

# Chapter 3

## The Senkaku Islands



### China’s Claim Prompted by Potential Oil Reserves

The Senkaku Islands are a group of small islands located 160 km north of the Yaeyama Islands, Okinawa Prefecture. “The Senkaku Islands” is the collective term that refers to Uotsuri Island, Kitakojima Island, Minamikojima Island, Kuba Island (Kōbisho), Taishō Island (Sekibisho), Okinokitaiwa, Okinominamiiwa, and Tobise. Their total land area is approximately 6.3 km<sup>2</sup>. The largest island, Uotsuri Island, covers about 3.6 km<sup>2</sup>. Apart from the period when Japanese people inhabited them, the Senkaku Islands were, and are still, uninhabited. The islands were thought to have no valuable natural resources, and therefore escaped the world’s attention (Fig. 3.1).

This changed in the autumn of 1968, when the United Nations Economic Commission for Asia and the Far East (ECAFE; now the United Nations Economic and Social Commission for Asia and the Pacific) released a report of a geophysical survey led by Japanese, Korean, and Taiwanese scientists of a vast area of the East China Sea. The ECAFE report concluded that there is a possibility of prolific oil reserves on the seafloor of roughly 200,000 km<sup>2</sup> northeast of Taiwan. This drew the attention of the international community to the Senkaku Islands. By late 1970, China began making territorial claims over the islands.<sup>1</sup>

Chapter 6 of this book discusses how negotiations between Japan and China over fishing rights around the Senkaku Islands have been handled. The Chinese government first began to officially assert sovereignty over the Senkaku Islands in a Statement of the Ministry of Foreign Affairs, dated December 1971. On March 8 of the following year, Japan released a document entitled “The Basic View on the Sovereignty over the Senkaku Islands, Ministry of Foreign Affairs.” This work will primarily analyze these two documents.

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<sup>1</sup>For more on issues concerning petroleum, see Takahashi, Shōgorō. 1979. *Senkaku rettō nōto* (Notes on the Senkaku Islands). Tokyo: Seinen Publishing.

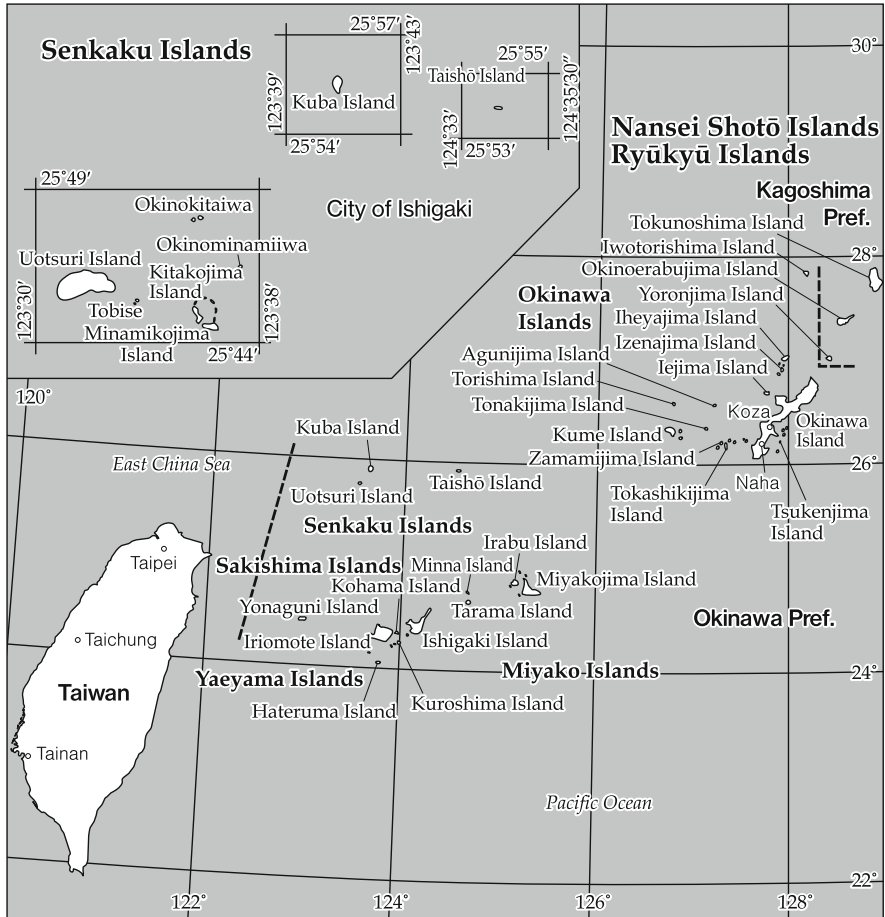


Fig. 3.1 Location of the Senkaku Islands

### Examination of China’s Argument and Its Basis

*Examination of the Argument Asserting the Illegality of the Inclusion of the Senkaku Islands into the “Reversed Areas” of the Okinawa Reversion Treaty.*

The Statement of the Ministry of Foreign Affairs of the People’s Republic of China dated December 30, 1971 begins as follows:<sup>2</sup>

*In the past few years, the Japanese Sato government, ignoring the historical facts and the strong opposition of the Chinese people, has repeatedly claimed that Japan has the so-called*

<sup>2</sup>“Statement of the Ministry of Foreign Affairs of the People’s Republic of China,” December 30, 1971. English translation in *Peking Review*, January 7, 1972, p. 12. <http://www.massline.org/PekingReview/PR1972/PR1972-01.pdf>. Accessed on November 30, 2022.

*'title' to China's territory of the Diaoyu<sup>3</sup> and other islands and, in collusion with U.-S. imperialism, has engaged in all kinds of activities to invade and annex the above-mentioned islands. Not long ago, the U.S. Congress and the Japanese Diet one after the other approved the agreement on the 'reversion' of Okinawa. In this agreement, the Governments of the United States and Japan flagrantly included the Diaoyu and other islands in the 'area of reversion.' This is a gross encroachment upon China's territorial integrity and sovereignty. The Chinese people absolutely will not tolerate this!*

The same statement elaborated on the point as follows:

*After World War II, the Japanese government illicitly handed over to the United States the Diaoyu and other islands appertaining to Taiwan, and the United States Government unilaterally declared that it enjoyed the so-called 'administrative rights' over these islands. This in itself was illegal. . . . Now the U.S. and Japanese Governments have once again made an illicit transfer between themselves of China's Diaoyu and other islands. This encroachment upon China's territorial integrity and sovereignty cannot but arouse the utmost indignation of the Chinese people.*

The premise of this Chinese argument can be summarized in connection with the San Francisco Peace Treaty as follows. In this argument, the Chinese insist that the Senkaku Islands were part of the region including Taiwan (Article 2) that was eventually separated from the territory of Japan under the terms of the San Francisco Peace Treaty. They were not included in the region that, while remaining part of Japanese territory, would be placed under US administration for the time being, like the Nansei Shotō Islands (Article 3). Furthermore, the argument goes that the Senkaku Islands continued to be under Chinese sovereignty even when the Okinawa Reversion Treaty was signed on June 17, 1971 and entered into force on May 15, 1972.

Indeed, with regard to such areas as Taiwan and other territories, China began the process of "reversion" of "Taiwan and the Pescadores Islands" to China, as provided for in the territorial clause of the Potsdam Declaration soon after Japan accepted the Declaration on August 14, 1945. On August 29, it had already appointed the governor-general of the Taiwan Provincial Administrative Executive Office and the Garrison Command. The Taiwan Provincial Administrative Executive Office Organization Regulation was promulgated on September 20, shortly after Japan signed the Instrument of Surrender on September 2. Specific steps were taken towards the seizure of Taiwan beginning in October. Taiwan was formally restored to China as its territory on October 25, through the formal procedures for the transfer called the "surrender ceremony." China introduced the same administration system in Taiwan as in its other territories. In this manner, such areas as Taiwan were incorporated into China through a purely domestic procedure based on the territorial clause of the Potsdam Declaration, prior to the signing of the peace treaty.<sup>4</sup> Taking these developments into account, the San Francisco Peace Treaty had Japan renounce Taiwan and other territories. From the viewpoint of China, which did

<sup>3</sup>The citations from *Peking Review* used "Tiaoyu" following an older style of romanization.

<sup>4</sup>Irie, Keishirō. 1951. *Nihon kōwa jōyaku no kenkyū* (Study of the Treaty of Peace with Japan). Tokyo: Itagaki Shoten, pp. 61–64.

not attend the deliberations on the San Francisco Peace Treaty, the acceptance of the Sino-Japanese Peace Treaty of 1952 and the Joint Statement between Japan and China of 1972, in which Japan maintained its position based on Article 8 of the Potsdam Declaration, gave final legal standing to China on the reversion of Taiwan and the Pescadores Islands to China. Thus, closely examining the Chinese argument from a legal perspective, it can be said that China's exact legal claim is that the Senkaku Islands were already part of Chinese territory at the time the San Francisco Peace Treaty was signed. This interpretation can be deduced from a message delivered on *Radio Peking* on December 30, 1971:

*It is even more absurd for the United States to want to include China's territory Diaoyu and other islands it has occupied into the 'area of reversion' in accordance with the Okinawa 'reversion' agreement. After World War II, Japanese imperialism returned Taiwan and the Penghu Islands<sup>5</sup> to China. It was illegal in itself that Japan handed over the Diaoyu and other islands appertaining to Taiwan to the United States. There were no legal grounds for this action.<sup>6</sup>*

With respect to the occupation of Okinawa, US forces landed on the Kerama Islands on March 26, 1945, then on the main island of Okinawa on April 1. Following Japan's surrender, the US Navy military government promulgated Proclamation No. 1-A "To the People of the Nansei Shotō Islands and Adjacent Waters" on November 26, 1945 for the Miyako Islands, the Yaeyama Islands and the Amami Islands. Shortly afterward, US forces began to occupy the Miyako Islands and the Yaeyama Islands in March and the Amami Ōshima Islands the following January. Actual military rule was enforced in the Miyako Islands on December 8 and in the Yaeyama Islands on December 28.

During the military occupation of Okinawa, the United States kept the administrative areas of the former Okinawa Prefecture in place as they had been before. When the Supreme Commander for the Allied Powers (SCAP), the General Headquarters (GHQ), issued a memorandum entitled "Governmental and Administrative Separation of Certain Outlying Areas from Japan" on January 29, 1946, the Ministry of Foreign Affairs of Japan informally submitted to GHQ a list of the islands comprising the Nansei Shotō Islands. The list named Sekibisho, Kōbisho, Kitajima Island, Minamijima Island, and Uotsuri Island as comprising the "Senkaku Islands" and included the islands within Okinawa Prefecture. This series of events all took place after China's incorporation of Taiwan and other areas into its territory.

