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Japan's possession of Senkaku Islands is legitimate based on history and international law
–Japanese government must assert its legitimate rights to the islands

October 4, 2010
Japanese Communist Party

The Senkaku Islands–Japanese Territory

Japanese Communist Party's View on Senkaku Islands Question

March 30, 1972

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Triggered by the collision of a Chinese fishing boat and Japan Coast Guard patrol boats near the Senkaku Islands of Japan, the dispute between Japan and China over the possession of the Senkaku Islands has attracted international attention. The Japanese Communist Party in its statement issued in 1972 made clear its position that Japan's possession of the Senkakus is legitimate. Taking this opportunity, we once again clearly demonstrate the legitimacy of Japan's sovereignty over these islands.

1. Japan's possession and effective rule

Until modern times, the Senkakus were *terra nullius*

The existence of the Senkaku Islands was long recognized in Japan and China and documents issued during the Ming and Qing Dynasties mentioned the islands. In those days, the Ryukyu Kingdom was allowed to trade with China by paying a tribute to its successive emperors, and investiture missions of the Chinese emperors visited the Ryukyu Kingdom on the occasion of successions to the Ryukyu throne. The Senkaku Islands lie at about the halfway point in the shipping route between the Ryukyu Islands and Fuzhou on the Chinese continent and were known as a navigation landmark for ships in the area. However, no Chinese documents

provided records showing that Chinese people historically inhabited the Senkaku Islands, or that during the Ming and Qing Dynasties, China, as a nation, claimed its sovereignty over the islands.

Japan also does not possess historical documents pointing to the possession of these islands in those days. Until modern times, the Senkaku Islands were *terra nullius* under international law, not belonging to any country or ruled by any country.

Japan's acquisition

It was Koga Tatsushiro, a Japanese national, who explored in 1884 the Senkaku Islands, *terra nullius*. In 1885, Koga applied to the Japanese government for a lease on the islands for business purposes. As albatross feathers were gathered on the islands and the number of fishermen who were engaged in fishing activities near the islands increased, the governor of Okinawa decided to carry out an on-site survey of the islands and submitted an inquiry to the central government whether markers should be erected to declare the Senkaku Islands to be part of Japan's territory. After careful study of the inquiry, the central government decided to save the opportunity to set up a national marker and establish settlements for another day (*Nihon Gaiko Bunsho,* Diplomatic Documents of Japan, Vol. 23).

After repeated on-site surveys through Okinawa Prefectural offices and other offices, on January 14, 1895 a cabinet decision was taken to incorporate the Senkaku Islands into Japanese territory. Historically, this decision was the first-ever acquisition of the islands, an act of "occupation" of *terra nullius* with the intent to possess it, one of the titles to territorial acquisition whose legitimacy is recognized under international law.

Japan's effective rule

In September 1896, after incorporating the Senkakus into Okinawa's Yaeyama County, the Japanese government leased four islands

(Uotsurijima, Kubajima, Minami-kojima and Kita-kojima islands) for 30 years for free of charge to Koga Tatsushiro, who had requested that they be leased to him. Granted the lease right, Koga began developing the infrastructure and constructed water storage facilities, landing bridges, and piers. He ran a business exporting albatross feathers and guano. Thus Kogamura Village was established, bringing the first ever inhabitants to the Senkaku Islands. In the Taisho Era (1912-1926), the production of dried-bonito and stuffed seabirds became the main business pursuit on the islands. At its peak, nearly 200 people, including fishermen and taxidermists creating stuffed seabirds, were living there.

In 1919, a fishing boat from China's Fujian Province was wrecked near the island of Uotsurijima. The islanders rescued all 31 Chinese fishermen and sent them home safely. The islanders on May 20, 1920 received a letter of appreciation for their rescue efforts from the Chinese consul to Nagasaki. The letter clearly described the Senkakus as Japanese territory.

Thus, the Senkakus had been under Japan's effective rule up to the end of World War II.

In the wake of Japan's defeat in the war in 1945, based on the Cairo Declaration in November 1943 and the Potsdam Declaration in July 1945, both of which were issued by the Allies, Japan was required to return to China occupied lands such as Taiwan which Japan had seized from China. However, the Senkaku Islands were not included in these documents.

