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## **Issues Surrounding the Senkaku Islands and the Japan-China Relationship**

### **—A History from Japan’s Territorial Incorporation to the Present Day and Contemporary Issues—\***

Yasuo Nakauchi

#### **Introduction**

On August 15, 2012, a boat carrying activists from Hong Kong intruded into the territorial sea around the Senkaku Islands, which belongs to Okinawa Prefecture. The boat left behind Japan Coast Guard patrol vessels which tried to intercept and seven activists illegally disembarked onto Uotsuri Island, one of the Senkaku Islands. This incident provoked a broader debate about the response of the Government of Japan in terms of letting the activists land on Uotsuri Island and deporting them without criminal prosecution following the arrest. The Chinese Government, on the other hand, criticized Japan by claiming that the Senkaku Islands are inherent part of the territory of China, and also alleged that the arrest of Chinese nationals on the island violated the sovereignty of China. Anti-Japan demonstrations subsequently took place in China to protest the arrest of the activists.

On September 11, the Japanese Government purchased Uotsuri Island, Kitakojima Island, and Minamikojima Island, which are part of the Senkaku Islands, from a Japanese private landowner. China and Taiwan strongly opposed this “nationalization” by claiming that it constituted a violation of their respective territorial sovereignty of the Islands. This also fueled anti-Japan demonstrations in China, leading to the destruction and looting of the properties of Japanese companies and violence against Japanese nationals. In addition, various exchange programs that were supposed to be held in the end of that month, including the celebration ceremony of the 40th anniversary of the normalization of Japan-China diplomatic relations, were postponed or cancelled. Furthermore, Chinese maritime and fishing surveillance vessels began to intrude into the territorial sea surrounding the Senkaku Islands.

The Government of Japan takes the basic position that “[t]here is no doubt that the Senkaku Islands are clearly an inherent part of the territory of Japan, in light of historical facts and based upon international law. Indeed, the Senkaku Islands are under the valid control of Japan.<sup>1</sup> There exists no issue of

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\* *This article was originally published as 中内康夫「尖閣諸島をめぐる問題と日中関係：日本の領土編入から今日までの経緯と今後の課題」『立法と調査』334号、参議院事務局企画調整室、2012年、69-84頁。*

1 The phrase “effective control” is sometimes used to describe the substantial state of control of territories. However, in the case of the Senkaku Islands, the Japanese Government describes its control as “valid control,” not “effective control,” given that “there are not a few cases in which the term ‘effective control’ is used when there is a territorial dispute. Since our position is that no territorial dispute exists, it is clearer to say ‘valid control.’” (*Statement of Takeaki Matsumoto, then Minister for Foreign Affairs, the Special Committee on Okinawa and Northern Problems, 177th Session of the Diet, Record of Proceedings of the Special Committee on Okinawa and Northern Problems, No. 3 (June 1, 2011), p. 6*)

territorial sovereignty to be resolved concerning the Senkaku Islands.<sup>22</sup> Nevertheless, China and Taiwan also claim their territorial sovereignty over the Islands. As exemplified by the incidents above, the controversy over the Islands has adversely affected the Japan-China and Japan-Taiwan relationships.

In light of these circumstances, this paper discusses the issues surrounding the Senkaku Islands. It presents, *inter alia*, the history of the Islands up to their incorporation into the territory of Japan and the current situation; the respective claims of territorial sovereignty over the Islands made by Japan, China and Taiwan; the position of the United States; and new developments from the 1990s onward. It also envisions the future of the Senkaku Islands in terms of the territorial integrity of Japan and Japan’s diplomatic relations with China.<sup>3</sup>

**I. Overview of the Senkaku Islands**

**(1) The Location and Composition of the Senkaku Islands**

The Senkaku Islands are a group of islands located in the southwestern part of the East China Sea (north of the Yaeyama Islands comprising Ishigaki Island and other islands). The Senkaku Islands are composed of Uotsuri Island, Kitakojima Island, Minamikojima Island, Kuba Island, Taisho Island, Okinokitaiwa Island, Okinominamiwa Island, Tobise Island, and other islands (see Figure 1). China calls Uotsuri Island “Diaoyu Island,” and refers to the Senkaku Islands as either the “Diaoyu Islands” or “Diaoyu Island and its affiliated islands.” Taiwan calls Uotsuri Island “Diaoyutai Island,” and refers to the Senkaku Islands as “the Diaoyutai Islands.”

The total land surface area of the Islands is approximately 5.56 square kilometers. The largest island is Uotsuri Island (3.82 square kilometers, located at 25° 44’ N 123° 28’ E). It is 410 kilometers to the west of the Island of Okinawa, 170 kilometers north-northwest of Ishigaki Island, 170 kilometers from Taiwan, and 330 kilometers from the Chinese mainland (see Figure 2).

Figure 1: The composition of the Senkaku Islands

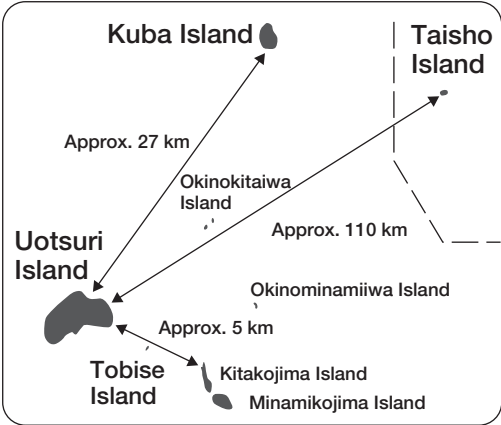
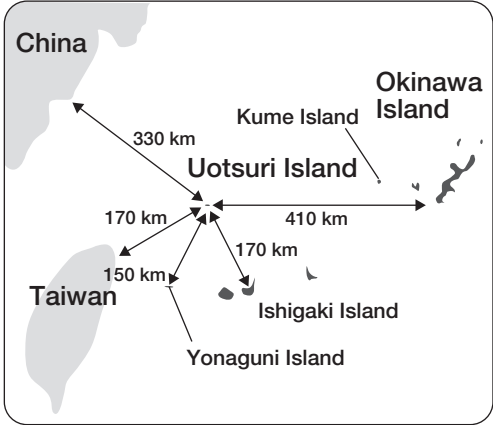


Figure 2: The Location of Uotsuri Island



Source: Each map is from the website of the Ministry of Foreign Affairs

2 Ministry of Foreign Affairs. Available at <[http://www.mofa.go.jp/mofaj/area/senkaku/qa\\_1010.html](http://www.mofa.go.jp/mofaj/area/senkaku/qa_1010.html)>  
 3 Drawing on recent movements related to the Islands, this paper adds onto and amends Yasuo Nakauchi’s “Issues Surrounding the Senkaku Islands — A History, from Japan’s Territorial Incorporation to the Present Day,” *Rippo to Chosa*, Vol. 311, (December 1, 2010)

## (2) The Historical Developments after the Incorporation into Japanese Territory

Since 1885, the Government of Japan has conducted a series of surveys of the Senkaku Islands through the agencies of Okinawa Prefecture and other means. It confirmed that the Senkaku Islands were not only uninhabited, but also *terra nullius*, or lands that showed no trace of having been under the control of the Qing Dynasty or any other state. On January 14, 1895 during the First Sino-Japanese War, the Government of Japan officially incorporated the Islands as a territory of Japan (Okinawa Prefecture) through a Cabinet Decision that ordered the construction of national markers on the Islands. The Government of Japan explains that these measures were carried out in accordance with the internationally accepted means of duly acquiring territorial sovereignty under international law (occupation of *terra nullius*).<sup>4</sup>

Following the implementation of a county system in Okinawa in 1896, Uotsuri Island and Kuba Island were soon incorporated into Yaeyama County and subsequently given addresses. Both islands were designated as state-owned lands along with Kitakojima and Minamikojima Islands.<sup>5</sup> In September 1896, the Government of Japan offered a 30-year lease that was free of charge for Uotsuri Island, Kuba Island, Kitakojima Island, and Minamikojima Island to the entrepreneur Tatsushiro Koga.<sup>6</sup> After the end of that period, the lease was renewed annually with a fee. In 1932, Zenji Koga, son of Tatsushiro Koga, purchased the four islands. The islands therefore became private lands. On the islands, the Koga family operated businesses that included a business for collected albatross feathers, a business to dig guano (bird droppings), a bonito fishery, and a business that manufactured dried bonito. At the highest point, 248 Japanese citizens (99 households) inhabited the island in 1909.<sup>7</sup> However, as Zenji Koga withdrew his businesses from the islands around 1940,<sup>8</sup> the residents left the islands accordingly. The islands again became uninhabited.

