakened Qing China. From the Chinese perspective, the Japanese claim that the islands were *terra nullius* and incorporated by virtue of the principle of discovery-occupation is to cloak its past territorial ambition over Chinese territory with high-sounding yet unfounded justifications.

Chinese scholars have been extremely sensitive to imperial Japan’s past usage of international law to justify its territorial designs over territory of other nations, naturally those that belonged to China in particular. Indeed, there are striking similarities between the Japanese incorporation process of the Diaoyutai/Senkaku Islands in 1895 and an earlier event known as the Japanese Expedition to Taiwan of 1874, when Japan sent a military expedition to the eastern region of the Chinese island of Taiwan. The reason behind sending this military expedition as claimed by Japan at the time was to punish aborigines of Taiwan for killing 54 shipwrecked Ryukyuan sailors in late 1871. This was merely a pretext, however, considering Japan’s military expedition was sent more than two years after the killings.

The real objective of the expedition was to legitimize Japan’s control over the Ryukyu Kingdom by asserting the exclusive right to speak for its “subjects,” the Ryukuans, thereby challenging Chinese suzerainty over the Ryukyu Kingdom, as well as establishing a foothold in Taiwan. In June 1873, prior to Japan displaying any signs of sending an expedition to Taiwan, a Japanese envoy visited the Zongli Yamen 總理（各國事物）衙門 (Board of Foreign Relations, *de facto* Chinese Foreign Ministry), openly asserting the
right to speak for the murdered Ryukyuans. In response, Zongli Yamen officials argued that since Ryukyu was a Chinese tributary and Taiwan was a part of China, the matter should be managed by China and its discretion alone and there was no need for Japan to act in place of China. One of the Zongli Yamen officials further stated in effect that the government could not always be held responsible for actions of the “untamed savages” of Taiwan since they lived in areas “beyond influences of government and civilization” --- a situation he regarded to be common in other countries as well, citing such examples as the Ezo (蝦夷) people of Japan and American Indian tribes of the United States.

However, the Japanese government seized upon this assertion and argued that the absence of effective local Chinese administration over areas resided by Taiwan aborigines implied that such areas constituted “land without owner” under principles of


Most original official documents on the subject issued during the controversy by Qing China and Japan can be found in Japan Foreign Affairs Documents, Vol. 7, pp. 1-338.

125 As previously mentioned, due to the Qing government’s reluctant attitude toward adopting western-originated ideas, it naturally had a poor understanding of principles of international law --- which was regarded by the Japanese government as an obvious weakness that it could exploit. From the Qing government’s perspective, that there existed certain areas under its empire resided by “wild savages” beyond “influences of civilization and government” was regarded as natural considering the vast amount of territory it possessed. Since the concept of “sovereignty” and its requirements as defined under western international law were not well understood by many Chinese at the time, the Qing government did not believe that its treatment of areas resided by “wild savages” would jeopardize its territorial claim. Indeed, Qing China’s lack of understanding of international law proved to be a considerable disadvantage that seriously impaired its ability to safeguard its territory and deal effectively in an international setting throughout its remaining years until it was overthrown in 1911. Time after time, national interests were sacrificed as the Zongli Yamen issued statements that were easily subject to distortion by imperial powers and further used as excuses to justify territorial encroachment over China.
international law — which marked the first step in creating a pretext that would be used by the Japanese government to justify later military actions toward Taiwan. Indeed, after the formation of the Office for the Taiwan Expedition in April 1874, the Japanese government dispatched an expeditionary force to Taiwan and argued that its actions could not be construed as a violation of Chinese territory since China lacked sovereignty over the areas resided in by the aborigines. Obviously, this view was not shared by Qing China, as well as several other countries including the United States and Britain. After realizing that its previous assertion regarding aboriginal Taiwan had been distorted by Japan to mean “land without owner” and further alerted by the British minister in China that a Japanese expedition force had already been sent to Taiwan, the Zongli Yamen immediately issued a letter on May 11, 1874 to the Japanese Foreign Minister clarifying its position,

[Taiwan] is an island lying far off amidst the sea and we did not yet restrain the savages inhabiting it by any legislation nor establish any government over them, following in this a Maxim mentioned in Rei-ki [Book of Rites] “Don’t change the usages of a people but keep their proper ones.” But the territories inhabited by these savages are truly within the jurisdiction of China; and this is also the case with several savages inhabiting other remote provinces within the jurisdiction of China with whom China permits to

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126 Harry S. Parkes, the British Minister in Tokyo, wrote in a letter on April 16, 1874 to Terashima Munenori, Minister of Foreign Affairs, that “[d]uring residence of upwards of twenty years in China, I always heard that the whole of Formosa was claimed by China.” (Japan Foreign Affairs Documents, Vol. 7, p. 25) In a subsequent letter on May 5 addressed to the Minister Terashima, Parkes again stated, “It is difficult to reconcile this statement with that made me by Your Excellency [Japanese Foreign Minister] that the territory inhabited by the savage tribes of Formosa is not under Chinese jurisdiction.” (Ibid., p. 67)

John A. Bingham, the U.S. Legation in Tokyo, also wrote in a letter on April 19, 1874 to Minister Terashima that if Japan decided that it must send a military expedition to Taiwan, then “China may decide that such act is hostile to her government within the territory of Formosa [Taiwan], and may accordingly meet and resist it with force of arms. To avoid such a result, which would be most fortunate for Japan, I cannot but say that Japan before approaching Formosa should obtain the written and authenticated consent of the Chinese government to the expedition proposed and its objects.” (Ibid., p. 45)
Determined to carry out its objectives, the Japanese government ignored Qing China’s protest and maintained its position that “aboriginal Taiwan” was beyond Chinese jurisdiction. Aware of the seriousness of the issue, further efforts of the Qing government were made during diplomatic negotiations with Japan to demonstrate that the entire island of Taiwan constituted Chinese territory. Among the evidences presented by the Qing government, the most important one was the Gazetteer of Taiwan Prefecture. In a letter issued on June 2, 1874 by Li Henian, Governor-General of Fujian and Zhejiang Provinces (under which Taiwan was Administrated), to Saigo Tsugumichi, leader of the Japanese expedition, it was pointed out that the aboriginal village that the “wild savages” responsible for the killing of the Ryukyuan belonged to paid annual provisions to the local Chinese authorities responsible for aboriginal affairs, which was duly recorded in the Gazetteer of Taiwan Prefecture.

In late June, the Qing government further prepared copies of the said gazetteer, which were cited and displayed in front of the Japanese during the three rounds of inconclusive talks held in Taiwan. Although the Japanese government still maintained that the gazetteers were insufficient to demonstrate that Qing China displayed effective control, it nonetheless could not deny the fact that such records contained certain passages that strengthened China’s position. Seeing that the gazetteers were the strongest evidence of Chinese control over the aborigines and occasionally
proved some level of effectiveness during negotiations, the Qing government continued to rely heavily on such records throughout subsequent negotiations. In a letter issued August 13, 1874 by the Zongli Yamen to the Japanese minister in Peking, gazetteers were once again invoked as follows,

It should be noted that the Gazetteer of Taiwan Prefecture (臺灣府志) has long existed and was not published just recently for the sake of our debate with Your Excellency [Japanese minister] today. The gazetteer records the occupancy regarding payment of provisions by the nineteen allegiant aboriginal villages during the third year of Yungzheng [1725]. The aboriginal village of Mudan [village whom the aborigines responsible for the killing of the Ryukyuans belonged to] is among the said nineteen villages...

128

On September 10, 1874, the Japanese Home Minister, Okubo Toshimichi 大久保利通, came to Peking himself to further negotiate a settlement. However, the fundamental position held by both sides remained unchanged as the debate continued to revolve around the question whether aboriginal Taiwan constituted Chinese territory. The Zongli Yamen continued to insist that Sino-Japanese relations be governed not by general principles of international law, but by the Treaty of 1871 which stipulated nonaggression against each other's territory, while Home Minister Okubo retorted that Japan had not invaded Chinese territory since the Taiwan aborigines were not under Chinese jurisdiction.129 Again, the Zongli Yamen reiterated China's claim over aboriginal Taiwan based on evidence from the Gazetteer of Taiwan Prefecture in a memorandum dated October 16 stating, “If [such areas] do not belong to China, how is it they are included in [our] gazetteers... if [such areas] do not belong to China, why did [the aborigines] pay [us] provisions? 若不屬中國，何以列入府志... 若不屬中國，何以輸餉?”

