



## THE EAST CHINA SEA DISPUTES: EXAMINING CHINA AND JAPAN'S TERRITORIAL CLAIMS

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**ABSTRACT:** *Territorial disputes, occasioned by colonialism in most if not all cases, remain a thorny issue in contemporary international relations. In the East China Sea (ECS), a portion of the Pacific Ocean, is a group of uninhabited islets and barren rocks which the Asian economic powers – China, Japan and Taiwan claim ownership and sovereignty over based on historical records, international legal documents and geographical fact. These islets, which China calls 'Diaoyu Islands' and Japan, 'Senkaku Islands', are close to important shipping lanes, potential hydrocarbon deposits, and good fishing areas. However, irredentism and nationalism in China, and the politics played by staunch nationalists in Japan, have from time to time led to simmering tensions between both countries. Though, China and Japan have a maritime delimitation feud over their overlapping Exclusive Economic Zone (EEZ), this paper solely examines the competing territorial claims of China and Japan to the Diaoyu/Senkaku Islands in the geostrategic East China Sea. For the study, the historical approach was adopted and data were garnered from secondary sources. The paper concludes that China has a rich history regarding the disputed islands. However, it has insufficient historical evidence to prove that it exercised territorial sovereignty over the islets centuries ago. For Japan, it has good historical evidence to make a case for the island's ownership. Also, it has met the international law requirement of 'effective occupation' of the islets.*

**KEYWORDS:** China, Diaoyu, East China Sea, Japan, Senkaku, Treaty, War

### INTRODUCTION

Territory, stated in Article 1 of the Montevideo Convention on the Rights and Duties of States (1933) as one of the four features of a state (see Ogunnoiki, 2018a: 118), has for decades been a source of dispute between neighbouring countries in several continents, most especially in Asia. In South Asia, the post-colonial states – India and Pakistan, infrequently clash over Kashmir, a disputed territory and flashpoint. Still on India, up North to be precise, is a border dispute with the People's Republic of China (PRC), a fellow nuclear-armed state, in the Ladakh region.

Rounding South Asia, in the Indian Ocean, brings us to the geostrategic South China Sea (SCS) in South East Asia (SEA). China to date claims 80-90% of the semi-enclosed sea of approximately 1.4 million square miles (i.e. 3.5 million square kilometres) with the vague U-shaped nine-dash line (NDL). Taiwan, the Philippines, Vietnam, Malaysia, and Brunei equally claim to have maritime jurisdiction over almost the entire South China Sea or part of it, the geographical features and natural resources therein (see Ogunnoiki, 2018b; Ogunnoiki, 2018c). Other territorial disputes in Asia worth mentioning are: Japan and South Korea over the Liancourt Rocks in the Sea of Japan which Japan calls 'Takeshima Islands' and South



Korea 'Dokdo Islands', and Japan and Russia over a cluster of islands in the Pacific Ocean which Japan calls 'Northern Territories' and Russia, 'Kuril Islands'.

Not far away from the aforementioned South China Sea is the East China Sea (ECS), a section of the Pacific Ocean, with a chain of islands known decades ago as 'Pinnacle Islands' which China, Japan, and Taiwan, lay claim to. In total, the East China Sea has five uninhabited islets (which China calls 'Diaoyu Islands', Japan 'Senkaku Islands', and Taiwan 'Diaoyutai Islands') and three barren rocks that cover an area of about 7 square kilometres (Valencia 2007: 150; Drifte, 2008; Drifte, 2009: 2; Manjiao, 2011: 164; Tatsumi, 2013: 107; Tian and Chao, 2013: 27; BBC News, 2014; Bendini, 2014: 4; Chao and Tian 2014: 21; EAPASI, 2018; Sato, 2019: 52; SCMP Reporter, 2019). These economically significant islands, which are located north-east of Taiwan, east of mainland China and south-west of Japan's southern-most prefecture, Okinawa, lie near potential oil and natural gas reserves. They are also close to prominent shipping routes, and are surrounded by rich fishing grounds (Council on Foreign Relations, n.d.; Takenaka, 2012; BBC News, 2014).