As this case shows, Japan continuously exercised valid control over the Senkaku Islands until World War II. The Islands were not only utilized by Japanese citizens under the permission of the Government but also were subject to surveys of natural resources and geological surveys conducted by national and local authorities.

When Japan lost World War II in 1945, the Nansei Shoto Islands, including the Senkaku Islands, came under the direct control<sup>9</sup> of the U.S. Forces. Even after the restoration of Japan's independence through the San Francisco Peace Treaty in April 1952, the Nansei Shoto Islands south of the 29th parallel north, including the Senkaku Islands, continued to be placed under the administration of the United States in accordance with Article 3 of the Treaty.

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4 In terms of the modes for the acquisition of territory, international law traditionally recognizes occupation, accretion, cession, annexation, conquest, and prescription. Occupation means effective occupation with intent to incorporate a *terra nullius*.

5 Taisho Island was designated as state-owned land in July 1921, and was then given an address.

6 Tatsushiro Koga was born in Fukuoka Prefecture and began engaging in the fishery business around the islands in 1884. He submitted a request for the use of the state-owned islands to the Japanese Government in 1895.

7 According to material from Ishigaki City, *An Outline of the Senkaku Islands*

8 The reasons for this are said to be that: it became difficult to carry on with the business because Zenji Koga was no longer able to make a profit from the main business of dried bonito manufacturing, it was hard for boats to travel to the Senkaku Islands due to fuel rations, and Zenji's health was worsening.

9 *Supreme Command for Allied Powers Instruction Note (SCAPIN) 677*, January 29, 1946.

In May 1972, as a part of Okinawa, the administrative rights over the Senkaku Islands were reverted to Japan under the Okinawa Reversion Agreement between the United States and Japan signed in June 1971.<sup>10</sup>

### (3) The Current Situation of the Senkaku Islands

Currently, no one lives on the Senkaku Islands. The Islands belong to Ishigaki City, Okinawa Prefecture and each island is registered in a land register of the city (for example, Uotsuri Island's address is 2392 Aza Tonoshiro, Ishigaki City).

Since April 2002, the Government of Japan has leased Uotsuri Island, Kitakojima Island, and Minamikojima Island, which were private land at the time, in the aim of "peacefully and stably maintaining and managing the Senkaku Islands." They have been leased from the owner (an assignee of the Koga family that had businesses on the land before World War II<sup>11</sup>). The lands were thus directly maintained by the Government until September 11, 2012, followed by the purchase of these three Islands by the Government. These Islands thus became state-owned lands (discussed below).

As a result, only Kuba Island remained as a private land. However, the Government of Japan has been renting the island since May 1972 when Okinawa was returned to Japan. Along with the state-owned Taisho Island, Kuba Island is a part of the area provided to the U.S. Forces. They are used respectively as Kobi-sho firing/bombing ranges and Sekibi-sho firing/bombing ranges (see Figure 3).<sup>12</sup>

The Government of Japan refers to the following examples to illustrate its valid control over the Senkaku Islands after the administrative rights of Okinawa were reverted to Japan in 1972. : 1) Patrol and law enforcement (e.g. law enforcement on illegal fishing by foreign fishing boats in the territorial waters), 2) Levying taxes on the owners of the Islands under private ownership (Kuba Island), 3) Management as state-owned land (Taisho Island, Uotsuri Island, etc.), 4) Researches conducted by the Government of

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10 *The Agreed Minutes for the Okinawa Reversion Agreement* states the latitude and longitude of the area that is to be reverted, with the Senkaku Islands included in that area.

*The Agreed Minutes for the Okinawa Reversion Agreement* (Excerpt)

"The territories defined in paragraph 2 of Article I are the territories under the administration of the United States of America under Article 3 of the Treaty of Peace with Japan, and are, as designated under Civil Administration Proclamation Number 27 of December 25, 1953, all of those islands, islets, atolls and rocks situated in an area bounded by the straight lines connecting the following coordinates in the listed order:

North Latitude East Longitude

28 degrees 124 degrees 40 minutes

24 degrees 122 degrees

24 degrees 133 degrees

27 degrees 131 degrees 50 minutes

27 degrees 128 degrees 18 minutes

28 degrees 128 degrees 18 minutes

28 degrees 124 degrees 40 minutes"

11 For the description of the transfer of ownership in the 1970s from the Koga family to the Kuribara family, a business family in Saitama Prefecture, please see Hiroyuki Kurihara, *Senkaku Islands for Sale* (2012), pp. 32-48.

12 The U.S. military stationed in Okinawa established firing/bombing ranges on Kuba Island and Taisho Island from the 1950s. At the time of the Okinawa reversion negotiations, based on an understanding between the Japanese and U.S. Governments, it was decided that even after the reversion of Okinawa, both islands would continue to be provided for by the facilities of the U.S. military as facilities and areas defined in the U.S.-Japan Status of Forces Agreement, Article II, 1. (a). Furthermore, the rental agreement between the Japanese Government and the landowner of Kuba Island was renewed in May 15, 2012. (*Answers to Questions on the Nationalization of the Senkaku Islands Submitted by House of Representatives Member Kenya Akiba, Naikaku Shushitsu*[Public Questions to the Cabinet], Vol.180, No. 418, September 14, 2012)

Japan and the Okinawa Prefecture (e.g. utilization and development research by Okinawa Development Agency (construction of temporary heliport, etc.) (1979), fishery research by Okinawa Prefecture (1981), research on albatross commissioned by the Environment Agency (1994)).<sup>13</sup>

Figure 3: Ownership of Each of the Senkaku Islands

	Ownership	Background	
Uotsuri	State	Leased to a Japanese citizen free of charge in 1896. Sold off to a Japanese citizen in 1932. (The ownership was then transferred between Japanese citizens.)	Rented out to the state on April 1, 2002. Acquired and owned by the state on September 11, 2012.
Kitakojima	State		
Minamikojima	State		
Kuba	Private	State-owned throughout	Part of the U.S. facilities and areas under the Japan-U.S. Status of Forces Agreement since 1972.
Taisho	State		
Okinokitaiwa	State	State-owned throughout	
Okinominamiwa	State		
Tobise	State		

**2. Claims to Territorial Sovereignty by China and Taiwan**

No country officially protested Japan’s exercise of territorial sovereignty over the Senkaku Islands until the 1970s.

However, in 1968, research in the East China Sea conducted by the United Nations Economic Commission for Asia and the Far East (ECAFE) revealed a high prospect of the existence of oil and gas fields in the seabed that includes the area around the Senkaku Islands. This maritime area thus drew attention, and in the latter half of 1970, China and Taiwan began to claim that the Senkaku Islands had been their “territory since ancient times.” In June 1971, the Taiwanese Ministry of Foreign Affairs issued an official statement claiming its sovereignty over the Senkaku Islands. This was followed by a similar statement made by the Chinese Ministry of Foreign Affairs in December 1971.<sup>14</sup>

The statement of ROC Ministry of Foreign Affairs in June 1971 claimed that in accordance with geographical position, geological structure, historical connection and long term use there by the inhabitants of Taiwan Province, the islets are affiliated with the Province of Taiwan and constitute a part of the territory of Republic of China.” It thus claimed that the Islands should be returned to the Republic of China after the end of the U.S. administration.<sup>15</sup>

The statement of PRC Ministry of Foreign Affairs in December 1971 was as follows: 1) The Senkaku Islands have been the territory of China since ancient times. During the period of the Ming Dynasty, the Islands were affiliated with China’s Taiwan, not the Ryukyu Kingdom, and were thus within the

