

The Territorial Dispute over the Senkaku/Diaoyu-Islands – Causes and Historical Justifications of the Claims by Japan and China

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Japan and the People's Republic of China are the dominant political and economic forces in the Asia Pacific region. For that reason, their complex diplomatic interplay has had a determining influence on the region's political landscape in East Asia for over a century. Due to their geographic and cultural proximity, the relationship between the two countries has a long history. However, it has hardly ever witnessed a period without political tensions. Diplomatic conflicts dominated the bilateral relationship for more than hundred years and still do so up to the present day. Especially after the normalization of diplomatic relations in 1972, bilateral relations have frequently been disrupted by political tensions.¹ These stem from unresolved diplomatic issues which are closely related to historical memory inconsistencies, namely the textbook debate, the visits to Yasukuni Shrine 靖國神社 by Japanese leaders and the territorial controversy over the Senkaku/Diaoyu 釣魚島 Islands.

Since there has never been any attempt to pursue historical reconciliation in both countries, these conflicts erupt time and again. Moreover, they remain highly emotional matters for the population of the two nations.² This is especially true for the bilateral conflict over the Senkaku/Diaoyu-Islands, which was extensively covered by the media in autumn 2012.³ Having started by the end of the 1960s, the territorial conflict over the

1 Cf. Dent 2008, 117; Jansen 1975, 5, 447; Zachmann 2008, 1.

2 Cf. Beck 2010a, 153f; He Yinan 2009, 216f; Mōri Kazuko 2006, 154; Kuhn 1999, 91ff.

3 The group of islets is called Diaoyudǎo 釣魚島 in China and Senkaku Shotō 尖閣諸島 or Senkaku Rettō 尖閣列島 in Japan. It consists of five islets and three rocks. All islands combined only have an area of 6,3 km. The islands are uninhabited and located in the East China Sea, more precisely 125 nautical miles northeast of Taiwan, 200 nautical miles east of the coast of the People's Republic of China and 185 nautical miles southeast of Okinawa. They are geographically located between 25° and 26° northern latitude and 123° and 124° eastern longitude. For reasons of simplicity and readability, this paper will from now on refer to the island chain as "Senkaku Islands" without wishing to take sides one way or the other (cf. Shaw, Hanyi 1999, 10).

island chain is also the most long-lasting among the reoccurring diplomatic quarrels in Japan-China relations since the normalization of the two countries.

Most people argue that economic or strategic motives are the crucial factors why both countries have not abandoned their territorial claims until the present day.⁴ To support their claims on the island chain, both conflicting parties bring forward various arguments. However, several authors listing and discussing these arguments emphasize either the Chinese or Japanese claim of sovereignty on the islands.⁵

This paper will critically analyze the most common historical and legal justifications of both nations, which are based on various historical sources and treaties. These documents will be examined in detail with respect to their limitations for possible sovereignty claims over the Senkaku/Diaoyu Islands. Finally, it will argue that the reason for the continued existence of the dispute is not only for the economic or the strategic value of the islands, but rather the symbolic value they possess for both China and Japan.

1 Development of the Conflict

The dispute over the Senkaku Islands is regarded as one of the most complicated territorial conflicts of the world today.⁶ This chapter will explain its history and give an overview of the relevant events during the course of the conflict.

In 1968, the UN Economic Commission for Asia and the Far East (ECAFE) suspected oil reserves to be located in the waters around the Senkaku Islands.⁷ Subsequently, experts from Japan, Taiwan and Korea conducted investigations in the area two and three years later. All teams independently confirmed rich natural resources in the area:⁸

The shallow sea floor between Japan and Taiwan might contain one of the most prolific oil and gas reservoirs in the world, possibly comparing favourably with the Persian Gulf area. The survey had been undertaken [...] with the participation of geologists and geophysicists from China (Taiwan), Japan, and the Republic of Korea. [...] The results of that survey had already aroused considerable interest and it was understood that further investigations were being planned by individual enterprises.⁹

4 Cf. Suganuma Unryū 2000, 128ff; Taylor 1996, 181; Tōgō Kazuhiko 2012, 121.

5 Cf. Moteki 2010, 3-39; Hsü Dau-Lin 1980; Macias 2012, 24-49.

6 Cf. Suganuma Unryū 2000, 11.

7 Cf. Mōri Kazuko 2006, 140; Tōgō Kazuhiko 2012, 121f.

8 Cf. Beck 2010, 56; Hwang 1976, 51f; Suganuma Unryū 2000, 128ff.

9 Cf. Suganuma Unryū 2000, 129.

They identified an area of 200.000 km² northeast of Taiwan in which most of the resources were to be found. Of course, the Senkaku Islands are located in this area as well.¹⁰ After the possibility of the existence of these oil reserves became known, first Taiwan and then mainland China raised claims of sovereignty over the island group. Furthermore, all three conflict parties employed different companies to exploit the oil resources; however, due to erupting anti-Japanese demonstrations in Hong Kong and Taiwan the enterprises were terminated again.

