

China's "Diaoyu Dao White Paper" and Territorial Claims

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1. Introduction

In 1969 in Bangkok, the United Nations Economic Commission for Asia and the Far East (ECAFE) Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas released a report indicating the possibility that considerable oil deposits lay in the subsoil of the sea floor of the East China Sea. It is well known that the People's Republic of China (hereafter referred to as China) thereafter suddenly began pressing its territorial claim to the Senkaku Islands. Japan took measures to formally claim the Senkakus in 1895, and has ruled them effectively since then continuously, with the exception of a certain period—namely, the years following World War II when Okinawa and its associated islands were administered by the United States. On May 14, 1972, this territory reverted to Japanese administration in accordance with the Agreement between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands, which had been signed on June 17 of the previous year. Japan has exercised effective administration over the Senkakus, which were returned along with Okinawa, continuously ever since.

On December 30, 1971, China's Ministry of Foreign Affairs issued a statement objecting to the inclusion of Uotsuri Island and other islands in the territory to revert to Japanese control with the conclusion of the Okinawa Reversion Agreement, claiming: "This is a gross encroachment upon China's territorial integrity and sovereignty." The Foreign Ministry protested against Japan on the

basis that (1) “Back in the Ming Dynasty, these islands were already within China’s sea defence areas; they were islands appertaining to China’s Taiwan but not to Ryukyu, which is now known as Okinawa”; (2) “The boundary between China and Ryukyu in this area lies between Chihwei Island and Kume Island”; and (3) “During the 1894 Sino-Japanese War, the Japanese Government stole these islands.”¹

In the same statement, China’s Foreign Ministry forcefully condemned Japan for its annexation of the Taiwan Islands after the Sino-Japanese War ended in 1895, phrasing its protest using the word “gangster” – a highly unusual term to use in a diplomatic context. In short, claimed this statement, Japan had pressured the Qing Dynasty government of the day to sign the unequal Treaty of Shimonoseki in April 1895, ceding Taiwan, the islands appertaining to Taiwan, and the Penghu Islands to Japan. On this basis, the Foreign Ministry argued forcefully that Tokyo was “making the Japanese invaders’ act of aggression of seizing China’s territory in the past a ground for claiming that Japan has the so-called ‘title’ to the Diaoyu and other islands. This is sheer and outright gangster logic.”

On February 25, 1992, the Chinese government enacted the Law of the People’s Republic of China on the Territorial Sea and the Contiguous Zone. On September 10, 2012, based on this law, the Chinese government issued a statement declaring that Uotsuri Island and the nearby islands would be used to determine the baselines of China’s territorial sea.² Also on September 10, 2012, China’s Foreign Ministry responded to the Japanese government’s purchase of the Senkaku Islands with a statement that “the Japanese government's so-called ‘purchase’ of the Diaoyu Island is totally illegal and invalid. It does not change, not even in the slightest way, the historical fact of Japan's occupation of Chinese territory, nor will it alter China's territorial

¹ “Statement of the Ministry of Foreign Affairs of the People’s Republic of China,” December 30, 1971. English translation in *Peking Review*, January 7, 1972, p. 12, at <http://www.massline.org/PekingReview/PR1972/PR1972-01.pdf> (accessed on October 24, 2013).

² “Statement of the Government of the People’s Republic of China on the Baselines of the Territorial Sea of Diaoyu Dao and Its Affiliated Islands,” September 10, 2012. English translation published by the United Nations Division for Ocean Affairs and the Law of the Sea at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/chn_mzn89_2012_e.pdf (accessed on October 24, 2013).

sovereignty over the Diaoyu Island and its affiliated islands.”³

The greatest weakness in the Chinese government’s territorial claims to the Senkaku Islands is the fact that China never exercised any claim to the islands prior to Japan’s inclusion of them in its territory, nor even for the 75 years thereafter, until the ECAFE report came out. This fact makes it easy to surmise that China is pursuing two major aims against the backdrop to its government’s territorial claim to the Senkakus: to monopolize the resources in the sea, the seabed, and the subsoil around the islands and, for security reasons, to secure a route to the Pacific Ocean for the Chinese People’s Liberation Army Navy, which is now seeking to establish China as a formidable maritime power.

