

Territorial Disputes and Taiwan's Regional Diplomacy: The Case of the Senkaku/Diaoyu/Diaoyutai Islands

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Abstract

In the territorial dispute over the Senkaku/Diaoyu islands between Tokyo and Beijing, Taiwan also claims what it calls the Diaoyutai, and Taiwan's President, Ma Ying-jeou, reaffirmed in August 2012 that these islands should legitimately be under Taipei's control. The ROC did not however join the dispute but chose instead to propose a plan to reduce the tension by implementing both solid bilateral talks and a multilateral approach at the regional level that will involve the three parties. This initiative symbolizes Taiwan's attempts to increase its diplomacy in the East China Sea, by using its good relations with both Tokyo and Beijing, and Taipei's potential implications in a regional security dialogue. It also suggests new approaches in engaging the territorial disputes in East Asia. This article explores Taiwan's position in the dispute, its basis as well as its philosophy; the emergence of a new diplomacy for the Republic of China, its impact and its limits; and questions the possibility of implementing a comprehensive security dialogue. It also suggests new orientations in Taiwan's diplomacy regarding its territorial and maritime claims, and raises the question of the relation with Mainland China.

Keywords

China, Taiwan, Japan, Senkaku, Diaoyu, Diaoyutai, territorial dispute, East China Sea

The territorial dispute in the East China Sea has been the source for increased tension in the region between the People's Republic of China (PRC), Japan, and the Republic of China (ROC, Taiwan) in recent months. It had been particularly sensitive in 2012, consecutively to Japan's decision to nationalize three of the islands known as Senkaku, Diaoyu or Diaoyutai (Hongo, 2012). This case of territorial and maritime dispute, although not unusual in East Asia (Huth, 1996), has the characteristics not only to concern more than two actors—which is also the case of the Paracels in the South China Sea, for instance—but to oppose one state on one side (Japan) and two separate, and also rival entities on the other (China and Taiwan). This situation generates therefore a unique example of tensions at different levels, and implies a multiplicity of understandings, to the point that it may be considered, both at the legal and the political levels, as the most complicated territorial dispute in East Asia, and one that international law fails to solve (Ramos-Mrosovsky, 2008). One of its consequences is that “without a proper treatment of the status, it is impossible for China and Japan to draw a maritime delimitation line in the East China Sea” (Pan, 2009, p. 29).

The island group—Diaoyutai in Chinese, usually known as Diaoyu in Beijing and Diaoyutai in Taipei, Senkaku in Japanese and sometimes referred to as the Pinnacle islands in English—is composed of eight small, uninhabited islets, sitting roughly 160 kilometers northeast of Taiwan and 400 kilometers west of Okinawa (Japan). The largest of these islets is only four square kilometers in area. However, the waters in the area are rich fishing grounds and the seabed below the waves could potentially contain minerals and/or oil.

The current dispute dates back to 1972, when the U.S. transferred the authority over the islands to Japan, while both Chinas have claimed its control. We may however consider that Japan's annexation of the Ryukyu Archipelago, including although neither Beijing, nor Taipei after 1949 has laid claims over the sovereignty

Japanese name	Chinese name	Area (km ²)
Uotsuri-shima (魚釣島)	Diaoyu Dao (釣魚島)	4.32
Taisho-to (大正島)	Chiwei Yu (赤尾嶼)	0.0609
Kuba-shima (久場島)	Huangwei Yu (黃尾嶼)	1.08
Kita-kojima (北小島)	Bei Xiaodao (北小島)	0.3267
Minami-kojima (南小島)	Nan Xiaodao (南小島)	0.4592
Oki-no-Kita-iwa (沖ノ北岩)	Da Bei Xiaodao (大北小島/北岩)	0.0183
Oki-no-Minami-iwa (沖ノ南岩)	Da Nan Xiaodao (大南小島/南岩)	0.0048
Tobise (飛瀬)	Fei Jiao Yan (飛礁岩/飛岩)	0.0008

Table 1
The Eight Islands: Names and Areas

of the islands until the U.S. occupation, which began in 1945, came to an end, and Washington returned the islands to Tokyo (Lee, Furness, & Schofield, 2002, pp. 10-13; Charney, Colson, & Smith, 2005). It is usually assumed that the biggest reason for this dispute is the release in 1969 of a study by the United Nations Economic Commission for Asia and the Far East suggesting that vast quantities of oil and gas might lie beneath the East China Sea (Emery, 1969, p. 3). Little actual drilling has taken place to this day, but some estimates suggest that as many as 100 billion barrels of oil and 200 trillion cubic feet of gas may be at stake (Harrison, 2005).

On top of the Beijing-Tokyo dispute that has been particularly vivid since 1996 when, during the most sensitive Cross-Strait crisis since the 1950s, Tokyo reaffirmed its sovereignty over the islands (Dzurek, 1996; Suganuma, 2000), the ROC also claims what it calls the Diaoyutai. Taiwan's current President, Ma Ying-jeou, reaffirmed in August 2012 that based on history, geography and geology, these islands should legitimately be under Taipei's control. The ROC did not however join the dispute and, unlike Japan and China, attempted to avoid a nationalist rhetoric. Taipei proposed instead a plan to reduce the tension by implementing both solid bilateral talks and a multilateral approach at the regional level that would involve the three parties. This initiative symbolizes Taiwan's attempts to increase its diplomacy in the East China Sea, by using its current good relations with both Tokyo and Beijing, and Taipei's potential implications in a regional security dialogue, in order to serve its own objectives (Hui, 2012; Jacobs, 2013). It also suggests new approaches in engaging the territorial disputes in East Asia, notably by leaving the door to cooperation with Beijing open, and therefore adjusting the official four principles' posture.

