THE SENKAKU/DIAOYU ISLANDS TERRITORIAL DISPUTE BETWEEN JAPAN AND CHINA: BETWEEN THE MATERIALIZATION OF THE "CHINA THREAT" AND JAPAN "REVERSING THE OUTCOME OF WORLD WAR II"?

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Abstract:

The territorial dispute between Japan and China over the sovereignty of the Senkaku/Diaoyu Islands is framed by economic interests, domestic circumstances, national identity issues, requirements of international law and historical grievances. The article provides an analysis of these issues which are indicative of the bilateral relationship in general. The analysis of the 1972-2010 period traces the reasons for the erosion of the implicit agreement in 1972 and 1978 between the two countries to shelve the territorial dispute, using Constructivist as well as Realist approaches. The second part contains a case study of the 2010 and the 2012/13 Senkaku incidents, the latter and most serious one started by Ishihara Shintaro, the right-wing Governor of Tokyo, when he declared in April 2012 his intention to have his local government buy some of the contested islands from its private owner which prompted the national government of Prime Minister Noda to buy them instead. The ensuing Chinese reaction has led to a crisis in the bilateral relationship which has political, military and economic implications of considerable importance for the future of Japan and China but also for the stability of the whole East Asian region.

Keywords: Japanese-Chinese relations; Japanese-Chinese economic relations; Senkaku/Diaoyu islands; Law of the Sea (UNCLOS); territorial conflicts; East China Sea.

Resumen:

La disputa territorial entre Japón y China sobre la soberanía de las Islas Senkaku/Diaoyu está muy influida por una serie de intereses económicos, circunstancias domésticas, cuestiones de identidad, exigencias de la legislación internacional y agravios históricos. Este artículo proporciona un análisis sobre estas cuestiones que también resultan a su vez indicativas del estado de las relaciones bilaterales en general. El análisis del período 1972-2010 indaga en las razones de la erosión de los acuerdos de 1972 y 1978 que ambos países acordaron para poner de lado la disputa territorial, usando para ello perspectivas tanto constructivistas como realistas. La segunda parte contiene un estudio de caso de los incidentes de las Senkaku en el 2010 y 2012/13, el último de los cuales fue iniciado por Shintaro Ishihara, el marcadamente conservador gobernador de Tokio, cuando manifestó en abril del 2012 la intención de su administración local de comprar algunas de las islas en disputa a sus propietarios privados, lo cual a su vez obligó al gobierno central del primer ministro Noda a adelantarse y comprarlas en su lugar. La respuesta ulterior por parte de China llevó a una crisis en las relaciones bilaterales de consecuencias políticas, militares y económicas de considerable importancia tanto para el futuro de las relaciones entre China y Japón como para la estabilidad de toda la región de Asia Oriental.

Palabras clave: *Relaciones Japón-China, relaciones económicas sino-japonesas, islas Senkaku/Diaoyu, Convención sobre el Derecho del Mar (UNCLOS), conflictos territoriales, Mar de la China Oriental.*

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1. Introduction

The Senkaku Islands (about 6 square kilometers), known to the Chinese as Diaoyu dao, consist of five uninhabited islets and three barren rocks, located approximately 170 km southwest of Okinawa, the same distance from the northern tip of Taiwan, and 380 km from Wenzhou on the Chinese mainland.[2] The disputes between Japan and China over the sovereignty of these islands and the closely linked issue of the Exclusive Economic Zone (EEZ) border demarcation in the East China Sea are framed by security concerns (territorial integrity; maritime defence space, Japan-US alliance), economic interests (oil, gas, fishing, seabed resources), international law requirements, domestic circumstances (political instability, the rise of non-governmental actors), national identity issues and historical grievances. The 2012 crisis which erupted over the Japanese central government`s purchase of some of the islands of the Senkaku Islands group in September 2012 from their private owner, has turned out even more severe than the previous one in 2010 when the Japanese authorities arrested the Chinese captain of a fishing vessel in one of the island`s territorial waters after two collisions with Japanese Coast Guard vessels. These recurring confrontations have grievous implications not only for Japanese-Chinese relations, but also for regional security and economic welfare. The similarly not-yet-demarcated EEZ border between China and the Republic of Korea has led to even worse clashes between the Korean Coast Guard and Chinese fishing vessels, claiming lives and causing injuries on both sides.[3] The Japanese-Chinese confrontations have arguably also led to a worsening of Japan`s other territorial disputes: with Korea over the Korea-held Dokto Islands (known to the Japanese as Takeshima), or the Russian-held Southern Kuriles islands (referred to by Japan as the `Northern Territories`). The territorial and border demarcation disputes in the East China Sea also have implications for similar conflicts between China and several countries around the South China Sea. The US policy towards these conflicts, and its support for its allies against the background of its pivot towards Asia, will heavily influence both the conduct of these regional players and US credibility as an alliance partner. Finally, in view of these confrontations and disputes, countries worldwide may reassess China`s stance towards the use of economic and military power and the country`s reliability as a business partner.

The first part of this article discusses the historical background of the Senkaku dispute, i.e. the history-based arguments advanced by Japan and China to justify their respective claims, and how these arguments are being linked to international law. China approaches the historical background very differently from Japan, and argues today that Japan`s claim ultimately aims at reversing the outcome of the World War II. The analysis of the history of the Senkaku Islands is also linked by China to the wider historical dispute about Japan`s past aggression against China.

In the second part, the author looks at the unofficial understanding in 1972, and reconfirmed in 1978, between Japan and China (negotiations for the normalization of diplomatic relations and the Treaty of Peace and Friendship, respectively) to shelve the Senkaku territorial dispute. The author then analyses the domestic and international circumstances which led to the erosion and finally demise of this unofficial consensus which had helped to manage the dispute until about the middle of the 1990s. The author concludes that the leadership of both countries did not do enough to protect the 1972/1978 consensus,

[2] For the sake of simplicity, the name `Senkaku Islands` is normally used in this article.
[3] Roehrig, Terence: "South Korea-China Maritime Disputes: toward a Solution", *East Asia Forum* (27 November 2012), at http://www.eastasiaforum.org/2012/11/27/south-korea-china-maritime-disputes-toward-a-solution/.

and instead took measures which, in Japan`s case, amounted to strengthening the Japanese sovereignty claim, or in the case of China, to diminishing Japan`s sovereignty claim, which finally led to the major crises of 2010 and 2012.

The analysis of the two crises shows the escalation of China`s political and economic retributions, which have undermined Japan`s official stance that there is no territorial dispute to be discussed and that Japan is in full control of the islands. China`s regularized law enforcement counter-measures (i.e. ship and airplane patrols by its coast guard and fishery agencies) since September 2012 have now led to the involvement of the military on both sides and heightened the risk of accidental clashes. Given the domestic and international dynamics, as well as the entrenched positions on both sides, the conflict over the sovereignty of the Senkaku Islands is not likely to go away very soon. The best one can hope for is management of the dispute and the prevention of armed clashes between the two sides so that the regional and global implications can be minimized.

2. Historical Background

2.1 History-Based versus Modern International Law-Based Claims

Japan bases its sovereignty claim on the fact that it incorporated the islands as *terra nullius* (vacant territory) on the 14 January 1895 and has been continuously occupying the islands since then.[4] China, however, argues that it discovered the islands long before and quotes several historical documents going back to the Ming Dynasty (1368-1644) which mention the islands as part of Taiwan, although Taiwan was incorporated by the Qing Dynasty only in 1683.[5] After Japan`s incorporation of the islands in 1895, a private person (Koga Tatsushiro) used some of the islands for commercial purposes for several decades until World War II, also providing habitation for workers who were employed in his fish processing plant. The government of the PRC claimed the islands only in December 1971 after a report in 1969 by an UN-related organization mentioning the possibility of substantial oil and gas reserves around the area (Reedman/Shimazaki 2006, p. 43).[6] This late claim was also very much in response to the Guomindang government in Taiwan (Republic of China, ROC) which had already in February 1971, and again on the 11 June 1971, publicly opposed the return of the Senkaku Islands (called by the ROC `Diaoyutai`) as part of the reversion of Okinawa to Japan in 1972. Applying contemporary rules of international law, the Japanese side has a strong claim to the sovereignty over the islands because of the incorporation as vacant territory, and Japan`s effective control which went unchallenged for such a long time.

China`s argument about `discovery` is not very strong in terms of modern international law because it never exercised effective control and Chinese never inhabited the islands. In a recent publication of the State Ocean Administration, however, it is argued that China not

[4] "Japan-China Relations Surrounding the Situation of the Senkaku Islands In response to China's Airspace Incursion", Gaimusho, *Position Paper* (18 December 2012), at http://www.mofa.go.jp/region/asia-paci/senkaku/position_paper2_en.html; Shaw, Han-yi (1999): *The Diaoyutai/Senkaku Islands dispute: its history and an analysis of the ownership claims of the P.R.C., R.O.C., and Japan*, Baltimore, University of Maryland School of Law, p. 22.

[5] Shaw, *op. cit.*, pp. 42-69.

[6] Reedman, Anthony and Shimzaki Yoshihiko: *A world of Difference. Forty Years of the Coordinating Committee for Geoscience Programmes in East And Southeast Asia, 1966-2006*, Bangkok, CCOP, (September 2006), at http://www.ccop.or.th/digital-publication, p. 43.

only discovered the islands and used them, but also exercised long-term control over them.[7] `Discovery` according to the Chinese accounts simply means that the islands were mentioned in records written by people who passed them and used them as orientation points on their sea voyage between China and Okinawa/Japan, and considered them as part of China`s coastal defence.[8] Moreover, the assertion that Japan acquired the islands as the result of the Sino-Japanese War 1894-95, which was ended by the signing of the Treaty of Shimonoseki in April 1895, depends on whether one considers the Senkaku Islands part of Taiwan or part of Okinawa. The Shimonoseki Treaty included the cession of Taiwan and the Pescadores but did not mention the Senkaku Islands. The latitude and longitude of the Pescadores were given and a joint committee for demarcating territories was set up.[9] In the map of Taiwan printed at the time the Senkaku Islands were not included. China, however, states that the Treaty included also the Senkaku Islands since they belong to Taiwan, which Japan refutes.[10]

2.2. Political and Moral Caveats Regarding Japan`s 1895 Acquisition

The historical circumstances of incorporation by Japan somewhat cast a shadow on Japan`s claim. Ivy Lee and Fan Ming – although they are in a minority – even express doubts about the legal basis of Japan`s claim in view of these circumstances.[11] In the first instance, at the end of the 19th century, the region was in an amorphous transition from a Sino-centric East Asian world order to one dominated by Western international law. Imperial China insisted on sticking to the former, while Meiji Japan warmly embraced the latter. As Shaw explains territorial ownership meant different things under these two different concepts and Chinese scholars use it as a base to refute Japan`s claims to territorial accession.[12]

From 1885 onwards, there was pressure from the local government in Okinawa and the entrepreneur Koga Tatsushiro, to incorporate the islands. But there is correspondence in 1885 between the central government in Tokyo and local government in Ryukyu (called Okinawa today) where the former demanded caution in asserting any claim or putting markers on the islands. The reason given was concern over raising the ire and suspicion of the Qing government, which at that time was militarily still stronger than Japan. This is interpreted by some as Japan at least implicitly admitting the Qing government`s title to the islands.[13] In contrast to the official Japanese version distributed since 1972 that, from 1885 on, there had been a series of surveys conducted by the Japanese government, documents clearly show that there were no such surveys.[14] Moreover, in 1880, negotiations between the Meiji and Qing governments had taken place over the establishment of a southern border because the Qing government opposed Japan`s incremental takeover of the Ryukyu island chain which, in 1879, had been incorporated into Meiji Japan as a prefecture, after having been under dual Chinese and Japanese suzerainty since 1609. A draft treaty was finalized where the Japanese proposed

[7] Zhang, Haiwen and Gao, Zhiguou (ed.) (2012): *Zhongguo de lingtu Diaoyudao*, Beijing, Haiyangqu Chubanshe, p. 2; p. 11.
[8] "Diaoyu Dao, an inherent Territory of China 25 September", *White Paper* (2012), at http://news.xinhuanet.com/english/china/2012-09/25/c_131872152.htm.
[9] "Treaty of Shimonoseki", Article 2c, and 3: http://www.taiwandocuments.org/shimonoseki01.htm.
[10] Shaw, *op. cit.*, p. 25.
[11] Lee, Ivy and Fang Ming: "Deconstructing Japan's Claim of Sovereignty over the Diaoyu/Senkaku Islands", *The Asia-Pacific Journal*, vol. 10, Iss. 53, no. 1 (31 December 2012), at http://www.japanfocus.org/-Fang-Ming/3877.
[12] Shaw, *op. cit.*, p. 64-68; see in particular p. 66 footnote 82 quoting a Chinese complaint in the 1870s during the negotiation about Okinawa.
[13] Hane, Jiro: "Senkaku mondai ni naizai suru horiteki mujun", *Sekai* (November 2012), p. 113; Shaw, *op. cit.*, p. 70.
[14] Shaw, *op. cit.*, p. 84.

to draw the border between Ryukyu and China by giving China the Ryukyu islands of Miyako and Yaeyama and everything to the south of them, in exchange for commercial rights in China. There was no specific reference to the Senkaku Islands, but according to Hane this is not surprising since they belonged in the understanding of the Qing government to the Ryukyu island chain which as a whole was the object of negotiations.[15] The treaty would have put the Senkaku islands on the Chinese side. For various reasons, China was reluctant to sign the agreement at the time, and from 1885 onwards, Japan no longer had any interest in signing either.[16] Hane argues that these two circumstances – Tokyo`s hesitation to incorporate the Senkaku Islands, as well as making them the object of a deal – raise doubts about the Japanese government`s claim today that the islands are `inherent territory` (*koyu no ryodo*) of Japan. Incidentally, there are some Chinese on both sides of the Taiwan Strait (including even President Jiang Jieshi in 1965), who also claim Ryukyu (Okinawa) because it was under Chinese suzerainty and allegedly only ceded to Japan as a result of the Sino-Japanese war in 1895 (which Japan had to repudiate in the 1951 San Francisco Treaty), but this claim is not pursued officially by either the Chinese or the Taiwanese governments.[17] Such demands are today mentioned as a further reason by those urging Japan to take a strong position on the Senkaku Islands, because giving in on the Senkaku islands would only lead the Chinese to aim next at undermining Japan`s sovereignty over Okinawa.[18]

Other historical circumstances used to contest Japan`s claim to the Senkaku Islands are the timing and secrecy of their incorporation on 14 January 1895. The incorporation occurred when China had lost decisive battles in the Sino-Japanese War, had put out peace feelers to Japan on 22 November 1895, and its ultimate defeat had become predictable.[19] Therefore, from the documents quoted, for example by Hane and Shaw, it is clear that the Meiji government felt free in January 1895 to go ahead with incorporation of the islands, in contrast to its earlier hesitation. The Chinese surrender followed in March 1895, and the Treaty of Shimonoseki ended the war in April 1895. The incorporation by the Meiji government is therefore strictly speaking not related to the Shimonoseki Treaty although the timing and historical circumstances establish a causal link to the Sino-Japanese War. The Treaty does not contain any mention of the Senkaku Islands, only that China would cede to Japan `the island of Formosa together with all islands appertaining or belonging to said island of Formosa`, as Taiwan was then referred to. The PRC and ROC understands, however, that this wording applies also to the Senkaku Islands because they consider the Senkaku Islands as part of Taiwan.[20]

The Japanese government never made public the act of incorporation.[21] Although the act allowed the setting up of markers, according to Professor Inoue Kiyoshi, who did most of

[15] Hane, *op. cit.*, p. 120.
[16] Hane, *op. cit.*, pp. 117-8; McCormack, Gavan and Oka Norimatsu, Satoko: "Ryukyu/Okinawa, From Disposal to Resistance", *The Asia-Pacific Journal*, vol. 10, Iss. 38, no. 1 (17 September 2012), at http://www.japanfocus.org/-Satoko-NORIMATSU/3828.
[17] Shin, Kawashima; Urara, Shimizu; Yasuhiro, Matsuda and Yang, Yongming (Yang, Philip) (eds.) (2009): "Nichi Tai kankeishi 1945-2008", Tokyo, Tokyo Daigaku Shuppankai, p. 87; Hille, Katherin and Dickie, Mure: "Chinese Nationalists eye Okinawa", *Financial Times*, 23 July 2012, at http://www.ft.com/cms/s/0/9692e93a-d3b5-11e1-b554-00144feabdc0.html#axzz21SXSzRGZ; Eldridge, Robert, US-Japan-China Comparative Policy Research Institute (CPRI) (10 June 1999), at http://cpri.tripod.com/cpr1999/ryukyu.html.
[18] Higurashi, Takanori (2009): *Okinawa wo nerau Chugoku no yashin*, Tokyo, Shodensha, p. 212.
[19] Shaw, *op. cit.*, p. 85.
[20] "White Paper Diaoyu Dao", *op. cit.*
[21] Gaimusho (1952): *Nihon gaiko bunsho* , vol 23, quoted in: Shaw, *op. cit.*, p. 100. Text of the act of incorporation at http://www.mofa.go.jp/region/asia-paci/senkaku/pdfs/fact_sheet_02.pdf.

the original research on the history of the islands, they were put up only in May 1969 by the local government of Ishigaki.[22] When the Meiji government decreed the geographic extent of Okinawa prefecture in 1896, there was also no reference to the incorporation act or to the Senkaku islands.[23] The withholding of publication of the 1895 act was confirmed to the author by a senior official of the Japanese Ministry of Foreign Affairs on 9 October 2012, who, however, pointed out that the islands were not inhabited at the time of incorporation.

Under international law, appropriation of territory is legally strengthened by making it public and by not being contested, but notification is not an absolute condition. However, even if the islands were incorporated without this being officially made public, it must have come to the attention of succeeding Chinese governments that the islands were being economically exploited and temporarily inhabited by Japanese citizens, since fishermen from Taiwan and China pursuing fishing activities in the area sometimes landed there to escape storms. Even at the beginning of the 1950s fishermen from Irabujima near Miyakojima had stayed on Minami Kojima for up to three months to process bonito and keep vegetable gardens, but were told in 1971 by the Japanese government not to go there anymore when China suddenly claimed the Senkaku Islands. Until then, Japanese researchers had also gone to the islands on several occasions and the islands were used as shelter during typhoons.[24]

There is a letter of appreciation from the consul of the Republic of China in Nagasaki in 1920 which thanked the people of Ishigakijima for rescuing Chinese fishermen washed ashore on one of the Senkaku islands, stating that the islands are part of Okinawa prefecture. [25] An article in the *People`s Daily* in 1996 dismissed this letter as the perception of certain people given the circumstance of Japan having colonized Taiwan at the time.[26] Even after the establishment of the People`s Republic of China there was an article in the *People`s Daily* on 8 January 1953 reporting Okinawan demonstrations against the US and explicitly including the Senkaku Islands in the description of the Ryukyu Islands.[27] Interestingly, the Chinese government does not mention this latter item in its counter claim. Instead, it simply asserts that the islands had been controlled by China for 600 years since the Ming Dynasty (referring to the above-mentioned accounts) and `in 1895, as the Qing government's defeat in the First Sino-Japanese War was all but certain, Japan illegally occupied the Diaoyu Island and its affiliated islands`.[28] One more recent historical proof for China`s control of the islands is a document according to which the islands were given to a Chinese herb collector by the Empress Ci Xi in 1893. This document is now considered by both Chinese and Japanese historians alike as a forgery.[29] The Chinese White Paper of 2012 no longer mentioned this document, but an article in the *Beijing Review* in 2012 still does.[30]

[22] Shaw, *op. cit.*, p. 101.
[23] *Ibid.*, pp. 101-102.
[24] "A home away from home / Fishermen worked, took shelter, grew vegetables on Senkakus", *Yomiuri Shimbun*, 7 July 2012, at www.yomiuri.co.jp/dy/national/T120706004188.htm.
[25] Text of the letter at http://www.mofa.go.jp/region/asia-paci/senkaku/pdfs/fact_sheet_03.pdf.
[26] Zhu, Jianrong: "Chugokugawa kara mita `Senkaku mondai`", *Sekai* (November 2012), p. 107.
[27] Text of the article at "Japan-China Relations...", *op. cit.*
[28] "Statement of the Ministry of Foreign Affairs of the People's Republic of China", Ministry of Foreign Affairs of the PRC, (10 September 2012), at http://www.fmprc.gov.cn/eng/topics/diaodao/t968188.htm.
[29] Shaw, *op. cit.*, pp. 60-62; p. 104; Mine, Yoshiki: "Empress Dowager Cixi`s Imperial Edict: Can it be a Basis for the Chinese to claim Ownership of the Senkakus?", The Canon Institute of Global Studies (4 July 2012), at http://www.canon-igs.org/en/column/security/20120704_1399.html.
[30] Zhong, Yan: "China`s Claim to Diaoyu Island Chain indisputable", *Beijing Review*, no. 45 (17 August 2012), at http://www.bjreview.com.cn/special/2012-08/17/content_476764.htm.

2.3.The World War II Agreements and the Senkaku Islands

Based on its assertion about the Sino-Japanese war and the Senkaku Islands being part of Taiwan, the PRC government argues that the allied agreements concerning the postwar period (Cairo Communique and Potsdam Declaration), and the San Francisco Peace Treaty of 1951 (neither the Guomindang government on Taiwan nor the PRC government were invited to the conference leading to the treaty) required Japan to return the Senkaku Islands. The Cairo Dec1aration in December 1943 demanded the return to the Republic of China of `all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores.'[31] Article 8 of the Potsdam Declaration states that ` The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine`.[32] Article 2 (b) of the San Francisco Treaty stipulates that ` Japan renounces all right, title and claim to Formosa and the Pescadores`.[33] The Senkaku Islands are nowhere mentioned in these documents, but because of its assertion about the islands being part of Taiwan the Chinese consider them to be included.[34] However, the PRC has never recognized the legality of the San Francisco Peace Treaty and the Treaty itself does not even clarify to what China Taiwan should be returned,[35] In an unsigned draft planning document of May 1950 from the Chinese Ministry of Foreign Affairs for the PRC`s possible participation in the San Francisco Peace Treaty, and published in the Japanese media only in December 2012 as proof of China recognizing Japan`s ownership, the islands are referred to by their Japanese name, and it is proposed to examine whether these islands are part of Taiwan, thus throwing doubt on China`s claim today that they have always been part of Taiwan and not Okinawa, and had been ceded to Japan in 1895 as part of Taiwan.[36] Professor Liu Jiangyong of Qinghua University explained the use of the Japanese name by the circumstance that this name was, after the Japanese colonization of Taiwan, the more popular name.[37]

Another battle field between Japan and China for proving their sovereignty is the use of maps. Both sides have been trying to prove their title to the islands by referring to maps where the islands are either shown as belonging to China (or Taiwan) or Japan, or using Chinese names instead of Japanese names.[38] However, until 1970 when the islands became an object of dispute, the inconsistencies on both sides seem to have more to do with ignorance, disinterest and confusion concerning these very minor and far-flung islands rather than being the object of centrally-directed and authorized map making, as was also demonstrated in the above-mentioned May 1950 draft document of the PRC. During World War II and in its aftermath, there was considerable confusion within the Guomindang government about whether it should or could claim the Ryukyu Islands (but no explicit mentioning of the

[31] *Cairo Declaration*, at http://www.ndl.go.jp/constitution/e/shiryo/01/002_46/002_46tx.html.
[32] *Potsdam Declaration*, at http://www.ndl.go.jp/constitution/e/etc/c06.html.
[33] *San Francisco Peace Treaty*, at http://www.mofa.go.jp/region/europe/russia/territory/edition92/period4.html.
[34] "White Paper Diaoyu Dao", *op. cit.*
[35] Shaw, *op. cit.*, p. 121.
[36] Text excerpts at http://en.wikipedia.org/wiki/Senkaku_Islands_dispute#. For a full discussion of this document see Shiroyama, Hidemi:"Fuin sareta Senkaku gaiko bunsho", *Bungei Shunju*, June 2013, pp. 264-271.
[37] Liu, Jiangyong: "US, Japan cannot change History by confusing the Public", *People`s Daily Online*, 8 January 2013, at http://english.peopledaily.com.cn/90777/8083511.html. For a thorough discussion of maps by all sides see Shaw, *op. cit.*, pp. 52-55.
[38] Zhu, *op. cit.*, p. 108; Guo, Jiping: "Ironclad Evidence Shows that Diaoyu Dao is China's Territory", Chinese Embassy New Zealand (23 October 2012), at http://www.chinaembassy.org.nz/eng/gdxw/t981502.htm; Zhong, *op. cit.*; Shaw, *op. cit.*, pp. 52-55; 94-96; MOFA, *Fact Sheet*, no. 4, at http://www.mofa.go.jp/region/asia-paci/senkaku/pdfs/fact_sheet_04.pdf.