13 From the Ministry of Foreign Affairs website, available at <[http://www.mofa.go.jp/mofaj/area/senkaku/qa\\_1010.html](http://www.mofa.go.jp/mofaj/area/senkaku/qa_1010.html)>  
 14 In the Ministry of Foreign Affairs statement issued by China, the Senkaku Islands are referred to as “Diaoyu Islands and its affiliated islands,” while in the Foreign Ministry Statement issued by Taiwan, they are referred to as “the Diaoyutai Islands.” The name used by the Japanese side, “Senkaku Islands,” is used throughout this paper, including when discussing the claims of China and Taiwan.  
 15 In an announcement by the Taiwanese authorities made on September 11, 2012, *The Historical Truth of Japan’s Illegal Occupation of the Diaoyutai Islands*, Taiwan claimed that the islands were occupied along with Taiwan following the First Sino-Japanese War, and that they should be reverted to the Taiwanese Republic along with Taiwan based on the Cairo Declaration, the Potsdam Declaration, the Japanese Statement of Surrender, and the Japan-China Peace Treaty. Available at <<http://www.taiwanembassy.org/JP/ct.asp?xItem=307988&ctNode=11514&mp=202>>

scope of China's coastal defense against pirates at that time. 2) Japan stole the Senkaku Islands during the First Sino-Japanese War and the Government of Japan exerted pressure on the government of the Qing Dynasty and forced it to sign the Treaty of Shimonoseki, an unequal treaty that ceded Taiwan from China to Japan, together with all the islands appertaining or belonging to Taiwan and the Pescadores Islands. 3) It was illegal for the United States to declare that it possessed administrative rights over the Senkaku Islands after World War II because the Islands were affiliated with Taiwan. 4) It was illegal for the government of Japan and the United States to include the Senkaku Islands in the area to be reverted to Japan under the Okinawa Reversion Agreement. 5) Chinese people will liberate Taiwan, and the islands affiliated with Taiwan, including the Senkaku Islands, will be recovered.<sup>16</sup>

In September 1972, the Joint Communiqué of the Government of Japan and the Government of the People's Republic of China was signed and diplomatic relations between the two countries were normalized. However, there was no reference to the Senkaku Islands. In October 1978, then Vice Premier Deng Xiaoping visited Japan for the exchange of instruments for the ratification of the Treaty of Peace and Friendship between Japan and the People's Republic of China. At the press conference held at the Japan National Press Club, Deng Xiaoping explained a proposal to shelve the issue of the Senkaku Islands as follows: "When we normalized diplomatic relations between our two countries, both countries promised to leave the issue aside. When we negotiated the Treaty of Peace and Friendship, we agreed to leave the issue aside in much the same way... Even if this means the issue is temporarily shelved, I don't think I mind. The people of our generation don't have sufficient wisdom to settle this discussion, but the people of the next generation will probably be wiser than us. At that time, a solution that everyone can agree on will probably be found."

The Chinese Government asserts that the two countries agreed to shelve the Senkaku issue during the negotiations to normalize Japan-China relations in 1972 and the negotiations to conclude the Treaty of Peace and Friendship in 1978. However, the Japanese Government denies the existence of such an agreement by arguing that there is no issue of territorial sovereignty to be solved between Japan and China.<sup>17</sup>

The authority of Taiwan recently proposed a joint development of the maritime area surrounding the Senkaku Islands by shelving the issue of sovereignty over them. In August 2012, it released the East China Sea Peace Initiative, which calls on all parties concerned to: 1) refrain from taking any antagonistic actions; 2) shelve disputes and refrain from abandoning dialogue; 3) observe international law and resolve disputes through peaceful means; 4) seek consensus on a code of conduct in the East China Sea; and 5) establish a mechanism for cooperation on exploring and developing resources in the East China Sea.<sup>18</sup> Minister for Foreign Affairs Koichiro Gamba responded to this proposal by stating that

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16 The Chinese Government released a white paper on the Senkaku Islands on September 25, 2012, "Diaoyu Dao, an Inherent Territory of China" White Paper. The white paper contained the claims that the Senkaku Islands, as the inherent territory of China, were grabbed by Japan during the First Sino-Japanese War and should have been reverted to China along with Taiwan in accordance with the Cairo Declaration, the Potsdam Declaration, and other documents (*The People's Daily*, Japanese Edition, available at <<http://j.people.com.cn/94474/7960430.html>>)

17 The Japanese Government has denied the existence of such a promise being made to shelve the Senkaku problem from the very beginning. Recent examples of this can be found in *Answers to Questions on Statements Made Related to the Senkaku Islands During a Japan National Press Club Press Conference by then Vice Premier of the People's Republic of China Deng Xiaoping on October 25, 1978, Submitted by House of Representatives Member Katsuyuki Kawai, Naikaku Shushitsu* [Public Questions to the Cabinet], Vol. 176, No. 69, (October 26, 2010)

18 *Republic of China Ministry of Foreign Affairs Statement on the East China Sea Peace Initiative* (August 5, 2012), available at <<http://www.taiwanembassy.org/JP/ct.asp?xItem=302730&ctNode=11514&mp=202&nowPage=2&pageSize=15>>

“[t]he Senkaku Islands are, an inherent part of the territory of Japan. There exists no issue of territorial sovereignty. Therefore, we cannot accept Taiwan’s assertion.” However, he added that “various ways of cooperation concerning the East China Sea are not inconceivable.”<sup>19</sup>

### 3. The Position of the Government of Japan on Territorial Sovereignty over the Senkaku Islands

As mentioned above, the basic view of the Government of Japan on territorial sovereignty over the Senkaku Islands is that “[t]here is no doubt that the Senkaku Islands are clearly an inherent part of the territory of Japan, in light of historical facts and based upon international law. Indeed, the Senkaku Islands are under the valid control of Japan. There exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands.”<sup>20</sup>

Japan refutes the allegations made by China and Taiwan by arguing that “[n]one of the points raised by the Government of China and the Taiwanese authorities as historical, geographical or geological evidences provide valid grounds in light of international law to support their sovereignty over the Islands.” It elaborates on the argument as follows. 1) From 1885, surveys of the Senkaku Islands were thoroughly conducted by the Government of Japan through the agencies of Okinawa Prefecture and by way of other means. Through these surveys, it was confirmed that the Senkaku Islands had not only been uninhabited but showed no trace of having been under the control of any state, including the Qing Dynasty of China. Based on this confirmation, the Government of Japan incorporated the Senkaku Islands into the territory of Japan in 1895. China and Taiwan began claiming their respective sovereignty over the Islands from 1970, although they have not proved that China exercised valid control over the Senkaku Islands under international law.<sup>21</sup> 2) Japan incorporated the Senkaku Islands through a Cabinet Decision made in January 1895. The peace treaty between Japan and China (the Treaty of Shimonoseki), which ceded Taiwan and the islands appertaining or belonging to it to Japan, was signed in April 1895. Therefore, Japan’s incorporation of the Senkaku Islands has no relevance to the results of the Sino-Japanese War. 3) The Senkaku Islands have been a part of the Nansei Shoto Islands since their incorporation into Okinawa Prefecture in 1895, and are not a part of Taiwan and the islands appertaining or belonging to it. The Senkaku Islands are thus not included in the territory renounced by Japan in accordance with Article 2(b)<sup>22</sup> of the San Francisco Peace Treaty. Instead, under Article 3 of the treaty, the Islands were placed under U.S. administration as a part of the Nansei Shoto Islands,<sup>23</sup> and were thereby included in

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19 Press Conference of the Minister for Foreign Affairs (August 7, 2012), available at: <[http://www.mofa.go.jp/mofaj/press/kaiken/gaisho/g\\_1208.html#3-C](http://www.mofa.go.jp/mofaj/press/kaiken/gaisho/g_1208.html#3-C)>

20 The basic view of the Japanese Government is posted on the website of the Ministry of Foreign Affairs, and can be confirmed on the following pages: *The Basic View on the Sovereignty over the Senkaku Islands*, available at <<http://www.mofa.go.jp/mofaj/area/senkaku/index.html>> and *Senkaku Islands Q&A*, available at <[http://www.mofa.go.jp/mofaj/area/senkaku/qa\\_1010.html](http://www.mofa.go.jp/mofaj/area/senkaku/qa_1010.html)>

21 Japanese scholars and other experts have expressed opposition to the claim of the Chinese and Taiwanese side that the Senkaku Islands were historically Chinese territory and that they were islands specifically affiliated with Taiwan. For an article that makes a comparison of the opinions related to the sovereignty of the Senkaku Islands between Japan and China, including the issue of the Islands prior to their incorporation into the territory of Japan, and adds further discussions on the topic, please see Kyoko Hamakawa, “Senkaku Retto no Ryoyu o Meguru Renten – Nicchu Ryokoku no Kenkai o Chushin ni –” [Issues on the Title of Senkaku Islands: Analysis of the Viewpoints of Japan and China], *Chosa to Joho – ISSUE BRIEF –* [Investigation and Information – ISSUE BRIEF –], No. 565 (February 28, 2007).