Focusing on the evolution of the recent crisis, this article evaluates Taiwan's position in the dispute, the emergence of a new diplomacy for the ROC, its impact and its limits; and questions the possibility of implementing a comprehensive security dialogue. It also suggests new orientations in Taiwan's diplomacy regarding its territorial and maritime claims, and raises the question of the relation with Mainland China on a case of territorial dispute. The first chapter explores Taiwan's arguments in the maritime dispute, in comparison with Japan's and China's claims. The second chapter introduces the question of the control of the oil reserves and the U.S. implications, and its perception in Taiwan. In the third chapter, Ma Ying-jeou's plan and its consequences are described, while the fourth chapter presents Beijing's strategic calculations.

Taipei's Arguments in the Territorial and Maritime Dispute

Although using a different formulation, Taiwan's claims in the Diaoyutai islands mostly meet those of China, with a few additional elements. Like Beijing, Taipei also rejects Japan's arguments.¹

With no surprise, the historical arguments are similar in China and Taiwan. According to Beijing, Chinese historical records detailing the discovery and geographical feature of these islands date back to 1403. China and Taiwan, both claiming the same historical heritage, assert that the Ming dynasty (1368-1644) considered the islands part of its maritime territory and included them on maps and documents of areas under the authority of the Ming coastal defenses. They also claim that the Qing dynasty (1644-1911) went further and placed the islands under the jurisdiction of Taiwan, which had, until 1885, the status of a territory, not a province. However, it seems that the Qing dynasty never established a permanent settlement of civilians or military personnel on the islands, and apparently did not maintain permanent naval forces in adjacent waters (Cheng, 1974, pp. 244-246). For several centuries the islands have also been used by Taiwanese fishermen as an operational base, while no official ever travelled in the area. In 1874, Japan took the Liu Chiu islands from China by force. The Senkaku/Diaoyutai, however, seemed to have remained under the administration of Taiwan until it was ceded to Japan in 1895 after the first Sino-Japanese War. Originally, during the Japanese occupation of Taiwan (1895-1945), the Senkaku/Diaoyutai archipelago came under the jurisdiction of Taipei Prefecture. After the end of World War II, when the U.S. troops were stationed on the Ryukyu and the Senkaku/Diaoyutai archipelagoes, the Kuomintang (KMT) government which officially ruled China and had recovered its sovereignty over Taiwan did not ask the U.S. to include the islands (Chiu, 1999).

After Japan's surrender, the islands have been placed under the administration of the U.S. as part of the Nansei Shoto Islands, in accordance with Article III of the

1 Japan claimed the islands as official Japanese territory in 1895. From 1885 on, surveys had been thoroughly made by the Government of Japan through the agencies of Okinawa Prefecture and by way of other methods. Through these surveys, it was confirmed that the islands had been uninhabited and showed no trace of having been under the control of China. Based on this confirmation, the Government of Japan made a Cabinet Decision on January 14, 1895, to erect a marker on the islands to formally incorporate the islands into the territory of Japan. Since then, the islands have continuously remained as an integral part of the Nansei Shoto islands which are the territory of Japan. These islands were neither part of Taiwan nor part of the Pescadores islands (or Penghu) which were ceded to Japan from the Qing dynasty of China in accordance with Article II of the Treaty of Shimonoseki which came into effect in May 1895. Accordingly, the islands are not included in the territory which Japan renounced under Article II of the San Francisco Peace Treaty. They came under the U.S. control after World War II. The U.S. kept that group of small islets for occasional bombing practice targets, largely for its Liu Chiu based Air Force. Japan claimed that the islands are part of Liu Chiu (Moteki, 2010).

1952 San Francisco Treaty. The administrative rights were reverted to Japan in accordance with the Agreement between Japan and the U.S. Concerning the Ryukyu Islands and the Daito Islands signed on June 17, 1971. It was not until the question of the development of petroleum resources on the continental shelf of the East China Sea came to the surface that the governments of China and Taiwan began to raise questions regarding the islands (Sutter, 2013).

President MaYing-jeou, in an August 2012 speech, argued that various international agreements after World War II “confirmed that Taiwan has been returned to the Republic of China.” He added that “the Diaoyutai Islands, an island group part of Taiwan prior to World War II, naturally should have been returned to the ROC along with Taiwan after the war.” This posture is a response to Japan’s argument formulated in 1972 that states that “the fact that China expressed no objection to the status of the Islands being under the administration of the United States under Article III of the San Francisco Peace Treaty clearly indicates that China did not consider the Senkaku Islands as part of Taiwan” (Ministry of Foreign Affairs of Japan, 1972). This attitude is described as a “judicial trend of putting increasing emphasis on the absence of rival acts or claims of sovereignty” (Sharma, 1997, pp. 47-48).