The diplomatic impasse between the two nations was finally brought to an end on October 30, 1874 as a settlement was reached

128 Ibid., p. 185.

129 Immanuel C. Y. Hsu, supra note 103, p. 317.

through the mediation of Thomas F. Wade, the British minister in Peking. China agreed to pay 500,000 taels for the murdered Ryukyuan and for the purchase of the barracks that were constructed by the Japanese in Taiwan, while Japan recognized Chinese authority over the entire island of Taiwan. For Japan, its first foreign military expedition obviously yielded desirable results that encouraged it to further embark on a path marked by territorial aggression towards its neighboring countries after the fashion of western imperialism. For China, on the other hand, "that it was willing to pay for being invaded, as the British minister in Japan Harry Parkes sarcastically described the case, was clearly an invitation to further foreign encroachment."\textsuperscript{131}

Two major points that may be derived from the Taiwan Expedition of 1874 episode that are relevant to this study are the following: 1) Imperial Japan's use of international law to justify its territorial ambitions toward territory of other countries was not an uncommon practice --- its assertion that aboriginal Taiwan was "land without owner" in 1874 parallels its assertion that the Diaoyutai/Senkaku Islands were \textit{terra nullius} in 1895; in both these cases Japan was fully aware that such areas were claimed by China; 2) During negotiations with Japan, Chinese local gazetteers became the most important and effective sources of evidence used by the Qing government to demonstrate what constituted its territory --- usage of local gazetteers as evidence has significant implications for the Diaoyutai/Senkaku Islands, since as mentioned in the previous chapter, the disputed islands and their official usage also were recorded in such local gazetteers.

From a consideration of the broad spectrum of events as presented in this chapter, Japan's reason for keeping its objective to absorb the disputed islands within its empire a discreet one is even more evident. Japan had learned from previous dealings with Qing China that if the incorporation was not carried out in secrecy, then the possibility of Qing China filing a diplomatic protest in the similar manner back in 1874 would always remain --- which would seriously upset Japan's territorial plans for the islands. Simply, had the Japanese government been certain that the Diaoyutai/Senkaku Islands were truly "land without owner" and not Qing territory --- as it continues to claim to this very day --- why was the

\textsuperscript{131} Immanuel C. Y. Hsu, \textit{supra} note 103, p. 317.
incorporation process in 1895 never made public as it was with the three other Ogasawara islands in 1891?

It seems that the only logical explanation is that Japan desired to have a free hand and avoid any potential diplomatic trouble from Qing China. Therefore, in light of the series of evidence heretofore presented in this chapter, it seems reasonable to conclude that the islands were indeed "stolen" from China rather than "incorporated" by a Japan that was fully confident of a final victory in the Sino-Japanese War of 1894-95. With respect to the Cabinet Decision of 1895, since a unilateral decision of one nation cannot result in the loss of territory of another nation, its legality also appears to be questionable. Moreover, since the disputed islands were traditionally considered a part of Chinese territory, in particular, a part of Taiwan, that the only legal basis of Japan's claim over the islands was the Treaty of Shimonoseki of 1895 seems a plausible assessment --- which follows that the disputed islands should have been returned along with the main island of Taiwan to China after the Second World War.

132 A summary of Chinese contentions regarding the questionable legality of Japan's incorporation of the disputed islands under international law is as follows:

1) The disputed islands were not terra nullius, but instead Chinese territory --- which rules out the legality of Japan's action of occupying the islands by virtue of the principle of discovery-occupation.

2) The secretive nature of the incorporation process further weakens Japan's claim since the only concerned state, China, was not notified of this action of such legal importance. International law requires that for discovery-occupation to be valid, both possession and administration are necessary. With respect to possession, as cited previously, international law generally requires,

The territory must really be taken into possession by the occupying state. For this purpose it is necessary that it should take the territory under its sway (corpus) with the intention of acquiring sovereignty over it (animus). This... normally involves a settlement on the territory, accompanied by some formal act which announces both that the territory has been taken possession of and that the possessor intends to keep it under his sovereignty. [Oppenhiem's International Law, supra note 19, p. 689; emphasis is mine.]

In the case of the disputed islands, no settlement on the islands nor any formal acts announcing Japan's incorporation were carried out by the Japanese government back in 1895.
4. Chinese Refutation of the Japanese Claim

As demonstrated in the previous chapter, the origins of the islands dispute finds its roots in the late 19th century, when Meiji Japan sought to use western-originated international law to justify its territorial ambitions against a weakening Qing Empire that continued to insist on the centuries-old East Asian World Order as the sole justification for its previously recognized territorial possessions. Yet another factor that has also contributed to the existence of this dispute concerns China’s attitude toward the islands after the second world war. Japanese scholars have highlighted the lack of China’s objection against Japan’s incorporation of the islands in 1895 and their U.S. administration after the Second World War to demonstrate that China did not regard them as its territory.

In regard to Japan’s incorporation of the islands in January 1895, as already shown, Japan’s professed knowledge of the islands’ Chinese ownership led it to secretly “incorporate” them which simply denied Qing China the information that could have generated a protest. Also, aside from the point that Qing China had traditionally considered the disputed islands to be a part of Taiwan, given that Japan’s secretive “incorporation” of the disputed islands and the transfer of all of Taiwan happened only three months apart, that Japan acquired the disputed islands from other than the Treaty of Shimonoseki would have been inconceivable to Qing China. From Qing China’s perspective, the disputed islands become Japanese territory as a spoil of war and was made legitimate through the signing of the Treaty of Shimonoseki. Being denied the information regarding Japan’s earlier incorporation of the islands, there simply did not exist a reason or sound basis for Qing China to protest against Japan.

In regard to China’s absence of protest against U.S. military administration over the disputed islands after the second world war, the ROC and PRC governments have each issued separate statements explaining their positions on the matter. This study will address the ROC official position first, followed by that of the PRC.

During the opening of the islands dispute in the early 1970s, the ROC Minister of Foreign Affairs Wei Tao-ming 魏道明

[Image -0x0 to 612x792]
described his government’s post-war attitude toward the disputed islands as follows,

After World War II, our government deemed that U.S. military administration of the Tiao-yu-t’ai Islets as a necessary procedure for the purpose of mutual defence. Afterwards, [the Republic of China] and the United States came into an agreement designating the perimeters for patrolling; later on fishermen from our country continued their operations within the said area.\textsuperscript{133}

This position was reiterated in a memorandum on March 15, 1971 by the ROC Ambassador to the United States as follows,

Since the conclusion of the second world war, the United States government assumed military occupation over islands located south of 29 north latitude pursuant to Article III of the San Francisco Peace Treaty; the Tiao-yu-t’ai Islets were also included within the boundaries of United States occupation, which the ROC government did not express its objection due to regional security concerns. However, this may not be interpreted as [my government’s] acquiescence to the Tiao-yu-t’ai Islets being a part of the Okinawa Islands. Moreover, according to the general principles of international law, temporal military occupation of a given area does not prejudice the final disposal of sovereignty over said area.\textsuperscript{134}

From the above statements, the primary reason the ROC government allowed the disputed islands to be placed under U.S. military control was for the purpose of “mutual defence” and “regional security concerns,” an indication that the fate of the disputed islands became entangled in the cold-war situation that immediately followed the conclusion of the Second World War. In order to understand the rationale of the ROC government at the time, a brief summary of the political realities that surrounded the ROC and the disputed islands is helpful.