However, there is no evidence that China lodged protests of any kind against these events, despite being fully aware of them as a member of the Allied powers. On April 20, 1971, Wei Yu-sun, spokesperson for Taiwan's Ministry of Foreign Affairs, explained that "the islands were occupied by the U.S. military, but our government

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<sup>5</sup>More commonly known as the Pescadores Islands.

<sup>6</sup>English translation from "Tiaoyu and Other Islands Have Been China's Territory Since Ancient (U.S.-Japanese Reactionaries' Vain Efforts)" in *Peking Review*, January 7, 1972, pp. 13–14. <http://www.massline.org/PekingReview/PR1972/PR1972-01.pdf>. Accessed on November 30, 2022.

believed this was a necessary step at the time out of consideration for the safety of the joint defense zone,” but he did not provide any evidence to support this.<sup>7</sup>

Furthermore, China responded to “The Basic View of the Ministry of Foreign Affairs,” a March 8, 1972 document outlining Japan’s position on the Senkaku Islands, with a statement in *Peking Review* on April 7 of that year. It stated, “As is well known, after World War II, the Japanese Government handed over to the United States the Diaoyu and other islands appertaining to Taiwan and the U.S. Government unilaterally declared that it had so-called ‘administrative rights’ over them. This is illegal in the first place, and the Chinese Government and people have never recognized it.”<sup>8</sup> Even here, however, there is no evidence that any objections were lodged against the Senkaku Islands being within the US “area of occupation” or its “area of administration,” nor is there any evidence whatsoever that China disapproved of these actions.

Of course, the inclusion of the Senkaku Islands “within the administered reversed areas” does not in and of itself provide the basis for Japan possessing sovereignty over these islands. That is because if they had been arbitrarily included within Japanese territory when the Okinawa Reversion Treaty was signed, then the Chinese objections would be legitimate.

However, were the Senkaku Islands actually continuously part of Chinese territory until the signing of the Okinawa Reversion Treaty after World War II, as China asserts?

The biggest hole in the Chinese argument is that on October 25, 1945, about 2 months before the US occupation began on the Yaeyama Islands of Okinawa Prefecture, which had been under the prefecture’s administration prior to the war, China had completed its incorporation of territories including Taiwan. Furthermore, documents compiled by Taiwan Province after World War II identified that Pengjia Islet, situated slightly north of the main island of Taiwan, constitutes the northern end of Taiwan Province. Maps published in Taiwan and Beijing excluded the Senkaku Islands from Chinese territory and marked them as a part of the Ryūkyū Islands. These facts not only show that China did not recognize the Senkaku Islands as its own territory, but that it clearly considered them to be a part of Japan. That is because if China had thought of the Senkaku Islands as Chinese territory and that they were included in the reference in the Cairo Declaration to “the territories stolen from China by Japan—including Manchuria, the island of Taiwan and the Pescadores Islands,” then it is unthinkable that China, a victor in the war, would face any difficulties or obstacles in incorporating the Senkaku Islands into its territory as it did immediately after the war’s end with islands like Taiwan.

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<sup>7</sup>The same reference, without supporting evidence, is also made in a book written by a former vice chairman of the Taiwan-Japan Relations Association: Lin Chin-ching. 1987. *Sengo no nikka kankei to kokusaihō* (Postwar Japan-Republic of China Relations). Tokyo: Yūhikaku Publishing, p. 182.

<sup>8</sup>English translation from “Sato Government Tries to Annex China’s Tiaoyu And Other Islands (So-Called ‘Administrative Rights’ Illegal)” in *Peking Review*, April 7, 1972, p. 14. <http://www.massline.org/PekingReview/PR1972/PR1972-14.pdf>. Accessed on November 30, 2022.

In contrast, even under the US Civil Administration following US military occupation, Japan undertook numerous significant initiatives in the form of actions taken by the US Civil Administration of the Ryūkyū Islands and the Government of the Ryūkyū Islands.

First, the Law Concerning the Organization of the Gunto Governments (Military Government Ordinance No. 22), the Provisions of the Government of the Ryukyu Islands (Civil Administration Ordinance No. 68) and the geographical boundaries of the Ryukyu Islands (Civil Administration Proclamation No. 27) defined areas under the jurisdiction of authorities, including the US Civil Administration of the Ryūkyū Islands and the Government of the Ryūkyū Islands, by indicating latitude and longitude coordinates, and naturally included the Senkaku Islands in these areas.

Secondly, in 1951 the US Navy set up maritime areas for aerial bombing training exercises on Kōbisho and Sekibisho, with the former designated as a special exercise area. Taishō Island (Sekibisho), which was State-owned land, was designated as an exercise area after April 16, 1956. For the privately-owned land of Kuba Island (Kōbisho), the US Civil Administration concluded Basic Lease GRI Nr. 183-1 on July 1, 1958 between its agent, the Ryūkyū government, and the landowner, Koga Zenji. Accordingly, a lease was paid to Mr. Koga. The Ryūkyū government had been levying a fixed asset tax<sup>9</sup> on the four islands he owned, and after the Basic Lease was concluded, it began to withhold taxes from the revenue earned from the utilization of military land on Kuba Island. According to an understanding reached between the Japanese and US governments during the Okinawa reversion negotiations, the Japanese government would provide firing ranges on Taishō Island and Kuba Island to the US forces in Japan as facilities and areas under the Japan-US Security Treaty, and under the Japan-US Status of Forces Agreement after the islands were restored to Japan.

Thirdly, Japan took measures against the dismantlement of submerged ships on Minamikojima Island by Taiwanese people in August 1968. On August 12, an officer of the Immigration Agency of the Ryūkyū government's Legal Department discovered that Xingnan Engineering, a Taiwanese salvage company, had set up a tent workshop and cranes for the dismantlement of submerged ships. As the company did not have a permit to enter the area, the agency ordered the intruders to immediately leave and recommended that the company apply for entry onto the islands. The Taiwanese workers soon exited and applied for entry to Minamikojima Island. On August 30, 1968 and on April 21, 1969, the company received a permit to enter the area with the approval of the High Commissioner of the Ryūkyū Islands. The High Commissioner issued a permit retroactively to allow Taiwanese workers to

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<sup>9</sup>The fixed asset tax was described as follows in an interview conducted by the author with the city of Ishigaki's financial affairs section on March 3, 1983. Taishō Island (Sekibisho: Block 2394, Tonoshiro, Ishigaki) is State-owned land. Koga Zenji, who was residing in the city of Naha at the time, sold Uotsuri Island (Block 2392, Tonoshiro, Ishigaki), Kitakojima Island (Block 2391), and Minamikojima Island (Block 2390) on June 21, 1974 to Kurihara Kunioki, a resident of Ōmiya, Saitama Prefecture. Therefore, Koga paid a fixed asset tax of 90,000 yen for Kuba Island (Kōbisho: Block 2393), while Kurihara paid a fixed asset tax of 450,000 yen for the other three islands.

enter the area from August 1, 1968 to October 31, 1969, and permission was also issued for them to bring some equipment and facilities into the area as well. No nation protested this matter. Incidentally, the head of the salvage company had licenses including a dismantlement license issued by the Taiwanese Ministry of Communications, as well as an exit permit issued by the Taiwanese garrison head office. This, along with the absence of protests, provides sufficient grounds to presume that Taiwanese authorities did not consider Minamikojima Island as their territory.

From July 8 to 13, 1970, the Ryūkyū government erected a territorial signboard on the Senkaku Islands. (*Radio Peking* criticized these moves on December 30, 1971, calling them the government's "attempt to make Japan's 'possession' of these islands a *fait accompli*." China claimed title to the Senkaku Islands for the first time, albeit informally, on December 4 of that year, as the *Xinhua News Agency* criticized the joint development of resources on the continental shelf in the East China Sea by Japan, Taiwan, and the Republic of Korea (ROK). The *People's Daily* also reported on December 29 that "Japan is also trying to incorporate into its territory even some islands and waters that belong to China, including Diaoyu" and that "islands, including Diaoyu, Huangwei, Chiwei, Nanhsiao, and Peihshiao, have, as has Taiwan, been the territories of China since ancient times." In other words, China never made territorial claims and never lodged effective protests from 1945 to 1970. To put it differently, Japan exercised State control over the Senkaku Islands in a peaceful and continuous manner for 25 years after World War II. However, the Government of the Republic of China (ROC), with which Japan had diplomatic relations until 1972, granted a permit to an American oil company to explore for oil along the continental shelf including the Senkaku Islands. At the House of Councillors' Special Committee on Okinawa and Northern Problems on August 10, 1970, the Japanese government reported that it had issued a statement to the ROC government that "these kinds of unilateral measures are invalid under international law."<sup>10</sup> In addition, in testimony during a secret meeting at the Legislative Yuan on September 4, Taiwanese Foreign Minister Wei Tao-ming said for the first time that the Senkaku Islands "are five islands that belong to the national government." His remarks were reported the following day. However, the basis for this statement is unknown.

In light of the foregoing, one cannot but conclude that the Chinese argument that the Senkaku Islands have always been part of Chinese territory, or that at the least they were already Chinese territory at the time of the conclusion of the San Francisco Peace Treaty as well as the Okinawa Reversion Treaty, is made on very weak grounds.

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<sup>10</sup>*Asahi Shimbun*, August 11, 1970.