22 This states, “Japan renounces all rights, titles, and claims to Formosa and the Pescadores.”

23 This states, “Japan will concur in any proposal of the United States to the United Nations, which places Nansei Shoto south of 29° north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands), as well as Parece Vela and Marcus Island under its trusteeship system, with the United States as the sole administering authority.”

the area reverted to Japan in accordance with the Okinawa Reversion Agreement.<sup>24</sup> 4) That neither the Government of China nor the Taiwanese authorities regarded the Senkaku Islands as originally part of Chinese territory. This is evidenced by the fact that neither China nor Taiwan raised any objections to the inclusion of the Islands into the area under the U.S. administration by the San Francisco Peace Treaty. It was not until the latter half of 1970 when the prospect for oil exploitation in the East China Sea was revealed that China and Taiwan began claiming their territorial sovereignty over the Senkaku Islands.

Furthermore, the Government of Japan invokes evidence that indicates that both China and Taiwan previously recognized the Senkaku Islands as a part of the territory of Japan. 1) There is a letter of appreciation that was sent by the then consul of the Republic of China in Nagasaki issued in May 1920 about an incident in which fishermen from Fujian Province were stranded on the Senkaku Islands. The letter referred to the Islands as “the Senkaku Islands, Yaeyama County, Okinawa Prefecture, Empire of Japan.” 2) An article published in the *People’s Daily* dated January 8, 1953 entitled ‘Battle of People in Ryukyu Islands against U.S. Occupation’ stated that the Ryukyu Islands consist of seven groups of islands that include the Senkaku Islands. 3) A Chinese world atlas collection published in China in 1960 treated the Senkaku Islands as a part of Okinawa.

#### **4. The Position of the United States on the Senkaku Islands**

In September 1970, when the possibility of a reversion of Okinawa had been materializing in response to the question “What would the U.S. position be if a conflict arose over sovereignty over the Senkaku Islands?” then U.S. State Department spokesman Robert McCloskey answered, “With respect to any conflicting claims, we consider that this would be a matter for resolution by the parties concerned.” The United States consistently takes a neutral position in that it expects a peaceful resolution of the conflict (if it exists) by the relevant parties. It adds that the United States is not in a position to make an ultimate judgment of the issue. The Obama administration follows this position.

At the same time, the United States expressed the opinion that “the Senkaku Islands have been under the administration of Japan after the reversion of Okinawa in 1972, and Article 5 of the Treaty of Mutual Cooperation and Security between Japan and the United States of America (the *Japan-U.S. Security Treaty*) shall be applied to the area under Japanese administration.” Hence, if an armed attack against Japan occurs in the Senkaku Islands, Article 5 of the Treaty, which stipulates a joint defense against the attack, will be applied.<sup>25</sup>

This position was recently reaffirmed in the talks between then Japanese Minister for Foreign Affairs Seiji Maehara and then U.S. Secretary of State Hillary Clinton held in New York on September 23, 2010. The talks were held in the period when Japan-China relations were aggravated by a collision involving a Chinese fishing vessel off the coast of the Senkaku Islands on September 7, 2010. Furthermore, on September 11, 2012, the Government of Japan purchased Uotsuri Island and other islands of the

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<sup>24</sup> Concerning the legal position of the Senkaku Islands at the time when they were under the administration of the United States, the Japanese Government has stated that, “Japan could not exercise direct control over the Islands until the administrative rights of Okinawa including the Senkaku Islands were reverted to Japan. However, the legal status of the Islands was that no foreign state had rights over them, with the only exception being that the United States was authorized to exercise the administrative rights over the Islands under the San Francisco Peace Treaty. This was being ensured through the valid control by the United States Civil Administration of the Ryukyu Islands and the Government of the Ryukyu Islands.”

<sup>25</sup> The first part of Article 5 of the Japan-U.S. Security Treaty states, “Each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety, and declares that it would act to meet the common danger in accordance with its own constitutional provisions and procedures.”



Senkaku Islands. This gave rise to fierce criticism from China. In the midst of this, on September 20, 2012, Assistant Secretary of State Kurt Campbell (in charge of East Asia and Pacific affairs) stated in a U.S. Senate Foreign Relations Committee Subcommittee on East Asian and Pacific Affairs meeting: “[t]he Senkaku Islands fall clearly under Article 5 of the Security Treaty.”

## **5. Developments over the Senkaku Islands after the 1990s**

### **(1) Chinese Legislation Related to the Territories and the Territorial Seas**

Since the 1990s, China has been promoting its maritime strategy as part of its national strategy. In February 1992, the Law of the People’s Republic of China on the Territorial Sea and the Contiguous Zone, which expressly stipulates the Senkaku Islands as being a part of China’s territory for the first time, was enacted.<sup>26</sup> In addition, the Law on the Exclusive Economic Zone and the Continental Shelf of the People’s Republic of China, which confirms the principle of the natural prolongation of the continental shelf, was enacted in June 1998 in order to strengthen the protection of natural resources and economic activities thereof in the seas adjacent to the Chinese mainland.

Furthermore, China has also been strengthening its border guards. The Law of the People’s Republic of China on National Defense, which was enacted in March 1997, stipulates that by recognizing border, maritime, and air defenses as a single unit, the Government shall develop the foundation of such a united system and the Central Military Commission is put in charge of commanding concrete defense operations. In addition, the Law of the People’s Republic of China on Island Protection, enacted in March 2010, stipulates, in relation to territorial protection, measures such as the exercise of ownership over uninhabited islands by the Government, and special protection of islands that constitute base points to delimit the territorial waters of China and are used for defense purposes.

### **(2) Rise of the Baodiao Movement from the Mid-1990s**

Japan ratified the United Nations Convention on the Law of the Sea (UNCLOS) in July 1996 and immediately established an exclusive economic zone (EEZ) for 200 nautical miles. Taiwan protested this measure by claiming that it would affect fishing activities in the seas adjacent to the Senkaku Islands. In addition, during the same month, a group of Japanese political activists constructed a lighthouse on Kitakojima Island of the Senkaku Islands, which fueled demonstrations in Taiwan and Hong Kong. Subsequent to this, the so-called “Movement for the Defense of the Diaoyu Islands” (the “Baodiao Movement”) has constantly been held to claim sovereignty over the Islands through protests involving physical acts.

In September 1996, a vessel carrying Hong Kong activists intruded into the territorial sea around the Senkaku Islands. Some of the activists dived into the water and one of them eventually died. A month later, 49 small boats with activists from Taiwan and Hong Kong approached the Senkaku Islands. Among them, 41 boats entered the territorial sea and four activists landed on Uotsuri Island.

In March 2004, a vessel carrying activists from China intruded into the territorial sea around the Senkaku Islands and seven activists landed on Uotsuri Island by using two small row boats. Japanese police arrested them on the charge of illegal entrance to the country. However, the Japanese authorities forcibly repatriated them without criminal prosecution.

In June 2008, a private fishing vessel from Taiwan was involved in a collision with a patrol boat of the

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<sup>26</sup> Paragraph 2 of Article 2 of this law states, “The PRC’s territorial land includes the mainland and its offshore islands, Taiwan and the various affiliated islands including Diaoyu Island, Penghu Islands, Dongsha Islands, Xisha Islands, Nansha (Spratly) Islands and all the other islands that belong to the People’s Republic of China.”

Japan Coast Guard in the territorial sea around the Island and the vessel eventually sank. This incident gave rise to many protests in Taiwan. A private vessel with activists and a patrol boat of the Coast Guard Administration of Taiwan subsequently intruded into the territorial sea around the Senkaku Islands for the purpose of “displaying sovereignty.” Taiwan also called for the return of its representative to Japan. The Japan Coast Guard eventually admitted a certain fault on its side and thus apologized. Compensation was also paid to the captain of the private fishing vessel that had sunk.

In December 2008, two Chinese marine surveillance vessels intruded into the territorial sea around the Senkaku Islands. A patrol boat of the Japan Coast Guard demanded the vessels to leave the area and the vessels obeyed the warning. This incident was noticeable as a new development due to the fact that Chinese official vessels entered the territorial sea around the Senkaku Islands.

