

***SOVEREIGNTY AND THE SENKAKU/DIAOYU  
TERRITORIAL DISPUTE***

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## **Working Title: Sovereignty and the Senkaku/Diaoyu Territorial Dispute**

### **Abstract**

This paper examines the East China Sea territorial and maritime dispute between Japan and China, from the re-emergence of the dispute in the 1990s until the 2010 collision between the Japan Coast Guard and Chinese fishing trawler. In the absence of the use of force, the paper provides an understanding of how both states seek to improve their position in the dispute. Utilising a constructivist understanding of sovereignty, the paper shows how both sides have sought to maintain or improve their position in the dispute's sovereignty status quo by effecting exercises of sovereignty over the disputed islands and associated waters, and preventing the other state from doing the same. This approach enables the paper to highlight the change in Japan's dispute policy, from a 'hands off' approach which prioritised positive bilateral relations throughout the 1990s, to a more assertive policy from the Koizumi administration onwards. It also demonstrates how China has successfully improved and consolidated its position in the dispute through a policy of preventing Japan's effective exercise of sovereignty, and provides an alternative explanation of the 2010 collision incident: a successful prosecution of a Chinese citizen in the disputed area would have considerably altered the sovereignty status quo in Japan's favour, leaving China had no choice but to react strongly to prevent it.

Keywords: Sino-Japanese relation; Senkaku Islands; Diaoyu Islands; Japan's foreign policy; Territorial Disputes

JEL Codes: F59; N45

## Introduction

The territorial dispute over a remote uninhabited island group in the East China Sea has become a major issue in Sino-Japanese relations over the past twenty years. The island chain, known as the Senkaku Shotō in Japanese and Diaoyutai in Chinese, consists of a number of tiny islands and rocks of little economic or historical significance in and of themselves. However, the waters around the islands are rich fishing grounds and are believed to contain large seabed deposits of oil and gas. Indeed, the territorial dispute has become inextricably linked to the broader maritime dispute between Japan and China over fishing and mineral rights to a large swathe of the East China Sea (Drifte 2008). Apart from the economic value of the islands' waters and the wider East China Sea itself, the islands themselves have become intertwined with nationalism: to Chinese nationalists they symbolise Japanese aggression during its imperial expansion while Japanese nationalists link China's claims to the idea of the 'China threat', exemplified in its most extreme form as the idea that Chinese seizure of the islands would be the first step (*dai ippo*) in the invasion of Okinawa and ultimately perhaps the mainland of Japan itself. Thus, the contemporary dispute has been increasing in salience since the early 1990s, plaguing Sino-Japanese relations with its regular flare-ups.

An increasing number of studies have been published on the dispute in recent years. Many of these provide valuable detailed empirical accounts of historical or contemporary events in the dispute (Hara 2007; Valencia 2007; Drifte 2008). Much – though not all – of the theoretically-informed scholarship on the dispute, and indeed International Relations scholarship on territorial disputes in general, has focused on identifying the factors which contribute to the escalation and de-escalation of conflict. The territorial conflict approach, an approach designed specifically to study territorial disputes, uses large quantitative data sets to refine hypotheses on various aspects of territorial disputes and the escalation or de-escalation of conflict (Huth 1996, 2000; Hensel 2000; Senese and Vasquez 2003). Such scholarship seeks to provide deductive, law-like statements on the broad phenomena of

territorial disputes as a whole, e.g. ‘interstate wars are 13 times more likely over territories with intangible salience characteristics [symbolic value]’ (Hensel and Mitchell 2011: 3). Specific studies of the dispute apply theories such as economic interdependency (Koo 2009) or geopolitics (Emmers 2010) to conflict escalation/de-escalation. Yet, despite its unquestionably fractious nature, the dispute has not yet witnessed military conflict of any kind. Moreover, since the end of World War II, and especially since the end of the Cold War, the use of force for the purpose of gaining territory has been largely unsuccessful and deemed internationally illegitimate (Zacher 2001). Japan enjoys – albeit circumscribed – effective control over the islands, which China could only overturn with the use of force. The US-Japan Security Treaty acts as a powerful deterrent against such use of force and so armed conflict remains unlikely in the foreseeable future (Fravel 2010).

Therefore the escalation/de-escalation dichotomy leaves us bereft of an understanding of the dynamics of the dispute itself. If neither side has or is likely to use force to seize the islands, or in Japan’s case to reinforce its control over them, what are the states involved doing in the dispute? How can we understand their actions, which initially may appear petty or irrelevant? How do the two seek to improve their position in the dispute? In order to answer these questions, this article adopts a constructivist approach, formulating a novel conceptual framework – the sovereignty game – to provide an analysis of the territorial dispute since its re-emergence in 1990. The logic of the sovereignty game is based upon the premise that the primary goal of a state is to gain or maintain sovereignty over the disputed territory. This is achieved through the direct exercise of sovereignty over the disputed territory and international recognition of this sovereignty, and by preventing the other state from doing the same. Just as under contemporary international law states must undertake legal protest to another state’s exercise of sovereignty to protect their legal claim, thus preventing legal acquiescence, so too in the sovereignty game must a state make an effective political protest against another state’s exercise of sovereignty to protect their own political claim – thus preventing political acquiescence and a change in the sovereignty status quo.