The Ma government’s posture does not differ from the previous administrations in Taiwan. Four principles regarding the islands were established by former Taiwanese president Lee Teng-hui (1988-2000), and followed by his successor, Chen Shui-bian (2000-2008). First, the sovereign rights of the Diaoyutai islands belong to the ROC. Second, the issue should be handled “peacefully and rationally.” Third, there should be no cooperation with Beijing. Finally, Taipei must protect the rights and interests of the Taiwanese fishermen. For the past four decades, the ROC has been maintaining that it “regained” sovereignty over Taiwan upon Japan’s surrender at the end of World War II and also should have regained the Diaoyutai islands (Shih, 2012). Like the PRC, the ROC Foreign Ministry has asserted that the islands first appeared in China’s historical records under the Ming dynasty, and argues that the Ryukyus was then a kingdom and a vassal state of China. The Emperor Hong-wu of the Ming dynasty proclaimed China’s suzerainty over the tiny but prosperous kingdom by sending an imperial commissioner to perform the first investiture of the king. During the Qing dynasty, no less than eight investitures were held, the last one in 1866. The Japanese on the other side claimed suzerainty after Shimazu Iehisa, a daimyo of Kagoshima, invaded the Ryukyus and took its king hostage in 1609, and the kingdom remained a vassal to its two big neighbors until Japan annexed it as a prefecture of Okinawa in 1879. However, the relevant material provides little information and mostly likely is false since Taiwan had no permanent Chinese communities until the Dutch brought in Chinese labor after

their arrival in 1624. Chinese records did not even mention Taiwan until the 17th century during late Ming dynasty (Thompson, 1964, p. 163). The Diaoyutai/Senkaku Islands were also much smaller than Taiwan, uninhabited and far from the Chinese coast, which may explain the little interest China had in these islands. However, it may be pointed out that the lack of relevant historical records is a major source of dispute.

In a 1999 publication, Han-yi Shaw also makes a claim for China's Ming dynasty ownership, by reaffirming that the Ryukyu Kingdom became a tributary state of the Ming in 1372 (Shaw, 1999, pp. 42-69). Shaw does not however make any mention of the fact that the Ryukyu Kingdom simultaneously was also a tributary of Japan. Nor does he mention that tributary nations conducted "tribute missions" with China primarily for trade purposes. Another problem with the tributary argument is that the Ma government now states that the U.S. Occupation Forces made a mistake in considering the Diaoyutai as part of the Ryukyu archipelago because a huge trench separates the Diaoyutai from the Ryukyus. Thus, according to the ROC, the islands should not have been returned to Japan when the Ryukyus reverted to Tokyo in 1972. Yet, if one wants to argue that the tributary relationship between the Ryukyus and the Ming was of vital importance in the history of the Diaoyutai, then the claim that the Diaoyutai/Senkaku islands are not part of the Ryukyus must fail. Ironically, in a more recent piece, Shaw argues:

So instead of proving the islands belonged to Ming China, this historical record proves the opposite. The Chinese should recognize that records from the Qing dynasty alone are sufficient to demonstrate Chinese ownership. Chinese envoy records place the islands within the "border that separates Chinese and foreign lands," with official gazetteers further recording "Diaoyu Island accommodates ten or more large ships" and placing it under the jurisdiction of Taiwan (Shaw, 2012).

Geographically, China and Taiwan argue indeed that the Okinawa Trough in the ocean floor separates the Senkaku/Diaoyu/Diaoyutai and China's continental shelf from Japan's Ryuku Islands. In his thesis, Han-yi Shaw refers to what he calls the "Black Water Ditch" (黑水溝) where there is a "sudden change in the color of sea water from dark blue to dark black" (Shaw, 1999, p. 48). As he writes, "this sudden change of sea water color was known to create a strong sense of fear and unpredictability among those who set sail across it, since reaching this area meant exiting familiar Chinese waters" (Shaw, 1999, p. 49). Shaw argues this Black Water Ditch refers to the trench between China and the Ryukyu Islands, but according to other sources, it is actually in the Taiwan Strait to the west of Taiwan, not far from Penghu

archipelago (Keliher, 2003, p. 39). Shaw's placement of the Black Ditch to the east of Taiwan is therefore disputed by other scholars. According to Shaw, the islands do however present some geological characteristics in common with Taiwan, which justifies both in Taipei and Beijing that they belong to the Taiwan province. Considering the dispute between the ROC and the PRC over the sovereignty of this province, there is a major divergence between both sides of the Taiwan Strait regarding the authority over the islands.

As a response to Tokyo's argument, China argues that Okinotorishima island, the southernmost islet in the Japanese archipelago, is merely a rock, not an island, in an attempt to nullify Japan's claim of an exclusive economic zone around the small island, which is under Tokyo jurisdiction (Donaldson & Williams, 2005). The Chinese said they had "differences of opinion," citing Okinotorishima and the Senkaku/Diaoyutai Islands (Helflin, 2000). While Beijing acknowledges that Okinotorishima belongs to Japan, it stressed that it did not fall under the classification of an island as defined by the UN Convention on the Law of the Sea, but is instead a rock, which cannot be used to designate an exclusive economic zone, as the Japanese government has done (Ramos-Mrosofsky, 2008). Taipei remains more silent on this issue.

Taiwan and China also differ at the level of the objectives they pursue in this crisis. For Beijing, the rivalry with Tokyo over the regional hegemony is the central element of the dispute. In the past two decades, China has taken any opportunity to criticize Japan, and this crisis appears to be a test aimed at analyzing Tokyo's diplomatic margin. The Chinese authorities have also excelled in the art of mobilizing the public opinion in spectacular anti-Japanese nationalist demonstrations through intense media campaigns (Downs & Saunders, 1998; Chung, 1998; Deans, 2000; Stockmann, 2010). For Taipei, it is important to reaffirm its territorial sovereignty—and therefore send a message to Tokyo, but also to Beijing—but at the same time to keep close relations with the two other actors, particularly Japan. To preserve this balance, Taipei favors a constant dialogue, with Beijing and even more with Tokyo, in order to avoid an escalation, based on the assertion that a lack of communication usually favors territorial disputes (Sartori, 2002). On top of this diplomatic calculation, the Taiwanese population is not particularly concerned with the dispute, and pays more attention to the fishing agreements than a territorial claim which is considered less valuable than a close partnership with Tokyo. China also has a particular interest in the potential oil reserves, while Taiwan seems to pay less attention to this rather important aspect of the dispute.