### **(3) The 2010 Collision Incident Involving a Chinese Fishing Vessel and the Landing of Activists from Hong Kong**

The Japan-China relationship was further aggravated by the incident that occurred in September 2010 when a Chinese fishing vessel collided with a Japan Coast Guard patrol vessel in the territorial sea around the Islands. Japan arrested and detained the captain of the Chinese vessel on a charge of obstruction of performance of public duty. Claiming that the Senkaku Islands were an inherent part of China’s territory, China demanded the prompt release of the captain on the grounds that the judicial proceedings by Japan against him were unlawful and void. China subsequently took various countermeasures against Japan, such as the arrest of a Japanese national in Hebei Province and decreasing the amount of rare earths exported to Japan. However, China denied that these were countermeasures in response to the incident. China continuously demanded an apology and compensation from Japan even after the release of the captain. In addition, a series of anti-Japan demonstrations took place in China.

On August 15, 2012, a vessel carrying activists from Hong Kong entered the territorial sea around the Islands. The vessel ignored warning issued by a Japan Coast Guard patrol vessel and seven activists illegally disembarked on Uotsuri Island. 14 activists were arrested, including the seven who landed on the island. However, all of them were forcibly repatriated without criminal prosecution. China criticized Japan over this incident by claiming that the Senkaku Islands is china’s inherent territory and that the arrest of Chinese nationals by Japan on the Islands constituted the violation of the sovereignty of China. In addition, anti-Japan protests took place in China again.

### **(4) The Development Leading to the “Nationalization” of the Senkaku Islands, and the Response from China and Taiwan**

Since 1996, the Baodiao Movement by activists in Hong Kong and Taiwan has intensified. In order to counter this movement, groups of Japanese political activists visited and eventually landed on the Senkaku Islands. Under such circumstances, in April 2002, the Government of Japan rented Uotsuri Island, Kitakojima Island, and Minamikojima Island from the landowner and began direct management of the Islands for the purpose of “the peaceful and stable maintenance and management of the Senkaku Islands.” In light of the will of the landowner and the purpose of the rent, it announced that any landings on the Islands are in principle prohibited except for landings by officials of the Government.<sup>27</sup>

In April 2012, when Governor of Tokyo Shintaro Ishihara announced in a speech delivered in the

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<sup>27</sup> *Statement of then Chief Cabinet Secretary Yoshito Sengoku and others, the Budget Committee of the House of Representatives, 176th Session of the Diet, Record of Proceedings of the Budget Committee of the House of Representatives, No. 2 (October 12, 2010), pp. 22-23.*

United States that the Tokyo Metropolitan Government (TMG) planned to purchase Uotsuri Island and others in the Senkaku Islands, this added the momentum for a major change. Mentioning the fact that discussions were moving forward on the matter with the landowner, Governor Ishihara expressed TMG's intention to reconsider the state of management over the Senkaku Islands,<sup>28</sup> and stated that TMG would consider how to effectively use the island after the purchase, with ideas that included the creation of a reef for fish and the development of fishing resources. Under these circumstances, in July 2012, Prime Minister Yoshihiko Noda announced that the national Government was also considering the purchase of Uotsuri Island and others, and had already approached the landowner.<sup>29</sup>

As a result, the negotiation between the Government and the landowner moved ahead, and it was agreed upon that the national Government, not TMG, would purchase Uotsuri Island, Kitakojima Island, and Minamikojima Island. On September 10, 2012, the Government formally confirmed this policy for acquisition and ownership of the three islands in a meeting with relevant Cabinet members. It also determined that the Japan Coast Guard would be mandated to manage these islands. On September 11, the Cabinet decided that the Government would pay 2.05 billion yen to the landowner from a reserve fund. The purchase contract was signed between the Government and the landowner on the same day.<sup>30</sup>

In response to these movements, on September 10, the Chinese Government released a statement with the criticism that the "nationalization" of the Senkaku Islands violated the sovereignty of China and expressed its "firm opposition" to the measure. Anti-Japan demonstrations heated up in the country, resulting in the destruction or looting of Japanese corporate property and violence against Japanese citizens staying in China. Various events for exchange that were supposed to be held in the subsequent period, including the celebration of the 40th anniversary of the normalization of diplomatic relations between Japan and China to be held at the end of the month, were canceled or postponed. Chinese fishing surveillance vessels (Yuzheng) and marine surveillance vessels (Haijian) subsequently entered the territorial sea around the Islands.

Taiwan also strongly criticized the "nationalization" of the Islands, which was followed by the intrusion of Taiwanese fishing vessels and patrol vessels into the territorial sea around the Islands.

The Government of Japan (the Noda Cabinet) explained that the purchase of the Islands "is not a major change of the current situation." In other words, it was a response to the movement in April 2012 by TMG to purchase the Senkaku Islands, given that "the Government of Japan will never approve the own assertions of China, but is concerned that some movements could have a substantial impact on the Japan-China relationship in practice." The Government felt that "the transfer of the ownership is the practical and best measure from a broad perspective of Japan-China relations for the purpose of ensuring a continued peaceful and stable maintenance and management of the Islands over the long term."

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28 "Senkaku de Gyogyo Shigen Kaihatsu o, Ishihara Chiji, Chugoku Kensei Nerai [Proposing the development of fishing resources in Senkaku Islands - Governor Ishihara seeks the containment of China], *Mainichi Shimbun*, evening edition, April 18, 2012, and other articles

29 "*Kokuyuka Hoshin, Shusho 'Senkaku wo Antei Kanri'*" [Policy for nationalization - PM seeks 'stable management of the Senkaku Islands'], *Yomiuri Shimbun*, July 10, 2012, and other articles

30 Concerning the price of 2.05 billion yen for the acquisition of the three islands, the Government has explained, "The acquisition price in question was determined based on our aim to acquire and own the three Senkaku Islands in order to facilitate the long-term peaceful and stable maintenance as well as management of the Senkaku Islands, which are unique in that they are irreplaceable offshore islands within our territory. It was also based on the results of examinations, which included real estate experts, on the price of the long-term peaceful and stable maintenance and management of the three Senkaku Islands." (*Answers to Questions on the Nationalization of the Senkaku Islands by the Government Submitted by House of Representatives Member Takahiro Asano, Naikaku Shushitsu* [Public Questions to the Cabinet], Vol. 180, No. 423, September 14, 2012)

Furthermore, “Japan does not wish for the situation surrounding the Senkaku Islands to have an impact on the overall relations with other countries or regions.”<sup>31</sup>

## **6. Concluding Remarks: Prospects for the Senkaku Islands Issue and Japan-China Relations**

### **(1) The Situational Differences between the Senkaku Islands, Takeshima, and Northern Territories**

This paper has reviewed the history of issues surrounding the Senkaku Islands. Notwithstanding the view of the Japanese Government, which is that there exists no issue of territorial sovereignty to be resolved, China and Taiwan have recently strongly claimed their respective sovereignty over the Islands. Numerous incidents have frequently occurred that aggravate the Japan-China and Japan-Taiwan relationships.

This section concerns the future of the Senkaku Islands. However, before addressing this subject, it is worthwhile to compare the two territorial disputes that Japan is involved with: disputes on Takeshima and the Northern Territories. An analysis on the differences between these cases will be conducted.