At the same time, overseas Chinese in Japan, Taiwan¹¹ and the USA founded organizations to defend the Chinese claim on the Senkaku-Islands.¹² Since then there have repeatedly been clashes between the Japanese Coast Guard and activists of such organizations trying to land on the islands to plant a flag there or to enter the waters around them, especially between 2006 and 2008, and again in 2012.¹³

Though most of these activists were members of the Chinese community, there were several instances when groups of Japanese people landed on the islands as well. In 1972 the politically right-winged (Jap.) *Nihon Seimensha* 日本青年社 (“Japan Youth Group”) constructed a light-house on the island of Ūtsurijima 釣魚島, which led to demonstrations of overseas Chinese emphasizing their claims on the islands.

Ten years later with the ongoing textbook debates between Japan and China, the attention of the Chinese community was again drawn to this light-house and sparked mass demonstrations around the globe as well as in mainland China:¹⁴

That is what happened with the Diaoyu Islands dispute; the relatively small issue of the light-house in the Diaoyu Islands between Japan and China quickly spread and became a titanic anti-Japanese movement in the Asian region.¹⁵

10 Cf. Suganuma Unryū 2000, 130.

11 Besides Japan and China, Taiwan also claimed sovereignty over the islands at the beginning of the conflict. Among the activists there were many people from Taiwan, who were either supporting the Taiwanese or Chinese claim on the island group. This met with enthusiasm in China and triggered criticism from Taiwan. However, Taiwan's territorial claim will not be discussed in detail in this paper, since it virtually lost its influence with the diplomatic recognition of the People's Republic of China in the 1970s (cf. Hwang 1976, 55).

12 Cf. Beck 2010, 57ff; Hwang 1976, 51f; Suganuma Unryū 2000, 131ff, 136.

13 Cf. Beck 2010, 61f, 77, 168.

14 Cf. Beck 2010, 61; Beck 2010a, 153; Takahara Akio 2012, 186f.

15 Cf. Suganuma Unryū 2000, 141.

Demonstrations in Hong Kong and Taiwan continued for months, and there were serious clashes between Chinese activists and the Japanese Navy in the waters around the Senkaku Islands.

During these confrontations, a Taiwanese activist drowned near the islands.¹⁶ An emerging debate in Japan in 1990, whether the light-house should be officially recognized by the Japanese government, led again to demonstrations in Taiwan and mainland China. In addition, Chinese activists planted a flag of the People's Republic on the islands. It was removed by Japan within a few days, and from October that year boats and helicopters from the Japan Coast Guard prevented further activists from approaching the islands. In response to the Japanese debate about recognizing the light-house, the Chinese government passed the "Law on the Territorial Sea and the Contiguous Zone"¹⁷ in 1992, extending the country's territorial waters in order to encompass the Senkaku Islands. The Japanese government reacted with a public statement declaring the Chinese claim on the islands as illegal.¹⁸

Between 1991 and 1995 there had been about 50 cases of unidentified boats firing in the direction of Japanese fishing boats near the islands.¹⁹ In 1996, the *Nihon Seinensha* that had constructed the light-house in the seventies decided to repair it. Once again, this was followed by mass protests in Taiwan und Hong Kong, and the government of mainland China openly criticized the "revival of the Japanese militarism". One year later, Ishihara Shintarō 石原慎太郎 (*1932), the current governor of Tōkyō, and a group of right-winged politicians also landed on the islands, an action which the Japanese government publicly condemned.

Even after the beginning of the 21st century and during the Chinese government's pursuit of "New Thinking"²⁰ when dealing with Japan, mass protests occurred in mainland China and Taiwan in October 2002, when the Japanese government decided to renew the contract of lease for the

16 Cf. Suganuma Unryū 2000, 11.

17 Cf. National legislation, United Nations 1992.

18 Cf. Beck 2010, 61ff; Suganuma Unryū 2000, 142f.

19 Cf. Beck 2010, 66; He Yinan 2009, 277; Suganuma Unryū 2000, 11, 139, 150.

20 During the first five years of the 21st century there was a tendency among a group of Chinese high-ranking politicians to deliberately shelve or downplay historical issues between Japan and China during bilateral dialogues. The most prominent examples are for instance Zhu Rongji 朱鎔基 (*1928), the president of the Chinese State Council from 1998 to 2003, or Hu Jintao 胡錦濤 (*1942). There were also a couple of Chinese intellectuals who supported this approach (cf. He Yinan 2009, 281; Lam Peng Er 2006, 16, 22, 30; 169, 206; Shambough 2005, 4f).

Senkaku Islands for one year.²¹ In 2003, the government of Japan approved another renewal of the contract for 20 years.

In response, a group of Chinese activists burned a Japanese flag in the waters close to the Senkaku Islands. Additionally, they threw flowers into the sea to commemorate the Taiwanese activist who had drowned near the islands in the 1980s. In 2004, the Japanese government made a public announcement that declared the light-house on Ūtsurijima as state property. At the same time, the government proclaimed its plan to begin the exploitation of oil around the islands as soon as possible.