## ***Analysis of the Arguments that the Senkaku Islands Appertain to Taiwan***

The Statement of the Ministry of Foreign Affairs of the People's Republic of China dated December 30, 1971 reads as follows:

*The Diaoyu and other islands have been China's territory since ancient times. Back in the Ming Dynasty, these islands were already within China's sea defence areas; they were islands appertaining to China's Taiwan but not to Ryukyu, which is now known as Okinawa. The boundary between China and Ryukyu in this area lies between Chiwei Yu and Kume Island and fishermen from China's Taiwan have all along carried out productive activities on the Diaoyu and other islands. During the 1894 Sino-Japanese War, the Japanese Government stole these islands and in April 1895 it forced the government of the Ching [Qing] Dynasty to conclude the unequal "Treaty of Shimonoseki" by which "Taiwan, together with all islands appertaining to Taiwan" and the Penghu Islands were ceded.<sup>11</sup>*

The December 30, 1971 broadcast by *Radio Peking* provided more details:

*To resist harassment by Japanese invaders, China's Ming Dynasty in 1556 appointed Hu Tsung-hsien [Hu Zongxian] commander of the punitive force in charge of military action against the Japanese invaders in the coastal provinces. The islands such as Diaoyu Island, Huangwei Yu and Chiwei Yu were then within the scope of China's coastal defence. It was more specifically stated in the records of missions sent to the Ryukyu Islands by China's Ming and Ching [Qing] Dynasties and in geography and history books that these islands belong to China and that the demarcation line between China and the Ryukyu Islands lies between Chiwei Yu and Kome Island, namely, present-day Kume Island.*

*In 1879, when Li Hung-chang [Li Hongzhang], Minister Superintendent of Trade for the Northern Ports of China of the Ching [Qing] Dynasty, held negotiations with Japan on the title to the Ryukyus, both the Chinese and Japanese sides held that the Ryukyus comprised 36 islands. Diaoyu and the other islands were not among those 36 islands at all.*

*The Diaoyu and other islands were under China's jurisdiction for several centuries, and it was only in 1884 that the Japanese "discovered" them. The Japanese Government immediately plotted to annex them, but dared not lay hands on them then. It was in 1895 when the defeat of the government of the Ching [Qing] Dynasty in the [First] Sino-Japanese War had become inevitable that these islands were grabbed by Japan. The Japanese Government then compelled the Ching [Qing] Dynasty government to sign the "Treaty of Shimonoseki" which ceded "Taiwan, together with all islands appertaining to Taiwan" and the Penghu Islands to Japan.<sup>12</sup>*

These statements by the Chinese Ministry of Foreign Affairs and *Radio Peking* can be summarized in the following four points; each of them shall be examined individually.

1. The Senkaku Islands were within China's coastal defense zone as early as the Ming period, and the islands appertained to the Chinese territory of Taiwan.

<sup>11</sup>"Statement of the Ministry of Foreign Affairs of the People's Republic of China," December 30, 1971. Op. cit.

<sup>12</sup>"Diaoyu and Other Islands Have Been China's Territory Since Ancient (U.S.-Japanese Reactionaries' Vain Efforts)", op. cit.



2. As historical sources such as the records of investiture missions make clear, the border between China and the Ryūkyū Kingdom lay between Sekibisho and Kume Island (modern-day Kuba Island).
3. In the Sino-Japanese negotiations regarding the so-called Ryūkyū issue, both sides recognized that the Senkaku Islands were not included in the "36 islands of Ryūkyū."
4. The Japanese discovered the Senkaku Islands in 1884, only after they had already become part of China hundreds of years before. When the defeat of the Qing dynasty government became certain during the First Sino-Japanese War of 1895, Japan "stole" the Islands. Soon afterward, the Japanese government forced the Qing administration to sign the Treaty of Shimonoseki, under the terms of which Taiwan and all its affiliated islands, along with the Pescadores Islands, were ceded to Japan.

### *Detailed Examinations of Each of China's Arguments*

1. While the statements from China's Ministry of Foreign Affairs did not cite Ming documents proving that the Senkaku Islands were within China's coastal defense zone, it can be surmised from various studies that the source they are referring to is *Chou Hai Tu Bian (An Illustrated Compendium on Maritime Security)*, edited by Hu Zongxian in the mid-sixteenth century.<sup>13</sup>

According to Inoue Kiyoshi, in the first volume, "Map of Coastal Mountains," the maps "Fujian 7" and "Fujian 8" show the coastal seas of Luoyuan and Ningde counties, with the following islands running from west to east: Jilong Shan ("shan" literally means "mountain" but used in reference to an island), Pengjia Shan, Diaoyu Yu, Huaping Shan, Huangwei Shan, Ganlan Shan, and finally Chi Yu. These islands start off the coast of Keelung, Taiwan, which is located in the seas of southern Fuzhou Province. The line along which the islands are situated heads eastward, and they "undoubtedly include the Diaoyu Islands." "These maps show that the Diaoyu Islands were added to the islands in Chinese territory in the coastal waters of Fujian. Volume 1 of *Chou Hai Tu Bian* shows maps, starting in the southwest and moving northeast, of not only Fujian, but also all the Chinese coastal waters that Japanese pirates would raid. None of these maps include any areas outside of Chinese territory, so there is no basis for only excluding the Diaoyu Islands from Chinese territory."<sup>14</sup>

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<sup>13</sup> See sources such as: Inoue, Kiyoshi. 1972. *Senkaku rettō* (The Senkaku Islands). Tokyo: Gendai hyōronsha, p. 32; Ozaki, Shigeyoshi. "Senkaku shotō no kizoku ni tsuite (Territorial Sovereignty over the Senkaku Islands) (Part 3-2)," *Reference* 263, p. 158. Ozaki wrote further on the historical examination section of his paper: Ozaki, Shigeyoshi. 1995. "Senkaku shotō no kokusaihō-jō no chii (The Status of the Senkaku Islands in International Law)," *Tsukuba hōsei* (Tsukuba Law and Policy) 18(1), March.

<sup>14</sup> Inoue, op. cit. 32.

Incidentally, does Inoue's argument stand up to scrutiny? According to Ozaki Shigeyoshi, Volume IV of *Chou Hai Tu Bian* contains a "Map of the Coast of Fujian Province." While the map contains the Pescadores Islands, it does not mark Taiwan, Keelung Islet northeast of Taiwan, Pengjia Islet, nor the Senkaku Islands. "This is based more on the true situation at the time." Other more recent sources, including the *Luoyuan County Annal* (1614, during the Ming dynasty) and the *Ningde County Annal* (1718, Qing dynasty), both official local publications, indicate that at the time the Senkaku Islands were not included in the administrative control of these counties in Fujian Province. Further still, the Senkaku Islands are not charted in the "Map of Fujian's Coastal Defenses" in Volume I of another government publication called *Chongzuan Fujian Tongzhi* (*Recompiled General Annals of Fujian*; 1838, Qing dynasty). Moreover, according to Okuhara Toshio, if *Chou Hai Tu Bian* is cited as a source, "it would be appropriate to say that 'Borders of Fujian,' the seventeenth map of Volume I, shows the borders of Fujian Province at the time."<sup>15</sup> While this map does mark the Pescadores Islands, Taiwan and the Senkaku Islands are not drawn on it. In other words, the Senkaku Islands did not belong to Fujian Province.

Hu Zongxian was appointed as supreme commander in charge of repelling the Japanese pirates in 1556, several years before *Chou Hai Tu Bian* was written. In any case, at the time that the Japanese pirates were most violent, between 1553 and 1559, China had to primarily focus on defending the coastal areas of its mainland. Consequently, the Ming dynasty could not even extend its defensive capabilities to the Pescadores Islands. While the pirates travelled quite freely between mainland China and the Ryūkyū Kingdom, particularly between the Miyako and Yaeyama Islands, it has not been confirmed in either Chinese or Ryūkyū historical records whether Ming military ships reached as far as the Ryūkyūs in pursuit of the pirates.

Wang Zhi, who had mustered several dozen Japanese pirate groups in 1553, was a Chinese man from the same town as Hu Zongxian. The pirate leader was lured to his hometown and was executed in 1560. Considering this, the fact that the Senkaku Islands are depicted only in "Map of Coastal Mountains" means simply that these islands either lay along the routes the Japanese pirates used in their raids or were in the vicinity of waters infested by the pirates. Therefore, this would merely indicate that the area was one warranting attention for the sake of defending the mainland. The text of *Chou Hai Tu Bian* does not make any mention that the Senkaku Islands were inside the Japanese pirate defense zone at the time, but even if there are any other sources unnoticed by the studies conducted thus far that indicate that the Senkaku Islands were within China's coastal defense zone as early as the Ming period, the aforementioned facts make it inconceivable that Chinese control did in fact extend to the Senkaku Islands in any form.

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<sup>15</sup> Okuhara, Toshio. 1978. "Senkaku shotō ryōyūken no konkkyō (Evidence for the Territorial Rights over the Senkaku Islands)." *Chūōkōron* (Central Review), July.

Then were the Senkaku Islands appertaining to the Chinese territory of Taiwan during the Ming period? In *History of Ming*, an official Chinese historical record, Taiwan was included in the “Biographies of Foreign Countries” as a foreign territory of the east, while Jilong Shan of northern Taiwan (modern-day Keelung) was also included in the “Biographies of Foreign Countries.” Thus, during the Ming period, Chinese control did not extend to northern Taiwan (Keelung), nor to islands northeast of Taiwan such as Pengjia Islet, Huaping Shan, or Mianhua Yu. In addition, China did not consider these places as its territory. Although Taiwan was conquered by the Sui and the Yuan dynasties of China, the land remained undeveloped. Taiwan became a base for Japanese pirates during the Ming period, and by the end of the dynasty’s rule in the beginning of the seventeenth century, the Dutch had constructed outposts like Fort Zeelandia where the present-day city of Tainan is located. The Spanish came from Manila to establish trading outposts in such locations as Keelung in northern Taiwan. The Dutch soon drove them off, however, and Taiwan was under the continuous rule of the Netherlands for about 40 years.

The Ming dynasty collapsed in 1644 when the Qing dynasty entered Beijing. The Qing later conquered southern China as well by 1681. However, Zheng Chenggong, who led a resistance movement against the Qing, crossed over to Taiwan in 1661 and drove out the Dutch. He made his base there to continue the resistance, but in 1683 surrendered to the Qing armies dispatched to Taiwan. This is when the Qing first added Taiwan to its territory. The island became Taiwan Prefecture, a part of Fujian Province. Accordingly, it would be proper to say that the Senkaku Islands did not in fact appertain to the Chinese territory of Taiwan during the Ming period.

Zheng Shungong wrote *Riben Yijian (A Chronicle on Japan)* in 1556 based on materials he had accumulated after returning from an investigation of Japan’s state of affairs and its geography under the orders of Hu Zongxian’s predecessor. In a section of the book, “Wanli Chang-ge (Ballad of 10,000 Li),” Zheng makes mention of “small islands of Xiaodong.” This shows that Zheng thought of the Diaoyu Islands as being small islands affiliated with, or near to, Xiaodong (Taiwan). Although the information presented thus far indicates that the Senkaku Islands were not included within the territory incorporated into the Qing dynasty’s territory together with Taiwan, this does not provide a definitive answer to the question. In any case, Zheng was merely an individual person acting in an unofficial capacity.

