

Understanding the Senkaku Islands through the Materials on the Senkaku Islands Archives Portal

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Introduction

This column reviews Japan's territorial rights to the Senkaku Islands from the perspective of international law, based on the materials available at the Senkaku Islands Archives Portal (https://www.cas.go.jp/jp/ryodo_eg/shiryo/senkaku/index.html). This website presents documents and materials that have been collected as a part of a project to confirm, collect, and compile materials showing the historical facts concerning the Senkaku Islands. This project, commissioned by the Office of Policy Planning and Coordination on Territory and Sovereignty, was conducted from FY2014 to FY2019 by the Okinawa Peace Assistance Center and Streamgraph Inc.

This column introduces materials that have been collected in this project, in particular those relating to the following two points: firstly, developments in roughly ten years leading up to the January 1895 cabinet decision concerning the Senkaku Islands' incorporation into Japan's territory, and secondly, China's acquiescence with regard to the U.S. military's designation of gunnery and bombing ranges on two of the Senkaku Islands, Taisho Island and Kuba Island, after World War II.

1 January 1895 cabinet decision concerning the Senkaku Islands' incorporation

Okinawa Prefecture was established in April 1879. After carefully ascertaining that the Senkaku Islands had never been inhabited and that there were no trace of having been under a control of any state including China through deliberation within the Okinawa Prefecture including a field survey of the islands (see [Document 1](#)), the Japanese government incorporated the Senkaku Islands into Okinawa Prefecture through a January 1895 cabinet decision to erect markers (see [Documents 7 and 8](#)). This decision was taken out of a need to manage the Senkaku Islands due to increased use of the surrounding waters as fishing grounds (see [Documents 3 and 4](#)).

The process leading up to the January 1895 cabinet decision on incorporation of the islands was not at first directed by the central government in Tokyo, but rather began with a petition by Okinawa Prefecture to incorporate the islands into the Prefecture, which had received a request to do so by the Yaeyama Islands Public Office, in light of the facts that local fishermen had begun fishing around the Senkaku Islands. Okinawa Prefecture's petition to the central government was submitted in January 1890 (see [Document 2](#)), but the government was not prompt to approve the petition. Thereafter, when fishing activities around the Senkaku Islands intensified (see [Document 5](#)), Okinawa Prefecture petitioned the central government again in November 1893 (see [Document 6](#)).

This incorporation of the islands qualifies as an "occupation" under international law. Occupation is a form of acquiring territorial title to turn terra nullius into part of the occupying

state's territory. This occurs when the state acts before any other state to take effective control of the land that does not belong to the territory of any state, with the intent of controlling the land as sovereign territory. Territorial title means facts that are considered to be a legitimate basis for territorial sovereignty¹.

Discovery of an unknown land only amounts to inchoate title. Within a reasonable time after the discovery, the claim must be supplemented by effective control of the discovered land (see the Arbitral Award in the 1928 Island of Palmas Case²).

Document 1:
"Overview of the Investigation and Survey of Uotsuri and Two Other Islands (Copy)," ("On the matter of erecting territorial markers on uninhabited islands scattered between Okinawa Prefecture and Fuzhou in the Qing Dynasty"; "Kobun Betsuroku, Ministry of Home Affairs, 1882-1885, Vol. 4, published 1885"; report dated November 4, 1885), (from the National Archives of Japan), (posted at the Senkaku Islands Archives Portal).

This is a report on a Senkaku Islands field survey by Hyogo Ishizawa, an official of Okinawa Prefecture who joined the prefecture's 1885 field survey of the islands. A six-person survey team, including Ishizawa, landed on Uotsuri Island, where they investigated the island's topography and potential for development.

Document 2:
"Ko No.1: Inquiry concerning the matter of the uninhabited islands; Kuba and Uotsuri Islands"; "Miscellaneous Matters Related to Imperial Territory"; January 13, 1890 (from the Diplomatic Archives of the Ministry of Foreign Affairs of Japan), (posted at the Senkaku Islands Archives Portal).

