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Controversy over the Pinnacle Islands Revisited

Student: Erick Gutierrez Macias  
Advisor: Teng Chung-chian

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研究生：谷呈陽

Student: Erick Gutierrez Macias

指導教授：鄧中堅

Advisor: Teng Chung-chian

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# Controversy over the Pinnacle Islands Revisited

By

Erick Gutierrez Macias

## Abstract

*The persistent Pinnacle Islands controversy has been often observed from several perspectives, such as historical entitlements, territorial sovereignty prerogatives, maritime rights to exploit natural recourses, and strategic affairs. The importance of this dispute lies in the contextual necessities and interests of the governments from China, Japan, and Taiwan. Likewise, the United States implications and interests beneath the dispute have also been manifested. In this case, the Japan-U.S. strategic alliance serves as a framework for the Washington policy maintenance in East Asia. In the meantime, International Public Law as an alternative to solve the Pinnacles controversy has failed. Under those circumstances, an armed conflict among the parties is possible, yet the United States military presence can prevent them.*

**Keywords:** Sovereignty, Pinnacle Islands, China, Japan, Taiwan, United States.



# TABLE OF CONTENTS

## CHAPTER ONE

<b>1. Introduction</b>	6
1.1. Preamble	6
1.2. Methodology	7
1.3. Primary literature review	9

## CHAPTER TWO

<b>2. Background and development of the dispute</b>	17
2.1. Bases of controversy	17
2.2. Overview of the involved parties' positions and claims	24
2.2.1. China's prerogatives	24
2.2.2. Taiwan's prerogatives	25
2.2.3. China and Taiwan joint statements	26
2.2.4. Japan's prerogatives	27
2.3. Historical references analysis	29
2.4. International Public Law sources analysis	40

## CHAPTER THREE

<b>3. Theoretical framework and analysis</b>	50
3.1. Neorealist paradigm	50
3.1.1. Balance of power theory	52
3.2. Theory applied to the dispute	54
3.3. Parties' economic and strategic necessities	61

## CHAPTER FOUR

<b>4. The U.S. implications and intentions in the dispute</b>	66
4.1. Washington's lawful implications	66
4.2. The U.S. pragmatic diplomacy	69
4.3. Washington's strategy beneath the Pinnacles case	75

## CHAPTER FIVE

<b>5. Conclusions</b>	80
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<b>References</b>	84
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<b>Appendix</b>	92
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## LIST OF FIGURES

Figure 1: Location of the Pinnacle Islands .....	92
Figure 2: Pinnacle Islands' vicinities .....	92
Figure 3: Pinnacle Islands' territorial expansion .....	93
Figure 4: Overlapping claims in the East China Sea gas fields .....	93
Figure 5: Zhouhai Tubian map by Hu Songxian 1556.....	94
Figure 6: Full map of the Three Kingdoms by Shihei Hayashi 1785 .....	95
Figure 7: Zhongshan Chuan Xin Lu map by Xu Baoguang 1721 .....	96
Figure 8: The fake deed of Empress Cixi .....	97
Figure 9: Islands lying between 119°-120° longitude east and 23°-24° north latitude .....	98
Figure 10: Letter of gratitude from the ROC Consul in Nagasaki 1920 .....	99
Figure 11: Chinese Renmin Bao referring to the Pinnacles as Senkaku Islands 1953 .....	99
Figure 12: World Map Atlas published in 1960 by Beijing Map Publishing Co. ....	100
Figure 13: Ryukyu Islands in World Map Album Vol. 1 East Asian Nations 1965 .....	101
Figure 14: Taiwanese Geography textbook for national junior high-schools 1970 .....	102
Figure 15: Classified Chinese map with the Japanese term for the Pinnacles .....	103
Figure 16: Marker erected on Uotsuri/Daioyu Island by Ishigaki City 1969 .....	104
Figure 17: Warning sign built by the Ryukyu Islands government 1970.....	105
Figure 18: PLAN maneuvers along the East and South China Sea .....	106
Figure 19: Minjinyu 5179 incident time and location .....	107
Figure 20: USCAR-27's geographical borders .....	108
Figure 21: Leasehold agreement for U.S. military purposes .....	109
Figure 22: The Pinnacle Islands' coordinates.....	110

## ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
CCP	Chinese Communist Party
DPJ	Democratic Party of Japan
EEZ	Exclusive Economic Zone
FDI	Foreign Direct Investment
ICJ	International Court of Justice
IR	International Relations
JMSDF	Japan's Maritime Self-Defense Force
JSDF	Japan's Self-Defense Force
KMT	Kuomintang (Chinese Nationalist Party)
PAC-3	Patriot Advanced Capability-3
PLA	People's Liberation Army
PLAAF	People's Liberation Army Air Force
PLAN	People's Liberation Army Navy
PRC	People's Republic of China
R&I	Research and Innovation
ROC	Republic of China
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNECAFE	United Nations Economic Commission for Asia and the Far East
UNSC	United Nations Security Council
US	United States
USCAR 27	United States Civil Administration of the Ryukyus - Proclamation 27
USFJ	United States Forces in Japan

# CHAPTER ONE

## 1. Introduction

### 1.1. Preamble

The Pinnacle Islands<sup>1</sup> are located in the Nansei Shoto (Ryukyu Archipelago), Japan in the East China Sea, Western Pacific Ocean (see Appendix, Figure 1). All the islands together have an estimated area of seven square kilometers. The Pinnacles are 170 kilometers north of Ishigaki City, Okinawa Prefecture, Japan; 186 kilometers northeast of Jilong (Keelung) harbor, Taiwan; 380 kilometers from China's east coast, and 410 kilometers west of Okinawa Main Island [1, 2]. For maps, see Figures 2 and 3 in Appendix. The Pinnacles consist of five islands: Kuba Jima 久場島; Taisho Jima 大正島; Uotsuri Jima 魚釣島; Kita Kojima 北小島; and Minami Kojima 南小島. In conjunction, these are three small islets: Okino Kita Iwa 沖の北岩; Okino Minami Iwa 沖の南岩; and Tobise 飛瀬 [3, 4].<sup>2</sup>

Currently, the Pinnacle Islands are administrated by Ishigaki City, Okinawa Prefecture in Nansei Shoto, Japan. However, the People's Republic of China (PRC) and the Republic of China (ROC) "Taiwan"<sup>3</sup> have been intensively claiming for these islands since 1972 [1]. Through this investigation, it will be clarified that the parties' positions and allegations in such a controversy would be better defined under postwar arrangements applied to the scope of International Relations (IR) theory.

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<sup>1</sup> This is the English term for Senkaku Retto 尖閣列島, Senkaku Shoto 尖閣諸島 or Senkaku Gunto 尖閣群島 in Japanese, and Diaoyutai Qundao in Chinese Mandarin; 釣魚台群島 traditional written form and 钓鱼台群岛 simplified written form. I use the English term throughout this investigation for reasons of transliteration, uniformity, and impartiality. The English term "Pinnacle" for the islands originated from the time when British sailors explored the islands and named them "Pinnacle Islands" in 1843. The Japanese name was called after the English term [14].

<sup>2</sup> Following the same order, are the islands' names in Chinese Mandarin with *hanyu pinyin* transliteration, as well as their traditional and simplified characters: Huangwei Yu 黄尾嶼 - 黄尾屿; Chiwei Yu 赤尾嶼 - 赤尾屿; Diaoyu Dao 釣魚島 - 钓鱼岛; Bei Xiaodao 北小島 - 北小岛; Nan Xiaodao 南小島 - 南小岛; Da Bei Xiaodao 大北小島 - 大北小岛; Da Nan Xiaodao 大南小島 - 大南小岛; Fei Jiao Yan 飛礁岩 - 飞礁岛 [3, 4].

<sup>3</sup> Historically, Taiwan is also known as "Formosa", which derived from "Ilha Formosa" *Beautiful Island* in Portuguese.

Since the end of the World War II, nationalist and territorial controversies have addressed the instability of the International System. Many of these disputes among Nation-States have ended in confrontations or even in armed conflicts. Although the Pinnacle Islands controversy is held among China, Japan and Taiwan, the United States (U.S.) still plays an important role as a “balancer of power” in the dispute.

From this perspective, the argument includes two difficulties: firstly, the controversy over the Pinnacle Islands’ sovereignty among China, Japan, and Taiwan along with the maritime rights in the East China Sea, which risks security in the region; and secondly, since the Japan-U.S. Security Treaty was signed in 1960, the U.S. government has obligated to defend the territory under Japanese administration. Thereby, the United States carries certain obligations in this dispute, especially concerning to the Pinnacle Islands’ territorial sovereignty.

## **1.2. Methodology**

Based on these arguments my hypothesis is planted: the dispute over the Pinnacles sovereignty is a precondition for the United States to maintain its supremacy in East Asia. To support my hypothesis, a series of research questions listed below are addressed so that we have a better understanding of the dynamics of power in such dispute.

- 1) What is the role of the United States in the Pinnacles controversy?
- 2) Are the involved parties’ national interests overcoming the United States’ balance of power in East Asia?
- 3) How can the United States utilize the Pinnacles dispute as a means to preserve its power in the region?

The Pinnacle Islands controversy is considered as one of the most precarious and challenging disputes in East Asia. As a matter of fact, on September 7<sup>th</sup>, 2010, the collision of a Chinese fishing boat with two Japanese coastguard ships intensified the Pinnacles dispute. The aim of this study is to analyze the recent tensions among the nations involved, and to evaluate the presence and role of the U.S. in the quarrel.

Although nowadays the United States supremacy in the world is declining, it still remains as the main power in this dispute; and yet it is the only actor that can deter the involved parties from military intervention, rather than to provoke them. Certainly, the Washington's intention is to come back to East Asia, with the purpose of safeguarding and maintaining its interests with its Asian allies, Japan and Taiwan.

Historical references and International Public Law sources are important to understand the development of the dispute and to analyze the parties' claims from a descriptive point of view. However, they are not sufficient to tell us how the involved actors have been behaving based on their objectives and necessities. For that reason, the position of the concerned actors (China, Japan, Taiwan, and U.S.) will be evaluated in such a quarrel by following the balance of power theory from the Neorealist paradigm of IR.

Additionally, this case study examines the evidence that the parties present to defend their positions in the controversy by carefully examining the historical facts and chronological events. Hence, the data used in this study is collected from relevant bibliographic sources, periodicals, and electronic sources. Finally, an analysis of the controversy, its challenges in order to be solved, and possible outcomes from the dispute will be discussed in this study.

This paper is divided into five chapters. The first chapter concentrates on the controversy preamble, methodology, and literature review. The second chapter contemplates the description of the dispute, including a rigorous examination regarding to the bases of the controversy in addition to a retrospective of parties' claims. The third chapter focuses on the theoretical framework applied to this dispute. The fourth chapter covers an analysis of the United States' role in the Pinnacle Islands case. Lastly, the final chapter corresponds to the findings and conclusions of the controversy. Most of the terms in Chinese Mandarin are cited in the Romanization *hanyu-pinyin* form.

### 1.3. Primary literature review

The controversy over the Pinnacle Islands has been studied from different angles and perspectives, in which the positions of the involved nations are identified. For the first instance, the Pinnacles' case has been a contiguous determinant in the Sino-Japanese relationship, and also it has challenged how both nations should handle this territorial dispute. In the meantime, Taiwan has also asserted its sovereignty over the islets during the last years. International Public Law sources, historical events, economic interests, nationalism, and political frictions have also played important roles in the power of dynamics and interactions among Beijing-Taipei-Tokyo-Washington relationships. Therefore, it is essential to understand the different studies and approaches of this polemic issue.

There is an extensive and varied IR literature that can explain the actors' positions and policies, which apply to the Pinnacle Islands territorial dispute. Classic works made by Joseph M. Grieco [5], Robert Jervis [6], and Kenneth Waltz [7, 8] offer a complete scheme from the Neorealist perspective related to the bases of this controversy. Basically, the Neorealist theory defines the essential factors of the Nation-States' existence and their interaction with other actors in the International System. According to this paradigm, States are predisposed to achieve power, security, national interests, and strategic alliances for their own survival. Consequently, war and conflicts among States may be inevitable and justifiable. From this standpoint, Kenneth Waltz [8], Hans Morgenthau [9], and Abramo Fimo K. Organski [10] narrow down the Neorealist perspective under the balance of power theory considering its benefits and critics. This theoretical approach has been manifested in the economic and geopolitics interests attached to the Pinnacles case among the involved parties.

Several works have examined the Pinnacles' dispute in concrete. Among those studies, the followings are the ones which focus more on the perspective of History and International Public Law: Daniel J. Dzurek [3], Kimie Hara [11], William B. Heflin [12], Carlos Ramos-Mrosovsky [13], Steven W. Su [4], Han-yi Shaw [14], Unryu Suganuma [15], and Mark J. Valencia [16]. Investigations made by Jason Blazevic [17], Richard C. Bush III [18], Reinhard Drifte [19], M. Taylor Fravel [20], Hitoshi Tanaka [21], Krista E. Wiegand [22], and Peter K. Yu [23] analyze the dispute from a more IR perspective. Chien-peng Chung [24], and Jing Zhao [25]



explore the nationalism's role immersed in the Sino-Japanese development of the Pinnacles dispute. Regarding to the United States' implication to the controversy, Richard C. Bush III [18], and Go Ito [26] define and explain the complex role and responsibility of the United States in East Asia. They also point out that China's rising power has spread not only to economic matters but also to military power and modernization. In fact, China lately has conducted military exercises in the East and South China Sea. Based on a report made by the International Institute for Strategic Studies [27], China led its most belligerent naval power ever from the East China Sea to the South China Sea on April 10<sup>th</sup>, 2010. China directed naval exercises not once but twice through Okinawa's waters, probably intending to intimidate the Japanese authorities, while the Chinese fleet arrived to the South China Sea to confront Vietnamese vessels around the Spratly Islands.

Richard C. Bush III [18] reveals that social and military relations in China and Japan are delicate and influenced by fever nationalism. On one side, China's military has enjoyed too much autonomy in the region; while Japan has not played a major role in this aspect. He also emphasizes that the Chinese and the Japanese governments should be able to reach an agreement in geostrategic matters as well, in order to avoid a military conflict between them, and at the same time to maintain the security in the East China Sea. In addition, the two militaries should be able to expand exchanges and dialogues, and both governments should make more efforts to reach a political consensus for mutually exploring the energy resources in East China Sea.

The United States' lawful implication in the Pinnacles' case is precisely examined by Jean Marc F. Blanchard [28], Richard C. Bush III [18], Kerry Dumbaugh, David Ackerman, Richard Cronin, Shirley Kan, and Larry Niksch [29], Daniel J. Dzurek [3], James H. Kawakami and Victor Okim [30], Hiromichi Moteki [31], and Larry Niksch [32]. Principally, these authors focus on the political and security developments of the United States, as well as its pragmatic position and policy in the region. They also describe that the Sino-Japanese ties have been aggravated over territorial disputes and maritime resources. In addition, they argue for the importance of the Japan-U.S. Security Treaty, as well as other legal documents and their implications with the Japanese administration of the Pinnacles.



James J. Przystup [33, 34] and Peter K. Yu [23] explain that despite the certain stability in East Asia and the economic interdependence between China and Japan, there are still unsettled security issues, such as the Pinnacles case. These authors address how the China's rising power has changed the foreign policies agendas of its neighbors and at the same time challenged the U.S. policy in the region. Additionally, they discuss that nationalism and strategic interests are the key factors that can explain the policy making process in East Asia. They claim that economic relations are important, but economic exchange does not represent an ultimate scenario in the region. Therefore, the foreign policy of the East Asian Nations and their interaction with each other will determine whether Asia is moving toward the stability or instability. Furthermore, Peter K. Yu [23] concerns the possibility whether or not Japan will defend the Pinnacle Islands. Rationalism can determine if the controversy will be solved by military intervention. Nevertheless, given the circumstances it is difficult how the involved parties can work out their differences, especially concerning the maritime rights in the East China Sea.

Similarly, Hitoshi Tanaka [21] argues that under the increasing economic interdependence between China and Japan, there are still political differences that can escalate to a major confrontation. He emphasizes the importance of settling a more reliable foreign policy between China and Japan. He mentions that the previous Kan administration mishandled the Chinese fishing boat incident, and that China should act with more prudence to deal this dispute with Japan. Hitoshi Tanaka [21] argues that the controversy over the Pinnacles requires special attention, where only an effective diplomacy between China and Japan can dissuade a belligerent intervention. He believes that there is still an uncertainty to redesign the strategy of the foreign policy of Japan. Meanwhile, the Pinnacles case demonstrates the Chinese assertive power in the East Asia, raised by the relative decline of the presence of U.S. power in the region. Both nations should work in their mutual and beneficial ties and integration with the Association of Southeast Asian Nations (ASEAN) for the security of the region. Meanwhile, Masahiro Akiyama [35] stresses that the Pinnacle Islands issue is a matter of Japan's national strategy. Thereby, the Japanese government has to be careful with China's ambitious strategies. For Masahiro Akiyama [35] Japan cannot be marginalized; it has to defend the Pinnacles. At the same time, Japanese leaders should know how to perceive the Chinese foreign policy driven by its rising

power in the region. Mark J. Valencia [16] points out that the development of oil and natural gas has been affected by decades of territorial disputes and boundaries among China, Japan, and Taiwan. The competition between China and Japan for natural resources has been more obvious during the last years and has been debilitating the improved relations. Nevertheless, under a mutual economic interdependence, China and Japan have tried to reach a joint development of exploration of hydrocarbons in the East China Sea. However, Chinese and Japanese governments have different interpretations about the geography over the area supposed to be jointly developed.

Reinhard Drifte [19] analyzes the Pinnacles controversy based on the IR outlook under the legal, military, political, and economic spheres. He evaluates the dispute beneath two possible scenarios “the military confrontation” and “the strategic cooperation.” These scenarios are focused on the economic interest between China and Japan, and their mutual development of natural resources diminished by different geographical boundaries deliberations. At this point, China’s ambitions over a wider maritime border along the East China Sea have raised political struggles, and constrain a settlement for more equal exploitation of economic resources. Reinhard Drifte [19] states that a proper political environment is a precondition to reach economic agreement, and then to prevent a catastrophic escalation over the Sino-Japanese disagreements.

Chien-peng Chung [24] examines the purpose and actions of the different nationalist forces in China, Japan, and Taiwan concerning how their actions have affected the negotiations and the dialog among the parties. Chien-peng Chung [24] provides an extensive explanation on the context of the periodical nationalist incidents that have gone through on the parties’ sides. He highlights that the importance of the dispute lies on its correlation of the sovereignty claims and the exploitation on natural resources (fishery, gas, and oil). This fact indicates that the dispute is influenced by the involved nations’ interests and that how the raised frictions are used by their nationalist groups and political factions for achieving their own objectives instead of settling down the struggles for maintaining the economic ties and stability in the East Asia region.

M. Taylor Fravel [20] evaluates the development in the Pinnacle Islands controversy from a wider scope. He argues that a prominent armed conflict among the parties is still minimal. Although China pursues to change the *status quo*, the costs of a military intervention will be substantial since the Japan-US Security Treaty deters any Chinese direct aggression to seize the disputed islands. At this point, the United States' obligations on the territories under Japanese administration stipulated in the Article V of the Japan-US Security Treaty should not be ignored. Nevertheless, China and Japan have somehow prevented the controversy from escalating to a major issue in their foreign policies outlooks. Certainly, the stability has overcome within the Pinnacles dispute, which also is reflected in the region. However, such stability is fragile and cannot be taken for granted. The persistent confrontation raises the possibility of an armed conflict, especially because of the interest in natural resources. As a matter of fact, the Pinnacles territorial dispute can be seen as rivalry among the involved Nation-States for competition on hydrocarbons. Consequently, the ambitions over the islands could increase in the future if the Sino-Japanese relations are deteriorated or if the presence of the U.S. in East Asia decreases. Therefore, the controversy requires a constant attention. For instance, several nationalist incidents and demonstrations have raised the frictions in the controversy. China and Japan should reaffirm their relations on more functional issues, such as a mutual cooperation over natural resources. In that sense, a strategic mutual collaboration can decline the importance over the islands' sovereignty. For example, in June 2008 China and Japan reached a certain agreement to develop natural resources. Although the agreement clearly did not focus on the Pinnacle Islands sovereignty, it created a framework for a future mutual exploration on both sides. Thus, the mutual agreement signifies a decrease of the tensions over the Pinnacles' sovereignty dispute.

M. Taylor Fravel [20] states that China and Japan should reduce their military presence nearby the Pinnacles. China should also restrict its naval or civilian vessels from entering to the waters around the disputed islands. In the meantime, even though Japan controls the Pinnacles, it should not develop the islets or imposed a military presence over there, so it will not provoke a Chinese reaction. In relation to the Beijing-Tokyo-Washington cooperation, as long as the confrontation can be avoided, the trilateral relationship can develop not only in strategic matters but also in other fields. The maintenance of stability in the controversy must continue so that it will not

deteriorate their relationship. Nonetheless, given the persistent economic interests and competitiveness, it might be difficult to guarantee the stability in the region.

Concerning to the International Public Law resources, Kimie Hara [11], Seokwoo Lee [36], Carlos Ramos-Mrosovsky [13], and Mark J. Valencia [16] provide comprehensive views over the Pinnacles case. They also explain the legal parties' arguments for claiming sovereignty over the Pinnacle Islands, as well as maritime rights in the surrounding waters. First, they cite international establishments that in some cases are indefinite, such as the United Nations Convention on the Law of the Sea, in which both China and Japan are parties, excluding Taiwan. The Law of the Sea regulations cannot easily be applied to the Pinnacles controversy due to the particular undersea geology of the East China Sea. The main difficulty is that the Pinnacle Islands controversy definitely has been aggravated by Law of the Sea, driving the parties to prove and proclaim exclusive maritime rights over a series of insignificant islets with eminent natural recourses attached.

In relation to the historical facts and evidences, Hiromichi Moteki [31] and Yutaka Takahana [37] explain the antecedents, chronological events, economic, and political developments of how Japan achieved sovereignty over the Pinnacle Islands. They argue that since 1895 the Pinnacle Islands have been legally seized as Japanese territory under the principles of International Public Law for occupation, and acquisition. Since then, no objections to Japanese sovereignty over the Pinnacle Islands were raised by Qing Dynasty when it ruled in China, later neither by the succeeding governments of the Republic of China and the People's Republic of China. In other words, none of the Chinese governments claimed sovereignty over the islands for more than half a century. In fact, the People's Republic of China and the Republic of China (Taiwan – Formosa) recognized the Pinnacle Islands as Japanese territory several times. Nevertheless, during the second half of 1971, the Republic of China and then the People's Republic of China abruptly began to raise claims for the Pinnacles as their own territory. It was most likely because a survey conducted by the United Nations Economic Commission for Asia and the Far East (UNECAFE) informed the possible existence of undersea deposits of natural gas and oil in the Pinnacle Islands' neighboring waters.

Furthermore, Satoshi Hara [38], Hiromichi Moteki [31], and Yutaka Takahana [37] provide and illustrate five pieces of irrefutable evidence that prove Chinese recognition of Japanese sovereignty over the Pinnacle Islands: the letter of gratitude from the Chinese Consul in Nagasaki (1920); the People's Daily newspaper article, which was revised by the Communist Party of China (January 8<sup>th</sup>, 1953); the World Atlas map issued by the Beijing Map Publishing Co. in 1960; the World Atlas, Vol. 1: The Nations of East Asia published jointly by the National Defense Studies Institute and the Chinese Institute for Geoscience (both located in Taiwan) in 1965; and the classified map made by the People's Republic of China in 1969 (from the Washington Times, September 15<sup>th</sup>, 2010 edition). In all those pieces of evidence, the Pinnacles are displayed with the Japanese name and located inside the Japan maritime territory.

On the other hand, Hungdah Chiu [39], Zhongqi Pan [40], Han-yi Shaw [14], and Steven W. Su [4] support the historical claims held simultaneously by China and Taiwan. They stress that China has demonstrated enough evidence to assert sovereignty over the Pinnacles before Japan did. These authors cited early Chinese records of the Pinnacle Islands made during the Ming Dynasty (1368–1644), as well as maps indicating that the islands were annexed into the Ming Dynasty and Qing Dynasty (1644–1911) maritime natural barriers. They also mention that according to Imperial records, Chinese sailors discovered and described in detail the geographical characteristics of the Pinnacles. At that time, the islands were used as navigational shelters and Chinese fishermen frequently visited there. Afterwards, China integrated the islands into its maritime defenses in 1556.

Additionally, China and Taiwan claim their usage of the islands to plant herbs for medicinal purposes. They also mention that a couple of Japanese scholars have recognized the Pinnacle Islands as a part of China based on the historical records. Subsequently, according to Zhongqi Pan [40] and Steven W. Su [4] the First Sino-Japanese War involved the sovereignty transfer of the Pinnacle Islands to the Japanese government. Thereby, Japan should have given up the Pinnacles' sovereignty after the end of the World War II. These authors stress that Pinnacles had been under China's administration and jurisdiction as a part of Taiwan before Japanese occupied the islands.

On the contrary, John Tkacik [41] proposes a critical analysis over the Pinnacles dispute. He examines the parties' positions and evidence as well as how their unstable domestic and foreign politics have begun to deteriorate their relationship in some spheres. John Tkacik [41] remarks that China's claims are unreliable, contradictory, and inappropriate. In addition, China has constantly pressured Japan and Japan's allies for their own interests. Beijing indirectly provokes Tokyo, and it certainly welcomes the Taiwan's sovereignty claims over the Pinnacles. At this point, China tries to stimulate the dispute not only by its own but as a matter of Chinese overseas interest. It seems that Beijing's strategy is to isolate Japan from its allies by putting them against it.

In this sense, the Pinnacles controversy jeopardizes the friendship between Japan and Taiwan. It also has a potential in draining the Japan-U.S. strategic relationship. The role of the United States' policy in the region could diminish the tension between China and Japan as well as maintaining the interests of the U.S. in the long run. John Tkacik [41] deduces that it would not be beneficial if Washington lets Beijing vacuum its power in East Asia. The standing points of the Japan-U.S. Security Treaty are clear regarding the Japanese administration of the Pinnacle Islands. Washington would be more consistent in the Pinnacles dispute as an ally of Japan if it takes its obligations and asserts a firm foreign policy in the region.