2. China argues that, as historical sources such as the records of investiture missions make clear, the border between China and the Ryūkyū Kingdom lay between Sekibisho and Kume Island.

The first formal negotiation between China and the Ryūkyū Kingdom took place in 1372. Soon after, Emperor Taizu of the Ming dynasty (personal name Zhu Yuanzhang) overthrew the Yuan dynasty and acceded to the throne. He dispatched a mission to the Ryūkyū Kingdom to provide notification on the unification of China and to urge the kingdom’s submission to the Ming court. Responding to and accepting this notice of the emperor, called a *zhao yu*

(invitation), the Ryūkyū King of Chūzan dispatched an envoy to the Ming court in the same year. (Emissaries were also sent that year to the Muromachi shogunate in Japan. As the Ryūkyū Kingdom did, Shogun Ashikaga Yoshimitsu accepted the *zhao yu* and pledged his loyalty as “the King of Japan, by your grace.”)

When small neighboring States dispatched envoys to the Ming court and pledged their allegiance as a response to the invitation, the Ming court called this act *ru gong* or *chao gong*. The gifts presented to the Ming court at the time of *ru gong* were called *gong wu* or *fang wu* (meaning “tribute”). The diplomatic missions and the ships that carried them to the court were called by such names as *chao gong*, *ru gong*, or *jin gong chuan* (this last literally meaning “tribute ship”). The Ming emperor, in return for the tributes, issued an imperial decree that conferred the title of “kings of tributary States” on the kings of their nations by granting *chi shu* (investiture). As this tribute-investiture relationship<sup>16</sup> between Ryūkyū and China became formalized incrementally, the preparations for and the formality of the tribute and investiture ceremonies were considered highly important national events in Ryūkyū. Customarily, Ryūkyū sent envoys called *qing feng shi* for the entreaty for investiture to China 2 years after the demise of the previous Ryūkyū king. There were two major ceremonies necessary to mark an investiture: the funeral for the previous king (*yu zhai*) and the conferment of the title of the new king (the aforementioned *qing feng shi*). China dispatched investiture missions to Ryūkyū 23 times during the 500-year period spanning from 1372 to 1879, the year that the Meiji government abolished the domain of Ryūkyū, established Okinawa Prefecture, and prohibited its tributary relations with China. Of these 23 instances, 15 took place during the Ming dynasty and eight took place during the Qing dynasty. For its part, Ryūkyū dispatched ships for various purposes to China other than tribute ships, particularly during the Ming period. For example, Ryūkyū dispatched ships called *jie feng chuan* to Fuzhou, the capital of Fujian Province, to escort Chinese investiture ships prior to their departure from Fuzhou City. Ryūkyū also dispatched ships called *xie en chuan* to escort Chinese investiture missions on their return voyages from Ryūkyū to China in order to express its appreciation, as well as *qing he chuan* (celebratory ships) for some celebratory events. During the Ming dynasty, Ryūkyū dispatched ships on as many as 171 instances. As this number indicates, Ryūkyū ships travelled to China far more often than Chinese ships to Ryūkyū. During the Ming dynasty, Ryūkyū also conducted trade with Korea and South Pacific countries. As a result, Ryūkyū flourished as a trading hub, making its people well acquainted with the sea routes in surrounding waters, particularly the sea routes between Ryūkyū and China.

Chinese investiture missions not only absorbed knowledge of the Ryūkyū Kingdom, but also customarily kept records of all their experiences and

<sup>16</sup>For more on the significance of the *chao gong* system in East Asia, see Hamashita, Takeshi. 1997. *Chōkō shisutemu to kindai ajia* (The Tributary System and Modern Asia). Tokyo: Iwanami Shoten.

knowledge, such as matters relating to navigation, all ceremonial customs, as well as the state of affairs in the Ryūkyū Kingdom. These records served as guidelines for subsequent missions.<sup>17</sup> According to Taira Kazuhiko, the earliest record of the investiture missions in existence is Chen Kan's *Shi Liuqiu Lu* (The Records of the Imperial Title—Conferring Envoys to Ryūkyū) of 1535, in which the descriptions of islands such as Diaoyu Yu [Uotsuri Island], Huangwei Yu [Kōbisho], and Chiwei Yu [Sekibisho] can be seen for the first time. Today there exist 13 such records including *Shi Liuqiu Lu*, ranging up to the last mission conducted by Zhao Xin for the investiture of Shō Tai, the last king of Ryūkyū.<sup>18</sup>

- (a) Chen Kan's *Shi Liuqiu Lu* (Records of the Imperial Missions to Ryūkyū): journeyed to Ryūkyū in 1534.
- (b) Guo Rulin's *Chongke Shi Liuqiu Lu* (Supplementary Records of the Imperial Missions to Ryūkyū): journeyed to Ryūkyū in 1561.
- (c) Xiao Chongye's and Xie Jie's *Shi Liuqiu Lu* (Records of the Imperial Missions to Ryūkyū): journeyed to Ryūkyū in 1579.
- (d) Xia Ziyang's and Wang Shizhen's *Shi Liuqiu Lu* (Records of the Imperial Missions to Ryūkyū): journeyed to Ryūkyū in 1606.
- (e) Hu Jing's *Dutianshi Cefeng Liuqiu Zhenji Qiguan* (A Report on Ryūkyū, Written by the Chinese Envoy Du Tian): senior envoy Du Sance, deputy envoy Yang Lun, and their subordinate Hu Jing journeyed to Ryūkyū in 1633.
- (f) Zhang Xueza's *Shi Liuqiu Ji* (Report of the Imperial Missions to Ryūkyū): journeyed to Ryūkyū in 1663.
- (g) Wang Ji's *Shi Liuqiu Zalu* (Miscellaneous Records of the Imperial Missions to Ryūkyū): journeyed to Ryūkyū in 1683.
- (h) Xu Baoguang's *Zhongshan Chuanxin Lu* (Missives to Zhongshan): senior envoy Hai Bao, deputy envoy Xu Baoguang journeyed to Ryūkyū in 1719.
- (i) Zhou Huang, *Liuqiuguo Zhilue* (Brief Gazetteer of Ryūkyū): senior envoy Quan Kui, deputy envoy Zhou Huang journeyed to Ryūkyū in 1756.
- (j) Ji Dingyuan's *Shi Liuqiu Ji* (Report of the Imperial Missions to Ryūkyū), senior envoy Zhao Wenjie, deputy envoy Ji Dingyuan journeyed to Ryūkyū in 1800.
- (k) Qi Kun's and Fei Cizhang's *Xu Liuqiuguo Zhilue* (Supplement to Brief Gazetteer of Ryūkyū): journeyed to Ryūkyū in 1808.
- (l) Senior envoy Lin Hongnian and deputy envoy Gao Renjian journeyed to Ryūkyū in 1838, but as the records are currently unavailable their course must be elucidated from the following source.

<sup>17</sup> Kishaba, Kazutaka. "Senkaku shotō to sakuhōshi roku (The Senkaku Islands and Chinese Envoys)." *Kikan Okinawa* (Okinawa Quarterly) 63.

<sup>18</sup> Taira, Kazuhiko. "Chūgoku shiseki ni arawaretaru Senkaku (Chōgyo) shotō (The Senkaku [Diaoyu] Islands in Chinese Historical Records)." *Ajia/Afurika shiryō tsūhō* (Asia and Africa Document Bulletin) 10, No. 4 & 6.

- (m) Zhao Xin's and Qian Guangjia's *Xu Liuqiuguo Zhilue* (Supplement to Brief Gazetteer of Ryūkyū): journeyed to Ryūkyū in 1866.

Of all of the records, the following two are particularly important in terms of the influence they had on other records and the frequency of reference. The first is *Shi Liuqiu Lu*, written by Chen Kan during the Ming dynasty. As the oldest record in existence, it was highly valued as a primary source and served as a guideline of sorts to the succeeding missions and records. The second is *Zhongshan Chuanxin Lu* (Missives to Zhongshan) by Xu Baoguang. This record serves as a representative example of the mission records during Japan's Edo period (1603–1867) and as a guideline for many scholars and intellectuals.<sup>19</sup>

Inoue Kiyoshi, whose article was translated wholesale into Chinese, and introduced in the *Guangming Daily* and the *People's Daily* published in Beijing on May 4, 1972, attaches importance to the following passages of these mission records. In Chen Kan's records it is written, "On the evening of the 11th, Gumi Shan (now called Kume Island) was in sight. It belongs to Ryukyu." Guo Rulin's records state that "Chi Yu is a hill bordering on Ryukyu territory." Wang Ji, who travelled to Ryūkyū in the Qing dynasty era, writes, "An island came into sight on the morning of the 25th. Although Huangwei should come first, followed by Chi Yu later, we somehow arrived at Chi Yu without having sighted Huangwei Yu. On the evening of that day, we passed through the *jiao*. The winds and waves were very rough. . . . I inquired as to the meaning of the *jiao* and was informed that it was the boundary between inside and outside. I asked how one can identify the boundary, to which I was told one only estimates its location." In his records Xu Baoguang writes such entries as, "Gumi Shan is a garrison hill on the southwest border of Ryūkyū . . ." <sup>20</sup>

Considering that a full translation of Inoue's article was introduced in the *People's Daily*, perhaps it contains the basis for the assertions made in the statement by China's Ministry of Foreign Affairs.

Judging only from the passages reviewed above, the only thing that is certain is that Kume Island was within Ryūkyū territory. This would make one think at first that the Senkaku Islands are outside Ryūkyū territory. However, in order to fully understand these writings, one must also note the condition of the sea routes at the time and what the authors wrote on their return journeys, not only on their way to Ryūkyū. That is the careful scrutiny that these records warrant as historical documents. When doing so, one finds that not all the writings are necessarily supportive of China's territorial claim over the islands.

Navigating from Fuzhou to Ryūkyū at the time, all of the islands on the route to Kume Island were uninhabited after passing the island currently known as Taiwan. There was absolutely no activity of substantial utility on these islands.

<sup>19</sup>Kishaba, op. cit.

<sup>20</sup>Inoue, op. cit.; Taira, op. cit.; Kishaba, op. cit. See an English version at "The Tiaoyu Islands (Senkaku Islands) and Other Islands Are China's Territory" in *Peking Review*, May 12, 1972, pp. 18–22. <http://www.massline.org/PekingReview/PR1972/PR1972-19.pdf>. Accessed on December 1, 2022.