This framework enables the article to provide a new and illuminating way to understand how the dispute has unfolded since its re-emergence in 1990. The article elucidates the transition in Japanese policy. It starts with Japan's maintenance of a 'hands off' approach throughout the 1990s, which prioritised positive bilateral relations, enabling China to assert its sovereignty claims and improve its sovereignty position. However, from the administration of Koizumi Junichirō on, there was a shift in the dynamics of the sovereignty game: Japan attempted a number of exercises of sovereignty, in some cases over-turning existing precedents and in other cases backing down and reinforcing the status quo. The article proceeds thusly: the next section explains the theoretical underpinning of the sovereignty game framework and provides a detailed outline of the game's mechanics. After this the background of the dispute is briefly sketched, followed by the application of the framework to the dispute itself. Due to the inter-related nature of the maritime and territorial disputes, this article combines the two when referring to the 'dispute'. The penultimate section compares the sovereignty game analysis with other non-conflict focused studies which also seek to answer the above questions. This format, rather than a conventional literature review at the beginning, allows for a more comprehensive comparison of the analysis in this paper with competing explanations. The paper concludes by considering the implications of the analysis, in terms of the dispute itself and the broader applicability of the framework.

## **Dispute Background**

Historically insignificant and uninhabited rocky outcrops in the East China Sea, the Senkaku/Diaoyu Islands became a major flashpoint between Japan and China due initially to their economic and later their symbolic value. The symbolic value to China derives from the manner in which Japan initially acquired sovereignty over the islands in 1895 during the First Sino-Japanese War; China insists that they were then a part of Taiwan and that Japan relinquished sovereignty over them along with Taiwan in the aftermath of World War II. However, neither China nor Taiwan protested Japan's administration of the islands until after the discovery of hydrocarbon deposits – initially believed to include large amounts of oil – in 1968 (Austin 1998). The re-emergence of the dispute coincides too with the

Okinawa Reversion in 1972, under the terms of which the US handed back administrative rights to Okinawa prefecture, including the disputed islands. The US then as now takes no position on the sovereignty status of the islands, though as Japan maintains administrative control, they are considered subject to the US-Japan Security Treaty. Japan and China normalised relations in 1972, while the dispute caused friction in the subsequent peace treaty negotiations, it was eventually shelved allowing for the signing of the 1978 peace treaty (Tretiak 1978). The dispute awoke from its dormant state in 1990, and since then has gradually moved from the periphery to the centre of Sino-Japanese relations. These subsequent developments have caused the islands' symbolic value to increase not only in China, but also in Japan, especially in recent years.

The United Nations Convention on the Law of Sea (UNCLOS) in 1982 developed and codified existing customary (and treaty) international law on state control over adjacent seas and the seabed (United Nations 1981). The convention provides for several zones: territorial waters up to 12 nautical miles (nm) from the coast and over which the state enjoys full sovereignty; the exclusive economic zone (EEZ), up to 200nm from the coast, and giving the state sovereign rights to resources in the water column and the seabed; and finally a continental shelf, where it exists, over which states have rights over the seabed up to 350nm from the coast. Furthermore, under UNCLOS islands, even small and remote ones, have the potential to generate these zones. China and Japan use different legal principles to derive their overlapping maritime claims in the East China Sea, and the islands themselves lie in this disputed zone, on China's claimed continental shelf as well as comprising part of the coastline which Japan uses to derive its EEZ claim (Valencia 2007). Thus the island and maritime territorial dispute are inseparable, and the net effect of UNCLOS has been to increase their value and enlarge the area in which the sovereignty game is played to include the islands' waters, and inextricably link the maritime and territorial dispute, extending from the islands' territorial seas to include the whole disputed zone of the East China Sea.

## The Sovereignty Game

The sovereignty game framework is based on Alexander Wendt's (1992) conception of sovereignty as a social construction. He asserts that the modern concept of sovereignty is a socially constructed institution providing the 'social basis for the individuality and security of states' (1992: 412). In a Hobbesian world without sovereignty, the existence of the state 'does not have any basis in social recognition'; there is no understanding that 'a state has a right to its existence, territory and subjects' (Wendt 1992: 412). As Wendt asks, 'what keeps the United States from conquering the Bahamas, or Nigeria from seizing Togo, or Australia from occupying Vanuatu?' (1992: 415). The answer comes down to the fundamental mutual recognition of these countries as sovereign states; sovereignty requires that states recognise each other's authority within given territorial boundaries. Of course, states *do* violate other states' sovereignty: they spy, intervene, foment and undertake other activities which work to undermine a state's exclusive sovereignty. But rarely do they undermine the concept of sovereignty *per se*: the fate of Hitler's Germany and Napoleon's France demonstrate what happens to states which reject the (formal) equality of sovereign states in favour of universalism. States today may have quarrels with their neighbours over territory, ethnic issues, and so on, but even when these quarrels turn violent, 'they are played out within the terms of the sovereignty game' (Wendt, 1992: 415).<sup>1</sup>

So how is sovereignty constructed in international relations? Although comprehensively defining sovereignty is a perhaps impossible task given its dynamic and elusive nature, Janice Thomson gives us a working definition from which we can build the sovereignty game: 'sovereignty is the recognition by internal and external actors that the state has the exclusive authority to intervene coercively in activities within its territory' (1995: 219). Recognition provides legitimacy, and legitimacy means that other states will act to confirm the actions of the sovereign state over its recognised sovereign territory. But, as Thomson herself admits, this is a problematic aspect of sovereignty; on the one hand,

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<sup>1</sup> Wendt's use of the "sovereignty game" is far broader than the one presented here. However, ultimately his conception operates under the same basic assumption as the current one: that states respect one another's sovereignty since violation of the principle of sovereignty is a threat to all states.

sovereignty is derived from the recognition of other states; but, on the other hand, states can exercise sovereignty without the recognition of other states. She uses the example of the control the Soviet Union enjoyed over the Baltic for the best part of fifty years: the lack of recognition had no effect in practice as the USSR 'had the physical capacity to make good on its claims to sovereignty despite other states' refusal to recognise it' (1995: 220).<sup>2</sup> Inis Claude (1966: 367) recognises this important point, suggesting how legitimacy requires that 'power be converted into authority ... and possession be validated as ownership'. Thus, sovereignty has two aspects: recognition – which provides legitimacy – and authority.<sup>3</sup> In terms of territorial disputes, these two aspects are crucial. Authority is the ability to actually exercise sovereignty over the territory, or to prevent another state from doing so. Recognition and authority are two key aspects of how sovereignty comes into existence; the final requirement for sovereignty is territoriality. As Thomson puts it, 'with sovereignty, states mutually recognise exclusive authority over what is contained in that [bordered] space' (1995: 227). The concepts of authority and recognition which underpin the modern notion of sovereignty are also the fundamental building blocks of the sovereignty game framework – in a territorial dispute, territoriality quintessential.

