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## **Reexamination of the Process of the Enactment of China's Territorial Sea Law—Internal Conflict over the Specification of the Senkaku Islands\***

Kazuyoshi Nishikura  
(Ryukoku University)

### **Introduction**

This paper is a review of the draft of the People's Republic of China (PRC) Law on the Territorial Sea and the Contiguous Zone (hereinafter referred to as the "Territorial Sea Law")<sup>1</sup>, enacted by China in February 1992. It is a reexamination of the process of the law's drafting.

In 2012, the Japanese DPJ (Democratic Party of Japan, since March 2016 the DP, or Democratic Party) government, led by Prime Minister Yoshihiko Noda, took the initiative to nationalize the Senkaku Islands (known as the "Diaoyu Islands" in Chinese), the possession of which is in dispute between China and Japan. After that, the relationship between the two countries deteriorated. There was a controversy in Japan at the time whether there had been an agreement with China to "shelve"<sup>2</sup> the dispute for the time being.

If the issue had indeed been shelved, the debate in Japan was carried out in the context of who had "brought it off the shelf," China or Japan. Although it was not literally specified during the normalization of relations between China and Japan, there had been a tacit agreement between the two sides to shelve it; thus, it was Japan that had unilaterally abandoned that agreement through the nationalization of the Senkaku Islands in 2012. The argument against that position stated that there had been no agreement to shelve the issue to begin with, and even if there had been, it was China who was the first to put it back on the table.

Cited as the basis for that objection was the Territorial Sea Law that China promulgated in 1992. Particularly, the reason was that in that law, China unilaterally mentioned the "Diaoyu Islands" as its own territory for the first time ever in domestic law.

The author is not partial to either side of the debate about the shelving issue, and holds the position that such a debate can never go beyond the level of "Which came first, the chicken or the egg?" However, given that it was China's passing of the Territorial Sea Law that brought renewed attention to the issue, spurring the controversy again, the author was curious to revisit the issue after having previously covered the Territorial Sea Law as a correspondent with Kyodo News in Beijing, and having contributed to magazines<sup>3</sup> on this subject for more than two decades since then.

There was a conflict at the time between the Chinese Ministry of Foreign Affairs and the Chinese

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military over whether to explicitly mention the Senkaku archipelago in the law. The Chinese State Council (equivalent to the Japanese Cabinet) eventually modified the draft prepared by the Ministry of Foreign Affairs, with the military succeeding in its demand to have the islands' name explicitly mentioned. In addition, the main point of an article that the author wrote was that the Territorial Sea Law gave the Chinese military authorities the right to expel intruders to the islands, allowing the exercise of force if need be.<sup>4</sup> This paper attempts to shed light on what effect the historical event of the first-ever visit by a Japanese emperor to China, realized in the second half of 1992, came to bear as background to the Senkaku/Diaoyu issue. It was highly questionable why the timing of the delicate territorial issue of the Senkaku Islands emerged at that juncture. Despite deepening economic interdependence between China and Japan, hardliners on both sides continued to provoke each other, resulting in the current pattern of Sino-Japanese relations where outbreaks of anti-Japanese sentiment in China are frequent.

### **Previous research on the issue**

Although international research on the general process of foreign policy decision-making in China has progressed greatly in the past dozen years or more,<sup>5</sup> a barrier still exists in the form of the lack of transparency on account of secrecy on the Chinese side, so it is hard to escape the feeling of being able only to scratch the surface of the issue. The same goes for individual cases within the Chinese foreign policy decision-making process.

Specifically, no studies exist—neither in China nor abroad—that have a firm grasp of the various twists and turns that occurred during the process of establishing the Territorial Sea Law of China. First, in China, it is taboo to directly address the topic of conflict between supporters of differing policy lines within the Chinese government about current and vital international issues. As for research activities overseas, the fact of the matter is that articles and research papers on the history of Sino-Japanese relations<sup>6</sup> or on East Asian security<sup>7</sup> contain nothing more than citations of this author's own reporting as well as his magazine submissions. The author's articles were the first to point out the problem in detail.

Due to those circumstances, the author has been paying attention to this problem ever since leaving his position as a reporter a decade ago. In order to review its significance, the author decided to reexamine the confrontation between different policy lines in China during the process of legislating the Territorial Sea Law by taking into consideration certain recent new developments that have come to light concerning minor but fragmentary information and developments in international affairs in China. The author also reveals facts that he could not include in his original writings to protect his news sources at the time.

### **The beginning of the author's coverage of the issue**

Looking back, the year 1992 may have been a major turning point for the Sino-Japanese relationship as well as for China itself: the promulgation of the Territorial Sea Law, coinciding with the historical event of the Emperor's visit that was already on the political schedule; the attempt to break through the "web of encirclement" or containment formed by the Western sanctions imposed on China after the Tiananmen Incident of 1989; the decision by the supreme leader Deng Xiaoping to breathe new life into the reform, open-door policy that had stalled after Tiananmen, making an inspection tour of various southern cities—known as *Nanxun* or the "Southern Tour"—at which he made important policy pronouncements; the waning effectiveness of communist ideology following the end of the Cold War and the rise of nationalism; and the shift in the main thrust of Chinese military policy from inland areas to the ocean, following reconciliation with the Soviet Union, with China's incursion into the ocean signifying that the country was emerging as a great power in both economic and security terms. In other words, it was a year when all those challenges and issues came to the fore and affected one another, subjecting Chinese

internal and external strategy to a big test. The author's main motivation in writing this paper was the idea that the developments surrounding the legislation of the Territorial Sea Law were linked to those issues somehow.

On February 25, 1992, at the 7th Chinese National People's Congress (NPC), equivalent to the Japanese Diet, the 24th Standing Committee unanimously adopted and enacted the Territorial Sea Law, which was then promptly promulgated by President Yang Shangkun. The next day, leading Chinese newspapers, such as the Chinese Communist Party (CCP) propaganda organ, the *People's Daily*, announced the full text of the law across a single page. However, there was no commentary explaining the significance of the Territorial Sea Law or the debate process leading to it. The author's coverage of the issue began because of the doubts that he had felt about that development.

To clarify the background of the author's coverage based on reporting memos from that period, the author had such questions in mind when he contacted NPC standing member Huang Shunxing, who was a valuable acquaintance and news source. Huang, who hailed from Taiwan, served as a member of the legislative committee (equivalent to a Japanese parliamentarian). The author had gotten to know him in Taipei in the beginning of the 1980's. He was a heavyweight critic of the ruling Kuomintang party and a supporter of unification with China. After that, Huang moved to mainland China, where the author continued a relationship with him even after his election to the NPC as a standing member representing Taiwan. During the author's tenure as a reporter in Beijing, Huang became a reliable news source as he was familiar with the internal trends of the Chinese government.

### **Acquiring internal documents**

In the residence for Standing Committee officials, Huang showed the author a document entitled "Opinions of the related section of the central and regional governments concerning the draft of the Territorial Sea Law (draft)," distributed to the members of the Standing Committee discussing the bill at the time (the document is hereinafter referred to as "the internal document on the draft's modification"). It was designated as confidential by a document prepared on February 18, 1992, by the Secretariat of the Standing Committee office. An article that the author wrote, based on explanations that the author had received from Huang about the document's contents, as well as his explanation of the situation in which the final draft was unanimously passed by the Standing Committee, was wired by Kyodo News to its affiliated newspapers on February 27, 1992.

The headline of the article, delivered as front-page news to affiliated newspapers, was that "Chinese Territorial Sea Law clearly stipulates the Senkaku Islands as territory unique to China; force not to be renounced if territory is violated, threatening conflict with Japan."<sup>8</sup> An accompanying article was headlined, "Difficulties of managing policy against Japan; Senkakus a source of confrontation between the Chinese military and foreign ministry."<sup>9</sup> The headline of the commentary article read, "Territorial Sea Law: Conflict between conservatives and reformers perhaps a protest against China's open-door policy."<sup>10</sup> In those articles, the author labeled the source of his information as simply "a Chinese source," hiding the fact that it was in fact based on an internal document. That was because of the author's fear that he himself would be charged with the crime of "stealing state secrets" had he admitted how the documents had been acquired.

