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ABSTRACT

This dissertation fills a gap in the literature created by the focus of conventional International Relations approaches on the escalation and de-escalation of conflict in territorial disputes. Japan's territorial disputes, while prone to controversy and flare-ups, have not witnessed any militarised conflict in their recent histories. By shifting the focus from conflict to sovereignty the dissertation allows an examination of what *does* take place in Japan's territorial disputes, and provides an understanding of Japan's approach to its territorial disputes and how this approach varies across time as well as across each individual dispute.

The dissertation takes a constructivist approach to the relationship between international politics and international law, constructing a conceptual framework – the sovereignty game – which is adapted to the study of Japan's territorial disputes. Simply put, in contemporary international relations, states rarely use force to conquer territory. Rather, they play the sovereignty game, in which they attempt to gain or maintain sovereignty over a disputed territory by (a) successfully undertaking exercises of sovereignty over the disputed territory, and preventing other states in the dispute from engaging in exercises of sovereignty over that territory; and (b) by gaining international recognition of sovereignty over the disputed territory. States seek to exercise sovereignty by utilising their resources (capital), and the extent to which they employ this capital is determined by the relative value of the territory in question.

The dissertation applies this sovereignty game approach to each of Japan's three territorial disputes, the Liancourt Rocks dispute with South Korea, the Pinnacle Islands dispute with China and Taiwan, and the Northern Territories dispute with Russia, examining the dynamics of the sovereignty game in the post-Cold War period. The dissertation finds that, due to the different relative values of the territorial disputes, Japan's approach varies: it has taken a formal, legalistic approach to the Liancourt Rocks and Pinnacle Islands dispute – at least until the mid-2000s – using sovereignty only to preserve its existing position in the disputes. However, its approach to sovereignty in the Northern Territories dispute has been characterised by a sense of moral justice, thus it seeks to prevent all Russian exercises of sovereignty while constantly attempting to push its own.

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Abbreviations

CCP	Chinese Communist Party
DPJ	Democratic Party of Japan
EEZ	Exclusive Economic Zone
EFZ	Exclusive Fishing Zone
EU	European Union
G7	Group of Seven Major Industrialised Countries
G8	Group of Eight Major Industrialised Countries
IBRU	International Boundary Research Unit
ICJ	International Court of Justice
IHO	International Hydrographic Organisation
IOC	International Oceanographic Commission
JCG	Japan Coast Guard
LDP	Liberal Democratic Party
LNG	Liquefied Natural Gas
METI	Ministry of Economy, Trade and Industry
MOFA	Ministry of Foreign Affairs
MSDF	Maritime Self-Defence Forces
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
NM	Nautical Mile
ODA	Official Development Assistance

PCA	Permanent Court of Arbitration
PLA	People's Liberation Army
PLAN	People's Liberation Army Navy
PNS	Prior Notification System
PRC	People's Republic of China
SDF	Self-Defence Forces
UK	United Kingdom
UNCLOS	United Nations Convention on the Law of the Sea
UNECAFE	United Nations Economic Commission for Asia and the Far East
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFAO	United Nations Food and Agriculture Organisation
UPU	Universal Postal Union
US	United States

Notes on the Text

Japanese, Chinese and Korean names are written using the surname first, given name second, except where the name is that of an author who has published in English using the Western name order. Japanese terms, such as place names, are transcribed with macrons, except where the place-name is well-known in English (such as Tokyo).

Introduction

Japan's territorial disputes represent an empirical conundrum for scholars of International Relations (IR). Conventional IR approaches to territorial disputes all take as their explanandum the escalation and de-escalation of conflict, while their explanantia depend upon the theoretical framework employed: realist approaches focus on the distribution of military capabilities while liberal accounts highlight economic interdependency. Even the territorial conflict approach – an approach designed specifically to study territorial disputes – seeks to explain the escalation and de-escalation of territorial conflict. But Japan's territorial disputes, while unquestionably fractious and prone to controversy, do not feature military conflict of any kind. Not once since these disputes emerged have any of them witnessed the exchange of fire by the militaries of any of the disputant states, let alone the actual outbreak of war.¹ These conventional approaches thus leave us bereft of theoretical frameworks we can turn to to understand what *does* take place in these disputes; simply because there has been no war or armed conflict does *not* mean that these disputes are unimportant or unworthy of study. Indeed, the Northern Territories² dispute (Chapter Five) between Japan and Russia has defined relations between those two states for decades, and in recent years the Liancourt

¹ It is true that in one case a Japanese fisherman was shot dead, this was done by the Russian border guards and was not a militarised confrontation, see Chapter Five, Section 5.11.

² The name 'Northern Territories' is chosen here to describe the islands to the northeast of Hokkaidō claimed by Japan but controlled by Russia. The islands are often described as part of the Kurile Islands – specifically the South Kurile Islands – an island chain which runs in a south-westerly direction from the Russian Kamchatka Peninsula. Describing the islands as the South Kuriles implies that the Japan's legal claim to the islands is invalid (see Chapter Five, Section 5.2), describing them as Northern Territories implies to a lesser extent the recognition of that same legal claim. Since (a) this is a Japanese Studies dissertation therefore it uses sources which frequently refer to the islands as the 'Northern Territories' and (b) the Northern Territories appellation has less implications of recognition/non-recognition than the South Kuriles, for the sake of clarity and nothing else, in this dissertation the islands are described as the Northern Territories.

Rocks³ (with South Korea, Chapter Three), Pinnacle Islands⁴ (with China and Taiwan, Chapter Four) disputes have in the past two decades moved from being marginal, sideline issues to serious controversies at the heart Sino-Japanese and South Korean-Japanese bilateral relations; if anything, *now* is the time to study and understand these territorial disputes.⁵

In order to remedy this situation, the dissertation adopts a constructivist approach to the study of territorial disputes to provide a novel conceptual framework – the ‘sovereignty game’ (explained in Chapter Two Section 2.6) – which enable us to analyse Japan’s territorial disputes without requiring a focus on conflict or war. This is not to say that conflict is not part of the analysis; rather the sovereignty game refocuses primary attention away from the escalation/de-escalation of conflict, and onto the use of sovereignty as a political resource by the states involved. Instead of asking, ‘what factors or issues led to the escalation/de-escalation of conflict in a given territorial dispute?’ or ‘how did the geopolitical situation lead to the escalation/de-escalation of conflict in a given territorial dispute?’, the primary question this dissertation asks: ‘how can we understand Japan’s behaviour in its territorial disputes?’ The answer to this question requires us to ask a broader question: ‘how and why do states behave in the way they do in territorial disputes?’ The answer to both of these questions, as will become clear as our argument unfolds, lies in the relationship between international

³ The rocks are known in Japanese as Takeshima, while they are called Dokdo in Korean. Again, for the purposes of impartiality, the lesser known English name, the Liancourt Rocks, is used.

⁴ The islands are known in Japanese as the Senkaku Shotō, or Senkaku Islands, while in Chinese they are called the Diaoyutai, or Diaoyu Islands. For the purposes of impartiality, the lesser known English name, the Pinnacle Islands, is used.

⁵ Other approaches have been employed in the study of territorial disputes in general, and in the study Japan’s territorial disputes in particular (see Chapter One). However, the majority of IR research on territorial disputes uses the escalation/de-escalation explanandum.

politics and international law and how this shapes the deployment and understanding of sovereignty by the state.

The dissertation builds on the work of Christian Reus-Smit (2004). It draws on his concept of the legal-realm – the nexus between law and politics, which legitimises and delegitimises certain behaviours and constitutes the range of options open to states – and applies it to the territorial disputes of Japan. In the language of this dissertation, the legal realm of territorial disputes is what we term the ‘sovereignty game’, in which the primary goal of the state is to gain or maintain sovereignty over the disputed territory. This is achieved through the *exercise* of sovereignty over the disputed territory – that is, by the concrete behaviour of states in attaining international recognition of sovereignty over the disputed territory, and preventing the other state(s) in the dispute from doing the same. Just as under international law states must undertake legal protest to another state’s exercise of sovereignty to protect their legal claim, thus preventing legal acquiescence, so too in the sovereignty game must a state make an effective political protest to another state’s exercise of sovereignty to protect their own political claim – thus preventing political acquiescence. If a state does not mount sufficient political protest to prevent another party from realising an exercise of sovereignty, a precedent is established and the sovereignty status quo altered. In order to play the sovereignty game, states must deploy resources: economic, diplomatic and military capital. The extent to which they are willing to employ these resources is dependent upon the territory’s economic, symbolic, precedential and strategic value, as is outlined in detail in Chapter Two. If the territory is of little value, then the state will not be willing to sacrifice much capital, but if the state highly values the territory then it will use more of its capital.

The empirical focus of this dissertation is Japan's territorial disputes in the post-Cold War period. Each dispute has its origins in the post-World War II territorial designation of Japan, and each territory has a history dating back hundreds of years. It is not the purpose of this dissertation to provide an historical examination of the disputes, history is of relevance insofar as it sets the context for our focus on the post-Cold War period. As the broader geopolitical situation remains largely constant, as does the normative and legal framework of the international system (i.e. the prohibition of territorial conquest and the use of force, see Chapter Two, Section 2.5.1), the concentration on this period is apropos. Two of the disputes, the Pinnacle Islands and the Liancourt Rocks, share many of the same attributes, for example, they are both comprised of remote and historically uninhabited islands and rocks,⁶ they both owe their legal origins to Japanese Imperial expansion at the turn of the century, and they both have potential economic value far in excess of the intrinsic land value due to their surrounding waters. Yet, while the Northern Territories dispute differs from the other two in many of its characteristics – much larger islands with a long history of human settlement – all three of the disputes share the basic characteristics of the sovereignty game: the states involved all seek to exercise sovereignty, to prevent the other state from doing the same, and to gain international recognition of their own sovereignty claim.

Each dispute involves at least two disputants. The common element for all three disputes, however, is the involvement of Japan, and the dissertation focuses on understanding Japan's behaviour in its territorial disputes. Therefore, while the dissertation does include analysis of the behaviour of all the states involved, this is done only to the extent necessary to

⁶ The Liancourt Rocks are presently inhabited, but this habitation began as recently as the 1950s, and was entirely due to the fact that the rocks were disputed (Chapter Three, Section 3.2). The Pinnacle Islands were inhabited for a very brief period prior to World War II (Chapter Four, Section 4.2).

elucidate Japan's own behaviour; understanding Japan's behaviour in its disputes would be impossible without understanding something of the nature of the other state's claims and behaviour. As a dissertation aiming to make a contribution to Japanese Studies as well as IR, the logic of this focus on Japan may seem obvious, but there are in fact compelling reasons for it.

Firstly, a deep understanding of the behaviour of all the states in each of the disputes is beyond the scope of a single dissertation. Even the adopted approach, focusing on Japan, requires selectivity in the choice of the empirical data.⁷ Moreover, as outlined earlier in this Introduction, the conventional approaches to territorial disputes all focus on the escalation of conflict, yet Japan is constitutionally prevented from "the threat or use of force as a means of settling international disputes" (Constitution of Japan, 1946). It is the very absence of armed conflict in Japan's territorial disputes, and the inability or at least unwillingness of Japan to use force to further its position in its territorial disputes, which requires us to find alternative explanations and propose new approaches. Therefore, by focusing primarily on Japan, the dissertation aims to provide a convincing explanation of Japan's approach to its territorial disputes and why and how this approach differs across its various disputes.

Chapter One reviews the literature on territorial disputes in general and Japan's territorial disputes in particular. The review considers the various theoretical approaches which have been applied to territorial disputes in light of the question, 'how can we understand Japan's behaviour in its territorial disputes?'. The first section assesses the

⁷ For example, Chapter Five deals with the Northern Territories dispute, but unlike Chapters Three and Four, the Liancourt Rocks and Pinnacle Islands disputes, does not make mention of regional actors such as Hokkaidō Prefecture, or of the inclusion of the dispute in education textbooks. This is because there is simply too much data to include in the chapter, thus only the most relevant is analysed.

territorial conflict literature, arguing that its methodological focus on conflict, its theoretical rationalism, and its over-simplification of complex issues, render it unsuitable for use in this dissertation's attempt to understand Japan's behaviour. The second section outlines M. Taylor Fravel's (2008) theory of territorial disputes. The review argues that, while Fravel's approach provides a compelling understanding of China's behaviour in its disputes, it cannot be applied to Japan; however, it does provide some points which can be theoretically altered and developed for use in the sovereignty game approach developed in this dissertation. The final section outlines the specific literature on Japan's territorial disputes. It assesses the various theories employed, the extent to which they can explain Japan's behaviour, and what issues and questions they raise which must be taken into account as we proceed with our analysis in the three case studies.

Chapter Two grounds the sovereignty game approach firmly in constructivist theory before outlining the logic and dynamics of the game itself. As noted earlier in the Introduction, the approach draws on Reus-Smit's constructivist theory of the relationship between international politics and international law. Having established that law and politics are in a mutually constitutive relationship, the chapter goes on to develop the aforementioned concept of the legal-realm as it applies to territorial disputes: the sovereignty game. In order to understand the sovereignty game, however, we must first understand the nature of sovereignty itself, and so, drawing on the work of Alexander Wendt (1992) the social construction of sovereignty is explained, alongside its three key aspects: recognition, authority (the exercise of sovereignty) and territoriality. Given the importance of international law in constituting international politics, the chapter also outlines the relevant

international law governing dispute islands territories.⁸ All of the preceding information is then synthesised to produce the sovereignty game itself: the range of options open to states in a territorial dispute. The chapter elucidates how states utilise their capital to exercise sovereignty – and prevent other states from exercising sovereignty – over a disputed territory. The chapter provides a brief overview of the four kinds of value which disputed island territories have for states: economic, symbolic, precedential and strategic. By organising our empirical analysis around these four values we are able to provide an understanding of the motivations of Japan in each of its disputes, thus helping us to deepen our comprehension of why it plays the sovereignty game in different ways in each of its three disputes.

Chapters Three, Four, and Five are the empirical case studies. Each chapter has the same basic structure: the chapter begins with a history of the disputed territory, focusing on the events which led to the territory being disputed in the first place (such as the San Francisco Peace Treaty), and on events which, in the light of the emergence of the dispute, have become salient to the parties involved (such as the first discovery of the islands). Subsequent to the history comes another section common to all chapters: the value of the disputed territory. This section assesses the various values of the disputed territory to Japan and to a lesser extent the other disputants in terms of the conceptual framework for value we introduced in Chapter Two: economic, symbolic, precedential and strategic. Following this each chapter outlines the details of the sovereignty game as it was played out in the post-Cold War period. Each chapter focuses on the particular events or incidents which characterised the dispute during this period. Finally, the chapters conclude with a brief summary of the sovereignty game in the post-Cold War period.

⁸ The term ‘disputed island territories’ is used here and elsewhere in the dissertation when the text must make clear that it is only referring to disputed islands and other types of territorial disputes.

Chapter Three examines the way in that Japan has played the sovereignty game in the territorial dispute with South Korea over the Liancourt Rocks. The historical background of the Liancourt Rocks means that they have a massive symbolic value to South Korea, whereas Japan values them primarily because of their role in an ongoing maritime dispute with South Korea in what Japan calls the 'Sea of Japan'. Thus, when in 1996 South Korea broke a long-standing understanding which involved the shelving of the dispute by constructing a wharf on the rocks, Japan protested legally, which sufficed to preserve its legal claim and its political claim on the maritime zone. However, its protests were sufficient only to maintain its legal claim: it acquiesced politically in South Korea's sovereignty over the rocks themselves. The chapter illustrates how this status quo persisted through the 1990s and 2000s, with Tokyo only pushing its political claim when its sovereignty over the adjacent maritime territory was threatened. However, the chapter then shows that, by the mid-late 2000s, domestic conditions had changed and Tokyo began to respond more actively to Seoul's exercises of sovereignty on both the maritime territory and the rocks themselves. The change in domestic conditions was caused by various factors, related to a growing sense that Japan had taken a weak stance on the sovereignty of what it considered to be its 'inherent' sovereignty, a feature common to both Liancourt Rocks dispute and the Pinnacle Islands dispute.

Chapter Four outlines the manner in which Japan played the sovereignty game in the Pinnacle Island dispute. The chapter demonstrates how the islands have varying levels of economic, symbolic, precedential and strategic values to both Japan and China. Japan controls the islands, and took a relatively 'hand-off' approach during the 1990s in order to maintain good relations with its two Chinese neighbours, China and Taiwan. However, as the chapter demonstrates through several key incidents in the 1990s, the China gradually

challenged Tokyo's sovereignty, first preventing Japan from exercising sovereignty over the islands, and then asserting its own sovereignty, over both the adjacent disputed maritime territory and the islands themselves. From the administration of Koizumi Junichirō on Tokyo toughened its approach to the sovereignty game, engaging in exercises of sovereignty over both the islands and the associated maritime territory, in contradistinction to all previous administrations. However, the final incident analysed in the chapter, the 2010 trawler collision (see Section 4.10), shows Tokyo's attempt to overturn the sovereignty status quo ended not only in failure, but in the reinforcement of the existing status quo, a status quo in which it was clear that, despite Tokyo's reiteration of the 'no dispute exists' line, Japan did not enjoy complete sovereignty over the islands or their waters.

The final case study, Chapter Five, investigates the manner in which Japan has played the sovereignty game in its territorial dispute with Russia over the Northern Territories. Unlike the previous two chapters, the historical background of the Northern Territories dispute has led the islands having a massive symbolic value to Japan, and it is this symbolic aspect which drives Japan's approach to the sovereignty game. The chapter elucidates how the sovereignty game started so brightly for Japan, entering into the post-Cold War with an abundance of capital, the Soviet Union disintegrated and an unstable Russian state emerged. However, while Tokyo was able to use its capital to limit Russian sovereignty in the 1990s it was unable to actually regain sovereignty over the islands themselves. The chapter then describes how the Krasnoyarsk process (see Section 5.7) saw various imaginative suggestions for a resolution of the dispute, but due to the huge symbolic value of the territory to Japan it was unable to compromise its claim over the ultimate sovereignty of all four disputed islands. The chapter finally goes on to illustrate how, post-Krasnoyarsk, Russia began to improve its situation in the sovereignty game, thanks largely to an economic boom and political stability

provided by President Vladimir Putin. The gradual loss of its diplomatic and economic capital combined with the assertive sovereignty position taken by Russia under Putin saw Japan's position in the sovereignty game steadily weaken throughout the 2000s.

Chapter Six, the final chapter, recapitulates the main findings of the dissertation and draws the theory and case study chapters together to answer the two key research questions posed above: 'how can we understand Japan's behaviour in its territorial disputes?' and 'how and why do states behave in the way they do in territorial disputes?' It begins by reassessing the literature reviewed in Chapter One in light of the findings of the case study chapters, before restating these findings and summarising the theoretical approach. This is followed by a comparative examination of Japan's approach to its territorial disputes. The chapter moves on to assess the implications of the research findings for the sovereignty game approach itself, looking at the relative importance of recognition and authority (exercises of sovereignty), as well as considering the portability of the approach. The final sections of the Conclusion reflect on the relationship between international law and international politics in international relations and outline avenues for future research.

Chapter One: Literature Review

1.1 Overview

This chapter provides an overview of the literature on territorial disputes in general and Japan's territorial disputes in particular. As suggested in the Introduction, this dissertation adopts a novel approach, which focuses on the relationship between international politics and international law and states' use of sovereignty in territorial disputes in order to answer the question, 'how can we understand Japan's behaviour in its territorial disputes?'. For this reason, then, the literature in this chapter is reviewed in light of this research question, albeit only a limited amount of the literature falls within the remit of the chapter. It is divided into three sections: the first section assesses the territorial conflict literature, which uses a hypothetico-deductive approach based on large-scale dyadic challenger/target aggregate data sets to ever further refine hypotheses regarding the relationship between a given issue (such as the duration of a dispute) and the escalation/de-escalation of conflict. The chapter argues that this approach, due to its methodological focus on conflict, its theoretical rationalism, and the over-simplification of complex issues, cannot account for Japan's behaviour in its territorial disputes. The second section outlines Fravel's theory of territorial disputes, based on his study of China's post-1945 disputes. The chapter proposes that, while useful in explaining China's behaviour in its disputes, the theory is not universal and cannot be applied to Japan's behaviour due to several crucial differences, such as the constitutional prohibition on the use of force (Constitution of Japan, 1946). The final section of the chapter outlines the specific research on Japan's territorial disputes, focusing on studies which have employed various theories to explain state behaviour in the disputes. These studies raise important questions which the dissertation must take into account; however, it is argued that, ultimately,

by not paying full attention to the role of sovereignty and international law, the studies overlook crucial aspects of the disputes which help us to understand the dynamics of the disputes and Japan's behaviour in them.

1.2 Territorial Conflict Approach

The territorial conflict approach was born out of a dissatisfaction with the realist approach to war and territory, specifically that realists treated territorial disputes as “symptoms of conflict between states, whereas the struggle for power and security is its true cause” (Kocs, 1995: 160, Vasquez, 1993: 124).⁹ Rather than focusing on the anarchic inter-state system as the locus of conflict in the world, the territorial conflict approach has been built upon the empirical fact that states which have territorial disputes with their neighbours are more likely to go to war with those neighbours than states which do not (Holsti, 1991; Vasquez, 1993; Hensel, 1996; Senese and Vasquez, 2003). Territorial conflict is part of a broader ‘issues approach’, which has sought to explain and predict inter-state conflict using a hypothetico-deductive approach based on large-scale dyadic challenger/target aggregate data sets to ever further refine hypotheses regarding the relationship between a given issue and the escalation/de-escalation of conflict. These issues include disputes over shared rivers and maritime boundaries, but “territorial issues are widely regarded as the most conflictual issue” (Mitchell and Hensel, 2011: 3).¹⁰ Although, as this dissertation shows, some constructivist critics have pointed to alternative approaches to the study of territorial disputes (Forsberg, 1996; Hassner, 2007), these have been few and far between, and in practice the territorial conflict approach has maintained a monopoly on the study of territorial disputes in IR, led by

⁹ Liberman's (1993) account of Nazi Germany's conquest of Europe typifies this traditional realist understanding of the strategic and economic benefits of territorial conquest.

¹⁰ Although it may at first seem as though these *are* territorial issues, they are differentiated in the issues approach.

the work of Paul Huth, particularly his book *Standing Your Ground* (1996), and the work of Huth as well as other many other scholars, perhaps the most prominent of which are John Vasquez and Paul Hensel, published in journals such as *Conflict Management and Peace Science*, *The Journal of Conflict Resolution*, and *International Studies Quarterly*.

This section critically examines the theory and methodology of the territorial conflict approach school and assesses the validity and relevance of the approach's insights in understanding state behaviour in territorial disputes, particularly disputes in which armed conflict – the very focus of the territorial conflict approach itself – has not occurred. The dissertation first outlines the narrow and exclusive nature of the theoretical rationalism which the approach adopts before assessing the methodology and highlighting its shortcomings. The final part of this section reviews some of the insights generated by the territorial conflict literature. Ultimately we conclude that the territorial conflict approach, while providing a number of useful insights, is fundamentally flawed as it is built on a simplistic and scientific methodology which lacks a firm theoretical grounding and fails to appreciate fully the massive variance in the nature of territorial disputes around the world.

1.2.1 The Theory of Territorial Conflict

Ted Hopf described the democratic peace as “an empirical regularity in need of a theory” (1998: 191), though he could just as easily have been talking about the territorial conflict literature. A brief comparison of the two provides a useful introduction to a major theoretical problem faced by the territorial conflict approach. First, while the approach shares the democratic peace's dyadic quantitative methodology, the implications of the empirical

observation which forms the basis of the entire research approach are far less clear-cut – compare ‘democracies historically have not gone to war with each other’ with ‘state dyads which have a territorial dispute are more likely – though (very) far from necessarily – to feature some form of conflict at some time in history’.¹¹ Whereas no democracies have actively fought one another, many territorial disputes – such as Japan’s territorial disputes – have existed and indeed exist today which have never seen any significant conflict, and have certainly not been the cause of war. Furthermore, while there are several cohesive competing theories seeking to explain the democratic peace, as Hemda Ben-Yehuda states, “a comprehensive theory of territoriality and war has yet to be established” (2004: 85).¹² In fact, territoriality as a concept – the basis of the inter-state system – has been almost entirely ignored by International Relations scholars, an oversight which John G. Ruggie refers to as “akin to never looking at the ground one is walking on” (1993: 174). Much of the research on territoriality and conflict – mostly using the territorial conflict approach – has been atheoretical hypothetical deduction – and because of this lack of any firm theoretical grounding, the approach spent much time “on the margins of the discipline” (Forsberg, 1996: 437). However, the move away from the parsimony of neo-realism to what can be described as neoclassical realism has opened up new spaces for theory-building in territoriality, most notably by Huth and his “modified realist” approach (1996, 2000).¹³

¹¹ There is of course much debate about the democratic peace, for example the problematic alliance between Finland and Germany in World War II, or the US overthrow of Salvador Allende’s government in Chile, however even taking these cases into account, we can still conclude that there is ‘abundant strong evidence, as well as theory, that democracies almost never go to war with each other’ (Russett, 1995: 395).

¹² For a review of the theories of the democratic peace see Owen (1994).

¹³ He calls it modified realism, though it can be considered neoclassical realism (see Rose, 1998, for a discussion of neoclassical realism), as it allows for the inclusion of domestic factors, but still maintains a predominantly realist approach.

While a discussion of ‘modified’ or neoclassical realism is beyond the scope of this review, in terms of territorial disputes this strand of neoclassical realism can be subsumed under the territorial conflict umbrella, sharing as it does the same basic assumptions about territory which stem from the empirical relationship described above.¹⁴ Not only are we as *Homo sapiens* biologically predetermined to fight over territory (Vasquez, 1993), territory also serves as “the ultimate embodiment of the state ... [and] a historic and religious homeland for people and an exclusive entity for the formation of national identity” (Chiozza and Choi, 2003: 251-2), thus territorial issues are highly salient to leaders and ultimately an underlying rather than a proximate cause of war (Senese and Vasquez, 2003: 278).¹⁵ Importantly, the two approaches also share a common rationalist ontology based on the state as a rational unitary actor. Constructivism has produced a solid critique of a rationalist conception of human nature and its application to international relations in general – it is beyond the scope of this dissertation to review it in full here.¹⁶ Instead the following section outlines the problem with a rationalist approach specifically to territorial disputes, focusing on the role of international law and norms, and national identity and the symbolic value of territory.

¹⁴ See Rose (1998) for a concise summary of its development.

¹⁵ The notion that territoriality is a biological impulse has been discredited, see Penrose (2002: 279)

¹⁶ See Reus-Smit (1996) or Checkel (1998) for a comprehensive review. The next chapter (Chapter Two) deals with the problems generated by a rationalist approach to international law.

1.2.2 Norms and International Law

A purely rationalist approach to territory cannot account for the major influence of international law and norms on state behaviour.¹⁷ On a very broad level, two interrelated norms in particular have influenced state behaviour with regard to territory: the norm against conquest (Fazal, 2007) and the territorial integrity norm (Zacher, 2001). Both of these norms have been codified in international law since the end of World War II (see U.N. Charter, 1945, Article 2.4), and have become – especially in the post-Cold War period – powerful norms governing state interaction¹⁸ Since their codification in law, wars of territorial aggrandisement have been largely unsuccessful to the extent that they almost ceased to exist – the role of legal norms in preventing conflict over territory is outlined in more detail in the next chapter. Suffice it to say here that the territorial conflict approach does not account for this major change in the international system and continues to operate under assumptions better used to analyse state behaviour in the 19th century, or at least pre-1945 (see for example Hensel [1996, 2001] who uses a data set with wars from 1816-1992).

Looking specifically at disputes over territory, Forsberg (1996) argues in favour of the norm of justice – not in a legal sense, but rather the sense of a state’s perception of the discrepancy between entitlements and benefits. He argues that “a normative explanation of territorial disputes holds that territorial claims are often motivated by the sense that a piece of territory rightly belongs to ‘us’ rather than by strategic or economic values” (1996: 436). He refers specifically to the Northern Territories dispute, but he might well be talking about any

¹⁷ See Finnemore and Sikkink (1998) for a discussion of the relationship between rationality and norms, while the next chapter takes up the role of international law in state behaviour.

¹⁸ Article 2.4 of the UN Charter reads states “shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state”.

number of territorial disputes worldwide: the dispute between the United Kingdom (UK) and Argentina over the Falkland Islands and the Preah Vihear Temple dispute between Cambodia and Thailand both neatly fit the description.¹⁹ There is little doubt that norms affect state behaviour with regard to territorial disputes in general, and, as will become clear later in the dissertation, to Japan's territorial disputes.

1.2.3 National Identity and Symbolic Value

By definition a rationalist approach must either outright ignore the role of national identity and the symbolic value of land in territorial disputes, or make what can only be a vain attempt to quantify them. While many studies opt to exclude them, those studies which do include them in the analysis tend to reduce them, for example, to hypotheses about the relationship between the presence of “minorities who share ethnic ties with the predominant group in the challenging state” (Chiozza and Choi, 2003: 261) or “the length of time a given ethnopolitical group had resided on a piece of territory” and the likelihood of conflict (Walter, 2003: 144). Such attempts to code symbolic value or identity overlook the fact that territory does require a long history of population to be symbolically valuable: the population of the Falkland Islands is predominantly of British descent, but that did not stop Argentina from invading the islands.

In fact the symbolic value of a territory is impossible to quantify, but its quantification in the territorial conflict approach is an unavoidable consequence of the application of a

¹⁹ The Falkland Islands dispute is taken up in more detail in the next chapter (Section 2.6.1). The Preah Vihear Temple dispute concerns a Khmer temple on the border between Cambodia and Thailand, which despite and ICJ arbitration has once again led to military conflict in recent years, for a detailed account see Silverman (2010).

purely rationalist theory (see next section for a discussion of the salience index). It does at the least indicate that the scholars involved with the approach appreciate the importance of the symbolic value of territory, but the result of such quantification is conclusions such as “interstate wars are 13 times more likely over territories with intangible salience characteristics [symbolic value]” (Hensel and Mitchell, 2011: 3). This statement tells us that the symbolic value of territory is vital, though arguably very few international relations scholars would argue with that proposition given events in Kosovo, Israel//Palestine, to name but a few. The value-added from this kind of quantitative research – “13 times more likely” – somehow does not actually tell us anything of real interest. Ultimately, this type of codification of identity and symbolic value is doomed from the beginning; the discrete nature of territorial disputes and the inherently unquantifiable nature of human emotion ensure this is the case. Rationality alone cannot explain territorial disputes, and the procrustean approach of territorial conflict quantifies the normative and symbolic aspects of territorial disputes using ill-fitting indices and formulae.

1.2.4 Methodological Focus on Conflict

Based as it is on the empirical relationship between the existence of a territorial dispute and the likelihood of conflict, the territorial conflict approach takes the escalation and de-escalation of conflict as its explanandum. However, the territorial disputes analysed in this research have not experienced any serious militarisation in their decades-long history. This is all the more curious when one takes into account the fact that they have existed in Northeast Asia, a region which has been described as “one of the most dangerous places on earth” (Calder, 2001: 106). Moreover, this absence of conflict is not unique to Northeast Asia – in

fact, researchers using the territorial conflict approach itself admit that globally the overwhelming majority of territorial disputes do not result in either war or large-scale armed conflict, and a large number of territorial disputes are settled with no militarised behaviour of any kind (Hensel, 2000: 76). The territorial conflict literature therefore usually either acknowledges and then moves on – or simply ignores altogether – the empirical absence of conflict. Examples include Chang *et al.*'s (2007) study which uses economic statistical measures to derive five possible scenarios or outcomes for territorial disputes, of which only one does not involve war, or Heldt's (1999) work using probit regression to examine the relationship between territorial disputes and diversionary wars.²⁰

This focus on conflict and war does not reflect the empirical reality of territorial disputes or northeast Asia, so how can we account for it? It is undoubtedly true that historically territory has been the cause of the majority of major conflict in the world. Yet the territorial conflict approach fails to acknowledge the dramatic shift in states' approach to territory in contemporary international relations, and the almost universal adherence to the aforementioned norms and international law which prevent conflict over territory. Smith's (2004) critique of IR theory in the United States (US) in general perhaps points us in the right direction, although such broad debates are beyond the scope of this review. Suffice it to say at this point that if we wish to understand the nature of territorial disputes in general, and territorial disputes in Northeast Asia in particular, we must move beyond this escalation/de-escalation dichotomy.

²⁰ To be fair, some literature (e.g. Chiozza and Choi, 2003) does focus on the peaceful settlement of disputes, but in doing so juxtaposes peaceful settlement with violent settlement escalation, and so perpetuates the escalation/de-escalation dichotomy.

1.2.5 Challenger/Target Dichotomy

The territorial conflict approach almost always relies upon a dyadic challenger/target dichotomy, where the focus of the research is on the behaviour of the challenger as opposed to the target state. This focus is based on the assumption that “*it is the actions and decisions of the challenger that are the fundamental cause of conflict and accommodation over disputed territory*” (Huth, 1996: 33, emphasis in original). This seems logical, given that in ‘normal’ disputes, one state controls the territory while the other state challenges and attempts through various means to overthrow the territorial status quo. However, it is also a gross over-simplification required by the narrow quantitative methodology of the territorial conflict approach – looking at territorial disputes in Northeast Asia, we see a far more complex reality than the approach can allow. As is outlined in Chapter Four, in the Pinnacle Islands dispute China would be considered the challenger and Japan the target, yet a cursory glance at the recent history of the dispute (for instance the 1996 lighthouse recognition incident, Section 4.4) shows that not only Chinese but also Japanese actions can lead to an escalation of conflict.²¹ Moreover, these actions, and the popular protests they triggered (which included Chinese protesters attempting to land on the islands) primarily involved non-state actors; non-governmental organisations (NGOs) and private citizens, whose existence cannot be acknowledged by a state-centric unitary actor rationalist theory. Furthermore, both China and Taiwan claim the Pinnacles, alongside Japan. A dyadic approach is inherently unable to incorporate more than two states.²² Clearly, while the challenger/target division

²¹ Although this escalation of conflict still remains non-militarised – we are talking here about diplomatic conflict.

²² And more broadly, many territories are claimed by three or more states who control varying quantities of disputed territories, further confounding the universality of a challenger/target approach, for example the Spratly Islands which feature overlapping claims from several states including China, Vietnam, the Philippines and Malaysia; and Rockall,

may work in some instances it does not in many others, and its application can only result in over-simplification and skewed understanding.

1.2.6 The Insights of Territorial Conflict

Up to this point we have critically discussed the theory and methodology of the territorial conflict approach, and have argued that there exist serious flaws in both. Yet despite all this criticism, it cannot be denied that the approach does what it sets out to do: the methodological focus on conflict, while inappropriate for the majority of contemporary territorial disputes, is based upon the empirical observation that interstate conflict is more likely where two states share a territorial dispute. This final section assesses some of the main insights generated by the approach. Insights refers to the ‘issues’ which scholars have identified and found to have a statistically strong correlation with conflict in territorial disputes – specifically contiguity/proximity, regime type, reputation, and finally the duration of the dispute.

The relationship between proximity and levels of conflict may seem self-evident, but demonstrating that there was a stronger relationship between territory and conflict than contiguity and conflict was one of the original tasks of scholars using the territorial conflict approach. The basis of the contiguity argument was that proximity and interactions “provide the opportunity and willingness to engage in conflict” (Starr and Thomas, 2005: 136; Starr, 1978). In other words, a territorial dispute was just one of many issues which could occur between close neighbours – it was the fact that they were close neighbours – i.e. contiguous – which was significant. While, unsurprisingly, a statistical relationship can be found between

whose status is disputed by the UK, Denmark, Ireland, and Iceland (though Iceland does not claim the territory, rather it merely disputes the legal status of the rocks).

contiguity and conflict, Ben-Yahuda points out that while “proximity may produce an opportunity for neighbouring states to fight ... it does not explain changes in motivation to do so” (2004: 87). The contiguity school was subsumed into the territorial conflict school through statistical findings such as: “given contiguity, war initiation depends heavily on the presence or absence of a never-resolved territorial dispute” (Kocs, 1995: 172). Moreover, the clear relationship between territorial disputes – rather than contiguity/proximity – and conflict has been cemented by Senese’s finding that of the territorial dispute dyads, the most war-prone ones were non-contiguous (2005).

As noted earlier, the establishment of the empirical relationship between territorial disputes and conflict clarifies what many scholars already assumed was the case: some degree of conflict is indeed inherent in the term ‘dispute’. As with Mitchell and Hensel’s (2011) finding that “interstate wars are 13 times more likely over territories with intangible salience characteristics [symbolic value]”, it is difficult to say what we actually learn from the observation that conflict is more likely where two states share a dispute. What does this mean for all the disputes which have seen not seen any actual conflict beyond the exchange of diplomatic barbs? What does this empirical relationship mean for the use of force in contemporary territorial disputes? For the reasons outlined above (neglect of the role of norms, laws, and so on) this insight does not provide adequate answers to these vital questions.

The democratic peace has been described as “the closest thing we have to an empirical law in the study of international relations” (Levy, 1989: 88) – and much like the territorial conflict approach, the democratic peace school is based upon large-scale dyadic studies of international conflict. Furthermore, as explained earlier, the territorial conflict

approach was born as a reaction to realism – bearing these two points in mind it should be no surprise that many studies examine the relationship between territorial disputes, regime type and conflict (see for example Huth, 1996; Hensel, 2001; Huth and Allee, 2002). While some empirical regularities have been found, a theory underpinning these findings has not clearly emerged.

In keeping with the democratic peace research, Huth (1996, 2000) found that authoritarian states are more likely to seek to both initiate and escalate territorial disputes than democratic ones. This is not to say, however, that democratic states have been found to be more eager to seek peaceful settlement; rather, further studies have shown that they are no less likely to offer concessions than non-democracies (Huth and Allee, 2002). Huth (2000) finds an explanation for this in the secure domestic political environment which autocracies enjoy (free as they are from the vagaries of electoral politics) – while simultaneously acknowledging that domestic political opposition in a democracy is more likely to advocate a more hawkish line than the government.²³ In terms of theory, Gibler (2007) attempts to turn the whole democratic peace on its head by explaining it in territoriality terms when he claims that “what scholars know as the democratic peace is, in fact, a stable border peace” (2007: 529). What he means by this is that states stabilise their borders before they become democratic, thus democracy and peace are symptoms, rather than causes, of the removal of territorial issues between neighbours. This explanation is far less than convincing – many democratic states have democraticised, and remained democratic, in spite of glaring, sometimes existential, territorial disputes.²⁴

²³ We can see this, for example, in the Japanese Communist Party’s maintenance of a claim not only over the entire Kurile Island Chain but also over Sakhalin.

²⁴ Examples of this include France, the US, and Israel.

Still, regime type surely does play a role in territorial disputes, but there is far more to the domestic political sphere in territorial disputes than the territorial conflict literature appears to appreciate. Huth's point that domestic political opposition in a democracy is more likely to advocate a hawkish line hints at the complex nature of territorial disputes and their usage by various domestic factions. Yet, while Huth singles out democracies, various studies have shown that territorial disputes are also used by different forces in authoritarian states within and outside the government (see Deans, 2000; Williams, 2006; Downs and Saunders, 1998; this chapter, Section 1.4.1). The ways in which territorial disputes are used and abused by domestic groups, both government and opposition, in both democracies and authoritarian states, are simply too intricate and context-dependent to be appreciated by the procrustean quantitative approach of the territorial approach.

The logic of the relationship between reputation and territory is laid out by Barbara Walter (2003: 149) in her study of the intractability of territorial conflict. She states that government actions in internal territorial disputes (against secessionist states) are based on expectations of the future – that is to say “governments actively choose to fight an early challenger in order to deter others from making similar demands” (2003: 138), and concludes that “the logic of the argument should apply equally well to territorial conflict between states” – she specifically cites China “with its many contiguous states” as an example (2003: 149). Indeed, Japan, with its three disputes, would also be a prime candidate. However, Fravel (2008) has made a comprehensive study of China's many post-1945 territorial disputes and his findings contradict this hypothesis – despite being an authoritarian state with an often favourable balance of capabilities, China compromised on its borders over and over again, especially in the 1960s and 1990s (Fravel, 2000; also see Huth, 1996: 122; outlined later in this chapter).

Given the discussion of the utility of a purely rationalist hypothetico-deductive approach earlier, this contradiction should not be surprising. Walter's quantification of symbolic value leaves much to be desired – “the length of time a given ethnopolitical group had resided on a piece of territory” (2003: 144) – and, unsurprisingly given this crude quantification, she finds symbolic value statistically insignificant. Yet Fravel's case studies show that China compromised in many of its border disputes, but never in what he terms homeland disputes (Taiwan, Hong Kong, Macao). This dissertation utilises ideas of reputation and the symbolic value of territory, albeit not as the primary focus of the research but as tools to flesh out the background and motivations for the sovereignty game analysis. As Fravel's findings show, reputation is a tricky and context-dependent concept, and cannot be used in a one-size-fits-all universal approach to territorial disputes. For this reason, in this research the context of the dispute itself will determine whether and to what extent these concepts are useful.

Many studies have shown a correlation between the duration of a dispute and increasing levels of conflict (Senese and Vasquez, 2003; Chiozza and Choi, 2003), although explanations of this tendency have been less than satisfactory. Huth (1996: 128-133) found that a history of militarised disputes coupled with a stalemate in negotiations dramatically increased the likelihood of conflict. Similarly, Senese and Vasquez find that “as disputes recur, they have a greater probability of going to war” (2003: 279). The explanation provided is as follows: the territorial dispute may not escalate at first, but “the conflict will fester, and ... eventually a crisis between states disputing territory will come along that escalates to war” (2003: 278). On the other hand, Chiozza and Choi show that “it is clear that the most common strategy for all leaders involved in territorial disputes is to stick to one's demands

while avoiding the use of military force” (2003: 269) while Kocs found that “even the most durable and intractable territorial conflicts tend to be resolved eventually” (1995: 168). Further, much dispute resolution literature suggests that the more time passes, the easier disputes are to resolve (for example Gartner and Segura, 1998).

Clearly, no consensus joins these analysts together. Looking at Japan’s disputes, we see that Japan has been at war twice with both China and Russia in the modern era, and formally occupied the Korean peninsula for thirty-five years, so there clearly is a long and bloody history of militarised conflict. Moreover, there has been no substantive progress in negotiations in any of the disputes at any time in their history – rather, drawing on Huth’s terminology above, in each dispute there have been regular stalemates. Yet, contrary to what both Huth and Senese and Vasquez predict, there not only has never been war over the islands/rocks at the heart of the three disputes, but there has not even been any military conflict. On the other hand, the disputes range between forty and sixty years old, with little progress towards resolution in that time.²⁵ Are Japan’s territorial disputes outliers, empirical abnormalities which defy explanation – part of Japan’s fabled *uniqueness*, perhaps? This dissertation refuses to traverse this well-worn path; it argues rather that the hypothetico-deductive approach cannot appreciate the context-dependent nature of the effect of time on territorial disputes.

Hassner uses diachronic process-tracing case studies to provide a far more credible constructivist account of the entrenchment of territorial disputes, adopting a line of argument that this author shares, namely, that “changes in perceptions of territory over time are not

²⁵ The Northern Territories dispute can be exempted from this, as been the subject of rather complicated negotiations and whose resolution was prevented by larger, geopolitical factors, see Chapter Five).

amenable to quantitative analysis” (2007: 111). Rather, using the concept of entrenchment (“the process by which disputes become increasingly resistant to resolution” [2007: 109]), he describes the material (perceived cohesion), functional (clear definition of boundaries) and symbolic (the irreplaceability of the territory) processes through which “the territory is invested with nationalist, religious, ethnic or other emotional value” (2007: 113). While these symbolic processes are often instigated by elites, their dynamic can take them beyond the direct control of such elites, and in certain cases may have negative, unintended consequences, ensnaring elites into non-negotiable positions (an argument also made by Goddard, 2006). He sees resolutions of entrenched disputes as coming about either from systemic shock, which can be external or internal, or from individual, influential leaders who succeed in “reconfiguring perceptions of the disputed territory among their constituencies” (2007: 137). This dissertation builds on and deploys the symbolic aspect of Hassner’s theory in its attempts to deal with the symbolic value of territory (see Chapter Two, Section 2.8.4).

1.2.7 Summary

To sum up the critique of the literature so far: this section of the review has provided a critical assessment of the territorial conflict approach to the study of territorial disputes. The approach builds upon what could be described as a self-evident empirical observation which lacks a solid theoretical foundation. This kind of rationalist hypothetico-deductive approach based on large aggregate data sets, which quantifies the dispute over the Liancourt Rocks using exactly the same methods as the dispute over the existence of Israel, or the dispute over Northern Ireland (all codified equally in Huth, 1996) faces great difficulty in dealing with the huge variation in territorial disputes globally. Further, the methodological requirement of a

focus on conflict, understandable in light of the empirical basis of the approach itself, leaves most of the day-to-day life of territorial disputes unstudied. Indeed, the lack of recognition of the changed nature of contemporary world politics and the ever increasing role of international law and norms in state behaviour means that, where disputes feature no armed conflict – as has been the case in Japan’s territorial disputes since World War II – the territorial conflict approach has little to offer. How do the states involved operate in the territorial disputes given that they cannot use force to secure their goals?²⁶ What other means are available to them?

1.3 Fravel’s Theory of Territorial Disputes

Fravel’s theory, outlined in his book *Strong borders, secure nation; cooperation and conflict in China’s territorial disputes*, is based on the assertion that states have “three generic strategies” in territorial disputes: delay, a strategy which covers not only inaction but also participation in negotiations where a state refuses to compromise; cooperation, a strategy which “excludes the threat of use of force” and involves states either handing over some or all of the territory or withdrawing its claim; or escalation, a strategy which “involves the threat or use of force to seize land or coerce an opponent in a territorial dispute” (2008: 12). By doing so he shifts the focus from the outcomes of the dispute to the state decision-making. Indeed, one of the criticisms he makes of the territorial conflict approach is that since the determining factors (e.g. regime type) rarely change in a given dispute, a focus on outcomes

²⁶ Speaking literally, of course the states *can* use force. However, Japan is prohibited from using force by its very own constitution, and while for example China *could* use force to occupy the Pinnacle Islands, such an event is highly unlikely in the foreseeable future due to the US-Japan Security Alliance (see Chapter Four).

does little to help us to understand changes in state behaviour (2008: 11).²⁷ His basic position is that cooperation takes place when the costs of the claim outweigh the benefits of the territory, while escalation takes place when states perceive a shift in the strength of their claim.

These two propositions are dealt with below, but before proceeding to a more detailed discussion of the theories of cooperation and escalation, some theoretical and methodological issues must be noted. First, as mentioned above, unlike the aggregate approach of the territorial conflict literature Fravel uses case studies, “structured, focused comparisons” of China’s behaviour over time in each of its disputes (2008: 40). Second, his theory seeks to explain cooperation and escalation but not instigation or delay (2008: 15). The latter of these is of particular relevance since he recognises that “all things being equal, states prefer to defer and delay the settlement of such conflicts” (2008: 38) – in other words, in most territorial disputes nothing is happening most of the time, but Fravel’s theory does not aim to account for this.²⁸ Having said that, he does provide some theoretical underpinning to the concept of delay, arguing that “a state is most likely to delay in its most important disputes, when its claim strength is stable, strong or strengthening, and it faces a benign security environment abroad and at home” (2008: 39). By implication, then, situations where this is not the case, and where those factors (outlined below) which cause cooperation or escalation are present, would lead to some change in the dispute.

²⁷ He argues that the territorial conflict literature “lacks a complete theoretical approach” (2008: 11). Moreover, several of his findings contradict those of the territorial conflict literature, for example, his results question the notion that a militarily stronger state is more likely to use to force.

²⁸ In a later study he analyses the factors which cause delay specifically in the Pinnacles Islands dispute, concluding that the “US-Japan alliance has deterred China from using force in the conflict” (2010: 145).

In his theory the state is “a unitary actor that exists apart from the society it governs” (2008: 13). Unlike other state models (e.g. the two-level game, Putnam, 1988), which recognise domestic actors, Fravel’s state is concerned only with domestic and external threats.²⁹ Like the territorial conflict approach, then, the theory is rationalist and features a unitary state actor. As the previous section showed, rationalism cannot account for the role of norms or national identity in influencing state behaviour; nor can it provide an understanding of the symbolic value of the territory in a given dispute. To be fair, Fravel does recognise that norms do play a role in international relations³⁰ but he argues that since they are generally constant (post-emergence) norms do not prove helpful in understanding change in a dispute.³¹

Finally, while Fravel omits national identity and symbolic value as explicit variables in his theory, he does incorporate them in the salience index he adopts, which he adopts from Hensel and Mitchell (2005). The scale measures the tangible and intangible value of a given territory, based on six indicators. The three intangible indicators (part of national homeland, inhabited by kinsmen, formerly exercised sovereignty over) are assigned a value of zero, one, or two points, and the salience index itself goes from zero to twelve, where twelve is highly salient. Thus, the theory faces the same difficulties which the territorial conflict approach does – the ‘rational’ quantification of aspects of territorial disputes which are irrational. Furthermore, even the ‘hard’ tangible value is over-simplified – natural resources increase the saliency of the territory according to the scale, but in reality the value of these resources is highly context dependent. An example should make this clear: a state such as Norway, which enjoys abundant hydro-electric power and exports approximately fifteen times more oil than

²⁹ And thus his theory is neoclassical realist: as he argues, the state “is not a black box whose internal dynamics are assumed away” (2008: 14).

³⁰ He singles out Fazal’s norm against conquest (2008).

³¹ He also argues that they may prevent escalation, but they do not explain cooperation.

it consumes, is far less likely to find oil as highly salient as say China or Japan, respectively the world's second and third largest importers of oil.

1.3.1 Cooperation

Cooperation in Fravel's theory is caused by two kinds of threats – external and internal. These threats are usually generic in nature, and not related to the territory itself (2008: 15). The impact such threats have on state behaviour is dependent upon the relationship between the opportunity cost of maintaining (and by extension delaying) the territorial claim and the underlying value of the territory.³² That is to say, when the costs of the claim outweigh the benefits of the territory, the state will cooperate. External threats result from the anarchical nature of the international system which causes states to “maximise their state's power and influence” (2008: 17). There are two sources of external threats, the international state structure and more local security competition. The former relates to changes in a state's relative position in the structure, if it is declining, it will seek to balance relative to other states, and if it rising, it will seek to prevent states balancing against it. The latter refers to the concept of rivalries, where a state is involved in a rivalry with another state and may seek to improve relations with third parties for alliances, trade, or to allow the diversion of resources. In both instances, “external threats that increase the value of diplomatic or military aid [or trade] from an opponent in a territorial dispute should increase the likelihood that a state will offer concessions” (2008: 19). As an example, Fravel cites the Soviet Union, which dropped claims against both Turkey and Iran in the early fifties in order to improve diplomatic relations and ultimately balance against the US (2008: 19).

³² Given that this is the basis of his theory, a more thorough explication of ‘value’, or ‘salience’, would give his work a firmer theoretical footing.

In terms of internal threats, the basic premise of Fravel's theory is that "internal threats to regime security create incentives for compromise in territorial disputes" (2008: 20). In this way his theory runs counter to the wisdom of diversionary war theory (where internal threats to security lead to a more bellicose foreign policy). Two types of threat are identified: threats to territorial integrity, such as secessionist movements and regional unrest; and threats to political stability, such as economic decline which questions state legitimacy, or political protest. In both of these cases, he argues, states may settle disputes in order to gain assistance in countering the threat, divert resources to deal with the threat, or to receive international legitimacy and delegitimise the domestic challengers (2008: 20-1). Several of his case studies show how China has resolved territorial disputes in response to uprisings in Xinjiang and Tibet.

1.3.2 Escalation

Escalation in Fravel's theory is caused by changes in the perceived strength of a state's claim. His concept of claim strength is completely unrelated to the legal strength of a claim, rather, it is comprised of "the amount of contested territory that a state occupies" and "the ability to project military power over all contested areas" (2008: 28). According to Fravel's theory, claim strength is synonymous with bargaining power, in that it determines the possibility of a favourable outcome at the negotiating table. He constructs a simple table of ideal types:

	Amount of contested territory occupied	
Power Projection	<i>Small</i>	<i>Large</i>
<i>High</i>	Strong	Dominant
<i>Low</i>	Inferior	Weak

Figure 1.1 Claim Strength. Source: Fravel, 2008.

As stated, change in claim strength is viewed to cause escalation according to the theory. Negative power shifts, or “territorial windows of vulnerability”, (2008: 30) arise when a state sees inaction “as more costly in the long run than using force in the short run” (2008: 30) . The basic reasoning is that the state *should act now while it still can*. This perceived decline in claim strength can be triggered by an opposing state developing new capabilities, fortifications, or politically consolidating its position with regard to the dispute.³³ Finally, Fravel points out that states with strong or dominant claims need to perceive a major decline in claim strength as triggering escalation, while those with weak or inferior claims need only perceive a minor change. He cites the Turkish invasion of Cyprus following the Greek instigated coup as an example of this kind of escalation (2008: 32).³⁴ Favourable power shifts, or “territorial windows of opportunity”, can also lead to escalation but in very different circumstances. In this scenario, the state may find itself with a temporarily increased claim strength, which may be caused by the opposing state collapsing, or having to divert resources to deal with other internal or external threats.³⁵ The Somali seizure of the

³³ In this way it is a form of the security dilemma, where one side’s defensive actions are seen by the other side as offensive actions.

³⁴ The coup installed a president who favoured unification with Greece, this level of political consolidation weakened Turkey’s claim strength sufficiently to trigger military intervention.

³⁵ He also cites decolonialisation as such a window of opportunity.

Ogaden region of Ethiopia in 1977, while Ethiopia was experiencing internal upheaval, is the cited example of this kind of escalation (2008: 33).³⁶

1.3.3 Summary

Basically, Fravel's theory is predicated upon perceived threats (internal and external) and perceptions of capabilities and territorial control (claim strength). He argues that increases in threats can cause states to cooperate, while "shifts in its claim strength ... explain decisions to use force" (2008: 301). Each outcome the theory predicts is highly context-dependent. For example, while an increase in external threats is seen to increase the likelihood of compromise (for balancing or other purposes), an increase in external threats coupled with a declining strength (window of vulnerability) is actually the situation most likely to result in the use of force. The findings of his research show that China has largely acted as the theory predicts. Importantly, he argues that China is not an outlier in the international system and that generalisations from its behaviour are valid (2008: 41) – his theory is universal.

Fravel's theory provides an excellent tool for understanding the material causes of cooperation and escalation in territorial disputes, but it overlooks several key aspects of territorial disputes, and while it may be applicable to other states, it cannot be applied to Japan. Japan is not China, and it does not face either the same security environment or domestic instability that China does. The importance placed on internal threats is clearly of relevance to China which continues to experience unrest in Xinjiang and Tibet, but is far less relevant to Japan, which has experienced a high degree of political stability since the end of

³⁶ This 'window' soon closed, and Ethiopia recovered all of the lost territory within a year.

World War II, and although the situation may of course change, such change is likely to be slow and incremental (Samuels, 2007).³⁷ Moreover, as we saw in the Introduction, Article Nine of Japan's constitution prohibits the "threat or use of force as a means of settling international disputes". This means that, at least under the current interpretation of the constitution, Japan cannot use force change the territorial situation in the two of its disputes where it does not control any of the territory (Liancourt Rocks and Northern Territories). As for other states using force to take any disputed territory which Japan does control, Japan is in a security alliance with by far the world's greatest military power, Article Five of the alliance treaty obliges the US to defend Japan from "an armed attack ... in the territories under the administration of Japan". This security alliance can be viewed as a major deterrent against any state using force against Japan.³⁸

An interesting, and from the perspective of this dissertation, highly problematic, aspect of Fravel's theory is that while he posits claim strength as the basis of his escalation theory, he specifically states that it has nothing to do with international law. However, in his very brief analysis of the Pinnacles Islands dispute (see Fravel, 2010 for a more detailed study, though not applying the theory under review here) he states that "China's claims remains weak, as Japan has controlled the islands since 1972 and *international law supports this claim*" (2008: 316 emphasis added). This would seem to be an admission that, in fact, international law *does* play a role in claim strength – as previously mentioned, even Huth concedes that "the legitimacy of a state's territorial claim ... could be one piece of the puzzle in understanding the resolution of territorial disputes" (2001: 12). Indeed, as the next chapter

³⁷ This is not to say that Japan has not experienced instability, indeed the recent revolving-door nature of the prime ministership suggests a certain kind of political instability. However, Japan has not experienced the same kind of instability which China has, such as the Cultural Revolution, The Great Leap Forward, and the democracy protests of the late 1980s.

³⁸ To be fair, Fravel notes this in his later work (2010).

makes clear, a legally legitimate claim is a key part of a territorial dispute, even where there is no chance of any legal arbitration in the foreseeable future – where a state does not have such a claim, it has to construct one.

The final point to be made here combines elements of the previous two points: Japan is not China, and claim strength is more complicated than Fravel allows. As we saw, Fravel's concept of claim strength is divided into two parts: (a) the amount of territory occupied and (b) the ability to project military power over all contested areas. The problem with (a) is that, in island disputes, occupation is often not feasible, particularly where the islands in question are small and remote.³⁹ Even where the islands are occupied, the associated maritime territory is vast and virtually unoccupiable. The position taken in this dissertation is that it is not the occupation of the territory, but rather the ability to exercise sovereignty, which is the crucial factor. This very relates to (b), as we have seen Japan is not China and the use of force is unlikely by any side in its disputes. Rather than the ability to project military power over all contested areas, the key factor becomes the ability to exercise sovereignty over all contested areas. This ability is measured not only in military terms – though military power still matters, for example naval capacity to patrol the disputed waters – but also through economic and diplomatic power. The issues behind the exercise of sovereignty and the importance of international law form the foundation of this dissertation's theoretical approach, and are discussed in-depth in the next chapter. Before turning to the approach, this dissertation turns now to the final section of the literature review: the specific research on Japan's territorial disputes.

³⁹ Although it should be stated that sometimes states do make a point of physically occupying remote islands, for example in the Spratly Islands dispute. On the other hand, as the Pinnacle Islands case study shows, there can be other factors beyond geography which prevent the occupation of the disputed territory (see Chapter Four).

1.4 Literature on Japan's Territorial Disputes

This section reviews the specific literature on Japan's territorial disputes. Covering as it does three territorial disputes involving several states, this section can only take up key examples from the existing literature in order to highlight the strengths and weaknesses of the dominant approaches adopted. The focus here is on theoretical studies of the disputes, rather than empirical ones, and specifically theoretical studies which aim to use theory to explain or understand state behaviour in the disputes. Although this perforce means a large amount of empirical and theoretical work must be neglected. Many of the empirical studies are drawn upon in the case study chapters themselves, as their detail provides rich accounts of various incidents and periods in Japan's territorial disputes (for example Hara, 2001, 2007; Drifte, 2006, 2008, 2009; Manicom, 2010). This section includes studies of Japan's territorial disputes which focus not only on Japan but also on the other parties involved; research which focuses on Russia, South Korea, and China is included where it highlights key areas which the dissertation must pay close to attention to on the Japanese side.

1.4.1 Pluralist Approaches

Williams (2006) and Buszynski (2006) both look at the Northern Territories dispute from the Russian perspective, focusing on subnational factors and the role of oil respectively. Williams shows how rising nationalism in post-Soviet Russia created the space for the "Sakhalin factor", whereby "Sakhalin elites embarked upon a sustained campaign of domestic lobbying and paradiplomacy" to prevent any territorial concessions to Japan (2006: 264). However, both Williams and Buszynski demonstrate how President Vladimir Putin,

buffeted by rising oil prices and support for the war in Chechnya, instigated reforms which strengthened the role of the president and weakened domestic and regional opposition to his foreign policy. Buszynski then explains the logic behind Putin's decision to scrap plans for an oil pipeline through China in favour of Japan: he sought to improve relations with Japan to counter the rise of China and to secure aid and investment to revitalise the stagnating Russian Far East. By neutering regional opposition, Putin was able to offer concessions on the Sino-Russia border and settle that dispute. Japanese domestic opposition to the two-island deal prevented similar success with the Northern Territories during the Krasnoyarsk process (see Chapter Five, Section 5.7). Although the Northern Territories dispute remains unresolved, the lack of opposition to the China deal "suggests that Putin may be able to compromise with the Japanese without suffering serious political consequences" (Williams, 2006: 279). Both accounts raise interesting issues about the role played by subnational governments in regional international relations in general and in Japan's territorial disputes in particular (see also Hook and Kearns, 1999). While Putin's reforms may have neutered Sakhalin Oblast's political power, via events such as 'Takeshima Day', prefectural and municipal assemblies have played a role on the Japanese side of the disputes; this issue is developed in the relevant case studies.⁴⁰

Erica Strecker Downs and Phillip Saunders' (1998) insightful and widely cited article looking at the Chinese Communist Party's (CCP) response to the Pinnacle Islands crises of 1990 and 1996 highlights the importance of reflexivity in understanding political events. They show how, contrary to the expectations of conventional International Relations theory, nationalism has been carefully controlled by the CCP and in cases subordinated to the greater goal of economic development. Classic International Relations understandings of

⁴⁰ See the role of Shimane Prefecture in Liancourt Rocks case study (Chapter Three, Section 3.7) and the role of Ishigaki and one of its assemblymen in Chapter Four, Section 4.6).

nationalism refer to its use in garnering support for elites, and point to its potential, once mobilised, for trapping these elites in their own rhetoric, forcing them to adopt hard-line and aggressive foreign policy stances (Downs and Saunders, 1998: 42). Yet China's behaviour during the 1990 and 1996 crises does not follow the expected pattern – rather, the CCP risked damaging its own nationalist credentials in order to maintain relations with Japan, because of Japan's importance to the Chinese economy. This is particularly surprising given the key role Japan has played in defining Chinese nationalism, and how the CCP itself depended largely on its now mythic role in defeating the Japanese as a major font of legitimacy in the post-ideology age (Downs and Saunders, 1998: 118-20). But, as they point out, economic development is also a source of legitimacy, suggesting how the CCP was engaged in a balancing act. Finally, beyond legitimacy, economic growth itself is a means to a positive end for China in the Pinnacle Islands dispute – they quote an unnamed official who ominously states that in the future, when China economically and militarily eclipses Japan, “Japan will review its position on the Diaoyus and find that China has been right all along” (1998: 73).⁴¹

Phil Deans agrees with the conclusions of Downs and Saunders, but “takes this further and argues that inter-elite conflict over economic policy drives a ‘shadow play’ of nationalism” (2000: 123). Looking at the 1996 crises, he shows how the post-Deng Xiaoping succession struggle spilt over into the dispute, but that by the end of the year moderates had gained the upper-hand, and the result was that China did not push the crisis to the brink. Meanwhile, in Taiwan the emergence of the New Party, which was anti-independence but also more anti-Japanese than the Kuomintang, played a major role in Taiwanese opposition to

⁴¹ This point is returned to in the conclusion of this dissertation. Both the analysis and some of the empirical data from the Downs and Saunders article is used in the case study on the Pinnacle Islands Dispute.

Japan's apparent displays of sovereignty. Finally, he suggests that "a new more assertive nationalism is emerging in Japan" (2000: 125), and that *Seinensha's* (a right-wing Japanese political group) actions must be understood in this context and in the context of its links with anti-Chinese elements in the Liberal Democratic Party (LDP). Thus he concludes that "nationalism in Northeast Asia and arguments over the islands must not be taken at face value" (2000: 128-9).