In 1949, two years prior to the formal inclusion of the disputed islands into areas of U.S. trusteeship in 1951, the ROC government


\textsuperscript{134} Cited and translated by the author from the official Chinese version of said memorandum, which can be found in Chiu Hungdah 丘宏達, Modern International Law 現代國際法 (Taipei: Sanmin Shuju, 1995), p. 542.
was defeated in the Chinese civil war (1945-1949) by the Chinese communists and forced to withdraw from the mainland and relocated itself on Taiwan. Henceforth, the ROC became politically, economically and militarily dependent on the United States. Therefore, when the 1951 Peace Treaty placed the former Nansei Islands (including the disputed islands) under U.S. trusteeship, the ROC government did not object to this move since it was well aware of the fact that U.S. military presence in the area only further secured its own national survival. More importantly, however, it must be noted that the ROC considered this post-war arrangement of the former Nansei Islands to bear no connection to the question of sovereignty --- since it was the opinion of the ROC government that the 1945 Potsdam Proclamation and 1951 San Francisco Peace Treaty had already removed Japanese sovereignty from the Nansei Islands and that the subsequent U.S. trusteeship system was not intended to address the islands' sovereignty.

In other words, to the ROC government, the placement of the Nansei Islands under U.S. military control was purely a strategic move necessary for the overall design to contain the threat of communism in the East Asia. That the ROC government regarded the placement of the Nansei Islands under U.S. military administration as an arrangement isolated from the issue of sovereignty is illustrated by its objection against the notion that Article III of the 1951 San Francisco Peace Treaty had also allowed Japan to retain "residual sovereignty" over the said islands.135

135 On August 8, 1953, when the United States made public its decision to return the Amami Islands group, one of the sub-island groups that constituted the former Nansei Islands, to Japan, the ROC government immediately filed diplomatic protests on the grounds that there were no provisions in the San Francisco Peace Treaty that could be construed as authorizing the United States to resort to any procedures other than those stipulated in Article III of the said Treaty for the final disposition of the Nansei Islands. With respect to the notion that Japan retained "residual sovereignty" over the Nansei Islands during U.S. administration, which the United States relied on as the basis for its return of the Amami Islands to Japan, the ROC government responded that it could not agree that "the mention of the term 'residual sovereignty' by the delegates of two powers [United States and Great Britain] without its embodiment in the actual wording of the [1951 Peace Treaty] could be construed to mean that it has been agreed upon by all the states." In another official statement issued by the ROC Ministry of Foreign Affairs on December 24, 1953, it was further argued that the U.S. interpretation that Japan retained "residual sovereignty" is inconsistent with the Potsdam Declaration of July 26, 1945, which
Due to the close military alliance between the ROC and United States that began in the early 1950s, activities carried out by citizens from Taiwan in the surrounding waters of the disputed islands were seldom prohibited by the U.S. military. This situation resulted from the overlapping of U.S. military patrolled areas in the region. Article 7 of the Sino-American Mutual Defence Treaty 中美共同防禦條約 signed on December 2, 1954 stipulated that “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 defence, as determined by the mutual agreement.” On the other hand, areas of U.S.-Japan defence cooperation were further embodied in Article 6 of the 1960 Japan-U.S. Security Treaty 日米安保條約 under the term “Far East,” which was explained by the Japanese government to be “areas north of the Philippines, Japan and its surrounding areas, as well as areas under the control of South Korea and Taiwan.” Since the Diaoyutai/Senkaku Islands and the surrounding areas of Taiwan both came under areas patrolled by U.S. forces, the boundaries between the two areas were not strictly enforced.

provides that “Japanese sovereignty shall be limited to the Islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we (the co-signatories of the Declaration of which the Republic of China is one) determine.” However, since the international status of the ROC had greatly diminished after 1949 while post-war Japan had emerged as the cornerstone of American interests in East Asia, naturally the protests of the ROC government did not yield any results and the Amami Islands were returned to Japan the following year in 1954. In any case, this event demonstrates that the ROC regarded that the U.S. military administration of the islands to be isolated from the issue of sovereignty over the islands that constituted the former Nansei Islands. See Secretary Office of the Legislative Yuan 立法院秘書處, Conference Records of the Legislative Yuan Regarding the Objection Against the Return of the Amami Islands to Japan 立法院反對奄美大島交與日本草案會議記錄一附有關文件 (March 1954).


137 “Guideline review redefines Japan’s security role,” The Daily Yomiuri (in English), September 23, 1997, p. 4.
As shown above, the ROC government has noted that fishermen from Taiwan were able to continue their traditional usage of the Diaoyutai/Senkaku Islands as their operational base for fishing activities which were not disrupted until 1968 when the islands dispute broke out. For these fishermen, the disputed islands also served as emergency shelters during bad weather conditions. Therefore, since the ROC government acknowledged that traditional usage of the disputed islands by personnel from Taiwan were never disrupted, and that military control of the disputed islands by its closest ally did not involve any issues concerning sovereignty, Taipei did not perceive an urgency to file any objection to the islands status insofar as they were under the control of the United States and not Japan. The ROC government notes that only when such activities carried out by its citizens were halted and that it was brought to its attention that the disputed islands were to be included within the islands to be returned to Japan in the late 1960s, that it deemed it necessary to raise the issue with the United States and communicate its position regarding the disputed islands' final disposal.

To substantiate the point that fishermen from Taiwan had traditionally used the disputed islands as operational bases which lasted until the late 1960s, Chinese scholars point to several documents. While initial use of the islands as fishing bases by Taiwanese fishermen began in the second half of the 19th century, their number increased steadily at the turn of the century. This is well-documented in Marine Products of Taiwan published in 1915 by the Production Bureau of the Government-General in Taiwan as follows, "As an operational base for bonito-fishing boats from Taiwan, the fishing grounds surrounding the Senkaku Islands constitutes (sic)... one of their most important deep sea fishing grounds." That such usage persisted until the late 1960s is further confirmed in news report in Yomiuri Shimbun dated September 18, 1970 as "Illegal entrance into Japanese waters surrounding the Senkakus and illegal landing on the islands by Taiwanese fishermen is as frequent as a daily occurrence."

longer have access to the waters within the disputed islands’ territorial sea of 12 nautical miles, the outer areas continue to be an important fishing ground on which many continue to depend for a living.

Therefore, the significance of the past and present usage of the disputed islands as fishing grounds by Taiwanese fishermen according to the Chinese scholars can be summarized as follows: 1) continued usage of the islands after the second world war did not create any urgency for the ROC government to file any objection toward the United States over these otherwise seemingly insignificant islands; and, 2) there has existed a long-standing “special economic and geographical relationship between the islands and Taiwan as demonstrated by the activities of the fishermen” which when viewed together with ample historical evidence presented in previous chapters, further support the claim that the disputed islands are politically, geographically and economically linked with the island of Taiwan.

Chinese scholars contend that the reason why the disputed islands were mistakenly excluded from the territory returned to China in 1945 was mainly because concerned nations overlooked the possibility that what constituted the administrative unit of Taiwan at the time of Japan’s surrender in 1945 may not have corresponded exactly to what previously constituted the Chinese Province of Taiwan back in 1895. As demonstrated in the previous chapter, Qing China had long regarded the disputed islands as a part of Taiwan, instead of the Okinawa Islands. In 1895, when Japan used its victory to remove the disputed islands from their Chinese ownership, it also ended their administrative status under Taiwan and re-grouped them under Okinawa Prefecture. However, when the second world war was close to an end, since the United States was unaware of the disputed islands’ historical relationship to Taiwan, their administrative status under Okinawa Prefecture at the moment of Japan’s surrender was naturally yet mistakenly adopted by the U.S. authorities as a matter of routine.

Meanwhile, as Japan accepted the terms set forth by the allies to return Taiwan back to China in 1945, only those areas that constituted the administrative unit of Taiwan during Japanese colonial rule that were returned. Soon afterwards, during the drafting of the 1951 San Francisco Peace Treaty, the above errors
were not remedied as the disputed islands were misplaced under the provisions of Article III, which formally granted U.S. authorities administrative powers over them. The disputed islands were therefore never restored to their pre-1895 status and remained within the Ryukyu Islands under U.S. military control.