Also on September 25, 2012, China’s State Council Information Office published a white paper titled “Diaoyu Dao, an Inherent Territory of China” (hereafter referred to as the “White Paper”).⁴ The aim of my essay is to reexamine China’s territorial claims to the Senkakus from the perspective of international law, based on this white paper, which presents China’s most recent public position on the matter. In this reexamination, in addition to the “Diaoyu Dao White Paper,” I will refer to a separate document with the same title, “Diaoyu Dao, an Inherent Territory of China” (hereafter “Inherent Territory”), which covers nearly the same content while going into China’s territorial claims in greater detail.⁵ I will also touch on essays by Guo Jiping of the *People’s Daily* (which I refer to as “Infringements of Sovereignty”⁶ and “Evidence Shows”⁷) in analyzing the international legal basis for China’s territorial claim to the Senkaku Islands.

³ “Statement of the Ministry of Foreign Affairs of the People's Republic of China,” September 10, 2012. English translation published on the Foreign Ministry’s website at http://www.fmprc.gov.cn/mfa_eng/topics_665678/diaodao_665718/t968188.shtml (accessed on May 9, 2014).

⁴ “Diaoyu Dao, an Inherent Territory of China,” September 26, 2012. English translation published on the State Council Information Office of the People's Republic of China at http://www.gov.cn/english/official/2012-09/25/content_2232763.htm (accessed on May 8, 2014).

⁵ China Oceanic Information Center, Chinese State Oceanic Administration. “Diaoyu Dao, an Inherent Territory of China.”

⁶ Guo Jiping, “Chugoku ryodo, shuken no shinpan o yurusazu: Nit-Chu yuko kankei wa kyodo iji ga hitsuyo” (Infringements of China’s Territory and Sovereignty Will Not Be Forgiven: Sino-Japanese Friendly Relations Must Be Maintained by Both Sides). *Jinmin Chugoku (People’s China)*, October 2012, pp. 6–14.

⁷ Guo Jiping, “Evidence Shows Diaoyu Dao Is China’s Territory,” *China Daily*. http://www.chinadaily.com.cn/opinion/2012-10/15/content_15816504.htm (accessed on May 5, 2014).

2. The “White Paper” and “Inherent Territory”

(1) Basic Character of the “White Paper”

The “White Paper” begins with a foreword and goes on to present five sections: I. Diaoyu Dao is China’s Inherent Territory; II. Japan Grabbed Diaoyu Dao from China; III. Backroom Deals Between the United States and Japan Concerning Diaoyu Dao are Illegal and Invalid; IV. Japan’s Claim of Sovereignty over Diaoyu Dao is Totally Unfounded; and V. China has Taken Resolute Measures to Safeguard its Sovereignty over Diaoyu Dao. A conclusion caps the paper.

“Inherent Territory,” meanwhile, consists of the following sections: I. General Situation of Diaoyu Dao; II. Diaoyu Dao Has Been China’s Inherent Territory Since Ancient Times; III. Japan and the International Community Recognized Diaoyu Dao as Part of China in Explicit Terms; IV. Japan’s Claim to Sovereignty over Diaoyu Dao Is Totally Unfounded; and V. China Resolutely Claims and Safeguards Its Sovereignty over Diaoyu Dao. In terms of its arrangement it is extremely similar to the “White Paper.” “Inherent Territory” uses photographs and maps of the Senkaku Islands, as well as old documents and maps related to them, to present a detailed case for Chinese sovereignty. The “White Paper,” however, features no photos, maps, references to old documents, or paintings whatsoever; in this sense it seems like a hastily compiled summary of the more polished “Inherent Territory.”

The basic character of the “White Paper” comes through in its foreword, which clearly sets forth the fundamental Chinese stance on possession of the Senkaku Islands: “Diaoyu Dao and its affiliated islands are an inseparable part of the Chinese territory. Diaoyu Dao is China’s inherent territory in all historical, geographical and legal terms, and China enjoys indisputable sovereignty over Diaoyu Dao.”

In the conclusion, meanwhile, the “White Paper” presents China’s dissatisfaction with the Japanese government’s purchase of the Senkaku Islands. “The so-called ‘nationalization’ of Diaoyu Dao,” claims the paper, “severely infringed upon China’s sovereignty,” as well as representing a rejection of the “understanding and consensus” reached by the “older generation of leaders of the two countries” during the 1970s, when Tokyo and Beijing normalized

relations and signed the Sino-Japanese Treaty of Peace and Friendship.⁸

Japan has done nothing more than to purchase the Senkaku Islands from their private owner and place them under the control of the government, in line with Japanese law. China, however, claimed that this act was equivalent to outright “nationalization” and made exaggerated criticisms of what Japan had done. In a socialist state with no real concept of private property, “nationalization” is tantamount to the state obtaining new territory. China is therefore replacing “placing under government control” with “nationalization” as part of a scheme to paint the Senkaku Islands situation as a territorial dispute.⁹ China is also strenuously arguing that the so-called nationalization of the islands is a move by Japan to alter the status quo, and that Japan is to blame for the skirmishes that are taking place in the seas around the islands.