Then, the Senkaku Islands were placed under U.S. military control as part of Okinawa. The San Francisco Peace Treaty signed in September 1951 designates that the U.S. military has administrative rights over the Ryukyus, the Daitos, and the other Nansei islands located south of 29 degrees north latitude, including the Senkakus. In return for paying a certain amount of land rent, the United States had used Taishojima and Kubajima of the Senkakus for its live-fire ranges. Although Japan was deprived of administrative rights over the islands, sovereignty resided with

Japan. The agreement signed between Japan and the United States in June 1971 on Okinawa's reversion to Japan came into effect on May 15, 1972. Accordingly, the administrative rights over the Senkakus were returned to Japan. To this day, Japan has had that right.

2. Japan's indisputable sovereignty based on international law

China made no objection for 75 years

Although China now claims sovereignty over the Senkaku Islands, the biggest problem with its argument is the fact that for 75 years, from 1895 to 1970, China never raised any objections or made protests in regard to Japan's territorial rights over the islands.

China and Taiwan started to claim sovereignty over the Senkakus in the 1970s. Taiwan claimed sovereignty over the islands for the first time in 1970, and in the following year of 1971, it issued a statement to that effect. On December 30, 1971, the Chinese government officially claimed sovereignty over the Senkakus in a foreign ministry statement. The U.N. Economic Commission for Asia and the Far East (ECAFE), in its report released in May 1969, had pointed out the possibility of rich undersea oil and gas resources in the East China Sea where the Senkaku Islands are located as well as in the Yellow Sea.

Different from seizure by aggression

The focal point of China's argument is that the Senkakus are part of China's territory as islands attached to Taiwan and were unjustly taken over by Japan in the Sino-Japanese War.

After the Sino-Japanese War (1894~1895), Japan forced China to cede Taiwan and its attached islands, as well as the Penghu Islands, thereby

initiating its invasion of China. However, the Senkakus were not included in the areas Japan unjustly seized.

The major point of disagreement on this issue centers on the process of negotiations for the Sino-Japanese Peace Treaty (Shimonoseki Treaty) which stipulated the cession of Taiwan and Penghu, and whether or not the Senkaku Islands were included in “the Island of Formosa (Taiwan) together with all Islands appertaining or belonging to the said Island of Formosa” in the Treaty’s Article 2 that defined areas ceded to Japan.

First, Japan proclaimed that the Senkaku Islands belong to Japan on January 14, 1895, more than two months before the start of the negotiations for the Shimonoseki Treaty on March 20, which concluded that Taiwan and Penghu would be ceded to Japan.

Second, the Shimonoseki Treaty stipulated in Article 2 that areas ceded by China to Japan include: “The Island of Formosa (Taiwan) together with all Islands appertaining or belonging to the said Island of Formosa” and “The Pescadores (Penghu) Group, that is to say, all Islands lying between the 119th and 120th degrees of longitude east of Greenwich and the 23rd and 24th degrees of north latitude.” It made no mention whatsoever of the Senkaku Islands.

Third, in the process of negotiations toward concluding the Shimonoseki Treaty, the Chinese side made a strong protest against Japan’s demand for the cession of Taiwan with all its islands as well as the Pescadores (Penghu) Group, but it did not refer to the Senkaku Islands at all. If the Chinese side had recognized the Senkakus as part of its territory, it would have lodged strong protests against their “cession” as well, but there were no such demands. This is clear from a careful examination of the minutes kept of the negotiations.

Fourth, following the conclusion of the Shimonoseki Treaty on April 17, 1895, the official document on handing over of Formosa (Taiwan) was

signed on June 2, 1895, at which time the question arose: “What are the islands belonging to Taiwan?” At the time, the Japanese side said that there was no ambiguity in regard to the islands belonging to Taiwan as they were officially recognized in the maps and charts published, and the Chinese side acknowledged this fact. Maps of Taiwan and charts around it which had been published in Japan until that time defined, without exception, Taiwan and its islands as up to the Pengjia Islet located 56 kilometers to the northeast of Taiwan, and did not include the Senkaku Islands which were further way off. Thus, the Chinese side at the time acknowledged that the Senkakus were not islands belonging to Taiwan. The Chinese government now claims that the Senkakus are part of Taiwan and were seized by Japan, which does not hold true judging from the historical evidence.

