

# The Japan-China Confrontation Over the Senkaku/Diaoyu Islands - Between “shelving” and “dispute escalation” 尖閣・釣魚諸島をめぐる日中対立 棚上げと激化のあいだとは

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## INTRODUCTION

The dispute over the Senkaku/Diaoyu Islands in the East China Sea has remained raw and menacing since its latest eruption as a result of the purchase of three islands by the Japanese central government in 2012. In contrast to the aftermath of the 2010 incident, the Chinese side under the new leader Xi Jinping has widened the dispute by political, military and propaganda means, and the Abe government has hardened its stance by insisting that “There is no territorial dispute” and “There never was any understanding of shelving the dispute”. Rather there was an attempt to political and military counterbalancing, which includes strengthening of the military alliance with the US, repositioning Japan’s armed forces to the South and reinterpreting Article 9 of the so-called Peace Constitution.

The ongoing military and coast guard stand-off around the islands risks a serious clash through either miscalculation, unforeseen circumstances or risk taking at lower command level.



The Chinese government is aiming to force Japan to acknowledge that there is a territorial dispute. The repeated dispatch of Chinese coast guard ships into the territorial waters around the islands is to prove that there is indeed a territorial dispute and that Japan no longer has exclusive control over the islands. The island dispute also involves the US as Japan’s alliance partner with its own high stake in a functioning relationship with a rising China. The US, therefore, seeks to avoid a military “entrapment” despite repeated declarations to the effect that the mutual security treaty includes the islands. China’s moves in the East China Sea send worrying signals to those countries around the South China Sea which contest actively (Vietnam, Philippines) or more

guardedly (Indonesia, Malaysia and Brunei) China's claim to almost 90% of the South China Sea, while Japan is supporting these nations politically and materially (e.g. providing assistance to beef up the coast guards of Vietnam, Indonesia and the Philippines). Finally China challenges the principles of the inviolability of international borders and the peaceful resolution of international disputes which is particularly ominous against the background of Russian moves against the territory of the Ukraine.

This article looks at the major developments which led to the current dangerous situation, and explores approaches for crisis management or resolution. I conclude that at least initially the sovereignty issue over the disputed islands has to be put aside by creating a new understanding that will permit shelving the issue. This new understanding will have to take into account the lessons which can be derived from the failed ones of 1972 and 1978 in order to succeed. Efforts will then have to be concentrated on Confidence and Security Building Measures (CSBM) and on how to share the economic interests in the area outside the 12 nautical mile (nm) territorial sea around the islands. This will require a lot of good political will on both sides, something that is currently missing.

## THE HISTORICAL BACKGROUND

### - The circumstances of Japan's acquisition

An analysis of the historical background shows that we are faced here with the amorphous transition at the end of the 19th Century from a China-dominated East Asian Order to one dominated by Western international law, with China basing its stance on the former and Japan on 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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup> 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).<sup>4</sup> This late claim was also very much in response to the Guomindang government in Taiwan (Republic of China, ROC) which had 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.<sup>5</sup> 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 only discovered the islands and used them, but also exercised long-term control over them without clarifying what this means.<sup>6</sup> '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.<sup>7</sup> Moreover, the assertion that Japan acquired the islands as the result of the Sino-Japanese War of 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.<sup>8</sup> The map of Taiwan printed at the time did not include the Senkaku Islands. China, however, states that the Treaty included the Senkaku Islands since they belong to Taiwan, a claim which Japan disputes.<sup>9</sup>

#### - Shadow over the political and moral foundation of Japan's acquisition

Timing, decision-making process and secrecy of Japan's territorial acquisition of the Senkaku Islands cast a shadow on 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, successive Chinese governments must have known that Japan was in control and Japanese citizens partly living on and commercially using the islands.

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.<sup>10</sup> 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, there is no documentary proof that such surveys were conducted.<sup>11</sup> Moreover, in 1880, negotiations between the Meiji and Qing governments had taken place over the establishment of a southern border because the Qing 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 prepared in which the Japanese proposed 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.<sup>12</sup> 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.<sup>13</sup> Hane argues that these two circumstances - Tokyo's hesitation to incorporate the Senkaku Islands and its 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.

The timing of Japan's incorporation of the islands is also telling. It 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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup>

The Japanese government tries to prove the Chinese recognition of Japan's sovereignty by two documents: The first 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.<sup>17</sup> 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 (1895-1945).<sup>18</sup> The second document is 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.<sup>19</sup> Another

battlefield today for beefing up their respective claims to the islands are maps. However, there are many inconsistencies on both sides until the 1970s.<sup>20</sup>

The conclusion from the above analysis can only be that neither the Japanese nor Chinese version of the historical background is devoid of weak points. The Japanese claim is certainly stronger in modern international law terms, and the Chinese position is seriously weakened by the absence of any protest from 1895 to 1970 and by the circumstances of the timing of protests from 1970 (i.e. report on hydrocarbon resources). But as I will show later, rather than using these weak points to reinforce mutually exclusive sovereignty claims, the mutual recognition of these weak points could also provide an encouragement for finding a compromise.

#### - World War II agreements and the Senkaku Islands

After the 2012 nationalisation of three of the islands, the Chinese government took the line that Japan's act was a negation of the results of World War II, thus combining the well-known history discourse of Japan's aggression against China until 1945 with the islands dispute. It is therefore important to investigate briefly what these agreements said about the islands.

Based on its assertion about the Sino-Japanese war of 1894-95 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 Declaration 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.'<sup>21</sup>



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'.<sup>22</sup> Article 2 (b) of the San Francisco Treaty stipulates that 'Japan renounces all right, title and claim to Formosa and the Pescadores'.<sup>23</sup>

The Senkaku Islands are nowhere mentioned in these documents, but because of its assertion that the islands are part of Taiwan, the Chinese consider them to be included.<sup>24</sup> At the same time, the PRC has never recognized the legality of the San Francisco Peace Treaty and the Treaty itself does not even clarify to which China Taiwan should be returned.<sup>25</sup> 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 casting 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.<sup>26</sup> Professor Liu Jiangyong of Qinghua University brushed away such doubts by explaining the use of the Japanese name by the circumstance that this name was, after the Japanese colonization of Taiwan, the more popular name.<sup>27</sup>

It is more likely that the Guomindang government, and from 1949 on also the government of the PRC, did not know and/or care about these islands until 1970. There was no clear understanding of whether the islands belonged to Okinawa or Taiwan, and even the ROC position on Okinawa was unclear. 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.<sup>28</sup> Ishii mentions that the ROC government at one stage demanded to take part in the Trusteeship of Okinawa.<sup>29</sup> 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.<sup>30</sup>

As a result of the San Francisco Peace Treaty of 1951, Okinawa, including the Senkaku Islands as part of the Nansei Shoto Islands (south of 29° north latitude refers to all the islands of the Ryukyu chain), 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.<sup>31</sup> It is obvious that the Japanese considered 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 was not raised by either side. In a separate exchange of notes, both sides agreed that the Treaty 'be applicable to all the territories which are now, or which may hereafter be, under the control of its Government' referring to the ROC government.<sup>32</sup> 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 specified in the San Francisco Peace Treaty.<sup>33</sup>

- The reversion of Okinawa in 1972 and the disputed islands

Consequently, 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), the ROC urged the US in September 1970 not to include the Senkaku Islands, and to keep the sovereignty issue open.<sup>34</sup>



**Vice President Spiro Agnew with Prime Minister Eisaku Sato on reversion of Okinawa. Emperor Hirohito and Empress Nagako look on. May 15 1972**