Questions about the Control of the Oil Reserves and the U.S. Implications

Like most territorial and maritime disputes, the Senkaku/Diaoyu/Diaoyutai case is a combination of various elements including historic and geographic tensions, unsolved sovereignty issues, and a temptation to consolidate nationalist movements. It also incorporates a strong dispute over the control of potential oil reserves that has increased considering the parties' important and growing needs of energy supplies. The control of the islands would grant the owner a large area of the continental shelf that may have rich sources of gas and oil. Such a dispute is obviously related to the interest in developing offshore energy resources to meet the economic demand (Pan, 2009, p. 140). According to China specialists however, even if oil resources did not exist, China would not give up one inch of what is considered its territory, pointing out that the symbolic value "far outweighs the commercial value the islands may hold" (Suganuma, 2000, p. 11; Shaw, 1999, p. 5). The dispute is also mostly symbolic for the ROC, and the importance given to the resources is limited for Taipei. One may, therefore, consider that the control of potential oil reserves is not the most important factor in the dispute, but just comes as an addition to the tensions among the three actors, particularly between Japan and China.

As it has been noted, a report released in 1969 by the United Nations Economic Commission for Asia and the Far East (ECAFE) indicated the possibility of large reserves of oil in the vicinity of the Senkaku/Diaoyu/Diaoyutai archipelago (Emery, 1969, p. 3). This report introduced a new dimension to the dispute that includes the possibility to exploit such reserves. In the early 1970s, Beijing started its claim to the Senkaku Islands for the first time in 1970, after the Japanese government protested to the government in Taiwan about its allocation of oil concessions in the East China Sea, including the area of the islands (Drifte, 2012, p. 49; Psyop Intelligence, 1972). Before that, neither China nor Taiwan had taken up the question of sovereignty over the islands until the latter half of the 1970s when evidence relating to the existence of oil resources deposited in the East China Sea surfaced. For some scholars, this clearly indicates that neither China, nor Taiwan had regarded the islands as a part of Taiwan (Lee, 2002, p. 11).

An early estimate of potential oil deposits in the disputed zone was 7.5 billion barrels (Stuckey, 1975, p. 47), while a more recent estimate is 100 to 200 billion barrels (Curtin, 2005). Because Japan currently controls the islands, unless China takes the islands by force or drops its territorial claim, Beijing will continue to forfeit access to the oil resources. Unilateral attempts to acquire oil resources inside the disputed zone have been risky (Stuckey, 1975, p. 55), and therefore have not occurred. China cannot drill for oil in the disputed zone on its own without pro-

voking Japan and risking an escalation. In recent years, Japan has protested Chinese drilling in an area that is clearly Chinese territorial waters, but is relatively near the disputed zone. Japan was particularly annoyed because the Japanese government had reserved allowing Japanese companies to explore and develop oil resources in Japanese waters near the disputed zone, fearing it would negatively affect relations with China (Valencia, 2005).

Japan has constantly objected to Chinese development of natural gas resources in the East China Sea in an area where the two countries Exclusive Economic Zone (EEZ) claims overlap. Tokyo claims a division of the EEZ on the median line between the countries' coastlines. About 40,000 square kilometers of EEZ are in dispute. China and Japan both claim 200 nautical miles EEZ rights, but the East China Sea width is only 360 nautical miles. China claims an EEZ extending to the eastern end of the Chinese continental shelf which goes deep into the Japanese EEZ beyond the median line. Taiwan's claims regarding the EEZ meet with those of China, but differ in the importance given to the unilateral exploitation of the oil resources. Therefore, it gives Taiwan a margin in potential negotiations.

Under the UN Convention on the Law of the Sea (UNCLOS), when there is a disagreement on the demarcation of EEZs, part V of the law stipulates that the parties concerned should avoid anything that could undermine an eventual agreement. China's gas field drilling near the median line between the two countries is also regarded by Japan as an obvious infringement of part II of the law (UNCLOS, 1982). Tokyo's proposal, which has not been accepted by Beijing, is to divide the sea equally between the two countries, which would put China's Chunxiao claim only five kilometers from Japanese territory.

Washington's role is also particularly important in this prospect, considering the occupation of the islands for more than 25 years. In 1969, when the Okinawa Reversion Treaty was signed between the U.S. and Japan, it included the islands,² which have been under the administrative control of the Japanese government since. On April 9, 1971, the U.S. State Department issued a statement that President Nixon and Japanese Prime Minister Sato Eisaku had reached an agreement, by which the U.S. would return Okinawa and the "South-western islands" which included the Senkaku, to Japan, in 1972 (Upton, 1972). In his letter of October 20, 1971, Acting Assistant Legal Adviser Robert Starr stated:

2 The Okinawa Reversion Treaty, which was signed on June 17, 1971, and entered into effect on May 15, 1972, provided for the return to Japan of "all and any powers of administration, legislation and jurisdiction" over the Ryukyu and Daito islands, which the United States had held under the Japan Peace Treaty. Article I of the Okinawa Reversion Treaty defines the term "the Ryukyu Islands and the Daito Islands" as "all territories with 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...."