Takeshima has been occupied by the Republic of Korea (ROK) since the 1950s. The Government of Japan has consistently lodged protests against the ROK because this constitutes an “illegal occupation.” The Government has proposed the settlement of this dispute through diplomatic negotiation or judicial settlement by referring the case to the International Court of Justice (ICJ). Regarding Takeshima, the ROK has responded that “It is an inherent territory of ROK. Thus, there is no territorial issue.” and has thereby refused the proposal for the settlement. The United States maintains a neutral position, stating that it expects the relevant parties to reach a peaceful solution if there is any dispute over the sovereignty of Takeshima. Because Takeshima is not under the administration of Japan, Article 5 of the Japan-U.S. Defense Treaty does not apply.<sup>32</sup>

The Northern Territories were occupied by the Soviet Union at the end of World War II and have been continuously occupied by Russia, its successor. The Government of Japan asserts that the Northern territories have been under “illegal occupation” by Russia and has thus consistently proposed to Russia to hold negotiations on this issue based on its basic policy of resolving the issue of the attribution of the four Northern territories and concluding a peace treaty with Russia. Russia claims that it acquired the Northern Territories as a result of World War II. However, Russia admits that a territorial dispute over the Northern Territories exists and is ready to hold negotiations. The United States has sided with Japan, although Article 5 of the Japan-U.S. Security Treaty does not apply to the Northern Territories as they are not “under the administration of Japan.”<sup>33</sup>

In sum, the Government of Japan recognizes the existence of territorial issue in terms of Takeshima and the Northern Territories, whereas it denies the existence of territorial issue with regard to the Senkaku Islands. The Republic of Korea denies the existence of the territorial dispute on Takeshima and thus refuses any proposal for diplomatic or judicial settlement, while Russia admits the existence of a dispute over the Northern Territories and thus is ready for negotiations. Article 5 of the Japan-U.S. Security Treaty applies to the Senkaku Islands because they are under the administration of Japan, but does not apply to Takeshima or the Northern Territories, which are not under Japan’s administration (see Figure 4).

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31 From the Ministry of Foreign Affairs website, *Three Truths about the Senkaku Islands* (October 4, 2012), available at <<http://www.mofa.go.jp/mofaj/area/senkaku/3shinjitu.html>>

32 *Statement of then Director-General of the North American Affairs Bureau Kazuyoshi Umemoto, the Committee on Foreign Affairs of the House of Representatives, 171st Session of the Diet, Record of Proceedings of the Committee on Foreign Affairs of the House of Representatives*, No. 19 (July 1, 2009), p. 6

33 *Ibid.*

In the light of these differences, in each issue of the Senkaku Islands, Takeshima, and the Northern Territories, Japan should note that the priority of the means to be taken may be different: measures to ensure territorial integrity, diplomatic negotiations, judicial settlement, and appeals of the territorial issue to the international community.

Figure 4: Comparison of the situations of the Senkaku Islands, Takeshima, and the Northern Territories

	Senkaku Islands	Takeshima	Northern Territories
Area	Approx. 5.6 sq. km.	Approx. 0.2 sq. km.	Approx. 5,036 sq. km.
Administrative Division	Ishigaki City, Okinawa Prefecture	Okinoshima Town, Shimane Prefecture	Within the administrative area of the Hokkaido Government Nemuro Subprefectural Bureau
State of Control	Valid control by Japan	Occupation by the Republic of Korea	Occupation by Russia
Recognition of the Territorial issue	<u>Japan</u> : Does not exist	<u>Japan</u> : Exists	<u>Japan</u> : Exists
	<u>China, Taiwan</u> : Exists	<u>ROK</u> : Does not exist	<u>Russia</u> : Exists
Japan's Position	The Senkaku Islands are an inherent territory of Japan, and there exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands.	Takeshima is an inherent territory of Japan but has been under illegal occupation by the ROK. The ROK should respond to diplomatic negotiations and a judicial solution.	The Northern Territories are an inherent territory of Japan but have been under illegal occupation by Russia. Japan will resolve the territorial issue over the four Northern Islands and conclude a peace treaty with Russia.
Position of Other Country/Region Claiming Sovereignty	<u>China, Taiwan</u> :The Islands are a part of China's (Taiwan's) territory, and the sovereignty of Japan is unacceptable. Japan should recognize that there is a territorial issue.	<u>ROK</u> : The island is an inherent territory of ROK , and there is no territorial issue. Thus, the island is not to be the subject of diplomatic negotiations or a judicial solution.	<u>Russia</u> : The territories have been under the control of Russia (the former Soviet Union) due to the result of World War II. Russia will respond to negotiations about the attribution of the four Northern Islands.
Response of the United States	The United States does not take any specific position on the issues of territorial sovereignty. However, the Senkaku Islands are under the administration of Japan, and so the U.S.-Japan Security Treaty does apply to them.	The United States does not take any specific position on the issues of territorial sovereignty. Takeshima Island is not under the administration of Japan, so the U.S.-Japan Security Treaty does not apply to it.	The United States supports Japan's position. However, the Northern Territories are not under the administration of Japan, so the U.S.-Japan Security Treaty does not apply to them.

Note: The Government of Japan recognizes the existence of territorial issue only for Takeshima Island and the Northern Territories.  
 Created by the author.

## (2) Divided Opinions over the State of Management of the Senkaku Islands

The Government of Japan purchased Uotsuri Island and other islands in September 2012. Various ideas have been proposed in terms of the management of the islands. In order to strengthen Japan's control over the islands, Governor Ishihara proposed to the Government the construction of a fishing vessel storm evacuation area and a climate observation station.<sup>34</sup> Other proposals include the permanent stationing of Japan Coast Guard personnel and police officers on the Islands in order to maintain Japan's sovereignty.<sup>35</sup> Conversely, it has also been pointed out that no change should be made to the current situation as the construction of structures on the Senkaku Islands would have more demerits than merits in that this would further increase tension between Japan and China.<sup>36</sup> In this regard, the Noda Cabinet stated that the acquisition and ownership of the Senkaku Islands was "not a major change of the current situation" and suggested a policy of continuing the response that had been undertaken in the past of ensuring the prohibition of any landings on the Islands, excluding landings made by officials of the Government for "the peaceful and stable maintenance and management" of the Senkaku Islands. However, the state of management over the Senkaku Islands is again being called into question out of consideration of the protection of Japan's territory and the future of Japan-China relations.

## (3) Strengthening the Defense of the Territorial Sea and Enhancing Japan's Island Defense Posture

In recent years, Chinese and Taiwanese official vessels and fishing vessels have repeatedly entered the territorial sea around the Senkaku Islands. In order to maintain "valid control" over the Islands, it is thus necessary for Japan to strengthen the coastal guard. It is proposed that the Japan Coast Guard should be strengthened by increasing the number of large-scale patrol vessels that are supposed to be deployed to the maritime areas adjacent to the Islands.

In terms of domestic legislation, the establishment of "the crime of the intrusion into territorial waters" is proposed so as to comprehensively regulate the entrance of vessels, which intrude into territorial waters, and, whose passage is not innocent. The Government of Japan takes the view that it needs a further examination on the possibility of making such a comprehensive legislation. It has implemented United Nations Convention on the Law of the Sea (UNCLOS) by enacting various special legislations in accordance with the Convention that provide various approaches to address passages that are not innocent (see Figure 5).<sup>37</sup>

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34 "Senkaku ni Funa-damari o, Ishihara Tochiji, Kuni Konyu ni Jyoken Shimesu" [The Senkaku Islands need a harbor - Governor Ishihara states conditions for the purchase of Senkaku Islands by the State], *Asahi Shimbun*, September 1, 2012, and other articles

35 Masashi Nishihara, "Ryodo Shuken o Futaiten no Kakugo de Mamore" [Protect the sovereignty with firm determination], *Sankei Shimbun*, September 5, 2012, and other articles

36 Tetsuo Kotani "Senkaku Mondai Chugoku he no Taiou, 'Kaiketsu' yori 'Kanri' Yusen" [The Senkaku issue: Better to prioritize management over solution in response to China], *Yomiuri Shimbun*, September 25, 2012, and other articles

37 *Statement of Commandant Hisayasu Suzuki, the Japan Coast Guard, the Committee on Land, Infrastructure, Transport and Tourism of the House of Representatives, 180th Session of the Diet, Record of Proceedings of the Committee on Land, Infrastructure, Transport and Tourism of the House of Representatives, No. 13 (August 3, 2012), p. 5*

Figure 5: Relationship between innocent passages as provided by UNCLOS and domestic legislation (Outline)