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 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'.<sup>35</sup> 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 support Japan's demand. Moreover, the US felt driven into a corner by Taiwan because the latter had the power to torpedo the pending textile agreement which the US was just negotiating with several countries, including Taiwan. Henry Kissinger, the President's Assistant for National Security Affairs, suggested promising the ROC that a pending US military delegation visiting Taiwan in August would buy them off with promises of military aid.<sup>36</sup>

Supporting Japan rather than Taiwan in the end meant that the US would arbitrarily "detach" the Senkaku Islands from Okinawan territory despite having clearly considered the two as one territorial unit over which Japan enjoyed "residual sovereignty" despite US occupation until 1972.<sup>37</sup> This was done by differentiating between Okinawa, which was returned as a territory, and where the US today has a consulate-general, and the Senkaku Islands, which were only recognised as being under the administration of Japan. Any conflicting sovereignty claims were explicitly left for the parties concerned to sort out after the reversion of Okinawa, which included the Senkaku Islands. Since Art. V of the bilateral security treaty applied to all Japanese territory being under Japanese administration, the security guarantee therefore applied also to the islands. In this way the US contributed significantly to the current difficult situation.

This rather self-serving ambiguous US position was enunciated when 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.<sup>38</sup> 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. In this way the US allowed Japan to regain control over the Senkaku Islands and enabled it to reinforce its sovereignty claim thanks to the reversion. When reading the proposal by 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, Henry Kissinger wrote candidly 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?'<sup>39</sup>

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 ROC 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.<sup>40</sup> 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 Taipei in 1970 to oppose the transfer of the islands to Japan.<sup>41</sup> 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.<sup>42</sup> Soon 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.<sup>43</sup>

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 also explain 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 ROC and 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.<sup>44</sup>

The weakest point of the territorial claim to the Senkaku Islands by the ROC and, since 1949, also that by the PRC is, therefore, that, until the ECAFE survey of the East China Sea, the islands were not claimed by either government, and Japan's control over the islands had been uncontested. Shaw calls this absence of objection a 'serious political misstep'.<sup>45</sup> 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

another since 1936, and was then taken over in 1949 by the PRC.<sup>46</sup>

In meetings with PRC academics in February 2013 this author was given several reasons for the long silence of the Beijing government, including some of those mentioned above. First of all, the government saw no reason to specifically claim the islands because according to the PRC interpretation of the Shimonoseki Treaty of 1895. Therefore, having been taken away from China as part of Taiwan, Japan was obligated 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 having been addressed by two PRC statements in 1951 which declared the treaty illegal. Interestingly, in these statements Beijing claimed the Paracel Islands, the Spratly Islands and the Pratas Islands as part of China.<sup>47</sup> 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 placed under US administration (and moreover joined to Okinawa) while the Pratas Islands were placed 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 a minor issue as these far away islands.

## WAS THE SENKAKU/DIAOYU ISSUE SHELVED IN 1972 AND 1978?

What had kept the territorial dispute between Tokyo and Beijing under control from the 1970s until the beginning of the 1990s was a tacit 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. Moreover, this author is convinced that another "understanding" will have to be found in order to escape from the current dangerous confrontation, but this will only be possible if the appropriate lessons can be learned from the demise of the 1972/1978 understanding.

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 negotiations 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'.<sup>48</sup> Yabuki Susumu corroborates 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.'<sup>49</sup> 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, '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*)'.<sup>50</sup> 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 views had been presented in an article in the *People's Daily* in May 1971. 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.'<sup>51</sup> After the ratification of the Treaty, Deng 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.<sup>52</sup> 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*).<sup>53</sup> 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 giant (literally '*disturb a bush only to let a snake out*' – *yabu wo tsutsuite, hebi wo dasu*), it will be a total loss (*moto mo ko mo nai*) for Japan.<sup>54</sup>

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 Treaties Division and later Director General of the Treaties Bureau, Kuriyama Takakazu, who was involved in the negotiations in 1972 and in 1978, stated in an interview in 2012 that he understood both then and today that there was a '*tacit understanding*' (*anmoku no ryokai*) between Japan and China to shelve the territorial issue.<sup>55</sup> Asai Motofumi, who was director of the Treaties 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.<sup>56</sup> 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.<sup>57</sup> Tajima Atsushi, who was the Director of the China Division in 1978 and participated in the discussion between Foreign Minister Sonoda and Deng Xiaoping in 1978, emphasized in an interview published in June 2013 that the Chinese side's perception of an "agreement (*goi*)" was one-sided and that the Japanese side only listened to Deng's explanation that the issue of the Senkaku Islands (and of the disputed sea border!) should be left to future generations. The Japanese side

was satisfied that Beijing had no intention to change the status quo and therefore judged that “no reaction was required”.<sup>58</sup> Despite Tajima’s intention to refute the existence of an “agreement”, it is clear that there was an implicit understanding since the *status quo* was in Japan’s favour.

Another indirect indication that Japan tacitly accepted the existence of a territorial problem and was willing to suspend the issue to protect the overall relationship with China was 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 prospecting and drilling for 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, thereby 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 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.<sup>59</sup>

## THE EROSION OF THE SHELIVING UNDERSTANDING

While one can well understand the desire by the Japanese and Chinese leaders to deepen the bilateral relationship through the two tacit understandings 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 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 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 leaders on both sides procrastinated and allowed the territorial issue to become the symbol of nationalism in both countries.<sup>60</sup> As a result, various changes and pressures in the domestic and international environment gradually eroded 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 obviously had 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 shelving the dispute in a legal sense.<sup>61</sup> The following official Japanese statements can be interpreted in this light: in

October 1990, Cabinet Secretary Sakamoto Misoji, after restating 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.<sup>62</sup> 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.<sup>63</sup> 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.<sup>64</sup> In the following, the author analyses the three main circumstances which account for the breakdown of the bilateral understanding.

## 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'.<sup>65</sup> 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.<sup>66</sup> Finally the vagueness of international law allows states to cherry pick those norms which fit best their interests and claims.<sup>67</sup> 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.<sup>68</sup> 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.<sup>69</sup> 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.<sup>70</sup> When Jiang Zemin visited Japan in April 1992, he also reaffirmed the shelving according to Deng's promise in 1978, while still restating China's claim to the islands.<sup>71</sup> However, the Chinese Ministry of Foreign Affairs (hereafter *Waijiaobu* or CMOFA) originally had not wanted to include the Senkaku Islands.<sup>72</sup> When it ratified UNCLOS in 1996, China referred to the 1992 Law and promulgated the precise location of many of its base lines, but left out some of them, including those for the Senkaku Islands.<sup>73</sup> 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 in its straight baseline claim.<sup>74</sup> Two separate bills creating the Basic Law of the Ocean Sea? 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.<sup>75</sup> 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, particularly if the islands were accorded an EEZ.

## 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.<sup>76</sup> In 2012, a letter related to the 1997 Agreement about fishing in the EEZ was revealed in which Foreign Minister Obuchi Keizo 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.<sup>77</sup> Sato Masaru, a former intelligence analyst of the Japanese Foreign Ministry, explained that this letter referred to the EEZ around the Senkaku Islands and applied only to Chinese fishermen.<sup>78</sup> 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. This has led to 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.<sup>79</sup> More research is needed on these developments to judge whether yet another 'unofficial understanding' between Tokyo and Beijing has been undermined.