While the Chinese often argue that the United States and the framers of the 1951 San Francisco Peace Treaty had mistakenly grouped the disputed islands along with the rest of the Okinawa Islands, it would only seem fair to also find fault with the Chinese government for not correcting this error, especially since it concerned Chinese territory. It also seems reasonable to say that the main reason for the Chinese government's negligence on the issue was that it too was not aware there had been administrative changes carried out by the Japanese between 1895 and 1945 over the areas that constitute the administrative unit of Taiwan. The question is then, why did this happen and what are its implications to the islands' dispute? Since the first part of the question has been rarely discussed, I have attempted to shoulder some of the responsibility in searching for an answer. The following is my opinion on the matter.

It should be noted that among the various Chinese territories that Japan evacuated from and returned to China in 1945, the island of Taiwan was a special case that differed from others in that it was the only area over which the government of the Republic of China had never had experience exercising control. Other areas such as Manchuria, Northern China, and the eastern Chinese coastal regions, had all during one period or another been within areas of effective governance of the ROC government until they were invaded and occupied by Japan. With respect to Taiwan however, since the ROC government was not founded until 1912, even though it represented the Chinese government that resumed control over Taiwan in 1945, it was not the same Chinese government that had last governed Taiwan before transferring it to Japan back in 1895.

In other words, the ROC government had never produced any administrative records concerning the former island province of Taiwan simply because it had never been under the ROC's effective control. Therefore, when the ROC government began its administration over Taiwan in 1945, naturally it did not rely on
administrative records (local gazetteers) on Taiwan from the previous Qing Dynasty, but instead relied on the more up-to-date administrative records and statistics compiled by the previous colonial Japanese government in Taiwan. In doing so, the ROC naturally and conveniently adopted the administrative arrangements of Taiwan created during Japanese colonial rule, which was inconsistent with the original administrative arrangements under the Qing government. As a result, until past local gazetteers were reviewed by the ROC government, the disputed islands' original administrative status under Taiwan remained hidden.

Another reason that may explain the ROC government's negligence over the status of the disputed islands after the war is because virtually all maps at the time labeled the disputed islands under their general Japanese name, Senkaku Islands, to denote their Japanese ownership prior to 1945. From a Chinese perspective, the characters that represent the Senkaku Islands appear foreign and distinctively Japanese, which indeed can be misleading as one overlooks their traditional relationship with China. Had the Chinese name, Diaoyutai Islands, been preserved and used in place of Senkaku Islands, perhaps the Chinese government would have promptly realized their Chinese origins and demanded their return.

The more important question is then, how does the ROC government's negligence toward the disputed islands immediately after the war affect its legal claim over them? Chinese scholars contend that the ROC's claim of sovereignty over the disputed islands were not diminished because of their placement under U.S. military control after the war. Considering the contents of Article III of the San Francisco Peace Treaty, which stipulated,

Japan will concur in any proposal of the United States to the United Nations to place [the Ryukyu and Bonin Islands] under its trusteeship system, with the United States as the sole administering authority... Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters, it is evident that such a arrangement bears no relevance to the

problem of sovereignty over these islands. Chinese scholars also point to a series of statements issued by the U.S. Department of State which also support the view that Article III of the said treaty bears no implication concerning their sovereignty (see next chapter). Moreover, since recent discoveries in historical evidence have further substantiated the Chinese claim that the disputed islands had formed a part of Taiwan before the signing of the 1895 Treaty of Shimonoseki, Chinese scholars contend that its sovereignty over the disputed islands were protected in all legal agreements and treaties that dealt with Taiwan after the second world war --- including Article II of the 1951 San Francisco Peace Treaty and the 1954 Taipei Peace Treaty, in which sovereignty over Taiwan was returned to China. In other words, Chinese scholars contend that its sovereignty over the islands were fully protected by Article II as against Article III of the San Francisco Peace Treaty.\textsuperscript{140} In addition, it is contended that the ROC government's belated realization and objection to the disputed islands being placed under U.S. military control should not weigh heavily against China, as mere silence cannot be construed as renouncing sovereignty over the islands.\textsuperscript{141}

\textsuperscript{140} Tao Cheng, \textit{supra} note 1, p. 252.

\textsuperscript{141} In an effort to further determine whether ROC's lack of protest will have serious legal implications to its claim to the islands, I have sought to consult related principles of international law. Contemporary principles of international law concerning an absence of protest provide the following, “[t]he significance of an absence of protest will to a large extent depend upon all the circumstances of the situation; failure to protest by a state being directly and substantially effected by the act in question will be of greater significance than failure by a state not so effected.” See \textit{Oppenheim’s International Law}, \textit{supra} note 19, p. 1195.

In considering the present islands dispute with the above definition, it should be noted that since the Diaoyutai/Senkaku Islands were tiny, remote, and uninhabitable, their placement under foreign control did not “directly and substantially” affect the national interests of the ROC. In addition, ROC citizens were able to continue their traditional usage of the islands after the war.

Perhaps more important is the fact that the disputed islands were placed under a system of trusteeship administrated by a temporal Administering Authority after the war, rather than being effectively controlled by any State for its name or sovereign. Hence, the ROC's lack of protest should not have serious adverse implications since neither did it intentionally or tacitly recognized any claims of sovereignty of another State (which did not exist) over the disputed islands between 1945-1972.
What then is the PRC’s official position on this matter? As with the ROC, it is doubtful that the PRC was aware of the past association between the disputed islands and Taiwan until vast amounts of historical evidence suggesting this were uncovered later on. However, since the PRC has consistently denied the legality of the San Francisco Peace Treaty signed in 1951, it has accordingly regarded U.S. military control over the former Japanese Nansei Islands, including the disputed islands, as illegal. Thus, any actions undertaken by the U.S. concerning the disputed islands were not recognized by the PRC government. Additionally, the PRC shares a position that parallels the ROC’s legal claim over the disputed islands --- that a series of war-time and post-war agreements involving the territory of the island of Taiwan restored Chinese sovereignty over the disputed islands.

Other points of refutation put forward by the Chinese include the following. First, with respect to the other Japanese contention that a number of state-sponsored Chinese publications treated the disputed islands as Japanese territory, the common official response is that such publications merely reflect the fact that the disputed islands were under U.S. administration since the end of the war. It is contended that no greater significance should be placed on such publications other than their recognition of the above political reality --- the disputed islands were under U.S. military control and no more.

Second, in response to the evidence and documents presented by the Japanese to prove Japan’s effective control over the disputed islands and China’s recognition of that fact (such as the previously cited 1920 Certificate of Appreciation), Chinese scholars contend that such evidence is irrelevant to the dispute since there is no denying the fact that these islands, together with Taiwan and the Pescadores, indeed came under Japanese control between 1895-1945 as a result of the Sino-Japanese War. Instead, the Chinese feel that the issues lie in whether the disputed islands were free for the taking in 1895 and whether they should have been returned to China after the second world war.

In conclusion, China’s absence of objection against the disputed islands’ placement under U.S. military control, even if not affecting its legal claim over the islands, was undoubtedly a serious political misstep. While abundant historical evidence seems to
suggest that China has the stronger sovereignty claim, it may prove to be futile in bringing the islands back under Chinese control islands — considering current political realities characterizing Sino-Japanese relations and the economic interests surrounding the islands (see final chapter). Had the Chinese government promptly raised the issue back in 1945, its international prestige and status as a victor nation at the time suggests that there would have been far less political barriers in reclaiming the islands back then. Perhaps only time will tell whether this political misstep will prove to be a lost opportunity that will end up costing China to permanently lose these islands.
VI. THE U.S. POSITION REGARDING THE DISPUTE

Finally, it is worth including the U.S. position toward the islands dispute in this study since not only has the United States been involved directly with the islands between 1951 and 1972, but both the Chinese and Japanese sides continue to invoke past U.S. rhetoric and action to strengthen their respective claims. The Japanese point to the American inclusion of the disputed islands under the boundary definition of the Nansei Islands as evidence that the United States is in agreement with Japan's contention that the islands were associated with Okinawa. Moreover, they point to the signing of the Okinawa Reversion Treaty between the United States and Japan signed on June 17, 1971 as legal evidence supporting Japan's claim of sovereignty over the islands. The Chinese, on the other hand, despite the signing of the reversion agreement with Japan and the subsequent transferral of the islands to Japanese administration, point to several United States official statements made since the opening of the dispute that the United States government in fact takes no position on the sovereignty issue.