## **CHAPTER TWO**

### **2. Background and development of the dispute**

#### **2.1. Bases of controversy**

In the International Public Law realm, territorial conflicts can be analyzed in terms sovereign entitlements over territorial borders, islands, atolls, and coral reefs. On the other hand, a controversy of maritime sovereignty is a divergence of exclusive rights over the waters, particularly Exclusive Economic Zones (EEZ) as expressed in the United Nations Convention on the Law of the Sea (UNCLOS). The UNCLOS covers the exclusive rights based on the geological characteristics. These conventions acknowledged the different maritime zones where coastal Nation-States may use their rights to exercise their sovereign power or exploit natural resources as they convene [29, 20, 42, 40, 13, 16].

1) Territorial sea is the sea line that is contiguous to a State's coast. The Territorial Sea may prologue to 12 miles (approx. 20 kilometers) from the coast. In this sea line the State may exercise full sovereignty over the sea, undersea, and over-flight. 2) Contiguous zone is defined as the adjacent area to the territorial sea of a Nation-State. In this zone the State cannot exercise complete sovereignty, but it may enforce its authority to prevent law infringements as well as exercise its regulations and sanitary controls in its territorial sea. This zone may extend up to 24 miles (approx. 38 kilometers) from the coast. 3) Exclusive Economic Zone is the State sea line up to 200 miles (approx. 322 kilometers) from its coast. In this zone the Nation-State is allowed to implement sovereign rights over the living and non-living resources of the sea, seabed, and subsoil. 4) Continental shelf is the natural prolongation of a Nation-State coast to the continental margin's external edge, in this area a State may control and exploit its natural resources. The continental shelf cannot surpass the 350 miles (approx. 515 kilometers) from the coast. 5) Equidistance principle is endorsed to the UNCLOS in order to settle maritime disputes, in which the frontier of neighboring coastal States overlaps with a contiguous continental shelf, as in the Pinnacles case. This principle remarks that Nation-States' maritime

boundaries should adopt a median line equidistant from the neighboring States' shores. In this way, neighboring coastal States may exploit natural resources more equitable [19, 29, 42, 30, 43, 44, 13, 16].

Differing from internal waters, Nation-States do not have complete sovereign rights in maritime zones under their jurisdiction, as they must exercise the freedom of passage and transit to foreign ships and over-flight. However, there are some limitations concerning to the foreign navigation and over-flights. For instance, foreign ships have the right to navigate the territorial sea of a coastal State; excluding internal waters. The passage of foreign ships must be "innocent in nature"; which means that it should not disturb peace, order, or security of the coastal State. Moreover, every coastal Nation-State may impose different regulations on its territorial sea, which foreign ships must follow. Likewise, over-flying of foreign aircrafts will be only allowed with the authorization of the coastal Nation-State [29, 44].

It is important to mention that maritime sovereignty cannot be used to demand a territory; while territorial sovereignty is able to claim maritime rights. Thereby, maritime sovereignty is more susceptible than territorial sovereignty. To some extent, maritime disputes tend to be less precarious than territorial ones [20, 13]. However, it is less probable to reach a total cooperation even in maritime sovereignty claims among China, Japan, and Taiwan due to the economic interests that are compromised into the Pinnacles' territorial sovereignty dispute. In addition, UNCLOS states that the EEZ and continental shelf rights may be proclaimed only in habitable islands with upheld economic life. Therefore, the rights may not be exercised on uninhabited islets. However, these conditions of habitability and economic viability are not totally compulsory, and in most of the cases, islands or islets tend to be used to acquire a larger EEZ or extend the resources of continental shelves [20].

Another point is that International Public Law urges the legal demonstration of sovereignty for territorial acquisition, and it denounces Nation-States for incurring occupation of a territory in a neighboring State, especially between competitors as China and Japan. When territorial disputes are sustained in a context of fever nationalism as in the Pinnacles case, asserting sovereignty is more possible than reaching an arrangement. Additionally, the deficiency of the International Customary Law simultaneously permits the parties to appeal international legal norms, which in



almost all cases are taken to complement their own benefits, yet deterring the parties for attempting to solve the controversy under more impartial legal bases. Therefore, ambiguity of the existing legal principles has allowed China, Japan, and Taiwan to justify their sovereignty claims by referring to International Public Law in order to assert sovereignty over the Pinnacles. Nonetheless, neither party has expressed their willingness to take the controversy to the International Court of Justice (ICJ). Furthermore, the periodical frictions and confrontations by Chinese and Japanese over the dispute notably deject the ICJ mediation [13].

This is how the International Public Law has shown ineffectiveness in order to solve prominent disputes in which natural resources are involved, as in the Pinnacles case. Another difficulty here is that the all involved parties must concordantly submit the controversy to the ICJ's resolution. In other words, if one of the parties does not agree in allowing the ICJ to determine the final judgment of the dispute, the trial cannot be led. Moreover, if one of the involved States does not adhere to the final sentence, the other parties may present the issue to the United Nations Security Council (UNSC). At this point, the controversy can remain unsolved, if any of the five permanent members of UNSC decides to obstruct a further initiative [45]. Hence, China as a member of the Security Council is able to arbitrarily *veto*<sup>4</sup> any instance or even the final resolution over the Pinnacle Islands. Another crucial point is that Japan and especially China do not recognize Taiwan as a Nation-State. In fact, Taiwan is no longer a member of the UN. Therefore, it cannot be represented as a legal party over a territorial controversy under the ICJ [24, 42].

Regarding the Pinnacles' sovereignty dispute, an essential legal matter is who initially discovered and occupied the islands. In a particular case of uninhabited territories, historical, geological, and geographical evidence does not necessarily constitute a valid claim to assert sovereignty. In fact, international judicial and arbitral bodies have often based their resolution on discovery along with occupation to solve uninhabited territorial disputes. Primarily, China claims that the Pinnacles have been a

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<sup>4</sup> China, France, the Russian Federation, the United Kingdom and the United States are the five permanent members of the United Nations Security Council. In addition, there are ten non-permanent members, who are elected by the United Nations General Assembly for a two-year period; non-permanent members are not eligible for immediate re-election. Each Council member has one vote. Decisions on procedural matters are made by an affirmative vote of at least nine of the fifteen members. Decisions on substantive matters require nine votes, including and concurring votes of all five permanent members. This is the rule of "great power unanimity", usually referred to as the "veto power" [124].

part of China based on historical records; while Japan sustains that the Pinnacles were *terra nullius*<sup>5</sup>, before it annexed them to its territory. Certainly, during 1885 to 1895 the Japanese authorities did not find any evidence of human settlements [19, 36, 46]. However, by means of Customary International Law, which is considered a source of International Public Law, the discovery *per se* is not enough to declare the sovereignty principle over a territory. A proper sovereign designation can be only achieved throughout an effective demonstration of intent to occupy a territory. This action is known as *animus occupandi* in International Public Law [13].

The effectiveness of sovereignty can be understood under two principles: the intention to act as a sovereign power and the real exercise of sovereign control or authority. International courts and arbitrators have also acknowledged different degrees of governmental action are applicable to different kinds of territory. In some instances, minimal levels of government activity can be justified in less populated or uninhabited areas. Moreover, several governmental acts have been recognized as indication or effectiveness degree of sovereignty: patrolling by military or law enforcement bodies, granting scientific surveys or studies, regulating trade, investigating criminal activity, maintaining jurisdiction, registering certificates of property, building infrastructure, conducting census registry, upholding navigational markers, exploiting natural resources, or engaging in any other economic activity. In those aspects, only governmental intervention can be appealed as evidence of sovereignty. Private commercial initiatives by national citizens might not be substantial even though it is regulated by the government. In light of International Public Law, sovereignty over a territory may be also acquired through the principle of cession, whereby the sovereign title is conveyed from one State to another by a treaty or agreement [44, 13].

China, Japan, and Taiwan have been immersed in several territorial disputes since the end of World War II. Although these controversies are not related directly to the Pinnacles issue, the China's, Japan's, and Taiwan's positions in other divergences can influence how these nations act in their own territorial disputes. For example, China is still struggling in the internal disputes in Xinjiang and Tibet among others provinces besides the endless dilemma about Taiwan's political status and their

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<sup>5</sup> In Latin, "Land belonging to nobody". The term is used in Customary International Law as a territory belonged to no sovereign power or nation [13].

reciprocal counterclaims of other territorial disputes [20]. The Chinese government claims Taiwan as its inherent territory even though the Chinese Communist Party (CCP) has never ruled in Taiwan, and the island has exercised all conditions of a proper State for over six decades. Furthermore, the Chinese irredentism has caused tensions with India and Bhutan over land borders, as well as with South East Asian countries and Taiwan concerning the Paracel and Spratly Islands, in which maritime rights in the South China Sea are included [40, 47]. Although China has claimed several territories against its neighbors since 1949, in most of the cases natural resources are involved, the CCP has kept the majority of these disputes within certain passive means [20].

Meanwhile, Taiwan still maintains its position, stressing its sovereignty over the Paracel and Spratly Islands as well as the South China Sea basin. Since 1947, the ROC has released several reports and evidence concerning its sovereign power over those claims. In 1995, regardless of the persistent territorial claims made by China and South East Asian countries, the ROC government, now established in Taiwan, started to develop infrastructure in the Spratly island of Itu Aba. It is important to remark that the Taiwanese government does not intend to assert its sovereignty by force over the islands, islets, and reefs of the South China Sea [48].

Simultaneously, Japan still faces the consequences of the ambiguity from post-World War II arrangements with its neighbors. Since 1945, Japan and the Russian Federation have disputed the sovereignty of the Northern Territories (Chishima Retto for Japanese or Kurile Islands for Russians), which have been occupied by Russia since the end of the World War II. In addition, Japan demands sovereignty over the Liancourt Rocks (Takeshima in Japanese or Dokdo in Korean), which are currently administrated by South Korea [20, 42, 49, 11, 40, 50].

The Chinese and Japanese governments are also in conflict in two other maritime sovereignty arguments. The one refers to the extension of maritime rights in the East China Sea. In order to ease tensions over the maritime rights of the area with China, Japan has tried to reach an agreement in mutual development of the gas fields. Curiously, Japanese firms invested in the Chinese gas and oil extraction projects in the zone [47]. In 2008, both nations tentatively decided to jointly develop the Shirakaba (Chunxiao in Mandarin) undersea gas field (see Appendix, Figure 4).

Nonetheless, this agreement is unsettled and it is ambiguous regarding to the mutual communication for the activities in the overlapping zone [51, 22]. This became evident when a group of Chinese vessels organized undersea surveys without the prior notification to the Japanese government. In order not to compromise the previous accords, the Japan's Foreign Ministry did not officially disapprove the incident [29].

Previously in 1992, China approved the "Law on the Territorial Waters and Contiguous Areas of the People's Republic of China." Six years later, China promulgated a "Law on Economic Waters and the Continental Shelf," and in 2001, the "Law on Management and Use of Sea Areas." Throughout these edicts, China has bolstered its intentions to secure its economic interests across the East China Sea and South China Sea. The zone claimed by China here is extensive; it contemplates 800,000 square kilometers, of which about 20,000 square kilometers of EEZ are conveying within the adjacent Pinnacles waters [17, 19, 13, 16, 47].

In the particular case of the East China Sea, the Chinese government has constantly refused Japan's attempts to recognize that "joint development" in the Shirakaba/Chunxiao field is based on Japanese maritime sovereignty entitlement. Japan declares that the EEZ median line of demarcation, which is based on the equidistance principle, should determine the maritime rights in those waters. While China insists on their demands to the continental shelf principle, this prerogative technically extends Chinese sovereignty to Taiwan, the Pinnacles, and to the whole Shirakaba/Chunxiao gas field as well as other developing areas [35, 17, 52, 19, 53, 54, 43, 40, 34, 51]. Although neither Japan nor Taiwan had established official negotiations over the Pinnacles sovereignty, previously both governments initiated an informal exchange of views concerning to the exploration of the natural resources in the East China Sea. In fact, the Japanese government also proposed that Japan, South Korea, and Taiwan should cooperate in developing the undersea resources of the East China Sea without affecting their respective maritime claims [39, 24, 19, 29, 16].

The continental shelf principle and the median line equidistant are validated by the UNCLOS. However, the International Court of Justice normally does not rely on the continental shelf or other geological features to solve territorial disputes except the median line equidistant principle. This characteristic advocates that the Pinnacles controversy should not be depended on substantial deliberations based on geological

characteristics [38, 55]. Despite the negotiations, the Japanese leaders are indignant because the Chinese allegation in this issue will permit to extend its maritime rights and even extract natural gas and oil from the Japanese EEZ [34, 16]. This argument is different from the Pinnacles' controversy, in which only territorial sovereignty over the islands is involved but maritime sovereignty is not. The second argument is centered over Okinotori-shima, a coral reef that remains more than 1,740 kilometers to the east of Tokyo. Although China does not demand sovereignty over the reef, it has objected that the Japanese can establish a larger EEZ in the West Pacific Sea. China claims that Japan cannot appeal for an EEZ in neighboring waters under UNCLOS because Okinotori-shima is a coral reef and not an island [19, 20, 56, 33].

Despite the fact that the United States does not intend to assert claims to any of the territories disputed by China, Japan, and Taiwan, the United States remains as an important actor in East Asia. Therefore, the positions of the U.S. in these conflicts are based on a complex multilateral relationship. Indeed, the foreign policy of the Washington can indirectly affect the development of the Pinnacles controversy as well as its ties with Beijing, Taipei, and Tokyo. Basically, the United States' policies toward the Pinnacle Islands are centered on impartial terms for a decisive sovereignty judgment, and also with the maintenance of a peaceful resolution that avoids the use of force. Nonetheless, it is important to mention that the Pinnacles fall in the scope of the Article V of the Japan-U.S. Security Treaty:

Each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes. Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations in accordance with the provisions of Article 51 of the Charter. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security [57].<sup>6</sup>

Since the Pinnacle Islands are under Japanese administration, the United States is committed to militarily support Japan if China or Taiwan ever takes the disputed islands by force [18, 19, 20, 16]. After days of the Chinese fishing boat incident, the

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<sup>6</sup> Ministry of Foreign Affairs of Japan, "Treaty of Mutual Cooperation and Security between Japan and the United States of America," 2011. [Online]. Available: <http://www.mofa.go.jp/region/n-america/us/q&a/ref/1.html>. [Accessed 7 July 2011].

declaration of the U.S. Secretary of State, Hillary Clinton, was quite positive to the Japanese administration over the Pinnacle Islands' and its relation concerning to the Article V of the Japan-U.S. Security Treaty. Afterwards, the U.S. Department of State later expressed, "any territorial dispute over these islands should be solved by the parties involved" [58].

## **2.2. Overview of the involved parties' positions and claims**

### **2.2.1. China's prerogatives**

The PRC semi-officially first stated its position over the Pinnacles in an assertive article on *Beijing Review*, accusing the Japanese intransigent efforts to "steal" China's resources along with South Korea and the ROC government, what they referred as "Chiang Kai-shek's gang." The CCP also denounced the U.S. Imperialism and the Japanese government pursuing excuses for incorporating the Pinnacles as well as surrounding waters to Japan's territory. Afterwards, on December 30<sup>th</sup>, 1971, an official statement was made by the PRC Foreign Ministry accusing Sato, the then-Prime Minister of Japan, for ignoring the historical facts that indicated China's ownership over the Pinnacle Islands. The PRC also disapproved the collaboration of the U.S. to relinquish the Pinnacles' administrative rights with Japan, which annexed and invaded the islets. Regarding to the Okinawa Reversion Treaty, the United States arbitrarily included the Pinnacle Islands sovereignty transfer. The CCP affirmed that this was a major infringement upon China's territorial integrity and sovereignty, and Chinese people would not tolerate this action [39, 40, 14].

The PRC official statement claims that Chinese first discovered the Pinnacles before the Japanese did. According to China during the Sino-Japanese War in 1894, the Japanese "stole" the Pinnacle Islands. Furthermore, in April 1895 the Meiji government forced the Qing Dynasty to conclude the war through the unequal "Treaty of Shimonoseki" by which Taiwan, together with all islands belonged to Taiwan along with Penghu Islands (the Pescadores) were ceded. The PRC also underlines that after World War II, the Japanese government illegally handed over the Pinnacles to the United States. As a result, the U.S. illicitly enjoyed "administrative rights" over



these islands. Moreover, the Chinese government affirms that the American and Japanese governments have once again made an illegal transfer between themselves regarding to the Pinnacle Islands sovereignty through the Okinawa Reversion Treaty on June 17<sup>th</sup>, 1971. According to the CCP, the United States and Japan cannot alter the Chinese sovereignty [59, 42, 56, 40, 14, 23]. At least, the Chinese leaders emotionally stressed that the PRC would recover and liberate Taiwan and all territories belonged to China, including the Pinnacles and other islands [39].

### **2.2.2. Taiwan's prerogatives**

On July 1<sup>st</sup>, 1971, Taiwan's official statement to claim the Pinnacle Islands indicated that in 1943 the Republic of China (now in Taiwan), the United States, and the United Kingdom (the Allied Powers) jointly proclaimed the Cairo Declaration and the subsequent Potsdam Declaration in 1945. Under those stipulations, the Allied Powers indicated that Japan's sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku, and such minor islands as they determine. Therefore, the Ryukyu Islands sovereignty should be established by the Allied Powers. Afterwards, based on these accords the Peace Treaty with Japan (San Francisco Peace Treaty) was signed on September 8<sup>th</sup>, 1951. The Article III of this treaty has a legal connotation regarding the sovereignty status of the Ryukyu Islands and their future stances that previously had been agreed on the Cairo and Potsdam Declarations.

In this matter, Taiwan affirms that as the Cairo and Potsdam Declarations were arranged among the Allied Powers, the final disposition of the Ryukyu should have been consulted to the ROC government as the ROC forces had fought against the Japanese during the World War II [60]. The ROC strongly opposes to the U.S. unilateral sovereignty transfer of the Pinnacle Islands along with the Ryukyu Islands to Japan. According to the ROC leaders, based on the geographical location, geological structure, historical association, and long term use of the citizens of Taiwan, the Pinnacles have been associated to Taiwan and constituted a part of the Republic of China domain. Therefore, it is the obligation of the ROC government to safeguard its national integrity and territory [39, 60, 14].

### 2.2.3. China and Taiwan joint statements

Essentially, Chinese and Taiwanese prerogatives over the Pinnacles are the same despite their own political disagreements and refusal to share the natural resources involved [61]. Their statements are mainly based on the historical records from Ming and Qing Dynasties' emissaries. Since the sixteenth century Chinese sailors had used the islands as navigation references when they were sailing to the Ryukyu Kingdom. Chinese sailors considered the Pinnacles as natural frontiers against the Japanese pirates. It is said that the Chinese emissaries fished in the Pinnacles' surrounding waters [53, 42, 40]. Additionally, the Chinese argue that Japan actually recognized the Pinnacles as a part of China before it annexed them in 1895. In 1885, the Japanese Foreign Minister, Kaoru Inoue, wrote a letter recommending to his government not to establish an official demarcation line on the Pinnacles [12, 59, 60, 13, 14].

China and Taiwan also affirm that Pinnacle Islands are separated from the Okinawa Trough, a depression feature in the East China Sea subsoil, which has been the natural frontier between China and Okinawa (Ryukyu) since ancient times as described in the historical records as *heisui gou* 黑水溝 "black water trench." The PRC and ROC governments explain that the western outer edge of Japan and Ryukyu continental shelf extents only to the Okinawa Trough and not to the Pinnacles. Neither China nor Taiwan accepts the median line equidistance that has determined the maritime rights on the East China Sea for decades [24, 19, 60, 40, 14, 4]. Furthermore, Taiwan affirmed to have deeds by the Qing Dynasty's Empress Cixi 慈禧太后 who conceded the Pinnacles to a Chinese noble, Sheng Xuanhuai 盛宣懷 who planted wormwood and collected medical herbs from three of the Pinnacles (Chiwei Yu/Taisho Jima; Huangwei Yu/Kuba Jima; Diaoyu Dao/Uotsuri Jima) in 1893 [17, 53, 12, 40, 13, 14, 16, 46, 4]. This proof supported the apparent historic ownership of the disputed islands made by Chinese and Taiwanese.

Finally, the PRC and ROC governments insist that Japan took possession of the Pinnacles with the ratification of the Treaty of Shimonoseki in 1895, which indicated the Japanese victory in the First Sino-Japanese War. Under this circumstance, China and Taiwan argue that later Japan accepted the conditions to



limit its territory within the Potsdam Declaration of 1945. Such conditions were planned previously in the Cairo Declaration of 1943. In other words, the initiative of the Allied Powers in Cairo and Potsdam Declarations during the World War II was to reestablish sovereignty over the Chinese territories lost during Japan's military aggression. Therefore, Japan should have returned the Pinnacle Islands' sovereignty to Chinese after the end of the World War II [39, 24, 53, 12, 60, 14, 4]. Precisely, in an interview made by Associated Press concerning to Pinnacle Islands' status, the incumbent President of Taiwan, Ma Ying-jeo declares:

The Japanese actually annexed those islands in 1895 after they had already defeated the armies and the navy of the Ching court at the end of 1894. So when the islands, including Taiwan, were ceded to Japan under the Treaty of Shimonoseki in 1895, these islands were also turned over. That is why after the war, those islands were returned to the Republic of China under not only the Instrument of Surrender but also the Sino-Japanese Peace Treaty of 1952. But the Japanese say that they discovered those islands in 1895 as *terra nullius*, so we have historical records [that are] quite clear... We believe these islands belong to us, not only for historical reasons but also for geographical and geological reasons. They are geologically connected with Taiwan. They are separate from the continental shelf of Taiwan and the mainland, away from the Ryukyu Islands [Okinawa]... On the other hand, geographically they are also closer to Taiwan than to the Ryukyu Islands. If you look at the historical records of Ryukyu, they have only 36 islands, not including the Diaoyutai Islands... The island has a mountain of 383 meters, which is rare in a volcanic island. And that has been used for centuries by sailors as a navigational aid. So we know that island very well; it has been visited many times by Taiwanese fishermen. Near the island there are great fishing grounds... These are islands geographically, geologically belonging to the island of Taiwan. Even historical records as early as the 16<sup>th</sup> century have had records of that. But the problem is, all these historical records were actually used by mainland China and Taiwan together because it's part of history [62].<sup>7</sup>

#### **2.2.4. Japan's prerogatives**

The Japanese government sustains that based on International Public Law principles; Japan continuously and peacefully has demonstrated different evidence of effective sovereignty over the Pinnacle Islands. Between 1885 and 1895, the Meiji government held a series of surveys over the Pinnacles' flora and fauna, in which they also affirmed that the islets were not only uninhabited and but also uncontrolled by the Manchu Empire. As a result, on January 14<sup>th</sup>, 1895, the Japanese government took the decision to erect markers over the Pinnacles and incorporate them to its territory.

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<sup>7</sup> Government Information Office, Republic of China "Taiwan", "AP Interview with President Ma," 21 October 2010. [Online]. Available: <http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20101021000212&cid=11>. [Accessed 4 July 2011].

Since then the Pinnacles have been a part of the Japan's region of Nansei Shoto [38, 63, 54, 31]. Japan also highlights that the Pinnacles were not included in the islands belonged to Formosa (Taiwan) and the Pescadores as stipulated in the Treaty of Shimonoseki, which entered in force in May 1895. For that reason, the San Francisco Peace Treaty did not mention the Pinnacle Islands as a surrendered territory. However, based on the provisions stated in the Article III of the same treaty, the Nansei Shoto islands along with the Pinnacles were administrated by the U.S. Military Government [28, 19, 29, 11, 54, 32, 16].

Afterwards, on June 17<sup>th</sup>, 1971, through the Agreement between Japan and the United States of America concerning the Ryukyu Islands and the Daito Islands (Okinawa Reversion Treaty), the United States relinquished Okinawa along with the Pinnacles to Japan. In addition, the Local Government of Okinawa built markers declaring that the Pinnacles have been under Japanese jurisdiction since 1895 [28, 64, 49, 11, 38, 63, 54, 65, 31]. Likewise, Japan has fostered economic activities on the islands by leasing them to a private entrepreneur, and it collected taxes from the commercial activity and property usage. Furthermore, besides conducted scientific surveys, the Japanese government has patrolled the islands and enforced law on illegal fishing; it also built warehouses, a weather station and a heliport, among other infrastructure [28, 38, 12, 63, 65, 31, 16, 46].

Lastly, Japan points out that neither PRC nor ROC ever opposed to Japan's control over the Pinnacles until the latter half of 1971; right after the Okinawa Reversion Treaty was signed, and when a survey concerning to the existence of potential oil and gas undersea was published in the late 1960's by the UNECAFE. These attitudes suggest that China and Taiwan initially did not consider the Pinnacles as their territory. In addition, Japan attests that China tries to reinforce its claims by using the continental shelf principle in order to assert territorial sovereignty over the Pinnacles as well. For Japanese government none of the geographical, geological, and historical claims raised by both China and Taiwan are impartial and probative under International Public Law bases [28, 49, 11, 38, 65, 31, 13, 41].

### 2.3. Historical references analysis

The first testimony on the Pinnacles was made in *Shi Liu-chiu Lu* 使琉球錄 “Records of the Imperial Mission to Ryukyu” (1534) by Chen Kan during the Ming Dynasty (1368–1644). Chen described his voyages from Fuzhou (Foochow), Fujian (Fukien) to Naha, Ryukyu (Okinawa), and during the trip he passed by the Pinnacles [39, 24, 59, 56, 12, 14]. However, from this time forth the islands were only mentioned as geographical landmarks in China’s Imperial records. At that time, the Chinese never indicated that they considered the Pinnacles as their territory or anything more than spots in the sea, not even mentioning any exercise of sovereignty over the Pinnacles. Indeed, China never established a settlement of civilians or army personnel on the disputed islands, and evidently did not maintain a naval patrol in neighboring waters [31, 32].

As mentioned above, International Public Law states that the discovery *per se* is not sufficient to proclaim territorial sovereignty. Certainly, the crucial question concerning to the Pinnacles territorial sovereignty is which party has acted as an effective sovereign power. For example, in the Island of Palmas Case (1928)<sup>8</sup>, the Permanent Court of Arbitration, antecedent of the current International Court of Justice, determined the following rules in order to assert sovereignty over a territory: 1) The titles based on geographical contiguity or proximity has no standing in light of International Public Law; 2) The titles by discovery alone are inchoate or insufficient; and 3) If another sovereign power starts to exercise continuous and actual sovereignty, and the discoverer does not allege this claim, the entitlement by the sovereign power that exercises control over the territory is greater than the title based on simply discovery [29, 12, 46].