Action	Applicable domestic law	
<b>Securing innocent passage</b> (Article 18 of UNCLOS)	<i>The Law on Navigation of Foreign Ships through the Territorial Sea and Internal Waters</i>	
<b>Regulation of passages that are not innocent</b> (Article 19 of UNCLOS)	Threat or use of force	<i>Self-Defense Forces Act</i> (exercise of self-defense)
	Drills or rehearsals using weapons	<i>Act for Controlling the Possession of Firearms or Swords and Other Such Weapons</i> (possession, explosion), <i>Criminal Regulations to Control Explosives</i> (use), etc.
	Gathering of intelligence that damages defense or security	No general domestic law in place
	Propaganda activities that impact defense or security	<i>Radio Law</i> (broadcast of communications claiming the destruction of the Government, etc.)
	Arrival/departure or loading of airplanes	<i>Civil Aeronautics Act</i> (landing areas, aviation, and domestic usage of foreign airplanes, etc.)
	Arrival/departure or loading of military craft	<i>Civil Aeronautics Act</i> (prohibition of munitions export)
	Loading or unloading of goods, currencies, or people in violation of laws regarding customs, finance, immigration control, or hygiene.	<i>Customs Act</i> (items prohibited for import) <i>Narcotics and Psychotropic Control Act</i> , <i>Opium Control Act</i> , <i>Cannabis Control Act</i> , <i>Stimulants Control Act</i> (possession, etc.), <i>Immigration Control and Refugee Recognition Act</i> (immigration of foreign nationals, etc.), <i>Quarantine Act</i> (prohibition on entry into port, etc.), <i>Foreign Exchange and Foreign Trade Control Law</i> (export approval, etc.), <i>Act for Controlling the Possession of Firearms or Swords and Other Such Weapons</i> (import prohibition), <i>Penal Code</i> (abduction with the intent to remove from the parent country)
	Pollution	<i>Act on Prevention of Marine Pollution and Maritime Disaster</i> (prohibition of discharge, etc.), <i>Act on Prevention of Radiation Disease Due to Radioisotopes, etc.</i> (limitation of marine dumping), <i>Act on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors</i> (limitation of marine dumping)
	Fishing activities	<i>Act on Regulation of Fishing Operation by Foreign Nationals</i> (prohibition of fishing), etc.
	Investigation/surveying activities	Partly not regulated by domestic law
	Resource surveys	<i>Mining Act</i> (prohibition of the investigation of mining resources), <i>Act on Regulation of Fishing Operation by Foreign Nationals</i> (prohibition of fishing), etc.
	Interference in communications facilities, etc.	<i>Radio Law</i> (prevention of crossed lines, etc.), <i>Wire Telecommunications Act</i> (damage to facilities), etc.
Other activities not directly related to passage (cruising, etc.)	---	

Source: Secretariat of Headquarters for Ocean Policy, Cabinet Secretariat

It is also proposed that the Self-Defense Forces Act should be amended in order to enable the Self-Defense Forces (SDF) to conduct patrols of the territorial sea as part of their regular duties under normal circumstances. This proposal also remains to be seen.

According to the public records, the national defense budget of China continues to increase by over 10% nearly every year. China has also been expanding its maritime activities. It has been pointed out that it is necessary to strengthen the SDF unit that is deployed around the Nansei Shoto Islands, which include the Senkaku Islands. The importance of strengthening cooperation with U.S. Forces is also emphasized.

#### (4) The Necessity of Strategic Diplomacy as China Grows to be a Superpower

At a press conference on September 19, 2012, the Minister for Foreign Affairs Koichiro Gamba outlined a foreign policy that strengthens international public relations efforts in terms of the basis of Japan's sovereignty over the Senkaku Islands. It includes public relations with other countries through Japan's diplomatic missions abroad. This is to respond to the ever-growing claims made by China at venues such as the United Nations. Japan had thus far refrained from conducting active public relations as its basic position is that there exists no territorial issue to be resolved. However, in light of China's recent diplomatic strategy, Japan concluded that it is necessary to appeal to the international community and to disseminate Japan's view on the Islands. Further developments will remain to be seen.

Some experts point out that it would be realistic for Japan to admit the existence of a dispute over the Senkaku Islands and thereby settle it through diplomatic negotiation with China and Taiwan.<sup>38</sup> The Government has expressed the opinion that "[t]he Senkaku Islands are under the valid control of Japan, and there exists no issue to be resolved concerning the Senkaku Islands. There is no necessity to bring this case before an international court or tribunal." (Chief Cabinet Secretary Osamu Fujimura).<sup>39</sup> However, some argue that a judicial settlement of the dispute before the ICJ might have certain advantages as it would ensure the parties could claim their respective historical and legal basis without adversely affecting the public opinions and nationalistic spirits of the respective countries.<sup>40</sup> Further discussion will be expected at a venue such as the Diet on the state of diplomatic management over the Senkaku Islands.

Beyond the Senkaku Islands, the state of overall diplomatic relations with China moving forward will start to become a challenge. In Chinese diplomacy, there is an expression *tāo guāng yǎng huì* – to hide one's potential and bide one's time. 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. China has continued to take a diplomatic approach with a focus on international cooperation based on this idea since the Tiananmen Square incident in 1989. However, in the midst of economic stagnation that is deepening in advanced economies due to the financial crisis caused by the Lehman shock in October 2008, and following the success of the Beijing Olympics in August of the same year, China's international influence increased alongside the comparatively steady growth of its economy. Furthermore, China overtook Japan to become the second largest economy in the world in terms of GDP

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38 Kazuhiko Togo, "Senkaku mo Dodo to Taiwa o" [We shall have a confident dialogue for the Senkaku Islands], *Asahi Shimbun*, August 19, 2012, and other articles

39 "Seifu, Senkaku 'Shihosai' Kecchaku ni Hiteiteki" [Government responds negatively towards 'judicial' solution to Senkaku Islands], *Yomiuri Shimbun*, September 30, 2012

40 Shunji Taoka, "Senkaku, Saiban ni Azuketeha" [How about leaving the Senkaku Islands up to the Courts?], *Mainichi Shimbun*, evening edition, October 1, 2012; Yoshiki Mine, "Senkaku Mondai, Monzenbarai Sezu Shijitsu Kakunin o" [Don't shut the door on the Senkaku issue and confirm relevant historical evidence], *Asahi Shimbun*, October 4, 2012, and other articles



in 2010. Given all of this, it is said that there has been greater domestic debate in China on whether the country should pursue a new form of diplomacy that is more befitting a major world power. In such a situation and due to the fact that China may become increasingly assertive and uncooperative in the future, how should Japan proceed in its dealings with China? There is now a need to advance the diplomatic relationship between Japan and China in a more strategic way by conducting sufficient examinations and discussions on policies and approaches, including those that could enhance connections between the people of Japan and China at every level, as well as the state of the Japan-U.S. Alliance.

[Reference materials] Main claims by Japan, China, and Taiwan regarding the sovereignty of the Senkaku Islands (Comparison)

	<b>Japan</b>
Basic Position	There is no doubt that the Senkaku Islands are clearly an inherent part of the territory of Japan in light of historical facts and based upon international law. Thus, there is no issue regarding the sovereignty of the Senkaku Islands between Japan and China or any other countries. None of the arguments that the Chinese Government or Taiwanese authorities have presented on historical, geographic, or geological grounds constitute valid evidence under international law to support China's and Taiwan's assertions of territorial sovereignty over the Senkaku Islands.
Positioning of the Senkaku Islands prior to their incorporation into Japanese territory (1895)	The Islands were <i>terra nullius</i> , not a part of any country.
Evaluation of the incorporation into Japanese territory (1895)	It was confirmed through surveys conducted from 1885 onward that the Islands were <i>terra nullius</i> . Based on the survey results, a Cabinet Decision was made to incorporate them in January 1895, which had no connection to the results of reconciliation after the First Sino-Japanese War. After the incorporation, the Islands were treated as being part of Okinawa Prefecture, and have never been included in the administrative area of the Governor-General of Taiwan (not part of Taiwan).
Treatment post-World War II	The Senkaku Islands were not included in "Formosa and the Pescadores," for which Japan renounced territorial sovereignty based on Article 2 (b) of the <i>San Francisco Peace Treaty</i> . Based on Article 3 of that same treaty, the Senkaku Islands were placed under the administration of the United States as part of the Nansei Shoto Islands. The Cairo Declaration and the Potsdam Declaration were documents that only stipulated the basic postwar settlement policy of the Allied powers. Neither document was intended to give a final determination on the disposition of territories as a result of war. Japan signed the <i>Sino-Japanese Peace Treaty</i> in 1952 with the Republic of China (Taiwan), which Japan recognized as an independent state at the time. Within that treaty, it was approved that based on the <i>San-Francisco Peace Treaty</i> , Japan had relinquished all rights to "Formosa and the Pescadores." The issue of the sovereignty of the Senkaku Islands was not discussed at all in the process of negotiating this treaty.