Deans' argument is persuasive, although his thesis lacks sufficient evidence, particularly on the Japanese side. The article raises more questions than it answers, in fact, and shines a light on an under-researched element of the dispute: the role of NGOs – their motivations, strategies, goals and beliefs. The reason is that these organisations can, almost at will, instigate a crisis over the islands, and are deeply involved in non-state attempts to demonstrate sovereignty over the islands.⁴² The relationship between the consciousness-raising acts of sovereignty by non-state actors and the changing (increasing) symbolic value of the disputed territory is a key issue in Japan's territorial disputes, and will be investigated in detail in Chapters Three, Four, and Five.

1.4.2 Economic Interdependence

The preceding article by Downs and Saunders (1998), emphasising the importance of economic factors in mitigating nationalism, raises the question of economic interdependence and the mitigation of conflict in territorial disputes. The territorial conflict section above

⁴² The term 'demonstrate' is deliberately used here instead of 'exercise' – the extent to which non-state actors actions can be considered as 'exercises of sovereignty' is discussed in the next chapter.

(Section 1.1) discussed liberal peace in the form of democratic peace theory, which focuses on domestic political institutions, but this is not the only form of liberal peace theory. Min Gyo Koo (2005, 2009, 2010) applies the economic interdependency school of liberal peace to territorial disputes in East Asia. In one study (2005), he utilises Ordinary Least Squares regression on the Militarized Interstate Dispute data-set with a challenger/target dichotomy, but focusing on the Liancourt Rocks, and the Pinnacle, Paracel, and Spratly Islands disputes; the critique of this kind of methodology has already been made in the territorial conflict section of this review, so suffice it to say here that Koo's work is susceptible to many of the same criticisms. The research charts rates of bilateral trade between pairs of states against levels of escalation of the disputes (2005). He concludes that the high levels of trade caused de-escalation in the crises over the disputed territories which occurred during the period of his study.

This conclusion does not seem to fit the results of study. For example, he glosses over the fact that there was "a brief trade boom during the Korean War (1950-3)", yet the declaration of the Rhee line which marked the start of the modern dispute took place in 1952 – in the middle of the trade boom. More problematic than this is the fact that the correlation between economic interdependency and de-escalation appears spurious. At times of high bilateral trade, for instance, conflicts eventually de-escalated – but this tells us little because the independent variable does not change: Japan has for decades enjoyed high levels of trade with both South Korea and China, and *there is no evidence of high levels of conflict unmitigated by low-levels of trade*. The lack of armed conflict over Japan's territorial disputes is one of their defining features. To be fair, his later study (2009) looks more closely at specific events, seeking to show that on the Chinese side in the 1996 Senkaku crisis "economic considerations strongly motivated the adoption of a conciliatory policy" (2009:

224), but he still does so within a quantitative framework of interdependency. Crucially for the economic interdependency approach, while acknowledging that 1996 was “far more serious in terms of political salience and its level of hostility than its predecessors”, Koo overlooks that backdrop against which it took place: booming bilateral trade between Japan and China (in 1996 Japan accounted for over one-fifth of China’s foreign trade, Xing, 2008: 5).

Jean Marc Blanchard (2009) evaluates the role of economics in two of Japan’s territorial disputes, the Pinnacle Islands and the Northern Territories, and finds that rather than contributing towards peace, in the Pinnacle Islands dispute economics “was more often a source of friction than cooperation”, while in the Northern Territories dispute “Japanese economic incentives failed to push the Soviet Union/Russia to compromise” (2009: 683). He concludes that “one must avoid the mono-causal myopia of commercial liberals who point to economics as the path to conflict resolution and peace” (2009: 683). In terms of the interdependency approach, in particular, he makes two key points: economic interdependence can breed friction, and, more importantly, that interdependence is based upon the “presumption that economic interests are as or more important than political interests” (2009: 685). Where the economic interdependency approach points to increasing levels of trade between China and Japan after the dispute emerged as the explanation for the avoidance of conflict in the 1980s and early 1990s, Blanchard argues that this relative peace can better be understood through the domestic challenges faced by China (reform movements) and China’s desire to balance against the Soviet Union. With both the Tiananmen Square incident and the Soviet Union fading into history, economics – in the form of the economic value of the territory – helped turn the dispute into a major issue in bi-lateral relations with Japan in the decade 1996-2006, and at a time of booming trade.

As for the Northern Territories, again Blanchard argues that “economic rationales for a resolution of the Territories dispute fell afoul of numerous domestic political ones, preventing a settlement” (2009: 695). Despite the huge economic incentives of a deal in the early 1990s, Russia did not accede to Japan’s demands for a return of the four islands (outlined in detail in Chapter Four). Despite increasing trade in the period after the Krasnoyarsk summit (see Section 5.7) this situation has not changed nor is it likely to change in the foreseeable future. As Blanchard states, “continuing non-progress on the Territories issue is paradoxical if one approaches the problem with an economic mindset” (2009: 699).

All this is not to say that economics does not play a role – in each of Japan’s disputes economics plays a major role, as will become clear in the three case studies, where the deployment of economics in the sovereignty game is investigated fully. Rather, economics, specifically economic interdependency, does not play the simplified role which scholars such as Koo assign to it. Rather, as Blanchard, Downs and Saunders and indeed this dissertation itself show, economic factors are only one part of the picture in Japan’s territorial disputes; their effects are context-dependent, and their use in the sovereignty game can only be understood in terms of their interactions with other factors in order to provide a convincing explanation of the complexity of the disputes.

1.4.3 Constructivism and Identity

Bukh’s study of the role of “post-war Japan’s construction of the Japanese ‘self’ vis-à-vis the Soviet/Russian ‘other’” stands as an alternative, critical or ‘hard’ constructivist approach to

understanding the Northern Territories dispute.⁴³ The Soviet's seizure of the Kurile Islands was presented "as decisive evidence of the expansionist, traitorous and threatening characteristics of the Soviet Union", against which Japan was contrasted as a liberal, advanced western state (2009: 352). He argues that the *Nihonjinron* phenomenon represents a high-point in this sense of superiority based on economic success, which contributed to the hierarchical construction of Japanese self (above) and Russian other (below).⁴⁴ Bukh argues that this conception of the Russians – as backward and untrustworthy – has contributed to an understanding within Japan that, given its superior technology and economy, Russia should defer to Japan in the dispute, and if it does so it can receive Japan's assistance (2009: 339-40).

Even after the fall of the Soviet Union, this hierarchy was maintained: the fall of the Soviet Union gradually removed the more threatening aspects of Soviet 'otherness', to be replaced by "a temporal difference through which Japan's identity as a mature capitalist democracy was reaffirmed" (2009: 334). Bukh shows how the territorial dispute was subsumed into this identity-construction process – it has its origins in various domestic and international political factors, but over time it "took the form of a national mission for the recovery of inherent territory, locating it within the realm of socio-cultural difference between peaceful Japan and expansionist Russia" (2009: 336). Russia's consistent refusal – in communist and post-communist form – to accept Japan's demand for the return of all four islands reproduces the hierarchy and prevents Russia from joining Japan in the "universal realm of civilised normalcy" (2009: 329, 339). Bukh focuses on the construction of identity through the self/other lens, and the territorial dispute is studied within this framework, but he

⁴³ This type of constructivism differs from the more conventional type in that it does not seek to find a causal relationship between its subject matter (in this case identity) and foreign policy (Bukh, 2009: 320), see the next chapter for further discussion of the different strands of constructivism.

⁴⁴ *Nihonjinron* refers to a style of academic or pseudo-academic literature popular in the 1970s and 1980s, which sets out the idea that Japan and Japanese culture are unique.

also highlights an important truth which is common to all territorial disputes: the meaning of the territory is not static, but changes through time. The Northern Territories, even after their occupation by the Soviets, did not have the same meaning in the 1940s as they did in the 1970s or indeed today. This idea of fluid and context-dependent meaning (and therefore symbolic value) of a territory has already been mentioned in this chapter, and is elaborated in the next (see Section 2.8.2).

Bukh's study draws attention to the multiplicity of state identities, and how these identities are dynamic and constructed, and contested and negotiated by domestic actors in relation to other states. As argued earlier, national identity is a complicated and poorly understood aspect of Japan's territorial disputes and Bukh's work makes a solid and much needed contribution to our understanding.

1.4.4 Relational Power

Hagstrom (2005a, 2005b, 2011) applies Steven Luke's concept of relational power in his effort to provide an alternative understanding of Japan's policy and position in the Pinnacle Islands dispute. He argues from a relational power perspective that various crises, from the 1992 Territorial Waters law, the 1996 Landing Incident and the 2010 Trawler Incident (Chapter Four, Sections 4.5, 4.6 and 4.10) represent a foreign policy successes for Japan based on "the statecraft of non-action" (2005a: 130; 2011). The crux of his argument is that Japan has consistently exerted relational power over China and maintained its own position of effective control over the islands and non-recognition of the dispute. On the one hand, Hagstrom's conclusions are based on empirical fact: when reviewing the 1992 and 1996

crises he concludes that since Japan continued to exercise effective control and held to its ‘no dispute exists’ line, despite Chinese pressure, its position is strengthened. While it is true that it maintained control and the ‘no dispute’ line, whether this lead to Japan’s position being strengthened is more controversial.

On the other hand, while the 1992 crisis does seem to follow the logic of relational power and even the 1996 crisis could have been construed as a foreign policy victory if seen in isolation: Japan emerged from both its effective control and reiterating its ‘no dispute exists’ line. However, as the Pinnacle Islands case study in Chapter Four demonstrates, Japan’s ability to exercise sovereignty has, over the long-term, been slowly but steadily eroded by China. While this dissertation takes the position that the 2010 trawler incident demonstrated the weakness of Japan’s position, Hagstrom posits a counter-narrative, arguing that the rise of China and the decline of Japan have resulted in a ‘self-fulfilling prophecy’. The conventional wisdom is that China gained and Japan lost; he argues, rather that Japanese control was sufficiently demonstrated by the arrest and detention of the skipper of the trawler, and China’s response showed the Japanese and international public opinion that China was in fact a threat (2011).⁴⁵

Part of his positive evaluation of Japan’s policy perhaps comes from his optimistic view of the future of Sino-Japanese relations. He concludes that as China is further integrated into international society, it will be forced to recognise the weakness of its own position under international law, and Japan’s policy of doing nothing will be vindicated (2005a). But his analysis does not take into account the striking pragmatic ability of the CCP

⁴⁵ The extent to which Hagstrom’s thesis is a counter-narrative is debatable, it is hard to say as of yet that a conventional understanding of the outcome of the incident has actually emerged.

to live with glaring contradictions when and where necessary. The fact that China has compromised on certain territorial disputes but not others – specifically not island or homeland disputes (Fravel, 2008) – while maintaining a basic stated aim of territorial revisionism – seems to suggest that it has little interest in taking any action (for example taking the case to legal arbitration) which would weaken its claim. Rather, it seems more likely that China will continue to push Japan over the sovereignty issue: he cites a Japanese Diet member as saying that effective control includes being “able to decide not to do certain things on the islands because they would provoke China” (2005: 130), but, if anything, this quote seems to suggest China’s relational power over Japan.

As will be examined in detail later, while Hagstrom considers Japan’s posture to be strong (2005b: 178), this dissertation considers it to have been weak (at least until the early 2000s); where he argues that Japan’s approach “is putting Japan in an increasingly favourable position vis-à-vis China”, this dissertation argues that the opposite is the case. Time will tell which analysis of the situation more closely reflects the changes likely to occur at some time in the future.

1.4.5 Issue Linkage and Coercive Diplomacy

Krista Wiegand (2009) offers another study which provides a reading of events in the Pinnacle Islands dispute which differs substantially from this dissertation’s analysis. She uses the concepts of issue linkage, “when a state deliberately links two or more distinct foreign policy issues together”, and coercive diplomacy, “an attempt by one state to compel another state through some type of coercion ... to shift its foreign policy on a certain issue”, to

account for China's behaviour in various incidents in the recent history of the dispute (2009: 171). Her basic thesis is that "China uses threats in the territorial dispute as bargaining leverage to compel Japan to shift its policy on another issue" (2009: 171). One such occasion, she suggests, is the 1996 lighthouse recognition incident (Chapter Four, Section 4.6), in which she argues that China's motivation was not the prevention of the lighthouse recognition itself but was related to the economic sanctions imposed after the Chinese nuclear tests in 1995 and then Prime Minister Hashimoto Ryūtarō's visits to the Yasukuni Shrine. She argues that China also used issue linkage and coercive diplomacy in 2004, when government-backed activists landed on the islands and were arrested for infringement of Japanese immigration law (Chapter Four, Section 4.10).

Her study is insightful in explaining China's behaviour in some of the more minor incidents in the dispute, where China did in fact use the territorial dispute as a proxy, linking it to other issues in which it managed to compel Japan to alter its policy. However, the concepts of issue linkage and coercive diplomacy cannot explain other incidents in the dispute, nor account for the general trends of the dispute. In particular, the two examples cited above, the lighthouse recognition and the arrests (1996 and 2004) both saw a severe reaction from China. This dissertation argues, as detailed in Chapter Four, that no issue linkage was at play in these incidents. Instead, in both cases Beijing deployed its capital (see Chapter Two, Section 2.7) in order to prevent Japan from exercising direct state sovereignty over the islands and judicial sovereignty over Chinese nationals, respectively, due to the effect such exercises would have on the sovereignty status quo of the dispute and China's claim to the islands.

1.4.6 Geopolitics

Ralf Emmers (2010) studies the role of geopolitics in his attempt to explain the dynamics behind the Pinnacle Islands dispute.⁴⁶ The concept of geopolitics which he employs is a traditional realist one, but “importance is also given to some ideational factors” (2010: 8). This geopolitical approach consists, then, not of a single explanation, but the operation of three inter-related variables which are seen to contribute to the escalation or de-escalation of conflict: territory, natural resources and power distribution. The territory variable refers primarily to nationalism and identity, natural resources refers to energy deposits, and while the distribution of power refers to the balance of power and the internal (developing capabilities) and external (alliances and so on) means through which states balance to prevent other states from becoming too powerful.

He finds that while the territorial (nationalism) element has been important in escalating the Pinnacle Islands dispute, it “for the most part, the conflict between China and Japan has remained at the rhetorical level” (2010: 55). The influence of natural resources has grown, he suggests, as China has become a net-importer of oil and energy security has become a more pressing concern for states globally, although again this still depends on wider circumstances (2010: 60). What remains amorphous in his analysis is the power distribution variable, for while he states that “by all estimates, Japan’s military strength is far superior to that of the PRC [China]” (2010: 61), China’s geographic proximity to the islands as well as its gradual rising power means that power distribution “has shifted from being a neutralising to an escalating factor” in the dispute (2010: 62).

⁴⁶ He also looks at the Paracel and Spratly Island disputes, but these are not of concern in the present discussion.

He concludes that “the sovereignty question, intertwined with domestic popular nationalism ... has arguably been the critical factor in exacerbating this dispute” (2010: 63). Nonetheless, he notes that since 2006 the three factors have served to calm the dispute.⁴⁷ By highlighting the role of nationalism, energy resources and power, Emmers manages to cover a great deal of the dynamics of the Pinnacles dispute. Furthermore, the emphasis on the interplay between these three variables deepens the analysis, providing a convincing explanation for the escalation and de-escalations which take place over the years of his study.

Still, the realist framework is premised on a number of assumptions which forces the study to overlook other crucial aspects of the dispute: while power is important in this territorial dispute (as in the majority of territorial disputes), no state has used force, and while the use of force cannot be ruled out, it remains unlikely that any state will use force in the foreseeable future. Emmers himself notes that “none of the parties is willing to yield on the crucial point of sovereignty”, and in the absence of force, we argue in subsequent chapters that the sovereignty issue is crucial. Understanding Japan’s territorial dispute requires an understanding of power, to be sure, but a broader concept of power than allowed for by a realist framework (see Chapter Two, Section 2.7). Finally, Emmers framework recognises the vital role of domestic politics: “the territorial dimension has fluctuated in its impact ... depending on the state of Sino-Japanese relations and *domestic political circumstances*” (2010: 56 emphasis added). True he does try to include some discussion of domestic politics, but the complex interactions which make up these domestic factors cannot be incorporated into the “traditional realist” approach. As we have already seen in this review, domestic political factors can be crucial in preventing resolution of disputes even when tempting economic and other benefits exist.

⁴⁷ It is worth noting that the book was written prior to the 2010 trawler collision incident.

1.4.7 Chaos Theory?

The final work reviewed here is Masato Kimura and David Welch's (1998) study of the Northern Territories dispute. Rejecting conventional notions of International Relations theory, which they criticise for treating interests endogenously, they embark on a mission to demonstrate that interests in a given situation are "highly variable and inescapably idiosyncratic" (1998: 216). Japan's shifting claims to the Northern Territories (from two islands to four islands) form the empirical evidence of this assertion, which is taken to its logical conclusion by more or less rejecting the very idea of International Relations theory itself: they conclude that Japan's position on the Northern Territories (the four-island claim) "is a path-dependent result of historical and political accidents – chaotic interactions of transient domestic, diplomatic and strategic imperatives – at work in a thickly textured cultural and psychological context" (1998: 232). Furthermore, they criticise other attempts to overcome the obvious deficits of endogenous interests and mono-causality, particularly a thinly veiled dismissal of analytical eclecticism, which can only "cobble together diverse bodies of theory (and for which their study has) discouraging implications" (1998: 232).

Although the authors protest "not [being] nihilistic" about International Relations theory (1998: 214), they are pessimistic about any theory which either takes interests as given or derives them from an ancillary theory. Despite the protestations against "cobbling together diverse bodies of theory", though, their most penetrating insights come from exactly this – by drawing on socialisation theory and psychological theory to show how a sense of victimhood combined with US intervention created a situation whereby Japanese foreign policy has become a prisoner of the four-island claim. In doing so, they draw a compelling sketch of Japan's changing interests over the decades in the Northern Territories dispute. Ultimately,

their approach is more akin to analytical eclecticism than what could perhaps be called “chaos theory” (see the “chaotic interactions” explanation above) and in this sense they go some way to neutralising their own critique. All that is missing is a structural account of the Dulles warning (see Chapter Five, Section 5.2) and recognition that, in fact, this was no historical accident but a deliberate act of astute diplomacy by the US Secretary of State which could only have happened in the context of the nascent Cold War in Asia. They would no doubt disagree with this interpretation and might cite their comparison of the Falklands Islands dispute with the Northern Territories (1998: 237), which they argue demonstrates the lack of theoretical portability.

This dissertation does not directly engage in the debate over the origins of interests, though it does include accounts of the value of the disputed territories in order understand state motivations. In fact, overall the approach we adopt takes does follow the course prescribed by Kimura and Welch: their key conclusion is that while the generation of state interests are idiosyncratic and resistant to theory, the patterns of state behaviour once those interests are determined are amenable to theoretical parsimony. They argue that “if we seek theories of state behaviour that can help us identify patterns in international politics, we must look for those patterns not in *what* states want, but in how they go about pursuing them” (1998: 239-40). This is precisely what this dissertation seeks to achieve; it seeks to identify (albeit crudely) the value of the disputed territory, the motivations and interests, which are pursued using economic, military and diplomatic capital through the sovereignty game.

1.5 Summary

This chapter outlined various approaches to territorial disputes in general and to Japan's territorial disputes in particular. Although it rejected the quantitative, rationalist approach of the territorial conflict literature, other studies reviewed highlighted relevant areas and raised important questions which this dissertation must take in to account. Fravel's theory directed us to the importance of claim strength in understanding the situation in a given territorial dispute. As will become clear in subsequent chapters, this dissertation develops further Fravel's idea of claim strength, but asserts that it is not the amount of territory occupation of territory, but rather the ability to exercise sovereignty over that territory, which is crucial in understanding Japan's territorial disputes. What is more, this ability is not measured solely in military power-projection terms, though military power is important, but also in economic and diplomatic terms. The specific research on Japan's territorial disputes, too, raised several important issues which must be incorporated in the theoretical approach adopted in this dissertation: 'what is the role of economics in Japan's territorial disputes?', 'how does domestic politics impact on Japan's behaviour in its territorial disputes?', and 'how can we avoid mono-causal explanations which derive interests from an ancillary theory?'. Each of these questions, and others, must be addressed if we are to successfully provide an explanation of Japan's behaviour in its territorial disputes. The dissertation turns now to the approach chapter, in which these and other pertinent questions are addressed in order to formulate a theoretically informed approach which can adequately answer the ultimate question, 'how can we understand Japan's behaviour in its territorial disputes?'

Chapter Two: Theoretical Approach

2.1 Overview

Even the most idealistic proponent of international law will admit that it is created, conditioned – and even sometimes rendered irrelevant – by international politics. But this is not to say that the law does not matter in the international relations of states – even the parsimonious potentate of neorealism, Kenneth Waltz, himself admits: “international law is followed by most countries most of the time” (2000: 27). Furthermore, as has been noted in the literature review, realists involved in the study of territorial disputes have themselves admitted that international law does play some role (Huth, 1996: 21; Fravel, 2008: 316), although the theoretical chains of realism prevent them from following up on these empirical observations. For their part, international legal scholars have kept well clear of politics, preferring to offer ‘safe’ formalistic accounts of the relative merits of each side’s competing claims (Heflin, 2000). This dissertation seizes the opportunities provided by constructivism to construct a tentative theoretical approach of the relationship between international law and state behaviour in territorial disputes. The questions which must be addressed then are: to what extent does the law matter – how does law impact on the political world, in general, and territorial disputes, in particular, and to what extent? How does the interaction between law and politics shape the interactions between states, specifically in relation to territorial disputes?

In order to provide workable answers which can be applied in the case studies, this section first outlines International Relations approaches to international law, ultimately drawing on a nascent constructivist approach to demonstrate the extent to which international

law creates and conditions state action with regard to disputed island territories. The subsequent section outlines this constructivist approach in more detail, drawing in particular on the work of Christian Reus-Smit (2004), who shows how the relationship between law and politics is mutually constitutive. This approach opens up a space for understanding how the law constitutes politics, and provides a concept – the ‘legal realm’ – in which the mutually constitutive relationship between law and politics generates options for states. The chapter then moves on to discuss the legal realm of territorial disputes, highlighting the importance of sovereignty and the ability to exercise sovereignty over the disputed territory – or to prevent another state from doing so – in territorial disputes; this ‘sovereignty game’ is the legal realm of the territorial dispute, and is the focus of this dissertation. In order to better understand what how the exercise of sovereignty is manifest, the next section provides an understanding of sovereignty and its role in both international politics and international law. Having provided an explanation of sovereignty, the chapter then turns to the international law regarding territorial disputes itself – specifically disputed island territories – so that the elaboration of the sovereignty game can draw on the law governing such disputes and assess how it influences state behaviour. After outlining the dynamics of the sovereignty game in the next section, the chapter addresses a number of definitional issues, defining the concepts of economic, diplomatic and military capital as deployed in this dissertation, and provides a brief theoretical account of how states value disputed territory.

2.2 International Politics and International Law

An understanding of the nature of the relationship between international law and international relations depends ultimately upon the theoretical prism adopted. Thus this section goes

through the “big three” theoretical paradigms of contemporary International Relations, realism, (neo-)liberalism and constructivism, outlining first the basic assumptions of each paradigm itself, then moving on to elaborate how these assumptions translate into an understanding of international law. While realism, perhaps unsurprisingly, has little theoretical space for international law, liberalism and neo-liberalism, too, reduces law’s role to nothing more than providing absolute gains for rationalist actors; constructivism’s ontological openness, instead, provides a theoretical space in which the relationship between law and politics can be studied.

2.2.1 Realism

Realism in its various guises has been and remains a core theory of International Relations. Classical realism from Thucydides (2004) to Hans Morgenthau (1978) sought to explain international politics based upon three key principles: the lack of a central authority which can impose order (i.e. anarchy); changing material capabilities and perceptions of these changes; and finally a negative, pessimistic conception of human nature, epitomised in the classic line from Thucydides’ Melian Dialogue: “the strong do what they can and the weak suffer what they must” (2004: 198).⁴⁸ Neorealism as espoused by Kenneth Waltz shifted the focus of realism from human nature to the structure of international system. Waltz rejected any causality derived from the behaviour of individual units (i.e. states), asking “how can one

⁴⁸ Although both Morgenthau’s and Thucydides’ theories were rooted in human nature, Morgenthau’s was an explicit theory, concerned with deciphering universal and objective laws of international politics. Also, while Thucydides work is conventionally considered to be classically realist, the manner in which the power-hungry Athenians suffer spectacular defeat has suggested alternative readings, see for example Lebow (2001).

account for the similarities of outcome that persist or recur even as actors vary?” (1979: 65).⁴⁹ He posited instead a structural theory of politics. The structure of the international system has three characteristics: anarchy, which leads to self-help;⁵⁰ the functional similarity of states – all the units in the system are states, and states, all states, act in the same way (1979: 94);⁵¹ and the distribution of capabilities, which refers to the fact while states are functionally undifferentiated, they are differentiated by their relative material capabilities.

More recent variants of realism, for example, neoclassical realism (see previous chapter, Section 1.2.1), which allow for the inclusion of some unit-level variables, similarly have little theoretical space for international law. Given that anarchy is the basic ordering principle of the entire theoretical edifice of realism, this is unsurprising. Thus realism sees international law as an epiphenomenon of great power politics, and while even Waltz does recognise that states do generally follow the law, valid realist reasons exist for such behaviour. The first is that, as Arthur Watts puts it, for “those with international power ... it is their action which shapes the law” (2000: 6). This is most evident in times past when international law facilitated the annexation of territories after wars, the colonisation of land as *terra nullius*, and so on. Secondly, “those with international power” only respect the law when it is in their interests to do so; they do not see themselves as constrained by it. The US invasion of Iraq is a classic example: the failure of the ‘legal’ UN route to invasion did not deter the US from declaring the existing law (specifically the requirement of a Security Council resolution) invalid and unfit for purpose and invaded Iraq, anyway. Indeed, the

⁴⁹ The classic example of such international similarity despite domestic difference comes in the form of the Cold War, where two ideologically opposed super-powers acted in a strikingly similar fashion despite the fact that one was ostensibly communist and the other was unapologetically capitalist.

⁵⁰ Anarchy is contrasted with hierarchy – a possibility only in domestic political structures.

⁵¹ Again, this functional undifferentiation is contrasted with the functional differentiation under hierarchy, where each unit performs a different function.

jurisprudence of territorial disputes itself is a product of a more “realist” era, with the result that the norms and mores of the colonial era – including occupation by force and the signature of treaties down the barrel of a gun – are today’s primarily legal principles in the determination of sovereignty over a disputed territory (see below).

Yet, despite the realist disdain for international law and even the numerous examples of the states’ disregard for it when expedient, the reality of contemporary international relations is that state behaviour *is* tempered by international law most of the time. Strong states are constrained by international law: the crisis of legitimacy faced by US foreign policy following the Iraq weapons-of-mass-destruction debacle (i.e. the crisis caused by US failure to observe international law) meant that it had to tread a very careful path during the Arab spring of 2011, leaving European Union (EU) states such as France to be the public face of the North Atlantic Treaty Organisation (NATO) campaign. Similarly, even when international law is disregarded, a deeper, internalised power of constraint can nevertheless be observed: Russia, for example, flouted international law in summer of 2008 when it sent troops into Georgia, thereby violating its sovereignty and threatening the population by marching to the outskirts of Georgia’s capital, Tbilisi. These actions were apparently in response to the Georgian state’s actions in South Ossetia (Nichol, 2008). But it is clear that Russia covets South Ossetia and neighbouring Abkhazia (which like South Ossetia is recognised by Russia but claimed by Georgia) and has the capacity to annex both of them; international law prohibits “the use of force against the territorial integrity or political independence of any state” (UN Charter Article 2.4), What stands between Russia and the annexation of the territory, as seen later in this chapter, is thus not power but law. That is, international law puts constraints on the major players, but it can also help the weaker ones:

the formal sovereign equality of states means that, in the eyes of international law at least, all states are created equal regardless of size or economic/military strength.

2.2.2 Neoliberalism

Neoliberalism shares a rationalist ontology (states as utility maximisers) with realism, and it also shares the assumption of anarchy and how it creates a self-help system. Thus, neoliberalism sees international law as similarly determined by anarchy and power competition, the difference being that in the case of liberal institutionalism, regimes (laws, but a safer, neo-liberal term for laws since ‘laws’ might alarm the realists with whom many neo-liberals seek synthesis) may provide rational-actor states with the opportunity to cooperate in order to secure absolute (rather than the realist rationality of relative) gains (Keohane and Nye, 2001). Still, regimes are limited by the possibilities generated by rational actor economic models, and thus exist only as long as states gain from them. Reus-Smit (2004) highlights a number of flaws in this understanding of international law, pointing out that if institutions are merely functional solutions to anarchy, then we would witness more or less the same institutions wherever anarchy obtains; but it is clear that, historically, international law varies dramatically. He also points out that such rationalist narrative cannot account for “the fact that states by and large accept legal rules as binding even in the absence of centralised enforcement mechanisms” (2004: 20). Thus, in the traditional rationalist frameworks, the law is almost entirely shaped by politics, with very little scope for law to shape politics in return – yet somehow it does.

2.2.3 Constructivism

Alexander Wendt's seminal article, "Anarchy is what states make of it: the social construction of power politics," is a ground-breaking work in which he uses theories of social construction to turn the assumptions and the causal flow of anarchy on its head (Wendt, 1992). Wendt's intellectual gymnastics show how "self-help and power politics do not follow either logically or causally from anarchy" (1992: 395), and that "each party acts in ways that the other feels are threatening to the self, creating expectation that the other is not to be trusted" (1992: 406). Thus self-help is not an inevitable outcome of anarchy, for if states chose to act differently, they could – hence the title of his 1992 article, "Anarchy is what states make of it" (1992: 365). Of course, the self-help system, while socially constructed, still "confronts each of its members as an objective social fact" (1992: 411); it is in essence an institution, a "relatively stable set of identities and interests" (1992: 399). Nevertheless, by demonstrating how reciprocal interaction can create seemingly objective, but actually socially constructed, social systems and institutions, Wendt opens the floodgates of constructivist analysis of international relations.

What makes constructivism different, then, from the rationalist theories? Epistemologically and methodologically constructivism does not necessarily differ greatly from realism or neo-liberalism. That is to say – with some notable exceptions – constructivists take a positivist approach to knowledge, thus sharing a common epistemology with the other two theories (Jepperson *et al.*, 1996; Checkel, 1998).⁵² Methodologically consensus is lacking: Ted Hopf characterises constructivism as having a "commitment to

⁵² Not all constructivists are positivists: for a discussion of the difference between 'soft' or 'conventional' constructivists and their 'hard' or 'radical' brethren see Hopf, 1998; Ruggie, 1998 or Palan, 2000.

thick description” (1998: 198), and similarly Friedrich Kratochwil and John Ruggie advocate a special interpretative methodology (1986) – yet Ronald Jepperson *et al.* stress their “methodological conventionalism”, insisting that constructivism “does not in and of itself involve any specific methodological imperatives” (1996: 67). Where constructivism in all its forms and interpretations *does* differ dramatically from other approaches is in its “challenge [to] rationalist conceptions of human nature ... stressing instead the social construction of actor’s identities” (Reus-Smit, 1996: 2). Thus, whereas the rationalist ontology treats states as having *a priori* interests which are universal and eternal, under constructivism state “identities are the basis of interests” (Wendt, 1992: 398), and these identities are shaped by both domestic and international factors (Ruggie, 1998: 864). Unlike the rationalist theories whose theoretically narrow focus requires the rejection of much of the stuff of world politics, constructivism “regards the world as a complicated and vast array of different domains” (Hopf, 1998: 200). For these reasons we draw on constructivism in our attempt to bridge the gap between international politics and international law in this dissertation.

In terms of how constructivism can be employed to understand the relationship between politics and law, it is instructive to return to Wendt’s analysis of the social construction of anarchy. As we saw, he asserts that self-help is not an objective fact of anarchy but rather an institution. The modern concept of sovereignty, too, is an institution, and as is explained later in the chapter it is also the conceptual underpinning of international law. In a Hobbesian world without sovereignty, the existence of the state “does not have any basis in social recognition”; there is no understanding that “a state has a right to its existence, territory and subjects” (1992: 412). The institution and concept of sovereignty can only exist “in virtue of certain intersubjective understandings and expectations”, the essence of which is the “mutual recognition of one another’s right to exercise political authority within territorial

limits” (1992: 412). Since sovereignty is the basis of international law, international law itself similarly becomes a socially constructed institution. Of course, just as the sovereignty of other states is not always respected by each state in the system, so, too, with international law: on occasion international law is breached by states which have the power and interest to do so.⁵³ Yet, almost all of the time almost all of the states in the international system recognise and respect international law and the sovereignty of other states, but no theory has adequately addressed this glaring empirical fact. Clearly, constructivism offers great promise in the study of the relationship between international relations and international law, particularly in respect of the way the sovereignty game works in territorial disputes.

2.3 A Constructivist Theory of International Law

Christian Reus-Smit has been at the forefront of a novel constructivist approach to the relationship between international law and international politics, one which avoids the formalism of international legal accounts, on the one hand, without reducing law to an epiphenomenon of politics, on the other. Rather, he describes the relationship as “mutually constitutive” (2004: 14) in the sense that “politics has constituted the international legal system, but it is in turn transformed by that system” (2004: 36). An example of this (though not one Reus-Smit himself makes) is customary international law: since there is no world legislative system which can create universally-accepted international law, much of it is derived from customary state practice, and hence becomes customary international law. Phillip Allott describes this kind of law as arising “out of the ideal and real self-constituting of society as a particular kind of residue of the past” which is the product of “a dialectic of

⁵³ And sometimes by states who do not – and these states face sanctions for the breach of the international law (e.g. Iraq’s invasion of Kuwait).

practice” (2000: 76). An example of this kind of law is diplomatic immunity, which has developed historically through a dialectic combination of practice and legislation.

Reus-Smit’s argument is that law, therefore, is not simply constraining, but it is also constitutive; states have created a ‘legal realm’ which is understood by actors as having an independent existence. It therefore matters to these actors “whether a problem or issue is defined as political or legal” (2004: 38). Legal problems are conceived as being of a different nature than political ones, and once the definition is made, “the narrowly defined politics of power and self-interest is delegitimised and communicative action is empowered” (2004: 38).

As he puts it:

The discourse of politics is now replete with the language of law and legitimacy as much as *realpolitik*, lawyers are as central to military campaigns as strategists, legal right is as much a power resource as guns and money, and juridical sovereignty, grounded in the legal norms of sovereignty, is becoming a key determinant of state power.

(Reus-Smit, 2004: 2)

In other words, a state will frame its claims in the language of law, in order to associate its “interests and strategies with the norms of international society, conscripting the power of social opinion to one’s cause” (2004: 38). Since territorial sovereignty is fundamental to the very existence of the state, states can thus be expected to engage in such behaviour in territorial disputes. Legal norms can be deployed to make and explain decisions, and to justify actions. Dino Kritsiotis takes up this idea and applies it to the international use of force: he argues that international legal argument has become a crucial feature in force,

deployment insofar as when “states use force against other states, they also *use* international law to define and defend, argue and counter argue, explain and rationalise their actions” (2004: 47, emphasis in original). In this sense, international law is much more than a set of rules; rather, it is a “discursive exercise, in which states are able to make, address, and assess justifications”. Reus-Smit sums up the argument by suggesting that this framework “helps us to see how the modern liberal politics has conditioned the institution of international law, and how the distinctive features of that institution shape politics in distinctive ways” (2004: 44).

This approach opens up a new and exciting space for thinking about the relationship between law and politics by recognising that, once defined as within the ‘legal realm’, the nature of international issues, and how they can be dealt with, is changed. Having said this, though, Reus-Smit’s case for the power of international law seems to be somewhat overstated. There are certainly occasions when an issue moving into the legal realm transforms its very nature, and the range of options for state action is altered, or at least the likelihood of certain actions is reduced. International trade law, for example, makes it less likely that a state will respond to a recession by attempting to boost domestic production through tariffs. However, as we saw with the imposition of steel tariffs by the US in 2002, it does not make it impossible.⁵⁴ In the realm of power politics, again law plays a role, and the delegitimation of the invasion of Iraq by the UK and the US cost both states diplomatically, but it did not prevent the war from taking place, and, as has subsequently become clear, the arguments and justifications – Reus-Smit’s ‘communicative action’ – which were put forward ultimately simply obfuscated the brute facts of power politics. As Watts eloquently puts it, “if politics is the art of the possible, then international law is merely the art of the plausible” (2008: 8).

⁵⁴ Although it is interesting that the tariffs did not last very long – in fact, international trade law does seem to favour those who have the stronger legal resources, as Reus-Smit suggests.

Another issue with the framework is the way in which Reus-Smit deals with legitimacy and fairness: his conception of the legitimacy of international law as being anterior to any state's individual conception of the fairness or legitimacy of particular aspects of it (2004: 42-3) does not actually help us in understanding to why states have problems with both the fairness and legitimacy of international law, and why some states (e.g. North Korea) seem to reject the concept of international law altogether. By stating that "the constitutional structure of international society . . . [is] the bedrock of international legitimacy" (2004: 43), Reus-Smit runs the risk of overlooking the fact that states can and do both simultaneously accept and reject the legitimacy of international law and international society, as can be argued in the case of both the United States under the George W. Bush administration and China under Mao.⁵⁵ This approach, then, offers us no more than an uncontested conception of international law – law that is, which the author fails to problematise. Customary international law is, as we have seen, "a kind of residue of the past" – a past in which great powers dominated and decimated peoples in every corner of the globe. Thus, the state practice which gave rise to customary international law was hardly 'liberal' in the sense that Reus-Smit uses the term – in fact, 'liberalism' in the history of international law is for many a deeply tainted term, used as a justification for war and oppression, particularly of the weak. Customary international law is not the only source of law which has its genesis in this period of high power politics: as we shall see later in this section, the law governing territorial disputes crystallised during the period when 'might was right'. This creates major problems of legitimacy for international law, problems which run to the heart not only of Japan's territorial disputes, but to disputes globally.

⁵⁵ Indeed the logic of pure realism leads to the conclusion that, as soon as China feels that it can overturn the international society, it will (see for example the work of John Mearsheimer, 2001).

Bearing these caveats in mind, Reus-Smit's work does nevertheless open up a new way of looking at the relationship between international law and international politics, providing us with an approach which recognises that the law can and does condition and constitute politics, and an approach which is new and promising. Territorial disputes are ideal candidates for analysis using this approach as they are neither defined as entirely legal nor entirely political. Rather, the territorial dispute enters the legal realm described by Reus-Smit above, in which the mutually constitutive relationship between law and politics generates options for states which are not necessarily 'legal' but which are perceived to be derived from the law, and which thus carry weight within this legal realm.

So what is this 'legal realm' of territorial disputes, and what is the range of options open to the states involved? We must begin with the assumption that the ultimate goal of a state in a territorial dispute is to acquire complete and total undisputed sovereignty and control over that territory. Of course, ulterior motives may linger, as for example, the continuation of the dispute may serve certain domestic actors' purposes. In other cases, a state may realise the impossibility of ever gaining complete sovereignty over the entire territory but nevertheless claim it in the hope of gaining sovereignty over some of it, or because of the effect of withdrawing the claim on other territorial disputes (these possibilities are taken account of in the approach this dissertation employs, see 'value of the territory', this chapter, Section 2.8); but, fundamentally, a territorial dispute cannot exist unless two or more states disagree over sovereignty over a given territory.

Acquiring sovereignty over the territory is not the same as occupying it. Rather, it is acquiring the ability to exercise sovereignty over the territory – a key difference elaborated in the coming pages. From this perspective, then, the exercise of sovereignty becomes the

crucial issue; and, of course, the very nature of a territorial dispute means that sovereignty is contested. Extending the logic of this statement, we can go two steps further: (a) each state in a dispute seeks to exercise sovereignty over the disputed territory, and (b) each state seeks to prevent the opposing state(s) in the dispute from exercising sovereignty over the territory. Therefore, in a territorial dispute, states enter what this dissertation calls the ‘sovereignty game’, in which both sides employ various resources and techniques in order to exercise sovereignty over the disputed territory and/or prevent the other state(s) from doing the same. However, before expanding upon the dynamics of the sovereignty game – the rules of the game, the techniques and resources which states utilise, as well the motivations for doing so – we must first understand the nature of sovereignty itself, since acquiring sovereignty is the very basis of the sovereignty game.

2.4 What is Sovereignty?

2.4.1 Wendt and the Social Construction of Sovereignty

The basic assumption of the approach to sovereignty adopted in this dissertation is this: sovereignty is socially constructed. In order to understand the socially constructed nature of sovereignty, it is instructive to return to Wendt’s analysis of the social construction of anarchy. As we saw, he asserts that self-help is not an objective fact of anarchy but rather an institution. The modern concept of sovereignty, too, is an institution; it provides the “social basis for the individuality and security of states” (Wendt, 1992: 412); in other words, it is the “*grundnorm* of international society” (Reus-Smit, 2001: 519). We saw that, in the Hobbesian state of nature, there is no sovereignty, and no understanding between states of each other’s

right to exist. Sovereignty requires states to recognise each others as such, to recognise each other's authority within given territorial boundaries. Indeed, the institution of sovereignty is self-perpetuating, as every state's interest is in its preservation; when a state violates another state's sovereignty this is also perceived as a violation of the concept of sovereignty itself, and thus is viewed as a threat to all states. This highlights the crucial role of sovereign states and sovereignty in international law: as Marcel Brus puts it, "international law as we know it today has been developed on the basis of this notion [of state sovereignty]" (2002: 3). But before assessing the relationship between sovereignty and international law, we must first understand sovereignty and international relations.

2.4.2 Understanding Sovereignty

Wendt's explanation of the social construction of sovereignty provides us with the basis for a deeper exploration of sovereignty in contemporary international relations. It is clear from our earlier discussion that sovereignty is based on mutual recognition, but what is sovereignty in and of itself? Defining sovereignty is a difficult task; Ruggie defines it as "the institutionalisation of public authority within mutually exclusive jurisdictional domains" (1986: 143), while Janice Thomson attempts to give us a working definition: "sovereignty is the recognition by internal and external actors that the state has the exclusive authority to intervene coercively in activities within its territory" (1995: 219). Alan James says that "sovereignty is what makes a territorial entity *eligible* to participate in international relations", and that ultimately sovereignty is a dynamic phenomenon which reflects state practice: "sovereignty is a product of an intersubjective consensus among state leaders" (1986: 92 emphasis in original).

The dynamic nature of sovereignty has been documented (see Jennings, 2002; Thomson, 1995; Reus-Smit, 2003). So, in the clear absence of a constant conception of sovereignty, we need not struggle beyond the remit of this dissertation to arrive at a final determinative definition of sovereignty. Rather, the purpose of this section is to provide an understanding of sovereignty, to demonstrate that sovereignty is under constant negotiation, and to demonstrate how sovereignty ultimately is a context-specific concept. Most definitions and descriptions of sovereignty emphasise the role of recognition – as Thomson says, “sovereignty is not an attribute of the state but is attributed to the state by other states” (1995: 219). Recognition provides legitimacy, and legitimacy means that other states will act to confirm the actions of the sovereign state over its recognised sovereign territory. But, as Thomson herself admits, this is a problematic aspect of sovereignty; on the one hand, sovereignty is derived from the recognition of other states; but, on the other hand, states can exert sovereignty without the recognition of other states. She uses the example of the control the Soviet Union enjoyed over the Baltic for the best part of fifty years: the lack of recognition had no effect in practice as the USSR “had the physical capacity to make good on its claims to sovereignty despite other states’ refusal to recognise it” (1995: 220).⁵⁶

Inis Claude (1966: 367) recognises this important point, suggesting how legitimacy requires that “power be converted into authority ... and possession be validated as ownership”. Thus, sovereignty has two aspects: recognition – which provides legitimacy – and authority.⁵⁷

⁵⁶ Another interesting example of a state existing for decades in the absence of the recognition of a majority of states is Taiwan. Even though Taiwan does not enjoy international recognition, informal recognition by (and support from) the most powerful state in the world has enabled it to continue its existence despite its larger neighbour claiming it as inherent Chinese territory.

⁵⁷ The example of the USSR above is an example of authority without recognition, but perhaps more common in contemporary international relations is recognition without authority. There exist a large number of so-called ‘failed states’ which, while recognised as

In terms of territorial disputes, these two aspects are crucial. Authority is the ability to actually exercise sovereignty over the territory, or to prevent another state from doing so. Recognition and Authority are two key aspects of how sovereignty comes into existence, but one final requirement for sovereignty exists, which has already been adumbrated, and that is territoriality. As Thomson puts it, “with sovereignty, states mutually recognise exclusive authority over what is contained in that [bordered] space” (1995: 227). The role of territory in providing for sovereignty is obvious, and yet needs to be expanded further. The concept of sovereignty is inextricably linked to “the rediscovery of Roman private property law in the sixteenth century” (Holland, 2010: 450). Under feudalism, territory was the subject of overlapping claims and hierarchies of titles; more than this, the title to a piece of land did not give the owner exclusive rights, as for example peasants enjoyed the right to collect firewood (2010: 452). But, as Ben Holland explains, through an understanding of sovereignty which sprung from Roman private property, “it was decided that ultimate authority would be exercised in mutually exclusive areas” (2010: 453). After this understanding of territory came into existence, it has historically been treated as property which can be bought, sold and bartered.⁵⁸ On the other hand, the national homeland of a nation-state has become sacrosanct, and the cause of countless wars.⁵⁹

the sovereign authority in their own territory, do not have the ability to exercise this sovereignty.

⁵⁸ For example the famous Louisiana Purchase where France – under no external duress or compulsion – sold a vast swathe of continental North America to the United States at the beginning of the 19th Century.

⁵⁹ See Smith (1991) later in this chapter.

2.4.3 Summary

This section has demonstrated the socially-constructed nature of sovereignty through its three key aspects: recognition, authority and territoriality. The relationship between the modern concept of sovereignty and international relations should now be clear; before we move on, though, let us turn to the relationship between sovereignty and international law. International law exists because it is created by sovereign states; the rules of international law, be it economic cooperation or diplomatic and consular relations “have a reciprocal state interest as their rationale”, and the concept of state sovereignty, “in the sense of *summa potestas*, was the largely undisputed basis for this” (Brus, 2002: 4). Not only does the sovereign state create the law, but it also enforces it (Jennings, 2002: 35). International law, then, much like sovereignty, is a social construct – the rules of international law which make up the sovereignty game of territorial disputes are rules which were made by the states themselves, and which they have “a reciprocal state interest” in observing. So before we turn to the mechanics of the sovereignty game, we must first know what these rules are – the next section outlines the relevant international law of territorial disputes, focusing on disputed island territories in particular.

2.5 The International Law of Territorial Disputes

2.5.1 The Acquisition of Territory under International Law

There are five modes of acquisition through which a state may take possession of additional territory, and these modes – like the modern concept of sovereignty itself – are based upon

the Roman law of property: *terra nullius*, prescription, cession, accretion and conquest (Shaw, 2003: 417). Accretion – the acquisition of territory newly formed by geographical processes – is not relevant to this dissertation. The other four modes can, for the current purposes, be divided into two groups: *terra nullius* and prescription; cession and conquest. Cession is the peaceful transfer of territory from one state to another, often by sale, exchange or by treaty following a war (Shaw, 2003: 420-2). Conquest involves the transfer of territory by force; however, it is considered legally illegitimate unless the annexing state takes action after the conflict “in the form of either a treaty of cession by the former sovereign or of international recognition” (2003: 424). The legality of cession and conquest is, then, determined by recognition – which as we saw is also a key element of state sovereignty – and/or treaties. Recognition can legitimise the acquisition of territory, even when that territory is acquired through violent means – of course, this raises difficulties which are outlined later in this chapter: the power of recognition depends upon who does the recognising. Treaties, too, are not as straight-forward as they might seem, as is explained below in the discussion of the legal principles governing disputed island territories.

But, before we move to those legal principles, there is first the matter of the other group: *terra nullius* and prescription. Like conquest and cession, the two are related: *terra nullius* involves occupying land over which there is no sovereign, though as the discussion below explains, it is not always clear whether a territory is in fact *terra nullius* or not. Prescription takes place when a state occupies a territory which was already under the sovereignty of another state; Shaw describes it as “the legitimisation of a doubtful title by the passage of time and the presumed acquiescence of the former sovereign” (2003: 426). These modes of acquisition are further explained in the next section.

2.5.2 The Jurisprudence of Territorial Dispute Resolution

The modes of acquisition outlined above can all be legal: it is the process and principles which determine whether their usage is legal and legitimate or not. There are countless justifications which states have made for their claims to territory, from contiguity to historical title, and Thomas Franck speaks to a timeless truth when he points out that, “for every principle, there is a countervailing one” (1983: 122). While historical claims are the most common, the jurisprudence of the arbitration of territorial disputes has established a hierarchy of principles which have been called upon in a consistent manner. The two key principles relevant here are treaties and effective control; there are other powerful legal principles, such as *uti possidetis*, but such principles are not relevant to the kind of disputed island territories which are under analysis in this dissertation.⁶⁰

Treaties and agreements represent the most straightforward and legalistic of all the justifications for territorial claims, and can also inform several of the other justifications. Treaties are similar to private contracts, in that they create legal rights and duties, and as such are binding on the signatories (Sumner, 2004: 1783). Article 26 of the Vienna Convention on the Law of Treaties (which codifies previous customary law on treaties) states that “every treaty in force is binding upon the parties to it and must be performed by them in good faith” (Part 3, Article 26). Thus, claims on territory which are based on valid treaties have the firm backing of international law. In fact, in a review of International Court of Justice (ICJ) jurisprudence by Sumner, treaties are ranked as the primary deciding factor in the resolution

⁶⁰ *Uti possidetis* is Latin for ‘as you possess’, and is the legal principle that sovereign states emerging from previous administrative regions should maintain their original borders. Its effects are most easily visible in Africa, where the former colonies became sovereign states based not on self-determination or ethnicity, but on the administrative boundaries the colonial powers had imposed.

of territorial disputes – where there is an extant treaty, the agreement it makes is upheld (Sumner, 2004: 1808). Thus, those states that can show evidence of a treaty which assigns the disputed territory to them have the strongest claim to the territory, following not only customary law but international conventions. However, treaties may be defective, disputed, or may not have been signed by the current parties.⁶¹ In these cases, and in the multitude of others where no defining treaty exists, the states involved can make claims based on other justifications – but as stated above, there is only one other key principle: effective control.

The *Island of Palmas Case* is considered to be the seminal case in dealing with island disputes (Shaw, 2003; Sumner, 2004). It involves a small island, located between the Philippines and the Former Dutch East Indies, which was disputed by the US and the Netherlands. The US claimed that Spain had title of the island, through its ‘discovery’ in 1648, which it then ceded to the US following its defeat in the Spanish-American war (Jessup, 1928).⁶² The Dutch claim was based on the fact that neither Spain nor the US ever occupied that island, whereas the Netherlands had effectively occupied it through an exercise of sovereignty, which in this case was the taxation of the ‘natives’. Both sides agreed to take the case to the Permanent Court of Arbitration (PCA), and Phillip Jessup summarises Judge Huber’s position on the island as being that “even if inchoate title persisted, it could not prevail over the continuous and peaceful display of authority by another state” (1928: 739). In other words, the case set the legal precedent that effective occupation – *based upon the exercise of sovereignty* – trumps historical title. Thus, Judge Huber awarded the island to the

⁶¹ For example, cases when colonial powers signed treaties dividing colonies between themselves, or where a state signed a treaty under duress or occupation.

⁶² The island was in fact inhabited when it was ‘discovered’, hence the *quotation marks*

Netherlands, since this was the country which exercised control over the island by collecting taxes from the ‘natives’ (Jessup, 1928: 746).⁶³

While the *Island of Palmas Case* set down the precedent of effective control as a principle of international law governing island disputes, there were two subsequent cases which refined the law, and are of relevance to the later case studies. The first is the *Clipperton Island Case*, concerning a small uninhabited island in the Pacific Ocean which was disputed by France and Mexico (Dickinson, 1933). The judge followed the *Island of Palmas* precedent, ruling in favour of France as it had a stronger claim of effective control. The ruling had two effects: first, it substantially lowered the bar for a claim of effective control – continuous occupation of an island is not always necessary – rather, the effective occupation “which is required is such occupation as is appropriate and possible under the circumstances” (Dickinson, 1933: 133). Second, it demonstrated the importance of timely protest: a state must protest another state’s incorporation of what it considers to be its territory within a reasonable time period.

The *Gulf of Fonseca Case* clarified the importance of a timely and meaningful protest even further (Rottem, 1993). Contested between Honduras, Nicaragua and El Salvador, the judge at the ICJ awarded each island based on the conduct of the parties since they gained independence, and the effective control of each island and acquiescence in this effective control.⁶⁴ Without timely, meaningful protest, a state loses its claim to a disputed

⁶³ *Terra nullius* did not necessarily mean that nobody lived on the land, simply that no-one deemed to be white or European enough lived on the land. Palmas had a population of about 750 ‘natives’, none of whom were consulted during the arbitration as to what they thought of the situation.

⁶⁴ Acquiescence occurs when a state vaguely protests but does not follow up the protest, or when a state does follow up the protest but does so too late, see Shaw (2003: 436). For a more detailed discussion of the judge’s awards, see Rottem (1993: 622).

territory. The International Court in the *Gulf of Maine Case* defined acquiescence as “equivalent to tacit recognition manifested by unilateral conduct which the other party may interpret as consent” (ICJ reports, 1984: 265, 305 cited in Shaw 2003: 84)⁶⁵ As Shaw explains, this means that “where states are seen to acquiesce in the behaviour of other states without protesting against them, the assumption must be that such behaviour is accepted as legitimate” (2003: 84-5). Acquiescence, protest, recognition and legitimacy, then, are the key concepts in territorial disputes; and not only are they crucial in the international law of territorial disputes, but they help constitute the politics of these disputes – the sovereignty game.

The final case of interest here is the *Pedra Branca/Pulau Batu Puteh Case* between Singapore and Malaysia over sovereignty of a rocky island and other smaller maritime features in the Straits of Malacca. On the one hand, the case raises questions about the validity of incorporating territory under the principle of *terra nullius* where there exist historical claims.⁶⁶ The ICJ denied Singapore’s argument of *terra nullius* incorporation on the basis that while uninhabited, the main rocky island was a part of the Johor Sultanate (part of modern day Malaysia) due to their being well-known as a navigational hazard in the Straits of Malacca.⁶⁷ On the other hand, the case reinforced the importance of “timely protest” and acted to underscore the role of effective control in contemporary dispute resolution: despite the denial of the claim of occupation based on *terra nullius*, the court found that Malaysia had failed to react to Singapore’s effective display of sovereignty (primarily maintaining a

⁶⁵ The *Gulf of Maine Case* was an ICJ arbitration involving the US and Canada following unsuccessful attempts to delimit their east coast maritime border.

⁶⁶ There are several other important cases which have helped refine the jurisprudence of disputed island territories, but given the spatial constraints of the dissertation it is impossible to outline them all.

⁶⁷ Technically some parts of the Johor Sultanate are also part of modern Indonesia, but for the purposes of the court any title the Johor Sultanate may have had was passed on to Malaysia.

lighthouse which had been constructed during the colonial era) in a timely manner – it had acquiesced – and so sovereignty had passed to Singapore.⁶⁸

While effective occupation – in effect the exercise of sovereignty – does provide a state with grounds for a legitimate legal claim, it is important to note that not all exercises of sovereignty at all historical times are considered by a court. The concept of critical date prevents this. Anthony Aust describes the critical date as “the date by which the rights of the parties to a territorial dispute have so crystallised that what they do afterwards does not effect the legal position” (Aust, 2005: 35). What this means is that, from a legal perspective, exercises of sovereignty post-dispute emergence are not legally relevant.⁶⁹ There is one other aspect of the law which relates to time: the intertemporal rule, which requires that the law of the time in which the acts occurred must be applied, rather than applying current international law retrospectively (2005: 35).

2.5.3 The United Nations Convention on the Law of the Sea

The United Nations Convention on the Law of the Sea (UNCLOS) was developed in the latter half of the 20th century, primarily in response to the desire of states to extend their control over adjacent seas and seabeds. Previously, territorial waters had been limited to three nautical miles (NM), which was the distance which cannon fire on land could reach. The treaty provides for several different zones stretching from the baseline (low-water line)

⁶⁸ It is worth noting that the main rocky island – the Pedra Branca of the case title – went to Singapore, but some other smaller features on which Singapore could not show any exercise of sovereignty were assigned to Malaysia.

⁶⁹ As long of course as the states maintain their claims post-emergence – the challenger must continue to protest.

of the coast out to a maximum of 350NM into the ocean. The zone closest to the shore, the territorial waters, extends 12NM from the baseline; the state enjoys full sovereignty over its territorial waters, though it must allow the right of innocent passage.⁷⁰ Beyond the territorial waters lies the exclusive economic zone (EEZ), which, according to the UNCLOS Articles 56 and 57, can extend up to 200NM from the coastal baseline, granting a state sovereignty over the water column and any undersea mining rights as well as jurisdiction over marine scientific research. Depending on what lies beneath the seabed, then, the EEZ may be far more valuable than whatever continental land or islands generate it. Beyond even the EEZ again, states may claim a continental shelf – where it exists – which may stretch up to 350NM from the coastal baseline or until the natural prolongation of the shelf ends, whichever is shorter. Like the EEZ, states have mining rights on the continental shelf, but where the continental shelf differs is that it does not include rights to organisms in the water column – i.e. it does not include fishing rights. Finally, while islands may be used to generate territorial waters, EEZs and continental shelves, Article 121.3 of UNCLOS states that “rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf”.

2.6 The Sovereignty Game

The preceding section included an outline of the jurisprudence of disputed island territories as developed through precedential decisions made by various international courts. However, the jurisdiction of these courts is limited to states which agree to take a case to either institution. In other words, as realists have been pointing out for decades, there is no over-arching power

⁷⁰ Innocent passage means transit, but excludes spying, fishing and weapons practice among other activities (UNCLOS, 1981, Article 19).

which compels states to follow the law, or in this case to submit a dispute for resolution to either of the courts. The courts do not have universal jurisdiction nor will they in the foreseeable future. Therefore, if the states (or even one of the states) involved in a given dispute refuse to take the case to court, does this not render the role of international law null and void? The answer is ‘no’, for two reasons. The first is that in recent years the number of cases referred to the courts has increased quite dramatically (Milano, 2004: 1; Permanent Court of Arbitration Annual Report, 2006). This means that more and more states are recognising the legitimacy and usefulness of these courts as means of resolving territorial disputes, and therefore we can infer that more cases are likely to be resolved presuming this upward trend continues.

The second and far more important reason from the perspective of this dissertation is that international law shapes the politics of territorial disputes, even where states have no plans to take the disputes to arbitration in the foreseeable future – and even when the concept of critical date prevents their actions from contributing to their legal claim. As we have seen, sovereignty is the fundamental concept underlying both international relations *and* international law. The ‘legal realm’ is the space states have created which alters the nature of issues, legitimises and delegitimises certain behaviours, and constitutes the range of options open to states – it is the *nexus* between politics and law. The ‘legal realm’ of territorial disputes is the sovereignty game. The sovereignty game itself concerns the attempts of states to attain complete and undisputed sovereignty over a disputed territory through the exercise of sovereignty over the territory. So how does the sovereignty game work?

2.6.1 The Acquisition of Territory by Force

Conquest, invasion, the acquisition of territory by force: this aspect of the sovereignty game dealt with here is perhaps the most important, because its realisation has the potential to undermine the entire edifice of international law by rendering its role in international politics at least irrelevant, if not null and void. To begin with, let us return to Wendt, who asks, “What keeps the United States from conquering the Bahamas, or Nigeria from seizing Togo, or Australia from occupying Vanuatu?” (1992: 415). The question has several possible answers, but perhaps the most fundamental of all is that of the mutual recognition of these countries as sovereign states – after all, sovereignty involves the mutual recognition of exclusive authority within the agreed territorial area. Of course, sometimes states *do* violate other state’s sovereignty: they spy, intervene, foment and undertake other sorts of activities which work to undermine a state’s exclusive sovereignty. But they do not undermine the concept of *sovereignty* per se: the fate of Hitler’s Germany and Napoleon’s France demonstrate what happens to states which reject the (formal) equality of sovereign states in favour of universalism. Thucydides’ aforementioned Melian Dialogue tells the story of the interaction between two ancient Greek states, Melos and Athens; the fate of Melos serves to reinforce the importance of the modern concept of sovereignty in preventing the acquisition of territory by force. Despite recognising Melia as a Greek state, Athens did not recognise its sovereign right to exist – because there was no such concept of sovereignty – and so, when it refused to submit to Athens and become a tributary ally, Athens extinguished the state.⁷¹ States may today have quarrels with their neighbours over territory, ethnic groups, and so on,

⁷¹ To be precise, all Melian men were killed and the island repopulated with Athenian settlers.

but even when these quarrels turn violent, “they are played out within the terms of the sovereignty game” (Wendt, 1992: 415).⁷²

A more recent example of the importance of the concept of sovereignty to sovereign states – and one which features a disputed island territory – comes from the almost unanimous international backing of the British response to the Argentinean invasion of the Falkland Islands in 1982. While the conventional wisdom holds that Argentina occupied the islands in order to divert the public’s attention from domestic problems (as in diversionary war theory), the reason behind the UK’s decision to fight is less clear-cut – after all, it cost the lives of 150 British soldiers (and over one thousand Argentines), billions of British pounds, and nothing more was at stake than a few kelp farmers in the South Atlantic, right?⁷³ Franck argues that “to study the rallying of Britons to the war is to confront the dynamic power of legal principles to mobilise the polity ... [for] war on behalf of abstract principle” (1983: 110).⁷⁴ Only Panama voted against UN resolution 502, calling on Argentina to withdraw immediately from the islands, and even within the ‘third world’ – or non-aligned – states, few openly supported Argentina (with most, including a majority of its neighbours) criticising its actions (1983: 114). Due to Britain’s often brutal colonial history, attitudes towards the former imperial power among states with colonial pasts are frequently unfavourable; yet most states refrained from taking Argentina’s side, an action which in most other disputes would have been automatic and unconscious. In fact, many of the states which

⁷² Wendt’s use of the “sovereignty game” is far broader than the one offered here. However, ultimately his conception operates under the same basic assumption as the current one: that states respect one another’s sovereignty since violation of the principle of sovereignty is a threat to all states.

⁷³ The possibility of oil influencing territorial island disputes is never far away, but in this case at least, oil does not seem to have played a role (see Franck, 1983: 110).

⁷⁴ The fact that nothing rouses patriotic fervour, and improves approval ratings, like a short, successful foreign war against a tyrannous foe probably did not hinder the Thatcher administration’s decision to use the military to reoccupy the islands.

abstained or voted for the resolution actually supported Argentina's claim. The reason for this is that, even if sceptical of the British motivations for war, the international community, "ignoring strategic, geographic, ethnic, social, and economic factors ... reacted to the crisis by asking, 'What precedential effect would an Argentine victory have on us?'" (Franck, 1983: 109).

Franck recognised that legal principles "that are regularly implemented over a long period tend to make certain conduct 'unthinkable'" (1983: 122), and that if a legal principle is not cared for, not defended, then it loses its 'unthinkability' – as he quips using a homely metaphor, "restoring its unthinkability is rather like putting toothpaste back in a tube" (1983: 123). The absence of substantial armed conflict over disputed islands territories⁷⁵ shows that the British actions over the Falklands, and the accompanying international response, reinforced the legal principle – which has become a norm of international relations in the post-World War II period (see Fazal, 2007) – prohibiting the conquest of territory. So what does this all mean for the sovereignty game? Well, even though it remains rare in contemporary international relations, states *do* still use force to occupy territory.⁷⁶ Thus, despite the unthinkability of it, the acquisition of territory by force as an option for states in a territorial dispute cannot be fully discounted. The reaction to the Falklands Islands invasion is instructive, and takes us back to the preceding discussion of the modes of acquisition of territory: the conquest must be legitimised. That is to say, the state may have power and authority to implement the conquest, but without recognition by the rest of world, in particular the great and regional powers, the sovereignty is incomplete: in the example of the

⁷⁵ Contrasted with existential wars such those which took place in the Balkans in the 1990s.