The same year Chinese football fans at the Asian Soccer Cup unrolled a banner postulating the return of the islands to China. Subsequently, there were violent clashes between Chinese and Japanese fans in the stadium. Chinese activists who landed on the islands that same year were arrested by the Japan Coast Guard. The arrests were followed by mass protests in China, during which 10,000 people gathered in front of the Japanese embassy in Beijing. The activists were given permission to go back to their home country a few days later without further consequences.²² For that reason, the governments of both countries started negotiations in order to settle the territorial issue in 2004. As a result of these negotiations, Japan and China signed an agreement regarding cooperation over the exploitation of resources in the East China Sea in July 2008.

According to this agreement, joint development of resources should ensure that the East China Sea will become a “sea of peace, cooperation and friendship” (Jap. *Heiwa, kyōryōku, yūkō no umi* 平和・協力・友好の海).²³ However, the issue of the territorial sovereignty of the Senkaku Islands remained untouched by the agreement.²⁴

Moreover, in December 2008 a Taiwanese fishing boat was chased by the Japan Coast Guard in the waters around the Senkaku Islands. Eventually, this led to a collision and the sinking of the vessel. The fishermen were rescued and questioned in Okinawa, but sent back to Taiwan after they explained they did not have any political intentions for entering the area.

According to the annual diplomatic bluebook of the Japanese foreign ministry from 2009, this incident was discussed between the Japanese and Chinese Prime Ministers, Asō Tarō 麻生太郎 (*1940) and Wen Jiabao 温家

21 Cf. Shambough 2005, 45.

22 Cf. Beck 2010, 69f, 77, 168.

23 Cf. Takahara Akio 2012, 96f.

24 Cf. Beck 2010, 77f.

寶 (*1942), in December that year, but it did not attract any attention in the media of both countries and no protests followed.²⁵

In contrast, the last incidents around the islands in 2010²⁶ and 2012²⁷ were extensively covered by the media and led to new waves of protests among the Chinese community, especially in mainland China.

These two events were followed by repeated clashes between the Japan Coast Guard and Chinese activists in the waters around the Senkaku Islands from July to October 2012. Besides, they had triggered waves of mass protests in 57 Chinese cities. These events have shown that there subsists great potential for conflict in the diplomatic relationship between the two countries up to the present day.²⁸

2 Arguments Supporting the Territorial Claims

As mentioned beforehand, China and Japan put forward various historical and legal arguments to support their territorial claims on the Senkaku Islands. This chapter discusses the arguments employed by both conflicting parties to support their claims. Firstly, it will evaluate the historical arguments, which are used by China and Japan in order to strengthen their position in the row over the islands. Secondly, the legal arguments of both countries will be analyzed in detail.

2.1 Historical Arguments

The People's Republic of China puts forward several historical sources in favor of its claim of sovereignty over the island chain.

First and foremost, it lists various documents, among them nautical charts and governmental reports from the Ming (1368–1644) and Qing

25 Cf. Gaikō Seisho, 2009.

26 In September 2010 there was a Chinese fishing trawler that collided with two boats of the Japan Coast Guards near the Senkaku Islands, at least with one of them on purpose. The captain of the ship was arrested by Japan. This raised a series of anti-Japanese protests in China. Being sent back to his home country after a few weeks, he was immediately released, which in turn sparked off Japanese criticism. Though this incident was followed by bilateral negotiations over the status of the island chain, the two parties were unable to find a solution (cf. Beck 2010, 70).

27 Eventually, Ishihara Shintarō publicly declared that he wished to purchase the islands in April 2012, and later that year in September, the Japanese government nationalized the island chain (cf. Chen Guan-Xing 2012, 88; Takahara Akio 2012, 96).

28 Cf. Magosaki Ukeru 2012, 86.

Dynasty (1644–1912). The oldest nautical charts from China that show the Senkaku Islands date back to around 1300 A.D., and the island group is depicted in many of such charts between 1300 and 1870. According to Hwang, there even used to be a Japanese atlas published in 1785 containing a map showing China, Japan and the Senkaku Islands and depicting the island chain and the Chinese mainland in the same colour.

Due to governmental reports from the Ming period, it had also frequently been used as location for a short stop of Chinese delegations on their route from the mainland to the Ryūkyū kingdom being China's tributary at that time (cf. also the contribution by Angela Schottenhammer in this volume).²⁹

For that reason, the Ming and Qing government have not only been familiar with the existence and location of the islands; they have also been used by Chinese sailors as a point of orientation during both periods. Additionally, it was very likely that the islands had been used strategically by the Chinese to defend their coast against Japanese pirates they referred to as *wokou* 倭寇.³⁰

Apart from governmental reports and sea charts, China presents an imperial decree from 1883 in support of its claims. This document states that the Senkaku Islands were given to a private person as a gift by the Empress Cixi 慈禧 (1835–1908) that year. Apparently, this man had been a doctor, and the islands were presented to him in return for an effective medicine. According to that decree, the islands would have been inherited by the man's son after his death, and later by his granddaughter in 1947. She is said to live in the United States, but has not voiced any claims on the islands.³¹