Finally, in this context, one has to mention the issue of private and state ownership of the Senkaku, 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 his death in 1918, his son, Koga Zenji, took over the business. In 1926, after the end of the free lease, the Japanese government converted it to a rental basis.<sup>80</sup> 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 Yen 25 million per year for them in rent.<sup>81</sup> The US military used Kubajima and Taishojima from 1957 as firing ranges, and after the reversion of Okinawa in 1972, 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.<sup>82</sup> It is also interesting to note that even in the Japan-US minutes of 15 May 1972 about these two firing ranges, the islands are still referred to by their Chinese characters which are transcribed in the English version as Kobisho and Sekibisho rather than Kubajima and Taishojima.<sup>83</sup>

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.<sup>84</sup> This is an illustration of the deterioration of the bilateral relationship during the following years, because it was the sale of three islands to the Japanese central state which touched off the 2012 crisis.

## THE IMPACT OF OIL AND GAS INTERESTS

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.

In order to fulfill its growing demand for oil and gas, and to diversify away from its high dependence on Middle Eastern supplies, China started in the 1970s to prospect and extract energy resources in the East China Sea.<sup>85</sup> 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.<sup>86</sup> Another bilateral proposal was made in 1984 by Deng Xiaoping, who urged 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.<sup>87</sup>

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.<sup>88</sup> 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 to follow 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.<sup>89</sup> During the negotiation of the 2008 joint understanding, the Chinese 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.<sup>90</sup> 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.<sup>91</sup>

#### 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.<sup>92</sup> 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. It 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.<sup>93</sup> 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 prevent incursions by other countries.<sup>94</sup> Since SDF members are civil servants (*komuin*), this demand sounds very similar to the demands by Abe Shinzo on 15 September 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.<sup>95</sup> 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 Seishinsha (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.<sup>96</sup> 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 Seishinsha 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.<sup>97</sup> 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 lighthouse structure and its maintenance.<sup>98</sup> Until then, the Gaimusho had succeeded in delaying this state takeover as 'too premature' in order not to provoke China.<sup>99</sup>

As can be seen, the Japanese government tried to resist these nationalist claims but it could not fully circumvent them, thus keeping China's suspicions alive. Moreover, whereas the Japanese government always tries to prevent the landing by foreigners on the islands, it has not until fairly recently prevented 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 heliport. Such demands had already been made by the LDP on 24 March 1978.<sup>100</sup> Although the final report of the survey spoke against building facilities and nothing followed from it, the Kurihara family considered Ohira - although generally known to be a pro-China politician - 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.<sup>101</sup>

Even within the Chinese leadership, the territorial issue has been divisive. 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 a means to pressure the Japanese during the treaty negotiations, it now seems now more likely that the Senkaku issue was used by 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.<sup>102</sup>

These latter incidents are also important when discussion turns to the question who started to undermine the understanding about shelving the islands dispute – Japan or China? Was it China when it passed the 1992 Territorial Law as is often mentioned in Japan, or did it already violate the understanding in April 1978 as some others claim? However, if the latter incident was beyond the control of the Chinese government, it could be argued that it was the Japanese government with the erection of a monument or the 1979 survey that touched off frictions. Yet the blame game does not help in finding a solution, instead these incidents should make it clear that both sides bear part of the responsibility for undermining the 1972/78 understanding and should therefore be willing to come to a new understanding.

#### THE DETERIORATION OF THE BILATERAL RELATIONSHIP SINCE THE 1990S

In addition to the above developments, it was

the general deterioration of the bilateral relationship since the middle of the 1990s that changed the conditions for maintaining the shelving of the territorial dispute. 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.<sup>103</sup> 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 the political relationship got colder, the economic relationship expanded and prospered ('Cold Politics, Hot Economics'). This also had – at first glance counter-intuitively – a deleterious effect on the motivation to work harder to maintain 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 preserve the navy's access to the Pacific Ocean to prevent Japanese/US observation or to intervene 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.<sup>104</sup> 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.<sup>105</sup> The Japanese reacted by increasing their military deployment and a strengthening of Japanese-American military cooperation. However, the Senkaku area is controlled by the Coast Guard 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, whether nationalist activists or fishermen, which caused the greatest direct confrontations since Japan's countermeasures were a demonstration of the exercise of sovereignty which the PRC became increasingly unwilling 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 Senkaku territorial waters. The action caused the boat to sink.<sup>106</sup>

In March 2004, for the first time since 1996, seven Chinese activists landed on Uotsurijima. When the Japanese police made arrests, the Chinese Foreign Ministry protested, calling 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.<sup>107</sup> In light of the 2010 incident in which a PRC fishing trawler twice rammed a Japanese coast guard ship it is important to note that despite guidelines which were to give = 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 that might torpedo the planned China visit by Foreign Minister Kawaguchi Yoriko, and was satisfied to have demonstrated effective control over the Senkaku Islands by arresting and expelling the Chinese.<sup>108</sup> A Japanese journal reported that there was a Japanese pledge to China following this incident that in future an intruder would not be put in detention but only arrested as long as it was not a serious case; in turn China agreed to prevent the departure of vessels with protesters from its harbours. Such an understanding has not surprisingly been denied by the Japanese as well as by the Chinese government.<sup>109</sup>

The China Marine Surveillance (CMS) 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.<sup>110</sup> Former ambassador to China, Miyamoto Yuji, called this new development a qualitative change in the Senkaku dispute which went beyond previous cases of intrusion by fishermen or protesters.<sup>111</sup> This deployment was followed by others 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 planned stationing of some troops on Yonaguni Island, one of the closest islands to the Senkaku Islands.<sup>112</sup>

## 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.<sup>113</sup> 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.<sup>114</sup> The Chinese unsurprisingly blame the CG vessels.<sup>115</sup> The issue of intention is important insofar as it gives some indication about the risk of recurrence and of escalation. The following circumstantial evidence suggests intentional ramming by the Chinese captain:

- There is ample video footage leaked by a CG officer which specialists have interpreted as intentional ramming by the Chinese captain.<sup>116</sup>
- The captain seemed to have been drunk and is known to be a volatile person.<sup>117</sup>
- 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 undemarcated EEZs among all three countries.

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, however, his boat sank as a result and the Chinese captain drowned.<sup>118</sup> Chinese crews are often armed with metal pipes and attack law enforcement agents which have led to other fatal casualties in 2011 and 2012.<sup>119</sup>

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 Japanese government 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 and 19 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 other Chinese sanctions as discussed below. The result, however, was that the Japanese released the Chinese captain.<sup>120</sup> Even immediately after the crew's arrest, the Chinese government had already begun to cancel the second round of negotiations for 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 as the biggest importer, Japanese media reported that the Chinese customs authorities totally suspended exports in late September.<sup>121</sup> The exact circumstances of this alleged embargo are still not yet clear as discussed in detail by Alastair Johnston.<sup>122</sup> 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 as surrender by the Japanese and the result of dubious political interference into the legal process. The opposition had a field day attacking the government's handling of the incident.<sup>123</sup> 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.<sup>124</sup> 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.<sup>125</sup>

China claimed that the incident showed that Japan had changed its approach to handling this type of incident, which could be interpreted as a confirmation that both sides had reached an informal understanding after the 2004 incident.<sup>126</sup> 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 in 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 Japan had not agreed with China to shelve the territorial dispute.<sup>127</sup> 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; and postponement at very short notice of the visit of 1000 Japanese youth, planned from 21 September, to the Shanghai World Exhibition). Japan is estimated to have lost ¥31.8 billion due to a decline in the number of Chinese tourists.<sup>128</sup>

It is difficult to judge whether these unprecedented countermeasures were centrally directed, and it is 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-Japanese 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 Japanese handling of the incident, which it perceived as a reversal of 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 Hatoyama Yukio and 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, a known defence hawk, who then became Minister of Foreign Affairs in a cabinet reshuffle on 17 September. He was therefore much more at liberty to take a hard-line 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 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.<sup>129</sup> 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.<sup>130</sup> 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 of the Chinese captain, which occurred the following day.<sup>131</sup>

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, and one moreover, related to the Senkaku issue. Against this background, but also in line with its previous position, Japan rejected a Chinese proposal made in October 2010 for joint resource development in the Senkaku area.<sup>132</sup> The legal aftermath of the incident continued 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.<sup>133</sup>

While the incident helped the Japanese government to obtain 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 US leverage *vis-à-vis* Japan concerning the realignment of its forces on Okinawa), it reduced Japan's independence with respect to the degree of support it provided for US China policy.