Among those who defend the position of the Chinese government an argument used is that the Qing Dynasty, which was defeated in the Sino-Japanese War, was not in a position to make a case for such small islands far off to sea as the Senkakus. However, a country can protest at any time under international law irrespective of the outcome of a war. If the Chinese side had recognized the Senkaku Islands as part of Taiwan, they could have lodged a protest either during the negotiations preceding the Shimonoseki Treaty or at any time after that.

As stated above, the acquisition by Japan of the Senkaku Islands was a legitimate act under international law, completely different in nature from the acts of aggression and territorial expansion as was the case in the cession of Taiwan and the Pescadores (Penghu) Group as a result of the Sino-Japanese War.

No claim for 25 years after the end of World War II

After the end of World War II, the Chinese government declared its position that the San Francisco Peace Treaty was invalid because the People’s Republic of China did not participate in it (Chinese Foreign

Minister Zhou Enlai's statement on September 18, 1951). However, it was not until the 1970s that the Chinese government began to claim that it was illegitimate that the Senkaku Islands were placed under U.S. administration and that they were included in areas to be returned to Japan. In other words, China did not claim sovereignty over the Senkaku Islands until 25 years after the end of World War II.

That China had lodged no objections or protests against Japan's possession of the islands for 75 years till the 1970s, and for 25 years after the end of World War II, clearly indicates that China did not regard the Senkakus as Chinese territory.

On the contrary, the People's Daily, the organ paper of the Communist Party of China, on January 8, 1953, reported about the struggle of the Japanese people in Okinawa under U.S. military administration in an article entitled "Struggle of the people of the Ryukyu Islands against U.S. occupation." The article described the Ryukyu Islands as "dispersed between the northeastern part of our country's Taiwan and the southwestern part of Japan's Kyushu Island" and as consisting of "seven islands groups such as the Senkaku Islands as well as the Sakishima Islands, the Daito Islands, the Okinawa Islands, the Oshima Islands, the Tokara Islands and Osumi Islands," thus themselves including the Senkakus as part of Japanese territory and explicitly using the Japanese appellation "Senkaku."

In addition, maps depicting the whole of China issued in 1958 and 1966 by a publishing house located in Beijing (Map Publisher, Inc.), for example, placed the Senkaku Islands as outside China's territory.

In this way, there is no denying the fact that the Senkaku Islands do not belong to China (including Taiwan), and that the Chinese government had so recognized this historical fact up to the 1970s.

Japan's sovereignty over the islands is indisputable under international law

Japan established sovereignty over the Senkaku Islands on January 14, 1895, by the declaration of territorial acquisition based on the legal principle of occupation under international law.

The legal principle of occupation is not codified in a particular pact. It has been established in modern history as international customary law through customary practices of sovereign states as well as through the accumulation of judicial precedents by international courts, including international arbitration courts and the International Court of Justice. The core of this principle is: "The continuous and peaceful display of territorial sovereignty" is a basic requirement for territorial acquisition to be internationally accepted. The "peaceful display" indicates that historically there has been no objection to the occupying state's territorial acquisition. It is generally accepted that occupation requires three conditions under international law to achieve validity: (a) the territory concerned must be *terra nullius* at the time of occupation; (b) the occupying state must express its intent to occupy the territory; and (c) that state must exercise effective rule over the territory. The occupying state generally has no obligation to notify countries concerned of its territorial acquisition under international law, except as previously arranged. Japan's acquisition of the Senkaku Islands meets these conditions and is undeniably legitimate under international law.

Moreover, in territorial disputes, if a state does not raise an objection or a protest while in full knowledge of occupation by another state, the former is regarded to have given silent approval to the latter's claim of sovereignty. This legal principle has been established through judicial precedents by international courts. Judging from this principle, the fact that China had never lodged a protest to Japan for 75 years after Japan claimed that it established sovereignty over the islands in 1895 is one of the crucial grounds for Japan's claim of legitimacy under international law.

Thus, Japan's sovereignty over the Senkaku Islands has indisputable basis in history and in international law, and by contrast, China's claims are unjustifiable.

3. For solving disputes on territorial claims

In order to resolve the dispute over the Senkaku Islands, it is most important for the Japanese government to clearly demonstrate to the international community as well as the Chinese government the clearcut legitimacy of Japan's sovereignty over the Senkaku Islands based on history and international law as rationally as possible.