Fishermen from Okinawa Prefecture began entering the waters around the Senkaku Islands in or around 1889. At that time, jurisdiction over the Senkaku Islands had not been established. Governor of Okinawa Kanji Maruoka petitioned the central government (through Aritomo Yamagata, Minister of Home Affairs [and concurrently Prime Minister]) to give the Yaeyama Islands Public Office (present-day Ishigaki City Hall) jurisdiction over the Senkaku Islands out of "a need to control the fisheries."

Document 3:
"Documents concerning the Yaeyama Islands - Kuba Island" (produced between December 1889 and April 1890), (from the Okinawa Prefectural Library), (posted at the Senkaku Islands Archives Portal).

These administrative documents were kept by Tadao Hanawa, who worked at the Yaeyama Islands Public Office (now Ishigaki City Hall) as an official of Okinawa Prefecture. They include interview surveys on the fishing industry in the waters around the Senkaku Islands. The documents state that a total of 78 people had traveled to Kuba Island and Uotsuri Island in the Senkaku Islands

¹ Methods of obtaining territorial title other than occupation are accession, cession, prescription, and annexation.

² Island of Palmas Case, Award, *Reports of International Arbitral Awards*, Vol. II, pp. 843-846 (available at https://legal.un.org/riaa/cases/vol_II/829-871.pdf).

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by the time that the survey was conducted. In one of the documents, the Director of the Yaeyama Islands requests the incorporation of the Senkaku Islands into the jurisdiction of the Yaeyama Islands Public Office.

Document 4:
"Okinawa Prefectural Police Statistics in the year of 1891" (instructions dated December 11, 1891; published in a compilation report on December 7, 1892), (from the National Diet Library, Japan), ("2019 Final Report on Research of Documents concerning the Senkaku Islands," page 32)

This is an annual report compiling reports from sections of the Okinawa Prefectural Police. In December 1891, Yaeyama Islands Police Station received an instruction from the Governor of Okinawa Prefecture to provisionally place the Akon-Kubashima Islands (an old and local name for the Senkaku Islands) under the police station's jurisdiction.

The January 1895 cabinet decision on the incorporation of the islands was not a sudden beginning to Japan's exercise of jurisdictional authority. Rather, this report shows that, based on the fact that the waters around the Senkaku islands had been actively used as fishing grounds, the Okinawa Prefectural Police had been making attempts to control the fishing activities there since before the cabinet decision.

Document 5:
"Mission statement for undertaking marine business around the uninhabited islands" (produced in 1893), (from the Okinawa Prefectural Archives), ("2019 Final Report on Research of Documents concerning the Senkaku Islands," page 34)

A fishing expedition around the Senkaku Islands was planned by a fishermen's organization led by Tadashi Noda, a former samurai from Kumamoto Prefecture. The mission statement states, "(We) have decided to engage in fishing operations around the Senkaku Islands, uninhabited islands lying between the Yaeyama Islands and Taiwan." Noda's fishing expedition to the Senkaku Islands was reported in the Yomiuri Shimbun, the Kyushu Nichinichi Shimbun, and "Exploration of Southern Islands" by Gisuke Sasamori (posted at the Senkaku Islands Archives Portal).

Document 6:
Follow-up petition by the Governor of Okinawa Prefecture on erecting territorial markers, ("Ko No. 111"; "Miscellaneous Matters Related to Imperial Territory"; submitted on November 2, 1893), (from the Diplomatic Archives of the Ministry of Foreign Affairs of Japan), (posted at the Senkaku Islands Archives Portal).

Governor of Okinawa Prefecture Shigeru Narahara again petitioned the central government (through Minister of Home Affairs Kaoru Inoue and Minister of Foreign Affairs Munemitsu Mutsu) for the incorporation of the Senkaku Islands into the Prefecture and the erection of territorial markers out of a need to control the further increasing fishing activities operating around the Senkaku Islands. The document states that the control is necessary in light of the situation in which "(r)ecently, however, people are coming to the islands to attempt fishery and other pursuits."