Though, China and Japan have a maritime delimitation dispute *vis-à-vis* their overlapping 200 nautical miles Exclusive Economic Zone (EEZ) in the East China Sea (SIPRI, n.d.; Valencia 2007; Yee, 2011; Zhao, 2011; Valencia 2014; Mondré, 2015; Das, 2016), this paper strictly examines Sino-Japanese territorial claims to the disputed Diaoyu/Senkaku Islands.

### **Historical Background to Sino-Japanese Territorial Dispute in the East China Sea**

The chequered history of the Sino-Japanese territorial dispute in the East China Sea dates back to the 19<sup>th</sup> and 20<sup>th</sup> century. The First Sino-Japanese War was a war between China under the Qing Dynasty (1644-1912) and Japan during the Meiji Period (1868-1912), over the control of Korea. The war which started on July 25, 1894, came to close on the 17<sup>th</sup> of April, 1895, with the signing of the Treaty of Shimonoseki or what the Chinese labelled the "unequal treaty". Vanquished China, based on the said treaty, recognised the independence of Korea and ceded the Island of Formosa (present-day Taiwan), alongside islands appertaining to it, Pescadores Islands, and Liaodong Peninsula to Japan. Though the Treaty did not mention precisely the Senkakus/Diaoyus as islands appertaining to or all the islands belonging to Formosa, victorious Japan, prior to when the Treaty was inked, formally annexed the islands after the January 14, 1895, Cabinet Decision to place sovereignty markers on the uninhabited islets (see US-China Institute n.d.; Han, 2013; Osti, 2013; Valencia 2014: 189; Chansoria, 2018a; Council on Foreign Relations, 2020).

Following the Mukden Incident (a minor explosion planned by Japanese Army near Japan's South Manchuria Railway on September 18, 1931, in order to occupy Mukden and the entire Manchuria) was the Second Sino-Japanese War which began with the Marco Polo Bridge Incident on July 07, 1937. The incident became one of the events that precipitated the Second World War (1939-1945). In 1943, the United States (U.S.), United Kingdom (UK), and Republic of China (ROC) concluded the Cairo Declaration. The declaration stated that Japan shall return all territories it had "stolen" from the Qing Dynasty such as Manchuria, Formosa and the Pescadores, and will be expelled from territories it took by "violence and greed". In contrast to many other occupied islands, the Senkaku/Diaoyu Islands were not explicitly mentioned in the Cairo Declaration (SCIO, 2012; Osti, 2013: 5; MOFA, 2016a). In Article 8 of the July 26<sup>th</sup>, 1945, Potsdam Declaration, it was stated that "Japanese sovereignty shall be



limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.” (MOFA, 2015).

Following the defeat of the Axis Powers (Germany, Italy and Japan) by the Allied Powers (mainly the United States, Soviet Union, United Kingdom, and Republic of China) in the horrendous Second World War, Japan renounced all right, title and claim to a number of territories and islands under Article 2 of the Treaty of Peace with Japan, popularly known as the San Francisco Peace Treaty, which was signed at San Francisco, United States, on September 08, 1951. In line with Article 3 of the said treaty, the U.S. had administrative control over Senkaku/Diaoyu Islands under the United Nations (UN) trusteeship system. Japan later took over the administration of the islands when the U.S. returned Okinawa to it via the Okinawa Reversion Agreement, concluded on the 17<sup>th</sup> of June, 1971 (see United Nations, 1952; Han, 2013; BBC News, 2014; Valencia 2014: 189-190).

In the late 1960s, potential oil and gas in the waters around the Diaoyu/Senkaku Islands became known (Osti, 2013). China, which claims that the Diaoyu Islands have been an inherent part of its territory since ancient times, became assertive, alongside Taiwan, over the contested islands from the early 1970s (Council on Foreign Relations, n.d.; Han, 2013; BBC News, 2014; Das, 2016).