These statements have been also applied to other International Public Law cases in order to solve territorial sovereignty disputes, such as the sovereignty over Clipperton Island Case (1932), the Minquiers and Ecrehos Case, and the Case

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<sup>8</sup> *The Island of Palmas Case* (1928) the United States and the Netherlands demanded sovereignty over an island between the Philippines and the former Dutch East Indies (Indonesia). The U.S. argued that the island had first been discovered by Spain in the 16<sup>th</sup> century, and then it was ceded to the U.S. through the Treaty of Paris after the culmination of the American-Spanish War in 1898. Additionally, U.S. appealed that the island’s proximity to the Philippines is suitable to assert its sovereignty. On the other hand, the Netherlands established effective and peacefully sovereignty and it also celebrated political accords with the native princes of the islands for 200 years before and after the Treaty of Paris. The Court determined that the title of actual and continuous sovereignty exercise was greater than those based on discovery and contiguity [29, 12, 46].

concerning Land, Island, and Maritime Frontier Dispute among El Salvador, Honduras, and Nicaragua (1992)<sup>9</sup>. The decisions made by the International Public Law bodies and arbitrators in these cases are not decisive for the Pinnacles controversy. However, in all the cases mentioned, the principle of discovery itself is weaker against the principles of occupation, possession, authority exercise, and prescription. From this standpoint, China or Taiwan has no legal basis for claiming the sovereignty over the Pinnacles.

In concrete, Chinese and Taiwanese allegations are mainly focused on historical records to claim the ownership of the Pinnacle Islands. These prerogatives were advocated by Kiyoshi Inoue, a Japanese historian, then-Professor at Kyoto University. In 1972, Inoue published a series of writings supporting the Chinese claims, which were welcomed by both Chinese and Taiwanese [66, 25]. It is important to mention that Professor Inoue was well-known as an extreme left-wing supporter in his country; he openly opposed to the Emperor figure in Japan and often criticized the Japanese government [38, 31]. Hence, it was not surprising why he started to raise these arguments against Japan's position over the Pinnacles. However, even those arguments based on historical chronicles and maps seem to be redundant. The Ryukyu Kingdom, nowadays Okinawa, had a tributary relationship with China under the Ming and Qing dynasties until its incorporation to Japanese territory (1372–1879) for 507 years in total. Whenever a new Ryukyuan King was crowned, the Chinese sent an emissary mission to the Ryukyu Kingdom in order to perform an

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<sup>9</sup> *Sovereignty over Clipperton Island Case* (1932) France and Mexico held a controversy for an islet's sovereignty 600 miles away of Mexico in the Pacific Ocean. French sailors disembarked on the islet in 1858 and declared it as French territory; however, France made no further actions to occupy it. Mexico, vied that the islet had been disputed by Spain in the 18<sup>th</sup> century and transferred to Mexico as the Successor State in 1836, and that its sovereignty exercise was demonstrated by its dismissal of many Americans who worked there in 1897. The King Victor Emmanuel III of Italy, who acted as arbiter, noted that the French sovereignty claims must be accompanied by an effective occupation for a territorial acquisition in order to be valid; however he considered that it can be acknowledged in less populated or uninhabited areas. Although, the Mexican claim was greater, the arbiter could not find evidence to support the Spanish discovery and occupation. Therefore, he held that Clipperton Island should remain under French sovereignty. *The Minquiers and Ecrehos Case* (1953) England and France claimed the sovereignty over two islands located between the British Channel Island of Jersey and the French shore. The ICJ found historical evidence defending more the English side, detonating that the sovereignty claims based on historical records must be absolute in terms of possession. As a result, England gained the legitimate sovereignty over the two islands. *The Case concerning Land, Island, and Maritime Frontier Dispute among El Salvador, Honduras, and Nicaragua* (1992) the three Central-American countries raised claims over three islands in the Gulf of Fonseca, which also determined the frontiers of the three nations. Spain governed the region until 1821, and the subsequent Federal Republic of Central American done it until 1839. The FRCA collapsed and the three countries emerged. The ICJ stated that because the islands were not undiscovered territory in 1821, the sovereignty based on discovery and occupation could not be valid in this case. Finding no evidence which country succeeded the Spanish control over the islands, the ICJ relied on evidence regarding to sovereignty authority. The Court found that Honduras has implemented authority over one island since 1849, while El Salvador has done it in the other two islands since the last period of the 19<sup>th</sup> century. The ICJ determined that one island belongs to Honduras and the rest to El Salvador [29, 12, 46].

investiture ceremony. At that time, due to the poor navigational technology, sailors were guided from islet to islet so that they could mark the path between China and Ryukyu. Chinese ships passed the three islets nearby Taiwan (Huaping, Pengjia, and Mianhua) and then went through the Pinnacles, crossing the Okinawa Trough, and finally arrived to Ryukyu. After days of being in Ryukyu, Chinese emissaries wrote several logs about the journey and life in the Ryukyu Kingdom. There are eleven Chinese records describing the Ryukyu voyages mentioning the Pinnacles [63, 54, 15]. For that reason, Chinese claim they first discovered the islets.

Nevertheless, according to all these records the Chinese emissaries only sailed 23 times to the Ryukyu Kingdom in 507 years, while Ryukyans sailed over 384 times to China in the same period. In addition, until 1534 the Ryukyu Kingdom had sent several merchant ships to the South East Asian Kingdoms of An-Nam (Vietnam), Siam (Thailand), Sumatra, and Java (Indonesia). It seems that at the time, Ryukyans were more active in the East China Sea than Chinese were. Indeed, according to China's Imperial manuscripts, the Chinese ships were navigated by Ryukyuan sailors, which also served as interpreters [38, 31, 15].

A ship has arrived at Fuzhou (Fujian province) from the Ryukyu Kingdom. We were glad to hear the news, after having worried about the mission. Our own sailors (Fujianese) lack of navigational experience to sail (to Naha). We celebrated their arrival and were able to ask for details regarding course headings... The Crown Prince (of Ryukyu) had 30 Ryukyuan sailors familiar with the voyages assist every Chinese-speaking navigation officer while others substituted to perform the work of Fujian sailors [31, p. 16].

Based on these facts most probably Ryukyans actually discovered the Pinnacles. In that sense, even at that time China neither exercised an effective control over the Pinnacle Islands nor the complete title of discovery. China and Taiwan also strains that in their historical records the Okinawa Trough was mentioned as the political border between China and the Ryukyu Kingdom [39, 24, 13]. Professor Inoue pointed out that in the Chinese Imperial documents Huangwei Yu/Kuba Island was described as the border between China and the Ryukyu Kingdom, and the islands located on the west side of Chiwei Yu/Taisho Jima were not Ryukyuan territories. However, Chiwei Yu/Taisho Jima was not a part of Ryukyu for the simple reason that it was deserted, not even mentioned that there was no port where the boats could anchor [31]. In Chen Kan records the Kume Jima was described as the west end of the



Ryukyu Islands. Whereas, in the subsequent mission of Guo Rulin (1561) describes that Chiwei Yu, or Taisho Jima in Japanese (one of the Pinnacles) was the point that separated the Ryukyu Kingdom from China. Afterwards, Wang Ji mission (1683) reiterated that the Okinawa Trough was considered as the boundary between China and Ryukyu Kingdom. It was quite prominent that Kume Jima was considered as the nearest access point for the Ryukyans sailors since the Pinnacles were uninhabited, and the Kume Island served as a place for embarking, disembarking, and gathering provisions [15]. Nonetheless, this assumption not necessarily means that the west sea of Kume Jima was considered Chinese territory during that time. If such supposition would be valid, then Ryukyuans could claim the whole East China Sea as theirs, for the simple reason that they navigated along it several centuries before Chinese did.

Furthermore, it is quite doubtful that the Okinawa Trough has been well known as the historical border between China and the Ryukyu Kingdom since during those days the conception of maritime sovereignty was inexistent. Yet, it was Wang Ji himself who asked the meaning of “jiao” 郊 (outskirt) to the Ryukyuan sailors, which they defined as “border between inside and outside.” In Wang records, it was described that even Ryukyuan sailors did not exactly know where such outskirts was lying at but they could only guess. Certainly, in the following Chinese mission, Li Dingyan corroborated that outskirts or what he called “black water trench” was a fictitious border [31].

Taking this into account, it can be presumed that there was no such political boundary between China and Ryukyu at that time. Perhaps, the so-called “black water trench” was not a political boundary, but a symbolical and psychological one for Ryukyuans sailors. The Okinawa Trough was considered as a dangerous zone in the sea where strong wave currents flow. For that reason, Ryukyuan sailors conducted ceremonies before and during their voyages, so that they could come back home safely as Wang Ji himself described the ceremonies in his records [15]. Additionally, Professor Inoue, Chinese, and Taiwanese all affirm that the Pinnacles were included into the Ming military domain because in the Chinese Imperial records some Pinnacle Islands are described as defensive islets against Japanese pirates. In 1556, Hu Songxian was ordered to conduct counter piracy operations on the Fujian (Fukien) coast. He drew a primitive map called 籌海圖編 *Zhouhai Tubian* [39, 59, 14]. On this

map three of the Pinnacle Islands 「釣魚島興; 黃尾山; 赤興」 Diaoyu Dao/Uotsuri Jima; Huangwei Yu/Kuba Jima; Chiwei Yu/Taisho Jima are displayed with their ancient names (see Appendix, Figure 5). It is important to mention that it was a warfare map, trying to illustrate the territories where enemies might be. For that reason, the enemies' territorial position on battle maps does not mean that they belonged to the nation that made the maps. Furthermore 「雞籠山」 Jilongshan, nowadays called Jilong (Keelung) Taiwan, appears as a foreign nation in the “History of Ming” manuscript. Certainly, the map was inaccurately sketched. 「釣魚島興」 Diaoyu Dao/Uotsuri Jima is actually 400 kilometers away from the Fujian (Fukien) coast, but in this map it is located next to 「雞籠山」 Jilongshan, which is much closer to Fujian (Fukien). Whereas 「赤興」 Chiwei Yu/Taisho Jima is nearby Jilongshan and not located on the Diaoyu Dao/Uotsuri Jima side, but on the Okinawa edge [31].

As mentioned above, a sovereign power should exercise their domain within a territory and its determination to occupy it. Therefore, it is quite irrelevant to establish sovereignty only by drawing maps and describing anecdotes. In addition, Korea, Philippines, Vietnam, and most of the East Asian nations (except Japan) were Tributary States of China. However, the existence of this ancient tributary system with Chinese does not suggest that these nations should be Chinese territory in contemporary times. Actually, Taiwan was not even considered as a part of China during the Ming Imperial era (1368–1644). Certainly, the name of “Taiwan” as such, was not mentioned in the Chinese literature of that time. Chinese often called it 小琉球 Xiao Liuqiu “Little Ryukyu.” It was not until 1683 under the Qing Dynasty, when China decided to occupy the west part of Taiwan and exercised a quasi-control of it [31]. This is why the Taiwan maps of that period appear as a half of their regular side. The east part of Taiwan was populated by strong Austronesian aborigine groups who scared Chinese for headhunting. Not even the Qing Dynasty and the previous foreign powers (Spanish, Dutch, and Koxinga) established in Taiwan could control and defeat those aborigine warriors. It was after Japan occupied Taiwan when all these Taiwanese tribes were subjugated with a lot of efforts. Actually, even during the Qing period (1644–1912), the Pinnacles were never incorporated as a part of the Manchu Empire before Japan proclaimed its sovereignty over the islands in 1895. The last

version of the *Qing Huidian* (1889), the statutory encyclopedias of the Manchu Dynasty, contains a diagram of Taiwan with the respective maps of the Tainan and Taidong (Taitung) regions. None of the maps illustrate the Pinnacle Islands [31]. These facts raise a question about Chinese ownership of the Pinnacles in ancient times.

China and Taiwan often cite a Japanese map called *Ryukyu Sanshou Narabini Sanjuuroku-no-shima Zu* 琉球三省並三十六島之図 “Map of Three Ryukyu Regions and Thirty-six Islands” made in 1783 by Shihei Hayashi, a Japanese military scholar from Sendai Miyagi, because this map was also quoted in Professor Inoue’s publication. Originally, this map was attached to a book titled: *Sangoku Tsuran Zusetu* 三国通覧図説 “An Illustrated Description of Three Kingdoms” (see Appendix, Figure 6). Inoue and both Chinese and Taiwanese governments use this map as a piece of evidence to prove that Japan admitted that the Pinnacle Islands were a part of China, only because in the map the Pinnacles were colored in pink, the same color as China [39, 38, 31, 14, 25]. Nonetheless, if one observes the whole picture, Taiwan is colored in yellow, a different color from Mainland China. At that time Taiwan was already a part of China under the Qing Dynasty. In addition, Taiwan, Korea, and a part of Russia are in the same color (yellow), while Manchuria and Japan are both in green. Curiously the Pinnacles, China, Siberia (Russia), and the Ogasawara Islands (a part of Japan since 1675) are colored in pink as well. Therefore, it can be assumed that difference in colors did not intend to demonstrate the political divisions. Probably, the map was made for tracking Japanese piracy, following a Chinese imperial manuscript. In this book, there is a note written by Hayashi declaring that he used the *Zhongshan Chuan Xin Lu* 中山伝信録 sketch, made by Xu Baoguang in 1721 during the Qing Dynasty, as a reference in order to publish his book. Indeed, Hayashi never visited Ryukyu and its adjacent islands [38, 31].

Hayashi, having little knowledge of that region, used that Chinese map and presumed that 「魚釣島」 Daioyu/Uotsuri Island’s location is closer to 「福建」 Fujian (Fukien) province in China. However, the real location of Daioyu/Uotsuri Island is over 420 kilometers from Fujian (Fukien); almost twice distance between 「久米島」 Kume Island (Okinawa) and Daioyu/Uotsuri Island. Hayashi was not sure to whom those islands belonged to, he only followed the *Zhongshan Chuan Xin Lu* sketch. Moreover, the *Zhongshan Chuan Xin Lu* map does not have any color and



extraterritorial designations, and the distance among the islets is imprecise and confusing (see Appendix, Figure 7) [31]. It is not clear that *Sanshou Narabini Sanjuroku-no-shima Zu* was supposed to describe political divisions; hence this map cannot be a reliable proof for Chinese people to claim the Pinnacles.

Likewise, all historical documents concerning to Taiwan during the Manchu period including the books of “History of Taiwan” (1696) and “The Sequel of History of Taiwan” (1765) describe the most northern part of Taiwan is the Huaping Yu islet. Moreover, in ROC official documents such as “History of Keelung City” (1954) and “A Summarized History of Taiwan Municipal Governments” (1965), the islets of Huaping, Pengjia, and Mianhua are also mentioned as the most northern points of Taiwan. In fact, those islets were officially incorporated to Taiwan sovereignty until 1905 under the Japanese rule [38, 31]. Thus, it is quite contradictory that China and Taiwan can claim the sovereignty of the Pinnacles since the Ming and Qing dynasties did not properly control for almost six centuries, although those islets (Huaping; Pengjia; Mianhua) were close to Pinnacles.

As for the deed of the Empress Cixi granting three of Pinnacles to some individual with the name Sheng Xuanhuai, researchers found that the evidence was fraudulent. First of all, Chiwei Yu/Taishou Jima is a barren rock so that nothing can grows on it. Second, at that time Huangwei Yu/Kuba Jima and Diaoyu Dao/Uotsuri Jima were occupied and developed by Tatsushiro Koga, a Japanese private entrepreneur. Besides, there is no record of wormwood or even medical herb production by Chinese on those islands [31, 41]. Likewise, the Meiji government made a series of studies, surveys, and maps of Pinnacles for twenty-eight years till 1895, when the islets were officially incorporated to Japanese sovereignty. During all this period the Qing Dynasty never protested any of these actions. In addition, several anomalies were found in the format of the fictitious deed. Firstly, the document is dated only by the year of the dynasty and the month of 十月 (October); curiously the exact day is missing. Secondly, the style of the deeds, the type of paper, and the seals did not correspond to the Qing Dynasty’s record patterns. In addition, it was found that Sheng Xuanhuai was not a Minister of Ceremonies during 1893 as written in the document (see Appendix, Figure 8). Finally, the bestowment of the islands was not

recorded in any documents of the Qing Dynasty; including the *Qing Shilu* 清史錄, *Donghualu* 東華錄, or *Donghua Xulu* 東華統錄 [31, 41].

The first Japanese reference about the Pinnacles was made in 中山世鑑 *Chuzan Seikan* “Mirror of Chuzan (Middle Kingdom)” in 1650. As in the Chinese records, there was no sign or indication that the islands were considered as Japanese territory yet [54]. In 1859, Nagayasu Oshiro, an officer from Misatomagiri, Okinawa, was the pioneer to conduct surveys on the Pinnacles. Oshiro studied the topography, fauna, and flora of the Uotsuri Jima/Diaoyu Dao, Kuba Jima/Huangwei Yu, and Taisho Jima/Chiwei Yu islands. The results from the surveys were documented by the officer Hyogo Osawa, who later submitted them to the Governor of Okinawa. These reports were later used to conduct some equipped ships in order to make deep-fishing possible in those virgin waters. As a result, fishing became viable in the region and the developing of Pinnacles shores begun [38, 31].

In 1884, Tatsushiro Koga, a fisherman from Fukuoka, landed on Kuba Jima/Huangwei Yu. Thereafter, he discovered that the islands were the habitat of a rare specimen of albatross. Koga started to develop a business using the albatross’ feathers and guano. The entrepreneur requested the Local Government of Okinawa to annex the island to Japan in order to exploit it [53, 38, 12, 63, 54, 31]. However, initially the Central Japanese Government in Tokyo denied Koga’s petition because it was not clear if the islets belonged to some other nation. In January 1885, the Ministry of Home Affairs of the Meiji government asked to the Okinawa Prefecture to do studies on the isolated islets scattered between Okinawa Japan and Fujian (Fukien) China referring to the Pinnacle Islands. Based on Oshiro’s surveys, Sutezo Nishimura, the then-Governor of Okinawa, sent a letter to the Minister of Home Affairs in Tokyo on September 22<sup>nd</sup>, 1885. The letter declared that annexing the Pinnacle Islands to the Okinawa territory would not be problematic, and also that he was eager to conduct more topographic studies. Successively, Nishimura ordered to Hyogo Osawa, an officer from Okinawa to do additional studies over the Pinnacles. In October of 1885, Osawa with four Okinawa government officers visited the Pinnacles and conducted more topographic studies. Thereafter, on November 4<sup>th</sup> of the same year, Osawa provided detailed reports to Governor Nishimura. Based on these studies, Nishimura sent a second letter to the Minister of Home Affairs with the purpose to build national

markers over the Pinnacles incorporating them to the Okinawa Local Government [31]. On October 9<sup>th</sup>, 1885, then-minister of Home Affairs, Aritomo Yamagata, made a proposal to the Meiji Central Government suggesting that the Pinnacle Islands were uninhabited and there was no evidence to belong to China or any other nation. Therefore, it would not be an impediment to erect national markers over the islets. However, Kaoru Inoue, the then-Minister of Foreign Affairs, responded, “It would be better to refrain from such action until further field surveys could be completed and reported upon. Otherwise, the Qing Dynasty might harbor suspicions”. [31, p. 6] Hence, he suggested that it is better to wait in order to establish a proper frontier, because it was unsure if the Pinnacles were controlled by the Manchu Empire or not. Nonetheless, Inoue’s letter is not an explicit recognition of Chinese sovereignty over the Pinnacle Islands although China and Taiwan governments deduce so [31, 13].

Meanwhile, despite the repetitive demands by the Okinawa Governor, the initiative to build territorial markers on the Pinnacles was still undecided during the last months of 1885. Nonetheless, the Pinnacle Islands were included into Japan’s Okinawa Prefecture in 1876 [49, 31]. As evidence, there were already several Japanese maps displaying the Pinnacles in Japan’s territory. To mention some: 1) the four different versions of Dai Nippon Zendo 大日本全図 “Full Map of Great Japan” (1876/1877/1882/1883); 2) Dai Nippon Fuku Kankatsu Chizu 大日本府県管轄図 “Map of Great Japan’s Prefectures” (1879); 3) Yogo Sonyu Dai Nippon Kyo Chizu 洋語挿入大日本輿地全図 “Full Map of Great Japan in English language” (1886); and 4) Kanei Suiro-shi 寰瀛水路誌 “The Hydrographic Journal of Japanese Territorial Waters” (1886) [67].<sup>10</sup>

Still at this point, the Manchu government never disapproved the maps or objected activities conducted on the Pinnacles by the Japanese government even when Spain and Japan in 1891 sustained a territorial dispute over Iwo Jima, an island nearby. The Spanish delegates were surprised by the fact that the Qing government, as a possible third party, did not object the Japanese occupation of Iwo Jima and its adjacent waters [38, 31].

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<sup>10</sup> T. Kunitaka, "Under Japanese Control 日本の実効支配," [Online]. Available: [http://www.geocities.jp/tanaka\\_kunitaka/senkaku/4occupation.html](http://www.geocities.jp/tanaka_kunitaka/senkaku/4occupation.html). [Accessed 20 April 2012].

On January 13<sup>th</sup>, 1890, with the purpose to avoid possible illegal fishing in the area, the Okinawa Governor sent another letter to the Minister of Home Affairs insisting that they should erect national markers over the Pinnacles and incorporated them to Yaeyama Islands' territory. Three years later, on November 2<sup>nd</sup>, 1893, the Okinawa Governor sent another letter to the Minister of Home Affairs and the Minister of Foreign Affairs emphasizing, "as fishing has become active around the Senkaku Islands, we need to crackdown on illegal activities, and therefore, we would like to build territory markers and incorporate the islands into Okinawa prefecture" [31, p. 6].

At the end of 1893, the respective Ministers of Home Affairs and Foreign Affairs made considerations to call a Cabinet meeting and make a decision over the Pinnacles official annexation. As a result, on January 14<sup>th</sup> in 1895 the Meiji government then declared their interest to incorporate the Pinnacle Islands into Japan's territory by peaceful means and not military intervention since the islands were uninhabited. In fact, based on the numerous surveys over the Pinnacles, there has been no evidence of Chinese inhabitants or records confirming that China or other nation ever controlled or administrated those islands. Indeed, there has been no sign that any Chinese people had ever lived or worked there. Therefore, under the International Customary Law, the Pinnacle Islands were considered as *terra nullius* by the Japanese delegation. On January 22<sup>nd</sup> in 1894, the Central Government in Tokyo decided the construction of national markers over the Pinnacle Islands. This was seven months earlier to outbreak of the First Japanese-Sino War (August 1<sup>st</sup>, 1894 – April 17<sup>th</sup>, 1895). Afterwards, on January 14<sup>th</sup>, 1895, the Okinawa Governor was ordered to build national markers on the Pinnacles; and by Imperial Decree No. 13 issued on March 5<sup>th</sup>, 1896, the Pinnacle Islands were officially incorporated into the Yaeyama Islands on April 1<sup>st</sup>, 1896, falling into Japanese territory [19, 31, 68, 13].

In the meantime, Tatsushiro Koga persisted to lease the Pinnacles from the Japanese government. In the end, Koga received the permission from the Minister of Home Affairs for the leasehold of the islands. Afterwards, Koga started to populate Uotsuri Jima/Diaoyu Dao and Kuba Jima/Huangwei Yu islands [31]. However, to attract a considerable number of people to the Pinnacles was far from easy. Given the fact that the islands were uninhabited, people were unwilling to live and work there. Moreover, due to the particular topography of the islets, it was not possible for the

boats to anchor, making the transportation of people and goods more difficult. To make things harder, Koga had to provide food and shelters to his workers, besides to deal with sanitation and health care concerns. In 1900, Koga went to Tokyo asking Professor Jukichi Minosaku from Tokyo Imperial University (nowadays Tokyo University) for assistance for development planning. Professor Minosaku introduced Mikinosuke Miyajima to Koga to help with the development plans over the Pinnacles. Afterwards, Miyajima visited the islands to supervise the civil engineering labors over the islets. Tsuneo Kuroiwa, a teacher from Okinawa Normal School, also served as a consultant for the developing tasks of the islets. During the Pinnacles development, Koga prohibited the over-exploitation of the flora and fauna, and built docks so that the boats could anchor and facilitate the water-land transportation. He also installed catchment tanks to provide fresh water. In addition, in order to accomplish the sanitation requirements from the Okinawan Local Government, Koga built houses, roads, dikes, and infrastructure for waste disposal [31, 41].

In 1905, Koga started a taxidermy business for albatross, brown boobies, and other birds, which were sold in Yokohama and Kobe cities. He also imported thirty thousand camphor seeds from Taiwan to plant on Uotsuri Jima/Diaoyu Dao and Kuba Jima/Huangwei. The camphor trees grew successfully. Koga made a fortune on his businesses and exported 200,000 birds in 1907 and the double during the following year. Besides birds, the Pinnacles became a region to foster *katsuobushi* (dried fermented bonito fish flakes), which is a supplement to many Japanese dishes. Koga hired several fishermen and dried bonito makers from Miyazaki Prefecture. About two hundred people including fishermen and *katsuobushi*'s factory workers lived in the Pinnacles [63, 31].

By 1908, Uotsuri Jima/Diaoyu Dao and Kuba Jima/Huangwei already counted 99 houses and 248 residents with production fields totaling sixty hectares. Curiously, Uotsuri Jima/Diaoyu Dao had its own postal address: 2392, *Aza Nobori-No-Jo, Uotsuri Jima, Ishigaki City, Okinawa Prefecture Japan*. In 1910, Tatsushiro Koga was awarded the Medal of Honor with Blue Ribbon in recognition of his attainments and contributions to the local economy. In 1918, Tatsushiro Koga passed away, and the production on the islands was taken over his sons, Zenji Koga and Yoshitsugu Koga [17, 31, 16]. During that time, the Koga family hired more workers to foster several economic activities on those islands. In the meantime, researchers from

private and public sectors did several surveys and studies of the islands, which were in various academic research publications. In 1932, the Ministry of Home Affairs granted the sale of Uotsuri Jima/Diaoyu Dao, Kuba Jima/Huangwei Yu, Minami Kojima/Nanxiao Dao, Kita Kojima/Beixiao Dao to Zenji Koga and his family, yet the rest of the Pinnacles have remained under Japan's governmental ownership to the present day. During that time, the Japanese government imposed taxes to the private owners of those islands [38, 65, 31].