Document 7:
Written request by the Minister of Home Affairs for a cabinet meeting ("Hibetsu No. 133 - On the matter of erecting markers"; "Kobun Ruishu, Vol. 19, 1895"), (from the National Archives of Japan), (posted at the Senkaku Islands Archives Portal)

Minister of Home Affairs Yasushi Nomura drafted this document (dated January 12, 1895) requesting a cabinet meeting in response to a written petition by the Governor of Okinawa Prefecture to the central government dated November 2, 1893 (see Document 5). This document states that there had been a petition to place the uninhabited islands of Kuba and Uotsuri under the jurisdiction of Okinawa Prefecture and erect markers out of a need to control the people attempting fishing operations there in recent years. The document also advocates for the erection of a marker as petitioned because the islands can be considered under the prefecture's jurisdiction.

Document 8:
Cabinet decision authorizing the erection of territorial markers and Okinawa Prefecture's jurisdiction (cabinet decision; draft instruction; on the matter of erecting markers, as the request stated; "Kobun Ruishu, Vol. 19, 1895"; decided on January 14, 1895), (from the National Archives of Japan), (posted on the Senkaku Islands Archives Portal).

This is a cabinet decision on placing Kuba and Uotsuri islands under the jurisdiction of Okinawa Prefecture (dated January 14, 1895) and a draft instruction to the prefecture. The cabinet decision recognizes Okinawa Prefecture's jurisdiction over the Senkaku Islands and permits the erection of markers as requested by the Governor of Okinawa Prefecture (see Document 5) due to the need to control the people attempting fishing operations around the uninhabited islands referred to as Kuba Island and Uotsuri Island.

2 Establishment of gunnery and bombing ranges by the U.S. military in 1948

The waters around the Senkaku Islands had been known among fishermen as prime fishing grounds for fish such as bonito, swordfish, and machi (a general term in Okinawa for snapper, gnomefish, and Japanese rubyfish).³ However, the interest U.S. forces stationed in Okinawa had in the Senkaku Islands was founded on the Senkakus' geographical status as uninhabited islands in the East China Sea.

In January 1948, the U.S. military designated the area around Kuba Island, one of the Senkaku Islands, as a "permanent danger area," and, in April of the same year, announced that the U.S. Air Force in Okinawa had established Kobi Sho Range as a gunnery and bombing range (see Documents 9 through 11).

- Response by the Republic of China (Taiwan)

After the establishment of gunnery and bombing ranges in the waters around the Senkaku Islands, in 1953, the Republic of China's Department of Agriculture and Forestry made inquiries through the ROC Ministry of Foreign Affairs with U.S. forces in Okinawa about the practice ranges (see the document "Strategic Bombing Exercises on Uninhabited Ryukyu Islands Designated by U.S. Forces Stationed in Ryukyu"). In December 1952, the

3 Makomo Kuniyoshi, "The History and Current Status of Fishing Grounds around the Senkaku Islands," "Fisheries Science," Vol. 77, No. 4 (2011), pp. 704-707.

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Department of Agriculture and Forestry requested that the Ministry of Foreign Affairs make an inquiry concerning the establishment of gunnery and bombing ranges by U.S. forces in Okinawa around “the Uninhabited Islands (as the Senkaku Islands were described in Taiwan,)” where Taiwanese fishermen visit to catch spearfish swordfish from January through May each year. In response, the Ministry made an inquiry in January 1953 with the United States Civil Administration of the Ryukyu Islands (USCAR), which held jurisdiction over the Ryukyu Islands (It was not a protestation against the establishment of gunnery and bombing ranges). The USCAR replied that the five miles around Kuba Island in the Senkaku Islands was designated as a gunnery and bombing range and a permanent danger area. The response also stated that, first of all, Taiwanese fishermen would need prior approval from USCAR to enter the waters around the Nansei Islands and that compliance would not put the fishermen in danger.

Even after the administration of Okinawa was reverted to Japan in May 1972, in the Japan-U.S. Joint Committee, established under the provisions of Article 25, paragraph 1 of the Agreement under Article VI of the Treaty of Mutual Cooperation and Security between Japan and the United States of America, regarding Facilities and Areas and the Status of United States Armed Forces in Japan (Japan-U.S. Status-of-Forces Agreement), Japan and the U.S. agreed that the U.S. military would continue the use of the gunnery and bombing ranges around Kuba and Taisho islands, the agreement continues to be valid today.