Few months after the Okinawa Reversion Agreement entered into force on May 15, 1972, China and Japan began the process of normalising diplomatic relations. During the process, Japanese Prime Minister Tanaka Kakuei and Chinese Premier Zhou Enlai reportedly reached a ‘tacit agreement’ to discuss the Diaoyu/Senkaku Islands issue in the future. Again, during the official visit of Chinese leader, Deng Xiaoping, to Japan in 1978, he was of the view that the next generation, with the much-needed wisdom, will be in the better position to resolve the perennial territorial dispute. But in 2010, the Japanese government of the Democratic Party denied there was ever such an agreement with China to shelve the territorial dispute (Ishida, 2013; Yang, 2017).

On July 14, 1996, the tensions between both countries came to a boil when the right-wing Japanese group, *Nihon Seinensha* (Japan Youth Federation), built a lighthouse on one of the disputed islands (Shaw, 1999: 19; Valencia, 2007: 130; Embassy of the People’s Republic of China in Australia, 2012; Lunn, 2012: 4).

### **Sino-Japanese Relations in the 21<sup>st</sup> Century: The East China Sea Territorial Dispute**

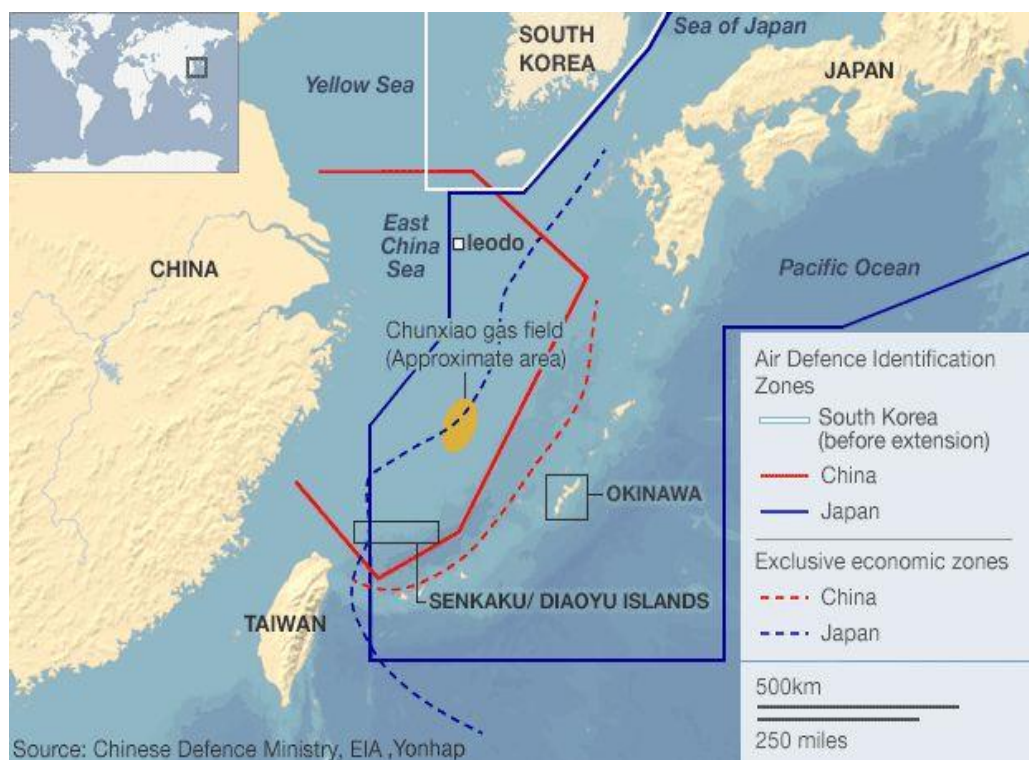
Decades after the normalisation of Sino-Japan relations on September 29, 1972 and the signing of the Treaty of Peace and Friendship between China and Japan on August 12, 1978, seven Chinese activists successfully landed on one of the disputed islands after which they were arrested by Japanese officers on March 24, 2004 (Kahn, 2004; Wiegand, 2009: 185; Fravel, 2010: 152). On August 15, 2012, seven Hong Kong activists also landed on one of the islets, but were arrested by Japanese officers. Four days later, it was the turn of ten Japanese activists who not only landed on the island chain, but raised the Japanese flag (Kyodo, 2012; Lunn, 2012: 5).