As a result of the outbreak of World War II, the Koga family and their employees were forced to leave the islands temporarily and moved to Naha and Ishigaki in 1940. Consequently, the Pinnacles have been left uninhabited since the end of the war. Nevertheless, under the U.S. occupation, the Koga family continued to pay the land taxes to the Okinawan Local Government, and the family remained as the legitimate owner of Pinnacle Islands mentioned above. Afterwards, the Kurihara family, who nowadays resides in Saitama Prefecture, bought the Koga family's islands under the condition that the islands must remain as a natural preservation site for its rare fauna specimens [31].

## **2.4. International Public Law sources analysis**

As described above, Chinese and Taiwanese governments insist that the Pinnacles were transferred to Japan under the Shimonoseki Treaty. By their accounts, those islands were returned to Taiwan after the end of World War II through the Japanese Instrument of Surrender, which accepted terms of the Potsdam Declaration, and then corroborated with the Treaty of Peace between the Republic of China (Taiwan) and Japan on April 28<sup>th</sup>, 1952. Nonetheless, it is important to mention that the Treaty of Shimonoseki, which concluded the First Sino-Japanese War, was signed on April 17<sup>th</sup>, 1895. Three months later when the Japanese government then built national markers over the Pinnacles territory, and one year ago after the islets were officially reincorporated to Yaeyama Islands, Okinawa by Imperial Decree on April 1<sup>st</sup>, 1896 [28, 38, 63, 54, 31, 13]. Certainly, in the Peace Conference of the First Sino-Japanese War, the Pinnacles were not mentioned; thus, not included in the Shimonoseki Treaty. This is because the Pinnacle Islands were not a part of the group



of islands annexed from Taiwan [17, 12, 63, 54]. As evidence, in the *Qing Hui Dian* “Great Qing Code” (1668), a compilation of 162 volumes, the Pinnacles were not identified as the islands belonged to Taiwan that Japan annexed from military aggression [31]. In fact, the Shimonoseki Treaty did not mention the Pinnacles and only ceded Taiwan, Penghu (the Pescadores), Jinmen (Chin-Mei/Quemoy), Mazu (Matsu), Lü Dao, and Lan Yu islands to Japan from the preceding government of the Manchu Empire.

Article II: China cedes to Japan in perpetuity and full sovereignty the following territories, together with all fortifications, arsenals, and public property thereon. Section B: The island of Formosa, together with all islands appertaining or belonging to the said island of Formosa. Section C: The Pescadores Group, that is to say, all islands lying between the 119<sup>th</sup> and 120<sup>th</sup> degrees of longitude east of Greenwich and the 23<sup>rd</sup> and 24<sup>th</sup> degrees of north latitude [69].<sup>11 12</sup>

Apparently the interpretation of “Formosa” and “The Pescadores” extension of sovereignty is ambiguous because it is not well-defined which islands were related to Formosa during its Japanese colonial period, “... those islands appertaining or belonging to Formosa” as mentioned in the Treaty of Shimonoseki. The dilemma here is the difficulty defining whether or not the treaty’s interpretation was referring to the geographic description as a main factor or to the administrative jurisdiction as a circumstantial prerogative. In this sense, given the geographic coordinates there is doubt as to which other islands are indicated in the treaty, as mentioned above.

On the other hand, the clause “those islands appertaining or belonging to Formosa” can be considered to refer to all areas under the jurisdiction of the Japan’s former Imperial Governor General of Taiwan. Hence, there should not be any uncertainty that the Pinnacle Islands were excluded from Formosa’s sovereignty in this point as well, since the Pinnacles have been administrated by Okinawa Prefecture before and after the American occupation. Since 1895, the Pinnacle Islands have remained as a part Okinawa in Nansei Shoto (Ryukyu Archipelago), which has been also Japanese territory since April, 1879 [54, 30]. Therefore, it is evident that the Pinnacles were unrelated and excluded in the Shimonoseki Treaty as the incumbent Taiwan’s President as well as Chinese leaders presume.

<sup>11</sup> Besides Formosa (Taiwan) and the Pescadores (Penghu), the islands falling on those coordinates correspond to: Jinmen (Chin Mei) or Quemoy, Mazu (Matsu), Lü Dao, and Lan Yu (see Appendix, Figure 9).

<sup>12</sup> Taiwan Documents Project, “Treaty of Shimonoseki,” [Online]. Available: <http://www.taiwandocuments.org/shimonoseki01.htm>. [Accessed 7 July 2011].



Actually, the declarations and assumptions held by current Chinese and Taiwanese governments seem to be quite contradictory. For first instance, in 1919, thirty-one fishermen from Fujian (Fukien) Province in China were stranded in the area of Uotsuri Jima/Diaoyu Dao, one of the Pinnacles. They were rescued by Yoshitsugu Koga, who owned the *katsuobushi* factory, and three of his employees. On May 20<sup>th</sup>, 1920, all those Chinese fishermen were repatriated without any problems. As a result, the Japanese fishermen received letters of gratitude from the Republic of China Consulate in Nagasaki, Japan [12, 63, 31, 37]. The translation of the letter is as follows:

In winter of the eighth year of the Chinese Republic [1919], Guo Heshun and 30 other fishermen of the county of Hui'an in Fujian province, adrift in a gale and in dire straits, washed ashore in the seas of Wayojima [another name for Uotsuri Jima] in the Senkaku Islands in the Yaeyama district of Okinawa prefecture of the Empire of Japan. At this point, Mr. Tamayose Magatomo of Ishigaki village office and others of Yaeyama district desperately came to their aid and the shipwrecked fishermen were safely repatriated. We would like to convey our deepest appreciation for this kindness. Under the name of the consul, Feng Mian, is the official seal "Chinese Consul-in-Residence, Nagasaki." Above the date appears, "Seal of the Consulate of the Republic of China in Nagasaki" [37, p. 4].

That letter of gratitude was sent to four people: Tamayose Magotomo, Yoshisuke Tomigawa (the Mayor of Ishigaki at that time), Yoshitsugu Koga (the owner of a dried fish factory on Uotsuri-Jima/Diaoyu Dao) and Robunasto Matsuo (the translator). In the letter, the Consul of the Republic of China refers to the Pinnacle Islands by the term in Japanese, Senkaku Retto 「尖閣列島」 instead of the Chinese term, Daiyutai Qundao 「釣魚台群島」 [31, 37]. It provides a piece of evidence that China under the Kuomintang (KMT) government, then-established in Mainland China, considered the Pinnacles as Japanese territory (see Appendix, Figure 10).

In addition, in 1949 when the People's Republic of China achieved its mandate, the CCP did not demand sovereignty over the Pinnacles. Similarly with the preceding government of Mainland China, the ROC, the PRC also considered the Pinnacle Islands as Japanese territory. On January 8<sup>th</sup>, 1953, Chinese People's Daily *Renmin Bao* published an article under the title: *The Ryukyu People's Struggle against U.S. Occupation*. Basically, this article stressed on the U.S. imperialist's presence in Okinawa, referring to the Pinnacles as its Japanese name 「尖閣諸島」 Senkaku

Shoto, and considering them a part of the Ryukyus (see Appendix, Figure 11) [38, 31, 37, 41]. The first paragraph of the article says:

The Ryukyu archipelago is a chain of islands located on the Pacific Ocean between northeast Taiwan and southwest Kyushu in Japan. It comprises seven groups of islands, including the Senkaku Islands, the Sakishima Islands, the Daito Islands, the Amami Islands, the Tokara Islands and the Osumi Islands. The chain contains both large and small islands. Over 50 islands have names, while more than 400 remain unnamed and, in total, they comprise a land area of 4,670 square kilometers [31, p. 38].

Later, in 1960 the CCP published a World Map Atlas made by Beijing Map Publishing Co. This Atlas contains a map that shows the Pinnacles with the Japanese names rather than the Chinese names (see Appendix, Figure 12). Likewise, the KMT government (now in Taiwan) published an Atlas (World Map Album, Vol. 1 – East Asian Nations) displaying the Pinnacle Islands as territory of Japan using the term 「尖閣群島」 Senkaku Gunto. The map was jointly published by the National Defense Studies Institute and the Chinese Institute for Geoscience based in Taiwan in 1965 (see Appendix, Figure 13) [38, 31, 37].

Furthermore, until 1970 the Taiwanese government distributed a series of geography books for junior high-school, presenting the Pinnacles with Japanese names and a part of the Ryukyus. The textbooks illustrate the Ryukyu Archipelago extension as latitude 24 degrees – 30 degrees north, longitude 122.5 degrees – 131 degrees west; and the map displays the Ryukyu Archipelago composed by 55 islands scattered between 24 degrees and 30 degrees north latitude and between 122.5 degrees and 131 degrees of east longitude (see Appendix, Figure 14). There were also a series of Taiwanese geography textbooks published in 1958 describing that the Pengjia islet as the most northern point of Taiwan, excluding the Pinnacles from the ROC sovereignty [38, 31, 37].

In other words, the Chinese and Taiwanese governments did not consider the Pinnacles as their territory at that time. Certainly, Lee Teng-hui, the former President of Taiwan, affirmed in an interview for Okinawa Times that the Pinnacles are unquestionably a part of Japan [70]:

The Senkaku Islands belong to Japan, and are, therefore, Japan's territories. No matter how much China claims sovereignty over the islands, there is no real evidence to support the claims. In light of international law, it is not clear what grounds China has to make the claim of sovereignty. There is no point in arguing that China has territorial rights unless, firstly, China has sovereignty over the islands and, secondly, there is evidence that China has stationed soldiers in the islands. I know about past collaborations between the Kuomintang and the Communist Party of China. When Hong Kong agents fomented unrest among fishermen in Suao, I mobilized war vessels to crush the riot. The more important issue for Taiwanese fishermen is fishing rights. Before WWII, the Japanese Diet granted rights to Taiwan to fish the waters of the Senkaku Islands, Yonakuni Island and Keelung. After the war, the Japanese Government remained silent regarding this arrangement. We would like the Japanese government to work on this issue in earnest [31, p. 21].

Additionally, in the ROC Fact Book 1962 and 1963 editions, the Taiwan's location is illustrated between 21 degrees 45'25 and 25 degrees 37'53 of north latitude and 119 degrees 18'3 and 122 degrees 6'25 of east longitude. By cartographical means, these coordinates do not include the Pinnacles on Taiwan's sovereignty. Instantaneously, the two Taiwanese journals compiled by Xiang Da in 1961 affirmed, "Diaoyu Yu is an islet of the Senkaku Gunto on the way to Liuqiu from Jilong of Taiwan. Today's name is Uotsuri Jima." In 1965, "The Outline of Local-Self Government in Taiwan Province" book recaps Jilong (Keelung) as the most northern territory of Taiwan, technically excluding the Pinnacle Islands. Finally, in the ROC Yearbook (1968) it was stated again that the northern limit of Taiwan is Pengjia Island, which is located approximately 150 kilometers south-west of the Pinnacles [68, 15].

Moreover, in 1969, a classified Chinese map made by the PRC government illustrates the Pinnacle Islands once again with the Japanese name written in Simplified Chinese characters: 「尖阁群岛」 Jiange Quandao (Senkaku Gunto). The map displays the demarcation line, which points these islands as Japanese territory (see Appendix, Figure 15) [71, 31, 37, 41]. This is another piece of evidence that refutes the statement of the Chinese Foreign Ministry Spokesperson, Jiang Yu, who assertively declared to the media as, "The Diaoyu Islands have always been a part of China since ancient times, and nobody can change this fact. China possesses unquestionable sovereignty over the Diaoyu Islands; the Chinese government's will and determination are to safeguard its national sovereignty and territorial integrity" [71].

On December 1<sup>st</sup>, 1943 the Cairo Declaration was promulgated by the Allies' leaders: Franklin Roosevelt, President of the United States; Winston Churchill, Prime Minister of the United Kingdom; and Chiang Kai-shek, the Republic of China Generalissimo. During the conference the Allies' leaders agreed as, "Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the First World War in 1914 and all the territories that Japan has stolen from the Chinese, such as Manchuria, Formosa and the Pescadores, shall be restored to the Republic of China" [30, p. 2]. Afterwards, the Potsdam Declaration was promulgated on July 25<sup>th</sup>, 1945. In relation to the limitations on Japanese territory the document postulated, "Article XVIII: The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine" [30, p. 2]. As a result, the Article II of the Treaty of Peace with Japan (San Francisco Peace Treaty) ratified on September 8<sup>th</sup>, 1951, clearly limited the Japanese sovereignty, in which there is no clause mentioning the Pinnacles:

Article II: (a) Japan recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet. (b) Japan renounces all right, title and claim to Formosa and the Pescadores. (c) Japan renounces all right, title and claim to the Kurile Islands, and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of 5 September 1905. (d) Japan renounces all right, title and claim in connection with the League of Nations Mandate System, and accepts the action of the United Nations Security Council of 2 April 1947, extending the trusteeship system to the Pacific Islands formerly under mandate to Japan. (e) Japan renounces all claim to any right or title to or interest in connection with any part of the Antarctic area, whether deriving from the activities of Japanese nationals or otherwise. (f) Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands [72].<sup>13</sup>

In addition, the Article III of San Francisco Peace Treaty permitted the United States the right to control several Japanese territories, in which the Pinnacle Islands were apparently included. Nansei Shoto (Ryukyu Archipelago), as written in this legal document, refers to all islands south of 29 degrees of north latitude. In this treaty, the United States also considered that residual sovereignty over the Ryukyu Islands was preserved by the Japanese government [28, 49, 11, 63, 36, 32, 16].

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<sup>13</sup> Taiwan Documents Project, "Treaty of Peace with Japan," [Online]. Available: <http://www.taiwandocuments.org/sanfrancisco01.htm>. [Accessed 7 July 2011].

Article III: Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29 deg. north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters [72].<sup>14</sup>

As a consequence of the political chaos between the two Chinas, neither the Republic of China (now in Taiwan – Formosa) nor the People's Republic of China ratified this treaty because the Allies, particularly the United States and the United Kingdom, could not decide which government should represent China, the PRC or ROC. For that reason, none of the two Chinese delegations joined San Francisco Peace Conference in September 1951 [3, 11]. Based on this point, it is incongruous how China and Taiwan, as no signatories, try to use this legal accord by claiming the ambiguous delimitation of Japan's minor islands territory. Actually, the PRC and ROC claims also contradict themselves in this aspect. Although the status of the Pinnacles was not explicitly contemplated in the Article III of the mentioned treaty, John F. Dulles, then-U.S. Secretary of State, acknowledged Japan's residual sovereignty over the Nansei Islands, which intended to include the Pinnacles, at the San Francisco Peace Conference [28, 49].

Earlier, during the World War II, Chiang Kai-shek expressed his interests in trying to obtain the Okinawas (Nansei Shoto). Consequently, at that time the ROC refused to recognize the Japanese residual sovereignty over the Nansei Islands, which Dulles had recognized at the San Francisco Peace Conference. Although Chiang Kai-shek's obsessions to recover Mainland China and occupied the Okinawas persisted, the new regime in Mainland China (PRC), however, supported the return of Nansei Islands to Japan in 1951. This was merely a gesture for the CCP propaganda pointing to the complete removal of the U.S. base in Okinawa, and the subsequent Peace and Friendship Treaty with Japan (1978) in attempt to expand the Communism in Japan during the Cold War era [28, 49].

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<sup>14</sup> Taiwan Documents Project, "Treaty of Peace with Japan," [Online]. Available: <http://www.taiwandocuments.org/sanfrancisco01.htm>. [Accessed 7 July 2011].

Afterwards, the Treaty of Peace between Japan and the Republic of China (Taiwan) signed on April 28<sup>th</sup>, 1952, also did not explicitly mention any clause related to sovereignty over the Pinnacle Islands:

Article II: It is recognized that under Article II of the Treaty of Peace which Japan signed at the city of San Francisco on 8 September 1951 (hereinafter referred to as the San Francisco Treaty), Japan has renounced all right, title, and claim to Taiwan (Formosa) and Penghu (the Pescadores) as well as the Spratly Islands and the Paracel Islands [73].<sup>15</sup>

Basically, this treaty acknowledged what was stipulated on the San Francisco Peace Treaty in relation to the Japanese residual sovereignty of the Nansei Islands and the following U.S. occupation over these territories. The later problem for the ROC in this treaty was that Japan did not officially assign a sovereign successor for any of these territories including Taiwan. This created confusion over the sovereignty transfer to other territories that Japan lost after that war, such as the Spratly Islands and the Paracel Islands, which disputed by China, Taiwan, Vietnam, and other South East Asian nations [74]; curiously, where once again hydrocarbons are involved.

Although Okinawa along the Pinnacle Islands had been occupied by the American forces, the Okinawa Local Government was still administrating the Pinnacles through Ishigaki City. Nevertheless, the Pinnacles again remained uninhabited during the U.S. occupation. For the same reason their territorial waters could not be well protected. At the beginning of the 1950's, Taiwanese fishermen did illegal fishing. Certainly, in 1968, a group of Taiwanese illegally landed on the Pinnacle Islands. Afterwards, the Ishigaki Local Government asked the trespassers to leave the islands. As a result, on May 9<sup>th</sup>, 1969, the then-Governor Ishigaki City and a group of officers disembarked the Pinnacles and new built concrete markers, which reminded that the islands are under the Ishigaki City jurisdiction (see Appendix, Figure 16). A year later, the Okinawa (Ryukyu) Prefectural Government with the supervision of the U.S. military administration built more indicators written in English, Japanese, and Mandarin declaring as, "the entrance to the Senkaku Islands is forbidden for non-resent of Ryukyu Islands" (see Appendix, Figure 17).

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<sup>15</sup> Taiwan Documents Project, "Treaty of Peace between the Republic of China and Japan," [Online]. Available: <http://www.taiwandocuments.org/taipei01.htm>. [Accessed 7 July 2011].



As additional proofs that Pinnacles continued under Japanese dominion, several studies were organized by the Okinawan government: 1) Five ecological surveys by Ryukyu University between 1950 and 1970; 2) A survey on subsurface natural resources, water quality, seabirds, and vegetation conducted by a joint research of the General Administrative Agency of the Japanese Cabinet, the University of Ryukyu, and the Government of Ryukyu in 1968; 3) Between 1969 and 1970 studies on marine geology were completed by researchers from the General Administrative Agency of the Japanese Cabinet; 4) In 1970, a joint investigation of researchers from Kyushu University and Nagasaki University ran a survey on geology, biota, insects, seabirds, and marine species [31].

In the meantime, Tsunehisa Omisha, a researcher from Naha City started to direct investigations about oil and natural gas deposits beneath the islands of Okinawa, Miyako, and Yaeyama. By February 1969, Omisha already submitted over five thousand applications to the Japanese government to grant excavating rights under the Pinnacles' waters. Months later, Omisha presented in depth reports concerning to the existence of hydrocarbons remaining in the sea bed where the Pinnacle Islands lie. Thereafter, the Japanese government presented its own surveys. Whereas, the Committee for the Co-ordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas with a sponsorship of the UNECAFE directed its own investigations over the Pinnacles undersea topography. In 1968, UNECAFE announced that the Pinnacle Islands might be located under abundant deposits of oil and natural gas; pointing it as one of the most proliferous hydrocarbons regions in the world [28, 64, 24, 38, 63, 54, 43, 31, 14, 16].

As a final point, it is ironic that neither the PRC nor the ROC objected the status of the Pinnacles under Japanese administration for seventy five years (1895–1970) [19, 63, 54, 31, 13]. This action evidently points out that China and Taiwan initially did not consider the Pinnacle Islands as a part of their territory despite their historical claims. According to Steven W. Su [4], the tacit objections related to Japanese administration over the Pinnacle Islands during the postwar agreements on China were notable. Nevertheless, on Taiwan's side, the silence was justified because of the United States' interventionism during the Cold War, which eclipsed the ROC's claims over the Pinnacles. Furthermore, Steven W. Su [4] justifies that Taiwan could not object the Article III of the San Francisco Peace Treaty because the ROC



established a Mutual Defense Treaty with the United States in 1954, which permitted a partial occupation by U.S. military forces of Taiwan. Oddly, after the UNECAFE announced high prospects about the existence of undersea oil and gas lying near the Pinnacles. Thereafter, the Taiwanese government began on July 1<sup>st</sup>, 1971 to claim the Pinnacle Islands as a part of their inherent territory. Subsequently, on December 30<sup>th</sup>, 1971, the Chinese government officially claimed the Pinnacles as well [63, 54].

It is a fact that from those ancient times until 1971 Chinese and Taiwanese ignored the Pinnacles, and then began to raise claims only because of the economic and geostrategic interest. China insisted that the Pinnacle Islands were not originally Japanese territory. However, if one revises Chinese ancient history, he will find that Tibet, Uighur, Inner Mongolia, and Manchuria were not originally part of China. Even Chinese themselves tried to distinguish their ancient Sino-centrism by building the Great Wall separating them from outsiders or what they called “barbarians.” Afterwards, the CCP occupied and tries to indoctrinate the people from those regions as Chinese; while Taiwan, the Pinnacles, and Okinawa seem to be their long-standing disputes. It seems that China’s strategy is trying to reaffirm their ancient sovereignty and to be influential in the region. In 1995, the former Chinese Premier, Li Peng, during his visit to Australia declared that in thirty years Japan would be vanished. In fact, the Chinese government has already purchased public-land in Hokkaido and Niigata Prefectures [75]. This circumstance suggests that gradually the Chinese expansionism is trying to reborn in the region, driven by its assertive nationalism to influence and persuade its competitors in East Asia.

## **CHAPTER THREE**

### **3. Theoretical framework and analysis**

#### **3.1. Neorealist paradigm**

“The more things change, the more they stay the same” as the French novelist, Alphonse Karr said, there is no better testimony than history to evidence that in International Relations. Lately, the frontiers have shifted, cooperation among Nation-States has become wider, and new actors have entered the picture, but power always finds the way to rise. As a result, nowadays the relationship among Nation-States may be more unpredictable than during the Cold War period. Today’s ally may be tomorrow’s rival and vice versa [76]. For these reasons, Neorealism is probably the most accurate paradigm of IR, which can explain the characteristics of parties involved in the Pinnacles issue. Fundamentally, the Neorealist scope in world politics underlines the constant anarchy in the International System. As a result, Neorealism perceives power as a tool to minimize such anarchy [7].

According to the Neorealism paradigm, Nation-States are unitary and rational actors, attempting at least to survive by defending their sovereignty and to maintain their own interests under a condition of competitiveness. Likewise, the main concern of Nation-States should be their own security [5, 6]. The difference between international and national policy realms is not properly analyzed in the use or nonuse of force, but in the different types of orders and configurations. The International System is deemed to be “one of self-help.” Although all States are conceived as functional units in the system, they are different in terms of capabilities, and those differences will eventually increase the competition among them. In this aspect, the configuration or structure of the system will decrease the cooperation. For example, each Nation-State takes some of its effort by protecting itself against others due to the insecurity conditions. At the same time, there is ambiguity about the other States coming actions and intentions. Another problem is that a Nation-State may become dependent on others through cooperation. At this point the more a State specializes,

the more it relies on others; so that the Nation-State will pursue to control what it depends on, or minimize the level of dependency. Furthermore, the structure produces actions that might have involuntary effects. Therefore, if the structure is unaltered, it is not possible to determine the purposes and actions of the actors to create desired or undesired outcomes in the system [8].

The Neorealism paradigm perceives power as a tool, in which States under risk will determinate how much power they should use: excessive weaknesses or excessive strength. According to Kenneth Waltz [7], conflicts among Nation-States are triggered by different governmental forms, economic systems, social institutions, and political ideologies. Neorealism points out that international politics can be understood only by means of the effects between the actors and system. Kenneth Waltz [7] insists that the existence of anarchy in the International System is a consequence towards the lack of a central power, in which the transformation of the system depends by the number of powers and their motives. Therefore, interactions among States will tend to be suspicious and consequently adverse. This aspect reminds them to reinforce their security. Nonetheless, the Neorealist paradigm is not centered on ambitions or intrigues, which point the mutual conflict among the Nation-States as the Realism perspective. Instead, States act according to the events. The recurrence of war is only followed by the configuration of the International System. In an anarchist scenario, peace is almost inexistent; the maintenance of the *status quo* (stability) requires the main actors' power in the system.

Neorealism theorists have special attention to the militarization and the strategies among the powers that rule in the International System. Kenneth Waltz [7, p. 45] affirms, "The excessive accumulation of power by one state or coalition of states elicits the opposition of others. This accumulation of significant power through conquest, even if only conventional weapons are used, is no longer possible in the world of nuclear powers." Under such circumstances, defense and deterrence create a status of stability and peace. In the meantime, weapons and strategies simplify the defense and contend the offensive inducing of a dismissal to war [7]. At the same time, alliances and common interests are usually established as a consequence of the fear from other Nation-States' power. The alliances are composed by certain flexibility. However, this binds the State's own maneuvers. After all, there is a common interest between the parties. Nevertheless, the key point of building alliances is strategy. In a

more globalized world, strategic alliances have not only become a trend but an essential necessity for State's survival. Nowadays, it is quite difficult for any Nation-State to reach its own interests from a local perspective. Therefore, alliances have signified a way to build State capabilities and to increase its resources.

### **3.1.1. Balance of power theory**

Under the Neorealist scope, the natural desire of the Nation-States to expand their power and influence through alliances will sooner or later constrain each other, causing a balance of power, which can configure the International System.

A balance-of-power theory, properly stated, being with assumptions about states: They are unitary actors who, at a minimum, seek their own preservation and, at a maximum driver for universal domination. States, or those who act for them, try in more or less sensible ways to use the means available in order to achieve the ends in view. Those means fall into two categories: internal efforts (moves to increase economic capability, to increase military strength, to develop clever strategies) and external efforts (moves to strengthen and enlarge one's own alliance or to weaken and shrink an opposing one). The external game of alignment and realignment requires three or more players, and it is usually said that balance-of-power systems require at least that number [8, p. 118].

The balance of power is formed under two instances: when the system order is anarchic; and when the order is settled by units or actors coveting to survive. According to this theory, the main interest of Nation-States is not to maximize power, but to maintain their positions in the system. While major States can balance their parallel power, minor States are able to move and engage to the stronger side (*bandwagoning*), if the major States frightens them. Clustering and balancing the power depend on the system's configuration [8].

Kenneth Waltz [7, p. 43] sustains, "In alliances among equals, the defection one member threatens the security of the others. In alliances among unequal's, the contributions of the lesser members are at once wanted and of relatively small importance. Alliance leaders need worry little about the faithfulness of their followers, who usually has little choice anyway." From this standpoint, in a balance of power with old political style the flexibility is limited; while in a balance of power with new political style the flexibility is wider. For example, in a multipolar system, the central

powers should establish a cooperation of their actions to reach a mutual benefit. However, the main interests are ambiguous. On the contrary, in a bipolar system as during the Cold War period, the alliances' leaders build their own strategies to keep their interests above their allies [7]. Essentially, the balance of power can be understood as equilibrium within the system. Such model presents two alternatives for the States: maintain the *status quo* or change it.