Gaining international recognition of a sovereignty claim over a territory is then an important part of the sovereignty game – without it sovereignty over a given territory remains incomplete. The implications of the lack of recognition can be difficult to ascertain and are context dependent. In some cases, it can result in military intervention (Kuwait), or boycotts (Israel), or, in others, states – and private organisations – simply take no sovereignty position and avoid any actions which could imply recognition of the sovereignty of any state. This lack of recognition can cause problems for the state exercising authority; those states which do not take a position on sovereignty – or private enterprises from those

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<sup>2</sup> However, in the long-term the USSR lost sovereignty over this territory, no doubt in part due to the lack of international recognition. In contrast, the Soviet Union's occupation of Königsberg was legitimised, and remains today the undisputed Russian oblast of Kaliningrad.

<sup>3</sup> The example of the USSR above illustrates authority without recognition, but perhaps more common in contemporary international relations is recognition without authority. There exist a number of so-called 'failed states' which, while internationally recognised as the sovereign authority in their own territory, lack the ability to exercise this sovereignty.

states – may be hesitant to cooperate with the state in actions which could be seen as recognition of sovereignty, including economic activities related to the territory. In the final analysis, all sovereign states recognise the fundamental value of sovereignty, their own sovereign existence as states, and their territorial sovereignty. The lack of international recognition makes that sovereignty incomplete, and so even if the immediate material costs of that incomplete sovereignty are not apparent, this does not diminish the state’s desire for complete sovereignty – international recognition by those states that matter – over all of its claimed sovereign territory.

However, enjoying international recognition of a sovereignty claim does not actually mean that the state enjoys full sovereignty over the disputed territory. Indeed, if the territory has been occupied by another state for a long period of time, other states may even gradually come to accept the *fait accompli* of the occupation, even if originally the occupation was unrecognised. This takes us to the other cornerstone of the sovereignty game: authority. The ability to exercise authority over a disputed territory is basically the ability to exercise sovereignty over it. The exercise of sovereignty forms the basis of the legal principle of effective control, exactly which – in the absence of an authoritative treaty – is also the determinative principle in the jurisprudence of international law of territorial disputes (Sumner 2004). Moreover, in the absence of arbitration, exercising authority is exercising sovereignty: it is in effect controlling the territory, even if the sovereignty remains legally incomplete. Thus, a crucial part of the sovereignty game is the ability to exercise sovereignty over the disputed territory, as well as the corollary of this: the ability to prevent others from exercising sovereignty. But before going further into the ways in which states instrumentalize the exercises of sovereignty – and their prevention – to further their position in the sovereignty game, an understanding of what constitutes an exercise of sovereignty is required.

The exercises of sovereignty at the heart of this study are specifically those which relate to disputed island territories, inclusive of their surrounding waters. They include any

state actions which refer to the disputed territory, and can, depending on the context, be realised not only by the state in the traditional sense (that is to say, not only by the central government), but also by sub-state actors, which can include citizens, private groups and subnational governments – though obviously not all exercises of sovereignty carry the same weight. Basically, an exercise of sovereignty in the sovereignty game takes place when both sides recognise it as such, and a simple test as to whether a state or other body's action is an exercise of sovereignty or not is whether the other state lodges a protest in response. Although paradoxical, in the sovereignty game, even if a state protests, it can in fact acquiesce; a protest is successful only if it prevents an exercise of sovereignty, or forces its rescission.

To clarify and develop this further, when a state attempts to exercise sovereignty over a territory, the first question which must be answered is whether the exercise of sovereignty is a break in precedent, or is in keeping with the status quo of the sovereignty in the dispute. If the exercise of sovereignty falls within the existing status quo then this does not affect the sovereignty status and thus there is no requirement for any major protest (unless the other state wishes to use this opportunity to alter or reverse the status quo, see below). If the exercise of sovereignty is unprecedented in the dispute – i.e. if the exercise does not fall within but instead alters the status quo – then the other state has two choices: protest or acquiesce. Protest in this instance is not legal protest, though it may include it – as explained, acquiescence can take place despite the state lodging a formal legal protest. Rather, a successful protest in the sovereignty game requires protest sufficient to cause the state attempting to exercise sovereignty to rescind its actions. This protest involves the use of its economic or political – or in extreme cases military – capital (see below). If the protest is not sufficient to prevent the exercise of sovereignty, the protesting state has acquiesced. This acquiescence creates a precedent, and once the precedent has been made it can become routinized, making it difficult to reverse – more difficult than it would have been to protest and prevent the initial exercise of sovereignty itself.

The final two aspects of the sovereignty game are the resources which the state has at its disposal to play the sovereignty game and the value of the territory to the state. The

former is referred to in this article as capital, of which there are three kinds: (a) economic, e.g. the provision or withholding of economic aid; (b) political, e.g. the withdrawal of ambassadors or the cancellation of bilateral ties; and (c) military, which can involve the threat or use of force or balancing through alliances or the development of capabilities. The latter is the value of the disputed territory, which determines the length to which states are willing to use their capital in the dispute. This article focuses on two types of value – symbolic and economic. Symbolic value refers to the importance of the territory in terms of nationalism and national identity while economic value refers to the physical value of the territory as well as the surrounding maritime zones (e.g. EEZ) associated with the territory.

