

China-Japan Territorial Conflicts and the US-Japan-China Relations in Historical and Contemporary Perspective 歴史的・現代的視野から みた中日領土問題と米日中関係 Edited Japanese version is available

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Mark Selden: In discussing the US-China relationship or *Chimerica*, you note the 200-strong US delegation that visited Beijing at the very moment that the US was toppling the DPJ administration of Hatoyama Yukio as evidence that the US will not back Japan in the current dispute with China over Diaoyutai/ Senkaku Islands.

However, the US has made a number of contradictory statements, including some suggesting that it would view the issue within the framework of its obligation to defend Japan under the Japan-US Security Treaty. Moreover, the US has moved aggressively to insert itself into other territorial issues, notably those

involving the clash between China and Vietnam/ Philippines in the South China Sea. The situation is in fact volatile. How are we to understand the Diaoyutai clash in the context of wider territorial conflicts in the region?

Yabuki Susumu: The issues of the Senkaku Islands and the Nansha Islands and Xisha Islands are symbolic of the fact that imperial Japan's postwar settlement is not yet completed. I think this is due to the limitations of Japanese and American political leadership.



Map showing contested Islands

1. First, concerning the origin of the Senkaku territorial issues, my view is that:

a. Originally the Senkaku Islands were part

of the three northern island groups near Keelung port in Taiwan along with the Huapin and Pangjia islands that were long associated with Taiwanese fishermen and merchants. Although Japan claimed sovereignty of the uninhabited islands in January 1895 when Qing China was defeated in the Sino-Japanese War, given that the Treaty of Shimonoseki makes no mention of these islands, Japan considers they have nothing to do with the Sino-Japanese War and the Shimonoseki Treaty. But from the Chinese perspective, the Senkaku Islands were nothing but part of the transfer of Taiwan to Japan in 1895. This is where the understanding of the two parties differs.

b. The transfer of Taiwan to Japan was accomplished as a result of the Sino-Japanese War, but in accepting the Potsdam terms in September 1945, the situation was restored to the original situation in which Taiwan, the Penghu islands, Manchuria and the Korean peninsula were returned to their pre-Japanese status. However, the Senkaku Islands, which were to be returned at this point, were not returned, and they have not yet been returned for the following reasons:

First, a civil war was fought between the Communist and Nationalist governments; the government of Chiang Kai-shek escaped to Taiwan and waited to counter-attack the

mainland. For this reason, US military support was indispensable to the Chiang government and the Chiang government welcomed US military control.

Second, the government of the People's Republic aimed to liberate Taiwan, and saw the solution to the uninhabited island attached to Taiwan as a part of the overall solution to the Taiwan issue.

Third, Japan, a defeated nation, forgot about the uninhabited Senkaku islands.

c. The territorial issues of the Senkaku Islands resurfaced at the time of Okinawa's reversion to Japan in 1972. At that time, both the Taiwan and mainland governments claimed territorial sovereignty. The Taiwan government at the time had diplomatic relations with the US and focused on negotiations with the US and it successfully clarified in diplomatic language that only administrative rights were returned to Japan. At the point of Okinawa's reversion to Japan in 1972, the US saw the sovereignty of the Senkaku Islands mostly as a point of conflict between Japan and Taiwan.

d. As a result of Deng Xiaoping's shift to the reform and opening line, Taiwan's economy was incorporated into the mainland economy, resulting in virtual economic unification. For this reason, both shores of the Strait have developed "stabilization on the basis of the status quo, which is neither

unification nor real independence.” The territorial sovereignty of the Senkaku Islands, therefore, mostly surfaced as a “Japan-China contradiction” rather than Japan-Taiwan contradiction. In 1992, Beijing included the Senkaku Islands in the Law of the Sea, and in the mid-1990s the Taiwan Strait Crisis occurred. The background of this was the rising Taiwanese independence movement, which has since become a thing of the past. In its place, the Japan-China contradiction has sharpened since 2012.

2. On the Nansha Islands and Xisha Islands

In March 1939, the Japanese empire incorporated the Nansha (Spratly) Islands and the Xisha (Paracel) Islands within Taiwan’s Kaohsiung city, but it lost them all in January 1946 in accordance with SCAPIN-677, which was issued with the Potsdam declaration and Japan’s unconditional surrender. From then on, several countries began to encroach on the Paracel and Spratly Islands. The Sino-Japanese Peace Treaty stated that, based on the second article of the San Francisco Treaty, Japan renounced all rights, titles and claims to Taiwan (Formosa) and the Penghus (the Pescadores) as well as the Spratly and Paracel Islands. Competition over the Nansha and Xisha islands intensified after March 1988, when China and Vietnam clashed over Johnson South Reef. In 1995 the Philippines and China had a conflict over Mischief Reef, and in 2012 the Philippines and China had a conflict over Panatag Reef.

(*Chimerica* pp. 72-79).

While the Senkaku Islands are contested by Japan, Taiwan and China, others contest the Nansha and Xisha Islands. But that all these islands were once part of the Japanese empire suggests Japan’s responsibility to resolve the issues. The old-style militaristic expansion is unacceptable and Japan has a significant responsibility to turn this region into a peaceful region. Despite its huge responsibility and its obligations, however, Japanese awareness remains inadequate. It is highly likely that The Ministry of Foreign Affairs (MOFA) altered the minutes of the Tanaka-Zhou Enlai meeting of 40 years ago (1972) and burned and destroyed the minutes of the Sonoda Sunao-Deng Xiaoping meeting of 34 years ago (1978). They also rejected Professor Ishii Akira’s request for information, claiming “non-existence” as the reason. China has not released the official minutes of the meeting, but Zhang Xiangshan’s memoir has been made public. This memoir, said to have been based on the minutes of the meeting, points out that there was a *de facto* agreement to shelve the Senkaku Islands issues. Concerning the content of Japan-China summit meetings in 1972 and 1978, China’s detailed records are credible, whereas MOFA’s alteration of the record is nothing short of inexcusable and outrageous.

