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Citation: Rule of Law Series, Japan Digital Library (March 2015),
http://www2.jiiia.or.jp/en/digital_library/rule_of_law.php

Territorial Sovereignty over the Senkaku Islands*

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I. Introduction

The Senkaku Islands are part of the Nansei Shoto Islands of Japan and belong to Ishigaki City, Okinawa Prefecture. They are located between longitude 123°30' and 124°35' E and latitude 25°45' and 26°0' N and consist of eight islands. The largest of the islands is Uotsuri Island, with a land area of approximately 4.32 km². It is followed by Kuba Island (1.08 km²), Minamikojima Island (0.463 km²), Kitakojima Island (0.302 km²), and Taisho Island (0.154 km²). In addition, the islands include Okinokitaiwa, Okinominamiwa, and Tobise.

The total land area for the Senkaku Islands are no more than 6.32 km², nearly equivalent to the areas of Lake Yamanaka in Shizuoka Prefecture or Taketomijima Island of the Yaeyama Gunto Islands. In May 1969, the United Nations (UN) Economic Commission for Asia and the Far East (ECAFE) released the results of a joint survey on mineral resources in the East China Sea continental shelf, identifying potential oil and natural gas resources especially in the continental shelf around the Senkaku Islands. This brought attention to the existence of the islands, and from 1971, China and Taiwan began to officially claim territorial title over the islands.

As will be discussed later, the Senkaku Islands were incorporated into Japanese territory during the Meiji Period, in accordance with the legal principle of occupation of *terra nullius* in international law. China and Taiwan nevertheless assert that the islands were their territories prior to the incorporation into Japanese territory, and moreover, were appertained to Taiwan.

According to Japan's position, the Senkaku Islands were never part of the territory of China and China and Taiwan had consistently acknowledged prior to 1969 that the islands were the territory of Japan. For example, in an article entitled "Battle of People in Ryukyu Islands against U.S. Occupation" in People's Daily (China) dated January 8, 1953, those islands were included as "Houkatsu Senkaku Shoto" (Senkaku Group of Islands) within part of the Ryukyu Islands. Similarly, a map entitled "Map of Japan" made by the editorial office of a cartographic publisher in Beijing in November 1958 treats the Senkaku Islands as clearly part of Japanese territory.

Before 1969, Taiwan not only failed to treat the Senkaku Islands as part of the islands appertained to Taiwan, but it clearly understood the islands as being included in the Ryukyu Islands and referred to them by their Japanese names. For instance, *Taiwansheng Difang Zizhi Zhiyao* [The Outline of the Local Self-Government in Taiwan Province] printed in November 1965 by the Taiwanese provincial government specifies the Pengjia Island (located closer to Taiwan than the Senkaku Islands by approximately 150 km) as the northern boundary of Taiwan province. *Zhonghua Minguo Nianjian* [The Yearbook of the

* This article was originally published as 奥原敏雄「尖閣列島の領有権」『現代の法律問題—時の法を探る—』法学書院、1979年、237-260頁。

Republic of China] of October 1968 also regards the Pengjia Island as northern boundary and Mianhua Island as eastern boundary of Taiwan.

In Volume 1 (East Asia Nations) of World Atlas, published in Taiwan in October 1965 by the National Defense Research Academy and the China Geological Research Institute of Taiwan, the Senkaku Islands are identified as Japanese term “Senkaku Gunto,” and the names of their individual islands are listed. The Japanese name of Uotsuri Island is used for Diaoyutai, accompanied with the Japanese pronunciation in Roman letters. Kobi-sho Island and Sekibi-sho Island are listed with their respective Japanese names, Kuba Island and Taisho Island, in parentheses. The names of these two islands are in Roman letters to be able to read them by their Japanese pronunciation. Kitakojima Island and Minamikojima Island are listed as well but not accompanied with Roman letters. However, both are names given by Japan. The Senkaku Islands are marked as Senkaku Group of Islands together with its correct Japanese pronunciation, “Senkaku Gunto.” In addition, a 1970 geographical science textbook for public junior high schools in the Republic of Taiwan treats the Senkaku Islands (“Senkaku Gunto” in the original map) as part of the “*Dai-Ryukyu Gunto*” [Great Ryukyu Group of Islands] and Japanese terminology is adopted, such as Uotsuri Island, Minamikojima Island, and Kitakojima Island.

Accordingly, Chinese and Taiwanese territorial claims over the Senkaku Islands not only contradict the facts above but also go against the estoppel principle of international law.

Nevertheless, so far as China and Taiwan assert title of these islands, their reasoning needs to be understood and critically examined. At the same time, it is necessary to clearly demonstrate grounds for Japan’s sovereignty over the Senkaku Islands as a basis of our criticisms.

II. Territorial Incorporation of the Senkaku Islands

Intention of extending sovereignty

Japan began to show its intention of extending sovereignty over the Senkaku Islands through official maps and other means in around 1879. In March 1879, *Dai Nihon Zenzu* [The Complete Map of Great Japan] edited by Chubei Matsui was published under the Interior Ministry’s censorship. In its map of the Ryukyu Islands, the location of the Senkaku Islands are almost accurately charted. Uotsuri Island is named “Wahe-san” and its nearby islands (Minamikojima, Kitakojima, and some reefs) are collectively named “Nakadaka San.” Names of these islands are marked both in Japanese and Roman letters. Kuba Island and Kumeaka Island are listed in Japanese term “Koubisho” and “Takaosho” respectively but without Roman letters.