Senkaku Islands) or not.[39] Ishii mentions that the ROC government at one stage demanded to take part in the Trusteeship of Okinawa.[40] According to an article in the newspaper of the Chinese Communist Party, Roosevelt even offered Jiang Jieshi Okinawa (which then would have naturally included the Senkaku Islands) during the Cairo conference in 1943, but Jiang turned it down.[41]

3. The Genesis of the Controversy

3.1. Turning Point: The Reversion of Okinawa in 1971

As a result of World War II, Okinawa, including the Senkaku Islands as part of the Nansei Shoto Islands (south of 29°north latitude), was placed under US administration and became a central anchor of the US military deployment in Asia. During the San Francisco Peace Treaty negotiations, the US and the UK agreed that Japan would retain `residual sovereignty` over Okinawa, and that the US would not require Japan to renounce its sovereignty over Okinawa.[42] It is obvious that the Japanese felt encouraged to consider the Senkaku Islands as being included in the `residual sovereignty over Okinawa` since, for Tokyo, the islands were part of Okinawa. Moreover, when the government of the Republic of China normalized diplomatic relations with Japan in 1952 (Treaty of Peace between Japan and the Republic of China), the subject of the islands had not been raised by either side. In a separate exchange of notes, both sides had agreed that the Treaty `be applicable to all the territories which are now, or which may hereafter be, under the control of its Government` which refers to the ROC government.[43]

But when the US announced in 1953 its intention to return to Japan the Amami Islands (north of Okinawa main island) as part of the Nansei Shoto, the ROC government (but not the PRC) protested against the US legal justification of doing so under the concept of Japan`s `residual sovereignty` over these islands because this concept was not part of the San Francisco Peace Treaty.[44] When the US started to discuss with Japan the transfer of the administrative rights over Okinawa to Japan, leading to the conclusion of the `Agreement Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands` (signed on 17 June 1971), Taibei urged the US in September 1970 not to include the Senkaku Islands, and to keep the sovereignty issue open.[45] The ROC ambassador to the US, in a note of 15 March 1971, explained his government`s silence concerning the Senkaku Islands until then by saying `for regional security considerations the Government of

[39] Liu, Xiaoyuan (1996): "A Partnership for Disorder: China, the United States and their Policies for the Postwar Disposition of the Japanese Empire, 1941-1945", Cambridge, University of Cambridge Press, pp. 77-78; Eldridge, *op. cit.*.

[40] Ishii, Akira: "Chugoku to Nihon. ASEAN kan no aida no kokkyo mondai", in Iwashita, Akihiro (ed.) (2006): *Kokkyou. Dare ga kono sen wo hikiitaka- Nihon to Yurasia*, Sapporo, Hokkaido Daigaku Shuppankan, p. 140.

[41] "Jiang Jieshi houhui jushou Liujiu qundao", *News of the Communist Party of China*, at http://cpc.people.com.cn/GB/68742/114021/114023/6771000.html. This is also confirmed by an article on the Japanese version of the Guomindang website: Jiang Jieshi ga Ryukyu wo sesshu shinakatano wo kokai, based on an article in Taiwan`s *Zhongguo Shibao*, 9 September 2012, at http://www.kmt.org.tw/japan/page.aspx?type=article&mnum=119&anum=8214.

[42] Shaw, *op. cit.*, p. 27, fn. 26.

[43] *Treaty of Peace between Japan and the Republic of China*, at http://en.wikisource.org/wiki/Treaty_of_Peace_between_Japan_and_the_Republic_of_China.

[44] Shaw, *op. cit.*, p. 114, fn. 135.

[45] "Foreign Relations of the United States (FRUS)", vol. XVII (1969-1976), p. 292, fn. 6, at http://2001-2009.state.gov/documents/organization/70142.pdf.

the Republic of China has hitherto not challenged the US military occupation of the Senkaku Islands under Article 3 of the San Francisco Peace Treaty. However, according to international law, temporary military occupation of an area does not affect the ultimate determination of its sovereignty`.[46] He then asked for the restoration of the islands to the ROC. `Regional security considerations` certainly meant that under the Cold War conditions and its confrontation with Beijing, the ROC government did not want to do anything which might have diminished the military power of or its good relationship with its American protector. Moreover Japan was an important anti-communist neighbour for Taiwan, and therefore the ROC government had, in 1951, waived all reparations from Japan. Under pressure from both allies (the US still had diplomatic relations with Taiwan in 1971!), the US had to choose whether to go against Japan or Taiwan, and in the end decided to be more supportive of Japan`s demand. As a compromise, the US Administration stated during Senate hearings on the reversion that` The United States has made no claim to the Senkaku Islands and considers that any conflicting claims to the islands are a matter for resolution by the parties concerned`, the latter including the ROC and the PRC.[47] Since the reversion in 1971, the US has stuck to not taking a position on the sovereignty of the Senkaku Islands and emphasizing that the 1971 Agreement transferred only the `administrative rights` to Japan. But not only did the US in this way allow Japan to regain control over the Senkaku Islands and enable it to reinforce its sovereignty claim thanks to the reversion, it also agreed the application of the 1960 revised Japan-US Security Treaty over the Okinawa area, including explicitly the Senkaku Islands. When reading the proposal by the National Security Staff member John Holdridge to return `the Ryukyus (*sic*) and the Senkakus` but to pass no judgement as to the conflicting claims to them, the President`s Assistant for National Security Affairs, Henry Kissinger, wrote on the margin of the memo of 13 April 1971: `But that is nonsense since it gives islands back to Japan. How can we get a more neutral position?`[48]

While the above sheds some light on why the ROC did not make any public claims to the title of the Senkakus between 1945 and 1970, it does not explain its silence before that period, or even for the period 1945-1949, i.e. before the establishment of the PRC. Shaw offers the theory that this was because the Guomindang government did not have any history of ruling Taiwan and had to rely on Japanese colonial records and maps when it took over Taiwan in 1945.[49] The US Department of State documents (FRUS) reveal that, for the ROC government, it was very much the opposition by public opinion in Taiwan to the islands` return to Japan, as well as by overseas Chinese which put pressure on Taibei in 1970 to oppose the transfer of the islands to Japan.[50] Another reason not mentioned in these documents is the report of hydrocarbon reserves around the islands. The Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas (CCOP), under the auspices of the UN Economic Commission for Asia and the Far East (ECAFE), had conducted a geophysical survey in 1968. The Committee said in a report in May 1969 that the continental shelf between Taiwan and Japan may be extremely rich in oil reserves.[51] Soon

[46] *Ibid.* p. 296.
[47] Niksch, Larry: "Senkaku (Diaoyu) Islands Dispute: The U.S. Legal Relationship and Obligations", *Congressional Research Committee* (1996), p. 4, at http://congressionalresearch.com/96-798/document.php?study=Senkaku+Diaoyu+Islands+Dispute+The+U.S.+Legal+Relationship+and+Obligations.
[48] FRUS 2006, *op. cit.*, p. 297.
[49] Shaw, *op. cit.*, p. 119.
[50] FRUS, *op. cit.*, p. 292. On the Overseas Chinese see also Shaw, *op. cit.*, pp. 13-14.
[51] Gao, Zhiguo and Wu Jilu: "Key Issues in the East China Sea: A Status Report and recommended Approaches", in: Harrison, Selig (ed.) (2005): *Seabed Petroleum in Northeast Asia: Conflict or Cooperation?*, Washington D.C., Woodrow Wilson International Center for Scholars, p. 32.

after the publication of this report, Japan started to explore with Taiwan and the Republic of Korea possibilities for joint development of the Sea`s hydrocarbon resources. In March 1969, Japan began protracted negotiations with Taiwan and South Korea, leading to an agreement in principle in September 1970, to set up a joint development project.[52]

If the ROC had until 1945 no experience of ruling Taiwan, then the PRC government had even less experience with the area of the Senkaku Islands. Their negligible size and remote location before the likelihood of hydrocarbon reserves was raised certainly did not draw any attention to them. The above circumstances explain also the timing of the PRC`s claim. In addition, and probably more urgent at a time when the government was just emerging from the political ravages of the Cultural Revolution, the PRC could not stay quiet in the face of Taiwan`s and the overseas Chinese claims if it wanted to be recognized as the sole representative of China. The first newspaper reports about China`s claims came out in May 1970, after Japan and Taiwan had started talks on jointly exploring the energy resources around the Senkaku Islands, and Okinawa`s reversion was announced. Only on 30 December 1971 did the Chinese Foreign Ministry publish an official statement claiming the islands.[53]

The weakest point of the territorial claim to the Senkaku Islands by the Republic of China and, since 1949, that by the People`s Republic of China is, therefore, that, until the ECAFE survey of the East China Sea, the islands were not claimed by either the PRC or the ROC governments, and Japan`s control over the islands had been uncontested. Shaw calls this absence of objection a `serious political misstep`.[54] The contrast to the Chinese claims to almost the whole of the South China Sea is revealing: the 9 dash line (originally 11 dash line) on which China`s claims to the South China Sea is based was already established in 1947 but had appeared in Chinese maps in one form or the other since 1936, and was then taken over in 1949 by the PRC.[55]

In meetings with PRC academics in February 2013 this author was given several reasons for the long silence of the Beijing government which include some of those mentioned above. First of all the government never saw a reason to specifically claim the islands because according to the PRC interpretation of the Shimonoseki Treaty they had been taken away from China as part of Taiwan and Japan had to return them as a result of the above mentioned wartime and postwar agreements. All counterarguments about the islands not having been mentioned in these agreements (in contrast to e.g. the Penghu Islands) were swept away by the assertion that the Diaoyu Islands are part of Taiwan. The US administration over Okinawa which explicitly includes the Senkaku Islands and the US/UK statement concerning Japan`s residual sovereignty over Okinawa during the San Francisco Peace Treaty negotiations (at that time no difference between Japanese sovereignty over Okinawa and administrative rights over the Senkaku Islands had yet been made) were simply considered as counteracted by two PRC statements in 1951 which declared the treaty illegal.

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[52] Drifte, Reinhard: "From `Sea of Confrontation` to `Sea of Peace, Cooperation and Friendship`? - Japan facing China in the East China Sea", *Japan Aktuell*, no.3 (2008), at http://www.giga-hamburg.de/dl/download.php?d=/content/publikationen/archiv/ja_aktuell/jaa_0803_fokus_drifte.pdf.

[53] Urano, Tatsuo (ed.) (2001): *Diaoyutai qundao (Senkaku Shoto) wenti, Yanjiu ziliao huibian*, Hong Kong, Lizhi Chubanshe, pp. 35-6; *People`s Daily*, 18 May 1970, 4 and 29 December 1970.

[54] Shaw, *op. cit.*, p. 121.

[55] Bonnet, François-Xavier: "Geopolitics of the Scarborough Shoal", *IRASEC`s Discussion Paper*, no. 14 (November 2012), pp. 22-23, at http://www.irasec.com/component/irasec/?task=publication_detail&publicationid=335;
Buszynski, Leszek and Sazlan, Iskandar: "Maritime Claims and Energy Cooperation in the South China Sea", *Contemporary Southeast Asia*, vol. 29, no. 1 (April 2007), p. 151.

Interestingly in our context, in these statements Beijing claimed the Paracel Islands, the Spratly Islands and the Pratas Islands as part of China.[56] Even if the PRC considered the Senkaku Islands as part of Taiwan, it is strange that no claim to the Senkaku Islands was made although Taiwan was under the control of the Guomindang whereas the Senkaku Islands in contrast were put under US administration (and moreover joined to Okinawa) while the Pratas Islands were put under UN Trusteeship. Another explanation given by these PRC academics for China`s silence is the absence of diplomatic relations between Beijing and Tokyo until 1972. It is not clear to this author why this should have prevented Beijing from protesting against Japan`s territorial claim to the islands since the government on many occasions before 1972 protested Japanese policies and even concluded `private` fishery agreements which managed to circumvent the territorial dispute. Another reason mentioned was China`s domestic instability during the Cultural Revolution 1966-69 which certainly distracted the PRC leadership from dealing with such minor islands.

3.2. Was The Senkaku Issue Shelved in 1972 and 1978?

What had been keeping the territorial dispute between Tokyo and Beijing under control from the 1970s until the 1990s was an unofficial understanding (`anmoku no ryokai` in Japanese) in 1972 and 1978 to shelve the dispute (`tana age` in Japanese, `gezhi` in Chinese). However, the Japanese government later explicitly denied such an understanding. Since this shelving agreement helped to keep the territorial conflict under wraps for such a long time despite several incidents and played a critical role in the 2010 and 2012 crises, it is important to investigate the circumstances of what was understood in 1972 and 1978, and why this understanding fell apart.

In 1972, the two countries normalized diplomatic relations, and in 1978, they concluded a Peace and Friendship Treaty. On the occasion of both negotiations, it was the Japanese side which raised the issue of the Senkaku Islands, and agreed to proceed to a conclusion of the respective negotiation despite diametrically opposed claims to the ownership of the Senkaku Islands. In other words, both governments agreed to shelve the issue, albeit not in writing or in any public or legal form. In the case of the September 1972 negotiations between Prime Minister Tanaka Kakuei and Prime Minister Zhou Enlai, the territorial issue (as well as the exact wording of Japan`s apologies about its past actions in China, which Tanaka offered to Zhou Enlai) was so sensitive for the Japanese government that the record of the Gaimusho omits the reaction of Tanaka to Zhou Enlai`s refusal to discuss the territorial issue. This part was deleted by the then head of the China Division in the Gaimusho, Hashimoto Hiroshi, who later admitted this in an interview in 2000. In the interview he said that Tanaka Kakuei, in reaction to Zhou Enlai`s reasoning that it would be better not to discuss the problem of the Senkaku Islands, replied, `Let`s discuss it another time`.[57] Yabuki corrobates this reaction by quoting the book by Zhang Xiangshan, an adviser to the Chinese Ministry of Foreign Affairs, who was present at one of the meetings. According to his record, Tanaka replied, `All right! Then it is not necessary to talk anymore about it. Let`s do it another time.`[58] Before this summit meeting, Komeito Chairman Takeiri Yoshikatsu who served as an important go-between for the Japanese government to prepare the visit by Prime Minister Tanaka, had a similar exchange with Zhou Enlai in July 1972, when it was also decided to shelve the Senkaku issue. When Takeiri met Zhou Enlai on 28 July 1972, the latter is quoted as saying,

[56] See http://en.wikipedia.org/wiki/Treaty_of_San_Francisco.
[57] Yabuki, Susumu: "Senkaku mondai no kosho keii no shinso", p. 1, at http://www25.big.jp/~yabuki/2012/senkaku.pdf (revised edition of 28 September 2012).
[58] Yabuki, *op. cit.*, p.2; See also Guo, *op. cit.*, p. 5.

`There is no need to touch on the Senkaku Islands issue. Mr Takeiri, you also had no interest. I also had no interest. But the historians raise it as a problem due to the oil issue, and Mr Inoue Kiyoshi is very keen on it. However, there is no need to place importance on it (*omoku miru)*`.[59] It is an irony that Zhou Enlai even referred to a Japanese academic, Professor Inoue Kiyoshi, whose historical studies favour China`s claim on historical grounds, and whose opinion had been presented in an article of the *People`s Daily* in May 1971 and had obviously been read by Zhou. In these discussions, it was made quite clear by both sides that the normalization of diplomatic relations was the most important goal, and therefore they agreed to shelve the Senkaku issue.

When both sides negotiated the Treaty of Peace and Friendship in 1978, there was a similar willingness to put the territorial problem aside in order to achieve the conclusion of the Treaty although the Gaimusho (Japan`s Ministry of Foreign Affairs) has so far not released the documents. According to Fravel, a chronology (*nianpu* in Chinese) of Deng's activities published by a party research office summarizes a meeting between Deng Xiaoping and Japan`s Foreign Minister Sonoda Sunao, according to which Deng stated, `It's not that China and Japan do not have any problems. For example [there are] the Diaoyu Island and continental shelf issues. Don't drag them in now, they can be set aside to be calmly discussed later and we can slowly reach a way that both sides can accept. If our generation cannot find a way, the next generation or the one after that will find a way.'[60] After the ratification of the Treaty, Deng Xiaoping visited Japan and declared at a press conference on 25 October 1978 that the issue should be left to future generations who may be wiser. In Diet discussions, it was also made clear by LDP Secretary General Ohira Masayoshi and Foreign Minister Sonoda Sunao that it was in Japan`s national interest to go along with Deng Xiaoping`s proposal to leave things for the next 20 or 30 years.[61] Ohira declared at the time on the question of an agreement to shelve the issue (tana age) that `tana age` was not correct, rather the other party (senpo) would not bring the issue up (mochidasanai).[62] Or, as Sonoda wrote later, while it is true that China is claiming these islands as their territory, the islands are currently in Japan's hands, and have not become an actual issue among Japan and China. If Japan takes the trouble to bring up the subject at this occasion and wakes up a sleeping dog (literally `disturb a bush only to let a snake out' – *yabu hebi*), it will be a total loss (*moto mo ko mo nai*) for Japan.[63]

One cannot but conclude from these accounts that both sides agreed to shelve the territorial issue while in no way abandoning their claims to the islands, otherwise there would not have been a normalization of diplomatic relations in 1972 or a Treaty of Peace and Friendship in 1978. It did not mean that the Chinese accepted Japan`s territorial claim since China had stated its own claim in these negotiations and has since 1971 never abandoned the claim. It is also obvious that both sides knew that there was a territorial problem, otherwise `shelving` would not have made sense. The director of the Treatise Division and later Director General of the Treatise Bureau, Kuriyama Takakazu, who was involved in the negotiations in 1972 and in 1978, stated in an interview in 2012 that he understood it both then and today that

[59] Ishii, Akira (2006): "Chugoku to Nihon. ASEAN kan no aida no kokkyo mondai", in: Iwashita, Akihiro (ed.) (2006): *Kokkyou. Dare ga kono sen wo hikiitaka- Nihon to Yurasia*, Sapporo, Hokkaido Daigaku Shuppankan, p. 142; Yabuki, *op. cit*., p. 3.
[60] Fravel, M. Taylor: "Explaining Stability in the Senkaku/Diaoyu Islands Dispute", in Curtis, Gerald; Kokubun, Ryosei and Wang, Jisi (eds.) (2010): *Getting the Triangle Straight: Managing China-Japan-US Relations*, Washington D.C., Brookings Institution Press.
[61] Yabuki, *op. cit.*, p. 5; Ishii, *op. cit*., p. 144.
[62] Okada, Takashi (2012): *Senkaku shoto mondai*, Tokyo, Sososha p. 102.
[63] Sonoda, Sunao (1981): *Sekai, Nihon, Ai*, Tokyo, Daisan Seikei Kenkyukai, p. 184.

there was a `tacit understanding` (*anmoku no ryokai*) between Japan and China to shelve the territorial issue.[64] Asai Motofumi, who was director of the Treatise Division in 1978-80 and director of the China Division in 1983-85, also confirmed that it was the understanding not only in the Gaimusho but also among the political leadership (Nagatacho) that there was a territorial problem concerning the Senkaku Islands.[65] Miyamoto Yuji also mentioned in 2012 that in his time as head of the China Division in the 1990s, there was still on the one hand, a clear position that the Senkaku Islands were Japanese territory, but on the other, the fundamental stance of maintaining the status quo (*genjo iji*) and a tacit understanding that no action needed to be taken.[66]Another indirect indication of Japan tacitly accepting the existence of a territorial problem and willing to suspend the issue to protect the overall relationship with China has been the government`s restraint for some time after 1972 and 1978 in taking actions which might have been interpreted by China as inflaming the territorial dispute. The government never allowed prospection and production of oil or gas reserves around the islands, and showed restraint in allowing landing on or making economic use of the islands. As we will see in the next part, however, this restraint was not absolute and still left room for measures which eroded the shelving agreement.

It is obvious from the historical context of the 1972 and 1978 negotiations that both sides had much greater interests at stake than the Senkaku Islands. Moreover, the shelving agreement was very much in favour of Japan as the country in *de facto* control over the islands, and thus reinforcing Tokyo`s ownership claim in international law. Later, when China`s political, economic and military weight increased and it became doubtful whether the US would really invoke the Security Treaty guarantee to protect the militarily-indefensible islands against a Chinese military challenge, the shelving agreement was useful for Japan against any such contingency.[67]

3.3. The Erosion of the Shelving Agreement

While one can well understand the desire by the Japanese and Chinese leaders to deepen the bilateral relationship through the two agreements in 1972 and 1978, and to trust that all remaining problems, including the territorial dispute, would then be easier to solve, with hindsight, this faith looks more like wishful thinking. It is indeed rather unusual to even conclude a Peace and Friendship Treaty without clarifying an open territorial issue, the very heart of a country`s security policy. Since the 1970s, this dispute has not only been a sensitive issue within Japan, but also within the much more limited circle of the autocratic Chinese leadership, with political groupings in both countries instrumentalizing it for their own narrow purposes.

The main conceptual problem with the bilateral understanding has been that it was based on the assumption that the conditions allowing its formulation in the 1970s could be frozen for as long as it would take to find a solution to the opposing territorial claims. However, maintaining the conditions for the continued reliance on the bilateral understanding would have demanded much greater efforts by both sides to clarify what the *status quo* is, and what measures would be seen as violating the *status quo*. Instead, as Ishii Akira put it, the

[64] Yabuki, Susumu: "Sasae gaimu jikan to Kuriyama Takakazu moto gaimu jikan no sekinin wo tou", 6 November 2012, at http://www.21ccs.jp/china_watching/DirectorsWatching_YABUKI/Directors_watching_72.html.
[65] "Gaimusho ni mai jita no giman", *Aera*, 8 October 2012, p. 66.
[66] Roundtable with Nakanishi, Terumasa; Sato, Masaru; Mikio, Haruna and Miyage, Kunihiko, *Bungei Shunju* (November 2012), p. 101.
[67] Magosaki, Ukeru: "Senkaku mondai. Nihon no gokai", *Sekai* (November 2012), p.90.

leaders on both sides wasted time and allowed the territorial issue to become the symbol of the nationalism in both countries.[68] As a result, various changes and pressures in the domestic and international environment were allowed to gradually erode these conditions, with Japan`s government in the end publicly even denying that there was a dispute which could have been the object of shelving, and prompting the PRC in the 2010 and 2012 crises to shower Japan with political and economic sanctions, which were unprecedented for two countries supposedly bound by a Peace and Friendship Treaty.

The shelving agreement had obviously no legal force, but denying its existence was politically unwise and morally wrong. Okabe Tatsumi argues that for political convenience, Japan agreed in 1978 to shelve the issue, but that this was different from accepting it in a legal sense.[69]. The following official Japanese statements can be interpreted in this light: in October 1990, Cabinet Secretary Sakamoto Misoji, after having restated Japan`s sovereignty claim, still declared that the island issue between Japan, China and Taiwan (*sic*) should be solved by a later generation, thus implying that there was a territorial dispute which had been put aside[70] But by the time China promulgated its law on territorial waters in February 1992 (see below), the Japanese government would unequivocally and publicly deny that there had been any agreement to shelve the issue and even that there was a territorial issue. When Prime Minister Miyazawa Kiichi protested against the Chinese law in February 1992, referring to a prior understanding with Deng Xiaoping over the Senkaku Islands, the Ministry of Foreign Affairs (MOFA) issued a correction denying such an understanding.[71] In September 1996, Administrative Vice-Minister Hayashi Sadayuki said that Japan had not agreed with Deng's 'put on the shelf' proposal, i.e. arguing that there was no territorial issue.[72] In the following, the author analyses the three main circumstances which account for the breakdown of the bilateral understanding.