The balance of power is a particular sign of every society composed of a number of independent elements. The stability in the system is determined by a number of autonomous forces. There are some suppositions, in which the balance of power existence is justified. First, a society needs a balance for its own survival, if there is no equilibrium in the system, and one major actor (State) will control the power over the small elements (States). Second, since the main objective of the stability is to preserve the *status quo*, the equilibrium must aim to avoid the dominance over others. The balance of power can be maintained by equilibrating the system through diplomatic pressure, making alliances, tracking mutual interests, and in some cases by recurrence of war [9].

On the other hand, the balance of power tends to be superficial as there is a constant desire for power by all States. In addition, States in competition will attempt to achieve relative goals rather than absolute goals from cooperative agreements or strategic alliances. However, cooperation among Nation-States might face obstacles related to the States' self-interests. The difficulties on cooperative agreements take place because politicians cannot attach themselves and their successors to one single idea. Sooner or later, States will aim to change their policies and even the *status quo* of the International System [6].

As a result, Nation-States do not look for a balance, but supremacy in the system. Since all States' aspiration is to obtain the main power, they also should concern about their misperceptions and miscalculations toward other States in order to avoid subordination. Therefore, all States that have achieved certain superiority over their competitors tend to merge this advantage, and use it to replace the distribution of power for their own permanent benefit. Consequently, whenever the equilibrium of the International System is perpetuated by a different force or actor, the major system powers try to restore the original equilibrium or *status quo* [9]. Although the balance

of power is often referred as an equal distribution of power, sometimes power is not properly distributed in the system. The balancer is constantly a supreme power (State or group of States). The balancer also acts as an arbitrator or mediator when the system is not operating normally due to the different events. Moreover, the balancer is distant; obtains its power outside of the system, and uses it just to maintain the equilibrium. At last, the balancer tries to compensate and distribute the power in the system. These actions deduce to equilibrate the distribution of power. Nonetheless, if the system is self-regulated, such balance should not be necessary even though some theorists argue that a balancer is essential actor for the maintenance of the *status quo*, the balancer itself will eventually create problems [10]. Given the fact that the balance of power in the system is frequently under risk, the major States will try to remove their counterparts. By means that all Nation-States will gradually attempt to achieve the main power and they always compete for it.

### **3.2. Theory applied to the dispute**

China and Japan have built a complex relationship of cooperation and competition since the mid 1970's. Nevertheless, the territorial disputes between these two countries have incited nationalist movements and even certain confrontations State-to-State. The controversy on sovereign power and national interests has directed the States' objectives and motivations. Therefore, the dispute over the Pinnacles is an obstacle to develop Sino-Japanese cooperation in several spheres. Although an armed conflict over the disputed islands has still not occurred, the tension between the affected parties diminishes the political and economic collaboration [18].

Moreover, the pragmatic diplomacy of the United States regarding the Pinnacles' status has challenged the dynamics of power among the concerned Nation-States, emphasizing the Washington's long-term interests. The frictions of the Sino-Japanese ties and their respective outcomes with the United States were intensified by the Pinnacles case. In this polemic issue, Japan had officially administered the Pinnacle Islands since 1895 to 1945, and then reestablished their administrative rights between 1971 and 1972 after the U.S. occupation. However, both China and Taiwan claim territorial sovereignty over the Pinnacles, although they have never exercised a



proper sovereignty over the islands [64, 41]. At this point, Japan can be seen as the defender over the territory in dispute. In the meantime, the current government of Taiwan prefers *bandwagoning* between the United States and China rather than confront them. In the dispute, Taiwan is also intending achieve a certain consensus with Japan; while China is acting the role of the challenger. Nevertheless, this assumption does not mean that China is a fully aggressive actor in the International System. Instead, it can be viewed that the Chinese State pursues the *status quo* change in the system. This behavior disturbs not only the Japanese government but also the United States, which intends to retake its role as the balancer of power in the East Asia region. In July 2010, tensions were raised over the South China Sea basin during the ASEAN Regional Forum (ARF) in Hanoi, Vietnam. The Chinese delegate, Yang Jiechi, felt intimidated after hearing the speech of the U.S. Secretary of State, “The United States has a national interest in freedom of navigation, open access to Asia’s maritime commons, and respect for international law in the South China Sea” [21, p. 2]. Despite the China’s intentions to maintain the issue bilaterally (ASEAN-China), Hillary Clinton’s comments were retaken by her ASEAN homologues [47].

In the Pinnacles case, the controversy among the parties concerned has stimulated certain hostility intensification over time due to the national and economic interests involved. From this perspective, economic and strategic struggles can underline the interests of United States’ allies in East Asia, such as Japan and Taiwan, to intensify their relative impact overseas and develop regional mobilization. For instance, the Japan-U.S. strategic alliance is similar to the Taiwan-U.S. strategic relationship, which is centered in the Mutual Defense Treaty between the United States of America and the Republic of China, ratified on December 2<sup>nd</sup>, 1954. In this treaty, the United States government is committed to keep a military capability to assist Taiwan. By strategic means, this support contemplates diplomatic actions and even use of force to defend the island [26]. Meanwhile, China has increased and improved its military capabilities and augmented its economic power as well as developed geostrategic alliances with some of its neighbors [18]. In fact, China has rebuilt full diplomatic relations with North Korea, pointing to it as a fundamental ally in the area. These agreements permitted the Chinese to have access to the Sea of Japan [77]. Thus, China can be recognized as a ‘counterbalance’ against the power of the United States. The Japanese have recognized that they are involved in a



supposedly cooperative relationship for mutual benefit with the Chinese. However, China is reaffirming its position in the region that they lost centuries ago. Currently, Chinese foreign policy not only contemplates natural resource interests in the East China Sea, but also extends their economic interests along the Indian frontier and the Indian Ocean, South China Sea, Africa, as well as other regions of the world [66]. China's, Japan's, and Taiwan's competing claims in the East China Sea have been reflected on their economic interest hidden by the nationalism and historical entitlements. Essentially, the parties' claims over the Pinnacle Islands sovereignty and the overlapping maritime rights towards the delimitation of EEZ may be legally different, but they are interrelated. First of all, Japan's territorial control over the Pinnacles somehow reinforces its EEZ geographical claim. At the same time, the PRC's geological claims and actions nearby the Japanese EEZ are often seen as an attempt for Chinese to occupy the Pinnacles. These confrontations are intensified when the People's Liberation Army Navy (PLAN) has driven exercises that have triggered some Japanese reaction.

During the 1990's, several provocations were held by the PRC and ROC boats in the area of the overlapping maritime claims around the vicinity of the Pinnacles. The PLAN and oceanographic vessels repeatedly entered to the Pinnacles surrounding waters. In addition, several finishing vessels from China, Taiwan, and even Hong Kong invaded Japanese EEZ nearby the Pinnacles to conduct illegal fishing and acts of protest. Periodically, the Chinese Navy and Air Force also entered to the disputed zone. Between 1992 and 1993, Chinese naval vessels provoked more tensions; there were reports that in several occasions PLAN ships fired warning shots to Japanese civilian and commercial ships nearby the Pinnacle Islands [29, 14]. In August 1995, People's Liberation Army Air Force (PLAAF) crossed to airspace of the disputed area, and in response Japanese jet fighters intercepted them. These incidents escalated certain tensions between Beijing and Tokyo, when PLAN war vessels entered to the disputed area once again in 1996. Japanese government has become suspicious towards the intentions of the PRC Navy to take the Pinnacles by force. For instance, the PRC's occupation of Mischief Reef (Meiji Jiao) on the South China Sea in 1995 increased Japanese distrusts. In June 1998, activists in Hong Kong and Taiwan attempted to land on the Pinnacles, but the Japanese Maritime Safety Agency prevented them. During this confrontation, one Hong Kong activist died, provoking

the Chinese government resentment [28, 24, 52, 29, 64, 20, 56, 14, 23, 47]. Japan's responses to the China's provocations had also mobilized Japanese nationalist groups. These Japanese right-wing groups have regularly visited the Pinnacles in the past; these groups have implanted flags, markers, and even built a couple of small lighthouses over the disputed islands [28, 24, 19, 20, 56, 40, 4, 16, 22, 23]. As a result, Beijing perceived the Japanese right-wingers' actions as a motivation to raise their presence in the East China Sea. In an intent to calm down the tensions, the Japanese government has forbidden national citizens to visit the islets and opted for not establish a physical presence on the islands since then [65, 21].

More recently, between 2003 and 2005, the Japanese media revealed numerous classified documents from Japan's Self-Defense Force (JSDF) confirming that Chinese submarines and vessels infiltrated in Japanese waters. During May 2004 alone, China registered at least twelve violations into the Japanese Exclusive Economic Zone. In October 2005, a Chinese warship close to Shirakaba (Chunxiao, in Mandarin) field targeted a Japanese P-3 surveillance aircraft and a Japanese coast guard vessel for no apparent reason. One year later, according to the Hong Kong media, the Chinese Navy conducted exercises in the East China Sea, attempting to overawe the Pinnacles' Japanese patrols vessels [28, 19, 53, 27, 34, 13, 41, 16, 22].

Furthermore, on April 10<sup>th</sup>, 2010 the Japan's Maritime Self-Defense Force (JMSDF) monitored ten Chinese warships fleeing 140 kilometers south of Okinawa across the Miyako Strait. As a matter of fact, in March of the same year, a smaller Chinese fleet directed naval exercises (see Appendix, Figure 18). Besides those confrontations, the Chinese Navy led "counter-piracy" operations in the South China Sea and Gulf of Aden across the Arabian Peninsula. During those exercises, the PLAN counted with the most sophisticated warships, including two *Kilo-class* diesel powered attack submarines, and at least two Russian-made *Sovremenny-class* destroyers [17, 27, 16]. These attempts were a breakthrough in the new China's tactics of its naval forces, demonstrating the power of Beijing's military strategy. Definitely, China's new military capabilities and territorial antagonism has already alarmed its neighbors' sense of national security.

In the last two decades, the Neorealist formula has been a driving force behind Chinese foreign policy. The rapid economic growth is just a glimpse into its rational behavior to satisfy strategic interests, assuming the role of a rising power not only in the East Asia region but also in the International System. Seiji Maehara, the former Japan's Foreign Minister and current Policy Research Committee Chairman of the ruling party in Japan, pointed out that the build-up of Chinese military capabilities is a real threat in the region [78]. Maehara has also spoken in favor of renovating the Japanese Constitution to permit a proper Japan's national defense army [79]. Nevertheless, his statements concerning the Pinnacles were not definitive and only suggested that the territorial dispute should be solved by concordance of International Public Law.

The tensions over the Pinnacles' controversy escalated on September 7<sup>th</sup>, 2010, when the Japanese authorities arrested Zhan Qixiong, the captain of the Chinese fishing boat, Minjinyu 5179 [47]. His men were fishing in waters within Japan's Exclusive Economic Zone. Evidently, the Chinese captain and his crew ignored the Japanese coastguards' warnings in Mandarin. Thereafter, the captain suddenly rammed his vessel against the Patrol Vessel Yonakuni at 12 kilometers northwest of Kuba Jima/Huangwei Yu. The Japanese coastguard tried to intercept the Chinese boat, but the captain did not stop and collided with the Patrol Vessel Mizuki (see Appendix, Figure 19). The Chinese captain was arrested not for illegal fishing, but for the act of aggression [1, 21].

A few days later, Japan sent the Chinese boat back to China with the fourteen fishermen, none of whom were arrested, except for the captain who was in custody for only seventeen days. The release of the Chinese captain was probably because of China's diplomatic pressure and hostile anti-Japan protests in Mainland China and Hong Kong, and more moderate protests were held in Taiwan as well [80, 42]. Certainly, the Chinese government put several retaliatory actions against Japan: the postponement of the China-Japan Parliamentary Exchange (September 13, 2010); the cancelation of a Japanese pop music group (SMAP) concert in Shanghai, and the following revocation of 1,000 members from a Japanese youth exchange group to participate in the Shanghai World's Expo (September 19, 2010); the arrest of four Japanese workers from Fujita Corporation, who were supposed to undertake the removal of chemical weapons in China planted by the Japanese Imperial Army during

the World War II; and the suspension of corporate exchanges, among other arbitrary actions [81, 38, 82, 34, 21, 1]. As a result, several nonviolent anti-Chinese demonstrations took place in Tokyo during the last year.

The quick release of the Chinese captain and the leak of the collision video on YouTube have raised questions about the political legitimacy of the new Japanese party in power, the Democratic Party of Japan (DPJ), for its inadequate domestic policy and fragile foreign policy [35]. Indeed, not only several factions inside the Japanese Diet but also within Japanese society demanded the resignation of then-Prime Minister, Naoto Kan [83]. The Japanese government perceived the video leak as an infringement on its national security and confidentiality. In the meantime, Kan's main concern was that release of the video might disturb Chinese leaders [84]. Nonetheless, China welcomed the video footage, and subjectively interpreted it as beneficial to its own cause in the controversy [85].

The Japanese government was strongly criticized by their own people for the decision to free the captain without being prosecuted. Kan declared the reason why the Chinese boat's captain was released without any accusation was a gesture to support the "mutual beneficial ties with China" [80]. In contrast, Masaharu Isshiki, the Japanese coast guardsman responsible of the video's leak was prosecuted and relieved of his labor duties. Meanwhile, those events provoked the mobilization of more Japanese nationalist groups and society in general to protest against China and the entire DPJ's Cabinet. Afterwards, the case was dropped by the judge because the prosecutors could not present enough evidence to sentence the defendant [35, 86].

Although China, Japan, and Taiwan have gone through several confrontations over the Pinnacle Islands since 1972, none of the parties has yet used direct force. Despite the parties' self-interests and the different levels of friction among them, the lack of a military conflict or direct hostilities is something to take into consideration. At the same time, the involved actors have not yet attempted any substantial determination to find a solution to this controversy. Instead, they have kept ambiguous positions that put the issue on stand-by for a later agreement [20]. However, in this particular case, it is quite evident that the close relationships of the United States with Japan have dissuaded China from using force to take the Pinnacles. Japanese retorts under the Chinese provocations are driven in two disjunctives; the

first dilemma is whether or not Japan should use the military forces to protect the Pinnacles from a possible Chinese occupation; second predicament, as discussed in the next section, is whether or not the United States has the determination to assist Japan in order to defend the Pinnacles. The Japanese government has not taken a firm position on the first issue, but it has already made some considerations to send troops nearby the islets.

During the recent tensions over the controversy, the Japanese government was pondering whether it should send troops to Yonaguni Island, which is located southwest of the Pinnacle Islands. Japan's new strategy is planning to send partial armed personnel to supervise the war-craft exercises and build new infrastructure. In addition, the Japanese Defense Ministry has also deliberated about sending troops to the islands of Miyako and Ishigaki located south of Pinnacle Islands to fortify the border security during the next couple of years [87]. Although the stipulated deployment of the troops is not yet planned for any of the Pinnacles, this maneuver signifies the establishment of a buffer zone close to the disputed islands. This action will definitely increase the tension among the nations involved in the controversy. Nonetheless, every Nation-State has the right to reinforce its boundaries if is necessary. Regardless of the latent armed conflict, the different perspectives on the Pinnacles' controversy represent a dilemma to many scholars and policy-makers of the East Asia region.

Recently, the Tokyo Mayor, Shintaro Ishihara declared in Washington that his government is planning to buy the four Pinnacles currently under private ownership. Previously, the Kurihara family reported that the Chinese government offered them ten billions yen to obtain the islands in their property [88]. Ishihara declared that the intention to purchase the remaining islets is to protect them from China since the Central Government is too scared to take any further action to defend Japanese sovereignty. In fact, the Tokyo Mayor talked with the Kurihara family to reach an agreement, and even his government already received heavy donations to fund its purchase plan [89]. As a response, Chinese Foreign Affairs spokesperson asserted that China would take any necessary actions to protect the Pinnacle Islands. Meanwhile, the Taiwanese Foreign Ministry spokesman qualified the Ishihara's intentions to buy the rest of the Pinnacle Islands as inappropriate [90, 91].

### 3.3. Parties' economic and strategic necessities

Another important aspect to examine, it is to understand the involve parties' behavior in the dispute based on their economic and strategic necessities. For instance, the main challenge for China will be the bargain between its foreign investment safety and its access to natural resources, especially oil and gas. Therefore, Chinese leaders have to prevent any military conflict in order to maintain its remarkable economic growth and prosperity. An additional question is how assertive the nationalism sentiment will remain in Chinese politics and educational system. The fact that nationalism is growing more in China than anywhere else in East Asia has made it more difficult to settle its territorial disputes [64, 22]. Nevertheless, for the CCP, nationalism is seen as a maneuver to maintain its authoritarian regime and to get support for its people and institutions. On the other hand, the feverish Chinese nationalism might reduce the foreign direct investment (FDI) in the long run from strategic investors (Japan, Taiwan, and U.S.), which are crucial for China's economic development.

Furthermore, in terms of values and principles there is a certain constraint of interaction of China with Taiwan, especially with Japan and the United States [92]. Human rights, religious beliefs, international law, and democratic political institutions do not fit within the CCP foundations. Most of the times such principles are attached to the policy making process. Therefore, these values and principles are important to avoid misperceptions among Beijing-Taipei-Tokyo-Washington foreign policies. In this sense, Chinese leaders have influenced the American interests not only in East Asia, but also in other regions by building strategic alliances with governments opposed to the U.S. (North Korea, Iran, Venezuela, and Sudan, among others). Certainly, China will continue to foster the relationship with these governments, in order to globally compete with the United States [92].

Additionally, an important point for China's foreign policy is to guarantee the access of hydrocarbons beyond its borders. In fact, it is China's large demand on energy and the instability of free markets that have created certain insecurity among the Chinese leaders to rely on energy and commodities imports. Hence, China will encourage the exploration and exploitation of natural resources inside and outside of its sovereignty. Consequently, in the long term, Japan and the United States will be



the main nations affected by the emergent Chinese demand on hydrocarbons and raw materials. For instance, increase of foreign oil prices will eventually take place, following a more direct confrontation over disputed maritime boundaries with natural resources attached as in the Pinnacles case. Therefore, the parties will try to justify its claims with the support of nationalism in order to secure or pursue their economic interests [52, 16].

In September 1970, Taiwan's legislative body promulgated the Statute for Exploration and Exploitation of Petroleum in Offshore Areas in the East China Sea. A month later, the Taiwanese government also announced the delineation of five reserved offshore petroleum zones. Under these legislations, the exploration and exploitation of natural resources were extended between the limits of the Okinawa Trough and the outer edge of the East China Sea continental shelf as well as the South China Sea [39, 23]. Taiwan has limited energy resources and relies on oil and gas imports principally from the Middle East. The Taiwan's oil consumption increased more than double from 1990 to 2010, accounting an average annual growth of 2.93 percent. The gas consumption multiplied dramatically to 606 million cubic meters in 1990 to 13,354 million cubic meters in 2010. Overall, Taiwan's dependence was 99.3 percent in 2010, which was 30 percent more than 2009. Therefore, the ROC Ministry of Economic Affairs Bureau of Energy has proposed initiatives to diversify the energy resources and secure its access [93].

In the meantime, China's and Japan's energy needs are more challenging. For instance, China remains as the most populated nation, and its rapid economic growth has substantially enhanced its energy demands. Indeed, China's energy needs have multiplied over the last two decades. Furthermore, China has already surpassed Japan as the second world's largest oil consumer after the United States [94]. According to the World Energy Outlook (2006), China will exceed the U.S. oil demands by 2020, accounting about the twenty percent of the world's sum by 2030 [19]. Chinese leaders have prognosticated that within two decades the internal demand will exhaust its oil and gas reserves [95]. In light of this problem, the Chinese government published the first report on energy "China's Energy Conditions and Policies" on December 26<sup>th</sup>, 2007. This document underlines the China's strategy of energy development inside and outside of its sovereignty [96].



Currently, China's imports of hydrocarbons from the Middle East account to fifty percent of its entire energy imports. However, Beijing has not limited their import to this region, and it has fostered relationships with other oil producer countries and strategic partners, such as Angola, Myanmar, North Korea, Venezuela, and Sudan. In fact, China has developed energy programs in Angola, Sudan, and other African oil producer nations, by which China obtains one third of its oil imports from Africa. Venezuela granted Chinese firms to conduct surveys of its oilfields. Myanmar is planning to build an oil pipeline across its frontier with China. North Korea and China ratified an agreement to cooperatively develop undersea oil reserves in the East China Sea. Evidently, as long as Chinese population increases and their living standards grow, China will compete with the United States for oil and gas reserves around the world [19, 97, 98].

The remarkable economic growth of China has also allowed the country to make huge investments on its defensive lines. Indeed, China's military modernization has been centered to assert its territorial disputes and to guarantee its access to natural resources. As discussed above, the PLAN for developing its strategies has coordinated an extensive drills and strategies along the East China Sea and South China Sea. However, China has not yet established a joint military operation with its allies [92], which can bolster its military power in East Asia. Meanwhile, China's military tensions over its territorial disputes will be more tangible as in the Pinnacles case, risking the region stability and power balance that the United States has tried to maintain for almost seven decades. China already surpassed Japan as the second economy in the world after the United States. Certainly, as China's economy continues growing, its military capabilities are growing as well. The military capabilities of the PLA are increasing progressively, while those of JSDF are only growing marginally. China's military budget has increased double digits each year, while the JSDF's account is basically nulled.

It seems that the strategy of Chinese military modernization aims at extending its power and influence. In 2002 only, China's rapid economic growth made it possible to budget one hundred billion dollars for military expenses. The PRC have acquired several Su-27 and Su-30 Russian-made combat jets, and it has also improved its missile defense capabilities. The Chinese government has acquired supersonic 3M-80E missiles, Moskit SS-N Sunburn missiles, and SA-N-7 missiles. Between 2003

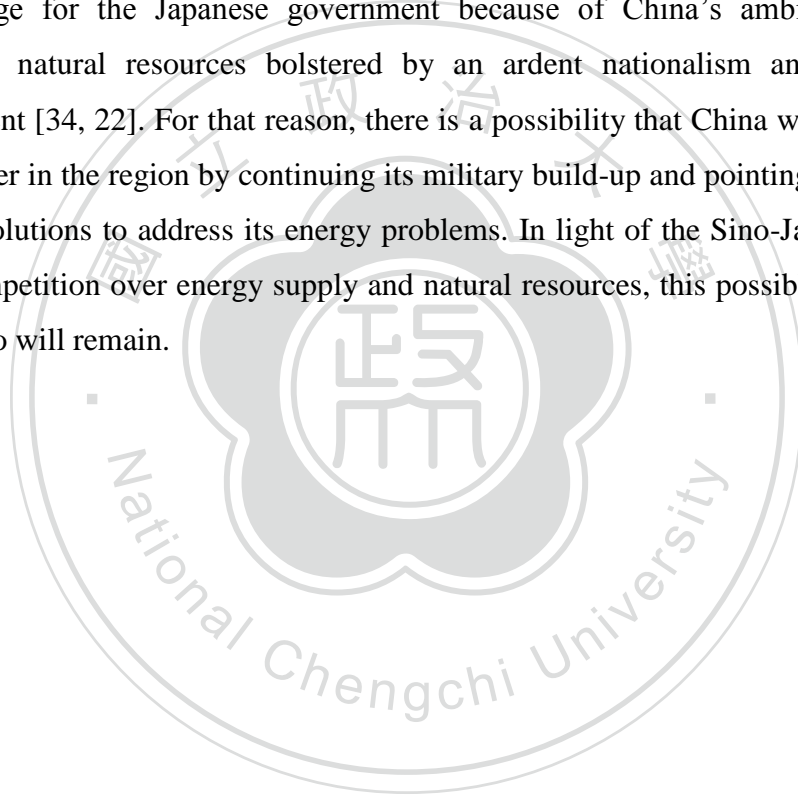
and 2004, China purchased thirty eight percent of Russian arm exports, accounting 2.2 billion USD besides 1.8 billion USD in arm exports from Belarus and Ukraine. From 2004 to 2010, Chinese Navy's share of the military budget boosted by over thirty percent, buying *Soveremenny* destroyers and *Kilo-class* submarines, as well as stealth diesel submarines and *Project-094* nuclear submarines [17]. In general, from 2000 to 2009, China's shares of military modernization have increased in all its defensive lines: 1) surface ships from less than five percent to around twenty five percent; 2) submarines from less than ten percent to fifty percent; 3) air force from less than five percent to about twenty five percent; and 4) air defense from about five percent to around forty to forty five percent [18].

Japan's oil supplies heavily rely on the Middle East, which compose of 86 percent of its total imports. However, after the Oil Crises in the 1970's, the Japanese government launched a program to diversify its energy sources, to secure its strategic reserves, to do research and innovation (R&I) on green energy and sustainable development. Likewise, China's oil demand will continue to exceed that of Japan in 2020. Under this circumstance, Japan will gradually encounter a lot of competition for hydrocarbons. Therefore, Japan's energy security policy has turned more conscious over China's increasing demands [19, 99]. This reality has already replanted the Japanese political agenda to consider whether or not Japan should still rely on energy imports. As a result, the Japanese Diet promulgated the "Fundamental Law of Energy Policy" in 2002. Basically, this regulation stipulates for safeguard the energy supply with a diversification of resources and their sustainable development [100]. Afterwards, the Agency for Natural Resources and Energy of Japan published the "New National Energy Strategy" in 2006. This strategy is aiming to satisfy the energy demand and supply toward year 2030 by saving energy and securing national energy resources. This initiative is an attempt of the Japanese government to reduce its dependency on energy imports and reinforce the diversification of other sources of energy [99].

The Japanese government's preliminary initiative was the nuclear energy. Nowadays, about thirty percent of the Japanese energy originates from nuclear reactors. The Basic Energy Plan stipulated that by the year 2030 fifty percent of Japan's electricity would have come from nuclear power. Nonetheless, the core initiative has been unsecured after the Tohoku earthquake and tsunami disaster,

followed by the nuclear crisis of TEPCO in Okuma-machi, Fukushima. The alternative way for the Japanese government is to shift to the development of sustainable energy, however, such energy is expensive and longwinded [101]. Therefore, Japan still has to rely on energy imports to compensate its domestic energy shortage and to ensure its economy. Recently, Japan started negotiations with Russia for the construction of gas pipelines between both nations connecting the Russian island of Sakhalin and Wakkanai, Hokkaido [102].