According to that document, one issue during the draft deliberation was that Article 2 of the draft had listed "islands associated with Taiwan," but had omitted any mention of the Diaoyu Islands themselves. That section of the draft stated, "The territory of the PRC includes the Chinese mainland and its coastal islands, beginning with Taiwan and its associated islands, the Penghu archipelago, the Dongsha archipelago, the Xisha archipelago, the Nansha archipelago, and all other islands belonging to China."

The opponents to that phrasing included the Central Military Commission Legislative Bureau, the General Staff Department, the Navy Headquarters, the Guangzhou Military District, the National Surveying Institutes, and some of the representatives from Shanghai, Tianjin, Shanxi and Hainan.

The military legislative bureau, which led the opposition to the draft's phrasing, first argued, "The Diaoyu Islands have been an integral part of our country since ancient times, since their strategic and economic positions are very important." Secondly, it attacked Japan's response by saying, "Japan has taken the initiative to break the oral agreement with the Chinese side on this issue, trying to assert its leading position by strengthening its effective control over the territory." Adopting a hardline tone, it continued, "Under such circumstances, it is essential not to leave any matters vague." It ended by demanding a revision in the draft, saying, "By clarifying the issue through legislation, we will be able to take the initiative in future negotiations with the Japanese side when resolving the territorial issue of the island." The opinions of the General Staff Office and Navy Headquarters were practically identical to that.

Meanwhile, the Chinese Ministry of Foreign Affairs, which had played a leading role in drafting the law in the State Council, said, "The draft includes the Diaoyu Islands in the phrase 'Taiwan and its associated islands,'" adding that it was appropriate not to specify the name concretely. It specified the following reasons for doing so:

- (1) The Diaoyu Islands have been regarded as part of Taiwan in terms of history, geography, and the traditional notation method.
- (2) Even if the name is not explicitly stated in the Territorial Sea Law, sovereignty over the Diaoyu Islands can be asserted by other means, avoiding international misunderstanding.
- (3) As Japan's territorial sea law does not explicitly mention the country's territorial makeup, it makes no explicit mention of the Diaoyu Islands. However, the Japan Coast Guard Annual Reports and other documents have clearly stated that the islands belong to Japan. That point should be considered during the legislation of the Territorial Sea Law.
- (4) China's leaders have repeatedly declared Chinese sovereignty over the Diaoyu Islands while also expressing "joint development," at the same time as shelving the issue of sovereignty. Owing to the current situation and Sino-Japanese relations, we must defend territorial sovereignty while reducing diplomatic friction to the utmost. For the time being, avoiding conflict with Japan and trying to secure a favorable international environment will, in the long run, be consistent with China's fundamental interests and advantageous for preserving territorial sovereignty.

### **Victory of the Chinese military**

As the document contains no mention of other support for the Chinese Ministry of Foreign Affairs, the position of that ministry seems to have been isolated. In the end, the ministry, which had struggled on its own, said that it would modify the part of the draft referring to Taiwan, thus effecting a compromise, stating, "If the draft cannot be passed as is, the option should be either to delete all island names from the draft, or to clearly indicate 'Diaoyu Islands' among 'Taiwan and its associated islands.'" In the end, the second option was chosen, with the Ministry of Foreign Affairs totally succumbing to the demands of the military.

In such a way, China's possession of the Diaoyu Islands came to be stated for the first time ever in the country's domestic law. Although China had early made a "territorial seas declaration" in 1958, it did not specify the Diaoyu Islands, but rather left the wording the same as the draft that was prepared by the Ministry of Foreign Affairs, namely, saying no more than "Taiwan and its associated islands." With the establishment of the Territorial Sea Law, however, China came to further emphasize its assertion of ter-

ritorial rights to the Senkaku archipelago.

Whether or not the Diaoyu Islands were on the minds of the Chinese leaders in 1958, when the first territorial sea declaration was made, must wait for future historians to verify at a later occasion.<sup>11</sup>

Here the author would like to describe how the Chinese authorities responded to his reporting of how the process of the Territorial Sea Law's legislation unfolded. Whenever he asked them to make comments, all he got was complete denial or silence. In China, there has long been an unwritten rule of not publicizing abroad any internal conflicts arising during the process of establishing policies related to foreign affairs. In particular, not showing the other side any weaknesses that can be taken advantage of—especially when it comes to vital international problems—is an issue upon which the political life of diplomatic officials depends.

### **Information leaks out later**

However, in more recent years, bits and pieces of what happened have gradually come to light. The first of those was the public admission by the official website of the Chinese NPC comparing the original draft of the Territorial Sea Law and later modifications.<sup>12</sup> While no mention was made of the conflict between the Chinese Ministry of Foreign Affairs and the military, it officially acknowledged as a fact that the draft had been changed during the process of establishing the Territorial Sea Law so as to clearly state the Diaoyu Islands. That represents a big step forward compared with the response that the author got from the Chinese diplomats, including former cabinet members, to whom he had requested comments, as they flatly denied even the fact that the draft had been modified.

In addition, what happened during the eight-year process of the original drafting of the Territorial Sea Law to its final establishment is also becoming increasingly apparent. In general, China's move to enact the Territorial Sea Law is said to have been triggered by the adoption of the United Nations Convention on the Law of the Sea (UNCLOS) at the third UN Conference on the Law of the Sea in 1982.

In 1984, the Chinese State Oceanic Administration (SOA) established a small working group for drafting domestic laws to upgrade the domestic legislation aiming to protect China's maritime interests in accordance with the UNCLOS. The group consisted of departments related to the State Council gathering reference materials from both home and abroad in starting the drafting work, while also broadly enlisting opinions from marine and legal experts. Due to the wide variety of related departments and the gaps in recognition, it took much time to make adjustments and polish the language, so it was not until the latter part of 1991 that the draft passed the Legislative Affairs Council Meeting and was presented to the Standing Committee of the NPC for its deliberation. According to an article in China Ocean News entitled "Diaoyu Islands clearly mentioned in the Territorial Sea Law," some 32 representatives jointly submitted a bill to the 4th session of the 7th NPC named "concerning the issue of accelerating our country's maritime legislation."<sup>13</sup> Their argument was as follows: "The lack of the guarantees of a basic maritime legal system negatively affects the implementation of separate related laws that have already been promulgated, making it extremely disadvantageous for protecting the maritime interests of the state. Therefore, we urge the state to accelerate the process of legislation, as it is necessary to set up the basic maritime legal system forthwith. We must pass the Territorial Sea Law as soon as possible."

According to the NPC's official website, SOA Director General Yan Hongmo explained the main points of the proposal for the draft of the Territorial Sea Law at the behest of the State Council at the 22nd meeting of the Standing Committee held in October 1991.<sup>14</sup> At that point, it was clarified that the draft would clearly state place names in accordance with the territorial sea declaration of 1958. In other words, the policy direction was not to specify the Diaoyu Islands specifically.

However, opposition to that policy burst out into the open in 1992. The NPC's Legal Committee



and the Legislative Council of the Standing Committee had sent drafts of the law to relevant departments in the provinces, autonomous regions, municipalities and central governments across the country, listening to roundtable discussions by experts, and broadly requesting opinions. In response, the Legal Committee convened two meetings, one on January 29 and the other on February 5, finalizing the draft. There is almost no doubt that this series of meetings were those pointed out by the “internal document on the draft’s modification,” namely, that the Ministry of Foreign Affairs and the military were fighting each other over the explicit mention of the Senkaku Islands.

According to the report by Legal Committee Deputy Director Song Rufen explaining the submission of the bill to the Standing Committee on February 20,<sup>15</sup> the series of conferences concluded the draft was basically “enforceable.” Although it is supposed to have approved the modification of four items, the most important was the correction allowing the explicit mention of the Diaoyu Islands.

Additionally, in his February 24 report,<sup>16</sup> Song also revealed that other modifications in the phrasing of the draft were made by the Legal Committee on February 22, but all were minor corrections and had nothing to do with the main problem at hand.