3.3.1. The Corrosive Role of International Law

The requirements of international law regimes, particularly the UN Convention on the Law of the Sea (UNCLOS) which was ratified by Japan and the PRC in 1996, prompted both countries to take domestic and/or international administrative and legal steps (for example, passing legislation related to the administration of their maritime space, demarcating their sea borders, and claiming borders for their EEZ) which had a general purpose but did not sufficiently take into account the need to protect the bilateral understanding of putting the territorial dispute aside. Moreover, international regimes have `vested otherwise worthless islands with immense economic value`.[73] They encourage the assertion of sovereignty and penalize states for appearing to acquiesce in a rival state`s claim to a disputed territory. Paul O`Shea applied the term `sovereignty game` to this diplomatic-legal tit-for-tat, based on Alexander Wendt`s conception of sovereignty as a socially constructed institution.[74] Finally the vagueness of international law allows states to cherry pick those norms which fit best their

[68] Ishii, *op. cit.*, p. 158.
[69] Okabe, Tatsumi (2006): *Nitchu kankei no kako to shorai*, Tokyo, Iwanami Gendai Bunko, p. 91.
[70] *China Aktuell* (October 1990), p. 781, quoting *Kyodo*, 23 October 1990.
[71] Hagström, Linus (2003): *Enigmatic power? Relational power analysis and statecraft in Japan's China policy*, Stockholm, Stockholm Studies in Politics 93, Department of Politics, Stockholm University, pp. 150; 155.
[72] Ishii, *op. cit.*, p. 158.
[73] Ramos-Mrosovsky, Carlos: "International Law's Unhelpful Role in the Senkaku Islands", *University of Pennsylvania Journal of International Law* (2009), p. 906, at http://www.law.upenn.edu/journals/jil/articles/volume29/issue4/RamosMrosovsky29U.Pa.J.Int per cent 27lL.903 per cent 282008 per cent 29.pdf.
[74] O`Shea, Paul: "Sovereignty and the Senkaku/Diaoyu Dispute", Stockholm School of Economics, *Working Paper*, no. 240 (September 2012) p. 6, at http://www.hhs.se/EIJS/Research/Documents/240.pdf.

interests and claims.[75] It is probably with this situation in mind that former Chinese ambassador to Japan and the UN, Chen Jian, explained at the beginning of a talk on 30 October 2012 that international law is a root cause of the current territorial disputes.[76] This author has too much respect for international law, notably UNCLOS, to agree with this strong statement, but is aware of the weaknesses of many legal stipulations.

With regard to the Senkaku dispute, international law regimes have thus brought with it the following complications:

- Both countries must always consider that whatever is decided in relation to the disputed Senkaku Islands might have implications for the country`s other territorial disputes (Japan`s territorial disputes with Korea and Russia; China`s EEZ dispute with Korea or territorial disputes with the other littoral claimants in the South China Sea)

- Any action taken by the Japanese government with regard to the Senkaku Islands can be interpreted as the official expression of the government in control of the islands, and China will therefore feel obliged to protest in order to defend its claim

- Both countries had to comply with UNCLOS in order to benefit from this regime and officially draw sea borders which start with base lines on which are dependent the extent of the Territorial Waters (12 nm from the base line), of the Contiguous Zone (24 nm from the base line), of the EEZ (200 nm from the baseline), and of the Extended Continental Shelf (under certain conditions, up to 350 nm from the base line can be claimed). The issues arising from this are whether Japan and China would apply the drawing of the sea borders to the disputed territory, and, if so, whether the Senkaku Islands could be classified as `islands` which are entitled to an EEZ, or just `rocks` which would entitle them only to territorial waters under UNCLOS Article 12.3, and how to draw the EEZ border in the East China Sea`s Senkaku area. These issues were bound to have an impact on the bilateral understanding in one way or the other, and would have required special action in order to keep the territorial dispute shelved.

When China passed its Territorial Law in 1992, it explicitly included the Diaoyu Islands which, naturally, was immediately protested by the Japanese government while still showing a considerable amount of understanding and specifically saying that the law did not violate Japan`s sovereignty over the islands.[77] At that time, the Japanese government was still preoccupied with preventing China`s isolation after the 1989 Tiananmen crackdown. China also played down the impact of this law and even referred to Deng Xiaoping`s 1978 statement of leaving the territorial issue for the future.[78] When Jiang Zemin visited Japan in April 1992, he also reaffirmed the shelving according to Deng`s promise in 1978, while still stating China`s claim to the islands.[79] However, the Chinese Ministry of Foreign Affairs (hereafter

[75] Ramos-Mrosovsky, *Ibid.*
[76] *Shisaku blog* (31 October 2012), at http://shisaku.blogspot.co.uk/.
[77] Okada, "Senkaku shoto mondai", *op.cit.*, p. 111.
[78] Drifte, Reinhard: "Japanese – Chinese Territorial Disputes in the East China Sea – between Military Confrontation and Economic Cooperation", *LSE Asia Research Centre Working Paper*, no. 24 (April 2008) p. 9, at http://www2.lse.ac.uk/asiaResearchCentre/_files/ARCWP24-Drifte.pdf.
[79] Suganuma, *op. cit.*, p. 143.

Waijiaobu or CMOFA) originally had not wanted to include the Senkaku Islands.[80] Including them did undermine the strength of the shelving agreement, and one can arguably date the start of the process leading to the ultimate breakdown of the shelving agreement to around this time. When it ratified UNCLOS in 1996, China referred to the 1992 Law and promulgated the precise location of its base lines, but left out some of them, including those for the Senkaku Islands.[81] In 1998, the National People`s Congress promulgated the PRC Exclusive Economic Zone and Continental Shelf Act, which did not mention any specific geographical areas. Clearly, the Chinese leadership was trying to walk a fine line between its territorial and EEZ claims (including the need to respond to domestic demands, increasingly dominated by nationalist tendencies), the requirements of the international law regime, and the maintenance of good relations with Japan.

Japan ratified UNCLOS in June 1996, and established in the following month the Law on the Territorial Sea and the Contiguous Zone, as well as the Law on the EEZ and Continental Shelf, which were supplemented by guidelines for implementation. The latter also established an EEZ around the Senkaku Islands. Japan did not include the Senkaku Islands into its straight baseline claim.[82] Two separate bills creating the Basic Law of the Ocean and the Law on Establishing Safety Areas for Maritime Structures were passed by the Diet in April 2007, and came into effect on 16 July 2007.[83] The latter two laws were passed mainly having in mind any future exploitation of natural resources in the contested EEZs. Naturally China does not recognize the validity of these laws for the Senkaku Islands, or for the EEZ border between the two countries. The territorial dispute is also a major obstacle for agreement on the EEZ border in the southern area of the East China Sea, which is not made easier by the fact that an agreement on the title to the Senkaku would have a major impact on the size of the EEZ area of the successful claimant.

3.3.2. Fishing and other Economic Interests

Fishing is a major interest for all littoral states of the East China Sea. Although Japan and China have concluded consecutive fishery agreements for the East China Sea, the 1997 agreement (effective from June 2000) excludes from the application of the fisheries agreement the territorial waters adjacent to the Senkaku Islands. Instead, the extant 1975 Fishery Agreement, which deemed the areas around the Senkakus as part of the high seas, was allowed to prevail.[84] In 2012, a letter related to the 1997 Agreement about fishing in the EEZ was revealed in which Foreign Minister Obuchi had stated to the Chinese ambassador in Tokyo, Xu Duxin, that Japan's laws and regulations would not apply to the `waters in question` (*togai no suiiki*). It is understood that the `waters in question` include the Senkaku Islands, although their name is not mentioned and the Japanese government today denies it.[85] Sato Masaru, a former analyst of the Japanese Foreign Ministry, explained that this letter

[80] Takahara, Akio (2011): "The Senkaku Trawler Collision Incident" (to be published in: Mochizuki, Mike (ed.): *The Okinawa question: regional security, the US-Japan alliance, and Futenma*, Washington, D.C.: Sigur Center for Asian Studies), p.3.
[81] *Ibid.*
[82] Dzurek, Daniel: "The Senkaku/Diaoyu Islands Dispute", Durham University, *International Boundaries Research Unit*, 18 October 1996, at http://www-ibru.dur.ac.uk/resources/docs/senkaku.html.
[83] For their texts see http://www.ron.gr.jp/law/law/kaiyou_k.htm and http://law.e-gov.go.jp/announce/H19HO034.html.
[84] Gupta, Sourabh: "China-Japan trawler incident: Japan's unwise — and borderline illegal — detention of the Chinese skipper", *East Asia Forum* (30 September 2010), at http://www.eastasiaforum.org/2010/09/30/china-japan-trawler-incident-japans-unwise-and-borderline-illegal-detention-of-the-chinese-skipper/.
[85] Aera, *op. cit.*, p. 66.

referred to the EEZ around the Senkaku Islands and applied only to Chinese fishermen.[86] However, the Japanese government seems not to want to allow foreign fishermen uncontrolled access to the territorial waters around the Senkaku Islands, and has been patrolling the area, which has resulted in the expulsion of Chinese fishermen and subsequent protests by Taiwan and the PRC. The Japanese controls have apparently increased in the decade since 2000, while Chinese fishing activities have also vastly increased.[87] More research is needed on these developments to judge whether here there is yet another `unofficial understanding` between Tokyo and Beijing which has been undermined.

Finally, in this context, one has to mention the issue of private and state ownership of the Senkaku Islands which falls under the headings of international law, as well as the role of non-state actors. In 1896, Koga Tatsushiro obtained a free lease of 30 years for the islands of Uotsurijima, Kubajima, Minami Kojima and Kita Kojima. After the death of Koga Tatsushiro in 1918, his son, Koga Zenji, took over the business on the islands. In 1926, after the end of the free lease, the Japanese government converted it to a rental basis.[88] In 1932, the Japanese government changed the status of these four islands from state-owned to privately-owned land by selling them to the Koga family. After 1945, Kubajima and Taishojima (the latter was always state-owned) were leased to the US as firing ranges. In 1972, Koga Zenji sold Kita Kojima and Minami Kojima, followed by Uotsurshima in 1978, and Kubajima in 1988, to Kurihara Kunioki, a real estate investor, and his family. In 2002, Kitakojima, Minami Kojima and Uotsurijima were leased to the state which paid Yen25 million per year for them in rent.[89] The US military used Kubajima and Taishojima from 1957 as firing ranges, and after the reversion of Okinawa in 1971, continued to do so until 1979. It paid rent to the private owner of Kubajima, but after 1971, the rental payment was effected by the Japanese government.[90]

The relevant point here is that, since the shelving of the territorial issue in 1972 and 1978, the islands changed private owners, and the state rented three of the islands from their private owner and owned one. The leasing in 2002 and the `nationalization` (no money was involved) of the Uotsurijima beacon in 2005 caused Chinese protests, but the private ownership changes did not cause any Chinese reaction.[91] This is an important point, because it was the sale of three islands to the Japanese central state which touched off the 2012 crisis.

3.3.3. The Impact of Oil and Gas Developments

The 1969 ECAFE Report had led to claims by the ROC and the PRC over the Senkaku Islands. The most promising area defined in this report for hydrocarbon resources happened to be around the Senkaku Islands. Since Japan abandoned its joint exploration plans with Taiwan in 1972 with the diplomatic recognition of the PRC, no Japanese activities have taken place because of concern about China`s reaction.

[86] Nakanishi, Sato, Haruna and Miyage, *op. cit.*, p. 101.
[87] Tiberghien, Yves: "The Diaoyu/Senkaku Dispute: Analyzing the Chinese Perspective", *Canada-Asia Agenda*, Iss. 30 (October 2012), at http://www.asiapacific.ca/sites/default/files/canada-asia_agenda_30_v11.pdf., pp. 5-6.
[88] Suganuma, Unryu (2000): *Sovereign Rights and Territorial Space in Sino-Japanese Relations : Irredentism and the Diaoyu/Senkaku Islands*, Honolulu, Association for Asian Studies and University of Hawai'i Press, p. 119.
[89] Shaw, *op. cit.*, p. 31; *Asahi Shimbun*,13 November 2012.
[90] "Nihon to taishaku keiyaku", *Sankei Shimbun*, 21 September 1996, p. 1.
[91] Yoshida, Reiji: "Senkaku Beacon set up by Rightists now state property", *Japan Times*, 10 February 2005, at http://www.japantimes.co.jp/text/nn20050210a3.html; Okada, "Senkaku shoto mondai", *op. cit.*, p. 38.

In order to quell its growing demand for oil and gas, and to diversify away from its high dependence on Middle Eastern supplies, China started in the 1970s with prospecting and extraction of energy resources in the East China Sea.[92] To overcome the territorial dispute in the south of the East China Sea, and the divergent position on how to draw the EEZ border in the rest of the East China Sea, China proposed `joint development` of hydrocarbon resources. In October 1980, PRC Deputy Premier Yao Yilin even proposed to a Japanese business delegation that development of off-shore oil resources around the disputed islands be done jointly by China, Japan and the US.[93] Another bilateral proposal was made in 1984 by Deng Xiaoping, who proposed solving the territorial problems of the Spratly Islands in the South China Sea and the Senkaku Islands, by jointly developing the disputed areas before discussing the question of sovereignty. But in this case, as well as later proposals until 1996, Japan first demanded a settlement of the maritime border or recognition of its title to the Senkaku Islands.[94]

China`s relentless progress and expansion of oil and gas development increasingly caused friction between Japan and China, which also impacted on the territorial dispute. Since 1996, Chinese research vessels have entered the waters of the Senkaku Islands, including its territorial waters.[95] Japan exerted great restraint and until 2004, did not allow Japanese companies to survey the ECS even in the area which it claimed as its EEZ, let alone around the Senkaku Islands. Moreover Tokyo`s permission for surveying in 2004 by a Japanese exploration company (never followed up because of the political risks involved) in response to Chinese oil and gas development near Japan`s claimed EEZ border was only for an area further north, away from the disputed islands.

The Senkaku Islands dispute contributed to the failure of following up on the joint understanding in June 2008 (*ryokai* in Japanese; *liangjie* in Chinese) to engage in joint development of an area in the north of the East China Sea and to allow Japan to join the Chunxiao gas field exploitation which had been developed by China in a disputed EEZ area.[96] During the negotiation of the 2008 joint understanding, the Chinese had demanded joint development of energy resources in the area around the Senkaku Islands in exchange for their compromise on joint development in other areas of the East China Sea. Although the Chinese government agreed to the understanding without getting satisfaction on its demand, the failure to achieve greater reciprocity from the Japanese in the Senkaku area then made it domestically impossible for the Chinese government to go any further with negotiating an implementation of the understanding.[97] In December 2008, two Chinese patrol vessels of the China Marine Surveillance (CMS, *Haijiandui* in Chinese) which is under the State Ocean Administration (SOA), entered for the first time the territorial waters around the Senkaku Islands in an apparent move to strengthen its claim to the islands.[98]

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[92] For a detailed account see Drifte, Japanese-Chinese territorial disputes...", *op. cit.*, pp. 15-18.
[93] Funabashi, Yoichi: "China proposes 3-Nation Oil Development off Senkakus", *Asahi Evening News*, 11 October 1980.
[94] Drifte, "Japanese-Chinese territorial disputes...", *op. cit.*, pp. 13-14.
[95] *Ibid.*, p. 19. Sullivan, Kevin and Jordan, Mary: "Tiny Islands sorely tax 3 Nations", *International Herald Tribune*, 1 August 1996.
[96] Drifte, "From `Sea of Confrontation` to `Sea of Peace...", *op. cit.*, p. 43.
[97] Zhang, Xinjun: "Why the 2008 Sino-Japanese Consensus on the East China Sea Has Stalled: Good Faith and Reciprocity Considerations in Interim Measures Pending a Maritime Boundary Delimitation", *Ocean Development & International Law*, vol. 42, no. 1 (2010), p. 61; Shimizu,Yoshikazu: "Kan Seiken ga minogashita Chugoku 'goki no naka no morosa'", *Chuo Koron* (November 2010), p. 65.
[98] Shimizu, *op. cit.*, p. 65.

3.3.4. Instrumentalization of the Senkaku Dispute by Politicians and Non-State Actors

The raising of the territorial issue by China (ROC and PRC) and the campaign of the Bao Diao (Protect the Diaoyu) movement, notably in Taiwan and Hong Kong, since the ECAFE report, led to a similar involvement of the Japanese political right and other nationalistic groups which took up the issue as a symbol of nationalism. In 1973, several rightwing politicians within the ruling Liberal Democratic Party, including Ishihara Shintaro who in 2012 became the trigger for the central government`s purchase of some of the Senkaku islands, established the so-called Seirankai. It was particularly Ishihara who raised the territorial issue and opposed its shelving by Prime Minister Tanaka.[99] Against the increase of tensions between Japan and China since the middle of the 1990s, the supra-partisan Diet Association for the Preservation of Territorial Integrity was established in 2004 which had 60 members by 2011. On 30 March 2004, the Security Committee of the Lower House passed a resolution on preserving territorial integrity and demanded a stronger Japanese stance. It was the first time the Diet passed a resolution relevant to the Senkaku Islands in this vein.[100] Edano Yukio, chief of the Constitution Research Committee of the Democratic Party of Japan (DPJ), then in opposition, proposed that Self-Defense Forces (SDF) troops should be stationed on the disputed Senkaku Islands to avoid incursions by other countries.[101] Since SDF members are civil servants (*komuin*), this demand sounds very familiar to the demands by Abe Shinzo in December 2012 to station *komuin* on the islands (without clarifying whether he meant soldiers or other civil servants), although he postponed a decision when taking over the government in December 2012. This shows the opportunistic exploitation of the territorial dispute for electoral purposes.

Nationalist politicians and activists have also been demanding to erect facilities on the islands such as a weather station, a beacon, a heliport or a harbor, in order to assert Japan`s sovereignty. The Nihon Seinensha (Japanese Youth Federation), a nationalist organization affiliated with the major yakuza group Sumiyoshi-kai, caused several incidents by landing on the islands, starting with erecting a light tower or beacon first on Uotsurijima in September 1978 which was enlarged in 1988, and another one on Kitakojima Island in 1996.[102] Each such landing caused protests in China and among the Chinese diaspora, and prompted the PRC government to complain officially. It also led to demands by the Seinensha that the light towers be officially recognized by the government and the maintenance be taken on by the Maritime Safety Agency (later called Coast Guard). But even the compromise of including the light tower into official charts was an official act, reinforcing Japan`s effective control over the islands. The discussion about the official handling of the light tower also raised the nationalist fever in Taiwan, and its military even prepared (but then cancelled at the last moment) a commando action at the end of 1990 to destroy the facility.[103] In February 2005, amidst rising tensions over China`s energy developments in contested parts of the East China Sea and Chinese protests against Prime Minister Koizumi`s Yasukuni Shrine visits, the Japanese government finally ceded to the demands of the group to take over the Uotsurijima

[99] Babb, James: "The Seirankai and the Fate of its Members. The Rise and Fall of the New Right Politicians", *Japan Forum*, vol. 24, no 1 (2012), p. 83.
[100] Przystup, James J.: "Not quite all about Sovereignty – but close", CSIS, p. 2, at http://csis.org/files/media/csis/pubs/0402qjapan_china.pdf.
[101] "DPJ exec wants SDF on Senkakus", *Japan Times*, 2 May 2005.
[102] Drifte, "Japanese – Chinese Territorial Disputes in the East China Sea...", *op. cit.*, p. 14.
[103] Murakami, Takio: "Taiwan had secret plan to land elite troops on Senkakus to destroy lighthouse", *Asahi Shimbun*, 5 December 2012, at http://ajw.asahi.com/article/asia/china/AJ201212050086.

lighthouse structure and its maintenance.[104] Until then, the Gaimusho had succeeded in delaying this state takeover as `too premature` in order not to provoke China.[105]

As can be seen, the Japanese government tried to resist these nationalist claims but it could not fully circumvent them, thus keeping China`s suspicion alive. Moreover, whereas it always tries to prevent the landing by any foreigners on the islands, it has not prevented until fairly recently the landing by Japanese. In order to keep foreigners out of the islands and their territorial waters, the Japanese Coast Guard (CG) has been patrolling the area which again is an official act. It may have been the nationalist pressure from within the LDP as well as from right wing circles which prompted Ohira Masayoshi when he was Prime Minister to send in 1979 a general survey team of 50 persons (including Kurihara Hiroyuki) to the islands in order to investigate the building of facilities like a helioport. Such demands had already been made by the LDP on 24 March 1978.[106] Although the final report of the survey spoke against building facilities and nothing followed from it, the Kurihara family considered Ohira to be the most supportive prime minister of all for the Japanese assertion of effective control over the islands. Before that Ohira had also agreed to Kurihara Hiroyuki`s proposal to set up on Uotsurijima a monument to honour Koga Tatsushiro which was done with the government`s material and financial support.[107]

Even on the relatively much more cohesive side of the Chinese leadership, the territorial issue has been divisive and has been instrumentalised. Just when the two sides were negotiating the Peace and Friendship Treaty in April 1978, about 100 Chinese fishing vessels, some armed, appeared around the Senkaku area with banners declaring China`s title to the islands. While this was explained at the time in Japan as possibly a means to put pressure on the Japanese during the treaty negotiations, it seems now more likely that the Senkaku issue was used by the followers of the Chairman of the Military Commission, Hua Guofeng, as a means of attacking the re-emerging Deng Xiaoping. The PRC central leadership explained at the time that this was `accidental` and Deng Xiaoping promised it would never happen again.[108]

3.3.5. The General Deterioration of Japanese-Chinese Relations since the 1990s

In addition to these developments which changed the conditions for maintaining the shelving of the territorial dispute, Japanese-Chinese relations had generally been deteriorating since the middle of the 1990s. Japan became suspicious of China`s non-transparent military modernization, particularly of the navy which has been expanding its operations, including the East China Sea.[109] Other negative developments were the progress of Chinese oil and gas exploration in the East China Sea despite disagreement over the common EEZ border, visits by Japanese political leaders to the Yasukuni War Shrine, and other issues related to Japan`s past aggression against China.

A nadir in the bilateral relationship was reached during the rule of Prime Minister Koizumi Junichiro (2001-2006) because of his annual visits to the Yasukuni Shrine. But while

[104] "Kaijo Hoan Report" (2007), p. 16.
[105] Nomura, Hataru: “Senkaku shoto Kaitei yuden”, *Shokun* (May 2005), p. 64.
[106] Okada, "Senkaku shoto mondai", *op.cit.*, p. 102.
[107] Kurihara, Hiroyuki (2012): *Senkaku shoto wo urimasu*, Tokyo, Kosaido, pp. 78-82.
[108] Takahara, Akio: “Gendai Chugokushi no saikento. Hua Guofeng to Deng Xiaoping, soshite 1978 nen no gakkisei ni tsuite”, *Toa*, no. 495 (September 2008), p. 36; Li, Enmin (2005): *Nitchu heiwa yuko joyaku. Kosho no seijikatei*, Tokyo, Ochanomizu Shobo, p. 71.
[109] Drifte, Reinhard (2003): *Japan’s Security Relationship with China since 1989. From balancing to bandwagoning?*, Oxford/London, Nissan Institute/Routledge Japanese Studies.

the political relationship got colder, the economic relationship expanded and prospered (`Cold Politics, Hot Economics`). This also had – maybe at a first glance counter-intuitively – a deleterious effect on the motivation to work harder on maintaining the conditions for putting aside the territorial conflict since this dichotomy gave the false impression that politics and economics could be kept separate forever while the territorial issue was pending. The worsening of the territorial conflict from 2010, and particularly from 2012, with China`s harsh political and economic retribution, would bear this out.