Dai Nihon Zenzu is an important map as it was published shortly before the enforcement of the prefectural system in Okinawa (Ryukyu Domain became Okinawa Prefecture about one month after the publication. Although the area was still called Ryukyu Domain, it was placed under the jurisdiction of the Interior Ministry from 1874. Thus, enforcement of the prefectural system to Ryukyu Domain does not affect the legal status of the islands as a territory of Japan). Maps which were published after the enforcement of the prefectural system include *Dai Nihon Fuken Kankatsu Zu* [Map of Prefectural Jurisdiction of Great Japan] of December 1879. This map is an official one edited by the Geography Bureau of the Interior Ministry. *Dai Nihon Fuken Kankatsu Zu* clearly indicates that the Senkaku Islands are comprised in the Ryukyu Islands and it marks the names besides some islands (Sekibi-sho Island, however, was not illustrated).

Subsequently, Japan repeatedly showed its intention of extending sovereignty over the Senkaku Islands. In “Map of Okinawa Prefecture” in *Dai Nihon Fuken Bunkatsu Zu* [Map of Prefectural Division of Great Japan] published by the Geography Bureau of the Interior Ministry in 1881 (revised in 1883),

the Senkaku Islands are depicted (except for Sekibi-sho Island) but the names of the islands are not listed. From 1886, not only maps but also the coast pilots of Japan began to include the Senkaku Islands as part of territory of Japan. *Kanei Suiroshi* [Coast Pilot Directory of Oceans], Volume 1, Part 2 published in March 1886 by the Japanese Navy Hydrographic Bureau mentions the Senkaku Islands in Section 10, “Shunan Shoto Islands.” The directory uses “Senkaku Gunto” as a collective term that included Uotsuri Island and its nearby islands. For the first time, the name “Senkaku” was applied in reference to a group of islands (*Taiwan Suiroshi* [Coast Pilot Directory of Taiwan] of 1873 published in Japan identifies Minamikojima Island as Senkaku. It is the literal translation of “Pinnacle Island,” the name given to Minamikojima Island in the U.K. Navy’s coast pilot directory.). In addition, the Senkaku Islands are referred to in Section 3 “Nansei Shoto Islands” of *Nihon Suiroshi* [Coast Pilot Directory of Japan] Volume 2, published in July 1894 by the Japanese Navy Hydrographic Department (this is deemed to be the first document which applies the term “Nansei Shoto Islands” and includes the Senkaku Islands within the scope of the Islands).

In 1885, there was another important development. For the first time, the government ordered Okinawa Prefecture to conduct a survey on the Senkaku Islands. In 1885, the Interior Minister (Aritomo Yamagata) internally ordered Nagayoshi Morimoto, Grand Secretary of Okinawa Prefecture in Tokyo, to “investigate the uninhabited Kumeaka Island and two other islands dotted between Okinawa Prefecture and Fuzhou of the Qing Dynasty.” First, the Governor of Okinawa Prefecture (Sutezo Nishimura) was informed by Eiho Oshiro (local official of logging in Misato Magiri) through Hyogo Ishizawa (Fifth grade officer of Okinawa Prefecture) that “before the abolishment of the feudal domain system, Eiho Oshiro confirmed at a short distance the islands at the time of travelling to the Qing Dynasty for official and private purposes.” This investigation report entitled *Kumeakajima Kubajima Uotsurijima no Santo Torishirabesho* [Report on the Investigation of the Three Islands of Kumeaka, Kuba, and Uotsuri] was submitted to the central government by the Governor of Okinawa Prefecture as an attachment to a proposal addressed to the Interior Minister on September 22, 1885, entitled *Kumeakajima hoka Nitou Torishirabe no gi nitsuki Jyoushin* [Proposal for the Survey on Kumeaka Island and Two Other Islands].

Following this, the Governor of Okinawa Prefecture dispatched Hyogo Ishizawa and five other officials to the Senkaku Islands aboard “Izumomaru” of Osaka Shosen (Osaka Shipping Co.), in order to investigate and report the configuration of harbors as well as the prospect of land development and local production. There are two such reports. One of them is Hyogo Ishizawa’s *Uotsurijima hoka Nito Jyunshi Torishirabe Gairyaku* [Outline of the Investigation and Survey of Uotsuri Island and Two Other Islands]. The other is *Uotsuri Kuba Kumeakajima Kaikou Houkokusho* [Report on the Navigation of Uotsuri, Kuba, and Kumeaka Islands] prepared by the captain of Izumomaru, Tsurumatsu Hayashi.

Territorial incorporation measures

The survey by Izumomaru is significant as it further affirmed Japan’s intention to hold title over the Senkaku Islands through concrete exercise of state sovereignty. This survey is also important in that the Governor of Okinawa Prefecture asked the Interior Minister’s advice on whether or not national markers should be erected on the islands. At that time, the Governor of Okinawa Prefecture had a slight concern about erecting markers since the Qing Empire was familiar with the islands. The Governor thus simply inquired the Interior Minister as to whether or not markers should be erected.

However, after reviewing the survey report of Izumomaru, the Governor of Okinawa Prefecture thought that there were no particular problems associated with placing the Senkaku Islands under the jurisdiction of Okinawa Prefecture. Therefore, in its second proposal to the Interior Minister (dated November 5, 1885), *Uotsurijima hoka Nito Jitti Torishirabe no Gi nitsuki Jyousin* [Petition for Land Survey

in Uotsuri Island and Two Other Islands], the Governor actively requested more of the erection of jurisdiction markers.