How has the process of the revisions to the draft Territorial Sea Law been reported and evaluated by more recent Chinese media? According to the “internal document on the draft’s modification” that the author originally obtained—which served as the starting point for various reports—the picture comes to light in which the Chinese Ministry of Foreign Affairs and the military were completely opposed to one another, with both declaring their respective positions and refusing to yield. The aforementioned article from the *China Ocean News* only reveals that there were two arguments over the mention of the Senkaku Islands, without touching on the situation during the draft deliberation itself.<sup>17</sup> The article reads as follows:

There were two arguments over the mentioning of the Diaoyu Islands. One was the position that those islands should be clearly specified by the Territorial Sea Law, with the corresponding section to be worded “Taiwan and its associated islands, including the Diaoyu Islands.” The other side argued that the wording should be in accordance with the territorial declaration of 1958, containing only the notation of “Taiwan and its associated islands.” Both sides agreed that the Diaoyu Islands belonged to China, but the SOA consistently supported the expression of the former name (i.e., citing the Diaoyu Islands explicitly) to eliminate any possibility of re-interpretation. That was to squelch any illusions of sovereignty held by some Japanese who had designs on the Diaoyu Islands. When the drafting subcommittee of the Standing Committee was holding its deliberations, SOA Director General Yan said, “The Diaoyu Islands have been Chinese territory since ancient times, and based on the current conflict over maritime interests, we can assert our sovereignty and protect our maritime interests by specifying the islands’ name. The conflict over the islands is not something that can be solved in a short time. To take care of the issue carefully, we definitely must specify ‘Diaoyu Islands’ in the Territorial Sea Law.” A majority of the members of the Standing Committee supported the position of the SOA.

The article cited the memoirs of Lu Rongshu, member at the time of the Chinese People’s Political Consultative Conference, who said, “Promulgating the Territorial Sea Law and clearly specifying the Diaoyu Islands as well as other archipelagos such as the Nansha Islands would capture the hearts of the people in a profound way.” The article also flatly affirms, as an established fact, the clear specification of the islands’ name. Although it revealed that there had been two positions during the draft modification process, it completely fails to make mention of any confrontation between the Ministry of Foreign Affairs and the military, nor does it mention the specific reasons for the position opposing the explicit mention of the islands’ name. Also, it seems that the statement by SOA Director General Yan, cited in the article,

and the statements and behavior of the Standing Committee differ slightly from what is written on NPC's official website. That seems to result from the fact that the SOA is part of the Ministry of National Resources, affiliated with the State Council, but at the same time is also affiliated with the military in matters pertaining to maritime interest. The truth, however, remains unknown.

### **Chinese media recognizes intense confrontation**

Meanwhile, when Japan nationalized the Senkaku Islands, *China Newsweek* presented a special feature headlined "Experts explain the Territorial Sea Law." While short, the feature revealed that there was an intense confrontation during the modification of the draft.<sup>18</sup> Of all the Chinese media, it was the only publication reporting the fact that conflict existed over whether the islands' name ought to be specified or not. The relevant part of the article is as follows:

The process of specifying the Diaoyu Islands in the Territorial Sea Law, enacted in 1992, was rife with complications. Then-Deputy Xu Senan of the SOA Policy Laboratory, who was participating in the drafting of the Territorial Sea Law at the time, gave the following comments to this magazine: "A relevant department of the government, worried about a strong reaction by a certain related country, opposed the clear specification of the Diaoyu Islands, using all its power to stop it from happening. A fierce controversy ensued in debates at the NPC. Finally, I managed to incorporate it somehow into the law thanks to the efforts of the NPC Law Drafting Committee."

That description basically agrees with that outlined in the "internal report on the draft's modification" that formed the basis of the author's reporting. In other words, the "relevant department" was the Chinese Ministry of Foreign Affairs, and the "related country" was Japan.

In the process of enacting the Territorial Sea Law, no mention can be found of whether discussions had been held concerning the propriety of specifying the names of disputed islands in the South China Sea, such as the Dongsha, Xisha and Nansha archipelagos, in the context of relations with such Southeast Asian countries as Vietnam and the Philippines. If so, doubts arise as to why the Chinese Ministry of Foreign Affairs was so fearful about instigating backlash or bad feelings only from Japan.

At a regular press conference held by the Chinese Ministry of Foreign Affairs on February 27, two days after the enactment of the Territorial Sea Law, spokesman Wu Jianmin, speaking on the 20th anniversary of the normalization of diplomatic relations between China and Japan, responded to a reporter's query about why the Senkaku Islands were explicitly mentioned in the Territorial Sea Law on the occasion of its promulgation. According to the February 28, 1992 edition of the *People's Daily*, the mouthpiece of the CCP, he said that copious historical facts proved that the Diaoyu Islands belong to China, as did a view of the matter from the standpoint of international law, so that it was impossible to refute China's position. Therefore, he said, there was also no room to criticize China's renewed expression of that position in the Territorial Sea Law. Incidentally, there is no connection between China's Territorial Sea Law and the 20th anniversary of the normalization of Sino-Japanese diplomatic relations.

The article in the *People's Daily* is not accurate. The reporter (namely, the author) had actually asked, "Why were the Senkaku Islands not included in the draft of the Territorial Sea Law but included at the time of its promulgation?" The ministry spokesman intentionally distorted the author's question when he answered, and the article published in the *People's Daily* only echoed the press release issued by the ministry. Contrary to the spokesman's response, made for outward appearances, the Chinese Ministry of Foreign Affairs found itself facing a huge dilemma between the Emperor's visit—the highlight of the 20th anniversary of the normalization of diplomatic relations—and the specification of the Senkaku Islands in the Territorial Sea Law.

## **Memoirs of the Chinese foreign minister**

It is rare for Chinese diplomats to produce full-fledged memoirs, but there are a few exceptions. One of those rare cases is Qian Qichen, who had been at the vanguard of Chinese diplomacy since starting as Deputy Foreign Secretary in 1982 and until resigning as Deputy Prime Minister in 2003. He refers to the time around 1992 as being the period when Chinese diplomacy faced its biggest challenges in his autobiography, *Ten Episodes in China's Diplomacy*.<sup>19</sup>

The book dealt with how China tried to break through the web of containment created by Western countries as they imposed sanctions on the country after the Tiananmen Incident of June 1989, as well as how to normalize relations with the countries of the West, led by the United States. What became a focus in those efforts was the role of Japan, so China's actions toward Japan emerged as a top priority. The realization of the Emperor's visit to China was to be the highlight of that. As will be explained below, China views diplomacy as a "struggle," so the Ministry of Foreign Affairs carried out a diplomatic struggle both internally and externally to meet that challenge. The relevant section of his book is as follows:

Among those countries that have imposed joint sanctions against China, only Japan did not feel motivated to do so the whole time. Japan only reluctantly agreed to a resolution at the G-7 summit for sanctions against China to keep in line with the countries of the West. ... Of course, Japan was acting in that way to protect its own interests. However, it was the weakest link in the chain of the allied front of sanctions against China, and thus became China's best hope for breaking through them and defeating them. ... At that time, we were pushing Japan to move in that direction.

According to the book, the emphasis in the strategy against Japan had been placed on the Emperor's visit. Again, the relevant section of Qian's book is quoted below:

[China's strategic considerations] were to promote the realization of the Japanese emperor's visit through the exchange of visits by high-level officials on both sides, advancing Sino-Japanese relations to a new stage. ... In the 2,000-year history of goings and comings of people between China and Japan, a Japanese emperor had never once visited China, so if the visit of the Emperor could be realized, it would make it possible to overcome the Western sanctions prohibiting mutual visits by high-ranking officials between the two sides. ... The visit by the Japanese Emperor during that period effectively demonstrated the successful end of Western sanctions against China, so its significance clearly went beyond the extent of bilateral Sino-Japanese relations....

## **Reasons for the Chinese Ministry of Foreign Affairs' resistance**

Qian Qichen, who had been supervising China's foreign policy on the practical side as of 1991, saw the Emperor's visit as a way to break through the web of containment formed by Western sanctions, revealed in his book that he had developed a strategy against Japan for the Ministry of Foreign Affairs. Meanwhile, around the very same time, the Standing Committee of the NPC was just about to begin deliberating the Territorial Sea Law, which Japan was expected to protest against. The original draft of the Territorial Sea Law was made by the Ministry of Foreign Affairs, and was supposed to have been able to minimize Japan's opposition by leaving out the clear specification of the Diaoyu Islands.