The Governments of the Republic of China and Japan are in disagreement as to sovereignty over the Senkaku Islands. You should know as well that the People's Republic of China has also claimed sovereignty over the islands. The United States believes that a return of administrative rights over those islands to Japan, from which the rights were received, can in no way prejudice any underlying claims. The United States cannot add to the legal rights Japan possessed before it transferred administration of the islands to us, nor can the United States, by giving back what it received, diminish the rights of other claimants. 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 (U.S. Congress, 1971, p. 91).

Successive U.S. administrations have restated this position of neutrality regarding the claims, particularly during periods of high tensions, as in 1996 and 2010, when the U.S. State Secretary Hillary Clinton stated that "We have certainly encouraged both Japan and China to seek peaceful resolution of any disagreements that they have in this area or others. It is in all of our interest for China and Japan to have stable, peaceful relations. And we have recommended to both that the United States is more than willing to host a trilateral, where we would bring Japan and China and their foreign ministers together to discuss a range of issues" (Clinton, 2010). The 2012 crisis did not change the U.S. posture in its call for a peaceful resolution of the dispute (Manyin, 2012). More recently however, the U.S. posture has been revised, avoiding the option of trilateral talks and warning China against any use of force, but reaffirming at the same time Washington's will to support a peaceful resolution. The Foreign Affairs Committee of the Senate unanimously supported an amendment in November 2012 that "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" (U.S. Senate, 2012). A more recent resolution also mentions "dangerous and destabilizing incidents," including the alleged focusing of a weapons-targeting radar from a Chinese vessel on a Japanese warship. Sending an explicit message to Beijing and warning against any unilateral action, it also states that the U.S. government accepts and acknowledges that the Senkakus are under the administration of Japan and that any move to threaten that will be opposed by the U.S. military, under the Treaty of Mutual Cooperation and Security. But the resolution also urges all parties concerned to "exercise self-restraint" because the U.S. has a "a national interest in freedom of navigation and overflight in the Asia-Pacific maritime domains."

The interesting aspect in Washington's call for negotiation is, besides the revi-

sion and the fact that the U.S. wants to avoid an escalation between China and Japan at any cost, that it favors an agreement that potentially fits with Taiwan's official approach of the dispute. This implicit support to the ROC initiative, if it does not suggest any particular role for the ROC, highlights the difficulties Tokyo and Beijing meet in order to implement a dialogue.

Taipei's position regarding the oil reserves favors a pragmatic approach reflected in Ma Ying-jeou's plan, and shared by the majority of political leaders and the public opinion in Taiwan. The ROC also understands that although improbable, a multilateral approach is the best official posture, in order to both boost Taiwan's image and keep all bilateral options on the table. The balance between a tough posture that reaffirms Taiwan's claim and a plan aimed at taking benefits from the dispute is the consequence of this understanding, and can therefore be seen as an opportunity.

Ma Ying-jeou's Plan and Its Implications for Taiwan's Regional Diplomacy

Ma Ying-jeou is very familiar with the territorial dispute. He participated in the Diaoyutai movement in 1970, when he was only about twenty years old, and his interest in the islands grew as he wrote his doctoral thesis specifically on the topic (Ma, 1984). Therefore, with no surprise, it became very clear that Ma himself runs Taiwan's Diaoyutai policy after a September 2012 visit to the Ministry of Foreign Affairs in Taipei (Jacobs, 2013).

One of the primary arguments that Ma made regarding the Treaty of Taipei signed by Japan and the ROC in 1952 and ownership of the islands is Article 4 of the treaty: "It is recognized that all treaties, conventions and agreements concluded before December 9, 1941, between China and Japan have become null and void as a consequence of the war."

However, there are several issues regarding this specific article of the treaty that the ROC president cannot ignore:

- First, the ROC argues that by becoming a signatory to this treaty, Japan agreed to nullify prior treaties between the two parties. However, the ability to abrogate prior treaties that have been acknowledged previously by both parties does not fall under accepted international law, although the ROC argument is considered by some scholars relevant from the perspective of pure theory of law (Liang, 2013);
- Second, the treaty does not specify any transfer of the Senkaku islands to another sovereign state;

- Third, following the same practice of abrogating treaties, the Japanese government did as much with the Treaty of Taipei in 1972, following its diplomatic switch in recognition from the ROC to PRC;
- Last, the ROC and the PRC believe that the Diaoyutai islands were ceded to Japan in 1895 under the Treaty of Shimonoseki.³ However, the islands were not specified in the treaty, and Japan claimed the islands in 1885 under the notion of terra nullius, or unclaimed territory.

Furthermore, Ma Ying-jeou cannot deny the previous ROC acceptance of Japan's sovereignty over the islands. As the Japanese Unryu Suganuma recalls, "the first volume of *Shijie Dituji* (*The World Atlas*), published by the Taiwan Defense Ministry and the Institute of Physical Geology in 1965, records the Diaoyu Islands with Japanese names: Gyochojima (Diaoyu Islands), Taishojima (Chiwei Island), and Senkaku Gunto. In addition, a high school textbook in Taiwan uses the Japanese name to identify the Diaoyu Islands" (Suganuma, 2000, p. 126). These books were modified in the late 1970s, but they suggest an approach of the dispute that cannot match Beijing's arguments and tactic. Ma Ying-jeou is aware of these books published under the leadership of the KMT, his own party, and must therefore focus on other arguments since he cannot remain silent, and consider a diplomatic approach instead of territorial claims comparable to the ones stressed by the PRC.