Interior Minister Aritomo Yamagata, upon receiving the first proposal from the Governor of Okinawa Prefecture, prepared a draft proposal for the Grand Council of State, but before submitting it, sent a letter to Foreign Minister Kaoru Inoue to ask for his opinion. This letter (dated October 9, 1885) was entitled, *Okinawaken to Shinkoku tono Aida ni Sanzaisuru Mujintou no Gi nikanshi Iken Toiawase no Ken* [Memorandum requesting comments on uninhabited islands sparsely situated between Okinawa Prefecture and the Qing Dynasty]. In the draft report for the Grand Council of State, which was enclosed with the letter, the Interior Minister expressed the following view:

The aforementioned islands appear to be identical with the islands reported in the Records of Messages from Chong-shan, but they were mentioned as a mere direction in the course of voyage and showed no particular trace of having been under the control of the Qing Dynasty while the islands' names were different between them and us. They belong to the uninhabited islands near Miyako, Yaeyama and others under the control of Okinawa and, therefore, there should be no problem with the prefecture surveying them and erecting national markers on them.

It is important that the Interior Minister mentioned that the islands “showed no particular trace of having been under the control of the Qing Dynasty” because he considered the islands “*terra nullius*” which did not belong to any state.

Nonetheless, due to the Foreign Minister's objection, the Interior Minister's opinion that “there should be no problem with the prefecture erecting national markers on them” did not lead to the erection of national markers at this time. This is, however, not because the Foreign Minister considered Kumeaka Island and other islands as part of the territory of the Qing Dynasty. The views of the Interior and Foreign Ministers did not differ on the legal status of the islands. This is also evident from the fact that the Foreign Minister approved the land survey by Izumomaru. It should furthermore be noted that the Foreign Minister's statement, “We should deal with [them] some other day,” illustrated that he was not opposed to the erection of national markers and the development of the islands *per se*. He was no more than raising an issue with their timing.

As for why the Foreign Minister considered that it was too early to erect national markers, he explained as follows in his response to the aforementioned letter from the Interior Minister addressed to the Foreign Minister (October 21, 1885), entitled *Okinawaken to Shinkoku tono Aida ni Sanzaisuru Mujintou ni Kokuhyoukensetsu ha Enkisuru hou Shikarubeki mune Kaitou no ken* [Reply suggesting the postponing of the erection of national markers on uninhabited islands sparsely situated between Okinawa Prefecture and the Qing Dynasty]:

Concerning the aforementioned islands, they are in proximity to the national border with the Qing Dynasty, their circumferences appear smaller than those of the Daito Islands after our on-site survey and in particular, their names are being attached by the Qing Dynasty. There are rumors recently circulated by Qing newspapers and others, including one that says our government is going to occupy the islands in the vicinity of Taiwan that belong to the Qing Dynasty, which are arousing their suspicions towards our country and frequently alerting the Qing government for caution. If we took measures such as publicly erecting national markers, it would result in making the Qing Dynasty suspicious.

In short, the Foreign Minister judged that it was not diplomatically appropriate to take measures, such as publicly erecting national markers, on the islands of which both Japan and the Qing Dynasty were fully aware of the existence and which were close to the national borders of both states, even if the islands did not belong to any state, at a time when Qing newspapers and others were raising alert to the Qing Dynasty seemed to show some interests on the islands.

Certainly, given the small size of the islands, there was no necessity to take measures, such as hastily erecting national markers, in the face of the risk of causing a diplomatic friction with the Qing Dynasty, at least at that time. This was not only a time when confrontations between Japan and the Qing Dynasty over the attribution of Ryukyu had lingering effects but also a time when many crucial diplomatic issues were being dealt with between Japan and the Qing Dynasty. In addition, Foreign Minister Inoue's cautious stance towards Qing diplomacy influenced his decision over this issue.

The Governor of Okinawa Prefecture filed his third and fourth proposals in 1890 and 1893. On January 13, 1890, the Governor of Okinawa Prefecture (Kanji Maruoka) submitted a proposal to the Interior Minister at the request of the Yaeyama Islands Local Office to place the jurisdiction over the uninhabited Uotsuri Island and two other islands based on the necessity for fishery control. In response to the proposal of the Governor of Okinawa Prefecture, on February 7, 1890, Kencho Suematsu, Director of the Prefectural Affairs Bureau of the Interior Ministry, requested the Governor to submit copies of the documents regarding the details of the December 5, 1885 order. Although the Governor sent the copies to him on February 26 and requested a response to his earlier proposals, the issue seemed to be left untouched for a while.

The government finally approved the proposal of the Governor of Okinawa Prefecture filed on November 2, 1893, which also gave fishery control as the reason for placing the islands under the jurisdiction of Okinawa Prefecture, similar to the 1890 proposal. It was not until April 14 of the following year, 1894, however, that the government began to take steps in response to the Governor's proposal. On this day, the Interior Minister (Kaoru Inoue, Foreign Minister in 1885), under the name of the Director of the Prefectural Affairs Bureau of the Interior Ministry (Kazuyuki Egi), sent an inquiry to the Governor of Okinawa Prefecture regarding following matters: (1) configuration of the harbors of the relevant islands; (2) prospect of local production and land development; (3) evidence that the islands belonged to Japan in ancient times, such as old records and oral traditions; and (4) existing relationship with Miyakojima Island, Yaeyama Islands, and other islands.

In response to the aforementioned inquiry, on May 12, 1894, the Governor of Okinawa Prefecture responded, "There exist no old records regarding the relevant islands or any transcribed evidence or oral traditions which prove the islands belonged to Japan. The only relation is that fishermen in Okinawa Prefecture, since ancient times, have sometimes sailed from Yaeyama Islands to the Nanto Islands (southern islands) to conduct fishing and hunting."