However, in the beginning of 1992, the hardline factions—primarily the military—instigated a backlash, with the Diaoyu Islands eventually being incorporated in the final draft, as revealed by the "internal document on the draft's modification." According to both that document and *China Newsweek*, the Ministry of Foreign Affairs engaged in a heated debate with the military, resisting explicit mention of the Diaoyu Islands to the end. The reason for that was that should Japan strongly oppose the clear



mention of the Diaoyu Islands, rendering the Emperor's visit no longer possible, its scenario of using diplomacy to break through the Western containment web of sanctions would no longer happen.

The Chinese Ministry of Foreign Affairs was not only "struggling" against Western sanctions but also with domestic anti-Japanese hardliners, including the military. In his book, Qian did not mention any of the developments leading up to the legislation of the Territorial Sea Law. Perhaps that is because he, too, viewed diplomacy as a struggle.

In January 1992, when Japanese Foreign Minister Michio Watanabe was visiting China, China officially extended its invitation for the Emperor's visit. The invitation was made right before the enactment of the Territorial Sea Law. The *Asahi Shimbun* later reported on October 26, 1992, that Foreign Minister Watanabe promised Qian at the time that the Emperor's visit would be realized, making it informally a done deal. The desperation of the Chinese Foreign Ministry in not wanting the Emperor's visit to be derailed is apparent in its resistance to the military.

### **Factors producing China's hardline argument against Japan**

In that case, what were the factors pushing the hardliners—namely, the military and others—toward the argument for the clear specification of the Diaoyu Islands in the Territorial Sea Law, as they succeeded in modifying the draft? Although there is no material directly showing that so far, the situation can be explained to some extent from the domestic and foreign circumstances that China found itself in at that time.

Firstly, a major shift occurred in China's perception of its external threats.<sup>20</sup> A Sino-Soviet reconciliation was effected after Gorbachev's visit to China in June 1989, greatly relaxing tensions along the two countries' common borders, which had represented the greatest threat to China until then. In accompaniment to that, the Chinese army shifted the main concentration of its deployment away from the inland part of the country's northwest to the coastal part of the southeast, including Taiwan, with the navy beginning to assume the most important role instead of the army. Another shift was away from the "people's war" concept of the Mao Zedong era, in which the enemy was drawn in then shot at, toward a style of war in which shooting would occur before the enemy landed. That was related to the fact that core industries had been moved to inland areas during the Mao Zedong era, the motto of which was "self-reliance," whereas the advance of the reform and open-door policies of the Deng Xiaoping era had created an industrial area along the coast. Additionally, to secure resources for higher economic growth and to gain the security of sea lanes, China's maritime strategy expanded from coastal defense to near-ocean and far-ocean waters. During that period, the person responsible for successively coming up with various ideas leading to the expansion of the current Chinese maritime force was Liu Huaqing, vice chairman of the Central Military Committee, who is known as the "father of the Chinese Navy."

The existence of Japan as a major regional rival to China meant that Japan emerged as a potential enemy within China's shift in maritime strategy. Several arguments circulated around Beijing at the start of the 1990's referring to Japan as "the main enemy," with others talking about "the inevitability of an economic powerhouse becoming a military powerhouse." They can be interpreted in that context.

In an internal report released in September 1990,<sup>21</sup> Chen Yun, chief of the Chinese Central Advisory Commission and a prominent figure in China's conservative faction, said, "There will be no world war in the next 15 years, but 15 years from now, Japan will gain war potential. China has to prepare for a war against Japan in the 15 years that it has left." On that basis, he argued that China should emphasize patriotism, uniting its citizens to deal with such "foreign enemies" as the United States and Japan.

According to an article in the *Asahi Shimbun* printed on March 21, 1992, entitled, "Japan, military power of the next century," the Institute of Asia-Pacific Studies of the Chinese Academy of Social Sciences suggested that Japan would likely become a military power by the beginning of the 21st century, or by 2010."

One example of that was its publication of a paper saying that Japan would represent a big threat to China.

### **The rise of nationalism in China**

Another factor in the rise of anti-Japanese sentiment was the emergence of nationalism.<sup>22</sup> Given what happened historically between the two countries, Japan is a prime target for Chinese nationalism. The collapse of the Soviet Union and the socialist bloc of Eastern Europe, along with the occurrence of the Tiananmen Incident, completely washed away the virtues of communist ideology. High economic growth and nationalism thus came to be stressed as the two main pillars propping up the justification of the Chinese Communist Party's dictatorship, with plans to impose nationalism from above through patriotic education and the like.

Nationalism has come to take root among the Chinese people as well, with instances occurring in which they have forced the "weak-kneed" government to take action. A typical example is the move demanding Japan to pay war-related compensation to individuals. The issue of national reparations for the Sino-Japanese War was settled by the Chinese government when it abandoned all claims during the process of normalizing diplomatic relations, but later a movement grew demanding compensation on the private level, as that had not yet been resolved. The Chinese government finally began to allow such activities tacitly. One leader of that movement was Tong Zeng, an acquaintance of the author. Tong had originally taken part in the democratization movement leading to the Tiananmen Incident, when he often visited the offices of Standing Committee member Huang Shunxing, mentioned earlier, who was in support of that movement. After the Tiananmen Incident, though, he turned to nationalism.

In the autumn of 1991, after a Supreme Declaration was submitted to the NPC arguing that "China's demand for damage compensation do not allow a grace period," anti-Japanese actions among the Chinese public started to be expressed openly. In addition, citizens started to become actively involved in the issue of the Senkaku Islands, with the establishment of the "China Federation of Defending Diaoyu Islands" in 2003, which sent activists to land on the Senkaku Islands.

Such actions by private Chinese citizens began to influence the foreign policy debate within the government, and the atmosphere developed in which fundamental, hardline, nationalistic assertions were more likely to gain public support as far as national interests were concerned. It increasingly became more difficult to make compromises on foreign policy in situations especially where there was no strong guidance by the top leadership. In fact, as recently as 2012, when the problem heated up again as the Japanese government nationalized the Senkaku Islands, the Chinese blogosphere erupted with such combative statements as "It is unthinkable that the Chinese government has failed to exercise forceful action despite the Territorial Sea Law."<sup>23</sup>

As seen in the case of the "internal document on the draft's modification," the Chinese military's fight with the Ministry of Foreign Affairs was consistent with the basic argument of principles of guarding national interests as far as security and the economy were concerned, leading it to carry out hardened anti-Japanese policies that eliminated any vagueness on the Diaoyu issue. In addition, the fact that such activities were particularly prominent (out of the many military branches) in the naval headquarters and the Guangzhou military district, both of which are related to maritime strategy, as well as in Shanghai, Tianjin and Hainan, all of which are first-class coastal administrative units, also agrees with the background explanation given above.

### **Who decided upon the final settlement of the issue?**

It has been entirely obfuscated how the dispute between the Chinese military and the Ministry of Foreign Affairs—both of which had been arguing with each other—was finally settled procedurally in such a way

that the military's argument prevailed. In the Communist Party's democratically centralized system, it is the Standing Committee of the Communist Party Politburo that has the ultimate right to determine important matters, but it is unclear whether the Diaoyu decision was settled on the spot. There is no way to know whether it was the judgment of Jiang Zemin, who was president of the Standing Committee and president and chief of the Central Military Committee and general secretary of the Standing Committee, or that of Deng Xiaoping, effectively China's supreme ruler.

In the "internal document on the draft's modification," the Chinese Ministry of Foreign Affairs secretly quoted Deng's words and actions when it retorted that the military's hardline policy would end up rejecting the proposed policy of joint development and the shelving of the sovereignty issue that the Chinese leadership had previously expressed. In other words, were the Diaoyu Islands to be clearly mentioned in the Territorial Sea Law, as argued by the military, the Chinese Foreign Ministry pointed out that Japan would interpret it as China's withdrawal of its position of shelving the sovereignty issue that it had staked until that point. That would undergird the assertion by some on the Japanese side that it was China that had "taken the issue off the shelf."