We must conclude that Japan is responsible for the 2012 Japan-China conflict because its origin is the MOFA and Japanese government’s one-sided

denial of the historical fact that the Senkaku Islands issue was shelved 40 years ago. Putting the past aside, how are we going to rebuild Sino-Japanese relations? It is said that there's no point crying over spilt milk. It is clear as day that the Senkaku problem is a product of imperialism, but in reality, with international territorial problems, the side with effective control has an overwhelming advantage. Once awakened, however, the sleeping lion cannot be put back to sleep. Japan has lost both principal and interest due to its failure of diplomacy. Despite the Japanese government's stance that there is no territorial rights issue, the speeches Japan and China delivered at the United Nations mean that the world now knows that there is a territorial dispute.

What is to be done now? For Japan, first of all, it is necessary to confirm the content of the two Japan-China summit meetings and accept the fact that China, too, is insisting on its territorial rights. Then it is necessary to peacefully negotiate a future arrangement. Two decades ago in the Taiwan Strait, in order to resolve China-Taiwan relations, the idea of the "1992 Consensus" was invented. Based on the assumption of "One China," the continent interpreted China as the PRC, while Taiwan interpreted China as The Republic of China – an agreement predicated on the idea of "same bed, different dreams." In other words, the sovereignty issue was temporarily shelved in favour of peaceful coexistence and

economic exchange. We need to learn from this wisdom and create a new, deliberately ambiguous keyword under which the sovereignty and territorial rights of the Senkaku Islands can be subsumed. For instance, there could be a "one island, two governments" response to "Senkaku-Diaoyu," wherein Japan might administer the islands on odd days and China on even days. What is required is the creation of this type of a "new consensus" based on shared administration, the maintenance of regional peace and order, and fair sharing of resources.



Activists flying PRC and ROC flags proclaim Chinese/ Taiwanese claims to Diaoyu/ Senkakus.

3. On the US-Japan Security Treaty and the Senkaku Islands

The conflict over the Senkaku Islands has stimulated a number of discussions as to whether the Japan-US Security Treaty (Ampo) applies to this region or not. At the time of the Okinawa Reversion Agreement, the Senkaku Islands were returned to Japan along with Okinawa, and since the Okinawan Islands were subjected to the

Japan-US Security Treaty, it is obvious that the Senkaku Islands were also included in this Treaty. There are reasons for the renewed interest in the question of the Ampo Treaty and the Senkaku Islands in the context of the ongoing conflict. First, the overwhelming growth of China's military power compared to 40 years ago. US bases in Okinawa now fall completely within the range of China's missile network. Thus from the perspective of US-China military relations, security talks are an urgent matter, and they have already started.

Another point is that dealing with conflicts over uninhabited islands such as the Senkaku Islands was not part of the original objective of the Japan-US Security Treaty. Moreover, the US has expressed its view many times that the conflict over the sovereignty over the Senkaku Islands is a matter between Japan and China, and that the US maintains neutrality. Next, the defence of the islands is the SDF's job, not a direct task of the Japan-US Security Treaty. Lastly, putting the Japan-US Security Treaty into motion requires the support of the US Congress, and it is doubtful that the Japan-US Security Treaty can actually be applied to a conflict over uninhabited islands. This position of the US is utterly commonsensical, and I think Japanese right wingers' strategy that attempts to reinforce the Japan-US Security Treaty by creating quasi tension around the Senkaku Islands is far-fetched.

In outlining your view of *Chimerica*, you point out that the debt-ridden US now needs Chinese cooperation to manage the world. What in your view are the key illustrations of Chinese provision of that assistance . . . particularly in the Asia-Pacific and Middle East/ Central Asia?

Most important is the fact that the US does not use its dependent states such as Japan in order to put pressure on, or hinder, China's peaceful rise. To put it more concretely, the US does not impede China's sea-lane security, which has become China's most urgent objective for its external economic development. China is not dependent on the Middle East for its crude oil to the extent Japan is; but as with Japan, Middle Eastern crude oil still represents a large proportion of China's oil requirements; so the Middle East as a region for crude oil supply is also important. In short, China's short-term goal is economic growth and the maintenance of peace in relevant regions to enable its economic growth. China is hoping that the US will recognise this goal and cooperate. China Threat theories, which predict that China will seek world hegemony once it achieves its economic goals, lack a foundation in reality. China currently has many points of conflict domestically and internationally, and has no room for such an action.

Critics of Japan's excessive dependence on the US frequently cast future prospects not exclusively in terms of an alternative Japan-

China relationship, but in a broader approach to Asian regional cooperation. What do you see as the prospects from this perspective?

Prime Minister Hatoyama's idea of East Asian Community, though epoch-making, miscarried because it remained merely an idea. In the past Japan proposed the Greater East Asia Co-prosperity Sphere, but since it was based on military power it could not avoid bankruptcy. The ideal form of economic cooperation under the globalised economy is economic solidarity based not on military pressure but on the principle of autonomy whereby nations are free to join or leave. From now on, economic cooperation in East Asia and South East Asia based on this type of moderate economic liberalism will grow. Neither Japan nor China nor the US should seek to construct an exclusive economic sphere or attempt to exert excessive influence over the region. It is vital that we find ways of sustainable development by cooperating, and aim for economic development conscious of the limit of the earth's natural resources and the environment at large. The 21st century needs to learn lessons from the 19th and 20th centuries, the centuries of war, and seek economic growth based on the new philosophy of symbiosis and coexistence.

Let's look further into the historical origins of the China-Japan territorial dispute over the Senkakus in the context of Japan's historical annexation of Okinawa, the San Francisco

Treaty, Okinawan reversion to Japan, and the Ampo Treaty.