### **The dispute: 1990-2010**

#### ***Re-emergence in 1990***

The re-emergence of the dispute began in 1990 when Taiwanese media announced that the Japan Coast Guard (JCG) had received an application for formal recognition of a lighthouse, constructed by a Japanese right-wing group, as an official beacon. China lodged a diplomatic protest but enforced a media blackout on the story while in Taiwan there were protests, diplomatic and civilian, as well as attempts by activists to land on the islands (*Asahi Shimbun* 22/10/1990, 23/10/1990). Since 1988 the Ministry of Foreign Affairs (MOFA) had been instructing the JCG to indefinitely defer applications for recognition of the lighthouse, and while the 1990 incident was the first time the issue was made public, it saw the same response - deferral (Shibuichi 2006). Two years later China promulgated the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, Article 2 of which states that 'the land territory of the People's Republic of China includes the mainland of the People's Republic of China and its coastal islands; Taiwan and all islands appertaining thereto including the Diaoyu Islands' (United Nations, 1992). Diplomatic protests were made via the Chinese embassy and Japanese Prime Minister Miyazawa Kiichi told the press that the islands were Japanese territory and he "could not accept" the new law (*Yomiuri Shimbun* 28/02/1992). There were calls from within the ruling Liberal Democratic Party (LDP) for a resolute stance in the dispute and subsequent unsuccessful attempts by LDP Diet members to use the issue to obstruct the scheduled historic visit of Emperor Akihito to

China in autumn of the same year (*Asahi Shimbun* 07/03/1992, 18/07/1992). Yet ultimately the Miyazawa administration failed to prevent or rescind China's 1992 Territorial Law. At a subsequent meeting with the General Secretary of the Chinese Communist Party (CCP) Jiang Zemin, Miyazawa was assured that the law did not reflect a policy shift and that China was keeping to its shelving policy (*Asahi Shimbun* 07/04/1992). Although Miyazawa accepted this, shortly after MOFA denied such an understanding, thus moving Japan's policy from 'shelving' to the current 'no dispute exists' line (Drifte 2008).

In the early 1990s, Japan was in strong position in the sovereignty game. Apart from continuous peaceful administration of the islands it also enjoyed considerable economic and political capital: post-Tiananmen Square China was a pariah state in the West, dependent upon Japan not only for trade but also for international loans and development aid. Yet in both 1990 and 1992 Japan acquiesced in the dispute, allowing for the creation of an unfavourable status quo. The 1990 lighthouse recognition incident involved MOFA intervention in the JCG's internal beacon recognition process and thus established a precedent that Japan was not willing to exercise direct sovereignty over the islands if it meant damaging bilateral relations with either of its Chinese neighbours, a status quo which would remain for over a decade. Again, two years later, despite calls from within the LDP for the use of political capital – the Emperor's visit to China – the response consisted of nothing more than the Miyazawa administration asking for a repeal of the Territorial Law. This did not happen, and despite its economic and political capital Japan took no further action, therefore acquiescing in China's public proclamation of ownership of the islands, although MOFA did switch to the 'no dispute exists' line. If China had adhered to the shelving formula thereafter, as Jiang claimed, then this acquiescence would have been of little harm to Japan's position in the sovereignty game. This was not to be the case.

### ***1996 Lighthouse Recognition***

1996 saw both China and Japan ratify UNCLOS, increasing the economic potential of the islands and firmly enmeshing the territorial and maritime aspects of the dispute, thus

enlarging the arena in which the sovereignty game would be played out. While UNCLOS had long-term ramifications for the dispute, the most immediate implications emerged shortly after the ratifications themselves. Once again lighthouse recognition was the proxy cause, as, frustrated with what they perceived as the government's soft-line on the dispute, right-wing activists built another lighthouse and re-applied for recognition of the original one.<sup>4</sup> The situation heated up in August when, in response to the lighthouse issue, Taiwan and Hong Kong-based activists set sail for the islands in an attempt to land. Following interception by the JCG, four of the activists dove into the sea, with the result that one of their number, David Chan, died by drowning (*Asahi Shimbun* 26/09/1996). This further fanned the flames of the already widespread protests in Taiwan and Hong Kong, leading to a successful landing in October (Downs and Saunders 1998: 135).

In an attempt to calm the situation the Japanese Foreign Minister, Ikeda Yukihiko, told assembled foreign ministers at the UN General Assembly in New York that recognition of the lighthouse was being deferred and Prime Minister Hashimoto Ryūtarō rescinded his promise to visit the Yasukuni Shrine for the Autumn Festival (*Asahi Shimbun* 26/09/1996). Despite the massive protests in Taiwan and Hong Kong, however, China again prevented domestic unrest related to the islands. Beijing did protest in far stronger terms than on previous occasions, calling for the removal of the lighthouse and accusing Japan of encouraging the right-wing activists (*Asahi Shimbun* 17/09/1996). On 13-14 of September China undertook war games, which included blockades of and landings on a group of islands in Liaoning Province. A report on this was published by the *China Daily* newspaper on the page opposite to the Foreign Ministry's warning to Japan on the Pinnacles; according to a Western diplomat in Beijing 'the side-by-side reports were no coincidence ... a clear signal that says "you know what we think"' (Wiegand 2009: 183–4). As the dispute escalated dangerously both Japan and China sought to minimise the effects on their overall bilateral relationship, with China reiterating calls for joint development of the disputed maritime territory, and Japan, as we have seen, deferring the lighthouse recognition issue.