However, there are some cases where the authenticity of historical documents put forward by China remains questionable, especially in case of the imperial decree implying the endowment of the island group to the doctor. Apart from that, many of the existing historical sources like nautical charts and governmental reports can be assumed to be authentic and suggest that China was familiar with the islands' existence before Japan. Nevertheless,

29 Cf. Hwang 1976, 13-16; Suganuma Unryū 2000, 42-100.

30 Cf. Hwang 1976, 13f, 15f. The oldest historical testimonies of Chinese-Japanese contacts from the first century B.C. had used the term *woren* 倭人 ("little person") to refer to the Japanese. With the arrival of Japanese pirates before the Chinese coast, the character *wō* 倭 started to be used in a way that it implied the meaning "pirate" as well, and it was combined with *kou* 寇 ("loot") to form the word *wokou* 倭寇 (cf. Oláh 2009, 3).

31 Cf. Hwang 1976, 20f; Suganuma Unryū 2000, 37.

according to international law, the knowledge of a territory is not legally sufficient to claim the ownership of it.³²

According to official statements by the Japanese Ministry of Foreign Affairs (MOFA), the Senkaku Islands have been discovered by a Japanese businessman named Koga Tasujirō 古賀辰四郎 (1856–1918) in 1884. The ministry further emphasizes that the government of Japan conducted a number of surveys of the islands after their discovery. Having realized the islands showed no traces of occupation or habitation, it was decided to include them into Japanese territory by an imperial decree in 1886.

In order to further support this argument for the Japanese claim on the islands, the MOFA points out that this integration of the islands into Japanese territory confirms with international law, according to which states can acquire territory by means of discovery and occupation.³³

Under international law, the acquisition of a territory permits a state to gain territory through its own unilateral acts in the following ways: discovery-occupation, cession, accretion, subjugation (or conquest) and prescription.³⁴

However, taking a look at the content of the decree mentioned above, it turns out to be simply an administrative reform of Okinawa Prefecture in 1886.

The integration of the Senkaku Islands is not touched upon in the document, in fact, the island chain is not mentioned in the decree at all.³⁵ In contrast, Japan decided to include the Senkaku islands into its territory by means of a cabinet resolution passed in January 1895.³⁶ Whereas the decree does not contain anything about the islands, the resolution says that the island group was discovered and found uninhabited. Moreover, it continues with the islands' integration into Okinawa Prefecture taking into account their increasing use of the islands by Japanese fishermen for a few years.

Nonetheless, according to Hwang this cabinet resolution was kept secret and only made public after the Treaty of San Francisco³⁷ was signed in 1952.

Naturally, the resolution's confidentiality raised criticism from the People's Republic of China after laying claims on the Senkaku Islands in the

32 Cf. Beck 2010, 49ff.

33 Cf. Sugauma Unryū 2000, 36f.

34 Cf. Sugauma Unryū 2000, 36f.

35 Cf. Hwang 1976, 29. For the text of the imperial decree see Hwang 1976, 164.

36 For the full text of the secret cabinet resolution see Hwang 1976, 164.

37 This treaty will be discussed against the background of Japan's and China's sovereignty claims in chapter 2.2.2.

1970s, emphasizing China did not have a chance to raise objections the time it was passed.³⁸

It is worth noting that China had not raised any claims on the islands when the resolution was disclosed in 1952. Emphasizing the fact that China began to claim sovereignty over the island group in the 1970s after the discovery of possible oil resources in the area, the MOFA assumes that China did not regard the island group as Chinese territory at the time of the treaty.³⁹ On the other hand, the maintenance of confidentiality for almost half a century makes the Japanese procedure of this cabinet decision appear rather questionable.

Furthermore, it is highly likely that Koga and the MOFA, who had had close ties at the time, had both been familiar with historical reports from China and the possibility of a Chinese claim on the island chain and discussed the matter thoroughly. It is interesting to note in this context that today's official statements of the MOFA emphasize the detailed investigations of the islands after their discovery by Japan in 1884, and especially stress that they were found to be uninhabited and ownerless islands. Naturally, the ministry's awareness of the Chinese historical sources back then is a topic that is not touched upon.⁴⁰

Beyond that, Koga and members of the MOFA had also discussed the issue whether it was appropriate to put up Japanese national emblems on them, and whereas they refrained from doing so, the official responsibility over the islands was given to Koga by means of a contract in 1897.⁴¹

He sent groups of workers on the islands collecting shells, feathers and guano. Moreover, he invested in the island chain in order to make them habitable. In 1909 he had managed to establish a settlement of about 250 Japanese people on the Senkaku Islands. Yet, there is too little fertile farmland and there are hardly any reserves of freshwater on the islands to live upon. For that reason, the people who lived there had to be supplied with all daily necessities by boats from Japan.⁴² Koga died in 1915, and the islands were inherited by his son. By the mid of the 1920s the government of Japan decided to charge him with an annual fee for

38 Cf. Beck 2010, 51; Hwang 1976, 27ff, 31, 164.

39 Cf. Suganuma Unryū 2000, 39.

40 Cf. Beck 2010, 48ff; Suganuma Unryū 2000, IX, 36f, 123.

41 Cf. Beck 2010, 48ff; Suganuma Unryū 2000, IX, 36f, 123.

42 Cf. Beck 2010, 47f; Hwang 1976, 5, 7; Suganuma Unryū 2000, 11, 122.

the use of the islands. No longer willing to pay this annual fee, he finally bought them from the government in 1932 with the intention to continue his father's enterprise on the island group.