1: Okinawa Reversion and the Senkaku Islands

a. The occupation of the Senkaku Islands in the concrete sense began with the Supreme Commander of Allied Powers Instruction (SCAPIN) no. 677, of which directives were confirmed in the San Francisco Peace Treaty in September 1951. Later in 1953, the United States Civil Administration of the Ryukyu Islands (USCAR) Proclamation no. 27 and Provisions of the Government of the Ryukyu Islands no. 68 determined the boundary of the US administration until the reversion of Okinawa. The boundary was indicated with latitudes and longitudes, as "within the following geographical boundaries: 28 ° north, 124 ° 40' east; thence 24 ° north, 122 ° east; thence 24 ° north, 133 ° east; thence 27 ° north, 131 ° 50' east; thence 27 ° north, 128 ° 18' east; thence 28 ° north, 128 ° 18' east; thence 28 ° north, 124 ° 40' east; thence to the point of origin." The Senkaku Islands are located within this boundary, but its name was not specified.

b. In May 1972 with the Okinawa Reversion Agreement Okinawa was returned to Japan. The boundary of Okinawa reversion was based on the aforementioned geographical boundary, and was indicated with latitudes and longitudes: "28 ° north 124 ° 40' east; 24 ° north 122° east 1; 24 ° north 133 ° east; 27 ° north 131 ° 50' east; 27 °

north 128 ° 18' east; 28 ° north 128 ° 18' east; 28 ° north 124 ° 40' east." The Senkaku Islands were within this boundary, but their name was not specified.

c. As is clear from the above points 1 and 2, at the time of Okinawa's occupation as well as the time of its reversion, the name Senkaku Islands was never specifically mentioned in the reversion agreement between Japan and the US.

d. Sovereignty and administrative rights in the Reversion of Okinawa

At the time of Okinawa's reversion, Foreign Minister Fukuda Takeo answered in the Diet as follows: "[About Kubajima/Huangwei Yu and Taishojima/Chiwei Yu]The Senkaku Islands have been used as shooting ranges for the US armed forces. While you have criticized the existence of the US shooting ranges on the Senkaku Islands, I'd like to urge you to see this as evidence that the administrative rights over the Senkaku Islands will be returned to Japan in future, as our territory – a full territory." (15 December 1971, plenary session of House of Councilors)

Fukuda's answer contains a significant mistake. He is equating "our territory," "full territory" and "administrative rights." In other words, his understanding is that "administrative rights of full territory will be returned to Japan." However, the US at the time distinguished "sovereignty and territorial rights" from

"administrative rights," for example, in the following document. A US authority has pointed this out, quoting some literature published in the context of current Japan-China conflict over the Senkaku Islands: "Washington has never recognized Japan's sovereignty over the Diaoyu Islands, known in Japan as Senkaku." If the US didn't recognize sovereignty, then what did it recognize? The report says, "the US recognizes only Japan's administrative power over the disputed islands in the East China Sea after the Okinawa Reversion Treaty was signed in 1971." (US Congressional report published Sept 25, 2012). According to this report, "in the Okinawa Reversion Agreement signed in 1971, the US recognized only administrative rights of Japan over these disputed islands in the East China Sea." Let me repeat. The US insists that it returned only "administrative rights" (which is differentiated from "sovereignty and territorial rights") to Japan; but Fukuda's answer says that not only administrative rights but also sovereignty and territorial rights have been returned. I have discussed earlier the meaning of this discrepancy. For Japanese people who had accepted Fukuda's answer at face value, China's territorial claim to the Senkaku Islands must seem abrupt, and the US distinction between the two a betrayal. At the time of negotiations over Okinawa reversion, the secret pact caused a scandal, but the ambiguity over the Senkaku Islands was another hidden issue. This is also the direct origin of Japan-China conflict at the

present.

e. Today every Japanese person knows of the Senkaku Islands; but at the time of reversion even a high-level MOFA official didn't know where the US shooting ranges were located. For example, a government delegate Izekei Yujiro couldn't answer about the shooting ranges on Kubajima: "that may be an issue of administrative agreement ... I've heard something about it... [silence] It is in the South of Okinawa, isn't it? I do not know about that in any detail, either." (Plenary session of House of Councilors, 15 December) This is how the Senkaku issue has been treated. We are now paying for having allowed this kind of ambiguity over this issue.

f. The basis of Okinawa's reversion was the Supreme Commander of Allied Powers Instruction 677 (29 January 1946). MacArthur issued it half a year into his occupation administration, and it strictly defined the "boundary of Japan." Territories of "imperial expansion" were all taken away and Japan was defined to include the four main islands of Japan (Hokkaido, Honshu, Kyushu and Shikoku) and the approximately 1,000 smaller adjacent islands, including the Tsushima Islands and the Ryukyu (Nansei) Islands north of 30° north (excluding Kuchinoshima Island). Here "the Ryukyu (Nansei) Islands north of 30° north" meant that up to Yakushima Island in Kagoshima prefecture was included in Japan. In other words, Tokara

Islands south of Kuchinoshima Island were excluded.

2. Which areas were removed from the former Japanese empire?

(a) Utsuryo (Ullung) Island, Liancourt Rocks (Takeshima/Dokdo Island) and Quelpart (Saishu or Cheju) Island. Takeshima was initially removed, but the Japanese government later negotiated to delete the word Takeshima from the document. However, South Korea has held effective administration to today. (b) The Ryukyu (Nansei) Islands south of 30° north (including Kuchinoshima Island), the Izu, Nanpo, Bonin (Ogasawara) and Volcano (Kazan or Iwo) Island Groups, and all the other outlying Pacific Islands [including the Daito (Ohigashi or Oagari) Island Group, and Parece Vela (Okinotori), Marcus (Minami-tori) and Ganges (Nakano-tori) Islands. As we can see from this, the area south of Kuchinoshima in the Amami Islands was removed from Japan. Subsequently, the Amami Islands were returned to Japan in December 1953; Ogasawara and Iwojima island returned in June 1968, and Okinawa and the Daito Islands in May 1972. (c) the Kurile (Chishima) Islands, the Habomai (Hapomaze) Island Group (including Suisho, Yuri, Akiyuri, Shibotsu and Taraku Islands) and Shikotan Island were occupied by the former Soviet Union, Russia, and are currently disputed.