After this response, we cannot find any official documents concerning this issue for some time thereafter. The next official document appeared seven months later on December 15, which was later submitted to a Cabinet meeting. This document attached a proposal to erect national markers, and its main text explained the reasons for submitting it to the Cabinet meeting. It gave the following three reasons, namely: (1) the circumstances are significantly different in 1885 and today; (2) according to an oral statement of the officials of the Hydrographic Department of the Navy Ministry, Uotsuri Island and Kuba Island have never been territories of any state; and (3) geologically, it can be considered as part of the Okinawa Islands.

On December 27, more than ten days after the above document was prepared, the Interior Minister

(Yasushi Nomura) consulted the Foreign Minister (Munemitsu Mutsu) on bringing this issue before the Cabinet meeting. In a letter dated January 11, 1895, the Foreign Minister responded that he had no objections on it. On January 12, the Interior Minister requested the Prime Minister (Hirobumi Ito) to convene a Cabinet meeting, and on January 14, the Cabinet decided as follows with regard to this matter:

Regarding the matter submitted by the Minister of Home Affairs for deliberation: In recent years, certain persons have sailed in the direction of uninhabited islands known as Kuba and Uotsuri situated northwest of the Yaeyama Islands of Okinawa Prefecture with the intent to engage in fishing and other activities. Given the need to control such activities, there is no hindrance to determining that the said islands come under the jurisdiction of Okinawa Prefecture and permitting the erection of jurisdictional markers as requested in the petition of the Okinawa Prefectural Governor.

III. Effective Control

The survey conducted by the *Izumomaru* in 1885 affirmed Japan's intention of extending its sovereignty over the Senkaku Islands through the dispatch of central and local government officials. At the same time, it signified the first display of Japan's effective control over the islands prior to their incorporation into its territory.

Even if it is not "effective control" in the sense of international law, private citizens also launched the development of the Senkaku Islands on a full-fledged basis already from 1885. In 1884, Tatsushiro Koga dispatched people to explore the islands and report on their current conditions. In 1885, he collected for the first time products, such as bird feathers and marine products. Discovering that these products held promise as exports and for creating domestic demand, Koga began to continuously collect such products for business purposes.

In 1894, designing a plan to develop the islands, Koga submitted an application to the Governor of Okinawa Prefecture for permission to develop the Senkaku Islands. In June 1895, Koga also filed *Kanyuchi Haisyaku Negai*, [Application for Leasing State-owned Land] with the Interior Minister. Koga's application for leasing state-owned land was formally accepted by the Interior Minister in August of the following year, 1896.

The government accepted Koga's application following the Cabinet decision to place Uotsuri Island and another island under the jurisdiction of Okinawa Prefecture on January 14, 1895, and their incorporation into Yaeyama County, Okinawa Prefecture in April 1896. The Interior Minister granted Koga approval to lease Uotsuri Island and Kuba Island free of charge for 30 years. From then on, Koga's use of the Senkaku Islands became no longer simply an act of a private citizen, but a state-authorized act that constituted effective control under international law.

From 1918, Koga's businesses were carried on by his son, Zenji Koga. The free lease of the islands expired in 1926, and subsequently, the islands were leased for a fee, subject to yearly contract. In 1932, Koga applied for the purchase of Uotsuri Island, Kuba Island, Minamikojima Island, and Kitakojima Island, and the government sold them off. The four islands thus became the private property of Koga. After ownership was transferred and registered, Koga paid land tax for the four islands every year thereafter.

Tatsushiro and Zenji Koga engaged in diverse businesses on the islands. In addition to collecting albatross feathers and mining guano, they carried out businesses such as processing shark fins, shellfish and tortoise shells; canning seabirds; stuffing brown boobies and common terns; producing dried bonito; and harvesting coral. In parallel with these businesses, the Koga built houses, reservoirs, wharves, and piers on Uotsuri and Kuba Islands. They also improved sanitary facilities, such as drainage, protected sea

birds, conducted test cultivation, such as of bananas, sugarcane, sweet potatoes, and tobacco, and planted trees, such as cedar.

At least 2,000 laborers in total, fishermen, craftsmen, and others settled or were dispatched to the Senkaku Islands over the period until Koga's businesses on the islands came to an end shortly before the outbreak of the Pacific War. According to a report submitted by Tatsushiro Koga to the Interior Ministry in 1909, there were a total of 248 settlers, 90 houses, and over 60 *chobu* (approximately 595,020 m²) of cleared land on the Senkaku Islands in 1907.

The development of the islands by Tatsushiro Koga after 1896 alone demonstrates that Japan displayed sufficient effective control for establishing its sovereignty over the Senkaku Islands. In addition to this fact, Japan exercised state functions (sovereign acts) over the Senkaku Islands as explained below.

In 1896, the government designated the four islands of Uotsuri Island, Kuba Island, Minamikojima Island, and Kitakojima Island as state-owned lands and registered as such in the State Register (under the jurisdiction of the Interior Ministry). At the same time, based on this measure, the government approved the lease of Uotsuri and Kuba Islands to Koga in August 1896. In regard to the incorporation of the Senkaku Islands into the local administration system, following the Cabinet decision to incorporate the Senkaku Islands into Okinawa Prefecture on January 14, 1895, the measure was taken to place them under the jurisdiction of Yaeyama County of Okinawa Prefecture in April 1896. In December 1902, the jurisdiction of the islands was conferred to Tonogusuku Village, Ohama District of Ishigakijima Island (Yaeyama County). In December of the same year, the Provisional Land Survey Office of Okinawa Prefecture conducted the first land measurement of the islands and made accurate scale maps of each island. Based on these measurements, the four islands, including Uotsuri Island, were formally listed in the land register of Ishigakijima Island and were given address numbers. Later, land measurements of the islands were conducted by the National Hydrographic Bureau in 1915, the Navy's Hydrographic Department in 1917, and the Forestry Bureau of Okinawa Prefecture in 1931.