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<sup>4</sup> Interview (22/04/2011) with Nakama Hitoshi, Ishigaki City Councillor. Nakama has been involved in the dispute since the 1970s, and landed on the islands more times than he can remember.

The domestic perception that Japan's stance on the dispute was weak was not confined to right-wing activists – LDP and opposition Diet members too were unhappy. This led to the inclusion of the dispute in the 1996 LDP election manifesto, as well as in the personal manifesto of a successful New Frontier Party candidate (NFP), Nishimura Shingō. *Heiseikai* (an opposition Diet member grouping) Chairman Hirai Takushi accused the Hashimoto administration of being 'obsequious' in its handling of diplomatic issues with China, stating that 'Japan should say and do what it should say and do without hesitation' (*The Japan Times* 23/01/1997). Later in 1997 NFP member Nishimura himself landed on the islands, and along with current Tokyo Governor Ishihara Shintarō issued a joint statement protesting the government's weak stance. In response to China's protests at these events, Hashimoto stated that, while the islands were 'inherent Japanese territory', in terms of friendly international relations the landing could only be described as 'regrettable' (*Yomiuri Shimbun* 06/05/1997).

In the aftermath of the events of 1996 and 1997, Japan maintained control of the islands and the Hashimoto administration continued to repeat the 'no dispute exists' line, allowing for the argument that Japan's basic position in the sovereignty game remained strong. However, Ikeda himself described the deferral of the lighthouse recognition as 'effective non-recognition', and explicitly associated the deferral with the maintenance of good foreign relations (*Asahi Shimbun* 04/10/1996). This routinized the existing precedent that Japan would refrain from exercising sovereignty in deference to other states, who were in effect preventing Japan from undertaking an exercise of sovereignty which, *ceteris paribus*, it would otherwise have undertaken. Hashimoto's insistence that 'no dispute exists' rang somewhat hollow, then, as it was abundantly clear that Japan did not exercise unfettered sovereignty over the islands, and thus a dispute did exist.

Despite Japan having a preponderance of military, economic and political capital in the dispute in 1996, the decision not to exercise sovereignty over the disputed islands can

be paradoxically explained by China's use of capital. China's strong diplomatic protests, the potential political and economic fallout – to both states – of further escalation of the flare-up, as well as China's show of military strength, can all be understood as contributing to Japan's inability to exercise sovereignty. Japan's position in the sovereignty game was further called into question when, during the 1996 incident, the US ambassador to Japan Walter Mondale stated that the US-Japan Security Treaty did not include the disputed islands, and thus US forces would not be compelled to defend them. Although this was soon refuted by Assistant Defence Secretary Kurt Campbell (*Yomiuri Shimbun* 28/11/1996), the initial vacillation called into question US military support for Japan, undermining Japan's military capital (in terms of its defence capabilities), and could be construed as a lack of recognition of Japan's administrative control, let alone its sovereignty, over the islands. Thus, on various fronts, Japan's position in the sovereignty game had been weakened. This could be seen too in the statements and actions of a number of Japanese politicians who were critical of the government's 'weak' stance. China's use of capital, and Japan's restraint in employing its considerable capital, is best understood as reflections of the value of the islands in each case; for China, the islands had both economic and symbolic value in the 1990s (see below), whereas Japan was neither developing the seabed hydrocarbon resources nor had the island dispute become a major domestic issue - yet. As the dispute moved in to the 2000s, this would begin to change.

### ***Maritime Issues***

Following the ratification of UNCLOS in 1996 the territorial and maritime disputes became further intertwined. The two states have overlapping claims to the East China Sea between Okinawa and mainland China, including the waters around the disputed islands; from the late 1990s on, China began to assert its claim. Under UNCLOS Article 246, a third state must inform the coastal state before conducting marine scientific research in the coastal state's EEZ. Throughout 1998 and 1999 Chinese research vessels were operating in the disputed maritime zone and around the disputed islands. When ordered to leave by JCG ships, the research vessels either ignored the warnings or replied that they did not recognise Japanese jurisdiction. At first Japan lodged oral protests with the Chinese embassy, and after it was

clear these were having no effect, raised the level of protest, lodging formal protests directly to the Chinese Foreign Minister (*Asahi Shimbun* 20/06/1999). In Japan, the research vessel issue was linked to China's on-going development of undersea hydrocarbon deposits near the disputed maritime zone in the East China Sea (Drifte 2008). In May 1999 12 People's Liberation Army Navy (PLAN) vessels were confronted by MSDF P-3 patrol ships in the vicinity of the islands, and in July 1999 another 10 PLAN ships were spotted near the islands (Dumbaugh *et al.* 2001).

In 2000 the issue came to a head when internal LDP opposition to the apparent inaction of the government on the issue led to the Foreign Affairs Committee of the LDP suspending a package of ODA loans to China (*Asahi Shimbun* 10/08/2000). Subsequent bilateral talks led to the establishment of a prior notification system (PNS) in February 2001, under which China would notify Japan in advance of research in 'waters near Japan and in which Japan takes an interest', while Japan would notify China before research in waters 'near' China, after which the loans were reinstated (*Kyodo News* 13/02/2001). While the 1999 PNS represented a temporary victory for Japan, as China was forced to implicitly admit that the disputed waters were somehow 'more Japanese', the system had no sovereignty implications because it did not specify sovereignty, just 'interest'. Furthermore, it had two key flaws: it included only research vessels, not naval ones; and it had no effective means of implementation, no punishment for violation. Thus, within a few short years it had become defunct, and the number of research vessels spiked once more. According to a 2003 annual JCG report, the vast majority of 'suspicious maritime activity in Japan's territorial waters in 2002 took place off the disputed Senkaku Islands', with 423 vessels spotted (*The Japan Times* 13/05/2003, figure includes fishing, research and naval ships). By 2007, from a Japanese perspective, the situation had further deteriorated as Chinese vessels operated with relative impunity in the disputed waters, including in the waters around the islands. Following one particular Japanese protest over a Chinese research vessel's presence near the islands, a Chinese Foreign Ministry official stated that the PNS was irrelevant to the issue and that the islands 'are China's inherent and indisputable sovereign territory' (*Asahi Shimbun* 07/02/2007).