Further areas specifically removed from the

governmental and administrative jurisdiction of the Imperial Japanese Government are the following: (a) all Pacific Islands seized or occupied under mandate or otherwise by Japan since the beginning of World War I. Included here are the Mariana islands, which became Japan's mandate territory when it was seized from Germany after World War I, as well as the Nansha and Xisha Islands, which Japan incorporated into Kaohsiung city of Taiwan. (b) Manchuria, Formosa and the Pescadores. Japan's withdrawal from Manchuria and Taiwan is well known. (c) Korea and (d) Karafuto. Repatriation from Korea and Karafuto are also well known.

Above were the areas that were removed from Japan. What about the Senkaku Islands? The only name mentioned is Ryuku (Nansei) Islands, and there is no specific reference to the Senkakus. Later, Article 3 of the San Francisco Peace Treaty said of the Nansha and Xisha Islands:

"Japan will concur with any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29° north (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration,

legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters."

Article 3 placed "south of 29° north" i.e. the area south of the Amami Islands (which are located to the south of Yakushima) under the US "trusteeship," and the US had administrative rights over the area. Entrusted with trusteeship, the US military established the U.S. Civil Administration of the Ryukyu Islands in 1953 and issued USCAR 27, in which the boundary of Nansei Shoto was defined as "south of 29° north." The boundary of trusteeship was thus basically identical with the area of Japan specified in SCAPIN-677 as well as the San Francisco Peace Treaty that confirmed SCAPIN-677. The US understanding is that when Okinawa reverted to Japan in 1972 the US returned the administrative rights that it had been "entrusted with" without any change in the nature of rights.

USCAR 27, which was issued on 25 December 1953, defined the "geographical Boundaries of the Ryukyu Islands" over which the US military had administrative rights as follows: Article 1. All islands, islets, atolls, and rocks and their territorial waters situated within an area bounded by the straight lines as below would be under the jurisdiction of the US Civil Administration of the Ryukyu Islands (USCAR) and Ryukyu government. "28° north, 124°40' east; thence to 24° north, 122° east; thence to 24°

north, 133° east; 27 north, 131°50' east; 27 north, 128°18' east; thence 28° north, 128°18' thence to the point of origin." This is the boundary of the US trusteeship and also the boundary of administrative rights that were returned to Japan when Okinawa reverted to Japanese rule. This boundary is shown using latitudes and longitudes, but the Senkaku Islands fall within this boundary. Thus the boundary definition of administrative rights of the Senkaku Islands that were returned to Japan was identical to that of the 1953 USCAR 27 and the Okinawa Reversion Agreement. To make this point clear, I attach the text of "Agreed Minutes."

In relation to the Reversion Agreement Article 1, "The territories defined in paragraph 2 of Article 1 are the territories under the administration of the United States of America under Article 3 of the Treaty of Peace with Japan. As designated under USCAR 27, all islands, islets, atolls and rocks in an area bounded by the straight lines connecting the following coordinates: 28° north , 124° 40' east ; 24° north , 122 ° east ; 24° north , 133 ° east ; 27° north , 131° 50' east ; 27° north , 128° 18' east ; 28° north , 128° 18' east ; 28° north , 124° 40' east ."

As is clear from the above, there is no evidence that the US was conscious of the Senkaku Islands when Okinawa came under US administration, nor were their names specifically mentioned when Okinawa reverted to Japan.

However, this is only at the level of the text of the final Agreement. In reality, the US record shows that at the time of the signing of Okinawa Reversion Agreement, State Department officials and Japanese officials understood that the area "include[ed] the Senkaku Islands." CRS Report 2012 ["Senkaku (Diaoyu/Diaoyutai) Islands Dispute: U.S. Treaty Obligations" (Congress Research Service, September 25, 2012)]. It mentions that at the time of the signing of the Okinawa Reversion Agreement several State Department officials (Robert Starr, Acting Assistant Legal Adviser; Harrison Symmes, Acting Assistant Secretary of State; Howard McElroy, Country Officer for Japan) "asserted" at a congressional hearing that following the signing of the Peace Treaty, "south of 29° north " was "understood" by the United States and Japan to "include the Senkaku Islands."

Thus this report on the one hand suggests that "administrative rights" were returned to Japan; but when it comes to the subject of "sovereignty and territorial rights" it leaves some room for interpretation.

One commentator from US congressional circles mentioned my name and wrote: "Professor Yabuki is an honest man. The Japanese Prime Minister insists that "there is no doubt that the Senkaku Islands are Japan's inherent territory in terms of history and international law," Noda said. "There is no problem of sovereignty." He is lying to the Japanese people."

Calling a prime minister a liar is provocative but the point this person is making is the following: “(at the time of the Okinawa Reversion Agreement) China had no diplomatic relations with US and Japan and the transfer was done without China’s consent.” In opposition to the Japanese claim that “China has not asserted its territorial rights till recently,” this comment criticizes the one-sided nature of Japan’s claim by pointing out that China simply didn’t have an opportunity to make such an assertion until now.

3. The Senkaku Islands and the Japan-US Security Treaty

What does the CRS Report 2012 (25 Sept) suggest? “The latitude and longitude boundaries set forth in the Agreed Minutes appear to include the Senkaku Islands (Diaoyu/ Diaoyutai).” The Senkaku Islands, however, are not explicitly mentioned: “During Senate deliberations on whether to consent to the ratification of the Okinawa Reversion Treaty, the State Department asserted that the United States took a neutral position with regard to the competing claims of Japan, China, and Taiwan, despite the return of the islands to Japanese administration.”

It goes on to say, “Successive U.S. administrations have restated this position of neutrality regarding the claims, particularly during periods when tensions over the islands have flared, as in 1996, 2010, and 2012. In short, while maintaining neutrality on the competing

claims, the United States agreed in the Okinawa Reversion Treaty to apply the Security Treaty to the treaty area, including the Senkaku, Diaoyu/ Diaoyutai.”