Under these conditions, it is very hard for Japan to give up the Pinnacle Islands' undersea resources. Consequently, the word 'Pinnacles' denotes a difficult challenge for the Japanese government because of China's ambitious plans for seeking natural resources bolstered by an ardent nationalism and anti-Japanese sentiment [34, 22]. For that reason, there is a possibility that China will seek to assert its power in the region by continuing its military build-up and pointing towards armed force solutions to address its energy problems. In light of the Sino-Japanese tensions for competition over energy supply and natural resources, this possible latent conflict scenario will remain.



## **CHAPTER FOUR**

### **4. The U.S. implications and intentions in the dispute**

#### **4.1. Washington's lawful implications**

International Public Law has not only been ineffective to solve the Pinnacles controversy, but it also affected the dispute along with the U.S. interventionism in East Asia. After the end of the World War II, the United States started its interventionism in Taiwan and the rest of the East Asia region. As described above, the Japanese accepted unconditionally the terms of surrender stipulated on the Potsdam Declaration. Consequently, under the supervision of the United States, Japan surrendered to the Chinese Nationalists (KMT). In 1949, when the CCP legitimized its government in Mainland China, the KMT government was forced to relocate its mandate to Taiwan. However, at the beginning the KMT considered Taiwan as “provisional territorial base” in order to try to recover its power in Mainland with the strategic support of the United States. Thereafter, the Chinese civil war ended, the U.S. government planned its involvement in Taiwan [14]. This situation launched the “Two Chinas” issue in the International Community, which ended in a series of confrontations and crises between the KMT and the CCP across the Taiwan Strait. Although most of the U.S. influence in Taiwan was implicitly designated to protect the political, ideological, military, and economic interests of U.S. government in Taiwan and the region. It is difficult to imagine how Taiwan could avoid and endure the social and political turmoil from the Communist China at that time.

In the meantime, months before the Potsdam Declaration, the U.S. Forces already occupied Okinawa and planned to interrupt all Japanese sovereignty over the Ryukyu Islands and neighboring waters. This initiative was later postulated in Article II of the United States Navy Military Government Proclamation No. 1. As a matter of fact, this document had substantial connotations related to the administrative status of Okinawa. Although the Pinnacle Islands were not explicitly mentioned in this document, the Pinnacles had been administrated by Okinawa Prefecture for nearly

fifty years at that time. Therefore, the U.S. Military Government understood that the Pinnacles were a part of Ryukyu Islands, where the United States occupied during the postwar period [28, 11, 30, 36]. In 1946, the General Headquarters in Tokyo<sup>16</sup> under the command of General Douglas MacArthur took the initiative to define the “minor islands” denoted in the Potsdam Declaration. On January 29<sup>th</sup> of the same year, the Memorandum Concerning the Governmental and Administrative Separation of Certain Outlying Areas from Japan excluded several islands and regions under Japanese sovereignty, and the Ryukyu Islands are one of these regions. Certainly, Formosa (Taiwan) and The Pescadores (Penghu) are other islands that were excluded from Japanese administration as well yet under totally different terms [30].

The islands with south of 30 degrees of north latitude, including the Amami Oshima (Islands), were excluded temporally from Japanese sovereignty. The Pinnacles certainly lie into these coordinates ranges as well. In fact, the Law Concerning the Organization of the Gunto (Archipelago) Governments enacted on September 1<sup>st</sup>, 1950, determined to incorporate Taisho Jima/Chiwei Yu to the Miyako Islands, and the rest of Pinnacles were incorporated to the Yaeyama Islands. On April 1<sup>st</sup>, 1952, the Government of the Ryukyu Islands was created under the U.S. supervision to administrate the four islands groups: Amami, Okinawa, Miyako, and Yaeyama. The Government of the Ryukyu Islands established geopolitical boundaries under the following coordinates: 28 degrees of north latitude, 124 degrees of 40' east longitude; thence to 24 degrees of north latitude, 122 degrees of east longitude; thence to 24 degrees of north latitude, 133 degrees of east longitude; thence to the point of origin. In the following year, the United States Civil Administration of the Ryukyu Islands designated new geographical boundaries for the Ryukyu Islands within Proclamation No. 27 (USCAR 27) of December 19<sup>th</sup>, 1953 [28, 29, 11, 32, 31]. This new establishment redefined the boundaries of the previous year as mentioned above, excluding the Amami Islands from the American occupation (see Appendix, Figure 20). As the map illustrates, Uotsuri Island/Diaoyu Dao and the rest of the Pinnacle Islands are inside the demarcation line connected to 28 degrees of north latitude, 124 degrees of 40' east longitude at the top left to a point at 24 degrees of north latitude, 122 degrees of east longitude at the bottom left corner of the map [28, 31]. This demarcation line was firmly followed by the U.S. Military Government in Japan.

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<sup>16</sup> The General Headquarters were also known as the Supreme Commander of the Allied Powers [31].

Thereby, the Pinnacles were included in the area of Okinawa that the United States administrated during the occupation. In fact, the territories within those coordinates were inside the documents of the Okinawa Reversion Agreement signed by Japan and the United States on June 17<sup>th</sup>, 1971, and effective on May 15<sup>th</sup>, 1972 [28, 29, 11, 32].

As mentioned above, evidently the United States administered the Pinnacle Islands along with the Okinawa Islands as a part of Nansei Shoto (Ryukyu Islands) under Article III of the San Francisco Treaty [3]. As a matter of fact, the U.S. Military Government in Japan assigned Kuba Island/Huangwei Yu and Taisho Island/Chiwei Yu as territories for military exercises in 1951. The U.S. Military Government made an agreement with Zenji Koga to lease those islands for military purposes. Effectively, the U.S. Navy paid an annual lease of \$11,000 USD to Zenji Koga (see Appendix, Figure 21) [28, 17, 12, 63, 54, 31, 32]. Additionally, since the Pinnacle Islands were not mentioned in either the Japan-Taiwan Peace Treaty or in the China-Japan Peace and Friendship Treaty, it is probable that Japan would not negotiate with China and Taiwan for a group islands considered Japanese territory in the postwar agreements. Certainly, the United States restored administrative rights of the Pinnacles to the Japanese government under the Agreement between Japan and the United States concerning the Ryukyu and the Daito Islands (Okinawa Reversion Treaty) signed on June 17<sup>th</sup>, 1971 [28, 3, 11, 54]:

Article I: Section 1: With respect to the Ryukyu Islands and the Daito Islands, as defined in paragraph 2 below, the United States of America relinquishes in favor of Japan all rights and interests under Article III of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, effective as of the date of entry into force of this Agreement. Japan, as of such date, assumes full responsibility and authority for the exercise of all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of the said islands. Section 2: For the purpose of this Agreement, the term "the Ryukyu Islands and the Daito Islands" means all the territories and their territorial waters with respect to which the right to exercise all and any powers of administration, legislation and jurisdiction was accorded to the United States of America under Article III of the Treaty of Peace with Japan other than those with respect to which such right has already been returned to Japan in accordance with the Agreement concerning the Amami Islands and the Agreement concerning Nanpo Shoto and Other Islands signed between Japan and the United States of America, respectively on December 24, 1953 and April 5, 1968 [103].<sup>17</sup>

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<sup>17</sup> Database of Japanese Politics and International Relations. Institute of Oriental Culture, University of Tokyo, "Agreement between Japan and the United States of America concerning the Ryukyu and Daito Islands," [Online]. Available: <http://www.ioc.u-tokyo.ac.jp/~worldjpn/documents/texts/docs/19710617.T1E.html>. [Accessed 8 July 2011].



Based on the U.S. Congressional Research Service report (September 30<sup>th</sup>, 1996):

U.S. administration of the islands began in 1953 as a result of the 1951 Treaty of Peace with Japan. The Treaty did not mention the Senkakus (Diaoyus), but it referred to other islands that had reverted to Chinese control or which China claimed. These included Taiwan, the Pescadores, the Spratlys, and the Paracels. Article 3 gave the United States sole powers of administration of “Nansei Shoto south of 29 north latitude.” In 1953, the U.S. Civil Administration of the Ryukyus issued U.S. Civil Administration of the Ryukyus Proclamation 27 (USCAR 27), which defined the boundaries of “Nansei Shoto south of 29 degrees north latitude” to include the Senkakus. At the time of the signing of the Okinawa Reversion Treaty, several State Department officials asserted that following the signing of the Japan Peace Treaty, “Nansei Shoto south of 29 degrees north latitude” was understood by the United States and Japan to include the Senkaku Islands [32, p. 2].

Clearly, the Pinnacle Islands fall south of 29 degrees of north latitude (see Appendix, Figure 22). Although the PRC and ROC governments do not accept the Okinawa Reversion Treaty as a lawful sovereignty transfer over the Pinnacles, the U.S. implication concerning the geographic delineation of the Ryukyu Islands notably supports Japanese administration of the Pinnacles through Okinawa Prefecture. Nonetheless, despite the United States’ legal association and commitments, since 1972 the U.S. Department of State has opted for an impartial position towards China, Japan, and Taiwan claims over the Pinnacles [28, 29, 32, 4, 16, 23]. Pragmatically, even though the United States maintains neutrality in the dispute, the U.S. government has agreed that the Okinawa Reversion Treaty is related to the Japan-U.S. Security Treaty. As described above, the Japan-U.S. Security Treaty obligates the United States to protect the territory under “Japanese administration,” which technically includes the Pinnacle Islands. Since 1971, neither the United States nor Japan has appealed to modify any clause of the Japan-U.S. Security Treaty, or its implications towards the disputed islands [32].

#### **4.2. The U.S. pragmatic diplomacy**

After the 9/11 incident, in the several other incidents such as the subsequent wars in Afghanistan and Iraq, the following trade deficit, the Wall Street crisis in 2008, and the China’s rise, the United States’ declination is quite evident. Additionally, East Asia transformation is aiming at competition with the United States.

Nevertheless, the U.S. is still yet the most important power in East Asia and in the world [26]. There is no other Nation-State or international organization capable, in some way, to guarantee security and stability in East Asia. Therefore, the United States' leadership in the region is still important.

In 1952, the United States and Japan signed a security accord that later was succeeded by the Treaty of Mutual Cooperation and Security between the United States and Japan in 1960 (Japan-U.S. Security Treaty) [57]. This agreement has remained as the core of the strategic alliance between the two States, and this treaty has also placed Japan as a promoter of the Washington policy in East Asia. Another important point is that the solid relationship between Tokyo and Washington has fostered the pacifist profile of Japan in the region. This aspect somehow has improved the image of Japan's foreign policy since the 1970's. At the same time, from Washington's perspective, the Japanese alliance contributes to the American strategic interests in East Asia by facilitating the deployment and maintenance of the U.S. Forces in Japan (USFJ) [29, 20].

Certainly, Washington performed a crucial role in the stimulation and manipulation of the Pinnacles issue in 1951 and then again in 1972. The United States provoked the causes of multiple territorial disputes between Japan and its neighbors within the 1951 San Francisco framework: 1) the Pinnacle Islands among Japan, PRC, and ROC; 2) the Northern Territories between Japan and USSR (Russia); and 3) the Liancourt Rocks among Japan and the two Koreas. Under the Cold War umbrella, these disputes acted as walls to encase Japan in the Western bloc, protecting it from the communist influence. Whereas, in 1972 the United States washed its hands to Japan by letting the Pinnacles issue unsolved, when it returned the Nansei Islands to Japan's sovereignty under the Okinawa Reversion Treaty, which included the Pinnacle Islands. Nevertheless, after the Pinnacles controversy erupted, Washington reaffirmed its position announcing that U.S. Military Government only relinquished administrative rights over the Pinnacle Islands in specific. Probably, the American strategists calculated that the Pinnacles dispute would serve as a shield to contend the PRC. They also probably know that letting the territorial dispute nearby the Okinawas would justify the presence of the U.S. Forces in Japan [11]. Indeed, these estimations were still demonstrated during the 2010 incident.

The U.S. policy will determine the security and stability of East Asia. Regardless the preponderance of the United States in East Asia, Washington cannot intervene directly into the regional affairs. Although the U.S. has tried to improve its alliances and reinforce its military presence in order to retain its strategy with its Asian partners, the United States has noted that its interactions with its Asian allies are turning more complex and uncertain. For instance, the American government cannot stimulate its Asian allies to formulate policies against China directly because the U.S. allies do not want to be in such a position. Therefore, the United States has adopted a pragmatic policy in the dispute. Washington has limited itself to deterring China if it forcibly takes the Pinnacles, while at the same time Washington is discouraging any determination to support the Japan's or Taiwan's claims. By strategic means, the U.S. supports its allies (Japan and Taiwan) by maintaining a certain power to contend China's force, and opposing any attempt to fully restore their military power in a way to solve their disputes. Gradually, Japan and the United States will strengthen their ties to work together and to promote progressive and beneficial relations in order to avoid conflictive scenario in East Asia. The United States has to reformulate how to track its interests in the region with the help of Japan and Taiwan [92, 29]. Otherwise, China will try to vacuum the U.S. power in East Asia by influencing the U.S. allies.

For instance, Taiwan self-determination is still uncertain, and given the possibilities that China's rise might persuade the Taiwanese leaders to formulate policies with regard to an eventual unification with China, in which there will not be much margin for the American influence in Taiwan. In this sense, Beijing's strategy would threaten the U.S. relations with its Asian allies, if they opt to ally the Chinese opposite force. Hence, the United States will motivate its strategic partners to rebuild their ties in order to keep balancing the power in the region. The relationship between Japan and the United States has been maintained since the end of World War II. As a matter of fact, for the United States, Japan is the most consistent ally in East Asia. Even though Japan has diversified its ties with many Nation-States, the U.S. is the only nation with special military commitments to Japan. Certainly, the American-Japanese security alliance is the essence of the Washington policy in East Asia. Therefore, the United States will try to consolidate its relations with Japan, trying to oppose the Chinese influence in the region. After 2001 the American-Japanese

alliance took a further step. Japan's support in the U.S. counter-terrorism operations in Afghanistan and Iraq were important efforts for the Japanese government to satisfy the United States' policies around the world. Thereby, Washington has proposed some changes regarding to its strategic alliance with Tokyo by emphasizing the security, integration, and exchange of information [29, 104]. In terms of security there have been strong maritime defense assistance and ballistic missile provisions from the United States as it was evidenced during the recent tensions that North Korea brought to Japan and the rest of the region over a suspicious rocket launch on April 2012. The JSDF deployed several American-made Patriot Advanced Capability-3 (PAC-3) missile interceptors over Tokyo Metropolitan area as well as various Okinawan townships (Ishigaki, Naha, Miyako, and Chinen) where the rocket supposed to soar. Fortunately, the North Korean artifact exploded a minute after takeoff, so that the Japanese forces did not require taking further actions [105]. Another important security joint case between Japan and the U.S. has been the SM-3 Cooperative Development Program. It is a SM-3 missile variance to neutralize long-range ballistic missiles, which will have been programed by 2018 [104]. Regarding to integration and exchange of information, the U.S. has promoted the Japanese pacifist foreign policy for decades. As a result, Japan has remarkably increased its participation in regional and international forums. Additionally, Japan has been acknowledged as one of the biggest donors for humanitarian operations across the globe [92, 26].

When the DPJ took the power in 2009, initially it tried to redefine a foreign policy towards a more Asian-oriented rather than a pro-American one. The Japan-U.S. alliance rhetoric was adjusted, strategic and security issues were planted in between the United States and China. As a result, Japanese government strategy was positioned itself in a more Asian stance, trying to move away from the United States. As a matter of fact, debates were raised in the Japanese Diet over the removal of the U.S. Futenma base in Okinawa [106, 107]. This initiative brought some tension in Washington and questioned the Japanese alliance commitments. Nevertheless, it can be observed that Washington can use its soft and hard power to convince the Japanese government for the importance of the United States military presence in Okinawa. For instance, *Tomodachi Operation* 'Operation Friend' exercised during the earthquake, tsunami, and nuclear disaster of 2011 reaffirmed that the United States alone was the only nation that has the capability to provide maritime resources and aid to people of

Japan on time [108]. Regarding to the U.S.'s hard power, it can be discerned that the American military supremacy is the only actor that is able to deterrence the parties involved in the Pinnacles dispute, so that the controversy will not escalate to a military conflict. On the other hand, the United States may also use the Pinnacles controversy in order to preserve its strategic interests and hegemony in East Asia. From this standpoint, the Japan-U.S. alliance is partly founded on the protection of Japanese sovereignty against a potential military encounter with China and North Korea. Whereas, it may be perceived as limiting the Japan's possibilities to once again develop its military power and intimate Beijing's interests in East Asia. At the same time, it is the U.S. protection that has ensured the progress of the commitment of China not to directly threaten Japan and Taiwan.

Under these circumstances, it is difficult for the DPJ to totally change Japan's foreign policy, making constitutional amendments, and thus obstructing the American-Japanese strategic relationship. Additionally, Japan is still suffering from numerous social problems such as an increasing aged population. The Japanese economy is still under recession, and the unemployment rate has been intensified as well as the tsunami and nuclear disaster of 2011, which has provoked health problems and energy shortages across the country. This last issue has somehow questioned if Japan should continue to rely on nuclear energy or not, which is very difficult to determine for the country with limited natural resources. Therefore, there is an increasing pressure on the DPJ to pay more attention to domestic policies rather than foreign ones.

In 2009, the Deputy Prime Minister of Japan, Katsuya Okada declared that the Japan-U.S. alliance should not be enclosed to military purposes, but also serves as a framework to deal with global issues. Okada emphasized the importance of the U.S. Forces in Japan for defense purposes, but also for conducting joint exercises in East Asia [109, 110]. This suggestion might be a big challenge for Japan to subordinate the limitation for its sovereignty protection in order to diversify the U.S. alliance towards further steps. Probably, Washington is willing to consolidate its strategic alliance with Japan to more cooperative issues. The dilemma is whether or not Tokyo is also willing to go forward with the American-Japanese security alliance or to move towards the new pole of power that Beijing is trying to assert in the region. In the inexistence of an improvement of a more strategic and security issues among China,

Japan, and Taiwan, it is up to the United States to determine the path of this complex multilateral relationship. For that reason, Washington tries to maintain relatively good ties with Beijing, Taipei, and Tokyo through a pragmatic diplomacy. Thus, the U.S. will continue to play its balancer role in order to safeguard its interests and stability in East Asia. Whereas, China might perceive the Japan-U.S. alliance beneficial for it in order to constrain Japanese military capabilities, and to determine itself as the main power in Asia. At the same time, China can compete for the global supremacy against the United States [111]. There is no other Asian power that has openly challenged the United States in economic and military terms as China did. In fact, China's trades with each of the U.S.'s major allies and partners in East Asia (Japan, South Korea, and Taiwan) have surpassed the value of the trades with the United States. Moreover, the new Chinese military build-up and modernization have confronted the American power in the region. Indeed, China has experienced substantial changes that indicate the new regional power trying to shift the U.S. balance of power away. Thereby, China will continue to be the core of the regional growth and dynamism, attempting to change the *status quo*. This transformation has also reflected in its assertive foreign policy, which aims the acquisition of economic and strategic interests around its borders and beyond them [92, 22].

In order to maintain the American interests and values against a rising China, which already has tried to diminish the U.S. influence on East Asia, Washington has performed a significant role regarding to the Pinnacle controversy. One important effect on the perception of the U.S. as the security guarantor of Japan is that it has created a broader scope for the Japanese government in order to maintain its position and deal with China and Taiwan in the Pinnacles issue [92]. From this perspective, Tokyo is seen as an important ally for Washington to keep their strategic interests in the region. Therefore, the U.S. does need Japan's cooperation to continue its long-stand power in East Asia. At the same time, America's support would guarantee to Japan not to be marginalized in the new world order. Nonetheless, such sense of security has been reduced by Japan's concern to become more dependent on China. Whereas, the U.S. implications in the Pinnacles case has also pressured China to make efforts to commit itself with its neighboring States in order to preserve the stability in the region [20, 41].



As discussed above, although the diplomatic relation between Beijing and Tokyo has improved in many aspects through dialogues since 1970's when the Sino-Japanese ties resumed, there are still some issues in which China and Japan cannot coincide, and they can drive the two nations to a mutual conflict as planted in this controversy. In this sense, the U.S.'s intermediacy cannot be neglected. The U.S. military power still retains its global hegemony; however, Washington strategy does not intend to threat or intervene militarily to solve the dispute. Instead, the United States involvement is to maintain the *status quo* in the region. How much U.S. will be involved will depend on the circumstances.

Basically, the United States is reluctant to get involved more than a military prevention, and it has not done much to solve the controversy. In fact, in the Pinnacles case, the Washington's official position is impartial regarding to the parties' claims and it has echoed that the involved parties should solve the controversy as they convene without an armed intervention [56]. Therefore, the U.S. military intervention will be launch only if the Pinnacles dispute would jeopardize the stability in the region. Although the Pinnacle Islands case has not yet escalated to a major conflict, it can incite a more direct U.S. response. Washington has tried to reinforce its strategy and interests in contending China in East Asia through its maritime disputes in the region. Hence, it would be quite difficult for China to take the Pinnacles, and at the same time it is able to protect its strategic and economic interests in other areas such as South East Asia.

#### **4.3. Washington's strategy beneath the Pinnacles case**

As the United States considers getting more involved in Asian affairs, it would have deal with China's heavy counterbalance power supported by a strong nationalism, influence, military, and economic competition. It is evident that the U.S. hegemony in East Asia is no longer granted, and it will pursue to compete and adjust in the region. As long as the United States and China differ on international law principles and democratic values, it is clear that the United States will try to reinforce its relationship with Taiwan and especially with Japan, the most reliable U.S. ally in the region. Indeed, Japan has been the main follower of American foreign policies and

democratic ideas since the end of World War II. From the Washington perspective, its strategy with Tokyo is crucial to maintain the *status quo* in East Asia and in the International System. The stability of the region will depend on the Sino-American relationship and its development with their strategic partners. In the meantime, Beijing and Washington should be very vigilant for avoiding any frictions, which could lead to more intensive confrontation [92]. Japan, Taiwan, and other minor powers in East Asia eventually will be driven to choose between the two leading powers. Some might align more to the United States' side as Japan does, while others will attach more to China's side as Taiwan does or just remain neutral. This might turn East Asia into a small Cold War scenario [56]. Due to the complexities presented on a bipolarity scheme of the region for the minor powers, Japan and Taiwan would have difficulty to be totally engaged with the major powers (the U.S. and China). Thereby, the regional adjustment will be deemed on the multilateral dynamics of the Beijing-Taipei-Tokyo-Washington ties. Furthermore, it is the U.S. government that has enormous challenge to encourage good relations among them. As a matter of fact, the East Asia transformation will depend more on how effective the United States power, commitments, and involvement will be in the regional affairs.

In this issue, since Japan and Taiwan share democratic values with the United States, they will offer a more open dialogue to reinforce their relations in political, economic, and security matters. Indeed, Washington and Tokyo have also tried to foster their relationships with the ASEAN countries. All these efforts may cause them more struggles in finding a true cooperation with China, so that Beijing will not feel displaced by Washington and its Asian allies [92]. At this point, it is extremely challenging for the United States and its Asian allies to deal with China over its territorial disputes.

Although Washington has adopted the so-called "one China policy", Taiwan still concerns in the U.S. political agenda. The successful democracy that the island has gone through has permitted an extensive trilateral dialogue among Taipei, Tokyo, and Washington. Moreover, the sustained Taiwanese democracy has also enhanced the trilateral as well as the regional cooperation. In 2005, Japan and the United States announced a common strategic statement to foster a peaceful resolution across the Taiwan Strait through the diplomatic way [92]. The United States have maintained certain strategic affairs with Taiwan, in order to protect their mutual interests in the

region. However, Taiwan's policy towards the United States is very pragmatic and unpredictable depending on which political coalition is in power. In fact, the current Ma administration is aiming at an eventual unification with Mainland China. Therefore, the Japan-U.S. alliance presents a more stable path to the U.S. policy preservation in East Asia.

In certain way, the Pinnacles dispute has fortified the strategic alliance between Japan and the United States in different areas. As mentioned above, the United States has reiterated that the Pinnacles controversy falls within the lawful framework of the Japan-U.S. Security Treaty, which commits the United States to defend the territory under Japanese administration. For instance, in September of 2011, the U.S. Secretary of State, Hillary Clinton declared a plain responsibility of the United States to defend Japan's territory. In addition, the Chairman of the Joint Chiefs of Staff, Mike Mullen and Secretary of Defense Robert Gates have also declared a solid support for Japan, offering confidence that the United States will follow-through its alliance and lawful responsibilities [112]. Somehow, these declarations highlighted the U.S. power of deterrence, which is the main purpose of the U.S. base in Okinawa. Therefore, the Pinnacles dispute represents an important factor to consider the final resolution over the Futenma base.

Recently, on April 30<sup>th</sup>, 2012 in Washington Yoshihiko Noda, the Japanese Prime Minister stated that a more broad presence of U.S. forces in East Asia will help to reinforce the deterrence against China's rising power. Noda also declared that the America-Japan relationship should not be limited to security concerns, but also to diplomatic and economic issues in the region [113]. At this point, the United States is trying to reinforce its strategic alliance with Japan by pressuring the Tokyo Central Government at least to maintain the fiscal allocation for the U.S. marines in Japan. Although there were deliberations to cut the budget for maintenance of the American forces, the funds will continue at least at the same level [114]. This attitude has probably been recognized as Japan's fears over a possible Chinese invasion to the Pinnacle Islands.

As Seiji Maehara has constantly mentioned, China represents a threat for Japan and the region. During his mandate, Maehara proposed to revise the Japan-US Defense Cooperation Guidelines, which permit Japan to offer land-sea-air logistical

support to USFJ in case of a regional conflict scenario. This move could shift Japan's role within its strategic alliance with the United States in the East Asia region. Maehara also indicated that Japan and the U.S. can work together on other important aspects, such as eradication of illegal weapons and related technology in the Asian black market [114, 33, 115]. On August 27<sup>th</sup>, 2010, days before the "Minjinyu 5179 incident", the DPJ already acknowledged the new China threat to the remaining North Korean threat by calling a Cabinet meeting on regional security issues. On December 17<sup>th</sup>, 2010, the Kan Administration approved the new National Defense Program Guidelines with the purpose to enhance the existing security links with the United States, and precisely reinforce JSDF presence nearby the Pinnacle Islands by 2011. As a result, the Japanese Diet proposed to notably increase the number of the JSDF effectives in Yonaguni, Miyako, and Ishigaki. There were other deliberations to amend the Japanese Pacifist Constitution clause in the Article IX, which would pursue a proper military build-up [17, 27, 90, 33, 41, 114].