Part of the rationale for the Chinese navy`s increased presence in the East China Sea is China`s oil and gas developments, as well as the wish to keep the navy`s access to the Pacific Ocean less vulnerable to Japanese/US observation or interception in a crisis. This could not but affect the territorial dispute. In May 1999, 12 Chinese warships conducted a manoeuvre in waters north of the Senkaku islands. The exercise was the first of its kind to be carried out by China in that region.[110] Other Chinese naval movements in the East China Sea increased, including reports about intelligence-gathering ships. In the last few years, the political influence of the PLA, and particularly of the PLA Navy (PLAN), has considerably increased.[111] The Japanese reacted by increasing their military deployment and a strengthening of Japanese-American military cooperation. However, the Senkaku area is controlled by the CG which is a law enforcement agency, and the Japanese navy keeps away from policing. This incidentally reinforces Japan`s claim, as policing is done only within national territory or EEZ areas.

Until the central government`s purchase of three of the islands in September 2012, it was the activities of non-state actors from Japan, Taiwan, Hong Kong and the PRC, be it nationalist activists or fishermen, which caused the greatest direct confrontations because Japan`s countermeasures were a demonstration of the exercise of sovereignty which the PRC became increasingly less likely to tolerate. In 1996, a Hong Kong protester who tried to cover the last meters from his boat to one of the islands drowned. Another incident occurred in 2008 when a Japanese Coast Guard ship rammed a Taiwanese sport fishing boat which had entered the territorial waters of the Senkaku Islands. The action caused the boat to sink.[112]

In March 2004, for the first time since 1996, seven Chinese activists landed on Uotsurijima. For the first time, the Japanese police made arrests, and the Chinese Foreign Ministry protested and called it a serious violation of Chinese sovereignty. The arrests were made under the immigration management law which includes a clause on expulsion of illegal foreign trespassers.[113] In light of the 2010 incident, it is important to note that despite guidelines which were to give the law enforcement agencies the authority to deal with trespassers `according to the law`, it was reported that the central government intervened at the last minute, did not press for an indictment and ordered the release of the arrested Chinese. The government did not want any further complications in order not to endanger the planned China visit by Foreign Minister Kawaguchi Yoriko, and was satisfied to have demonstrated effective control over the Senkaku Islands by arresting and expulsing the Chinese.[114] A Japanese journal reported that there was a Japanese promise to China after this incident that in future an intruder would not be put into detention but only arrested as long as it was not a serious case, and that in turn China would prevent the departure of vessels with

[110] Drifte, "Japanese – Chinese Territorial Disputes in the East China Sea...", *op. cit.*, p. 22.
[111] Drifte, "Japan`s Security Relationship with China..", *op. cit.*, pp. 64-67.
[112] Drifte, "Japanese – Chinese Territorial Disputes in the East China Sea...", *op. cit.*, p. 31.
[113] The information about the application of the immigration law is from Professor Takahara Akio, Email 4 May 2013.
[114] *Asahi Evening News*, 27 and 29 March 2004.

protesters from its harbours. Such an understanding has not surprisingly been denied by the Japanese as well as by the Chinese government.[115]

The China Marine Surveillance started irregular patrol activities near the Senkaku Islands in December 2008 when two CMS vessels stayed for over nine hours in the territorial waters of the Senkaku Islands as mentioned above. This was interpreted in Japan as a major escalation.[116] Former ambassador to China, Miyamoto Yuji, called this new development a qualitative change in the Senkaku dispute which went beyond the previous cases of intrusion by fishermen or protesters.[117] This deployment was followed by others in the following year against a background of China reinforcing its maritime control. Japan responded by building up its own defence efforts in the south, including the consideration of stationing some troops on Yonaguni Island, one of the closest islands to the Senkaku Islands.

4. 2010 and 2012/13 Incidents

4.1. The 2010 Fishing Trawler Incident

It is against this complex background that the Chinese fishing trawler *Minjinyu 5179* with a crew of 15 entered the territorial waters of the Senkaku Islands on 7 September 2010 near Kubajima. There were many other Chinese fishing trawlers in the same area and several ships of the Japanese Coast Guard were trying to chase them away. Pursued by three Japanese CG vessels, the *Minjinyu 5179* twice collided with two of the CG vessels. There are different interpretations whether the Chinese captain Zhan Qixiong intentionally rammed the CG vessels, and there are some strange inconsistencies highlighted in the reports of the incident.[118] Some non-Japanese authors like Sheila Smith and Linus Hagström are non-committal on the question of the collision, but most Japanese authors blame the trawler and this author is more inclined to believe that the ramming was intentional.[119] The Chinese unsurprisingly blames the CG vessels.[120] The issue of intention is important insofar as it gives some indication about the risk of recurrence and of escalation. The following circumstantial evidence seems to indicate intentional ramming by the Chinese captain:

- There is ample video footage leaked by a CG officer which is interpreted by specialists as indicating intentional ramming by the Chinese captain.[121]

- The captain seemed to have been drunk and is generally considered a volatile person. [122]

[115] "Nitchu `Senkaku mitsuyaku` atta", *Aera*, 25 October 2010; Okada, Takashi: "`Botan no kakechigae` wa naze okotta ka", *Sekai* (December 2010), p. 129.
[116] Shimizu, *op. cit.*, p. 65.
[117] Miyamoto, Yujji: "Nitchu shomosen wo kachinuku chie", *Bungei Shunju* (December 2012), p. 145.
[118] Takahara, "The Senkaku Trawler Collision Incident...", *op. cit.*, p. 7; Kaneko, Hidetoshi: "Truth behind collision off Senkaku Islands awash in mystery", *Mainichi Shimbun*, 12 November 2010, at http://mdn.mainichi.jp/perspectives/news/20101112p2a00m0na003000c.html.
[119] Smith, Sheila A.: "Japan and The East China Sea Dispute", *Orbis*, vol. 56, Iss. 3 (2012), p. 374; Hagström, Linus: "Power Shift' in East Asia? A Critical Reappraisal of Narratives on the Diaoyu/Senkaku Islands Incident in 2010", *Chinese Journal of International Politics*, vol. 5, no 3 (Autumn 2012), p. 272, fn. 29.
[120] "Riben xunluochuan Diaoyudao zhuang wo yuchuan. Zhongfang tichu yanzheng jiaoshe, *Xinhuawang*, 8 September 2010, at http://news.xinhuanet.com/world/2010-09/08/c_12529310.htm.
[121] William D. O`Neil: "Senkaku Incident on YouTube", NBR, *Japan Forum* (9 November 2010), at http://nbrforums.nbr.org/foraui/message.aspx?LID=5&srt=FromName&pg=1253&MID=38174.

- Fishing in the East China Sea is very competitive and Chinese fishermen are particularly annoyed about the patrols and controls by Japanese and Korean law enforcement agencies in the as yet un-demarcated EEZs among all three countries

The Chinese fishermen have a reputation of often being violent, as many incidents in the South China Sea and in the Yellow Sea seem to prove. Only three months later, in December 2010, another Chinese fishing trawler captain rammed a South Korean coast guard vessel in the Yellow Sea and his boat sank as a result, with the Chinese captain drowning.[123] Chinese crews are often armed with metal pipes and attack law enforcement agents which have led to other fatal casualties in 2011 and 2012.[124]

The 2010 trawler incident is further relevant in our context in view of the Japanese government`s handling it (legal aspect; denial of the shelving understanding), China`s countermeasures, and the aftermath of the government`s purchase of three islands in September 2012. After the collisions, the CG arrested the crew and confiscated the trawler. The following day, the Chinese government demanded the release of the crew and the trawler, which the Japanese government did on the 13 September, but keeping the captain in custody. The Japanese ambassador to China, Niwa Uichiro, was summoned six times by the Chinese between 8 and19 September. Beijing`s reaction escalated after the Chinese captain`s term of detention was extended on 19 September to last from 20 to 29 September. On 20 September, Chinese authorities detained four Japanese citizens for entering a restricted military area in Hebei province. Even without the trawler incident the detention of the four Japanese would have harmed the bilateral relationship, but, happening in this context, it was, rightly or wrongly, immediately linked by the Japanese to the other Chinese sanctions and seems to have been the final straw for the Japanese to release the Chinese captain.[125] Even immediately after the crew`s arrest, the Chinese government had already begun to cancel the second round of the negotiations for the implementation of the understanding on energy cooperation in the East China Sea concluded on 18 June 2008. Other reprisals and sanctions followed, including the suspension of rare earth exports to Japan on which the country`s high technology industry is very dependent. Although, before the incident, the Chinese government had already moved to reduce rare earth exports, which naturally hit Japan most as the biggest importer, Japanese media reported that the Chinese customs authorities totally suspended exports temporarily in late September.[126] The exact circumstances of this alleged embargo are still not yet clear as discussed in detail by Alastair Johnston.[127] The crisis ended when the deputy prosecutor in Ishigaki announced on 24 September the release of the captain, citing the `diplomatic impact` of the case on the bilateral relationship. Some considered this ending as surrender by the

[122] Personal email to this author by Andrew Horvat, 24 December 2010, giving an account of a NTV broadcast on 23 December 2010.
[123] "China urged to rein in Fishermen", *Japan Times*, 21 December 2010, at http://www.japantimes.co.jp/text/nn20101221a5.html.
[124] "Korea must get tough on illegal fishing", *The Chosun Ilbo*, 18 November 2011, at http://english.chosun.com/site/data/html_dir/2011/11/18/2011111801200.html; "Coast Guard kill Chinese Fisherman", *The Choson Ilbo*, 17 October 2012, at http://english.chosun.com/site/data/html_dir/2012/10/17/2012101701262.html.
[125] Interview with a senior Japanese diplomat in China, 26 May 2011; "Power Shift' in East Asia? ...", *op. cit.*, p. 281.
[126] "No improvement in China's rare earths ban", *Japan Times*, 13 October 2010, at http://www.japantimes.co.jp/text/nn20101013f3.html.
[127] Johnston, Alastair Iain: "How new and assertive is China`s new assertiveness?", *International Security*, vol. 37, no. 4 (Spring 2013), pp. 23-26.

Japanese and the result of a dubious political interference into the legal process. The opposition had a field day attacking the government`s handling of the incident.[128] The Japanese Foreign Ministry spokesman declared that the government had applied domestic law, and again refuted the idea of there being a territorial problem to be resolved.[129] Others argue that the incident had several benefits for the Japanese government because it obtained a reconfirmation of the US security guarantee to include the Senkaku Islands, it helped to convince the public about the necessity of more Japanese defence efforts and it exposed China as an assertive if not aggressive power.[130]

China claimed that the incident showed that Japan had changed its approach to handling this type of incident and this could be interpreted as a confirmation that both sides had indeed reached an informal understanding after the 2004 incident.[131] However, this incident was much more severe since the captain`s two collisions with CG ships were interpreted by the Japanese government as intentional ramming. The captain was charged with obstruction of Performance of Public Duty as a result of the ramming. On the other hand, one cannot blame China for allowing this boat to leave its Chinese harbour because it was a fishing trawler and not a protesters` campaign vessel. What made this incident so serious for the Chinese was Japan`s very public assertion of its sovereignty over the islands, by the way it handled the Chinese captain and the explicit denial of the shelving understanding of the 1970s. On 21 September, Foreign Minister Maehara stated that it was not the case that Japan had agreed with China to shelve the territorial dispute.[132] This declaration followed the second extension of the captain`s detention on 19 September which prompted the Chinese government to allow widespread demonstrations in China and to place a series of sanctions against Japan (cancellation of ministerial meetings; `self restrictions` on visits to Japan by Chinese tourists; postponement at very short notice of the visit of 1000 Japanese youth, planned from 21 September, to the Shanghai World Exhibition, etc.). Japan's consumption is estimated to have fallen by ¥31.8 billion due to a decline in the number of Chinese tourists.[133]

It is difficult to judge whether these unprecedented countermeasures were centrally directed or not, and it is more likely that it was a combination of various power centres competing and/or feeling the need to be seen acting in accordance with the increasingly anti-Japan mood.

Japan`s domestic circumstances made a speedy solution such as that in 2004 difficult. The DPJ had come to power only in 2009 and lacked foreign policy experience. There was no effective communication between the two governments, at least at the beginning of the incident, in contrast to earlier times. The Japanese leadership obviously misjudged how the Chinese would interpret the Japanese handling of the incident, which was perceived by China as a reversal of the Japan`s previous (albeit gradually) diminishing restraint. Although the DPJ had initially a more pro-China leadership when it came to power (notably Prime Minister

[128] Shimizu, *op. cit.*, p. 62. Okada, "Botan kakechigae...", *op. cit.*, p. 130; “Japanese government tipped off Chinese officials about fishing boat captain's release”, at http://mdn.mainichi.jp/perspectives/news/20101206p2a00m0na006000c.html.

[129] “Senkaku shoto shuhen ryokainai ni okeru Wagakuni junshisen to Chugoku gyosen to no sesshoku jian”, Gaimusho, *Position Paper* (25 September 2010, at http://www.mofa.go.jp/mofaj/press/danwa/22/dga_0925.html.

[130] See e.g. Hagström, “Power Shift’ in East Asia? ...", *op. cit.*, p. 296.

[131] Smith, Sheila A.: “Japan and The East China Sea Dispute”, *Orbis*, vol. 56, Iss. 3 (2012), p. 377.

[132] Hagström, “Power Shift’ in East Asia? *op. cit.*, p. 285.

[133] "Standoff over Senkakus could stall growth in both nations", *Japan Times*, 4 October 2012, at, http://www.japantimes.co.jp/news/2012/10/04/business/standoff-over-senkakus-could-stall-growth-in-both-nations/#.UZT_bsrLujk.

Hatoyama Yukio and then Secretary General Ozawa Ichiro), this had changed by 2010. The minister in charge of the CG (which is under the Ministry of Land, Infrastructure, Transport and Tourism) on the day of the incident, was Maehara Seiji, who is a known defence hawk, and who then became Minister of Foreign Affairs in a cabinet reshuffle on 17 September. He was therefore much more at liberty to take a hardline stance against China while the DPJ presidential election – won again by Kan Naoto – took place on 14 September, followed by the prime minister`s departure to New York to attend the UN General Assembly on the 22 September. The foreign minister before the 17 September was Okada Katsuya, who was also more inclined to take a strong stance. Maehara as well as Okada had seen the CG`s video of the collision which could not but have left them with a very negative impression of the Chinese captain`s actions.[134] It certainly did not help when Maehara, in his new post as foreign minister, qualified China`s reaction in the Diet on 18 September as `very hysterical`, and then declared on 21 September that there had never been an understanding about shelving the territorial dispute.[135] On 23 September, Secretary of State Hillary Clinton assured visiting Foreign Minister Maehara that the Senkaku Islands were covered by the bilateral Japan-US Security Treaty, an intervention that was certainly also not welcome to the Chinese. However, there have been speculations that in exchange for this strong US reconfirmation of the security guarantee, in order to get out of the stalemate, the Japanese had to promise to release the Chinese captain, which happened the following day.[136]

4.2. The Impact of the 2010 Incident

The 2010 incident had several consequences which made a recurrence very likely. First of all the incident raised tensions to a degree last seen during the anti-Japan demonstrations in 2004 and 2005, which had been mainly concerned with Japan`s attempt to gain a permanent UN Security Council seat and the history issue. These tensions had made it impossible to have any new negotiation round to conclude a treaty about cooperation in the exploitation of hydrocarbon resources in the East China Sea and thus reduce another major source of bilateral tensions which is moreover related to the Senkaku issue. Against this background, but also in line with its previous position, Japan refused a Chinese proposal made in October 2010 for joint resource development in the Senkaku area.[137] The legal aftermath of the incident kept on for some time, with Japan claiming compensation from the Chinese captain for the damage caused to the two CG vessels, which was rejected by China and countered with demands for compensation and an apology. The Japanese prosecutor dropped the case against the captain only in January 2011, but the CG still sent a bill to the captain in February 2011.[138]

While the incident helped the Japanese government to get strong US support on the applicability of the bilateral security treaty to the Senkaku Islands, and generally helped to convince the Japanese public about the need for greater Japanese defence efforts (including a strengthening of the US leverage *vis-à-vis* Japan concerning the realignment of its forces on Okinawa), it reduced Japan`s independence regarding the degree of support for the US China policy.

[134] Takahara, "The Senkaku Trawler Collision Incident", *op. cit.*, p. 9.
[135] Hagström, "Power Shift' in East Asia? *op. cit.*, p.276 and 285.
[136] Kaneko, Hidetoshi: "U.S. Intervention in Japan-China fishing boat row", *Mainichi Shimbun*, October 2010, at http://mdn.mainichi.jp/perspectives/news/20101008p2a00m0na001000c.html.
[137] "China seeks, Japan nixes joint resource development near Senkakus", *Mainichi Shimbun*, 22 October 2010, at http://mdn.mainichi.jp/mdnnews/news/20101022p2g00m0fp017000c.html.
[138] "China spurns demand to pay for Senkaku ship collisions", *Japan Times*, 13 February 2011, at http://www.japantimes.co.jp/text/nn20110213a4.html.

Secondly, the incident further undermined the conditions which were the foundation for the unofficial shelving of the Senkaku issue. If it was not yet clear to everybody that there was a territorial dispute over the Senkaku Islands, then this incident, with the unprecedented Chinese sanctions against Japan, had lifted the last remnants of doubt. Maehara Seji, who repeated on 25 occasions in Diet debates between 10 September and 16 November 2010, that there existed no territorial dispute, made this official position even less convincing.[139] The incident prompted Beijing to publicly undermine Japan`s territorial claim even more by announcing on 29 October 2010 permanent deployment of large fisheries patrol vessels in waters near the Senkaku Islands, which was reciprocated by the CG deploying patrol vessels of over 1000 tons in the same area.[140] In a further tit-for-tat, on 17 December 2010, the city government of Ishigaki, the administrative authority of the Senkaku Islands, passed an ordinance to designate 14 January the day to commemorate the Senkaku Islands` incorporation in 1895.[141]

4.3. The Further Erosion of the Shelving Agreement after October 2010

The next major confrontation over the Senkaku Islands in September 2012 occurred against the background of more measures taken by both sides to support their respective territorial claim, and domestic circumstances in both countries which were even less conducive to re-establish trust and good relations. The growing US-China political and military rivalry in East Asia, as exemplified by the Asia pivot which China perceives as directed against its rise did certainly not help. Initially, the year 2011 saw a recovery of relations from the 2010 incident. The bilateral trade reached a new high with a volume of $345 billion. Japanese foreign direct investment in China soared nearly 50 per cent in 2011 to $6.3bn.[142] Moreover, the Chinese public was very impressed with the disciplined way the Japanese people reacted towards the triple disasters which hit the country on the 11 March 2011, and there was an outpouring of sympathy which also included the sending of a Chinese search-and-rescue mission to the affected Tohoku area.[143] Yet, this improved atmosphere was quickly spoiled when the results of the textbook review were published on 27 March which asserted Japan`s territorial claim to the Senkaku Islands (as well as to Takeshima/Dokto) and denied the Chinese figure of 300,000 victims in the Nanjing massacre.[144]

In the meantime, the Japanese government continued to turn the legal screws which affected the Senkaku Islands by implementing domestic laws in order to be congruent with international law and strengthening maritime control. In February 2012, the Japanese cabinet passed bills to enhance the Japan Coast Guard's law enforcement powers in territorial waters which would, for example, authorize the CG to order foreign ships to leave Japan`s Territorial Waters without first boarding them.[145] Other administrative measures derived from the Basic

[139] Hagström, "Power Shift in East Asia...", *op. cit.*, p. 285.
[140] Minemura, Kenji: "China to establish permanent Senkaku Patrols", *Asahi Shimbun*, 20 December 2010.
[141] "Senkaku memorial day riles China. Furious Beijing blasts Ishigaki's planned 'Pioneering Day' to celebrate the isles' integration " *Japan Times*, 18 December 2010, at http://www.japantimes.co.jp/text/nn20101218x1.html.
[142] Dickie, Mure: "Tokyo warned over Plans to buy Islands", *Financial Times*, 6 June 2012, at http://www.ft.com/cms/s/0/af98fc54-aef7-11e1-a4e0-00144feabdc0.html#axzz2Epzs1wfX.
[143] Matsubara, Mihoko and Yang, Yi: "Chinese social Media reshape Image of Japan", *Japan Times*, 29 September 2012, at http://www.japantimes.co.jp/opinion/2011/09/29/commentary/chinese-social-media-reshape-image-of-japan/#.URzKgPL-MSw.
[144] Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on March 29, 2012, at http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t919280.htm.
[145] "Coast Guard`s Enhancements OK`d", *Japan Times*, 29 February 2012, at

Law on Ocean Policy, which had been enacted in 2007 and which provides the framework for administrating remote islands. Since 2009, Japan has given names to hitherto unnamed islands to clarify its claims to an EEZ. For this purpose, in August 2011, the government placed 23 uninhabited islands under state control, but four islets near the Senkaku Islands were exempt, out of consideration for China. In March 2012, however, the government abandoned this caution and registered Kitakojima as national asset.[146] In November 2011, the government had let it be known that it would shortly release a new list of names for islands which would include islets of the Senkaku group.[147] China protested and a meeting in Beijing planned in February 2012 between President Hu Jintao and with representatives of seven bilateral friendship groups from Japan was cancelled. An opinion piece in the *People's Daily* (RMRB) on 17 January 2012 said Japan's move 'is a blatant move to damage China's core interests'.[148] On 2 March 2012, Tokyo finally announced a list of 39 islands which included four islets in the Senkaku Islands group.[149] The Chinese protested immediately on the same day and, in a tit-for-tat, the State Oceanic Administration released on 3 March standard names and descriptions of the Senkaku islands and its 70 affiliated islets.[150] Another Chinese countermove was the announcement on 16 March by the SOA that they had started patrolling near the Senkaku Islands. This was followed promptly on the same day by one CMS ship entering the Territorial Waters of the Senkaku Islands, and the same vessels with another CMS ship cruising in the Contiguous Waters of the islands.[151] In November 2010 an official of the Ministry of Agriculture's Bureau of Fisheries which operates the Fisheries Law Enforcement Command (FLEC) had already announced that his organization would from now on deploy fisheries patrol vessels of over 1000 tons to maintain continuous patrols.[152]

4.4. Lighting the Fuse: Ishihara Shintaro`s Purchase Announcement

It was in this tense environment that Tokyo Governor Ishihara Shintaro announced on 16 April 2012 that the Tokyo Metropolitan Government (TMG) was negotiating the purchase of three of the four privately-held Senkaku islands by the end of the year, i.e. Uotsurijima, Kita Kojima and Minami Kojima. The lease of the central government for these three islands was due to expire in March 2013, and no incident would have happened if the government had quietly renewed the lease. The central government admitted that it had not known about Ishihara`s intention, but that there had been contacts on various occasions between the government and the private owner.[153] This seems convincing since state ownership would

http://www.japantimes.co.jp/news/2012/02/29/news/coast-guard-enhancements-okd/#.URzL2PL-MSw.

[146] "Japan declares Islands near Senkakus national Asset", *Japan Times*, 27 March 2012, at http://www.japantimes.co.jp/news/2012/03/27/news/japan-declares-island-near-senkakus-new-national-asset/#.URzM0vL-MSw.

[147] For the official lists of islands see http://www.kantei.go.jp/jp/singi/kaiyou/ritouhoushin/meisyou.html.

[148] "Hu Meeting nixed amid Senkaku Spat", *Japan Times*, 12 February 2012, at http://www.japantimes.co.jp/news/2012/02/12/news/hu-meeting-nixed-amid-senkaku-spat/#.UR0KA_L-MSw.

[149] "23 remote isles put under state ownership", *Yomiuri Shimbun*, 8 March 2012, at http://www.yomiuri.co.jp/dy/national/T120307006853.htm.

[150] "China opposes Japan`s naming Diaoyu Islands", *Xinhua*, 3 March 2012, at http://news.xinhuanet.com/english/china/2012-03/03/c_122784453.htm; "China releases Standard Names of Diaoyu Islands", *Xinhua*, 3 March 2012, at http://news.xinhuanet.com/english/china/2012-03/03/c_122784452.htm.

[151] *NHK*, 16 March 2012, at http://www3.nhk.or.jp/daily/english/20120316_20.html; "Chinese ship enters Japanese Waters near disputed Islands", *Jiji*, 16 March 2012, at http://jen.jiji.com/jc/eng?g=eco&k=2012031600478.