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, 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.<sup>134</sup> The incident prompted Beijing to publicly undermine Japan's territorial claim further 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.<sup>135</sup> 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.<sup>136</sup>

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 claims, 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, certainly did not help. Initially, the year 2011 saw a recovery of relations from the 2010 incident. 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.<sup>137</sup> Moreover, the Chinese public was very impressed with the disciplined way the Japanese people reacted towards the triple disasters which hit the country on 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.<sup>138</sup> Yet, this improved atmosphere was quickly dispelled 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.<sup>139</sup>

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.<sup>140</sup> Other administrative measures derived from the Basic Law on Ocean Policy, which had been enacted in 2007 and which provides the framework for administering remote islands. Since 2009, Japan has given names to hitherto unnamed islands to substantiate 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 a national asset.<sup>141</sup> 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.<sup>142</sup> China protested and a meeting in Beijing planned in February 2012 between President Hu Jintao and 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'.<sup>143</sup> On 2 March 2012, Tokyo finally announced a list of 39 islands which included four islets in the Senkaku Islands group.<sup>144</sup> 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.<sup>145</sup> 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.<sup>146</sup> 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.<sup>147</sup>

## THE 2012 CONFRONTATION: ISHIHARA SHINTARO LIGHTING THE FUSE

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 occurred if the government had quietly renewed the lease. The central government stated 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.<sup>148</sup> This seems convincing since state ownership would 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.<sup>149</sup> 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 gain stronger support from the US for Japan's territorial claim.<sup>150</sup> 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 and his hatred of communist China. 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 proclivities, helped Ishihara to become the favoured purchaser.<sup>151</sup>

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 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.<sup>152</sup> 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.<sup>153</sup> On 27 July, the TMG ran an advertisement in the *Wall Street Journal* asking for US understanding and support for the purchase plan.<sup>154</sup> The TMG had to request central government 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.<sup>155</sup> 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 an embarrassing turn for Ishihara. In addition he did not succeed in using the offer of his collected money to entice the 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 Gempa to leave things as they were in order not to further inflame the Chinese.<sup>156</sup>

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 Chinese countermeasures after 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.

## 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.<sup>157</sup>

<sup>158</sup> 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'.<sup>159</sup> 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.<sup>160</sup> 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.<sup>161</sup> 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 announcement.<sup>162</sup> 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.<sup>163</sup> On 13 May, Premier Wen Jiabao raised the Senkaku issue and the Uyghur 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'.<sup>164</sup> 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 Uyghur issue were described as 'core issues' and Wen's statement was stressed in a Chinese TV broadcast.<sup>165</sup> The Xinjiang issue, as well as Taiwan and Tibet, have 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.<sup>166</sup> Only on 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.<sup>167</sup>

The above chronology certainly gives 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, the interview of the *Financial Times* with Japan's ambassador in China, Niwa Uichiro, at the beginning of June 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 added that such a crisis would affect business.<sup>168</sup> Niwa must have been truly concerned about the severity of the situation to make such an undiplomatic public statement for which he was reprimanded by Foreign Minister Gamba and criticized by some media outlets and politicians, ultimately leading to his recall later in the year.<sup>169</sup>

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 the 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'.<sup>170</sup> 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.<sup>171</sup> On 9 July a Xinhua commentary titled 'Japan playing with fire over Diaoyu Islands' called the purchase by the central government a 'farcical ambition', an expression repeated thereafter many times.<sup>172</sup> 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.<sup>173</sup> Public opinion became 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.<sup>174</sup>

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.<sup>175</sup>

## FAILURE OF COMMUNICATION

The above chronology and escalation of Chinese reactions to the planned purchase of the islands over the summer 2012 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 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. Despite ongoing communication and dialogue through various channels, these adverse circumstances led to a hardening of positions over the summer 2012 between the two governments.

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 this would seriously complicate Japan-China relations. Ishihara wanted to embarrass the Noda government which was constantly declining in popularity, and to force it 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 Gamba 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'.<sup>176</sup> 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.<sup>177</sup> Foreign Minister Gamba 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'.<sup>178</sup> In short, for the Japanese, the purchase of the islands was aimed at maintaining the *status quo* in such a way that it hoped China would consider to be in its own interest, that is by choosing the lesser of two evils. 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.<sup>179</sup>

Any intended conciliatory overtone in the above explanations by Gamba and many similar declarations before and later were further negated by the insistence that there was no territorial dispute, exactly the position the Chinese most sought 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.<sup>180</sup>

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).<sup>181</sup> 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.<sup>182</sup> 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 as perceived in Japan.<sup>183</sup>

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 pressure by their success in forcing the Japanese government hand over the captain in

September 2010, it most likely had the effect on the Noda government to remain 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 18<sup>th</sup> 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 incoming or outgoing, to appear soft. Eight out of nine Politbureau members publicly expressed opposition to the purchase either before or after the announcement of the purchase on 11 September.<sup>184</sup> There are also credible reports that during the CCP's summer retreat to Beihai in August, Hu Jintao came under pressure from the future group of leaders to take a more severe position on Japan's intention to nationalise the three islands. As a result, the leading foreign policy interlocutors of the Japanese government, Zhang Zhijun and Dai Bingguo hardened their position as well.<sup>185</sup> 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.<sup>186</sup>

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 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.<sup>187</sup> 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*. The conditions contained no opposition to a possible purchase and instead just mentioned abstention from landing, surveying and building facilities on the islands.<sup>188</sup> 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.<sup>189</sup> Even on 12 September when the storm broke, the deputy director of the Japan Institute of the Chinese Academy of Social Science, Gao Hong, stated in an interview with the on-line version of the *Renmin Ribao*, that if Japan would respect the three abstentions mentioned above, the situation could ultimately revert to the *status quo ante*.<sup>190</sup> But these were no longer the decisive voices of the Chinese leadership after the Beihai meeting. The above-mentioned Campbell interview seems to suggest that Japan was long before more inclined to act upon Chinese statements which were closer to what it wanted to understand.