During the last year, the Japanese Diet held deliberations to establish a joint command post between the JSDF and the USFJ around Yaeyama Islands group, which technically will contemplate the defense of the Pinnacle Islands. These maneuvers might provoke some response from Beijing. However, the fact that Japan and the United States share the same visions and concerns in the region has realigned their mutual strategic plans. In concrete, their main objective for establishing this joint command is to deter the threats by China and North Korea. By strategic means, the Nansei Shoto (Ryukyu Islands) joint operation would eventually consolidate the Japan-U.S. alliance in the Pinnacles controversy. In effect, the strategic interest for both, Washington and Tokyo are certainly associated. Not only the Pinnacle Islands dispute represents a central issue for defending Japanese sovereignty and the economic interests attached to them, but also the islets are important to maintain the U.S. presence in East Asia [82, 26, 104, 41].

Evidently, China's interests are not only to focus on the Pinnacle Islands. China has nearly over six thousands islands off its coast. If China takes possession of the Pinnacles, the next target will probably be the rest of the Nansei Islands in order to secure China's access to the East China Sea as well as the rest of the Western Pacific Ocean [66]. A possible Chinese invasion to the Nansei Archipelago would set what the U.S. Department of Defense defines as a Chinese "A2/AD" operation (anti-

access/area denial) against the U.S. forces in the East Pacific. This approach has been contemplated by China's strategists to diminish the U.S. naval reinforcements and maritime presence in Asia as well as undermining the U.S. marines' forces from entering to the Taiwan Strait and waters surrounding the east coast of Taiwan [35, 116, 104]. Given the potential anti-access and area-denial maneuvers from Chinese forces and their suspicious cooperation with North Korea, it seems likely that the outlook of the U.S. presence in East Asia will depend on its military cooperation with Japan [104]. Therefore, the Pinnacles underline a potential significance for the Washington strategy in order to maintain its power in the East Asia. In a latent conflict scenario in which China invades one or more of the Pinnacle Islands, the U.S. Forces in Japan will play a crucial factor. If the U.S. Marines would be dismissed from Okinawa, probably China will occupy the Pinnacle Islands right away. Therefore, Washington would use the Pinnacles dispute in order to avoid a Chinese expansion to the Pacific Ocean [110]. In fact, the DPJ has rationalized its attitude towards the removal of Funtenma base, which serves as an important defense wedge against the Chinese PLAN presence in the East China Sea.

Fundamentally, the strategic alliance with Japan is a crucial element for the United States' power shift toward the East Asia, which includes the reinforcement of the U.S. forces across the region. As the U.S.-Japan Joint Statement: A Shared Vision for the Future [113, p. 1] pointed it out, "the Japan-U.S. Alliance is the cornerstone of peace, security, and stability in the Asia-Pacific region." Essentially, this joint statement attempts to reaffirm the Washington's long-stand position and objectives in East Asia by permitting to fortify as well as to increase security and cooperation between Japan and the United States. It also allows the regional partners to join this "shared vision". At the same time, this mutual statement is a crucial element for the United States to rebalance its power in East Asia through a wider and stronger support from Japan. In this way, the U.S. military presence can be preserved in the region.

## CHAPTER FIVE

### 5. Conclusions

The Pinnacle Islands controversy denotes a major challenge for multilateral ties among China, Japan, Taiwan, and the United States and questions the ability for these nations to achieve a consensus regarding their common strategic and economic interests. By analyzing historical facts and International Public Law sources, it is clear that Japan has better evidence to prove and defend its sovereignty over the Pinnacle Islands than China or Taiwan does. Precisely, China's and Taiwan's claims based on historical, geographical, and geological evidence in order to demand their sovereignty over the Pinnacles do not have enough sustainability or justification under the International Public Law framework to support their positions. Firstly, the geographic and geologic notions held by China technically include its sovereignty not only over the Pinnacle Islands but also over Taiwan Island. Curiously in this case, China sustains a territorial dispute with a claimed territory by its own as Taiwan has still been pondering its own right to self-determination against China since 1949.

In addition, China's and Taiwan's geographic and geological claims are immaterial concerning maritime territorial disputes. If the geological structure were a substantial factor to solve territorial controversies, the sovereignty of several overseas territories and dependencies across the world would have to be transferred. Hypothetically speaking, Greenland would be a Canadian territory not Danish one. Furthermore, sovereignty claims maintained by the Chinese and Taiwanese governments mostly depend on historical records, whose evidence is inconsistent. Arguing that Ming and Qing Dynasties' sailors named and mapped the Pinnacles when they passed by during their voyages to the Ryukyu Kingdom is irrelevant because previous sovereign entitlements are not applicable to the current sovereignty of China or Taiwan. This supposition is as if the Old Portuguese Empire would have the right of sovereignty over Taiwan only because during the mid-sixteenth century they navigated through its waters and referred to it as "Formosa". The fact is that the



Ming and Qing Dynasties are in the past, so their sovereignty entitlements and territorial boundaries.

Therefore, if the controversy were to be submitted to the International Court of Justice, Japan's claims would possibly have a more substantial evidence to appeal since Japan has legal possession of the islands. In addition, the Japanese government has effectively administrated and exercised sovereignty over the Pinnacles for a reasonable period of time. By contrast, neither the PRC nor ROC has ever exercised effective sovereign authority on the disputed islands. However, it seems that the Pinnacles case will remain unsolved even in a long run, given the deficiency within the current ICJ's system discussed earlier along with the potential risks of a military confrontation among the parties involved. In addition, it is difficult to find a possible solution to this controversy for the Nation-States concerned since they have been immersed in several territorial disputes with their neighbors.

This situation appears to be more challenging for China. For decades, the CCP has not even settled its "domestic" territorial disputes, such as those with Tibet and Taiwan. It seems likely that China will not solve the territorial controversies with its neighbors in the long run either. On one side, China and Japan have demonstrated that both nations can tentatively work together on economic affairs. Unfortunately, neither China nor Japan has diversified a wider cooperation in political areas, such as security and military strategy. On the other side, despite the last confrontation between a Taiwanese vessel and Japanese authorities close to the Pinnacles' waters [117]; the Taiwanese government has shown more maturity by declaring that the controversy should not affect its relationship in economic and political matters with Japan. Indeed, Taiwan contributed with the major aid for Japan's earthquake and tsunami victims of March 11<sup>th</sup>, 2011 [118].

Nevertheless, it is important to mention that none of the involved parties can simply leave or diminish their claims over the disputed islands since a government can jeopardize its sovereign authority principle when it is not seen to protect the nation's territorial integrity and makes it recognized by its neighbors. This aspect is more evident in the Sino-Japanese relationship because of historical events that both nations experienced together in the past. As a result, it will be more difficult for China to come to an agreement with Japan in their territorial and maritime claims due to the

strong nationalism and anti-Japanese sentiment that is still present not only in China's foreign policy but also in its society. Meanwhile, the current Japanese Cabinet is apparently averse to giving a weak impression about defending its country's territorial claims. However, its foreign policy towards China has been more submissive than assertive over the last couple of years, probably because of the close nexus between some DPJ members and Chinese leaders.

Evidently, there is a latent hostile scenario clouding the final resolution to the question of the Pinnacle Islands' sovereignty. Probably, there may be more and more such a conflicts as long as a vast amount of oil and natural gas exist in the area. Under these circumstances, probably none of the parties is much interested in the small islands and islets terrain, but instead in the natural resources surrounded them. This is because Japan's energy shortages are increasing as a result of the nuclear crisis, and China's energy demand continues to rise due to its fast economic growth. Thereby, it seems that these nations are unwilling to openly share natural resources despite the previous talks with each other. Moreover, in a global economy where serious energy supply shortages will eventually take place; the benefits involved in the Pinnacles' case might turn the controversy towards an escalating conflict for economic interests.

Although the PRC is trying to persuade its neighbors that China's rising power is not assertive; territorial disputes that China holds could provoke frictions and instability among them. As a matter of fact, some analysts speculate whether the PRC might take what its leaders consider as their own territory by force. In the Pinnacles case, Chinese foreign policy has contradictory claims but bold intentions, which mainly concern to ambitions towards hydrocarbons and proclaiming the nation's rising power. The CCP leaders have made it clear that they do not have to negotiate the sovereignty of what they consider their own territory. Whereas, Taiwan's current position is, instead, to peacefully solve this controversy with Japan, and to set up a cooperative development for mutual benefits.

The general outcome from the Pinnacle Islands controversy has somehow motivated Tokyo and Washington to reinforce their strategic relationship based on their respective concerns. Fundamentally, this alliance is vital for the stability of East Asia thus the International System. Indeed, the Japan-U.S. alliance is also especially appreciated by other States having maritime and territorial disputes with China. The

Pinnacles controversy has also served as a motivation for the United States to come back to East Asia and to keep acting as the balancer in the region, thus to secure its interests. In the end, the Japan-U.S. alliance will redefine its tactics against North Korea and their major opponent, China. It is evident that Japan's involvement in the U.S. policy is necessary in order for the United States to hold its position and power in East Asia. At the same time, the role of the United States in the controversy is crucial for Japan to defend the Pinnacle Islands and its resources against the increasing ambitions of China.



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## Appendix



Figure 1: Location of the Pinnacle Islands [1].

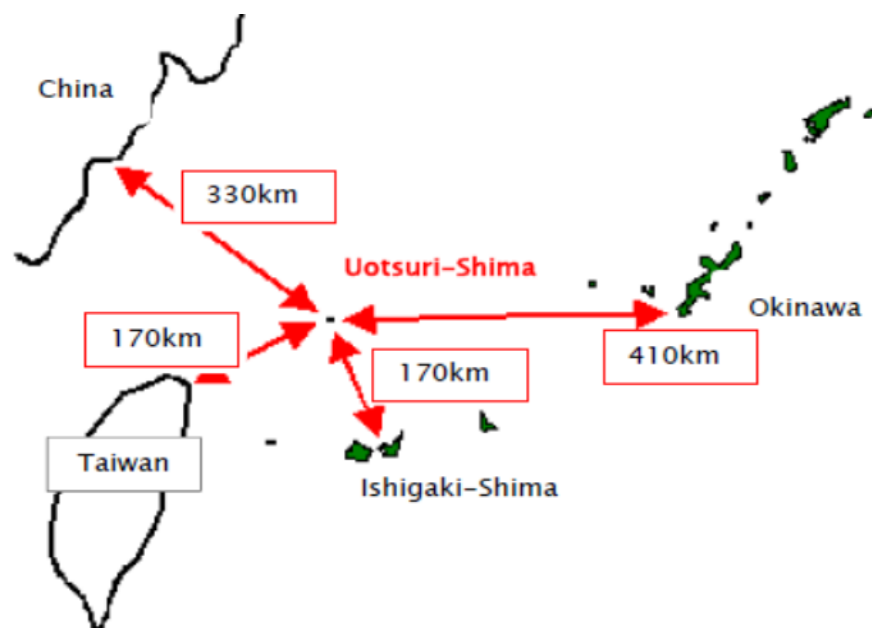


Figure 2: Pinnacle Islands' vicinities [1].



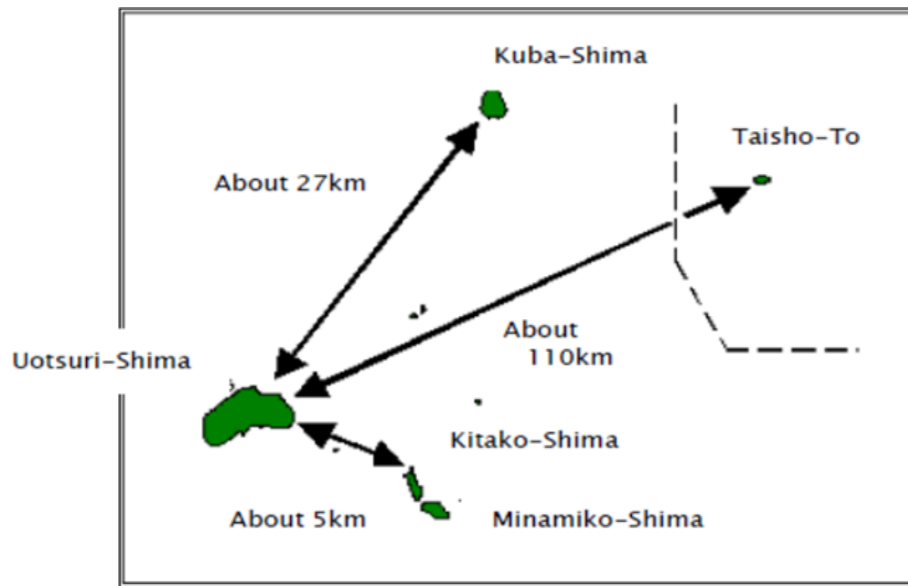
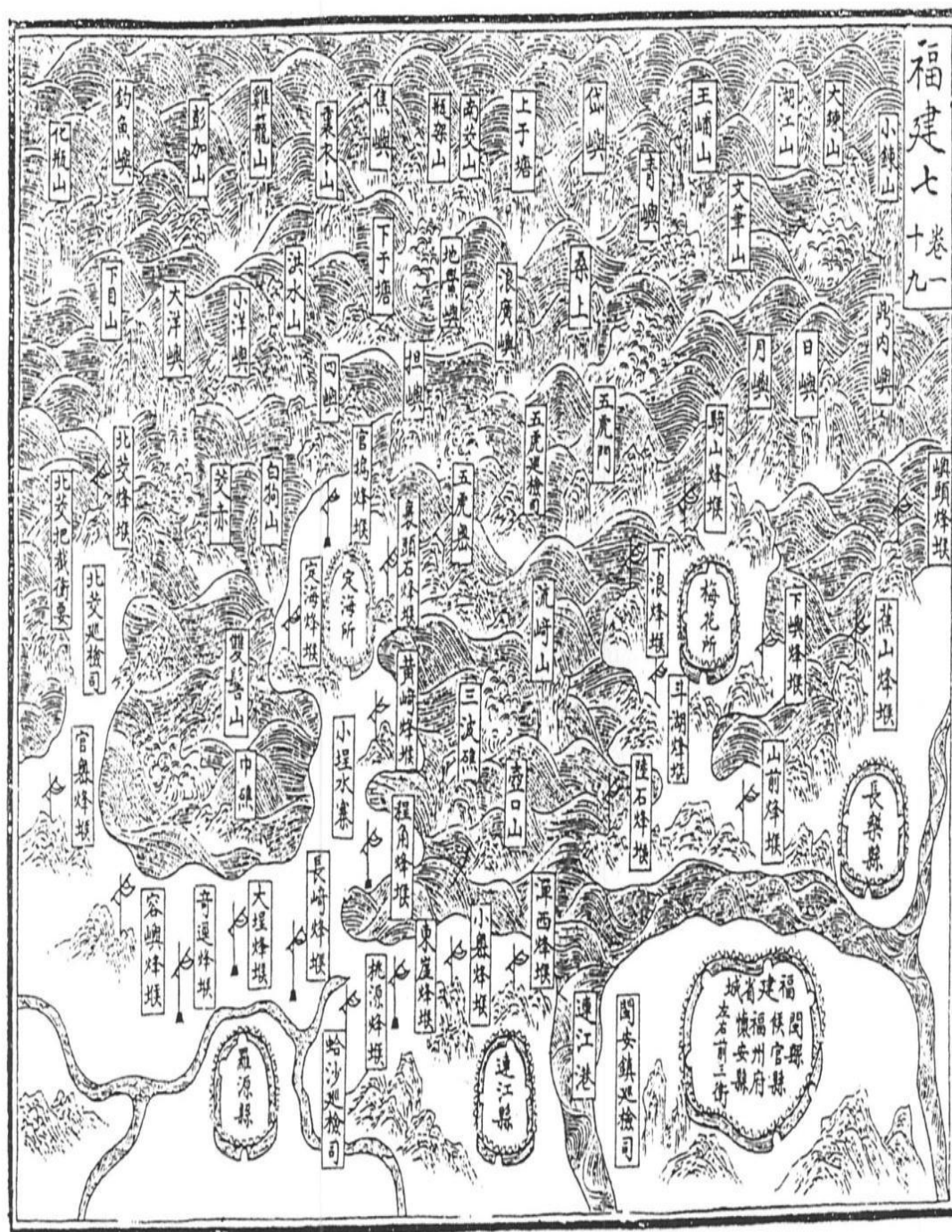


Figure 3: Pinnacle Islands' territorial expansion [1].



Figure 4: Overlapping claims in the East China Sea gas fields [51].



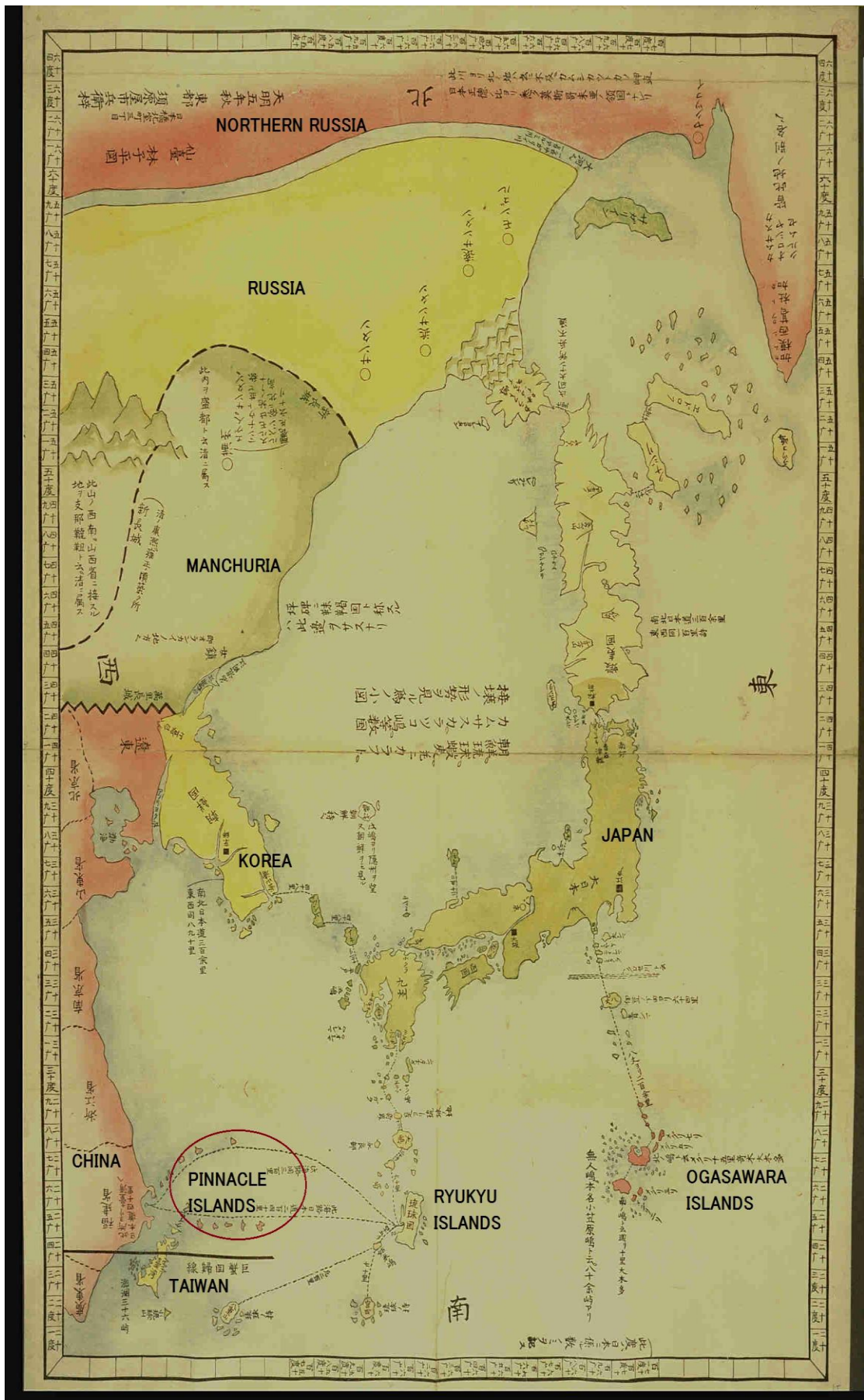


Figure 6: Full map of the Three Kingdoms by Shihei Hayashi 1785 [119].



Figure 7: Zhongshan Chuan Xin Lu map by Xu Baoguang 1721 [31, p. 30].



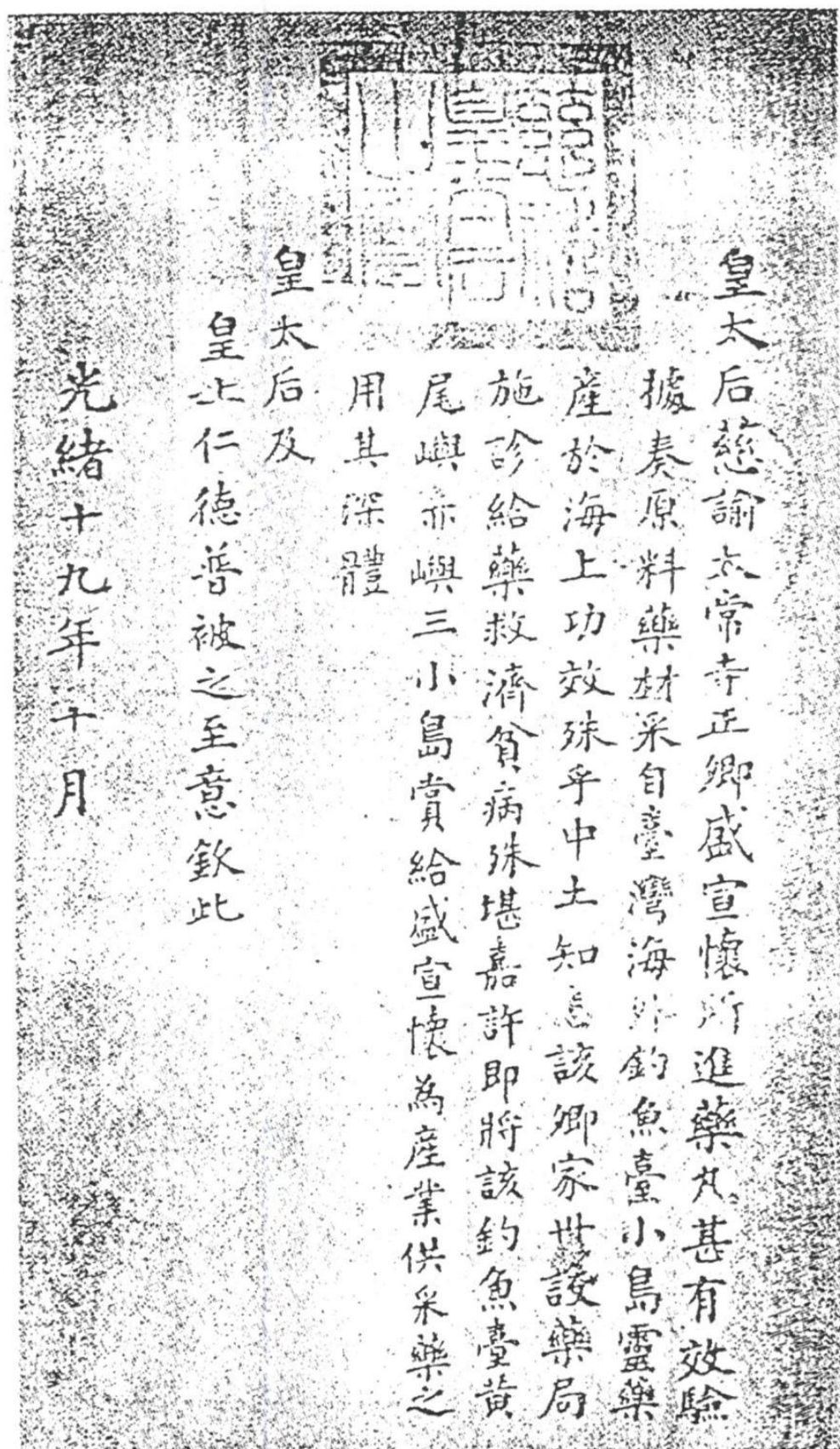


Figure 8: The fake deed of Empress Cixi [31, p. 19].