However, this attempt failed and he was not able to maintain the settlement and business on the islands. A few years after purchasing the island chain, he ran out of financial resources and oil for the supply ships. Thus, the islands returned back to their original state within a very short period of time.⁴³

2.2 Legal Arguments

Besides presenting various historical sources to underpin its position in the island dispute, China relies on legal arguments as well.

The most frequently mentioned example of them is the treaty of Shimono-seki (Shimonoseki Jōyaku 下関条約) which had marked the end of the first Chinese-Japanese War in 1895. It had been signed on April 17th, and stated among other things, that Korea should become independent from China, and that Chinese reparations should be paid to Japan. In addition, it involved territorial cessions from China to Japan. For instance, the island of Taiwan and the Penghu 澎湖 Islands in the Taiwan Strait were ceded to Japan on the basis of that treaty:

China cedes to Japan in perpetuity and full sovereignty the following territories, together with all fortifications, arsenals, and public property thereon. [...] The island of Formosa, together with all islands appertaining or belonging to the said island of Formosa. [...] The Pescadores Group, that is to say, all islands lying between the 119th and 120th degrees of longitude east of Greenwich and the 23rd and 24th degrees of north latitude [69].⁴⁴

Though there were protests among the Chinese population after the signing of the document, especially because of the cessions of territory, the Qing government did not make any attempt to annulate the treaty.⁴⁵

Today, China declares this unequal treaty as illegal. It further stresses that Japan has deprived Taiwan, the Penghu Islands and the Senkaku Islands from China with this document. But taking a closer look at the text of the treaty, it appears that the island group is not mentioned at all.

Besides, the signing of the treaty happened a few months after the Japanese government's secret cabinet resolution (passed in January 1895) that

43 Cf. Beck 2010, 50; 72f; Hwang 1976, 36f; Suganuma Unryū 2000, 37, 118f.

44 Cf. Atwill 2010, 92; For an English version of the full text of the treaty see Atwill 2010, 91.

45 Cf. Iriye Akira 1980, 90f; Lone 1994, 10; Jansen 1975, 25, 31.

had incorporated the island chain into Japanese territory. For that reason, according to Beck, the Senkaku Islands were not included among the territories ceded to Japan with the treaty of Shimonoseki.⁴⁶ Citing the treaty of Shimonoseki as an argument for territorial claims on the islands, therefore, remains questionable.

Two more examples of the legal arguments employed by the People's Republic are the Cairo Declaration (1943) and the Potsdam Declaration issued in 1945. Being the result of the Conference of Cairo between Winston Churchill (1874–1965), Jiang Kaishek (Jiang Jieshi) 蔣介石 (1887–1975) and Roosevelt (1882–1945), the Cairo Declaration⁴⁷ stated that Japan should be deprived of the rights on all islands in the Pacific it had occupied since the beginning of World War I. According to the declaration, Japan was to return the Chinese territories it had seized. Nonetheless, among these territories, only the island of Taiwan, the Penghu Islands and Manchuria are explicitly mentioned, and nothing is said about the Senkaku Islands in the document. Nevertheless, China assumes that the island chain had been included in the “territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and [...] all other territories which she has taken by violence and greed”⁴⁸, even though the declaration does not specifically refer to them. Besides, it is worth mentioning that Jiang Kaishek was asked by Roosevelt during this conference whether he also wanted Japan to return the Ryūkyū Islands, which had been invaded by Japan in 1874, to the Republic of China. In return, Jiang just proposed the islands could initially be administered by both China and the US and later put under UN administration. However, this suggestion was never put into practice.⁴⁹

In the Potsdam Declaration of July 1945, Great Britain, the USA and the Republic of China postulated Japan's unconditional surrender and the implementation of the contents of the Cairo Declaration. What is more, Japan's territory should be reduced to four main islands and a few smaller island groups. Naturally, the question which small islands exactly were to be incorporated had been on the agenda during the Potsdam Conference. Unfortunately, however, the declaration does not specify any names of smaller islands to be included into Japanese territory.