If Deng agreed with the draft modification while being aware of the quarrel between the military and the Foreign Ministry, what, exactly, had his talk about "shelving the sovereignty issue" been about all along? Furthermore, the theory that Deng was involved goes against his "keeping a low profile" (*tāo guāng yǎng huì*) philosophy (literally, to hide one's potential and bide one's time), that is, the basic policy of hiding one's ability in the international community for the time being by adopting a low profile. This is a teaching imparted by Deng Xiaoping that means to hide one's potential as much as possible while one has little power, and then to wait patiently while accumulating enough power.

Incidentally, the author confirmed those words of Deng's in a pamphlet of his pithy phrases, acquired in early 1992, that was issued by the CPC Publicity Department (CPCPD) as a guideline for the media. It emphasized China's fundamental external posture, namely, that "Our policy is to calmly observe and respond, keep pace with others, conceal our true capabilities, act defensively, and not stick our heads out."

### **Decline in Deng Xiaoping's authority**

In an article that the author submitted to the monthly magazine *Sekai* (World), he wrote, "At that time, the Communist Party was in the midst of an unusually intense struggle between conservatives and progressives over the reform and open-door policies, with the authority of Deng Xiaoping declining on account of the aftershocks of the Tiananmen Incident and the shock of the dissolution of the Soviet Union." The victory of the military over the diplomats was made apparent during the process of the legislation of the Territorial Sea Law, and provides a good example of how the military strengthens its influence during times of confusion when the Chinese leadership is experiencing internal conflict, as in the beginning of 1992. In addition, if one looks back over the issue chronologically, Deng, despite his old age, embarked on his *Nanxun* Southern Tour, giving speeches throughout southern Chinese cities in January and February of that year, in order to revitalize the reform and open-door policies that had stagnated as a result of the Tiananmen Incident. As that coincided with the timing of the draft modification of the Territorial Sea Law, he may not have been able to devote enough attention to it.

On the other hand, there is the possibility that Jiang Zemin, who had taken over from Deng the post of chairman of the Central Military Committee—the top military post, which controlled the military while straddling the party and state—supported the hardline position led by the military. Jiang needed to win support from the military to shore up his vulnerable power base, and possibly he responded to the military's request. It may also be supporting evidence for his clearly anti-Japanese posture that later

became evident, namely, his widespread implementation of patriotic education. That also may be interpreted as his intention to conceal his complicated background.

### **The stability of the government and the influence of the military**

China scholar Allen S. Whiting cited the author's article in his book, *China Eyes Japan*<sup>25</sup> (University of California Berkeley Press, June 1989), which analyzes the relationship between China and Japan. He wrote that further complicating the problem was the policy of the People's Liberation Army (PLA). According to certain "sources" in Beijing, it was the PLA that stubbornly asserted that the Senkaku Islands be included in the 1992 Territorial Sea Law, while the Ministry of Foreign Affairs expressed concerns, saying that it would cause relations with Japan to deteriorate. That information, he wrote, was "clearly believed to have been deliberately leaked" to the Japanese Kyodo News agency, so its verity could not be confirmed, but the Ministry of Foreign Affairs may have done so to smooth diplomatic relations with Japan. However, the issue, Whiting said, has played a role reminding us that the Chinese military's influence is stronger when the top leadership is divided than when it is not. It also emphasizes that Chinese domestic politics can impair favorable diplomatic relations. Although the section of Whiting's comments mentioning an intentional leak is not factual, his statements are consistent with the author's view in its analysis that the Chinese military gets stronger when the Chinese government loses stability owing to internal divisions.

When the author's articles first came out, some scholars claimed that it was an exaggeration to say that there were conflicts between conservatives and progressives as well as between the Chinese Ministry of Foreign Affairs and military concerning China's entry into the ocean, their criticism being that the policy of China's maritime expansion was being promoted by both sides.<sup>26</sup> In a sense, that is true.

There was no inconsistency insofar as the enactment of the Territorial Sea Law itself was concerned, as became evident over time in the law's legislation process. The timing of the promulgation of the Territorial Sea Law was not made to deliberately coincide with the Emperor's visit, because the preparation and deliberations of the draft had continued to be delayed over the eight-year period leading to 1992. There were no differences between the two sides over the claim that the Diaoyu Islands were Chinese territory, which both supported. There was just one point of tactical discrepancy as to whether to clearly state the name of the islands—not included in Chinese official documents until then—in the Territorial Sea Law. On the other hand, differences did exist between the two sides in the background: the military restricted the discussions to the bilateral relationship between China and Japan, while the Ministry of Foreign Affairs, which was concerned about global strategy, went beyond that bilateral relationship in its thinking.

### **Draft modification process kept confidential**

In China today, the Territorial Sea Law is considered a grand legal premise for maritime strategy, and is positioned as an important legal basis for the subsequent establishment of the territorial sea baseline and the air defense identification zone (ADIZ). The author searched for statements dealing with any draft modifications during the process of enacting the Territorial Sea Law in a vast Chinese database called CNKI (China National Knowledge Infrastructure), but could not find anything.<sup>27</sup> The only document that the author did find was a headline reading "Five prominent problems in the deliberations during the drafting of the Territorial Sea Law bill," but the author could not confirm its contents as they had already been deleted. One can only speculate that the document ran into censorship by the Chinese authorities.

In China, there are no articles or essays concerning the specification of the Diaoyu Islands name, except for the two articles already cited in this paper. That is because all the developments surrounding the issue are treated as confidential information in China, and because the Chinese Foreign Ministry did

not experience as strong an opposition from Japan about the islands' name being cited as it had feared. Those fears ended up being completely unfounded, as the Emperor's visit went ahead as planned, helping China to break through the containment web of Western sanctions, and the country being able to return to international society after a while without much delay.

### **Response of the Japanese media**

Let us now take a closer look at Japan's reaction to the specific inclusion of the Senkaku Islands in China's Territorial Sea Law. Looking at newspaper reports from that period, we see that the February 27, 1992 edition of the *Sankei Shimbun* reprinted articles distributed by Kyodo News, treating the story importantly on both its front page and editorial page, but changing both headlines to its own version. It headlined the main story by saying, "Chinese government explicitly declares territorial ownership of Senkaku Islands, threatening use of force if invaded; Japanese government protests." The editorial, meanwhile, was entitled, "China mentions Senkaku Islands: Ignoring Deng's promise, [Chinese] conservatives use relationship with Japan to strike back." Local newspapers around Japan treated the issue in the same way. On the other hand, what sort of stories were written by other national newspapers that were receiving material from Kyodo News?

The national newspapers devoted only an unobtrusive amount of column space to the story, watering down its contents, as each had its own Beijing correspondent who was directed to do follow-up coverage on the issue after getting the initial report from Kyodo News. On the same day, the *Yomiuri Shimbun* printed only one article on the story, putting it on page two with a two-column headline that read, "China's Territorial Sea Law specifically mentions Senkaku Islands; Japan protests." In its evening edition, the front page of the same newspaper featured an interview with Vice-Chairman Fu Hao of the NPC's Foreign Relations Committee, using a four-column headline above the article. The main point of the interview was that China would not delete the territory's citation from the law, but that the "shelving" of the issue of Senkaku territorial sovereignty remained unchanged. In addition, there was also a short article on the second page dealing with revisions in Prime Minister Miyazawa's comments, and a short background story on the fifth page suggesting that conflicts existed between the Chinese military and the Ministry of Foreign Affairs on the issue.

In its morning edition, the *Mainichi Shimbun* printed a story on page two with a two-column headline, using material from Kyodo News' Beijing bureau. The same newspaper's evening edition contained a short commentary mentioning a conflict between conservatives and reformers within China's leadership as background to the clear specification of the Senkaku Islands, pointing out the vulnerability of "shelving" the issue. On page three of its morning edition, the *Asahi Shimbun* printed an article with a three-column headline saying that "China has no intention of stirring up matters with its neighboring countries now, and is aiming to check possible actions by related countries by developing its legal foundation." It thus phrased things ambiguously, making no commentary on the background to the explicit mentioning of the Senkaku Islands in the law.