⁷⁶ For instance China in 1988 occupied features in the Spratly Islands claimed by Vietnam. The battle resulted the death of soldiers on both sides.

Soviet Union in the Baltic, discussed earlier, in the long-term the state lost sovereignty over the conquered territory which was never internationally recognised.⁷⁷

2.6.2 International Recognition

International recognition, as we have seen, is the foundation of the sovereign state in both politics and law, and in a territorial dispute, just as in the case of the existence of a state, recognition matters. But despite the sovereign equality of states in the eyes of the law, in political practice sovereignty does not come from just any recognition: it is great and regional powers who determine whether a state is a sovereign state or not, as well as who enjoys the legitimate sovereignty over a disputed territory. Czechoslovakia learnt this lesson the hard way in 1938 when Italy, France and the UK agreed that the Sudetenland – the Czechoslovakian territory bordering Germany which had an ethnically German majority – be ceded to Germany. It mattered little what any other states thought of the situation, since the major players presented Czechoslovakia with little choice. A more recent example is that of Kosovo. It became a member of the world of states in 2008 when it declared independence; it is recognised (as of November 2011) by 85 states, including all the major E.U. states (except Spain) and all of its bordering countries except Serbia. Russia, China, and a further 105 U.N. member states do not recognise it. It remains only partially-recognised, then, but yet it exists because those states that recognise it are great and regional powers.⁷⁸

⁷⁷ In contrast, the Soviet Union's occupation of Königsberg was legitimised, and remains today the undisputed Russian oblast of Kaliningrad.

⁷⁸ If none of the states which border Kosovo recognised it, and neither did any of the world's politically, militarily or economically powerful states – if the 85 states which recognise it all came from Oceania, Africa and central Asia – we may conclude that Kosovo would not exist, in legal *or* political form.

So what is the role of international recognition in the sovereignty game? To begin with, recognition clearly matters: without international recognition of sovereignty over a given territory, the sovereignty remains incomplete. Thus gaining international recognition of a sovereignty claim over a territory is an important part of the sovereignty game. Yet, as we saw, recognition is only one constituent of sovereignty; the second is authority, or, in the case of disputed territories, perhaps better referred to as actual direct control. Enjoying the recognition of a sovereignty claim by the majority of states does not actually mean that the state enjoys full sovereignty over the disputed territory. Indeed, if the territory has been occupied by another state for a long period of time, the international community may even gradually come to accept the *fait accompli* of the occupation, even if originally the occupation was unrecognised.

That is not to say that international recognition is worthless – far from it – rather, the implications of the lack of recognition can be difficult to ascertain and are *context dependent*. In some cases, it can result in military intervention (Kuwait), or boycotts (Israel), or, in others, states simply take no position regarding the sovereignty of the territory, and avoid any actions which recognise the sovereignty of any state. This lack of recognition can cause problems for the occupying state; even those states which do not take a position on sovereignty may be hesitant to cooperate with the occupying state in any actions which could be seen as an act of recognition of sovereignty such as the joint exploration of resources on the territory or investment in projects or businesses related to the territory. Similarly, the lack of international recognition and disputed nature of the territory may also make private actors reluctant to engage in economic activities related to the territory. In the final analysis, as the discussion of sovereignty in the previous section showed, all sovereign states recognise the fundamental value of sovereignty, their own sovereign existence as states, and their territorial

sovereignty. The lack of international recognition makes that sovereignty incomplete, and so even if the immediate material costs of that incomplete sovereignty are not apparent, this does not diminish the state's desire for complete sovereignty – international recognition by those states that matter – over all of its claimed sovereign territory.

2.6.3 Authority: The Effective Exercise of Sovereignty

We have seen that recognition of sovereignty is important, but it only represents one aspect of sovereignty, and even if a state enjoys international recognition of its sovereignty over a territory, this does not mean that it enjoys the actual direct application of this sovereignty. This leads us to the other half of sovereignty: authority. The ability to exercise authority over a disputed territory is basically the ability to exercise sovereignty over it. The exercise of sovereignty forms the basis of the legal principle of effective control, which – in the absence of an authoritative treaty – is the primary principle in the jurisprudence of international law. Furthermore, obviously in the absence of arbitration, exercising sovereignty is exercising authority: it is in effect controlling the territory, even if the sovereignty remains legally incomplete.

Thus, a crucial part of the sovereignty game is the ability to exercise sovereignty over the disputed territory, as well as the corollary of this: the ability to prevent others from exercising sovereignty. But before going further into the ways in which states deploy the exercises of sovereignty – and their prevention – to further their position in the sovereignty game, we must first outline what an exercise of sovereignty actually is and do so specifically with an understanding of exercises of sovereignty over disputed island territories. The formal

legal definition of an exercise of sovereignty is narrower than the legal one – for example, in ICJ jurisprudence, maps cannot indicate territorial title unless they are attached to an official text which are expressions of the will of the state or states involved (Prescott and Triggs, 2008: 203). Yet, as has already been elucidated, the sovereignty game is constituted by both law and politics; therefore, states act in ways which are not strictly ‘legal’ but which are informed by law.

The exercises of sovereignty which are of interest to this dissertation are specifically those which relate to disputed island territories. They include any state actions which refer to the disputed territory, and can, depending on the context, be affected not only by the state in the traditional sense (that is to say, not only by the central government), but also by substate actors, which can include citizens, private groups and subnational governments.⁷⁹ Ultimately, an exercise of sovereignty in the sovereignty game takes place when both sides recognise it as such, and thus a simple test as to whether a state or other body’s action is an exercise of sovereignty or not is whether the other state lodges a protest in response. Obviously not all exercises of sovereignty carry the same weight. The extent to which an exercise of sovereignty makes a difference to the sovereignty game is itself part of the game, as discussed below, but first let us list some examples of exercises of sovereignty as related to this dissertation:

- Construction of state infrastructure on the disputed territory or within its EEZ
- Government statements proclaiming sovereignty over the disputed territory
- The exercise of criminal jurisdiction over the territory

⁷⁹ These exercises of sovereignty are substantially weaker in nature than direct state exercises.

- Conducting marine scientific research in the territory's adjacent waters⁸⁰

As we saw in the previous section, one of the ways an exercise of sovereignty can be recognised is the response to it: do the other claimants protest or acquiesce? In order to lodge a legal protest, a state merely has to lodge a formal protest. However, the extent of the political protest takes us to the critical issue of the effect of the exercise of sovereignty, and the ability of each state to exercise sovereignty and prevent the exercise of sovereignty by other claimant states; in other words, the relationship between the exercise of sovereignty, the protest or acquiescence, and the position of each state in the sovereignty game, as outlined below.

When a state attempts to exercise sovereignty over a territory, the first question which must be answered is: is this exercise of sovereignty a break in precedent or is it in keeping with the status quo of the sovereignty in the dispute? If the exercise of sovereignty falls within the existing status quo then this does not affect the sovereignty status and thus there is no requirement for any major protest (unless the other state wishes to use this opportunity to alter or reverse the status quo, see below). If the exercise of sovereignty is unprecedented in the dispute – i.e. if the exercise does not fall within but instead alters the status quo – then the other state has two choices: protest or acquiesce. Protest in this instance is not legal protest, though it may include it – acquiescence can take place despite the state lodging a formal legal protest. Rather, a successful protest in the sovereignty game requires taking actions which cause the state attempting to exercise sovereignty to rescind its actions. This protest involves the use of one or more of the three types of capital discussed below:

⁸⁰ UNCLOS Article 56.1.b.ii gives the coastal state jurisdiction over marine scientific research in an EEZ. Hydrographic research, however, is a murkier issue, as is the difference between hydrographic research and marine scientific research, and is taken up in both Chapter Three and Chapter Four.

economic, military and diplomatic; examples include the threat or actual use of force, the recall of ambassadors, or the curtailment of economic ties. If the protest is not sufficient to prevent the exercise of sovereignty, the protesting state has acquiesced. This acquiescence creates a precedent, and once the precedent has been made it can become routinised, making it very difficult to reverse – more difficult than it would have been to protest and prevent the initial exercise of sovereignty itself.

In order to make this clearer let us take an example: State A controls a small island, State B also claims sovereignty over the island. The island is small and remote – State A has never constructed anything more than a small lighthouse on it. State A announces plans to build a base for its coastguard, including a port, buildings, and other necessary infrastructure. Such an exercise of sovereignty represents a change in the status quo of the territorial dispute: it would create the precedent that State A can construct state infrastructure on the disputed island. State B, recognising the threat to its position in the dispute, and valuing the disputed territory highly (see below, Section 2.8), decides to use its economic resources. State B threatens to break all economic ties with State A if it proceeds with the construction of the coastguard base. State A takes the threat seriously and reverses or delays the construction plans and so the status quo is preserved; indeed it is reinforced since State A reversed course in the face of the threat by State B, demonstrating the inability of State A to effectively exercise sovereignty over the territory it controls.

A second example can help to elucidate the complexity of the sovereignty game: in this case, a change in the position of both sides in the sovereignty game takes place. Once again State A controls the disputed territory and State B disputes sovereignty. State A begins

for the first time to conduct maritime scientific research in the waters around the islands.⁸¹ State B protests via formal diplomatic channels. State A reiterates that the disputed islands are part of its territory; therefore, the research is of no concern to State B. State B once again protests, threatening to withdraw its ambassador should the research go ahead. State A conducts the research, and State B withdraws its ambassador for a period of a week. The status quo is altered: despite State B's protests, State A exercised sovereignty in an unprecedented way. The ability of State A to exercise sovereignty over the territory has increased, though by at least withdrawing the ambassador State B has made it clear to State A that the repetition of such an exercise will provoke a consequential response. Still, State B's protest was *incommensurate*, that is, it was unable to prevent the exercise of sovereignty from going ahead; State B acquiesced in State A's exercise of sovereignty.

These two illustrative examples demonstrate how states seek to improve their position in the sovereignty game through attempting to exercise sovereignty or prevent such exercises. The examples referred to two other aspects of the sovereignty game which have not yet been addressed: the value of the territory to the state, and the resources which the state has at its disposal to play the sovereignty game. It is to these two final aspects of the sovereignty game this chapter now turns.

2.7 Resources: Capital

Capital in this dissertation is defined as the resources which a state can bring to bear on a dispute in order to (a) exercise sovereignty over the disputed territory, (b) prevent another

⁸¹ Maritime scientific research being subject to the jurisdiction of the state which enjoys sovereignty over the territory, see Chapter Three, Section 3.8.

state from exercising sovereignty over the disputed territory, and (c) acquire international recognition of its sovereignty over the disputed territory. There are three forms of capital which states can employ: diplomatic, economic and military. Diplomatic capital is basically the positive status a state has achieved among the other states in the world through various international actions and behaviour. Such diplomatic capital can be earned through something as simple as good behaviour: from not breaking the international rules and norms; through to supporting and/or funding various international initiatives, providing aid to other states, and so on. Diplomatic capital can also be based on emotion or symbolism: for example it can be acquired through enduring perceived injustices. It is important to note that diplomatic capital is both bilateral and collective: in the former respect, a state which participated in the so-called 'Coalition of the Willing' which invaded Iraq may enjoy diplomatic capital courtesy of the United States, but would have certainly lost diplomatic capital from other states who opposed the war. The latter refers to capital gained from the international community as a whole, for example, through participation in United Nations Peace-keeping Operations, economic contribution to multilateral organisations (regional or global), and so on.

Economic capital in this dissertation is similarly regarded as bilateral and has two dimensions: offering and withholding. A state may provide loans, grants, and other benefits to another state: in the sovereignty game, it may either offer these benefits, or where it already does provide them, it may threaten to or actually withhold such benefits. Such action may be used to enable an exercise of sovereignty, or to prevent the other state from implementing an exercise of sovereignty. A state may use broader bilateral economic relations in the sovereignty game: for example, it may refuse to trade with the other state

entirely or in certain areas, or it may threaten such action, again to enable or prevent exercises of sovereignty.

The final form of capital used in this dissertation is military capital. Military capital has three inter-related dimensions: capabilities, threats, and the use of force. A state may develop capabilities which can improve its potential ability to exercise sovereignty over the disputed territory. For example, a state which controls the disputed territory and has a relatively powerful navy or coastguard can better prevent the other state from engaging in a wide range of exercises of sovereignty, from policing the waters to ensure that no foreign vessels conduct research or other activities, to acting as a deterrent to any occupation of the actual territory itself. Where such activities have not yet taken place but are known to be in the planning stages (for example, when a state announces plans to undertake research in the disputed waters), a state may threaten the use of force should the activities go ahead. If such activities do go ahead, the state is then left with the option of allowing them, or actually deploying force. Finally, in very rare instances a state may also use force to implement an exercise of sovereignty: the use of force itself varies from the act of border guards firing on fishing trawlers which are ‘poaching’ in the disputed waters to the more serious use of military means to occupy or invade a disputed island.

2.8 Value of the Disputed Territory

Each case study in this dissertation includes a brief assessment of the value of the disputed islands to each state. Four kinds of value are assessed: economic, symbolic, precedential, and strategic. Though the measures are crude, a basic understanding of the value of the islands is

essential in order to shed light on the motivations for the states involved and helps to explain why the states use certain kinds of exercises of sovereignty, or work hard to prevent others, in each respective sovereignty game. For example, where the value of a disputed island territory lies in the hydrocarbon resources in the waters around the islands rather than the islands themselves, the states will be more likely to use exercises of sovereignty which strengthen their maritime position and less likely to use those which strengthen their position over the actual islands themselves. Alternatively, where the value is primarily symbolic, the state will focus on improving their position vis-à-vis the islands themselves. The remainder of this section provides the theoretical background to understanding how the territories generate these different kinds of values. In each case, the value of the territory is context-specific – for example, it may be of great symbolic value to one state but not to the other, or it may have plentiful oil which a state with no energy resources desperately wishes to exploit, while the other state may have abundant energy resources but be more interested in the disputed territorial water's fisheries.

2.8.1 Economic Value

We have seen that the 1982 UNCLOS provides a legal basis for states' claims of sovereignty over various aspects of the surrounding seas. This means that in addition to whatever the economic value of an island itself may be, sovereignty over the island enables a state to claim territorial waters, and EEZ and possibly a continental shelf. Of course, the reality is not so simple. We saw that Article 121.3 of UNCLOS prevented the possibility of rocks generating this kind of marine sovereignty: that is, rocks which "cannot sustain human habitation or economic life of their own". In order to ensure that its marine features did generate maritime

territory, a state in possession of such rocks might decide to artificially alter the territory to enable human habitation and an economic life of their own. According to the *travaux préparatoires* of UNCLOS such artificial alterations are permissible and rocks which have been altered in such a fashion are not Article 121.3 rocks (Charney, 1999: 867).

However, as Charney points out, in the jurisprudence of the resolution of maritime boundary disputes, even rocks which are excluded from Article 121.3 “may be discounted if their use would have an inequitable distorting effect in light of their size and location” (1999: 875). In addition, he shows that generally “islands are discounted; the smaller the feature, the more limited a role (if any) it will play in the delimitation” (1999: 876). In each of the three case studies, taken up in Chapters Three, Four, and Five, the states involved have overlapping claims to maritime territories: the coastal baselines (not including the disputed islands themselves) are less than 400NM apart. The problem is, of course, that not all maritime disputes go to arbitration, and as is outlined in the case studies, both China and South Korea have exempted themselves from the compulsory resolution procedures under Article 298 of UNCLOS. Once exempted from such procedures, the ability of the islands to generate an EEZ depends on the ability of the states involved to enforce one: this enforcement takes place under the rules of the sovereignty game. Apart from the economic value of the seas, the islands may have an intrinsic economic value such as guano deposits, minerals, arable land and other assets. Such economic assets are outlined in each respective case study.

2.8.2 Symbolic Value

As the critique of the symbolic aspect of the salience index used by some scholars involved in the large-N territoriality approach in the literature review in Chapter One makes clear, the symbolic value of a territory is very difficult to measure. It is far beyond the scope of this dissertation to propose a theoretically sophisticated manner of measuring such value, so instead a rather crude, imprecise but methodologically efficacious procedure is used, drawing on the concept of national homeland (Smith, 1991) and the process of entrenchment (Hassner, 2007). Smith argues that there are five fundamental features of national identity, the first of which is “historic territory” (1991: 14). Such historic territory is not merely physical land, but a “repository of historical memories and associations” (1991). The importance of this kind of territory cannot be underestimated; it provides much more than mere physical space – as Smith puts it, “we belong to it, as much as it belongs to us” (1991: 23). Of course, not all territories are part of a national homeland: sovereignty over Rockall, a remote rocky islet in the Northwestern Atlantic Island is disputed by Ireland, the UK and Denmark (on behalf of the Faroe Islands), but there is little sense that the tiny arctic island is part of the national homeland of any of the three states.

However, symbolic entrenchment – “the process by which disputes become increasingly resistant to resolution” (Hassner, 2007: 109) – highlights how territory which was once of little symbolic meaning can over time become “invested with nationalist, religious, ethnic or other emotional value” (2007: 113). Manifestations of symbolic entrenchment may include “the construction of religious or nationalist shrines and memorials ... the production of evidence that supports historical, religious, and ethnic links between the territory and the homeland ... (and the) destruction of evidence tying the territory

to the opponent's heritage" (2007: 167). Furthermore, education or propaganda may be used to cement the territory's place as intrinsic and sacred national soil (2007: 169). What all this means is that the disputed territory can be transformed over time, and integrated into the national homeland's identity. Thus, by combining the concepts of national homeland with the process of entrenchment and employing the existing research on the symbolic aspects of the disputes, this dissertation will offer an assessment of the changing symbolic value of the disputed islands and their influence on each dispute.

2.8.3 Precedential Value

Where states are involved in more than one territorial dispute, actions in one dispute may have an effect on one of the other disputes. From a legal perspective, if two disputes have very similar legal and historical bases and a state loses an arbitration or withdraws its claim to one of the territories its legal claim to the other maybe damaged, or may appear to be damaged. This is important even where there is little or no possibility of the other dispute going to arbitration, because the legitimacy of a state's claim is an important part of the sovereignty game, especially where recognition is concerned. For example, Canada and Denmark have for decades disputed the sovereignty of Hans Island, a tiny island located in the Nares Strait between Greenland and Ellesmere Island. The value of the island is negligible; it has no bearing on maritime territory demarcation and no history of human habitation. Yet, from 2002-5, the two states engaged in a 'flag war', where representatives of each state repeatedly landed and planted their respective state flag.⁸² Kenn Harper explains the logic of Canada's actions in the flag war by arguing that "losing its claim to Hans Island

⁸² The Danish minister for Greenland even flew in on a helicopter, planted a flag and left behind a bottle of Danish brandy! (Burkeman, 2008)

may set a precedent for challenge to the more important trans-oceanic passage through the heart of the High Arctic” (2005), a point which is particularly salient given that while Canada claims the Northwest Passage as its territorial sea, other states, most notably the US and Russia, consider the passage as international waters.⁸³ Thus, Canada’s motive in the dispute was to prevent the possibility that a legal precedent in a dispute with one country could legally disadvantage it in an otherwise unrelated dispute with an unrelated country.

The other aspect of the precedential value of a dispute is entirely political, and comes down to the reputation of a state. We saw in the last chapter that Walter shows how in internal territorial disputes (with would-be secessionist states) “governments actively choose to fight an early challenger in order to deter others from making similar demands” (2003: 138), and that she concludes that “the logic of the argument should apply equally well to territorial conflict between states” (2003: 149). Yet, Fravel’s (2008) comprehensive study of China’s behaviour in its many disputes contradict this hypothesis – despite being an authoritarian state with an often favourable balance of capabilities, China compromised on its borders over and over again. Thus the extent to which reputation matters in territorial disputes is unclear. However, from a sovereignty game perspective, we can say that to certain extent at least reputation is relevant to state behaviour. In the example of Hans Island above, Canada partook in the ‘flag wars’; this behaviour was unnecessary as a formal legal protest would have sufficed to demonstrate the maintenance of its claim in an arbitration. Rather, Canada was sending a message to other states that it was serious about its claims and that it would act politically to defend them. Of course, the context is very important, and will be laid out carefully in the case studies, but we can conclude that – to an extent – state

⁸³ The relevance of this is that the Northwest passage may become a viable – and lucrative – shipping route as global warming continues at its present rate (Burkeman, 2008).

behaviour in one dispute can be influenced by events in other disputes, and even by the mere existence of those disputes.

2.8.4 Strategic Value

The strategic value of a disputed island territory is highly context dependent. For example, ownership of Gibraltar – a peninsula rather than an island but none-the-less an illustrative case – once gave Britain control over access to the Mediterranean via the Atlantic, at a time when Europe saw shifting alliances and frequent wars. As recently as World War II the rock maintained strategic significance, but by 2002 the situation had changed dramatically enough that London agreed to share sovereignty with Spain – but the deal was rejected by the Gibraltarians themselves. Thus, we can say that the strategic value of a disputed island territory is generated by the nature of the relationship between the states which dispute them as well as any alliances, formal or informal, in which those states are involved. If the regional geopolitical configuration means that the islands *do* have strategic value, then of course geography matters in terms of their size and location. Each set of islands will be taken on a case by case basis in their respective chapters.

2.9 Summary

This chapter utilised a novel constructivist approach to the relationship between international and international politics to show how states in a territorial dispute are involved in a sovereignty game, seeking to exercise sovereignty over a disputed territory while

simultaneously *trying* to prevent other states from doing the same. Unlike realism or neoliberalism, constructivism allows for an understanding of the relationship between law and politics which goes beyond instrumental rationalism. Drawing on Reus-Smit's constructivist concept of the legal realm, the chapter shows how law and politics are in a mutually constitutive relationship; the legal realm changes the nature of political issues, legitimising certain behaviours and delegitimising others, ultimately constituting the range of options open to states. The legal realm of territorial disputes is the sovereignty game – it is through the sovereignty game that states attempt to acquire sovereignty over the disputed territory.

State sovereignty, as argued in this chapter, is not an objective fact but rather a social construct; we saw that it is based upon the mutual recognition by states of each other's exclusive authority within an agreed territorial area. This understanding provides us with the three key aspects of sovereignty: recognition, authority and territoriality. In the sovereignty game, in order to acquire complete and undisputed sovereignty over a territory, states need to enjoy international recognition of sovereignty *and* need to be able to exercise that sovereignty through state authority, that is, effective control. Thus, we saw that in the sovereignty game states use the resources available: economic, military and diplomatic; in order to secure international recognition and to exercise sovereignty over the territory and prevent other states from doing the same. Finally, we saw that the lengths states are willing to go to in order to further their position depends on the value of the territory itself; this dissertation focuses on the economic, strategic, symbolic and precedential values of a territory in order to understand the motivations behind state actions in the sovereignty game.

Chapter Three: The Liancourt Rocks Dispute

3.1 Overview

This chapter examines the way in which Japan has played the sovereignty game in the territorial dispute with South Korea over the Liancourt Rocks. The chapter opens with a political and legal history of the rocks, focusing in particular on Japan's incorporation of the rocks into Shimane Prefecture in 1905, the treatment of the rocks in the post-war settlements in the 1940s and 1950s and the 'secret pact' agreed by negotiators in the fraught normalisation talks in the 1960s. This is followed by an assessment of the value of the disputed territory, which enables us to provide an understanding of the motivations of both states in the dispute following its re-emergence in 1996. For both sides the rocks have more economic value in their potential to determine sovereignty over the fisheries-rich surrounding maritime territory than any intrinsic economic value in and of themselves. For South Korea they also have a fundamental symbolic value: the timing of incorporation – in the same year as Korea was made a protectorate – has resulted in the incorporation itself being considered by many to be the first step in the Japanese colonisation of the peninsula. Meanwhile, for Japan, the maintenance of a credible claim to the rocks also has a legal precedential value derived from the similar legal backgrounds to the Liancourt Rocks and Pinnacle Islands disputes. UNCLOS's introduction of the 200NM EEZs potentially imbued the rocks with an economic value incomparable to the value of the rocks themselves, and it is little surprise that the dispute re-emerged in 1996 – the year when both states ratified UNCLOS.

The next section, then, looks at the details of the re-emergence of the dispute in 1996. The immediate proxy for the re-emergence of the dispute was Seoul's abrogation of the secret pact not to develop the rocks (see below) when it started construction of a wharf on the rocks. Japan's relatively muted response to South Korea's actions indicated a political acquiescence in South Korea's attempted *fait accompli* in terms of sovereignty over the rocks, but the response level was raised enough to maintain its bargaining position for the EEZ dispute as its basic legal claim to the rocks, preserving the precedential effects of the claim with regard to the Pinnacle Islands dispute. The chapter then outlines the 1998 Fisheries Agreement, signed in lieu of a final delimitation of EEZs in the Sea of Japan. The section demonstrates how, despite South Korea's *fait accompli* in terms of the effective direct exercise of sovereignty over the rocks, Japan maintained its position regarding the maritime aspect of the territorial dispute and the 1998 Agreement did not represent any significant loss for Japan. The chapter then highlights two examples of Japan's policy of not pushing the sovereignty issue over the rocks themselves; the 2004 'Dokdo Stamp' issuance and attempted landing by a Japanese right-wing protest group later in the same year. In both cases the Japanese government acted with restraint, careful not to aggravate South Korea and refraining from demonstrating sovereignty itself or even allowing private citizens to get involved in such demonstrations.

The chapter then shows how, in the mid-2000s, there was a shift in attitudes toward the dispute in Japan. Takeshima Day, first celebrated in 2006, played a role as both a cause and a symptom of this, as evinced by the fact that while no Diet politicians attended the celebrations in the first three years, since 2009 both LDP and DPJ (Democratic Party of Japan) Diet members have been in attendance in growing numbers. The controversy over hydrographic research in 2006 reinforces the hypothesis that successive Japan's focus was

not the rocks per se but the surrounding maritime territory, while also demonstrating the government's hardening stance on the dispute. The chapter closes by reviewing the dispute in the post-Cold War period, highlighting the low-key approach Japan took in the sovereignty game and how this position changed over the period.



Figure 3.1 The Location of the Liancourt Rocks. Source: Wikimedia Commons

3.2 History

The history of the Liancourt Rocks up to 1905 is hotly disputed by both South Korean and Japanese scholars and governments and both sides point to various maps, journey logs and other historical documents stretching back over centuries to argue that the rocks have always been either Japanese or Korean. However, the rocks' remoteness and size have meant that, while today they remain a highly contentious issue, for many centuries neither side was sufficiently interested in them to be able to demonstrate, without doubt, that either state

enjoyed the unfettered exercise of sovereignty over them in the past. To further confuse the issue, historically both Japan and South Korea have used various different names for the rocks, and in some cases even confused them with the larger neighbouring island of Ulleungdo.⁸⁴ None-the-less, in order to better understand how the dispute unfolded up to the end of the Cold War, a brief sketch of the period from the 17th to 19th century is necessary.

3.2.1 Pre-1905 History

The pre-1905 history of the Liancourt Rocks is deeply intertwined with that of nearby Ulleungdo.⁸⁵ Ulleungdo is a comparatively large island (73 km²) lying 87 kilometres northwest of the rocks, and was inhabited by Koreans until 1416 when the Korean government enforced the “Vacant Island Policy”, removing the inhabitants and prohibiting travel to the island (Van Dyke, 2006: 165).⁸⁶ By the late 17th century some Japanese fishermen were using both Ulleungdo and the Liancourt Rocks for the collection of abalone and seaweed, and in 1692 these fishermen came into conflict with Korean fishermen who were on Ulleungdo in breach of their government’s “Vacant Island Policy”. A diplomatic spat ensued, the result of which was that the Shogunate recognised Ulleungdo as Korean territory, prohibiting Japanese from travelling to the island in 1696, although whether this

⁸⁴ The island was previously called Usando and possibly Seokdo in Korea, and has been called Matsushima in Japanese, while neighbouring Ulleungdo Island is in some periods referred to as Takeshima – the situation is even further confused when one considers that from the 18th century the rocks have also had various English names, including Dagelet and Argonaut (MOFA, 2011, Government of the Republic of Korea, 2011).

⁸⁵ The old English name for which is Dagelet.

⁸⁶ The island had become a haven for tax-evaders and pirates.

also meant a prohibition on visiting the Liancourt Rocks is the subject of debate.⁸⁷ For the next 200 years little of major interest took place aside from the various designations of the rocks in Korean, Japanese, and European maps, as either Korean or Japanese, although the lack of naming consistency remained right up until the late 19th century.⁸⁸

In the late 19th century, Japanese fishermen began to exploit the resources not only of the Liancourt Rocks but also of Ulleungdo, despite the prohibition of passage to Ulleungdo remaining in force. Korea objected to the Japanese government, and in 1881 the “Vacant Island Policy” was replaced with a policy of actively encouraging the settlement of Ulleungdo. Meanwhile, the Japanese administration apologised for the incursions into the Korean territory of Ulleungdo and sought to repatriate its citizens (Van Dyke, 2006: 174). Later, in 1900, the Korean government issued Imperial Ordinance No.41, which created the county of Ulleungdo, comprised of Ulleungdo itself and several other named islands, including an island called Sokto, which it is claimed refers to the Liancourt Rocks, although this claim is disputed (Sugihara Ryū [Advisor to Shimane Prefecture on the Takeshima Issue] Interview, 16/07/2010). Once again we see the naming problem rearing its head. Establishing a clear and objective history of the Liancourt Rocks in the pre-20th century period is highly problematic due to the various names used and the contentious nature of the historical documents available. The story does become clearer as we move into the 20th century, although some regional background is necessary to put the events surrounding the rocks into context.

⁸⁷ The Korean government alleges that it did, while the Japanese government denies this. A character called Ahn Yong Bok and the veracity of his testimony lie at the heart of this particular dispute (Sugihara Ryū Interview, 16/07/2010).

⁸⁸ This has led to a phenomenon one might call “map wars”, where both sides produce and refute countless historical maps to show that the rocks are in fact Korean or Japanese.

3.2.2 The Russo-Japanese War

While the famous ‘Black Ships’ sailed into Tokyo Bay in 1853 forcing the opening of Japan and the beginning of its transformation into a modern nation-state, Korea managed to maintain its isolationist policy for almost thirty more years until it, too, was forced to sign a treaty with the US in 1882 (Cumings, 1997: 99).⁸⁹ This thirty year gap saw great changes in Northeast Asia, as the new Meiji administration – witness to the carving up of China by the Western powers – acted quickly to modernise, reverse the unequal treaties, and secure its territorial integrity in the manner of the Western states themselves (McClain, 2002). Part of the latter included the formal incorporation of Okinawa, as well as the treaties signed with Russia defining Japan’s northern boundaries (see Chapter Five) and the eventual incorporation of the Pinnacle Islands in 1895 (see Chapter Four). However, the line between the consolidation of inherent Japanese territory and imperial expansion is blurred, as a rising Japan sought to establish an empire for itself and join the ranks of the Western powers. Japan had defeated a weak China in the Sino-Japanese War in 1894-5, and Korea’s late opening left it decades behind Japan in terms of military strength. This left Russia as Japan’s main rival in the region. The two states competed for influence in Manchuria and Korea with tensions eventually leading to the Russo-Japanese War in 1904-5. It was against this backdrop that the 1905 incorporation of the Liancourt Rocks by Japan took place – indeed, some scholars argue that it was the Russo-Japanese War itself which spurred Japan to incorporate the rocks due to their strategic significance in naval communication (Lee, 2005).⁹⁰

⁸⁹ Although it should be pointed out that the first international treaty was actually the 1876 Treaty of Kanghwa with Japan (Dudden, 2005).

⁹⁰ Indeed as outlined in the next section, the rocks were used by Japan during the war to gather intelligence on Russian naval movements.

Japan's defeat of Russia opened the door to the colonisation of Korea, a process which began in earnest in November 1905, when Japan made Korea a protectorate and took control of its foreign affairs (Cumings, 1997: 140). It is worth noting that this was the age of colonisation, and Japan being "the modern, legal nation in Asia", Japan's take-over of Korea was both legal and acceptable to the international community at that time – indeed, when Korea sent delegates to the 1907 Hague Peace Conference to plead the Korean case, they were universally ignored (Dudden, 2006: 7). This is the context in which, in February of 1905, the Japanese cabinet instructed Shimane Prefecture to take 'measures' to officially incorporate the Liancourt Rocks into its administration under the principle of *terra nullius*, after which it appeared on the State Land Register and its resources were exploited subject to state licence (MOFA, 2010a). These actions were published locally and in national newspapers, but it was not until 1906 that the Korean government reacted to the incorporation (it is unclear when exactly the Koreans found out about it as the declarations were all in Japanese and only in Japan), and it was powerless to make a diplomatic protest since it had lost diplomatic power. Formal annexation of the entire Korean peninsula took place in 1910, leaving question marks about the relationship between the nature and timing of the incorporation of the rocks and Korea itself. The issue lay dormant until Imperial Japan's eventual defeat and surrender to the Allied Powers in 1945.

3.2.3 The San Francisco Peace Treaty

As we saw, the timing of the incorporation of the rocks and the annexation of the Korean peninsula is problematic, leaving open the question as to whether the incorporation of the rocks can be separated from the Japanese annexation of Korea. This point is crucial because

the 1943 Cairo Declaration, which was drawn up by the then leaders of the UK, the US and China, states that, on defeat, Japan will “be expelled from all other territories which she has taken by violence and greed” (Cairo Declaration, 1943). While unsigned, the importance of the Cairo Declaration lies in the fact that the 1945 Potsdam Declaration, which defined the Japanese terms of surrender, specifically states that “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” (Potsdam Declaration, 1945 Article 8). Thus, following the war all territories which were taken by Japan during the course of its imperial conquest were to be returned. On 2 September 1945, Japan accepted the terms of the Potsdam Declaration in the Instrument of Surrender signed by representatives of the government on the deck of the USS Missouri in Tokyo Bay (Instrument of Surrender, 1945).⁹¹ This means that, if the Liancourt Rocks were taken by Japan as part of its annexation of Korea, then they were also returned to Korea after World War II.

This San Francisco Peace Treaty was supposed to clarify exactly which “minor islands” would be delimited as comprising part of the new Japan. The drafting process itself took years to complete, and was strongly influenced by the changing Cold War climate – in the initial drafts, the rocks were designated as Korean; however, by the late 1940s the drafts were allocating them to Japan (Lee, 2002: 17-20). In the final document, however, there was no mention of the rocks at all – in the chapter referring to the territory of Japan, Article 2 (a) of the treaty states: “Japan ... renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet”. This is where, as Hara (2001) argues, the incipient Cold War plays a crucial role. Early drafts were generally punitive, but with the

⁹¹ The original text reads: ‘We, acting by command of and in behalf of the Emperor of Japan, the Japanese Government, and the Japanese Imperial General Headquarters, hereby accept provisions in the declaration issued’. The declaration referred to is the Potsdam Declaration.

Chinese Communist Party in the ascendancy on the mainland, and heightening tensions between North and South on the Korean peninsula, the treaty, and US policy towards Japan in general, became softer. In this context, the designation of the rocks became a strategic issue. With the so-called ‘Acheson Line’ seemingly suggesting that the US would not heavily intervene to save South Korea in case of invasion, there was logic in keeping the rocks Japanese should the entire Korean peninsula become communist.⁹²

Thus the eventual removal of the rocks altogether can be understood in two ways: the first is that, in the context of the ‘Dulles Warning’ over the Northern Territories (see Chapter Five, Section 5.2), by “retaining some potential sources of discord between Japan and its neighbours” the US could ensure that Japan would look to it to provide security (Hara, 2007: 45).⁹³ Since, as the ‘Acheson Line’ suggested, the US saw a communist Korean peninsula as a distinct possibility, keeping Japan at odds with a communist Korea would be in the US’s own interests (Hara, 2007: 44). There can be no doubt that the rocks have created much discord, albeit in the end between two allies of the US. An alternative explanation which paints the US in a less Machiavellian light suggests simply that the US did not wish to choose sides – both South Korea and Japan were US allies, and both were petitioning for the territory to be assigned to them, putting the US in a no-win situation (Lee, 2002: 38).

⁹² The ‘Acheson line’, dating from 1950, included Japan and the Philippines in the US defense area, but not Taiwan and Korea.

⁹³ The ‘Dulles Warning’ refers to the actions of the US Secretary of State John F. Dulles, warned the Japanese government that coming to agreement with the USSR over the Northern Territories would create serious doubt over the future return of sovereignty over Okinawa, see Chapter Five.

3.2.4 The Rhee Line

The multilateral nature of the determination of sovereignty of the Liancourt Rocks, specifically the role of the US, is highly significant in terms of the birth of the modern dispute. In 1951, an interesting exchange took place between the South Korean ambassador to the US and the then US Assistant Secretary of State for Far Eastern Affairs, Dean Rusk. South Korea was requesting that the rocks be assigned as Korean. However, memorandums from the time indicate the US understanding was that the rocks were Japanese territory, and that “according to our information” they had never been a part of Korea (Lee, 2002: 27). Later, in 1954, a US report on Far East issues again indicates that US opinion was that the rocks “remained under Japanese sovereignty and the Island [sic] was not included among the Islands that Japan released from its ownership under the Peace Treaty” (Van Fleet, 1954). Having said this, none of these documents was meant for external publication, and the report goes as far as to state that “we have declined to interfere in the dispute”. At this time it seems that the US hoped that the dispute would be taken to the ICJ for resolution; however, as explained below, events overtook the possibility of such a settlement.

These events centre on the MacArthur Line, which had been imposed by SCAP after the US occupation of Japan, and prevented Japanese fishermen from entering a large swathe of the Sea of Japan. The US had intended on terminating this line with the implementation of the San Francisco Peace Treaty. However, President Syngman Rhee pre-empted the termination with his ‘Peace Line’ declaration, which replicated the MacArthur line and made this large area of the Sea of Japan, which included the Liancourt Rocks, part of Korean maritime territory. President Rhee, annoyed over what were perceived as various slights to Korea (including the feeling that the treaty was overly generous to Japan, and that Korea

received no invitation to the peace conference), took action to ensure future Korean control over the Liancourt Rocks and the fertile fishing resources of the Sea of Japan (Hara, 2007: 47).

Although privately the US deemed the Rhee line (Peace line) illegal (Van Fleet Report, 1954) once again it did not actively intervene, and Korea enforced the line vigorously, with profound implications for the Liancourt Rocks dispute – indeed, it is from this declaration and Japan’s subsequent protests that the origin of the modern territorial dispute can be traced (Hara, 2007: 46). Thus, from an international legal understanding of the dispute, the ‘critical date’ would be this very period, centering on the establishment of the Rhee line and the government’s protests of it. The 1950s saw several skirmishes between Korean and Japanese fishermen and coastguards on and around the rocks, and while the numbers vary, many Japanese fishermen were killed by Korean guards, and as many as a thousand were arrested (Cha, 1999: 24). In 1954 Korea built a lighthouse and radio communication facilities on the rocks, cementing their effective control (Cha, 1999). By September of 1954 Japan was requesting the Liancourt Rocks case be sent to the ICJ, a move which was rejected by South Korea – the request was repeated in 1962, still to no avail.

3.2.5 The Secret Pact

As the Cold War heated up in the 1960s, a normalisation of ties between the pro-Western states became increasingly important, but the territorial issue stood in the way of the final treaty. The Japanese side insisted that a reference to the rocks be included while the South Korean negotiators refused, pointing out that this would imply recognition of the territorial

dispute. The issue was resolved via a secret pact negotiated by the Minister of Construction, Kōno Ichirō and his counterpart, Chong Il Kwon, then Prime Minister of South Korea. The pair agreed that the dispute would be shelved: “solve it by not solving it”, and that it would not be touched by the 1965 Treaty on Basic Relations Between Japan and the Republic of Korea (Roh, 2008: 208). In the future, both states would claim the territory and understand each other’s claims, but during fishing zone negotiations both sides would use the rocks as baselines for drawing their own zones, with the overlapping area becoming a joint fisheries zone (2008: 208). Finally, although the current status quo of South Korean occupation would be maintained, Seoul would undertake not to increase the number of guards stationed or to improve or construct new buildings on the rocks.

This allowed for the normalisation of relations between the two states with the aforementioned Treaty on Basic Relations, and in the same year the two sides signed the Agreement on Fisheries, which divided the Sea of Japan into exclusive and joint regulation zones (Park, 2000: 57). In a prescient statement during discussions with American officers at the time of the negotiations, President Park Chung-Hee described the dispute as an “irritating problem”, but also “a small one”, and said “he would like to bomb the island out of existence to resolve the problem” (USDOS 1965 quoted in Lee, 1998: 1).

3.3 The Value of the Liancourt Rocks

3.3.1 Economic Value:

The Liancourt Rocks are in and of themselves of almost no intrinsic economic value, though due to their symbolic value (see below) they have become a tourist attraction, with Korean descriptions of them often referring to their natural beauty.⁹⁴ Yet, given that the rocks comprise two isolated and barren islets and a number small rocks and reefs, it would not be unfair to say that the scenic beauty of the islands is in the eye of the beholder, and that the tourist value is dependent on their political and symbolic status.⁹⁵ Beyond the tourist value, then, the truly significant economic value of the rocks comes not from any intrinsic worth of the land area itself, but rather from the potential of the rocks to generate EEZs in their surrounding waters. South Korea and Japan have yet to come to a conclusive agreement about their potentially over-lapping EEZs in the Sea of Japan though, as is outlined below, they came to a temporary agreement on fisheries, but otherwise EZZ negotiations remain deadlocked, with the Liancourt Rocks the main sticking point.

As we saw in Chapter Two (Section 2.5), UNCLOS developed and clarified the legal basis for the exclusive development of marine resources by states. Off-shore islands can also generate EEZs, but UNCLOS Article 121.3 states that “rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone”. A key issue in the negotiations is whether the Liancourt Rocks have the potential under UNCLOS to generate an EEZ of their own. This is obviously of great interest in terms of the potential

⁹⁴ For example, the stamps which caused the controversy in 2004 were titled ‘The Nature of Dokdo’ and featured stylised paintings of the rocks and their flora and fauna.

⁹⁵ See Nogue and Vicente (2003: 116-20) for a discussion of the role of landscape – opposed to territory – in constructing national identity.

rewards of sovereignty over the island, and is more complicated than would perhaps appear at first glance. This is because the rocks seem to satisfy the demands for exclusion from Article 121.3 – while very small, they do support human habitation and economic life of their own. While the capabilities to support human habitation might be man-made (for example there is a water purification system on the rocks), as pointed out in the last chapter, the *travaux preparatoires* of UNCLOS clearly show that rocks which have been artificially altered in this fashion – and which now can sustain human habitation or economic life of their own – are not Article 121.3 rocks (Charney, 1999: 867). According to this interpretation then, the rocks can generate their own EEZ.

Conversely, the small size of the rocks and the potential for them to significantly skew the delimitation of the states' EEZs mean that, in any arbitration, they would likely be discounted (as they are roughly equidistant from the coasts of both states). UNCLOS provides a compulsory mechanism for the resolution of such maritime boundary disputes (Article 287). However, South Korea submitted a declaration on 18 April 2006 exempting itself from these compulsory procedures (which it had the right to do under UNCLOS Article 298). In the same year, South Korea also changed its negotiating stance from a position where the rocks did not generate an EEZ to one where they do (see below).⁹⁶ The timing is hardly coincidental, but it would be very difficult for Japan to dispute the claim that the rocks, at least formally, are capable of generating an EEZ, given that Japan employs one of the loosest definitions of non-Article 121.3 rock in the world.⁹⁷ Thus, it can be concluded that, while an adjudicator would likely not consider the rocks as generating an EEZ, South Korea's

⁹⁶ South Korea's position regarding the EEZ-generating potential of rocks has not been clear.

⁹⁷ This is due to the large number of off-shore, and often far flung, rocks and islands which Japan uses to generate its EEZ. The case of Okinotorishima is particularly telling, Japan having declared that it generates a full 200NM EEZ despite being a remote atoll which is less than 15 centimetres above sea level.

2006 exclusion from binding international adjudication together with Japan's loose definition of a non-Article 121.3 rock, means that in bilateral negotiations the legal situation is more intricate.

The value of the maritime territory which the rocks could generate is difficult to quantify. The Sea of Japan, in which the Liancourt Rocks lie, is a key source of marine products for both South Korea and Japan. The mix of the warm Tsushima current from the south and the colder Liman current from the north makes for fertile breeding grounds for mackerel and other fish, although over-exploitation over the past few decades has seen the depletion of marine resources.

In 2009, Japan caught over four million tonnes of fish and other marine creatures, with another million-plus tonnes from aquaculture production (United Nations Food and Agriculture Organisation [UNFAO], 2009). Despite this (catch) figure being less than half the quantity produced in the peak production years of the late 1980s and early 1990s, Japan still takes the world's third largest catch annually, and maintains a modern fleet using sophisticated technology (UNFAO, 2009). The Sea of Japan fisheries are a vital source of employment in isolated regions such as Shimane Prefecture, under whose administration the Liancourt rocks nominally falls on the Japanese side – as a result, the fishing lobby in Shimane prefecture is particularly powerful (Russel, 2006a). The Korean fishing industry is smaller and less developed, but none-the-less Korea still produces approximately three million tonnes of fish annually and provides employment to an estimated quarter of a million people, often in poorer rural areas (UNFAO, 2003).

The EEZ not only bestows sovereignty over the water column, but also over any undersea resources. In 2007 South Korea announced the discovery of a massive deposit of gas hydrates beneath the Ulleung Tsushima basin (the area around and to the north-west of the Liancourt Rocks). Gas hydrates are solid crystals comprised of methane gas and water molecules, generally found deep in the ocean, and have an energy density which is several times higher than that of conventional natural gas (Kvenvolden, 1993: 180). Until recently, the extraction of such deposits was financially unviable because of the great costs involved, but recent technological developments have allowed for their extraction in cases of large-scale deposits: the Ulleung/Tsushima deposits are believed to contain as much 600 million tonnes, which would fulfill South Korea's gas needs for thirty years (*The Chosun Ilbo*, 21/03/2005). Drilling has already begun, and commercial extraction is planned to begin in 2015. Although this gas find has not yet become a controversial issue, both sides continue exploration of the Sea of Japan, and further discoveries will only serve to complicate EEZ delimitation negotiations and the broader dispute.

3.3.2 Symbolic Value

It is difficult to underestimate the symbolic value of the Liancourt Rocks dispute to South Korea. As Cha (2000: 314) states, to a large extent "Korean nationalism is anti-Japanism", and the Liancourt Rocks – 'Dokdo' – is *the* symbol of Korean nationalism *and* anti-Japanism. Since the emergence of the dispute, the rocks have taken on a symbolic value unparalleled among any similar sized islets anywhere in the world – there is no question that they are considered 'homeland' territory by Koreans. For Japan, the rocks are much more ambiguous. Both national opinion polls and those carried out solely in Shimane itself show that many

Japanese express a distinct lack of awareness and interest in the dispute.⁹⁸ However, since the creation of Takeshima Day in 2005 the dispute has enjoyed a raised profile in domestic politics and citizen awareness of it has been raised substantially. While the media had mostly ignored events related to the rocks previously, the anti-Japanese nature of the Korean response was widely reported, and sparked off a debate about ownership of the rocks (Johnston, 2007: 118). The scale and nature of the anti-Japanese protests, from the severing of fingers to the burning of flags, shocked the Japanese public (see Section 3.3.2).

The net effect of all this was to fundamentally change the Japanese discourse on the rocks, making them into a major issue for traditional right-wing conservatives and for the new ‘youth nationalists’ (they were always a major issue for the far-right ultranationalist). In terms of the traditional conservatives, the LDP and even the DPJ have taken a tougher stance on the dispute in recent years, and the fact that education was their main focus is telling. Textbooks represent “legitimate knowledge” (Schneider, 2008: 113) and the gradual spread of the Liancourt Rocks into geography, history, and social studies textbooks is not only insightful in and of itself, but also has the more basic function of educating future generations.

The growing interest in the issue is further illustrated by the fact that, in the 1990s, the issue was rarely raised in the Diet or mentioned in the media, but since 1996, and especially since 2005, it has been the subject of countless column inches and hundreds of Diet members questions. Among the general population, too, a dramatic change is visible: in a 1996 *Sankei Shimbun* survey, when asked “Do you think South Korea’s treatment of the Liancourt Rocks as its own territory is proper?”, only 52.6 per cent of respondents said “no”, 12.6 per cent said “yes”, while 35.6 per cent said “don’t know” (*Sankei Shimbun*,

⁹⁸ For example, an opinion poll taken in Shimane Prefecture found that 70 per cent of respondents had a “weak interest” in the dispute (*Asahi Shimbun*, 12/01/2007).

20/02/1996). In a similar poll twelve years later 73.7 per cent of respondents replied that it was Japanese territory, while only 18.2 per cent replied “don’t know”, and a paltry 8.1 per cent responded that it was not Japanese territory (*Sankei Shimbun*, 05/08/2008).⁹⁹ Although this not enough evidence to conclude that the rocks can now be considered part of Japan’s ‘homeland’, it seems that the process of entrenchment is underway and the symbolic value of the rocks has steadily increased over the past two decades.

3.3.3 Precedential Value

The similarities in the histories of both the Liancourt Rocks dispute and the Pinnacle Islands dispute – and even the Northern Territories dispute – add further value to Japan’s claim on the Liancourt Rocks. All the territories were acquired during Imperial Japan’s expansion, and in particular the timing of the incorporation of the Liancourt Rocks (as noted above, in the same year as Korea was made a protectorate) and the timing of the incorporation of the Pinnacle Islands (in the same year as China ceded Taiwan to Japan, see Chapter Four, Section 4.2) means that, were Japan to withdraw or lose (in arbitration) its claim to one, this could seriously damage its legal claim to the other; the implication being that if the claim to one was faulty, then so, too, would be the claim to the other.

The ability to demonstrate a convincing legal basis to a state’s claim is an important part of establishing the political legitimacy to that claim, particularly for the Japanese government which takes a highly formalistic legal posture which Japan to each of its

⁹⁹ A poll in the *Yomiuri Shimbun* in 2010 gave similar results, with 71 per cent of respondents stating that Japan should clearly state its position while only 22 per cent said that Japan should take consideration of South Korea’s claims.

territorial disputes.¹⁰⁰ Such a posture requires a legal grounding which, irrespective of its potential to actually win in an international court of law, bestows legitimacy on Japan's claims and allows it to maintain the claims and continue its participation in the sovereignty game. This may seem like an obvious and universal point, but can be contrasted with South Korea's position: there is no possibility that – even if hypothetically some piece of evidence emerged which destroyed the legal basis for its claim, or it were somehow forced into accepting a legal arbitration which it subsequently lost – Seoul would hand over the rocks. In that sense, the South Korean government's position in this dispute is similar to the Japanese government's position in the Northern Territories dispute – this point is developed in the conclusion of this dissertation. For Japan, maintaining the appearance of a strong legal claim is an important aspect of its approach to the sovereignty game in this dispute.

Indeed, this precedential value may help to explain the fact that Japan asked South Korea to take the case to the ICJ in 1954 and again in 1962, but it has not made such an offer since the re-emergence of the Pinnacle Island dispute in 1971. Normally, a state in a territorial dispute which does not occupy a disputed territory is keen to take the dispute to the ICJ, even if only because such offers reflect well upon its claim internationally, garnering sympathetic diplomatic capital. But, as stated above, were Japan to lose an arbitration over the Liancourt Rocks, aside from the obvious result that it would lose any claim to the Liancourt Rocks, the negative precedential effect on the other two disputes would be seriously damaging.

¹⁰⁰ As argued in Chapter Five, however, this is less true for the Northern Territories.

3.3.4 Strategic Value

At various times during the 20th century, the location of the Liancourt Rocks, not far from the Tsushima Straits and midway between the Korean peninsula and the Japanese mainland, gave them strategic significance. In the Russo-Japanese war, an observation tower was built by the Japanese navy, which relayed information about Russian fleet movements via submarine telegraph cables (Lee, 2005). Fifty years later, at the beginning of the Cold War, the rocks were found once again to be of strategic significance. As outlined previously, Hara argues that part of the reason later drafts of the San Francisco Peace Treaty allocated the rocks to Japan was because of the belief in the US State Department that the whole Korean peninsula would fall to communism, and if it did, the rocks would provide an excellent site for a US weather and radar stations (2001: 371). In the end, however, it was South Korea who established such facilities on the rocks, beginning in 1996 with the construction of a wharf.

To this day, the rocks are continually occupied by members of the Korean police, and the surrounding seas are closely monitored for intruding Japanese ships (be they scientific research ships or fishing trawlers). Yet, as the above examples show, strategic value is not an intrinsic quality but rather dependent on regional geopolitics, and despite the vitriolic dispute over the rocks (and other historical issues), South Korea and Japan ultimately are both allies of the US. While there is no equivalent of the US-Japan Security Treaty between the two states, since the 1990s formal, high-level security dialogue has been established (Manosevitz, 2003).¹⁰¹ Thus, the very concept of strategic value in the sense of a military confrontation is a moot point – how long this situation persists is another question

¹⁰¹ See Victor Cha's *Alignment Despite Antagonism* (1999) for a comprehensive study of the nature of South Korea-Japan security relations over the past decades.

entirely. Suffice it to say that, currently, the rocks are of little or no strategic value, but history tells us that this was not always the case.

3.4 1996 Re-emergence

The dispute remained dormant following the 1965 Basic Relations Treaty and the secret pact. Each year the Japanese government would quietly send a *note verbale* protesting South Korea's occupation of the islands, while South Korea, for its part, kept its end of the deal, maintaining but not expanding its basic presence on the rocks. This situation changed completely in 1996 when South Korea, under the presidency of Kim Young-sam, constructed a wharf on the rocks. While the Cold War dictators were largely pro-Japanese, the new generation of democratic leaders, while not necessarily anti-Japanese, were also not pro-Japanese, either (Roh, 2008: 236).¹⁰² A new nationalism was unleashed by democratic reforms in South Korea; Choi Sung-jae (2005) points to 1987 as the key year in which the democratic transition opened up the dispute to domestic Korean NGOs. He argues that these NGOs became important actors in the issue and challenged the central government policy. Moreover, we saw above the potential economic value of the rocks in terms of their EEZ generating abilities enshrined in the UNCLOS: UNCLOS came into force in 1994 and in 1996 was ratified by both South Korea and Japan.¹⁰³ Thus, it can be argued that the combined impact of UNCLOS and the new Korean nationalism are likely to be the crucial factors behind Kim's decision to unilaterally abrogate the pact.

¹⁰² Roh puts it down to a loss of the actual secret pact itself – the paper it was written on! – and more importantly the loss of the spirit of the secret pact: the new leaders disposition towards Japan.

¹⁰³ As early as January 1996 the *Sankei Shimbun* was stating that UNCLOS would “inevitably reignite the conflict” (*Sankei Shimbun*, 24/01/1996)

3.4.1 The Wharf

Unlike the low-level protests issued over the previous decades, the construction of the wharf provoked a strong reaction from the Japanese government. Foreign Minister Ikeda Yukihiko lodged a protest, stating that the rocks were “historically and legally Japan’s inherent territory” and demanding that Seoul halt all work on the wharf (*Yomiuri Shimbun*, 09/02/1996). The protest led to counter-protests in Seoul, both on the street and in the corridors of power; effigies of Ikeda were burnt in street protests and President Kim announced military exercises around the islands. The rocks’ defences were bolstered, with the police garrison increased from 26 to 34 (Nakajima, 2007: 18) – another move which directly contradicted the secret pact. Much of the reaction came from the fact that reports had surfaced in the media prior to the incident that Japan would be including the rocks in its EEZ as part of its ratification of UNCLOS. South Korea then went ahead and deposited its instrument of ratification on 29 January, which included the rocks in the Korean EEZ. As the furore around the incident began to calm down, Ikeda met the South Korean Ambassador to Japan, Kim Tae Ji, when both sides agreed they would seek to separate the dispute over the rocks from the EEZ issues, specifically the division of fishing and mineral rights (*Yomiuri Shimbun*, 15/02/1996).

3.4.2 The 1996 LDP Manifesto

Later in 1996 FIFA announced that South Korea and Japan would co-host the 2002 World Cup – despite the two sides having campaigned individually – and along with the looming EEZ negotiations, it was clear that the relationship would have to improve. After the affair had begun to cool down, President Kim and Prime Minister Hashimoto Ryutarō met in

Bangkok on the sidelines of an Asia-Europe Meeting and again during a bilateral summit in South Korea in June. The pair confirmed the previous undertaking between Ikeda and Ambassador Kim to separate the EEZ issue from the territorial dispute. The EEZ negotiations began in August of the same year (see below), the lower-house diet elections in September of the same year saw the rocks causing friction once more. This time it stemmed from the LDP's inclusion of the territorial issue in its election manifesto, as well as its stance on the Yasukuni Shrine visits.

Events in the Pinnacle Islands dispute were causing ruptures within the LDP and, following a meeting on the day of the break-up of the last Diet session before the election, Murakami Masakuni, chief secretary of the House of Councillors, argued that the dispute should be included in the manifesto (*Asahi Shimbun*, 02/10/1996, see Chapter Four, Section 4.6).¹⁰⁴ Days later, when the manifesto was released, not only were the Pinnacles included, but so was a sentence stating that the Liancourt rocks were “our country’s territory” and that the LDP would “continue its diplomatic efforts to work peacefully towards a solution” (LDP Lower House Election Manifesto 1996). Yamasaki Taku, LDP policy chief, declared that the Liancourt Rocks as well as the other disputes were included as they were in the news, they had become issues for the election and that the voters would like to know where the party stood (*Asahi Shimbun*, 02/10/1996).

Referring to the territorial disputes in a party manifesto was not standard practice, the LDP being the only party to do so in that election. An angry Korean response was assured, and street protests followed, but none-the-less Hashimoto was reelected as prime minister, and despite the severe friction of the year and growing apprehension about the

¹⁰⁴ Taiwanese protesters had successfully landed on the Pinnacle Islands on the previous day.

LDP's – and more broadly Japan's – perceived increasingly nationalistic stance on many issues, Kim immediately sent Hashimoto a warm message of congratulations following his victory (*Asahi Shinbun*, 21/10/1996).

The flare-up over the rocks came at a time of blossoming relations between the two states. Trade increased steadily throughout the 1990s, from US\$29 billion in 1990 to US\$51 billion in 2000 (Hook *et al.*, 2005: 530), security relations finally began to develop after decades of mistrust (Manosevitz, 2003) and political relations were improving, too, as evinced by Kim's phone call to Hashimoto, made despite the furore over the islands and Hashimoto's Yasukuni Shrine visits. Indeed, Funabashi Yōichi points out that, from the beginning of the Hashimoto administration in January of 1996, “normalising relations with Korea was a top Japanese priority” (1999: 92). But the territorial disputes were increasingly becoming an issue in domestic politics, as it appeared to more nationalistic politicians that Japan was taking a soft stance not only on the Liancourt Rocks but also on the Pinnacle Islands. Hirai Takushi, chairman of Heiseikai (an opposition grouping) accused the Hashimoto administration of being “obsequious” in its handling of diplomatic issues with South Korea and China, stating that “Japan should say and do what it should say and do without hesitation” (*The Japan Times*, 23/01/1999).

The sovereignty game provides a means of understanding the re-emergence of the territorial dispute and the manner in which it played out, despite otherwise strengthening Japan-South Korea ties. Firstly, the abrogation of the secret pact – which had maintained the status quo for decades – is determinative. Reasons for this abrogation have already been suggested, but there can be little doubt of the importance of the role of the ratification of UNCLOS. It is not a coincidence that the first major flare in the Liancourt Rocks dispute

(and in the Pinnacle Islands dispute for that matter, see Chapter Four) came not in 1987 after the first direct elections for the presidency were held in South Korea, nor did they come in 1992 when the democratic reformer, Kim Young-sam, was elected.¹⁰⁵ Rather, the dispute re-emerged when UNCLOS was ratified, and Seoul's actions were calculated to take full advantage of its already advantageous position in the sovereignty game: replying to another formal protest over the ongoing construction work on the wharf in November 1996, aside from the usual rebuff of Japan's claims and statements regarding Korean sovereignty, Seoul added that construction work was a sovereign act over its inherent territory (Kyodo, 01/11/1996). Similarly when the Korean Defense Ministry announced the military exercises around the rocks in early 1996, the reasoning was that the exercises would "display the nation's sovereign power over the islet in the face of Japan's claim to it". South Korea understood and was playing the sovereignty game – more than that, it was implementing a quick and early *fait accompli*.

The construction of the wharf represented a major change in the territorial status quo and raised the requirement for effective political protest. This helps make sense of Ikeda's comments, which went far beyond anything emanating from Japan for decades.¹⁰⁶ In the face of an apparent *fait accompli*, the Hashimoto administration had to act. Yet, Ikeda's comments served to further enflame the situation, without, of course, having any effect on the wharf construction. It is highly unlikely that anyone in Tokyo thought that the South Korean government would cancel the wharf, but it is important to note that prior to 1996 Japan had

¹⁰⁵ As mentioned above, Roh argues that the "spirit" of the pact was lost with the Kim (Young-sam and Dae-jun) generation of leaders emerged in newly democratic South Korea. There is no doubt a truth in this, but while this may be true, the dispute could still have rolled along in the background if it were not for UNCLOS and the issue of a final demarcation maritime territory pushing the sovereignty over the rocks to the fore.

¹⁰⁶ As mentioned earlier, according to the secret pact each year Tokyo quietly issued a *note verbale* protesting South Korea's control over the rocks.

not been willing to risk damaging relations with South Korea by making serious high level protests. But with the end of the pact, and negotiations on the horizon where sovereignty over the rocks could play a major role in determining access to lucrative fisheries (and, from the Japanese perspective, enable it to implement thorough conservation measures), a harder line on the dispute would give Japan a stronger bargaining position.

Yet, as we have seen, many Diet politicians were unhappy with the “obsequious” stance taken by the Hashimoto administration towards the dispute. This, too, is understandable when seen through the lens of the sovereignty game. South Korea was explicitly attempting a *fait accompli* over the islands in the most effective way possible: direct construction of state infrastructure which would enable further effective occupation. Japan’s protests, although at a raised level, were never going to influence the South Korean policy on the rocks, nor was that their intent: as work on the wharf continued, Hashimoto and Kim, agreed to put the dispute aside and continue to work towards better bilateral relations. Therefore the Hashimoto administration’s protests can be understood as a form of political acquiescence in South Korea’s attempt to change the sovereignty *status quo*.

The government was never going to use its military capital against South Korea (even in the sense of veiled threats or warnings), but it did enjoy a certain amount of diplomatic and economic capital, which it could have expended to try to bring Seoul back to the *status quo ante* in a manner which would enable both sides to keep face –whether this could have been done successfully or not is an entirely different question bearing in mind the historical issues and the symbolic value of the rocks in South Korea. In the end, it used neither, and the precedent was set: South Korea could exercise sovereignty freely over the rocks themselves, while all the Japanese government would do was make diplomatic protests.

Despite the now complete loss of sovereignty over the rocks, the incident showed how unimportant they were to Japan in-and-of-themselves: the higher-level protest was made neither because it was legally necessary nor because it was believed it would have any effect, but rather it was made in view of the upcoming EEZ negotiations.