Prior to the transfer of the islands to the Japanese on May 15, 1972, both the PRC and ROC governments filed protests against the United States inclusion of the Diaoyutai/Senkaku Islands under the area covered by the Okinawa Reversion Agreement. Japan similarly protested against the United States for its neutral stance toward the sovereignty issue. Despite the U.S. decision to include the disputed islands within the territories covered by the reversion agreement, several official statements specified that the agreement did not affect the determination of sovereignty nor the legal status of the islands. Following several official statements issued by the U.S. State Department stating the U.S. policy of neutrality toward the sovereignty debate, Secretary of State William P. Rogers further reassured this policy before the Senate Foreign Relations Committee on November 9, 1971. He stated, "This treaty does not affect the legal statues of those islands of all. Whatever the legal situation prior to the treaty is going to be the legal situation after the treaty comes into effect."142 Similarly, the Senate Foreign Relations Committee also stated the following,

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 the United States in this regard derives from the [San Francisco] Peace Treaty under which the United States merely received rights of administration, not sovereignty. Thus, the United States action in transferring its rights of administration to Japan does not constitute a transfer of underlying sovereignty nor can it affect the underlying claims 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 Islands by any state.¹⁴³

Naturally, the distinction made between "administrative rights" and "sovereignty" in these U.S. official statements is of particular significance for the Chinese, who find support in the assertion that United States could not have transferred to Japan that which it did not own, namely, sovereignty of the disputed islands.

However, despite the United States' affirmation that the provisions of the Okinawa Reversion Agreement were not predicated on the transfer of sovereignty, Japan nonetheless believes that its claim of sovereignty is still justified. As mentioned in previous chapters, during U.S. administration of the Nansei Islands, the United States and Japan had an exclusive mutual understanding that Japan retained some degree of "residual sovereignty" over the areas occupied by the United States. After the U.S. decision to return the "administrative rights" to Japan under the reversion agreement in 1972, Japan contends that its previously-held "residual sovereignty" over the islands was as a result consolidated into full sovereignty.

Successive U.S. administrations have continued to reaffirm the U.S. policy of neutrality with respect to the sovereignty dispute. During the most recent 1996-1997 flare-up of the dispute, U.S. State Department briefer Glyn Davies stated on September 23, 1996:

> We expect the claimants to the islands will resolve their differences and do so peacefully. We urge all the claimants to exercise restraint as they move forward on this process... We're not going to predict what's likely going to happen. We're simply going to confine ourselves to calling on both sides to resist the temptation to provoke each other or raise tensions over those islands. From a U.S. standpoint, though we understand it has a great

¹⁴³ Ibid.
emotional content, it's not the kind of issue that's worth elevating beyond a war of words, where we are not. So that is our position on it.144

Clearly, it is the policy of the United States to remain officially neutral, although the fact is that the disputants in the sovereignty dispute all rely to a varying extent on the actions and rhetoric of the United States to strengthen their own individual claims and weaken those of others. There can be no denying that the issue has been further complicated by the contradictions between U.S. action and rhetoric concerning the islands dispute. On one hand, Japan relies on the U.S. transfer of the disputed islands as confirmation of Tokyo's sovereignty over the islands, while the Chinese on the other hand find support in the rhetoric of the United States for refuting that same claim. More importantly, despite the low-key posture concerning the Diaoyutai/Senkaku controversy adopted by the United States, one must not overlook Washington's legal obligation to defend the islands should they come under military attack. When ratifying the Okinawa Reversion Treaty in 1972, the United States also agreed to the continued application of the 1960 U.S.-Japan Security Treaty over all areas denoted as Okinawa, including the disputed islands. Article V of the U.S. Japan Security Treaty stipulates:

[The United States and Japan] recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes. [Emphasis is mine]145

Thus, despite its official neutrality, the United States is technically bound to defend Japan's claim over the islands in the unlikely—yet not entirely impossible—event of armed confrontation between China and Japan. Some U.S. scholars have noted that there is no automatic commitment on the part of the United States to defend


the islands since any of its actions would have to be taken “in accordance with its constitutional provisions and processes.” Japanese scholars have criticized such an interpretation, however, by arguing that U.S. inaction would undoubtedly cripple American credibility vis-a-vis its Asian-Pacific allies.146

On September 16, 1996, The New York Times reported that Walter F. Mondale, former U.S. Ambassador to Japan, indicated that “the United States takes no position on who owns the islands... American forces would not be compelled by the treaty to intervene in a dispute over them.” Japan responded to this statement by expressing concern over what appeared to be a change in U.S. policy toward the disputed islands, noting possible implications concerning U.S. commitment to joint security. This concern of the Japanese was partly ameliorated when a front page news report of Yomiuri Shimbun cited Kurt M. Campbell, U.S. Deputy Assistant Secretary of Defense for Asian and Pacific Affairs, as saying during an interview with the newspaper that “the Okinawa Reversion Treaty of 1972 stipulates that the Senkaku Islands be placed under the administration of Japan. With regard to this issue, [the United States'] responsibility for the maintenance of security is clearly defined.”147

If the United States believes that its interests can be best served through policies that strive to ease regional tensions and promote stability, then perhaps it should be noted that Washington’s insistence of a policy of neutrality and ambiguity toward the Diaoyutai/Senkaku dispute has done little, if anything, to help reduce tensions or encourage reconciliation among the disputants. This lack of U.S. initiative is clearly regrettable considering that the United States itself has been involved in varying degrees with the islands since the end of World War II. Although endeavoring to stay out of the dispute, should the United States continue to insist upon a policy of neutrality despite its legal obligation to defend the islands when the need arises, there can be little doubt that its

146 See Schachte, William L. Jr., Thoughts on the Diaoyu/Senkaku Islands Dispute, Conference Papers for the International Law Conference on the Dispute over the Diaoyu/Senkaku Islands between Taiwan and Japan (Yi-lan, Taiwan: 1997). Also see Nakamura Katsunori, supra note 31.

longstanding alliance with Japan and possibly overall joint security arrangements in the Asia-Pacific would suffer --- presumably the exact pitfalls U.S. neutrality was originally intended to avoid.

This study does not intend to discuss whether the United States should either publicly express a more clear cut determination to stay out of the Diaoyutai/Senkaku dispute or, through mediation and good-faith counseling, encourage the parties to refer the dispute to the International Court of Justice (ICJ) or other third party arbitration. The complexity of this issue is beyond the scope of this study. However, given the inherent contradictions and potential risks in past and present U.S. policy concerning the dispute as outlined above, this issue deserves greater attention and further discussion.

VII. CONCLUSION: POSSIBLE SOLUTIONS

From a lengthy presentation of the bases of claims advanced by each of the disputants, it can be observed that the Diaoyutai/Senkaku Islands dispute has classic legal characteristics. It is a dispute that centers on legally relevant facts that have been subject to different interpretations. Considering that international tribunals have been set up and are well-suited to deal with such territorial disputes, the question is then, what are the prospects of presenting the case to the International Court of Justice for a judicial settlement? A second question that may follow is, if a judicial settlement proves unlikely, what are the prospects of setting up a cooperative development zone for joint development of the natural resources surrounding the islands? As stated earlier, while this study does not intend to go into an in-depth discussion of what may be the best viable option to resolving the dispute, it nonetheless wishes to briefly address these questions by providing a background of the current political realities surrounding Sino-Japanese relations and cross-strait relations between the PRC and ROC that will undoubtedly be crucial when seeking a final solution to the dispute.