The above quotations reveal that the US has been engaged in double-dealing. The Security Treaty applies to “Okinawa, including the Senkakus,” but the US maintains neutrality in relation to a conflict over the Senkaku Islands’ sovereignty. What does this mean in reality? Is the US going to defend the Senkaku Islands, or not? My view is that the US will not and cannot defend the Senkaku Islands.

There are three reasons why the US will not defend the Senkaku Islands: first, the US will not commit to a conflict over sovereignty. In other words, its priority in this instance is the maintenance of neutrality. Next, the “primary responsibility” for the defense of the islands should be Japan’s; and lastly, putting the Security Treaty into motion requires constitutional procedure and Congressional approval. If we consider these three points, we must conclude that this amounts to saying that the “Japan-US Security Treaty will not be applied” in relation to a conflict over uninhabited islands like the Senkaku Islands. And this has to be evaluated positively as a rational and calm judgement that casts the issue in a wider perspective. Those who insist on confronting China’s military power by “reinforcing the Japan-US Security Treaty” are on shaky ground.

Two legal principles that support Japan's territorial claims to the Senkaku Islands are said to be central principles of international law; but this is the logic of imperialism and it is not persuasive for former colonies.

a. The Principle of Occupatio. The background to the emergence and acceptance of the principle of "occupatio" in modern international law were the increasing number of colonies "acquired" by colonial powers following the "discovery" of new continents and new sea routes, and the attempts to monopolise international commerce. Behind international law, which aims to regulate international behaviour, there was often motivation to justify the action of one's own country in the eyes of other nations. Now, what is terra nullius? Terra nullius (no man's land) in international law is not limited to uninhabited land. "Even if there were already some inhabitants, if the land did not belong to any country, it is regarded as terra nullius." Africa prior to its occupation by European nations is a good example. There were "primitive natives" living there but not having formed "states recognised in international law", these areas were considered "terra nullius." In the 19th century, it came to be argued that "occupation" must mean actual land occupation and control. This gradually became a common practice of the states, and by the latter half of the 19th century it was established that the "occupatio" in international law had to be effective. It is easy to

guess, therefore, that "occupatio" in international law is the logic of the rule by imperial powers. Such logic is clearly difficult for former colonies to accept. In terms of the Senkaku Islands, Japan saw them as "terra nullius", made a cabinet decision to "occupy" the islands, and had this position recognised by the Western imperial powers. But China has claimed that they were not "terra nullius" and opposes Japan.

b. The legal principle of Estoppel. Estoppel is a principle under which if one party has acted on the basis of the other party's statement or act, trusting the latter, then the former party is precluded from asserting anything to the contrary of that which has been established as the truth between the two parties.

As a principle of good faith that sees promises as founded on accumulated facts, "estoppel" contains age-old wisdom. When Tanaka Kakuei and Zhou Enlai agreed to restore diplomatic relations between the two countries in 1972, Zhou used a Chinese saying: "A promise must be kept and result in action" to Tanaka, and Tanaka replied with a Japanese proverb: "Trust is the basis of everything." This exchange mutually affirmed a promise based on trust and its fulfillment. Now let us replace "one party" in the aforementioned principle of "estoppel" with "China" and "the other party" with "Japan." We now end up with this sentence: "because of China's statement and action, Japan judged the Senkaku Islands as terra nullius, trusting China,

and made a territorial claim on the basis of the trust. If this is the case, China is precluded from claiming [post facto] that the Senkaku Islands were not terra nullius or that they belong to China. Now what is wrong with this?

There are two points: first, Japan's evaluation of the Senkaku Islands as terra nullius; second, the conclusion that the Qing Dynasty didn't protest or that there was no protest. The first point can be rejected on the basis of, for example, the letters of Inoue Kaoru and Yamagata Aritomo. It is clear that they had anticipated China's protest and were acting cautiously. On the second point, at the time when China's defeat in the Sino-Japanese War was becoming obvious and when the cession of Taiwan was imminent, who would discuss the uninhabited Senkaku Islands? This is a matter of common sense. In short, Japan claims that "occupation of terra nullius" was decided in cabinet a few months prior to the Shimonoseki Treaty; in opposition to this China claims that Japan's effective rule of the Senkaku Islands was a part of Taiwan's Transfer to Japan, and therefore they need to be returned to China according to The Cairo Declaration.

4. Can the Japan-US Security Treaty guarantee the defence of the Senkaku Islands?

Japanese newspapers reported on the 1st December, 2012 that the US Senate had passed a bill affirming the US obligation to defend the Senkaku Islands. For instance, Kyodo News

reported from Washington on the 30th November that the US Senate decided to include an amendment to the National Defense Authorization Act for fiscal year 2013. Kyodo's interpretation of this was that it "intended to keep China's moves to assert its claim in check" and the senate was "in line with the stance of U.S. President Barack Obama's administration, which had a clear position that "the Senkaku Islands are subject to Article 5 of the Japan-U.S. security treaty obliging the US to defend Japan in case of hostilities." It further commented that "Sen. Jim Webb (Democrat) who jointly proposed the amendment with other senators, said the amendment is a strong statement of support for a vital ally in the Pacific-Asia region" and emphasised the importance of the Japan-US Security Treaty. Are these commentaries accurate? It is a fact that the amendment passed, but how should we interpret its meaning? This is quite difficult. In order to accurately grasp the nuance of the Senate's resolution we need to go back as far as the Okinawa Reversion Agreement and examine what promises Japan and the US made while being conscious of China's presence.

Let us first summarise the following three main points of the news article:

1. In the Plenary Session on the 29th November, The US Senate approved the amendment to the National Defense Authorization Act for fiscal year 2013 (October 2012 – September 2013).

2. This amendment says that the US “acknowledges the administration of the islands by Japan.”

3. The above “position” of the US to “acknowledge” will “not be affected by the unilateral actions of a third party [i.e. China or Taiwan].”