The Taiwanese president is also in a particular position. Strongly advocating a spectacular engagement of a closer economic and trade partnership with Beijing, at a level unseen since 1949, he has also maintained extremely close relations with Tokyo. In order to reaffirm the ROC position regarding the disputed islands, he used this position halfway between Japan and China. Ma Ying-jeou proposed the East China Sea Peace Initiative on August 5, 2012, based on the principle of "safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint exploration and development." He called upon all parties concerned to demonstrate restraint and avoid escalating confrontational acts, to shelve controversies and not abandon dialogue, to respect international law and deal with disputes through peaceful means, to seek consensus and draft a East China Sea Code of Conduct, and to establish a mechanism for cooperation on exploring and developing resources in the East China Sea based on the hereafter guidelines officially presented by Taiwan's Ministry of Foreign Affairs:

3 This treaty is declared invalid by both the ROC and PRC.

I. Implementation

The East China Sea Peace Initiative is to be implemented in two stages:

1. Peaceful dialogue and mutually reciprocal negotiation

This stage involves promoting the idea of resolving the East China Sea dispute through peaceful means, and establishing channels for Track I and Track II dialogue and encouraging all parties concerned to address key East China Sea issues via bilateral or multilateral negotiation mechanisms in order to bolster mutual trust and collective benefit.

2. Sharing resources and cooperative development

This stage involves institutionalizing all forms of dialogue and negotiation and encouraging all parties concerned to implement substantive cooperative projects and establish mechanisms for joint exploration and development of resources that form a network of peace and cooperation in the East China Sea area.

II. Key issues

1. Fishing industry

Convening bilateral and multilateral fishing industry meetings and other forms of fishing industry cooperation and exchange, and establishing a mechanism for fishing industry cooperation and administration.

2. Mining industry

Promoting joint exploration in the territorial waters to the north of Taiwan and establishing a mechanism for joint exploration, development and management.

3. Marine science research and maritime environmental protection

Conducting multi-national marine and ecological research projects pertaining to the East China Sea.

4. Maritime security and unconventional security

Implementing bilateral and multilateral law enforcement exchanges and marine rescue agency cooperation, and establishing a collaborative marine security and crime-enforcement mechanism.

5. East China Sea Code of Conduct

Implementing mechanisms for Track I and Track II dialogue and negotiating mechanisms for resolving disputes through peaceful means that will bolster mutual trust and encourage all parties concerned to sign the East China Sea Code of Conduct.

III. Implementation Objectives

In its role as a facilitator of peace in the international community, the govern-

ment of the ROC (Taiwan) has proposed the East China Sea Peace Initiative and its implementation guidelines in the sincere hope that all parties concerned replace confrontation with negotiation, and set aside their controversies by means of temporary measures, so as to maintain peace and stability in the region. Over the long run, we can move from three parallel tracks of bilateral dialogue (between Taiwan and Japan, Taiwan and the Chinese mainland, and Japan and the mainland) to one track of trilateral negotiations and realize peace and cooperation in the East China Sea (MOFA, 2012).

If implemented, the East China Sea Peace Initiative and its five points would put Taiwan at the same level as China and Japan in joint management of East China Sea resources and eventually as a partner in a trilateral Code of Conduct. The main challenge is quite clear: Taiwan will find it difficult to draw attention to the initiative, as China considers Taiwan to be a renegade province and Japan does not maintain official relations with the ROC. This obstacle can be managed on bilateral levels, however, on a multilateral level Taiwan's efforts encounter stiff resistance from China. From Beijing's perspective, there is a significant lack of incentive to give Taiwan the status of an independent—or autonomous—party in a multilateral agreement.

For these reasons, it is hard to believe that both Beijing and Tokyo can accept the terms proposed by Ma, and a multilateral is simply unlikely—if not impossible—to be reached. This posture may therefore be evaluated in its capacity to improve bilateral talks, but also—and perhaps more importantly—at the domestic level. Ma Ying-jeou must acknowledge existing divergences regarding the way the Taiwanese look at the dispute. Recently, a group of scholars at Academia Sinica, using official ROC maps, have demonstrated that the Chiang Kai-shek government did not claim the islands until 1971 (Yap, Chen, & Huang, 2012, pp. 90-105), and met with the arguments generally developed in Japan. Thus, the government's efforts to demonstrate that the Diaoyutai/Senkaku islands belong to the ROC suffer from huge political flaws as well as scientific opposition in Taiwan (Jacobs, 2013).

At the same time, the question of Taiwan's diplomatic margin has been exposed by various critics. Professor Lin Ting-hui from the Department of Maritime Police of the Central Police University notes that "only when the strength of China surpasses that of the United States will the government of Taiwan think about cooperation with the mainland" (Hui, 2012). Meanwhile, Taiwan should not rely too much on a hypothetical and obviously calculated support from Beijing. Other scholars such as Professor Wang Kao-cheng, from Tamkang University, believe that "Taipei may do well to side itself with Beijing verbally, as both sides consider the islands part of a greater historical and political China that includes both Taiwan and

the mainland. But it is still unwise for Taiwan to cooperate with China since support from the United States and Japan is crucial to the island" (Hui, 2012).