Kume Island was the first inhabited island on the sea route from Fuzhou. Moreover, it was recognized that along the Fuzhou-Ryūkyū sea route, Kume Island was the southwest boundary of lands inhabited by the people of the Ryūkyū Kingdom. In order to be considered part of the territory of the Ryūkyū Kingdom of the time, i.e., the 36 islands of Ryūkyū, an island had to be inhabited and had a duty to pay tribute to the king's court in Shuri, the capital of Ryūkyū. Only those islands that satisfied these conditions were marked as territories under the administration of the king.

In this light, Kume Island was the southwestern boundary of Ryūkyū, and Hateruma Island and Yonaguni Island of the Yaeyama Islands were the most southern areas of Ryūkyū.<sup>21</sup> The Senkaku Islands were not within the territory of the Ryūkyū Kingdom which requires such conditions as human habitation and tribute. Likewise, none of the official local publications from either Fujian Province during the Ming and Qing dynasties, or from Taiwan Province during the Qing dynasty (after Taiwan Prefecture was established upon the island of Taiwan, becoming part of Chinese territory), indicate that the Senkaku Islands were under the administrative control of either Fujian Province or Taiwan Province.<sup>22</sup> In other words, in terms of administration, the fact is that there is no definitive evidence showing that the Senkaku Islands were incorporated into the Ryūkyū Kingdom, Fujian Province, or Taiwan Province. Accordingly, the most natural way to view mentions of such islands as Uotsuri Island in the mission records is as landmarks on the sea routes then running between Fujian and Ryūkyū.

Navigation records of return journeys to China further underscore these views. Investiture ships that left Naha Port, after passing the Baji and Gumi "mountains" (islands), took a sea route north of islands of Huangwei, Chiwei, Diaoyu, and Xiaoliuqiu, and then south of the "mountains" of Nanba, Fengwei, Yu, Tai, and Lima as they entered Dinghaisuo in Fujian and proceeded to Geanzhen An. Xu Baoguang, in the volume entitled "Zhenlu (Course)" in his *Zhongshan Chuanxin Lu*, refers to the title of the islands for the first time on his journey from Ryūkyū, when Nanba Shan, an island that belongs to Wenzhou, Zhejiang Province, becomes visible in the distance. This style stands in contrast to that of Chen Kan's records, who wrote of Gumi Shan on his way to Ryūkyū: "The island belongs to Ryūkyū." Xu Baoguang's delegation departed for China on February 16, 1720. On February 24, he wrote, "In the morning, steering southwest of the compass for one *geng* (about 60 miles), we arrived at Yu Shan and Fengwei Shan. These two *shan* (mountains) belong to Taizhou. The investiture ship left the compass to the same direction and headed to Nanba Shan in Wenzhou. The Yu and Fengwei mountains are located 500 Chinese miles from Nanba Shan." Xu Baoguang made no reference to the title of the islands comprising the present day Senkaku Islands, which were located on the sea route to the two mountains. On

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<sup>21</sup> Kishaba, op. cit.

<sup>22</sup> Ozaki, op. cit. (Part 3-2), 160.



the other hand, it is only after touching upon Yu Shan and Fengwei Shan that he wrote that “both mountains belong to Taizhou.” This indicates basically the same thing as investiture missions and other envoys, who noted Kume Island as the southwestern boundary of Ryūkyū when they traveled there.

Zhao Xin, on the last investiture mission which arrived at Ryūkyū in 1866, describes in his record the conditions of the return route of the previous investiture mission in 1838. He states that after departing Naha Port on October 12, 1838, and passing Gumi Shan on the following day, “On the 18th a wind blew over the sea from the north-northeast. Therefore, we are using the *jiuxuzhen* method of orientation, following a bearing between west and west-northwest. In the early morning we could see mountains beyond China’s realm. In the mid-afternoon we could see Nanba Shan and began using the *weishenzhen* method of orientation, following a bearing between south-southwest and west-southwest. On the 19th we passed Dingmei at around noon and entered the Wuhumen (Five Tiger Passage) in the mid-afternoon.”

The record presents, however, no explanations of the islands along the sea route on the way to the mountains beyond China’s realm. The records of the return voyage include no references to the Senkaku Islands, except for islands near present-day Taiwan. As historian Kishaba Kazutaka says, descriptions such as “Nanba Shan (mountain) in Wenzhou” and “*shan* (mountains) beyond China’s realm” are equivalent in meaning to the descriptions “the island belongs to Ryūkyū,” “a garrison hill on the southwest border of Ryūkyū” and “a mountain that marks the border of Ryūkyū Region.” They are inextricably linked. Thus, in the end these islands near both points of departure and arrival were for mariners nothing more than markers that they needed to confirm along their route. Accordingly, it would be improper to see these passages from the mission records as definitive indicators of territory. Moreover, as Kishaba has examined in detail, upon examining the use of terminology such as *jiao* and *gou* (i.e., “boundary between inside and outside”)<sup>23</sup> in the mission records, keeping in mind such matters as how ships navigated at the time, the presence of the Kuroshio Current that flows across the sea routes, and religious beliefs associated with the ocean in that era, one comes to the conclusion that these words do not hold territorial meaning as a border separating inside and outside, but are rather merely intended to describe “pathways on the waters.”

The examination thus far has shown that China’s argument that historical sources such as the records of investiture missions show that the border between China and the Ryūkyū Kingdom lay between Sekibisho and Kume Island rests on weak grounds, and that the assertion is not necessarily clear.

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<sup>23</sup>Kishaba, op. cit. p. 71 *ad passim*.

3. China argues that during the Sino-Japanese negotiations regarding the Ryūkyū issue,<sup>24</sup> both sides affirmed that the Senkaku Islands were not included in the “36 islands of Ryūkyū.”

However, as noted earlier, the so-called 36 islands of Ryūkyū refers to inhabited islands within the territorial extent of the Ryūkyū Kingdom at the time. These islands were obligated to pay tribute to the king's court in Shuri. Therefore, it must be remembered that these islands, and only such islands, were cited as the territories of Ryūkyū in the Ryūkyū's historical records and in records of imperial missions. As far as what is evident in the local annals of Fujian Province and Taiwan Province during the Ming and Qing dynasties, the Senkaku Islands were not included within the administrative area of either Fujian Province or Taiwan Province. Equally, it can be said that the Senkaku Islands were not under the administrative area of Ryūkyū, in that they were not included among the 36 islands of Ryūkyū that satisfy the criteria that such an island must be inhabited and obligated to pay tribute. Accordingly, the fact that the Senkaku Islands were not included among the “36 islands of Ryūkyū” cannot be supposed to have any legal meaning whatsoever with regard to territorial sovereignty of the Senkaku Islands. This does not provide conclusive evidence supporting the argument that the Senkaku Islands were Chinese territory.

4. China also makes the following argument. The Japanese discovered the Senkaku Islands in 1884, hundreds of years after they had already become part of China. When the defeat of the Qing dynasty government became certain during the First Sino-Japanese War of 1895, Japan “stole” the Islands. Immediately afterward, the Japanese government forced the Qing government to sign the Treaty of Shimonoseki, under the terms of which Formosa (Taiwan) and all islands appertaining or belonging to the said island of Formosa, along with the Pescadores Islands, were ceded to Japan.

It is unclear what exactly the Chinese mean when they say that the Japanese “discovered” the Senkaku Islands in 1884. However, Governor of Okinawa Nishimura Sutezō submitted a written report to Minister of Home Affairs Yamagata Aritomo by September 22, 1885 that stated:<sup>25</sup>

*Under secret orders recently received by chief secretary Morimoto, currently stationed in Tokyo, we have conducted a survey of the uninhabited islands lying between Okinawa Prefecture and Fuzhou of the Qing Dynasty. As outlined in the appended documentation,*

<sup>24</sup>For more on the Sino-Japanese negotiations concerning the sovereignty over Ryūkyū see Hanabusa, Nagamichi. 1955. “Okinawa kizoku no enkaku (A History of the Attribution of Okinawa),” in *Japanese Society of International Law. Okinawa no chii* (The Position of Okinawa). Tokyo: Yūhikaku, pp. 20–40.

<sup>25</sup>Existing primary document on territorial incorporation of the Senkaku Islands in Ministry of Foreign Affairs of Japan, *Teikoku hanto kankei zakken* (Miscellaneous Records Related to Imperial Territory). Quotation included in *Kikan Okinawa* 56. Also see Okuhara, Toshio, “Senkaku rettō no ryōdo hennyū kei (The Circumstances Leading to Territorial Incorporation of the Senkaku Islands),” *Kokushikan daigaku seikei gakkaiishi* (*Journal of the Politics and Economics Society of Kokushikan University*) 4.

*the islands have long been referred to within the prefecture as Kumeaka Island, Kuba Island, and Uotsuri Island. Furthermore, they are uninhabited islands that are located near islands under the jurisdiction of the prefecture, such as Kume Island, the Miyako Islands, and the Yaeyama Islands. Therefore, there are no objections to considering these islands as being under the jurisdiction of Okinawa Prefecture. However, their terrain does differ from that of the Daitō Islands, which were reported earlier, and there are doubts over whether the islands may be the same as those mentioned in Zhongshan Chuanxin Lu (Records of the Messages from Zhongshan): Chogyo-dai [Uotsuri Island], Kōbisho, and Sekibisho. If they were the same, then clearly the Qing would have already known the islands in detail from investiture missions to the former King of Chūzan, have already given names to each of them, and have used them as markers for navigation to and from Ryūkyū. Therefore, we are hereby requesting permission to conduct an on-site survey and erect a national marker thereat as was done on the Daitō Islands. The hired steamship Izumo-maru is scheduled to depart in mid-October for the Sakishima Islands. On its return we intend to conduct the survey. I would like to receive orders concerning the survey and the erection of national markers.*

After receiving this report, Home Minister Yamagata wrote the following recommendation that proposed to the Grand Council of State (Dajōkan, equivalent to today's Cabinet) the "erection of national markers on Kumeaka Island and two other uninhabited islands":

*With regard to the survey of Kumeaka Island and the two other uninhabited islands lying between Okinawa Prefecture and Fuzhou Province of the Qing Dynasty, as explained in the appended documents, the islands reported upon by the prefecture's governor seem to be the same islands mentioned in Zhongshan Chuanxin Lu (Records of the Messages from Zhongshan). However, the islands were merely used as course markers by the Qing and no evidence can be confirmed that they belong to the Qing. In addition, the names of the islands vary between what we and they call them, and they are uninhabited islands located near the Miyako Islands and the Yaeyama Islands, both of which are under the jurisdiction of Okinawa. Therefore, I believe that there is no problem with Okinawa Prefecture erecting national markers upon conducting a survey. Accordingly, I ask you to give this matter urgent consideration, along with the content of the appended documents.*

Consequently, these official documents and the actual situation of the investiture relationship between China and Ryūkyū, as described above, demonstrate that there is absolutely no basis for the Chinese argument that the Japanese discovered the Senkaku Islands in 1884. Moreover, if discovery refers to the finding of economic value and utility from the Senkaku Islands, then this sort of discovery by the Japanese occurred in 1885 as described in an application to lease State-owned lands that Koga Tatsushirō, a private citizen, submitted on June 10, 1895. Koga wrote, "When I took a boat and landed on Kuba Island in 1885, I unexpectedly discovered a colony of albatrosses, colloquially called *baka-dori*. I have heard that albatross feathers are highly prized by Westerners, so I am certain that these feathers will be of great value as products for overseas export."