Even after reading the above three points, only a few Japanese would be able to understand their meaning accurately. This is because of the Japanese media’s habit since the US occupation and the reversion of Okinawa of emphasizing convenient points while leaving the truth ambiguous. Since the English version of the Kyodo news is more accurate, I cite it below in its entirety. But even with the English version, it is hard to understand the precise meaning of this amendment. Now, what’s new about this news? To our surprise, there is nothing new.

The true meaning of this article is:

- Japanese rights to the Senkaku Islands are only administrative rights and do not include sovereignty = territorial rights. The article confirms that the “US acknowledges” this view, which it has maintained domestically and internationally. In other words, this article primarily confirmed the 40-year-old US position: the “separation of sovereignty and territorial rights.”

- The US position explained above will not be affected by “China’s unilateral actions” such as its claim of sovereignty and other actions (for example, anti-Japanese demonstrations or sending patrol boats). That is, this is merely an expression that the “the US will continue the same position in the future.” In other words, this is nothing but US indication that its position “has not changed since the time of the Okinawan reversion” 40 years ago. So what has changed? This time the name of the Senkaku Islands, which was completely hidden 40 years ago, is now clearly stated. That’s the only difference.

Many Japanese, fearful of conflict between Japan and China over the Senkaku Islands, must have hoped for the reinforcement of the Japan-US Security Treaty, and mistakenly assumed that this would be useful for the defense of Japan. They must have mistakenly thought that the US, as Japan’s ally, would surely help Japan according to the provisions of the Japan-US Security Treaty. Encouraging such a misunderstanding is the true meaning of this amendment. This largely remains lip service. Let me explain this below.

I will first examine the Kyodo news report and the seven points in the amendments. First, Kyodo news. The essence of the report has been introduced earlier.

U.S. Senate reaffirms defense of Senkaku Islands under Japan-U.S. pact, WASHINGTON, Nov. 30, Kyodo

The U.S. Senate unanimously approved Thursday an amendment stating the Japanese-administered Senkaku Islands fall under the scope of a bilateral security treaty and Washington would defend Japan in the event of armed attacks. While China claims the islands in the East China Sea, the amendment to the National Defense Authorization Act for fiscal 2013, in line with the stance of U.S. President Barack Obama's administration, is intended to keep China's moves to assert its claim in check. Obama is expected to sign the bill after passage by the House of Representatives. Sen. Jim Webb, a Democrat who jointly proposed the amendment with other senators, said the amendment is a strong statement of support for a vital ally in the Pacific-Asia region. While stating that the United States takes no position on the ultimate sovereignty of the Senkaku Islands, the amendment acknowledges the administration of the islands by Japan, and also said the unilateral actions of a third party will not affect the U.S. acknowledgement. Stating the United States is opposed to any claimant's efforts to coerce or threaten to use force or use force in seeking to resolve sovereignty and territorial issues in the East China Sea, the amendment says the country reaffirms its commitment to the Japanese government under Article V of the 1960 Treaty of

Mutual Cooperation and Security. The amendment was co-sponsored with a bipartisan group of senators, including John McCain, a Republican. The U.S. defense authorization act has often been amended over diplomatic issues including sanctions against Iran over suspected development of nuclear weapons. Kyodo [Emphasis added.]

Next, let's look at the biography of Senator Webb, who is the key figure behind the proposal of this amendment. Over more than 40 years, he has been a Marine Corps officer, a defense planner, a journalist, a writer, a Department of Defense executive, Secretary of the Navy as well as a business consultant. We can consider him an expert who is able to represent the US on this matter.

Seven articles in the amendment are as follows.

SEC. 1246. SENSE OF THE SENATE ON THE SITUATION IN THE SENKAKU ISLANDS. It is the sense of the Senate that —(1) the East China Sea is a vital part of the maritime commons of Asia, including critical sea lanes of communication and commerce that benefit all nations of the Asia-Pacific region; (2) the peaceful settlement of territorial and jurisdictional disputes in the East China Sea requires the exercise of self-restraint by all parties in the conduct of activities that would complicate or escalate disputes and destabilize the region, and differences should be handled in a constructive

manner consistent with universally recognized principles of customary international law; (3) while the United States takes no position on the ultimate sovereignty of the Senkaku islands, [i.e. maintaining neutrality] the United States acknowledges the administration of Japan over the Senkaku Islands; 4) the unilateral actions of a third party will not affect United States acknowledgement of the administration of Japan over the Senkaku Islands; [meaning that “actions such as sending Chinese patrol boats” will not affect “US acknowledgement of the administration of Japan over the Senkaku Islands.”] (5) the United States has national interests in freedom of navigation, the maintenance of peace and stability, respect for international law, and unimpeded lawful commerce; (6) the United States supports a collaborative diplomatic process by claimants to resolve territorial disputes without coercion, and opposes efforts at coercion, the threat of use of force, or use of force by any claimant in seeking to resolve sovereignty and territorial issues in the East China Sea; and (7) the United States reaffirms its commitment to the Government of Japan under Article V of the Treaty of Mutual Cooperation and Security that “[e]ach Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes”.

[Emphasis added.]

In this amendment, the Senkaku islands are clearly named in articles 3 and 4 and are included in the “territories under the administration of Japan.” In the past the status of the Senkaku Islands was left ambiguous by using expressions such as “it is understood to be included.” This amendment is the first US law that specifically states the name of the Senkaku Islands, and this is the meaning of the amendment. As I see it, it is lip service.