Evaluation of the <i>Okinawa Reversion Agreement</i>	Based on the <i>Okinawa Reversion Agreement</i> , sovereignty of the Senkaku Islands was reverted to Japan as part of Okinawa in May 1972.
Evidence that China and Taiwan previously recognized the Senkaku Islands as Japanese territory	That neither the Government of China nor the Taiwanese authorities regarded the Senkaku Islands as originally part of Chinese territory is apparent by the fact that they did not protest when the Senkaku Islands were included in the region placed under U.S. administration after World War II, and only made claims on the Islands once movement heated up toward oil development in the East China Sea in the 1970s.
Existence of a promise to shelve the issue of sovereignty between Japan and China	There is no issue of sovereignty to be solved between Japan and China. There is no truth to the claim that a promise was made to shelve the Senkaku issue.
Proposal of East China Sea Joint Development by Taiwan	The Senkaku Islands are clearly an inherent part of the territory of Japan, and there is no issue of sovereignty. Japan does not accept the claims made by Taiwan. However, that premise does not mean that various forms of cooperation cannot be carried out in the East China Sea.

Note 1: The claims of Japan were taken from the website of the Ministry of Foreign Affairs, “The Basic View on the Sovereignty over the Senkaku Islands,” press conferences given by the Minister for Foreign Affairs, and other sources.

Note 2: The claims of China are based on the December 1971 statement issued by the PRC Ministry of Foreign Affairs; the white paper released in September 2012 titled “Diaoyu Dao, an Inherent Territory of China;” and other sources.

China	Taiwan
The Senkaku Islands (Chinese name: Diaoyu Dao and its affiliated islands) are an inseparable part of China’s territory (islands affiliated with the island of Formosa). China is firmly opposed to Japan’s violation of China’s sovereignty over the Diaoyu Islands in all forms, and will take resolute measures to curb Japan’s related acts.	The Senkaku Islands (Taiwanese name: Diaoyutai Islands) belong to Taiwan, and are comprised of the territory of the Republic of China. They are closely connected to the Republic of China based on their geographic position, geological composition, historical connections, and long-term continuous use of the Islands by the Taiwanese people. Taiwan cannot relinquish sovereignty of them.
The Senkaku Islands have been part of China’s territory since ancient times (islands affiliated with the island of Formosa).	The Senkaku Islands have been part of China’s territory since ancient times (islands affiliated with the island of Formosa).
Japan stole the Senkaku Islands through the First Sino-Japanese War. Furthermore, the Government of Japan placed pressure on the then Qing Government, and in April 1895 forced the Qing Government to sign the unequal <i>Treaty of Shimonoseki</i> and to cede to Japan “the island of Formosa (Taiwan), together with all islands appertaining or belonging to the said island of Formosa.”	Japan occupied the Islands in a predatory manner after China lost the First Sino-Japanese War. Legally, the Senkaku Islands are included in “Formosa and the Pescadores Islands,” which were ceded to Japan through the <i>Treaty of Shimonoseki</i> .
Based on the Cairo Declaration, the Potsdam Proclamation, etc., the Senkaku Islands, together with Taiwan, should naturally be returned to China. The declaration by the United States that it had administrative rights over the Senkaku Islands after World War II was illegal.	Based on the Cairo Declaration, the Potsdam Proclamation, the Japanese Instrument of Surrender, and the <i>Sino-Japanese Peace Treaty</i> , the Senkaku Islands, as part of “Formosa and the Pescadores Islands,” should be returned to the Republic of China.

The inclusion of the Senkaku Islands in the area reverted to Japan in the <i>Okinawa Reversion Agreement</i> signed by the Japanese and U.S. Governments was illegal.	The inclusion of the Senkaku Islands in the area reverted to Japan in the <i>Okinawa Reversion Agreement</i> signed by the Japanese and U.S. Governments is unacceptable.
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Japan and China agreed to shelve the issue of the sovereignty of the Senkaku Islands within the negotiations to normalize relations between the two countries in 1972, and at the conclusion of the <i>Treaty of Peace and Friendship between Japan and the People's Republic of China</i> in 1978.	---
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Note 3: The claims of Taiwan are based on statements released by the Taiwan Ministry of Foreign Affairs in June 1971, August 2012, and September 2012.  
Created by the author.

[Reference materials] Main movements regarding the Senkaku Islands (chronological table)

1895	Jan.	The Japanese Government incorporates the Senkaku Islands into Japanese territory through a Cabinet Decision.
	Apr.	The peace treaty following the First Sino-Japanese War (the <i>Treaty of Shimonoseki</i> ) is signed, and the Qing Government cedes Taiwan and the Pescadores Islands to Japan.
1896	Sep.	The Japanese Government approves the 30-year free loan of four of the Senkaku Islands (Uotsuri Island, Kuba Island, Kitakojima Island, and Minamikojima Island) to Tatsushiro Koga.
1932		The Japanese Government transfers the ownership of the four islands to Zenji Koga (Tatsushiro's son) for profit.
Around 1940		Mr. Koga halts his businesses on the Senkaku Islands (the Islands become uninhabited).
1945	Aug.	Japan loses World War II (Potsdam Declaration accepted).
1946	Jan.	According to Supreme Command for Allied Powers Instruction Note (SCAPIN) 677, the Nansei Shoto Islands, including the Senkaku Islands, are put under direct management of the U.S. military.
1952	Apr.	The <i>San Francisco Peace Treaty</i> comes into effect, and Japan recovers its independence. However, under Article 3 of that treaty, the Nansei Shoto Islands, including the Senkaku Islands, are placed under the administration of the United States.
1968		The United Nations Economic Commission for Asia and the Far East (ECAFE) carries out an ocean survey in a zone of the East China Sea, and following this indicates the high possibility of the existence of oil and gas fields in the sea bed.
1971	Jun.	The Ministry of Foreign Affairs of the Republic of China (Taiwan) releases a statement officially claiming sovereignty of the Senkaku Islands.
	Dec.	The Ministry of Foreign Affairs of the People's Republic of China (China) releases a statement officially claiming sovereignty of the Senkaku Islands.
1972	May	Based on the Okinawa Reversion Agreement, administrative rights over the Senkaku Islands are returned to Japan as part of Okinawa.

	Sep.	Japan-China relations are normalized through the Japan-China Joint Communiqué.
1978	Apr.	Approximately 100 Chinese fishing vessels approach the Senkaku Islands and conduct operations in Japan's territorial sea.
	Aug.	The Japanese and Chinese Governments sign the <i>Treaty of Peace and Friendship between Japan and the People's Republic of China</i> .
	Oct.	Then Vice Premier Deng Xiaoping announces the idea of shelving the Senkaku issue during a press conference while visiting Japan.
1979		The Japanese Government begins construction of a temporary heliport on Uotsuri Island, but stops following a request to halt from the Chinese Government (facilities under construction have been removed).
1992	Feb.	China establishes the <i>Law on the Territorial Sea and the Contiguous Zone</i> , which clearly states that the Senkaku Islands are part of Chinese territory.
1996	Jul.	Japan ratifies the <i>United Nations Convention on the Law of the Sea</i> (China also ratifies it in the same year). The Japanese Government establishes an EEZ in the waters around Japan.
	Sep.	A boat carrying activists from Hong Kong infiltrates the waters around the Senkaku Islands, and one of the five people who jump into the sea perishes.
1997	May.	Then Member of the House of Representatives Shingo Nishimura becomes the first Diet member to step foot on the Senkaku Islands.
2002	Apr.	The Japanese Government leases Uotsuri Island, Kitakojima Island, and Minamikojima Island and places them under direct Government management.
2004	Mar.	Seven Chinese activists set foot on Uotsuri Island. The police arrest all seven for illegal immigration, but do not prosecute and instead forcefully repatriate them.
2010	Sep.	A Chinese fishing vessel collides with a Japan Coast Guard patrol vessel in the territorial sea around the Senkaku Islands.
2012	Aug.	A boat containing activists and others from Hong Kong infiltrates the territorial sea around the Senkaku Islands, and seven individuals set foot on Uotsuri Island. Fourteen activists and others are arrested, but they are not prosecuted and are forcefully repatriated.
	Sep.	The Japanese Government decides to acquire Uotsuri Island, Kitakojima Island, and Minamikojima Island, and concludes a purchase contract with the landowner.

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