CHINESE REACTION: RHETORICAL

## 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 then announced two days later the signing of the purchase contract with the Kurihara family. Whether Hu had not sufficiently conveyed 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 Noda had 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.<sup>191</sup> 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 rhetorical 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 rhetorical offensive was calling the government 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 Panetta on 19 September.<sup>192</sup> 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 calling 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'.<sup>193</sup> 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 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'.<sup>194</sup> In a further rebuttal of Japan's assertion of its claim, Li characterized the island purchase as 'nothing different from money laundering'.<sup>195</sup> 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.<sup>196</sup> On 11 October, the CMFA spokesperson Hong Lei refuted Foreign Minister Gamba's historical account justifying Japan's claim by calling it 'gangster logic'.<sup>197</sup>

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 the already well-rehearsed history narrative, i.e. Japan having



victimised China since the Sino-Japanese war of 1894-95. 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.<sup>198</sup> Former Foreign Minister Gamba 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'.<sup>199</sup> Since then until now China has continued this "history warfare" by publishing endless articles on Japan's aggression against China before 1945. The most recent move in July 2014 is the serialised on-line publication of the hand-written confessions by 45 Japanese convicted war criminals by the State Archives Administration.<sup>200</sup>

## POLITICAL SANCTIONS AND PUBLIC OPINION

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 40<sup>th</sup> anniversary of the normalization of diplomatic relations with China were cancelled or postponed, and even more events in China.<sup>201</sup> These cancellations were not always the result of direct government intervention, but sometimes more indirect official 'discouragement', helped by the Chinese preference for not being seen to do something in contradiction to the (initially fomented and later self-propelling) anti-Japan atmosphere, or by fear of participants 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.<sup>202</sup> 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.<sup>203</sup> On 20 September, a government agency published a thematic map of the Diaoyu Island and its affiliated islands.<sup>204</sup> China's Meteorological Administration started providing weather forecasts for the Senkaku area on the state-run TV station.<sup>205</sup> 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.<sup>206</sup>

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.<sup>207</sup>

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.<sup>208</sup> The websites of at least 19 Japanese banks, universities and other institutions came under cyber-attack.<sup>209</sup> 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'.<sup>210</sup>

Although only 63 per cent of polled Japanese in late September 2012 expressed 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.<sup>211</sup> 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'.<sup>212</sup> There were, however, reports that some of the demonstrations were tolerated, if not abetted, by government agencies.<sup>213</sup> 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.<sup>214</sup> 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.<sup>215</sup> But such actions were relatively rare and small in scale?

## ECONOMIC SANCTIONS AND THE QUESTION OF WHO IS MORE DEPENDENT ON WHOM

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 distinction 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'.<sup>216</sup> *Renmin Ribao* 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.<sup>217</sup> 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.<sup>218</sup>

After 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, although the Chinese authorities denied this.<sup>219</sup> In the same week, reports appeared about Japanese companies experiencing delays in obtaining working visas for their Japanese employees.<sup>220</sup> Big Japanese companies with investments in China were experiencing hold-ups in gaining regulatory approvals for Merger & Acquisitions.<sup>221</sup> 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).<sup>222</sup>

The greatest medium-term 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, and in 2013 to \$312.5 billion according to Chinese figures. According to Japanese figures trade in 2013 increased but declined in volume.<sup>223</sup>

The worst hit sector was 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.<sup>224</sup> However, as of 2014, Japanese car sales in and to China have again been increasing. The tourist industry was also hard hit in both countries. Chinese visitors to Japan decreased by 44 per cent from September to December 2012 from the year before.<sup>225</sup> 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.<sup>226</sup> This fall continued into 2013 when their number fell to 2.9 million Japanese tourists, down 18.2 % from 2012 and the 3rd straight annual decline.<sup>227</sup> However, in March 2014, visitors from mainland China surged 80.1 % from the previous March to total 184,200, a record high for the month and a steeper year-on-year rise than visitors from any other countries and regions. This was also helped by the falling yen and the resumption of cruise tours with large ships which were totally suspended in March 2012.<sup>228</sup>

Another more long-term negative economic effect on the bilateral relationship can be gauged from falling Japanese FDI to China which, according to Chinese figures, declined by 42.2 % in the first five months of 2014, after having fallen by 4.3% to \$7.1 billion in 2013 according to Chinese figures, or by 18 % to \$10.9 billion according to Japanese figures.<sup>229</sup>

China's multiple economic retributions 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 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 within a short time, Japan's industry secured 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 specialists, China's imports accounted in 2011 for 23.7 per cent of Japan's export 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.<sup>230</sup> There seem to be only few Chinese voices which express concern over the negative impact of China's sanctions on China's economy itself, notably at a time of worldwide economic contraction.<sup>231</sup>

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.<sup>232</sup> 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.<sup>233</sup> However, Chinese consumers still prefer Japanese products for safer food, drinks and daily necessities, and those Japanese companies were hardly affected by the boycott.<sup>234</sup>

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.<sup>235</sup> The Japanese perception remains that China in the end needs Japan more than the other way round, which, in view of China's huge problems and its dependence on Japanese high technology components for its manufacturing industry, is arguably the case. This Japanese perception has fostered the conviction, as demonstrated, for example, 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.<sup>236</sup> 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.<sup>237</sup> 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. In this context it is interesting to note that China has recently been exchanging with Japan a number of high-powered business delegations (apart from exchanges with political parties and local government officials). The willingness of Japanese business to take part may be interpreted by China as an expression of Japan's economic dependence on China, while giving it also the opportunity to put pressure on the Abe government to make concessions and to keep links with Japan for the post-Abe era.

In view of the importance of the economic relationship and the damage suffered by Japanese business after September 2012, one would have expected more pressure from the business community to come to a territorial compromise solution and so improve relations. However, this has not been the case, and may have to do with the perception gap discussed above, but also the relative lack of influence on the government (the majority of the China-relevant Japanese business community consists of small- and medium-sized companies), the fear that a more vocal role would get companies into trouble with the authorities in Japan and/or China, or the hope of being able to weather the political storms either because of alternative market opportunities or the company's size.

## FROM POLICING TO MILITARY INVOLVEMENT

The most serious consequences for the bilateral relationship – let alone for the solution of the



territorial dispute and regional peace – 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 the Chinese is obvious: to demonstrate that the Japanese can no longer claim exclusive 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.<sup>238</sup> So far law enforcement actions by Japan in the Senkaku area have been limited to the deployment of the Japanese Coast Guard and police, which is now, however, constantly challenged by Chinese with patrols by CMS and FLEC (since 22 July 2013 unified under the State Ocean Administration and renamed China Coast Guard, CG) vessels asserting the same rights in the islands' CZ and TW. The Chinese side 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 aircraft, 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.<sup>239</sup>

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.<sup>240</sup> Thereafter, the frequency of incursions into the CZ and TW increased, but it 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.<sup>241</sup> According to Xinhua News Agency, in 2013 China sent 50 "patrol missions" into the TW of the disputed islands, and as of 12 July 2014 by the author's count, there had been 17 such Chinese "patrol missions" in 2014 which are "incursions" for the Japanese side.<sup>242</sup> Other needle pricks to demonstrate China's claims are the occasional incursions of Chinese survey ships into the Senkaku Islands' EEZ, or the boarding of Chinese fishing vessels in the EEZ. Defence Minister Itsunori Onodera in late October 2013 called these repeated incursions a threat to peace which fell in a "gray zone (between) peacetime and an emergency situation".<sup>243</sup>

A new level of depriving Japan of the ability to claim sole effective control over the islands was reached on 13 December 2012 when a small turboprop aircraft of the CMS (Harbin Y12 type) flew over Uotsurijima.<sup>244</sup> Since then, regular CMS air patrols have been conducted but the aircraft normally stay about 120 km from the islands. With this move, Chinese measures to undermine Japan's control over the islands were expanded to the air space which, for organizational reasons, had immediately military implications because 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.<sup>245</sup> On 24 September, the SOA had also announced plans to deploy drones by 2015 following the successful test the previous day.<sup>246</sup> 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 Administration and the fishing bureau of the Agriculture Ministry, with the aim of raising tensions.<sup>247</sup>