In this regard, ever since the 1972 normalization of relations between Japan and China, successive Japanese governments have shown a weakness in clearly asserting the legitimacy of Japan's sovereignty over the islands.

The Japan-China Peace and Friendship Treaty was concluded in 1978. Although this may have been a good opportunity for the territorial demarcation to be recognized, the Japanese side did not argue the case for Japan's sovereignty over the Senkaku Islands, while Deng Xiaoping, the then Chinese vice premier, proposed a "temporary suspension" in addressing the territorial question related to the islands. This Japanese attitude was derived from the government position stated by Prime Minister Fukuda at the Foreign Affairs Committee in the House of Representatives on October 16, 1978, that "it was totally unnecessary" to ask the Chinese side to acknowledge Japan's sovereignty over the Senkaku Islands.

When China adopted in 1992 the Law on the Territorial Sea and the Contiguous Zone which included the Senkaku Islands as part of its territory, the Japanese government did not make any serious response,

political or diplomatic, except that the Foreign Ministry registered an oral protest.

When the recent incident occurred, the government led by the Democratic Party of Japan only stated that it would deal with it according to Japan's domestic laws and judicial procedures, but failed to make any diplomatic efforts to explain its position over the islands, which was the crux of any attempt to resolve the matter.

In this way, successive Japanese governments have avoided asserting an unambivalent position on the matter for a long time. A cabinet minister, in response to questioning by a JCP Dietmember, stated that there was much to be reviewed on whether Japan had communicated the Japanese position on the matter to China and the international community (September 30, Budget Committee, House of Representatives).

We call on the Japanese government to change its attitude, initiate diplomatic efforts to present the case of the legitimacy of its sovereignty over the Senkaku Islands in a straightforward manner to the international community and the Chinese government, based on the historical facts and recognized principles of international law.

At the same time, we also call on the Chinese government to refrain from taking any measures that might escalate the situation or heighten the tension, and to maintain a calm attitude in both words and deeds if and when such an incident as the recent one occurs in future. It is advisable that even if differences of opinion or discord arise between Japan and China, both sides should try to solve the issue at a working-level, and not to politicize it. It is most important that they solve disputes peacefully through negotiations.

Japanese and Chinese governments agreed "to work together to make the East China Sea a 'Sea of Peace, Cooperation and Friendship'" in a joint statement issued in May 2008. Building on this, we request both

governments to work to further develop a “mutually beneficial relationship based on common strategic interests,” thereby making a lasting contribution to peace and stability in East Asia.

– Akahata, October 5, 2010

Japanese Communist Party's View on Senkaku Islands Question

March 30, 1972

1. While the seabed oil field question in the Senkakus area is being made an issue in various ways, suddenly from the side of Chiang Kai-shek, then from the government of the People's Republic of China the question of the title to the Senkaku Islands has been brought up. The Okinawa Legislature, in the March 3 plenary session resolved that "It is clear that the Senkakus are Japanese territory and there is no room for dispute over their territorial right". The opinion of our party is that this claim is correct. We would again like to make clear our party's view on the Senkakus question. For some time now our party has carried out investigations and studied the historical background and relations under international-law in connection with this. Our investigations have made it clear that the Senkakus are Japan's territory.

2. Some records relating to the Senkakus can be found from old times in both the literature of Japan, including Okinawa, and the literature of China. But neither the Japanese nor the Chinese made any final decision that the Senkakus, which were uninhabited, and where no inhabitant of either country had ever settled, belonged to them.

In 1884, Tatsushiro Koga, a Japanese, for the first time in Japanese history explored Uotsurijima Island of the Senkakus and in the next year, 1885, he applied to the Japanese government for a lease on the islands. With regard to the territorial possession of the Senkakus, in January 1895 the Japanese government decided to place Uotsurijima and Kubajima Islands under the jurisdiction of Okinawa Prefecture. In April 1896, the government decided

to include the Senkakus in Yaeyama County and designated them as state-owned lands. Historically, this measure was the first act of possession of the Senkakus. Japan's effective rule over the islands has continued since then. This is what in international law is regarded as possession and effective rule based on the rights of "occupation", and for 75 years, till 1970, no objection from foreign powers had ever been officially made to this.