Sino-Japanese relations became strained on the 7<sup>th</sup> of September 2010, when a Chinese fishing trawler collided with two Japanese coast guard vessels near the contested islands. Japan seized the boat and arrested the 14 crew members on the fishing boat and the 41-year-old Chinese captain, Zhan Qixiong, which led to public protests, and Beijing suspending

ministerial and high-level exchanges with Tokyo. The boat and crew members were later released, but the captain was detained on Ishigaki Island. Following mounting pressure from China, Japan released Zhan Qixiong on September 24, 2010, in the interest of both countries (Ito, 2010; The CNN Wire Staff, 2010; see Fravel, 2016: 28-29; Hall, 2019: 13).

On September 11, 2012, tensions between China and Japan heightened when Prime Minister Yoshihiko Noda's government purchased and nationalised three of the five uninhabited islands from the private Japanese landowner, Mr Kunioki Kurihara, for a whopping sum of ¥2.05 billion (\$26 million) ostensibly to pre-empt an outspoken nationalist and right-wing politician from buying them. We would recall here that on April 16, 2012, in Washington D.C., the governor of Tokyo, Shintaro Ishihara, announced his plans to purchase some of the Senkaku Islands. Tokyo's action not only irked Beijing but triggered anti-Japanese demonstrations across China, and the boycott of Japanese products e.g. automobiles (Council on Foreign Relations, n.d.; SIPRI, n.d.; Associated Press, 2012; Takenaka, 2012; Han, 2013; BBC News, 2014; Das, 2016; Burke, *et al.*, 2018; EAPASI, 2018; Ogunnoiki, 2019a; SCMP Reporter, 2019; Council on Foreign Relations, 2020).

On December 13, 2012, Japan sent eight F-15 fighter jets after a small Chinese propeller plane that flew over the disputed Senkaku Islands. According to Japan, this was the first Chinese intrusion into its airspace since 1958 (Kleine-Ahlbrandt, 2013). The following year, the Japanese government announced on February 05, 2013, the incidents of Chinese frigates locked fire-control radar on a Japanese Maritime Self-Defense Force (MSDF) helicopter and a destroyer in the East China Sea on January 19 and 30. Such action on Chinese frigates was proactive and might have led to a skirmish if not a full blown war between China and Japan (Ishida, 2013; Yoshida and Aoki, 2013).



**Figure 1: China and Japan's Overlapping Air Defence Identification Zone (ADIZ)**

*Source: BBC News (2014). How Uninhabited Islands soured China-Japan Ties*





On the 23<sup>rd</sup> of November, 2013, China took a major step to contest Japan's administration of the Diaoyu Islands when it announced the creation of its Air Defence Identification Zone (ADIZ) – a zone established to help countries track or monitor aircraft approaching their territories. According to China's declaration, any aircraft entering its ADIZ need to submit its flight plans to China's Ministry of Foreign Affairs, maintain a two-way radio communication and reply promptly to identification inquiries from Chinese authorities which, failure to do so, will force China to take "defensive emergency measures". China's ADIZ, which covers the airspace of the disputed islands in the East China Sea, overlaps Japan's ADIZ. Though China followed international practice, its ADIZ raised the risk of air mishap (SIPRI, n.d.; China Daily, 2013; Harlan, 2013; BBC News, 2014; Das, 2016; Valencia, 2016; Burke, *et al.*, 2018). To avoid accidental clashes in the air or at sea, China and Japan launched a new crisis communication hotline on June 08, 2018 (Council on Foreign Relations, n.d.; Council on Foreign Relations, 2020).