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 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 procedures 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 China might respond by sending its air force.<sup>248</sup> 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'.<sup>249</sup> At the beginning of January 2013, there were apparently erroneous reports that the ASDF might consider firing warning shots (tracer bullets) at intruding Chinese aircraft which prompted further bellicose comments in the Chinese press.<sup>250</sup> 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 patrolling the airspace of Chinese oil platforms in the East China Sea.<sup>251</sup> The Japanese reported that more than ten Chinese aircraft, including military aircraft, had approached the Japanese air defence identification zone.<sup>252</sup> In a further escalation, the Japanese side reported that on 11 June 2014 two Chinese military jets flew abnormally close to two planes of Japan's Self Defence Force above the East China Sea, an accusation which the Chinese side refuted, speaking instead of two incidents provoked by Japanese fighters.<sup>253</sup> Related to this development and further enhancing the possibility of an incident is the enhanced patrolling of the PLAA over the East China Sea which caused the ASDF to increase scrambling against PLAA aircraft to 415 times between 1 April 2013 and 31 March 2014 (Fiscal Year 2013), 109 times more than in the previous Fiscal Year 2012.<sup>254</sup>

Continuing to increase the pressure on Japan, the Chinese government decreed on 23 November 2013 an Air Defence Identification Zone (ADIZ) which includes the airspace over the Senkaku Islands and was certainly meant to reinforce China's territorial claim, despite the fact that an ADIZ has no territorial implications in international law. The threat of military countermeasures in the text of the decree ('China's armed forces will adopt defensive emergency measures to respond to aircraft that do not cooperate in the identification or refuse to follow the instructions') has further heightened the possibility of a military clash.<sup>255</sup> However, the Japanese side refuses to accept the ADIZ. The Chinese moves have wider implications for peace and stability in the region: in order to protect the freedom of its military aircraft in East Asian airspace and its ability to observe China's military forces, Washington refused to recognise the zone,

continued to ignore the requirements of the ADIZ by pursuing its regular patrol flights, and criticised its implementation. Simultaneously, however, the Department of State advised civilian airlines to follow China's instructions, and Vice President Biden advised both countries on his trip to Northeast Asia in December 2013 to establish a crisis management structure. Since the US does not take a stance on the Senkaku/Diaoyu Islands' sovereignty, Washington seemed to ignore Japan's main grievance about the ADIZ, which is China's intention to further reinforce its sovereignty claim by extending the ADIZ over the islands. The most far-reaching US statements were a reconfirmation of the application of the security treaty to the islands, even mentioning the islands by their Japanese and Chinese names, and complaining that the Chinese action was an attempt to unilaterally change the *status quo* in the East China Sea, which raised regional tension and increased the risk of accident and miscalculation.<sup>256</sup> However, in this way, the Obama Administration risked creating among some Japanese observers doubts about the Administration's reliability, and so gave succour to China's attempt to drive a wedge between the two allies. Another complication is that the Chinese ADIZ overlaps that of Korea and moreover covers the submerged rock, called Ieodo in Korean and Suyan in Chinese, which has an impact on the not yet demarcated EEZ border between both countries. Interestingly, the Japanese ADIZ also covers Ieodo, but this has never been underpinned by any Japanese EEZ claims. But China knows how to play on South Korea's criticism of Japan's attitude towards the history issue and the territorial dispute with Japan over Dokto/Takeshima island. Moreover, the Asian countries contesting China's claims to parts of the South China Sea are concerned that China would further complicate the territorial disputes in the area by establishing an ADIZ. Yet, the ASEAN member states have been very cautious in directly criticising China. China's establishment of the ADIZ directly affects many

countries because so many of them have airlines flying through the zone. However, with the exception of Japan, all others agreed to conform with China's request for notification, which undermines the Japanese government's position of explicitly advising Japanese airlines not to conform.

With these escalating developments, the Chinese side achieved its goal of showing that the Japanese authorities are no longer in full control of the disputed islands. In the case of Chinese Coastguard 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 having 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 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.<sup>257</sup>

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 demonstrations of 'effective control'. In October, it was reported that the CG now always maintains ten vessels against eight from China.<sup>258</sup> The 11<sup>th</sup> regional headquarters 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 headquarters.<sup>259</sup> 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.<sup>260</sup> 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.<sup>261</sup> On 26 October, the Ministry of Land, Infrastructure, Transport and Tourism, which heads the CG, announced plans to increase budgetary requests for more ships.<sup>262</sup> The Abe government plans to build more vessels or advance the calendar, retrofit vessels which were to be retired, and is considering extending the retirement age of the officers.<sup>263</sup>

The Chinese have 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.<sup>264</sup> 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 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.<sup>265</sup>

Another worrying development is the gradual involvement of the PLA navy (PLAN) and the Maritime Self Defence Force (MSDF). The Japanese MOD announced on 16 October 2012 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.<sup>266</sup> In December 2012 four PLAN ships sailed through the CW of the Iriomote-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 Okinawan main island and Miyakojima.<sup>267</sup> 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 Chinese Coast Guard 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.<sup>268</sup> 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.<sup>269</sup> 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 denied by the Chinese side.<sup>270</sup> 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 ships than the hitherto 3 km in order to avoid incidents, but this policy was reversed by the more hawkish Abe administration to the previous 3 km distance.<sup>271</sup> The fire radar locking incident had happened at a distance of 3 km.

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.<sup>272</sup> 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.<sup>273</sup> 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.

However, the constant confrontation between the policing and military forces of both sides could easily lead to a military clash either as a result of an unforeseen civilian or military incident, miscalculation or malicious intention at a lower level of command. Two recent examples of unforeseen civilian incidents could have escalated: One is the attempted landing on one of the disputed islands by a Chinese protester with a balloon in January 2014. This incident was peacefully resolved because Japan did not arrest the balloonist. In this case, the first report on the crash-landing in the territorial waters of Uotsurijima came from the Taiwanese coast guard, which informed the Japanese coast guard, followed by the hand-over of the balloonist to the PRC authorities outside of Japan's territorial waters.<sup>274</sup> The other incident was the sinking of a Chinese fishing boat "to the north of the Diaoyu Islands" and the move of two Chinese naval (!) vessels to rescue the crew.<sup>275</sup> This author could not find out how close the fishing boat came to the islands and apparently there has not been any further reporting about the incident.

The previously mentioned radar-targeting incidents and these two civilian incidents have

not led to an escalation, but there is no guarantee for the future. Shi Yinong, a professor at Renmin University, predicts that the territorial conflicts in the ECS, South China Sea and along the Sino-Indian border will intensify because of popular nationalism, dynamics within the armed forces "and of course also our top leaders' personal beliefs and strategic personalities".<sup>276</sup> Hugh White argues that a war (which could lead to a nuclear exchange between China and the US) could also begin because the Chinese leadership may consider that starting hostilities now rather than later would be more beneficial to either test US resolve to defend Japan (which the Chinese leadership doubts) and determine the issue of Chinese supremacy in the Asian region, which he considers to be the real issue rather than the islands themselves.<sup>277</sup>

## IS THERE A WAY FORWARD?

The current confrontation is not only continuing but even escalating and domestic developments in both countries are not creating an atmosphere more conducive to better management of the crisis, let alone finding a solution. Inaction runs the risk of a further escalation or even a military clash, while positive options are becoming fewer. Meanwhile, both countries suffer from the economic fall-out and heightened tensions, while the integration of a rising China into a new strategic environment in Asia will become even more fraught, casting a shadow on Japan's close relationship with the US.