At the political level, the Democratic Progressive Party (DPP, the main opposition party) meets with Ma's claim and argues that the islands are a natural extension of Taiwan's part of the continental shelf and thus belong to Taiwan under current international law. Both major parties compete for support among Taiwanese fishermen and cannot ignore their voices asking for freedom of fishing in adjacent waters. However, the fishermen do not show much interest in the sovereignty issue as long as there is an arrangement allowing them to freely fish in the area. Ownership of the islands is therefore as good as reaching an agreement with Japan that is practically acceptable for both Tokyo and Taipei. Nor is anti-Japanese rhetoric particularly appealing among the majority of Taiwanese, whether they support the KMT or the DPP. In fact, the anti-Chinese rhetoric appears to be usually much more popular in Taiwan, while the relations with Japan, as well as the attraction of Japan, do not seem to have been affected by this crisis. The recent deal between Taipei and Tokyo confirms this reality and the fact that Taiwan does not want to jeopardize its relation with Japan over the Diaoyutai dispute, which also indicates that its claim is not a priority.

Therefore, "it would be misleading to disconnect the debate in Taiwan from local interests which care little about the question of sovereignty over the islands. Ma may personally want to see Taipei cooperate more closely with Beijing but he must be also aware of public opinion, which is not supportive of such a prospect and does not embrace inflammatory anti-Japanese rhetoric" (Thim, 2013). In other words, one may not compare the debates within the democratic society of Taiwan and the official position in Beijing. Re-elected for a second term in January 2012, Ma Ying-jeou suffers from an important unpopularity. Although Ma, considering the two term limit in Taiwan, won't be able to take part in the next presidential election scheduled in 2016, the government faces important challenges and tries to improve its popular support.

At the international level, the crisis offers Taiwan a double opportunity. First, as Ma's plan explicitly states, the fishing industry is the main priority for Taiwan, which means that the ROC gives more importance to the waters surrounding the islands than the islands itself. Second, considering the difficulties for the ROC to define a coherent and active diplomacy, at the international level but also at the regional level, this tension between Tokyo and Beijing puts Taiwan in a particular position. These two different levels of opportunities converge in the potential gains the ROC can get from the crisis.

These gains are focusing on the fishing rights, which are the only thing the Taiwanese population really cares about in the Diaoyutai case, considering the prox-

imity with Taiwan's shore. It is also one of the four principles of the ROC regarding the claims over the islands. It is therefore not totally surprising that Japan and Taiwan concluded a fisheries agreement in Taipei on April 10, 2013, after officials from both sides formally resumed negotiations for the first time in four years. The deal allows Taiwanese trawlers to operate in part of Japan's exclusive economic zone near the disputed islands. Under the deal, Japan and Taiwan designate an area in Japan's EEZ as jointly managed waters where fishing by both Japanese and Taiwanese boats will be allowed. The agreement contains these points:

- intervention-free fishing zone for Taiwanese fishing boats in waters between 27° north latitude and the Sakishima islands, Okinawa Prefecture;
- Taiwan is given an additional fishing zone of 4,800 square km outside Taiwan's temporary enforcement line;
- fishermen from both countries can operate in a large area within the designated zone without being subject to the jurisdiction of the other side;
- smaller area of the zone, where Japanese fishing vessels frequently operate, is under joint management by the two governments;
- provisions under the agreement do not apply to waters within 12 nautical miles (i.e. territorial waters) surrounding the Senkaku/Diaoyutai islands;
- Article 4 of the agreement states that agreed conditions have no effect on each side's sovereignty claims over the islands.

The last point is particularly important, as it does not affect both sides official posture. It is therefore a "face saving" formula that was probably implemented at Taipei's request, and will at the same time reduce Taiwan's claims. This deal finally confirms the ROC pragmatism in the crisis considering its lack of diplomatic power to claim sovereign rights to the islands, establishes a clear separation with Beijing's claims, and preserves the Tokyo-Taipei partnership. One may therefore consider this deal a victory for the Taiwanese diplomacy, which managed at the same time to reaffirm the ROC sovereignty, and thus its political identity, to unite its often divided population, to send a positive signal to Beijing, and to keep its extremely important close relation with Japan. Considering the difficulties, if not the impossibility, to implement a multilateral dialogue, Taipei favored a bilateral approach and came to an acceptable agreement with Tokyo.

Beijing's Strategic Calculation

Taiwan's diplomatic margin remains however extremely limited considering the

particular status of the island, its lack of international recognition, and of course the difficult relationship with Beijing. For instance, because China bars Taiwan from international treaties, the ROC cannot ratify the UNCLOS. Like most of the other treaties, Taipei follows the convention's principles anyway, but this situation is a reminder of the particular position in which the ROC remains when it comes to addressing a diplomacy based on the respect of treaties, agreements and conventions, and thus multilateral mechanisms.

While some observers have stated that any form of joint-cooperation between the PRC and Taiwan regarding the dispute could be seen as a single joint claim, the Ma government has looked to distance itself from such a perception. Taiwan's Minister of Foreign Affairs spokesperson, Steve Hsia stated for instance that due to the PRC's derecognition of the Sino-Japanese Treaty, "there is no basis for cross-strait cooperation."