中華民國八年冬福建省惠安縣漁民

郭合順等三十一人遭風遇難飄泊至

日本帝國沖繩縣八重山郡尖閣列島

内和洋島承

日本帝國八重山郡石垣村雇玉代勢

孫伴君熱心救護使得生還故國洵屬

救災恤鄰當仁不讓深堪感佩特贈斯

狀以表謝忱

中華民國駐長崎領事馮軍

中華民國九年五月二十日

## 資料

琉球群島人民反對

琉球群島散佈在我國台灣東北和日本九州島西南之間的海岸上，包括尖閣諸島、先島諸島、大東諸島、沖繩諸島、大島諸島、土噶喇諸島、大隅諸島等七組島嶼，每組都有許多大小島嶼，總計共有五十個以上有名稱的島嶼和四百多個無名小島。陸地面積為四千六百七十平方公里是沖繩諸島中的沖繩島，其面積為二千二百一十一平方公里；其次為大島，面積七百三十平方公里，它的內側是我國東海。

美國在一九四五年六月佔  
手在該島建築軍事基地。隨  
略計劃的破產，琉球基地的  
起來。遠在美國發動侵略朝  
群島的軍事工程就已佔用了  
用作建造基地的費用超過了  
基地的建造計劃一再擴大，  
着。一九五一年六月二十二  
直一惟志會登時由是聞名

[illegible]

99

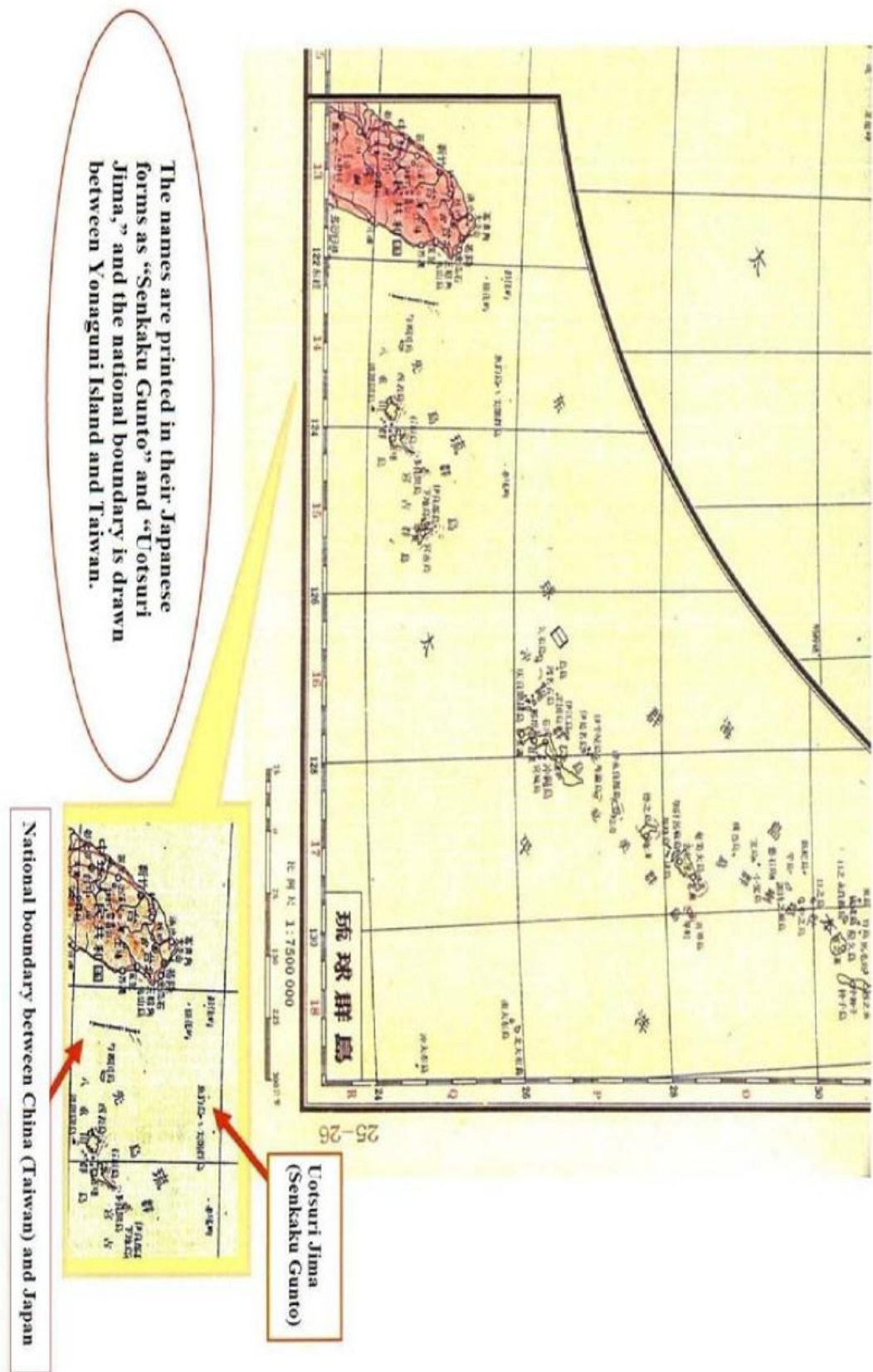


Figure 12: World Map Atlas published in 1960 by Beijing Map Publishing Co. [31, p. 33, 37, p. 2].



RYUKYU-ISLANDS 圖島羣琉

B 14

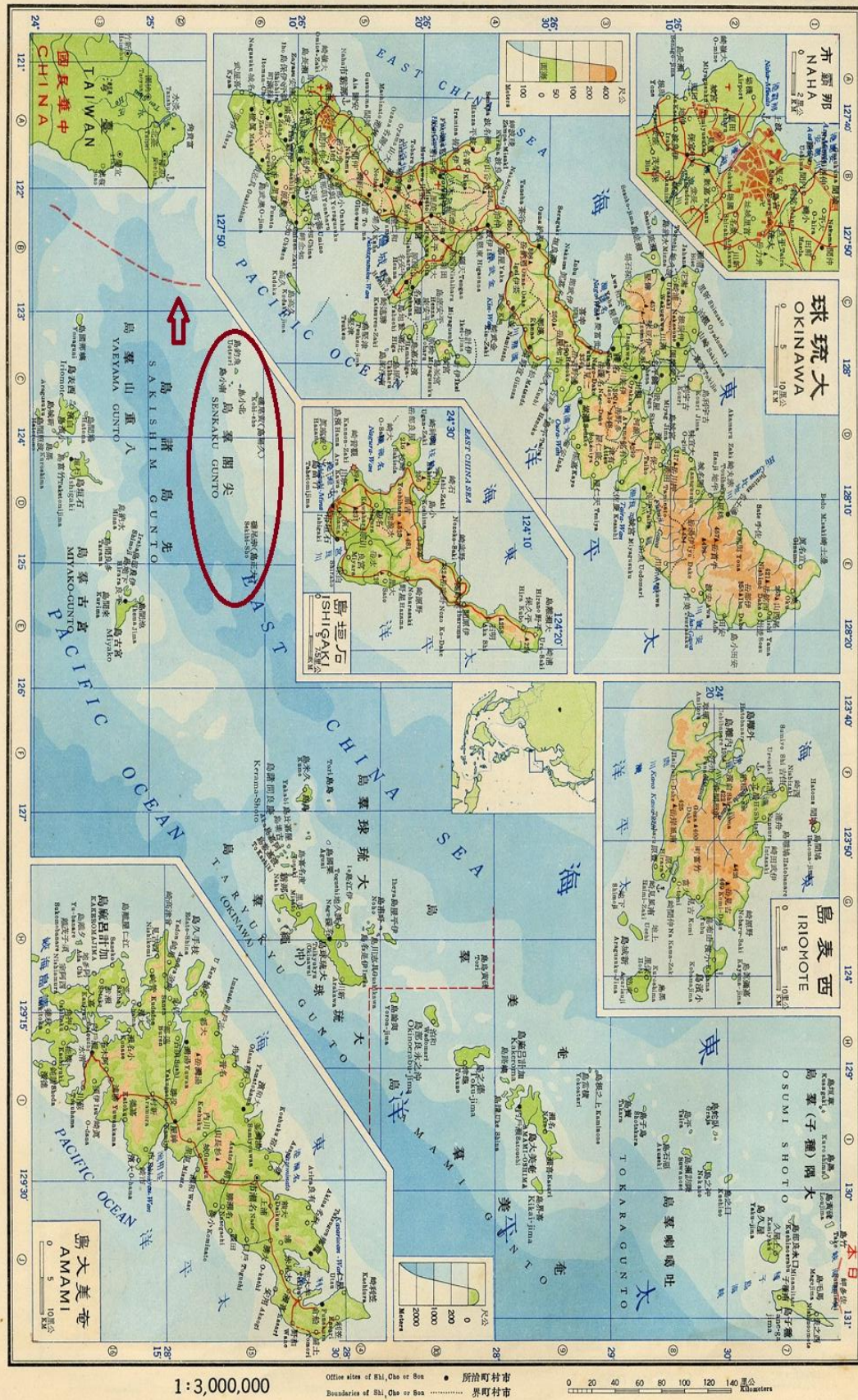


Figure 13: Ryukyu Islands in World Map Album Vol. 1 East Asian Nations 1965 [38, p. 16, 31, p. 34, 37, p. 3, 122].



琉球羣島地形圖

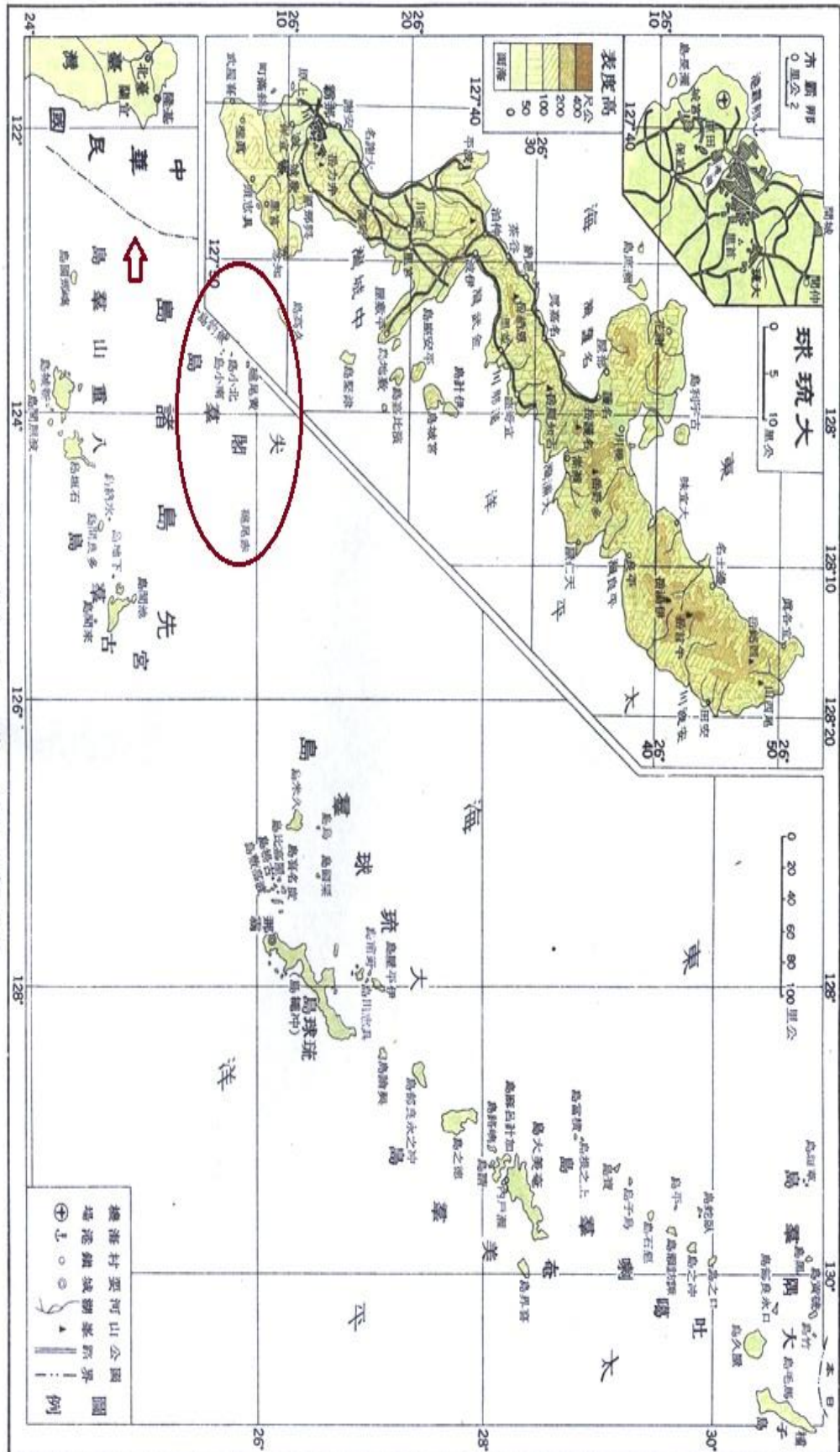


Figure 14: Taiwanese Geography textbook for national junior high-schools 1970 [123].

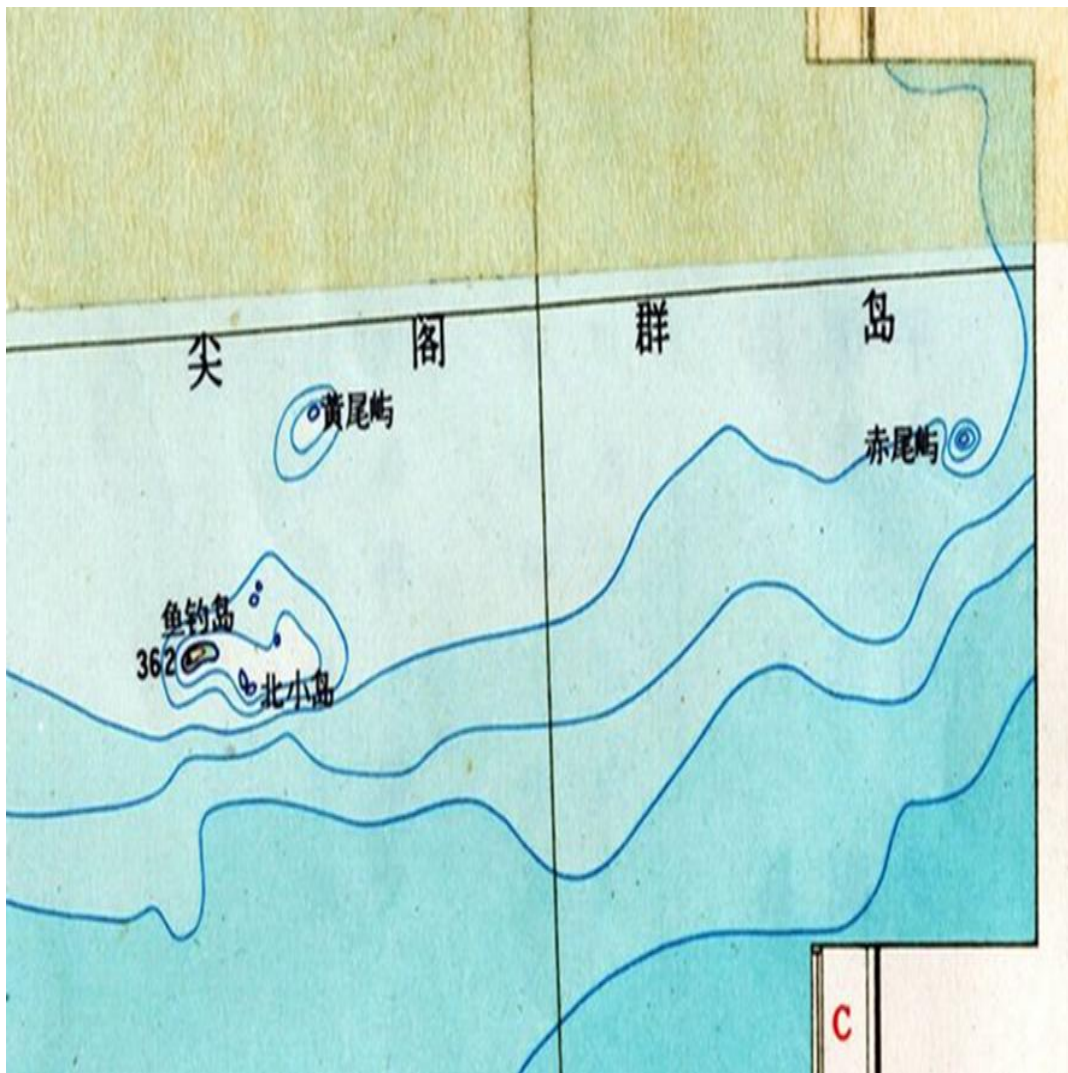


Figure 15: Classified Chinese map with the Japanese term for the Pinnacles [71].



Figure 16: Marker erected on Uotsuri/Daioyu Island by Ishigaki City 1969 [31, p. 12].





Figure 17: Warning sign built by the Ryukyu Islands government 1970 [31, p. 13].



Figure 18: PLAN maneuvers along the East and South China Sea [27, p. 3].

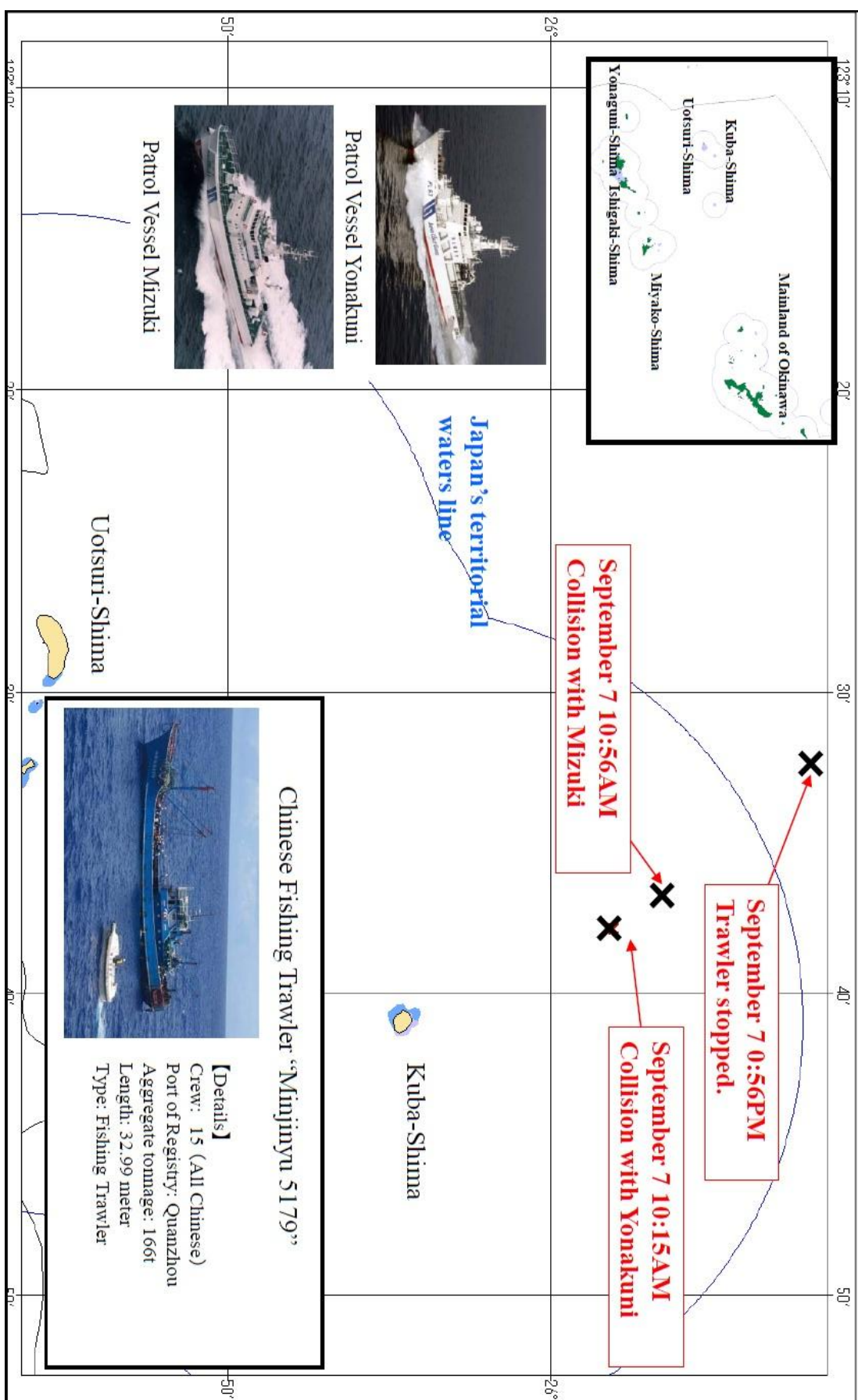
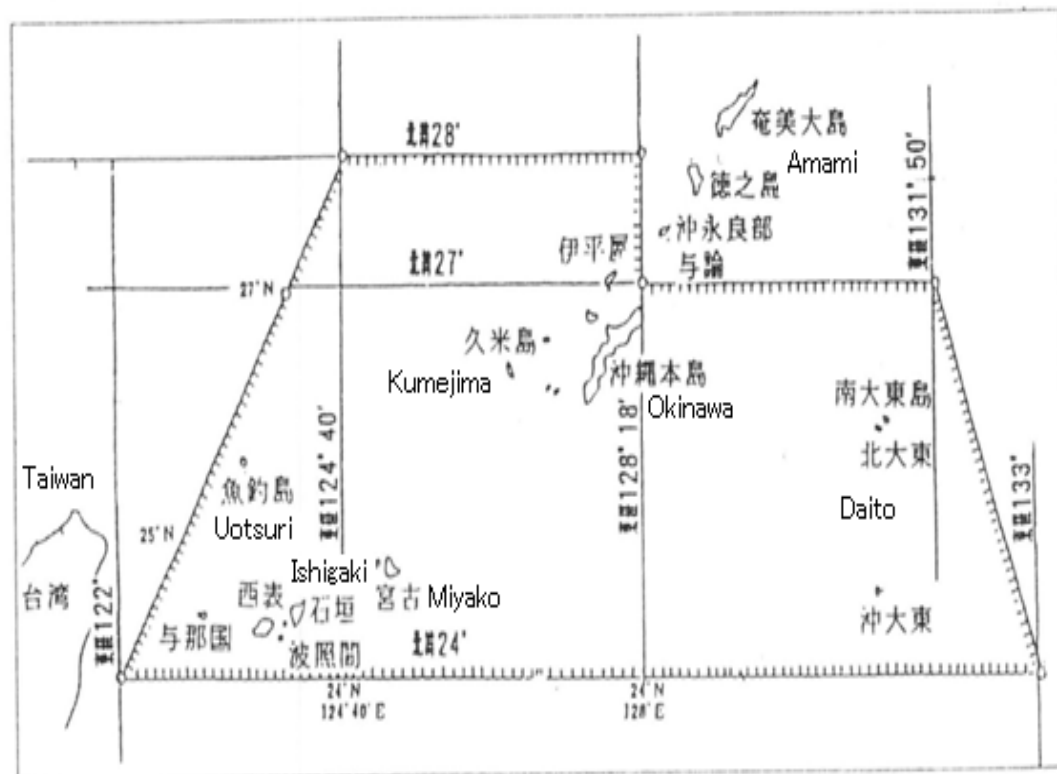


Figure 19: Minjinyu 5179 incident time and location [1].



**Figure 20: USCAR-27’s geographical borders [31, p. 10].**

久場島の軍用地基本賃貸借契約書  
(1958.7.1)

GRI Nr. 183-1  
琉球政府番号

BASIC LEASE  
基本賃貸借契約書

THIS LEASE, made pursuant to the provisions of HICOM Ordinance Nr. 20, "Acquisition of Leasehold Interest," dated 12 February 1959 and made effective 26 January 1959, 12日付高等弁務官布令第20号「賃借権の取得について」の規定に従い

this 28 day of JAN, 19 60, between KOGA, ZENJI

19 60 年 1 月 18 日 東京都北区港野川7の46

whose address is TOKYO-TO, KITA-KU, TAKINOGAWA, 7-46

に居住する

, hereinafter called the

古 賀 善 次 (以下賃貸人という) と

Lessor, and the Government of the Ryukyu Islands, hereinafter called the Ryukyuan 琉球列島政府 (以下琉球政府という) との間に締結され、次のとおり規 Government, provides that:  
定 す る。

1. The Lessor, in his capacity as ATTORNEY-IN-FACT  
(owner or otherwise)

賃貸人は 代理人 (所有者又はその他の権利  
hereby leases to the Ryukyuan Government the land described at the end of this lease.  
者) として、この契約書の末尾に表示された土地をここに琉球政府に賃貸する。

2. The Ryukyuan Government is authorized to sublease said land to the United States of 琉球政府は総括賃貸借契約の下に当該土地をアメリカ合衆国  
America under a master lease. The termination of such master lease, insofar as it pertains  
に転貸する権限を有する。総括賃貸借契約の終了は、それがこの契約書の末  
to the land described at the end of this lease. shall constitute a termination of this lease.  
尾に表示された土地に関する限り、この契約の終了となる。

3. The term of this lease shall begin 1 July 1958 and shall continue indefinitely, or until  
この契約の期間は1958年7月1日に始り、不定期間又は上記第  
terminated in accordance with paragraph 2 above.  
2項により終了するまで継続する。

4. (Alternate Nr. 1) The Ryukyuan Government shall pay to the Lessor upon the  
(代替第1) 琉球政府はこの契約の締結に際して 58 年 7 月 1 日 から  
execution of this lease the sum of

1959 年 6 月 30 日までの借賃として米 五千七百六拾参弗九拾貳仙

(5,763弗92仙) を

Figure 21: Leasehold agreement for U.S. military purposes [31, p. 11].



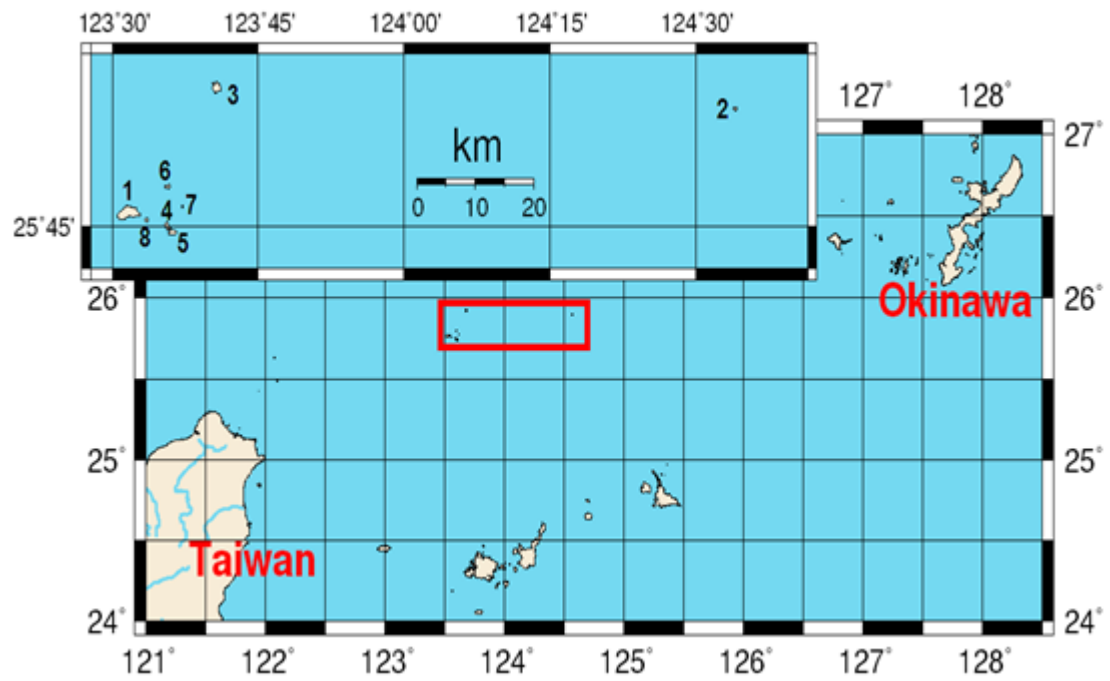


Figure 22: The Pinnacle Islands' coordinates [2].