Many other activities were also conducted on the Senkaku Islands, such as resource surveys and academic research which were approved or encouraged by national or local governments, rescue measures, and preliminary survey for the construction of a meteorological station. In 1900, 1901, 1903, and 1907, national and local government officials (*e.g.* prefectural officials, prefectural engineers, and Yaeyama police chief) sailed to the islands to conduct technical guidance, to observe the situation, and for other purposes. In 1932, a natural resources surveying team of the Ministry of Agriculture and Forestry was assigned to the islands to conduct research. This surveying team, accompanied by Tsutomu Masaki from the Ishigakijima Island Meteorological Station, later submitted a report of the results. In 1940, when the Greater Japan Airways aircraft "Aso" connecting Japan and Taiwan made an emergency landing in Uotsuri Island, police officers from the Yaeyama Police Office and others rushed to the scene to rescue the 13 passengers aboard. In 1943, at the request of the military, two engineers from the Ishigakijima Island Meteorological Station visited Uotsuri Island in order to establish a meteorological station on the island. Additionally, in 1945, police officers and military personnel went to Uotsuri Island to conduct rescue activities associated with the wreckage of vessels that were carrying civilians evacuating to Taiwan. On November 22, 1909, the government bestowed Tatsushiro Koga with the Medal with Blue Ribbon for his achievements related to the development of the Senkaku Islands. On August 19, 1907, the Fukuoka Mining Supervision Office formally approved Koga's application for the mining of phosphate.

As the above facts demonstrate, before World War II, Japan had already exercised sufficient effective control for establishing sovereignty over the Senkaku Islands. After WWII, the Senkaku Islands were placed under the legislative, judicial, and administrative control of the United States along with the

Nansei Shoto Islands south of 29° N latitude, including the Ryukyu Islands and Daito Islands (however, Amami Gunto were excluded after December 25, 1953).

Article 3 of the San Francisco Peace Treaty, which stipulates the administrative rights of the United States over the Nansei Shoto Islands, does not explicitly refer to the Senkaku Islands. However, it was clear that the islands were included in the scope of Article 3 of the Peace Treaty from various sources, including U.S. Civil Administration Ordinance No. 68 (Provisions of the Government of the Ryukyu Islands) of February 29, 1952 and U.S. Civil Administration Proclamation No. 27 (Geographical Boundaries of the Ryukyu Islands) of December 25, 1953. Furthermore, the Senkaku Islands are listed with their individual names of the islands in the “List of the Nansei Shoto Islands,” prepared by the Ministry of Foreign Affairs of Japan pursuant to the “Governmental and Administrative Separation of Certain Outlying Areas from Japan” memorandum of the General Headquarters (GHQ), the Supreme Commander for the Allied Powers (SCAP) dated January 29, 1946.

Article 3 of the Peace Treaty gave the United States only administering right over the Nansei Shoto Islands south of 29° N latitude. Sovereignty over the Nansei Shoto Islands, including the Senkaku Islands, remained in Japan. In the sense that Japan could not exercise territorial sovereignty over its territories of the Nansei Shoto Islands, Japan was considered to have residual sovereignty over this area. On August 31, 1970, Mr. Robert J. McCloskey, Spokesperson of the U.S. Department of State, confirmed this point by explicitly referring to the Senkaku Islands. This policy of the U.S. government remained consistent until the reversion of Okinawa to Japan.

The Senkaku Islands were included in the scope of Article 3 of the San Francisco Peace Treaty. As a result, the treaty ensured the legal status of the Senkaku Islands (that the islands were part of the territory of Japan). Thus, it does not affect the attribution of the title of the islands the extent to which the United States exercised administrative rights over the Senkaku Islands during the period that it had administrative right.

Apart from the issue of the attribution, however, it can be said that the United States exercised effective control (exercised administrative rights) over the Senkaku Islands in place of Japan after WWII pursuant to Article 3 of the Peace Treaty. Although the United States did not exhibit the same degree of effective control over the islands as Japan did before WWII, it was not zero, neither the U.S. Civil Administration utilized Taisho Island, a state-owned land of the Senkaku Islands, as a Navy exercise area after 1956 and Kuba Island, a private-owned land, as an Air Force exercise area in 1955 and as a Navy practice area afterward. Since Kuba Island was private-owned land, the Basic Leasing Contract was concluded on July 1, 1958 between the landowner, Zenji Koga, and the Ryukyu government as the agent for the U.S. Civil Administration. According to this contract, the U.S. Civil Administration paid a certain amount every year as a fee for utilizing the land for military purposes. The Ryukyu government had been levying a fixed asset tax for the four islands Koga owns before the conclusion of the leasing contract, and thereafter it also collected withholding tax on the revenue that it collected from the rent.

Meanwhile, on March 5, 1955, the Legislature of the Ryukyu Government adopted a resolution calling for investigation by the U.S. Civil Administration, the Japanese government, the UN, among other entities on the so-called *Daisan Seitoku Maru* Case. This was an incident of March 2, 1955 in which an Okinawa fishing boat was subjected to gunshots from two junks of unidentified nationality in territorial waters near Uotsuri Island and three crew members went missing. On October 28, 1967, the Ryukyu government paid relief funds to the affected families in connection with this incident.