Aside from the new precedent of the free exercise of sovereignty by Seoul over the rocks, there was a further precedential element to the events of 1996 and 1997. In 1992 China passed the Law on the Territorial Sea and Contiguous Zone, which explicitly referred to the 'Diaoyu Islands' (Pinnacle Islands) as China's territory, and in 1995 Chinese ships were spotted in the area. China also ratified UNCLOS in 1996, and so Japan and China were also facing EEZ negotiations on the waters around these disputed islands, with even higher stakes involved, given the potential strategic rivalry between the two, and not least the confirmed submarine deposits of oil and gas (see Chapter Four). As we have seen, the claim to the Liancourt Rocks has a precedential value in terms of the Pinnacles, increasing the importance of clear protests against South Korean actions. In 1996 there was also a political precedential value: taking a soft line on the Liancourt Rocks would reflect poorly on Japan's claims over the Pinnacle Islands and could give the impression that Japan's territorial policy was weak.

3.5 The 1998 Fisheries Agreement

South Korea ratified UNCLOS in January 1996, while Japan did so in June of the same year. Japan had previously declared a 200NM EEZ in 1977, but it could not enforce this in the Sea of Japan because of its 1965 Fisheries Agreement with South Korea (see above).

Negotiations to delimit the respective EEZs began in August of 1996. The negotiations resulted in the 1998 Agreement of Fisheries between the Republic of Korea and Japan, which entered force on 22 January 1999 (Park, 2000: 57). However, the problem of how the Liancourt Rocks would be dealt with plagued the negotiations (*The Japan Times*, 02/08/2001). While South Korea used Ulleungdo as the base-line for its EEZ claim, Japan used the Liancourt rocks themselves (as per the secret pact) as the baseline for its claim (*The Japan Times*, 16/06/2006). The Korean argument was unacceptable to the Japanese, as a base line drawn from Ulleungdo would place the rocks on the Korean side of the median line, and thus in the Korean EEZ. On the other hand, the Japanese stance of using the rocks as the baseline of its claim, with the median line midway between them and Ulleungdo, was obviously unacceptable to the Koreans.

Thus, as a result of the territorial dispute, a final EEZ delimitation was impossible, and so *solely* for the purposes of the agreement the rocks were not recognised as generating their own EEZ. The final deal gave both sides a 35NM exclusive fishing zone, and created a large provisional/intermediate zone (92,719 km²), approximately the same size as Portugal) in which both sides could fish, and which would be regulated by a joint fisheries commission.¹⁰⁷ For the discussion here, the most significant aspect of the deal was the way in which it dealt with the Liancourt Rocks, which lie inside this intermediate zone. In order to ensure that the agreement would not affect the territorial dispute, Article 15 of the agreement states that “no provision of this Agreement shall be deemed to prejudice the position of each Contracting Party relating to matters on international law other than matters on fisheries” (quoted in Park, 2000: 60). However, some Korean politicians and scholars,

¹⁰⁷ The two sides could not even agree on a name for this zone. The Japanese side refers to it as a ‘provisional’ zone, the Korean side calls it a ‘middle’ or ‘intermediate’ zone (Kim, 2003: 99)

angry at their government for a perceived capitulation, have argued that the agreement in and of itself is a form of acquiescence on the Korean side since it can be interpreted as “official confirmation of the fact that Korea and Japan have a sovereign dispute over Dokdo Island [sic]” (Kim, 2008: 24).¹⁰⁸

The fisheries agreement, despite the fraught negotiations, ended up with a situation largely similar to previous agreements, and one which conformed with the original ‘secret pact’ formula of drawing baselines from the undisputed islands and coastline, leaving the rocks in a joint zone. Neither side could possibly allow the rocks to be enclosed by the other sides’ EEZ, or even after EEZ demarcation was deemed impossible, to be surrounded by the other state’s fisheries zone – despite the fact that in arbitration this would carry little or no legal weight. In fact Article 15 of the agreement itself makes it painstakingly clear that even though the islands are located in the so-called ‘intermediate zone’, this fact has no bearing on the dispute. When the Korean scholars refer to acquiescence to Japan – Kim goes as far as to state that the agreement “substantially enhances the Japanese legal position in asserting their sovereign title over Dokdo Island” (2008: 25) – they may be *outwardly* stating legal acquiescence, but what is really meant is political acquiescence.

Although there is nothing whatsoever in the agreement which compromises South Korea’s legal claim to the Liancourt Rocks, the political acquiescence in Japan’s sovereignty claims over the rock would further contribute to the ‘incompleteness’ of South Korea’s sovereignty over them in the sense that the recognition of Japan’s claims would constitute a recognition that a dispute exists, and thus that South Korea does not enjoy full recognition

¹⁰⁸ Just as the official line from the Japanese government in the Pinnacle Islands dispute is that ‘there is no dispute’, so too does Seoul deny the existence of a dispute over the Liancourt Rocks.

and that its sovereignty over the rocks is therefore incomplete. Further, despite Seoul's push for a *fait accompli* from 1996 on, the 1998 Fisheries Agreement did not represent any significant gains for South Korea nor did Japan lose out despite its own political acquiescence in the wharf construction. In sum, while Japan had lost the rocks through its political acquiescence in 1996, the result of the 1998 Fisheries agreement was that Japan's maritime claim was not affected by that acquiescence, and, indeed, if anything, South Korea may have politically acquiesced in the existence of the dispute, thus *improving* Japan's position.¹⁰⁹

3.6 Japan's Restraint: Stamps and Attempted Landings

The 'Dokdo Stamps' and *Nihon Shidokai* (a Takamatsu-based far-right organisation) attempted-landing incident demonstrate well the Japanese government's policy of prioritising peaceful coexistence over pushing the sovereignty claim. Rather than push the claim over the rocks, the overall claim was instead maintained via low-level protests in order to keep its hand in on the EEZ/fisheries issue as well as sustain the precedential value of the Liancourt Rocks claim on its other disputes. Both the 'Dokdo Stamps' and the attempted-landing issues were dealt with in a restrained manner; it was clear that Japan would not seek to demonstrate sovereignty, nor would it allow private groups or individuals to do so on its behalf.

¹⁰⁹ It must be said that this is a weak form of political acquiescence, but none-the-less the point is that despite the events of 1996, Japan's position vis-à-vis the maritime dispute did not deteriorate, and may even have improved, due to the 1998 Fisheries Agreement.

3.6.1 'Dokdo Stamps'

The 'Dokdo Stamps' issue began in 2003 with the announcement that South Korea would issue a series of stamps entitled "The Nature of Dokdo" in early 2004. This was in fact the third time that Seoul had issued 'Dokdo stamps', the first time being in 1954, two years after the declaration of the Rhee line, and the second being in August 2002. In 1954 Japan sought to return all post with these stamps affixed, but was blocked by Seoul's use of the Universal Postal Union's (UPU) rules (Ōtani, 1985 in Dobson, 2002: 24).¹¹⁰ Japan did, however, lodge a complaint directly to UPU regarding Seoul's actions (*Sankei Shimbun*, 10/01/2004). In 2002, by contrast, the stamps were released as the football World Cup jointly hosted by Japan and South Korea came to an end, and just in advance of a trip by Prime Minister Koizumi Junichirō to Seoul. On that occasion neither the government nor the media picked up the issue, and no complaint was made – the story only emerged two years later, during the 2004 incident (*Sankei Shimbun*, 15/01/2004).

Unlike the 2002 issuance, the 2004 "The Nature of Dokdo" series did not pass off quietly. There was much internal debate in the LDP and the cabinet as to how best to deal with the issue, with then Posts Minister, Asō Tarō, coming out in favour of producing a "Takeshima Stamp". Koizumi balked at the idea, telling a press conference that while "Takeshima is Japan's territory ... it is better not to aggravate the situation" (*Sankei Shimbun*, 10/01/2004). Instead, the Foreign Minister, Kawaguchi Yoriko, telephoned her opposite number in Seoul, Yoon Young-kwan, asking for the stamps to be cancelled, a request which was unsurprisingly ignored. The stamps were released as planned on 16 January and sold out immediately. Kawaguchi called in the South Korean ambassador and informed him that

¹¹⁰ The UPU is the United Nations body responsible for international post.

“Takeshima is Japan’s inherent territory” and that Japan could not accept Seoul’s actions (*Sankei Shimbun*, 17/01/2004).

While the Koizumi administration may have shied away from retaliating with ‘Takeshima Stamps’, private individuals did try to make use of a service offered by the Japan Post Office which allowed customers to submit their own photographs which form the background for stamps. Several successfully created ‘Takeshima Stamps’, which quickly increased in value, before the authorities caught on and decided to clamp down on the practice (*Sankei Shimbun*, 04/03/2004, 05/04/2004).¹¹¹ The result was that Tonooka Teruo, a former assistant professor at Tokyo Gakugei University and prominent member of the far-right nationalist party, New Wind, actually took the Japan Post to court after he was told that, following consultation with MOFA, the Japan Post Office would not allow stamps which could cause diplomatic problems to be produced under the scheme (*Asahi Shimbun*, 04/03/2004, 19/11/2004). Toonoka’s case was raised in the Diet by LDP member Morioka Masahiro (Diet Minutes, 2004), who also criticised the inaction of the government and called on Asō to change the policy regarding the stamps.

In 2004 Japan acquiesced in the production of the ‘Dokdo Stamps’ – as it had done in 2002. In 1954 the possibility of refusing post which came with the stamps affixed was seriously considered; it was rejected only because it would violate the UPU treaty. Instead, a complaint was lodged with the UPU. In 2002 the stamp issue passed completely without notice. But in 2004 the media (especially the *Sankei Shimbun*) and domestic politicians caught hold of the issue, using it to criticise the government’s perceived soft stance on the

¹¹¹ The ministry went as far to as to contact one particular businessman who was selling the stamps online in order to have him return the remainder – he told them he had already sold out.

dispute.¹¹² The result was that, while the Koizumi administration was forced to act, the actions were carefully calculated, in Koizumi's own words, "not to aggravate the situation". It is unlikely that the Koizumi administration could have done anything to prevent the issuance of the stamps, but it is highly significant that it refused to undertake similar measures itself and moreover that private individuals were prevented from doing so.

If, as Stanley Brunn (2000: 2 in Dobson, 2002: 24) states, "stamps are products or 'windows' of the state that illustrate how it wishes to be seen by its own citizens and those beyond its boundaries", then we can conclude that, while South Korea was making its position on the Liancourt Rocks very clear, Japan's reaction (or lack thereof) to South Korea's 'Dokdo Stamps' during both 2002 and 2004 shows that the rocks themselves simply were not a high priority for Japan – certainly not considered 'national homeland' – and it was unwilling to jeopardise relations with South Korea in order to maintain a credible political claim. As with the construction of the wharf and the resulting precedent created by the Hashimoto administration's political acquiescence, the Koizumi administration was cognisant of the virtual impossibility of effecting a change to South Korea's policy, and the diplomatic risks it would run if it tried. Rather, the government had abandoned the idea of recovering the rocks and instead, as in previous years, was just doing enough politically to maintain the maritime and precedential aspects of the claim to the rocks.

¹¹² In the one-year period after the announcement of the stamps *Sankei Shimbun* carried 39 articles relating to the issue, while *Mainichi Shimbun* carried 13 and even the conservative *Yomiuri Shimbun* carried only 18.

3.6.2 *Nihon Shidokai* Attempted Landing

The attempted landing by *Nihon Shidokai* in May of the same year (2004) conforms to this reading of the Japanese government's attitude to the rocks. The success of seven Chinese activists in their attempts to land on the Pinnacle Islands in March of 2004 provoked right-wing groups into action (see Chapter Four, Section 4.10). Members of *Nihon Shidokai* announced their intention to land on the Liancourt Rocks, and left their headquarters in Takamatsu on 2 May, making their way to Shimane Prefecture. On their way they spent some time publicising their trip on the streets before departing for the rocks from Nishino Island on 6 May. However, they were intercepted by the Japanese Coast Guard, which "warned them" of the dangers of making the trip, and they were sent back to shore. Considering that in the days running up to the event itself they had made statements such as "in order that it be known that Takeshima is Japan's inherent territory, we accept the risk of capture in our landing attempt" (*Yomiuri Shimbun*, 07/05/2004), it is very unlikely that they turned back without offering some sort of resistance.

There is little doubt that the Japanese Coast Guard (JCG) was under strict orders to make sure that under no circumstances were they to be allowed to land on the rocks. Despite their failure to get close to the rocks, the incident was widely reported in the South Korean media. When news of the planned trip reached South Korea, Seoul not only requested that Japan prevent the group from sailing but it also deployed warships, helicopters, and commandoes in the waters around the rocks – all this for a small protest boat (*The Chosun Ilbo*, 05/05/2004). In Japan, however, the entire episode barely registered in the media,

whereas Korean newspapers carried both the build-up and aftermath of the incident.¹¹³ Given the symbolic aspect of the dispute and the South Korean reaction to the news of the planned landings (the deployment of warships and helicopters) if the activists had made it to the waters around the rocks the situation would have been highly unpredictable and very dangerous. Thus, the Japanese government's decision to prevent the activists from reaching the rocks is understandable. None-the-less it is worth contrasting this stance with that of China, which actively encouraged (or at the very least acted complicity with) citizen activists in their attempts to land in 2004 (see Chapter Four, Section 4.10). Also, considering the potential for trouble, it is interesting that the incident barely featured in the Japanese media. The reason for the low-profile nature of the incident in Japan was, once again, Japan's position in the sovereignty game: the rocks were off the table, the government was focused on the maritime territory and the potential precedential aspects of the dispute.

This policy proved successful until 2005, as the government played down the dispute while the media for the most part did not deem it newsworthy, keeping the dispute off the agenda and away from the national consciousness. The precedent of South Korean control over the rocks may have been routinised, but that was now of little concern to Japan. However, as the next section shows, it would be the very attempts to play down the dispute which would cause sub-state actors to unwittingly catapult it to the very centre of Japan-South Korea relations.

¹¹³ In fact only two of national dailies even carried the story, the *Yomiuri Shimbun* and the *Mainichi Shimbun*.

3.7 Takeshima Day

Shimane had long been lobbying Tokyo to take a more active role in the Liancourt Rocks dispute, but the calls had been falling on deaf ears (Jōdai Yoshirō [Shimane Prefectural Assemblyman] Interview, 16/07/2010). The money and attention lavished on Japan's other territorial dispute, where another state was "illegally occupying" – the Northern Territories – led to a sense of injustice, and the second-class treatment of the Liancourt Rocks dispute was one of the main factors behind the prefecture's decision to enact the legislation creating Takeshima Day (Jōdai Yoshirō Interview, 16/07/2010).¹¹⁴ The importance of the dispute, locally, was as much about fishing rights as sovereignty, particularly as local fishermen protested that the 1998 Fisheries Agreement was not being honoured. It is difficult to evaluate the validity of these complaints, though it is clear that, despite the rocks being in a joint fisheries zone, Japanese fishing boats were kept well away from the rocks by South Korean authorities (Sugihara Ryū Interview, 16/07/2010). The result was that, on 15 March 2005, the prefectural legislation enacting the establishment of Takeshima Day was passed, and the first Takeshima Day itself was celebrated on 22 February 2006, on the anniversary of the formal incorporation of the rocks into Shimane prefecture.

Although conditions in Shimane were ripe for the creation of Takeshima Day, the idea was not a local one. This is not an uncontroversial point, as *The Korea Times* headline, "Japan's ruling elite were behind Takeshima Day", on 5 October 2011 suggests. A US diplomatic cable from the consulate in Osaka released by Wikileaks (and used in *The Korea Times* article) cites contacts as stating that "the Takeshima Day issue was not an example of

¹¹⁴ Indeed, if one looks at the amount of money put aside per year for the Liancourt Rocks dispute – 120 million yen, compared to Northern Territories' one billion yen (MOFA, 2010b), the difference is quite stark.

‘homegrown’ nationalism in Shimane” and that the source could have been LDP HQ, a Tokyo politician or even a Tokyo-based right-wing organisation. While *The Korea Times* immediately leapt upon the mention of the LDP HQ and stated that it was responsible for the day (going only on the evidence in the wikileaks cable), interviews with local bureaucrats and others in Shimane have confirmed that the Takeshima Day legislation came from Shimojo Masao, a professor at Takushoku University and chairman of the Takeshima Issue Research Group (Fukuhara Yūji [Professor, The University of Shimane] Interview, 15/07/2010).¹¹⁵ The legislation creating the celebration passed the Prefectural Diet with all but one member voting in favour.

The South Korean response to the legislation was severe. North Gyeonsang Province cancelled its sister-region relationship with Shimane almost immediately, while Seoul lodged a protest and cancelled a planned visit by the Foreign Affairs and Trade Minister, Ban Ki Moon (*The Japan Times*, 15/03/2005). The citizen protests were even more vitriolic than usual, including the burning of a car outside the Japanese embassy in Seoul and the chopping off of fingers by protesters (*The Japan Times*, 24/02/2005). The violent response to the enactment of the legislation in 2005 surprised those responsible (Fukuhara Yūji Interview, 15/07/2010). The legislation was, as suggested above, aimed very much at the central government and putting pressure on it to take a more active role in the dispute, particularly on the fisheries issue. Once passed, however, the prefectural government felt it had to go through with the celebration despite the controversy (Russel, 2006a). Indeed, contrary to the suggestions that “Japan’s ruling elite” was responsible for the ordinance, the central

¹¹⁵ Shimojo has a long-standing interest in the dispute, having published several books on the topic. In late July 2011 Shimojo travelled to South Korea to visit Ulleungdo, but was refused entry at Seoul Incheon Airport, and was forced to return to Japan later that same day (Yonhap, 01/08/2011). The same thing happened to a group of Japanese Diet members shortly after, see below.

government did what it could to prevent the day from taking place but with local autonomy law there was little room to manoeuvre. The rhetoric was substantially toned down by the time of the actual first Takeshima Day in 2006, away from the standard “Takeshima is an inherent part of Japan” line and towards a softer message, calling for mutual understanding and cooperation to resolve the dispute (*Asahi Shimbun*, 20/01/2006).

Within the prefecture, the celebration met with a luke-warm reception, and the cancellation of the various exchanges with South Korea was greeted with dismay by many: citizens of the prefecture moved to organise non-official exchange activities instead, including cooking classes and a Korean film festival (*Asahi Shimbun*, 18/02/2006). Similarly, when the day itself was celebrated in 2006, despite all prefectural schools receiving instructions on how to teach about the dispute, there was dissent, especially in schools which had links to or exchanges with South Korean schools. Many of the schools simply ignored the event entirely (*Asahi Shimbun*, 22/02/2006). Finally, and perhaps most damningly, the two leading candidates for Upper House seats in the 2007 election, Kamei Akiko and Nakayama Tatsuo, admitted on the campaign trail that, for Shimane voters, the territorial dispute is simply not a big issue (*The Japan Times*, 25/07/2007).¹¹⁶ Despite the citizen opposition and the dramatic South Korea response to Takeshima Day, it was a complete success in fulfilling its primary goals: raising awareness of the dispute among ordinary Japanese and putting pressure on the central government to take a more active role in the dispute.

In 2009 it seems that Prime Minister, Asō Tarō, helped “to neutralise the impact of ... ‘Takeshima Day’” (Zumwalt, 2009), though for the first time a Diet member, Yamatani Eriko,

¹¹⁶ See also Section 3.3.2, Symbolic Value (a 2007 opinion poll in Shimane Prefecture found that 70 per cent of respondents had a ‘weak interest’ in the dispute)

attended the event. In 2010, with the LDP now in opposition, there were ten Diet members in attendance, representing three different political parties (although there were no DPJ representatives). At the 2010 event, Suzuki Muneo – a politician deeply involved in the Northern Territories dispute (see Chapter Five) – described the Liancourt Rocks dispute as a matter of the nation’s “sovereignty and respect” (*Yomiuri Shimbun*, 23/02/2010). By 2011 the number of Diet members had increased to thirteen, including for the first time two from the ruling DPJ.

The legislation creating Takeshima Day, as well as the actual inaugural celebration of the day in 2006, because they were organised by a subnational government rather than by Tokyo, had less of an impact on the sovereignty issue. Still, the very act of protesting the announcement of the celebrations can be seen as a validation of it as an (albeit weak) exercise of sovereignty. The prefectural governments are a part of the overall structure of the state so, despite local autonomy, actions by the prefectural governments carry political and legal significance; it was after all Shimane Prefecture which formally incorporated the rocks in 1905.

More important were the consequences of the day: there was some high level fall-out from Shimane Prefecture’s actions (e.g. Foreign Minister Moon cancelling his visit to Japan) but neither the creation of Takeshima Day nor its celebration caused as much diplomatic friction as the 2006 hydrographic research (see next section). It is likely that Seoul understood the impossibility of preventing Takeshima Day, but still needed to send a message to its own citizens as well as to Japan that it was not in any way softening its stance. In contrast, the citizen response in South Korea was overwhelming, and in fact it was this rather than the actual celebration itself which served to raise consciousness of the Liancourt Rocks

dispute across Japan. While successive administrations (and MOFA) had managed to control the dispute up until Takeshima Day – protesting South Korean exercises of sovereignty just enough to maintain its claim, but without seriously impacting relations – from 2005 on the nature of the dispute changed. Domestically, the issue was no longer the preserve of far-right groups or nationalist historians, but more and more mainstream politicians came to take an interest, as evinced by the increasing attendance of Diet members.¹¹⁷

3.8 Hydrographic Research

In April of 2006, only two months after the inaugural Takeshima Day, the Liancourt Rocks dispute erupted again. The JCG announced plans to conduct hydrographic research in order to examine submarine geographical features in the Sea of Japan, controversially including features near the Liancourt Rocks and within an area which South Korea claimed as its EEZ (hydrographic research is traditionally permitted within another state’s EEZ, though this has become problematic, see Bateman, 2005; Fang, 2010).¹¹⁸ This action was a response to similar South Korean research trips, undertaken with a view to proposing Korean names for the undersea features at the annual meeting of the International Hydrographic Organisation (IHO) in June of the same year, and which, according to Japanese government officials, would be used to strengthen the Korean EEZ claims (*The Japan Times*, 04/07/2006). The South Korean response to the Japanese research mission was defiant, with Foreign Minister, Ban Ki Moon, warning Japan against the expedition and the immediate deployment of over

¹¹⁷ The opinion polls cited earlier show that there was a substantial increase in awareness and support for Japan’s position on the dispute among its citizens over this period.

¹¹⁸ UNCLOS Article 246.2 states that “marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal state”, but it does not specify precisely what constitutes such research.

18 ships to the area in order to block the Japanese vessel (*The Japan Times*, 20/4/2006). It emerged several years later that these South Korean ships were actually under orders to ram any Japanese vessels which came near the rocks (*The Japan Times*, 20/08/2011). Japan, for its part, asserted that the research ship would be on the high seas, and thus its actions would be entirely legal according to international law.

The stand-off was eventually resolved following negotiations that were described as “severe” and “tense” by Vice Foreign Minister, Yachi Shōtarō, head of the Japanese negotiating team. Eventually, the Japanese agreed to temporarily suspend the trip, while South Korea tacitly agreed not to propose new names at the IHO naming conference in the summer; both sides agreed to resume talks on the demarcation of their EEZs (*The Japan Times*, 23/03/2006) Despite the agreement, President Roh, in a live broadcast on Korean television, used the occasion to describe Japan’s claims to the Liancourt Rocks as tantamount to “justifying its history of crimes committed during the war of aggression”, and that the claims denied “Korea’s full liberation and independence” (*The Japan Times*, 26/04/2006). At the conference itself, a large number of South Koreans were present, and while no new names were proposed, they offered to hold the 2008 meeting in South Korea, and in a speech given at the end of the conference, Jung You-sub, criticised the manner in which “some undersea features are mostly located in the EEZ of Korea, but named without any consultations or consent with us” (International Oceanographic Commission [IOC] and IHO Report, 2006: 30).¹¹⁹

The controversy was not over yet, however, as in July South Korea began conducting research in the waters around the Liancourt Rocks, which provoked Japan into a tit-for-tat

¹¹⁹ South Korea did eventually propose new names, and these names were accepted at the 2007-8 conferences.

response – in the words of a senior MOFA official: “If South Korea conducts the survey, we will also consider doing it” (*The Japan Times*, 04/07/2006). Vice Foreign Minister Yachi summoned the South Korean Ambassador and delivered a protest, but the research continued as planned. From a Japanese perspective, the timing of the South Korean research was highly significant: the research vessels arrived at the disputed rocks on the same day as North Korea fired its Nodong and Taepodong missiles into the Sea of Japan. The timing, combined with the fact that Seoul refused to give any official prior notification of its survey, led to damaged ties at local and national level (Russel, 2006b).

In June of 2006 both sides sat down to another round of EEZ negotiations. As mentioned previously, in the negotiations leading up to the 1999 Fisheries Agreement Japan’s negotiating base was that the rocks would serve as Japan’s baseline, putting the median line between them and Ulleungdo. South Korea did not use the rocks, despite its control over them, instead starting from Ulleungdo, with a median line between Ulleungdo and the Japanese Oki Islands. However, this all changed in 2006: in advance of the negotiations, South Korea submitted a declaration exempting itself from the compulsory resolution of maritime boundary disputes (UNCLOS Article 287) and then altered its negotiating stance to one where the rocks were the baseline for the claim. Perhaps unsurprisingly, then, once again the negotiations proved fruitless. The discovery of gas hydrates in 2007 added another potential stumbling block to the already fraught EEZ issue.

As outlined in the previous chapter, UNCLOS not only bestowed potential access to valuable maritime resources on tiny rocks and islands but it also created vast new areas in which states could dispute sovereignty, particularly where the respective coastlines were less than 400NM apart (which would lead to overlapping claims). In the case of the Liancourt

Rocks, even the names of undersea features became part of the sovereignty game.¹²⁰ South Korea aggressively pursued the naming issue, even managing to gain ‘home advantage’ for the 2008 meeting, and Japanese government officials admitted that, if South Korea managed to name the disputed undersea features at the IHO naming conference, this would improve their position in the EEZ dispute. This is at first glance a curious statement, but makes sense when view from the perspective of the sovereignty game. While at first glance the name of an obscure undersea feature seems to be of little political or legal consequence, the international recognition of one state’s names for the disputed undersea features bestows a political legitimacy on that state’s claims. Were Japanese names to be used this would further undermine South Korea’s already incomplete sovereignty over the disputed waters, while Korean names would weaken Japan’s claims over those same waters.

The hydrographic research incident conforms to the idea that Japan was primarily concerned with the issue of sovereignty over the waters around the rocks, and it was for this reason that it was willing to take an unprecedentedly assertive position. The brinkmanship which the research incident led to had not been seen previously in any of the incidents involving the dispute, maritime or over the rocks themselves; South Korean ships were under orders to ram Japanese research vessels. Nonetheless, the government’s actions were successful in preventing South Korea’s exercise of sovereignty: there were no new names proposed at that year’s IHO conference; moreover, the government sent a message to Seoul that it would not back down when it came to sovereignty over the disputed maritime territory. Thus, it would be more accurate to say that while the hydrographic research incident *does* conform to the pattern of the government pushing the maritime issue rather than the rocks

¹²⁰ In a similar manner, there has been a long and ongoing controversy about the name of the sea in which these features are found; while the conventional name is the Sea of Japan, Seoul insists that the sea should be called the East Sea.

themselves, it also marks a new departure in its behaviour in the dispute. There was a distinct shift in Japan's policy to its maritime disputes from the mid-2000s on (Nakajima, 2007; Manicom, 2010, further examples are given below, Section 3.9), and in the Liancourt Rocks dispute Japan's more assertive behaviour in 2006 is a manifestation of this new trend. This broader trend is discussed further in the Conclusion, but looking specifically at the Liancourt Rocks, the growing awareness and interest in the dispute among both citizens and politicians surely played a key role.

Finally, South Korea's decision to move back to the position of using the rocks as a baseline for its EEZ in the 2006 negotiations is highly significant. While the original move back to Ulleungdo in the negotiations for the 1998 Fisheries Agreement was part of the abrogation of the secret pact, it did suggest that Seoul was willing to compromise to some extent on the maritime territory issue as long as it maintained full sovereignty over the rocks themselves. However, the 2006 move is likely to have been a substantial toughening of Seoul's stance for a number of reasons: the period 2005-6 saw broader South Korea-Japan relations sink to a post-Cold War low, the shift came in the midst of the worst conflict in recent history of the dispute (the hydrographic research incident), and finally Seoul moved in 2006 to exempt itself from UNCLOS's obligatory resolution mechanisms. The combination of the UNCLOS exemption and the tougher stance served to increase the saliency of the sovereignty game as a determinant in the maritime dispute.

3.9 Recent Developments

In late July 2008 media reports surfaced announcing that the US Board of Geographic Names (BGN) had changed its designation of the Liancourt Rocks from South Korean to “nondesignated sovereignty”, and placed the Japanese name for the rocks, Takeshima, ahead of the Korean name, Dokdo (Crowell, 2008). The BGN is the body responsible for maintaining uniform geographic name usage across the US government, though it does not have the power to determine the US position on sovereignty over disputed territory. The decision provoked a strong reaction from Seoul, with the White House Asia adviser stating that “a very high-level” government official made contact with the George W. Bush administration seeking the reversal of the designation (*The Japan Times*, 01/08/2008). Bush himself was due to travel to South Korea only a week later, and after consultation with Secretary of State Condoleezza Rice, the designation-change was quickly rescinded. The White House Asia Advisor, Dennis Wilder, stated in a press conference: “we regret that this change in designation was perceived by South Koreans as some sort of change in our policy”.

The changed designation came at an already fraught time in the territorial dispute: in early July of 2008 the Minister of Education issued non-binding supplementary guidelines for teachers and textbook publishers which included for the first time a reference to the need to educate children that “differences exist between claims of our nation and South Korea over Takeshima” (*The Japan Times*, 17/07/2008). This was the latest in a long line of textbook controversies throughout the 2000s. 2002 had seen the approval of *Saishin Nihonshi* – a senior high school history book which made references to the Liancourt Rocks – by the Ministry of Education, while in 2005 ministry inspectors altered Junior High School civics textbooks so that, instead of acknowledging the existence of a “confrontation”, they now said

the rocks were “an integral part of Japanese territory ... unlawfully occupied by South Korea” (*Asahi Shimbun*, 10/04/2002; *The Japan Times*, 09/03/2005).¹²¹ Yet, despite the relatively mild wording of the 2008 guidelines (in the same publication the Northern Territories were defined as Japan’s “inherent territory”), and the fact that the ministry apparently produced one hundred proposals on the wording regarding the rocks in order to minimise the diplomatic effects, the result was not only a diplomatic protest and the recall of the South Korean ambassador from Tokyo, but also a visit by the South Korea Prime Minister to the rocks, and large-scale military exercises around the rocks (*The Japan Times*, 17/07/2010).

2011 was another eventful year in the dispute: it began in March with another set of protests over textbooks claiming the territory as Japanese, followed by the announcement of further construction on the rocks in April; Seoul planned to build a Maritime Science Facility, which the Japanese government duly protested. Then, in May, three South Korea members of parliament made a high profile trip to the Northern Territories, ostensibly to learn about the way in which Russia exercised sovereignty over its disputed territory (*Yomiuri Shimbun*, 25/05/2011). July saw a Korean Air test flight of its new Airbus A380, which flew out to the rocks and back again the day before it went into operation on the Tokyo-Seoul route. As a result, the central government instructed its officials to boycott the airline – an example of how, unlike in previous cases (such as the ‘Dokdo stamps’), the government was now responding directly to South Korea exercises of sovereignty. Finally, in August three Diet LDP politicians, who went on a ‘fact-finding’ trip to Ulleungdo, were refused entry to South Korea (*Asahi Shimbun*, 01/08/2011).

¹²¹ While the 2002 textbook incident saw protests from Seoul, with the 2002 World Cup coming up the need for good relations prevented any major flare-up. 2005, on the other hand, was a terrible year for relations between Japan and South Korea as it was: Seoul protested, calling for the textbook to be amended, while a foreign ministry spokesman added that “Japan’s claims [to the rocks] amount to an attempt to justify its colonial invasion and negate the history of our liberation” (*The Japan Times*, 06/04/2005).

The naming issue reflects the massive weight South Korea puts on the international recognition of its sovereignty over the Liancourt Rocks. The change in designation by the BGN carried no apparent political weight, the US State Department reiterated its neutrality in the dispute and its hope that the two sides could resolve the issue diplomatically between themselves (*The Japan Times*, 01/08/2008). Yet, despite this apparent lack of political meaning behind the change, the State Department did say that the change to “nondesignated sovereignty” was carried out “to be in conformity with US government efforts to standardise the filing of all features to which we do not recognise the claims of sovereignty” (*The Japan Times*, 01/08/2008). With Bush scheduled to make an official visit to South Korea just a week later, and to do so against a backdrop of anti-US protests over the resumption of beef imports that very month (US beef had been banned since 2003 following a BSE outbreak), Seoul was in a position to make use of its diplomatic capital and pressure Washington to reverse the move *even though* it reflected the actual policy of the US. While South Korea spent diplomatic capital on the naming issue – just as it does on the East Sea/Sea of Japan issue, Tokyo remained silent; Chief Cabinet Secretary, Machimura Nobutaka, stated that “we don’t think we have to react excessively each time a US government organisation does something” (*The Japan Times*, 01/08/2008).

The textbook controversies of the 2000s contribute to the thesis outlined earlier in this chapter (Section 3.3.2) that the symbolic value of the Liancourt Rocks on the Japanese side is increasing, and is likely set to increase further in the future. Again, whether this will result in the rocks actually becoming part of the ‘national homeland’ is difficult to say, but certainly it is no longer seems as improbable as before 1996, or even 2005. Meanwhile, the events of 2011, in particular the trip to the Northern Territories by the South Korean members

of parliament, illustrate the continuing relevance of the dispute as well as the links between Japan's disputes. This point is developed in the Conclusion to the dissertation.

3.10 Summary

The timing of the incorporation of the Liancourt Rocks into Shimane Prefecture – in 1905, the same year as Korea was made a Japanese protectorate – resulted in the highly emotional nature of the modern dispute in South Korea. In Japan the secret pact, agreed in the negotiations in advance of the 1965 Normalisation Treaty, meant that the rocks were largely forgotten about until 1996, the abrogation of the pact, and the ratification of UNCLOS. The reasons behind the abrogation of the pact suggested in this chapter focused on the relationship between Korean nationalism and democratisation, as well as the ratification of the UNCLOS and the resulting overlapping EEZs claims in the Sea of Japan. The latest phase of the territorial dispute, then, dates from 1996.

The Hashimoto administration's response to the construction of the wharf on the rocks follows the logic not of international law but of the sovereignty game. Such a powerful and direct exercise of sovereignty (construction of state infrastructure) had to be protested at a level much higher than the usual *note verbale* protesting South Korean occupation of the rocks, or else Japan's political claim would seem weak. This led to Foreign Minister Ikeda's protests. Yet, the emotional nature of the dispute in South Korea created an anti-Japanese backlash against not only the protest but also the later inclusion of the issue in the LDP's lower house election manifesto. The result was that while the Hashimoto administration did protest South Korea's new activity on the rocks, it also acquiesced politically in what was

essentially a *fait accompli*: Seoul would never back down in response to a foreign minister's protest, even if that was an unusually high-level protest in the recent history of the dispute. Of course, the economic, diplomatic or military capital which Japan would have had to expend in order to prevent a *fait accompli* was prohibitive; rather, the level of protest was commensurate with ensuring that Japan's interests in the dispute were maintained: preserving its negotiating position for the surrounding disputed maritime territory, maintaining the overall claim to the rocks from a legal perspective (and thus maintaining its precedential value with regard to the Pinnacle Islands), and sending a message to China, with whom further EEZ problems were looming.

The 1998 Fisheries Agreement was a temporary EEZ compromise as neither side would allow the rocks to be surrounded by the others' sovereign maritime territory (i.e. their EEZ); the waters surrounding the rocks became a joint administration zone. While article 15 of the agreement – “no provision of this Agreement shall be deemed to prejudice the position of each Contracting Party relating to matters on international law other than matters on fisheries” – was included to prevent the agreement having any effect on the territorial dispute itself, there was some consternation in South Korea due to a perception that, somehow, the agreement involved South Korea acquiescing in the existence of the dispute and thus strengthened Japan's claim. The consternation came from a sense of a political acquiescence rather than a legal one, given that the article clearly states that the agreement did not prejudice the position in other matters, and does not even specify the nature of these other matters. Despite the construction of the wharf, the increased size of the garrison on the rocks, and other developments, South Korea enjoyed no gains on the maritime territory issue: the agreement was basically along the same lines as previous Korean-Japanese fisheries agreements.

After the fisheries agreement the government maintained its low-level protest, thus preserving its position vis-à-vis the EEZ issue and the precedential value of the dispute. Despite coming under nationalist pressure to take a tougher line in 1996 and 1997, when various issues arose in the early 2000s the then Koizumi administration dealt with them quietly and carefully; the response to the ‘Dokdo stamps’ well illustrates this point. Whereas, in 1954, the government had investigated various possible responses, even considering returning any mail with the stamps affixed, in 2002 and 2004 the reaction was muted. Foreign Minister Kawaguchi Yoriko did protest but there was no actual attempt to prevent Seoul from going ahead with the stamp issuance, nor any suggestion that future similar acts would be deterred. The restraint was so great that even private individuals were prevented from making ‘Takeshima stamps’ in response. The stamp issue, together with *Nihon Shidokai*’s landing attempt, show that the government at this time would not let the dispute damage relations with South Korea. The foreign minister-level protest ensured that its EEZ claim would be intact and the precedential value – in this case both legal and political – of the territorial dispute in terms of the Pinnacle Islands would be preserved.

The fact that the Japanese government did raise the stakes when it came to the maritime territorial dispute in 2006 confirms this hypothesis. The Japanese government was aware that, although again of no real legal importance, the Korean naming of undersea features in the disputed maritime zone would be used to strengthen Korean EEZ claims. The brinkmanship to which the hydrographic research issue led, and the difficulties in resolving the tense stand-off, left little doubt that it was the maritime territory, not the rocks themselves, that was of interest to the Japanese government. The role of international recognition in the territorial dispute became very apparent during this crisis. The Japanese reaction was spurred

on by South Korea's intention to have of the disputed EEZ named at an IHO conference, giving the Korean names international recognition. Such international recognition could provide further legitimacy to South Korea's claim to the maritime territory and therefore bolster its claim in a political sense. In contrast, the Japanese government kept quiet during the 2008 BGN incident, most likely because, unlike the IHO naming conventions, it realised that there was nothing it could do to change the US position on sovereignty and that its position in both the sovereignty game and regarding the BGN itself would not be negatively affected.

Observing the territorial dispute over the long-term, from 1996 on, a change in the Japanese government's stance in the sovereignty game can be identified from the mid-2000s. The Liancourt Rocks dispute is no longer the preserve of far-right groups or academics as was mainly the case in the 1990s or early 2000s, but rather it is increasingly becoming part of a mainstream nationalist discourse. The brinkmanship of the 2006 hydrographic research incident evinces the new, tougher position taken by the government, yet as we have seen there are numerous others: Takeshima Day, initially played down by the central government and ignored by Diet politicians, has gained legitimacy and is now attended by both LDP and DPJ Diet members. The more recent events serve to back up this claim: the boycott of Korean Air, the 'fact-finding' mission to Ulleungdo, and the steady inclusion of the rocks in various junior and high school syllabi – it is difficult to imagine any of these occurring in the 1990s. While there is no question that Takeshima Day, or rather, as we have seen, the Korean response to Takeshima Day, has contributed to this shift, other factors should not be ignored. A similar shift in government policy can be seen in the Pinnacle Islands dispute, and the relationship between them is discussed in further detail in the Conclusion to this dissertation.

In sum, while Seoul took advantage of its effective control of the rocks to attempt a *fait accompli* on sovereignty over the Liancourt Rocks, subsequent Japanese actions meant that this *fait accompli* applied only to the rocks themselves; although the huge symbolic value which the rocks hold for Koreans meant that Japan's ability to use its economic, diplomatic or military capital in order to exercise sovereignty over them was severely stunted, although in both 1998 and 2006 it managed to prevent Seoul's exercise of sovereignty over the surrounding waters. Meanwhile, the process of entrenchment which can be observed as far back as 1996, with the inclusion of the rocks on the LDP manifesto, has led to the rocks themselves becoming an issue in Japanese domestic politics. The future effects of this development are unpredictable and potentially destabilising, as the South Korean reaction to any attempts by Japan to exercise sovereignty, even indirectly, over the rocks themselves has shown.

Chapter Four: The Pinnacle Islands Dispute

4.1 Overview

This chapter outlines the manner in which the sovereignty game has been played out in the Pinnacle Island dispute in the post-Cold War period. The Pinnacle Islands are comprised of (Japanese name first, then Chinese) Uotsurijima/Diaoyudao, which is by far the largest; Kubajima/Huangweyu, Taishōjima/Chiweiyu, Minamikojima/Nanxiaodao, Kitakojima/Beixiaodao, and a number of small rocks and islets.¹²² While the dispute is primarily (and legally) between Japan and China, Taiwan also maintains a claim and its actions are highly relevant to the dynamics of the dispute and thus are included in the chapter where necessary. The chapter begins with a political and legal history of the islands, from first mentions on ancient Chinese maps to their treatment in the post-World War II treaties, concluding with events during the Sino-Japanese treaty negotiations in 1978. The subsequent sections plot the trajectory of the sovereignty game in which both sides took part following the end of the Cold War, after the dispute emerged from dormancy. The chapter demonstrates how, during the 1990s, Japan's MOFA-led policy saw it refrain from exercising sovereignty over the islands in deference to China, prioritising instead friendly bilateral relations. As China was economically dependent on Japan it, too, held back during several major incidents, but unlike Japan never backed down on the issue of sovereignty. The chapter shows how, after the 1996 ratification of UNCLOS and the associated flare-up in the summer of the same year, domestic opposition to the Japanese government's perceived weak stance on the dispute mounted. This culminated in an internal LDP committee forcing the

¹²² From here on the Japanese names are used, and the suffix 'jima' is dropped. This is purely for the purposes of clarity – while the island group has an English name, the individual islands do not. Many of sources used refer to the islands using their Japanese name, thus, it makes for smoother reading to stick to the Japanese names.

issue and deploying Japan's economic leverage over the Chinese research vessel incursions into Japan's claimed EEZ and the waters around the disputed islands. Beijing continued to push its sovereignty claims, however, and was on course to affect a *fait accompli* on political sovereignty of the disputed maritime territory in which the islands were located, as well as having prevented Japan from exercising sovereignty over the islands themselves on several occasions. The administration of Koizumi Junichirō saw Japan take a stronger stance in the dispute, engaging in exercises of sovereignty over both the islands and the associated disputed maritime territory. This was unprecedented, as all previous administrations had shied away from taking action likely to exacerbate tensions with China.

The chapter pays particular attention to the manner in which the Koizumi administration approached the arrests and attempted prosecution of Chinese activists who landed on the islands in 2004, compared to the response of the DPJ administration of Kan Naoto to the collision between JCG patrol boats and a Chinese fishing trawler in 2010. Both incidents show the importance of the demonstration of jurisdictional and political sovereignty over the islands, though the two incidents had dramatically different implications for Japan's position in the dispute. The chapter concludes by reviewing the events of the post-Cold War period, highlighting the shifting dynamics of the sovereignty game from the early 1990s – the 'shelving' years – to Beijing's push in the late 1990s and early 2000s, and finally to Japan's strengthening of its position from the Koizumi administration onwards.



Figure 4.1 The Location of the Pinnacle Islands. Source: CIA Maps.

4.2 History

Chinese records indicate that both the Ming (1368-1644) and Qing (1644-1912) dynasties in China were aware of the existence of the islands, and Chinese sailors en-route to the then Ryūkyū Kingdom, a tributary state of China, used them as navigational aides. For example, in 1532 a Chinese envoy called Chen Kan travelled to Naha and recorded passing through the islands, and describing several of them by name (Suganuma, 2000). Although no records exist prior to this date, several other envoys had travelled along the same route, and it is safe to assume that since Chen knew the names of the islands they were named at some point prior to his journey. Moreover, Chen Kan noted when he reached Kume Island that it belonged to the Ryūkyūs, the implication being that the islands prior to this were Chinese territory (Inoue, 1972). There are some other examples of an implicit understanding between the Ryūkyū

people and later Chinese envoys that the islands were part of China rather than the Ryūkyūs. However, by 1838 records indicate that an envoy called Zhao did not know the Chinese names of the islands, and in fact asked the Ryūkyū people on arrival in Naha, at which point he was given the Ryūkyū names for the islands (Suganuma, 2000).

Of potentially more consequence was an alleged edict issued by the Empress Dowager Cixi in 1893, granting the islands to an herbalist by the name of Sheng Xuanhuai for the collection of medicinal herbs (Suganuma, 2000). It seems that the title was passed on in a will in 1947, the details of which did not surface until the 1970s, after the modern dispute had emerged, although the authenticity of the document is in doubt (Austin, 1998: 166-7). Also, as with the Liancourt Rocks dispute (Chapter Three, Section 3.2), both sides can produce maps from the 18th and 19th century which indicate that the islands were either Japanese or Chinese territory – there is no need to get involved in these ‘map wars’ here, suffice to say that neither side has produced *the* definitive map which conclusively shows that the territory belongs to one side or another, nor would it ever be possible to do so.

4.2.1 The Incorporation

The precise details of the years prior to the eventual incorporation of the islands under the principle of *terra nullius* are unclear. According to some sources, the Okinawan governor, Nishimura Sutezo, petitioned the Japanese government to incorporate the islands in 1885, which was vetoed by the then Foreign Minister, Inoue Kaoru, because it was unclear who owned the islands, and the erection of markers might cause suspicion in China (Suganuma, 2000). Again, in 1894, Koga Tatsushiro, a resident of Naha, applied for a lease on the islands,

where he had already been collecting marine products (Inoue, 1972). The application was rejected once again apparently because the government was unsure of the status of the islands. However, the government did conduct surveys on the islands in 1887 and 1892, and a cabinet resolution was made on 14th January 1895 to erect markers on the islands and formally incorporate them (Heflin, 2000: 6). The following year the islands were leased to Koga.

The timing of the incorporation – three months before the end of the first Sino-Japanese War (1894-5) – has major implications for the modern dispute. By the time of the formal incorporation, Japan had gained the upper hand in the war, advancing well into Manchuria and taking several key ports. This clear military superiority could explain the change of heart regarding the incorporation of the islands (Su, 2005: 54). Further clouding the issue is the islands' proximity to Taiwan, which was ceded to Japan along with “all islands appertaining or belonging to the said island of Formosa (Taiwan)” (Treaty of Shimonoseki Article 2.b, 1895). Thus, whether the islands pertained to Taiwan or were already part of Japan according to the January cabinet declaration, is a key issue in the dispute; Greg Austin (1998) points out that the 1895 Treaty of Shimonoseki did not make any reference to the islands.

Either way, Koga died in 1913, but his descendants continued to use the islands, purchasing four of them from the government in 1932 and building a stuffed bird and katsuobushi (dried bonito) factory (*Aera*, 21/10/1996). At the height of production in the 1930s, approximately 250 people were living on the islands, but with the outbreak of World War II production was stopped and the islands became uninhabited once more. In a letter dating from May 1920 the consul of the Republic of China, based in Nagasaki, sent a letter of thanks to Japanese fishermen who rescued a number of Chinese fishermen shipwrecked on

Uotsuri Island, in which he referred to the Pinnacle Islands using their Japanese name, and giving their address as Yaeyama District, Okinawa Prefecture (*Ryūkyū Shimpo*, 15/06/2005).

4.2.2 The San Francisco Peace Treaty

As we saw in the previous chapter, the 1951 San Francisco Peace Treaty was to determine the territorial boundaries of post-war Japan, yet, as was the case with the Liancourt Rocks, no mention of the Pinnacle Islands was made. Article 3 of the treaty put the Bonin and Ryūkyū Islands under US control, with Japan granted “residual sovereignty” (San Francisco Peace Treaty Article 3). In fact, it was not clear at the time what the fate of these islands would be – several of the allies were in favour of the US retaining full sovereignty, and at that time the Kuomintang claimed that Okinawa belonged to the Republic of China (Dulles memo, 08/09/1951; Hara, 2007: 176).¹²³ When, in 1953, the US Civil Administration of the Ryūkyūs (USCAR) issued US Civil Administration of the Ryūkyūs Proclamation 27 (USCAR 27) to define the scope of its territory, it specifically included the Pinnacle Islands (Niksch, 1996). From then on, the islands were turned into a firing range, and the then owner, Koga Jinji (a descendent of the original Koga), was paid an annual rent of US\$11,000 by the US administration (Niksch, 1996: 1).

As is made clear in Chapter Five, the Okinawan question and the concept of residual sovereignty were part of a (successful) attempt by the US, under the aegis of Secretary of State, John Foster Dulles, to keep a wedge between the USSR and Japan (see Section 5.2); as with the Northern Territories, decisions regarding the US treatment of the Pinnacles must be

¹²³ On the other hand, the People’s Republic of China supported Japanese sovereignty over the islands (Wiegand, 2011: 236).

understood in the context of the nascent Cold War. Mainland China fell to the Communist Party in 1949, and the Korean peninsula was already on the brink of war. With the regional situation deteriorating rapidly from a US perspective, the Ryūkyū Islands became “indispensable to American security plans”, and drafts of the San Francisco Peace Treaty from 1951 indicate that the US had already decided that the Pinnacle islands were to be part of the Ryūkyūs (Blanchard, 2000: 106). The aforementioned USCAR 27 was the formal implementation of this decision.

4.2.3 The Emergence of the Dispute

Neither China nor Taiwan protested the USCAR’s definition of the Ryūkyūs, and in fact in the period up until 1969 both Chinese governments appear to have implicitly recognised that the Pinnacles were Japanese territory.¹²⁴ Examples of this recognition include an article in the Chinese People’s Daily newspaper (an organ of the CCP) which describes the islands as part of Okinawa, a number of atlases published in China which locate the islands as part of Japan, and a state-prescribed high-school textbook in Taiwan which again referred to the islands as Japanese (Suganuma, 2000: 124-5).

However, after a United Nations Economic Commission for Asia and the Far East (UNECAFE) geological survey of the continental shelf between Taiwan and Japan estimated that between 10 and 100 billion barrels of oil may be under the sea in the region, the dispute began. A reporter for the China Times, a Taiwanese newspaper, landed on the islands and

¹²⁴ Note that the China did protest the San Francisco Peace Treaty, and was not a signatory to it. However, Japan and Taiwan did sign a peace treaty in 1952, in which direct reference was made to the San Francisco Peace Treaty – Japan reaffirmed the renunciation of territories according to the San Francisco Peace Treaty.

planted a flag, before being removed by the Okinawan police (Suganuma, 2000: 125), which provoked popular protests in Hong Kong and Taiwan. Both China and Taiwan made claims to the islands (Taiwan first, then China), after which the US transferred administrative control to Japan under the terms of the Okinawa Reversion Agreement, signed in June 1971 which went into effect in May 1972. It was made clear that the Pinnacle Islands were included in the Reversion Treaty, and interestingly several of the witnesses to the 1971 Senate Foreign Relations Committee's deliberations on the treaty advised that reservations be made concerning the inclusion of the Pinnacle Islands in the US-Japan Security Treaty (Niksich, 1996: 4). The fact that no such reservations were made indicates that, as a result of both the Reversion and Security treaties, the US understood that its obligation to defend Japan included an obligation to defend the Pinnacle Islands.

While the US did, therefore, hand the islands over to Japan, it was made clear that it was taking a neutral position regarding the territorial dispute itself – during the aforementioned Senate Foreign relations Committee deliberations, Secretary of State William Rogers stated that “this treaty [Okinawa Reversion Treaty] does not affect the legal status of those [Pinnacle] islands at all”; instead, it was simply a matter of handing back the administrative rights which it had gained through USCAR (Niksich, 1996: 4). The US decision not to back its ally in the dispute over the territory which it had, after all, specifically determined as being part of the Ryūkyū Islands can again only be understood with reference to the Cold War politics of the time. The Sino-Soviet split of 1960 represented an opportunity for the US to shift the Cold War balance of power in its favour. By developing ties with China, the administration of President Richard Nixon managed to push the USSR into a corner, a move which was partially responsible for the period of *détente* in the 1970s. Nixon's famous visit to China took place in early 1972, after several years of careful

diplomacy, exactly the period during which the dispute emerged. It seems clear that US support for Japanese sovereignty of the islands was sacrificed to larger Cold War strategic goals – the last thing the Nixon administration wanted was for its ‘ping-pong diplomacy’ to be scuppered by some remote and apparently meaningless islands (Hara, 2007: 180) – decades later such sentiments would call the US commitment into question during the presidency of Bill Clinton (see below Section 4.6).

4.2.4 The 1978 Peace and Friendship Treaty

Although pushed into the claim by the actions of Taiwan, in a competition for “the mantle of defender of national honour and integrity” (Austin, 1998: 4), by 1978, hostility over the dispute between China and Japan had reached “near-crisis proportions” (Tretiak, 1978: 1235). Japan and China were in the process of negotiating a peace and friendship treaty when Beijing sent, in April of the same year, a flotilla of armed fishing boats into the waters around the islands. The provocation for this aggressive move came from within the LDP itself, as 100 anti-treaty Diet members met and proposed that the dispute be resolved in the treaty (thus making the treaty negotiations far more difficult). With the dispute now out in the open, China was left with “the option of dealing with it – or implicitly ceding their claim” (Tretiak, 1978: 1242). The Japanese response was cool-headed, with Prime Minister Fukuda Takeo attempting to reign in nationalistic elements at home, and the administration made statements regretting the fishermen’s action. Meanwhile, Beijing officially denied involvement in the dispatch of the flotilla, allowing Japan to keep face and thus enabling the second phase of negotiations to begin in July, and which were then concluded in August.

Shortly before negotiations were concluded, a right-wing group *Nihon Seinensha* (literally meaning “Japanese Youth Society”, hereafter *Seinensha*), hitherto better-known for their involvement in the Northern Territories dispute with the USSR, became involved. Angry at the perceived inaction of the Japanese government, the group organised a “suicide corps for the possession of Senkaku [Pinnacle] Islands” and landed on Uotsuri in order to build a lighthouse (*Seinensha*, 2005). This lighthouse was to become a major bone of contention in later years.

The result of the 1978 incident was that both Japan and China clarified their claims’ of sovereignty over the islands, and Japan made it clear that in any peace treaty negotiations with the USSR, it would behave in the same “strong but not inflexible manner” (Tretiak, 1978: 1248). Furthermore, as it became apparent, Beijing’s behaviour was not welcomed in Japan or the rest of East Asia, with China being forced to become more conciliatory, resulting in Deng Xiaoping’s now famous comment on shelving the dispute:

“It does not matter if this question is shelved for some time, say 10 years. Our generation is not wise enough to find common language on this question. Our next generation will certainly be wiser. They will certainly find a solution acceptable to all”

(quoted in Fravel, 2010: 157)

4.3 The Value of the Pinnacle Islands

4.3.1 Economic Value

As noted in the history section, there was some economic activity in the pre-war years, but, generally speaking, the economic value of the islands themselves remains marginal. Some local and regional politicians have sought to turn the islands into a tourist destination (capitalising on their very ‘disputedness’, as with the Liancourt Rocks, see Section 3.3.2), but given the fraught nature of the dispute with China and Taiwan this has proven impossible (Nakama Hitoshi [Ishigaki City Councillor] Interview, 22/04/2011).¹²⁵ Right-wing activists did introduce goats on to the islands in a misguided attempt to create some form of economic life. As citizens are now prohibited from landing the islands, today the goats have multiplied to over 400 and risk destroying the native ecosystem (Nakama Hitoshi Interview, 22/04/2011). But in essence the actual economic value of the islands themselves remains marginal, compared to the value of the surrounding waters; the impact and interpretations of UNCLOS are thus crucial.

In 1994 UNCLOS came into effect, and in the summer of 1996 both Japan and China deposited their respective instruments of ratification – the Japanese cabinet announced in February 1996, four months before actual ratification, that it would be including an EEZ around the Pinnacle Islands. The move went down quietly in China (*Asahi Shimbun*, 21/02/1996). Beijing, for its part, reaffirmed a 1992 law in which it claimed the Pinnacle Islands as its own territory, and later in 1998 passed the “EEZ and Continental Shelf Act” in

¹²⁵ Nakama is an Ishigaki City Councillor and erstwhile member of *Seinensha*. When this dissertation refers to *Seinensha* landings, more often than not he was part of the team who visited the islands. He has visited so many times that he cannot remember the exact number (Nakama Hitoshi Interview, 22/04/2011).

which it claimed that it would either claim a 200NM EEZ and/or a natural prolongation of the coastline for its continental shelf, whichever was longer. Even if one excludes the Pinnacle Islands and their potential for generating an EEZ, the EEZ/continental shelf claims of both sides overlap considerably in the East China Sea (see Figure 4.2); the relative quiet which had accompanied the initial ratifications and declarations would not last long.

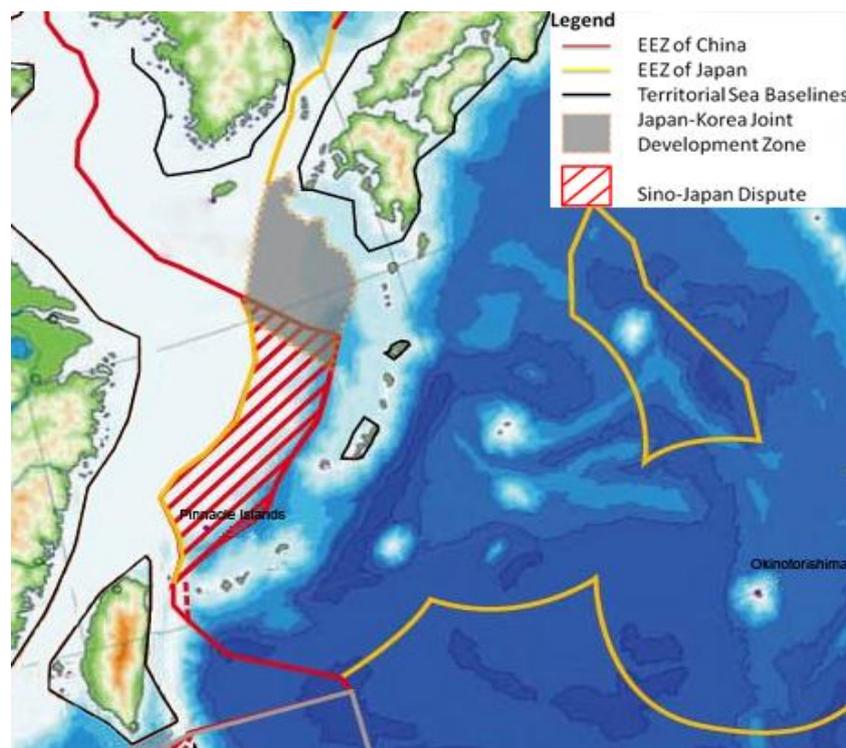


Figure 4.2 East China Sea EEZ Claims. Source: Wikimedia Commons

To clarify, as Figure 4.2 shows, Japan claims an EEZ as far as the median line between the two states, that is, a line drawn equidistant from the coastlines of the Chinese mainland and the Nansei Islands, including the Pinnacles. China claims not only an EEZ but also a continental shelf, which it argues runs naturally as far as the Okinawa Trough (see Figure 4.3). Japan counters that the Okinawa Trough is merely a depression in the seabed and is of no practical consequence to EEZ/continental shelf claims. The Pinnacle Islands lie on the Chinese side of the Okinawa Trough, and thus on China's claimed continental shelf.

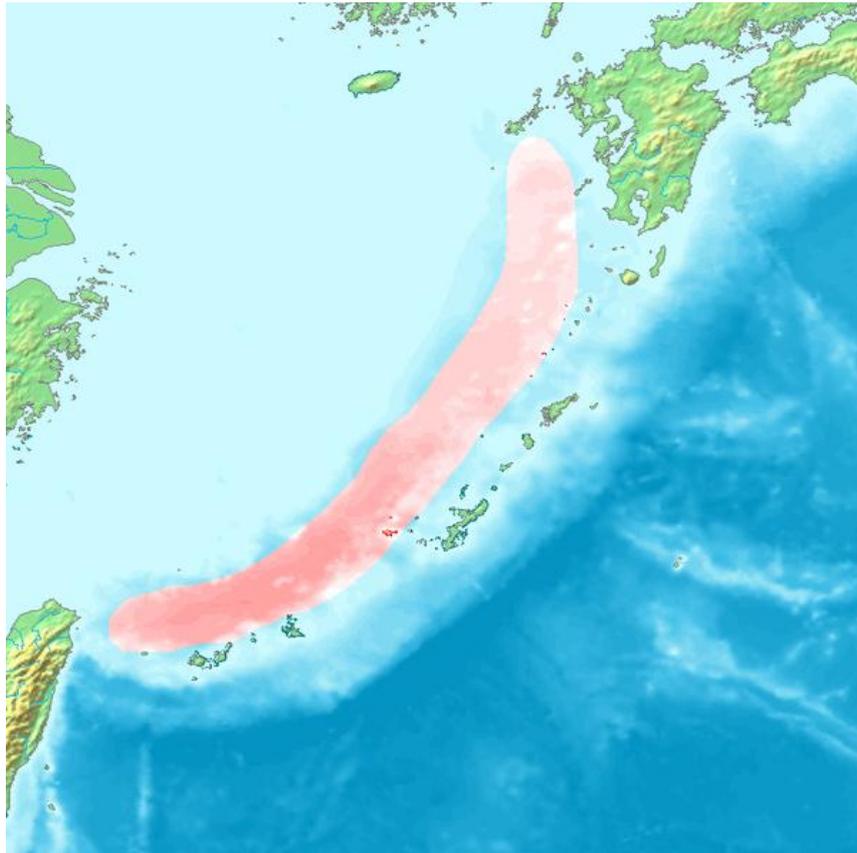


Figure 4.3 The Okinawa Trough, Indicated by Red Line. Source: Seiyo City Geological Museum

These disagreements raise several legal issues. First, there is the question of whether the Pinnacles are Article 121.3 rocks – rocks which cannot sustain human habitation and therefore cannot generate an EEZ of their own (see Chapter Two, Section 2.5.3). Given that the islands have in fact sustained human habitation (with a population of several hundred people in 1930s, it can be said that they have the potential to generate an EEZ. Indeed, Japan claims an EEZ around far less significant features than the Pinnacle Islands, and even goes as far as to use the Liancourt Rocks in its EEZ delimitation claims (see previous chapter) as well as claiming that Okinotori Island (an atoll in the Philippine Sea over 1,700 km south of the Japan mainland) also generates a 200NM EEZ – a claim which China has protested since

2004 (*Asahi Shimbun*, 24/04/2004). As we have seen in the discussion of the EEZ-generating potential of the Liancourt Rocks in Chapter Three, in the jurisprudence of the resolution of maritime boundary disputes islands and rocks “may be discounted if their use would have an inequitable distorting effect in light of their size and location” (Charney, 1999: 876).¹²⁶

The issue is further complicated by the nature of the coastlines of the two states and recent developments in the jurisprudence of maritime disputes. There is no specification in UNCLOS as to whether natural prolongation (the Chinese approach) or the median line (the Japanese approach) carries more legal weight. The concept of natural prolongation was introduced in 1969 by the ICJ in the *North Sea Continental Shelf* case, but has fallen out of use: by the 1985 *Libya-Malta* case the ICJ had ruled out geological and geomorphological characteristics as “completely immaterial”, (Schofield and Gault, 2011: 27). This is problematic for China’s claim, though some scholars argue that under the doctrine of intertemporal law, since natural prolongation was a reasonable legal basis when China made its original claim thirty years ago, this situation pertains to this day (Zhang, 2011: 60).