46 Beck 2010, 50f; Hwang 1976, 89f; Suganuma Unryū 2000, 38.

47 For the text of the declaration of the Cairo Communiqué see: National Diet Library 2003–2004.

48 Cf. National Diet Library 2003–2004.

49 Cf. Hwang 1976, 38f.

Though lacking reference to the Senkaku Islands in the document, the People's Republic of China assumes that the island chain belongs to the territories Japan has stolen together with Taiwan, and should have been returned to China after World War II.⁵⁰

Apart from supporting its territorial claim on the Senkaku Islands with historical documents and the above-mentioned treaties, China further argues that the island chain is located on the country's continental shelf. According to the United Nations Convention on the Law of the Sea (UNCLOS) this shelf

comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines [...] (Art. 76 para. 1 UNCLOS).⁵¹

The above-mentioned "base line" refers to the mean low-water line before the coast of a state. In addition, the exclusive economic zone (EEZ) of coastal states is equally long as their continental shelf. In case of an extremely rugged coastline, states may require a straighter baseline further away from their coasts. Therefore, in such circumstances their shelf can be prolonged to up to 350 nautical miles from the coast. Thus, according to China, the Senkaku Islands are located on an extended "natural prolongation" of Chinese territory. As Japan claims an extended EEZ as well, and the distance from the Chinese to the Japanese coast is less than 400 nautical miles, the shelves as well as exclusive economic zones of both countries overlap. What remains problematic about this argument is that there are no worldwide consistent regulations for the determination of the base line in case of a prolongation of the continental shelf.⁵²

Apart from the Continental Shelf Doctrine that both nations employ for their claims, the Japanese Ministry of Foreign Affairs agrees with China in regard to the assumption that the Senkaku Islands were ceded to Japan under the treaty of Shimonoseki according to official statements in 2010 and 2012.⁵³ As mentioned before, the question of the islands' sovereignty is not touched upon in the text of the document. For that reason, it remains doubtful to employ the treaty as valid argument to support territorial claims on the island chain for any of the two parties.

50 Cf. Beck 2010, 52; Hwang 1976, 41 ff.

51 Cf. Federal Agency for Nature Conservation 2000.

52 Cf. Beck 2010, 40 ff, 71 f; Beck 2010a, 153; Hwang 1976, 134 f.

53 Cf. MOFA 2012.

The MOFA further argues that after belonging to Japan from 1895 to the end of World War II, the Senkaku Islands were put under US-administration with the San Francisco Peace Treaty and later returned to Japan with the “Agreement Between the United States of America and Japan Concerning the Ryūkyū Islands and the Daitō Islands”⁵⁴ in 1971. After a peace conference had been held in San Francisco in September 1951, the San Francisco Peace Treaty came into effect in 1952 and formally put an end to the Second World War in Asia. The most common Japanese names for the treaty are *Nihonkoku to no Heima Jōyaku* 日本国との平和条約 or *Sanfuranshisuko Heima Jōyaku* サンフランシスコ平和条約.⁵⁵

By signing the treaty, Japan agreed to refrain from its territorial claims on Korea, Taiwan and the Penghu Islands. Again, the treaty does not mention the Senkaku Islands. Moreover, neither the government of the People’s Republic nor the Taiwanese government were present at the peace conference to sign the treaty since the Allied Powers could not agree upon which government to invite. Since the document has not been signed by *any* Chinese government, it is subject to criticism from China today. The document does not state to whom the ceded territories shall belong after the end of the administration by the USA. Even today, this remains problematic when considering the unresolved question of the status of Taiwan.⁵⁶

Taking a closer look at the agreement, which came into force in 1972 and which returned the Ryūkyū Islands to Japan in 1971, raises similar questions. Again, the text of the agreement does not contain anything about the Senkaku-Islands. Its article 3, which is often said to support the Japanese claim on the island group simply grants the US – in case of Japanese approval – full administrative rights and sovereignty over the Nansei Islands:⁵⁷

Japan will occur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29° north latitude (including the Ryukyu Islands and the Daito Islands) [...] Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all

54 Cf. University of Tokyo, Institute of Oriental Culture, The World and Japan Database Project, 1971.

55 Cf. Mōri Kazuko 2006, 10f.

56 Cf. Coox 1978, 339ff; Mōri Kazuko 2006, 2ff; Jansen 1975, 460f. For the full text of the peace treaty see: Taiwan Documents Project (TDP), 1999.

57 Cf. Beck 2010, 53; Hwang 1976, 45ff.

and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.⁵⁸

It is striking that the time when the United States plans to renounce their possible administrative rights over the islands is not mentioned in the document.⁵⁹

However, the US had issued a civil administration proclamation extending the area in the East China Sea which ought to be administered by the US in December 1951. The “Civil Administration Proclamation No. 27” came into effect the following year. Thus, the Senkaku Islands fell under US responsibility in 1953.⁶⁰

The territorial Jurisdiction of the United States Civil Administration of the Ryukyu Islands, and the Government of the Ryukyu Islands are redesignated as all of those islands, islets, atolls and rocks and territorial waters within the following geographic boundaries: 28 North Latitude, 124.40’ East Longitude; thence 24 North Latitude, 122 East Longitude; thence 24 North Latitude, 133 East Longitude; thence 27 North Latitude, 131.50’ East Longitude; thence 27 North Latitude, 128.18’ East Longitude; thence 28 North Latitude, 128.18’ East Longitude; thence to the point of origin.⁶¹

Considering the fact that the US carried out military exercises on the islands between 1953 and 1971 a number of times, it is possible that the “Agreement Between the United States of America and Japan Concerning the Ryūkyū Islands and the Daitō Islands” in 1971 was supposed to include the Senkaku Islands as well, though it does not mention them.⁶²