In 1961, Ishigaki City, which has administrative jurisdiction over the Senkaku Islands, sent officials to the islands to conduct a survey for reassessing fixed assets in accordance with the Land Rent

Stabilization Act. In May 1969, Ishigaki City, accompanied by the mayor, erected administrative markers specifying the city's jurisdiction on the five Senkaku Islands. At the same time, after 1968, the U.S. Civil Administration and the Ryukyu government took various measures to control illegal entry into the islands. They included patrols by military aircraft, the construction of warning signs, patrols by the patrol vessels of the Ryukyu government, and the issuance of exclusion orders against illegal entrants.

Five academic surveys on the Senkaku Islands were carried out after the war, even before the commencement of the UN ECAFE survey on the East China Sea continental shelf. Academic, natural resource, water quality and other research were conducted in 1950, 1952 (twice), 1963, and 1968 by various entities, such as University of the Ryukyus, the Meteorological Agency of the Ryukyu government, the Yaeyama Local Government Office, the Yaeyama Meteorological Observatory, and the Ishigaki City Police.

IV. Chinese and Taiwanese Arguments for the Title and Critiques against Them

The Government of the Republic of China (Taiwan) and the Government of the People's Republic of China (China) asserted the title of the Senkaku Islands in the official foreign ministry statements on June 11, 1971 and December 30, 1971, respectively. Since then, the issue of sovereignty over the Islands has gained a feature of an international dispute between Japan, China, and Taiwan. Although China and Taiwan formally make separate territorial claims, with each asserting that the islands are part of their own territory, the two share the view that the Senkaku Islands were part of the territory of China prior to their incorporation into Japanese territory. Nevertheless, the arguments for the title by the two are not necessarily the same. A number of differences are found in the way that the two states develop their argument. This paper does not examine the differences unless it is necessary to do so. Instead, it undertakes a holistic examination of the arguments that the islands are part of the territory of China and makes a few critiques against these arguments.

In general, the arguments that the islands are part of the territory of China may be classified into the following six categories. The first line of argument is based on historical documents, such as the records of *Sakuhousi*, investiture missions. The second is the assertion that Diaoyutai Senkaku Islands and other islands were included in "The Island of Formosa together with all Islands appertaining or belonging to the said Island of Formosa" in Article 2 of the Treaty of Shimonoseki. The third is the following assertions: China discovered the islands since the names of Diaoyutai and other islands are found in the historical documents of the Ming Dynasty; and China occupied the island of *terra nullius* before Japan since an imperial edict of Empress Dowager Cixi of 1893 (the 19th year of Emperor Guangxu) serves as evidence for China's intention of extending its sovereignty to Diaoyutai and other islands or an act of its sovereign power over the islands. The fourth line of argument is based on the geographical proximity as well as the geological integrity between Taiwan and Diaoyutai and other islands. The fifth line of argument points out the use of Diaoyutai and other islands by Taiwanese fishermen and the status of their use. The sixth argument considers Diaoyutai and other islands as part of the continental shelf.

Of the above reasons and arguments, the fourth through the sixth lines hardly pose any issues under international law. It is clear from state practices and international precedents that geographical proximity and geological integrity do not determine the attribution of sovereignty. Furthermore, the argument that the islands are part of the continental shelf ignores the definition of continental shelf under international law. With regard to the use of the islands and their territorial waters by Taiwanese fishermen, even Taiwanese scholars of international law have found that these activities took place after Japan's rule of Taiwan. The use of the islands by Taiwanese fishermen and others during Japan's rule of

Taiwan was done in compliance with Japan's domestic laws at the time. Under the Nationality Act, such activities constituted activities of Japanese nationals. In addition, with respect to the use of the islands by Taiwanese fishermen after WWII, even if the issue of its unlawfulness is left aside, this act was no more than a simple act of a private citizen and does not give Taiwan any legal effect to claim sovereignty under international law. With regard to the work of dismantling submerged ships that Taiwanese laborers and others conducted on the Senkaku Islands (including some activities to construct facilities on the islands), after the U.S. Civil Administration began to regulate these activities, the work was continued through procedure to obtain a visa from the U.S. High Commissioner to enter the islands.

As regards the third line of argument concerning the imperial edict of Empress Dowager Cixi, there are not only some questions over its credibility, such as its seal is not an official one, but also it reveals the fact that there exists no evidence demonstrating China's effective control other than the edict. Even if the imperial edict were authentic, opinions are divided among Taiwanese scholars of international law as to whether or not the edict should be regarded as evidence of effective control. It is believed that Empress Dowager issued this imperial edict in order to award three islands, including Diaoyutai, to Sheng Xuanhuai for the collection of medicinal herbs. However, Taiwanese newspapers and other sources have revealed that Sheng Xuanhuai himself never went to Diaoyutai or the other islands. On the other hand, Japan had already exercised sovereignty over the Senkaku Islands eight years prior to the imperial edict of Empress Dowager Cixi (in 1885, the Governor of Okinawa Prefecture dispatched Izumomaru to conduct a survey of the islands after obtaining the consent of the Interior and Foreign Ministers and receiving the government's order regarding the islands survey). Therefore, the edict does not weaken Japan's territorial claims, regardless of whether or not it is credible.