3. In the meantime, in 1895 Koga again applied to the government for the lend-lease of the islands. In September 1896, he was granted the lease right to four islands (Uotsurijima, Kubajima, Minami-Kojima and Kita-Kojima Islands) for 30 years free of charge. Every year since then scores of reclaiming workers had been sent to the islands and "Kogamura Village" was set up on Kubajima. This is the first human settlement on the islands. Later a dried-bonito factory was built in Uotsurijima. (Since the end of World War II, the islands have again been uninhabited.)

4. The definite possession of the Senkakus was simultaneous with the Sino-Japanese war (1894-5) in which both the Japanese and Chinese ruling circles fought for domination over Korea. Japan was victorious in the war and China was forced to cede Taiwan and the Pescadores (Penghu), its attached islands, to Japan. It is clear that this action cannot be justified, but the Senkakus were not included in the settlement. Jurisdiction over the Senkakus was not taken up in the course of the Sino-Japanese negotiations.

As the result of Japan's defeat in 1945, all the territories Japan had taken from China, including "Taiwan and the Pescadores" were to be returned to China in accordance with the Cairo Proclamation and the Potsdam Declaration. But the Senkakus were not included. The Chinese side did not claim the return of the Senkakus after Japan's acceptance of the Potsdam Declaration.

5. Since 1945, the Senkakus have been placed under the political and military rule of US imperialism, as part of Okinawa, and both Taishojima

(Sekibisho or Kume-Akajima) and Kubajima (Kobisho) of the islands have been turned into firing ranges for the US armed forces and have been used for military purposes in exchange for a certain amount of ground rent (paid to Zenji Koga, son of Tatsushiro Koga). In Article 3 of the San Francisco Treaty, 1951, the Japanese government committed a serious error, that in disregard of the wishes and interests of the Okinawa prefectural people, it left Okinawa, including the Senkakus, under US imperialism's military occupation. Furthermore, in the existing Japan-US agreement on the reversion of Okinawa to Japan (Okinawa Agreement), the Liberal-Democratic government has disregarded the wishes of the Okinawa prefectural people and agreed to the United States retaining its military bases in Okinawa Prefecture, including both Kubajima and Taishojima Islands of the Senkakus. Needless to say, the removal of the firing ranges of US armed forces from the Senkakus is also included in the struggle tasks for the complete reversion of Okinawa and the struggle for the removal of military bases of the US armed forces from the whole of Japan, struggles which the Japanese people, including the Okinawa prefectural people, have continued waging for a long time.

6. Since 1970, the Chiang Kai-shek group of Taiwan has begun to demand the right to the Senkakus, and then, in a statement of the foreign ministry on December 30, 1971, the People's Republic of China came out with the demand for the right to possess the islands. But the grounds for their demand lack substance.

(1) In the literature of the Chinese side there is no record that Chinese people have ever inhabited the Senkakus. Neither the Ming Dynasty nor the Qing (Ching) Dynasty had announced possession of the Senkakus internationally. There is one opinion that claims that the Senkakus "were included in the marine defense area of the Ming Dynasty", but this is a different question from territorial possession.

(2) There is no precedent to show that historically the Chinese side raised any objection to Japan's possession of the Senkakus.

(3) On maps of the whole of China issued by the People's Republic of China (for instance, the map issued by the Peking Map Publisher, 1966) the Senkakus are not included, nor on the map of Taiwan Province are the Senkakus included. The geographical position and longitude of the Senkakus (between 123.4 degrees - 125 degrees east longitude) are outside the "territorial waters" indicated by the Chinese map.

(4) There is also one argument that makes the grounds for the claim that the Senkakus belonging to "Chinese territory", that they are located at the tip of the so-called "Chinese continental shelf". The so-called "continental shelf" theory, with the depth of 200 meters as the yardstick, is an opinion covering seabed resources and a matter different from the possession of islands in the area.

7. From the above points, Japan's right to possession of the Senkakus is clear. The United States, which has continued to use the islands as firing ranges for military purposes, plans to retain them even after the "Okinawa Agreement" goes into effect. We demand that the firing ranges of US armed forces on Kubajima and Taishojima be removed and that the Senkakus be islands of peace.

-Akahata, March 31, 1972