In its foreword, the “White Paper” describes the Japanese government’s September 10, 2012, purchase of the Senkaku Islands from their owner as “a move that grossly violates China’s territorial sovereignty and seriously tramples on historical facts and international jurisprudence.”¹⁰ It is clear from this that this hastily compiled document was published in the form of a protest against the Japanese government’s purchase of the islands for audiences both within China and around the world.

(2) “Understanding and Consensus Reached Between the Older Generation”

The “White Paper” uses a phrase not seen in “Inherent Territory,” namely “understanding and consensus,” to criticize Japan’s “nationalization” of the islands. In 1972 the leaders of the nations, Prime Minister Tanaka Kakuei and Premier Zhou Enlai, held a summit to negotiate and sign the Japan-China Joint Communiqué on reopening diplomatic ties and the Treaty of Peace and Friendship. During their talks, the paper claims, the leaders reached this “understanding and consensus.” According to Guo Jiping in “Evidence

⁸ All quotes are from the official English translation of the “White Paper.” See note 4 above.

⁹ The Japanese government has repeatedly stated that “There exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands,” meaning that the islands were incorporated into Japanese territory through occupation of *terra nullius* in accordance with international law, and therefore other nations have no reason to view Japanese sovereignty as problematic.

¹⁰ Quote from the foreword in the official English translation of the “White Paper.” See note 4 above.

Shows,” the two leaders, “acting in the larger interest of bilateral relations, decided not to involve the issue of Diaoyu Dao for the time being and leave it to be resolved later.”¹¹ The same article claims that later, in October 1978, Deng Xiaoping, then vice-premier of China, reconfirmed this agreement with Japanese Prime Minister Fukuda Takeo when the Treaty of Peace and Friendship went into effect.

In “Evidence Shows,” the claim is also put forward that “both China and Japan were clear about whether the two countries had reached understanding and consensus on shelving the dispute over Diaoyu Dao.”¹² The document does not, however, provide any evidence to back this claim. On this point, however, Japan’s Ministry of Foreign Affairs clearly rejects this claim, stating that there was no agreement reached to shelve the question of the Senkaku Islands or to maintain the status quo, as can plainly be seen from the public record of the Japan-China summit meeting at the time of normalization of relations. The Foreign Ministry notes also that “Japan has pointed out its position to the Chinese side clearly and time and again.”¹³

The Chinese government, while on the one hand criticizing Japan for altering the status quo in contravention of the “understanding and agreement,” has also created domestic legislation that declares Uotsuri Island and the associated islands to be Chinese territory, thus moving forward with its own moves to alter the status quo based on the same understanding and agreement. In February 1992, China enacted the Law of the People’s Republic of China on the Territorial Sea and the Contiguous Zone, stating that the Senkaku Islands, Spratly Islands, and Paracel Islands were all Chinese territory. The National Defense Law passed in 1997 tasked the PLA Navy with securing China’s maritime interests. And as noted above, 2012 saw the release of the “Statement of the Government of the People’s Republic of China on the Baselines of the Territorial Sea of Diaoyu Dao and Its Affiliated Islands,” which defines straight baselines demarcating two territorial seas – one adjacent to Diaoyu Dao (Uotsuri Island) and the surrounding islands of Huangwei Yu (Kuba Island), Nanxiao Dao (Minamikojima Island), Beixiao Dao (Kitakojima Island), Nan Yu

¹¹ Guo Jiping, *op. cit.*

¹² *Ibid.*

¹³ Japanese Ministry of Foreign Affairs, “Q&A on the Senkaku Islands,” Q14. http://www.mofa.go.jp/region/asia-paci/senkaku/qa_1010.html#qa14 (accessed on October 24, 2013).

(Okinominamiwa Island), Bei Yu (Okinokitaiwa Island), and Fei Yu (Tobise Island),¹⁴ and the other adjacent to Chiwei Yu (Taisho Island).