With respect to Article 2 of the Treaty of Shimonoseki, the issue that was on the table at the peace conference was whether or not the islands off the coast of Fujian Province were included in the islands appertaining to Taiwan. The Qing Dynasty requested that the treaty specify the names of the islands covered, fearing that Japan would assert even the islands close to Fujian Province included in the islands appertaining to Taiwan. However, Japan explained that the Qing Dynasty's concerns would never happen so long as the Pescadores Islands were lying between Taiwan and Fujian Province, and the Qing delegates gave their consent. As this background indicates, it was the islands off the coast of Fujian Province that the Qing Dynasty expressed its concerns over the scope of the islands appertaining to Taiwan.

While the Treaty of Shimonoseki identifies the latitudes and longitudes of the Pescadores Islands, which were considerably closer to Taiwan than the Senkaku Islands, the treaty neither names the Senkaku Islands nor refers to their latitudes and longitudes. The Senkaku Islands obviously were not raised at all in the discussions at the peace conference. It is quite natural that the state parties did not question about the Senkaku Islands as well as the three islands of Mianhua, Huaping, and Pengjia during the conference.

That is to say, in Volume 1 "Boundaries" of *Zhuluo xianzhi* [Zhuluo County Gazetteer], compiled by Zhou Zhongxuan in 1717, *Da Jilong Shan* (current Keelung Port) is indicated as the northern boundary of Taiwan Province (northern Taiwan). In "Boundaries" in Volume 1 "Border Gazetteer" of *Danshui tingzhi* [Danshui Sub-prefecture Gazetteer] compiled by Chen Peigui in 1871, *Da Jilong Shan* is similarly indicated as the endpoint of the far north road. Additionally, *Keelung shizhi* [Keelung City Gazetteer] edited by the Keelung City Historical Document Commission in 1954 states that the three islands of Mianhua, Huaping, and Pengjia were incorporated into the administrative coverage of Taiwan Province in 1905 (the 31st year of Emperor Guangxu) and that in the same year the Japanese government rearranged the jurisdictional divisions. *Taiwan sheng difang zizhi zhiyao* "The Outline of the Local Self-Government in Taiwan Province" published in 1965 also reaffirms that Pengjia and other islets were incorporated into the

coverage of Taiwan Province during Japan's rule of Taiwan. By extension, as would be expected, various sources, including the two official documents above and *Zhonghua Minguo Nianjian* "The Yearbook of the Republic of China" published in 1968, explain that the northern limit or the extreme north of Taiwan Province after the end of WWII is not the Senkaku Islands but Pengjia Island, which is approximately 150 km closer to Taiwan.

As observed from the above, at the end of the First Sino-Japanese War, the northern limit of Taiwan Province for administrative purposes was Keelung Mountain. Neither the Senkaku Islands nor even the three islands such as Pengjia were treated as islands appertaining to Taiwan Province. It was to be expected that the Senkaku Islands were not disputed during the Sino-Japanese peace conference.

Lastly, there are the archives, such as the records of investiture missions. The ones cited as supporting China's territorial claims include: *Shi Liuqiu lu* [Records of the Imperial Missions to Ryukyu] by Chen Kan (1534); *Riben yijian* [A Mirror of Japan] by Zheng Shungong (1556); *Chong bian shi Liuqiu lu* [Recompilation of Records of the Imperial Mission to Ryukyu] by Guo Rulin (1561); *Chou hai tu bian* "An Illustrated Compendium on Maritime Security" by Zheng Ruozeng (1562); *Shi Liuliu zalu* [Miscellaneous Records of the Imperial Mission to Ryukyu] by Wang Ji (1682); *Zhongshan Chuanxin lu* [Records of Messages from Chong-shan] by Xu Baoguang (1719); *Liu Qiu Guo Zhi Lue* [Annals of Ryukyu] by Zhou Huang (1756); and *Sangoku Tsuran Zusetsu* [Illustrated Outline of the Three Countries] by Shihei Hayashi (1785).

With regard to the records of Chen Kan, the controversial passage is that "In the evening of the eleventh day, Gumi Shan [Gumi Mountain, or Kume Island] came into view. The island belongs to Ryukyu." Similarly, it is also disputed the passage in Guo Rulin that "Chi Yu is the island that marks the boundary of the Ryukyu region." According to China's explanation, Chen Kan's records explain indirectly that islands lying closer to China from Kume Island were part of the territory of China, and furthermore, it can be construed from Guo Rulin's records that Chi Yu (Sekibi-sho Island/Taisho Island) is an island dividing the border of China and Ryukyu. Similarly, by interpreting "boundary between the inner and outer" in the records of Wang Ji and others to mean the boundary between China and other countries, China explains that the border between China and Ryukyu was located in the waters between Chi Yu and Kume Island.

This paper has already discussed why the above contentions are contrary to the facts. The three islands of Mianhua, Huaping, and Pengjia were incorporated as islands appertaining to Taiwan for administrative purposes after 1905. Thus, it cannot be asserted that the China-Ryukyu border jumped over these islands and was located in the waters between Chi Yu and Kume Island. In order to make this assertion or interpretation plausible, one needs to assume that Taiwan together with these three islands was already part of Chinese territory at the time of Chen Kan and Wang Ji in 16th century. The first time that Taiwan was included in Chinese territory was, however, in the 22nd year of Kangxi, 1683. This is evident in the official documents of the Qing Dynasty, including *Taiwan fu zhi* [Gazetteer of Taiwan Prefecture] compiled by Gao Gongqian in 1696 and *Xu xiu Taiwan fu zhi* [Continued Gazetteer of Taiwan Prefecture] compiled by Yu Wenyi in 1765 (however, *Taiwan fu zhi* writes that Taiwan was included in Chinese territory in the 20th year of Kangxi, 1681, stating that "Taiwan was included in Chinese territory for the first time in the 20th year of Kangxi").