[152] Minemura, Kenji: "China to establish permanent Senkaku Patrols", *Asahi Shimbun*, 20 December 2010.

[153] "Governor seen as goading administration into action", 16 April 2012, at http://www.japantimes.co.jp/news/2012/04/18/national/governor-seen-as-goading-administration-into-action/#.UZX8Mq7Ppak.

have provided better prevention of incidents, even more than just leasing. Taken aback by Ishihara`s surprise move, the Chief Cabinet Secretary Fujimura Osamu declared the following day that the central government might acquire the islands `if required`, and Prime Minister Noda implied in a Diet speech on the 18 April that a purchase by the central government was one of the options. Both statements were widely reported in China.[154] Ishihara had chosen his announcement for maximum effect on the occasion of a speech at the conservative Washington DC-based Heritage Foundation. He made it clear that this project was meant as a criticism of the DPJ-led central government, which he considered failing in its duty to sufficiently protect Japan`s sovereignty by saying that the central government should be buying the islands but that the Gaimusho was too afraid of offending China. The location of his announcement was meant to get stronger support from the US for Japan`s territorial claim.[155] As we have seen above from Ishihara`s activities in the 1970s, this announcement was in many ways the logical conclusion of his long lasting obsession with the Senkaku Islands. It was the 2010 incident in particular which had encouraged him to renew his old plan of buying the islands after his earlier failure to do so. His good connections with the owner Kurihara Kunioki, who shared his nationalist tendencies, helped Ishihara to become the favoured purchaser.[156]

The possibility of having the three islands under the control of the nationalistic governor of Tokyo who wanted to build facilities on the islands to strengthen Japan`s sovereignty was extremely unpalatable to the Noda government which feared complications with China. In a meeting on 18 May, Noda and his top advisers decided in principle to purchase the islands.[157] Pressure on the government increased, to pre-empt Ishihara because he was astonishingly successful in raising voluntary contributions from the public to buy the three islands, thus circumventing any legal difficulties in using Tokyo`s taxpayer money and also proving the popularity of his move: By 1 June he had collected 70,000 donations totaling around ¥1.01 billion which increased to ¥1.46 billion by 6 September.[158] On 27 July, the TMG ran an advertisement in the *Wall Street Journal* asking for US understanding and support for the purchase plan.[159] The TMG had to demand the central government's permission to conduct a survey of the islands, which the government refused to grant on 27 August, forcing the TMG to conduct a survey from a ship on 2 September.[160] In the end, it was the higher sum and the shortest delay of concluding the deal which prompted Kurihara Kunioki, who was apparently in some financial difficulties, to accept the central government`s offer of ¥2.05 billion ($26 million) and to sign the contract on 11 September. This was quite an embarrassing turn for Ishihara. In addition he did not succeed in using the offer of his collected money to entice the

[154] "Tokyo gov't in talks with owners to buy Senkaku Islands: Ishihara", *Kyodo News*, 15 April 2012, at http://english.kyodonews.jp/news/2012/04/153304.html;
Tiberghien, Yves: "Misunderstadings, Miscommunication, and mis-signaling. Senkakus through Chinese eyes", *The Oriental Economist*, vol. 80, no. 12 (December 2012), p. 8.

[155] "Tokyo negotiating purchase of Senkaku Islands", *NHK*, 17 April 2012, at http://www3.nhk.or.jp/daily/english/20120417_23.html.

[156] Hijikata, Shinji and Nakayama, Shozo: "Ishihara challenges Govt on territorial Issues / Plan to buy Senkaku Islands, a Slap at DPJ-led Administration, was hatched Months ago in Secret", *Yomiuri Shimbun*, 19 April 2012, at http://www.yomiuri.co.jp/dy/national/T120418005346.htm.

[157] "Senkaku konyu ni fumidashita", *Asahi Shimbun*, 26 September 2012, pp. 1-2.

[158] "Donations to metro government to buy Senkaku Islands top ¥1 billion" *Japan Times*, 2 June 2012, at http://www.japantimes.co.jp/text/nn20120602b4.html; *Yomiuri Shimbun*, at
"Govt to buy 3 Senkaku isles for 2 billion yen", *Yomiuri Shimbun*, 6 September 2012, at http://www.yomiuri.co.jp/dy/national/T120905004690.htm.

[159] "Ad in Wall Street Journal seeks U.S. support for Senkaku purchase plan", *Japan Times*, 29 July 2012, at www.japantimes.co.jp/text/nn20120729a2.html.

[160] "Tokyo metro government's inspection team sets sail for Senkaku Islands" *Japan Times*, 02 September 2012, at www.japantimes.co.jp/text/nn20120902a9.html.

Noda government to promise the building of any facility on the islands. Noda was presented by his administration with several options, including his favoured option of repairing the existing light house on Uotsurijima, but in the end was convinced by Foreign Minister Gemba to leave things as they were in order not to further inflame the Chinese.[161]

The central government`s purchase of the three islands on 11 September immediately led to a very harsh reaction by the Chinese which was even worse than in 2010. But before looking at the Chinese countermeasures after the 11 September in detail, it is important to investigate why the Chinese reaction was so strong and why the Japanese apparently did not anticipate it, particularly in view of China`s unprecedented reaction in September 2010.

4.5. Chinese Warnings before the Nationalization on 11 September

Prime Minister Noda admitted on 19 September, only eight days into the comprehensive Chinese sanctions and counter measures that he had underestimated their extent.[162]

The question arises, therefore, whether Japan could or should have anticipated the strong Chinese reactions, and what this incident means for the future of the territorial dispute and for the bilateral relationship in general. At this point, one has to rely solely on media reports and only some tentative conclusions are possible.

Looking at the Chinese reactions to the Ishihara announcement on 16 April 2012 and afterwards, one can detect at least two stages in the intensity of Chinese warning signals. The initial Chinese reactions to the Ishihara announcement on 16 April 2012 were rather moderate, albeit firm, on the principle of China`s sovereignty claim to the islands. On 18 April, the spokesperson of the Chinese Ministry of Foreign Affairs said that the islands were part of China and that it can exercise its sovereign right over them. He added that any unilateral action by Japan on the islands was invalid and could not change the fact that they were Chinese.[163] In a named commentary of Xinhua on 18 April, attention was drawn to Ishihara`s known right wing and anti-Chinese statements but also pointed out that the CMOFA `would not hesitate to take any necessary measures to safeguard sovereignty over the Diaoyu Islands`.[164] Vice-President Xi Jinping told visiting Kono Yohei, a known pro-China hand, that Japan should not worsen the bilateral relationship and that core issues should be resolved by the two countries in an appropriate manner.[165] At the end of April, the State Oceanic Administration announced a plan to designate islands and their surrounding waters as strategically vital and to protect their environments and develop marine resources.[166] More specifically targeting the Senkaku Islands was, however, the entry on 3 May of two FLEC vessels into the Senkaku Islands` Contiguous Waters for the first time since Ishihara`s

[161] "Govt to buy 3 Senkaku isles for 2 billion yen", *Yomiuri* 6 September 2012, at www.yomiuri.co.jp/dy/national/T120912004075.htm.
[162] "Japan should see things clearly", *China Daily*, 25 September 2012, at http://www.chinadaily.com.cn/opinion/2012-09/25/content_15779727.htm.
[163] "Foreign Ministry Spokesperson Liu Weimin Press Conference", *Ministry of Foreign Affairs of the PRC*, 18 April 2012, at http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t925289.shtml.
[164] Haiqing, Wang: "Commentary: Provocation by Japanese official over Diaoyu Islands detrimental to ties with China", *Xinhua News*, 18 April 2012, at http://news.xinhuanet.com/english/china/2012-04/18/c_131535887.htm.
[165] "Xi Jinping checks Japan on Senkaku Islands", *NHK*, 24 April 2012, at http://www3.nhk.or.jp/daily/english/20120424_37.html.
[166] "China to set up Protection of Islands", *NHK*, 20 April 2012, at http://www3.nhk.or.jp/daily/english/20120420_07.html.

announcement.[167] Bilateral tensions also increased after a Japanese right wing group supported the holding of a meeting of the World Uyghur Congress in Tokyo from 14 to 18 May, which led to the cancellation by Beijing of several official visits.[168] On 13 May, Premier Wen Jiabao raised the Senkaku issue and the Uighur meeting during talks in Beijing with Prime Minister Yoshihiko Noda, cautioning that 'it is important to respect China's core interests and matters of great concern'.[169] While there might be some ambiguity whether the Senkaku issue was meant here to be a `core interest` or only `a matter of great concern`, Wang Jiarui, head of the Communist Party's International Department, was quoted by Eda Satsuki, a foreign policy adviser of the DPJ, that both the Senkaku and the Uighur issue were described as `core issues` and Wen`s statement was stressed in a Chinese TV broadcast.[170] The Xinjiang issue, as well as Taiwan and Tibet, have clearly been referred to for some time by the Chinese government as `core issues`, but the Senkaku issue had been called a `core issue` apparently for the first time only in an opinion piece by the *Renmin Ribao* in January 2012.[171] Only on the 23 March 2013 did the Chinese Foreign Ministry Spokesperson clearly state that China regards the Diaoyu Islands as its core interest although the written record subsequently softened this statement.[172]

The above chronology gives certainly the impression that there was a series of Chinese reactions which expressed strong Chinese concern with any purchase (whether by the TMG or the central government) of the Senkaku Islands. If that had not been enough, it was the interview of the *Financial Times* with Japan`s ambassador in China, Niwa Uichiro, at the beginning of June which showed strong concern about the implications of a purchase. He was quoted as saying that 'if Mr Ishihara's plans are acted upon, then it will result in an extremely grave crisis in relations between Japan and China….We cannot allow decades of past effort to be brought to nothing'. He warned that such a crisis would affect business.[173] Niwa must have been truly concerned about the severity of the situation to make such a rather undiplomatic public statement for which he was reprimanded by Foreign Minister Gemba and criticized by some media outlets and politicians, ultimately leading to his recall later in the year.[174]

The Chinese warnings became sharper at the second stage when Prime Minister Noda announced on 7 July that his government would seek to buy the islands because now the

[167] "Chinese ships near the Senkakus again", *Japan Times*, 04 May 2012, at http://www.japantimes.co.jp/news/2012/05/04/national/chinese-ships-near-senkakus-again/#.UZX_xa7Ppak.

[168] "China calls off Yang-Yonekura talks", *Japan Times*, 16 May 2012, at http://www.japantimes.co.jp/news/2012/05/16/business/china-calls-off-yang-yonekura-talks/#.UZYAv67Ppak.

[169] "Are Senkakus a 'core interest' for China?", *Japan Times*, 24 May 2012, at http://www.japantimes.co.jp/news/2012/05/24/national/are-senkakus-a-core-interest-for-china/#.UZYBE67Ppak; Przystup, James J.: "Japan-China Relations: "Happy 40th Anniversary…? Part 2", CSIS, *Comparative Connections* (September 2012), at http://csis.org/files/publication/1202qjapan_china.pdf.

[170] "Are Senkakus a 'core interest' for China?", *Japan Times*, 24 May 2012, at http://www.japantimes.co.jp/text/nn20120524a8.html; Inuma, Yoshisuke: "Senkakus", *The Oriental Economist*, vol. 80, no. 12 (December 2012).

[171] "Are Senkakus a 'core interest' for China?", *op. cit.*.

[172] "Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference", *Ministry of Foreign Affairs of the PRC*, 26 April 2013, at http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t1035948.shtml. For a critical discussion of this issue see Campbell, Caitlin; Meick, Ethan; Hsu, Kimberley and Murray, Craig: "China's "Core Interests and the East China Sea", *US-China Economic and Security Review Commission, Staff Research Backgrounder*, 10 May 2013, at www.uscc.gov/sites/default/files/Research/China's Core Interests and the East China Sea.pdf.

[173] Dickie, Mure: "Tokyo warned over Plans to buy Islands", *Financial Times*, 6 June 2012, at www.ft.com/cms/s/0/af98fc54-aef7-11e1-a4e0-00144feabdc0.html#axzz2Epzs1wfX.

[174] "Japan`s main Opposition Party calls on Gov`t to sack Envoy", *Kyodo News*, 16 June 2012, at http://english.kyodonews.jp/news/2012/06/162766.html; "No need to pander to China over Senkaku Islands", *Yomiuri Shimbun*, 13 June 2012, at www.yomiuri.co.jp/dy/editorial/T120612003987.htm.

purchase could no longer be put down to a mere local maverick with strong anti-Chinese inclinations. The *Global Times* editorial of 9 July showed the frustration by some Chinese: 'Each time Japan takes one step, we should take one and half or even two steps forward, making Japan aware of the grave consequences caused by its aggression against China'.[175] A Xinhua commentary on 7 July quotes the CMOFA`s spokesperson referring probably for the first time in this row to a `consensus` against which the Japanese government went by wanting to buy the islands, meaning of course the shelving consensus of 1972 and 1978.[176] On 9 July a Xinhua commentary titled `Japan playing with fire over Diaoyu Islands` called the purchase by the central government a `farcial ambition`, an expression repeated thereafter many times.[177] On 11 July, the Japanese media reported the entry by three FLEC vessels into the territorial waters of Kubajima, the first time since the 16 March 2012, followed by one vessel cruising the following day in the island`s contiguous zone.[178] Public opinion became also increasingly inflamed and the *Global Times* reported on 19 July that 90.8 per cent of Chinese people surveyed approve using the military to enforce China's sovereignty over the islets, with 52.1 per cent saying a military clash 'is likely' between China and Japan over the islands.[179]

Even the US gave Japan `strong advice` not to proceed with the purchase because it could `trigger a crisis` as was revealed in April 2013 by Kurt Campbell who was at the time Assistant Secretary for East Asian and Pacific Affairs. "Even though we warned Japan, Japan decided to go in a different direction, and they thought they had gained the support of China, or some did, which we were certain that they had not," Campbell is quoted in an interview with Kyodo.[180]

4.6. Failure of Communication

The above chronology and escalation of Chinese reactions to the planned purchase of the islands over the summer 2012 seem to give a clear indication that a Japanese purchase of the three islands was not considered just another incident without major consequences. So why did the Japanese government still go ahead with the purchase? In the final analysis, the failure to avoid the crisis escalating in September 2012 lay in the wide difference between the interests of the two governments. Domestic circumstances on both sides and the inherent zero sum nature of territorial disputes prevented the transition from dialogue to preventive action, let alone solution. Aggravating events over the summer 2012, which raised the tempers on both sides, were the demands by the TMG to send a survey team to the Senkaku Islands (the Noda government after some initial conflicting reports did not allow a landing), the landing of Hong Kong activists on Uotsurijima on 15 August (timed with the anniversary of Japan`s surrender), followed by the landing of Japanese activists (including local parliamentarians) on 19 August, and an attack in Beijing on 27 August on the car carrying Ambassador Niwa.

[175] Richardson, Michael: "Time to dial down Senkakus friction", *Japan Times*, 19 July 2012, at http://www.japantimes.co.jp/opinion/2012/07/19/commentary/time-to-dial-down-senkakus-friction/#.UZYDPq7Ppak.
[176] "Commentary: Japan playing with fire over Diaoyu Islands", *Xinhua News*, at 09 July 2012, at http://news.xinhuanet.com/english/indepth/2012-07/09/c_131704237.htm.
[177] *Ibid.*; ""Buying-Islands" farce to badly damage hard-won China-Japan relations", *Xinhua News*, 13 July 2012, at http://news.xinhuanet.com/english/china/2012-07/13/c_131713259.htm.
[178] "China patrol ships enter waters near Senkakus", *Japan Times*, 12 July 2012, at www.japantimes.co.jp/text/nn20120712a6.html#.T_50_ZGibiM; "Another Chinese Patrol Ship spotted near Senkaku Islands", *Jiji Press*, 12 July 2013, at http://jen.jiji.com/jc/eng?g=eco&k=2012071200425.
[179] "Central government would have to build harbors if it buys isles from metro authority", *Japan Times*, 21 July 2012, at www.japantimes.co.jp/text/nn20120721a3.html#.UAp005GibiM.
[180] "U.S. warned Japan against purchase of Senkakus: Campbell", *Kyodo News*, 10 April 2013.

Despite ongoing communication and dialogue through various channels, these adverse circumstances did not help with proper communication over the summer 2012 between two very different governance systems.

The Japanese central government had been caught short by Ishihara`s sudden announcement on 16 April, and became totally absorbed with preventing the maverick politician from going ahead with the purchase of the islands, fearing rightly that he would seriously complicate the Japanese-Chinese relationship. Ishihara wanted to embarrass the Noda government which was constantly losing percentage points in popularity, and to force its hands to deal more assertively with the islands. As we have seen, for Ishihara it was not just about purchasing the islands, but about building facilities on them. For the Noda government, buying the islands by the state was therefore the lesser evil. The government tried all along to convince the Chinese of Tokyo`s good intentions, for example, when Foreign Minister Gemba met with his Chinese counterpart Yang Jiechi on 11 July, that the purchase was only a `domestic commercial transaction` and not a diplomatic matter, and was only meant to ensure that the islands would be `administered peacefully and stably`.[181] In December 2012, when the full extent of China`s unprecedented reactions had become known, the new Japanese ambassador Kitera still stated that 'The change in ownership should not have caused a problem in relations with China', adding that Japan had given China sufficient explanations ahead of the purchase.[182] Foreign Minister Gemba even tried to highlight in November that the purchase was actually a return to the *status quo ante*: 'The measure taken by the government of Japan was just a transfer of title under Japanese domestic law and just means that the ownership of the islands — held by the government until 1932 — was returned from a private citizen to the government'.[183] In short, for the Japanese, the purchase of the islands was aimed at maintaining the *status quo* which China should consider to be also in its own interest. That expressions like `peaceful administration`, or `transfer of title under domestic Japanese law` could only be interpreted by the Chinese as acts of asserting Japanese sovereignty was apparently simply ignored. Under these circumstances it was impossible to convince the Chinese that transfer of ownership had nothing to do with sovereignty. Instead, the Chinese even suspected that the Noda government and Ishihara were conniving at strengthening Japan`s control over the islands.[184]

Any intended conciliatory overtone in the above explanations by Gemba and many similar declarations before and later were further negated by the insistence that there was no territorial dispute, exactly the position the Chinese wanted to change. The frequent references to `core interest` by China were ignored by the Japanese government. For the Chinese leaders, the `offer` to choose between the Tokyo Metropolitan Government or the Government of Japan buying the islands was, as Vice Foreign Minister Zhang Zhijun later put it, like being asked to choose between two doses of poison.[185]

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[181] "Senkaku talks with China end in stalemate", *Yomiuri Shimbun*, 13 July 2012, at http://www.yomiuri.co.jp/dy/national/T120712005055.htm.

[182] "New ambassador to China upbeat on improving ties", *Japan Times*, 11 December 2012, at http://www.japantimes.co.jp/news/2012/12/11/news/new-ambassador-to-china-upbeat-on-improving-ties/#.UZo64UrnSww.

[183] Genba, Koichiro, *New York Times*, 20 November 2012, at http://www.nytimes.com/2012/11/21/opinion/koichiro-genba-japan-china-relations-at-a-crossroads.html?ref=japan.

[184] Miyamoto, *op. cit.*, p. 146.

[185] "China Voice: Japan should face up to past, present wrongdoing", *Xinhua News*, 29 October 2012, at http://news.xinhuanet.com/english/indepth/2012-10/29/c_131938015.htm.

It was also unfortunate that the Japanese government allowed the expression *kokuyuka* (nationalization) to prevail, even among government members, instead of the original term agreed by the Japanese cabinet *shutoku* (acquisition).[186] Chinese media has taken over the Japanese term of 'nationalization' which certainly further confused Chinese public opinion. Since it does not know the historical background and Japan`s effective control of the islands, `nationalization` tended to be understood as a radical change in the *status quo* or even as invasion.[187] A well known Japanese observer in China, Kato Yoshikazu even argued therefore that the 1972 and 1978 understanding about shelving had prevented the Chinese people from learning about the issue.[188]

Both sides made it impossible with their extreme and diametrically opposed positions to find a compromise. The Noda government was too weak (and also too preoccupied with other issues like the passing of the law to introduce a hike of the value added tax, coping with the aftermath of the triple disaster of March 2011 and simply trying to stay in power) to find an alternative to the now abandoned `shelving compromise` and to admit that there was a territorial problem. At the end of August, Noda was forced to promise Lower House elections `sometime soon` despite the grim outlook for his party`s chances in the elections. Making a compromise on the territorial issue would not have helped to gain popular support. While the Chinese probably felt encouraged to escalate its pressure by its success in making the Japanese government hand over the captain in September 2010, it most likely had the effect on the Noda government to stay inflexible in order to avoid being seen yet again as caving in to Chinese pressure. But the Chinese were also not able to compromise on their demand that the Japanese should admit the existence of a territorial issue. The preparation for the 18th National Party Congress in November 2012, and the ensuing leadership change to be finalized only in spring 2013, similarly did not allow the Chinese leaders whether in or outgoing, to appear soft. Eight out of nine Politbureau members publicly expressed their opposition to the purchase either before or after the announcement of the purchase on 11 September.[189] Public opinion in China had grown increasingly hostile to Japan over the summer and was particularly inflamed when the landing of the Hong Kong activists was followed by the landing of Japanese activists which were treated by the Japanese authorities more leniently than the former, i.e. not arrested despite having violated private land leased to the state. Riots in several Chinese cities started thereafter.[190]

Although both sides agreed to continue dialogue, and several official meetings at different levels took place, they could only end in restating known positions. China did not make things easier by later cancelling such meetings, depriving both sides of possible opportunities to find a breakthrough. The start of Chinese sanctions across the whole gambit of bilateral relations deprived the Japanese of even more domestic wriggle room for a compromise.

It seems that the above circumstances did not allow Japan`s central decision-makers concerned with the issue, in particular the Prime Minister and his immediate circle, to admit to and/or understand until the purchase announcement on 11 September 2012, how strongly

[186] Nakanishi, Sato, Haruna and Miyage, *op. cit.*, p. 97.
[187] Takahara Akio: "interview", *Jiji Press*, 24 October 2012 (provided to the author by Professor Takahara).
[188] Kato, Yoshikazu: "Ecouter l`autre plus que jamais", *Courrier International*, 27 September 2012, at http://www.courrierinternational.com/article/2012/09/27/ecouter-l-autre-plus-que-jamais.
[189] Zhu, *op. cit.*, p. 103.
[190] "Chinese stage anti-Japan rallies over Senkakus", *Japan Times*, 20 August 2012, at http://www.japantimes.co.jp/news/2012/08/20/national/chinese-stage-anti-japan-rallies-over-senkakus/#.UTxp2zfxmig.

the Chinese felt about it. Ambassador Niwa`s rather undiplomatic statements in the *Financial Times* interview seem to indicate that he felt that the central decision-makers did not understand the strength of the feelings of the Chinese and how far they might go. Niwa warned in his interview that even a possible pre-purchase survey of the islands could be diplomatically incendiary, since such a survey was discussed already at the time to enable the TMG to go ahead with the purchase.[191] As late as the 3 September, the *Yomiuri Shimbun* reported that the Chinese government was reacting calmly as long as three conditions were observed to maintain the *status quo*, but the conditions contained no opposition to a possible purchase and instead just mentioned abstention from landing, surveying and building facilities on the islands.[192] For now, one can only speculate whether the government was misled by such reports. However, in view of the growing diffusion of power in China`s policymaking, it is also conceivable that the CMOFA (or other Chinese communicators) was trying to send out more conciliatory signals, but not having the same power as other policy-making institutions, sent in this way a wrong message to Japan. According to Professor Takahara Akio, General Zhu Chenghu said on 5 September that a purchase by the central government would be better and Qu Xing, director of the China Institute of International Affairs is said to have expressed a similar opinion.[193] The above Campbell interview seems to suggest that Japan was more inclined to act upon Chinese statements which were closer to what it wanted to understand.