China in this way unilaterally ignores the “understanding and agreement” to which it refers. Japan, meanwhile, has done nothing more than purchase property from its private owner and place it under the control of the state, in line with Japanese law. China has taken an excessively strident tone in blasting this “nationalization” of the Senkaku Islands. It is only natural to think that with this “nationalization” as an excuse, Beijing is now scheming to turn the question of the islands into a full-blown territorial dispute.

The conclusion of the “White Paper” touches on the importance of respect for international law. It reads: “China strongly urges Japan to respect history and international law and immediately stop all actions that undermine China’s territorial sovereignty.”¹⁵ This statement of respect for international law with respect to sovereignty over the Senkakus is an expression of a Chinese willingness to seek an international legal, rather than a political, solution to the question of the Senkaku Islands, and as such is to be welcomed.

3. Claiming the Islands as Chinese Territory

(1) Claims in the *Shunfeng Xiangsong* and Envoys’ Records

The “White Paper” states that Diaoyu Dao was first discovered, named, and used by China, and therefore that the Senkaku Islands are Chinese sovereign territory. Namely, the paper lists the 1403 *Shunfeng Xiangsong* as the earliest historical text to carry names including Diaoyu Dao (Uotsuri Island) and Chiwei Yu (Taisho Island), claiming this as evidence that China had discovered and named Diaoyu Dao in the fourteenth or fifteenth century.¹⁶ This text does

¹⁴ China has drawn straight baselines to enclose a territorial sea adjacent to Uotsuri Island, but these include a straight baseline extending to the considerably distant Kuba Island. There are doubts as to whether this would be approved as a straight baseline. The United Nations Convention on the Law of the Sea states: “The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters” (Article 7, Paragraph 3).

¹⁵ Quoted from the “White Paper” (see footnote 4).

¹⁶ “White Paper,” p. 35. A detailed examination of *Shunfeng Xiangsong*, though, reveals that it describes Nagasaki as being home to Portuguese people, which would mean it was written after 1570. See Ishii Nozomu, “Senkaku Chogyo Retto zassetsu yonshu”

indeed include such terms as Diaoyu Yu and Chikan Yu, older names for those islands, but from the perspective of international law this cannot be taken as evidence of China's having discovered or named them.

In 1372 Emperor Hongwu (r. 1368–98) sent an emissary to the Ryukyus, beginning the payment of tribute from the Ryukyu Kingdom to the Ming court. This relationship of tribute and trade with China is said to have continued until 1879. During the reign of the Ming Dynasty's Emperor Yongle (r. 1402–24), the so-called tributary system of Chinese recognition of the Ryukyu kings began; through 1866, a period of almost 500 years, the Ming and Qing courts sent title-conferring envoys to the Ryukyu Kingdom a total of 24 times. According to the "White Paper," in 1534 the Ming envoy Chen Kan wrote *Shi Liuqiu lu* (Record of the Envoy's Journey to the Ryukyu); in 1562 the Ming envoy Guo Rulin wrote another document by the same name; and in 1712 the Qing envoy Xu Baoguang wrote *Zhong Shan chuan xin lu* (Records of Messages from Zhong Shan). The "White Paper" uses these records as evidence that the islands were used from antiquity as navigation guides during sea journeys – a claim that is indeed correct.¹⁷

The "White Paper" goes on to quote from the first formal history of the Ryukyu Kingdom, *Chuzan seikan* (Mirror of the Ages of Chuzan), whose 1650 production was supervised by Sho Joken, prime minister of the kingdom, and from the 1708 *Shinan kogi* (A General Guide) by the Ryukyuan scholar Tei Junsoku. Based on these sources, it claims that the boundary between China's territory and the Ryukyus lay along the Hei Shuigou (Black Trough), namely the Okinawa Trough, between Chiwei Yu and Kumejima Island.¹⁸ To further support this claim, the "White Paper" also quotes from the 1579 *Liuqiu lucuo yao buyi* (Addendum to the Summarized Records of Ryukyu) by the Ming deputy title-conferring envoy Xie Jie; the 1606 *Shi Liuqiu lu* (Record of the Envoy's Journey to the Ryukyus) by the Ming envoy Xia Ziyang; the 1683 *Shi Liuqiu za lu* (Miscellaneous Records of an Envoy's Mission to the Ryukyus) by the Qing envoy Wang Ji; and the 1756 *Liuqiu guo zhi lue* (Annals of the Ryukyu Kingdom)

(Four Tales Concerning the Senkaku/Diaoyu Islands), in *Junshin Journal of Human Studies* 19 (2013), p. 55.