3 Reasons for the Subsistence of the Conflict

As discussed in chapter one, the territorial question of the Senkaku Islands has not been solved by bilateral negotiations or other diplomatic efforts. Furthermore, Chinese and Japanese governments and groups of activists from both countries insist on their claims on the island chain.⁶³ Why have neither governments nor activists abandoned their claims of sovereignty on the islands for almost half a century? Among the reasons frequently listed for the continuing dispute, the islands’ strategic position and suspected oil

58 Cf. Suganuma Unryū 2000, 121.

59 Cf. Beck 2010, 52; Hwang 1976, 38ff; 45ff, 50; Suganuma Unryū 2000, 37f.

60 Cf. Hwang 1976, 49f.

61 Cf. John Michael Purves, The Ryūkyū-Okinawa History and Culture Website (1995–2013).

62 Cf. Beck 2010, 55f; Hwang 1976, 51, 58; Suganuma Unryū 2000, 39, 122.

63 Cf. Beck 2010, 212; Chae-jin Lee 1976, 108f.

reserves are often deemed solely responsible for the subsistence of the conflict. This chapter argues that though these factors cannot be completely neglected, it is indeed the symbolic value of the islands which is a determining factor for the long endurance of the conflict.

3.1 Strategic and Economic Value

First and foremost, it is often argued that the Senkaku Islands are located in a strategically valuable position between Taiwan and Okinawa.⁶⁴ As stated before, they had been used by China for defensive purposes against Japanese pirates by the Ming Dynasty according to Chinese historical sources.⁶⁵ Moreover, the US has held military exercises on the islands between the 1950s and 1970s. However, in an age of nuclear weapons and long-range missiles, the strategic value of the island group remains rather marginal. There are no infrastructure or machinery on the islands that could be used for military purposes. Finally, both China and Japan possess well-developed naval capacities. In case of a militarized conflict the ownership of the islands is highly unlikely to have any impact on its outcome.⁶⁶

As mentioned above, Taiwan and the People's Republic of China raised their claims of sovereignty over the Senkaku Islands the time when the suggestions of oil resources in this area became publicly known. Indeed, it cannot be disregarded that the conflicting parties – Japan, a country scarce in natural resources and strongly dependent on their imports, and China, with its increasing demand for resources because of its economic growth – keep out an eye for resources around the islands.⁶⁷ Nevertheless, Beck emphasizes that the results of the investigations conducted around the islands by the end of the 1960s and the beginning of the 1970s had simply been suggestions which had not been confirmed by further detailed geological investigations or drillings. Furthermore, as mentioned in chapter one, the assumptions of rich resources were not constrained to the waters around the Senkaku Islands, but included an area of 200,000 km² northeast of Taiwan in the East China. Compared to the rest of the East China Sea, the waters around the Senkaku Islands do not contain a bigger amount of resources than any other area in this ocean. Likewise, they are not home to more kinds of fish of commercial value. There are no resources to be found on the islands them-

64 Cf. Suganuma Unryū 2000, 11ff.

65 Cf. Hwang 1976, 13-16. See also Schottenhammer 2013 in this volume.

66 Cf. Beck 2010, 55f; Hwang 1976, 51, 58; Suganuma Unryū 2000, 39, 122.

67 Cf. Dent 2008, 110; Hagström 2005, 64.

selves, merely grass and ferns, guano from seagulls or seaweed. All in all we can say that the waters surrounding the islands only encompass a very small area of the East China Sea, which in its entirety contains rich resources of oil, gas and fish. However, the area around the island group is not endowed with more resources or fish above average.⁶⁸

3.2 Symbolic Value

Leaving aside possible strategic considerations or competition for resources, we will now take a closer look at the symbolic value of the Senkaku Islands.

The historically legitimated right of sovereignty over the islands is emphasized by both conflicting parties, and their symbolic value remains a crucial factor being responsible for the duration of the dispute. According to the People's Republic of China, the island group has been stolen by Japan with the unequal treaty of Shimonseki 1895 and shall now be returned. Regaining control of territories stolen from China during the "century of humiliation" with unequal treaties by Western powers or Japan represents a national objective⁶⁹ for the Chinese government. Furthermore, with nationalism replacing the declining Communist ideology, reacquiring these territories provides an important basis of legitimacy for the Chinese Communist Party.⁷⁰

Decreasing membership and democracy movements gaining more support since the 1980s led to the beginning of a so-called state nationalism in China. He, Lam and others present several examples for that, i.e. the implementation of patriotic educational campaigns in schools or the national anthem being based upon an anti-Japanese song from World War II.⁷¹ Conflicts between Japan and China like the controversy over the islands have often been employed by either government to divert the population's attention away from more pressing domestic issues.⁷²

What is more, the island chain is of equal symbolic importance for Japan as for China. This is because of the assumption that it has been incorporated into Japanese territory by the end of the Meiji 明治 period (1868–1912), at a time when Japan had developed to an internationally recognized power and modern state pursuing hegemony in the region within a few decades. Both Japan and China have several other territorial disputes in the