Thus Japan's position in the sovereignty game was being undermined both in the waters around the islands and with respect to the broader East China Sea dispute. This perception was reflected in the Japanese media, for example in warnings of China's *fait accompli* over the East China Sea oil and gas deposits (*Yomiuri Shimbun* 05/04/2004, 19/06/2004). Meanwhile, China was developing hydrocarbon deposits in its undisputed maritime zone, as well as near the disputed area. In stark contrast, Japan's 'hands off' policy on the island dispute extended to the maritime dispute too: for example, since the late 1970s Tokyo had consistently rejected applications to test drill in the East China Sea, because, in the words of an oil executive, 'it is convenient for the government not to confirm whether [such resources] exist' (*The Japan Times* 22/10/2004). In fact, while preventing its own companies from drilling, Japan had actually been indirectly funding Chinese exploration via the Asian Development Bank (Drifte 2008). Furthermore, suspicions were rife that one of the fields China was exploiting, the Chunxiao field, straddled the boundary between China's undisputed zone and the disputed maritime area, and that therefore China was siphoning off 'Japanese' gas.

By 2005 there was a clamour in both the media and among opposition and ruling party Diet members for action (Drifte 2008; Manicom 2010). The decline in influence of the MOFA's China school, which had been behind Japan's 'hands-off' approach, together with the advent of the administration of Prime Minister Koizumi, known for his hard-line approach to China-related issues, saw Tokyo grant permission to a Japanese company to drill in the disputed zone, near the Chunxiao field itself. This was a clear attempt to (re-)establish Japanese sovereignty over the disputed EEZ and elicited a serious reaction from China, resulting in a number of naval stand-offs in the area (Valencia 2007). As a statement of intent by Japan, it also contributed to the halting of extraction of hydrocarbons and led to the negotiations which culminated in the 2008 Consensus Agreement (Schofield and Gault 2011). A detailed discussion of the Consensus Agreement is beyond the remit of this article, suffice it to say here that due to sovereignty issues negotiations remain stalled (Zhang 2011). China continued to push its activities in and around the disputed islands, to the extent that,

in 2008, the Chinese news agency Xinhua published an article describing how the research vessels had broken through the Japanese defensive line (*Asahi Shimbun* 14/12/2008).

### ***Lighthouses and Leasing***

The Koizumi administration also took a hard-line on the islands themselves, taking actions which previous governments had shied away from. In 2002 the government leased the remaining islands which it did not already own, ostensibly in order to prevent third-party purchase or lease and to better regulate landing on the islands (*Asahi Shimbun* 01/04/2003). The move has significant weight when seen as a direct exercise of state sovereignty, and caused a strong reaction in China. However, China was not able to force Japan to rescind the lease as it was presented to China as a *fait accompli*: the islands were leased in 2002, but China did become public until April 2003. Similarly, in 2005 the lighthouse, which had caused so much trouble in the 1990s, was recognised as an official beacon. In response to Chinese protests calling the move 'illegal and invalid', Foreign Minister Machimura Nobutaka stated the decision was a domestic matter and there was no territorial dispute (*Asahi Shimbun*, 02/10/2005). Whereas in previous years, news of the consideration of recognition had reached China before any decision was made thus enabling it to use its capital to protest, in this case as in the leasing case, the move was undertaken secretly and presented to China as a *fait accompli*, thus out-manoeuvring Beijing.

The extent of this about-change in policy can be put into context by considering the fact that, as recently as 1997, Hashimoto's Chief Cabinet Secretary, Kajiyama Seiroku, had announced (never implemented) plans to revise the law on the establishment of beacons and lighthouses in order to allow for the removal of the offending lighthouse (*Asahi Shimbun*, 26/02/1997). The Koizumi administration's approach could not have been more different. However, as mentioned earlier, this tough stance should be put into the context of the broader bilateral relationship – the administration's policies on a number of issues led to a deep-freeze in Sino-Japanese relations, whereas in the 1990s bilateral relations were prioritised. As outlined below, this was not the only way the Koizumi administration sought

to improve Japan's position in the sovereignty game, and overall the administration marked a shift in Japan's approach to the sovereignty game, strengthening Japan's position in both the maritime and island disputes.

### **Arrests**

In 2004 seven Chinese (mainland) protesters managed to lose the JCG patrol vessels and land on the disputed islands. They were eventually apprehended, and standard practice would have seen them quickly deported back to China. However, in a break with standard practice – indeed for the first time since the Okinawa reversion in 1972 – the protesters were detained under suspicion of damage to private property (*Asahi Shimbun* 26/03/2004). The private property in question was the Senkaku Shrine, erected by right-wing activists years before, and a case was prepared for the local public prosecutor. Harsh Chinese diplomatic protests quickly followed, with the Vice Foreign Minister warning that 'this issue could be complicated and intensified to jeopardise Sino-Japanese relations .. the serious outcomes from this would have to be borne by Japan', while the Chinese ambassador in Tokyo told MOFA that if the protesters were not released 'Japan will be responsible for all consequences arising thereupon' (Wiegand 2009: 186). Meanwhile a second wave of Chinese activists announced plans to land not only using ships but also small aircraft (*Asahi Shimbun* 27/03/2004). Within two days the case was dropped and the activists were suddenly and swiftly deported.