The only Japanese newspaper expressing doubts and confusion was the *Nikkei Shimbun*, which, in a front-page story with a three-column headline, cited a source inside Japan's Beijing embassy who said, "I don't know why this problem—which might provoke Japan—had to be brought up at this time." In a commentary on page two, it cited a Japanese government official who said, "What an embarrassing problem to bring up just as it was decided to have General Secretary Jiang Zemin visit Japan on the occasion of the 20th anniversary of diplomatic relations between China and Japan, and when the Emperor's visit to China had already been scheduled." It thus expressed the sense by the Japanese side that something was not right, or out of joint. On February 28, though, the *Mainichi Shimbun* printed an editorial entitled,



“Let’s leave the Senkaku issue to the next generation,” in which it called for a cool-headed response, writing that China was not expected to exercise force right away, and probably did not intend to upset the situation pointlessly. In that way, the reaction of most Japanese national newspapers was rather muted.

### **Response of the Japanese government**

The response of the Japanese government was also calm. On February 27, the Japanese Ministry of Foreign Affairs protested to its Chinese counterpart through the Chinese Embassy in Tokyo, and Vice-Minister for Foreign Affairs Owada Hisashi summoned the Chinese ambassador Yang Zhenya. In both cases, the protests were made orally. That was a suppressed action in comparison to that of Vietnam and Philippines, both of which made their protests in writing. The Japanese Ministry of Foreign Affairs explained that oral protests were made so as not to stir up the situation too much.

Japanese Chief Cabinet Secretary Koichi Kato, at a news conference, said, “China is now developing a legal framework, and this law has emerged as part of that effort.” On the same day, Kyodo News wrote an article entitled, “Political problems not to be made tenser,” in which it wrote its expectations this way: “We do not believe that the political issue will adversely affect the Sino-Japanese relationship, as the Japanese government expects the Chinese side to keep the situation calm, while watching future moves.” It also reported that it did not expect the Chinese military to exercise the right granted to it to use force against intruders.

According to a Kyodo News article on March 3, headlined “Not to be regarded as an infringement of sovereignty,” Japanese Foreign Ministry spokesman Masamichi Hanabusa, at a press conference held the same day, spoke in reference to the fact that China had clearly specified the Senkaku Islands in its Territorial Sea Law by saying, “China made this move to follow the law. China has always made that assertion of territorial ownership, and it is a difficult problem to solve in a way that Japan would be immediately satisfied.” He thus stated his idea of coping with the situation calmly. He also said, “This is a territory that Japan effectively controls, so Japan has taken the position that its sovereignty has not been infringed” as China had not exercised force in the area.

The Chinese Ministry of Foreign Affairs, which had been so strongly opposed to any mention of the Senkaku Islands in the Territorial Sea Law, moved to a situation of damage control once the law came into effect. In a sense, the “China School” of the Japanese Ministry of Foreign Affairs and the “Japan School” of the Chinese Ministry of Foreign Affairs were acting almost as if in lockstep. According to the March 18, 1992, edition of the *Asahi Shimbun*, Chinese Deputy Foreign Secretary Xu Dunxin said, “This legislation is part of a long-term legal development, and not aimed at a specific country, nor are we taking this opportunity to advance things or take any measures.”

How much did the Japanese Ministry of Foreign Affairs know about the modification of the draft of the Territorial Sea Law ahead of time? Undoubtedly, as the original draft had been made public in the latter half of 1991, when the original draft was presented to the NPC, it knew about it at that point. However, the contents of the draft at that time were drawn up by the Chinese Ministry of Foreign Affairs, so it is highly likely that its Japanese counterpart was unaware of the subsequent circumstances in which the Chinese military and the Chinese Foreign Ministry were at loggerheads over the specification of the Senkaku Islands.

### **Background briefing**

The grounds supporting that belief can be found in an article concerning the viewpoint of the Foreign Ministry that Kyodo News had distributed on March 5, 1992, headlined “Citation of Senkaku Islands a push by the military.” The article focused on how the Japanese Ministry of Foreign Affairs had, until then,

treated developments concerning the Chinese Territorial Sea Law as part of the “organization of a legal framework,” but that it had then suddenly changed its views. The article went on to say that officials of the Japanese Ministry of Foreign Affairs said that China had included mention of the Senkaku Islands as Chinese territory in its Territorial Sea Law because of the rise of the military, which had a strong hardline position against Japan.

In fact, a few days before that article came out, the author had visited the Japanese Embassy in Beijing, and pointed out to Ambassador Hiroshi Hashimoto his theory of the conflict between the Chinese military and the Ministry of Foreign Affairs in the background of the inclusion of the Senkaku Islands in the Territorial Sea Law. The ambassador stated his surprise, saying, “I cannot believe it. Is there evidence?” The author thus gave him a copy of the “internal document of the draft’s modification” that he had received. The ambassador then sent the document to ministry headquarters in Tokyo, where it was analyzed. That probably became the background briefing referred to by the Kyodo News story. Ambassador Hashimoto was a diplomat working actively at the forefront of such historical events as the normalization of relations between China and Japan as well as the visit by the Emperor to China.

The strained nature of the situation between China and Japan concerning the Territorial Sea Law ended up with China’s reaffirmation of the “shelving” of the sovereignty issue and with Japan’s tacit “re-shelving” of the debate.

### **No effect on the Emperor’s visit to China**

While the establishment of the Territorial Sea Law did make some waves in the Japanese political world ahead of the Emperor’s visit to China, it did not become an obstacle to it. There are several excellent historical examinations of the Emperor’s visit, but it has been pointed out that the circumstances on the Japanese side promoting the visit’s realization included such goals as<sup>28</sup>: (1) using the Emperor’s visit to reconcile with China and settle historical issues between the two countries, (2) enhancing Japan’s presence as a major power on the international stage by serving as a bridge linking China and the West, and (3) reinforcing the Sino-Japanese relationship as a counterbalance to the US-Japan relationship, which was becoming strained at the time owing to economic friction.<sup>29</sup> Meanwhile, China’s main aim was to use the Emperor’s visit to break through the “containment web” of Western sanctions, as mentioned above. In the framework of the coincidence of strategic interests—which can be described as “lying in the same bed with different dreams”—the issue of the Territorial Sea Law seems to have been just nothing more than a “tempest in a teapot,” according to the perception at the time.

Another factor enabling Japan to respond relatively calmly to China’s enactment of the Territorial Sea Law was its awareness of China’s national strength. In a front-page feature published in its March 23, 2014, edition, entitled “40 years of reconciliation and enmity between China and Japan #4: China changes mind in the shadow of the Emperor’s visit, clearly specifying Senkaku Islands as Chinese territory; passage of Territorial Sea Law destroys the shelving of the issue,”<sup>30</sup> *The Nikkei* asked Sakutaro Tanino—director-general of the Asian and Oceanic Affairs Bureau of the Japanese Ministry of Foreign Affairs at the time, and who was involved in the practical details of the Emperor’s visit—whether the issue of the Territorial Sea Law had ever been an obstacle to that visit. He answered, “I don’t think anyone in the government wanted to cancel or postpone the Emperor’s and Empress’s visit.” He added, looking back, “In circumstances where Japan effectively controls the Senkaku Islands, there was a sense of security at that time, unlike in more recent years. The Chinese side never challenged that fact straight on, nor did it embark on rough action.” At that time, Japan’s economy was almost eight times as big as China’s, so considering the overwhelming difference in national strength, no one thought that China would seriously come and take over the Senkaku Islands by force.

## No reaction by the United States

Just as it does today, the issue of the Senkaku Islands at that time did not end at the boundaries of the bilateral relationship between China and Japan, but also involved the United States in connection with various multilateral issues. Taiwan, which claims the territory of the Senkaku archipelago as the Republic of China, is also involved in the issue in a complicated fashion for historical reasons, but the author will leave that discussion for another opportunity.