Sino-Japanese relations further deteriorated after Prime Minister Shinzo Abe of Japan visited the controversial Yasukuni Shrine on December 26, 2013, which hurt the feelings of its neighbours – China and South Korea that suffered from Imperial Japan's aggression, colonial rule and human rights abuse (mostly Korean women who were forced to be 'comfort women' – sex slaves by Imperial Japanese army before and during World War II) in the 20<sup>th</sup> century. The shrine honours Japan's war dead, including individuals convicted at the 1945 Tokyo Tribunal for war crimes committed during the Second World War (SIPRI, n.d.; McCurry, 2013; see Ogunnoiki, 2019b: 2-3). We would recall here that former Japanese Prime Minister Junichiro Koizumi also made the same visit to the controversial shrine in 2001 and 2006 (The Japan Times, 2001; BBC News, 2013). Two months after, members of China's National People's Congress approved on the 27<sup>th</sup> of February, 2014, national remembrance days to commemorate Japan's defeat in World War II (Victory Day: September 03) and the Nanjing Massacre (National Memorial Day: December 13). (see AFP, 2014).

In the past few years, there has been a marked increase in Chinese coast guard vessels patrol in territorial waters close to the Senkaku Islands (Das, 2016; Fravel, 2016: 32; Chansoria, 2018b). The goal of President Xi Jinping's administration is to demonstrate that China can also exercise administrative control over the contested islands by establishing a coast guard presence in the territorial waters, but in a manner that would not escalate to a military conflict with Japan (Burke, *et al.*, 2018: 9). In the evening of the 30<sup>th</sup> of March, 2020, a Japanese destroyer collided with a Chinese fishing boat north of the Japan-controlled islets, but no one was injured or missing according to Japan's Defence Ministry (Al Jazeera, 2020).

### **Examining China and Japan's Territorial Claims in the East China Sea**

China, to start with, is confident like the Island of Taiwan with similar claims, that it can prove its ownership and territorial sovereignty over the Diaoyu Islands using historical records, international legal documents and geographical fact (Comment, 1973: 850; Embassy of the People's Republic of China in Australia, 2012).

China's official position on the disputed islands remains that the Diaoyu Islands are an inherent part of its territory (SCIO, 2012). It argues that the Diaoyu Islands were never '*terra nullius*' (Latin: meaning 'land that no state claims sovereignty over', or simply put, 'no man's land') as Japan claims. In this regard, it quotes the then Japanese Foreign Minister, Inoue



Kaoru, who in a letter in the year 1885, advised the Japanese government not to “suddenly establish publicly national boundary marks” on the islands as this might “easily invite Chinese suspicion.” He went on to add that “those islands are near the Chinese national boundary” and “there are Chinese names on them.” (as cited in Ramos-Mrosovsky, 2008: 926; Peterson, 2009: 447-448)

Following the discovery, naming and usage of the islets by China in the 14<sup>th</sup> century, the 15<sup>th</sup> century navigational guidebook *Shun Feng Xiang Song* was published in 1403 to help sailors navigate safely to the Ryukyu Kingdom whose king paid tribute to the imperial court of the Ming Dynasty (1368-1644) and Qing Dynasty. In particular, most if not all the twenty-four investiture missions sent to confer title on the King of Ryukyu from 1372 to 1866, mentioned the Diaoyu Islands in their official report to the reigning Chinese emperor. In addition to this, China has cited other historical evidence: Chinese and foreign maps, one of which was drawn in the mid-16<sup>th</sup> century, 1561 to be precise, that shows that the Diaoyu Islands were part of China’s coastal defence system from the Japanese pirates ‘*Wakō*’, and lastly that the islands were a source of a rare medicinal herb (*statice arbuscula*). In 1893, Empress Dowager issued an Imperial Edict, awarding three of the contested islands to Sheng Xuanhuai for the purpose of gathering medicinal herbs (see Shaw, 1999: 37-61; Valencia, 2007: 151-153; see Drifte, 2008; Ramos-Mrosovsky, 2008: 925-926; see Peterson, 2009: 447; Embassy of the People’s Republic of China in Australia, 2012; SCIO, 2012; Osti, 2013: 4; see Bendini, 2014: 5-6; see Tseng, 2014: 73; see EAPASI, 2018).