The 2010 incident ended quickly with Japan's release of the captain. One reason for this is certainly the fact that China's demand in 2010 was relatively clear and achievable (release of the captain) if painful for Japan at a time of a weak and inexperienced government. This time, in September 2012, the crisis 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. The Abe cabinet's attitude towards the past as exemplified by various statements by cabinet members and people close to it, the attempt to revise the Kono statement recognizing the forced war prostitution (the military comfort women), and Abe's Yasukuni Shrine visit, all served China's anti-Japan propaganda, worsened Japan-Korea relations which China is cleverly exploiting, and even angered the US administration. Abe is seen as utilizing the tensions with China to win domestic and international support for Japan to have a "normal" national defence posture. The latter is welcome by the US administration because it would help with the US Asian realignment and support its China policy. At the same time China's actions cast an ominous shadow on its intentions in the South China Sea and Abe, and more importantly the US, is supporting the claimants there against China.

Under these bilateral, multilateral and regional circumstances, would China be satisfied with going back to the 'understanding about setting aside the dispute' in conjunction with Japan's recognition of the existence of a territorial dispute, or would it demand a reversal of the purchase of the three islands? Would it demand the end of Japanese CG patrols around the islands? China's standard demand now that Japan '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.<sup>278</sup> 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 wiggle room for negotiations which would satisfy all Chinese stakeholders' interests.

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. This, as we have seen, has been superseded by deeds and words on both sides. The Chinese have now not only publicly declared that the shelving agreement was 'broken' by Japan, but after the first Y12 patrol on 13 December 2012, commented that "The situation has changed. It has become normal for China's marine surveillance vessels to enter the 12-nautical-mile zone. Japan's "actual control" over the islands has gone."<sup>279</sup>

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', but this demand was not made often thereafter. It 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.<sup>280</sup> Previously, 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."<sup>281</sup> On 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'.<sup>282</sup>

The latest official proposal to shelve the islands issue was made by the former foreign minister Tang Jiaxuan on 16 July 2014.<sup>283</sup>

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 or legal 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 Ribao in June 2012, 62.7 per cent of Japanese agreed that there exists a territorial problem dispute (17.6 % disagreed), compared with 82.2 % of the Chinese (13.9 % disagreed).<sup>284</sup> 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 Dokdo/Takeshima). 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.<sup>285</sup> However, this compromise solution was never confirmed by 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. Maehara Seiji of the Democratic

Party declared in a conference at Qinghua University in Beijing in September 2013, that the Japanese government should add (to its own position) that China has a different view (Senkakushoto wo meguru Nihon seifu no tachiba ni tsuite 'Chugoku ga chigau kangaekata wo motte iru, to iukoto wo ichigen tsukekuwaerubeki da'). At the same time he emphasised, however, that there was no territorial dispute.<sup>286</sup> Japan Business Federation Chairman Yonekura Hiromasa 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.<sup>287</sup> 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'.<sup>288</sup> This is also the stance which the previous Japanese ambassador Niwa Uichiro takes in an article after his return to Japan.<sup>289</sup>

Concerning conflict resolution, it is interesting to note that, when asked about the modern significance of the 1978 Japan-China Peace and Friendship Treaty, 68.4 % of the polled Japanese agreed with Art. 1,2 ('The two parties shall settle all disputes by peaceful means and shall refrain from the use or threat of force') but only 52.5 % of the Chinese agreed. Moreover, 58.1 % of the Chinese favour China strengthening its control over the area.<sup>290</sup>

If therefore a new "implicit understanding" about shelving the dispute is achievable, it would have to be based on learning from the failures of the 1972/1978 shelving, i.e. it would be necessary to achieve a mutual understanding of what the status quo is, what would undermine the status quo, and what has to be done to move from conflict management to solution. Quite clearly, such a new understanding would be less favourable to Japan's current stance on the dispute.

## FROM CONFLICT MANAGEMENT TO ADDRESSING THE SOVEREIGNTY ISSUE

Any move forward will certainly require decisive leadership on both sides, be it to take the initiative or to respond positively to the initiative of starting the process towards resolution. In view of the complex background of the external and internal dynamics, it is obvious that addressing the Senkaku/Diaoyu Islands dispute requires a step-by-step approach. The ultimate issue to address is the sovereignty issue, and territorial disputes are generally viewed as zero sum in nature given their close link to core security interests. Even those who recognize the importance of transcending such logic in favour of condominium or shared sovereignty, generally hold that the issue can only be addressed at the last stage of any negotiated process if at all.

Two important issues have to be considered at the beginning: to what extent have the various stages of the negotiating process to be agreed beforehand ('road map'), or even the final outcome, whether a viable condominium or only shelving the issues, and could the role of a third party mediator be helpful/acceptable? In view of the political difficulties on both sides, the start of the negotiation process would be endangered if there is not sufficient room for ambiguity and interpretation about the various stages, although the general aim of tension reduction and suspension of the sovereignty issue must be clearly agreed.

A third party mediator is probably not acceptable to the Chinese side. The third party most often mentioned is the International Court of Justice (ICJ) or any kind of international arbitration. However, this seems unlikely in view of China's preference for bilateral negotiations and its refusal to accept judicial settlement by the ICJ or any international arbitration except in non-political areas such as trade.<sup>291</sup> The Japanese government would be willing to accept the jurisdiction of the ICJ, but

only if China brings the case to the Court lest it be perceived as acknowledging the existence of a territorial dispute.<sup>292</sup> But there are also political and procedural arguments against the recourse to the ICJ. China's legal argumentation is comparatively weak, and since 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 of China making an exception for the Senkaku/Diaoyu Islands dispute. In view of the entrenched positions of both sides and the risk of a 'winner takes all' outcome of international litigation, both governments would face considerable domestic resistance in case of a negative outcome. In view of the urgency of the dispute and the long time it takes for a judgement, there would also be the risk of domestic forces trying to pre-empt a negative result.

In view of the security issues involved (let alone the American historical 'debt' as a result of Washington's ambiguity related to Washington's ending of the administration of Okinawa in 1972), an American mediation could be seen as natural and even in American interests. Such an American role, however, is extremely unlikely as it would be seen by China as unduly advantageous to Japan. However, at some point during the Japan-China negotiation process, the US might assist (or even be requested) by agreeing to certain Confidence and Security Building Measures (CSBM) in the area around the islands.

The first stage would have to consist of measures which reduce the risk of a military clash, but in a way which prevents the perception that one side is giving in to coercion. This stage would be a gradual phasing out of intrusions by Chinese official vessels and aircraft into the territorial waters, contiguous zone and airspace of the islands, which is reciprocated by Japan's reducing in the same way its coastguard patrols in the two zones, as well as its scrambling activities in the



islands' airspace. There were reports in June 2013 that China called on Japan to agree to a 12-nautical-mile no-entry zone around the islands.<sup>293</sup> Japan rejected this course.