Japan’s claim, too, is based on shaky legal ground; various cases (the *Gulf of Maine Case*, the *Tunisia/Libya Continental Shelf Case* the *Libya/Malta Case*) have developed international law in the direction that “there should be a reasonable degree of proportionality between the area of the shelf appertaining to a state and the length of the coastline” (Churchill and Lowe, 1988: 158). What this means is simply that Japan is claiming a very large EEZ on the basis of a number of very small and isolated islands in the Nansei chain, while China’s claim is based on its long continental coastline – and the land area and coastline of the

¹²⁶ Indeed, the Liancourt Rocks case is comparatively straightforward when compared to the Pinnacle Islands, since the rocks are tiny and located roughly equidistant from both states’ coastlines and thus would likely be ignored were the case to be dealt with according to international law.

Pinnacle Islands, in particular, is tiny compared to China's continental coastline. Combined with the remoteness and size of the islands (see above) at either arbitration or the negotiating table it is likely that Japan would be forced to concede a substantial part of its EEZ claim – some scholars suggest that the islands would only be entitled to the 12nm territorial waters (Valencia, 2007). The situation is further muddled by Beijing's decision in 2006 to opt out of the obligatory resolution mechanism (as South Korea also did in 2006, both using UNCLOS Article 298, see previous chapter, Section 3.3.1).

The fact that both sides can point to interpretations of international law which favours their claim seriously problematises an already complicated dispute insofar as the legality of marine and hydrographic research is concerned (the legality of hydrographic research in another state's has become a problematic issue, see Chapter Three, Section 3.8).¹²⁷ Since both sides claim overlapping EEZs based on international law, both sides can claim that the other is undertaking illegal actions when research is performed in the disputed zone – and as will become clear in subsequent sections, it was originally Japan protesting Chinese operations in the zone, but gradually China's position in the sovereignty game improved and it began to protest, in progressively harsher terms, Japanese operations in the zone. In 2009 China made preliminary submissions to the UN Commission on the Limits of the Continental Shelf (CLCS), claiming its continental shelf as far as the Okinawa Trough (Schofield and Gault, 2011: 30). This causes confusion, as for example when Japan protests a Chinese research vessel in Japan's EEZ it is not always clear whether the vessel was operating in Japan's undisputed EEZ or the zone disputed with China.

¹²⁷ UNCLOS Article 246.2 states that “marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal state”, but it does not specify precisely what constitutes such research.

In terms of the quantity of hydrocarbons under the East China Sea, it seems the 1968 UNECAFE report may have over-estimated, though reports suggest that there are still large oil and gas deposits in various locations across the East China Sea. After ratification of UNCLOS in 1996, China and later Japan began conducting research which led to estimates of “potential East China Sea gas reserves on the entire shelf range from 175 trillion to 210 trillion cubic feet in volume” (Harrison, 2005: 5).¹²⁸ Key areas include the Okinawa trough and the waters around the Pinnacle Islands themselves – Japanese studies conducted shortly after the 1968 report estimate 94.5 billion barrels of oil in the shallow waters around the islands (Harrison, 2005: 6).

Both China and Japan are dependent on energy imports, large quantities of which come from the Middle East, and the two states are second and third (respectively) in the list of the world’s largest consumers of oil (Drifte, 2008). The disputed EEZ appears to contain large deposits of gas which, due to the location of the deposits, suits China far more than Japan. The reason for this is that Japan imports only Liquefied Natural Gas (LNG) and would need to build a gasification plant to process the East China Sea gas, as well as a pipeline from the area to the consumption centres, thousands of kilometres away (Drifte, 2008). Furthermore, the laying of the pipeline itself would be complicated as it would have to cross the thousands of metres deep Okinawa trough (see Figure 4.3 above). None-the-less, the basic fact remains that hydrocarbon reserves in the disputed EEZ, including the disputed zone around the Pinnacles, are potentially of immense economic value to both sides, and while Japan does face more logistical difficulties, the question marks hanging over nuclear power post-Fukushima provide a compelling incentive to control and develop these reserves.

¹²⁸ To put into context the US has an estimated 117.4 trillion and Saudi Arabia 21.8 trillion (Harrison, 2005: 5).

The East China Sea and the waters around the Pinnacle Islands have long been a source of marine products for Japan and China/Taiwan: the characters for the Chinese name of the chain means ‘fishing platform’ (釣魚台) while the Japanese name for Uotsuri, the largest island, means ‘fishing island’ (魚釣島). Local Okinawan fishermen take tuna, bonito and snapper from the waters near the islands (Nakama Hitoshi Interview, 22/04/2011). For China, the East China Sea region in general is the most important of its fisheries zones, accounting for 34 per cent of all marine catch (UNFAO, 2006), while the increasing demand in both China and Taiwan for fish has seen more and more fishing in the disputed zones and the islands’ territorial waters themselves (*The Japan Times*, 08/12/2010). While the actual financial value of the catch in the disputed zone is less than the potential rewards of large oil or gas deposits, the long history and culture of fishing – not to mention the power of the fishing lobbies – mean that the fisheries in the zone have value beyond that of the immediate catch.

4.3.2 Symbolic Value

As in the case of the Liancourt Rocks, the history of the islands – in particular the timing of their incorporation in 1895 – means a far greater symbolic value is imputed to the territory by China rather than by Japan – though this value has not remained static. The response in both Hong Kong and Taiwan to the 1990 and 1996 incidents (see below) clearly show how the dispute had great symbolic significance; one can assume that such events would also have taken place in China had the government not actively prevented them. A 2010 poll by the Chinese Xinhua news agency saw over half of the respondents (52 per cent) citing the Pinnacle Islands as the main priority in improving Sino-Japanese relations, ranking above

even ‘the problem of historical awareness’ (*Yomiuri Shimbun*, 09/11/2010).¹²⁹ However, during the 1980s and most of the 1990s the dispute the Islands meant little or nothing to the average Japanese. In a *Yomiuri Shimbun* opinion poll from 1988, the islands were listed as the least important area of Sino-Japanese relations by respondents (*Yomiuri Shimbun*, 24/09/1988).¹³⁰

The consciousness-raising efforts of right-wing groups and politicians gradually began to take effect, however. From the late 1990s the islands began to take a more prominent place in school textbooks; in 2001 *Tsukurukai*'s¹³¹ junior high school civics textbook featured on its frontispiece a picture of two right-wing politicians on Uotsuri Island in 1997, and by 2006 nine high school textbooks had taken up the issue, repeating the government's line that the islands are “Our country's inherent territory” (*Asahi Shimbun*, 30/09/2006). The 2004 landings, the anti-Japanese protests in 2005, and the perceived invasion of Japan's sovereign maritime territory contributed to a growing sentiment that Japan should stop deferring to China, evinced not only in places like the internet bulletin board 2-Channeru but also in letters to newspapers and in general mainstream public discourse (*Asahi Shimbun*, 09/03/2006).

In the previous chapter we saw the transformative effect of ‘Takekushima Day’ on the Liancourt Rocks dispute – the Pinnacle Islands equivalent, “Senkaku Colonisation Day”, celebrated by Ishigaki City Council in 2011 did not have the same effect on the Pinnacles dispute because the islands had already become symbolically important – the events and

¹²⁹ The survey was conducted in conjunction with the *Yomiuri Shimbun*; the same question in Japan saw 32 per cent of respondents choosing the Pinnacle Islands, while the problem of historical awareness came first with 42 per cent.

¹³⁰ The question allowed respondents to select two answers from a list of six, and even still the Pinnacle Islands were picked by only 4 per cent of the respondents.

¹³¹ *Tsukurukai* is an abbreviation of *Atarashi Rekishi Kyōkasho wo Tsukurukai*.

media coverage of the dispute throughout the 2000s had already ensured that. Finally, the aggressive stance taken by China in the 2010 incident meant that the islands were inexorably tied to the China Threat idea, to the extent that protesters witnessed by the author (not the traditional male-dominated far-right but a broader mix of people from both sexes and of all age-brackets) marching in Tokyo in October 2010 carrying signs which read “Senkaku Islands are the first step to the invasion of Okinawa”, a theory gaining popularity in Japan.

Clearly, the symbolic value of the islands has changed dramatically over the past twenty years, but the question remains as to whether it is considered ‘national homeland’. In China and Taiwan this is appears to be the case – indeed, the very basis of their claim to the islands is that they have been part of Chinese territory for centuries. In contrast, Japan’s claim is based upon the incorporation of the islands as *terra nullius*; the ‘late addition’ of the Pinnacle Islands is clearly reflected in the title of Ishigaki’s celebratory day: ‘Senkaku Colonisation Day’. Of course, the premise of entrenchment is that territory which was once of little symbolic meaning can over time become “invested with nationalist, ethnic or other emotional value” (2007: 113). There is little doubt that the islands have become of more and more symbolic significance to Japan over the course of the dispute, but this is more because of their position as a symbol of Sino-Japanese relations than due to the value imbued to the islands themselves. This kind of symbolic significance is no less important, however, and plays no less a role in the dispute.

4.3.3 Precedential Value

The precedential value of the Pinnacle Islands is difficult to establish clearly. The legal precedential value is clear enough; as outlined in the previous chapter, the histories of all three of Japan's territorial disputes are inter-related, especially those of the Liancourt Rocks and the Pinnacle Islands. Thus, Japan's legal claim to the Pinnacle Islands has implications for the other two disputes, and acts as a further motivating factor for the maintenance of a legitimacy claim. Again, as in the previous case, this is given particular salience due to Japan's formalistic legal approach to its territorial disputes, especially to the Pinnacle Islands and Liancourt Rocks.

In broader political terms, given that this is the only dispute in which Japan actually enjoys control over the disputed territory, how Japan responds to China's challenge has reputational effects on the other two disputes, on its relationship with China and on its position in East Asia (and vice versa, for China). Due to (among other things) Article Nine of the constitution, Japan can be expected to refrain from the deployment of military force in either the Liancourt Rocks or the Northern Territories dispute. However, as the defending state in the Pinnacle Islands dispute, the use of force cannot be entirely ruled out. Of course, such an action would have grave reputational effects on its relations not only with China, but also with South Korea, other East Asian states and potentially much wider afield. Conversely, some scholars argue that, because Russia sees Japan as weak, compromise as a negotiating tactic to resolve the Northern Territories problem does not appeal to Russia (Hakamada Shigeki [Professor, Aoyama Gakuin University] Interview, 06/07/2011). A tougher stance on its other disputes may convince Russia otherwise. Thus, beyond the basic legal and

legitimacy value of the claim on the Pinnacles, the broader political precedential value is more context-dependent and unpredictable.

4.3.4 Strategic Value

The strategic value of the Pinnacle Islands is entirely dependent on the nature of the Sino-Japanese relationship. Since the early 1990s, the potential value of the islands has increased: China's 1992 Territorial Waters law included the islands as a result of lobbying by the People's Liberation Army Navy (PLAN), and it resulted in – for the first time since 1980 – the 1992 Ministry of Defence White Paper including a reference to the islands as Japanese territory and noting that caution was necessary in dealing with China in light of its fresh claims. This warning was maintained in subsequent years' publications (Defence White Paper, 1992, 1993, 1994). Over the following years there was a gradual shift of Japan's security focus from the north – facing the Soviet/Russian threat – to the southwest, facing China (*The Japan Times*, 21/09/2004). In 2004 the Ministry of Defence announced plans to increase the number of ground troops in Okinawa (*The Japan Times*, 21/10/2004) and in 2005 published its plans to defend the southwestern islands, stretching from Kyushu to the Pinnacles, including further redeployments of troops in order to address the “vacuum in terms of security” which the more remote islands (e.g. the Pinnacles) face (Mochizuki, 2007; *The Japan Times*, 16/01/2005). By 2006 the US and Japan were engaging in military drills based upon a mock invasion of the Pinnacles themselves (*The Japan Times*, 30/12/2006).

A broader discussion of Sino-Japanese security relations is beyond the scope of this dissertation, but from the details above it is clear that the islands are taking on a certain

amount of strategic value. Indeed, although small in size, conventional wisdom would be that their geographic location – at the end of the Ryukyu Islands, close to Taiwan (see Figure 4.1 above) – makes them of high strategic value. In contrast, Gabe Maasaki argues that the strategic value of the remote southwestern islands remains negligible (Gabe Maasaki [Professor, University of the Ryukyus] Interview, 26/04/2011). He points out that in 1945 the US skipped islands such as Ishigaki on its way to the mainland, and that, in the event of a similar situation with China, many southwestern islands would be skipped again. Although it is difficult to imagine such eventualities now, Gabe's assertion is based on historical precedence, and the small size and difficult terrain of the islands means that any bases would have to be small and militarily insignificant. Regardless of such a historical background, however, it is clear that many politicians, advisors and academics in Japan believe the islands have strategic value. Members of both the DPJ and the LDP have called for the Self Defence Forces (SDF) to set up a base on the islands, and the very fact that there are currently plans to establish a base on Yonaguni, the nearest undisputed Japanese island to the Pinnacles, serves to highlight the perceived strategic value of the disputed islands.

4.4 1990 Lighthouse Recognition

Japan entered the post-Cold War period in a very strong position in the territorial dispute. Since the 1978 flotilla incident Japan had quietly and without incident administered the islands while Japanese citizens continued to land and upkeep the lighthouse on Uotsuri. With the dispute dormant there was no real sovereignty game to speak of and there was no serious challenge to Japan's continued administration. This was helped no doubt by the remote and marginal nature of the islands during this period: strategically speaking the Soviet Union, far

to the north, was Japan's (and China's) main security threat, leaving the islands bereft of immediate strategic value. Although UNCLOS was created in 1982 it would not come into force until 1994 and not be ratified by the disputing states until 1996 (thus removing the immediate issue of marine resources); the islands' intrinsic economic value remained minimal. In terms of symbolic value, as outlined above, the dispute was not on the national radar, and as for precedential value, the Liancourt Rocks dispute was dormant and would remain so until 1996. All these factors would change dramatically over the next twenty years, bringing the dispute to the fore of bilateral relations.

The first foreshocks came as early as 1990 when it emerged that the JCG was considering an application to recognise the Uotsuri lighthouse. *Seinensha* had been upgrading the lighthouse over the previous years in order that it would satisfy the standards of recognition, and press reports of the application began to surface in September of 1990, though the application was made in 1989. Taiwan immediately lodged an official protest and citizen protests erupted across the island, including the burning of Japanese flags outside the Interchange Association (the *de facto* Japanese embassy in Taipei). Several attempts were made by Taiwanese fishing vessels to enter the territorial waters of the Pinnacles, but all were thwarted by JCG patrol boats (*Asahi Shimbun*, 22/10/1990). Soon afterwards the Taiwanese protesters raised the stakes, sending out vessels carrying Taiwanese athletes with mock Olympic torches to plant on the island; but the Taiwanese government soon intervened and "took steps to prevent Taiwanese boats from approaching [the islands]" (Downs and Saunders, 1998: 129).

Meanwhile, the JCG, which normally deals with such applications internally, passed the issue of obtaining official recognition of the lighthouse MOFA for consultation (*Asahi*

Shimbun, 24/10/1990). As soon as the issue became controversial the application – despite being received and under consideration since the previous year – was refused. The state’s recognition of a lighthouse may seem like a minor affair, but taking into account the jurisprudence of territorial disputes regarding minor islands/islets, it is precisely this kind of act which, if unopposed, can determine a legal arbitration.¹³² Of course, legally speaking, all that is needed to counter such action is a simple diplomatic protest, but in this instance this may not have sufficed to prevent the recognition of the lighthouse going ahead.

We saw how the 1895 incorporation of the islands coincided with the Sino-Japanese War and the secession of Taiwan from China to Japan. This symbolic aspect of the dispute contributed to the severity of the reaction in Taiwan. Despite the Taiwanese protests, the incident created little commotion in China. There was a media blackout of the Taiwanese and other overseas protests, and applications for rallies in universities and other locations were rejected (Downs and Saunders, 1998: 129). It took almost three weeks after the press reports emerged before a Foreign Ministry spokesman warned that recognition would be an infringement of Chinese sovereignty, though the protests were firm with a spokesman stating that the islands were inherent Chinese territory and there was no room for dispute over sovereignty (*Asahi Shimbun*, 22/10/1990, 23/10/1990).

China prevented domestic protests similar to those in Taiwan because of the nature of its political and economic relationship with Japan. Japan had been engaging in what Mochizuki (2007: 747) describes as ‘commercial liberalism’ since 1978, using yen loans to China to spur economic prosperity, and thus by the liberal logic, engender friendly relations. Bilateral trade was growing dramatically in the late 1980s and early 1990s, and China

¹³² See for example the role of Singapore’s lighthouse in the *Pedra Branca Case*, Chapter Two, Section 2.5.2.

became increasingly dependent upon Japan: in 1990 Japan accounted for over 15 per cent of all Chinese foreign trade while Chinese trade accounted for only 3.5 per cent of Japanese total trade (Xing, 2008: 5).¹³³ While Chinese exports to Japan were predominantly commodities and labour intensive products, China received much-needed capital goods. Furthermore, in the aftermath of the Tiananmen Square incident in 1989 China became internationally isolated and saw much of its international loans and investment frozen – Japan became a very important and influential friend (Downs and Saunders, 1998: 127). Not only was China dependent on trade with Japan, but the Japanese government was also supporting the early resumption of the international loans as well as preparing to reinstate its own development loans to China. This combination of factors gave Japan significant leverage over China, in terms of both diplomatic and economic capital. Thus China prevented its citizens not only from protesting but even from learning of the protests taking place in Taiwan.

Yet, the correlation between the timing of the refusal of the application for the lighthouse and the protests from Taiwan and China, along with the JCG's referral to MOFA, substantiate the conclusion that the lighthouse was not recognised because of external pressure; so, too, does the fact that it had been carefully upgraded to the required standard; that it was considered useful by local fishermen; and also that it was recognised as an official beacon in 2005 (see below Section 4.8). So, given such a strong position, why did Japan not exercise unfettered sovereignty over what it openly considered its own territory, instead bowing to pressure from Taiwan and China? In terms of China, the simple answer is that the sovereignty game had not yet begun in earnest. UNCLOS was still several years away, and China appeared content to abide by the 1978 Deng formulation; there appeared to be no need

¹³³ Chinese exports to Japan were predominantly commodities and labour/resource intensive products, while China received much-needed capital goods.

to alter the *status quo*. As for Taiwan, neither side wanted a conflict over the territorial dispute as both were heavily dependent on the other for trade – albeit Taiwan needed Japan more than Japan needed Taiwan.¹³⁴ Indeed, Taiwan even prevented its own citizens from travelling to the islands to protest. Furthermore, as will become clearer later in the chapter, MOFA had little interest in allowing the islands to disrupt relations with China or Taiwan.

The decision not to recognise the lighthouse no doubt contributed to positive relations with Taiwan and China. However, in terms of the sovereignty game it established a major and lasting precedent: the Japanese government had been prevented from undertaking an exercise of sovereignty on the islands due to external pressure. If Japan was unwilling or unable to exercise sovereignty over the disputed islands due to the objections of other disputant states, its sovereignty over the islands was less than certain. Further, this precedent would be routinised over the coming years, further undermining Japan's position in the sovereignty game.

4.5 1992 Chinese Law on the Territorial Sea

In 1992 China promulgated the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, article 2 of which states that “the land territory of the People's Republic of China includes the mainland of the People's Republic of China and its coastal islands; Taiwan and all islands appertaining thereto including the Diaoyu Islands [Pinnacle Islands]” (United Nations, 1992). As well as claiming the Pinnacles, the law included references to disputed islands in the South China Sea, and caused consternation not only in

¹³⁴ Japan was Taiwan's second most important trade partner in 1990, after the US.

Japan but also across East Asia.¹³⁵ The Japanese embassy in Beijing lodged a protest, and Deputy Foreign Minister Owada Hitoshi called in the Chinese ambassador to orally protest the law, while LDP Diet members called for their own government to take a stronger line on the dispute (*Asahi Shimbun*, 27/02/1992, 07/03/1992). Prime Minister Miyazawa Kiichi told the press that the islands were Japanese territory and that he “could not accept” the new law (*Yomiuri Shimbun*, 28/02/1992). When the General Secretary of the CCP Jiang Zemin visited Japan in April of the same year and Miyazawa raised the issue, Jiang reassured him that the law did not reflect a policy change and that China was sticking to Deng formula of shelving the dispute (*Asahi Shimbun*, 07/04/1992). Although Miyazawa accepted this, days later “MOFA issued a correction denying such an understanding” (Drifte, 2008) – Reinhard Drifte points out that this represents a substantial change in Japanese policy on the dispute – previously, the government had accepted the shelving solution, but from the MOFA correction onward it moved to the current ‘no dispute exists’ line.

China’s 1992 Law on the Territorial Sea and Contiguous Zone was drafted and promulgated in anticipation of the eventual ratification of UNCLOS, demonstrating China’s intention to claim the maximum EEZ and continental shelf available and the seriousness of its claims on disputed islands in the East and South China Seas, along with their maritime zones.¹³⁶ A distinctive feature of the law was that it pointed out “what should be obvious, namely the right of the People’s Liberation Army (PLA) to stop by force any incursion ... and to continue to chase offending ships into the open seas” (Hagstrom, 2005: 165). Japan, too,

¹³⁵ The inclusion of the Pinnacle Islands in the law was the result of lobbying by the PLA (People’s Liberation Army) and came about despite the opposition of the Foreign Ministry (Roy, 1998: 75).

¹³⁶ In 1988 China forcibly occupied reef features in the Spratly Islands, also mentioned in the law, overcoming Vietnamese resistance in a skirmish which left dozens of Vietnamese dead. In 1994 it began a slow but steady occupation of Philippine-controlled reefs in the same chain. It was clear that China was taking a firm approach to the islands mentioned in the law.

was set to claim the maximum EEZ available, and the Pinnacles lay in the middle of what would become the two sides' overlapping claims (see above, 'Economic Value'). Yet some elements of the law intimated that China was willing to take a softer line: although the law refers to the methods of drawing baselines to define China's maritime territory (Articles Three and Four), the baselines themselves remained unspecified. In other words, although China made a *de jure* claim to the waters around the Pinnacle Islands, no specific reference to these waters was made (Downs and Saunders, 1998: 132). Also, as we have seen, Jiang Zemin specifically told Miyazawa that the law did not reflect a policy change, and the Deng formula of shelving the dispute remained the preferred option. None-the-less, the law was a clear signal that China was renewing its interest in the islands.

The domestic Japanese response to this Chinese assertion of sovereignty over the disputed islands was considerable, especially compared to the relative quiet following the JCG/MOFA refusal to recognise the lighthouse two years previous. Diet members' views' on China hardened considerably, the Pinnacle Island issue being both a symptom and a cause. Following the 1992 law, LDP Diet members called on their government to take a resolute stance on the both Chinese law and on the concomitant South Korea-Russia Fisheries Agreement (*Asahi Shimbun*, 07/03/1992, for the fisheries agreement see Chapter Five, Section 5.5.2), while the issue was seized on by LDP Diet members as a means to obstruct the scheduled historic visit of Emperor Akihito to China in autumn of the same year (*Asahi Shimbun*, 18/06/1992).¹³⁷ The visit went ahead, but the opposition to the visit bore an ill wind for future Sino-Japanese relations as the LDP members behind the bid to call off the visit were mostly from the new, younger generation of Diet members (*Asahi Shimbun*, 07/04/1992). It is interesting to note that, despite the considerable economic and diplomatic

¹³⁷ This tactic echoed the attempt in 1978 by some LDP members to use the Pinnacle Islands dispute to block the 1978 Treaty of Peace and Friendship.

capital Japan had enjoyed vis-à-vis China, as well as China's international pariah status (see previous section), there was no suggestion that Japan would try to use its economic or diplomatic capital to rescind the offending section of the law.

Still, the future potential for conflict over the islands was being taken seriously by the government. As noted in the section on strategic value, in 1992 the annual Ministry of Defence white paper included a reference to the Pinnacles Islands as being Japanese and noted that caution was necessary in dealing with China in light of its fresh claims. Hagstrom (2005) argues that Japan exercised quiet power over China in the 1992 incident (see Chapter One, Section 1.4.4). That is to say that "by means of 'effective control', the 'no dispute' principle, and ambiguity with regard to planned state visits ... Japan exerted power over China". He points out that Jiang Zemin reassured Miyazawa that China was sticking to the Deng formula and there were no follow up actions after the law (2005: 178-80). While persuasive when the incident is looked at in isolation, from the long-term perspective of the sovereignty game, as played out in the cases of Northern Territories and the Liancourt Rocks, it is far more difficult to see Japan exerting power over China in 1992. Japan's large number of high profile protests, all of which called for a repeal of the law, were unsuccessful. Even the possibility of the cancellation of the Emperor's visit was not enough to cause the Pinnacles to be removed from the law.

Moreover, as Hagstrom himself points out, the Japanese Official Development Assistance (ODA) loans which were so important to China were not mentioned by Japan; some in China feared the loan could act as leverage in the dispute, but this linkage was made on the Chinese side, not the Japanese (2005: 176). In fact, all the Miyazawa administration did was protest in strong terms – despite the serious nature of the 1992 law it was unwilling

to use economic or diplomatic capital in order to try to repeal the law. Thus Japan acquiesced in the new law; if Beijing had simply left the issue and adhered to the Deng formula thereafter, this acquiescence would have been of little harm to its position in the sovereignty game. But, as we shall see below, Beijing did not leave the issue at rest, and the 1992 law marks the beginning of serious Chinese involvement in the sovereignty game – UNCLOS had transformed remote and hitherto unimportant islands into a means of gaining sovereignty over a large and potentially lucrative marine territory.

4.6 1996 Lighthouse Recognition

As we saw previously, both Japan and China ratified UNCLOS in 1996; ratification of UNCLOS would fundamentally alter the nature of the dispute. As well as the economic value which potential EEZs and continental shelves themselves could generate, the arena in which the sovereignty game would be played out now was enlarged significantly to include the surrounding waters of the East China Sea. In the years to come, then, the sovereignty game would no longer be limited to the exercises of sovereignty on the islands themselves – though, of course, such actions would remain crucial – but exercises of sovereignty in the waters around the islands would also come to play a major role. Indeed, the manner in which, from the late 1990s until the mid-2000s, the disputed zone swung from being more ‘Japanese’ to more ‘disputed’ demonstrates in an illuminating way the inherent nature and workings of the sovereignty game. But the most immediate implications of UNCLOS emerged shortly after the law’s ratification in 1996 as activists from both sides sought to demonstrate the effective control and sovereignty over the disputed islands by their state in incidents which would eventually result in the death of a Hong Kong politician.

Although the initial announcement of ratification by Japan in February failed to provoke a response, as the year went on the dispute grew hotter and by the late summer it had reached boiling point. As we saw in the previous chapter, UNCLOS was having a similar effect on the Liancourt Rocks dispute, as in February of 1996 South Korea constructed a wharf on the Liancourt Rocks, a move which would consolidate its sovereignty over the rocks marking the beginning of a *fait accompli*. Responding to the events in the Liancourt Rocks dispute, *Seinensha* decided that, as little could be achieved in respect of that dispute (since South Korea occupied the territory) the members would bolster their efforts on the Pinnacles (Nakama Hitoshi Interview, 22/04/2011; *Asahi Shimbun*, 21/10/1996). Frustrated with what they perceived as the soft-line the government was taking on the question of Japanese sovereignty, the group decided to push the sovereignty issue in the way they knew best: in July they constructed a second lighthouse on Kitako Island, one of smaller islands in the group, and shortly after another application for official recognition of the first lighthouse was lodged with the JCG. Later that month, on the same day as the law demarcating Japan's new UNCLOS maritime zones came into effect (20 July), Taiwanese fishermen announced plans to send over 200 boats to the Pinnacle Islands in protest at the lighthouse construction and potential recognition (*Asahi Shimbun*, 22/07/1996).

In early August the incident calmed somewhat, but on 18 September a *Seinensha* member landed again, erecting a wooden Japanese flag – and group members landed once more in September to fix typhoon damage to one of the lighthouses (Downs and Saunders, 1998: 133-4). The group also reapplied for official recognition of the lighthouse, and the dispute flared-up once more. Taiwan and Hong Kong saw massive anti-Japanese demonstrations, and once more protesters set-off from Taiwan with the islands in their sights.

The first group, carrying Taiwanese MPs, were headed off by the JCG without too much trouble but, a few days later, a single protest boat, this time carrying protesters (including local politicians) from Hong Kong, arrived in the territorial waters of the islands. Intercepted by the JCG before the boat could reach the islands proper, four of the protesters dove into the sea. Ten minutes later the JCG received a request for assistance from the boat, and on boarding found one of the four, David Chan, in a serious condition. Although airlifted to Ishigaki for emergency treatment, Chan died shortly afterwards (*Asahi Shimbun*, 26/09/1996).

This fanned the flames of the already widespread protests in Taiwan and Hong Kong. Spurred on by the death of their colleague, on 9 October a joint effort by Hong Kong and Taiwanese protesters finally resulted in the planting of their respective flags on the islands (Downs and Saunders, 1998: 135). In an attempt to calm the situation the Foreign Minister, Ikeda Yukihiro, told the assembled foreign ministers at the UN General Assembly in New York that recognition of the lighthouse was being deferred and Prime Minister Hashimoto Ryūtarō rescinded his promise to visit the Yasukuni Shrine for the Autumn celebration (*Asahi Shimbun*, 22/09/1996, 25/09/1996). Despite the massive protests in Taiwan and Hong Kong, however, once again China prevented domestic unrest related to the islands from arising, although the government did protest in far stronger terms than on previous occasions, calling for the removal of the lighthouse and accusing Japan of encouraging *Seinensha* in its actions (*Asahi Shimbun*, 17/09/1996). On the 13 and 14 of September China undertook war games, which included blockades and landings on a group of islands in Liaoning Province. A report on this was published by the *China Daily* newspaper on the page opposite to the Foreign Ministry's warning to Japan on the Pinnacles; according to a Western diplomat in Beijing "the side-by-side reports were no coincidence ... a clear signal says 'You know what we think'" (Wiegand, 2009: 183-4). Yet, as the dispute escalated dangerously, both Japan and

China sought to minimise the effects on their overall bilateral relationship, with China reiterating calls for joint development of the disputed maritime territory, and Japan, as we have seen, deferring the lighthouse recognition issue.

Japan's position was further called into question when, after Japanese officials called on the US to clarify that the security treaty covered the disputed territory, US Ambassador to Japan, Walter Mondale, stated that American forces would not be compelled by the treaty to intervene in a dispute over them (*The New York Times*, 16/09/1996). This statement had echoes of 1972, when the US government refused to back its ally in the then nascent dispute by insisting it was taking a neutral stance on the issue, despite its own prior determination that the islands were part of Okinawa. Just as in 1972, US behaviour was governed by regional geopolitics, as the second Clinton administration sought to deepen ties with China and did not wish to risk alienating the Chinese over these remote, uninhabited islands (Dumbaugh *et al.*, 2001). However, while the State Department was focusing on engaging China, the Pentagon was attempting to deepen the alliance with Japan, and not long after Ambassador Mondale's comments, Assistant Defence Secretary, Kurt Campbell, tacked toward Japan in saying: "America made a solemn promise in the US-Japan Security Treaty to defend Japan's territory and areas under its administration ... we will keep this promise" (*Yomiuri Shimbun*, 28/11/1996).¹³⁸ Notwithstanding, the US's initial vacillation represented by the Mondale comment, would have consequences for the dispute up until the present day, as outlined later in this chapter.

In terms of the sovereignty game, then, Japan maintained effective control over the islands and Hashimoto himself continued to repeat the "no dispute exists" line (*Asahi*

¹³⁸ A comment which was repeated in December by Secretary of Defense William Perry at a Press Roundtable in Tokyo (Dumbaugh *et al.*, 2001: 24).

Shimbun, 02/03/1996); it also did not remove the lighthouses, though it had no legal ability to do so, as discussed below. Thus, it can be argued that Japan's basic position in the dispute remained very strong. Yet, Ikeda himself described the deferral of a decision on the lighthouse issue as "effective non-recognition", and explicitly stated that the reason for this move was the maintenance of good foreign relations as well as the safety of Japanese citizens abroad (*Asahi Shimbun*, 04/10/1996). In other words, once again the government was deferring to the other disputant states, which were in effect preventing Japan from undertaking an exercise of sovereignty which, *ceteris paribus*, it would otherwise have undertaken. The efforts of *Seinensha* may have pushed the government into a position it did not wish to be in, but when the situation became difficult, it backed down. Furthermore, non-Japanese protesters had been successful in landing on the islands, though they were quickly deported. From all this we can conclude that the events of 1996 routinised the precedent established in 1990 establishing a clear sovereignty status quo in which the Japanese government could no longer exercise direct state sovereignty on the islands.

Meanwhile, by sending mixed signals as to whether the islands were covered by the Security Treaty, the US confirmed its position of not taking sides. Given that, in 1972, the US explicitly handed over administrative control of the islands to Japan, and that the Security Treaty covers "the territories under the administration of Japan" (Article 4), Mondale's statements that the islands were not covered by the treaty could be construed as a lack of recognition of Japan's administrative control, let alone its sovereignty, over the islands. Thus, on various fronts Japan's position had come under attack and been weakened as a result.

Krista Weigand (2009, see Chapter One, Section 1.4.5) argues that China's actions regarding the Pinnacles, both in general as well as specifically in 1996, can be understood

through coercive diplomacy and issue linkage – that is, China used the lighthouse recognition issue as a way to compel Japan to shift policy on other issues. She specifies the economic sanctions imposed after the resumption of nuclear tests in 1995 and Hashimoto’s visits to the Yasukuni Shrine. While Yasukuni visits were indeed stopped, the grant aid which had been suspended remained so until March 1997 (Drifte, 2006). Rather, the primary purpose of Beijing’s (and Taipei’s) protests was to prevent the lighthouse from being recognised – if it were not, then diplomatic means would have seen China allowing the lighthouse to be recognised in exchange for other concessions, as Wiegand’s theory implies. The implications of a direct exercise of state sovereignty on the islands themselves were more than China (or Taiwan) would accept in 1996 – political acquiescence would have prejudiced China’s position not just on the disputed islands, but also on the sovereignty status of the adjacent maritime territory.

4.6.1 Domestic Reaction and 1997 Landings

While the actions of the Hashimoto administration did see the dispute settle down, the sovereignty game was now well underway. As the incident wound to a close, Japan geared up for a lower house election (on 20 October) in which the incumbent LDP’s main rival was Ozawa Ichirō’s New Frontier Party (NFP, *Shinshintō*). As noted in the previous chapter (Section 4.6), both sides were attempting to out-conservative each other, and the territorial disputes were a convenient platform. The LDP’s manifesto made reference to the Pinnacle Islands, stating that “there is no doubt that historically and under international law, the Senkaku Islands [Pinnacle Islands] are our country’s inherent territory, and no territorial

dispute exists with China” (LDP, 1996).¹³⁹ It also called for composure from the other parties in the dispute.¹⁴⁰ The Chinese embassy in Tokyo requested that the reference be deleted, but it was maintained (*Asahi Shimbun*, 04/10/1996). While the LDP did go on to win, an opposition grouping called *Heiseikai* (see previous chapter, Section 4.6), attacked Hashimoto over the government’s handling of both the Pinnacle Islands and the Liancourt territorial disputes, with the Chairman Hirai Takushi calling for Japan to “say and do what it should say and do without hesitation” (*The Japan Times*, 23/1/1997). While, opposition politicians can make statements calling for hard-line policies more easily than the government, a growing sense had emerged that Japan was ceding ground in the sovereignty game to China, and allowing its administrative control – and ultimately its sovereignty – over the islands to be constrained by China.

The domestic discontent with Japan’s approach to the dispute increased over the following years. In May 1997 came reports of another group of Hong Kong protest boats setting sail for the Pinnacle Islands. In response an opposition member of the NFP seized the moment to make good on a campaign promise to land on the islands and erect a Japanese flag.¹⁴¹ Nishimura Shingō¹⁴² together with Ishihara Shintarō¹⁴³ and Ishigaki City Councillor

¹³⁹ The decision to include the reference in the manifesto did not come from Hashimoto’s administration, rather it was a party decision

¹⁴⁰ The manifesto did not specify either Taiwan or Hong Kong by name, rather it referred to “*Chugoku nado*”, China and so on.

¹⁴¹ In the end the Hong Kong protesters were unsuccessful, although three boats did manage to make it to the islands’ territorial waters (*Asahi Shimbun*, 27/05/1997)

¹⁴² Nishimura’s mainstream political career effectively ended in 1999 when, having been appointed Vice Minister of Defence, he stated that Japan should build nuclear weapons, comparing rape and nuclear weapons in highly controversial remarks: “If there were no punishment for rape, we would all be rapists ... We do not become [rapists] because there is the deterrent of punishment”, (*The Japan Times*, 20/10/1999). After his formal resignation ceremony, he visited the press club, and on seeing a map of Japan which did not include the Pinnacle Islands, told the audience “You shouldn’t shrink Japanese territory!” (*Asahi Shimbun*, 22/10/1999).

Nakama Hitoshi arrived in the waters around Uotsuri on 6 May. Nakama, Nishimura and two cameramen actually landed and planted the flag while Ishihara stayed on the boat (Nakama Hitoshi Interview, 22/04/2011; *Yomiuri Shimbun*, 06/05/1997). Together they issued a joint statement protesting the government's inaction regarding the islands, and calling for an open debate on the dispute. On his return, Nishimura was criticised by both Hashimoto and Ikeda, and a criminal investigation was initiated to see if the group had broken any laws they could be prosecuted under.¹⁴⁴ He was also warned by the NFP over his actions, which were taken without party consultation. Although Nishimura promised to consult with the party in the future, he was unrepentant, and continued to criticise the government and calling on all Japanese citizens to use their legal right to arrest the passengers on the incoming Hong Kong vessels. Beijing and Taipei both protested, and in response Hashimoto stated that, while the islands were "inherent Japanese territory", in terms of friendly international relations the landing could only be described as "regrettable" (*Yomiuri Shimbun*, 06/05/1997).

Nishimura struck again in September, timing his second landing attempt to correspond with newly re-elected Prime Minister Hashimoto's visit to China in an attempt to cause as much embarrassment as possible. In a statement made before departure he specifically noted that the Pinnacle Islands "must be protected from China and Taiwan" (*Yomiuri Shimbun*, 05/09/1997). This time the boat was stopped by the JCG under a law which prevents ships under a certain size from travelling more than 20NM from the coast,

¹⁴³ Ishihara is the current mayor of Tokyo, author of *The Japan than can say 'no'* (1991), and is well known for his nationalist views.

¹⁴⁴ The craft used was legally not allowed to sail more than 20NM from the shore, and there were questions of trespassing as the owner of the island had specifically asked the JCG in April of that year not to allow anyone, regardless of nationality, to land on the islands (*Asahi Shimbun*, 06/05/1997). In the end, the government did not prosecute Nishimura, but did look into prosecuting the captain of the boat for over a year and a half. It transpired that he was the same captain as had been ferrying the *Seinensha* members over and back for years, and in the end, due to various factors including his old age, the prosecution was dropped (*Yomiuri Shimbun*, 05/01/1999)

and the incident caused no problems to what was a largely successful China visit by the prime minister (*Asahi Shimbun*, 05/09/1997). Judging from a MOFA press conference on 5 September 1997, that the government appears to have decided that no more landings would be tolerated by citizens of any state – spokesman Tanaka Nobuaki repeated that such attempts were “unwelcome at any time” and would be “strictly dealt with” (MOFA, 1997). Nonetheless, criticism of the government’s ‘weak’ stance on the dispute, and on the Liancourt Rocks issue, which itself was just calming down (see previous chapter, Section 3.4) continued: on his return, Nishimura and Odamura Shirō, a right-wing academic,¹⁴⁵ co-sponsored the ‘Senkaku [Pinnacle] Islands Inspection Information Meeting’ which was attended by both NFP and LDP members, and concluded with yet another demand for the Hashimoto administration to take a “resolute” stance against territorial incursions of the islands (*Yomiuri Shimbun*, 17/05/1997).

Tokyo, Beijing, and Taipei acted in 1990, 1992 and 1996/7 to ensure that the dispute, while at times very heated, did not spiral out of control. There were strong incentives for all sides as, during the early 1990s, bilateral trade boomed, with China accounting for 8.2 per cent of total Japanese foreign trade while Japan accounted for over 20 per cent of Chinese foreign trade in 1996 (Xing, 2008). The point on the role of economics in preventing escalation in the dispute has been well made (Koo, 2005, 2009, 2010; Downs and Saunders, 1998), and it certainly helps to explain the actions of both sides in the early and mid-1990s. Yet despite its economic leverage, throughout the 1990s Japan refrained from employing economic capital, instead ceding ground in the sovereignty game. Beijing was no longer adhering to the Deng formula of shelving the dispute, and it had declared the islands (and their waters) to be sovereign Chinese territory. Further, both China and Taiwan had

¹⁴⁵ And he is also head of the publishing house behind the controversial 2002 history textbook *Saishin Nihonshi* (see Chapter Three Section 3.9).

effectively prevented Japan from – to paraphrase Susan Strange (1994) – doing what it otherwise would have done, and on several occasions.

Thus, Japan's declaration of 'no dispute' over the islands rang somewhat hollow, as it was abundantly clear that it did not exercise unfettered sovereignty over the islands, so a dispute clearly did exist. This could be seen, too, in the statements made by a number of Japanese politicians themselves, who opposed the apparent weak stance taken by the central government. Furthermore, the islands were beginning to enter the national consciousness and take on both a symbolic and a strategic value, which they previously had lacked (see Section 4.3.2 and 4.3.4 above).

Having said all this, Japan still remained in the driving seat: it still controlled the islands, although the extent to which it was willing or able to effectively exercise this control had been called into question. China was playing carefully in order not to ruffle too many feathers and militarily, while US support was not entirely reliable in case of a serious incident, Japan's own SDF and JCG were more than well-equipped to protect the islands (Emmers, 2010: 61). However, as the next section shows, China was growing economically and militarily, and, unlike Japan, it was already exploring the hydrocarbon deposits in the East China Sea – tellingly, Japan had not explored the East China Sea precisely so as not to irritate China.

4.7 The Maritime Dispute I: Prior Notification

The inability to come an agreement over the disputed EEZ in the East China Sea created a situation where, as we have seen, each side could claim the disputed area as legally part of its own maritime territory. China had already begun exploring the hydrocarbon deposits in its own undisputed EEZ when its research vessels began operating in the disputed EEZ and even in the territorial waters of the Pinnacle Islands. Under UNCLOS Article 246, a state must inform another state before conducting marine scientific research in that state's EEZ – though, as noted earlier, technically hydrographic research is permitted (this has become a grey-area).¹⁴⁶ Yet, the number of Chinese research vessels operating in the disputed zone and even in the Pinnacles' territorial waters grew throughout 1998 and 1999. When ordered to leave by JCG ships, the research vessels would either ignore the warnings or reply that they did not recognise Japan's jurisdiction over the waters.¹⁴⁷ Japan lodged oral protests with the Chinese embassy, and, when these were clearly having no effect, began to lodge formal protests directly to the Chinese Foreign Ministry (*Asahi Shimbun*, 20/06/1999). Meanwhile, the incursions spiked, with over 20 in the first six months of 1999, four of which entered Japanese territorial waters (*Asahi Shimbun*, 20/06/1999, at least one of these was in the Pinnacles' territorial waters).

Responding to Japanese protests, China protested its innocence, claiming that the research vessels were merely measuring ocean currents, temperatures and plankton – all legal practices in another state's EEZ. The Japanese side grew more and more uneasy, linking the Chinese research to its ongoing development of undersea hydrocarbon deposits (*Asahi*

¹⁴⁶ See Fang (2010) for difficulties in differentiating legal and illegal activities in other states' EEZs.

¹⁴⁷ For example, in May 1998 a Chinese vessel responded that it did not recognise Japan's EEZ (*Asahi Shimbun*, 05/11/1998).

Shimbun, 16/06/1999).¹⁴⁸ When a group of high-ranking MOFA officials raised the issue on a trip to Beijing in June 1999, they received the same answer, and were told that China was more worried about the new security defense guidelines (see below). Thus the ‘incursions’ (again, many of which took place in the disputed zone and thus potentially in China’s own maritime territory) continued, and it was not only research vessels but warships which were causing concern in Tokyo: in May 1999, for instance, 12 PLAN ships were confronted by MSDF P-3 patrol vessels in the vicinity of the Pinnacles and in July 1999 another 10 PLAN ships were spotted near the islands (Dumbaugh *et al.*, 2001). For the first time in five years the 1999 Ministry of Defence white paper referred not only to Beijing’s 1992 maritime law but also to the Chinese infringements of Japan’s EEZ by research vessels and warships. Worried about the possibility of a *fait accompli* (i.e. that without a suitable response, the disputed EEZ zone would be conceded to China), the government considered legislation to deal with the problem (*Asahi Shimbun*, 20/06/1999).

In 2000 the issue came to a head, as not only sightings of research vessels but also of Chinese naval vessels in the area increased sharply (*The Japan Times*, 22/03/2000). The internal LDP opposition to the apparent inaction of the government on the Pinnacles issue – which as we saw had also resulted in the inclusion of the dispute in the party manifesto of 1996 – led this time to the Foreign Affairs Committee of the LDP suspending a package of ODA loans to China (*Asahi Shimbun*, 10/08/2000, Drifte, 2008). Resumption of the loans was made contingent on “a satisfactory clarification of these incursions from the Chinese” (Drifte, 2008). At the end of August 2000, Foreign Minister Kōno Yōhei met his counterpart. Tang Jiaxuqan, in Beijing and the pair agreed to establish a framework for mutual prior notification (MOFA, 2000). The loans were resumed the following month (*The Japan Times*,

¹⁴⁸ In particular the Chunxiao (Japanese: Shirakaba) gas field, which is close to the median line between the two states.

08/09/2000), while the details of the system were hammered out over the following months, culminating in the announcement of a prior notification system (PNS) in February 2001.

The tricky issue of sovereignty over the disputed waters was avoided by describing the areas which required prior notification as waters “near Japan and in which Japan takes an interest”, while Japan would notify before research in waters “near” China (Kyodo, 13/02/2001). The system did not include naval vessels. With no effective means of implementation (or punishment for violation), within a few years the prior notification system had already become defunct. According to the 2003 annual JCG report, the vast majority of “suspicious maritime activity in Japan’s territorial waters in 2002 took place off the disputed Senkaku (Pinnacle) Islands”, with 423 Chinese or Taiwanese vessels spotted near the islands (*The Japan Times*, 13/05/2003, figure includes fishing, research and naval ships). In 2004 the number of confirmed research vessel incursions soared once more (JCG, 2008).

The root of the problem was that, as we have seen, both sides claimed the disputed islands and the disputed EEZ they generated, on the one hand, and both sides could point to international law to legitimise their claim, on the other hand.¹⁴⁹ While the research vessels which entered the Pinnacles’ territorial waters (12NM) can be more convincingly regarded as violating Japanese maritime territory – especially since despite Chinese claims on the islands the original Deng formulation precluded this kind of activity– those vessels operating in the area which both sides claim as their own EEZ can be seen as acting in accordance with an interpretation of international law. As for the exploitation itself, Chinese hydrocarbon resource developments took place on the Chinese side of the median line, that is, in what both

¹⁴⁹ It should be noted that even without the existence of the islands there would have been overlapping claims.

sides consider to be China's EEZ.¹⁵⁰ Yet, these developments were proving controversial as Japan began to suspect that Chinese rigs may siphon off oil/gas from the Japanese side of the median line (Schofield and Gault, 2011: 29).

A particularly surprising aspect of the issue is highlighted by Drifte: while Chinese research vessels were causing a great fluster in the LDP, MOFA, and so on, the Japanese government was actually funding Chinese exploitation of East China Sea via the Asian Development Bank, yet was entirely refraining from undertaking any research of its own (2008). This state of affairs ended at the turn of the century, but it lasted long enough to encourage China to continue and expand its activities – indeed, it is what led to both the media and politicians fearing Japanese political acquiescence in a *fait accompli* (the ceding of the contested EEZ to China). Japan's policy of not exploring or developing the hydrocarbons in the East China Sea was a long-standing one dating back to the 1970s, in deference to China and part of its dispute-management policy (Valencia, 2007: 128; Drifte, 2008). For example, in 1994 a company called Uruma Resources Development was told by a MITI official “if you want to do trial drillings, go ahead. But even if the workers are attacked by a Chinese warship, neither the Self-Defense Forces nor the Maritime Safety Agency can move under the current law” (*The Japan Times*, 22/10/2004). Other oil companies, too, wished to drill (Teikoku Oil, Japan Petroleum, *The Japan Times*, 17/01/2005), but the applications were not accepted, prompting one executive to say that “it is convenient for the government not to confirm whether [such resources] exist”.

Thus, at the turn of the century the LDP forced the central government into taking a tougher stance in the sovereignty game: using its economic capital to compel China to agree

¹⁵⁰ This situation would not continue into the mid/late 2000s however.

to the prior notification system, while continually protesting Chinese “incursions” into its own undisputed EEZ as well as the disputed zone. But the system itself was a failure and, having conceded ground in the territorial dispute itself, Japan now was in danger of losing the sovereignty game in the East China Sea. Despite the government’s deeply cautious policy towards the exploration and exploitation of hydrocarbon deposits, China had not reciprocated in kind; and instead, as a clear illustration of the failure of the policy pursued, Chinese vessels were operating in the disputed zone, in Japan’s own EEZ and even in the Pinnacles’ own territorial waters. As outlined later, China even began to lodge severe protests about Japanese activities in the disputed waters. Despite continued nominal administrative control over the Pinnacles, therefore Japan’s ability to exercise sovereignty over the islands and their waters was becoming ever more limited, and China was now treating the area as its own sovereign maritime territory.

4.8 Koizumi, Lighthouses and Leasing

4.8.1 2002 Leasing

The Japanese government under the administration of Koizumi Junichirō took a stronger line on the Pinnacles, taking actions which previous governments had shied away from. In 2002 all the islands in the chain, apart from Taishō and Kuba Islands (already owned by the government) were leased by the Ministry of Defence for a renewable ten year period at a cost of 22,560,000 yen (*Asahi Shimbun*, 01/04/2003). The ostensible reason for this action was in order to prevent third-party purchase or lease, as well as to better regulate landing on the islands. True, state-control of the islands did make landings by *Seinensha* and other Japanese

citizens more difficult. What is more, should a protester successfully make a landing, they were subject to hefty fines (Nakama Hitoshi Interview, 22/04/2011).¹⁵¹ Still, even if such a change in the island's status made landing more difficult, it did not solve the issue of the protesters, Japanese or Chinese, landing on the islands.

The move has a much greater weight when seen as a direct exercise of state sovereignty over the islands. When news of the lease filtered out in the media in April 2003, China lodged oral and official protests demanding the Koizumi administration “correct” the action, and for the first time since 1998 a group of Chinese protesters (from Hong Kong) headed out to the islands in an attempt to land. Although the would-be landers were intercepted by the JCG, this attempt was unusual in comparison with earlier attempts, as the protesters apparently had the backing of the CCP (*Asahi Shimbun*, 24/06/2003). These strong protests stem from the fact that, in the sovereignty game, state actions carry far more weight than those of private individuals or groups and so the lease of the islands by the central government was a clear demonstration of state sovereignty. But it was too late for Beijing to take any meaningful compensatory action: news of the lease emerged months after the agreement had been ratified – in this instance, it was Beijing who was presented with a *fait accompli* generated by Japan through the clear exercise of sovereignty.

¹⁵¹ Although the official government position was to prohibit landings, according to Nakama, the local JCG officers frequently turned a blind eye to landing activities, with many officers privately encouraging the landings (Nakama Hitoshi Interview, 22/04/2011).

4.8.2 2005 Lighthouse Recognition

Another example of the change in approach by the Japanese government came in 2005, when the lighthouse built privately on Uotsuri Island was finally recognised by the state as an official beacon. In response to Chinese diplomatic protests calling the move “illegal and invalid”, Foreign Minister Machimura Nobutaka stated that the decision was a domestic matter and there was no territorial dispute (*Asahi Shimbun*, 02/10/2005). The contrast with the Japanese response to the previous lighthouse recognition incidents is stark. Yet, the Chinese response was not as severe as might have been expected: the Koizumi administration was able to present the recognition as a move to prevent further landings on the islands and thus keep the dispute under control: since the government had taken control of the islands in 2002, landing on them to maintain the lighthouse (changing lightbulbs and so on) had become illegal, and thus in order to protect the safety of local fishermen (ostensibly at least) the government decided to recognise and upkeep the lighthouse itself (*The Japan Times*, 10/02/2006). Moreover, once again the move achieved a *fait accompli* – that is, the recognition came to light *post-facto* – Beijing was out-manoeuvred, as it was too late to pressure Japan into dropping the recognition issue. The move was, in strictly sovereignty terms, a master-stroke: it removed the possibility of right-wing groups hijacking foreign policy and deliberately causing flare-ups in the dispute on the pretext of maintaining the lighthouse, and, once again, it stood as a clear exercise of state sovereignty – one which would be reaffirmed every year when JCG officers would land on Uotsuri to maintain the lighthouse.

The relationship between Japan and China had changed dramatically since the early/mid 1990s: on the one hand, China was pushing now for a *fait accompli* in the East

China Sea and appeared to be undertaking a naval military build-up (Drifte, 2006: 133-5, see the next section), significantly increasing the strategic value of the islands; yet, on the other hand, economic relations were still close and trade continued to boom. Still, the lighthouse recognition incident cannot be divorced from the response on the popular level in China, as illustrated by the breakout of the anti-Japanese demonstrations which took place across China in the spring of 2005.¹⁵² Historical issues were also at play as was the Ministry of Economy, Trade and Industry's (METI) granting of an exploratory drilling licence in the East China Sea to a Japanese company. Indeed, for the remainder of 2005, further conflict over the islands and the disputed marine territory emerged, as elaborated in the next section. The about-change in Japan's approach to the dispute is highlighted by the fact that, as recently as 1997, Hashimoto's Chief Cabinet Secretary, Kajiyama Seiroku, had announced plans to revise the law on the establishment of beacons and lighthouses, since the existing law allowed only for the state to order improvements to a lighthouse but did not allow the state to order its removal (*Asahi Shimbun*, 26/02/1997).

The Koizumi administration's approach could not have been more different, and the actions described in this section are best understood with reference to the unapologetic stand Koizumi took on other issues in the bilateral relationship, as illustrated by the Yasukuni Shrine visits or the history textbook issue. While the behaviour of the Koizumi administration contributed to the deep-freeze in Sino-Japanese relations – there were no bilateral summits between Chinese and Japanese leaders from October 2001 until Prime Minister Abe Shinzō took over in 2006 – the Pinnacle Island policy strengthened Japan's position on the islands. As is outlined in Section 4.10.1, the Koizumi administration attempted to strengthen sovereignty even further by attempting to prosecute Chinese activists

¹⁵² One of the main organisers of the spring demonstrations was the Chinese Federation to Protect the Diaoyu Islands.

who landed in 2004, but in the end it backed down in face of grave Chinese threats. Still, the leasing of the islands and the recognition of the lighthouse – and the manner in which Beijing was presented *post facto* with a *fait accompli* – marked a shift in Japan’s approach to the sovereignty issue, and strengthened Japan’s position in the sovereignty game – as the example of Kajiyama’s plans to dismantle the lighthouse shows. In short, previous administrations had shied away from *any* clear display of state sovereignty over the islands in the way the sovereignty game was being played. It would not be long until Japan would also take a stronger line in the associated maritime dispute.

4.9 The Maritime Dispute II: Conflict and Cooperation

As we saw in Section 4.7, Japan was losing control over the disputed EEZ zone in the East China Sea. In the 1990s the government publicly described the Chinese vessels operating in the Pinnacles’ territorial waters and EEZ as acting illegally, and, as late as 2001, was able to force China into the (short-lived) PNS. In the first three months of 2004 there were eleven confirmed Chinese research vessel incursions, none of which had applied for permission using the PNS. China thusly disregarded the PNS and continued its exploration and eventual extraction of the hydrocarbon deposits. In January of 2004 two Chinese protest boats arrived in the disputed islands’ waters, and though intercepted by the JCG before they could attempt a landing, were able to drop a stone monument in the shallow water near Uotsuri, proclaiming the islands to be Chinese territory. What made the incident unusual was that, after the event, they delivered a report to the Chinese marine authorities, and lodged an application for permission to develop the islands for tourism (*Asahi Shimbun*, 05/02/2004). While the idea of China developing the disputed islands as a tourist spot seems fanciful, such

an incident – which appeared to enjoy the backing of the Chinese government – would have been unthinkable a decade earlier. Japan was faced with ceding its EEZ claim in the East China Sea, and China was continuing to exert pressure on the sovereignty of the disputed islands.

The situation continued to deteriorate from the Japanese point of view. In 2004 the number of research vessels spiked once again (JCG, 2008). Not only were the vessels suspected of looking for hydrocarbon deposits but sonar waves were also reported, indicating that the vessels were mapping out the sea-floor for submarine use.¹⁵³ This fear was confirmed later the same year when a Chinese nuclear submarine was detected submerged in Japanese territorial waters between Ishigaki and Miyako islands in the far south of the Ryukyu Islands, not far from the Pinnacles.¹⁵⁴ The Ministry of Defence described the incident as highly provocative and speculated that China was testing MSDF capabilities (*The Japan Times*, 13/11/2004).¹⁵⁵ What is more, 2004 was the year China began to protest Japanese research vessels operating in the disputed EEZ zone.

Sino-Japanese relations sunk to a nadir in 2005 over Koizumi's visits to the Yasukuni Shrine, the Pinnacle Islands dispute and other historical issues. The influence of MOFA's China school, which had pushed Japan's soft line on the East China Sea, was waning, and the media and a number of domestic politicians – both opposition and ruling party – were calling for Japan to take a stronger line on the dispute (Drifte, 2006, 2008;

¹⁵³ As early as 2001 the National Institute for Defense Studies (the Ministry of Defence think tank) referred to issue of Chinese research vessels “collecting oceanic data for submarine warfare”.

¹⁵⁴ It is legal for submarines to pass through territorial waters as long as they are on the surface, passing through submerged is considered an unfriendly act.

¹⁵⁵ Chinese Vice Foreign Minister Wu Dawei apologised to Jap ambassador Anami Koreshige in Beijing, blaming a technical error for the intrusion (*The Japan Times*, 17/11/2004).

Manicom, 2010). The Chunxiao gas field was located close enough to the median line to lead Japanese side to conclude that, irrespective of the Chinese government's position, the action may lead to the siphoning of gas from the Japanese side of the median line. All these factors led to METI's reopening procedures for applications to test-drill on the Japanese side of the median line – in the disputed zone – in April 2005. A Japanese oil and gas company, Teikoku Oil, submitted a reworked version of an application originally submitted in 1972, which was accepted in July of the same year. The areas designated for exploration bordered the median line, and as such were located in the disputed zone, running next to two existing Chinese sites, Duanqiao and the aforementioned Chunxiao. China lodged an official protest, describing the application as a severe provocation. A month later it was Japan's turn to protest as China began to extract gas from its installations near the median line, which the government had alleged would siphon resources from Japan's claimed EEZ.¹⁵⁶

4.9.1 2008 Consensus Agreement

After Koizumi left office in 2006 Sino-Japanese relations improved under the Abe administration. High-level bilateral summits – frozen since 2001 – resumed, with the prime minister, making China the destination of his first official overseas visit. Concomitantly, serious negotiations got underway on the EEZ dispute.¹⁵⁷ Several years and eleven rounds of negotiations later, the two sides announced the 2008 consensus, which was to turn the East China Sea into a “sea of peace, cooperation and friendship” (Drifte, 2008). The agreement set aside for joint development a small block of seabed which straddled the median line, and

¹⁵⁶ In this case, the Tianwaitian field.

¹⁵⁷ The negotiations began in 2004 but it was the bilateral meetings post-2006 which gave them momentum, (Zhang, 2011: 56).

opened up the Chunxiao gas field to “cooperative exploration”, which would “welcome the participation of Japanese legal persons in the development of existing oil and gas fields in Chunxiao in accordance with the relevant laws of China” (Zhang, 2011: 59).

At first, the agreement appeared to be an important, positive step in resolving the maritime dispute, with Foreign Minister Kōmura Masahiko describing it as an example of how “Japan and China can resolve even the most difficult issues at stake through talking out [sic]” (MOFA, 2008). However, it soon became clear that the agreement was of much less significance than originally expected, as the basic issue of sovereignty would remain the stumbling block: China asserted that “cooperative exploration” was not “joint development” because the Japanese legal persons (corporations) would be recognising Chinese jurisdiction and sovereignty over Chunxiao, while denying any recognition of the median line (Zhang, 2011: 57). Meanwhile, Kōmura was insisting that “it is unquestionable that the median line goes through the inside [the agreed block of joint development]” (Zhang, 2011: 57). This back and forth came within a week of the announcement of the agreement itself.

Since the late 1990s China had been steadily increasing its activities – exercises of sovereignty – in the disputed maritime zone in the East China Sea. Japan’s initial response consisted of formalistic diplomatic protests. While such a response enjoyed legal validity in maintaining Japan’s claim, it did not have an effect on China’s activities. The legal sovereignty claim may have been safe, but Japan’s ability to effectively prevent China from exercising sovereignty over the islands and the disputed maritime zone was being eroded. By the mid-2000s, China was operating with relative impunity in the disputed waters – including the waters around the Pinnacle Islands – and the fact that such operations would have been inconceivable ten years previously indicates the extent to which Japan was losing the

sovereignty game. Even after LDP Diet members took matters into their own hands by forcing MOFA to use its economic leverage via the ODA loans, China continued to systematically push its sovereignty claims, pressing ahead with research, exploration and drilling. By 2006, in response to Japanese protests over a Chinese research vessel's presence in Japan's EEZ near the Pinnacles, China responded: as the islands "are China's inherent territory ... there is no scope for dispute", (*Asahi Shimbun*, 07/02/2006).

The extraction of gas from the Chunxiao field proved to be the tipping point in terms of the maritime dispute (Manicom, 2010). The 2005 decision (again, under the Koizumi administration) to grant Teikoku Oil permission to drill in the disputed zone marked a dramatic change in Japan's approach to the sovereignty game. Like the previous decisions to lease the islands and to recognise the lighthouse, the granting of permission to drill was a clear attempt to (re-)establish Japanese sovereignty over the disputed EEZ, and elicited a serious reaction from China (see below). But, as a statement of intent by Japan, it also contributed to halting the extraction of hydrocarbons and led to the negotiations which culminated in the 2008 consensus agreement (Schofield and Gault, 2011).

In late 2005 tensions were high as China made a show of naval force near the Chunxiao field; when a Japanese P3-C surveillance aircraft flew over head one of the Chinese destroyers aimed its guns at the airplane (Valencia, 2007: 131). China also announced the formation of an East China Sea reserve naval group whose explicit mission was to "eliminate obstacles" in the area (Valencia, 2007: 131). Manicom argues that from 2005-6 Japan's "strategic posture towards its maritime domain underwent a dramatic shift" (2010: 307). Not only was Teikoku Oil finally granted an exploratory drilling license, but moves were afoot in Tokyo to strengthen laws protecting ships and rigs operating in the East China Sea (Drifte,

2008; Manicom, 2010). Yet, despite – or perhaps because of – Japan’s tougher stance, the 2008 Consensus Agreement led to “no substantive progress concerning the delimitation of the maritime border” in the East China Sea (Drifte, 2008), and at the time of writing *Teikoku Oil* has not extracted any oil or gas from the areas under exploration. Indeed, while Japan’s tougher stance did slow down the extraction of oil and gas resources in the East China Sea (Schofield and Gault, 2011), it did not prevent Beijing from continuing to push the sovereignty issue over both the islands and the disputed maritime zone. In December 2008 China announced an increase in its activities in and around the Pinnacle Islands, and did so based on the understanding that these islands were Chinese territory, and hence this was a domestic issue (*Asahi Shimbun*, 14/12/2008). The same month two Chinese government research vessels were found in the islands’ territorial waters, the first time for state research vessels (Fravel, 2010).¹⁵⁸ To underscore the point of the operations, the Chinese news agency Xinhua published an article describing how the research vessels had broken through the Japanese defense line, and emphasising how, should a conflict break out in the East China Sea, China would have military superiority (*Asahi Shimbun*, 14/12/2008).