The Koizumi administration sought to exploit the activists' landing, since a successful prosecution would have demonstrated Japanese jurisdictional sovereignty over the islands, making a major new precedent and altering the sovereignty status quo in Japan's favour. The fact that it would have involved Chinese citizens served only to make such an act more symbolically powerful. Thus China's harsh response, causing fears of serious escalation among high-level Japanese bureaucrats if the activists were not released quickly; one such fear was that the next group of Chinese activists would be accompanied by the military, for their 'protection' (*Aera* 25/10/2010). Koizumi himself stated that the decision to release the

activists was made to ‘not adversely affect Sino-Japanese relations’, and he publicly shifted the blame for the detention to local officials in Okinawa, despite previous statements by both MOFA and local police which made clear that the decision was made at the highest levels of government (MOFA 2004; *Asahi Shimbun* 27/03/2004). Still, while the reversal was clearly a result of Chinese pressure, the early release combined with the public blame shifting allowed both states to keep face, thus not adversely affecting Japan’s position in the sovereignty game.

Six years later, on 7 September 2010, a Chinese fishing trawler collided with two pursuing JCG patrol ships in waters near the disputed islands. The captain and crew were arrested and within a few days the crew was released and the captain was remanded and a file prepared for the Naha public prosecutor (for obstruction of duty and illegal fishing). China protested strongly, especially after the period of detention was extended by a further ten days on 19 September. As Japan declared its intention to proceed with the prosecution, China responded with a range of measures – including the suspension of ministerial and civilian exchanges, the halting of rare earth exports, and the arrest of a number of Fujita employees in China on charges of espionage – in what has been described as “shock and awe diplomacy” (Funabashi 2010). Although some of the measures cannot be directly connected to the incident (Hagström 2012), due to the timing they were construed as responses, regardless of the original intentions. Shortly after the extension of the detention, on 22 September, Premier Wen Jiabao made a statement which could only be read as a thinly-veiled threat: “If Japan acts wilfully despite advice to the contrary, China will take further actions, and Japan must accept full responsibility for all the severe consequences” (*Reuters*, 22/10/2010). Two days later on 24 September, the local prosecutor in Okinawa, citing the need for peaceful bilateral relations, announced the cancellation of the prosecution and the captain’s release (*The Japan Times* 25/10/2010).

Like the 2004 incident, the 2010 incident was undoubtedly orchestrated at least in part from Tokyo, in particular by Foreign Minister and China hawk Maehara Seiji as well as Sengoku Yoshito (*Aera* 25/10/2010, *The Japan Times* 23/10/2010). This prosecution not only would have broken with existing practice – immediate deportation – but also violated

two previous agreements with China. The first is the 1997 Fisheries Agreement, which resulted in the waters around the disputed islands to be considered high seas, meaning that the Chinese trawler was subject to flag-state (i.e. Chinese) jurisdiction. Therefore, as Sourabh Gupta (2010) points out, 'the appropriate course of actions should have been prompt deportation of the Chinese skipper and crew [and] an insistence on the former's trial in a Chinese tribunal' – instead Japan's actions were an enforcement of territorial sea rights and domestic law. The second agreement the prosecution violated was a secret one dating back to 2004, not dissimilar to the secret pact which governed Japan's territorial dispute with South Korea for over thirty years (Roh 2008): Japan undertook not to prosecute Chinese activists while China undertook to prevent such activists from landing in the first place (*Aera* 25/10/2010).

In this way the incident, as in 2004, was a case of Japan seizing an opportunity to make a new precedent, alter the status quo, and improve its position in the sovereignty game. China protested using all forms of capital – military (threats), economic (rare earth exports), and political (cancellation of meetings), and its reputation took a bruising in a region where it has similar maritime and territorial disputes with several other states. However the vehemence of the response should be understood through the sovereignty implications of a successful prosecution and the value of the territory. Moreover, this protest was successful, as, having raised the stakes and stated specifically that the due domestic legal process would take place without political interference, Japan released the captain without charge and political motivations were cited for this decision. Thus the attempted prosecution ended up reinforcing the sovereignty status quo rather than changing it, and while the Japanese government repeated the 'no dispute exists' line in the aftermath, this call again rang hollow, as it was made very clear worldwide that Japan did not enjoy the full exercise of its sovereignty in issues related to the disputed islands or their waters.

## **Conclusions**

### ***Alternative Interpretations***

The sovereignty game analysis presented here details the manner in which Japan's 'hands off' approach to the territorial and maritime dispute enabled China to effectively prevent Japan from exercising sovereignty over the disputed territory while pushing its own claim. Japan's more assertive stance, from the Koizumi administration on, has halted and perhaps even reversed the deterioration of its position in the dispute; however it has also contributed to worsening bilateral relations. The analysis presented in this article was made possible by the sovereignty game framework, which takes the ability to exercise sovereignty over a territory and to have that sovereignty recognised, as the basic desire of a state involved in a territorial dispute. Unlike other approaches which privilege external variables, the sovereignty game approach takes the dispute as an object of study in and of itself. The basic premise is that states ultimately seek to exercise sovereignty over the territory and have that sovereignty recognised and thus legitimised – the extent to which they are willing and able to do this is determined by the relative value of the territory, and by the capital available.