Yamagata consulted with Foreign Minister Inoue Kaoru on October 9 and asked his opinion on the 1885 proposal to erect national markers before submitting the issue to a Cabinet meeting. Inoue's response dated October 21 stated:

*... [Senkaku islands] are in proximity to the national border with the Qing Dynasty, their circumferences appear smaller than those of the Daitō Islands, ... and ... their names are being attached by the Qing Dynasty. There are rumors recently circulated by Qing newspapers and others, including one that say[s] our government is going to occupy the islands in the vicinity of Taiwan that belong to the Qing Dynasty, which are arousing their suspicions towards our country and frequently alerting the Qing government for caution. If we promptly took measures such as publicly erecting national markers, it would result in making the Qing Dynasty suspicious. Therefore, we should have the islands surveyed and details—such as the configuration of harbors and the prospect of land development and local production—reported and stop there. We should deal with the erection of national markers, land development, and other undertakings some other day.<sup>26</sup>*

This demonstrates the diplomatic deference that Japan, the smaller power, gave toward the Qing dynasty, the larger power. It is alleged that Japanese private citizens, including Koga, had landed on the islands after 1885 and that the warships *Kongo* and *Kaimon* conducted field surveys on the Senkaku Islands in 1887 and 1892, respectively. The Qing did not protest these activities. Despite the critical opinion of Japan in Qing newspapers, the Qing government appears not to have taken any action, as can be seen from Inoue's response. Compared to the Clipperton Island case, in which Mexico dispatched the gunboat *La Democrata* and France immediately lodged a protest upon realizing this, it is sufficient to infer from these facts that the Qing did not recognize the Senkaku Islands as its own territory. It was no earlier than in 1971 that China objected that Japan "stole" the islands, an objection that carries no legal weight.

Lastly, the issue of the "names" of the island, which Inoue Kaoru mentioned in his response, should be briefly touched upon.

The names of the islands comprising Okinawa, not only those included among the "Oki," are clearly Japanese names: Iejima Island, Minna Island, Sezoko Island, Yonaguni Island, Iriomote Island, Kuruma Island and Kudaka Island. When the Meiji government carried out the Ryūkyū Disposition<sup>27</sup> in 1879, the King of the Ryūkyū Kingdom asked the Qing dynasty for aid. In response, He Ruzhang, the Chinese ambassador to Japan, argued that Ryūkyū was China's.<sup>28</sup> At that time, however, Higashionna Kanjun, a historian from Okinawa, addressed the naming of the islands in a counterargument in which he pointed out that the individual names of the islands are in fact Japanese, not Chinese. Takahashi Shōgorō, executive director of the Association for the Promotion of International Trade, takes a similar approach in his counterargument asserting that the names of

<sup>26</sup>English from "Reference 1: A letter dated October 21, 1885, sent by Foreign Minister Inoue to Interior Minister Yamagata." [https://www.mofa.go.jp/region/asia-paci/senkaku/qa\\_1010.html](https://www.mofa.go.jp/region/asia-paci/senkaku/qa_1010.html). Accessed on December 20, 2022.

<sup>27</sup>See Chapter 1 for more on the Ryūkyū Disposition.

<sup>28</sup>For more on the argument's relationship with the Ryūkyū Disposition see Ōyama Azusa. "Ryūkyū kizoku to nissei fungi (Attribution of the Ryūkyūs and Japan-Qing Dynasty Dispute)" in Ōyama Azusa (ed). 1980. *Nihon gaikōshi kenkyū* (Studies in Japanese Diplomatic History). Tokyo: Ryōsho fukyūkai, pp. 107–151.

Huangwei Yu, Chiwei Yu, and Diaoyu Yu,<sup>29</sup> which are Chinese, clearly indicate that these three islands are part of the Taiwanese chain of islands including Huaping Yu, Mianhua Yu, and Pengjia Yu and that they are Chinese territory.<sup>30</sup> However, research conducted before and after World War II by Higashionna Kanjun, Fujita Motoharu, and other scholars has found that the people of Okinawa had names for these islands long before, such as “Igun Kubajima,” “Yukun Kubajima,” and “Yukun Kuba.” Additionally, it is quite conceivable that such names as “Igun (or Yukun),” which had been passed down in Ryūkyū, were transcribed during investiture missions by Ryūkyūan sailors who accompanied the delegations and that the names became established as Chinese words,<sup>31</sup> taking into consideration the research Miyanaga Masamori conducted for his *Yaeyama gōi* before the war,<sup>32</sup> as well as the situation in Ryūkyū at the time written by Chen Kan during an investiture mission (“The people of Ryūkyū do not study Chinese characters. There are no relevant records. No Chinese people go there [i.e., to the Senkaku Islands].”)

Regardless, although the names of the islands are of great significance for identifying the islands in dispute, under international law, names alone are not decisive factors for determining possession of territory. Let us review some related cases. Clipperton Island, claimed by both France and Mexico (the dispute was later settled through arbitration in France’s favor) is believed to have been named after a British adventurer who used the island as a refuge in the early eighteenth century. The Island of Palmas (today a part of Indonesia) was contested by the Netherlands and the US (eventually awarded to the former after arbitration). Although Palmas was discovered by Spain, it was given a Portuguese name. Furthermore, the name of islands claimed at the heart of the *Minquiers and Ecrehos* case (concerning small islands lying between the mainland of France and the British-held Channel Islands, settled by the International Court of Justice (ICJ) in the United Kingdom’s favor) clearly have French-oriented names. Although the language currently spoken on the Channel Islands is English, French is used for rituals. Nonetheless, these names had no major significance in terms of determining sovereignty over the territory at issue. Accordingly, even if the names of *Kōbisho* and *Sekibisho* originate from Chinese, this fact alone does not give greater credence to China’s claim.

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<sup>29</sup>In Japanese, *Kōbisho* and *Sekibisho* are written with the same characters as used in Chinese, while the Japanese name of the third island, *Uotsuri Island*, inverts the first two of the three characters.

<sup>30</sup>Takahashi, *op. cit.*

<sup>31</sup>See Ozaki, *op. cit.* (Part 2-1).

<sup>32</sup>Miyanaga, Masamori. 1930. *Yaeyama gōi* (Lexicon of the Yaeyama Islands). Tokyo: Tōyō Bunko.

## Examination of Japan's Argument

The basic view on the sovereignty over the Senkaku Islands of the Ministry of Foreign Affairs of Japan released on March 8, 1972 states the following; it seems that Japan's argument rests solely on the occupation of *terra nullius*.<sup>33</sup>

*From 1885 on, surveys of the Senkaku Islands had been thoroughly conducted by the Government of Japan through the agencies of Okinawa Prefecture and through other means. Through these surveys, it was confirmed that the Senkaku Islands had been not only uninhabited but also showed no trace of having been under the control of the Qing dynasty of China. Based on this confirmation, the Government of Japan made a Cabinet Decision on January 14, 1895, to erect markers on the islands to formally incorporate the Senkaku Islands into the territory of Japan.*

“The Senkaku Islands,” a Ministry of Foreign Affairs document dated January 1978, largely contains the same content as a pamphlet of the same title that was published by the Ministry's Public Information Bureau in 1972. The 1978 document contains the following on the Islands' incorporation into Japanese territory:

*1. Deliberate process of incorporation*

*In 1879, the Meiji government abolished the domain of Ryukyu and set up Okinawa Prefecture. Afterward, from 1885 onward the Japanese government conducted surveys of the Senkaku Islands through the agencies of Okinawa Prefecture and through other means, taking as long as ten years. After having carefully ascertained that there had been no trace of control over the Senkaku Islands by the Qing Dynasty, under the cabinet decision on January 14, 1895, the Japanese government decided to place the Senkaku Islands under the jurisdiction of Okinawa Prefecture and erect national markers on the islands.*

*Thus, the Senkaku Islands were incorporated into Japanese territory. (This incorporation occurred before April 17, 1895, the day of the signing of the Treaty of Shimonoseki that provided for the cession of Taiwan to Japan as a result of the [First] Sino-Japanese War. Therefore, the Senkaku Islands have never been treated as part of Taiwan) . . .*

The Governor of Okinawa Prefecture submitted proposals on three occasions: the aforementioned first proposal in 1885; the second on January 13, 1890 entitled “Inquiry Concerning the Matter of the Uninhabited Islands: Kuba and Uotsuri Islands”; and the third on November 2, 1893. As a result, the Cabinet decision on January 14, 1895 was adopted as follows: “Regarding the matter submitted by the Home Minister for deliberation: In recent years, certain persons have sailed in the direction of the uninhabited islands known as Kuba Island and Uotsuri Island situated northwest of the Yaeyama Islands of Okinawa Prefecture with the intent to engage in fishing and other activities. Given the need to control such activities, there is no hindrance to determining that the said islands come under the jurisdiction of Okinawa Prefecture and permitting the erection of jurisdictional markers as requested in the petition of the Okinawa Prefectural Governor.” An order dated January 21 was issued to the governor of Okinawa Prefecture which stated: “Approved the proposal concerning the erection of markers as requested.” Although it remains unconfirmed whether Okinawa Prefecture erected the markers on the

<sup>33</sup> See the section on occupation in Chapter 1.

Senkaku Islands under this order, this was how the Islands were incorporated into Japan.