- Response by the government of the People's Republic of China

Despite the claim by the government of the People's Republic of China that the Senkaku Islands are "Chinese territory," for more than 70 years until December 1971, it had never lodged a protest or argument with the governments of Japan or the United States against a variety of measures that the Japanese and U.S. governments had taken vis-à-vis the Senkaku Islands after the incorporation of the Islands into the Japanese territory in 1895 including but not limited to: the U.S. government's military occupation or administration after World War II; the widely publicized establishment of a gunnery and bombing range by the U.S. Air Force in Okinawa around Kuba Island beginning in 1948; the inclusion of the Senkaku Islands in the areas to be returned under the terms of the Agreed Minutes of the Okinawa Reversion Agreement signed in June 1971.

- Acquiescence under international law

This long period of tacit consent by the government of the People's Republic of China clearly contradicts its claim to sovereignty over the Senkaku Islands and constitutes "acquiescence" under international law. As clearly stated by the judgement in the 1962 Preah Vihear dispute at the International Court of Justice, “*Qzri tacet consentire videtur si loqui debuisset ac potuisset.*”⁴ In other words, one who should or can make a claim yet is silent is considered to have agreed. A protest would refute the acquiescence and is a means of preventing the maturation of prescriptive title or historic title. A state that has acquiesced surrenders the ability to repudiate both another state's claim to sovereignty over the land subject to acquiescence as well as the validity of the actions based on the said claim.

Document 9:

"Operations: Gunnery and Bombing Ranges (Supersession of the 1st Air Division Regulation 55-8)" (produced by HQ 1st Air Division; "Personnel: Okinawan"; command dated January 15, 1948), (U.S. National Archives and Records Administration), (posted on the Senkaku Islands Archives Portal)

This document dated January 15, 1948 designates five permanent danger areas, including the area in and around Kobi Sho (in reference to Kuba Island in the Senkakus).

Document 10:

"Designation of Permanent Danger Areas by the U.S. military command in Ryukyu" (produced by the Document Section, Liaison and Public Affairs Division, General Affairs Bureau, Government of the Ryukyu Islands; correspondence with USCAR; documents received; command dated April 9, 1948), (from the Okinawa Prefectural Archives)

In this document dated April 9, 1948, the U.S. military command in Ryukyu instructed the Governor of Okinawa to announce the relevant personnel that five areas, including in and around Kobi Sho (in reference to Kuba Island in the Senkakus), have been designated as permanent danger areas for use by the 1st Air Division.

The designation of Permanent Danger Areas by the U.S. military command in Ryukyu can be confirmed from several materials from the same year including the "Rinji Hokubu Nansei Shoto Koho" (an Amami Islands bulletin) on May 25, the "Koho Shin-Miyako" (a Miyako Islands bulletin) on May 27, and the "Yaeyama Times" (a Yaeyama Islands newspaper) on November 1.

The fact that the establishment of a gunnery and bombing range in and around Kuba Island by the U.S. Air Force in Japan was widely publicized provides a basis for establishing acquiescence by the government of the People's Republic of China.

Document 11:

"Oki-Sui No.44: Fishing Prohibition Zones due to Bombing Exercises" (produced by the Okinawan Civilian Administration; announcement dated April 22, 1948), (from the Okinawa Prefectural Archives), (2019 Final Report on Research of Documents concerning the Senkaku Islands," page 98).

In response to the instruction by the U.S. military command in Ryukyu to the Governor of Okinawa dated April 9, 1948, the Director of the Okinawa Fishery Department sent this document to the Chairperson of the Okinawa Fishery Co-operative Association, the head of other fisheries associations and others for the purpose of notifying of the prohibited fishing areas due to a bombing exercise.

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4 Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Judgement (Merits), *ICJ Reports 1962*, p. 23 (available at <https://www.icj-cij.org/public/files/case-related/45/045-19620615-JUD-01-00-EN.pdf>).