Aside from the conflict focused studies referred to earlier, other studies, particular those by Krista Wiegand (2009) and Linus Hagström (2005a, 2005b, 2012) ask similar questions as the present study, but provide differing interpretations of the events under analysis. Wiegand's (2009) study uses the concepts of issue linkage and coercive diplomacy to provide interesting explanations of the way in which 'China uses threats in the territorial dispute to compel Japan to shift its policy on another issue' (2009; 171). For example, she argues that China's actions during both the 1996 lighthouse recognition incident and the 2004 landing incident were connected to Hashimoto and Koizumi's visits to the Yasukuni Shrine visits, and also in the 1996 incident, economic sanctions due China's 1995 nuclear tests, rather than the dispute itself. To be sure, the dispute does not exist in a vacuum and on occasion behaviour in the dispute may well be related to other issues; due to spatial constraints, the analysis here has necessarily neglected broader bilateral relations. Nevertheless, the sovereignty game analysis presented here offers a contrasting explanation. In both 1996 and 2004 Beijing sought to prevent Japan from exercising sovereignty over the

disputed islands, or over Chinese nationals on the disputed islands, due to the effect such an exercise would have on the sovereignty status quo of the dispute. China values the islands highly, the reaction to the attempted prosecution of the captain of the fishing trawler backs up this argument: there was no issue linkage, instead we saw China was willing to go very far – damaging bilateral relations and its international reputation – specifically to prevent Japan’s from exercising sovereignty over the territory.

Hagström (2005a, 2005b) too offers an alternative understanding of the trajectory of the dispute. By applying the concepts of relational and quiet power, he argues that the 1992 law and the 1996 lighthouse incident represented foreign policy successes for Japan, since in each case Japan emerged with effective control and reiterated the ‘no dispute exists’ line. Seen in isolation these events can be seen as strengthening, or at least not harming, Japan’s position. From the long-term perspective of the sovereignty game, however, the events of 1992 and 1996 mark a watershed in China’s approach to the dispute, publicly declaring its claim and forcing Japan to refrain from exercising sovereignty. China continued to undermine Japan’s sovereignty in following years and Japan’s ‘hands off’ approach most likely only invited China to further assert its position. It is difficult to argue that from 1990 to 2010 China’s position in the dispute did not improve substantially, and although highly risky today (see below), Japan could have used its preponderance of capital in the early 1990s to exercise sovereignty and perhaps even affect a *fait accompli*.

The high profile of the 2010 collision incident meant that it was the subject of much commentary and analysis, producing a wide variety of opinions, including several which argued that, at the very least, Japan’s position was not damaged by the incident (Hagström 2012) and in fact it may have been improved (Park 2010; Ennis 2010). The latter argument centres on the idea that, by using its domestic legal system Japan effectively exercised sovereignty, and thus ‘successfully set an important precedent’ (Park 2010). The sovereignty game approach suggests a different reading – the ‘emphasis on local law enforcement’ which ‘highlighted Japanese territorial sovereignty’ (Ennis 2010) would have

made a new precedent if the process had been taken to its conclusion – a case in a Japanese court of law. However, the very statements that the case would be dealt with without political influence were completely undermined by the local prosecutor's statement that the captain was released after 'careful consideration of future Japan-China relations' (*The Japan Times* 25/10/2010). In previous incidents, such as lighthouse recognition, the internal process (the JCG's beacon recognition process) that was subject to external (foreign) influence was less fundamental as in this case: external influence undermined the judicial system of Japan. On the other hand it is clear that 2010 incident dispute had effects on a wide range of other issues, and it can be considered a 'a diplomatic setback for China' (Mochizuki 2010). It played into the hands of pro-US China hawks, enabling the portrayal of China as aggressive and underlining the need for a strong US alliance. Still, it cost the DPJ administration dearly, with polls before and after showing the government's approval ratings collapsed, falling from 63% in August to 21% in December (*Yomiuri Shimbun* 9/11/2010, *Asahi Shimbun* 14/12/2010), due to the perceived failure of Japan's action.

### ***Implications***

It is important to note that the overall analysis presented here is not prescriptive, nor is the sovereignty game a predictive framework. While the 'hands-off' approach of the 1990s did see Japan lose ground in the sovereignty game, this was a very positive time for Sino-Japanese relations. Conversely, the Koizumi administration improved Japan's position, but at the cost of a deep-freeze in bilateral relations. The DPJ's actions in 2010 failed on both counts – damaging bilateral relations *and* failing to improve Japan's position. Although not predictive, the analysis does highlight key implications for future events. China has demonstrated that it is willing to expend considerable capital to prevent Japan from altering the status quo. Since Japan backed down in recent attempts (2004, 2010), it is impossible to know how far China would have gone. Nonetheless, the message is clear: if Japan follows through on such new precedent, the effects on the bilateral relationship would be catastrophic. In April 2012 Tokyo Governor Ishihara announced plans for the metropolitan government to purchase the islands explicitly to 'protect' them – i.e. to improve Japan's sovereignty position. If this goes ahead, and especially if the islands are subsequently

developed, Japan's position in the sovereignty game would be improved, but effects on bilateral relations would be dire. On the other hand, if the government intervenes and purchases the islands themselves – which may have been Ishihara's intention all along – while declaring the reasoning as an attempt to prevent third party interference, as with the 2002 lease, then the actions have precedent and may not cause too much trouble.

Finally, in terms of the sovereignty game framework itself, further research is required to examine the broader applicability of the framework. The absence of militarised conflict in the dispute and the fact that such conflict remains unlikely in the near future, lends itself to the sovereignty game analysis. The remoteness and size of the islands, making full occupation less likely, further raises the importance of the back and forth of exercises of sovereignty. Further research should then look first at similar island disputes, such as the Dokdo/Takeshima dispute (South Korea and Japan) or the Hans Island dispute (Denmark and Canada), and if suitable, could be applied more broadly, e.g. to the Falkland Islands dispute. The approach is less likely to provide insightful analysis of existential disputes, such as North/South Korea or Israel/Palestine. In these cases, the sovereignty game, in both the Wendtian sense and the specific approach developed here, goes out the window.

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