As is clear from the above articles 3, 4, and 7, we can confirm that there is nothing new in the content of the amendment. The only difference is that article 3 and 4 each mentions the name “the Senkaku Islands” once. In the Okinawa Reversion Agreement this key word was hidden; but the US position hasn’t changed since the time of reversion. The “third party” in the sentence “the unilateral actions of a third party will not affect United States acknowledgement of the administration of Japan over the Senkaku Islands,” at least in this context, seems to be an active check against “Chinese hegemony.” But there is a subtle historical fact here. 40 years ago, at the time of the Reversion Agreement, the Taiwan government was still a “US ally” and was lobbying the US Congress heavily. The ambiguity over the Senkaku islands in the Reversion Agreement was in fact a product of the Congress’s consideration towards Taiwanese lobbying strategies. We should also remember

that the PRC at the time was in hostile relationship with the US over the Vietnam War. Thus the “US 40 years ago” maintained a “neutral stance” while being conscious of the conflict between its ally, Taiwan (The Republic of China) and Japan. “Today’s US” no longer has diplomatic relations with the Taiwan government, and is conscious of the relationship with Beijing that emerged with the 1979 normalisation of US-China relations. In this context it has reaffirmed its policy/direction of “maintaining neutrality” between “Beijing and Tokyo.”

Let us now read the Okinawa Reversion Agreement (Agreement Between the United States of America and Japan Concerning the Ryukyu Islands and the Daito Island), which was signed on the 17th June, 1971. Article 1 paragraph 2 states: “For the purpose of this Agreement, the term “the Ryukyu Islands and the Daito Islands” means all the territories and their territorial waters with respect to which the right to exercise all and any powers of administration, legislation and jurisdiction was accorded to the United States of America under Article 3 of the Treaty of Peace with Japan other than those with respect to which such right has already been returned to Japan in accordance with the Agreement concerning the Amami Islands and the Agreement concerning Nanpo Shoto and Other Islands signed between the United States of America and Japan, respectively on December 24,

1953 and April 5, 1968.”

Then how is this stated in Article 3 of the San Francisco Peace Treaty (September 8, 1951)? Article 3 reads:

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

As we can see from the above, Article 3 determined that “Nansei Shoto south of 29° north (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island” will be placed under the US trusteeship system. Here “Nansei Shoto south of 29° north” refers to the boundary between the “Tokara Islands” and “Yakushima” in the north of the Tokara Islands; north of Yakushima became part of Japan, and “Tokara Islands south of

Kuchinoshima" came under US military trusteeship. From this, it is clear that "south of Kuchinoshima" was included in "Ryukyu Nansei Shoto." However, the San Francisco Peace Treaty made no reference whatsoever to what islands constituted the so-called "Nansei Shoto." At that time, Japan had almost forgotten about the Senkaku Islands. In 1953, or 2 years after the San Francisco Treaty, the US Civil Administration of the Ryukyu Islands (USCAR) issued USCAR 27, which defined the boundary of Nansei Shoto as "south of 29° north," thus including the Senkaku Islands within its administrative sphere. This definition of "south of 29° north" is identical to that in Article 3 of the Peace Treaty; but again, the question of whether the Senkaku Islands were "included in the sphere or not" was not clearly stated. In other words, both the "Supreme Commander of Allied Power Instruction 677 (29 January 1946)" and USCAR 27 (25 December 1953) simply referred to a latitude – "south of 29° north." Neither specifically mentioned the Senkaku Islands by name – just as the 1971 Okinawa Reversion Agreement, above. Thus, since the immediate postwar period when Japan was divided into south and north with "29° north" as the boundary line, placing the south under US military rule, until the 1971 reversion, the name of the Senkaku Islands was never explicitly discussed between Japan and the US.

Not only are the Senkaku Islands absent from the text of the Reversion Agreement, they are also

missing from the "Agreed Minutes" (17 June 1971, *Diplomatic Bluebook* no. 16: pp. 479-482). It simply explains that "the territories defined in paragraph 2 of Article 1" are "the territories under the administration of the United States of America under Article 3 of the Treaty of Peace with Japan." In other words, what reverted to Japan were those "islands, islets, atolls and rocks inside a hexagon bounded by the straight lines connecting the following coordinates: 28 ° north 124 ° 40' east ; 24 ° north 122 ° east ; 24 ° north 133 ° east ; 27 ° north 131 ° 50' east ; 27 ° north 128 ° 18' east ; 28 ° north 128 ° 18' east ; 28 ° north 124 ° 40' east . Because the specific names of islands were not included, instead merely stating latitudes and longitudes, ordinary readers have no clue as to whether the Senkaku islands are included or not, and where this is stated. Why were they treated in this way?

On the other hand, the following interpretation also exists: when the Reversion Agreement was signed, the US State Department and Japanese officials "mutually understood" that "Nansei Shoto at the time of the signing of the Okinawa Reversion Treaty" "include[d] the Senkaku Islands." Mark Manyin explains that this is in the record of US Congressional hearings in his "Senkaku (Diaoyu/Diaoyutai) Islands Dispute: U.S. Treaty Obligations" (Congressional Research Service, September 25, 2012). This 10-page report was based on and expanded to double the length of Larry Niksch's original 5-page report,

“Senkaku (Diaoyu) Islands Dispute: The U.S. Legal Relationship and Obligations” (Congressional Research Service, 30 Sept 1996), and was published one week after aggressive anti-Japanese demonstrations in 2012. It explains the US Congress’s position on the Senkaku Islands in detail. While this report is not exactly the resolution of the Congress, it contains basic data that congressmen need in order to evaluate the issue, and therefore is an indispensable document for learning about the US Congress’ current attitude. The subtitle of Niksch’s report is “The U.S. Legal Relationship and Obligations,” while that of Manyin’s report is “U.S. Treaty Obligations.” The former was published at the time of the Taiwan Strait Crisis, and the latter explains the relationship between the basic position of the US on the Senkaku Islands and US obligations due to the Security Treaty in the context of the contemporary conflict over the Senkaku Islands.

In Japan, however, this important report is rarely referred to. On the contrary Japanese politics have been manipulated by one-sided information leaked by US government sources and certain Japan handlers. This is an alarming situation. Japan-China conflict has been used to manipulate public opinion in order to force the deployment of the Osprey in the face of strong objections from the people of Okinawa. In the long run, this will weaken the basis of Japan-China and Japan-US relationships, and Japanese people should be

very cautious.