Japan’s economic capital vis-à-vis China was fading fast, as trade relations underwent something of an inversion. For several years Japan had accounted for approximately one-fifth of China’s total trade – while China had generally taken up between 5-10 per cent of total Japanese trade. In 2003 trade with China stood at 15 per cent for Japan and trade with Japan stood at 15 per cent for China – a first in the modern era. From 2004 onwards China surpassed the US as Japan’s number one trading partner (Drifte, 2006: 100), yet Japan occupied a diminishing amount of China’s annual total trade. Aside from the shifting trade patterns, China’s economy continued to boom while Japan’s struggled with

¹⁵⁸ Although other non-state, research vessels had been found in the waters as early as 2004 (*Asahi Shimbun*, 12/02/2004).

stagnation. Section 4.6 described how economic interdependency played an important role in preventing the dispute from escalating out of control, particularly during the 1996 incident. Yet, inter-dependency figures fail to capture how the changing nature of bilateral economic relations allowed China to assert itself in the dispute, and left Japan with little recourse but to assert its sovereignty in a serious manner or risk ceding the maritime territory, and perhaps even the islands themselves.

4.10 Sovereignty and Arrests

4.10.1 2004 Activist Arrests

As mentioned in the previous section, Chinese (mainland) protesters, with apparent state backing, attempted to land on the Pinnacles in January 2004. Although they were intercepted by JCG vessels just off the coast of Uotsuri Island, a far more serious incident took place two months later when seven Chinese (mainland again) actually managed to lose the JCG and land on Uotsuri island itself (*Asahi Shimbun*, 24/03/2006). The initial response involved the standard diplomatic protest, this time lodged by Deputy Foreign Minister Takeuchi Yukio with the Chinese ambassador in Tokyo (Kyodo, 24/03/2004). However, in a break with standard practice, and indeed for the first time since the Okinawa reversion in 1972, the protesters were arrested under the law on illegal immigration, and were under suspicion of damage to private property (*Asahi Shimbun*, 28/03/2004). The case was sent to the Naha

public prosecutor.¹⁵⁹ In previous cases of successful landings (e.g. 1996) the cases were dealt with by the immigration office, and usually resulted in speedy deportation.¹⁶⁰

The protesters were hailed as heroes in China, and anti-Japanese street protests calling for their release took place across China.¹⁶¹ The Chinese Vice Foreign Minister lodged a protest with the Japanese ambassador in Beijing, warning that “this issue could be complicated and intensified to jeopardise Sino-Japanese relations ... the serious outcomes from this would have to borne by Japan”, while the Chinese ambassador in Tokyo told MOFA that if the protesters were not released “Japan will be responsible for all consequences arising thereupon” (Wiegand, 2009: 186). Meanwhile, *Seinensha* members gathered in Ishigaki to sail to Uostsuri, but were prevented from travelling by a contingent of 100 JCG officials who formed a shield around their ship.¹⁶² On 27 March, two days after the arrest, the central government suddenly and swiftly intervened. The seven protesters, who were due to be sent to the public prosecutor that day, were instead sent to the immigration office and within three hours were all on a plane bound for China (*Asahi Shimbun*, 27/03/2004). These orders came from the National Police Agency and the Ministry of Justice, yet the question of who made the decision to begin a criminal investigation – rather than deport the protesters immediately – remained unclear. According to a government source quoted in the *Asahi Shimbun*, the arrests were not the government’s intention, a point made publicly by Prime Minister Koizumi in a press conference in which he stated that the decision to arrest the

¹⁵⁹ The private property in question being the Senkaku *Jinja* or Senkaku Shrine, erected by *Seinensha*.

¹⁶⁰ In the ‘normal’ cases, however, there is usually no suspicion of other crimes other than immigration violations, however in this case they were held due to the facts that they may have destroyed the Senkaku Shrine, none of them carried passports, and they were denying all charges (*Asahi Shimbun*, 26/03/2004).

¹⁶¹ This was an exception, since as we have seen China had hitherto prohibited such protests.

¹⁶² As is discussed later, this was a highly unusual move for the JCG, who had allegedly been tacitly permitting *Seinensha* voyages to the islands in the previous years (Nakama Hitoshi Interview/ 22/04/2011).

protesters was made on the spot by the local police. This claim contravenes a prior statement by MOFA Press Secretary, Takashima Hatsuhisa, who answered a question regarding the government's involvement in the arrests by saying: "This was a government decision" (MOFA, 2004). Furthermore, Koizumi's claim was later disputed by local police officers, who claimed to have received orders from above (*Asahi Shimbun*, 27/03/2006).

As with the decision to make the arrests, the decision to release and to eventually deport the protesters was very much a political one. Koizumi stated at a press conference on 26 March that the decision was made in order to "not adversely affect Sino-Japanese relations" (*Asahi Shimbun*, 27/03/2004). Following the release, a second wave of protesters, planning to land not only using ships but also small aircraft, cancelled their trip (*Asahi Shimbun*, 28/03/2006), and in early April Foreign Minister Kawaguchi Yoriko travelled to China for a scheduled summit, meeting both foreign minister and premier. While MOFA and Koizumi expressed relief at the drawing to a close of the incident, many dissenting voices arose within the LDP and across the opposition benches, with a Diet resolution passing a few days later on the "maintenance of inherent territory" – the member behind the proposed resolution was the DPJ's Noda Yoshihiko, who would become prime minister in 2011 (*Asahi Shimbun*, 25/03/2004, 31/03/2004).

The incident also led to the formation of the non-partisan "Territory Diet Members' Alliance", headed by Morioka Masahiro. With over 60 Diet members, the goal of the Alliance is the strengthening of government policy in all three disputes.¹⁶³ Hyōdō Nagao, a former MOFA diplomat and ambassador to Poland and Belgium wrote a piece in the *Yomiuri Shimbun* criticising the decision to release the protesters, warning that, while Japan was

¹⁶³ At the time of writing Yamatani Eriko is President of the alliance.

prioritising peace at any cost, China was becoming increasingly aggressive, and was on the verge of a *fait accompli* in terms of the East China Sea oil and gas deposits (*Yomiuri Shimbun*, 05/04/2004).

The Koizumi administration's handling of the incident illuminates the delicate line between seeking to exercise sovereignty and maintaining peaceful bilateral ties. While Koizumi attempted to distance himself and his administration from the decision to arrest and attempt to prosecute the protesters, given the duration of the incident and the comments cited above, it seems clear that both decisions were made in at the central government level. Even if these decisions *were* made by the police on the islands themselves, it seems the Koizumi administration was willing to wait and see how Beijing would respond. While the lighthouse recognition and the leasing of the islands had caused protests from Beijing, the level of protest was tolerable. It seems that in this case, however, in face of mounting criticism and threats of escalation from the Chinese side, the protesters were promptly released – early enough in the crisis to avoid losing too much face and to allow the blame to be laid at the level of the local police force. Given what would happen several years later, the central government seems to have understood that, under no circumstances, would China accept such a display of Japanese jurisdictional sovereignty – *involving Chinese citizens* – on the islands.

If China had politically acquiesced in the prosecution of the protesters, a major precedent would have been established and the sovereignty status quo would have been dramatically altered, making credible Chinese resistance to this kind of Japanese exercise of sovereignty in future far more difficult. For Japan, it was a gamble in the sovereignty game some thought worthy of taking, since a convenient way out existed, should China, as it did, threaten serious consequences – release the protesters and blame the local police.

4.10.2 2008 Taiwanese Protesters

On 10 June 2008 a JCG patrol boat collided with and sank a Taiwanese pleasure fishing boat nine kilometres from the coast of Uotsuri. All of the crew and passengers were rescued and thirteen of the sixteen on board Taiwanese were transferred to a Taiwanese coast guard vessel on the same day. The three remaining crew members were kept for questioning. Press reports suggested that the accident was the fault of the Taiwanese skipper (*Asahi Shimbun*, 11/06/2006). Taiwanese President Ma Ying-jeou, known for taking a tough line against Japan on historical issues, strongly protested the sinking and detention of the crew in what he described as Taiwan's own waters (*Asahi Shimbun*, 13/06/2008).¹⁶⁴ Under strong pressure from Taipei, by the 14 June all the remaining crew, including the captain, had been released. However, on the 15 June an internal investigation into the accident concluded that, while the bulk of the blame lay with the JCG captain, the Taiwanese vessel also had a smaller role in causing the accident: the investigators sent files to the public prosecutor on suspicion of negligence. Although the case on the Taiwanese captain went no further than this, Taipei responded by withdrawing its *de facto* ambassador to Japan and sending a number of Coast Guard vessels and fishing boats to circumnavigate the islands. There was even serious discussion in the Taiwanese parliament of sending warships to defend the islands, while Premier Liu Chao-Shiuan told the parliament that he “would not rule out war with Japan” over the islands (Kyodo, 15/06/2008).

Five days after the accident the JCG formally apologised, with the captain receiving a direct apology from the Interchange Association in Taipei on the 20th, by which time the

¹⁶⁴ In contrast to former President Lee Teng-hui who in an interview with the *Okinawa Times* in 2002 stated that the islands belong to Japan – this was several years after he had stepped-down from office (*The Okinawa Times*, 25/09/2002).

controversy had died down. In December of the same year the captain received approximately 280,000,000 yen in compensation (*Asahi Shimbun*, 06/12/2006). China, too, weighed in on the issue, with a spokesman from the foreign ministry expressing “strong discontent” and condemning Japan’s “illegal activities around the Diaoyu [Pinnacle] Islands” which he described as “Chinese territory since ancient times” (Xinhua, 11/06/2008).

The vitriolic response in Taiwan was due to a number of factors, including the nature of the incident – the over-aggressive pursuit by the JCG vessel – and the fact that President Ma was more interested in relations with the mainland than he was with Japan. But also crucially at stake was the issue of sovereignty: if Japan prosecuted the captain of the Taiwanese vessel in the waters of the Pinnacle Islands, this would send a clear and powerful message on the exercise of sovereignty and would establish a major precedent. As far as Beijing is concerned, Taiwan is a province of China so such actions would be seen to prejudice its position in the sovereignty game, too. However, given the extent of the Taiwanese response, Beijing was assured that the prosecution would not go ahead, and thus it did not need to become overly involved. Moreover, unlike in the 2004 incident, the Japanese government was not opportunistic and did not seek to turn the situation to its advantage. Instead, in the interests of good relations with its neighbours, it released the captain within a few days.

4.10.3 2010 Trawler Collision Incident

Two years later another collision involving the JCG caused a massive flare-up in the dispute. On 7 September 2010 a Chinese fishing trawler attempted to evade a number of JCG patrol

ships in the waters off Kuba Island. During the pursuit the trawler collided twice with two different patrol ships. In this situation, JCG officers decided to board the trawler and arrested its captain and crew-members. Within a few days the crew of the ship was released but the captain was held in the capital of Okinawa prefecture, Naha, and a file prepared for the Naha public prosecutor (for obstruction of public duty and illegal fishing). China strongly protested the detention, especially after the period of detention was extended by a further ten days on the 19th. Anti-Japanese protests took place in cities across China, and the Japanese Ambassador was summoned several times to the Foreign Ministry.¹⁶⁵ As Japan declared its intention to proceed with the prosecution, China responded with a range of measures, in what has been described as “shock and awe diplomacy” (Funabashi, 2010). This included the suspension of ministerial exchanges, halting exports of rare earth minerals and arresting a number of Fujita employees in China on charges of espionage.¹⁶⁶

Early in 2010 the Obama administration in the US had shifted policy on the Pinnacle Island slightly by not stating explicitly that the islands were covered by the Security Treaty (*The Japan Times*, 17/08/2010). However, following a meeting with Secretary of State Hilary Clinton in New York, Foreign Minister Maehara Seiji announced that he had her assurance that the islands were covered. On 22 September Chinese Premier Wen Jiabao made a statement which could be read as a thinly-veiled threat: “If Japan acts willfully despite advice to the contrary, China will take further actions, and Japan must accept full

¹⁶⁵ Some of the summons took place in the middle of the night, which is highly unusual diplomatic practice.

¹⁶⁶ China denies the linkage in the rare earth mineral exports, stating that the reduction in exports was planned beforehand. Other measures included the cancellation of a concert by pop-group SMAP at the Shanghai Expo and the cancellation of East China Sea negotiations and various bilateral meetings. The Fujita employees were investigating the feasibility of applying for a contract to dispose of chemical weapons dumped by the Japanese army during World War II. By 9 October they were all released, having expressed regret at accidentally entering a prohibited military zone.

responsibility for all the severe consequences” (Reuters, 22/10/2010). Finally, on 24 September the central government performed a complete u-turn, stating that, just as local prosecutors had made the decision to prosecute the captain, so, too, had they independently decided to drop the charges and deport him. On his arrival in China the captain was hailed as a hero, while Japanese media and politicians castigated their own government’s weak handling of the incident. The following month Isshiki Masaharu, a JCG officer, leaked a video of the incidents on the website Youtube. He later stated that his actions were in response to what he perceived as Japan’s weak stance, which he saw as only encouraging Chinese aggression, and he hoped that by releasing the video he would force the government to take a firm line on the dispute (*Sankei Shimbun*, 06/09/2011). Although the video shows the Chinese trawler colliding with the JCG vessels, commentators and officials on both sides argued that it vindicated either the Chinese captain or the JCG patrol vessels.

Following victory in the Lower House elections in 2009, the DPJ took power. The new government had won the election promising to wrestle power from the government bureaucrats, and initially, under Prime Minister Hatoyama Yukio, it seemed as though Japan would follow a new Asia-centric policy, focusing on relations with states such as China (*The New York Times*, 26/08/2009). Never-the-less, the new prime minister lasted less than nine months, so that, by the time of the 2010 incident, Kan Naoto, a man not known for a strong interest in foreign policy, had taken over as prime minister. Unlike Kan, Maehara was well-known for a hawkish attitude to China (Shimotomai Nobuo [Professor, Hosei University] Interview, 03/10/2011), and it is highly likely that he played a major role in the whole incident (Gabe Masaaki Interview, 26/04/2011), also reports suggest he was in Ishigaki

meeting JCG officers during the crisis.¹⁶⁷ Maehara's closeness to the US and his views on China do not follow the narrative of the DPJ's Asia-centric foreign policy, but rather follow the pattern of wresting control from the bureaucracy which is "more comfortable following precedents set in foreign policy" (*Asahi Shimbun*, 04/05/2011) – the attempted prosecution did not follow any previous precedent. Thus, while in the case of the 2004 incident the most important decisions were unlikely to have been made by local officials, in 2010 it seems impossible – there is little doubt that Maehara and other DPJ China-hawks in the supposedly more Asia-centric DPJ were responsible for the decision to prosecute the Chinese captain and then to extend his period of detention. The political and legal potential of a successful prosecution of a Chinese captain in the disputed islands' waters was too much of a temptation.

China's international reputation, cultivated carefully over the previous two decades since the Tiananmen Square incident, took a bruising over its 'shock and awe' response – especially among the countries of Southeast Asia, which are involved in the South China Sea dispute. Again, China reacted the way it did because of the sovereignty implications, of that little doubt exists. Beijing was willing to use all forms of capital to prevent this exercise of sovereignty: military (thinly-veiled threats), economic (rare earth exports) and diplomatic (loss of reputation, cancelling of meetings, arrest of Fujita employees). Regardless of these set-backs, the Pinnacle Islands have become one of China's core interests (Fravel, 2009), and China could not allow Japan to gain such a strong advantage in the sovereignty game.

¹⁶⁷ Not all interpretations of the events follow this line, for example Peter Ennis, a columnist for the *Tōyō Keizai* weekly, argues that in fact it was Chief Cabinet Secretary Sengoku Yoshito who took over the incident from Maehara, and used it as a means of demonstrating sovereignty over the islands without ever intending to actually prosecute the Chinese skipper. In the sense that Japan pushed China over the dispute in the manner it had already planned, Japan actually emerged victorious from the incident. Even if it is true that the events went roughly according to Sengoku's plan, however, the apparently causal pattern of China's fierce reaction followed by the Captain's release without charge leaves the incident open to the interpretation that Japan gave in, regardless of whether Sengoku planned it or not.

The Kan administration lacked the foresight of the Koizumi administration in 2004 in not leaving an exit clause. Having raised the stakes and entered into a sovereignty game more akin to the game of ‘chicken’ with China, Japan blinked. By so consciously and blatantly trying to alter the status quo in terms of the islands and their waters, and then being forced to back down so ignominiously, the attempt ended up reinforcing the sovereignty status quo, with Japan being unable to prosecute Chinese nationals arrested on or near the islands, rather than changing it. Finally, and most importantly for the sovereignty game, the post-collision international situation had highlighted how, despite Japan’s formal claim that ‘no dispute exists’, China and the world now knew one thing even more clearly than before: Japan did not enjoy the full exercise of its sovereignty in issues related to the Pinnacle Islands.¹⁶⁸

4.11 Summary

The Pinnacle Islands dispute was awoken from its dormant state in 1990 when it emerged that the JCG was considering formal recognition of the lighthouse on Uotsuri as an official beacon. At that time post-Tiananmen China was dependent upon Japan both economically and politically, thus it kept relatively quiet. Still, events in Taiwan were enough for the JCG to pass the issue on to MOFA, which prioritised positive bilateral relations over the territorial dispute – this would remain the MOFA-driven policy for the next decade. The move did see

¹⁶⁸ It should be noted that there is an argument that by taking the arrest issue as far as it did in 2010 in fact Tokyo made a stand against China, showing that it would not be bullied. Looking at the events from the perspective of the sovereignty game however, this does not appear to be the case – the precedent failed, and if anything reinforced the old precedent that Japan *cannot* use jurisdictional sovereignty to prosecute Chinese nationals for crimes on or around the Pinnacle Islands.

the dispute return to something resembling its dormant status, but the action of refusing to recognise the lighthouse in deference to other states set a sovereignty precedent itself: Japan was not willing to exercise sovereignty over the islands if this meant damaging bilateral relations. Once established, this precedent would be difficult to overturn.

The 1992 Chinese territorial sea law was a precursor of things to come in terms of the effects UNCLOS would have on the dispute. The Pinnacles were inserted into the law by the PLAN, which has grown in both military strength and foreign policy sway – particularly in China’s territorial disputes – over the past decade (Jacobson and Knox, 2010). Japan protested through the standard diplomatic channels calling for a repeal of the law, but it did not attempt to use the considerable economic or diplomatic capital it enjoyed at the time in an attempt to force China to withdraw the reference. Although the diplomatic protests did reach an unusually high-level, no element of threat was contained in them – the linkage between the law and the possibility of economic reprisals was made only on the Chinese side. This indicates a form of political acquiescence in China’s claim, and the counter-intuitive result of China’s actions was that Japan switched to its “no dispute exists” position. At this stage Japan’s Pinnacle Islands policy was driven by MOFA, which did not consider the Pinnacles a major issue; certainly it was not rated highly enough to expend political or diplomatic capital over. In the early 1990s the islands had little economic, symbolic, precedential or strategic value. Yet, the whole purpose of the law was to lay down a marker for China’s future maritime territorial claims, and thus it was inevitable that during the 1990s the dispute would become more intense.

The sovereignty game got well underway with the ratification of UNCLOS in 1996. Both sides claimed the islands and used different methods – backed up by different

international legal principles – to generate their respective EEZs and continental shelves. This resulted in substantial overlapping claims, with the Pinnacle Islands lying on China's claimed continental shelf in the disputed zone. The ratification of UNCLOS and related events in the Liancourt Rocks dispute led to *Seinensha* reigniting the dispute once more through the construction and recognition of lighthouses. While again Taiwan (and Hong Kong) erupted, Beijing prevented similar civilian protests on the mainland – but it did protest in a far more serious tone, and issued threats on the consequences of recognition. Once again the government decided against a state exercise of sovereignty over the islands, with both Prime Minister Hashimoto and Foreign Minister Ikeda explicitly linking the reactions of the other parties and the need for good relations with the decision to drop the lighthouse recognition question. The explicit nature of the decision served to reinforce the sovereignty status quo.

The domestic fall-out from the 1996 incident led to a growing awareness and interest in the dispute among politicians in both the LDP and opposition parties, as evinced by the Diet groups which formed around territorial issues in its aftermath. It appeared that Japan was either unwilling or unable (or both) to exercise unfettered sovereignty over territory which in public the government stated was not even the subject of a territorial dispute. At the turn of the century the research vessel issue pushed the internal LDP opposition to the apparent weak stance of the government to breaking point when an internal LDP committee suspended the ODA loans to China. Although thereby gaining ground in the sovereignty game, China was at this stage still vulnerable to Japan's economic capital and agreed to the PNS. In a sense, the disputed waters were still somehow more 'Japanese'; Beijing

compromised on the government's demands over the disputed maritime territory that was, according to Beijing's interpretation of international law, entirely Chinese.¹⁶⁹

Quickly disregarding the PNS, China continued to push for sovereignty over the waters: by 2004 not only was the system effectively defunct but China began to protest Japanese operations in the disputed waters. By this stage the disputed maritime zone was no longer considered Japanese; rather it was very much disputed, and China was operating there almost at will. The extent of Japan's political acquiescence in Chinese activities in the East China Sea was highlighted by the fact that Japan had been indirectly funding Chinese pipelines via the ADB. All this led both the media and politicians in Japan to talk openly about a Chinese *fait accompli*.

Under the Koizumi administration Japan's stance on the territorial and associated maritime dispute altered dramatically. The change began with the leasing of the islands in 2002, which was in effect a direct exercise of state sovereignty over the islands. The 2005 recognition of the lighthouse demonstrates even more clearly the policy-change, particularly given that as recently as 1997 Foreign Minister Kajiyama planned to change domestic laws in order to remove the lighthouse. Since Japan had backed down on the issue twice before, the sudden announcement caught China by surprise. Indeed, the Koizumi administration managed to overturn the sovereignty status quo precisely because both moves were undertaken long before Beijing was apprised of them; thus Beijing was presented with a *post facto fait accompli* in both cases, which prevented it from issuing the usual warnings or threats about the consequences should the leasing/recognition go ahead. Foreign Minister

¹⁶⁹ 'Maritime territory' here refers to the disputed EEZ and further to the continental shelf which China claims beyond any EEZ: the continental shelf does not include to the water column but only the continental shelf itself.

Machimura's statement accompanying the lighthouse recognition – that it was a domestic issue, and there was no territorial dispute – symbolised the turnaround in Japan's approach under Koizumi.¹⁷⁰ It should be noted that the Koizumi administration, unlike previous administrations in the 1990s, showed little interest in maintaining good relations with China. True, the recognition did contribute to the spring 2005 anti-Japanese demonstrations, but more to the point, enough anti-Japanese sentiment had been generated already by other issues, so the recognition of the lighthouse would not have made much difference in the overall Chinese response.

The Koizumi administration also took a stronger line on the maritime dispute. With the PNS defunct China was beginning to operate with relative impunity in the East China Sea, frequently sending research vessels to the disputed maritime zone and the waters around the Pinnacles themselves. When extraction began at the Chunxiao gas field Japan finally responded. Not only was Teikoku Oil granted permission to drill – adjacent to the existing Chinese fields and in the disputed maritime zone – but the Koizumi administration also enacted legislation which would allow the protection of the oil and gas rigs and their workers, something which it had refused to do since the 1970s. The government's approach to the sovereignty game in the territorial dispute thus went from actively avoiding any direct state exercises of sovereignty to actively engaging in state exercises of sovereignty, while in the associated maritime dispute it went from relatively ineffective diplomatic protests to the use of economic capital; after the PNS failed Japan upped the stakes even further, by allowing Teikoku Oil to drill in a highly sensitive zone. Domestic opposition to the cession of ground in the sovereignty game throughout the 1990s led to the declining influence of MOFA and

¹⁷⁰ This is in comparison to the statements regarding the lighthouse under previous administrations which publicly declared that the lighthouse would not be recognised in order to facilitate good relations.

the rising influence of the LDP itself in determining Japan's policy on the dispute, and the Koizumi administration marked the high-point of Japan's assertive approach to the sovereignty game. Yet, this reversal came at a high diplomatic cost, and it was only after Koizumi left office that serious negotiations on the oil and gas field could get underway.

Despite Japan's tougher line on the dispute, China continued to push its sovereignty claim. The first state-backed Chinese protesters since 1998 attempted to land in 2004. In a sense, the Koizumi administration saw this as an opportunity to set a precedent by having the protesters prosecuted under domestic Japanese law for alleged crimes committed while on the disputed islands. This was a major break with standard practice and would have dramatically changed the sovereignty status quo. Beijing weighed in heavily to warn of the serious consequences of such an action. Within a couple of days, the Koizumi administration had made a u-turn, but it did so fast enough and with a ready-made pretext so that neither side lost face – or position in the sovereignty game – because of the incident.

The same could not be said of the 2010 collision incident. Unlike in 2004, the DPJ-led government allowed the arrest and prosecution to advance much further, keeping the captain of the Chinese trawler for seventeen days. In the meantime, Beijing made it clear that its threats were not empty, responding with diplomatic 'shock and awe' – utilising military, diplomatic and economic capital – and eventually forcing the Kan administration to back down and release the captain. As in 2004, China was unwilling to allow Japan to exercise jurisdictional sovereignty – *over a Chinese national* – on or near the disputed islands, as such an exercise would have severely prejudiced China's position in the sovereignty game. But, unlike in 2004, no safe 'out' existed for the DPJ once the government began proceedings, and the result of the incident was an ignominious climb-down which worked to reinforce the

sovereignty status quo rather than revise it: Japan had demonstrated to the whole world that it was incapable of prosecuting Chinese nationals suspected of committing a crime on or near the Pinnacle Islands, and therefore that it clearly did not enjoy unfettered sovereignty over the islands or their waters. This fact made the reiteration of the ‘no dispute exists’ line sound hollow and called into question the ability of the DPJ to skilfully play the sovereignty game – China’s salami tactics of gradually but consistently challenging Japanese sovereignty over the islands and their waters had weakened Japan’s position in the sovereignty game.

Chapter Five: The Northern Territories Dispute

5.1 Overview

This chapter investigates the manner in which Japan has played the sovereignty game in its territorial dispute with Russia over the Northern Territories, comprised of the islands of Etorofu/Iturup, Kunashiri/Kunashir, Shikotan and Habomai/Khabomai (Japanese name first, Russian second).¹⁷¹ The chapter begins with an overview of the history of the islands, from the 19th century treaties which placed them under Japanese sovereignty to the Soviet occupation in 1945 and the subsequent emergence of the dispute. The next section assesses the relative economic, symbolic, precedential and strategic value of the islands to both states, though, as in the previous two case studies, the focus is primarily on their value to Japan. Following this, the pattern of the sovereignty game in the post-Cold War period is outlined. The end of the Cold War saw an opportunity for the Japanese government to try to resolve the territorial dispute, as the Soviet Union dissolved and a new, economically and politically unstable Russian state, emerged. Despite enjoying particularly robust economic and diplomatic capital in the dispute, however, the government's push to regain the islands failed. This failure was offset to a certain extent by Japan's ability to prevent Moscow from exercising unfettered sovereignty over the islands, which Russians continue to occupy.

By the mid-1990s the chances of a resolution seemed to have all but disappeared. Russia tried to assert itself in the sovereignty game but it lacked the capacity to turn its

¹⁷¹ The Khabomai/Habomai islands are in fact a group of small islands and rocks, but as they are generally treated as 'one' island for the purposes of political negotiations as well as academic studies, this dissertation maintains that convention. The same name is used for Shikotan in both languages. Finally, while in Japanese each island ends with the suffix 'tō', meaning island, these are not used, nor is the word 'island' added to each name, for the purposes of clarity.

sovereignty goals into reality. The Krasnoyarsk process, discussed in detail below, saw successive Japanese administrations take a fresh approach, demonstrating willingness to compromise on various outstanding issues, especially economic cooperation with Russia. However, the process was doomed to failure as the value of the islands was viewed as too high to allow respective Japanese governments to compromise on the ultimate sovereignty of all four of the disputed islands. Post-Krasnoyarsk Moscow pushed back and began to play a more sophisticated sovereignty game: a combination of the strong leadership of Presidents Vladimir Putin and Dmitri Medvedev, a stable domestic political situation, and economic prosperity due in particular to energy exports, meant the Russian government was able to exercise sovereignty over the islands in a variety of ways, thereby strengthening its position in the sovereignty game. By the late 2000s Japan's position in the sovereignty game was significantly undermined by various actions in the domestic, Russian and international spheres, thereby weakening its ability to play the sovereignty game.

5.2 History

Japan-USSR: Northern Territories

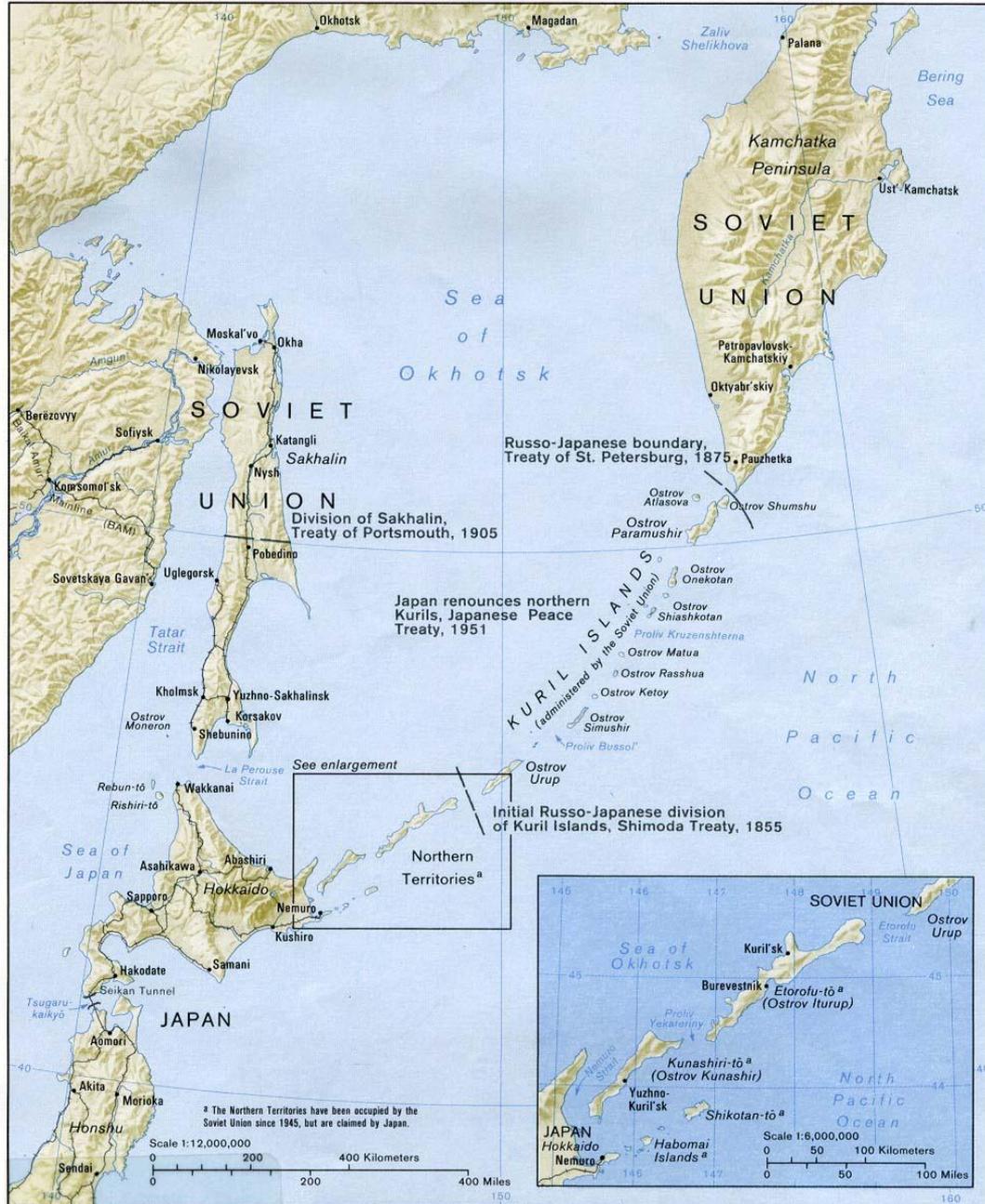


Figure 5.1, Map of the Northern Territories, Showing Territorial Configuration after the Shimoda (1855), St. Petersburg (1875) and Portsmouth Treaties (1905). Source: Courtesy of the University of Texas Libraries, The University of Texas at Austin.

5.2.1 18th and 19th Century

Sovereignty over the Kurile Islands was a contentious issue from the very beginning of Russo-Japanese relations. Originally inhabited by the Ainu, the islands were one of several locations where the two expanding empires of Russia and Japan met in the late 18th and 19th centuries. By the 18th century Japan had established control over the island of Hokkaidō and it continued to expand north with settlements as far as the currently disputed island of Etorofu/Iturup. Meanwhile, Russia was consolidating its control of the Russian Far East, with explorers and settlers making their way south along the Kurile Island chain. Following various skirmishes and incidents, in 1855 the Treaty of Shimoda opened diplomatic relations between the two sides and set the border in the Kurile chain between Etorofu/Iturup and Uruppu/Urup (Hasegawa, 1998). The treaty specified that Sakhalin would remain “indivisible”, that is, a joint condominium, while the Kurile Islands border would be located between Etorofu/Iturup and Uruppu/Urup (Treaty of Shimoda, 1855). However, the treaty was negotiated in Dutch, and subsequently translated into Japanese, and the two versions differ slightly on their definition of what exactly constitutes the ‘Kurile Islands’: the Dutch version uses a vague definition which includes Urup and those islands to the north – but does not preclude Etorofu/Iturup and the islands south – while the Japanese version states that Urup and the islands to its north are the Kurile Islands.¹⁷²

Although the definition of the Kurile Islands was thus unclear, the border demarcation was not, and this border remained in place until the 1875 Treaty of St.Petersburg. The open nature of the treatment of Sakhalin led to further incidents between Japanese and

¹⁷² Much scholarship takes Japanese claims at face value – that the Kurile Islands were strictly defined – leaving out the fact that the original Dutch version was hazier and the legally binding treaty is the Dutch version, yet the one of the pillars of Japan’s claim is the Japanese translation (Gregory Clark Interview, 06/07/2011).

Russian settlers, and with Russia in a stronger position in 1875 (having lost the Crimean War it was turning its attentions east), Japan gave up its rights to Sakhalin in exchange for the entire Kurile chain as far as the Kamchatka Peninsula (Hasegawa, 1998). Competition for dominance in the region, particularly over Korea and Manchuria, came to a head with the 1904-05 Russo-Japanese War and Japan's surprise attack on the Russian Far East Fleet in Port Arthur. Following Japan's victory, the US-brokered Treaty of Portsmouth gave Japan the southern half of Sakhalin Island and paved the way for the annexation of the Korean peninsula.

5.2.2 1905-1945: From the Russo-Japanese War to World War II

During the Russian Civil War (1918-22) Japan validated the Russian fear and suspicion of Japan which had emerged in particular in the aftermath of the Russo-Japanese war. As a result of the Siberian intervention, Japan occupied northern Sakhalin as well as key cities across Siberia, with the aim of preventing the spread of communism and perhaps settling the Russian problem once and for all by creating an independent state in the Russian Far East (Hasegawa, 1998: 34). Japan was the last state to withdraw its troops from the newly formed Soviet Union, and, by the 1930s, the power struggle for dominance in Northeast Asia had resumed. Via its puppet state, Manchukuo, Japanese forces did make several raids on the Soviet border, but an all-out conflict was avoided.

During the negotiations for a Neutrality Pact eventually signed in 1941 prior to the outbreak of the Pacific War in 1941, the Soviet Foreign Minister, Vyacheslav Molotov, demanded the return of the Kuriles and Southern Sakhalin, but was rebuffed (Hasegawa, 1998: 39). Japan itself considered denouncing the pact in 1941 in order to invade the Soviet

Union and Mongolia but, instead, turned its attention to the south. In the end, it was the Soviets who declared war on Japan: by 1944 they shut down Japanese coal and oil concessions in Sakhalin and eventually denounced the Neutrality Pact in April 1945 (Ferguson, 2008: 32).¹⁷³ The denouncement followed the Yalta Agreement in which the Soviet Union agreed to enter the Pacific War against Japan, in return for, among other concessions, control over the Kuriles and Sakhalin.¹⁷⁴ On 8 August the Soviet Union declared war on Japan and began its invasion of Manchuria. On 11 August the Soviets invaded Sakhalin and on 15 August attacked the island of Shumushu/Shumshu, the most northerly of the Kuriles. By 25 August the Soviet Union had gained the upper hand on Sakhalin, finally occupying Habomai/Khabomai on in early September, although Japan had accepted the terms of surrender on 14/15 August,¹⁷⁵ with the formal ceremony of surrender taking place on 2 September (Hasegawa, 1998: 66).¹⁷⁶ At the end of World War II 17,000 Japanese remained on the now-disputed islands, of which half fled and the other half were repatriated between 1947 and 1949 (*The Japan Times*, 28/07/2002). The four disputed islands were formally incorporated into Russia in February of 1946 (Hara, 2007: 78).

¹⁷³ The Neutrality Pact was not due to expire until 1946.

¹⁷⁴ The Soviet Union also wanted Hokkaido but this was rejected by the other allies, though there are records which show as late as August 1945 an invasion and occupation of Hokkaido was under consideration, Hasegawa, 1998; *The Japan Times*, 28/07/2002).

¹⁷⁵ On 14 August the first message that Japan had surrendered was sent out; on 15 August the Emperor made his surrender speech.

¹⁷⁶ The Soviet Union, behaving just as it did in Europe, realised that while agreements and promises of spheres of influence and territorial control were one thing, occupation of the territories themselves was the only way to guarantee post-war control.

5.2.3 1945-1956 The San Francisco Peace Treaty and Normalisation

As in the case of Japan's other disputes, the acceptance of the Potsdam Declaration (see Chapter Three, Section 3.2) required that "the terms of the Cairo Declaration shall be carried out" (Potsdam Declaration, 1945 Article 8), meaning that Japan would lose all "territories which she has taken by violence and greed" (Cairo Declaration, 1943). This would logically mean the loss of Southern Sakhalin, which was booty from the Russo-Japanese war, but since the Kuriles were acquired by peaceful treaties in 1855 and 1875, and the Northern Territories had never been Russian territory question marks remained over their legal treatment. This was especially contentious since the first point of the Atlantic Charter stated that the Allies sought no "aggrandisement, territorial or other" (Atlantic Charter, 1941), and would be clearly violated by the terms of the Yalta agreement which gave the Kuriles to the Soviet Union. However, the Soviet Union was not a party to the Atlantic Charter, and was well on its way to territorial aggrandisement in Europe; Stalin wanted his rewards for the efforts of the Soviet Union in Europe and for agreeing to join the Pacific Theatre.

Thus, the San Francisco Peace Treaty would see Japan "renouncing all right, title and claim to the Kurile Islands" (San Francisco Peace Treaty, 1951 Article 2c), although the manner in which it did so was to create the modern territorial dispute. As was the case with the other two disputes, although earlier drafts of the treaty were relatively specific, stating the Kurile Islands would be ceded to the Soviet Union, the treaty did not specify either to whom the islands would be ceded or what islands actually comprised the Kuriles. The reason for this, as in the other disputes, was the nascent Cold War. Hasegawa Tsuyoshi argues that there are two reasons for this lack of specification: first, since it was not specified to whom Taiwan was ceded (thus to avoid handing it over to the newly communist mainland) as a

matter of logical consistency the Kurile Island renunciation (the next line in the treaty) would also remain unspecified; second, as it was believed the Soviet Union was not going to attend the Peace Conference or sign the treaty, no benefit should accrue directly to the communist state (1998).¹⁷⁷ Based on this assumption of non-participation, US Secretary of State John Foster Dulles inserted the crucial Articles 25 and 26 – which stated that the treaty “shall not confer any rights, titles or benefits on any State” which had not signed the treaty (Article 25), and that if Japan did make a subsequent separate peace treaty with another state which gave that state “greater advantages than those provided by the present Treaty, those same advantages shall be extended to the parties to the present Treaty” (Article 26).

Yalta was a meeting of war allies, and the Kuriles were offered as an incentive for the Soviet Union to enter the Pacific War. By 1951, the Cold War was already underway and the US policy of containment in place – the Truman administration wanted to go back on Yalta, but the US’s own occupation of the Ryukyu, Daito and Bonin Islands made this difficult. The absence of a definition of the Kurile Islands gave the US and Japan room to manoeuvre, and, by early 1951, even before the peace treaty was signed, Dulles had agreed to Japan’s request that Habomai/Khabomai and Shikotan not be included.¹⁷⁸ In the chaos which followed the US occupation of Japan, pinpointing the critical date of the dispute is difficult, but it would be some time between the surrender in 1945 and the signing of the San Francisco Peace Treaty in 1951. In order to prevent Japan and the Soviet Union from signing a separate peace treaty and settling the problem of the Northern Territories – which would concomitantly direct the focus of Japanese irredentist sentiment to the return of the Ryukyus and threaten the alliance – the insertion by Dulles of articles 25 and 26 was a master-stroke.

¹⁷⁷ The Soviet Union had criticised the peace treaty process on various grounds, including the exclusion of the People’s Republic of China and the US occupation of the Ryukyu Islands.

¹⁷⁸ Shikotan was included in the definition of Habomai/Khabomai, thus leaving only Kunashiri/Kunashir and Etorofu in the Kuriles.

Article 25 further fogged the issue of the Soviet's legal right to the four islands (already with no specified recipient) since it was understood the Soviet Union would not sign the peace treaty, while Article 26 meant that, if Japan and the Soviet Union were to sign a peace treaty in the future, any move by Japan to recognise new Soviet sovereignty over the islands would mean that the US could theoretically claim Okinawa for itself.

This is precisely what happened during the 1955-6 normalisation negotiations between Japan and the Soviet Union, when having relinquished the goal of gaining sovereignty over all four islands Japan tried to negotiate the return of Habomai/Khabomai and Shikotan.¹⁷⁹ With both parties poised to sign a peace treaty based on the return of the two islands Dulles intervened, calling the chief Japanese negotiator, Matsumoto Shunichi, to London and using articles 25 and 26 to warn him about the implications for Japan's residual sovereignty over Okinawa if Japan signed a treaty with the Soviet Union (Matsumoto, 1966). With this, US support for Japan's claim over the Northern Territories shifted from two to four islands. The 'Dulles warning' was successful, as the two sides failed to reach an agreement on the terms of a peace treaty because of the new four-island approach. In late 1956, Prime Minister Hatoyama Ichirō went to Moscow to negotiate the normalisation of relations between the two sides, and came away with the Joint Declaration of Japan and the Soviet Union, which resumed diplomatic relations and provided for future negotiations for a peace treaty and settlement of the Northern Territories issue : "the USSR ... agrees to hand over to Japan the Habomai/Khabomai and Shikotan Islands, provided that the actual changing over to Japan of these islands will be carried out after the conclusion of a peace treaty" (Article 9).

¹⁷⁹ Although MOFA disputes this, there is much evidence which shows that in fact Japan formally accepted that Etorofu and Kunashiri/Kunashir were part of the Kurile Islands renounced in the San Francisco Peace Treaty, from the Nishimura statement (Gregory Clark Interview, 06/07/2011), the 1946 Pamphlet (Hara, 2001), and the comments by Prime Minister Yoshida on the final day of the San Francisco Peace Conference (Hasegawa, 1998).

5.2.4 1956-1989: The Cold War

The joint declaration thus called for peace treaty negotiations on the basis of the two-island return, but the signing of the 1960 revised Security Treaty, which provided for the continuation of long-term US military bases in Japan, caused the Soviet Union to shift its negotiating policy by including a demand for the removal of all foreign troops from Japanese soil (Mack and O'Hare, 1990: 386). During the next two decades sporadic attempts were made to deal with the territorial dispute, but, as both sides' position had become entrenched, there was no progress. The advent of Soviet nuclear submarines operating in the Sea of Okhotsk – within range of the US mainland but defended by the Kurile Islands wall – greatly increased the islands' strategic value (see below, Section 5.3.4). Without a peace treaty, and with Japan and the Soviet Union on opposite sides in the Cold War divide, relations remained in deep freeze throughout the 1960s, 1970s, and early 1980s. Japan was clear that there would be no economic cooperation unless all four islands were returned, while the Soviet Union, after some informal offers of the two islands as per the joint declaration (e.g. in 1967 and 1972), in 1973 reverted to a “no territorial dispute exists” position (Hasegawa, 1998).

In 1980 a Diet resolution was passed calling for the promotion of activities to resolve the NT issue, and soon the same resolution was passed in prefectural and local assemblies nationwide, on 7th February 1981, the anniversary of the Treaty of Shimoda, Japan celebrated the first annual Northern Territories Day, and Prime Minister Suzuki Zenko became the first prime minister to view the islands from Cape Nosappu in Hokkaido (Hasegawa, 1998a: 169). In 1982 another law on the dispute was passed, the “Law Concerning Special Measures to Promote a Resolution of the Northern Territories Dispute”, which contained various measures for the resolution of the dispute, including a ten billion yen fund (Williams, 2010: 230).

Soviet-Japanese relations, which had been poor at best throughout the Cold War, had sunk to a post-war low by the time Mikhail Gorbachev came to power in 1985, as the Soviet Union maintained its decades old policy that there was no territorial dispute (Hasegawa, 1998).

Gorbachev's premiership saw a gradual recalibration of Soviet foreign policy in Northeast Asia, but the Northern Territories remained the key stumbling block in Soviet-Japanese relations. A grave visit programme for former residents, which had been started in 1965 during a period of thaw in Soviet-Japanese relations, was reinstated in 1986 following a thirteen year hiatus and high-level bilateral ministerial meetings resumed (Williams, 2003). Gorbachev himself was to visit Tokyo in 1989, but with both sides still refusing to compromise and Japan threatening to make the Northern Territories the sole focus of his visit, the trip was cancelled. Although the cancellation of Gorbachev's visit was a setback, the years from 1985-89 did see a general upswing in relations. By 1989 the *perestroika* which was transforming Soviet domestic policy began to reach its foreign policy, paving the way for the first visit to Tokyo ever by a Soviet or Russian head of state in 1991.

5.3 The Value of the Northern Territories

5.3.1 Economic Value

The disputed islands are surrounded by some of the richest fishing grounds in the world and , as Mark Valencia points out, the maritime zones generated by the island comprise almost 150,000km² (*The Japan Times*, 02/11/2000). Among the main catches are crab, salmon, and squid, and while in recent years there have been some problems with over-fishing, the area

generates approximately 25 per cent of Russia's annual catch, giving the EEZ a total estimated market value of \$1 billion per annum (Dupont, 2000: 107). In fact, most of the population of the islands owe its livelihood to these fisheries in one way or another, and, after the military, "fishermen of the Far East and the Ministry of Fisheries have been the most vocal opponents of territorial concessions" (Kuhrt, 2007: 73). On the Japanese side, too, much of the lobbying has been organised by fishermen's groups based in Hokkaido, and even during the Soviet period Japan was buying large quotas in the maritime zones around the islands (Akaha, 1992). Indeed, the value of the fisheries around the disputed islands to the local Japanese fishermen can be clearly understood by the willingness of many of them to risk their lives undertaking illegal fishing (fishing without a Russian permit) in the islands' Russian-controlled maritime zone (both Japanese and Chinese fishermen have been killed by border guards in the area since the end of the Cold War, see below Section 5.5.2 and 5.11.1).

Unlike the other two disputes, the ratification of UNCLOS in 1996 was not a hugely significant moment in the case of the Northern Territories as both states were already operating under bilateral fisheries agreements which were based on the concept of 200NM EFZs (Exclusive Fishing Zones) prior to the establishment of their EEZs. This did not stop the Japanese government from announcing its intention to declare an EEZ around the islands, but the effects of this were far less controversial (see below Section 5.5.2). Nonetheless, the fisheries situation has been an important part of the sovereignty game and is discussed at length later in the chapter; for the moment suffice it to say that fisheries are a key aspect of the value of the disputed territory for both states.

Unlike the other two disputes, oil and gas are not motivating factors in the Northern Territories dispute (at least not as yet). However, the islands – specifically

Kunashiri/Kunashir and Etorofu/Iturup – are rich in minerals: tin, zinc, copper, nickel, chromium, vanadium, niobium, titanium, magnetite, and huge deposits of sulfur. Some of these minerals are highly valued for military and scientific purposes. Valencia points out that extraction would require infrastructure and technology which Japan could provide should the islands be exploited on a joint-development basis (*The Japan Times*, 02/11/2000).

In terms of tourist value, at present Japanese citizens are requested by their government not to visit the islands, and while there are no direct penalties for the violation of this resolution, MOFA is highly active in following up violators and such cases usually make the national news and include an apology for the violation; the net effect is that very few Japanese citizens travel to the islands outside of the *visa nashi* programme (see below). On the Russian side, the remoteness of the islands from the population centres of Russia, as well as the complete lack of tourist infrastructure, means that they are currently not frequented by significant numbers tourists. Given the complex role of the islands in Japan's history and national consciousness, however, the islands would no doubt very quickly become important tourist destinations should they ever come under Japanese control.¹⁸⁰

5.3.2 Symbolic Value

The role which the Northern Territories dispute plays in the national identities of Russia and in particular of Japan is a broad and complex issue which, to do it justice, requires analysis far beyond the confines of this brief section of the dissertation. By drawing on extant

¹⁸⁰ Indeed despite the vigilance of MOFA, the high costs of travelling there and the lack of tourist infrastructure, some Japanese tourists have already visited the islands, as outlined later in the chapter.

research, however, we are able to highlight how the Soviet Union saw the occupation of these islands as a just reward for its massive blood sacrifice in the defeat of the aggressive axis powers, and as a fair conclusion of the numerous wars and conflicts which the untrustworthy Japanese had initiated in the post-Meiji period (Hasegawa, 1998). In 1945 the Soviet Union was far more concerned with prestige than in developing good relations with Japan – if the US could occupy Okinawa, then the Soviet Union could occupy the Northern Territories (Hasegawa, 1998: 131). In the post-Soviet era, a reawakened Russian nationalism has ensured that the Russian blood spilt in World War II, along with a resurgent Russia once again seeking prestige and recognition on the world stage, has precluded any kind of compromise on the Russian side (Buszynski, 2006).

As for Japan, to put it simply, “without acknowledged sovereignty over the Northern Territories, the Japanese feel that Japan is simply not complete” (Welch, 2005: 98). Welch argues that the return of the islands has become a “moral imperative”, which has its roots in “what the Japanese perceive as the simple injustice of the Soviet occupation and annexation, which consists both in the opportunism and in the violation of what Japan considers its title to the islands under international law” (2005: 98). This has resulted in what Hasegawa describes as “Northern Territories syndrome” – “an affliction akin to a mental block that paralyzes Japan’s ability to see and comprehend rationally its own interests, which go beyond a fixation on the Northern Territories” (1993: 423). Indeed, Welch’s own research confirms that this is not only a popular view, but one held at the highest levels: he cites interviews with various senior officials in MOFA and the Ministry of Defence, almost all of which emphasised the special nature of the issue.¹⁸¹

¹⁸¹ In the words of one of his interviewees, “The territorial issue is very special – very emotional ... The issue will not go away. It is about who we are” (2005: 99).

Chapter Two noted the way in which symbolic entrenchment can take place over time, and it would seem that, based on the apparently arbitrary nature of the four-island claim (as outlined in the preceding history section), the Northern Territories underwent symbolic entrenchment during the Cold War. One of the most notable aspects of Bukh's (2009) study is how he shows that, despite the changing Japanese perceptions of Russia over time, the position on the territorial dispute remained the same. Yet, while it seems unlikely that the symbolic value of the islands will be reduced in the future, it is also unlikely that the dispute will undergo further symbolic entrenchment – or indeed that it has in recent years. Indeed there are signs that in traditionally the most hardline region of all – Nemuro, home to many of those who were forced to leave the islands after World War II and the spiritual home of the campaign to return the islands to Japan – opinion is softening, and the possibilities of a compromise are emerging (Williams, 2010).

5.2.3 Precedential Value

The historical background and legal nature of the Northern Territories dispute differs somewhat from that of the Pinnacle Islands and Liancourt Rocks dispute, though all three still have their origins in Japan's imperial expansion and their unclear treatment in the post-World War II treaties. Japan does still take a legalistic approach to the dispute, though as the previous section shows, the government's legal basis for its claim to the islands overlooks the events of the normalisation negotiations in 1955-6. Rather, in terms of the Japanese claim, the concept of justice at work here seems to be more moral than legal: the idea of the Soviet Union's opportunistic behaviour in seizing territory which had never belonged to it, and thus

Japan losing territory which it argues has always been Japanese.¹⁸² Certainly, unlike in the Liancourt Rocks dispute in which Japan also does not control the territory, no government has ever called for the dispute to be taken to the ICJ, despite US encouragement to do so. Given the high stakes involved – not to mention the potential holes in its legal argument – it is highly unlikely that it ever would. Thus, the legal precedential value of Japan's claim in this dispute is not as significant as in the other disputes. In contrast, there is the possibility that any concession to Japan – even returning two of the islands – could open up a Pandora's box territorial issues for Russia and its World War II territorial gains (among others Karelia and Kaliningrad, Gregory Clark [Director of Akita University] Interview, 06/07/2011). However, as the case study shows, at various time Moscow did offer Japan two of the islands in exchange for a peace treaty, therefore suggesting that the precedential value is particularly significant to Russia either.

It can be argued that there is a reputational aspect to Japan's behaviour in the dispute, especially since it is the longest running of Japan's three disputes as well as being the one typically considered the most important of the three (Hakamada Shigeki Interview, 06/07/2011). If Japan is seen as taking a soft stance on the sovereignty of the Northern Territories, then this may send a message to the other disputant states in the other disputes. This reputational aspect is difficult if not impossible to measure, especially since the many of the issues which comprise the bulk of the sovereignty game in the case of the Northern Territories, such as the *visa nashi* programme, are not to be found in the other disputes. Having said this, a relation between events in this and the other two disputes does exist, as will be discussed in the Conclusion to this dissertation (Chapter Six).

¹⁸² Of course, as the history section points out, the territory has not always been Japanese, the Ainu peoples lived there prior to the arrival of Japanese settlers; indeed, if the present stalemate in the dispute continues then Japan will soon be faced with a situation where the territory has been Soviet/Russian for longer than it has been Japanese!

5.3.4 Strategic Value

As pointed out in Chapter Two (Section 2.8.4), the strategic value of any disputed island territory is highly context dependent, and generally depends upon the regional geopolitical configuration. This is no less true of the Northern Territories than it is any other territorial dispute. During the Cold War the islands had a strategic significance in their “importance in protecting Soviet submarines carrying strategic nuclear missiles that [were] deployed in the Sea of Okhotsk” (Kimura, 1991: 812); these submarines were in range of the US mainland. In light of the US-Japan security alliance, the strategic value of the islands during this period is clear. However, with the end of the Cold War the strategic value of the islands appeared to be greatly reduced. Yet, today nuclear submarines still patrol the area, and as outlined in Section 5.3.4 of this chapter, Moscow is undertaking a new military build-up in the Russian Far East. Thus, whether the islands are currently of strategic value is less important here than the fact that, due to – from the Russian perspective at least – the relatively fluid geopolitics of Northeast Asia, the islands have an underlying latent strategic value.¹⁸³

Assuming that a geopolitical situation arises in which the islands would become immediately of strategic significance, importantly not all are of equal strategic value. As Felgenhauer (2010) points out, and can be seen in Figure 5.1, the two larger islands, Kunashiri/Kunashir and Etorofu/Iturup, effectively act as a barrier between the Sea of Okhotsk and the North Pacific – the smaller Habomai/Khabomai and Shikotan run parallel to the larger island of Kunashiri/Kunashir. Thus, even if Russia did return Habomai/Khabomai and Shikotan, its strategic position in the Far East would not be significantly disadvantaged.

¹⁸³ Whereas Japan’s post-World War II strategic posture remains based on the alliance with the US, Russia, in the guise of the Soviet Union, has been at turns allied with and the adversary of China, it has enjoyed some periods of slightly warmer relations with the US post-1991 as well of course as being its mortal enemy for the duration of the Cold War.

Finally, whatever the current strategic value of the islands, in the post-Cold War period the Russian military has been one of the primary – if not the main – lobbyists against any concessions to Japan (Kuhrt, 2007) – thus, we can conclude that they were of significant strategic value in the past and they are perceived to have strategic value today.

5.4 The End of the Cold War: Japan-Soviet Joint Communiqué

Although relations improved in the late 1980s, still little progress was made on the territorial dispute, especially following the cancellation of Mikhail Gorbachev's planned visit in 1989. Yet, as noted in the history section (5.2), by 1989 *perestroika* was filtering into Soviet foreign policy and the September 1990 visit to Tokyo by Soviet Foreign Minister Eduard Shevardnadze's – which included a meeting with the Emperor – paved the way for Gorbachev's eventual visit in spring of 1991. Another sign of this thaw in relations came later in the same month as Shevardnadze's visit, when, under instructions from Prime Minister Kaifu Toshiki, the Ministry of Defence removed the Soviet Union as a potential threat in its annual Defence White Paper (Nakano, 2005: 41).

Despite the improvement in relations, Gorbachev's eventual visit to Tokyo for a summit with Prime Minister Kaifu Toshiki in March 1991 and the resultant Japan-Soviet Joint Communiqué must be viewed overall as a failure for both Japan and the Soviet Union as neither was willing or able to make concessions. Japan stuck firmly to its four-islands policy, believing that economic incentives would be enough to encourage the Soviet Union to make some major concessions, but Gorbachev, severely constrained by the hardline taken by

Russian President Boris Yeltsin and the Soviet military, was not in a position to propose any offers (*Far Eastern Economic Review*, 02/05/1991).

Although the return of all four islands was unlikely, Kaifu also failed to obtain an acknowledgement of the 1956 Moscow declaration from the Soviet side, instead Gorbachev said that “chances were missed and history took a different course – we were unable to revive the second part of the [1956] document more than 30 years later” (Kimura, 2006: 94). Gorbachev, for his part, failed in his attempts to obtain promises of substantial economic aid from Japan. On the other hand, the communique did formally acknowledge the existence of the dispute, and mentioned the four islands specifically by name. It also opened the door to the *visa nashi* programme which would replace the limited and intermittent grave visits programme in operation since 1964.

5.4.1 Visa Nashi

The visa nashi programme followed the same basic principle as the already existing grave visit programme, allowing Japanese citizens to visit the islands without using Russian visas and thereby without recognising Russian sovereignty over them. Where the grave visits programme was restricted to former residents and their families, *visa nashi*, in its original form, allowed not only former residents but also activists involved in the campaign for the islands’ return, journalists, and certain others, e.g. interpreters and doctors. The programme, which still operates today, was expanded in 1998 (see Section 5.9 below). The *visa nashi* programme also provides for Russians from the islands to visit parts of Japan (initially Hokkaido and Okinawa) without a visa. Both Russians and Japanese on the programme

travel using identification papers issued by MOFA and a paper from the Russian embassy in Japan, or vice versa.

The first *visa nashi* group left for Kunashiri/Kunashir in April 1992 and, since then, thousands of Japanese have visited the islands without a visa. The sovereignty issue is taken very seriously: before departure the group receives a lecture on Japan's Northern Territory policy, and is warned not to make any statement or take any action which could imply that recognition of Russian sovereignty, for example such as referring to the existence of a 'border' between Hokkaido and the islands, or to describing returning to Japan as "returning to my country" (Williams, 2003). A MOFA official accompanies all groups, monitoring them and making a formal protest when the group is required to make customs declarations.

Gorbachev was not in a position to negotiate over the islands themselves: he was constrained by the value the island had for various domestic constituencies: the strategic significance for the military, the symbolic significance for the revived Russian nationalists, and the precedential significance in the face of the territorial disintegration of the Soviet Union. Thus, he found *visa nashi* a useful get-out clause, while, for Japan, the *visa nashi* programme represented an important concession on various levels. The programme established an important precedent: normally states seek recognition of their sovereignty claims to territory by other states, but *visa nashi* was recognition by Moscow itself that its own sovereignty over the islands was not indisputable, thus turning the islands into a sovereignty grey-area – an interesting twist in the sovereignty game. Moreover, if Japanese – and only Japanese – could visit the islands without a visa yet not enter any other part of the

Soviet Union/Russia without a visa, then clearly Japan had some special form of sovereignty rights.¹⁸⁴

Furthermore, the programme was an opportunity to increase exchange with the islanders and use soft power – interaction with Japanese, and travel to Japan to see the wonders of consumer capitalism in one of the world’s richest countries – to entice them into support for secession from the Soviet Union/Russia and incorporation into Japan. Although it is unlikely that local sentiments weighed heavily on the minds of decision-makers in the Kremlin (given the lack of political clout of the tiny number of islanders), having the inhabitants openly calling for secession could only improve Japan’s position. Indeed, Japanese officials went as far as to directly link *visa nashi*, humanitarian assistance and local support for Japan’s claim; Brad Williams (2003), for instance, cites evidence that the Japanese government has gone as far as to “use economic aid as weapon to ensure local Russian officials do Japan’s bidding”, citing claims that Japanese officials threatened to discontinue humanitarian aid to the islands if the South Kurile District administration did not petition the central government to accelerate the conclusion of a peace treaty.

Visa nashi also helped the government avoid the very real danger that, after the opening up of the Soviet Union, curious Japanese citizens might acquire a visa and travel to the islands privately, and thus, in the government’s eyes at least, commit an act of recognition of Soviet/Russian sovereignty over the islands. In fact, in September 1989 the government issued a cabinet agreement requesting Japanese citizens not to make such trips after it emerged that reporters from the *Asahi Shimbun* had visited Etorofu/Iturup and

¹⁸⁴ The Soviet Union/Russia is used here to indicate that while *visa nashi* was agreed by Gorbachev as head of the Soviet Union, the programme was continued by Russia and therefore the sovereignty effects carried over.

Kunashiri/Kunashir days before using Russian visas (*Asahi Shimbun*, 12/09/1989). Although the cabinet agreement was non-binding and had no legal force, MOFA was quick to unearth and try to prevent any such trips, and the cabinet agreement was sufficient to prevent any further incidents of this sort for over a decade.¹⁸⁵

5.5 Establishing a Post-Cold War Sovereignty Status Quo

Japan had emerged as a global economic superpower, with its GNP looking likely to exceed even that of the US during the 1980s. As the Soviet Union disintegrated and both it and the newly independent Russia desperately sought economic aid to revitalise the economy, Japan, with its high technology and strong economy, gained considerable economic capital. But this state of affairs allowed for a perception that Japan would not need to compromise in the dispute; a return of the four-islands could be ‘purchased’ through the means of economic and technical assistance. This would not be the case. The Soviet Union dissolved in December 1991 and Russia emerged as the successor state for international legal purposes. Boris Yeltsin remained as President of the newly independent Russian Federation. Although recognising the dire need of economic assistance he was – much like Gorbachev before him – not in a position to make compromises over territory. By baulking at compromise, Japan was losing valuable support from the Western allies for its position on the islands.