To return to the question concerning the prospects of presenting the islands dispute to the International Court of Justice (ICJ) at The Hague, the following political circumstances
confronting the disputants must be first pointed out. First and foremost is the issue concerning the status of the Republic of China on Taiwan in the international community. When the Republic of China was expelled from the United Nations and replaced by the Peoples' Republic of China as the sole legitimate government of China in 1971, it was also expelled from all U.N. related organizations, including the Statute of the International Court of Justice. Without being considered a "State" by the United Nations and being excluded from membership, the ROC cannot have access to the ICJ. Given the well-known and longstanding rivalry between the PRC and ROC, and that the former currently occupies one of the five permanent seats in the U.N. Security Council, the prospects of the ROC being readmitted into the U.N. General Assembly or resuming its status as a active signatory to the Statute is dim --- which essentially rules out any possibility for the ROC to seek settlement through the ICJ in the foreseeable future. Therefore, bringing the islands dispute before the ICJ is only an option concerning only the PRC and Japan, since both nations are current members of the U.N. and signatories to the Statute of the International Court of Justice.

However, perhaps a more fundamental question concerns the willingness of the disputants to resort to a judicial settlement, which brings us to consider the applicability of compulsory jurisdiction of the ICJ over the dispute. In situations when one disputant has not deposited with the Secretary-General of the United Nations a declaration recognizing compulsory jurisdiction to the ICJ, it is entitled to decline an ICJ judicial settlement. To date, the PRC has not deposited its recognition of compulsory jurisdiction, which is a relatively minor issue in relation to the islands dispute, since it is unlikely that it would be inclined to prevent the islands dispute from being taken to court --- it enjoys a position of having nothing to lose. Japan, on the other hand, deposited its recognition of compulsory jurisdiction in 1958, but with two important reservations: 1) that the other disputant must also have agreed to compulsory jurisdiction; and, 2) that the subject under dispute be limited to "situation or facts" after 1958.148 Since Japan could

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argue that the disputed islands were incorporated back in 1895, it could decline judicial settlement through the ICJ, even if China accepts compulsory jurisdiction.

Perhaps more important, however, is Japan's fundamental attitude toward a judicial settlement on territorial disputes which can be seen in a statement issued by Foreign Ministry Press Secretary Hiroshi Hashimoto on February 13, 1996 as follows, “As far as I understand, we have no intention to do so, because in general I can tell you, unless the two parties agree, they cannot go to the International Court of Justice.” Japan's response should not come as a surprise considering that the islands are currently under its possession. Bringing the dispute before the ICJ presents the obvious risk that if the court rules against Japan, then Japanese occupation of the islands and all associated advantages would be brought to an end. Simply put, Japan recognizes that courts can be unpredictable. Therefore, unless the PRC decides to take a stronger stance toward the issue by pressing for a special agreement requiring both countries to agree to a judicial settlement, either through the ICJ or third-party arbitration, it can be assumed for the present that settlement through judicial means is an unlikely option.

The other remaining alternative is to establish a joint development zone for the exploration of natural resources around surrounding the islands in a cooperative effort while leaving aside the issue of sovereignty. Ideally, this offers an interim solution in which neither state renounces its sovereignty claim to the islands nor recognizes the legitimacy of another state’s while making it possible


150 The PRC government has been long criticized by Chinese communities for taking a low profile stance toward the issue. A quote by historian Ian Nish well describes the situation: “The capacity of one power to influence the course of action of another varies in accordance with the degree of the supplicant's dependence on the first.” See Ian Nish, Origins of the Russo-Japanese War (New York: Addison Wesley Longman, 1996), p. 234.

Political observers have frequently pointed to the fact that due to China's incentive to secure receipt of low-interest loans from Japan, its bargaining position in issues concerning Sino-Japanese relations has been weakened accordingly.
to address resource problems. As with the prospects of a judicial settlement, however, the applicability of this option to the islands dispute also faces a series obstacles, divisible into two categories: 1) present political circumstances; and, 2) disagreement among the parties concerning the delimitation of the continental shelf.

Once again, the ROC's status in the international community proves to be a major barrier to this option. Since Japan derecognized the ROC and established diplomatic ties with the PRC in 1972, relations between Taipei and Tokyo have remained unofficial. This unofficial relationship greatly limits the scope of joint development between the ROC and Japan, since any joint exploration of hydrocarbon resources in the continental shelf will necessarily require direct involvement of the concerned governments. In the face of constant political pressure from the PRC, any cooperative efforts between the ROC and Japan will have to be limited to a private level, and the only remaining possible area whereby such efforts may be worthwhile with respect to the islands' resources is setting up a regional fishery agreement, and nothing further. Therefore, unless the political rivalry between the PRC and ROC ceases to exist, it would be naive to envisage any trilateral agreements for the development of the potential hydrocarbon resources in the sea-bed appertaining to the disputed islands.151

To say that problems exists for the ROC in entering into a cooperative agreement for the development of the disputed islands' sea-bed resources, is not to say that the PRC and Japan appears more likely to succeed in creating one. In fact, in the late 1970s and early 1980s, attempts were already made by both the PRC and Japan to realize this proposal of joint development of the continental shelf surrounding the islands.152 While both

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151 Note that the political rivalry between the PRC and ROC is not uni-directional. In September 1996, when the ROC government issued its guidelines in handling the islands' dispute, it similarly rejected any cooperative agreements that would involve the PRC. See Government Information Office of the ROC, An Objective Evaluation of the Diaoyutai Islands Dispute, (1996).

152 Some studies have questioned whether the Diaoyutai/Senkaku Islands should be entitled to any continental shelf or EEZs beyond their territorial sea of 12 nautical miles due to their geological features. Article 121.3 of the United Nations Convention on the Sea of Law (UNCLOS) stipulates "Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic
governments seemed to have endorsed the idea at the time, bilateral discussions during a working-level talk held in Beijing in November 1980 soon revealed that there existed too large a gap between the two governments' opinion on how to properly delimit the continental shelf. The conflicting opinions can be summarized as follows: "If the area covered by joint development extended right up to the Okinawa Trough, the Japanese would have felt that the Chinese would gain a lot without giving away anything. Whereas for the Chinese government, if joint development was limited to the continental shelf on the Chinese side of the median line between the baselines of the two countries, it would be... the only party making a concession."\(^{153}\)

Even if the initial problem concerning the delimitation of the continental shelf can be overcome, considering the historical animosity and mutual suspicion that has characterized past Sino-Japanese relations, one cannot refrain from wondering whether further issues of management and apportionment of the islands' resources and subsequent economic returns can be easily agreed upon. Therefore, even when it is recognized that joint development zone or continental shelf." Scholars have suggested that the disputed islands seem to fit the above definition since they are of volcanic formation and fail the test of habitation and economic viability. Without outside subsidies, it is doubtful that human survival can be possible on the islands.

Based on the above reasoning, Prof. Ma Ying-jeou suggests that "the [Diaoyutai/Senkaku] territorial dispute can then be wholly detached from the continental shelf issue. However the territorial issue is eventually resolved and whoever ultimately acquires the sovereignty of the Tiao-yu-t'ais [Diaoyutais], the disputing states would be unable to take advantage of the islets' strategic location in claiming portion of the seabed of the East China Sea beyond their territorial sea." See Ma Ying-jeou, *Legal Problems of Seabed Boundary Delimitation in the East China Sea*, supra note 1, p. 104.

However, due to the potentially large economic implications of the disputed islands' seabed, it can be assumed that the concerned disputants will maintain that the islands are beyond the limitation of the Article 121.3 of the LOS Convention and therefore entitled to both continental shelf and exclusive economic zones.

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\(^{153}\) Chi-kin Lo, *China's Policy Towards Territorial Disputes --- The Case of the South China Sea Islands* (Routledge: London, 1989), p. 174. Lo’s work provides a brief account on the efforts of the PRC and Japanese government made toward joint development of the islands' resources during the late '70s and early '80s.
offers the more attractive outcome whereby all concerned parties can benefit, as opposed to the zero-sum judicial settlement or the present stagnant situation whereby no development of the hydrocarbon resources have been undertaken, there are still enough barriers that make this option an unlikely one for the foreseeable future.

Considering the many difficulties inherent in the possible solutions to the islands dispute discussed above, perhaps it would require nothing less than a miracle to find a resolution. Nevertheless, any efforts taken to resolve the issue in a rational and equitable manner requires all disputants to understand where they each stand in relation to one another in light of the relevant historical evidence and their implications under applicable rules of international law. Such information would prove crucial for the disputants in determining whether judicial settlement or joint development of the islands resources is the more viable path.