Another measure would be to increase the distance at which vessels of both maritime forces observe each other. Such steps should ultimately be officialised by a gradually expanding series of CSBMs and a bilateral liaison mechanism. This could also include a demilitarisation agreement as an incentive for the Chinese side. It would be vital that the steps at this stage be incremental, that no step is exploited in a one-sided way, and that they are considered irreversible. At the same time both sides have to prevent people from approaching the islands, since this would be seen as a provocation by the other side. This latter task is technically not easy because of the controversial character of any compromise with certain non-state actors in Japan, China, Hong Kong and Taiwan. The (failed) landing of a Chinese hot balloon on one of the islands in January 2014 demonstrated at the same time the technical difficulty of a no-entry policy as well as the possibility of a successful cooperation of the coastguards of all three countries.<sup>294</sup>

At this first stage, or leading to the next, there will have to be a Japanese government statement to the effect that there is a 'problem' related to the Senkaku/Diaoyu Islands. This can be worded in such a way that the sensitive expression 'territorial problem' (which is strenuously denied by the government) is avoided, and it can be supplemented by a sentence that such a statement in no way prejudices the legal position of the government. Such a qualifying statement is, for example, included in the Japan-China agreement for prior notification of research vessels from both countries in the East China Sea in 2000.<sup>295</sup> A similar qualification is part of the 1997 Japan-China Fisheries Agreement. In the joint communiqué of 1972, which normalised

diplomatic relations between Japan and China, diplomatic wording also managed to bridge the huge gap between their stances on Taiwan which the PRC considers an 'inalienable part' of its territory. Japan considers the sovereignty issue still unresolved because the 1951 San Francisco Peace Treaty Art. 2 (b) only stipulated that 'Japan renounces all right, title and claim to Formosa and the Pescadores' without clarifying the recipient of the territory. The compromise in 1972 was reached with the sentence that Japan 'fully understands and respects this stand of the Government of the People's Republic of China, and it firmly maintains its stand under Article 8 of the Potsdam Proclamation'.

## POSSIBLE APPROACHES TO THE SOVEREIGNTY ISSUE

The most difficult problem is the sovereignty issue which goes to the core of any country's security interests. It is not imaginable that either side will renounce its claim to the islands. Sidestepping or shelving the issue is only useful if the lessons from the 1972 and 1978 attempts as outlined above can be learned and applied but there is still the fundamental problem with the implicit assumption that the quality of the bilateral relationship will always be as good as when the sidestepping agreement was achieved and can be maintained in perpetuity, or until the sovereignty issue can be addressed. But in order to solve the sovereignty issue, an even better relationship has to be created. This better relationship could be brought about by the steps explained above and further below.

An important condition for any lasting territorial compromise would be reducing the value of the islands for both countries which can be achieved by one of the measures proposed for stage 1, i.e. resolutely preventing anyone from approaching the territories (including total demilitarization) which in themselves are economically worthless and are

uninhabited. The main point is to prevent any governmental act which could be interpreted as being part of the 'sovereignty game'. The most difficult part here is to prevent any act by non-governmental actors. This would have to include the territorial waters and the exploitation there in of any kind of resources including fishing. Scientific interests in the islands could be served by bilateral surveys without any political connotations. There have been proposals to declare the islands an International Nature and Wildlife Preserve.<sup>296</sup> Such a preserve would have to be administered either bilaterally or by a relevant international organisation and as such could serve as a confidence-building measure.

The above steps would then allow the two sides to deal with the considerable economic interests in fishing and the exploitation of hydrocarbon resources and other seabed resources around the islands, i.e. in the Exclusive Economic Zone and/or the Extended Continental Shelf. Once the islands' land area and the territorial waters have been put aside, it would be easier to come to an overall agreement on the delimitation of the EEZ border (with the exception of the northern part which would require a trilateral agreement between China, Japan and Korea) which would include the delimitation of these surrounding waters. It would facilitate a compromise if both sides agree that the islands do not merit their own EEZ. This might be difficult for Japan which claims an EEZ for Okinotorishima, refuted by China since it considers the reef not to be an island according to Art. 121 of UNCLOS.

A compromise on the sovereignty issue could only be the outcome – if at all – of a successful process of the above or comparable steps. In order to avoid a 'winner take all' situation, the compromise would have to involve a sharing arrangement. History offers quite a number of international precedents of shared sovereignty, referred to as condominium in international

law.<sup>297</sup> One case with some similarities to the Senkaku/Diaoyu Islands is a small island (3,000 sq m) in the river separating France and Spain, known as Pheasant Island or Conference Island, which even today still changes every six months between France and Spain as owner. Like the Senkaku/Diaoyu Islands, the island has no economic value anymore, and the island is off limits. It was the location of the signing of the Treaty of the Pyrenees in 1659 which ended a long war.<sup>298</sup> Most other examples of joint sovereignty concern territories with a population, which makes cooperation much more difficult. Other historical precedents of sharing sovereignty are the establishment of "neutral zones". Accordingly, the islands and possibly a sea area around the islands could be declared a neutral zone like the one between Saudi Arabia and Kuwait (1922-1965). On July 7, 1965, the two governments signed an agreement (which took effect on July 25, 1966) to partition the Neutral Zone adjoining their respective territories. A demarcation agreement dividing the Neutral Zone was signed on December 17, 1967.

Particularly relevant here is that Saudi Arabia as well as Kuwait exploited the oil resources under a joint operating agreement.<sup>299</sup>

## Conclusions

The action-reaction pattern of the Senkaku/Diaoyu Islands dispute is accelerating, and the initiative seems to be more often than not with the Chinese side, while the Japanese side is in a defensive position. The danger of a military confrontation is looming increasingly larger in what could be called a 'chicken game'. At the same time, the internal and external dynamics are undermining the environment which is required for a peaceful solution as well as for maintaining the number of positive options. While the Japanese government refuses to acknowledge the very existence of a territorial dispute, the Chinese government is now (July 2014) even refusing to have a

dialogue with Japan's current prime minister. It is possible that the Chinese side again wants to wait with any move forward until the Japanese prime minister has changed, as Beijing did with Prime Minister Sato Eisaku or with Prime Minister Koizumi Junichiro. But waiting for an improvement of the bilateral atmosphere as the Chinese side likes to stress is a very risky option, and such an improvement may anyway be a very short window of opportunity if looking at the ups and downs of the post-1949 history of the bilateral relationship.

To start a step-by-step process of addressing the territorial issue, strong leadership is required which understands the wider interests of a functioning Japanese-Chinese relationship. Japan simply asking China for a summit meeting is not very sensible if there is no willingness to engage in substantive discussions, and would be very risky for China's top leader if the Japanese prime minister then visits the Yasukuni Shrine. The history issue should no longer be a Chinese lever for pressurising Japan, but the latter has to abstain from actions which are seen as provocative not only by China but also by Korea, the US and many others. There has to be a committed leadership on both sides which starts with a rough road map and tension-reducing steps such as CSBMs en route to agreeing on a formula which allows the parties to obtain economic as well as security gains while reducing tensions.

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<sup>7</sup> "Diaoyu Dao, an inherent Territory of China 25 September", *White Paper* (2012), [here](#).

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<sup>13</sup> 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).

<sup>14</sup> Shaw, *op. cit.*, p. 85.

<sup>15</sup> "White Paper Diaoyu Dao", *op. cit.*

<sup>16</sup> Even in the early 1950s fishermen from Irabujima near Miyakojima sometimes stayed on Minami Kojima (one of the disputed islands) 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. "[A home away from home / Fishermen worked, took shelter, grew vegetables on Senkakus](#)", *Yomiuri Shimbun*, 7 July 2012, at .

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<sup>18</sup> Zhu, Jianrong: "Chugokugawa kara mita `Senkaku mondai`", *Sekai* (November 2012), p. 107.

<sup>19</sup> Text of the article at "Japan-China Relations...", *op. cit.*

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<sup>21</sup> [Cairo Declaration](#).

<sup>22</sup> [Potsdam Declaration](#).

<sup>23</sup> [San Francisco Peace Treaty](#).

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