Having examined the domestic coverage of the issue at the time, the author found no evidence that the US government had expressed any views on the legislation of the Chinese Territorial Sea Law. There is also no record of Japanese correspondents in Washington raising the issue at State Department press conferences. However, as the author was gathering material in Beijing at the time related to the “internal document on the draft’s modification,” it turns out that the United States was also involved slightly. Below are quotations from the author’s article submitted to the monthly magazine *Sekai* (mentioned above).

At that time, the author obtained the documents on the Territorial Sea Law in question from two sources, one of which was obtained indirectly through the US Embassy in Beijing (as explained by the person who gave it to the author). That means that the United States did not tell Japan anything even though it knew of the important contents in the Territorial Sea Law impinging on the Japan-US Security Treaty even before the law was enacted (though the US Embassy officially denies having gained the information beforehand). In addition, if the Chinese authorities had intentionally leaked the information to the US Embassy, the United States and China were carrying out shrewd information warfare above the heads of an oblivious Japan....

If China was trying to gain an edge over Japan by pre-announcing its intention of specifying the Senkaku Islands in the Territorial Sea Law to the United States, which potentially is a third participating party in case of conflict flaring up between China and Japan, its leak of information to the United States may be said to be a far-sighted strategic move. That is also consistent with the policy of the CCP at the time, namely, to “exploit contradictions between Western countries.”<sup>31</sup>

The position of the US government on the Senkaku Islands issue was summarized in a statement made by State Department spokesman Robert J. McCloskey on September 10, 1970,<sup>32</sup> in which he said that the United States was taking a neutral position on the ownership of the islands. In a press conference, he explained that the US government had administrative rights to the Senkaku Islands at that time as part of the Ryukyu archipelago, according to the Treaty of Peace with Japan, but that it also regarded Japan as having latent sovereignty over that archipelago. On the other hand, when asked what the US position would be if a conflict arose between Japan and China over sovereignty over the Senkaku Islands, McCloskey answered, “With respect to any conflicting claims, we consider that this would be a matter for resolution by the parties concerned,” confirming that the United States would take a neutral position in territorial disputes. No one pressed him about the intensity of such a conflict, and that remains the case today.

The United States has continued to take a vague or unclear position on what kind of response it would make in an emergency, and has also continued to avoid declaring what it would do based on the Japan-US Security Treaty. When the author was posted to Beijing as a reporter, he once queried an American diplomat about how the United States would respond to a conflict over the Senkaku Islands, and he replied only by saying, “We hope that the governments of China and Japan will resolve it through discussion.” Four decades after McCloskey made his statement, however, the United States changed its position during the Obama administration, when Secretary of State Hillary Clinton announced that the terms of the Japan-US Treaty would be applicable to the situation. The issue had been neglected for a long time, because both Japan and the United States did not share a sense of crisis about the situation in the

East China Sea, judging from China's foreign posture and national strength, meaning that Senkaku Islands sovereignty was not regarded as such an urgent issue by the two countries.

## Conclusion

There is a common point between China's actions incorporating the Senkaku archipelago in its Territorial Sea Law and Japan's actions nationalizing them: namely, domestic political actions in both cases have influenced events externally. As far as the Chinese Territorial Sea Law is concerned, both the Chinese military and the Ministry of Foreign Affairs concur with the claim that the Senkaku Islands are Chinese territory, regardless of whether that fact is clearly stipulated in law or not. Meanwhile, as far as Japan is concerned, the claim that the Senkaku Islands are Japanese territory remains unchanged no matter if they are nationalized or remain private property. The only thing different in either case is that a stronger message is being sent to the other side asserting territorial ownership. When placed in the context of specific changes in the power relationship, though, that message can produce unexpected effects.

More than two decades have passed since the legislation of the Territorial Sea Law, and now, a power shift is said to be occurring in East Asia.<sup>33</sup> The framework of international politics changes in a macro fashion through the expansion and contraction of the power of the parties concerned and the distribution of the power among them. In 2010, China surpassed Japan in terms of economic strength, reversing the power relationship between the two, with China steadily boosting its armaments. At a lecture, a certain Taiwanese scholar proclaimed, "The issue of the Senkaku Islands has recently come to the fore because Japan's lead over China in East Asia—which had been continuing since the First Sino-Japanese War of 1894-95—has collapsed."<sup>34</sup> The power shift can be read as signifying specific security issues as well as the context of international politics.

When the Territorial Sea Law came into effect in 1992, Japan's response was restrained, and the US government made almost no response, because there was no sense of the possibility that China would ever challenge the security framework of the East China Sea led by Japan and the United States. However, the military superiority of Japan and the United States in the East China Sea vis-à-vis China is now said to be rapidly dissipating.<sup>35</sup> The movement by the Abe government to strengthen the Japan-US military alliance, as well as the recent "pivot to Asia" by the former Obama administration, can both be described as new responses to the power shift taking place.

The conflict between the Chinese Ministry of Foreign Affairs and the military regarding the amendment to the Territorial Sea Law draft was a concrete case that foreshadowed the increasing diversification of actors involved in the subsequent process of foreign policy decision-making in China. Given China's recent aggressive tendency toward external expansionism, the confrontation between the two may have just been at the level of internal dissension, but if the CCP loses its centripetal force in the future, it may serve as an example in which there is an increased likelihood that hardliners will take the initiative in foreign affairs.

In a series of anti-corruption campaigns, the Xi Jinping regime indicted military leaders from the previous administration one after another, thereby strengthening its control of the military. The absolute control by the CCP over the military may be described as the Chinese version of civilian control of the military. However, it is also based on a long tradition of civilian dominance over the military by successive Chinese dynasties throughout history. The author would like to pay further close attention to the future direction of China's security, including the question of whether civilian control of the military is sustainable without democracy.

1. "People's Republic of China Law on the Territorial Sea and the Contiguous Zone" from the China National People's Congress official website (accessed May 11, 2015).  
[http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content\\_4562.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content_4562.htm)
2. The assertion that the agreement was made to shelve the issue is detailed in an article by Ni Zhimin in the 44th annual report of *Shakai Kagaku Kenkyu* [Social Science Research] (May 2014, Ryukoku University Research Institute for Social Sciences) entitled *Chogyoto (Senkakushoto) Ryoyuken Mondai ni Kansuru Nihon Seifu no Shucho o Kensho Suru* [Verifying the Japanese Government's Claims in the Diaoyu Islands (Senkaku Islands) Territorial Rights Issue]. It tries to prove that there was recognition of the agreement, judging from material coming from the Japanese side.
3. The author's articles covering this issue distributed by Kyodo News were summarized in an article printed in *Sekai* [World] magazine in its May 1994 issue, which featured "Chugoku 'Shin Reisen' Gaiko wa Nani o Mezasu ka" [What Is the Aim of China's 'New Cold War' Diplomacy?]. The material was eventually included in the author's own book entitled *Ajia Mirai* [Asia Future] (1997, Kyodo News).
4. Tianjin Maritime Bureau Official Website, "Experts Explain Law on the Territorial Sea and the Contiguous Zone." (accessed May 11, 2015)  
<http://www.tjoa.gov.cn/textContent.aspx?cid=18386&tid=180>
5. Linda Jacobsen & Dean Knox, "New Foreign Policy Actors in China" (2011).  
Stuart Harris, *Chinese Foreign Policy*, Polity Press (2014).
6. Akio Takahara and Ryuji Hattori, eds., *Nitchu Kankeishi 1972-2012 1 Seiji* [History of Sino-Japanese Relations 1972-2012, Vol. 1, Politics], The University of Tokyo Press, 2012.  
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Akihiko Tanaka, *Ajia no naka no Nihon* [Japan in Asia], NTT Publishing, 2005.
7. Shigeo Hiramatsu, *Chugoku no Kaiyo Senryaku* [China's Maritime Strategy], Keiso Shobo, 1993; Shigeo Hiramatsu, *Zoku Chugoku no Kaiyou Senryaku* [Sequel to "China's Maritime Strategy"], Keiso Shobo, 1997.  
John W. Garver, "China's Push through the South China Sea: The Interaction of Bureaucratic and National Interest," *The China Quarterly*, 132, December 1992.
8. Kyodo News article database, February 26, 1992.
9. Ibid.
10. Ibid.
11. Yusuke Anami, "Daihassho: Kaiyo o Meguru Nitchu Kankei" [Chapter 8: The Sino-Japanese Relationship Regarding the Maritime Issue], *Kiro ni Tatsu Nitchu Kankei* [The Sino-Japanese Relationship at the Crossroads] (Ryouko Iechika, Yasuhiro Matsuda, Dan Suizou, eds.), Koyo Shobo, 2007.
12. Final deliberation report of the draft of the PRC Law on the Territorial Sea and the Contiguous Zone by the legislative committee of the National People's Congress, from the China National People's Congress official website (accessed May 11, 2015).  
[http://www.npc.gov.cn/wxzl/gongbao/2000-12/14/content\\_5002676.htm](http://www.npc.gov.cn/wxzl/gongbao/2000-12/14/content_5002676.htm)  
The site is believed to have first posted reports related to the Law on the Territorial Sea and the Contiguous Zone starting at the end of 2000.
13. "Lǐnghǎi Fǎ" Chūtái Míngquè Biǎoshù Diàoyúdǎo" [Territorial Sea Law Introduces Clear Expression of the Diaoyu Islands] *China Ocean News*, dated July 22, 2014 (accessed May 11, 2015).<http://epaper.oceanol.com/shtml/zghyb/20140722/42424.shtml>
14. Explanation of the draft of the Territorial Sea and the Contiguous Zone in the China National People's Congress official website (accessed May 11, 2015).  
[http://www.npc.gov.cn/wxzl/gongbao/2000-12/14/content\\_5002675.htm](http://www.npc.gov.cn/wxzl/gongbao/2000-12/14/content_5002675.htm)
15. Same as (12).
16. Article concerning modifications to the PRC Law on the Territorial Sea and the Contiguous Zone China National People's Congress official website, from the China National People's Congress official website (accessed 11, 2015).  
[http://www.npc.gov.cn/wxzl/gongbao/2000-12/14/content\\_5002677.htm](http://www.npc.gov.cn/wxzl/gongbao/2000-12/14/content_5002677.htm)
17. Same as endnote 12.
18. "Zhuānjiā Jiě Zhōngguó 'Lǐnghǎi Fǎ'" [Experts Interpret the Territorial Sea Law], *Chinese Newsweek*, November 26, 2012 edition (accessed May 11, 2015).