Accordingly, it is a complete mistake to interpret historical documents earlier than Wang Ji records, in the manner described above. Even historical documents of later times cannot be interpreted as such, as the three islands, including Pengjia Island, were not islands appertaining to Taiwan. The claim that the Diaoyutai and other islands were painted in the same color as China in *Sangoku Tsuran Zusetsu* as well

as the interpretation that the Diaoyutai Islands were islands appertaining to Taiwan on the basis of the passage in *Riben yijian* “Diaoyu Yu is a small island belonging to Taiwan” ignore the facts. The assertion that Diaoyutai and other islands were considered to be part of the territory of China because the islands can be found in the “Map of the Coast of Fujian Province” in *Chou Hai Tu Bian* ignores or overlooks the fact that Volume 1-17 “Fujian Boundary” in *Chou Hai Tu Bian* does not depict Xiao Liuqiu (Taiwan), Diaoyutai, and other islands (Pengjia Island-Pescadores Islands was depicted).

From all the historical documents cited in order to historically verify Chinese sovereignty, it fails to prove China’s intention of extending sovereignty over the Senkaku Islands. In all of the citations concerned, China no more than attempts to verify its intention of extending sovereignty by its interpretation of the text of historical documents or the colors used in maps, while ignoring the facts, and furthermore, intermixing speculations and subjective views.

V. Conclusion

Many of the historical documents that refer to the Senkaku Islands are Chinese documents. Historical documents from Japan and Ryukyu are generally limited to the aforementioned *Sangoku Tsuran Zushi* by Shihei Hayashi, along with *Chuzan Seikan* [Mirror of Chuzan] by Choshu Haneji (Shoken Sho) (1650) and “*Shinan Kogi* [Guide to Navigation] by Chobun Nago (Junsoku Tei) (1708). *Chuzan Seikan* no more than reproduced the content of Chen Kan’s records and it has also been revealed that Shihei Hayashi’s *Sangoku Tsuran Zushi* relies on *Zhongshan Chuanxin lu* by Xu Baoguang. Therefore, it is sometimes alleged from these facts that the Chinese were the first to discover the Senkaku Islands and that the Ryukyu people had no other way of knowing the existence of the Senkaku Islands other than through Chinese people or Chinese literatures.

This reasoning, however, merely compares the number of sources and jumps to conclusions. As is revealed also in Chen Kan’s records, it was the Ryukyu people who were deeply familiar with the navigation route around the Senkaku Islands. Chinese people, who were unfamiliar with the navigation route, could make their way to the Ryukyu only with the pilot of the Ryukyu people aboard Chinese investiture ships. Ryukyu and China had an investiture and tribute relationship for 496 years from 1372 to 1868. Despite this length of time, Chinese investiture ships sailed to Ryukyu no more than 23 times. Although this equates to once every 21.5 years by simple calculation, in reality, intervals of 30 or 40 years were not rare. In particular, no ships sailed over a 55-year interval between Chen Kan and his predecessor, envoy Dong Min.

In contrast, the Ryukyu Kingdom dispatched tribute ships to Fuzhou every year from 1372 to 1523, except for a 32-year interval in between. After the once-a-year tribute system was abolished in 1523, tribute ships did not sail to China every year but a considerable number of ships were still dispatched. Ryukyu dispatched to Fuzhou not only tribute ships but also ships for various other purposes, including appreciation ships, reception ships, and escort ships. On their return to Ryukyu, the ships took routes that passed the Senkaku Islands. Their trips total 240, counting only the trips for which records still exist. In addition, Ryukyu ships are believed to have taken the routes along the Senkaku Islands on their return trips from trade activities with southern areas. If these trips are added, the number of trips exceeds 330. Moreover, trade between Ryukyu and the southern areas had begun in around the early 14th century, prior to the commencement of the investiture relationship with China.

The navigation routes along the Senkaku Islands can be heavily affected depending on the seasonal winds. Even if the literature does not record whether or not the navigation route along the Senkaku Islands was taken, the dates on which a Ryukyu ship left and entered a port are recorded. Furthermore,

records indicate that these dates fall around the same season. This is the same season that investiture ships left the port in Fuzhou. From Ryukyu's perspective, the navigation route along the Senkaku Islands was the shortest return route from trade activities with southern areas; while for investiture ships, it was an indirect route between Ryukyu and Fuzhou. It is well documented in *Omorosaushi* (compilation of Ryukuan songs from 1531 to 1623) and other sources that Ryukyu *Kangoufu* ships (trading ships certified by the Ming government) utilized the seasonal wind of the south wind to return to Ryukyu upon completing their trade activities with southern areas. Chen Kan's records do not state that Chen Kan himself discovered or named the Senkaku Islands. It can neither be deemed that Chen Kan knew their names from earlier literatures. There is no trace of such literature being cited in Chen Kan's records, nor is there indication that he gave names to the islands.

It seems that Chen Kan learned of the names of the Senkaku Islands aboard an investiture ship. It is also presumed that Min people (people from Fuzhou) were not aware of their names since they were unfamiliar with the routes passing the Senkaku Islands, as described in Chen Kan's records. In reality, those who took the route to the Senkaku Islands were not Min people but were Ryukyu people who were aboard Chen Kan's investiture ship. As these islands were the navigation marks of the route, it is possible to think that Ryukyu people had given names to the islands as a means of distinguishing the marks. It may be more natural and accurate for Chen Kan to ask Ryukyu people aboard the ship the names of the islands.

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