However, in addition to Uotsuri Island and Kuba Island (Kōbisho), which were mentioned in the Cabinet decision, the Senkaku Islands include Sekibisho (known as Kumeaka Island in Okinawa), as well as two small islands north and south of Uotsuri Island and reefs. Since Minamikojima Island and Kitakojima Island, along with the reefs of Tobise, Okinominamiwa, and Okinokitaiwa, are a part of the same island chain with Uotsuri Island and Kuba Island (Kōbisho), these small islands and reefs were also considered within the scope of the territorial incorporation, even without explicit mention in the Cabinet decision. A district system was introduced in Okinawa Prefecture based on the imperial edict of April 1, 1896. Under the system, both Uotsuri Island and Kuba Island were incorporated into Yaeyama District shortly afterwards and were designated as State-owned land along with Minamikojima Island and Kitakojima Island. However, it was only on July 25, 1921 that Kumeaka Island (Sekibisho) was designated as State-owned land, listed in the national land register, and renamed Taishō Island.

Does this show that Kumeaka Island was incorporated into Japanese territory in 1921, as some people argue? To reach that conclusion from these events in 1921 is unnatural. The Cabinet decision of 1895 was based on the proposals submitted by the governor of Okinawa Prefecture. Given that the governor's proposals in 1885 and 1890 include Sekibisho by referring to "Uotsuri Island and two other islands," there is no particular reason to distinguish and exclude Sekibisho from the scope of the Cabinet decision (although the 1893 proposal by the governor of Okinawa Prefecture is not necessarily clear). After the decision, Koga Tatsushirō started developing Kuba Island (Kōbisho), and in May 1900 he went to Sekibisho and erected wooden markers there. The waters around Sekibisho have strong currents of two to three knots from the Kuroshio Current that turn turbulent as they envelop the isle. This makes it difficult for ships to land on the island, even on calm, sunny days. Moreover, the island did not have much appeal in terms of exploitation since it did not seem to have valuable resources and its entire area is a rugged mountain, making it unsuitable for development. These factors explain the delay in Sekibisho's designation as State-owned land.

However, the territorial incorporation of the Senkaku Islands would seem to be irregular as this measure was not accompanied by the notifications, announcements or edicts Japan used when incorporating other islands into the territory, and because it is not possible to verify whether the markers were actually erected.<sup>34</sup>

As is well known, for occupation to be legitimate under international law, the territory in question must be *terra nullius* and effectively occupied by a State with the intention of possessing said territory. In other words, the problem is about the State indicating intention to possess the territory as the subjective requirement of occupation, and its effective occupation as the objective requirement. Typically,

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<sup>34</sup>See Kokusaihō Jirei Kenkyūkai. 1990. *Nihon no kokusaihō jirei kenkyū (3): Ryōdo* (Study of Practices in Japan, Vol. 3: Territory). Tokyo: Keio University Press.



intention to take possession of land is indicated by declaring the State's intent to incorporate the area into its territory, or to incorporate it through legislative or administrative means, or by notifications delivered to other countries. Some argue that, as provided by Chapter VI, Article 34 of the General Act of the Berlin Conference of 1885 on the partition of Africa, notification is a required condition in order to complete occupation. But only the signatories to the Act were obliged to obey its provisions, so this is not part of general international law. Furthermore, as can be seen from the decisions made in the cases of Palmas Island and of Clipperton Island,<sup>35</sup> the prevailing theory denies such an argument.<sup>36</sup> According to the prevailing theory, even if no notification is made, it is sufficient if intention to possess the territory is expressed by other means. It is possible to confirm that Japan's intention to possess the Senkaku Islands fulfills the criteria of international judgments and the prevailing theory.

There are two views on the definition of effective occupation. One is that it means physical occupation in the form of actually utilizing the land or establishing a settlement there. The other defines effective occupation as social occupation via the establishment of control over the land. All international judicial precedents support the social occupation theory, as exemplified by the rulings in such cases as those concerning the Palmas, Eastern Greenland, as well as *Minquiers and Ecrehos*. This means that in the case of an uninhabited island, simply discovering the island and hoisting one's national flag upon it in a symbolic act of territorial incorporation does not constitute an effective occupation. As demonstrated in the judgment of the Palmas case, the prevailing theory does accept the inchoate title of discovery, but acquisition of territory is incomplete if effective occupation does not follow. This norm has been part of international law since the nineteenth century. Accordingly, even if markers had been erected, this alone would not complete Japan's occupation of the Senkaku Islands. According to the international law of the nineteenth century, the occupation of an uninhabited island is not effective unless the functions of the State extend to the said island, such as through regular patrols by warships or other government vessels.

As explained earlier, the Senkaku Islands were incorporated into Japanese territory via a Cabinet decision of January 14, 1895. Koga Tatsushirō submitted an application to lease State-owned lands on June 10 of that year, and the Japanese government granted Koga permission in September 1896 to lease four islands, namely Uotsuri Island, Kōbisho, Kitakojima Island, and Minamikojima Island, for 30 years free of charge for the purpose of promoting their development. During this time, however, the peace treaty that ended the First Sino-Japanese War was signed on April 17, 1895, its instrument of ratification was exchanged on May 8, and the cession of Taiwan was completed on June 2. Clearly Japan exerted valid control over

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<sup>35</sup>For details on these rulings, see Serita, Kentarō. 1999. *Shima no ryōyū to keizai suiki no kyōkai kakutei* (Sovereignty over Islands and the Delimitation of Economic Zones). Tokyo: Yūshindo Kōbunsha.

<sup>36</sup>This point is addressed further in Chapter 4, "Takeshima."

the Senkaku Islands, but this was mostly during Japan's administration of Taiwan, after the island had been ceded. Therefore, despite the lack of objections from China, it may not necessarily be possible to distinguish between whether Japan controlled islands that were *terra nullius* prior to occupation, or whether the control was over islands that were ceded. In this sense, it might be possible that the actions taken by Japan up until its defeat on August 14, 1945 may be frozen, and that only the actions taken after the war may be counted as effective occupation. However, for good or bad, it was in 1971 that China began lodging objections and claiming the Senkaku Islands as its own territory. This means that the "critical date"<sup>37</sup> can be set as June 17, 1971, the date on which the Okinawa Reversion Treaty was signed.<sup>38</sup>

So, were the Senkaku Islands *terra nullius* prior to occupation in 1895, which can be subject to occupation? China argues that the islands were Chinese territory, using historical records from diplomatic missions as evidence. As addressed earlier in our examination of China's argument and its basis, China asserts that the border between it and Ryūkyū lay between Sekibisho and Kume Island. However, in investiture mission records, their return journey described the islands known by the Chinese as Yu Shan and Fengwei Shan with the phrase "both *shan* (mountains) belong to Taizhou." This, along with phrases like "Nanba Shan in Wenzhou" and "outlying *shan* (mountains) of China," indicates that it is natural to consider that the Senkaku Islands, which lay upon the sea route between Fuzhou and Ryūkyū, were noted in these historical mission records as navigational markers. In addition, China did not take any sort of measures to improve safety along the route. However, even if there were evidence that it had taken some measures, this would still be insufficient. In the *Minquiers and Ecrehos* case,<sup>39</sup> France made its argument by citing facts, regarding *Minquiers*, showing it had conducted field investigations for hydrographic surveys, installed lights and buoys, and established temporary markers for conducting field research. But in its judgment, the ICJ stated, "The Court does not find that the facts, invoked by the French Government, are sufficient to show that France has a valid title to the *Minquiers*. . . such acts can hardly be considered as sufficient evidence of the intention of that Government to act as sovereign over the islets . . ."<sup>40</sup> In many cases, actions by a State for the sake of safety of ships are taken irrespective of the intention to possess an island as territory, and it is difficult for such actions to be direct evidence of title to sovereignty. Therefore, it can be inferred that the Senkaku Islands were *terra nullius*.

<sup>37</sup>This can be interpreted as a deadline for permissible evidence, as any facts arising after this date will not be accepted for examination as evidence in an international court.

<sup>38</sup>Matsui Yoshirō believes that the most appropriate and equitable date is mid-February 1971, when China or Taiwan lodged its first objection and claim. See Matsui, Yoshiro, "International Law of Territorial Acquisition and the Dispute over the Senkaku (Diaoyu) Islands," *The Japanese Annual of International Law* 40 (1997): 8.

<sup>39</sup>A case filed and lost by France.

<sup>40</sup>International Court of Justice, *The Minquiers and Ecrehos Case (France/United Kingdom) Judgment of 17 November 1953*, p. 71.

Next, assuming from the copious Chinese documents available, even if new ones were discovered that provide clear proof of the Senkaku Islands being Chinese territory, a distinction must be made between the “creation of rights” and the “existence of rights,” as the judgment in the *Palmas* case makes clear. With regard to this point, neither the Ming nor the Qing dynasties utilized the Senkaku Islands for economic purposes, and even if China acquired original title to the islands arising as a result of their discovery and that the title remained in China's possession in inchoate form until 1895, such inchoate title must give way to continuous and peaceful display of sovereignty by another state.

Accordingly, the basis of Japan's position on sovereignty over the Senkaku Islands is first of all, occupation of *terra nullius*, which seems favorable according to private sector research, even if the critical date is set as 1895. However, by setting the critical date as June 17, 1971, when the Okinawa Reversion Treaty was signed, the actions taken by Japan between 1895 and 1970, facts that show valid control by Japan, can be considered permissible evidence. Therefore, in addition to the occupation of *terra nullius*, the title arising from the “continuous and peaceful display of sovereignty”<sup>41</sup> should also be insisted upon. At least, so long as China denounces the Okinawa Reversion Treaty's inclusion of the Senkaku Islands in the “reversed areas” and asserts that it has retained continuous sovereignty over the Islands, it would be logical to set the critical date to the time when the Okinawa Reversion Treaty was signed.

In that case, it can be noted that Japan exerted “continuous” control for 75 years beginning in 1895, while there were no objections lodged by China; in other words, this is more than sufficient to prove that Japan exercised State authority over the Islands in a “peaceful” manner. However, even if the Senkaku Islands are not considered as having been *terra nullius*, there is no room to argue the permanent title, which Judge Max Huber called the “continuous and peaceful display of sovereignty,” if the islands were ceded, along with Taiwan, to Japan in accordance with the Treaty of Shimonoseki. That is because this cession constitutes a clearer source of title. But were the Senkaku Islands actually included as islands appertaining or belonging to Taiwan under the terms of the Treaty of Shimonoseki?

The fact that, according to local government publications from Fujian Province and Taiwan Province during the Ming and Qing dynasties, the Senkaku Islands were not considered within the administrative control of either province has been addressed above. The instrument of ratification for the Treaty of Shimonoseki was exchanged on May 8, 1895. Pursuant to Article 5 of the Treaty, plenipotentiary Kabayama Sukenori of the Japanese delegation and plenipotentiary Li Jingfang of the Qing delegation signed the “Note on the delivery of Taiwan” on June 2. On this occasion, the following conversation took place between plenipotentiary Li and

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<sup>41</sup> A precedent set by the *Palmas* case.