- [http://news.ifeng.com/shendu/zgxwzk/detail\\_2012\\_11/26/19536807\\_0.shtml](http://news.ifeng.com/shendu/zgxwzk/detail_2012_11/26/19536807_0.shtml)
19. Qian Qichen, *Wàijiāo Shǐjì* [Ten Episodes in Chinese Diplomacy], World Knowledge Publishers, 2003.
  20. The history of China's development of its maritime strategy since its reconciliation with the Soviet Union is detailed in the previously mentioned *Chuugoku no Kaiyou Senryaku* and *Zoku Chuugoku no Kaiyou Senryaku*, both by Shigeo Hiramatsu. Incidentally, it cites the author's articles published in the Sankei newspaper concerning the process of establishing the Territorial Sea Law.
  21. An article printed in the September 18, 1990, edition of the *Asahi Shimbun* was headlined, "Nichibei ga 'Kaso Teki,' Chugoku Hoshuha Chin Un-shi ga Shin Senryaku, 'Tainichi-sen ni Sonae o,' Kokunai Hikishime Kyocho" [Japan and the United States are "Virtual Enemies" [of China]; Chinese conservative Chen Yun Plans New Strategy to Prepare for War against Japan, Emphasizing Domestic Consolidation].
  22. A detailed description of China's nationalism since the Tiananmen Incident is found in Miwa Shimizu's *Chuugoku wa Naze "Hannichi" ni Natta no ka* [Why Has China Become "Anti-Japanese"?] (Bunshun Shinsho, 2003). It cites the author's aforementioned article submitted to the *Sekai* magazine on the process of establishing the Territorial Sea Law.
  23. "Diàoyú dǎo Zhuàng chuán Chuàng xīn Jù miàn—Běijīng Hái Bù Zhí xíng Lǐng hǎi Fǎ?" [The Ship Collision Incident off the Diaoyu Islands: Won't Beijing Implement the Territorial Sea Law Yet?] (accessed May 11, 2015)  
[http://www.360doc.com/content/12/0915/01/224237\\_236176929.shtml](http://www.360doc.com/content/12/0915/01/224237_236176929.shtml)
  24. From the Kyodo News article database (March 22, 2015): "Shi-shi Iko de Seijihan Shakuho, Kokka Tenpukuzai no Rekishi Gakusha, 'Ko-shi Haijo' no Kanosei" [Xi [Jinping] Intends to Release Political Criminal: Historian Convicted of Trying to Overthrow the State; Possibility of Excluding Jiang [Zemin]]. The sentenced historian, who had argued that Jiang Zemin's real father was a Japanese collaborator, was released in the spring of 2015.
  25. Allen S. Whiting, "China Eyes Japan," University of California Berkeley Press, June 1989.
  26. Shigeo Hiramatsu, "Haro Takamaru 'Toshoei no Umi'" [High Waves on "Deng Xiaoping's Seas"] *THIS IS Yomiuri*, May 1995.
  27. CNKI ("Chinese national knowledge infrastructure") is a fee-based search site that covers a wide range of Chinese newspapers, magazines, academic papers, government presentations and so on (accessed May 11, 2015).  
<http://www.cnki.net/>
  28. Helpful in understanding the factors on the Japanese side that helped realize the Emperor's visit to China include the aforementioned *Nitchu Kankeishi 1972-2012 1 Seiji*, as well as Hidemi Shiroyama's *Chugoku Kyosanto "Tenno Kosaku" Hiroku* [Confidential Papers on the Chinese Communist Party's "Emperor Plan"] (Bunshun Shinsho, 2009).
  29. In his book, *Tiān'ānmén Shìjiàn hòu Zhōnggòng yǔ Měiguó Wàijiāo Nèimù* [Inside Story of Diplomacy between China and the United States after the Tiananmen Incident] (Zhengzhong Publishing House, 1999), former Chinese diplomat Chen Youwei said that after the Tiananmen Incident, a new focus of Chinese diplomacy was to "take advantage of the conflict of interests between individual Western countries, aiming to drive a wedge mainly between Japan and the United States as well as between Europe and the United States."
  30. The author cooperated with the coverage for this article after a request was made by the *Nikkei Shimbun*.
  31. From the Kyodo News article database (February 27, 1992): "Futatsu no Shin Reisen ga Shutsugen to Kitei, Nishigawa-kan no Mujun Riyo o Shiji, Chugoku Kyosanto no Kokusai Hodo Shishin" [Defining the Emergence of Two New Cold Wars, Communist Party's International Press Guidelines Order the Utilization of [Internal] Contradictions on the Western Side]. Although this article originated from Kyodo News' Hong Kong bureau, the author covered and wrote the story in Beijing. It was made out to be from Hong Kong so as to obscure the source.
  32. *Kikan Okinawa Dai 63-go Tokushu Senkaku Retto Dai 2-shu*, "Makurosuki Hodokan no Shitsugi Oto in 1970" [The quarterly *Okinawa* No. 63, Special Feature on Senkaku Islands, Part 2: "[State Department] Spokesman McCloskey's Q&A [Session] in 1970"] (accessed May 11, 2015).  
<http://www.tanaka-kunitaka.net/senkaku/dos19700910.html>
  33. Kazuhiko Noguchi, *Pawa Shifuto to Senso: Higashi Ajia no Anzen Hoshō* [Power Shift and War: Security in East Asia], Tokai University Press, 2010.
  34. On November 21, 2013, a lecture sponsored by the Ryukoku University Ethnology Study Group was given by Lin Quanzhong, researcher at Taiwan Central Research Institute, entitled "Senkaku Mondai kara Mita Nitchutai Kankei to Higashi Ajia no Shorai" [Relations among China, Taiwan and Japan as Seen from the Senkaku Problem, and the Future of East Asia].
  35. Michael D. Swaine et al., *China's Military & the U.S.-Japan Alliance in 2030*, Carnegie Endowment for International Peace, 2013.