¹⁷ "White Paper," p. 35.

¹⁸ *Ibid.*, p. 36.

by the deputy imperial title-conferring envoy Zhou Huang.¹⁹

The names of some of the Senkaku Islands do indeed appear in the texts that the “White Paper” quotes from. It is clear, however, that the crews of the Chinese envoys’ vessels – which only made some two dozen journeys to the Ryukyus over the course of about 450 years – could not have been familiar with the sea routes. It is easy to surmise that Ryukyuan sailors, who are said to have made more than 170 round trips to China on tributary missions, would have served on the Chinese vessels as navigators. It is therefore natural to consider the geographic names appearing in the Chinese reports as having been told to the writers by the Ryukyuan.

The “White Paper” also concludes based on a number of title-conferring envoys’ reports that the boundary between China and the Ryukyus was the Hei Shuigou between Chiwei Yu and Kumejima Island.²⁰ But all that can actually be concluded based on these passages is that the Ryukyuan of that era viewed Kumejima Island as Ryukyuan territory. In the absence of any definitive statement that the islands from Chiwei Yu toward the Chinese mainland were Chinese territory, we can say that the Senkaku Islands were unclaimed until Japan took possession of them in 1895 via occupation of *terra nullius*, recognized in international law as a legitimate means of acquiring territory.²¹

(2) The Extent of Sea Defenses and Map-Based Evidence

The Chinese government’s “White Paper” states that to defend the coast of southeastern China from Japanese pirates in the early Ming period, Diaoyu Dao was made part of the coastal defense area. As evidence for this, the paper notes that the 1561 *Chouhai tubian* (Illustrated Compendium on Maritime Security) compiled by Zheng Ruozeng included Diaoyu Dao and other islands in the *Yanhai shansha tu* (Map of Coastal Mountains and Sands), clearly incorporating

¹⁹ Ibid.

²⁰ Ibid.

²¹ For a detailed examination of this, see Ozaki Shigeyoshi, “Senkaku Shoto to Nihon no ryoyuken,” part 1, in *Tosho Kenkyu Journal*, Vol. 1 (June 2012), pp. 8–17; and part 2, in *Tosho Kenkyu Journal*, Vol. 2 No. 1 (October 2012), pp. 8–27. These are available in English as “The Senkaku Islands and Japan’s Territorial Rights,” part 1 (<http://islandstudies.oprf-info.org/research/a00001/>) and part 2 (<http://islandstudies.oprf-info.org/research/a00004/>).

them in the Ming court's maritime defense area.²² The "White Paper" further refers to the 1605 *Qiankun yitong haifang quantu* (Complete Map of Unified Maritime Territory for Coastal Defense) and the 1621 *Wubei zhi – Haifang er – Fujian yanhai shansha tu* (Treatise on Military Preparations; Coastal Defense No. II; Map of Fujian's Coastal Mountains and Sands), a defense map for the Chinese coast created by Mao Yuanyi, and other documents as evidence that islands including Diaoyu Dao were a part of China's maritime territory. "Inherent Territory" draws on the same sources in advancing China's sovereignty claims.²³

The "White Paper" uses the same approach to historical materials for the Qing Dynasty as it does for the Ming in stating that Diaoyu Dao and other islands were a part of China's maritime defense zone and that the Taiwanese regional government incorporated the islands in the area under its administrative jurisdiction. Namely, Vol. 84 of the 1871 *Chongzuan Fujian tong zhi* (Recompiled General Annals of Fujian), compiled by Chen Shouqi and others, describes Diaoyu Dao as a strategic location for maritime defense under the jurisdiction of what is today Taiwan's Yilan County.²⁴ "Inherent Territory," meanwhile, refers to the above documents in addition to *Taihai shi cha lu* (Record of a Tour of Duty in the Taiwan Sea), a report written by Huang Shujing after a tour around Taiwan that mentions Diaoyu Dao.²⁵ While both the "White Paper" and "Inherent Territory" use similar historical references to show that names for Uotsuri Island and other islands were mentioned in old documents, it cannot be said that these mentions of island names are evidence that Ming or Qing China possessed Uotsuri Island.

The upper portion of the *Fujian Yanhai shansha tu* (Map of Fujian's Coastal Mountains and Sands), the first volume of the *Chouhai tubian* mentioned above, includes Diaoyu Yu (Uotsuri Island), Huangwei Shan (Kuba Island), and Chi Yu (Taisho Island). However, a detailed examination of Fujian map 7, 1-19, and Fujian map 8, 1-20, also in the same *Fujian Yanhai shansha tu*, shows fortresses in places named Meijian, Dinghai, and Daijin on coastal peninsulas. Farther inland, there are fortresses in the counties of Changle, Luoyuan, and Ningde, among other places. To defend its coastal territory, Ming China

²² "White Paper," p. 36.