4.7. The Chinese Reaction: Rhetoric Warfare

The final miscommunication or clash of irreconcilable interests occurred when Prime Minister Noda met President Hu on the sidelines of the Asia Pacific Economic Cooperation (APEC) summit in Vladivostok on 9 September but announced two days later the signing of the purchase contract with the Kurihara family. According to one account Hu did not want to meet Noda in Vladivostok, but the Japanese embassy in Beijing told later some Chinese that Hu had wanted to meet Noda.[194]Whatever the circumstances were or the reason for either Hu not sufficiently conveying his strong feelings concerning the purchase, which had been known and bilaterally discussed at least since the Japanese official announcement of its purchase intention on 7 July, or for Noda not understanding the Chinese feeling for the possible reasons discussed above, Hu apparently felt he had lost face when Japan announced the purchase on 11 September.[195] Moreover, the Japanese announcement could not have come at a more awkward time because of the anniversary of the Mukden Incident on the 18 September which, like several other carefully cultivated anniversaries regarding Japan`s past misdeeds in China, always arouse latent anti-Japanese feelings. As a result, the Japanese announcement caused an avalanche of virulent rhetoric outbursts relating to the past, political sanctions, further measures to assert China`s territorial claim (for example, including the islands in the Chinese TV weather forecast; an exhibition of ancient maps to prove Chinese control), economic sanctions, and an escalation of patrols by Chinese FLEC and MSA ships and aircraft around the Senkaku Islands.

The mildest part of China`s rhetoric avalanche was calling the government`s purchase a `farce`, a rather undiplomatic expression already used by Xinhua in July 2012, but then taken up at the highest level by Vice President Xi Jinping when meeting Secretary of Defence Leon

[191] *Financial Times*, 6 June 2012, *op. cit.*
[192] *Yomiuri Shimbun*, 3 September 2012, at http://www.yomiuri.co.jp/dy/national/T120902003029.htm.
[193] Interview with Professor Takahara Akio 10 October 2012.
[194] Interview with a Chinese member of CASS, 26 February 2013.
[195] "Isles row puts chill on 40th anniversary of ties", *Japan Times*, 30 September 2012, at http://www.japantimes.co.jp/text/nn20120930a1.html.

Panetta on 19 September.[196] But the main line from now on was that Japan`s claim to the Senkaku Islands was a denial of the post-World War II results. In its statements and rebuttals the Chinese showed their frustration at not having been able to fundamentally change the *status quo* and they did not hesitate to use expressions which were rather undignified for diplomats and political leaders. Japan on the other hand argued for peaceful resolution along the lines of international law and dialogue which probably infuriated the Chinese even more. On 10 September, the CMFA issued a statement where it called Japan's position on the disputed islands `an outright denial of the outcomes of the victory of the World Anti-Fascist War and … a grave challenge to the post-war international order`.[197] In a heated exchange at the UN General Assembly between China's UN ambassador Li Baodong and Japan's Deputy UN ambassador Kodama Kazuo, Li called the motive for purchasing the three islands to 'legalize its stealing and occupation of the Chinese territory' and stated, 'This action of Japan constitutes a serious encroachment upon China's sovereignty, and intends to continue and legalize the result of Japan's colonial policy. It is an open denial of the outcomes of victory of the world anti-fascist war, and a grave challenge to the post-war international order and the purposes and principles of the Charter of the United Nations'.[198] In a further rebuttal of Japan`s assertion of its claim, Li characterized the island purchase as 'nothing different from money laundering'.[199] At the Asia Europe Meeting (ASEM) in Laos Foreign Minister Yang Jiechi repeated the reference to the `outcome of the anti-Fascist war` while Prime Minister Noda spoke of peaceful resolution of conflicts according to international law.[200] On 11 October, the CMFA spokesperson Hong Lei refuted Foreign Minister Gemba historical account justifying Japan`s claim by calling it `gangster logic`.[201]

On the Chinese side, therefore, there are now two closely-linked history narratives: one is about the islands having been part of China since the Ming and Qing dynasties, the other connects the islands to what is the better known history narrative, i.e. Japan having victimised China since 1894 and as part of its imperialism annexed the islands. These two narratives continue to be cultivated by the Chinese leadership. In October 2012, the Chinese announcement of the publication of 80 volumes on the Far East War Criminal Court was clearly meant to link the latter narrative to Japan`s acquisition of the Senkaku Islands.[202] Former Foreign Minister Gemba explicitly tried in October 2012 to delink the territorial issue from Japan`s aggression against China, only to be reminded by the Chinese ambassador to the UK in an article in the *Financial Times* (as part of the ensuing worldwide press campaign by both sides) that 'the Diaoyu Dao issue is all about history'.[203]

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[196] "Buying-Islands" farce to badly damage hard-won China-Japan relations", *op. cit.*; "China delays approval of working visas. Firms made to wait as Beijing retaliates amid Senkakus dispute", *Japan Times*, 23 September 2012, at http://www.japantimes.co.jp/text/nn20120923a1.html.

[197] "Statement of the Ministry of Foreign Affairs of the People`s Republic of China", 10 September 2012, at http://www.fmprc.gov.cn/eng/topics/diaodao/t968188.htm.

[198] "China's U.N. ambassador rebuts remarks by Japanese representative on Diaoyu Islands", *Xinhua News*, 28 September 2012, at http://news.xinhuanet.com/english/china/2012-09/28/c_123777391.htm.

[199] "China says Japan 'stole' isles, in verbal war at U.N.", *Mainichi*, 28 September 2012, at http://mainichi.jp/english/english/newsselect/news/20120928p2g00m0dm067000c.html.

[200] "Japan, China engage in war of words at ASEM summit", *Japan Times*, 07 November 2012, at http://www.japantimes.co.jp/news/2012/11/07/national/japan-china-engage-in-war-of-words-at-asem-summit/#.UZYMX67Ppak.

[201] Foreign Ministry Spokesperson Hong Lei`s Regular Press Conference, 11 October 2012, at http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t979321.shtml.

[202] "China to publish books on Tokyo Trials", Xinhua News 24 October 2012, at http://news.xinhuanet.com/english/china/2012-10/24/c_131927888.htm.

[203] "Foreign Minister Koichiro Gemba interview", *Financial Times*, 19 October 2012, at

4.8. Political Sanctions

Chinese political countermeasures ranged from the cancellation of official and unofficial visits to further legal acts to reinforce China`s claim to the Senkaku Islands. Around 40 per cent of ceremonial events in Japan to mark 2012 as the 40th anniversary of the normalization of diplomatic relations with China were cancelled or postponed, and even more events in China.[204] These cancellations were not always the result of direct government intervention, but sometimes more indirect official `discouragement`, helped by the Chinese preference of not being seen to do something in contradiction to the (initially fomented and later self-propelling) anti-Japan atmosphere, or by fear of participants of running into demonstrations if not assaults. The legal screws were further turned with long-term implications: On 10 September, the Chinese government announced the base points and baselines of the territorial waters of the disputed islands and their affiliated islets, as well as the names and coordinates of 17 base points.[205] On 16 September, reports appeared that China was submitting proposals for its extended continental shelf to the UN Continental Shelf Commission which included the Senkaku Islands, but in fact the actual submission occurred only on 14 December 2012.[206] On 20 September, a government agency published a thematic map of the Diaoyu Island and its affiliated islands.[207] China's Meteorological Administration started providing weather forecasts for the Senkaku area on the state-run TV station.[208] On 16 September, the fishery bureau announced the lifting of the fishery ban in the East China Sea and stressed that China planned to strengthen its sovereignty claim over the Senkakus.[209]

There were rumours that 1000 fishing vessels would come to the Senkaku area and though this did not materialize, it helped to further raise tensions.[210]

Most attention in Japan was focused on the widening street protests in over 100 Chinese cities, the destruction of Japanese shops, restaurants, cars and production facilities and the attacks on Japanese citizens in China.[211] The websites of at least 19 Japanese banks,

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http://www.mofa.go.jp/mofaj/annai/honsho/gaisho/gemba/pdfs/ft_1210_en.pdf; Liu Xiaoming: "China responds to Japan`s Provocation", *Financial Times*, 1 November 2012, at http://www.ft.com/cms/s/0/83440fd8-22c2-11e2-938d-00144feabdc0.html#axzz2B9FakMww.

[204] "40% of Japan-China 40th anniversary events canceled across Japan?", *Japan Times*, 30 September 2012, at www.japantimes.co.jp/text/nn20120930a5.html.

[205] "Japan to take "all possible measures" in response to Chinese patrol around Diaoyu Islands: report", *Xinhua News*, 14 September 2012, at http://news.xinhuanet.com/english/world/2012-09/14/c_131850153.htm. For a critical discussion of these base lines see Roach, J. Ashley: "China`s Straight Baseline Claim: Senkaku (Diaoyu) Islands", *Insights*, (13 February 2013), at http://www.asil.org/pdfs/insights/insight130213.pdf.

[206] *Asahi Shimbun*, 28 September 2012; "Submission by the People`s Republic of China concerning the Outer Limits of the Continental Shelf beyond 200 Nautical Miles in Part of the East China Sea", p. 5, at http://www.un.org/Depts/los/clcs_new/submissions_files/chn63_12/executive%20per%20cent%2020summary_EN.pdf.

[207] "Foreign Ministry Spokesperson Hong Lei's Regular Press Conference", *Ministry of Foreign Affairs of the PRC*, 21 September 2012, at http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t973304.htm.

[208] "China to Provide Weather Forecasts for Islands Claimed by Japan", *Bloomberg*, 12 September 2012, at http://www.bloomberg.com/news/2012-09-12/china-to-provide-weather-forecasts-for-islands-claimed-by-japan.html.

[209] "Chinese Fishing Boats to head for Senkaku Waters", *NHK*, 14 September 2012, at http://www3.nhk.or.jp/daily/english/20120914_06.html.

[210] "Chinese armada reports conflict over fishing boats' position", *Japan Times*, 02 September 2012, at http://www.japantimes.co.jp/text/nn20120920b4.html.

[211] "China-Japan Dispute Takes Rising Toll on Top Asian Economies", *Bloomberg News*, 9 January 2013, at http://www.bloomberg.com/news/2013-01-08/china-japan-dispute-takes-rising-toll-of-asia-s-top-economies.html.

universities and other institutions came under cyber-attack.[212] At a demonstration in Shanghai, about 7,000 protesters chanted slogans such as 'Beat Japanese imperialism', 'Boycott Japanese products' and 'Destroy Japan and retrieve Okinawa'.[213]

Although only 63 per cent of polled Japanese expressed their support for their government`s nationalization of the islands, down from 73 per cent in a previous poll on 15 and 16 September, 82 per cent of respondents in a *Mainichi Shimbun* survey said the Japanese government had not protested strongly enough to Beijing over anti-Japan protests.[214] The Chinese government denied any official involvement and the spokesperson of the Waijiaobu went only as far as saying that the protests and demonstrations were `completely caused by the Japanese government's illegal "purchase" of the Diaoyu Islands and are people's spontaneous acts`.[215] There were, however, reports that some of the demonstrations were tolerated, if not abetted, by government agencies.[216] The demonstrations soon died down because tolerating them much longer would have run the risk that they would turn into anti-government demonstrations. Even the Chinese Academy of Social Sciences reported that some demonstrators who were arrested did not even know where the Senkaku Islands were and that anger over the widening wealth gap was behind their acts.[217] In contrast to these Chinese demonstrations and acts of lawlessness, there was hardly any public demonstration in Japan, which shows the relative detachment of the Japanese from the dispute. On 22 September, `Nippon Gambare`, a right wing organization chaired by former Air Self Defence Force chief Tamogami Toshio, staged a march through parts of Tokyo which this author witnessed. A brief fire was started at a Chinese school in Kobe and two smoke bombs were thrown into the Chinese Consulate General in Fukuoka.[218]

4.9. Economic Sanctions

Protest measures of a longer duration and as yet unpredictable consequences for the bilateral relationship have been China`s economic sanctions and a boycott of Japanese goods by the general public, although the authorities denied again any government intervention. A commentary of Xinhua half admitted, however, government intervention when it made the unconvincing difference between `measures` and `sanctions`: `Since Japan "purchased" China's Diaoyu Islands in September, the Chinese government has taken a series of countermeasures in the economic, legal, diplomatic and military fields, which have helped it to wrest the initiative to resolve the islands dispute. ...despite China not imposing any economic sanctions, the Japanese economy has been badly hit`.[219] The *Renmin Ribao*

[212] "Japanese websites come under attack as Senkaku squabble continues", *Japan Times*, 20 September 2012, at www.japantimes.co.jp/text/nn20120920b7.html.
[213] "Protests flare in China on contentious anniversary. The pretext for invasion 81 years ago fuels rallies in 125 cities", *Japan Times*, 19 September 2012, at www.japantimes.co.jp/text/nn20120919a1.html.
[214] "82% rap lukewarm response to anti-Japan protests in China over Senkakus: Mainichi poll", *Mainichi*, 01 October 2012, at http://mainichi.jp/english/english/newsselect/news/20121001p2a00m0na015000c.html.
[215] "Foreign Ministry Spokesperson Hong Lei's Regular Press Conference", *Ministry of Foreign Affairs of the PRC*, 20 September 2012, at http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t973304.htm.
[216] Tiberghien, *op. cit.*, p. 3.
[217] "Japan protests No.1 topic on China web", *NHK*, 18 December 2012, at http://www3.nhk.or.jp/daily/english/20121218_29.html.
[218] "Noda urges dignity", *Japan Times*, 21 September 2012, at http://www.japantimes.co.jp/text/nn20120921a7.html; "Man throws smoke bombs into Chinese consulate general in Fukuoka", *Japan Times*, 18 September 2012, at http://www.japantimes.co.jp/text/nn20120918a7.html.
[219] "Good move on Diaoyu Islands", *Xinhua News*, 26 October 2012, at http://news.xinhuanet.com/english/indepth/2012-10/26/c_131932004.htm.

compared `economic punishments` with a `gun` and warned that through its island purchase Japan had already touched the `trigger`. In a rather heavy hint, the paper pointed out how vulnerable Japan`s economy was because of the 2011 earthquake and the dependence of key economic sectors on China.[220] Even more official was Vice Minister of Commerce Jiang Zengwei`s warning that the island purchase would inevitably have a negative impact on Sino-Japanese economic and trade ties.[221]

After the 11 September, it soon became very obvious that the heavy hand of the Chinese government was imposing sanctions and making life for Japanese business more difficult. On 21 September, it was reported that Chinese customs authorities were strengthening inspections of imports from and exports to Japan, but this was denied by the Chinese authorities.[222] In the same week, reports appeared about Japanese companies experiencing delays in obtaining working visas for their Japanese employees.[223] Big Japanese companies with investments in China were experiencing hold-ups in gaining regulatory approvals for Merger & Acquisitions.[224] In contrast to the interference in rare earth exports to Japan after the trawler incident in 2010, however, no such embargo was implemented, because this particular economic weapon had lost its effectiveness since then (see below).[225]

The greatest damage to Japanese economic activities, apart from the above mentioned destruction of Japanese commercial and industrial sites, was caused by a partial consumer boycott, notably the fall of car sales in China and Chinese tourism to Japan. Overall, bilateral trade decreased by 3.9 per cent in 2012 to $329 billion, the first drop since the collapse of the Lehman investment bank in 2009.[226] The worst hit sector is automobiles: Toyota sold 840,500 vehicles in China in 2012, the first annual drop since 2002. Nissan experienced a 24 per cent drop in December China sales, and Honda saw a 19 per cent December fall.[227] In November 2012, it was announced that, compared with the previous year, Toyota`s production in China fell by 61.1 per cent, Nissan`s production by 44 per cent , Honda`s by 54.2 per cent and Mitsubishi Motors by 84.6 per cent .[228] This has a strong effect on the individual car makers, given that China accounts for 25 per cent of Nissan's net profit, 21 per cent of Toyota's and 16

[220] "People's Daily implies economic measures against Japan", *Xinhua News*, 17 September 2012, at http://news.xinhuanet.com/english/indepth/2012-09/17/c_131855730.htm; see also Ye, Xiaowen, *op. cit.*

[221] ""Purchase" of Diaoyu Islands could cost Japan", *Xinhua News*, at http://news.xinhuanet.com/english/indepth/2012-09/13/c_131849093.htm.

[222] "Japan Boosts Info Gathering on Customs Procedures in China", *Jiji News*, 21 September 2012, at http://jen.jiji.com/jc/eng?g=eco&k=2012092100437; "Foreign Ministry Spokesperson Hong Lei's Regular Press Conference", *Ministry of Foreign Affairs of the PRC*, 11 October 2012, at http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t979321.htm.

[223] "China delays approval of working visas. Firms made to wait as Beijing retaliates amid Senkakus dispute", *Japan Times*, 23 September 2012, at http://www.japantimes.co.jp/text/nn20120923a1.html.

[224] "Japanese investment in China falls sharply", *Financial Times*, 20 November 2012, at http://www.ft.com/cms/s/0/31020a3e-330e-11e2-aa83-00144feabdc0.html#axzz2CnaHIILD.

[225] Seaman, John: "Rare Earths and the East China Sea: Why hasn`t China embargoed Shipments to Japan?", IFRI-CIGS *Op-Ed Series*, (2012), at http://www.canon-igs.org/en/column/pdf/121009_seaman_oped.pdf.

[226] "Trade with China falls first time in three years", *Japan Times*, 11 January 2013, at http://www.japantimes.co.jp/news/2013/01/11/business/trade-with-china-falls-first-time-in-three-years/#.UZYpyq7Ppak; According to JETRO, the bilateral trade fell to $335 billion: "Japan-China Trade Deficit hits Record in 2012, *NHK*, 19 February 2013, at http://www3.nhk.or.jp/daily/english/20130219_30.html.

[227] "Toyota delays plan for China expansion", *Japan Times*, 09 January 2013, at http://www.japantimes.co.jp/text/nb20130109n3.html.

[228] "Japan car production in China down 49 per cent in October", *NHK*, 29 November 2012, at http://www3.nhk.or.jp/daily/english/20121129_33.html.

per cent of Honda's.[229] However, the figures seem to be recovering since the beginning of 2013. The tourist industry has also been hard hit in both countries. Chinese visitors to Japan decreased by 44 per cent from September to December 2012 from the year before.[230] The number of Japanese tourists on group tours to China plunged by more than 70 per cent year-on-year in the last three months of 2012, and this downward trend is continuing in 2013.[231]

The effect of China`s economic retributions highlight the extent to which Japan has become dependent on its economic exchanges with China and cast doubt on the continued viability of the earlier `Hot Economics and Cold Politics` dichotomy. The answer to the question which country is more dependent on the other, or more vulnerable to sanctions, is dependent on the economic indicators and sectors being chosen and is also a political question because the answer can be politically manipulated. Japan`s economic difficulties since the 1990s (and its dependence on economic interaction with China to cope with these difficulties!), and China pushing Japan to No. 3 in world GDP ranking has diminished the Chinese perception of Japan as an economic power house. It means that, for China, the relationship with Japan became less important while political relations deteriorated at the same time. The strong effect of the Chinese embargo on rare earth exports to Japan in 2010 can be viewed in two diametrically opposed ways. Chinese observers may be inclined to put emphasis on the strong effect it immediately had on Japanese public opinion and industrial circles, contributing to a certain extent to the government`s surrender of the trawler captain. Others may point out that the case demonstrated the futility of abusing a dominant supplier position because even within a short time, the farsighted accumulation of high stocks of rare earth by Japan`s industry, followed after the embargo by securing alternative resources, and demand reduction through recycling and product re-engineering not only provided enough breathing space, but in the end reduced China`s market power. Still, Chinese experts are convinced that Japan is now more dependent on China than the other way round. According to some experts, China's imports accounted in 2011for 23.7 per cent of Japan`s exports volume. The bilateral trade volume in 2011 took up 21 per cent of Japanese gross trade volume of that year, while it merely accounted for 9.4 per cent of China's annual gross trade volume.[232] There seem to be only few voices which express concern over the negative impact of China`s sanction on China`s economy itself, notably at a time of worldwide economic contraction.[233]

The Chinese market is certainly too important for many Japanese companies to leave. A survey in November 2012 to which more than 10,000 Japanese companies in China replied showed that for almost 30 per cent of them the territorial dispute had affected their business, but still more than half want to maintain their operations, and only 16 per cent said that they wanted to either cut back or pull out.[234] This is also borne out by the FDI figures: in 2011, Japanese FDI to China had increased by 55 per cent, but in 2012, by `only` 16.3 per cent to

[229] "Factory shift to non-Chinese sites seen accelerating. Companies reopen as anger eases in China", *Japan Times*, 21 September 2012, at http://www.japantimes.co.jp/text/nb20120921a1.html.
[230] "Chinese visitors fall since September", *Japan Times*, 17 January 2013, at http://www.japantimes.co.jp/text/nn20130117b4.html.
[231] "Tour travelers to China down by over 70 per cent", *NHK*, at http://www3.nhk.or.jp/daily/english/20130124_11.html.
[232] "China Focus: Diaoyu Islands rift takes toll on China-Japan economic, trade ties", *Xinhua News*, at http://news.xinhuanet.com/english/indepth/2012-09/25/c_131872368.htm.
[233] Ding, Gang: "Spat costs Sino-Japanese business dear", *Global Times*, 5 December 2012, at http://www.globaltimes.cn/content/748399.shtml.
[234] Nakata, Hiroko: "Not all, but sundry find niche in China", *Japan Times*, 4 January 2013, at http://www.japantimes.co.jp/news/2013/01/04/news/not-all-but-sundry-find-niche-in-china/.

$7.4 billion.[235] Although Japanese car sales seem to be increasing again, Chinese car dealers, worried about a repeat of the boycott, are decreasing with long term implications.[236] Japanese companies in certain sectors are likely to become more reluctant to make investments in China, all the more as other Southeast Asian countries (notably, Myanmar is currently the New Frontier for Japanese business!) have cheaper labour costs.[237] However, Chinese consumers still prefer Japanese products for safer food, drinks and daily necessities, and those Japanese companies were hardly affected by the boycott.[238]

A wide gap between both sides` perception about their economic dependence and vulnerability to sanctions is dangerous for the management of their bilateral relationship, particularly when one side tries to leverage its supposedly stronger position to achieve victory in a sensitive area like territorial integrity. While Chinese commentators and experts may be inclined to overrate Japan`s vulnerability, their Japanese counterparts have a tendency to look at the issues too much in purely economic terms, neglecting the impact of Chinese emotions and government propaganda, as well as the wider public`s insufficient knowledge about the overall impact of bad economic relations with Japan on China`s own economy.[239] The Japanese perception has been lingering on until today that China in the end needs Japan more than the other way round, which, in view of China`s huge problems or its dependence on Japanese high technology components for its manufacturing industry, is arguably the case. This Japanese perception has fostered the conviction, as is, for example, demonstrated by the belief in the sustainability of `Hot Economics and Cold Politics`, that, despite recurring political crises in the relationship, China would, in the end, compromise, as it had done several times in the past.[240] Yet the problem with the perception of `needing Japan` is, that it can be politically manipulated, particularly in an authoritarian system. This gap between Japanese and Chinese observers and experts on the issue of dependence can seriously influence the willingness of both sides to compromise.[241] It also challenges the liberal view that close economic relations can prevent, or at least soften, deep political differences like territorial conflicts which, moreover, are linked to economic interests like hydrocarbon resources.