It is unfortunate however that historical and legally relevant evidence concerning the status of the disputed islands has been frequently subjected to both intentional or unintentional misuse, misinterpretation, and distortion during the past quarter century. As a result, it has been very difficult for most legal studies on the subject to produce accurate evaluations of the bases of claims of each disputant. A clarification of such evidence relevant to the dispute has long been overdue and therein lies one of the primary reasons why this study was made.

In this study, enormous efforts have been made to collect, verify, and examine almost every piece of evidence available to date to provide the necessary groundwork for further analysis of their legal implications. This study does not pretend, however, to provide the in-depth appraisal of the legal evidence or compare the Diaoyutai/Senkaku Islands dispute to prior court rulings concerning legal territory disputes from the past, since that is currently beyond the ability of my untrained legal mind. It is hoped that these issues may be addressed in future revisions of this paper upon completion of my studies as a student in the field of law. In short, I hope this work offers a constructive step toward helping international lawyers determine the underlying question of the dispute: whether the disputed islands were terra nullius or Chinese territory at the time of their occupation by Japan on January 14, 1895.
Finally, whether or not the issue seeks its final settlement through international tribunals or through bilateral or even multilateral cooperation, a presentation of the evidence and bases of claims of both the Chinese and Japanese sides hopefully will allow all persons concerned with the issue to recognize the complexity of the dispute i.e., while both sides seemingly have infallible arguments supporting their respective claims, they are not free from weaknesses --- for instance, the manner by which the disputed islands were secretly brought within the Japanese empire in 1895 (which the Japanese government probably prefers to be kept secret), and the negligence toward the legal status of the disputed islands by the PRC and ROC governments after the Second World War (which both have failed to address persuasively). Considering that many Chinese and Japanese regard their own respective nations to indisputably be the rightful owner of the disputed islands, if all parties concerned with the dispute are able upon reading this study to refrain from provocative actions based on unquestioned self-righteousness and intolerance of the others' argument, then the necessary first step in seeking a rational and equitable solution has been undertaken.
LOCATION MAP OF THE DIAOYUTAI/SENKAKU ISLANDS

Adapted from Notes on the Senkaku Islands by Takahashi Shogoro, Tokyo: Seinen Shuppansha, 1979, inside cover.
APPENDIX

The Appendix includes original versions of all Meiji official documents pertaining to the incorporation process of the disputed islands uncovered to date which I have taken the responsibility to be the first in translating them into the English language. The original versions of these documents are included here for the purpose of objectivity and accuracy of this study --- which may be referred to in case of any unanticipated errors in my translations. As in Chapter V of this study, the documents are listed here in chronological order.

Please note that the following documents labeled as 7, 8, 9 and 10 are currently kept at the Diplomatic Records Office of the Ministry of Foreign Affairs of Japan 外務省外交史料館 in Tokyo and cannot be found in the official publication series, Japan Foreign Affairs Documents 日本外交文書. I have been fortunate to obtain original versions of these four documents for use of this study from Prof. Chang Chi-hsiung 張啓雄 of the Institute of Modern History, Academia Sinica 中央研究院 of the ROC, who first uncovered their existence in an earlier academic study published in 1993. While Prof. Chang's earlier study included excerpts of the said documents, I have chosen to present them in their entirety (followed by slightly different interpretations) in this study. In doing so, it may be noted that the entire contents of these four documents are, for the very first time, presented in a publication of any sort.

1. Letter from the Okinawa Prefectural Magistrate to the Home Minister (September 22, 1885)

別紙甲号
第三百十五号

久米赤島外二島取調ノ儀ニ付上申
本県卜清国福州間ニ散在スル無人島取調ノ儀ニ付、先般、在京森本本県大書記
官ヘ御内命相候趣ニ依リ、取調致候処、概略別紙（省略）ノ通ニ有ノ候。抑モ、
久米赤嶼、久場嶼及魚釣島ハ古来本県ニ於テ称スル所ノ名ニシテ、而モ本県所轄
ノ久米、宮古、八重山等ノ群島ニ接近シタル無人ノ島嶼ニ付、沖縄県下ニ属サラ
2. Petition letter to the Grand Council of State enclosed in a letter from the Home Minister to the Foreign Minister (October 9, 1885)

別紙乙号

大政官上申案

沖縄県ト清国福州トノ間ニ散在セル無人島久米赤島外島ニ島取調之義ニ付別紙之通県令ヲリ上申候処右諸島ノ義ハ中山信信録ニ記載セル島嶼ト同一ノ如ク候ヘ共只針路ノ方向ヲ取リタル迄ニテ別ニ清国所屬ノ証跡ハ少シモ相見ヘ不申且ツ名称ノ如キヘ彼ト我ト各其ノ唱フル所ヲ異ニシ沖縄所轄ノ久米、宮古、八重山等ニ接近シタル無人ノ島嶼ニ有之候へハ同県ニ於テ実地踏査ノ上国標相建候義差支無之ト相考間至急何分ノ御諭議相成候度別紙相添此段相伺候也

内 務 郎

太 政 大 臣 宛
3. Letter of response from the Foreign Minister to the Home Minister (October 22, 1885)

十月二十一日発達
親展第三十八号

外務卿伯爵 井上 賢

内務卿伯爵 山縣有朋殿下

沖縄県ト清国福州トノ間ニ散在スル無人島、久米赤島外二島、沖縄県ニ於テ実地調査ノ上国標建設ノ義、本月九日附甲第十八号ヲ以テ御協議ノ趣致候処、右島嶼ノ義ハ清国国境ニモ接近歴候。聰ニ路査ヲ遂ケ候大東島ニ比スレハ、周回モ小サキ趣ニ相見ヘ、殊ニ清国ニハ其島名ヲ附シ有之候ニ就テハ、近時、清国新聞紙等ニモ、我政府ニ於テ台灣近傍清国ノ所属ノ島嶼ヲ占拝セン等ノ風説ヲ掲載シ、我国ニ對シ猜疑ヲ抱キ、聰ニ清政府ノ注意ヲ促シ候モノモ有之ニ付、此際ニ邏ニ公然国標ヲ建設スル等ノ処置ヲ有之候テハ、清国ノ疑惑ヲ消キ候聞、差向実地ヲ路査セシメ、港湾ノ形状ヲ並ニ土地物産開拓見込ノ有關ヲ詳細報告セシムルニミニ止メ、国標ヲ建テ開拓等ニ着手スルニ、他日ノ機会ニ遅り候方可然候。

且聰ニ路査セシ大東島ノ事並ニ今回路査ノ事共、官報ヲ並ニ新聞紙ヲ掲載ス不相成候方可然候間、未候御注意相成置候様致候。

右回答並具備見申進候等也。

追テ御差越ノ書類及び御付候御落手相成度候也。

4. Letter from the Okinawa Prefectural Magistrate to the Home Minister (November 24, 1885)

管下無人島ノ儀ニ兼テ御下命ノ次第ヲ有之取調為候処候今般別紙ノ通復命書差出候該備。国標建設ノ儀ハ、書箋書ノ通通り、清国トノ関係ナキニシモアリス、万ー不都合ヲ生シ候テハ相濟候ニ付キ、如何取計可然哉。至急何分ノ御指揮奉仰候也。

明治十八年十一月二十四日

内務卿伯爵 山 縣 有 朋 殿

沖縄県令 西 村 拢 三

5. Orders from the Home Minister and Foreign Minister conferred upon the Okinawa Prefectural Magistrate to forgo placement of national markers (December 5, 1885)

秘第二十八号ノ二
書面伺イ趣、目下建設ヲ要セザル儀ト心得ベキ事

両卿
6. Petition from the Okinawa Prefectural Governor requesting the Ministry of Home Affairs to incorporate the disputed islands under the jurisdiction of Okinawa Prefecture (January 13, 1890)

甲第一号
管下八重山群島ノ内石垣島ニ接近セル無人島魚釣島外ニヤリニ付十八年十一月五日三百八十四号伺ヘ対シ同年十二月五付ヲ以テ御指令ノ次第ヲ有之候処右ハ無人島ナルヨリ是迄別ニ所轄ヲモノ不相定其仮ニ設置候処昨今ニ至リ水産取締ヲ必要ヨリ所轄ヲ被相定度旨八重山島役所ヨリ伺出候次第ヲ有之傍此際管下八重山島役所所轄ニ相定度此段相伺候也。