²³ "Inherent Territory," p. 21.

²⁴ "White Paper," p. 36.

²⁵ "Inherent Territory," p. 22.

established military posts and patrol stations here and there on islands in nearby seas outside of Chinese territory;²⁶ these include Wuhu Men, Wuhu Xunjian Si, and Fenghuo Zhai. It can therefore be determined that Ming China's maritime defenses at the time of the *Chouhai tubian* extended only several kilometers out to sea from these fortifications. The Senkaku Islands, situated some 400 kilometers away from Fujian, can safely be said to be outside this area.²⁷ The *Chouhai tubian* also includes a list of military posts. All of the extraterritorial military posts are located within a space just over 10 kilometers from the coastline. It is natural to conclude that the Senkaku Islands were outside the maritime defense area.²⁸

The "White Paper" also looks to old pictures for evidence that the Senkaku Islands were Chinese territory. Namely, it draws on the 1579 "Liuqiu guo hai tu" (Sea Chart to the Ryukyus) in the *Shi Liuqiu lu* (Record of the Envoy's Journey to the Ryukyus) by the Ming title-conferring envoy Xiao Chongye; the 1629 *Huang Ming xiangxu lu* (Record of the Interpreters of the Ming Emperor), created by Mao Ruizheng; the 1767 *Kun yu quan tu* (Complete Map of the World); and the 1863 *Huangchao Zhongwai yitong yu tu* (Complete Imperial Atlas of China and Foreign Lands) to claim that Diaoyu Dao was included in Chinese sea territory. It also introduces maps published by Japanese, French, American, and British cartographers.²⁹ "Inherent Territory," too, uses old pictures like the 1863 *Daqing yitong yu tu* (Atlas of the Great Qing Dynasty), which shows Diaoyu Dao as Chinese territory, to demonstrate that all the islands from Meihua in Fujian to Naha Port in the Ryukyus had Chinese names.³⁰

Islands may have their names listed on old pictures or maps. But this does not mean that these old pictures will be taken as evidence of territorial ownership in an international legal sense. International judicial precedent makes it clear that with the exception of maps attached to treaties or that have

²⁶ Ishii Nozomu, "Senkaku Chogyo Retto zassetsu nanahen" (Seven Tales Concerning the Senkaku/Diaoyu Islands), in *"Kotoba to ningen keisei" no hikaku bunka kenkyu* (Comparative Cultural Studies on "Language and Formation of the Self"), ed. Nagasaki Junshin Catholic University Institute of Comparative Cultures (March 2013), p. 69.

²⁷ *Ibid.*, p. 65.

²⁸ Ishii Nozomu, "Senkaku Chogyo Retto zassetsu yonshu" (Four Tales Concerning the Senkaku/ Diaoyu Islands), in *Junshin jinbun kenkyu* (Junshin Journal of Human Studies) 19 (2013), p. 219.

²⁹ "White Paper," p. 36.

³⁰ "Inherent Territory," p. 22.

been admitted as evidence in international legal proceedings, such documentation can only be viewed as collateral evidence. Therefore, while the “White Paper” puts forth these old charts to back up China’s claims of sovereignty over the Senkaku Islands, legally speaking, they are not supportive of the claims in question.

4. Disposition of the Islands After World War II

(1) The Cairo Declaration and Potsdam Declaration as Evidence

Toward the end of World War II, Japan underwent a baptism by fire – a series of bombing raids on its urban centers and the atomic bombings of Hiroshima and Nagasaki. On August 14, 1945, the nation had no choice but to accept the terms of the Potsdam Declaration. The surrender conditions set forth by the Allied Powers in this declaration were the removal from power of all those who had led Japan’s war efforts (article 6), occupation of Japan until all of its war-making potential was destroyed (article 7), implementation of the terms of the Cairo Declaration and determination by the Allies of the limitations of Japanese sovereignty (article 8), complete disarmament of Japan’s armed forces (article 9), and stern justice for Japanese war criminals (article 10). On September 2, Japan signed the Instrument of Surrender agreeing in full to the conditions of the Potsdam Declaration.