Legally, China claims that Japan, during the First Sino-Japanese War (1894-1895), used its victory over the Qing court in November 1894 to gain control of the Diaoyu Islands which are appurtenant territories of Formosa (Taiwan) that were, according to China, ceded to Japan under Article 2(b) of the 1895 Treaty of Shimonoseki that obliged China to cede in perpetuity and full sovereignty, the Island of Formosa with all islands appertaining or belonging to Formosa. Resuming sovereignty over Taiwan after World War II, Beijing argues that the islets should have been returned to China in line with the 1943 Cairo Declaration and 1945 Potsdam Declaration (see US-China Institute n.d.; see Shaw, 1999: 39; United Nations, 1952; Valencia, 2007: 152-153; see Peterson, 2009: 448; Fravel, 2010: 146; Osti, 2013; BBC News, 2014; Hickey, 2014: 497-498; O’Shea, 2015: 554).

At this juncture, it is imperative to know that the People’s Republic of China (PRC) does not recognise the 1951 San Francisco Peace Treaty. Following its exclusion from the making and signing of the San Francisco Peace Treaty, China sees the said treaty as “illegal and invalid”. Also, from China’s viewpoint, the U.S. “arbitrarily” expanded its jurisdiction to include the Diaoyu Islands via the Civil Administration Proclamation No. 27 on December 25, 1953, and transferred the administrative rights over the islets to Japan in “backroom deals” – the 1971 Okinawa Reversion Agreement (Shaw, 1999: 40; SCIO, 2012; Tseng, 2014: 76).

Based on geographical fact, China asserts that the contested islets are located on the edge of the East China Sea continental shelf. It contends that the Diaoyu Islands cannot possibly be Japan’s as they are natural prolongation of mainland China’s landmass into the ocean (Embassy of the People’s Republic of China in Australia, 2012).

Over the years, Tokyo has refuted Beijing’s territorial claims to the disputed islands on historical records, international legal documents or geographical fact basis. Unlike China, Japan does not acknowledge a dispute of territorial sovereignty in the East China Sea. Japan



asserts that prior to it exercising sovereignty over the islets, there was no trace that the Senkaku Islands were effectively controlled by China or any other country. The uninhabited islands, says Japan, were '*terra nullius*' which the Japanese, Tatsushiro Koga, discovered in 1884. For ten years, starting from 1885, the islands were surveyed through the agencies of Okinawa Prefecture, and following the 'secret' Cabinet Decision on January 14, 1895, the Government of Japan formally incorporated them into Okinawa Prefecture. No sooner had the islands been annexed than some Japanese settled on them and started the business of dried bonito (fish) manufacture and feather collecting (see Shaw, 1999: 22-25; Valencia, 2007: 151-153; see Ramos-Mrosovsky, 2008: 922-925; see Peterson, 2009: 449; Fravel, 2010: 146; Lunn, 2012: 3; Han, 2013; Osti, 2013; BBC News, 2014; see Bendini, 2014: 6; MOFA, 2014; Hickey, 2014: 493; O'Shea, 2015: 554; MOFA, 2016a; MOFA, 2016b Chansoria, 2018a; Smith, 2013 as cited in Kim, 2018: 42; Council on Foreign Relations, 2020).