Let me repeat my point. At the time of the signing of the San Francisco Peace Treaty, it was not explicitly stated whether the Senkaku Islands were included in “Nansei Shoto”. This continued with the Reversion Agreement, with no statement as to whether the Senkaku Islands are included in the text of Agreement. The Agreed Minutes only refer to latitudes and longitudes. When it comes to the question of whether the Senkaku Islands were included among the islands that fall within such a vaguely defined area, all we know is that the Japanese and US government authorities (such as Robert Starr, Acting Assistant Legal Adviser; Harrison Symmes, Acting Assistant Secretary of State; Howard McElroy, Country Officer for Japan; Japanese officials’ names are not known) “mutually understood” that the area “includes the Senkaku Islands.” And it only appears in the record of US Congressional hearings as the assertion of US Secretary of State Rogers and some experts in the US Congress at the time.

Once we pursue the “truth of the Japan-US agreement” in the Okinawa Reversion Agreement in this way (putting aside the notorious secret pact on Okinawa reversion), the background of then Foreign Minister Fukuda Takeo’s strange answer in the Diet becomes transparent (see p. 5 above).

In his statement, Fukuda is clearly saying that “a.

as our full territory” the Senkaku Islands’ “b. administrative right will be returned to Japan,” thus equating a and b. However, the logic of the US is $a \neq b$.

Fukuda’s reply implies perhaps that he was telling a lie to the nation pretending that he had misunderstood. Whether it was a misunderstanding or a lie, it is clear that the Japanese people, who have been exposed to such irresponsible answers from the Foreign Minister, mistakenly believed that the return of administrative rights meant the return of sovereignty, and, directing their discontent towards China, felt offended. Successive Japanese governments are responsible for the current conflict over the Senkaku Islands.

The 2012 report explains the situation as follows: “An Agreed Minute to the Okinawa Reversion Treaty defines the boundaries of the Ryukyu Islands and the Daito islands ‘as designated under USCAR 27.’”

“Moreover, the latitude and longitude boundaries set forth in the Agreed Minute appear to include the Senkaku Islands (Diaoyu/Diaoyutai).”

I would like to pay attention to this subtle expression – “appear to include the Senkaku Islands.” An Agreed Minute is written in a way that even the US expert can only state that it would “appear to include the Senkaku Islands.” In other words, the Agreed Minute is written in a

way that does not specify the Senkaku Islands by name.

“During Senate deliberations on whether to consent to the ratification of the Okinawa Reversion Treaty, the State Department asserted that the United States took a neutral position with regard to the competing claims of Japan, China, and Taiwan, despite the return of the islands to Japanese administration.”

In short, (1) in terms of the conflict over the sovereignty over the Senkaku Islands, “the US maintains neutrality” but (2) the Okinawa Reversion Agreement has certainly stated that “the Security Treaty is applicable to the area including the Senkaku Islands.”

There are other conditions that restrict the US. US-China total trade value in 2011 was \$500 billion, or 2.5 times larger than Japan-China trade. Most of China’s \$3 trillion foreign currency reserves, which resulted from its trade surplus, are used to purchase US bonds. Neither the US nor China wishes to lose trade 2.5 times larger than trade with Japan; and they wish to continue complementary economic relations in which “China’s under-consumption (oversaving)” compensates for “US over-consumption,” like the relationship between the “hard-working ants” and the “lazy grasshopper” in *Aesop’s Fables*. From the US perspective, should it ever be pushed into choosing between Japan and China, to “abandon Japan and choose China” is

pragmatically far more beneficial. In addition, the US and China both possess nuclear weapons. There is a danger of even a small spark developing into a nuclear war. In this context, the Security Treaty is already a treaty in name only. Let us remember that in 1978, when Japanese Minister of Foreign Affairs Sonoda Sunao visited China, Deng Xiaoping frankly told him that the Sino-Soviet Military Alliance had already become nominal, and that this opened up a path towards the signing of a Sino-Japanese Peace Treaty.

Considering the above conditions as a whole, “the US and China will not and cannot fight.” The “mutually complementary and dependent structure” of the largest and second largest economies in the world under the global economic system is now completely built-in. Since the recent conflict between China and Japan, there has been a remarkable increase in the number of people who insist on confronting Chinese military power by “reinforcing the Japan-US Security Treaty.” The reality discussed in this paper pours cold water on those Japanese who hope to be able to depend on the US.

Yabuki Susumu, Professor emeritus at Yokohama University, is one of Japan’s leading specialists on Mao Zedong, on China-Japan Relations, and on Chinese economic development and geopolitics. His two most recent books are *チャーイノ* *カー米中結託と日本の進路* (<http://www.amazon.co.jp/dp/4763406353?tag=theasipacjo0b-20>) (*Chimerica: US-China Co-*

dependence and Japan’s Way Forward) *尖閣問題の核心*. 日中関係はどうなる (<http://www.amazon.co.jp/dp/4763406566?tag=theasipacjo0b-20>)(The Core of the Senkaku Problem: What is to Become of Japan-China Relations.)

See also his interview (http://ajw.asahi.com/article/forum/security_and_territorial_issues/AJ201212120001) with the Asahi “INTERVIEW: China-watcher Yabuki says Senkakus are a diplomatic mistake by Japan,” Dec 12, 2012

And two interviews with Yabuki by Stephen Harmer at Forbes: Interview with Professor Yabuki on the Senkaku/Diaoyu Crisis and U.S.-China-Japan Relations (<http://www.forbes.com/sites/stephenharner/2012/10/03/interview-with-professor-yabuki-on-the-senkakudiaoyu-crisis-and-u-s-china-japan-relations/>), Oct 3, 2012; and Japan and U.S. Ignored Chinese Signals and History, Blundering into the Senkaku/Diaoyu Crisis (<http://www.forbes.com/sites/stephenharner/2013/02/20/japan-and-u-s-ignored-chinese-signals-and-history-blundering-into-the-senkakudiaoyu-crisis/>), February 20, 2013.

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