4.10. From Policing to Military Involvement

The most serious consequences for the bilateral relationship – let alone for the solution of the territorial dispute – may arise from the constant intrusions of Chinese official vessels into the Contiguous Zone (CZ) or even Territorial Waters (TW) of the Senkaku Islands since September 2012 and the growing involvement of the armed forces of both sides. The aim of

[235] "Direct investment in China off in '12", *Japan Times*, 17 January 2013, at http://www.japantimes.co.jp/text/nb20130117a2.html.
[236] "China deserting Japanese brand cars", *The Japan Times*, 08 December 2012, at http://www.japantimes.co.jp/news/2012/12/08/business/china-deserting-japanese-brand-cars/#.UZYusK7Ppak.
[237] "Factory shift to non-Chinese sites seen accelerating. Companies reopen as anger eases in China", *Japan Times*, 21 September 2012, at http://www.japantimes.co.jp/text/nb20120921a1.html; Nakata, Hiroko: "Firms move some eggs out of China basket", *Japan Times*, 19 December 2012, at http://www.japantimes.co.jp/news/2012/12/19/reference/firms-move-some-eggs-out-of-china-basket/#.UZYvIK7Ppak.
[238] Nakata, "Not all, but sundry..", *op. cit.*
[239] For examples of overrating see Wu , Di, *Caijing*, 9 September 2012, quoted in: *China Analysis*, no 40 2012, p. 44, at chinaanalysis@centreasia.eu.
[240] Drifte, Reinhard: "The Future of the Japanese-Chinese Relationship: The Case for a Grand Political Bargain'", *Asia-Pacific Review*, vol. 16, no. 2 (2009), p. 56.
[241] "Factory shift to non-Chinese sites seen accelerating. Companies reopen as anger eases in China", *Japan Times*, 21 September 2012, at http://www.japantimes.co.jp/text/nb20120921a1.html.

the Chinese is obvious: to demonstrate that the Japanese can no longer claim *de facto* control of the islands and to force Tokyo to admit the existence of a territorial dispute. Apparently, a task force at the highest level, headed by Xi Jinping, was set up in September 2012 to achieve this goal through escalating pressure.[242] So far law enforcement actions by Japan in the Senkaku area had been limited to the deployment of the Japanese Coast Guard and police, which is now, however, constantly challenged by the Chinese with patrols by CMS and FLEC vessels asserting the same rights in the islands` CZ and TW. The Chinese escalated its pressure on Japan by first deploying FLEC vessels in the CZ and TW of the disputed islands, then ratcheting up their pressure with CMS vessels doing the same, followed later in December 2012 with air patrols by CMS, which led to the deployment of the air force of both sides in January 2013.

As we have seen, after the September 2010 incident, in November 2010 FLEC started to regularly send its vessels to the Senkaku area, which entered from time to time the islands` CZ and also, in August 2011, twice the TW. Apparently, the more serious intrusions which are those into the TW were sometimes timed with specific spikes of tensions, such as the TW incursion on 16 March 2012 (the Japanese naming of some islands), July 2012 (Noda`s announcement of purchase intention on 7 July) and finally on 19 September, when six vessels entered the TW, starting a series of more frequent and regular incursions. In December 2012, FLEC deployed its newest and biggest ship, the 5,800-ton FLEC vessel *Yuzheng 206*., a former ship of the Chinese navy.[243]

The entries of the vessels of the CMS into the islands` CZ and TW seem meant to send an even higher degree of warning and denial of Japan`s control over the islands. On 17 September, the number of FLEC and CMS vessels in the CZ and TW had reached the record of 17.[244] Since then the frequency of incursions into the CZ and TW increased but decreased after March 2013. On 30 October, Xinhua even reported that the CMS had `expelled a number of Japanese vessels illegally sailing in waters around the Diaoyu Islands` although it is not clear what exactly this meant since the CG did not confirm such an incident.[245] By 17 May 2013, the CMS and FLEC vessels had entered the TW for the 45th time since the 11 September announcement.[246]

A new level of depriving Japan of the ability to claim sole actual control over the islands was reached on 13 December 2012 when a small turboprop aircraft of the CMS (Harbin Y12 type) flew over Uotsurijima.[247] Since then, regular CMS air patrols have been conducted but the aircraft normally stay about 120 km from the islands. With this move, the Chinese measures to undermine Japan`s control over the islands were expanded to the air

[242] Chubb, Andrew: "Radar Incident obscures Beijing`s conciliatory turn toward Japan", *China Brief*, vol. 13, Iss. 4 (15 February 2013), at http://www.jamestown.org/programs/chinabrief/single/?tx_ttnews[tt_news]=40462&tx_ttnews[backPid]=25&cHash=f0dc74bbb5b2591002ea8abc2f576f05.

[243] "China sending helicopter-carrying ships in Senkakus dispute", *Asahi Shimbun*, 4 March 2013, at http://ajw.asahi.com/article/asia/china/AJ201303040005.

[244] "Vessel carrying Taiwanese activists is spotted near to Senkaku Islands" *Japan Times*, 22 September 2012, at http://www.japantimes.co.jp/text/nn20120922a6.html.

[245] "Japanese vessels expelled from Diaoyu Islands waters", *Xinhua News*, 30 October 2012, at http://news.xinhuanet.com/english/china/2012-10/30/c_131939991.htm.

[246] "3 Chinese vessels enter Japanese waters near Senkakus", *Kyodo*, 17 May 2013, at http://english.kyodonews.jp/news/2013/05/225407.html.

[247] "Senkaku air intrusion prompts radar upgrade", *Japan Times*, 15 December 2012, at http://www.japantimes.co.jp/news/2012/12/15/national/senkaku-air-intrusion-prompts-radar-upgrade/#.UZYxGa7Ppak.

space which, for organizational reasons, had immediately military implications because only the Air Self Defense Force (ASDF) is responsible for intercepting aircraft which intrude illegally into Japan`s air space. The incident did not happen out of the blue because already in January 2012, the SOA had announced a plan to deploy the Y12 in `2012`.[248] On 24 September, the SOA had also announced plans to deploy drones by 2015 following the successful test the previous day.[249]

The low altitude flight of the Y12 on 13 December was particularly upsetting for the Japanese government because it was not picked up by the ASDF radar (the closest one being on Miyakojima, about 200 km from the islands) but instead by CG ships in the area. In this case, eight ASDF fighters scrambled but could not anymore detect the Y12. Interception of aircraft is by nature much more difficult and carries a certain risk of accident, as happened in 2001 when a US intelligence aircraft collided with a Chinese interceptor jet. Without explaining the standard Japanese proceedings for aerial defence,which solely relies on the ASDF, the Chinese media interpreted the use of military aircraft by Japan as `aggressive` and the *Global Times* cautioned against any interception, warning that otherwise China may respond by sending its air force.[250] On the Japanese side, even the centre-left *Asahi Shimbun* called the Y12 flight ` a highly provocative act that could lead to an armed conflict between the two countries`.[251] At the beginning of January 2013, there were apparently erroneous reports that the ASDF may consider firing warning shots (tracer bullets) at intruding Chinese aircraft which prompted further bellicose comments in the Chinese press.[252] As a consequence, the Chinese air force also became involved: on 10 January, when the Chinese Ministry of Defence announced that the People`s Liberation Army Air Force (PLAA) had sent two fighter jets against two ASDF F-15 interceptors because they were following a Chinese military Y8 transport aircraft which was patrolling the airspace of Chinese oil platforms in the East China Sea.[253] The Japanese reported that more than ten Chinese aircraft, including military aircraft, had approached the Japanese air defence identification zone.[254] Another worrying development is the enhanced patrolling of the PLAA over the East China Sea which caused the ASDF to increase scrambling against PLAA aircraft to 91 times within the October-December 2012 period, whereas the total for the same period of the previous year was 140 times.[255]

With these escalating deployments, the Chinese side certainly achieved its goal of showing that the Japanese authorities are no longer in full control of the disputed islands. In

[248] "China to boost surveillance flights over disputed East China Sea areas", *Japan Times*, 27 January 2012, at http://www.japantimes.co.jp/news/2012/01/27/national/china-to-boost-surveillance-flights-over-disputed-east-china-sea-areas/#.UZYxiq7Ppak.

[249] "Beijing plans drones to monitor islets", *Japan Times*, 25 September 2012, at www.japantimes.co.jp/text/nn20120925a7.html.

[250] Avic International, at http://www.y-12.com.cn/y-12/home/index.do?cmd=goToChannel&language=US.

[251] "China's provocations could lead to armed conflict", *Asahi Shimbun*, 15 December 2012, at http://ajw.asahi.com/article/views/editorial/AJ201212150020.

[252] "Japan tracer bullets will bring war closer", *Global Times*, 10 January 2013, at http://www.globaltimes.cn/content/754886.shtml; "朝日の記事引用で「誤報」論争 中国メディアＶＳ．香港の記者", *Sankei*, 26 January 2013, at http://sankei.jp.msn.com/world/news/130126/chn13012607010003-n1.htm.

[253] "China sends fighters to counter Japanese aircraft", *Xinhua News*, 11 January 2013, at http://news.xinhuanet.com/english/china/2013-01/11/c_132096805.htm.

[254] "China accuses Japan as increasing tension", *NHK*, 11 January 2013, at http://www3.nhk.or.jp/daily/english/20130111_40.html.

[255] "ASDF scrambles 91 times against China in Oct.-Dec.", at *Yomiuri Shimbun*, 26 January 2013, at http://www.yomiuri.co.jp/dy/national/T130125003790.htm.

the case of CMS or FLEC vessel intrusions, the reaction of the Japanese CG is limited to shadowing the Chinese vessels, to inform them that they are violating Japan`s CZ or TW, and to ask them to leave which, however, they do at their own discretion (the time span hovering in the CZ or TW has become a further means of Chinese pressure!), followed by diplomatic protests. Otherwise, the CG has avoided any physical confrontation or contact. When confronted by the CG, the Chinese vessels simply declare (by radio or even electronic displays) that they are patrolling Chinese waters and that the CG ships were operating illegally in these waters. This ritual has so far prevented any violence. This is in contrast to an exchange of water cannon salvos between the CG and the Taiwanese coast guard in the territorial of the Senkaku Islands on 25 September 2012 and again on 24 January 2013.[256]

The increase of patrols by Japan and China is causing operational strain for both sides (also raising the risk of miscalculations or overreactions) but this has not reduced the willingness of either government to scale down the almost daily demonstration of `effective control`. In October, it was reported that the CG now always has ten vessels against eight from China.[257] The 11th regional headquarter responsible for the Senkaku area is in Naha and has nine patrol ships (but only seven vessels of at least 1,000 tons) but now needs additional ships which are dispatched from other regional coast guard headquarters.[258]. In April 2012, the CG had a total of 357 patrol vessels, but only 51 over 1,000 tons which are those most needed for a far flung area like the Senkaku Islands.[259] On 14 September 2012, Senior Vice Minister of Fisheries Iwamoto Tsukasa mentioned plans to increase the number of fishery patrol vessels to ensure fishermen's safety amid intensifying territorial disputes with China and South Korea.[260] On 26 October, the Ministry of Land, Infrastructure, Transport and Tourism, which heads the CG, announced plans to bring budgetary requests for more ships forward.[261] The Abe government plans to build more vessels or advance the calendar than originally planned, retrofit vessels which were to be retired, and considers extending the retirement age of the officers.[262]

The Chinese have even fewer vessels which can be deployed as far as the Senkaku Islands. In addition, leave of the sailors has been restricted, and their deployment length at sea has increased.[263] In March 2013 the Chinese side announced closer cooperation between the military and various maritime law enforcement agencies, as well as the merger of four maritime law enforcement agencies under the State Ocean Administration (administered by

[256] "50 Taiwanese boats intrude near Senkakus. Coast guard cutters deploy water cannons", *Japan Times*, 26 September 2013, at www.japantimes.co.jp/text/nn20120926a1.html; Coast guards' water duel ends Taiwanese isle trip, *AFP-JIJI*, *Kyodo*, 25 January 2013, at http://www.japantimes.co.jp/news/2013/01/25/national/coast-guards-water-duel-ends-taiwanese-isle-trip/#.UQKdRvJSEn0.

[257] Interview with a senior official of the Japanese Ministry of Defense, 12 October 2012.

[258] "JCG stretched thin over Senkakus", *Yomiuri Shimbun*, 4 October 2012, at www.yomiuri.co.jp/dy/national/T121003003773.htm.

[259] "Coast guard needs more ships, sailors amid protracted isle-row: commandant", *Japan Times*, 14 December 2012, at http://www.japantimes.co.jp/news/2012/12/14/news/coast-guard-needs-more-ships-sailors-amid-protracted-isle-row-commandant/#.UZY4oK7Ppak.

[260] "Japan to increase fishery patrol vessles", *NHK*, 13 September 2012, at www3.nhk.or.jp/daily/english/20120913_27.html.

[261] "Japan Coast Guard closes in on more ships, choppers", *Kyodo News*, 26 October 2012, at http://english.kyodonews.jp/news/2012/10/190181.html.

[262] "Japan Coast Guard to bolster patrols around Senkaku Islands", *Asahi Shimbun*, 11 January 2013, at http://ajw.asahi.com/article/behind_news/politics/AJ201301110049.

[263] "Chinese surveillance fleet busy due to island dispute", *Xinhua News*, 08 January 2013, at http://news.xinhuanet.com/english/china/2013-01/08/c_132088487.htm.

the Ministry of Land and Resources), i.e. the China Marine Surveillance, the coast guard forces of the Public Security Ministry, the fisheries law enforcement command of the Agriculture Ministry and the maritime anti-smuggling police of the General Administration of Customs.[264] This will likely enhance the Chinese control of its surrounding seas or at least provide better coordination.

There has also been a gradual involvement of the PLA navy (PLAN) and the Maritime Self Defence Force (MSDF). The Japanese MOD announced on the 16 October that, for the first time, PLAN ships were observed navigating in the 22-km-wide CZ between Yonaguni and Iriomote islands, although the ministry left open the possibility that they did so in order to avoid a typhoon. Nevertheless the Gaimusho sought explanations from the Chinese about these ship movements.[265]. In December 2012 four PLAN ships sailed through the CW of the Iromoto-Yonaguni islands on the way back from drills in the Pacific, after having gone into the Pacific through the more normal route of the strait between the Okinawa main island and Miyakojima.[266] Again, there was nothing illegal about it, but it raised attention at a time of tensions. However, there are signs of greater cooperation of the PLAN with CMS and FLEC vessels as was shown in the standoff between China and the Philippines around the disputed Scarborough Shoal in the South China Sea and joint exercises took place between the three in the East China Sea in October 2012.[267]. The patrolling activities of the MSDF in the Senkaku area became known when the Japanese reported at the end of January 2013 that, on 19 January, a Chinese frigate's target radar had locked onto an MSDF helicopter and, on 30 January, another frigate sailing close to an MSDF destroyer did likewise. The Chinese vehemently denied it. .[268] However, in March this year the Kyodo news agency reported that senior Chinese military officials had admitted the incident of 29 January. Even more worrisome is that the Chinese vessels acted apparently without prior approval from the fleet command or navy headquarters. All this was again denied by the Chinese side.[269] It did not help that under Prime Minister Noda the MSDF had been ordered after the eruption of the 2012 crisis to keep a greater distance from PLAN ship than the hitherto 3 km in order avoid incidents, but this policy was revised by the more hawkish Abe administration to the previous 3 km distance.[270] The fire radar locking incident had happened at a distance of 3 km.

The Chinese acts are apparently carefully planned and coordinated since the officials in the above Kyodo report also said that the airspace violations on 13 December 2012 by an airplane of the CMS was planned by the staff section of the national Land and Sea Border Defense Committee, which acts as a liaison office for the Chinese military, the State Oceanic

[264] "Chinese military to further cooperation with maritime law enforcement", *Xinhua News*, 29 March 2013, at http://english.peopledaily.com.cn/90786/8187240.html.
[265] "7 Chinese warships pass waters near Okinawa island", *Mainichi Shimbun* , 16 October 2012, at http://mainichi.jp/english/english/newsselect/news/20121016p2g00m0dm042000c.html.
[266] "China navy ships pass contiguous zone in southwestern Japan", *Asahi Shimbun*, 10 December 2012, at http://ajw.asahi.com/article/asia/china/AJ201212100063.
[267] "Report: China military beefing up civilian 'maritime surveillance'", *Asahi Shimbun*, 20 December 2012, at http://ajw.asahi.com/article/behind_news/politics/AJ201212200029.
[268] Yoshida, Reiji: "Beijing denies MSDF Lock-on", *Japan Times*, 9 February 2013, at http://www.japantimes.co.jp/news/2013/02/09/national/beijing-denies-msdf-target-lock/#.URytxvL-MSz.
[269] "Chinese officials admit to MSDF radar lock allegations", *Japan Times* 18 March 2013, at http://www.japantimes.co.jp/news/2013/03/18/national/chinese-officials-admit-to-msdf-radar-lock-allegations/#.UUbitDfxmig; "Japan's radar targeting allegations groundless: ministry", *Xinhua*, 18 March 2013, at http://english.peopledaily.com.cn/90786/8172751.html.
[270] "Noda told MSDF to stay away. Vessels instructed to avoid Chinese Navy near Senkaku", *Yomiuiri Shimbun*, 9 March 2013, at http://www.yomiuri.co.jp/dy/national/T130308004672.htm.

Administration and the fishing bureau of the Agriculture Ministry, with the aim of raising tensions.[271]

Against the background of greater involvement of military forces, it is particularly regrettable that a plan to build a maritime liaison mechanism between their defense authorities on which they had agreed in June 2012 to make later that year was shelved.[272] Unfortunately it is still Chinese practice to consider Confidence Building Measures (CBM) not as the first step to build confidence, but as a tool to extract from the other side prior concessions under the pretext of `creating a better atmosphere` for discussing CBM. The outbreak of the September 2012 crisis was therefore a convenient pretext for the Chinese to cancel the project. The latest confirmation was in March 2013 when General Yin Zhuo explained that there could be no military trust if the political and diplomatic relationship is bad.[273] Since the target radar lock-on incidents, the Japanese government is publicly calling for resumption of negotiations for the maritime liaison mechanism but the Chinese will certainly want to extract some concessions before even considering a positive response.

4.11. How Far are China`s Demands Going?

The current confrontation is still continuing, notably in the economic as well as law enforcement/military arena, whereas the 2010 incident ended quickly with Japan`s release of the captain. One reason for this difference is certainly the fact that China`s demand in 2010 was relatively clear and achievable (release of the captain) if painful for Japan and confronting a weak and inexperienced government. This time, the crisis has first hit a government which reacted intransigently because of its previous defeat, and other unfavourable domestic circumstances, and was then replaced by the more hawkish Abe government. China`s aim now is less clear: Would it be satisfied with going back to the `understanding about setting aside the dispute` and Japan`s recognition of the existence of a territorial dispute, or does it even demand a reversal of the purchase of the three islands? Does it demand the end of Japanese CG patrols around the islands? China`s demand of Japan to `correct its mistakes`, is rather ambiguous because it could be interpreted as going back to the shelving understanding and the recognition of the existence of a dispute, or demanding a reversal of the government`s purchase of the islands.[274] The latter would simply be impossible in legal and practical terms and one can only hope that the ambiguity is only aimed at raising China`s negotiation position and/or leaving enough wriggle room for negotiations which would satisfy all Chinese stakeholders` interests.

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[271] "Chinese officials admit to MSDF radar lock allegations", *Japan Times*, 18 March 2013, at http://www.japantimes.co.jp/news/2013/03/18/national/chinese-officials-admit-to-msdf-radar-lock-allegations/#.UUbitDfxmig.

[272] "China opposes Japanese military drills: DM spokesman", *Ministry of National Defense of PRC*, 26 October 2012, at http://eng.mod.gov.cn/TopNews/2012-10/26/content_4408605.htm.

[273] "Higashi Shinakai de no Chu-Nichi shototsu kaihi no kagi wa Nihon ni aru", *Xinhua*, 11 March 2013, at http://jp.eastday.com/node2/home/xw/gjpl/userobject1ai75704.html.

[274] The latest repetition of the demand to `correct mistakes` is by Foreign Minister Yang Jiechi which was interpreted by *Kyodo* but not all other media as reversal of the purchase: "Beijing urges Senkaku Nationalization Reversal", *Japan Times*, 10 March 2013, at http://www.japantimes.co.jp/news/2013/03/10/national/beijing-urges-senkaku-nationalization-reversal/#.UTxUBTfxmig. For a different interpretation see e.g. Hayashi, Nozomu: "China calls for `restraint` by Japan over Senkaku", *Asahi Shimbun* 9 March 2013, at http://ajw.asahi.com/article/asia/china/AJ201303090091; for the original Chinese report see e.g. "Japan should not escalate over Diaoyu Islands: China`s FM", *Xinhua*, 9 March 2013, at http://news.xinhuanet.com/english/china/2013-03/09/c_132220476.htm.

It seems that it is already too late for going back to the shelving agreement of 1972/1978 which would imply that the two sides can somehow go back to the *status quo* of the 1970s which, as we have seen, has been superseded by deeds and words on both sides. The Chinese have now not only gone to publicly declaring the shelving agreement having been 'broken' by Japan, but after the first Y12 patrol on 13 December 2012, commenting that Japan`s administrative control over the Senkaku Islands now no longer existed. The bilateral relationship has deteriorated to the extent that at least shelving the conflicting sovereignty claims *without* officially admitting that there is a territorial dispute is no longer an option acceptable to China, because it feels Japan has abused the shelving consensus through a series of administrative measures, with the final straw having been the central government's purchase of three islands. When studying the various Chinese official statements and news reports after the 2012 crisis had fully erupted in September, it becomes clear that until October 2012, the Chinese still raised the demand that Japan should go back to the previous 'understanding' or 'consensus'. However, since then, this demand has been dropped, until it briefly reappeared in remarks by Wang Jiarui, the head of the Communist party's International Department, when meeting Yamaguchi Natsuo, the leader of the junior coalition partner Komeito, in January 2013.[275] Before, a comment on the Xinhua internet site on 29 October said that 'The 'purchase' showed that the Japanese government has wholly abandoned the attitude of laying aside disputes and has fundamentally changed the situation.[276] On the 30 October, the CMOFA spokesperson declared that 'Japan's illegal "purchase" of the Diaoyu Islands broke the important consensus...The Japanese side should not have any more illusion of occupying the Diaoyu Islands. What the Japanese side should do is to face up to the reality, admit the sovereignty dispute, correct mistakes and come back to the track of a negotiated settlement`.[277]

The recognition of a territorial problem would be relatively easy for Japanese public opinion (and even more so for Japan's friends and allies) to accept because they would not see the need for any kind of diplomatic sophistry for what is obviously a territorial conflict whatever the legitimacy of the Chinese claim might be, given also the fact that the current Japanese position comes down to refusing to even discuss whatever settlement might be possible. According to a survey conducted by Genron together with Zhongguo Ribaoshe in June 2012, 62.7 per cent of Japanese agreed that there exists a territorial problem.[278] However, consecutive Japanese cabinets have refused to recognise the existence of a territorial dispute, which is often the default position of a government in actual control of a disputed territory (for example, the Korean government's position on Takeshima/Dokto). This position has been reinforced by the explicit Japanese denial since the 1990s of a shelving agreement which would have been an implicit admission that there is a dispute. To circumvent the risk of being perceived as admitting the existence of a territorial problem, the deputy prime minister of the previous Noda government, Okada Katsuya, was reported to have mentioned in a speech in October 2012 that there was no territorial dispute but as a matter of fact a debate existed.[279] However, this compromise solution was never confirmed by

[275] "China official: Senkaku issue can be shelved", *NHK*, 25 January 2013, at http://www3.nhk.or.jp/daily/english/20130125_01.html.
[276] "China Voice: Japan should face up to past, present wrongdoing", *Xinhua*, 29 October 2012, at http://news.xinhuanet.com/english/indepth/2012-10/29/c_131938015.htm.
[277] Foreign Ministry Spokesperson Hong Lei's Regular Press Conference", *Ministry of Foreign Affairs of the PRC*, 30 October 2012, at www.fmprc.gov.cn/eng/xwfw/s2510/2511/t984041.htm.
[278] Zhu, *op.cit.*,p.109.
[279] "Japan's deputy PM admits Diaoyus dispute, opening path to China talks", *South China Morning Post*, 23 October 2012, at www.scmp.com/news/asia/article/1067564/japans-deputy-pm-admits-diaoyus-dispute-opening-path-china-talks.

the Noda government and did not become policy. It is even less likely to be acceptable to the new Abe government. Even among influential opinion makers there is hardly any support for admitting the existence of a territorial conflict or of a shelving agreement. Even more conciliatory statements on this subject are rather vague. Japan Business Federation Chairman Hiromasa Yonekura mentioned in September 2012 in an NHK interview that the government should be more flexible since otherwise its stance could be taken to mean that Japan has no intention of solving the dispute.[280] Miyamoto Yuji, the former Japanese ambassador to China, is quoted as saying that 'The government does not need to alter its basic position, but in reality, a conflict does exist over the Senkaku isles'.[281] This is also the stance which the previous Japanese ambassador Niwa Uichiro takes in an article after his return.[282]

5. The Regional and International Context

5.1. Negative Implications Arising from fhe Regional and International Context

There is a series of international circumstances which make a resolution of these opposing territorial claims difficult because of their precedent-creating implication. Japan, and indirectly the international community, is basically faced with the fundamental question: how to deal with a rising power which, all of a sudden, demands a territory which has, at least according to modern international law, legally been acquired and peacefully controlled without being challenged by any other country for over 70 years?