Contrary to China's argument that Japan's annexation of the disputed islands is inextricably linked to its defeat in the First Sino-Japanese War and the attendant 'unequal' Treaty of Shimonoseki (1895), is Japan's contention that the incorporation of the *terra nullius*, Senkaku Islands, into its territory is unrelated to the said war or treaty. It annexed the islets in January 1895 and the peace treaty in April 1895 which obliged China to cede Formosa and the islands appertaining to it to Japan, could not possibly have included the Senkaku Islands that were already part of its territory. Also, Japan has taken out time to accentuate that the Senkakus were not part of the territories it relinquished under Article 2 of the 1951 San Francisco Peace Treaty (Valencia, 2007: 152; see Drifte, 2008; Drifte, 2009: 2; SCIO, 2012). It insists that the Senkaku Islands were part of the Nansei Shoto south of 29° north latitude as stated in Article 3 of the 1951 San Francisco Peace Treaty (United Nations, 1952; Valencia, 2007: 152). Thus, the disputed islands were administered by the U.S. after World War II under the UN trusteeship system which America returned the administrative control over the islands to Japan under the 1971 Okinawa Reversion Agreement. The return of administrative control from Japan's perspective, was a confirmation that the islets belong to Japan.

A thought-provoking question at this juncture is, if truly the islands appertain to China's Taiwan, why did China not challenge the U.S. administrative control of the islets for a long period? In this regard, Tokyo maintains that China acquiesced to Japan's title to the Senkaku Islands, as it did not once, since the post-World War II era began in 1945, claim the islands until the early 1970s after potential oil and gas resources in the area came to their knowledge (see Drifte, 2008; Ramos-Mrosovsky, 2008: 929; see Peterson, 2009: 450; Han, 2013: 62; BBC News, 2014; Burke, *et al.*, 2018; Chansoria, 2018a: 42).

In the year 1968 and 1969, the Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas (CCOP) under the aegis of the UN Economic Commission for Asia and the Far East (ECAFE), conducted extensive geophysical surveys in the East China Sea. In its report, it suggested the possible existence of the 'richest seabed with oil and hydrocarbon deposits' in the waters off the Senkaku Islands. The report aroused the interest of states bordering the East China Sea as was seen in early 1970s when China abruptly began to be assertive over the contested islands (Gao and Wu, 2005 as cited in Drifte, 2009: 2; Bendini, 2014: 11; Das, 2016; Lee, 2002 cited in Chansoria, 2018a: 40; SCMP Reporter, 2019; Council on Foreign Relations, 2020).



Customary international law is very clear on how states can acquire ‘title’ to a territory. The first of the five modes of acquiring a territory is *Occupation*. Following the discovery of a *terra nullius*, title to the territory is certain if, and only if, a state demonstrates the intent to occupy (*animus occupandi*) and exert administrative control over it. This is known as “effective occupation”. The second is *Cession* – the transfer of a territory from a sovereign state to another via a treaty in most cases. Though it has been proscribed, territories in time past were acquired through *Conquest* by a victorious state from the vanquished during or after a war. The fourth method is the controversial *Prescription*. Succinctly, a state gains title to a territory of another state following the exercise of sovereignty over it for a long period of time without the state contesting it (see Ramos-Mrosovsky, 2008: 913-916; see Harry, 2013: 666-669; see Ogunnoiki, 2018b: 174). Last but not least is *Accretion*. Here, new land is added to a state’s existing territory by nature e.g. a flowing river depositing alluvium at the river bank in a country (see Boczek, 2005: 201). Going by this, it can be said that China hinged its legal argument on ‘conquest’ and ‘cession’ while Japan predicated its legal position on ‘occupation’, ‘cession’ and ‘prescription’.

Having taken a thorough look at China and Japan’s territorial claims, it can be said that the former has a weak argument compared to the latter. No doubt, the historical evidence tabled by China dates back to the 14<sup>th</sup> century, which is over 500 years older than that of Japan from the late 19<sup>th</sup> century. However, China has not been able to prove with its historical records that it had effective control over the Diaoyu Islands (see Dutton, 2007: 59; Tseng, 2014: 74; Fravel, 2016: 25). As mentioned earlier, the islets in ancient times only served as navigational aids, a source of medicinal herbs, and part of its coastal defence system. In the eyes of modern international law, these are little or no act of sovereignty over the Diaoyu Islands. That said, Japan has the upper hand as it has not only historical evidence – 1895 Cabinet Decision, but has demonstrated for decades administrative control over the Senkakus.