The Ma government has repeatedly stated that its claims to the Diaoyutai are not the same as those of China. Yet, many of the arguments are similar, and based on the same references. The Ma government also claims that it desires peace around the islands, yet when some hotheads from Taiwan tried to go to the Diaoyutai/Senkaku Islands on a fishing boat with a statue of Matsu on January 24, 2013, the government escorted the boat with four Coast Guard ships. The Coast Guard escort made government claims that "the voyage was a voluntary action by private citizens" look silly (Jacobs, 2013).

In order to understand how similar are the arguments defended by Beijing and Taipei, one may compare the statement by the Ministry of Foreign Affairs of the ROC of June 12, 1971, declaring that "the islets are affiliated with the Province of Taiwan and constitute a part of the territory of the Republic of China," and the statement of the Ministry of Foreign Affairs of the PRC of December 30, 1971, declaring that the islands are "islands appertaining to Taiwan. Like Taiwan, they have been an inalienable part of Chinese territory since ancient times.... The Chinese people are determined to liberate Taiwan! The Chinese people are determined to recover the Diaoyu and other islands appertaining to Taiwan!" In other words, Taipei claims that the islands belong to Taiwan, and Beijing stays on its position that Taiwan belongs to the PRC.

In 2003 China and Taiwan asserted their claims to the islands with increased media coverage and protest actions, although the then ROC President, Chen Shui-bian, was a pro-independence leader and Beijing's enemy, which tends to indicate that the ROC and the PRC's convergence on the islands goes beyond traditional political disputes. On June 22, 2003, a group of protestors from China and Hong Kong attempted to land on the Senkaku Islands using a small fishing vessel. The vessel did not reach the islands themselves and nobody got onshore. However, it

did according to Tokyo violate Japanese territorial waters. Therefore, the Japanese Coast Guard took appropriate action to send them out of Japanese territorial waters.

On August 10, 2005 President Chen Shui-bian reiterated Taiwan's sovereignty claim over the islands, and was the first ROC President to visit Pengjia islets, Taiwan's northernmost territory. Chen was accompanied by both the Minister of National Defense Lee Jye and the chief of the Coast Guard Administration Hsu Hui-yu. On top of this political maneuver, Taiwan fishermen held a large-scale demonstration in July 2005 to protest what they called unfair treatment at the hands of the Japanese coast guard.

On top of convergent official posture, private Chinese and Taiwanese organizations have made repeated attempts to land on the islands and clashed with the Japanese Coast Guard (Mainichi Daily News, 2006). It is well known that appeals to sovereignty and territorial integrity have "intense symbolic value" in China and Japan (Downs & Saunders, 1998, p. 114). But it also does in Taiwan, particularly considering the possibility to mobilize the public opinion in order to protect the territorial sovereignty, mostly against Beijing's claims. The Taiwanese aware however that "nationalism and political legitimacy have been and will continue to be closely linked in China" (Downs & Saunders, 1998, p. 114). One may however, as mentioned above, establish a clear distinction between demonstrations aimed at reaffirming the territorial sovereignty in Taiwan and nationalist protests orchestrated by the Communist Party in China.

Although important, this difference does not mean that unlike the Chinese, the Taiwanese may not be tempted by a nationalist rhetoric. The shooting on May 9, 2013, of a 65-year-old Taiwanese fisherman by a Philippine coastguard provoked a deep crisis between the two countries and revived a strong feeling of nationalism in Taiwan that benefited from the support of both major political parties. China saw this new crisis as an opportunity to reaffirm its support for Taiwan. The Chinese Foreign Minister was quick to condemn what he called a "barbaric act." The *Global Times* dutifully recalled that Taiwan is in China's eyes a province-in-waiting, deserving of its protection. The paper quoted Zhuang Guotu of Xiamen University, in Fujian Province: "China has reiterated over time that Taiwan is an integral part of China. Now is a good opportunity to show that China will not tolerate the shooting of our fishermen, whether they are from the mainland or Taiwan, and that our government is determined to protect the life of its people" (Long, 2013). For the first time, the Chinese Communist Party, the KMT and the DPP have simultaneously shared a common approach on an important diplomatic issue. But they do certainly not share the same objectives, as the fishing agreement between Taipei and Tokyo clearly shows. This new crisis indicates that Taiwan and China usually agree on

territorial disputes, and thus seems to reinforce the idea of “One China”, notably as Beijing makes its support for Taipei public, and loud. But at the same time, one cannot be mistaken about the very different interests both parties defend, both in the case of the crisis with the Philippines and in the dispute with Japan. Although Beijing attempts to reaffirm its position by “taking the defense” of Taiwan, it therefore confirms the idea of a “One China, several interests,” not only at the domestic, but also at the diplomatic level.

Conclusion

Besides the notorious rivalry between China and Japan, the Senkaku/Diaoyu/Diaoyutai maritime and territorial dispute reveals the importance of Taiwan's regional diplomacy, its complex definition in order to establish a difference with China's claims, and the opportunities that may result from an active engagement toward a bilateral dialogue. In this prospect, the Ma government's response to the current crisis and the negotiations between Taipei and Tokyo offer an interesting example of how the Taiwanese diplomacy uses the ROC particular status in order to serve clear objectives.

The balance between a nationalist rhetoric and a pragmatic approach of the dispute, which significantly contrasts with the attitude observed in Beijing and Tokyo, is also a characteristic of the ROC management of the dispute and the support of the Taiwanese public opinion. Its relative success, considering the fishing agreement signed with Japan and at the same time the reaffirmation of the territorial claim based on the four principles, and in accordance with Beijing's claims, may be the prelude to a new, proactive ROC diplomacy with significant gains.

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