Minister Resident Mizuno Jun of Japan regarding the scope of the islands appertaining or belonging to Taiwan:<sup>42</sup>

Li: "Is it not necessary to list in the index the names of the islands described as islands appertaining or belonging to Taiwan? In the Treaty of Peace, the area of the Pescadores Group is clearly demarcated with latitude and longitude coordinates. However, the Treaty does not specify the area of the islands appertaining or belonging to Taiwan. I worry that it may bring a dispute if Japan, at a later time, will point to the islands near Fujian Province and assert that they are islands appertaining or belonging to Taiwan."

Mizuno: "If we list the names of the islands as you say, there may be islands that are omitted from the list, or islands which do not have any names, in which case this would mean that such islands do not fall under the territory of either government. That is an inconvenient result. In addition, in nautical charts, maps, and other sources, it has been recognized officially, referring to the islands near Taiwan, that these islands belong to Taiwan. The Japanese government will never claim that the islands near Fujian Province are appertaining or belonging to Taiwan. I will surely explain this point to Governor-General Kabayama on the return ship. This is more true when considering the fact that the Pescadores Group lies between Fujian Province and Taiwan. Your concern will be proved unfounded, Your Excellency."

Li: "Agreed."

The maps and nautical charts of Taiwan published in Japan before 1896 identified without exception that Taiwan extended up to Pengjia Islet. Both Japan and the Qing dynasty seemed to share the view that the Senkaku Islands were not included in the "islands appertaining or belonging to Taiwan as recognized officially in nautical charts, maps, and other materials," i.e., the islands over which an issue was raised at the time of Taiwan's delivery.

## Approaches to a Final Settlement

The way to pursue the settlement of a dispute differs depending on which side actually holds the disputed island. In the case of the Senkaku Islands, they are under Japan's control, and thus, until a final settlement is reached, Japan should simply maintain control and there is no particular need to strengthen it.

Twenty years ago, in the early morning of April 12, 1978, the date on which the negotiation concerning the Treaty of Peace and Friendship between Japan and the People's Republic of China was conducted, a large number of Chinese fishing vessels appeared in the territorial waters around the Senkaku Islands. The Japan-China negotiations on the Treaty, which had just resumed, were temporarily suspended. On April 15, Vice Premier Geng Biao stated, "The [Senkaku] incident was incidental. The settlement of this issue of small islands should be left to the future." After the statement, all Chinese fishing vessels were cleared from the territorial waters around the Senkaku Islands.

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<sup>42</sup>Inō, Kanori. 1965. *Taiwan bunkashi* (3) (Cultural History of Taiwan [Vol. 3]). Tokyo: Tōkō Shoin. Reprint, pp. 936–937.

The negotiations later resumed in Beijing, and Foreign Minister Sonoda Sunao arrived in Beijing on August 8. After his talks with Foreign Minister Huang Hua on August 9 and with Vice Premier Deng Xiaoping on August 10, the Treaty of Peace and Friendship between Japan and the People's Republic of China was signed on August 12. At a press conference following the signing, Sonoda stated in his opening remarks, "I explained the position of the Japanese government regarding the Senkaku Islands during my talks with Vice Premier Deng Xiaoping on the afternoon of the 10th. The Vice Premier responded that the Chinese government would never repeat confrontations like the recent incident." Deng's comment was repeatedly brought up during the treaty deliberations at the Diet in Japan. During a session of the Committee on Foreign Affairs of the House of Representatives on October 13, Sonoda stated, "I explained the position of Japan regarding the Senkaku Islands. I said that we feel disturbed by incidents like the previous one, and strongly requested the Chinese government to prevent such incidents. Vice Premier Deng Xiaoping responded that the incident was incidental and that they would never engage in such an incident again."<sup>43</sup> On the following day, October 14, Sonoda stated, "Vice Premier Deng Xiaoping stated clearly at an official meeting that the previous incident was incidental and that they would never engage in such incidents again. This is in the record of discussion. I believe these incidents will not occur in the future."<sup>44</sup>

Deng visited Japan from October 22 to 29 for the exchange of the instruments of ratification of the Treaty of Peace and Friendship between Japan and the People's Republic of China. He held a press conference at the Japan Press Center on October 25 and commented on territorial title over the Senkaku Islands: "When we normalized diplomatic relations between our two countries, both parties promised to leave the issue aside. At this time of negotiation on the Treaty of Peace and Friendship, we agreed to leave the issue aside in much the same way . . . I think it is better to avoid the issue when our countries have negotiations. Even if this means the issue is temporarily shelved, I don't think I mind. I don't mind if it's shelved for 10 years." This Chinese decision to place the territorial issue on the shelf was beneficial to Japan.

Minister of Transport Moriyama Kinji stated at a press conference on January 16, 1979 that "In order to build facilities on the Senkaku Islands of Okinawa Prefecture, where issues with China have not been ultimately addressed, the Okinawa Development Agency will start conducting surveys in fiscal 1979. To support this survey, the Japan Coast Guard will consult with the Okinawa Development Agency to build a temporary heliport on Uotsuri Island (an uninhabited island) of the Senkaku Islands." As a result, the Senkaku Islands were again on the agenda at the 87th session of the Diet. In connection with the 30-million-yen survey cost and the issue of the heliport's construction, Foreign Minister Sonoda stated, "It is in the

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<sup>43</sup>Foreign Minister Sonoda, 85th Diet, Meeting of the Committee on Foreign Affairs of the House of Representatives, 1st session.

<sup>44</sup>Ibid., 2nd sess.

interest of Japan to quietly continue its current valid control over the islands. However, if the heliport is going to be constructed as an evacuation area or for the safety of the residents and fishermen in the area, then construction should proceed while provoking China as little as possible. It is problematic if the heliport is being constructed to flaunt our valid control.”<sup>45</sup> Sonoda further stated that while the Senkaku Islands were Japanese territory, provocative actions were not desirable.<sup>46</sup> Nonetheless, it led Director Shen Ping of the Department of Asian Affairs of China’s Ministry of Foreign Affairs to summon Ban Shōichi, chargé d’affaires ad interim of the Japanese embassy in China, to the ministry to verbally express his regret on May 29. The following is the full text of *Xinhua News Agency’s* article on that date regarding the protest that Shen lodged:<sup>47</sup>

*This morning, Shen Ping, Director of the Department of Asian Affairs of the Ministry of Foreign Affairs of the People’s Republic of China, met with Shoichi Ban, Japanese chargé d’affaires ad interim to China. Discussion took place on the Japanese government’s recent dispatch of the patrol vessel Soya for the transport of personnel and equipment to China’s Diaoyu Island, the establishment of a temporary heliport and the dispatch of survey missions and vessels.*

*Islands including Diaoyu Island have been part of the territory of China since ancient times. On December 30, 1971, the Chinese Ministry of Foreign Affairs issued a statement to this effect. However, China and Japan have different views regarding the issue of the attribution of island territories, including the Diaoyu Islands. When diplomatic relations were normalized between China and Japan, and when the Treaty of Peace and Friendship was concluded, the two parties agreed to leave this issue aside for the sake of the China-Japan friendship, and to settle the issue in the future.*

*In accordance with this agreement, Director Shen Ping noted, ‘The Japanese side is clearly betraying the aforementioned bilateral understanding. We are forced to express regret over the actions of Japan. Moreover, we do not deem that Japan’s actions have legal value.’*

*Shen Ping also stated, ‘We would like the Japanese government to adopt a broad perspective and respect the understanding that our countries’ leaders reached on the issue of Diaoyu Island, and to take measures to refrain from all activities that undermine the bilateral friendship and neighborly cooperative relations.’*

Regarding the above protest, Sonoda responded at the Diet that, “As long as our counterpart has lodged a protest, we are compelled to understand that China interpreted our action as an activity intended to demonstrate our valid control.”<sup>48</sup> It would seem that Sonoda’s idea was that the government’s top policy priority should be for Japan to quietly maintain its current possession of the islands. However, what must be kept in mind is that, as explained earlier, while France argued in the *Minquiers and Ecrehos* case that it had conducted field investigations for hydrographic surveys, installed lights and buoys, and established temporary

<sup>45</sup> Committee on Cabinet, 14th session, 23.

<sup>46</sup> Committee on Foreign Affairs, 13th session, May 30, 30.

<sup>47</sup> For an English summary of the account, see May 29 “Chronicle” item on front page of *Beijing Review*, June 8, 1979. <http://www.massline.org/PekingReview/PR1979/PR1979-23.pdf>. Accessed on March 25, 2023.

<sup>48</sup> Committee on Foreign Affairs, 13th session, May 30, 30.

markers for conducting field research, the ICJ determined, “The Court did not find that the facts invoked by the French Government were sufficient to show that France has a valid title to the Minquiers.” Thus, action taken solely for the safety of ships is insufficient grounds. However, the case of *Grisbadarna*, in which Norway and Sweden engaged in a dispute over the border between their southern territorial waters, must also not be forgotten. Sweden, which had erected markers, conducted maritime surveys, and installed lights, considered such actions not only as the exercise of its rights, but also as “the fulfillment of duties.” Meanwhile, since Norway expressed nearly no interest in the waters with regard to these actions, the court decided that the shoal belongs to Sweden.

Accordingly, as can be seen from the case described above, the reason why Japan should maintain its current control of the Senkaku Islands and why there is no particular need to further strengthen the said control is as follows. Since Japan holds territorial sovereignty over the Islands, rather than taking some sort of action to exercise its rights, Japan should simply continue carrying out the actions it has thus far. To elaborate, since May 15, 1972, when administrative rights over the Nansei Shotō Islands reverted to Japan, Japan Coast Guard patrol vessels and aircraft have continued to monitor the areas around Okinawa in the same manner as before, including the Senkaku Islands. They still regulate intrusion into territorial waters and illegal fishing in such waters. Therefore, it is proper for Japan to warn Chinese civil activists who in recent years have conducted demonstrations at sea and forcibly entered the territory, and request that they leave. It should be noted that the actions taken by States after the critical date are not permissible as evidence of valid control. Thus, such measures as the Law of the People’s Republic of China Concerning the Territorial Sea and the Contiguous Zone, which China enacted in 1992 treating the Islands as its own territory, are meaningless under international law.

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