### **The Pacific Settlement of the East China Sea Territorial Dispute**

There are two methods that can be explored for the peaceful resolution of the East China Sea territorial dispute. These methods are: i) diplomatic method, and ii) judicial method. Under the diplomatic method category are four options: a) *Negotiation* – the round table dialogue between the leadership or representatives of the states without involving a third party mediator, b) *Mediation* – a ‘neutral’ mediator is involved in the negotiation process, to facilitate effective communication between the parties to the dispute (Ogunnoiki, 2018b) c) *Inquiry* – a commission is formed to look into the factual matter(s) *vis-à-vis* the dispute (Shaw, 2008), d) *Conciliation* – a commission is set up to look into the dispute. Having done this, the commission will submit a report containing recommendations for the resolution of the dispute (Umozurike, 2005; see Shaw, 2008: 1022; Ogunnoiki, 2018b).

Under the judicial method are two legal options: a) *Arbitration* – here, states table their dispute before an arbitrator or arbitral tribunal that is provided for in an agreement as a dispute resolution mechanism *vis-à-vis* any dispute arising from the agreement. After the contracting parties have made their case, the arbitrator or arbitral tribunal will arrive at a decision called an ‘award’, b) *Adjudication* – the dispute between states are settled through the judicial organ of an International Organisation (IO) e.g. the International Court of Justice (ICJ) of the UN. In the case of the ICJ, the states must accept the compulsory jurisdiction of the Court over the dispute as stated in Article 36(2) of the ICJ Statute. Also, they are to





comply with the verdict of Court as stated in Article 94(1) of the UN Charter (1945) (see Ogunnoiki, 2018b: 176).

Over the years, China has resisted the settlement of its territorial disputes through mediation, conciliation, inquiry, arbitration or adjudication. A good example is the South China Sea disputes. After the Philippines on the 22<sup>nd</sup> of January, 2013, filed a case against China at a tribunal in The Hague-based Permanent Court of Arbitration (PCA) in accordance with Annex VII of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the tribunal on the 12<sup>th</sup> of July, 2016, gave an award in favour of the Philippines. The award that China's claim of historical rights and the unpopular nine-dash line are invalid under international law (Panda, 2016), was not accepted by Beijing, which pointed out that following China's ratification of 1982 UNCLOS on the 7<sup>th</sup> of June, 1996, it submitted a declaration on August 25, 2006, to the UN Secretary-General, stating that "The Government of the People's Republic of China does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a), (b) and (c) of Article 298 of the Convention" (FMPRC, 2016).

Negotiation at the moment remains the option China and Japan can adopt in resolving peacefully the protracted territorial dispute in the East China Sea. But for the dispute to be successfully resolved through negotiation, both countries must first and foremost shelve their 'inviolable sovereignty' or 'not open for deliberation' stance over the Diaoyu/Senkaku Islands.

## CONCLUSION

The East China Sea territorial dispute between the second and third-largest economy in the world has infrequently given rise to simmering tensions in East Asia. Though, China and Japan have thus far managed not to make miscalculations that will turn the East China Sea into a flashpoint, the protracted issue of ownership and territorial sovereignty remains unresolved to date. Having examined China and Japan's territorial claims in the East China Sea, it can safely be said of the former that it has a rich history *vis-à-vis* the disputed islands. However, its historical evidence does not convincingly prove that it exercised territorial sovereignty over the Diaoyu Islands centuries ago. For the latter, it has good historical evidence to make a case for territorial sovereignty and ownership of the Senkakus. Besides this, it has satisfied the international law requirement of 'effective occupation' of the disputed islands.

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