The “White Paper” uses the Cairo Declaration, the Potsdam Declaration, and the Instrument of Surrender to back China’s claim that Diaoyu Dao should have been returned to the Chinese as part of the islands belonging to Taiwan. Article 8 of the Potsdam Declaration executes the terms of the Cairo Declaration issued in November 1943 by the Allied Powers, which stated: “all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China.” As paragraph 1 of the Instrument of Surrender states that Japan accepts the terms of the Potsdam Declaration, and paragraph 6 that it will faithfully carry out the provisions of that declaration, argues the “White Paper,” Diaoyu Dao should have been returned to China.³¹

The “White Paper” states that the Chinese government formally

³¹ “White Paper,” p. 29.

declared war against Japan in December 1941,³² but in fact it is unclear whether China was one of the nations party to the Potsdam Declaration. “Inherent Territory,” meanwhile, goes on to note that the United States signed the San Francisco Peace Treaty with Japan in 1951, along with a group of other countries that excluded China.³³ While both of these documents do refer to a country named *China*, in the former this signifies the Republic of China, while in the latter it is the People’s Republic of China, seeing as Japan in April 1952 would go on to sign the Japan-Taiwan Peace Treaty with the Republic of China. In order to connect the People’s Republic of China with the Cairo Declaration, it appears that China is deliberately mixing these different names in its reports.

Next comes the problem of whether the Senkaku Islands are included in “Formosa and the Pescadores” as listed in the Cairo Declaration. This declaration states that “all the territories Japan has stolen from the Chinese” are to be returned to “the Republic of China.” If the Senkaku Islands are included in the area ceded to Japan in article 2 of the 1895 Treaty of Shimonoseki, which ended the Sino-Japanese War of 1894–95 – namely, “the island of Formosa, together with all islands appertaining or belonging to the said island of Formosa” – then Japan could be held to have relinquished the Senkakus in article 2 (b) of the 1951 San Francisco Peace Treaty, based on the stipulations of the Cairo Declaration.

On this point, Japan’s Ministry of Foreign Affairs sets forth the following view.³⁴ As the major Allied Powers in World War II recognized the Senkaku Islands as Japanese sovereign territory, these islands were treated as a part of the Ryukyu island chain, and Japan was not forced to give them up by the Treaty of San Francisco. The Foreign Ministry also notes that there was no debate whatsoever during talks on the peace treaty addressing the Senkakus, which were left as part of Japan’s territory, which is a clear indication that the talks rested on the view that the islands had previously been Japan’s.

There are Chinese resources that support this view of Japan’s Foreign Ministry. The 1871 *Chongzuan Fujian tong zhi* (Recompiled General Annals of Fujian), a geographic text compiled by the Qing government, shows in its

³² Ibid., p. 38.

³³ “Inherent Territory,” p. 26.

³⁴ MOFA, “Q & A on the Senkaku Islands.”

http://www.mofa.go.jp/region/asia-paci/senkaku/qa_1010.html (accessed on January 25, 2014.)

section on what is today Yilan County that the Senkaku Islands were not among the islands appertaining to Taiwan. This section of the text clearly states that the Yilan County territory extended to the northeast only as far as Sandiao, on the northeastern coast of Taiwan; heading out to sea from that point would take a traveler beyond the Qing state's boundary, meaning that Diaoyu Dao (Uotsuri Island), 170 kilometers to the northeast, was naturally not a part of China. Another official geographic text, the 1852 *Gemalan ting zhi* (Kavalan Subprefecture Gazetteer), also described Diaoyu Tai as *Lan jie wai* – lying beyond the border of Yilan County, and therefore outside of Qing China.³⁵ It appears, therefore, to be difficult even using old Chinese documents to show that the Senkaku Islands were a part of Ming China's maritime defense area or part of the islands appertaining to Taiwan, as China claims today.

(2) Administration of the Senkaku Islands and the Okinawa Reversion Agreement

The "White Paper" refers to the 1952 Provisions of the Government of the Ryukyu Islands and the 1953 United States Civil Administration of the Ryukyu Islands (USCAR) proclamation on the geographical boundary of the Ryukyus, claiming that the United States arbitrarily placed the Nansei Islands and other territories south of 29° north latitude under United Nations trusteeship, expanding this jurisdiction to encompass Diaoyu Dao. The document calls this an act with no legal grounds and states China's firm opposition to it.³⁶ It also declares that Chinese people all over the world condemned the return of power of administration over the islands to Japan in the 1971 Okinawa Reversion Agreement and notes that in December that year, the Chinese Ministry of Foreign Affairs declared it an illegal act to include Diaoyu Dao and other islands in the territory returned to Japan, one that did not change China's territorial sovereignty over them.³⁷

Article 3 of the Treaty of San Francisco states that Japan agrees to all US proposals to place islands south of 29° north latitude, including the Ryukyu Islands and the Daito Islands, under United Nations trusteeship with the United States as the administering authority; and that until said proposals are

³⁵ Ishii, "Senkaku Chogyo Retto", op. cit., p. 38.