Although unable to force a return of the islands in the immediate post-Cold War period, Japan moved quickly to combat the effect on the dispute of the dissolution of the Soviet Union and the emergence of a freer, capitalist Russia. Acting domestically and

¹⁸⁵ With the exception of a Peace Boat visit in September 1991, before the *visa-nashi* programme had gotten started (*Kyodo*, 27/08/2002).

internationally, the government sought to prevent Japanese or international companies from investing in or setting up businesses on the islands. As we saw it also moved to prevent Japanese citizens from travelling to them using a Russian visa. Yeltsin's Russia, for its part, tried to induce Japan into cooperation using a carrot and stick approach: on the one hand, it clamped down on Japanese fishermen in the disputed islands' waters and made plans for state and third-party investment; while, on other the hand, it offered Japan various concessions (e.g. *visa nashi* travel) and sought joint economic development. Russia was neither economically nor politically in a position to compete with Japan, and the government was able to see off most threats to its sovereignty claims throughout the period.

5.5.1 Economic Aid and the G7

In the early 1990s Japan sought to internationalise the territorial dispute in order to gain not only international recognition for its sovereignty claim to the islands, but to try to turn this international recognition into concrete measures in order to put pressure on Soviet Union/Russia. This was done primarily through the G7, through which the Soviet Union/Russia was seeking aid for its ailing economy; as early as 1990, for instance, Prime Minister Kaifu told the other G7 leaders that Japan would not provide aid to the Soviet Union because of the Northern Territories (Dobson, 2004: 87). From 1990-1992, the policy seemed to be successful. At the 1990 summit in Houston, Texas, Kaifu, announced that Japan would resume suspended loans to China (see Chapter Four, Section 4.5), but he rejected the idea of aid to the Soviet Union. In 1991 President George H. W. Bush gave a speech in Moscow in which he stated that aid to the Soviet Union was conditional on, among another things “a return of the four Kurile Islands” (*The Financial Times*, 31/07/1991), and a few months later US Treasury Secretary Nicholas Brady reaffirmed US support when he told Kaifu that “The

Northern Territories are all yours” (Kyodo, 12/10/1991). At the 1991 G7 London summit the question of economic aid to the Soviet Union had become a serious issue, and Japan went to London looking for assurances from the G7 states that a joint effort would be based on the Soviet Union giving the islands to Japan (*The Financial Times*, 16/07/1991).¹⁸⁶ In the end the only mention of the issue in the G7 London documents came in Chairman Douglas Hurd’s (then Foreign Secretary of the UK) statement, in which he expressed hope that the “new spirit of international cooperation will be as fully reflected in *Asia* as in Europe” (emphasis in original) and a statement that the “resolution of the Northern Territories issue would greatly contribute to this” (G7 Chairman’s Statement, 1991). In clarifying the G7 position on the issue in a press conference, he went on to state that “how that is solved is a matter for discussion and negotiation between Japan and the Soviet Union” (G7 Chairman’s Press Conference, 1991).

At first, in 1992, it did not seem as though Japan would receive any more support from the G7. The other states were more interested in stabilising the Russian colossus and helping the nascent democracy to get off the ground. To this end they tried to construct an economic assistance package for Russia, which was suffering hyperinflation and economic collapse following the ‘shock therapy’ of economic liberalisation, and patience with Japan’s stance of holding back on aid until the islands were returned was beginning to wear thin.¹⁸⁷ Europe’s ambivalence was clear after Prime Minister Miyazawa Kiichi held a summit with

¹⁸⁶ Hugo Dobson points out that “the inconsistency in the Japanese government’s position of supporting China in its economic and political reform, on the one hand, but baulking at pressure to assist the Soviet Union in achieving its same goals, on the other hand, came to the fore” (2004: 86-7). The irony here is that, as outlined in Chapter Four, even when it had the opportunity, Tokyo resisted using any of that economic and diplomatic capital on the Pinnacles dispute, but made the Northern Territories the centrepiece of its G7 policy.

¹⁸⁷ This was ironic turn-around from the Kaifu-Gorbachev summit in 1991, when the G7 worried about an unstable Soviet Union and breathed a sigh of relief after the two sides failed to come to a territory/economic agreement, worrying that it would lead to economic aid.

UK Prime Minister John Major and President of the European Commission Jacques Delors, and the joint statement they produced made no mention of the dispute. Major stated in the joint press conference following the meeting that the issue was “essentially a bilateral dispute” and for other states “to take public positions would not assist in that bilateral settlement” (Major, John, Delors, Jacques and Miyazawa, Kiichi, 1992). French President Francois Mitterand went a little further when he promised moral support for Japan in the dispute, but said that the issue was not for discussion at the G7 summit (*The Financial Times*, 01/05/1992). And yet, in 1992, at the Munich summit, the G7 political declaration did suggest that Russia was in the wrong, and should offer Japan some sort of deal:

We welcome Russia’s commitment to a foreign policy based on the principle of law and justice. We believe that this represents a basis for full normalisation of the Russian - Japanese relationship through resolving the territorial issue”

(G7 Munich Summit, 1992)

The implication of this statement was that the occupation of the islands was illegal, and the G7 states were supporting Japan in the dispute – referring to Japan’s own “law and justice” approach. Yet ,the inclusion of this statement was intended to act as both a carrot and stick, a nod to Japan’s position but also diplomatic pressure in order to that it would fall in line with the other G7 states, and it marks the end of broad multilateral support for Japan’s position. Indeed, when Yeltsin cancelled his trip to Tokyo in September, ostensibly because of domestic issues, Japan “suffered a serious setback in the realm of international diplomacy” (*The Independent*, 12/09/1992). It was assumed then that the real reason for the cancellation of the trip was that he was left with no choice with the impossibility of the position in which

Japan had put Yeltsin – it was either cancel or suffer the same failure as Gorbachev had the year before.

In April of 1993 at a G7 ministerial meeting in advance of the July summit, the Miyazawa administration gave in and agreed to participate in the economic aid package and provide US\$1.8 billion out of a total of US\$30 billion. Foreign Minister Mutō Kabun stated that the linkage between aid and the territorial dispute had been suspended (*The Independent*, 14/04/1993). Only a month later Yeltsin yet again cancelled his scheduled trip to Japan, and once again it appeared the reason was the impossibility of making any progress because of Japan's stance on the territorial issue.

As outlined in Chapter Two (Section 2.6.1), international recognition matters in the sovereignty game – in particular the recognition of regional or global powers – and, in the early 1990s, the G7 comprised the most powerful countries in the world. But the nature of any forthcoming recognition also matters. The government sought to use its economic and diplomatic capital to pressure Moscow into compromising on the territorial dispute, but found itself unable to take advantage of the situation. While the statements by the G7 members implied support for Japan's position, they would go no further. While the US, whose initial support for the four-island claim helped perpetuate the contemporary dispute, went beyond implicit support, it did not act in anyway to help Japan. The pressing need for an economic aid package took precedent over the territorial dispute. Put simply, the G7 states were not particularly interested in the islands, and found Japan's resistance troublesome. By linking participation in the G7 aid package with the territorial dispute, the Japanese government lost much of the international recognition of its position: that is not to say that the European states explicitly changed their positions, but rather that their support for Tokyo's position faded. In

April 1993, when the linkage was suspended, Japan lost both diplomatic and economic capital. The European states were no longer clearly siding with Japan in their recognition of Japanese sovereignty and the issue was not raised in any of the official documents of the Tokyo summit.¹⁸⁸

5.5.2 1992 Russia-South Korea Fisheries Agreement

Japan not only faced the loss of European support for its sovereignty claims on the islands, but in Northeast Asia, too, states were changing their policies to fit the new post-Cold War environment. In 1991, China appeared to alter its long-held policy of supporting Japanese sovereignty over the islands when it described the territorial dispute as a bilateral matter (Kyodo, 21/03/1991).¹⁸⁹ Far more serious, from Japan's perspective, was a 1992 fishing agreement between South Korea and Russia. The deal, which was agreed in February, would allow South Korean fishing vessels to operate in the waters off the disputed islands. Japan protested the agreement on the basis of its claim to sovereignty over both the disputed islands and their waters, but Russia responded that Japan had given *de facto* recognition to the Soviet Union's establishment of its Exclusive Fishing Zone (EFZ, the precursor to EEZ) in 1977, and had acquired a licence to fish in the disputed waters in an agreement similar to the one South Korea had just made. As such, it was inconsistent to criticise the South Korea deal. South Korea, for its part, responded to Japanese complaints by stating that the agreement did not affect Japanese claims of sovereignty. In May a compromise was reached following trilateral talks between the parties, in which South Korea would voluntarily refrain from

¹⁸⁸ Technically it was raised in the press conferences but journalists were told the issue would be discussed during Yeltsin's visit in autumn.

¹⁸⁹ As part of China's attempts to undermine the territorial integrity of the Soviet Union in the 1960s Beijing had supported Japan's claim to the Northern Territories (Wiegand, 2011: 236)

fishing in the disputed waters in exchange for the right to fish in the Sanriku region of Northeastern Japan in the waters to the southeast of the islands (*Yomiuri Shimbun*, 02/06/1992).

Russian policy towards Japanese fishermen in the waters around the islands changed after Japan had contributed to the G7 economic aid plan. In 1993 Border guards were authorised to use weapons against Japanese vessels which entered Russian waters, and particularly from 1994 this became a serious issue as crew were injured and boats were sunk. Throughout the mid-1990s vessels were seized and their crews taken into custody, as in October 1996, when the captain of a fishing vessel was detained for one month, and released following the payment of a 3.8 million rouble fine for illegal fishing. In autumn of 1994 this new tough border policy resulted in the deaths of Chinese fishermen operating in the islands' waters, who were killed after guards opened fire on their boat in Russian waters – the Japanese embassy in Moscow protested, describing the incident as both regrettable and but also illegal since it took place in what the Japanese government claimed as Japanese waters. Russia rejected Japan's protests (*Yomiuri Shimbun*, 14/09/1994). Clearly, Russia was forcefully demonstrating its sovereignty over the islands' waters. Yet, despite all the risks, the incursions did not stop, and in some cases Japanese fishermen took part in mass incursions, involving dozens of boats, as a form of protest against various Russian border guard actions (e.g. in 1994 when Russia claimed 130 boats entered Russian waters following the seizure of a fishing vessel, ITAR-TASS, 03/02/94).

Having apparently been in such a strong position in 1991, Japan found itself fighting a rearguard action in the sovereignty game for the Northern Territories. The attempt to gain international recognition and support for its position through the G7 was failing and states

which had openly recognised its claim over the islands were quietly shifting towards a neutral position. The government was unable to exploit the G7, but it was able to prevent the fisheries agreement between Russia and South Korea. While Seoul's statements that its actions in no way prejudiced any state's sovereignty may or may not have been true from a legal perspective, from the perspective of the sovereignty game, Seoul's actions would involve direct third-state recognition of Russian sovereignty over the maritime territory generated by the disputed islands. In response, the Japanese government used its economic capital in the form of providing Seoul with access to its own fishing grounds. Thus, Japan prevented third-state recognition of Russian sovereignty in 1992; however, there was little it could do to prevent Russian exercises of sovereignty post-1993.

Moscow's clamp-down on Japanese fishermen simultaneously protected its own economic resources while, more importantly, effectively exercising its sovereignty over the disputed maritime territory. The clampdown coincided with the lull in negotiations and Russia's offers of joint economic development to Japan (see below). The reason for the Japanese incursions again comes down to the issue of sovereignty: Japan could not come to an agreement with Russia over licenses for Japanese fishermen to fish in Russian waters off the islands because of the risk that such an action would imply recognition of Russian sovereignty over the waters, and therefore the islands. In a manner similar to the 1989 cabinet act "requesting" Japanese citizens not to travel to the islands using a Russian visa, individual Japanese fishermen were prohibited by the central government from applying for Russian permits to fish in the waters around the islands. Thus the government managed to withhold recognition of Russian sovereignty over the disputed maritime territory.

This problem led to thirteen rounds of fishing negotiations from 1995-7, in the middle of which came the 1996 ratification of UNLCOS and the demarcation of EEZs (IBRU, 01/01/1998). Unsurprisingly, both sides declared EEZs around the disputed islands. The sovereignty issue was dealt with through reference to the 1985 Japan-USSR Reciprocal Fisheries Agreement, including a statement that the agreement “shall not prejudice the position or views of either government” and allowed the issue to be shelved (*Asahi Shimbun*, 17/03/1996). This did not resolve the problem of Japanese fishermen operating without licenses in Russian-controlled waters, but finally, in late 1997, in the aftermath of the ‘breakthrough’ Krasnoyarsk summit, a deal was hammered out (see below Section 5.7).

5.5.3 Shikotan Lease

Japan’s claimed sovereignty over the islands came under threat once again in September of 1992 when it emerged that Sakhalin provincial authorities had given a Hong Kong company a 50 year lease of 700 acres of land on Shikotan (*The Independent*, 17/09/1992). The land was ostensibly to be developed for tourism by the company, although some reports stated that it was property speculation, based on the belief that the islands would be transferred to Japan. In fact, the company, Carlson and Kaplan, turned out to be a shell company and according to press reports “the Japanese foreign ministry was horrified when it emerged that one of the firm’s executives was a Taiwanese man who became a Japanese citizen in 1972” (*The Independent*, 17/09/1992) – MOFA had been working so hard to prevent Japanese citizens from travelling to the islands, the idea that a Japanese citizen would actually lease part of the islands was intolerable. The Japanese consulate in Hong Kong demanded the company cancel the contract, which it did, telling the consulate “Our company has taken into account

the request of the Japanese government as the territorial problem between Japan and Russia, which includes Shikotan, is beyond our competence to deal with” (*Asahi Shimbun*, 23/10/1992).

On hearing of the lease, the government had protested immediately both at the Russian embassy in Tokyo and via its own embassy in Moscow, but it turned out that Moscow knew nothing about it, the policy had been conceived and realised by the Sakhalin authorities (Meyer, 1993: 963). This was not to say that Moscow was against the move, however, as in December of the same year Yeltsin issued a presidential decree creating a special economic zone on the islands, in keeping with his five-point plan (see below). As discussed above, Japan consistently opposed any kind of joint economic activity on the islands due the perception that it would indicate recognition of Russian sovereignty.

It is unclear what kind of pressure the Japanese government brought to bear on the Hong Kong company to cancel the contract, though it is possible that it did not need to use any. As outlined in Chapter Two (Section 2.6.2), where sovereignty over a territory is disputed, private companies from within the disputing states as well as from third-states – and, indeed, the governments of third-states themselves – are often reluctant to engage in economic activity related to the disputed territory. There are various reasons for this, among others, the unpredictability of territorial disputes and the repercussions of alienating one of the disputant states, and it remains unclear exactly why the Hong Kong company cancelled the contract. Nonetheless, Japan’s ability to prevent the Shikotan lease demonstrates that it was in a strong position in the sovereignty game: it may have lost the direct recognition of its sovereignty claim by certain states, but it had turned the islands into a sovereignty grey-zone through *visa nashi* and the effective prevention of South Korean recognition as well as by

preventing third-state companies from engaging in economic activities on the islands. Clearly, Russian sovereignty over the islands was incomplete.

5.6 The 1993 Tokyo Declaration

As we saw, President Boris Yeltsin headed the newly independent Russian Federation and inherited the territorial dispute over the Northern Territories. Unwilling to repeat the failures of Gorbachev's visit to Tokyo and aware of the huge obstacles preventing any kind of compromise or progress on the dispute, he twice cancelled trips to Japan. In October 1993 he finally went to Tokyo and met Prime Minister Hosokawa Morihiro. Although the territorial dispute/peace treaty issue was to dominate the proceedings, Yeltsin himself was in a much stronger position than he would have been had he made the visit earlier due to the delinking of economic aid and territory and the G7 package.

The meeting produced the 1993 Tokyo Declaration, which was designed to act as a spur to negotiations. Japan realised the concession of the implicit recognition of the 1956 Moscow Declaration, the text stating that "all treaties and other international agreements between Japan and the Soviet Union continue to be applied between Japan and the Russian Federation" (Tokyo Declaration, Article 2). The Declaration also mentioned by their Japanese name the four islands at the centre of the dispute (Tokyo Declaration, Article 2). The Tokyo Declaration would become a key part of Japan's negotiating strategy in later years, but at the meeting itself Yeltsin pushed a modified version of a five-stage plan which he had originally suggested in 1990 (Williams, 1998). The plan was (a) to declare the existence of a territorial dispute (accomplished already by Gorbachev), the next step was (b) to make the

islands a free-trade and industrial zone, followed by (c) the withdrawal of military personnel (already underway, and at the summit Yeltsin promised to remove that last 5,000 troops)¹⁹⁰, and then (e) the signing of a peace treaty (Williams, 1998). The fifth step was left ambiguous, with the final solution left to later generations.

However, the Tokyo Declaration generated little momentum in terms of negotiations, and from 1993 on Russia used diplomatic and various other means to solidify its sovereignty over the disputed islands. As we saw, beginning in late 1993 Moscow began to enforce far stricter controls on Japanese fishermen illegally in the waters around the islands. Meanwhile, peace treaty negotiations came to a standstill as Japan focused on the wording of the Tokyo Declaration, specifically reference in Article 2 to “an early conclusion of a peace treaty ... based on the principles of law and justice”. Yet, Russia’s position was completely changed. As with many new democracies, politicians were sensitive to a fiercely nationalist public opinion and populist politics flourished.¹⁹¹ Faced with serious domestic instability and the threat of secessionist movements across the country, no Russian leader could realistically entertain any substantial territorial concessions.¹⁹²

Furthermore, there was little impetus for Russia to engage in serious negotiations as Japan clearly would not compromise on the return of all four islands and Russia had already secured the G7 aid package following Japan’s temporary delinking of aid and the territorial dispute. The situation deteriorated to such an extent that, by mid-1996 Yeltsin, while

¹⁹⁰ Both the Soviet Union and Russia had been unilaterally reducing its troop numbers in the Russian Far East since 1991 due to financial constraints, so this was in a way not such a difficult concession.

¹⁹¹ The success of Vladimir Zhirinovsky’s Liberal-Democratic Party in 1993 is testament to this.

¹⁹² Russia in the early 1990s was variously plagued by hyperinflation, a constitutional crisis and war with Chechnya after the latter declared independence.

canvassing for the Presidential elections, announced his intention to visit the islands when the elections were over – although he did not follow this up and it was widely assumed that the statement, and indeed Russian policy on the islands, was due to pressure from nationalist rivals (*Eurasian Daily Monitor*, 1996).

In January 1996, Yevgeniy Primakov became Russian foreign minister, and in his first press conference drew on the words of Deng Xiaoping, telling Japan to leave the dispute for the next generation and pointing to the shelving of the Senkaku/Diaoyu dispute between Japan and China as a model for the Northern Territories (*The Financial Times*, 13/01/1996). Later in 1996, Moscow began making more concrete proposals for progress in the dispute, focusing on joint development. At first, the government flatly rejected these proposals, since it had already prohibited Japanese economic activity on the islands, fearing that any joint economic activity would imply recognition of Russian sovereignty over the islands. However, in November 1996 Primakov visited Japan, meeting Foreign Minister Ikeda Yukihiro, former Prime Minister Nakasone Yasuhiro and Prime Minister Hashimoto Ryūtarō. Primakov once again proposed joint development, specifically mentioning tourism, fishing and transport infrastructure, as well as referring to cooperation between the UK and Argentina in the Falkland Islands zone as an example of what could be accomplished (*Asahi Shimbun*, 16/11/1996). He also even stated that, on the question of sovereignty, the development could go ahead with both sides maintaining their own positions and that nothing would take place which would affect the *status quo*. Nakasone responded that he would study the proposals as long as Japan “*suffers no damage in terms of its sovereign rights*” in the dispute (Zinberg, 1997-1998: 91 emphasis in original). This was the first time Japan had even entertained the idea of joint development, and marked the beginning of a process of

negotiations that would span several years, with both sides offering various forms of compromise.

5.6.1 Sovereignty Issues Post-Tokyo Declaration

As touched on above, from 1993 Russia began to push its sovereignty claim over the islands. While the aggressive stance taken on Japanese fishermen was the most obvious sign of this shift in policy, there were several fronts in which Russia sought to strengthen its control, and ultimately its sovereignty, over the disputed islands. In 1994 the islands were hit by an earthquake and subsequent tsunami, and Japan – which had provided hundreds of millions of yen worth of humanitarian aid to the Russian islanders since 1991 – sent aid and reconstruction workers. The issue of sovereignty was avoided by sending the workers on the *visa nashi* programme. Yet, by 1995, relations had deteriorated to the point where, following a devastating earthquake in Sakhalin, Yeltsin went as far as rejecting aid in case Japan would use it as a bargaining tool: “they will later try to bargain over their participation ... the Japanese, they might say, ‘Give us back the islands’” (*The Independent*, 01/06/1995). Although in the end Russia did accept Japanese aid, the comments were telling.

Also in 1995 the Russian embassy in Tokyo protested following the removal of 18th-19th century maps from an exhibition jointly held by the Russian State Library and the Japanese Diet Library. The maps showed the disputed islands as Russian territory and were objected to by Diet members (IBRU, 08/12/1995) who viewed maps in advance of the public opening. A year later, in May 1996, came a classic example of Japan’s reactive posture towards any possible admission of sovereignty: Suzuki Muneo, a lower house Diet member

and head of the Diet Special Committee for the Northern Territories and Okinawa, travelled to Kunashiri/Kunashir with a group of former islands on the *visa nashi* programme. The group brought several saplings, including cherry blossom saplings, to plant on the islands, when Russian officials requested a quarantine certificate, the MOFA observer accompanying them on the trip refused, stating “Showing a quarantine certificate to the Russian side will recognise Russian sovereignty” (*Asahi Shimbun*, 17/09/2002). Thus the group were forced to take the saplings back with them to Japan.

In the face of Russia’s apparent consolidation of its sovereignty over the islands, Japan seemed able to do little, although a number of actions show how the government continued to play the sovereignty game. For example, in 1994 it staged a particularly big ‘Northern Territories Day’ (IBRU, 12/02/1994). Then, in 1995, amid concern “that the Clinton administration was backing away from its support for Japanese claims” to the islands, the US reinvolved itself: Thomas Pickering, the US ambassador to Russia, stated on a trip to the Russian Far East that the islands should be returned to Japan (Ferguson, 2008: 139). After Russia protested to Washington, White House officials confirmed that the US fully supported Japan’s claim to the disputed islands.

Despite Yeltsin’s statements on the demilitarisation of the islands, although some were removed, Moscow had not withdrawn all of its troops (IBRU, 27/01/1996). At a regional level, Governor Igor Farkhutdinov took up the “joint economic development” proposal, using an agreement with federal authorities to plan the lease and ultimate sale of land on the disputed islands, with a view to their development. The plan was directed at Japanese interests, as Sakhalin authorities were quoted as saying that they hoped Japan would “get the right message” and join the joint development endeavours (IBRU, 24/07/1996).

Sakhalin also pushed local development, where funding allowed, building a cross on one of the Habomai/Khabomai islands to commemorate the discovery of the islands by Russians 300 years previous, as well as requesting that the Russian government apply to have the islands recognised as a United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Site (Williams, 2005).¹⁹³

The de-linking of economic aid and territory had strengthened Yeltsin's position, and while the 1993 Tokyo Declaration seemed to put Japan in a favourable position, with nothing more to be gained from Japan, Moscow regrouped and sought to improve its now-weakened position in the sovereignty game. The tougher stance on the maritime dispute, the refusal to negotiate as long as Japan maintained its four-island position, and the various statements issued by state officials, culminating in Primakov's use of the Deng formulation, underline this policy shift. The Diet Library exhibition and the cherry blossom saplings were classic petty sovereignty manoeuvres, which made little difference in the broader sovereignty game, but did serve to remind each other that each state was taking the sovereignty issue very seriously, and would continue to do so; the message was: "there can be no compromise on sovereignty". Finally, while the international recognition aspect of the dispute was becoming less relevant, Pickering's comments, and the affirmation by the State Department, served to bolster Japan's position at a time when it seemed to be weakening. The situation seemed to be deteriorating further in 1996 when Yeltsin announced plans to visit the islands; the plans turned out to be mere pre-election posturing, and after Primakov's November visit to Tokyo, the course of the dispute was to change dramatically.

¹⁹³ Plans which were made, but as of writing not yet submitted.

5.7 The Krasnoyarsk Process

The administration of Hashimoto Ryūtarō saw a sea change in Japan's policy towards Russia and the territorial dispute. Whereas previous administrations had tried to link economic cooperation with Russia to the signing of a peace treaty and Japanese sovereignty over the disputed islands, under the Hashimoto administration Japan began to move both issues along concurrently. Following a 1997 bilateral summit with President Yeltsin in Krasnoyarsk, Siberia, serious negotiations got underway towards the resolution of the dispute. The process dragged on for several years, but, in the end, despite the various compromises suggested, neither side would compromise on the basic issue of sovereignty: Japan would not give up its claim of sovereignty over all four islands and Russia would not compromise on the sovereignty of more than two, Shikotan and Habomai/Khabomai.

The Krasnoyarsk summit did allow for other sovereignty issues to be resolved, such as the fishing disputes which had been causing headaches in the early and mid-1990s as well as a broadening of the *visa nashi* programme. However, the advent of the Putin and Koizumi administrations in the early 2000s saw both sides move back to more hard-line negotiating positions, spelling the end of the Krasnoyarsk process. With no resolution in sight, but the door to economic cooperation already open, the dispute now would be put on the back-burner.

5.7.1 Hashimoto Administration

Late 1996 marked the beginning of a shift in Japan's policy towards the territorial dispute, and by extension Russia. In December 1996 MOFA announced complete recognition of

Russian sovereignty over Sakhalin and plans for the construction of a consulate in Yuzhno-Sakhalinsk, the regional capital (Kyodo, 01/12/1996).¹⁹⁴ 1997 saw Russia participate in the newly expanded G8, though the summit in Denver was named the Summit of Eight due to Hashimoto's objections (Dobson, 2004: 113). The shift appeared to be bearing fruit when, in April 1997, Yeltsin and Hashimoto met for an informal two-day summit at Krasnoyarsk. The summit produced the 'Hashimoto-Yeltsin Plan', an economic cooperation programme between Japan and Russia (including loans, investment, and dialogue on energy resources), and an agreement to resolve the territorial dispute and sign a peace treaty by the year 2000, based on the 1993 Tokyo Declaration, thus satisfying Japan's 'law and justice' approach (Okuyama, 2003). This seemed like a massive concession on Yeltsin's part, and with the apparent normalisation of economic relations, Russia's entry into the G7 (now G8) and the 2000 treaty agreement, hopes were high for a resolution to the dispute. The fundamental issue of sovereignty would not, however, be so easily overcome.

The Krasnoyarsk summit gave impetus to the fisheries agreement signed in January of 1998 (see below), and, later that year, Vice Foreign Minister Yanai Shunji went as far as to say that although "the joint development involves the difficult issue of sovereignty, we are ready to consider such development" (*The Japan Times*, 08/04/1998). Krasnoyarsk was followed up in April 1998 by the Kawana summit in Shizuoka. The initial euphoria of the Krasnoyarsk breakthrough had worn off, and negotiators on both sides were much more subdued (Ferguson, 2008: 89). Russia was reeling economically and politically from the fall-out of the Asian Financial Crisis and the decreasing prices of its energy exports, and the summit itself had to be postponed for a week after Yeltsin fired his Prime Minister and entire cabinet.

¹⁹⁴ Recognition of Russian sovereignty over Sakhalin was followed in 2001 by the opening of a Japanese consulate in Yuzhno-Sakhalinsk.

At Kawana, Hashimoto made Yeltsin a proposal which would allow for the sovereignty issue to be solved – in Japan’s favour – and the joint economic development to get underway. The proposal, known as the ‘Hong Kong’ formula, involved a final border demarcation which set the border north of the island of Etorofu/Iturup, thus giving Japan sovereignty over all four of the islands, but which would leave the islands under Russian administration for an undefined period of time (Zagorsky, 2000: 349). In substance, this was very similar to Japan’s old position – the primary change being that unlike in the 1993 Tokyo Declaration and the 1956 Moscow Declaration, the islands of Habomai/Khabomai and Shikotan would not be handed over straight away (i.e. as a precondition to the signing of the peace treaty). The response to the proposal was to come in autumn of 1998, by which time, even if Yeltsin had warmed to the proposal – highly unlikely since he had rejected similar proposals before – post-financial crisis and in bad health, his domestic political position made acceptance of the proposal politically untenable.

5.7.2 Obuchi and Mori Administrations

Suzuki Muneo, then Director General of the Hokkaido Development Agency, visited Kunashiri/Kunashir on the *visa nashi* programme in June of 1999, becoming the first Japanese cabinet minister to do so (Kyodo, 24/06/1998). Hashimoto resigned in July 1998 and was succeeded by his foreign minister, Obuchi Keizō, who had served as foreign minister for Hashimoto and as prime minister continued the diplomatic push. By the time Obuchi went to Moscow in autumn of 1998 for Yeltsin’s response to the proposed Hong Kong formula it was clear that the answer would be negative (*The Japan Times*, 14/04/1998). Yeltsin had moved back to his previous position of shelving the dispute by proposing a

“peace and friendship treaty” by the year 2000 which would normalise relations and include a pledge to solve the dispute at some point in the future. This was of course unacceptable to Japan. Just as Russia would not accept a plan to cede all four islands, so Japan would not abandon its policy of linking the peace treaty with the resolution of the dispute.

Yeltsin resigned suddenly on New Year’s Eve 1999 and Prime Minister Vladimir Putin, who had been groomed by Yeltsin as his successor, took over as President.¹⁹⁵ Immediately after Putin became president, Obuchi made it public that he wanted to meet Putin as soon as possible and sent Suzuki to Russia as his “personal emissary” in April (Rozman, 2002: 335). Obuchi died while Suzuki was still in Russia, and Mori Yoshirō took over as prime minister. Mori, who already had strong ties to Russia through his father, maintained the Hashimoto/Obuchi push to resolve the territorial dispute and sign a peace treaty with Russia, and carried out Obuchi’s plan to visit Russia in the spring, meeting Putin in St. Petersburg in April.¹⁹⁶ Yet Putin, for his part, was in no rush, and was far more interested in economic cooperation than in resolving the territorial dispute; the April talks were inconclusive.

Putin and Mori met again in September of 2000, this time in Tokyo, but going into the summit prospects for an agreement before the Yeltsin/Hashimoto deadline of the end of 2000 were bleak. The Russian side was calling for a peace treaty first, territorial settlement later, while the Japanese side reiterated that resolution of the dispute was a precondition for a peace treaty. In the end, Mori once again proposed the Hong Kong formula (residual sovereignty),

¹⁹⁵ Putin was actually only Acting President until March 2000, when he comfortably won the presidential election.

¹⁹⁶ Mori’s father Shigeki was mayor of Neagari, a town in Ishikawa Prefecture and developed strong ties with Shelekhov, a town in Irkutsk Oblast in Russia where he had spent time as a prisoner after World War II. Mori Yoshirō had visited many times, and knew many of the local politicians (*Kantei*, 2000) ‘Profile of Prime Minister Yoshiro Mori’

which was rejected by Putin, who once again proposed the temporary shelving of the dispute while going ahead with the peace treaty, which was in turn rejected by Mori. One positive result which did emerge was the oral recognition by Putin of the 1956 Joint Declaration, promising the return of Habomai/Khabomai and Shikotan on the signing of the peace treaty, and the mention in the joint statement agreed by the two leaders of the 1993 Tokyo Declaration (Tokyo Joint Statement, 2000, Articles 2, 4).

Shortly before the expiration of the end of 2000 deadline, Dmitry Rogozin, Chairman of the Russian Parliament's Foreign Affairs Committee, again referred to Russia's willingness to hand over Habomai/Khabomai and Shikotan in a statement made shortly before a planned trip to Japan in December (*The Japan Times*, 17/12/2000). But the deadline expired and Japan's attempts to continue the negotiations were set back further when Foreign Minister Yōhei Kōno did not manage to meet Putin during his trip to Moscow in January 2001 to discuss the state of negotiations, shortly after which Putin postponed a planned summit with Mori in Irkutsk by one month.¹⁹⁷ Since the previous negotiations had failed to produce a peace treaty in time for the 2000 deadline, the summit was supposed to review and summarise the progress of the negotiations since the Yeltsin/Hashimoto breakthrough. In the end, the pair did meet at Irkutsk in March 2001, and signed a joint statement which confirmed the 1956 Moscow Declaration as "a basic legal document that established the starting point in the negotiation process for the conclusion of a peace treaty" (Irkutsk Statement, 2001), as well as referring to the 1993 Tokyo Declaration and specifying by name all four disputed islands. However, at the post-summit press conference it appeared that both sides had different interpretations of exactly what the 1956 Moscow Declaration implied, and it seemed

¹⁹⁷ Irkutsk had been chosen because of Mori's father and his close relationship to the region.

clear that the only deal Putin would contemplate was the return of Habomai/Khabomai and Shikotan, not Etorofu/Iturup and Kunashiri/Kunashir (*Yomiuri Shimbun*, 26/03/2001).

Both before and after the summit there was fierce debate over Japan's negotiating strategy, as many on the right of the LDP criticised Mori, Suzuki, as well as Togō Kazuhiro, the head of both the negotiating team at Irkutsk and of the MOFA European Affairs Bureau, claiming that they were selling out Japan's position by separating the disputed islands into two batches (Kunashiri/Kunashir and Etorofu/Iturup; Shikotan and Habomai/Khabomai) and considering signing a peace treaty without securing a guarantee of the return of the second batch (Rozman, 2002: 338-9). The suggestion was that this so-called 'two plus alpha' approach was a trap, and that once Russia had signed the peace treaty and handed over two of the islands, the commitment to continue the negotiations for the other two would not be honoured.

5.7.3 Koizumi Administration

Mori, who was already a lame duck prime minister by the time of the Irkutsk summit, resigned in April 2001 and was succeeded by Koizumi Junichirō. The new Koizumi administration was of the opinion that the separation of the islands into two batches as outlined above was in fact a trap, and Foreign Minister Tanaka Makiko publicly stated her opposition to a step-by-step return of the islands. In March 2002 a purge began in MOFA of officials in favour of the two plus alpha position, which was interpreted by the Russians as a signal that Japan did not take any kind of compromise seriously, and thus negotiations would be fruitless (Rozman, 2002; Sarkisov, 2006). By May 2002 Suzuki had been arrested on suspicion of misusing government funds, along with MOFA bureaucrat, Sato Masaru, who

had been close to Suzuki and supported him in his “personal” diplomacy with Russia, while Togo Kazuhiko was questioned, and fled to Europe.

Regardless of the validity of the charges, the already frail relationship with Russia suffered another setback, with sources on the Russian side describing Japan’s position post-purge as “rudderless” (*The Japan Times*, 26/5/2002). In November, Gennadiy Seleznev, Chairman of the Duma (Russian Parliament) told Kyodo in advance of a visit to Japan that “the Russian people now holds the view that it cannot hand over the territory” (sic), and finally in December 2002 the governor of Sakhalin announced plans to conduct military exercises on the disputed islands the following summer, in which the Pacific Fleet and army units would defend Etorofu/Iturup and Kunashiri/Kunashir from invasion by an imaginary enemy (*The Japan Times*, 27/11/2002, 08/12/2002). The diplomatic initiative begun in Krasnoyarsk in 1997 clearly had run out of steam.

At the time the Krasnoyarsk summit breathed new life into attempts to resolve the Northern Territories dispute and sign a peace treaty, but the 1996-2002 negotiations ultimately failed as neither side was willing to compromise on the most important thing: sovereignty. Economically speaking, Russia in the 1990s needed Japan more than Japan needed Russia, and thus Japan still enjoyed economic capital vis-à-vis Moscow. However, this situation began to change in the new millennium as the Russian economy entered a boom based on energy exports, while Japan’s continued to stagnate. Hashimoto’s dual track approach, furthering economic cooperation at the same time as negotiating over the disputed islands, was encouraged by the US, which, under the administration of Bill Clinton, was enjoying closer relations with Moscow (Ferguson, 2008: 139). The approach was unsuccessful in bringing about a peace treaty or a resolution of the dispute, but can be

identified as the beginning of the increasingly strong economic ties which would develop over the next decade.

The inability of the Hashimoto, Obuchi and Mori administrations in terms of the dispute itself boiled down to the simple fact that Japan enjoyed no capital equivalent to the value of the islands themselves to Russia. The Hashimoto administration's overtures resulted in Japan losing much of what economic capital it had left by once again delinking the territorial dispute from economic ties. In terms of international recognition, the dispute was no longer on the G7's or any other international agenda, and even the one state which stood firmly behind Japan's claim – the US – was encouraging Japan to develop closer ties with Russia. This left Japan with little diplomatic capital. Furthermore, with China and Russia enjoying close security ties and resolving their multiple border issues, Russia did not see a need to move closer to Japan in order to balance against Beijing, as it would in later years. Thus Japan enjoyed no strategic capital either.

Meanwhile, with the departure of Yeltsin a new, more powerful leader had arrived on the scene. Putin consolidated his position at home, becoming a strong, popular figure. By the time of the Irkutsk summit between Mori and Putin the best Japan could hope for was a two-island deal with some possibility of negotiations for the other two, but no guarantees. The joint statement from Irkutsk described the 1956 Moscow Declaration as the "basic legal document"; the document, which specifies the handing over of Habomai/Khabomai and Shikotan and the signing of a peace treaty. This, rather than the 1993 Tokyo Declaration, would be the basis of Putin's diplomacy from then on.

The two-plus alpha approach – separating the islands into two batches for negotiating purposes – was highly controversial in Japan. The Koizumi administration, which took power in 2001 was against it, and Foreign Minister Tanaka made this clear within a month of taking her post. The MOFA Russian division purge which followed was taken by Russia to mean that Japan was no longer interested in compromise, and thus that negotiations were a waste of time. There was no bilateral summit between Putin and Koizumi until early 2003.

In sum, while the Krasnoyarsk process promised much, the reality of each side's uncompromising negotiating positions meant that there could be no resolution: whatever imaginative schemes may have been conjured up, no Japanese government would not compromise on ultimate sovereignty over all four of the islands. Putin, as a strong pragmatic leader, was potentially in a position to do a deal with Japan (Kimura, 2001). However, it seems that he felt the benefits of making a deal on the sovereignty of all the islands did not outweigh the costs of the loss of the islands. The purge of the Russian division reinforced the impression that Japan would never compromise on all four-islands, and the negotiations on the territorial drifted.

5.8 1998 Fisheries Agreements

The diplomatic breakthrough at Krasnoyarsk also led to a breakthrough in the seemingly endless rounds of negotiation over fishing rights around the disputed islands. The difficulty lay in the problematic issue of sovereignty recognition, which was dealt with by an agreement reached in February 1998, confirmed in a Memorandum of Understanding in 2002,

in which Japanese fishermen would pay 21.3 million yen and provide 21.1 million yen of equipment for fisheries studies, as well as 240 million of “technical assistance, research assistance and training to the Sakhalin region” (Valencia and Lee, 2002: 341). The agreement avoided mentioning which country controls fisheries violations, and thus which country has legal ownership – instead, Japan agreed to provide detailed information to Russian authorities in advance of Japanese vessels entering Russian waters. Article 6 of the formal Agreement included a clause, much like the one in the contemporaneous South Korea-Japan fisheries agreement (see Chapter Three, Section 3.5), which stated that “nothing in this Agreement .. shall be deemed to prejudice the positions or views of any Party with respect to any issues of their mutual relations” (MOFA, 1998).

Yet, as the initial euphoria of the bilateral summits and the diplomatic initiative petered out, so too did the fishing issue return to the pattern of the early 1990s. In late 1998 Japan lodged a protest with Russia after North Korean fishing vessels were seen fishing unobstructed in the EEZ around the disputed islands, and by 1999 the problem of illegal fishing by Japanese fishermen in the islands’ waters had become a serious issue once more, with several arrests, boat confiscations and even an incident of border guards opening fire on the fishermen. But, in terms of Japan’s position in the sovereignty game, worse was to come.

In the 1998 South Korea-Japan Fisheries Agreement, South Korea lost much of its saury fishing quota in the Sanriku region of Northeast Japan.¹⁹⁸ From 1999, South Korean fishing companies began operating in the waters off the disputed islands, having purchased private fishing rights from the Russian Fishing Resources Corporation. In 2000 Russia changed the quota system, strengthening state control and resulting in a bilateral agreement

¹⁹⁸ It had gained this in the 1992 deal struck with Japan to stop fishing in the Northern Territories waters.

between South Korea and Russia on the 10 December 2000. Japan put pressure on both South Korea and Russia to cancel the deal, with Foreign Minister Tanaka telling the Russian Ambassador in Tokyo that “it is unacceptable to Japan that South Korean boats will be allowed to fish around the Northern Islands based on approval by Russia” (*The Japan Times*, 14/07/2001). Meanwhile, from 19 June Japan revoked the rest of the Korean fishing quota in the Sanriku area, offering to allow Korean boats to “operate in its waters only if South Korea officially recognised that the Kurile area is part of Japan’s EEZ”, and even went as far as to threaten to seize any Korean boats found fishing in the area (Valencia and Lee, 2002: 338). Emergency talks held in advance of the commencement of saury fishing in late summer 2001 failed, and in autumn the situation was made even worse when it emerged that North Korea, Ukraine and Taiwan had also purchased fishing rights in the disputed islands’ waters. This all took place as Japan itself was negotiating the aforementioned new agreement with Russia, finalised in November, for quotas in the islands’ waters.

In the end, Russia offered Japan a deal whereby Japan would compensate Russia for the financial loss of cancelling the other agreements to which Japan responded negatively. Eventually, a compromise deal was done, in which Japan would compensate Russia not directly for the loss of revenue from the other deals, but via technical assistance and tough controls on illegal fishing in the region (Valencia and Lee, 2002: 341). Meanwhile, Japan restored the South Korean quota in the Sanriku region to the 2001 level, and Russia banned third party fishing in the waters off the disputed islands.

The 1998 agreement, like previous agreements before it, avoided the sovereignty issue by not stating which country actually had legal ownership of the disputed waters. As we saw with the 1998 South Korea-Japan Fisheries Agreement, it is possible to interpret this

as a gain for Japan in the sovereignty game, since if Russia controlled the territory and claimed sovereignty over it, logically then an agreement which specifically refers to the territory would not need to specifically state that the agreement did not affect other issues (i.e. the sovereignty of the islands). Indeed, just as critics of Seoul's perceived 'soft' stance in 1998 argued that the fisheries agreement was acquiescence in Japan's claim, so too did the Sakhalin Duma call the Japan-Russia deal "a creeping demarcation of the Russian border in the South Kuriles area". However, comparisons with the Liancourt Rocks in this instance are limited: Japan's position in the sovereignty game was already much stronger, and Moscow did not (and does not) take the absolute legal sovereignty position which Seoul does (see Chapter Six, Section 6.4).

Much like in 1992, the controversy on fisheries caused by the agreement between South Korea and Russia themselves was ultimately a matter of sovereignty recognition. Worried that third-party fishing boats operating in the waters under Russian licenses would be construed as an international recognition of Russian sovereignty, the Japanese government felt it had to do something. Indeed, that the key issue at hand for the government was sovereignty was made clear when it offered to allow South Korean boats to fish in the Sanriku region if Seoul officially recognised the disputed islands as Japan's sovereign territory. Again, as in 1992, Tokyo used its economic capital to prevent third-party recognition. As Valencia and Lee put it: "Japan placed diplomatic interest before economic interest" and "may have prevented the undermining of the legitimacy of its claims to the Northern Territories" (2002: 342).

5.9 *Visa Nashi* Expansion

The momentum created by the Krasnoyarsk summit led to a widening of the *visa nashi* programme. As mentioned previously, Japanese aid workers were sent to the islands following the 1994 earthquake and tsunami using an agreement set up specifically for that purpose. The criteria for sending humanitarian assistance was limited to the case of earthquakes, and valuable time had been wasted in reaching the agreement, so the post-Krasnoyarsk changes allowed *visa nashi* travel to help with any natural disaster. The agreement also broadened the potential candidates for *visa nashi* travel – originally journalists, former residents and their families, and activists (and post-1994 earthquake relief workers) – to include specialists such as teachers, geologists, ornithologists and other researchers (*Yomiuri Shimbun*, 05/10/1998). These expanded *visa nashi* trips began in 1999. Also in 1999 changes were made to the grave visit programme. Visiting graves on Habomai/Khabomai had been problematic, as the islands were no longer inhabited by private citizens, and former residents had to travel first to Kunashiri/Kunashir because of the lack of a wharf or customs officials on the Habomai/Khabomai islets. In late 1999 Japanese Foreign Minister Kōmura Masahiko and Russian Deputy Foreign Minister Viktor Khristenko finalised an agreement for direct visits, stationing customs officers and constructing wharves on Etorofu/Iturup, Kunashiri/Kunashir and Habomai/Khabomai. The question of who would foot the bill for these moves was left unresolved (Williams, 2003).

The broadening of the *visa nashi* scheme to include scientists led to increased cooperation between Russian and Japanese conservationists, keen to preserve the wilderness of the islands, which had been “described by Japanese scientists as a trip back in time to an era before Japan became a concrete paradise” (*The Japan Times*, 17/02/2002). In 2000 the

conservationists sought to apply for World Heritage Status for a joint zone including the Shiretoko peninsula in Hokkaido and the Kurile Islands, but this was rejected by the Japanese government.¹⁹⁹ In 2002 proposals were made for a Transboundary Reserve which would include the disputed islands but again the Japanese government “staunchly opposed any proposal that would dilute its territorial claim” (*The Japan Times*, 17/02/2002).

While the government maintained control over its researchers’ activities on the disputed islands, it was unable to control the activities of the non-state funded Japanese NGO Peace Boat. In August 2002 over 500 people, a majority of which were Japanese citizens, disembarked on Kunashiri/Kunashir as part of its Northeast Asia Peace Voyage, which included stops in North and South Korea, aiming to “build a strong people-to-people level foundation to improved relations between Japan and its closest neighbours” (Peace Boat Website, 2010). Although the group did not travel on the *visa nashi* programme, they did travel without visas under a special exemption allowed by Russia. The MOFA Russian Division director Kozuki Toyohisa contacted them directly, requesting the cancellation of the trip. However, after the group did not respond, both Foreign Minister Kawaguchi Yoriko and MOFA press secretary Takashima Hatsuhsa publicly criticised the group, Takashima stating that visiting the islands “while the Russian Federation is illegally occupying the territories will make it appear as if they consider the land belongs to Russia” (*The Japan Times*, 28/08/2002). After the visit took place MOFA issued a statement saying that “the Government of Japan deeply deplores the “Peace-Boat” tour that included this high-handed entry into the Northern Territories” (MOFA, 2002a). In response Peace Boat representatives claimed that they hoped their efforts would “work out measures to settle the decades-old territorial row”, and criticised MOFA, arguing that the informal prohibition on Japanese

¹⁹⁹ Shiretoko was separately designated as a World Heritage Site in 2005.

citizens visiting the islands was part of a broader flawed approach and that if this approach was continued “negotiations for the return of the islands will never proceed” (*The Japan Times*, 16/08/2002).

The introduction of the *visa nashi* programme following the Japan-Soviet Joint Communiqué in 1991 was a form of acquiescence by the Soviet Union /Russia not only to the existence of a the dispute but to their own weak ability to actually exercise sovereignty over the islands. The expansion of the programme post-Krasnoyarsk shows how both states were using the programme to further different goals. As the discussion of procedures which participants were ordered to undergo (the deliberate and constant non-recognition of sovereignty) in Section 5.4.1 shows, for the government, *visa nashi* had great value in undermining Russian sovereignty over the island and allowing the exercise of at least some form of Japanese sovereignty. In contrast, Moscow sought to use the programme to further co-operation, with the hope that this could pave the way to joint-development. Even if Tokyo formally maintained a position against any joint-projects, the process of exchange could result in calls for a change in policy by those involved in the exchanges, as the example of the Transboundary Reserve above shows.

Furthermore, along with the humanitarian assistance Japan was providing, the *visa nashi* programme could counter intuitively actually help Russia exercise sovereignty over the islands. As outlined in Chapter Two (Section 2.6.3), it is not enough for a state to have recognition of its sovereignty over a territory; it also needs to have the ability to exercise authority over the area. Russia in the early 1990s barely had the ability to exercise authority over the islands – many of the inhabitants were unemployed and stranded on the islands because they lacked the resources to get away, and because the transport infrastructure was so

poor. One of the primary reasons behind the growth in support for succession was the inability of the central government in Moscow to provide for the islanders which led to support for secession in the early 1990s (Williams, 2003). Nonna Chernyakova points out that one of the main gripes the islanders had was the failure to provide electricity, such that by 1998 “the Kuriles were gripped by a serious energy crisis, and the island of Etorofu/Iturup was without electricity for 16 hours a day” (*The Japan Times*, 05/07/2001). Yet, as Chernyakova goes on to point out, by providing the locals with the generator and quantities of diesel fuel, the Japanese government helped to remove the reason for support of secession.

Finally, the Peace Boat’s voyage in late 2002, after the negotiations had come to a stand-still, was a sign of things to come. Severely criticised by MOFA, the NGO struck back: in press releases, it criticised the government’s approach to the islands, including the 1989 cabinet agreement and the stalled negotiations. Since the 1989 cabinet agreement, the government had made a serious issue of trips to the islands outside of the *visa nashi* programme, stating they undermined its sovereignty claim. This has little legal meaning, though: the critical date largely removes legal meaning from actions post-1945-51, and if private citizens’ actions were to have had any legal impact they would have had to have taken place at least prior to 1951. Instead, such trips undermined the position the Japanese government had made for itself in the sovereignty game – seeking to prevent any recognition, be it at state level or the level of the individual, of Russia’s sovereignty – and as relations deteriorated and the prospects of the “early return” of the islands grew dimmer, such violations of the cabinet agreement would increase, further undermining the government’s position.

5.10 Post-Krasnoyarsk Negotiations

From 2003 on, the Northern Territories slipped away from Japan. The Koizumi administration moved the peace treaty conditions back to all four islands returned together, effectively removing any possibility of compromise, after which it moved the emphasis of its Russian policy away from the dispute and on to economic matters, specifically the development of Siberian and Russian Far East oil and gas for import to Japan. Putin also lost interest, happy to continue developing economic ties and forget about the islands. This policy was more or less continued by Koizumi's LDP successors, although from Prime Minister Asō Tarō onwards the dispute increasingly became a source of bilateral friction. During the subsequent DPJ administrations increased rhetoric on the Japanese side faced increased action from a more politically and economically self-assured Russia which, through social, economic and military development, began to reassert its own sovereignty over the disputed islands, eventually leaving Japan with very few options left.

On 10 January 2003 Koizumi and Putin met in Moscow for a bilateral summit in an attempt to get Russo-Japanese relations back on track in the aftermath of the failure of the previous years' negotiations and the fall-out from the MOFA/Suzuki affair (see above). However, the day before the pair met, North Korea officially announced its intention to withdraw from the Nuclear Non-Proliferation Treaty, overshadowing what was already likely to be a difficult task. Despite Koizumi beginning the summit by stating that "It is necessary to solve the territorial issue and sign a peace treaty as soon as possible" (AFP, 10/01/2003), it appeared that Koizumi and his administration had already put the territorial dispute on the back-burner. The 'Japan-Russia Action Plan' which emerged from the summit did refer to the dispute, and included the usual pledges to work towards a resolution and the signing of a

peace treaty. There was, however, little concrete progress. A larger part of the ‘Action Plan’ was dedicated to plans for the expansion of economic ties and for Japanese investment in the development of energy resources and infrastructure in Siberia and the Russian Far East (MOFA 2003).

The pair met again in June 2004 in the US on the sidelines of the G8 summit, again delivering the usual platitudes on the need for a peace treaty in advance of an expected visit by Putin in February 2005 to mark the 150th anniversary of the signing of the Shimoda Treaty (the treaty which opened up relations between Russia and Japan, see above Section 5.2; *The Japan Times*, 11/06/2004). The gap between the two remained Japan’s desire for all four islands as against Russia’s willingness to discuss only the return of Shikotan and Habomai/Khabomai. Relations deteriorated further in August 2004 when Koizumi announced his intention to visit the disputed islands as soon as was feasibly possible – a first for a Japanese prime minister (*The Japan Times*, 19/08/2004). The suggestion was immediately criticised by the Russian Ambassador in Tokyo, Alexander Losyukov, who said it “would only create problems” (*The Japan Times*, 19/08/2004). Although Koizumi did not follow up the plan to actually land on the islands, in September of 2004 he viewed them from a JCG vessel, becoming the first Japanese prime minister to do so in this manner. Despite further criticism this time from the Russian Foreign Ministry itself, Koizumi defended his trip, stating that “in Japan-Russia negotiations, it is very important to have Russia clearly understand Japan’s stance” (*The Japan Times*, 01/09/2004).

Koizumi’s trip, along with the statements he made while viewing the islands – reaffirming that they were in fact Japanese territory, not Russian – were to have a negative effect on bilateral relations (*The Japan Times*, 11/05/2005). In November and December of

2004 Putin and Foreign Minister Sergei Lavrov suggested that Russia was willing to sign a peace treaty with Japan based on the 1956 Joint Declaration, handing over Shikotan and Habomai/Khabomai (Kyodo, 23/12/2004; *The Japan Times*, 17/11/2004). The Koizumi administration was adamant that the 1993 Tokyo Declaration – which names the four islands as being the subject of the dispute – be the basis for a peace treaty and the eventual return of all of the disputed islands. Relations were deteriorating fast, and Putin did not come to Japan for the Shimoda Treaty anniversary celebrations, nor could Russia give a date as to when exactly he would come. He did finally make his visit at the end of 2005, for what was considered in Japan to be an “absolutely non-productive” summit – Putin would not consider the Tokyo Declaration (Sarkisov, 2007: 44).

In September 2006 Abe Shinzō replaced Koizumi as prime minister, retaining Asō Tarō as foreign minister. That same month in an interview with the *Mainichi Shimbun*, Asō made his so-called “50/50” proposal, which would divide the islands not into two groups as had been previously done, but based on a division of the total land area, 50 per cent for each side: “Two islands are not acceptable for us, four – not acceptable for them. So what about three islands a half of the difference?” (*Mainichi Shimbun*, 28/09/2006).²⁰⁰ He floated a similar idea in December in the Diet Foreign Affairs Committee in response to questions by DPJ diet member Maehara Seiji, adding that “we should negotiate based on reality”; under intense criticism for “selling-out” Japan’s negotiating stance, he quickly retracted his statement, saying that it had been taken out of context (*The Japan Times*, 16/12/2006). Meanwhile, Abe met Putin at the sidelines of APEC meeting in Hanoi in November of 2006, and despite the death of a Japanese fisherman in Russian-controlled waters off the disputed

²⁰⁰ A more “fair” division, since Habomai/Khabomai and Shikotan make up only a very small amount of the total land area of the disputed islands (see Figure 5.1)

islands that August, there was little mention of the territorial dispute (see below, Section 5.11.1).

Asō met Russian Foreign Minister Sergei Lavrov in May 2007, both agreeing on the need to continue negotiations, but with no specific proposals to overcome the two versus four islands impasse. In fact, one week prior to the G8 summit in Heilgendamm in Germany where Abe and Putin were due to hold a bilateral summit Lavrov became the first Russian foreign minister to visit the disputed islands. Although there was little progress on the territorial dispute under either the Abe administration or its successor, the administration of Fukuda Yasuo, the economic relationship was blossoming. Many large Japanese corporations, including Toyota and Mitsubishi, had opened up operations in Russia (*The Japan Times*, 04/02/2008). There was a belief among some MOFA officials and top politicians that such an environment would help Putin come to a compromise (presumably giving Japan what it wants) before he was due to leave office in 2008, particularly since at this point Putin was presiding over a strong economy and operating in a stable political environment (*The Japan Times*, 10/05/2007). Although there were some dissenting voices which still saw economic cooperation as a bargaining chip and called for a return to the previous policy of linking economics and the Northern Territories, the overall pattern of increasing economic ties and letting the territorial dispute wait continued into the Fukuda administration, with bilateral meetings at both foreign minister and leader level producing calls for the resolution, but also for “patience”, and focusing not on the dispute but on various aspects of economic ties.²⁰¹ Although receiving some more attention in 2008 when due to G8

²⁰¹ For example, in April 2008 following a meeting with Japanese Foreign Minister Komura Masahiko, Russian Foreign Minister Lavrov said of the territorial dispute: “it will take time, but we will tackle this with patience” (*The Japan Times*, 30/05/2008). Later that same April Fukuda met with both President Putin and President-elect Medvedev, focusing not on the

meeting in Hokkaido, the fact remained that “no one seems to be in a hurry to resolve [the territorial dispute], least of all President Putin” (*The Japan Times*, 04/02/2008).

Asō, who as Foreign Minister had previously suggested novel resolutions to the dispute, succeeded Fukuda as Prime Minister in September 2008. His tenure, while short, saw the territorial dispute come back into focus after a relatively quiet spell since 2006 shooting incident. In November, shortly after taking power, Asō met President Medvedev in Peru on the sidelines of an APEC summit, at which Medvedev said that he had no intention of leaving the dispute to future generations, but that leaders on both sides needed to show determination (Scheiffer, 2008). These comments caused fresh speculation that perhaps a resolution to the dispute was on the cards.

Instead, things would only get worse: in May Asō stated in the Upper House of the Diet that the “illegal occupation of the Northern Islands by Russia is extremely regrettable” (*The Japan Times*, 03/06/2011) and in July, shortly before the two were to meet again at the 2009 G8 in Italy, the Diet passed a law revising a 1982 Act (see above Section 5.2) which provided measures for the solution of the territorial dispute, describing the islands as an “inherent part of Japan” (Xinhua, 04/07/2009; Rianovosti, 10/07/2009). The Russian response was severe, with both upper and lower houses of the Duma issuing a proposal to ratify the San Francisco Peace Treaty (in which Japan gave up “The Kurile Islands”), while islanders on Etorofu/Iturup planned to turn away a group of Japanese *visa nashi* visitors and the South Kurile Administrative District leader calling for the programme to be scrapped (*The Japan Times*, 09/07/2009). The *visa nashi* visits did eventually go ahead, as did the bilateral summit on the margins of the G8 in Italy. But the meeting led only to the usual

dispute but on the development of energy resources in East Siberia (*The Japan Times*, 30/05/2008)

expressions of the desire to solve the problem, despite Asō warning Medvedev that “without political progress, Japan may hesitate to build up an economic partnership with Russia” (Kyodo, 09/07/2009).

5.10.1 The Democratic Party of Japan Takes Power

In September 2009 the LDP fell out of power and Hatoyama Yukio, the grandson of Hatoyama Ichirō who as prime minister signed the 1956 Moscow Declaration with Nikita Khrushchev, became the first DPJ Prime Minister of Japan. Although much was made of Hatoyama’s desire to realign Japan with its Asian neighbours, and Hatoyama himself described resolving the Northern Territories dispute as his number one foreign policy goal, little progress was made on the territorial dispute.²⁰² In fact only one month after the Hatoyama administration took charge, Maehara Seiji, then a cabinet minister with responsibility for the Northern Territories issue, travelled to Hokkaido to view the islands stating that they were not only an “inherent part of Japan” but also that they were under an “illegal occupation” by Russia (Kyodo, 20/10/2009). The comments, echoing Asō’s months before, were heavily criticised in Russia, described by the Russian Foreign Ministry as “unacceptable, inappropriate, and legally meaningless remarks steeped in a confrontational spirit” (Abiru, 2010). In November Hatoyama’s cabinet approved a position paper confirming Maehara’s “illegal occupation” remarks (Kyodo, 01/11/2010).

Hatoyama did seek to adopt a fresh approach, and brought Suzuki Muneo – who had worked behind the scenes under Prime Ministers Hashimoto, Obuchi and Mori before falling

²⁰² He stated this at the 2010 Northern Territories Day in Tokyo, and so perhaps it could be seen as playing to the crowd.

foul of corruption charges under the Koizumi administration (see Section 5.7.3) – back in from the cold, seeking help on kick-starting the negotiations which had barely moved since 2002. However, in an interview with *Sankei Shimbun* Suzuki, while acknowledging the importance of pragmatism in approaching the dispute, criticised Asō (who suggested dividing the islands up by size) for considering anything other than an eventual four-island deal: “we aren’t talking about breaking up a bunch of bananas for sale here” (Abiru, 2010). Suzuki was proposing something much like Hashimoto’s Hong Kong formula, or the 2-plus-alpha of Mori’s administration – but with the *proviso* that alpha included a recognition of residual or future Japanese sovereignty over the remaining islands. This basically unchanged position of ultimate Japanese sovereignty over all the disputed islands was unlikely to lead to much in the way of progress, but in the end it would be a moot point – Hatoyama resigned in June 2010, his administration lasting less than nine months, and in September 2010 Suzuki lost his Supreme Court appeal on previous corruption charges, leading to the loss of his Diet seat and a two year jail term.

Kan Naoto succeeded Hatoyama as the second DPJ Prime Minister, taking the helm during what would be a tumultuous period for Russia-Japan relations. He had barely taken office when Russia designated 2 September as a memorial day (and national holiday) to commemorate the defeat of Japan and the end of World War 2, and in July Russia staged large-scale military exercises in Siberia and the Russian Far East, including on Etorofu/Iturup, which Foreign Minister Okada Katsuya described as “extremely regrettable” (*Rianovosti*, 07/07/2010). In September 2010 the collision between a Chinese trawler and a JCG patrol vessel in the waters around the disputed Pinnacle Islands and the arrest of the skipper of the Chinese trawler led to a stand-off between China and Japan and saw Sino-Japanese relations deteriorate to levels not seen since the Koizumi administration (see Chapter Four, Section

4.10.3). As the affair related to one dispute dragged on, President Medvedev announced plans to personally visit the disputed Northern Territories, plans which the then Foreign Minister Maehara responded to by warning the Russian ambassador in Tokyo that such a visit “would seriously hurt bilateral ties” (*The Japan Times*, 30/09/2010).²⁰³

In the end bad weather forced Medvedev to cancel his September plans, and it appeared Japan believed the whole thing was merely posturing on the Russian side.²⁰⁴ This was a mistake, as not only did Medvedev visit the islands on 1 November, but he also took a trip to Beijing en route to an APEC meeting in Yokohama, where he met President Hu Jintao and issued a joint statement on the 65th anniversary of the end of World War II. The pair agreed to support each other’s positions regarding sovereignty and territorial integrity, and upgraded the Sino-Russian relationship to a “strategic partnership of cooperation” (*The Japan Times*, 03/06/2010, 06/10/2010). The joint statement went as far as to accuse Japan of “fabricating history”, and it seemed clear that China and Russia were supporting each other’s position in their respective territorial disputes (*The Daily Yomiuri*, 29/09/2010)

Maehara described the visit as “deplorable”, calling in the Russian Ambassador to lodge a protest (*Yomiuri Shimbun*, 02/10/2010). Meanwhile, US State Department spokesman Phillip Crowley reiterated US support for Japan in the dispute in a press conference in Washington, stating that “the United States government supports Japan and recognises Japanese sovereignty over the Northern Territories” (Kyodo, 02/11/2010). A stream of politicians followed in Medvedev’s footsteps to the islands, including visits from

²⁰³ Interestingly Maehara had toned down his language after becoming Foreign Minister, no longer referring to Russian control as an “illegal occupation”, (*The Japan Times*, 18/01/2011).

²⁰⁴ Given that the Japanese side expressed such shock when Medvedev did visit in November, to the extent that Japanese Ambassador in Moscow lost his job for not warning Tokyo of the seriousness of the situation sooner.

First Deputy Prime Minister Igor Shuvalov visiting in December, followed by visits from the defence and regional ministers. These visits stopped briefly after the 11 March Earthquake/Tsunami, resuming in May with Deputy Prime Minister Sergei Ivanov visiting Etorofu/Iturup and Kunashiri/Kunashir.