68 Cf. Beck 2010, 74ff, 83; Suganuma Unryū 2000, 11ff.

69 Cf. He Yinan 2009, 214f; Lam Peng Er 2006, 80.

70 Cf. Beck 2010, 168; Suganuma Unryū 2000, 14.

71 Cf. Beck 2010, 168; He Yinan 2009, 214f; Suganuma Unryū 2000, 14; Lam Peng Er 2006, 80.

72 Cf. Kuhn 1999, 94; Lone 1994, 27; Zachmann 2008, 32f.

region.⁷³ Thus, abandoning their claims on the Senkaku Islands might place both nations in an unfavorable situation in regard of yet another territorial dispute. Since the beginning of China's rapid economic growth in the 1970s and the massive upgrading of its armed forces, the two countries have become economic and strategic rivals. That is why both conflicting parties do their utmost not to show any signs of weakness towards the other and will not abandon their claims of sovereignty on the island group.⁷⁴

Conclusion

In order to support their territorial claims on the Senkaku Islands, both Japan and the People's Republic of China present a variety of legal and historical arguments.

Unfortunately, the question of the islands' sovereignty is not explicitly touched in many legal documents, for instance, they are not mentioned in the treaty of Shimonoseki, the Potsdam and Cairo Declaration or the San Francisco Peace Treaty. That is why there are several cases where both parties have to rely on implicit assumptions whether a treaty may or may not include the island chain.

Similarly, the argument resting on the Continental Shelf Doctrine and an extended EEZ for claims of sovereignty also raises some questions, since there are no exact rules determining the location of the base line in case of a prolonged continental shelf. Besides, the secret cabinet decision incorporating the island group into Japanese territory remains equally doubtful.

Referring to the historical arguments presented by both conflicting parties, it remains questionable whether nautical charts, governmental reports or other testimonies of historical use of the islands are to be treated as valid support of sovereignty claims, not to mention the question of authenticity of some documents. It is worth noting that – assuming the historical arguments employed by both conflicting parties are accurate – the islands had had two private owners (since 1883 and 1897) for more than half a century and were used independently in one way or another without any dispute regarding their sovereignty.

73 For China's and Japan's other territorial disputes see for example: Chung Chien-peng 2004, Nakazawa Takayuki 2005 or Tōgō Kazuhiko 2012.

74 Cf. Beck 2010, 174, 177; Dent 2008, 110; Drysdale 2000, 17; Hagström 2005, 64; Mōri Kazuko 2006, ii.

The causes of the dispute are manifold and stem from a combination of “an intricate tapestry of economic interests, geopolitical considerations [...] and historical rights.”⁷⁵ Governments and activists from both countries cannot abandon their claims on the island group because of their symbolic value. As far as China is concerned, regaining the Senkaku Islands constitutes a national objective and an important source of legitimation for the government. Since Japan has added the islands to the nation’s territory in the Meiji era during its pursuit of rapid modernization and regional hegemony, the symbolic connotation of the islands is equally important.

To conclude, one can say that the controversy over the Senkaku Islands in the East China Sea is one of the most enduring unresolved diplomatic conflicts based on historical differences in Japan-China relations.

Since the conflict first erupted it has been put aside by both governments on numerous occasions. In order to prevent the issue from becoming an impediment for diplomatic treaties or commercial agreements between China and Japan it was deliberately shelved,⁷⁶ which is why it has not been resolved through diplomatic channels. No more has increasing mutual economic interdependence between the two parties led to a pragmatic settlement of the problem.⁷⁷ For that reason, a quick and straightforward solution of the Senkaku issue is not to be expected.⁷⁸ On the contrary, despite the absence of a militarized conflict during the whole time of the dispute, clashes around the Senkaku Islands are quite likely to reoccur in the near future.⁷⁹

75 Cf. Sugauma Unryū 2000, 11.

76 At the beginning of the 1970s, for instance, it was first set aside because of the necessity to form an alliance against the Eastern block during the late years of the Cold War. For that reason, neither the Joint Communiqué for the normalisation of bilateral relations in 1972 nor the “Treaty of Peace and Friendship between Japan and the People’s Republic of China” (which is called *Nihonkoku to Chūkajinminkyōwakoku to no aida no Hei'yūkō Jōyaku* 日本国と中華人民共和国との間の平和友好条約 or *Zhonghuarenmingongheguo he Ribenguo heping youhaotiaoyue* 中人民共和國和日本國和平友好條約 in Chinese) signed in 1978 contains anything about the Senkaku dispute. The same applies for the governmental trade agreements signed in 1974, 1975 and 1978 (cf. Chae-jin Lee 1976, 191ff; He Yinan 2009, 194; Lam Peng Er 2006, 26; Sugauma Unryū 2000, 136ff; Takahara Akio 2012, 41-64).

77 Cf. Lam Peng Er 2006, 3ff, 10.

78 Cf. Emmott 2009, 218; He Yinan 2009, 274; Lam Peng Er 2006, 3ff, 10, 15; Söderberg 2002, 148; Takahara Akio 2012, 96.

79 Cf. Lam Peng Er 2002, 15.

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