³⁶ "White Paper," p. 39.

³⁷ Ibid.

made, the United States will exercise any and all powers of administration, legislation, and jurisdiction over the inhabitants of these islands.³⁸ Incidentally, the Treaty of San Francisco represents the Allied Powers' final decision on the extent of Japan's territory, based on the Potsdam Declaration. In June 1971, the United States returned the territory in question, including the Senkaku Islands, to Japan according to the provisions of the Okinawa Reversion Agreement. In the end, they were never placed under UN trusteeship.

Japan's Foreign Ministry points out that the Senkaku Islands remained a part of Japan's territory when the San Francisco Peace Treaty was concluded, but none of the major Allied powers – the United States, Britain, France, and China (the Republic of China and the People's Republic of China) – raised any objection to this. Based on this, the ministry argues as follows: In a January 8, 1953, *People's Daily* article titled "Battle of People in Ryukyu Islands against U.S. Occupation," China criticized the United States for its occupation of the Ryukyus, which had not been put under trusteeship in either the Cairo Declaration or the Potsdam Declaration, without heed to opposition from the islands' residents. This article described the Ryukyu Islands as comprising seven groups of islands, including the Senkakus, thus indicating that China recognized the Senkakus as part of the Ryukyu chain.³⁹

The claims in the "White Paper" are thus inconsistent with China's own territorial arguments it has advanced in the past, and can be viewed as arbitrary misinterpretations of treaty articles. We can surmise that this document was hastily produced, with insufficient attention to detail – largely for a domestic audience – in order to respond to Japan's "nationalization" of the Senkaku Islands.

5. Conclusion

³⁸ Article 3 reads in full: "Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29 deg. north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters."

³⁹ MOFA, *op. cit.*

Above I have focused mainly on the “White Paper,” looking also at “Inherent Territory” and “Evidence Shows,” in considering China’s territorial claims concerning the Senkaku Islands. Section IV of the “White Paper” is titled “Japan’s Claim of Sovereignty over Diaoyu Dao Is Totally Unfounded,”⁴⁰ but having assessed the content of this document, we can conclude that China’s claims are insufficiently supported.

The title of section V of the “White Paper,” “China has Taken Resolute Measures to Safeguard its Sovereignty over Diaoyu Dao,” is buttressed by no evidence whatsoever of actual Chinese sovereignty. The content of this section makes it clear that the title is little more than a slogan to be used in a territorial struggle. This section does little more than introduce some of China’s acts and statements. For instance, it mentions (1) statements issued just before and after the 1951 San Francisco Conference, from which the People’s Republic of China was excluded, to the effect that all the conference’s content and outcome would be regarded as illegal, invalid, and under no circumstances to be recognized; (2) the announcement following ratification of the Okinawa Reversion Agreement that islands including Diaoyu Dao were an indivisible part of Chinese territory; and (3) the enactment of domestic laws clearly defining Diaoyu Dao as belonging to China. None of these unilateral actions or statements provides a basis in international law for Chinese territorial claims.

The “White Paper” states: “The compatriots from Hong Kong, Macao and Taiwan and the overseas Chinese have all carried out various forms of activities to safeguard China’s territorial sovereignty over Diaoyu Dao, strongly expressing the just position of the Chinese nation, and displaying to the rest of the world that the peace-loving Chinese nation has the determination and the will to uphold China’s state sovereignty and territorial integrity.”⁴¹ The conclusion of the report states that Japanese nationalization of the islands was an act that “severely infringed upon China’s sovereignty,” that the Chinese government is firmly resolved and has the will to defend the country’s territorial sovereignty, and that the nation “has the confidence and ability to safeguard China’s state sovereignty and territorial integrity.” Such language does not appear in “Inherent Territory” – perhaps a sign that the “White Paper” is a form of political propaganda targeting both domestic and international

⁴⁰ “White Paper,” p. 40.

⁴¹ *Ibid.*, p. 42.

audiences.

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