Japan could do little in response. In December 2010 Maehara took a trip up to Hokkaido to view the disputed islands for a second time, this time on a JCG airplane. Speaking at the Northern Territories Day rally in Tokyo on 7 February Kan used unusually strong language when he described Medvedev's visit as an "unforgivable outrage", yet in the same speech he "indicated Tokyo's intention to continue talks with Moscow on expanding economic cooperation" (Kyodo, 07/02/2011). The "unforgivable outrage" comments came in the same week as a bullet was mailed to the Russian embassy in Tokyo and only a few days before Maehara was to visit Russia for talks with his opposite number Lavrov. Before Maehara arrived, and in response to Kan's comments, Medvedev described the islands as an "inseparable part of the Russian Federation" and announced plans to strengthen Russia's military presence on the islands (AFP, 09/02/2011). During a tense meeting in Moscow Maehara told Lavrov that the islands were "age-old Japanese territory", while Lavrov criticised Kan's statement, describing Japan's current position as "radical", and told Maehara that "dialogue has no chance" as long as this position is maintained (AFP, 13/02/2011). Lavrov also said that Russia "would be happy to see Chinese, Korean investors [on the islands], as well as our Japanese partners", while Maehara responded that although third country investment would make the situation "even more complicated", Japan was ready to consider joint economic development as long as it did not harm its sovereignty over the islands (Russia Today, 11/02/2011).

Putin's offer of two-islands in 2004 served to underscore that a return of all four-islands – which seemed to some a possibility during the Krasnoyarsk Process – was now off the table. However, the policy of economic cooperation, begun under the Hashimoto administration, was continued in the form of the Japan-Russia Action Plan, signed during the Koizumi administration. Both the Abe and Fukuda administrations continued this policy of economic cooperation, and while economic relations boomed, there was no progress on the dispute. The response to Aso's 50/50 kite was overwhelmingly negative, such that it was clearly still the case that no politician could contemplate compromising the sovereignty claim over all four islands. By the time Aso took power in 2008, his warning to Medvedev over Japan's potential hesitancy to build economic ties without further political (i.e. territorial) progress rang hollow. Russia was no longer the economically and politically unstable state looking for Japanese aid: it had grown economically strong through its energy exports, and import-dependent Japan had become one of its good customers. Furthermore, Tokyo was competing with Beijing for access to those energy resources. Thus the government had little economic capital to bring to bear – if anything Moscow was in the driving seat, and it was simply not credible that Tokyo would put a freeze on economic ties.

The new DPJ administration did not bring any new ideas to the dispute. Maehara's reiteration of Aso's 'illegal occupation' remarks provoked an aggressive response from a Russia now seeking to consolidate its sovereignty position. Such strong criticism of the Russian sovereignty position served to undermine it, hence the Russian response. But perhaps nothing demonstrated the weakness of Japan's position in the sovereignty game more clearly than events after September 2010, when Medvedev visited the islands and teamed up with China to show Japan a united front on the territorial issue. As Russia announced increases to the budget of the development plan for the islands, and minister after minister

flew out to inspect the infrastructural projects, Kan and Maehara could do nothing but blow hot air (e.g. Kan's "unforgivable outrage" remark). The positions in the sovereignty game had changed completely, and in each area of the dispute Russia was taking control, as is outlined below.

5.11 Russia Pushes Back

5.11.1 Fishing

The Russia-Japan fisheries agreement of 1998 and the agreements hammered out as a result of the Russia-South Korea-Japan fishing negotiations in 2001 led to a steep decline in incidents between fishermen and border guards in the waters off the disputed islands. However, in the first incident of its kind since 2000, in August 2006 Russian Guards fired warning shots at a small Japanese boat which had attempted to flee on being caught illegally fishing for crab just off Kaigara Island, one of the Habomai/Khabomai group (*The Japan Times*, 20/08/2006). The incident resulted in the death of one of the crew, Morita Mitsuhiro, and the detention of the boat and its captain and remaining crew. Foreign Minister Asō lodged a protest, with both sides claiming that the incident took place in its own territorial waters – the problem being that since Japan refused to recognise Russian sovereignty over the islands, even if the incident did take place in Russian controlled waters Japan would claim that it was Japanese waters. This difficulty became more apparent when Vice Foreign Minister Yamanaka Akiko, who was supposed to go to Kunashiri/Kunashir to press for a return of the dead man's body, waited to see if she could travel to Kunashiri/Kunashir on a JCG vessel (*The Japan Times*, 18/08/2006) – again the implication being that to do otherwise

would be to recognise Russian sovereignty. Even in such tragic circumstances, the government was maintaining its policy of effective non-recognition.

The captain of the vessel pleaded guilty to charges of illegal fishing and was eventually returned to Japan in October, leaving behind his boat and paying a hefty fine (*The Japan Times*, 04/10/2006). More incidents occurred in the autumn of 2006 and spring of 2007, with Japanese boats seized and their crew arrested.²⁰⁵ In April 2007 President Putin echoed the sentiments of Sakhalin Governor Igor Farkhutdinov during the previous South Korean fishing dispute when he told the Duma that “we should stop allocating quotas to foreign companies and give preference to Russian companies” (Kyodo, 01/05/2007). He later went further stating that Russia would ban live exports of crabs to Japan (Kyodo, 01/05/2007). In June Prime Minister Abe raised the issue with Putin at the G8 in Heilgendamm, referring to previous bilateral fisheries agreements. Putin did not respond directly to Abe’s comments, instead asking him for Japan’s cooperation on the prevention of smuggling and illegal fishing (*The Japan Times*, 09/06/2007). Putin’s comments again showed the strength of the Russian position: whereas in previous fisheries agreements Moscow exchanged fishing quotas for technical and financial assistance for its fishing industry, it now wanted to show Japan that it was dispensable.

Further illegal fishing incidents saw Japan taking two cases to the International Tribunal for the Law of Sea in Hamburg in 2007; the first time Japan had taken such action against any other state. In the first of these cases the court ruled that since the Russian domestic courts had already wrapped up the case against the captain of a fishing vessel and

²⁰⁵ For example the captain of one ship seized off fishing illegally off Kunashiri/Kunashir in January 2007 was held until May after he failed to stop when approached by Russian border guards.

released him on payment of a fine, it did not have to make a decision. In the second case the court found that Russia had breached article 73(2) of UNCLOS, which states that “arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other financial security”, and ordered the issuance of a bond, thus the freeing of the captain. Interestingly, both captains admitted their guilt, and it was not the illegal fishing which Japan had a problem with, but Russia’s failure to follow UNCLOS and release the detainees (International Tribunal for the Law of Sea, 2007).

The illegal fishing problem (not confined only to Japanese fishing but also domestic poaching) remained a headache, causing further serious incidents as the political side of the dispute heated up in early 2010. In January a border guard helicopter launched what seemed to be flare bomb at Japanese fishing boats off Kunashiri/Kunashir, and in February another helicopter open fired on two boats, again off Kunashiri/Kunashir, when they refused inspection; the boats escaped to Japanese waters without serious injury or loss of life (*Stratfor*, 03/02/2011). It also emerged that four Japanese fishing companies had been bribing Russian border guards to turn a blind eye to fishing in excess of agreed quotas in the disputed islands’ waters (*Yomiuri Shimbun*, 27/12/2010). In February the Japan Fisheries Agency met its Russian counterpart to discuss measures on illegal fishing and the prevention of such incidents in future. Meanwhile, Sakhalin’s border guard service announced that it would crack down on Japanese illegal fishing in the area after a Mutual Legal Assistance treaty came into effect on 11 February (*Yomiuri Shimbun*, 23/02/2011).

5.11.2 International Recognition and International Trade and Investment

The Japanese embargo on trade remained throughout the period, although like the *visa nashi* programme, it was also violated – albeit sometimes unintentionally. This was the case in 2007 when a Japanese firm, Sanko Progress Corporation, exported steel to a Russian company, with the understanding (written in the contract) that the steel not be sent to the disputed islands (*The Japan Times*, 09/12/2007). However, the Russian firm did send some of the steel to Kunashiri/Kunashir, in breach of the contract. MOFA described the incident as “deplorable”, and warned the Japanese company – which apologised and protested to the Russian company – despite the absence of any law prohibiting Japanese companies from doing business on the disputed islands. Also in 2007 reports emerged that a company in Hokkaido planned to invest in a sea cucumber (*namako*) farming project off Kunashiri/Kunashir, in a joint development with a Russia firm. Sea cucumbers fetch a high price in China, where they are considered a delicacy. Foreign Ministry officials were quick to criticise the move, stating that “it will endorse Russia’s jurisdiction over the territories and the nation’s illegal occupation of the islands”.

Sea cucumbers were the source of another headache for Japan in February 2011. A Chinese fishing company signed a memorandum of understanding with a Russian partner for the joint development of a sea cucumber farm off Kunashiri/Kunashir. Although Beijing denied any knowledge, the foreign ministry issued a statement describing the territorial dispute as “a bilateral issue between Russia and Japan” (*The New York Times*, 17/02/2011). Prime Minister Kan also made a statement, referring to the apparent agreement as “incompatible with our position”. The threat of third-party economic activity on the disputed islands grew throughout the year as rumours surfaced of South Korean companies planning

joint ventures with Russian companies on the islands. In July the head of the Russian Far East administrative district took Lavrov's February call for Chinese and Korean investment one step further when he criticised Japan for not getting on board with joint development earlier, warning them that both China and South Korea would be happy to take its place (*Asahi Shimbun*, 07/08/2011).²⁰⁶ Whereas in 1992 Tokyo had been able to reverse the decision by a Hong Kong company to lease land on Shikotan, and throughout the 1990s Moscow's calls for foreign investment on the islands went unheeded, by the late 2000s the situation was very different. The intensification of the disputes over the Liancourt Rocks with South Korea and Pinnacle Islands with China meant that Japan had little diplomatic capital left, and actual foreign investment became an increasing possibility.

2011 also saw a number of Chinese labourers heading to the islands to work on a Kunashiri/Kunashir farm owned by an ethnic Chinese Russian citizen. The workers followed standard Russian immigration procedures, but the Japanese embassy in Moscow criticised the situation, saying that third country citizens travelling to the islands was inconsistent with the Japanese position. This incident came only two months after three South Korea parliamentarians made a high profile trip to Kunashiri/Kunashir, ostensibly to learn how Russia exerted its sovereignty over the disputed islands (see also Chapter 3, Section 3.9). Even the normally strong US backing for Japan's position in the dispute was shaken when a diplomatic cable from the US embassy in Tokyo was revealed by Wikileaks. The cable, from 2009, criticised the Japanese approach to the dispute, saying that a "policy vacuum" existed in the LDP, DPJ and MOFA, and that "Japan lacks a plan to negotiate the return of the Northern Territories" (*The Japan Times*, 12/05/2011).

²⁰⁶ According to sources quoted by the *Asahi Shimbun*, South Korean machinery was already being widely used at the airport and port on the islands (25/05/2011)

5.11.3 Infrastructure, Investment, and Military Build-up

In November 2005 an orthodox church was built on Suisho Island, the island closest to Japan and visible from Cape Nosappu, Hokkaido – an island with border guards, but no civilian population. Two years later a three-metre tall statue of St. Nicholas, the patron saint of travellers and border guards, was erected, and prayers were offered up by Orthodox clergymen (Kyodo, 27/07/2007). This occurred only one year before Moscow announced the second federal programme for the social and economic development of the Kurile Islands. A previous programme had run from 1994-2005, but had been an abject failure, as neither the money nor the political will existed to fully implement the plans. The new programme, to be prioritised by a newly rich Russian government, laid out 17.9 billion roubles (668 million US dollars) for the development of infrastructure, including airports, hospitals and schools (Blagov, 2006). The plan aimed not only at improving the region's infrastructure, but also at doubling the population, increasing industrial output and reducing the relatively high levels of unemployment; and unlike previous plans, the planned spending was actually carried out.

Indeed, during Medvedev's 2010 visit he inspected various new infrastructural developments, and posed for television cameras eating dinner with local residents and promising them that Moscow had not forgotten about them, and would continue to invest heavily in the region. Another ministerial visit, this time by Defence Minister Anatoliy Serdyukov, in February 2011 saw more promises of increased spending, this time on the military. Plans were announced to revamp ports on the islands for the deployment of two *Mistral* helicopter carriers, due to arrive from France in 2013 and 2015. The increased spending would also see the reinforcement of the garrisons on the islands, and the modernisation of equipment. In March 2011 plans to deploy cruise missiles and air defence

system in the Russian Far East, which would include the islands, were announced by Moscow (*The Japan Times*, 03/03/2011). Here Russia was refocusing its attention on Asia, and the islands – or more specifically Etorofu/Iturup and Kunashiri/Kunashir, larger, and strategically significant – were to play a role in this.

5.11.4 Visa Nashi

The visa-nashi programme came under pressure as political relations between Japan and Russia became increasingly strained towards the end of the period 2003-11. Following the death of a Japanese fisherman in the 2006 shooting incident the Nemuro city council requested MOFA to suspend the programme. MOFA declined and only a few days later a planned trip went ahead, which included Maehara Seiji. In February 2009 Russian authorities required passengers aboard a Japanese ship delivering medical aid to the islands to complete disembarkation cards, which the Japanese refused to do as such an act would constitute a recognition of Russian sovereignty (*The Japan Times*, 17/02/2009). The ship returned to Japan without delivering its cargo.

Later in 2009 it was the turn of the Kurile islanders themselves to attempt to turn away Japanese *visa-nashi* visitors after the Diet passed a law declaring the islands to be an “inherent part” of Japan. After intervention by the Sakhalin government the islanders were persuaded to allow the visitors to disembark, although the South Kurile Administrative District head, Igor Koval, stated that “future visits without visas could be cancelled” and as mentioned previously the Russian Duma called on Medvedev to freeze the programme (*The Japan Times*, 09/07/2009). The planned trip went ahead, with Suzuki Muneo among its

participants. Such actions and language, coming directly from the islands themselves, would have been unimaginable in the 1990s due to their dependence on Japan for humanitarian and other assistance. The state of the dispute had changed dramatically.

But perhaps the greatest threat to the programme came not from squabbles over disembarkation cards or the tense state of bilateral relations from late 2010 on – rather, it came from the Japanese citizens themselves. In August 2010 a group of eight elderly Japanese tourists (not former residents) went through standard Russian visa procedures and toured the disputed islands via a Japanese travel agency, defying the 1989 Cabinet agreement. The Foreign Ministry issued a statement describing the tour as “extremely regrettable” (*The Japan Times*, 23/08/2010). The reason given by the tourists was telling: they were elderly, and wanted to see the islands before they died; they clearly did not believe that they would be returned to Japan in their lifetimes. This was not an isolated case, as only a month before two Japanese engineers went to Kunashiri/Kunashir for the servicing of equipment sold to a Russian company on the island, and two months later in October two Japanese men ignored the cabinet agreement and went to the islands to visit the grave of a recently deceased Russian friend (*The Japan Times*, 25/10/2010). The Japanese policy of preventing its citizens from travelling to the islands on a Russian visa, and thereby recognising Russian sovereignty, was under threat.

In sum, as we saw with the political negotiations between Russian and Japanese leaders, the dynamics of the dispute had changed, tilting in favour of Moscow. Japan had run out of economic and diplomatic capital. With Beijing and Tokyo alienated and Beijing and Moscow enjoying warm ties, Japan also lacked strategic capital. Thus, buoyed by a strong economy and stable domestic political situation, Moscow went about strengthening its

position in the sovereignty game. Japan's position in the maritime dispute was weakened, as Russia clamped down on Japanese fishermen, and a domestic debate began on effectively ending Japan's privileged position. Unlike Foreign Minister Primakov's calls for foreign investment in the 1990s, Foreign Minister Lavrov's calls were beginning to be answered by South Korean and China. Of course, once established and routinised, precedents are difficult to overturn, and it will take time for Russia to actually be in a position to end Japanese fishing quotas or effectively attract large amounts of foreign investment to the islands, but in both cases the process has begun. Moreover, the seriousness with which Moscow is taking this sovereignty push is highlighted by the money it has already spent on the planned infrastructure as well as the renewal of military installations. In the face of all this, the government has not been unable to effectively respond; it is busy plugging holes in its own sovereignty strategy and is in danger of losing the sovereignty game.

5.12 Summary

Japan has taken an uncompromising, and perhaps extreme, approach to the sovereignty game in the Northern Territories dispute. On each conceivable sovereignty issue the Japanese government has fought tooth and nail where possible to prevent recognition of Soviet/Russian sovereignty over the islands, from third-state recognition – including non-state actors in third states – to its own citizens. Its behaviour has cost it money (both in payments made out and in potential benefits of joint development/other opportunities in Russia), international diplomatic capital, and even indirectly the life of one of its own citizens.

It all started promisingly, as Japan entered the post-Cold War period with an accumulation of diplomatic and economic capital, while the Soviet Union disintegrated and Russia was riven by economic and political upheaval. Gorbachev was not in a position to hand over the islands, but he did set a precedent by agreeing to the *visa nashi* Programme, which effectively undermined Soviet and later Russian sovereignty over the islands, and recognised that Japan had in effect some form of special sovereignty rights over them. It also provided a means for Japanese former residents, journalists and others to travel to the island without obtaining a visa, thereby avoiding any recognition of Russian sovereignty. Finally, the programme, along with the concomitant humanitarian assistance, also enabled Japan to use its economic capital to encourage secessionist sentiment among the islanders.

In 1992 the government was in a position to prevent third-party recognition of Russian sovereignty, convincing a Hong Kong-based company to cancel a contract to lease land on Shikotan and using its economic capital to prevent South Korean fishing boats from operating in the disputed maritime zone. However, the government's attempts to internationalise the dispute and put pressure on Moscow failed, as the G7 states grew tired of the conditionality and linkage between Japanese economic aid to Russia and the return of the islands. As the G7's patience grew thin, the Japanese government was left with no choice but to suspend the linkage between economics and politics and contribute to the aid package. While effective in preventing Russia from gaining any kind of Japanese or international recognition of its sovereignty over the islands in the early 1990s, after the Tokyo Declaration and the G7 aid package, Moscow tried to push back. There was a clampdown on Japanese and other foreign fishing boats in the disputed waters, and Moscow made plans for third-party and state investment on the islands. It lacked the capacity to follow up on these plans.

By the second half of the 1990s Russia's authority – its ability to exercise sovereignty over the islands – was in question, as they became dependent on Japanese assistance. Japan was again able to use its economic capital to reverse a South Korea-Russia fishing deal and thus prevent any form of third-state recognition of Russian sovereignty, while at same time signing an agreement with Moscow which gave it privileges in the disputed maritime zone. It even seemed for a while that the Krasnoyarsk process, started by Hashimoto and Yeltsin, might result in a deal over the islands and the signing of a peace treaty. However, Moscow would not offer more than two islands and none of the subsequent administrations would compromise on sovereignty over all four islands. While various imaginative suggestions were made, such as the Hong Kong formula and 'two plus alpha', the basic fact was the symbolic value of the islands was such that the Japanese government would not – could not – compromise its claim of ultimate sovereignty over all four islands.

The Krasnoyarsk process would perhaps represent the apogee of Japan's position in the sovereignty game; with the arrival of President Putin and the upswing in Russia's economy, the goal of sovereignty over all of the islands would move out of reach. Economic cooperation, started under the Hashimoto administration in 1997, would gradually see Japan lose its economic capital in the dispute, while events in its other disputes stripped it of its regional diplomatic capital. Indeed, by the late-2000s it seemed the tables had turned, as the actions of Chinese and South Korean politicians and businessmen undermined Japan's hard-line position on Russian sovereignty. Moscow itself was taking a new approach to the dispute: while Putin and Medvedev kept the two-island offer open, they also presided over a huge infrastructural investment programme and a military build-up in the Russian Far East, which included the islands themselves. Not only was Moscow now capable of exercising sovereignty over the islands, and regional states apparently shifting their long-held policies of

non-involvement (with even the US questioning Japan's position), but domestically Japanese citizens themselves were beginning to undermine the government's position by travelling to the islands on a Russian visa. With Russia securing its sovereignty, Japan was left rudderless, and Kan's 'unforgiveable outrage' comments, while on the one hand seeming desperate, on the other further by seeming to undermine Russia's sovereignty, served only to provoke Moscow and push any agreement further into the future. Japan and Russia's positions in the sovereignty game had changed dramatically since the first years of the 1990s.

Chapter 6: Conclusion

6.1 Overview

This dissertation has taken a novel, constructivist approach to sovereignty and the relationship between international politics and international law, shedding a penetrating new light on the nature and dynamics of Japan's three territorial disputes in the post-Cold War period. The dissertation focused on several key questions: how does the interaction between law and politics shape interactions between states in territorial disputes; how does this change our understanding of state behaviour in territorial disputes; and, finally, how can we understand Japan's behaviour its territorial disputes and how and why is its behaviour the same or different in each dispute? The Conclusion as follows: the first half summarises the findings of this dissertation, while the second half draws the various preceding chapters together in order to provide a fuller understanding of Japan's approach to its territorial disputes and the implications of the research for the sovereignty game approach itself.

The next section, then, reassesses the literature reviewed in Chapter One in light of the three previous case study chapters. After this, the chapter goes on to then provide a short summary of the theoretical approach employed by this dissertation before outlining the main findings of each case study chapter. The chapter then provides a comparative approach to Japan's territorial disputes. It shows how the different historical backgrounds and values of the disputed territories, as well as the approach taken by the other disputant state, have caused Japan to take different approaches to each dispute. It also accounts for the changes in Japan's approach to the Liancourt Rocks and the Pinnacle Islands disputes from the mid-2000s on. The next section assesses the implications of the research findings for the sovereignty game

approach itself. It reviews the relative importance of international recognition and authority (exercises of sovereignty), before turning to the portability of the approach itself to other cases of territorial disputes. The final sections of the conclusion, and indeed the dissertation itself, take a reflexive, subjective look at the relationship between international law and politics in light of the dissertation itself and offer some suggestions for future research in light of the contribution of this dissertation.

6.2 Reassessing the Literature

We saw that the existing literature can be divided into three types: the large-N territorial conflict literature, the Fravel's theory of territorial disputes, and the predominantly Area Studies literature which focuses specifically on Japan's territorial disputes. The territorial conflict literature is an 'issues'-based approach, which seeks to explain and predict inter-state conflict using a hypothetico-deductive approach based on large-scale dyadic challenger/target aggregate data sets to ever further refine hypotheses regarding the relationship between a given issue – in this case the existence of territorial disputes – and the escalation/de-escalation of conflict. We saw that the approach, while providing some useful insights, is ultimately flawed as it is built on a simplistic and scientific methodology which lacks a firm theoretical grounding and fails to appreciate the massive variance in the nature of territorial disputes around the world. Further, the approach's methodological focus on conflict makes it ill-suited to the study of territorial disputes in which conflict does not escalate beyond diplomatic barbs; the empirical absence of conflict in Japan's territorial disputes (revealed in Chapters Three, Four, and Five) provides little data for the territorial conflict approach to analyse, resulting in limited understanding: the approach can say almost nothing about how

or why Japan does what it does. By focusing on sovereignty rather than conflict, the sovereignty game allowed for a more nuanced understanding of the dynamics of Japan's territorial disputes. By providing an understanding of the history and context-dependent value of each of Japan's disputes the dissertation thus was able to make sense of Japan's complex motivations and behaviour in the disputes, without needing to reduce these issues to large-n numerals, as required by the quantitative territorial conflict approach.

We next saw that Fravel's theory is predicated upon perceived threats (internal and external) and perceptions of capabilities and the occupation of the territory (claim strength). While his theory is an excellent tool in understanding the material causes of cooperation and escalation in territorial disputes, his claim that it is a universally portable theory is hard to justify in the case of Japan's territorial disputes. As with the territorial conflict approach, this is due to the focus on conflict and the fact that, while he acknowledges that international law may influence territorial disputes, he does not include a role for law in his theory. The focus on conflict results in the assertion that threats, military power and the occupation of territory are the defining factors in such disputes; these are no doubt important, but Japan does not – and, under the present interpretation of Article Nine, cannot – use force in its territorial disputes. It is not the occupation of territory, but rather the ability to exercise sovereignty over that territory, which is crucial in Japan's disputes. So it is not solely military power which plays a defining role, but military, economic, and diplomatic capital – and the willingness to use these (based on the value of the territory) – which is determinative in Japan's disputes.

The specific research on Japan's territorial disputes covers a wide array of approaches and empirical foci, much of it providing empirical data for the case studies in this

dissertation; this Conclusion recaps some of the more comparable studies. The geopolitical approach taken by Emmers (2010) focused on nationalism, energy resources, and power distribution in order to explain the escalation or de-escalation of conflict in the Pinnacle Islands dispute. While the emphasis on the interplay of these factors does provide a convincing explanation for the escalations and de-escalations which take place over the years of his study, the realist framework relies on certain assumptions which require it to overlook key aspects of the dispute. While he recognises that “none of the parties is willing to compromise on the crucial point of sovereignty”, the absence of the use of force in these disputes (see above) means that the traditional realist framework cannot fully account for the behaviour of the states in Japan’s territorial disputes. By using a broader conception of power (capital) and focusing on sovereignty rather than escalation and de-escalation, this dissertation has taken a broader view of Japan’s territorial disputes, to provide thereby a deeper understanding of Japan’s behaviour.

Koo’s work (2005, 2009, 2010) applied economic interdependency to the Liancourt Rocks and Pinnacle Islands disputes. Again, the same problems derive from the focus on conflict, but also, the correlation between increased economic dependency and de-escalation appears spurious since, as we have seen, while interdependency increased progressively since Japan’s normalisation of relations with both South Korea and China, the most peaceful period in both disputes was the 1970s and 1980s, the most conflictual the 1990s and 2000s: when interdependency has been at its highest. This critique does not preclude a role for interdependency, but rather, as the three case studies show, the role of economics in general is deeply complex: in both the Liancourt Rocks and Pinnacle Islands disputes the economic value of the associated maritime territory has led to exercises of sovereignty which have escalated the dispute, while the Pinnacle Islands and the Northern Territories disputes

involved the use economic capital by both sides in order to further their positions in the sovereignty game.²⁰⁷

Wiegand's (2009) study provides interesting explanations of certain events and issues which China used in the territorial dispute as a proxy, linking it to other issues in which it managed to compel Japan to alter its policy. However, the concepts of issue linkage and coercive diplomacy cannot explain other incidents in the dispute, and do not account for the general trends of the dispute. For example, Wiegand suggests that, following the arrests of the activists who landed on Uotsuri in 2004, the Chinese pressure was due to issue linkage with Koizumi's Yasukuni Shrine visits rather than the landings themselves. The sovereignty game instead shows that, especially in light of the 2010 trawler collision incident, the severe reaction by Beijing was not due to issue linkage but rather the need to prevent Japan from exercising judicial sovereignty over Chinese nationals on or near the disputed islands due to the effect such an exercise would have on the sovereignty status quo of the dispute and China's claim to the islands.

We saw that Hagstrom's (2005a, 2005b, 2011) work applied the concepts of relational and quiet power to provide an alternative understanding of Japan's policy in the Pinnacle Islands dispute. In his 2005 study of the 1992 Territorial Waters Law and the incidents of 1996 he argues that they represent foreign policy success for Japan since, in each case, Japan emerged with effective control and reiterated its 'no dispute exists' line. Looking at the dispute from the long-term perspective of the sovereignty game, however, the events of 1992 and 1996 mark a watershed in China's approach to the dispute. China made a formal public

²⁰⁷ Examples of this include the cancellation of the ODA loans which forced China in the PNS in the Pinnacle Islands dispute, and the linkage made by Tokyo between economic aid and the resolution of the territorial dispute in the 1990s in the Northern Territories.

claim to the disputed territory in 1992 and in 1996 China (along with Taiwan) prevented Japan from doing something it would otherwise have done – recognising the lighthouse. If anything, it would seem as though China was exerting relational power over Japan rather than Japan exerting quiet power over China. Moreover, China continued on the course it laid out in 1992 and 1996, and few would argue that it did not improve its position in the dispute in the post-Cold War period overall (bearing in mind the dispute was dormant in 1990 and by 2010 China was preventing Japan from exercising sovereignty over the islands and the associated maritime territory).

Finally, Kimura and Welch's (1998) study of the Northern Territories rejected conventional notions of International Relations theory, instead demonstrating that Japan's interests in the dispute are "highly variable and inescapably idiosyncratic" (1998: 216). Their key conclusion was that while the generation of state interests is idiosyncratic and resistant to theory, once those interests are determined the patterns of state behaviour are amenable to theory: "if we seek theories of state behaviour that can help us identify patterns in international politics, we must look for those patterns not in *what* states want, but in how they go about pursuing them" (1998: 239-40). This dissertation does precisely that, using the sovereignty game to understand and explain *how* states go about securing sovereignty over disputed territory.

6.3 The Sovereignty Game: Theory and Findings

The sovereignty game – the approach employed in this dissertation – finds its niche, then, in the absence of empirical research on the concept of sovereignty and the role played by international law in territorial disputes in the literature. True, various studies have

acknowledged the role of law and the importance of sovereignty, but no studies have made these the focus of their research. This is largely due to the fact that two of the ‘big three’ international relations theories – realism and neoliberalism – are theoretically pre-programmed to bypass international law as either an epiphenomenon of great power politics (realism) or reduce it to the cooperation of rational-actor states cooperating to secure absolute gains (neoliberalism). Constructivism, specifically the constructivist approach to international law developed by Reus-Smit, recognises that “politics has constituted the international legal system, but it is in turn transformed by that system”. Drawing on Reus-Smit’s concept of the ‘legal realm’ – the nexus of law and politics, which alters the nature of international issues which enter it – this dissertation outlined the legal realm of territorial disputes: the sovereignty game.

The sovereignty game is predicated on the understanding that, in a given dispute, a state’s goal is to acquire sovereignty over the disputed territory. Thus, states seek to exercise sovereignty over the disputed territory, and to prevent the opposing state(s) from doing the same. Sovereignty, from the perspective of this dissertation, is a social construct which has three key aspects: recognition, authority, and territoriality. Sovereignty is not an objective fact, but a subjective construction; in order to be complete the state must have the capacity to effect its authority over a given territory and that territorially-bound authority must be recognised as sovereign by other states. Finally, sovereignty is the basis of international law. Like sovereignty, international law was created by states and is enforced by states, and is based upon reciprocal state interest.

As we saw, the ‘legal realm’ is the space states have created which alters the nature of issues, legitimises and delegitimises certain behaviours, and constitutes the range of options

open to states. The sovereignty game *is* the legal realm of territorial disputes; the construction of sovereignty provides the basis for understanding the dynamics of the game. States attempt to exercise their authority over the territory through exercises of sovereignty, and similarly seek to prevent other states from doing the same. They seek international recognition of their claims of sovereignty over a disputed territory, particularly the recognition of great or regional powers. Finally, the development of the concept of sovereignty – the mutual recognition of each other’s sovereignty – has created a world in which states abide by some basic rules: the acquisition of territory by force is prohibited and when it does take place it is rarely recognised by other states.

There are two final parts to the sovereignty game jigsaw: capital and value. Capital in this dissertation was defined as the resources which a state can bring to bear on a dispute in order to exercise or prevent the exercise of sovereignty over the disputed territory, or to acquire international recognition of its sovereignty over the disputed territory. This dissertation employed three forms of capital: diplomatic, economic and military. The value of the territory determines the extent to which a state will use its capital in a territorial dispute; if the territory is highly valued, then the state is more likely to use its capital. This dissertation defined four kinds of value: economic, symbolic, precedential, and strategic.

6.3.1 The Liancourt Rocks Dispute

The first case study to which the sovereignty game approach was applied was the territorial dispute between Japan and South Korea over the Liancourt Rocks. The economic and precedential value of the Liancourt Rocks provides the basis for understanding Japan’s

behaviour in this dispute. We saw that in 1996 Japan acquiesced in Seoul's effective *fait accompli*: the construction of the wharf on the rocks. However, the protest level was raised sufficiently that neither its legal claim to the rocks nor its sovereignty claim on the associated maritime territory were prejudiced. This was borne out by the 1998 Fisheries agreement in which, despite Seoul's *fait accompli* over the rocks themselves, South Korea did not enjoy any gains on the maritime territory issue. In fact some Korean scholars argued that the agreement resulted in Seoul acquiescing in the existence of the dispute, thus strengthening Japan's claim.

Throughout the subsequent decade the Japanese government maintained a low-level protest, thus preserving its position vis-à-vis the EEZ issue and the precedential value of the dispute. In both the 'Dokdo stamps' and the *Nihon Shidokai* attempted landing incidents, the Koizumi administration acted with restraint. However, in the 2006 hydrographic research issue it took a stronger stance in the sovereignty game. This incident highlights the importance of international recognition and confirms the hypothesis that the Japanese government was interested not so much in the rocks themselves but in the associated maritime territory; Seoul's attempts to name the undersea features of the disputed waters would give the Korean names international recognition, thus providing further legitimacy to South Korea's claim to the maritime territory. The brinkmanship of the hydrographic research incident also evinces the new, tougher position taken by Japan from the late Koizumi administration on – a feature which is also to be found in the Pinnacle Islands dispute.

This tougher stance was exhibited in later developments in the dispute, such as the increasing inclusion of the dispute in educational textbooks and the boycott of Korean Air.

The creation of Takeshima Day in 2005 (and the subsequent annual celebration beginning in 2006) was both a symptom and a cause of this new tougher stance. The day raised consciousness of the dispute among citizens and politicians alike, less through the actual celebrations themselves and more due to the severity of the reaction to them in South Korea. The extent of the change in sentiment was demonstrated by the fact that the central government wanted to prevent its celebration in 2006 and that, while there were no Diet members in attendance in 2006, by 2011 both DPJ and LDP members had attended the celebrations, giving speeches and calling for a return of the rocks. The implications of this change for the future of the sovereignty game are outlined later in this chapter, as is the relationship between this dispute and the Pinnacles, specifically in the toughening in stance from the mid-2000s on.

6.3.2 The Pinnacle Islands Dispute

While the Liancourt Rocks dispute highlighted the importance of understanding the value of the territory to the disputant states and the manner in which states vie for international recognition, the application of the sovereignty game to the Pinnacle Islands dispute between Japan, China, and Taiwan demonstrated the importance of acquiescence in and the prevention of exercises of sovereignty. Japan's MOFA-driven policy was to avoid direct exercises of sovereignty, prioritising instead good relations with its neighbours. This can be observed from the very beginning: in 1990 the dispute, which had remained dormant since its shelving in 1978, remerged when reports surfaced that the JCG planned to recognise the lighthouse on Uotsuri; the vehemence of Taipei's protests prevented the exercise of sovereignty, establishing the precedent that Japan would not exercise sovereignty over the islands if this caused damage to bilateral relations with its two neighbours.

Japan's response to China's 1992 territorial sea law was a form of political acquiescence in China's claims: despite enjoying considerable economic and diplomatic capital (as well as comprehensive military superiority), the Japanese government refrained from using it to pressure Beijing into rescinding the law. The law laid down a marker for China's future maritime territorial claims which were reinforced in 1996 when China reaffirmed the law as part of its ratification of UNCLOS. Japan also ratified UNCLOS in 1996, and with the Pinnacles lying in the middle of the substantial overlapping claims, the scene was set for further friction. This was provided by the activities of *Seinensha* and the second lighthouse recognition incident. On this occasion, the government again decided against a state exercise of sovereignty, and Prime Minister Hashimoto and Foreign Minister Ikeda's comments, explicitly linking the reactions of the other parties and the need for good relations with the decision to drop the lighthouse recognition question, served to reinforce the sovereignty status quo.

In the years after the 1996 incident Japanese politicians began voicing their disapproval of the government's apparently weak stance in the dispute; this criticism increased as Chinese research vessels began operating in Japan's claimed EEZ. In the end it was not the central government, but rather an internal LDP committee, which used Japan's economic capital to force Beijing into the PNS. That Beijing gave in to the demands over the disputed maritime territory suggested that the waters were still somehow more 'Japanese'. However, within a short time Beijing had disregarded the PNS and continued its push for sovereignty over the disputed waters; by 2004 Beijing was protesting Japanese operations in the disputed maritime territory while Chinese research vessels were operating in the Pinnacle Islands own territorial waters. The extent of Japan's political acquiescence in Chinese

activities was highlighted by the fact that in Japan both the media and politicians were openly talking about a Chinese *fait accompli*.

Japan's approach to the Pinnacle Islands dispute changed dramatically under the Koizumi administration; under Koizumi, good relations with Japan's neighbours were not a priority. In 2002 the remaining islands in the group were leased by the Ministry of Defence and in 2005 the lighthouse on Uotsuri was finally recognised. These were both direct state exercises of sovereignty and the 2005 recognition actually reversed a routinised precedent. This reversal was achieved by presenting China with *post facto fait accompli*, which prevented Beijing (or Taipei) from issuing the usual threats or warnings. The Koizumi administration also took a stronger line on the maritime dispute, granting Teikoku Oil permission to drill adjacent to existing Chinese gas fields and enacting legislation to protect the oil and gas rigs and their workers – something which successive governments had hesitated in doing for decades.

The Koizumi administration not only reversed a major sovereignty precedent from the 1990s, but in 2004 it attempted to fundamentally alter the sovereignty status quo by establishing a major precedent of its own. State-backed Chinese activists landed on Uotsuri and were arrested and sent to the public prosecutors for alleged crimes committed while on the island. The implications of this action were not lost on Beijing, which weighed in to warn of serious consequences should the prosecution go ahead. The activists were quickly released, and with a ready-made pretext so that there was no loss of face on either side. The same could not be said of the 2011 collision incident. The trawler captain was held for seventeen days, during which time Beijing employed diplomatic, military and economic capital to unleash 'shock and awe'. As in 2004, Japan's exercise of jurisdictional sovereignty in the

dispute would have radically changed the sovereignty status quo, something which Beijing could not allow. However, the fact that the Kan administration did push ahead with its attempts to prosecute, then ignominiously back-down, served to reinforce the sovereignty status quo rather than revise it: Japan did not enjoy unfettered sovereignty over the islands or their waters, making the reiteration of the ‘no dispute exists’ line ring hollow.

6.3.3 The Northern Territories Dispute

In the Northern Territories dispute we saw that Japan has taken an uncompromising approach to the issue of sovereignty over the four disputed islands: on every conceivable sovereignty issue, the Japanese government has sought to prevent *any* direct or indirect recognition of Russian sovereignty by *any* actor, from its own citizens to third-state companies. The end of the Cold War put Japan in an ostensibly powerful position; it enjoyed plentiful diplomatic and economic capital while the disintegrating Soviet Union and its successor state, the Russian Federation, was riven by economic and political upheaval. However, Japan was unable to translate this capital into success in the sovereignty game. While Gorbachev agreed to the *visa nashi* programme, effectively recognising the special sovereignty position of Japan vis-à-vis the islands, he was not in a position to negotiate over the full sovereignty of the islands themselves. In 1992 the government used its capital to prevent third-party recognition of Russian sovereignty over the islands and their maritime territory by effecting the cancellation of the Shikotan lease contract and the South Korea Russian Fisheries Agreement.

From 1990-3 Japan attempted to use G7 economic aid to Russia to try to pressure Moscow into handing over the islands, but the G7 states’ patience ran out and Japan was forced to suspend the linkage between economic aid to Russia and the dispute. The linkage

remained on a bilateral level until 1997, but the value of the islands to Russia was sufficient that, despite the economic incentives, Moscow would not hand over sovereignty; in contrast, Russia attempted to push back and re-establish its unfettered sovereignty over the islands. However, it was unable to do so effectively: it could not fund its own infrastructural plan while the calls for foreign investment were left unanswered by states and companies unwilling to alienate Japan. By the second half of the 1990s Russia's authority - its ability to exercise sovereignty over the islands – was in question, as they became dependent on Japanese assistance. Moscow lacked the capacity to realise its infrastructural plans for the islands; indeed it lacked even the capacity to provide a steady electricity supply to the islands. In 1998 the Japanese government was successful once again in reversing a South Korea-Russia fisheries deal while at the same time using large amounts of economic capital to secure privileges in the Russian-controlled waters around the islands.

The Krasnoyarsk process, which began in 1997 with great hopes for the resolution of the dispute and the signing of a peace treaty, ultimately fell apart; despite the various imaginative compromises suggested, fundamentally neither side would compromise on the basic issue of sovereignty. The arrival of Vladimir Putin and the upswing in the Russian economy would change the nature of the sovereignty game entirely. The rejection of Putin's offer of Habomai/Khabomai and Shikotan saw the end of meaningful negotiations on the dispute, and throughout the 2000s Moscow gradually regained its capacity to exercise sovereignty over the islands. By 2011 Moscow was investing in infrastructure and renewing its military presence in the disputed islands, while Japan had lost diplomatic capital with its neighbours due to events in its other disputes, with the result that Moscow's calls for international investment in the islands seemed finally to be answered. Even on a domestic level, Japanese citizens themselves were beginning to undermine the government's

sovereignty stance by travelling to the islands using a Russian visa. By the end of the period under examination Japan was left with few options, struggling to maintain its absolutist approach to the sovereignty game despite dramatically altered dynamics of the dispute.

6.4 Japan's Approach to its Territorial Disputes

What we see above, then, is how Japan takes a different approach to the sovereignty game in each of its disputes, dependent primarily upon the historical background and value of the territory. The historical background of the Liancourt Rocks dispute means that the rocks have a massive symbolic value to South Korea. To Japan, in contrast, the value lies primarily in the disputed maritime territory and the precedential aspect of the legal claim. Thus, Japan's approach to the sovereignty game is formalistic and legal, and does not involve serious attempts to regain sovereignty over the rocks themselves. The hydrographic research incident, compared with the Japanese response to the wharf construction and the 'Dokdo Stamps', among others, demonstrated that Japan is willing to push its sovereignty claim through exercises of sovereignty *only* when its sovereignty over the disputed waters is threatened. As the dispute is a highly emotional issue for South Korea, it responds vigorously to any perceived attempt by Japan to exercise sovereignty over the rocks, from Takeshima Day to the textbook issue. The hydrographic research incident showed Seoul was willing to use force to prevent Japanese exercises of sovereignty even in the vicinity of the rocks. In contrast, Japan's formalistic legal approach, while well suited to the maintenance of Japan's interests in the dispute, infuriates South Korea due the moral sense that, by legalising the claim to the rocks – which are perceived to have been the 'first step' in the colonisation of

Korea – Japan is somehow invalidating the history and national pride of the nation. Justice in the Korean sense in this dispute is moral justice; justice for Japan is entirely legal.

The situation is inverted in the Northern Territories dispute; here the motivation for Japan lies primarily in the symbolic value of the territory. The dispute has defined Russo-Japanese relations precisely because of its subjective nature, with the result that, just as South Korea takes an absolutist stance on Japanese exercises of sovereignty in the Liancourt Rocks dispute, so, too, does Japan fight every Russian exercise of sovereignty tooth-and-nail. Russia, for its part, does not quite take the formalistic legal approach which Japan employs in the Liancourt Rocks dispute, rather its approach is pragmatic: the islands are Russian, some of them can change hands if Japan is willing to make a deal. Ironically, just as the Japanese approach to the Liancourt Rocks infuriates South Korea, so too does the Russian approach to the Northern Territories infuriate Japan. In the Northern Territories dispute justice for Japan is moral justice; for Russia justice is the law of the jungle.

Japan's approach to the Pinnacle Islands dispute has more in common with its approach to the Liancourt Rocks than to the Northern Territories. The dispute is more evenly balanced, however, with the islands having symbolic, economic, precedential, and strategic value to both sides. Japan has taken a generally formalistic legal approach, basing its claim in international law and extending that legal logic to proclaim its EEZ as far as the median line, regardless of the apparent 'unfairness' of this extension.²⁰⁸ For the first decade of the dispute it appears the Japanese government reasoned that a legally legitimate claim backed up by effective occupation on the most minimal scale would be sufficient to maintain sovereignty over the islands without souring relations with its two Chinese neighbours.

²⁰⁸ Due to the small islands and tiny coastline which Japan uses to generate its claims, compared to the continental coastline which China uses.

However, China's approach, based on salami tactics, took advantage of Japan's 'hands-off' sovereignty stance, gradually increasing its ability to exercise sovereignty over the maritime territory while compromising Japan's ability to exercise sovereignty over both the maritime territory and the islands.

We saw that Japan's approach to both the Pinnacle Islands and the Liancourt Rocks disputes shifted in the 2000s. This dissertation argues that this shift was due to the fact that, in the decade since 1996, Japan's position in the sovereignty game in both disputes had weakened significantly and that the value of the territories had increased. As far back as the 1992 Territorial Waters Law, internal LDP opposition had voiced concerns over the gradual erosion of Japan's sovereignty in the Pinnacle Islands dispute, and as time passed this opposition spread across various parties and to Japan's perceived weak position in Liancourt Rocks dispute. The more Japan's position in the sovereignty game in both disputes was eroded, the more the opposition grew, until 2000 when an internal LDP committee intervened to suspend the ODA loans to China, forcing it in the PNS. This act failed, and Japan continued to lose its position in the Pinnacles dispute while maintaining its (post-1996 weakened) basic position in the Liancourt Rocks disputes.

Meanwhile, in the post-Cold War period the ratification of UNCLOS and the process of symbolic entrenchment had caused the value of the disputed territories, particularly the Liancourt Rocks and the Pinnacle Islands, to increase dramatically. Thus the loss of position in the sovereignty game and the increased value of the territories saw a tougher, more aggressive stance in the disputes from the mid-2000s on. This is evinced in the Liancourt Rocks dispute by the fact that the government now responds to the kind of South Korean exercises of sovereignty which in the past it would simply have formally protested: the 2005

‘Dokdo Stamps’ were protested, but no action was taken, while in 2011 Korean Air was boycotted for flying to the rocks and back.²⁰⁹

6.5 The Sovereignty Game

This penultimate section of the dissertation argues that the sovereignty game approach allows for a thorough and nuanced understanding of Japan’s territorial disputes and assesses the impact of the research findings on the sovereignty game itself. Rather than focusing on escalation, economic interdependency, geopolitics or any of the other approaches we have seen, this dissertation focuses on sovereignty; its argument is that Japan’s territorial disputes can best be understood through the manner in which the states involved attempt to exercise sovereignty, and prevent the other state(s) from doing the same. Factors such as military power and economics do matter, but only to the extent in which they play a role (as capital) in the sovereignty game. By assessing the value of the disputed territory, thus outlining the motivations for the states involved, the sovereignty game then allows us to better understand what often at first appear to be petty back-and-forth-between the states in a given dispute. For example, the 1992 Shikotan lease in the Northern Territories dispute may initially appear to be of little consequence, but through an understanding of the massive symbolic value of the territory and Japan’s absolute approach to the sovereignty game, we can see that preventing the Shikotan lease was imperative for Japan. It prevented any form of third-party recognition and made other third-party actors aware that the Japanese government would be highly displeased should they involve themselves in any economic activity on the disputed

²⁰⁹ Symbolic though this boycott may have been, it was not the kind of action which any of the administrations prior to Koizumi would have taken. In fact, even under Koizumi Japan’s acted with restraint such that such an action did not take place.

islands. This prevented any *de facto* recognition of Russia's sovereignty and sent a message to Moscow that the government was taking the dispute and any recognition or exercise of Russian sovereignty seriously. Yet, in the long-term, despite its hardline approach to sovereignty, Japan's position in the sovereignty game at the time of writing appears weaker than, for instance, at the time of the Shikotan lease. So what do these three case studies tell us about the sovereignty game itself?

6.5.1 Recognition

In Chapter Two we saw that sovereignty has three key aspects: recognition, authority and territoriality. Territoriality is a given in this research; it is, after all, a dissertation on territorial disputes. But the three case studies have provided interesting findings on the varying impact of recognition and authority (the exercise of sovereignty). Successive Japanese governments worked hard in the Northern Territories dispute to prevent any recognition of Russian sovereignty, whether by another state, a company from a third-state, or indeed by its own citizens. Yet, despite this absolutist approach to sovereignty, it was unable to achieve its goals in the return of all four islands, and finished the period under analysis in a weaker position than it began. What, then, does this tell us about the recognition of sovereignty? First, the context must be taken into account: Russia takes a pragmatic approach to its territorial sovereignty. This may be due to the frequent alterations of Russia's (and the Soviet Union's) borders. As we saw in Chapter Two, the Soviet Union controlled the Baltic States for over forty years despite the absence of international recognition of its sovereignty. Thus, we can conclude that the international recognition of its sovereignty matters less to Russia than it does to other states, or at least to Japan.

In terms of direct influence on the sovereignty game, recognition *did* prevent Russia from exercising sovereignty over the disputed islands during the 1990s and the early 2000s – Moscow was incapable of exercising its authority over the islands and needed the help of third parties and states, which the Japanese government prevented. There were a number of factors behind the change which took place in the 2000s, including Putin’s rise, Russia’s economic growth and events in the other disputes which hardened South Korea’s and China’s attitude to Japan. There is another factor, however, which may be of even greater importance: time. While the acquisition of territory through the use of force is prohibited and has been delegitimised internationally, the continued and peaceful exercise of sovereignty over that territory by a state may result in *de facto* recognition of that sovereignty by other states; particularly when the geopolitical situation changes during that time. We saw how, with the end of the Cold War, the European states were reluctant to allow Japan’s position on the dispute to interfere with other issues; we also saw that China moved to a neutral position on the dispute in 1991. By the late 2000s, the US was the only state which openly supported Japan, and there were suggestions that China and South Korea might directly invest in the islands. Thus the combination of the passage of time and a geopolitical shift contributed to the gradual *de facto* recognition of territorial sovereignty and the inability of Japan to play a strong hand in the sovereignty game.

Furthermore, there appears to be a correlation between the symbolic value of the territory and the importance of international recognition of sovereignty over that territory. The symbolic value of the Northern Territories to Russia is much less than it is to Japan, and its much less than that of the Liancourt Rocks to South Korea. The two cases of the most extreme approaches to the recognition of sovereignty were Japan in the Northern Territories

dispute and South Korea in the Liancourt Rocks dispute. It appears that states care more about international recognition of territory which is of great symbolic value than they do about recognition of territory which is primarily of economic or strategic value.

We can conclude, then, that international recognition matters, but its importance is context dependent: it depends on whose recognition it is and what this recognition entails. It appears that passive recognition from a distant state provides legitimacy but little else, while active non-recognition by a powerful neighbour can have a major impact on a dispute. Finally, recognition alone cannot have a major impact on the sovereignty game; recognition must be accompanied by the exercise of sovereignty. South Korea's *fait accompli* in 1996 and China's erosion of Japan's sovereignty over the disputed maritime territory were accomplished by the exercise of sovereignty. So what do the case studies tell us about the exercise of sovereignty?

6.5.2 Authority: Exercises of Sovereignty

More than recognition, we saw that in each dispute it was the direct exercise of sovereignty which had the biggest impact in the sovereignty game. South Korea's *fait accompli* in 1996 came about through the construction of the wharf – the direct state exercise of sovereignty – and left a sovereignty status quo which, for the rocks themselves at least, could not be overturned by Japan short of invasion. China's salami slice tactics were based on the gradual and progressive exercise of sovereignty by its research vessels, first in the disputed maritime zone, then in the territorial waters of the islands themselves. Japan was only able to reverse this erosion of its sovereignty situation when it began to directly exercise sovereignty itself,

through, for example, the recognition of the lighthouse and granting permission to Teikoku Oil to drill. Finally, in the Northern Territories dispute Russia's inability to exercise sovereignty in the 1990s allowed Japan to assert its own sovereignty, while in the 2000s Russia was able to reverse this situation due to various factors, including its high economic growth and strong position as an energy exporter.

This leads us to an important question: what was the role of economic, diplomatic, and strategic capital in enabling Japan and the other states to exercise sovereignty, or to prevent the exercises of sovereignty? Without economic capital, Russia was unable to exercise effective sovereignty over the Northern Territories, while due to its economic capital Japan was able to assert its sovereignty; it also employed both economic and diplomatic capital in its attempts to prevent recognition of Russian sovereignty. If we indulge in some counterfactual thinking, it is highly possible that, *ceterus paribus*, if Japan had not ended the linkage between economic relations and territory in 1997 and if the Russian economy had not boomed in the early 2000s, Japan could have been in a position to use its economic capital to regain all four islands. Capital played less of a role in the other disputes; it was more a matter of each state having sufficient basic capital to enforce its claim. Thus Japan had the well-equipped JCG which could patrol the disputed waters around the Pinnacles and South Korea used its navy and coast guard to enforce its sovereignty on and around the Liancourt Rocks.

It seems from the case studies that the capital used in the exercises of sovereignty mattered less than the manner in which the exercises of sovereignty were executed. That is to say, when states acted, without deliberation or prior warning, their exercises of sovereignty were most likely to be accomplished. An obvious example of this is the lighthouse recognition in 2005: the Koizumi administration managed to overturn a well-established

sovereignty precedent by presenting its exercise of sovereignty to Beijing as *post facto fait accompli*. China's actions in the disputed maritime territory also follow this logic; there were no prior announcements or discussions of its drilling plans in the East China Sea, and Japan found out about them only after they had begun. The construction of the wharf, the visit by President Medvedev to the Northern Territories (while there was prior speculation it still caught Japan unaware), both of these were exercises of sovereignty which also follow this pattern and were successful in setting precedents and impacting on the sovereignty status quo of the disputes.

6.5.3 A Universal Theory?

The final point to be made here about the sovereignty game approach regards its potential portability. One of the criticisms made about Fravel's approach to China's territorial disputes was that he suggested it was universally applicable. The dissertation has shown that such an approach is ill-suited to understanding Japan's territorial disputes in the post-Cold War period due to the relative lack of conflict, military threats, and so on. However, this dissertation does not suggest that the sovereignty game approach is universally applicable either. As Wendt suggested, mutual recognition by states is the basis of sovereignty, which leads to an international state system whereby interactions between states, even when they turn violent, "are played out within the terms of the sovereignty game" (Wendt, 1992: 415). It is not always the case that states act within the terms of Wendt's sovereignty game. Existential territorial disputes, such as that between Serbia and Kosovo or North and South Korea, are not suitable for sovereignty game analysis because the stakes are so high and states prioritise self-preservation over international law.

Many, if not most, historical territorial disputes are also unsuitable to the sovereignty game approach, for the same basic reason. The sovereignty game only operates when international law is broadly respected and the rules of the Wendtian sovereignty game – based upon mutual recognition – are followed. Where states have any form of universal ambitions (such as Nazi Germany or the Soviet Union) the sovereignty game approach cannot be applied due to the lack of mutual recognition of sovereignty. Finally, it may be difficult to apply the sovereignty game approach to territorial disputes which feature frequent violent conflict. As we saw in Chapter Two, the sovereignty game approach is founded upon the relationship between international law and international politics. If, in a dispute, international law is flouted to the extent that it loses relevance, then that dispute obviously cannot be adequately understood using the sovereignty game. Bearing all these caveats in mind, this dissertation proposes that the sovereignty game approach can be applied to territorial disputes in which mutual sovereignty is recognised and international law is broadly respected. Examples of such disputes include the Hans Island dispute outlined in Chapter Two (Section 2.8.3), the Spratly Islands dispute in the South China Sea and the Preah Vihear Temple dispute between Thailand and Cambodia. Although the latter two have witnessed violent conflict, this conflict has been sporadic and remained at a relatively low level: all three disputes involve exercises of sovereignty and international recognition of sovereignty claims.

6.6 Reflections: International Politics and International Law

The penultimate section of this dissertation first takes a reflexive look at the relationship between international law and international politics in light of the findings outlined above

before making some suggestions for future research. The first part, then, is more subjective reflection on, rather than objective analysis of, the dissertation. International law has played a major role in each of Japan's territorial disputes, and, perhaps counter-intuitively, this role has not necessarily been positive. The most obvious impact of international law is probably that of the ratification of UNCLOS; both the Pinnacle Islands and Liancourt Rocks disputes were, to varying degrees, dormant before the advent of the 200NM EEZ. The economic value of the disputed maritime territory surrounding both disputed territories is a major factor in each dispute, and its absence contributed to the shelving of both disputes in years past.

More problematic than the provisions for these EEZs was the fact that UNCLOS did not include definitive measures for the delimitation of EEZs or for their arbitration. This resulted in both Japan and China being in a position to claim legal backing for their contrasting claims to the East China Sea, and to South Korea and China both being able to opt out of obligatory dispute resolution mechanisms in 2006. There may be an argument that states would have been less likely to ratify UNCLOS had it contained definitive and compelling means of dispute resolution and EEZ/continental shelf delimitation, thus reducing the actual jurisdiction of UNCLOS itself; after all, is it not better to have incomplete or faulty law than no law at all? This argument is unpersuasive: the overwhelmingly negative impact of UNCLOS on the Pinnacle Islands and Liancourt Rocks dispute is proof of this. For example, if UNCLOS had not been ratified by Japan or China in the East China Sea dispute, neither state could so dogmatically repeat the mantra that their maritime claims are based in international law, enabling them to seek only to maximise their claims and refuse to enter productive negotiations. However, had the UNCLOS included such provisions, and been ratified, the Pinnacle Islands dispute would not feature the economic element and thus remain marginal; indeed, given the low value of the territory (bearing in mind the symbolic value has

developed as a consequence of events which took place due to the economic value) in such a case, the states would have been far more amenable to cooperation and perhaps there would be no dispute today. This also holds for the Liancourt Rocks dispute, given that the value of the rocks to Japan has been mainly economic and precedential (values which would have been erased) – it is likely that, eventually, the government would simply have rescinded the claim.

Of course, UNCLOS did not arise out of thin air. While it is a treaty (rather than customary) law, it is still based upon the customary law which preceded it; it reflects the ocean enclosure movement which had been gaining momentum since the 1950s (Manicom, 2010: 310). This leads us to a second and related point: how just is the international law of territorial disputes? In some senses it appears to be developing in a just manner: for example, the jurisprudence that small, remote islands with small coastlines are of less consequence than long continental coastlines in the resolution of maritime territorial disputes (see Chapter Two, Section 2.5.3), seems to be inherently fair. But what of the other pillars of the law: the principle of effective control – which remains the primary principle (after treaties) for the determination of sovereignty over a disputed territory in a legal arbitration and one of the reasons why states are so concerned over acquiescence and recognition of sovereignty in a dispute – crystallised during the colonial era, a time when states acted in ways that would under no circumstances today be considered just or moral. In fact, the Clipperton Island Case, one of the key cases in developing the principle of effective occupation (see Chapter Two, Section 2.5.2), was arbitrated by King Victor Emmanuel III of Italy: the man whose reign included the entire period of fascism, and during which he also acquired the titles of Emperor of Abyssinia and King of the Albanians following Italy's invasion and annexation of those

two states. The origins and nature of the principle of effective control suggest that while it may be legal, it is not necessarily just.

6.7 Suggestions for Future Research

In the course of seeking to answer the research questions posed above, this dissertation has raised a number of other questions which could provide fruitful directions for future research in both International Relations and Japanese Studies. To start with, further research is required to establish the extent to which the sovereignty game approach is portable. This could be tested by applying the approach to a dispute which is relatively similar, as in the case of the Spratly Islands dispute: it is located in East Asia, the islands are small and remote, and there is little history of human habitation. Further research could spread out in two directions: the first would include disputed island territories globally, such as the Hans Island and Falkland Islands disputes (see Chapter Two); the second – which would require some further theoretical refinement – would be to apply the sovereignty game approach to land-based disputes, such as the aforementioned Preah Vihear Temple dispute, and to more complex disputes such as the situation on the island of Cyprus.²¹⁰

We saw in Japan's territorial disputes that international recognition appeared to be much less determinative than the effective exercise of sovereignty; we also saw that states which value disputed territory primarily for symbolic reasons are more likely to seek international recognition than those who value it for economic, strategic, or precedential

²¹⁰ While Cyprus is divided into two states, Northern Cyprus and the Republic of Cyprus, only the latter state is internationally recognised. Northern Cyprus is recognised only by Turkey, which maintains a military presence there. This case would be a fascinating opportunity to develop the relationship between authority and recognition.

reasons. Thus any study of these or other territorial disputes using the sovereignty game approach would be able to make a significant contribution to the IR literature by paying special attention to the respective and interrelated roles of international recognition and authority – the exercise of sovereignty. Does international recognition matter in a territorial dispute? What types of exercises of sovereignty are most likely to further a state's position in the sovereignty game? In what sovereignty circumstances will a state resort to the use of force in order to exercise sovereignty in a territorial dispute? These are all questions raised by this dissertation, and which would provide potential bases for future research on territorial disputes.

In terms of Japanese Studies, the research has illustrated a number of stark differences in the Japanese government's policy towards its territorial disputes over the period covered by this dissertation. Of particular interest is the shift in its policy towards both the Liancourt Rocks and Pinnacle Islands disputes from the mid-2000s onwards. While the broad coverage of this dissertation has prevented a detailed examination of the reasons for this shift, further analysis of the different actors involved would help to shed light on the future of Sino-Japanese and South Korean-Japanese relations: the maritime aspect of the disputes, while of course significant economically, is easier to manage and indeed resolve than the nationalist aspect. The effects of rising nationalism are unpredictable; however, we can at least say that further symbolic entrenchment in either dispute could lead to serious escalations of dispute into a bilateral or multilateral conflict, possibly far beyond anything the disputes have hitherto witnessed.

A further and related area of study which would benefit from further research is Japan's territorial dispute policy-making process itself. Japan's Liancourt Rocks and

Pinnacle Islands policy seems to have been MOFA dominated during the 1990s, after which politicians began to wrest control away from the ministry. For example, the recognition of the lighthouse during the Koizumi administration had been passed to MOFA, and rejected, several times before. Similarly, it was MOFA which prevented Japanese citizens from producing their own 'Takeshima Stamps', even going as far as to contact those who had managed to do so in order to ask them to return the offending stamps. The policy-making process from the mid-2000s onwards seems to have been led more by the politicians than the ministries, particularly under the Koizumi administration and since the DPJ have taken power. What is a particularly fruitful line of enquiry is the policy of the DPJ administrations, which has not changed significantly from the LDP policy, particularly from Koizumi onwards. To what extent, then, does this represent the DPJ's own policy on the territorial disputes rather than an institutional hangover from the previous LDP administrations? Is the process of symbolic entrenchment deepening, and if so, how does this relate to the broader trends of rising nationalism and the gradual normalisation of Japan?

Thus, closer examination of the various actors and positions in the policy-making process would provide a more nuanced understanding of who was responsible for Japan's behaviour in its territorial disputes, why they acted the way they did, and what this means for both Japan's foreign policy in general and for the future of the territorial disputes in particular. It is hoped that this dissertation has shed some light on these questions, and provided a bases for further research on these topics. Moreover, it is hoped that the dissertation has provided an alternative reading of Japan's territorial disputes; one which takes into account the way in which law and politics interact to condition state behaviour, which recognises the importance of sovereignty as both a means and an end in territorial disputes, and one which accounts for the absence of militarised conflict in Japan's territorial disputes.

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Appendix: Interview Dates and Interviewees

(in chronological order)

15 July 2010	Fukuhara Yūji, Professor, The University of Shimane
16 July 2010	Sugihara Ryū, Shimane Prefectural Advisor on the Takeshima Issue
16 July 2010	Jōdai Yoshirō, Shimane Prefectural Assemblyman
22 April 2011	Nakama Hitoshi, Ishigaki City Councillor
26 April 2011	Gabe Maasaki, Professor, University of the Ryukyus
6 July 2011	Hakamada Shigeki, Professor, Aoyama Gakuin University
6 July 2011	Gregory Clark, Director of Akita University
3 October 2011	Shimotomai Nobuo, Professor, Hosei University