明治廿三年一月十三日
内務大臣宛

7. Subsequent Petition from the Okinawa Prefectural Governor requesting the Home Minister and Foreign Minister to grant permission to place the disputed islands under the jurisdiction of Okinawa Prefecture (November 2, 1893)

甲第百十一号
久場島、魚釣島ヘ本県所轄標杭建設之義ニ付上申
本県下八重山群島ノ北西ニ位スル無人島久場島魚釣島ノ義本県所轄トシ大東島ノ例ニ従ヒ本県所轄標杭建設度儀ニ付去ル十八年十一月五日三百八十四号ヲ以テ上申仕候処同年十二月五日付ヲ以テ目下建設ヲ要セサル儀ト可相心得旨御指令相成度処近来該島ヘ向ケ漁業ヲ試スム者有之取締上ニモノ関係不貯義ニ付去ル十八年續々上申仕度通本県所轄トシ其目標建設仕度候条ヲ至急指導度聴ノニ上申書及御指令ヲ相添ヘ此段重テ上申候也。

明治廿六年十一月二日
沖縄県知事 奈良原繁
内務大臣伯爵 井上 瑞 殿
外務大臣 陸奥宗光 殿
8. Internal document from the Director of Prefectural Administration Bureau of the Ministry of Home Affairs to the Home Minister (April 14, 1894)

[秘別第三十四号]

県治局長
大臣
久場島、魚釣島へ所轄標杭建設ノ義上申
沖縄県
右案一広照会可然敷仰裁。
追テ本件ハ別紙ノ通り明治十八年中伺出候得共清国ニ交涉スルヲ以テ外務省ト御協議ノ末建設ヲ要セサル旨指令相成倍セラ太政官ニモ内申相成候件ニ有之候。
照会案
客年十一月ニ日付ヲ以テ久場嶼魚釣島へ所轄標杭建設ノ義上申相成候処左ノ件承知敷度。
一、該島港湾ノ形状。
一、物産及土地開拓見込ノ有無。
一、旧記口碑等ニ就キ我国ニ属セシ証左其他宮古島八重山島等トノ従来ノ関係。
右及照会候也。
年月日
県治局長
沖縄県知事

9. Letter of response from the Okinawa Prefectural Magistrate to the Director of Prefectural Administration Bureau of the Ministry of Home Affairs (May 12, 1894)

復第百五十三号

久場島、魚釣島港湾ノ形状及其他ノ件ニ付秘別第三十四号御照会ノ趣キ承知候。然ル処該島ハ去ル十八年中、県属警部等派出踏査セシメ候、以来更ニ実際に地調査致サルヲ以テ確報難及候得共、當時出張員ノ調査及び回航船出雲丸船長報告書ハ別紙ノ通りニ有之候。条具詳写シ略図相添へ此端及御回答候也。
明治二七年五月二十二日
沖縄県知事 奈良原繁
内務省県治局長 江木千之殿

追テ該島ニ関スル旧記書類及我邦ニ属セシ事ノ明文又ニ口碑ノ伝説等モ無之古来県下ノ漁夫時々八重山島カラ南嶋ヘ渡航漁漁狐セシ候関係ノハ有之候等此段添侯也。
10. Internal document from the Director of Prefectural Administration Bureau of the Ministry of Home Affairs to the Home Minister (December 15, 1894)

[秘別一三三号]

県治局長

久場島、魚釣島へ所轄標杭建設ノ義上申

沖縄県

本件ニ関シテ別紙ノ通明治十八年中仲出候得共清国ニ交渉スルヲ以テ外務省ト
御協議ノ未建設ヲ要セザル旨指令相成其旨太政官ニモノ内申相成候処其時ト今日
トハ大ニ事情ヲ異ニ致候付標杭建設ノ義御閣関ノ積リヲ以テ左案相同意

（本文魚釣島、久場嶋ニ関スル地理ノ沿革等送達調査候得共何分其要綱ヲ得ス海軍
省水路部二百十号地図ノ八重山島ノ東方及山及び釣魚島ニ向ハ右ニ該当スルモノ
如シ而メ同部員ノ陳ニ依レハ右二島ハ別ニ従来何レノ領土ト定マラセル趣ニ
有之地形上沖縄群島中ノ一部ト認めべきハ当然ノ義ト被候議間先以テ本文ノ通取
調候。）

関議提出案

別紙標杭建設ニ関スル件関議提出ス

年 月 日

総理大臣宛

（別紙）沖縄県下八重山群島ノ北西ニ位スル久場島魚釣島ハ従来無人島ナレト近
来ニ至リ該島へ向ケ漁業ヲ試ムル者有之ヲレカ取締ヲ要スルヲ以テ同県ノ所轄
トシ標杭建設致度皆同県知事ヨリ上申ノ通標杭ヲ建設センメントス

右関議ヲ請

11. Letter from the Home Minister to the Foreign Minister (December 27, 1894)

秘別第一三三号

久場島、魚釣島へ所轄標杭建設ノ義、別紙甲号ノ通リ沖縄知事ヨリ上申候処、
本件ニ関シ別紙乙号ノ通リ明治十八年貴省ト御協議ノ未指示ニ及ベタル次第ヲ有
之候共、其ノ當時ト今日トハ事情ヲ相異ニ致スケルヲ付キ、別紙閣議提出ノ見込ニ有之候
条、一応及御協議候也。

明治廿七年十二月廿七日

内務大臣正男 尾村 靖⑨

外務大臣子爵 陸奥宗光殿
12. Cabinet Decision of January 14, 1895

DIAOYUTAI/SENKAKU ISLANDS DISPUTE

Cabinet Decision of January 14, 1895

明治二十八年一月十四日 内務大夫子爵 野村 靖
内閣總理大臣伯爵伊藤博文殿、

秘別第一三三号

沖繩県下八重山群島ノ北西ニ位スル久場島魚釣島ヘ従来無人島ナレテ近来ニ至
り該島ヘ向ケ漁業等ヲ試ムル者有之ニレカ取締ヲ要スルヲ以テ同県ノ所轄トシ標
杭建設致度旨同県知事ヨリ上申有之右ヘ同県ノ所轄ト認ムルニ上申ノ通標杭ヲ建
設セシメントス右閣議ヲ請フ

明治廿八年一月十二日内閣大臣子爵 野村 靖
明治廿八年一月十四日内閣書記官
内閣總理大臣花押 内閣書記官長花押 外務大臣花押 大蔵大臣花押 海軍大臣
文部大臣花押 通信大臣花押 内務大臣花押 醫軍大臣花押 司法大臣花押
農商務大臣花押

13. Imperial Decree No. 13 of 1896

DIAOYUTAI/SENKAKU ISLANDS DISPUTE

Imperial Decree No. 13 of 1896

明治二十九年三月五日

内閣總理大臣侯爵 伊藤博文
内 務 大 臣 芳川慶正

敕令第十三号（官報三月七日）

第一条 轄表全土区 DEC除了外沖繩県ヲ含シテ左ノ五郡トス

島尻郡 島尻各間切、久米島、慶良間諸島、波名喜島、粟國島、伊平屋諸
島、鳥島及び大東島

中頭郡 中頭各間切

国頭郡 国頭各間切及伊江島

宮古郡 宮古諸島

八重山郡 八重山諸島

第二条 郡ノ境界モシクハ名称ヲ変更スルコトヲ要スルトキハ、クハ内務大臣
之ヲ定ム。

附則

第三条 本令施行ノ時期ヘ内務大臣之ヲ定ム
SELECTED BIBLIOGRAPHY

The Selected Bibliography is intended to provide the reader with easy access to the more important sources upon this study was based or which were consulted. The sources are grouped under three main categories, reflecting the language in which they were written. Each of these three categories are then grouped under four subgroups, namely, newspapers, academic papers and shorter pieces, government publications and pamphlets, and books.

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