The inherent zero sum nature of a territorial conflict demands great efforts to reach a compromise. China's claim and modus operandi raises a fundamental challenge to the structure of the international system as well as to the widely-agreed modalities of solving territorial disputes. China has been questioning the territorial *status quo* in Asia (even leaving aside for the moment the unfinished civil war between the Communist and Guomindang leaderships over Taiwan) not only in case of the Senkaku Islands, but also in the case of the South China Sea. The modalities of resolving the territorial dispute in the East China Sea, as well as its outcome, will have implications for the various territorial conflicts and unresolved EEZ borders between China and other claimants which are much weaker than Japan. China has not yet resolved the delimitation of its EEZ borders with Korea or Japan, which is causing tensions and has already resulted in casualties and injuries. China's use of rather contested asymmetrical political-economic-military means is challenging the role of international law for settling disputes peacefully. If might turns out to be right, it would set dangerous precedents not only for the other disputes in the East and South China Sea, but worldwide. Japan is responding to these circumstances by trying to rely even more on closer military cooperation with its American military ally, engaging in regional political power balancing (for example, establishing closer links with India, Vietnam and Myanmar) and soliciting political support from around the world. It is demonstratively supporting Vietnam and the Philippines' efforts to protect their maritime security, because they are most concerned about the outcome of the Senkaku problem in view of their own territorial conflicts with China in the South China Sea. These moves, as well as Japan having become more vocal in demanding

[280] "Yonekura urges flexibility by Japan over Senkakus", *NHK*, 28 September 2012, at www3.nhk.or.jp/daily/english/20120928_36.html.
[281] "Ex-ambassador to China calls for Senkakus talks", *Japan Times*, 27 September 2012, at www.japantimes.co.jp/text/nn20120927f4.html.
[282] Niwa, Uichiro: "Nitchu gaiko no shinjitsu", *Bungei Shunju* (February 2013), pp. 120-131.

a peaceful resolution of the South China Sea disputes, are naturally resented by China and have unclear implications for the resolution of the Senkaku dispute.

The regional context puts considerable pressure on Japan not to be seen as ceding to Chinese pressure, particularly after the 2010 and 2012 crises. China cannot fail to see a similar precedent value. Other pressures preventing a compromise arise from the US promise that the security guarantee of Article 5 of the Japanese-American Security Treaty applies also to the Senkaku Islands, although the US takes no stand on the sovereignty issue and Article 5 does not imply an automatic US military involvement. If Japan compromises its administrative rights over the Senkaku Islands in a deal with China, it would risk these US guarantees, and cast a shadow over the whole bilateral relationship as well. For the supporters of the Japan-US military relationship, the dispute has become a test case for the security treaty while they fear at the same time that the US will use Japan's reliance on the US to extract from Tokyo more military burden sharing, force it to find a resolution to the relocation of US forces on Okinawa, and draw Japan even more into the growing US-China rivalry in Asia.[283] At the same time there are doubts whether the US would really risk war with China over the islands, doubts which are stirred by Chinese commentators.[284] The US is torn between its desire to develop a politically positive and economically lucrative relationship with China, and its reflexes aim at maintaining its military preponderance in Asia. At the same time it needs Japan, for the latter but does not want to have its relationship with China further complicated by Japanese-Chinese tensions. For example, the US announced on 19 December 2012 that it planned the deployment of F35 stealth fighters in Iwakuni, at the same time it insists on a diplomatic solution of the island dispute. [285] During the preparations for Prime Minister Abe`s visit to the US in February 2013, it was reported that the US does not want to openly welcome Abe`s intention to allow collective defence or to have Obama call for Chinese restraint in the territorial dispute because of concern about China`s negative reaction.[286] These dynamics of Japan's eternal US dilemma of entrapment versus abandonment do not facilitate a territorial compromise.

The position of Taiwan in the Senkaku Islands conflict is another complicating regional factor. Taiwan's claim to the islands is framed by the importance of the American support for its security from the PRC (which, in conjunction with Taiwan's fishing interests around the islands, also constrains the vigour with which it can confront Japan on this issue), its domestic politics dynamics (the current ruling Guomindang government being more assertive in claiming the islands than the opposition Democratic Progressive Party), its will to represent the 'All China interest' without simultaneously being seen to act in unison with the PRC, and the need not to be forgotten in what is a dispute mainly fought between Beijing and Tokyo. As we have seen above there have been clashes between the coast guards of Japan and Taiwan in the area of the Senkaku Islands because of Taiwanese support for protesters and fishing vessels from Taiwan. Such intrusions by Taiwanese protesters are bound to continue.

[283] Magosaki, *op. cit.*, p. 92.
[284] See: "Japan should see things clearly", *op. cit.*.
[285] "U.S. Preparing to Deploy F-35 in Japan in 2017: Panetta", *Jiji*, 19 December 2012, at http://jen.jiji.com/jc/eng?g=eco&k=2012121900227; "Senkaku air intrusion prompts radar upgrade", 15 December 2012, at http://www.japantimes.co.jp/news/2012/12/15/national/senkaku-air-intrusion-prompts-radar-upgrade/#.UZZFiq7Ppak.
[286] "U.S. doesn't want Abe to bring up collective self-defense at summit", *Mainichi Shimbun*, 2 February 2013, at http://mainichi.jp/english/english/newsselect/news/20130202p2g00m0dm011000c.html.

The strongest domestic force is, however, the fishing industry which has traditionally been active in the Senkaku area, while this has always been less the case for the PRC fishing industry. Taiwan has been urging Japan since 1996 to conclude a fisheries agreement, and only on 10 April 2013 a compromise was found to bridge deep differences over the delimitation of their overlapping EEZ. The implementation of this private sector agreement will still need further negotiations on rules and on the delimitation of parts of Japan`s EEZ around the Senkaku Islands (the territorial waters around the islands are excluded). It seems that Japan finally relented in order to prevent Taiwan-PRC cooperation against Japan while Taiwan was keen on getting access to the rich fishing grounds around the Senkaku before the start of the new season.[287] It is doubtful that this `unofficial` agreement will be a model for an agreement between Japan and China and may instead make a compromise even more difficult. The PRC has several times protested the agreement because it undermines Beijing`s negotiation position and strengthens Taiwan`s international position.[288] It is also worth noting that the local fishing industry in Okinawa is against giving Taiwanese fishermen access to the waters around the Senkaku Islands.[289]

5.2. International Arbitration

Since all the above analysed dynamics point to a repetition of crises with a growing risk of clashes between the law enforcement agencies if not the military, there seems to be only international arbitration which could help to find a way out of the *impasse* of the two rigidly entrenched and diametrically opposed territorial claims. However, there are strong countervailing forces on the Japanese as well as Chinese, and even structural problems with international arbitration.

Since Japan considers that there is no territorial problem, consecutive governments have refused to take the issue to international arbitration. Within the Gaimusho it seems that the legal department has been the most decisive force in refusing international arbitration. However, according to a now-retired ambassador, about half of the Gaimusho staff in the 1970s was in favour of putting all three Japanese territorial conflicts (Senkaku; Takeshima, Northern Territories) to the International Court of Justice (ICJ) but the Treatise Bureau was against it.[290] So far Japan has only been willing to take the Takeshima/Dokto territorial dispute to international arbitration but South Korea refused three times (1954, 1962 and 2012) when Japan officially suggested it.[291] It does not look very convincing that Japan gives the impression of wanting to apply international law in an à la carte fashion, i.e. it favours it in its territorial dispute with South Korea where the latter is in *de facto* control of Takeshima, but takes a passive position in the case of the Senkaku dispute. The reason given for its passivity in the case of the Senkaku issue is the concern that approaching the ICJ would be interpreted by China that there is a territorial dispute.[292]

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[287] "Japan, Taiwan agree on fishing rights around Senkakus, *Asahi Shimbun*, 10 April 2013, at http://ajw.asahi.com/article/behind_news/politics/AJ201304100058.

[288] "Foreign Ministry Spokesperson Hong Lei's Regular Press Conference", *Ministry of Foreign Affairs of the PRC*, 10 April 2013, at http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t1030227.shtml; "Taiwan should consider mainland's feelings on Diaoyu", *Global Times*, 12 April 2013, at http://www.globaltimes.cn/content/774416.shtml#.UWcsrkoUPoc.

[289] "Okinawa protests Japan-Taiwan fisheries accord", *NHK*, 12 April 2013, at http://www3.nhk.or.jp/nhkworld/english/news/20130412_20.html.

[290] Interview 10 October 2012.

[291] "Take Takeshima row to ICJ despite South Korea's refusal", *Yomiuri Shimbun*, 31 August 2012, at www.yomiuri.co.jp/dy/editorial/T120831004205.htm.

[292] "Govt: Senkaku plan not diplomatic matter", *Yomiuri Shimbun*, 10 July 2012, at

Which judicial forum would be appropriate? The dispute settlement mechanism of UNCLOS is not applicable here because it is only relevant in case of the interpretation or application of issues contained in the Convention (e.g. sea boundary delimitations) which excludes territorial disputes. This leaves the possibility for Japan and China to seek a decision by the ICJ or any agreed international arbitration panel. Unfortunately, China refuses judicial settlement by the ICJ and other international arbitration, and agrees in general only to international arbitration in non-political areas such as trade.[293]

It is therefore very doubtful that China would unilaterally, or together with Japan, call upon international arbitration. Since China`s legal argumentation is rather weak, and a negative judgement could have implications for China`s legal claim to most of the South China Sea, there is even less of a chance for China making an exception for the Senkaku dispute. The most recent case of China rejecting international arbitration is its reaction to the Philippines' unilateral move in January 2013 to ask the UN for arbitration concerning the two countries' overlapping jurisdictional claims in the South China Sea.[294]

Other circumstances related to the mechanics of international arbitration also cast some doubt on this approach. It may seem the best solution but as Ramos-Mrosovsky warned, `the unpredictability of litigation, the probable domestic illegitimacy of any adverse result, and the lack of any means short of force to enforce a judgment all work to discourage litigation or arbitration`.[295]. One can also add the long time it takes to get a result, which may be too long to hold back the domestic forces which want to pre-empt a negative result, particularly if natural resources are at stake and the dispute is so much linked to historical grievances and animosities.

6. Conclusions

The first part of this paper discussed the validity of the claims by both sides to the legal title to the Senkaku Islands and the question whether Japan and the PRC agreed in 1972 and 1978 to shelve the conflicting territorial claims to the islands, and if they did so, why this agreement fell apart.

In terms of modern international law, Japan seems to have the stronger arguments because of its consistent and unchallenged control over the islands and the failure of successive Chinese governments to publicly claim the title to the islands between 1895 and 1971, and particularly after 1945.However, timing, decision-making process and secrecy of Japan`s territorial acquisition, as well as the amorphous transition at the end of the 19th Century from a China-dominated East Asian Order to one dominated by Western international law somewhat puncture the political and moral foundations of Japan`s incorporation of the islands. But even if the document of incorporation of the islands was made public by Japan only in 1952, it must have been known by successive Chinese governments that Japan was in control and Japanese citizens partly living on and commercially using the islands. At the same time, the timing and circumstances of the Chinese claims (i.e. by the People's Republic as

www.yomiuri.co.jp/dy/national/T120709003776.htm.

[293] Hong, Nong (2010): *Law and Politics in the South China Sea, Assessing the role of UNCLOS in Ocean Dispute Settlement*, Ph. D. Alberta University, Edmonton, Alberta, p. 172.

[294] For a summary of the Philippine`s Notification and Statement of Claim see: http://www.dur.ac.uk/ibru/news/boundary_news/?itemno=16498.

[295] Ramos-Mrosovsky, *op. cit.*, p. 907.

well as the Republic of Taiwan) at the beginning of the 1970s cast suspicions on the motives behind their belated claims as former Prime Minister Zhou Enlai hinted himself in 1972. William B. Helflin, an international lawyer, therefore concluded his discussion of the issues arising from the historical and international law circumstances by writing in 2000 that `Under a variety of different guises, Japan has maintained authority over the Diaoyu/Senkaku Islands for over a century. Although historically inequitable, Japan appears to have a more persuasive case merely by its peaceful and continuous exercise of authority over the islands, which China did not timely protest`.[296]

The US occupation of Okinawa included explicitly the Senkaku Islands. During the San Francisco Peace Treaty in 1951, the US and Britain referred to Japan's 'residual sovereignty' over Okinawa. According to the US official position, the reversion of Okinawa to Japan's sovereignty in 1972 transferred only Tokyo's administrative rights over the Senkaku Islands, but this event opened for the first time the door to public sovereignty claims by the ROC and the PRC. To what extent these arrangements are congruent with international law needs still some research. The ROC government argued that security considerations against the background of the Cold War and its confrontation with the PRC explained its silence over the Senkaku Islands until then. The demands for the Senkaku Islands' return to the ROC government, which also claimed to represent the whole of China, as well as the report in 1968 about the likelihood of major hydrocarbon resources in the area, certainly played a role in the PRC's belated claim to the island in 1971. Rather than clarifying its stance on the Senkaku's legal title, the US opportunistically left it in 1972 to the contesting parties to decide, while implicitly reinforcing Japan's claims by stating that the Senkaku Islands enjoy the same security protection under the bilateral Security Treaty as the rest of Japan. This could hardly be called a neutral position, as Henry Kissinger appropriately noted.

The following unofficial and undocumented agreement between Japan and China to shelve the dispute helped for a considerable time to keep it under wraps. From the available evidence, it is indisputable that Japan and the PRC agreed in 1972 and again in 1978 to set the territorial dispute aside. This was politically understandable because both sides had other more urgent issues to address, and normalizing diplomatic relations and concluding the Peace and Friendship Treaty, respectively had the highest priority for both sides. In 1972, the greatest problems were how to deal with the Taiwan issue and the burden of history (reparations; apology), and, in 1978, how to deal with China`s demand for a joint front against the Soviet Union (anti-hegemony clause). However, this agreement had a congenital defect because it was never integrated into a public or agreed document, it never got legal force and any side could therefore deny it at any time. Although both sides never conceded their sovereignty claim, shelving of the dispute could be achieved for a considerable time because China did not challenge Japan`s effective control over the islands while the Japanese government exerted restraints in taking any measures which China would interpret as unacceptable acts of sovereignty (e.g. not allowing prospection for hydrocarbon resources or limiting access to the islands). The fundamental conceptual problem with the bilateral understanding of shelving the dispute was the assumption that the conditions allowing its creation and continuity in the 1970s could be frozen for as long as it would take until a solution to the opposing territorial claims could be found. The conclusion from the author's analysis suggests, however, that maintaining the conditions for the continued reliance on the bilateral understanding would have demanded much greater efforts by both sides to maintain a good overall relationship and to clarify what the *status quo* is and what measures would be

[296] Heflin, William B.: "Diaoyu/Senkaku Island Dispute, Japan and China. Oceans apart", *Asia-Pacific Law & Policy Journal*, vol. 1, Iss. 2 (2000), at http://blog.hawaii.edu/aplpj/volume-1-issue-2/, p. 20.

seen as violating the *status quo*. Instead, various changes and dynamics in the domestic and international environment were allowed to, and later even instrumentalized, gradually erode these conditions. As can be seen from the above analysis, it is difficult to pinpoint a date when this process of erosion started, or an individual measure taken which set it off because of the accumulative nature of this process and the political aggregation of it.

The appearance in the Senkaku Island waters of around 100 PRC fishing ships, some of them armed and with banners claiming Chinese sovereignty in April 1978 was brushed away by the Deng Xiaoping regime`s promise that this would not happen again. The general survey conducted in 1979 and the subsidized erection of a memorial monument during Prime Minister Ohira`s cabinet was certainly not in the spirit of the shelving agreement but did not lead to more than Chinese protests. The 1992 Chinese law on the territorial waters was definitely one turning point, as can be seen from the Chinese policy-making process as well as the political packaging when China tried to negate the law's revisionist implications by denying any change of the Deng Xiaoping statement of shelving the territorial dispute. Even Japan`s official reaction at the time tried to play down the impact of the Chinese law. Later Japan reciprocated with its own series of administrative measures which affected the disputed islands against the background of a worsening bilateral relationship after 1992. By 2008, when the Chinese started sending patrol vessels into the territorial waters of the islands, the shelving agreement was all but dead. Both sides have therefore to carry the blame for letting things get out of control in an age of rising nationalism in both countries (albeit of a higher order in China) and interventions by non-state or local government actors.

The fishing trawler incident in September 2010 marked a serious aggravation of the territorial conflict because China took offence at Japan's detention and indictment of a trawler captain who was accused of twice ramming Japanese Coast Guard vessels in the territorial waters around the Senkaku Islands. The handling by the Japanese authorities was accompanied by statements about dealing with the incident according to Japan's laws, as well as repetitions of the denial of any shelving agreement or the existence of any territorial conflict. China reacted to this reassertion of Japanese sovereignty over the islands by a series of unprecedented political and economic sanctions and retributions which forced the Japanese government to release the captain unconditionally. This crisis made a solution of the territorial conflict more difficult, and was bound to lead to the next crisis which happened in September 2012 when the central government bought three of the islands from its private owner in order to pre-empt a purchase by the anti-China oriented governor of Tokyo, Ishihara Shintaro. Further research will have to elucidate beyond the author's own speculation why communication between Japanese and Chinese authorities about the well-meant prevention of a purchase of three islands by the Tokyo mayor went so terribly wrong.

The ensuing demonstrations in many Chinese cities, the Chinese official rhetoric, and Chinese retributive measures in the political, economic, law enforcement and military spheres have been even more unprecedented than those in 2010 and are hardly congruent with the conduct between nations which had concluded a Peace and Friendship Treaty. The linkage to Japan's past aggressions against China by calling its position on the disputed islands `an outright denial of the outcomes of the victory of the World Anti-Fascist War and a grave challenge to the post-war international order` contradicts past official Chinese appreciation of Japan's peaceful development after 1945. So far, China has demonstrated through its incursions into the Senkaku Islands' Contiguous and Territorial Waters, as well as into their airspace, that Japan no longer enjoys full control over the islands. Denying the existence of a territorial conflict by Japan has become increasingly unconvincing, and appears like a refusal

to deal constructively with the confrontation. In contrast to the confrontation in 2010 it is still unclear what exactly the Chinese want to achieve and where a new compromise can be found.

In a way, both sides are at the same time too vulnerable as well as too strong, to allow much room for a compromise. China feels vulnerable because it is faced with an apparently insurmountable territorial *status quo* (which Japan is perceived as reinforcing to its benefit) and its actions are under close international scrutiny because of the danger of conjuring the `China threat` perception. This vulnerability is well hidden in the following comment by Ye Xiaowen in the *China Daily*: 'China's adherence to its peaceful development path is not to persuade, please or cheat anyone in the world, nor is it because China fears any other country. China has proposed "shelving the dispute and carrying out joint development" while claiming its sovereign rights over the islands, which demonstrates its restraint and tolerance. But if a country mistakes China's restraint for weakness, it is making a serious misjudgment'.[297] Moreover, at least for some Chinese analysts the island dispute is a means to undermine `America`s strategy of suffocating China and of reshaping regional dynamics to benefit China`.[298] This ambiguity of China`s position makes it difficult for example to evaluate the full intentions of the government - beyond tactical manoeuvering - behind the invitation of several high ranking Japanese politicians with pro-China reflexes to China in January 2013, the cancellation of trilateral Japan-China-Korea summit and ministerial meetings, or the toning down of the anti-Japan rhetoric. If M.T. Fravel is correct about his assumption that a weakening bargaining power in a territorial dispute creates an incentive to use force in order to prevent a further decline of bargaining power, then the current confrontation could lead to bloodshed.[299]

Moreover, China perceives Japan as weakening and its own political, economic and military strength rising. The new leadership is bound to continue for the time being the severe Japan policy of its predecessors until it feels firmly in power. Moreover the new Chinese president, Xi Jinping, is much closer to the military than his predecessor. [300]He has been a member of the Leading Group on Maritime Security since August 2012 and thus involved in the issue directly.[301] China is also able to mobilize considerable diplomatic capital for its claim, be it sowing doubts about US support of Japan or building a `United Front` with South Korea by accusing Japan of historical revisionism in the case of the Senkaku as well as Takeshima islands.

Japan is worried about China's bullying and does not want a repetition of being seen as ceding to Chinese pressure as in October 2010. It fears China's 'salami tactics': if it gives in now, will China demand Okinawa next? Or will China proceed arbitrarily with the exploitation of the oil and gas resources in the East China Sea without waiting for an

[297] Ye, *op. cit.*

[298] Ren, Weidong: "China wants to resist pressure from the United States and force the Japanese to give up", *Zhongguo Wang*, 3 November 2012, quoted in *China Analysis*, February 2013, p. 8., at www.ecfr.eu.

[299] Fravel, M.T.: "Power Shifts and Escalation: China`s Use of Force in Territorial Disputes", *International Security*, vol. 32, no. 3 (2007), p. 52.

[300] Minemura, Kenji: "China's Senkakus operations overseen by party task force led by Xi", *Asahi Shimbun*, 4 February 2013, at http://ajw.asahi.com/article/asia/china/AJ201302040089; Lam, Willy: "All the Secretary General`s Men: Xi Jinping`s inner Circle revealed", Jamestown Foundation, *China Brief*, vol. 13, Iss. 4 (15 February 2013), at http://www.jamestown.org/programs/chinabrief/single/?tx_ttnews[tt_news]=40461&tx_ttnews[backPid]=25&cHash=a2948d5ab8d0b3e6c8a29033e263839a.

[301] Buckely, Chris: "China Leader Affirms Policy on Islands", *New York Times*, 29 January 2013, at http://www.nytimes.com/2013/01/30/world/asia/incoming-chinese-leader-will-not-to-bargain-on-disputed-territory.html?_r=0.

agreement on the delimitation of the EEZ borders? But Japan also feels itself too strong for a compromise because it is in a comfortable position as *status quo* holder with effective control over the islands (although diminishing by the week), it tends to overrate China's economic dependence on Japan, and it is being assured by the security guarantee of the US.

The question is whether any Japanese government – in the face of unprecedented Chinese pressure - can get the balance right between either relying too much on the Japan-US Security treaty and its own defence efforts, or a creative comprehensive China policy which makes use of all of Japan's political, military and economic strengths. Abe declared in his first news conference as prime minister in December 2012 'I recognize that the first step in turning Japan's foreign and security policy around is reinforcing our *kizuna* — our bonds of friendship — once more under the Japan-U.S. alliance, which is the cornerstone of Japanese foreign policy'.[302] He has several times since denied the existence of a territorial problem and announced strengthening of Japan`s military and defence cooperation with the US. This would indicate that the former is unsurprisingly the default option. Moreover, given his revisionist stance on issues related to the history issue, there is not much optimism warranted for an incident-free management of the territorial issue, let alone a solution. Abe or his successor(s) as well as the Chinese leaders will have to find a new bilateral `understanding` which hopefully takes into consideration the lessons from the circumstances which led to the demise of the 1972/1978 `shelving consensus`. However, such a new consensus risks being less favorable to Japan`s current territorial position, while giving sucour to those arguing the `China threat` theory.

[302] Yamamoto, Daisuke: "Isle rows, TPP, 'comfort women' all pose challenges to improving ties", *Japan Times*, 8 January 2013, at http://www.japantimes.co.jp/news/2013/01/08/news/isle-rows-tpp-comfort-women-all-pose-challenges-to-improving-ties/#.UZZIHa7Ppak.